Colorado Register

39 CR 17

Volume 39 , No. 17

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Introduction

The *Colorado Register* is published pursuant to C.R.S. 24-4-103(11) and is the sole official publication for state agency notices of rule-making, proposed rules, attorney general's opinions relating to such rules, and adopted rules. The register may also include other public notices including annual departmental regulatory agendas submitted by principal departments to the secretary of state.

"Rule" means the whole or any part of every agency statement of general applicability and future effect implementing, interpreting, or declaring law or policy or setting forth the procedure or practice requirements of any agency. "Rule" includes "regulation". C.R.S. 24-4-102(15). Adopted rules are effective twenty days after the publication date of this issue unless otherwise specified.

The *Colorado Register* is published by the office of the Colorado Secretary of State twice monthly on the tenth and the twenty-fifth. Notices of rule-making and adopted rules that are filed from the first through the fifteenth are published on the twenty-fifth of the same month, and those that are filed from the sixteenth through the last day of the month are published on the tenth of the following month. All filings are submitted through the secretary of state's electronic filing system.

For questions regarding the content and application of a particular rule, please contact the state agency responsible for promulgating the rule. For questions about this publication, please contact the Administrative Rules Program at rules@sos.state.co.us.

Notice of Proposed Rulemaking

Tracking number

2016-00404

Department

200 - Department of Revenue

Agency

204 - Division of Motor Vehicles

CCR number

1 CCR 204-10

Rule title

TITLE AND REGISTRATION SECTION

Rulemaking Hearing

Date

10/04/2016

Time

02:00 PM

Location

1881 Pierce Street, Lakewood, CO 80214; Rm 110 (Board/Commission Meeting Room)

Subjects and issues involved

The following rule is promulgated to establish criteria for the issuance of Temporary Registration Permits by Licensed Colorado Motor Vehicle Dealers.

Statutory authority

42-1-204 and 42-3-203, C.R.S.

Contact information

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DEPARTMENT OF REVENUE

Division of Motor Vehicles – Title and Registration Sections

1 CCR 204-10

RULE 34. DEALER ISSUED TEMPORARY REGISTRATION PERMITS

Basis: The statutory bases for this ~~regulation are~~ rule are 42-1-204~~, 42-3-116(5), 42-3-203(3)(b), 42-3-203(3)(c)(II)~~ and 42-3-203,~~(3)(c)(III)~~ C.R.S.

Purpose: The following ~~rules and regulations are~~ rule is promulgated to establish criteria for the issuance of ~~temporary registration permits~~ Temporary Registration Permits by ~~licensed~~ Licensed Colorado Motor Vehicle Dealers.

1.0 Definitions

~~1.1~~ "Licensed Colorado Motor Vehicle Dealer" or "Dealer" means the same as defined in section 42-6-102(2), C.R.S.

~~1.2~~ "Mounting Boards" means the Department approved device that a printed Temporary Registration Permit is affixed to.

~~1.3~~ "Temporary Registration Permit" or "Temporary Registration Number Plate and Certificate" means the Department approved form that is printed when performing a Temporary Registration Permit Issuance transaction on the Quick Tags System that when affixed to a Mounting Board and mounted to a vehicle provides evidence that the vehicle has been issued a temporary registration.

~~1.4~~ "Quick Tags System" means the Department approved vendor hosted system provided to a Dealer for the performance of Temporary Registration Permit transactions.

~~1.5~~ "Secure and Verifiable Identification" or "SVID" means an identification document issued by a state or federal jurisdiction or recognized by the United States Government and that is verifiable by federal or state law enforcement, intelligence, or homeland security agencies.

2.0 Requirements

~~2.1~~ Dealer issued Temporary Registration Permits must be processed and issued through the Quick Tags System. A Dealer must register its dealership and each individual authorized user in the Quick Tags System. A Dealer must not issue Temporary Registration Permits unless registered in the Quick Tags System.

~~2.2~~ A Dealer whose license is inactive, suspended, or revoked must not issue Temporary Registration Permits.

~~2.3~~ A Temporary Registration Permit is only valid if issued through the Quick Tags System and affixed to a Mounting Board.

~~2.4~~ Dealers must purchase Mounting Boards directly from a Department authorized Mounting Board vendor(s). A Dealer must only use Department approved Mounting Boards for affixing Temporary Registration Permits.

~~2.5~~ Upon the sale of a motor vehicle, the Dealer shall:

a. Perform the Temporary Registration Permit issuance transaction in the Quick Tags System;

b. Print the Temporary Registration Permit generated by the Quick Tags System on a printer selected by the Dealer;

c. Print the Colorado registration receipt generated by the Quick Tags System on a printer selected by the Dealer;

d. Affix the printed Temporary Registration Permit to a Mounting Board;

e. Affix the Mounting Board with the Temporary Registration Permit to the sold vehicle pursuant to 42-3-202(2) and 42-3-203(3)(d)(I), C.R.S.; and

f. Provide the printed Colorado registration receipt to the purchaser.

~~2.6~~ A Dealer must verify the purchaser(s) SVID prior to the issuance of a Temporary Registration Permit.

~~2.7~~ If the Temporary Registration Permit and/or Mounting Board are damaged during issuance, the Dealer may issue a corrected Temporary Registration Permit through the Quick Tags System. The Dealer must destroy the original Temporary Registration Permit and Mounting Board to render it unreadable and unusable.

~~2.8~~ A Temporary Registration Permit is valid for up to sixty (60) days from the date of sale/issuance. A Temporary Registration Permit cannot not expire on a Saturday, Sunday, or legal holiday. If the sixtieth day falls on a Saturday, Sunday, or legal holiday, the Temporary Registration Permit will expire on the first weekday prior to the Saturday, Sunday, or legal holiday.

~~2.9~~ A Temporary Registration Permit is not renewable, but when circumstances outlined in section 42-3-203(3)(e), C.R.S., are met, the Dealer may issue a second Temporary Registration Permit pursuant to the requirements in this rule.

~~2.10~~ A Dealer must not place hand written markings, stickers, items, decorations, decals, or other markings on the printed Temporary Registration Permit and/or Mounting Board. Mounting frames must not obstruct any portion of or otherwise render the Temporary Registration Permit unreadable pursuant to in section 42-3-202(2)(b), C.R.S.

~~2.11~~ A Dealer must not alter the printing of the Temporary Registration Permit by resizing it, rotating it, or by any other alteration. Altering the printing of the Temporary Registration Permit will render it invalid.

~~2.12~~ A Temporary Registration Permit must not be issued to vehicles sold as “Tow Away” or to vehicles that are not roadworthy. A Temporary Registration Permit must not be used to demonstrate, transport, or deliver vehicles.

~~2.13~~ Dealers must ensure that the Quick Tags System is secure and accessible only by authorized users. Dealers must meet all training and system requirements to use the Quick Tags System.

2.14 Dealers are required to select a payment plan with the Quick Tags System vendor and must pay the vendor based on the payment plan selected. Dealers who fail to timely pay the vendor will be denied access to the Quick Tags System.

2.15 Mounting Boards must be kept in a secure location. Dealers must file a police report with local law enforcement within twenty-four (24) hours of discovering that a Mounting Board(s) has been lost or stolen. A copy of the police report must be supplied to the Department.

2.16 All Mounting Boards must be surrendered immediately to the Department of Revenue, Enforcement Business Group, Auto Industry Division, when a Dealer's license has been suspended or revoked.

2.17 After notice and hearing conducted pursuant to 24-4-104 and 24-4-105, C.R.S., a Dealer found to have violated this rule may have its privilege of issuing Temporary Registration Permits suspended or revoked.

2.18 "Authorized Agents" means the officer of a county or city and county designated by law to issue annual registrations of vehicles and to collect any registration or license fee imposed thereon by law.

2.19 "Dealer Stub" means the Department of Revenue form DR 2206A.

2.20 "Department" for the purpose of this regulation means the Department of Revenue, State Registration Section

2.21 "Licensed Colorado Motor Vehicle Dealer" or "Dealer" means every person engaged in the business of buying, selling, or exchanging vehicles of a type required to be registered under articles 1 to 4 of Title 42 of the Colorado Revised Statutes and who has an established place of business for such purpose in this state.

2.22 "Temporary Registration Permit" or "Temporary Permit" means the Department of Revenue form DR 2206.

2.23 "Registration Address" means a person's principal or primary home or place of abode, to be determined in the same manner as residency for voter registration purposes as provided in sections 1-2-102 and 31-10-201, C.R.S. or for those persons that do not have a principal or primary home or place of abode registration address is the address for which the vehicle is permanently maintained at.

2.24 "Secure and Verifiable Identification" or "SVID" means identification issued by a state or federal jurisdiction or recognized by the United States Government and that is verifiable by federal or state law enforcement, intelligence, or homeland security agencies.

2.0 Requirements

2.1 The cost for temporary permits sold in blocks of twenty-five (25) shall be the fee stated in 42-3-203(3)(b) C.R.S. At the same time the block of temporary permits is purchased the Department's authorized agents will release twenty-five dealer stubs to the purchasing dealer.

2.2 The cost for temporary permits on an individual basis shall be the individual temporary permit rate applicable to the general public. Dealer stubs will be released by the Department's authorized agents for the same number of temporary permits purchased.

2.3 Temporary permits and dealer stubs shall be issued by Dealers upon consummation of a sale. Dealers shall not loan, give, borrow, sell, exchange or issue permits for or with another dealer, individual, business, company, or corporation.

2.4 Dealers shall verify SVID prior to issuance of temporary permits, unless the purchaser declares that the vehicle will be titled and registered outside the State of Colorado.

A. The duration of a temporary permit issued under these circumstances shall be issued for 14 days or less.

2.5 Temporary permits and dealer stubs shall be kept in a secure location. Dealers shall contact local law enforcement within 24 hours and file a police report for any temporary permit(s) or dealer stub(s) that are lost or stolen. A copy of the police report shall be supplied to the Department via the address located on the back of the dealer stub or faxed to 303-205-5978. Replacement purchase of temporary permits shall not be allowed until a filed police report is received by the Department.

2.6 The duration of a temporary permit may not exceed sixty (60) days from the date of sale/issuance. Temporary permits shall not expire on a Saturday, Sunday, or legal holiday. If the 60th day falls on a Saturday, Sunday, or legal holiday the dealer shall make the temporary permit expire on the first weekday prior to the Saturday, Sunday or legal holiday. Temporary permits are not renewable, but when circumstances warrant, subsequent permits may be applied for by the consumer from their County Motor Vehicle Office or the Auto Industry Division.

2.7 Temporary permits shall not be issued to vehicles which are sold as "Tow Away" or to vehicles which are not roadworthy. Temporary permits shall not be used to demonstrate, transport or deliver vehicles.

2.8 Temporary permits shall be completed in permanent black marker/ink or printed using a standard commercial printer in fonts and styles established by the Department and shall be completely filled out ensuring accuracy of information. Missing or incomplete temporary permits shall render the temporary permit void.

A. ABBR. MONTH – shall be the three character designation (i.e., JAN = January) of the month in which the temporary permit expires. Dealers should ensure that the month is written over the hologram strip on the temporary permit. Upon completion of the ABBR. MONTH the dealer shall remove the protective film backer and affix the protective film to the temporary permit ensuring full coverage of the written month and hologram strip.

B. DAY – shall be the work weekday day in the month in which the temporary permit expires. Temporary permits shall not expire on a Saturday, Sunday or legal holiday. In no event shall a temporary permit expire date exceed sixty days. If the expire date falls on a Saturday, Sunday or legal holiday the dealer shall make the temporary permit expire on the first weekday prior to the Saturday, Sunday or legal holiday.

C. YEAR (expired section) – shall be the two digits indicating the year the temporary permit expires (i.e., 08 = 2008).

D. DEALER NUMBER – shall be the dealer number assigned to the licensed Colorado dealer from the Department of Revenue, Enforcement Business Group, Auto Industry Division that is issuing the temporary permit.

2.9 For every temporary permit issued by the dealer a dealer stub shall be completed with the three part copies being distributed as:

A. White copy – shall be submitted to the Department within calendar 5 days of the issued date as detailed below in 2.13.

B. Pink copy – shall be provided to the customer as evidence of temporary registration.

C. Yellow copy – shall be retained by the issuing dealer for a minimum of one year from the issue date.

2.10 The dealer stub shall be completed in permanent black ink or printed using a standard commercial printer in fonts and styles established by the Department and shall be completely filled out ensuring accuracy of information is maintained. Incomplete dealer stubs are not acceptable (unless as indicated below) and shall render the dealer stub void.

A. PERMIT NUMBER field - shall reflect the temporary permit serial number issued in 2.8 above.

B. Owner field - shall reflect the name of the owner of the vehicle as indicated on the SVID.

C. Owner field - shall reflect the name as indicated on the SVID of the second owner if there is a second owner.

D. Address, City, State and Zip field - shall reflect the registration address of the owner of the vehicle.

E. Year field - shall reflect the four digit model year of the vehicle.

F. Make field - shall reflect the make of the vehicle.

G. CWT field - shall reflect the empty weight or curb weight of the vehicle.

H. GVW field - shall reflect the vehicle's "Gross Vehicle Weight" which is equal to the empty weight plus the weight of the heaviest load that will be hauled. If no GVW available then leave blank.

I. VIN field - shall reflect the Vehicle Identification Number for the vehicle.

J. Date Issued field - shall reflect the date in Month, Day, Year format (mm/dd/year) for the date the temporary permit was issued.

K. Date Exp. field - shall reflect the date in Month, Day, Year format (mm/dd/year) for the vehicle that the dealer stub is issued indicating the date of expire of the temporary registration.

L. Dealer field - shall reflect the business name of the dealer.

M. Dealer Lic. # field - shall reflect the dealer number assigned to the licensed Colorado dealer from the Department of Revenue, Enforcement Business Group, Auto Industry Division.

2.11 Strike over and corrections are not permitted on the face of the temporary permit or dealer stub. Voided, damaged or recovered temporary permits and/or dealer stubs shall be mailed to the Department for recording or destruction within five calendar days of being voided. These should be marked "VOID" in bold black ink/marker across the face of the

document. The dealer shall retain the yellow copy of the dealer stub with the word "VOID" written in permanent black ink/marker across the face to indicate that the dealer did not issue or place the temporary permit on the vehicle for auditing purposes.

2.12 Temporary permits should be affixed to the rear of the vehicle in the area normally designed for the normal placement of the license plate. Dealers may place the temporary permits in plastic/protective bags or holders as long as the bags or holders do not cover, distort or make unreadable any part of the temporary permit. Temporary permits may be placed on the inside of the vehicle or on the inside rear window provided the temporary permit is readable.

2.13 The white copy of the dealer stub shall be submitted to the Department within five (5) calendar days of issuance via one of the following methods:

A. Dealer may elect to transcribe the exact information on the issued dealer stub into an electronic file that is transferred to the Department electronically.

1. Format, file type, information and transfer of the electronic file shall be determined by the Department.

2. Dealers that elect to use this method are not required to mail in the white copy of the dealer stubs to the Department.

B. Dealer may mail the white copy of the dealer stub to the Department at the address indicated on the back of the white copy of the dealer stub.

1. Only the dealer stubs are required to be submitted to the Department. Copies of insurance, vehicle registrations, identification cards etc. shall not be mailed to the Department.

2.14 All temporary permits and dealer stubs must be surrendered immediately to the Department of Revenue, Enforcement Business Group, Auto Industry Division when a dealer license has been suspended or revoked by the Colorado Motor Vehicle Dealer Board.

2.15 Dealers that do not comply with this regulation or have been found in violation of this regulation may have their privilege of issuing temporary permits revoked. Revocations will be issued through the Department of Revenue, Enforcement Business Group, Auto Industry Division.

DEPARTMENT OF REVENUE

Division of Motor Vehicles – Title and Registration Sections

1 CCR 204-10

RULE 34. DEALER ISSUED TEMPORARY REGISTRATION PERMITS

Basis: The statutory bases for this rule are 42-1-204 and 42-3-203, C.R.S.

Purpose: The following rule is promulgated to establish criteria for the issuance of Temporary Registration Permits by Licensed Colorado Motor Vehicle Dealers.

1.0 Definitions

1.1 "Licensed Colorado Motor Vehicle Dealer" or "Dealer" means the same as defined in section 42-6-102(2), C.R.S.

1.2 "Mounting Boards" means the Department approved device that a printed Temporary Registration Permit is affixed to.

1.3 "Temporary Registration Permit" or "Temporary Registration Number Plate and Certificate" means the Department approved form that is printed when performing a Temporary Registration Permit Issuance transaction on the Quick Tags System that when affixed to a Mounting Board and mounted to a vehicle provides evidence that the vehicle has been issued a temporary registration.

1.4 "Quick Tags System" means the Department approved vendor hosted system provided to a Dealer for the performance of Temporary Registration Permit transactions.

1.5 "Secure and Verifiable Identification" or "SVID" means an identification document issued by a state or federal jurisdiction or recognized by the United States Government and that is verifiable by federal or state law enforcement, intelligence, or homeland security agencies.

2.0 Requirements

2.1 Dealer issued Temporary Registration Permits must be processed and issued through the Quick Tags System. A Dealer must register its dealership and each individual authorized user in the Quick Tags System. A Dealer must not issue Temporary Registration Permits unless registered in the Quick Tags System.

2.2 A Dealer whose license is inactive, suspended, or revoked must not issue Temporary Registration Permits.

2.3 A Temporary Registration Permit is only valid if issued through the Quick Tags System and affixed to a Mounting Board.

2.4 Dealers must purchase Mounting Boards directly from a Department authorized Mounting Board vendor(s). A Dealer must only use Department approved Mounting Boards for affixing Temporary Registration Permits.

2.5 Upon the sale of a motor vehicle, the Dealer shall:

a. Perform the Temporary Registration Permit issuance transaction in the Quick Tags System;

b. Print the Temporary Registration Permit generated by the Quick Tags System on a printer selected by the Dealer;

c. Print the Colorado registration receipt generated by the Quick Tags System on a printer selected by the Dealer;

d. Affix the printed Temporary Registration Permit to a Mounting Board;

e. Affix the Mounting Board with the Temporary Registration Permit to the sold vehicle pursuant to 42-3-202(2) and 42-3-203(3)(d)(I), C.R.S.; and

f. Provide the printed Colorado registration receipt to the purchaser.

2.6 A Dealer must verify the purchaser(s) SVID prior to the issuance of a Temporary Registration Permit.

2.7 If the Temporary Registration Permit and/or Mounting Board are damaged during issuance, the Dealer may issue a corrected Temporary Registration Permit through the Quick Tags System. The Dealer must destroy the original Temporary Registration Permit and Mounting Board to render it unreadable and unusable.

2.8 A Temporary Registration Permit is valid for up to sixty (60) days from the date of sale/issuance. A Temporary Registration Permit cannot not expire on a Saturday, Sunday, or legal holiday. If the sixtieth day falls on a Saturday, Sunday, or legal holiday, the Temporary Registration Permit will expire on the first weekday prior to the Saturday, Sunday, or legal holiday.

2.9 A Temporary Registration Permit is not renewable, but when circumstances outlined in section 42-3-203(3)(e), C.R.S., are met, the Dealer may issue a second Temporary Registration Permit pursuant to the requirements in this rule.

2.10 A Dealer must not place hand written markings, stickers, items, decorations, decals, or other markings on the printed Temporary Registration Permit and/or Mounting Board. Mounting frames must not obstruct any portion of or otherwise render the Temporary Registration Permit unreadable pursuant to in section 42-3-202(2)(b), C.R.S.

2.11 A Dealer must not alter the printing of the Temporary Registration Permit by resizing it, rotating it, or by any other alteration. Altering the printing of the Temporary Registration Permit will render it invalid.

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2.15 Mounting Boards must be kept in a secure location. Dealers must file a police report with local law enforcement within twenty-four (24) hours of discovering that a Mounting Board(s) has been lost or stolen. A copy of the police report must be supplied to the Department.

2.16 All Mounting Boards must be surrendered immediately to the Department of Revenue, Enforcement Business Group, Auto Industry Division, when a Dealer's license has been suspended or revoked.

2.17 After notice and hearing conducted pursuant to 24-4-104 and 24-4-105, C.R.S., a Dealer found to have violated this rule may have its privilege of issuing Temporary Registration Permits suspended or revoked.

Notice of Proposed Rulemaking

Tracking number

2016-00409

Department

700 - Department of Regulatory Agencies

Agency

701 - Division of Banking

CCR number

3 CCR 701-1

Rule title

COMMERCIAL BANKS

Rulemaking Hearing

Date

10/20/2016

Time

10:00 AM

Location

Division of Banking, 1560 Broadway, Suite 975, Denver, CO

Subjects and issues involved

Section A, item 2 only of CB101.53 Loan Production Office, is being amended to revise the definition of a branch to match the definition provided in Section 11-101-401(10) C.R.S.

Statutory authority

Section 11-102-104, C.R.S.

Contact information

Name

Diana S. Gutierrez

Title

Banking Board Secretary

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303-894-7584

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diana.gutierrez@state.co.us

CB101.53 **Loan Production Office** [Section 11-105-101(1) and 11-102-104(1)(a)]

Note to publisher: The existing LPO definition, number 1 under Section A, should remain a part of this Rule.

A. Definitions:

2. A Branch ~~is any~~means any branch bank, branch office, branch agency, additional office, or branch place of business situated ~~location~~ in Colorado~~, other than the main office,~~ or another state of a financial institution located in this or another state at which deposits are received, checks are paid, and money is lent~~,~~ and trust powers may be exercised, if approved by its chartering authority.

Note to publisher: The existing text under Sections B through F inclusive should all remain a part of this Rule.

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
Denver, CO 80202

August 19, 2016

BEFORE THE
COLORADO STATE BANKING BOARD

IN THE MATTER OF	)	
	)	**NOTICE OF PROPOSED RULEMAKING**
RULE AMENDMENT	)	

I. Notice of hearing

PLEASE BE ADVISED THAT, as required by Section 24-4-103, C.R.S., of the State Administrative Procedures Act, the Colorado State Banking Board (Banking Board) hereby gives notice of proposed rulemaking. A hearing is scheduled for October 20, 2016, commencing at 10:00 a.m., at the Division of Banking (Division), 975 Conference Room, 1560 Broadway, Suite 975, Denver, Colorado.

II. Purpose of the proposed rulemaking

The purpose of the hearing is to hear comments concerning the proposed amendment of Section A, Item 2 only, of Banking Board Rule CB101.53 – Loan Production Office, to update the definition of a branch to match the definition provided in Section 11-104-401(10) of the Colorado Revised Statutes. All remaining portions of the rule remain unchanged and are not part of this proposed rulemaking.

III. Statutory authority for proposed rulemaking

The proposed amendment of the rule is being held under the authority given the Banking Board by the Colorado Banking Code in accordance with Section 11-102-104(1), C.R.S., which states "the banking board is the policy-making and rule-making authority for the division of banking and has the power to: (a) make, modify, reverse, and vacate rules for the proper enforcement and administration of this code..."

IV. Opportunity to testify and submit written comments

Any interested person(s) has the right to submit written comments or data, view, or argument. Written information should be filed with the Division no later than October 10, 2016. To submit written comments, please contact Diana Gutierrez, Banking Board Secretary, at diana.gutierrez@state.co.us. In addition, any interested person(s) has the right to make an oral presentation at the Hearing, unless the Banking Board deems any oral presentation unnecessary.

SUBMITTED ON BEHALF OF THE
COLORADO STATE BANKING BOARD

Chris R. Myklebust
State Bank Commissioner

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
Denver, CO 80202

August 18, 2016

STATE BANKING BOARD
RULE CB 101.53
PERTAINING TO TITLE 11, ARTICLE 105, SECTION 101
COLORADO REVISED STATUTES

STATEMENT OF BASIS, PURPOSE AND SPECIFIC AUTHORITY

Statement of Basis

In January 2016, the Colorado State Banking Board approved amendments to Banking Board Rule CB 101.53, Loan Production Office (CB101.53), which became effective March 2016. During the rule review process by the Office of Legislative Legal Services, it was noted that the branch definition was incomplete and did not match the branch definition provided in Section 11-101-401(10) of the Colorado Revised Statutes (C.R.S.).

Specific Purpose of this Rulemaking

The specific purpose of this rulemaking is to revise the definition of a "branch" in CB101.53 to be consistent with statute. The proposed amendment is for the branch definition only; the other amendments that were approved and became effective in March remain unchanged.

The branch definition currently reads:

> A Branch is any location in Colorado, other than the main office, at which deposits are received, checks are paid, money is lent, and trust powers may be exercised;

The definition will be revised to read:

> A Branch means any branch bank, branch office, branch agency, additional office, or branch place of business situated in Colorado or another state of a financial institution located in this or another state at which deposits are received, checks are paid, and money is lent and trust powers may be exercised, if approved by its chartering authority.

Rulemaking Authority

Sections 11-101-102, 11-102-104(1)(a), and 11-105-101(1), C.R.S.

Notice of Proposed Rulemaking

Tracking number

2016-00411

Department

700 - Department of Regulatory Agencies

Agency

701 - Division of Banking

CCR number

3 CCR 701-1

Rule title

COMMERCIAL BANKS

Rulemaking Hearing

Date

10/20/2016

Time

10:00 AM

Location

Division of Banking, 1560 Broadway, Suite 975, Denver, CO

Subjects and issues involved

This rulemaking is for the proposed promulgation of Banking Board Rule CB101.66 Frequency of Board Meetings, which was promulgated in response to the passage of SB16-126 and subsequent amendment of Section 11-103-502, C.R.S.

Statutory authority

Section 11-102-104, C.R.S.

Contact information

Name

Diana S. Gutierrez

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Banking Board Secretary

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CB101.66 **Frequency of Board Meetings** [Section 11-103-502, C.R.S.]

A. The board of directors (Board) of a state bank shall meet at least once each calendar quarter, unless the Colorado State Banking Board directs the meetings be held on a more frequent basis or less frequent basis in case of a disaster or emergency. If the Board of a state bank plans to change its current meeting schedule, the bylaws should be reviewed with regard to meeting frequency and updated, if necessary. A revised Board of Directors meeting schedule and a copy of the revised bylaws, if necessary, shall be provided to the Division no less than 30 days following receipt of approval of the change.

B. If other than monthly meetings are held, a director who fails to attend two consecutive meetings shall automatically cease to be a director unless the absence is satisfactorily explained to the banking board or commissioner, who shall, in that event, notify the president of such bank the approval of the continuation of the director.

C. If monthly meetings are held, a director who fails to attend three consecutive monthly meetings shall automatically cease to be a director unless the absence is satisfactorily explained to the banking board or commissioner, who shall, in that event, notify the president of such bank the approval of the continuation of the director.

D. Should a state bank's Board decide to again change its meeting schedule, the bank shall follow the process outlined in Section A.

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
Denver, CO 80202

August 19, 2016

BEFORE THE
COLORADO STATE BANKING BOARD

IN THE MATTER OF	)	
	)	**NOTICE OF PROPOSED RULEMAKING**
RULE PROMULGATION	)	

I. Notice of hearing

PLEASE BE ADVISED THAT, as required by Section 24-4-103, C.R.S., of the State Administrative Procedures Act, the Colorado State Banking Board (Banking Board) hereby gives notice of proposed rulemaking. A hearing is scheduled for October 20, 2016, commencing at 10:00 a.m., at the Division of Banking (Division), 975 Conference Room, 1560 Broadway, Suite 975, Denver, Colorado.

II. Purpose of the proposed rulemaking

The purpose of the hearing is to hear comments concerning the proposed promulgation of Banking Board Rule CB101.66 – Frequency of Board Meetings, which was promulgated in response to the passage of SB16-126 and subsequent amendment of Section 11-103-502, C.R.S. The proposed rule 1) establishes the procedure to be followed by a bank that wishes to change the frequency of its board of directors (board) meetings, and 2) provides reinstatement requirements with regard to board directors who are absent for consecutive meetings.

III. Statutory authority for proposed rulemaking

The proposed promulgation of the rule is being held under the authority given the Banking Board by the Colorado Banking Code in accordance with Section 11-102-104(1), C.R.S., which states "the banking board is the policy-making and rule-making authority for the division of banking and has the power to: (a) make, modify, reverse, and vacate rules for the proper enforcement and administration of this code..."

IV. Opportunity to testify and submit written comments

Any interested person(s) has the right to submit written comments or data, view, or argument. Written information should be filed with the Division no later than October 10, 2016. To submit written comments, please contact Diana Gutierrez, Banking Board Secretary, at diana.gutierrez@state.co.us. In addition, any interested person(s) has the right to make an oral presentation at the Hearing, unless the Banking Board deems any oral presentation unnecessary.

SUBMITTED ON BEHALF OF THE
COLORADO STATE BANKING BOARD

Chris R. Myklebust
State Bank Commissioner

COLORADO
Department of
Regulatory Agencies
Division of Banking

1560 Broadway, Suite 975
Denver, CO 80202

August 18, 2016

STATE BANKING BOARD
RULE CB 101.66
PERTAINING TO TITLE 11, ARTICLE 103, SECTION 502
COLORADO REVISED STATUTES

STATEMENT OF BASIS, PURPOSE, AND SPECIFIC AUTHORITY

Statement of Basis

Effective August 10, 2016, Senate Bill 16-126, Concerning Parity of State-Chartered Banks with Federally Chartered Banks Regarding Frequency of Meetings, revised the required frequency of a state bank's board of directors meetings from monthly to "at least once each calendar quarter unless the Banking Board directs the meetings be held on a more frequent basis or less frequent basis in case of a disaster or emergency", pursuant to Section 11-103-502, C.R.S. Reinstatement requirements for a director with consecutive board meeting absences must also be addressed.

Specific Purpose of this Rulemaking

The purpose of this proposed rule promulgation is to

1) establish a procedure for a Colorado state-chartered bank's board of directors that wishes to change its board meeting frequency to less than monthly; and
2) clarify the reinstatement requirements for a director with consecutive board meeting absences.

Rulemaking Authority

11-101-102. Declaration of policy.

11-102-104. Powers and duties of banking board.

Notice of Proposed Rulemaking

Tracking number

2016-00432

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-4 Series 4-1

Rule title

LIFE, ACCIDENT AND HEALTH, Series 4-1

Rulemaking Hearing

Date

10/04/2016

Time

10:30 AM

Location

1560 Broadway, Ste 850, Denver CO 80202

Subjects and issues involved

The purpose of this regulation is to recognize the following mortality tables for use in determining the minimum standard of valuation for annuity and pure endowment contracts: the 1983 Table a, the 1983 Group Annuity Mortality (1983 GAM) Table, the Annuity 2000 Mortality Table, 2012 IAR Mortality Table (2012 IAR) and the 1994 Group Annuity Reserving (1994 GAR) Table.

Statutory authority

10-1-109 and 10-7-309(2)(a)

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Proposed Amended Regulation 4-1-7

FOR RECOGNIZING A NEW ANNUITY MORTALITY TABLE FOR USE IN DETERMINING LIABILITIES FOR ANNUITIES

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Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109 and 10-7-309(2)(a), C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to recognize the following mortality tables for use in determining the minimum standard of valuation for annuity and pure endowment contracts: the 1983 Table "a," the 1983 Group Annuity Mortality (1983 GAM) Table, the Annuity 2000 Mortality Table, 2012 IAR Mortality Table (2012 IAR) and the 1994 Group Annuity Reserving (1994 GAR) Table.

Section 3 Applicability

This regulation is applicable to all foreign or domestic life and fraternal insurers.

Section 4 Definitions

A. "1983 Table 'a'" means, for the purposes of this regulation, th~~at~~e mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June 1982 by the National

Association of Insurance Commissioners (NAIC). [See *1982 Proceedings of the NAIC II*, page 454.] This regulation does not include later amendments or editions of this table.

B. "1983 GAM Table" means, for the purposes of this regulation, that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December 1983 by the National Association of Insurance Commissioners [See *1984 Proceedings of the NAIC I*, pages 414 to 415.] This regulation does not include later amendments or editions of this table.

C. "1994 GAR Table" means, for the purposes of this regulation, that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force and shown at XLVII Transactions of the Society of Actuaries 866-867 (1995), and adopted as a recognized mortality table for annuities in December 1996 by the National Association of Insurance Commissioners. [See *1996 Proceedings of the NAIC, third quarter*, pages 9, 40, 908, 1202, 1236-1237.] This regulation does not include later amendments or editions of this table.

D. "Annuity 2000 Mortality Table" means, for the purposes of this regulation, that mortality table developed by the Society of Actuaries Committee on Life Insurance Research and shown at XLVII Transactions of the Society of Actuaries 240 (1995) and adopted as a recognized mortality table for annuities in December 1996 by the National Association of Insurance Commissioners. [See *1996 Proceedings of the NAIC, third quarter*, pages 9, 40, 908, 1202, 1236-1237.] This regulation does not include later amendments or editions of this table.

E. "Period table" means, for the purposes of this regulation, a table of mortality rates applicable to a given calendar year.

F. "Generational mortality table" means, for the purposes of this regulation, a mortality table containing a set of mortality rates that decrease for a given age from one year to the next based on a combination of a Period table and a projection scale containing rates of mortality improvement.

G. "2012 IAR Mortality Table" means, for the purposes of this regulation, the Generational mortality table developed by the Society of Actuaries Committee on Life Insurance Research and containing rates, q_x^{2012+n}, derived from a combination of the 2012 IAM Period Table and Projection Scale G2, using the methodology stated in Section 6.

H. "2012 Individual Annuity Mortality Period Life Table" and "2012 IAM Period" mean, for the purposes of this regulation, the Period table containing loaded mortality rates for calendar year 2012. This table contains rates, q_x^{2012}, developed by the Society of Actuaries Committee on Life Insurance Research and is shown in Appendix E.

I. As used in this rule, "Projection Scale G2 (Scale G2)" is a table of annual rates, $G2_x$, of mortality improvement by age for projecting future mortality rates beyond calendar year 2012. This table was developed by the Society of Actuaries Committee on Life Insurance Research and is shown in Appendix E.

Section 5 Individual Annuities or Pure Endowment Contracts

A. Except as provided in Subsections B and C of this section, the 1983 Table "a" is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1981.

B. Except as provided in Subsection C of this section, either the 1983 Table "a" or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1985.

C. Except as provided in Subsection D of this section, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after March 2, 2001.

D. Except as provided in Subsection E of this section, the 2012 IAR Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2017.

~~D.~~E. The 1983 Table "a" without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after March 2, 2001, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

1. Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;

2. Settlements involving similar actions such as workers' compensation claims; or

3. Settlements of long term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

Section 6 Application of the 2012 IAR Mortality Table

In using the 2012 IAR Mortality Table, the mortality rate for a person age x in year (2012 + n) is calculated as follows:

$$q_x^{2012+n} = q_x^{2012}(1 - G2_x)^n$$

The resulting q_x^{2012+n} shall be rounded to three decimal places per 1,000, e.g., 0.741 deaths per 1,000. Also, the rounding shall occur according to the formula above, starting at the 2012 period table rate.

For example, for a male age 30, $q_x^{2012} = 0.741$.

$q_x^{2013} = 0.741 * (1 - 0.010) ^ 1 = 0.73359$, which is rounded to 0.734.

$q_x^{2014} = 0.741 * (1 - 0.010) ^ 2 = 0.7262541$, which is rounded to 0.726.

A method leading to incorrect rounding would be to calculate q_x^{2014} as $q_x^{2013} * (1 - 0.010)$, or $0.734 * 0.99 = 0.727$. It is incorrect to use the already rounded q_x^{2013} to calculate q_x^{2014}.

Section 67 Group Annuity or Pure Endowment Contracts

A. Except as provided in Subsections B and C of this section, the 1983 GAM Table, the 1983 Table "a" and the 1994 GAR Table are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, any one of these tables may be used for purposes of valuation for any annuity or pure endowment purchased on or after July 1, 1981, under a group annuity or pure endowment contract.

B. Except as provided in Subsection C of this section, either the 1983 GAM Table or the 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure

endowment purchased on or after January 1, 1985 under a group annuity or pure endowment contract.

C. The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after March 2, 2001 under a group annuity or pure endowment contract.

Section ~~7~~8 Application of the 1994 GAR Table

In using the 1994 GAR Table, the mortality rate for a person age x in year (1994 + n) is calculated as follows:

$$q_x^{1994+n} = q_x^{1994} (1 - AA_x)^n$$

where the q_x^{1994} and AA_xs are as specified in the 1994 GAR Table.

Section ~~8~~9 Severability

If any provision of this regulation or the application to any person or circumstances is for any reason held to be invalid, the remainder of the regulation and the application of its provisions to other persons or circumstances shall not be affected.

Section ~~9~~10 Enforcement

Noncompliance with this regulation may result, after proper notice and hearing, in the imposition of any sanctions made available in the Colorado statutes pertaining to the business of insurance or other laws, which include the imposition of fines, issuance of cease and desist orders, and/or other suspensions or revocations of license. Among others, the penalties provided in §10-3-1108, C.R.S. may be applied.

Section ~~10~~11 Effective Date

The effective date of this regulation is ~~March 2, 2010~~ January 1, 2017.

Section ~~11~~12 History
This regulation was originally effective January 1, 1985.
Amended regulation 4-1-7, effective March 2, 2001.
Amended regulation 4-1-7, effective March 2, 2010.
Amended regulation 4-1-7, effective January 1, 2017.

Appendix A

1994 Group Annuity Reserving (1994 GAR) Table

Age (x)	Male		Female		Age (x)	Male		Female	
	q_x	AA_x	q_x	AA_x		q_x	AA_x	q_x	AA_x
1	0.000592	0.020	0.000531	0.020	31	0.000821	0.005	0.000373	0.008
2	0.000400	0.020	0.000346	0.020	32	0.000839	0.005	0.000397	0.008
3	0.000332	0.020	0.000258	0.020	33	0.000848	0.005	0.000422	0.009
4	0.000259	0.020	0.000194	0.020	34	0.000849	0.005	0.000449	0.010
5	0.000237	0.020	0.000175	0.020	35	0.000851	0.005	0.000478	0.011
6	0.000227	0.020	0.000163	0.020	36	0.000862	0.005	0.000512	0.012
7	0.000217	0.020	0.000153	0.020	37	0.000891	0.005	0.000551	0.013
8	0.000201	0.020	0.000137	0.020	38	0.000939	0.006	0.000598	0.014
9	0.000194	0.020	0.000130	0.020	39	0.000999	0.007	0.000652	0.015
10	0.000197	0.020	0.000131	0.020	40	0.001072	0.008	0.000709	0.015
11	0.000208	0.020	0.000138	0.020	41	0.001156	0.009	0.000768	0.015
12	0.000226	0.020	0.000148	0.020	42	0.001252	0.010	0.000825	0.015
13	0.000255	0.020	0.000164	0.020	43	0.001352	0.011	0.000877	0.015
14	0.000297	0.019	0.000189	0.018	44	0.001458	0.012	0.000923	0.015
15	0.000345	0.019	0.000216	0.016	45	0.001578	0.013	0.000973	0.016
16	0.000391	0.019	0.000242	0.015	46	0.001722	0.014	0.001033	0.017
17	0.000430	0.019	0.000262	0.014	47	0.001899	0.015	0.001112	0.018
18	0.000460	0.019	0.000273	0.014	48	0.002102	0.016	0.001206	0.018
19	0.000484	0.019	0.000280	0.015	49	0.002326	0.017	0.001310	0.018
20	0.000507	0.019	0.000284	0.016	50	0.002579	0.018	0.001428	0.017
21	0.000530	0.018	0.000286	0.017	51	0.002872	0.019	0.001568	0.016
22	0.000556	0.017	0.000289	0.017	52	0.003213	0.020	0.001734	0.014
23	0.000589	0.015	0.000292	0.016	53	0.003584	0.020	0.001907	0.012
24	0.000624	0.013	0.000291	0.015	54	0.003979	0.020	0.002084	0.010
25	0.000661	0.010	0.000291	0.014	55	0.004420	0.019	0.002294	0.008
26	0.000696	0.006	0.000294	0.012	56	0.004949	0.018	0.002563	0.006
27	0.000727	0.005	0.000302	0.012	57	0.005581	0.017	0.002919	0.005
28	0.000754	0.005	0.000315	0.012	58	0.006300	0.016	0.003359	0.005
29	0.000779	0.005	0.000331	0.012	59	0.007090	0.016	0.003863	0.005
30	0.000801	0.005	0.000351	0.010	60	0.007976	0.016	0.004439	0.005

1994 Group Annuity Reserving (1994 GAR) Table (continued)

Age (x)	Male		Female		Age (x)	Male		Female	
	q_x	AA_x	q_x	AA_x		q_x	AA_x	q_x	AA_x
61	0.008986	0.015	0.005093	0.005	91	0.167260	0.004	0.128751	0.003
62	0.010147	0.015	0.005832	0.005	92	0.182281	0.003	0.141973	0.003
63	0.011471	0.014	0.006677	0.005	93	0.198392	0.003	0.155931	0.002
64	0.012940	0.014	0.007621	0.005	94	0.215700	0.003	0.170677	0.002
65	0.014535	0.014	0.008636	0.005	95	0.233606	0.002	0.186213	0.002
66	0.016239	0.013	0.009694	0.005	96	0.251510	0.002	0.202538	0.002
67	0.018034	0.013	0.010764	0.005	97	0.268815	0.002	0.219655	0.001
68	0.019859	0.014	0.011763	0.005	98	0.285277	0.001	0.237713	0.001
69	0.021729	0.014	0.012709	0.005	99	0.301298	0.001	0.256712	0.001
70	0.023730	0.015	0.013730	0.005	100	0.317238	0.001	0.276427	0.001
71	0.025951	0.015	0.014953	0.006	101	0.333461	0.000	0.296629	0.000
72	0.028481	0.015	0.016506	0.006	102	0.350330	0.000	0.317093	0.000
73	0.031201	0.015	0.018344	0.007	103	0.368542	0.000	0.338505	0.000
74	0.034051	0.015	0.020381	0.007	104	0.387885	0.000	0.361016	0.000
75	0.037211	0.014	0.022686	0.008	105	0.407224	0.000	0.383597	0.000
76	0.040858	0.014	0.025325	0.008	106	0.425599	0.000	0.405217	0.000
77	0.045171	0.013	0.028366	0.007	107	0.441935	0.000	0.424846	0.000
78	0.050211	0.012	0.031727	0.007	108	0.457553	0.000	0.444368	0.000
79	0.055861	0.011	0.035362	0.007	109	0.473150	0.000	0.464469	0.000
80	0.062027	0.010	0.039396	0.007	110	0.486745	0.000	0.482325	0.000
81	0.068615	0.009	0.043952	0.007	111	0.496356	0.000	0.495110	0.000
82	0.075532	0.008	0.049153	0.007	112	0.500000	0.000	0.500000	0.000
83	0.082510	0.008	0.054857	0.007	113	0.500000	0.000	0.500000	0.000
84	0.089613	0.007	0.060979	0.007	114	0.500000	0.000	0.500000	0.000
85	0.097240	0.007	0.067738	0.006	115	0.500000	0.000	0.500000	0.000
86	0.105792	0.007	0.075347	0.005	116	0.500000	0.000	0.500000	0.000
87	0.115671	0.006	0.084023	0.004	117	0.500000	0.000	0.500000	0.000
88	0.126980	0.005	0.093820	0.004	118	0.500000	0.000	0.500000	0.000
89	0.139452	0.005	0.104594	0.003	119	0.500000	0.000	0.500000	0.000
90	0.152931	0.004	0.116265	0.003	120	1.000000	0.000	1.000000	0.000

Appendix B

Annuity 2000 Mortality Table

Age Nearest Birthday (x)	$1000q_x$		Age Nearest Birthday (x)	$1000q_x$		Age Nearest Birthday (x)	$1000q_x$	
	Male	Female*		Male	Female*		Male	Female*
5	0.291	0.171	43	1.362	0.781			
6	0.270	0.141	44	1.547	0.855	81	50.643	35.985
7	0.257	0.118	45	1.752	0.939	82	55.651	40.552
8	0.294	0.118	46	1.974	1.035	83	61.080	45.690
9	0.325	0.121	47	2.211	1.141	84	66.948	51.456
10	0.350	0.126	48	2.460	1.261	85	73.275	57.913
11	0.371	0.133	49	2.721	1.393	86	80.076	65.119
12	0.388	0.142	50	2.994	1.538	87	87.370	73.136
13	0.402	0.152	51	3.279	1.695	88	95.169	81.991
14	0.414	0.164	52	3.576	1.864	89	103.455	91.577
15	0.425	0.177	53	3.884	2.047	90	112.208	101.758
16	0.437	0.190	54	4.203	2.244	91	121.402	112.395
17	0.449	0.204	55	4.534	2.257	92	131.017	123.349
18	0.463	0.219	56	4.876	2.689	93	141.030	134.486
19	0.480	0.234	57	5.228	2.942	94	151.422	145.689
20	0.499	0.250	58	5.593	3.218	95	162.179	156.846
21	0.519	0.265	59	5.988	3.523	96	173.279	167.841
22	0.542	0.281	60	6.428	3.863	97	184.706	178.563
23	0.566	0.298	61	6.933	4.242	98	196.946	189.604
24	0.592	0.314	62	7.520	4.668	99	210.484	201.557
25	0.616	0.331	63	8.207	5.144	100	225.806	215.013
26	0.639	0.347	64	9.008	5.671	101	243.398	230.565
27	0.659	0.362	65	9.940	6.250	102	263.745	248.805
28	0.675	0.376	66	11.016	6.878	103	287.334	270.326
29	0.687	0.389	67	12.251	7.555	104	314.649	295.719
30	0.694	0.402	68	13.657	8.287	105	346.177	325.576
31	0.699	0.414	69	15.233	9.102	106	382.403	360.491
32	0.700	0.425	70	16.979	10.034	107	423.813	401.054
33	0.701	0.436	71	18.891	11.117	108	470.893	447.860
34	0.702	0.449	72	20.967	12.386	109	524.128	501.498
35	0.704	0.463	73	23.209	13.871	110	584.004	562.563
36	0.719	0.481	74	25.644	15.592	111	651.007	631.645
37	0.749	0.504	75	28.304	17.564	112	725.622	709.338
38	0.796	0.532	76	31.220	19.805	113	808.336	796.233
39	0.864	0.567	77	34.425	22.328	114	899.633	892.923
40	0.953	0.609	78	37.948	25.158	115	1000.000	1000.000
41	1.065	0.658	79	41.812	28.341	* Based on 50% of Female Improvement Scale G.		
42	1.201	0.715	80	46.037	31.933			

Appendix C

1983 Table A

Age Nearest Birthday (x)	$1000q_x$		Age Nearest Birthday (x)	$1000q_x$		Age Nearest Birthday (x)	$1000q_x$	
	Male	Female		Male	Female		Male	Female
5	0.377	0.194	42	1.673	0.867	79	51.755	32.328
6	0.350	0.160	43	1.886	0.942	80	57.026	36.395
7	0.333	0.134	44	2.129	1.026	81	62.791	40.975
8	0.352	0.134	45	2.399	1.122	82	69.081	46.121
9	0.368	0.136	46	2.693	1.231	83	75.908	51.889
10	0.382	0.141	47	3.009	1.356	84	83.230	58.336
11	0.394	0.147	48	3.343	1.499	85	90.987	65.518
12	0.405	0.155	49	3.694	1.657	86	99.122	73.493
13	0.415	0.165	50	4.057	1.830	87	107.577	82.318
14	0.425	0.175	51	4.431	2.016	88	116.316	92.017
15	0.435	0.188	52	4.812	2.215	89	125.394	102.491
16	0.446	0.201	53	5.198	2.426	90	134.887	113.605
17	0.458	0.214	54	5.591	2.650	91	144.873	125.227
18	0.472	0.229	55	5.994	2.891	92	155.429	137.222
19	0.488	0.244	56	6.409	3.151	93	166.629	149.462
20	0.505	0.260	57	6.839	3.432	94	178.537	161.834
21	0.525	0.276	58	7.290	3.739	95	191.214	174.228
22	0.546	0.293	59	7.782	4.081	96	204.721	186.535
23	0.570	0.311	60	8.338	4.467	97	219.120	198.646
24	0.596	0.330	61	8.983	4.908	98	234.735	211.102
25	0.622	0.349	62	9.740	5.413	99	251.889	224.445
26	0.650	0.368	63	10.630	5.990	100	270.906	239.215
27	0.677	0.387	64	11.664	6.633	101	292.111	255.953
28	0.704	0.405	65	12.851	7.336	102	315.826	275.201
29	0.731	0.423	66	14.199	8.090	103	342.377	297.500
30	0.759	0.441	67	15.717	8.888	104	372.086	323.390
31	0.786	0.460	68	17.414	9.731	105	405.278	353.414
32	0.814	0.479	69	19.296	10.653	106	442.277	388.111
33	0.843	0.499	70	21.371	11.697	107	483.406	428.023
34	0.876	0.521	71	23.647	12.905	108	528.989	473.692
35	0.917	0.545	72	26.131	14.319	109	579.351	525.658
36	0.968	0.574	73	28.835	15.980	110	634.814	584.462
37	1.032	0.607	74	31.794	17.909	111	695.704	650.646
38	1.114	0.646	75	35.046	20.127	112	762.343	724.750
39	1.216	0.691	76	38.631	22.654	113	835.056	807.316
40	1.341	0.742	77	42.587	25.509	114	914.167	898.885
41	1.492	0.801	78	46.951	28.717	115	1000.000	1000.000

Appendix D

1983 Group Annuity Mortality (1983 GAM) Table

Age	q_x		Age	q_x		Age	q_x	
	Male	Female		Male	Female		Male	Female
5	0.000342	0.000171	41	0.001370	0.000716	76	0.049388	0.027185
6	0.000318	0.000140	42	0.001527	0.000775	77	0.054758	0.030672
7	0.000302	0.000118	43	0.001715	0.000842	78	0.060678	0.034459
8	0.000294	0.000104	44	0.001932	0.000919	79	0.067125	0.038549
9	0.000292	0.000097	45	0.002183	0.001010	80	0.074070	0.042945
10	0.000293	0.000096	46	0.002471	0.001117	81	0.081484	0.047655
11	0.000298	0.000104	47	0.002790	0.001237	82	0.089320	0.052691
12	0.000304	0.000113	48	0.003138	0.001366	83	0.097525	0.058071
13	0.000310	0.000122	49	0.003513	0.001505	84	0.106047	0.063807
14	0.000317	0.000131	50	0.003909	0.001647	85	0.114836	0.069918
15	0.000325	0.000140	51	0.004324	0.001793	86	0.124170	0.076570
16	0.000333	0.000149	52	0.004755	0.001949	87	0.133870	0.083870
17	0.000343	0.000159	53	0.005200	0.002120	88	0.144073	0.091935
18	0.000353	0.000168	54	0.005660	0.002315	89	0.154859	0.101354
19	0.000365	0.000179	55	0.006131	0.002541	90	0.166307	0.111750
20	0.000377	0.000189	56	0.006618	0.002803	91	0.178214	0.123076
21	0.000392	0.000201	57	0.007139	0.003103	92	0.190460	0.135630
22	0.000408	0.000212	58	0.007719	0.003443	93	0.203007	0.149577
23	0.000424	0.000225	59	0.008384	0.003821	94	0.217904	0.165103
24	0.000444	0.000239	60	0.009158	0.004241	95	0.234086	0.182419
25	0.000464	0.000253	61	0.010064	0.004703	96	0.248436	0.201757
26	0.000488	0.000268	62	0.011133	0.005210	97	0.263954	0.222044
27	0.000513	0.000284	63	0.012391	0.005769	98	0.280803	0.243899
28	0.000542	0.000302	64	0.013868	0.006386	99	0.299154	0.268185
29	0.000572	0.000320	65	0.015592	0.007064	100	0.319185	0.295187
30	0.000607	0.000342	66	0.017579	0.007817	101	0.341086	0.325225
31	0.000645	0.000364	67	0.019804	0.008681	102	0.365052	0.358897
32	0.000687	0.000388	68	0.022229	0.009702	103	0.393102	0.395843
33	0.000734	0.000414	69	0.024817	0.010922	104	0.427255	0.438360
34	0.000785	0.000443	70	0.027530	0.012385	105	0.469531	0.487816
35	0.000860	0.000476	71	0.030354	0.014128	106	0.521945	0.545886
36	0.000907	0.000502	72	0.033370	0.016160	107	0.586518	0.614309
37	0.000966	0.000536	73	0.036680	0.018481	108	0.665268	0.694885
38	0.001039	0.000573	74	0.040388	0.021092	109	0.760215	0.789474
39	0.001128	0.000617	75	0.044597	0.023992	110	1.000000	1.000000
40	0.001238	0.000665						

APPENDIX E

2012 IAM Period Table

Age Nearest Birthday (x)	$1000q_x^{2012}$		Age Nearest Birthday (x)	$1000q_x^{2012}$		Age Nearest Birthday (x)	$1000q_x^{2012}$	
	Male	Female		Male	Female		Male	Female
0	1.605	1.621	41	0.926	0.600	82	42.261	32.509
1	0.401	0.405	42	0.999	0.650	83	47.441	37.329
2	0.275	0.259	43	1.069	0.697	84	53.233	42.830
3	0.229	0.179	44	1.142	0.740	85	59.855	48.997
4	0.174	0.137	45	1.219	0.780	86	67.514	55.774
5	0.168	0.125	46	1.318	0.825	87	76.340	63.140
6	0.165	0.117	47	1.454	0.885	88	86.388	71.066
7	0.159	0.110	48	1.627	0.964	89	97.634	79.502
8	0.143	0.095	49	1.829	1.051	90	109.993	88.377
9	0.129	0.088	50	2.057	1.161	91	123.119	97.491
10	0.113	0.085	51	2.302	1.308	92	137.168	107.269
11	0.111	0.086	52	2.545	1.460	93	152.171	118.201
12	0.132	0.094	53	2.779	1.613	94	168.194	130.969
13	0.169	0.108	54	3.011	1.774	95	185.260	146.449
14	0.213	0.131	55	3.254	1.950	96	197.322	163.908
15	0.254	0.156	56	3.529	2.154	97	214.751	179.695
16	0.293	0.179	57	3.845	2.399	98	232.507	196.151
17	0.328	0.198	58	4.213	2.700	99	250.397	213.150
18	0.359	0.211	59	4.631	3.054	100	268.607	230.722
19	0.387	0.221	60	5.096	3.460	101	290.016	251.505
20	0.414	0.228	61	5.614	3.916	102	311.849	273.007
21	0.443	0.234	62	6.169	4.409	103	333.962	295.086
22	0.473	0.240	63	6.759	4.933	104	356.207	317.591
23	0.513	0.245	64	7.398	5.507	105	380.000	340.362
24	0.554	0.247	65	8.106	6.146	106	400.000	362.371
25	0.602	0.250	66	8.548	6.551	107	400.000	384.113
26	0.655	0.256	67	9.076	7.039	108	400.000	400.000
27	0.688	0.261	68	9.708	7.628	109	400.000	400.000
28	0.710	0.270	69	10.463	8.311	110	400.000	400.000
29	0.727	0.281	70	11.357	9.074	111	400.000	400.000
30	0.741	0.300	71	12.418	9.910	112	400.000	400.000
31	0.751	0.321	72	13.675	10.827	113	400.000	400.000
32	0.754	0.338	73	15.150	11.839	114	400.000	400.000
33	0.756	0.351	74	16.860	12.974	115	400.000	400.000
34	0.756	0.365	75	18.815	14.282	116	400.000	400.000
35	0.756	0.381	76	21.031	15.799	117	400.000	400.000
36	0.756	0.402	77	23.540	17.550	118	400.000	400.000
37	0.756	0.429	78	26.375	19.582	119	400.000	400.000
38	0.756	0.463	79	29.572	21.970	120	1000.00	1000.00
39	0.800	0.504	80	33.234	24.821			
40	0.859	0.552	81	37.533	28.351			

Appendix G

Projection Scale G2

Age Nearest Birthday (x)	$G2_x$		Age Nearest Birthday (x)	$G2_x$		Age Nearest Birthday (x)	$G2_x$	
	Male	Female		Male	Female		Male	Female
0	0.010	0.010	41	0.010	0.010	82	0.013	0.012
1	0.010	0.010	42	0.010	0.010	83	0.013	0.011
2	0.010	0.010	43	0.010	0.010	84	0.012	0.010
3	0.010	0.010	44	0.010	0.010	85	0.011	0.010
4	0.010	0.010	45	0.010	0.010	86	0.010	0.009
5	0.010	0.010	46	0.010	0.010	87	0.009	0.008
6	0.010	0.010	47	0.010	0.010	88	0.009	0.007
7	0.010	0.010	48	0.010	0.010	89	0.008	0.007
8	0.010	0.010	49	0.010	0.010	90	0.007	0.006
9	0.010	0.010	50	0.010	0.010	91	0.007	0.006
10	0.010	0.010	51	0.011	0.010	92	0.006	0.005
11	0.010	0.010	52	0.011	0.011	93	0.005	0.005
12	0.010	0.010	53	0.012	0.011	94	0.005	0.004
13	0.010	0.010	54	0.012	0.011	95	0.004	0.004
14	0.010	0.010	55	0.013	0.012	96	0.004	0.004
15	0.010	0.010	56	0.013	0.012	97	0.003	0.003
16	0.010	0.010	57	0.014	0.012	98	0.003	0.003
17	0.010	0.010	58	0.014	0.012	99	0.002	0.002
18	0.010	0.010	59	0.015	0.013	100	0.002	0.002
19	0.010	0.010	60	0.015	0.013	101	0.002	0.002
20	0.010	0.010	61	0.015	0.013	102	0.001	0.001
21	0.010	0.010	62	0.015	0.013	103	0.001	0.001
22	0.010	0.010	63	0.015	0.013	104	0.000	0.000
23	0.010	0.010	64	0.015	0.013	105	0.000	0.000
24	0.010	0.010	65	0.015	0.013	106	0.000	0.000
25	0.010	0.010	66	0.015	0.013	107	0.000	0.000
26	0.010	0.010	67	0.015	0.013	108	0.000	0.000
27	0.010	0.010	68	0.015	0.013	109	0.000	0.000
28	0.010	0.010	69	0.015	0.013	110	0.000	0.000
29	0.010	0.010	70	0.015	0.013	111	0.000	0.000
30	0.010	0.010	71	0.015	0.013	112	0.000	0.000
31	0.010	0.010	72	0.015	0.013	113	0.000	0.000
32	0.010	0.010	73	0.015	0.013	114	0.000	0.000
33	0.010	0.010	74	0.015	0.013	115	0.000	0.000
34	0.010	0.010	75	0.015	0.013	116	0.000	0.000
35	0.010	0.010	76	0.015	0.013	117	0.000	0.000
36	0.010	0.010	77	0.015	0.013	118	0.000	0.000
37	0.010	0.010	78	0.015	0.013	119	0.000	0.000
38	0.010	0.010	79	0.015	0.013	120	0.000	0.000
39	0.010	0.010	80	0.015	0.013			
40	0.010	0.010	81	0.014	0.012			

Notice of Proposed Rulemaking

Tracking number

2016-00433

Department

700 - Department of Regulatory Agencies

Agency

702 - Division of Insurance

CCR number

3 CCR 702-4 Series 4-2

Rule title

LIFE, ACCIDENT AND HEALTH, Series 4-2

Rulemaking Hearing

Date

10/04/2016

Time

10:30 AM

Location

1560 Broadway, Ste 850, Denver CO 80202

Subjects and issues involved

The purpose of this regulation is to provide carriers offering health benefit plans with the continuity of care requirements for health benefit plans as they relate to network adequacy. These standards shall serve as the measurable requirements used by the Division to evaluate carrier compliance with network adequacy continuity of care requirements.

Statutory authority

10-1-109(1), 10-16-109, 10-16-704, and 10-16-708

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DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Proposed New Regulation 4-2-56

CONCERNING NETWORK ADEQUACY AND CONTINUITY OF CARE REQUIREMENTS FOR HEALTH BENEFIT PLANS

Section 1 Authority

Section 2 Scope and Purpose

Section 3 Applicability

Section 4 Definitions

Section 5 Network Adequacy Continuity of Care Requirements

Section 6 Severability

Section 7 Enforcement

Section 8 Effective Date

Section 9 History

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109(1), 10-16-109, 10-16-704, and 10-16-708, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to provide carriers offering health benefit plans with the continuity of care requirements for health benefit plans as they relate to network adequacy. These standards shall serve as the measurable requirements used by the Division to evaluate carrier compliance with network adequacy continuity of care requirements.

Section 3 Applicability

This regulation applies to all carriers marketing and issuing individual, small group, and/or large group health benefit plans on or after January 1, 2017, that are subject to the individual, small group, and large group laws of Colorado. This regulation excludes individual short-term policies as defined in § 10-16-102(60), C.R.S.

Section 4 Definitions

A. “Active course of treatment” means, for the purposes of this regulation:

1. An ongoing course of treatment for a life-threatening condition;

2. An ongoing course of treatment for a serious acute health condition, chronic health condition, or life-limiting illness;

3. The second or third trimester of pregnancy through the postpartum period; or

4. An ongoing course of treatment for a health condition, whether physical health, mental health, behavioral health, or substance abuse disorder, for which a treating physician or health care provider attests that discontinuing care by that physician or health care provider would worsen the condition or interfere with anticipated outcomes.

B. "Covered person" means, for the purposes of this regulation, a person entitled to receive benefits or services under a health benefit plan.

C. "Health condition" means, for the purposes of this regulation, an illness, injury, impairment, or condition of a physical, behavioral, or mental health nature, or that involves substance abuse.

D. "Life-threatening health condition" means, for the purpose of this regulation, a disease or health condition for which likelihood of death is probable unless the course of the disease or health condition is interrupted.

E. "Network" means, for the purposes of this regulation, a group of participating providers providing services under a managed care plan. Any subdivision or subgrouping of a network is considered a network if covered persons are restricted to the subdivision or subgrouping for covered benefits under the managed care plan as defined in § 10-16-102(43), C.R.S.

F. "Primary care" means, for the purposes of this regulation, health care services for a range of common physical, mental or behavioral health conditions provided by a physician or non-physician primary care provider.

G. "Primary care provider" or "PCP" means, for the purposes of this regulation, a participating health care professional designated by the carrier to supervise, coordinate or provide initial care or continuing care to a covered person, and who may be required by the carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person. For the purposes of network adequacy measurements, PCPs for adults and children includes physicians (Pediatrics, General Practice, Family Medicine, Internal Medicine, Geriatrics, Obstetrics/Gynecology); and physician assistants and nurse practitioners supervised by, or collaborating with, a primary care physician.

H. "Serious acute health condition, chronic health condition, or life-limiting illness" means, for the purpose of this regulation, a disease or health condition requiring complex on-going care which the covered person is currently receiving, including, but not limited to, chemotherapy, post-operative visits or radiation therapy.

Section 5 Network Adequacy Continuity of Care Requirements

A. Carriers shall ensure sufficient continuity of care provisions for their policyholders.

B. A carrier and participating provider shall provide at least sixty (60) days written notice to each other before a provider is removed or leaves the network without cause or before the provider contract is non-renewed.

C. When a primary care provider is being removed, leaving the network, or is being non-renewed, all covered persons who are patients of that primary care provider shall be notified, in writing, prior to

termination. When the provider gives or receives the notice in accordance with Section 5.B. of this regulation, the provider shall supply the carrier with a list of those patients of the provider that are covered by a plan of the carrier. The carrier shall supply the provider with a list of the provider's patients that are covered by the carrier.

D. Irrespective of whether it is for cause or without cause or due to non-renewal of a contract, the carrier shall make a good faith effort to provide written notice of a provider's removal, leaving, or non-renewal from the network within fifteen (15) working days of receipt or issuance of a notice provided in accordance with Section 5.B. of this regulation. This notice shall be provided to all covered persons who are identified as patients by the provider, are on a carrier's patient list for that provider, or who have been seen by the provider being removed or leaving the network within the previous twelve (12) months.

E. A covered person must have been undergoing treatment, or have been seen at least once in the previous twelve (12) months, by the provider being removed or leaving the network for that covered person to be considered in an active course of treatment.

F. A carrier shall establish reasonable procedures to transition the covered person who is in an active course of treatment to a participating provider in a manner that provides for continuity of care when a covered person's provider leaves or is removed from the network.

G. A carrier shall make available to the covered person a list of available participating providers who are accepting new patients in the same geographic area and specialty provider type, or a referral to a provider if there is no participating provider available, who is of the same provider or specialty type. The carrier shall provide information about how the covered person may request continuity of care as required by this regulation.

H. A carrier's transition procedures shall provide that:

1. A carrier shall review requests for continuity of care made by the covered person or the covered person's authorized representative;

2. Requests for continuity of care shall be reviewed by the carrier's Medical Director after consultation with the treating provider.This requirement applies to:

    a. Patients who meet the applicable criteria listed in Section 5 of this regulation; and

    b. Who are under the care of a provider who has not been removed or leaving the network for cause;

3. Any decisions made with respect to a request for continuity of care shall be subject to the health benefit plan's internal and external grievance and appeal processes in accordance with applicable state and federal laws and regulations;

4. The continuity of care period for covered persons who are in their second or third trimester of pregnancy shall extend through the postpartum period; and

5. The continuity of care period for covered persons who are undergoing an active course of treatment shall extend to the earlier of:

    a. The termination of the course of treatment by the covered person or the treating provider;

b. Ninety (90) days after the effective date of the provider's departure or termination from the network, unless the carrier's Medical Director determines that a longer period is necessary;

c. The date that care is successfully transitioned to a participating provider;

d. Benefit limitations under the plan are met or exceeded; or

e. The care is no longer medically necessary.

I. In addition to the provisions of Section 5.H. of this regulation, a continuity of care request may only be granted when the provider departing or terminated from the network:

1. Agrees in writing to accept the same payment from and abide by the same terms and conditions with respect to the carrier for that patient as provided in the original provider contract, or by the new payment and terms agreed upon and executed between the provider and the carrier; and

2. Agrees in writing not to seek any payment from the covered person for any amount for which the covered person would not have been responsible if the provider were still a participating provider.

J. The obligation to hold the patient harmless for services rendered in the provider's capacity as a participating provider survives the termination of the provider contract. The hold harmless obligation does not apply to services rendered after the termination of the provider contract, except to the extent that the in-network relationship is extended to provide continuity of care.

Section 8 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section 9 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 10 Effective Date

This new regulation shall be effective on January 1, 2017.

Section 11 History

New regulation effective January 1, 2017.

Notice of Proposed Rulemaking

Tracking number

2016-00419

Department

700 - Department of Regulatory Agencies

Agency

741 - Division of Professions and Occupations - Office of Respiratory Therapy Licensure

CCR number

4 CCR 741-1

Rule title

RESPIRATORY THERAPY LICENSURE

Rulemaking Hearing

Date

10/04/2016

Time

09:00 AM

Location

1560 Broadway, Conference Room 1250A, Denver, CO 80202

Subjects and issues involved

Hearing to revise current rules and adopt new rules to provide clarification regarding conditions and procedures governing the evaluation of an applicant's military training and experience and to specify the notification requirements regarding a physical or mental illness or condition that affects a licensee's ability to practice respiratory therapy or practice as a respiratory therapist with reasonable skill and safety to patients.

Statutory authority

Section 12-41.5-113, 24-34-102(8.5) and 24-4-103, C.R.S.

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Basis

These rules are promulgated and adopted by the Director of ~~Registrations~~ the Division of Professions and Occupations ("Director") pursuant to section 12-41.5-113, C.R.S.

Purpose

These rules are adopted to implement the Director's authority to license persons as respiratory therapists and to set forth the requirements for being so licensed.

Rule 1 - Oxygen Deliveries

The purpose of this rule is to define the respiratory therapy services that can be rendered by an unlicensed person delivering oxygen supplies as exempted from the practice of respiratory therapy in section 12-41.5-110(2)(e), C.R.S.

A. An unlicensed delivery person can deliver, setup, inspect and maintain an oxygen apparatus in a patient's home. An unlicensed delivery person may also instruct the patient about the apparatus' operation.

B. An unlicensed delivery person may not perform pulse oximetry testing, interpret or report physician orders, titrate the oxygen level, discuss disease status with the patient, or engage in any other task or duty that constitutes the practice of respiratory therapy as defined in section 12-41.5-103(6), C.R.S.

C. This rule does not pertain to other licensed health-care professionals practicing within the permitted scope of their profession.

Rule 2 - Declaratory Orders

The purpose of this rule is to establish procedures for the handling of requests for declaratory orders filed pursuant to the Colorado Administrative Procedures Act at section 24-4-105(11), C.R.S.

A. Any person or entity may petition the Director ~~of Registrations ("Director")~~ for a declaratory order to terminate controversies or to remove uncertainties as to the applicability of any statutory provision or of any rule or order of the Director.

B. The Director will determine, at her discretion and without notice to petitioner, whether to rule upon any such petition. If the Director determines that she will not rule upon such a petition, the Director shall promptly notify the petitioner of her action and state the reasons for such decision.

C. In determining whether to rule upon a petition filed pursuant to this rule, the Director will consider the following matters, among others:

1. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provisions or rule or order of the Director.

2. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Director or a court involving one or more of the petitioners.

3. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Director or a court but not involving any petitioner.

4. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.

5. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to CRCP 57, which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.

D. Any petition filed pursuant to this rule shall set forth the following:

1. The name and address of the petitioner and whether the petitioner is registered pursuant to Title 12, Article 41.5.

2. The statute, rule or order to which the petition relates.

3. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner.

E. If the Director determines that she will rule on the petition, the following procedures shall apply:

1. The Director may rule upon the petition based solely upon the facts presented in the petition. In such a case:

a. Any ruling of the Director will apply only to the extent of the facts presented in the petition and any amendment to the petition.

b. The Director may order the petitioner to file a written brief, memorandum or statement of position.

c. The Director may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.

d. The Director may dispose of the petition on the sole basis of the matters set forth in the petition.

e. The Director may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition.

f. The Director may take administrative notice of facts pursuant to the Administrative Procedure Act at section 24-4-105(8), C.R.S., and may utilize her experience, technical competence and specialized knowledge in the disposition of the petition.

2. If the Director rules upon the petition without a hearing, she shall promptly notify the petitioner of her decision.

3. The Director may, at her discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner shall set forth, to the extent known, the factual or other matters into which the Director intends to inquire.

For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition; all of the facts necessary to show

the nature of the controversy or uncertainty; and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Director to consider.

F. The parties to any proceeding pursuant to this rule shall be the Director and the petitioner. Any other person may seek leave of the Director to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Director. A petition to intervene shall set forth the same matters as are required by Section D of this Rule. Any reference to a "petitioner" in this Rule also refers to any person who has been granted leave to intervene by the Director.

G. Any declaratory order or other order disposing of a petition pursuant to this Rule shall constitute agency action subject to judicial review pursuant to the Colorado Administrative Procedures Act at section 24-4-106, C.R.S.

Rule 3 - Requirement for Reinstatement

The purpose of this rule is to state the requirements for reinstatement of a license that expired under sections 12-41.5-107 and 24-34-102, C.R.S.

A. An applicant seeking reinstatement of an expired license shall complete the reinstatement application and pay the reinstatement fee.

B. If the license has been expired for more than two years from the date of receipt of the reinstatement application, but less than five years the applicant will have to establish "competency to practice" under section 24-34-102 (8)(d)(II), C.R.S., as follows by submitting:

1. Verification of licensure in good standing from another state along with proof of active practice in that state for two years of the previous five years from the date of application for reinstatement; OR

2. Documentation to demonstrate that they have otherwise maintained competency as a respiratory therapist by completing 30 hours of continuing education courses related to the practice of respiratory therapy during the two years immediately preceding the application for reinstatement. The continuing education must meet the approval of and shall be attested to in the manner prescribed by the Director; OR

3. Documentation to demonstrate that the applicant re-took and achieved a passing score on the National Examination within two years immediately preceding submission of an application for reinstatement; OR

4. By any other means approved by the Director.

C. An applicant seeking to reinstate a license that has been expired for more than five years will need to demonstrate "competency to practice" as required in section 24-34-102(8)(d)(II), C.R.S. by:

1. Verification of licensure in good standing from another state along with proof of active practice for two years of the previous five years prior to an application for reinstatement; OR

2. Supervised practice for a period no less than six months subject to the terms established by the Director; OR

3. Retaking and achieving a passing score on the National Examination within two years immediately preceding submission of an application for reinstatement; OR

4. By any other means approved by the Director.

Rule 4 - Reporting Convictions and Other Adverse Actions

The purpose of the rule is to clarify the procedures for reporting convictions, and other adverse actions to include judgments and administrative proceedings pursuant to section 12-41.5-109, C.R.S.

A licensee shall inform the Director within 90 days of any of the following events:

A. The conviction of the licensee of a felony under the laws of any state or of the United States which would be a violation of section 12-41.5-109(2)(b), C.R.S.

B. A disciplinary action imposed upon the licensee by another jurisdiction that licenses respiratory therapists which would be a violation of section 12-41.5-109(2)(d), C.R.S.

C. Revocation or suspension by another state board, municipality, federal or state agency of any health service related license, other than an expired license for respiratory therapy as described in section 12-41.5-109(2)(p), C.R.S.

D. Any judgment, award or settlement or a civil action or arbitration in which there was a final judgment or settlement against the licensee for malpractice of respiratory therapy.

E. The notice to the Director shall include the following information:

1. If the event is an action by governmental agency (as described above), the name of the agency, its jurisdiction, the case name, and the docket, proceeding or case number by which the event is designated, and a copy of the consent decree, or decision.

2. If the event is a felony conviction, the court, its jurisdiction, the case name, the case number, a description of the matter or a copy of the indictment or charges, and any plea of verdict entered by the court. The licensee shall also provide to the Director a copy of the imposition of sentence related to the felony conviction and the completion of all terms of the sentence with in 90 days of such action.

3. If the event concerns a civil action or arbitration proceeding, the court or arbiter, the jurisdiction, the case name, the case number, a description of the matter or a copy of the complaint, and a copy of the verdict, the court or arbitration decision, or, if settled, the settlement agreement and court's order of dismissal.

F. The licensee notifying the Director may submit a written statement with the notice to be included in the licensee's records.

Rule 5 - Duty to Report Information to the Director's Office

The purpose of this rule is to clarify the requirement of licensees to notify the Director of a change in submitted information pursuant to section 24-34-107, C.R.S.

A. The licensee shall inform the Office of Respiratory Therapy Licensure in clear, explicit and unambiguous written statement of any name, address, telephone or email change within 30 days of the change. The Office of Respiratory Therapy Licensure will not change licensees' information without explicit written notification from the licensee. Notification by any manner approved by the Office of Respiratory Therapy Licensure is acceptable.

1. The Division of ~~Registration~~ Professions and Occupations ("Division") maintains one contact address for each licensee, regardless of the number of licenses the licensee may hold.

2. Address change requests for some, but not all communications, or for confidential communications only, are not accepted.

B. The Office of Respiratory Therapy Licensure requires one of the following forms of documentation to change a licensee's name or social security number:

1. Marriage license;

2. Divorce decree;

3. Court order; OR

4. Driver's license or social security card with a second form of identification may be acceptable at the discretion of the Division.

Rule 6 – Licensure Requirements: Credit for Military Experience

The purpose of this rule is to outline the conditions and procedures governing the evaluation of an applicant's military training and experience under section 24-34-102(8.5), C.R.S.

A. An applicant for licensure as a respiratory therapist may submit information about the applicant's education, training, or experience acquired during military service. It is the applicant's responsibility to provide timely and complete information for the Director's review.

B. In order to meet the requirements for licensure, such education, training, or experience must be substantially equivalent to the required qualifications that are otherwise applicable at the time the application is received by the Director.

C. The Director will determine, on a case by case basis, whether the applicant's military education, training, or experience meet the requirements for certification.

Rule 7 - Duty to Self-Report Certain Medical Conditions (Section 12-41.5-109.7, C.R.S.)

The purpose of this rule is to specify the notification requirements regarding a physical or mental illness or condition that affects a license holder's ability to practice respiratory therapy or practice as a respiratory therapist with reasonable skill and safety to patients, pursuant to section 12-41.5-109.7, C.R.S.

A. No later than 30 days from the date a physical or mental illness or condition impacts a licensed respiratory therapist's ability to perform respiratory therapy services with reasonable skill and safety, the licensed respiratory therapist shall provide the Director, in writing, the following information:

1. The diagnosis and a description of the illness or condition;

2. The date that the illness or condition was first diagnosed;

3. The name of the current treatment provider and documentation from the current treatment provider confirming the diagnosis, date of onset, and treatment plan; and

4. A description of the respiratory therapist's practice and any modifications, limitations or restrictions to that practice that have been made as a result of the illness or condition.

B. The licensed respiratory therapist shall notify the Director of any worsening of the illness or condition, or any significant change in the illness or condition that affects the licensed respiratory therapist's ability to practice with reasonable skill and safety, within 30 days of the change of the illness or

condition. The respiratory therapist shall provide to the Director, in writing, the following information:

1. The name of the current treatment provider, documentation from the current treatment provider confirming the change of the illness or condition, the date that the illness or condition changed, the nature of the change of the illness or condition, and the current treatment plan; and

2. A description of the licensed respiratory therapist's practice, and any modifications, limitations, or restrictions to that practice that have been made as a result of the change of condition.

C. Compliance with this rule is a prerequisite for eligibility to enter into a Confidential Agreement with the Director pursuant to Section 12-41.5-109.7(2), C.R.S. However, mere compliance with this rule does not require the Director to enter into a Confidential Agreement. Rather, the Director will evaluate all facts and circumstances to determine whether a Confidential Agreement is appropriate.

D. If the Director discovers that a licensed respiratory therapist has a mental or physical illness or condition that affects the licensed respiratory therapist's ability to practice with reasonable skill and safety, and the licensed respiratory therapist did not timely notify the Director of such illness or condition, the licensed respiratory therapist may be subject to disciplinary action pursuant to Section 12-41.5-109(2)(i), C.R.S.

Notice of Proposed Rulemaking

Tracking number

2016-00420

Department

1000 - Department of Public Health and Environment

Agency

1001 - Air Quality Control Commission

CCR number

5 CCR 1001-9

Rule title

REGULATION NUMBER 7 CONTROL OF OZONE VIA OZONE PRECURSORS AND CONTROL OF HYDROCARBONS VIA OIL AND GAS EMISSIONS

Rulemaking Hearing

Date

11/17/2016

Time

09:00 AM

Location

Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246

Subjects and issues involved

To consider proposed revisions associated with the moderate ozone non-attainment classification and separate revisions to address EPA concerns with previous SIP rule language submittals. The proposed revisions 1) incorporate State-only requirements for combustion device auto-igniters
into the SIP; 2) establish condensate storage tank audio, visual and olfactory inspection
requirements; 3) establish Reasonably Available Control Technology (RACT) requirements for both printing operations and general industrial cleaning solvent use; 4) provide for the implementation of RACT for major sources of VOC and NOx; 5) establish RACT for combustion sources; and 6) adjust the applicability of Regulation Number 7 accordingly. The proposed revisions also address EPAs concerns with previous SIP submittals that 1) establish monitoring, recordkeeping and reporting requirements for glycol natural gas dehydrators and natural gas
processing plants; 2) remove references to EPA approval of emission factors; and 3) renumber, revise or revert to previously approved SIP language in other provisions. Finally, the proposed revisions make other typographical,grammatical and formatting changes.

Statutory authority

Sections 257101,257105(1)(a), 257301,257106,257106(1)(c) and (2),109(1)(a), 244103 and 257110,
110.5 and 110.8 C.R.S., as applicable and amended.

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 7

Control of Ozone via Ozone Precursors and Control of Hydrocarbons via Oil and Gas Emissions

(Emissions of Volatile Organic Compounds and Nitrogen Oxides)

5 CCR 1001-9

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

Outline of Regulation

I. Applicability

II. General Provisions

III. General Requirements for Storage and Transfer of Volatile Organic Compounds

IV. Storage of Highly Volatile Organic Compounds

V. Disposal of Volatile Organic Compounds

VI. Storage and Transfer of Petroleum Liquid

VII. Crude Oil

VIII. Petroleum Processing and Refining

IX. Surface Coating Operations

X. Use of Cleaning Solvents ~~for Degreasing and Cleaning~~

XI. Use of Cutback Asphalt

XII. Volatile Organic Compound Emissions from Oil and Gas Operations

XIII. Graphic Arts and Printing

XIV. Pharmaceutical Synthesis

XV. Control of Volatile Organic Compound Leaks from Vapor Collection Systems and Vapor Control Systems Located at Gasoline Terminals, Gasoline Bulk Plants, and Gasoline Dispensing Facilities

XVI. Control of Emissions from Stationary and Portable Engines and Other Combustion Equipment in the 8-Hour Ozone Control Area

XVII. (State Only, except Section XVII.E.3.a. which was submitted as part of the Regional Haze SIP) Statewide Controls for Oil and Gas Operations and Natural Gas-Fired Reciprocating Internal Combustion Engines

XVIII. (State Only) Natural Gas-Actuated Pneumatic Controllers Associated with Oil and Gas Operations

XIX. 2008 Ozone State Implementation Plan Reasonably Available Control Technology Limits

XX. Statements of Basis, Specific Statutory Authority and Purpose

Appendix A Colorado Ozone Nonattainment or Attainment Maintenance Areas

Appendix B Criteria for Control of Vapors from Gasoline Transfer to Storage Tanks

Appendix C Criteria for Control of Vapors from Gasoline Transfer at Bulk Plants (Vapor Balance System)

Appendix D Minimum Cooling Capacities for Refrigerated Freeboard Chillers on Vapor Degreasers

Appendix E Test Procedures for Annual Pressure/Vacuum Testing of Gasoline Transport Tanks

Appendix F Emission Limit Conversion Procedure

I. Applicability

I.A.

I.A.1. The provisions of this regulation shall apply as follows:

I.A.1.a. All provisions of this regulation apply to the Denver 1-hour ozone attainment/maintenance area, ~~and~~ to any nonattainment area for the 1-hour ozone standard, and to the 8-hour Ozone Control Area.

I.A.1.b. (State Only) All provisions of this regulation apply to any ozone nonattainment area, which includes areas designated nonattainment for either the 1-hour or 8-hour ozone standard, unless otherwise specified in Sections I.A.1.c. and d., below. Colorado's ozone nonattainment or attainment maintenance area maps and chronologies of attainment status are identified in Appendix A of this regulation.

I.A.1.c. The provisions of Sections V., VI.B.1. and 2., VII.C., and XVII. apply statewide. The Provisions of Sections XVII., XVIII. and any other sections marked by (State Only) are not federally enforceable, unless otherwise identified.

~~I.A.1.d. The provisions of Sections XII. and XVI. apply in the 8-hour Ozone Control Area.~~

I.A.2. REPEALED

I.A.3. REPEALED

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X. Use of Cleaning Solvents ~~for Degreasing and Cleaning~~

X.A. General Provisions

X.A.1. Applicability

The provisions of this section apply to cold cleaners, non-conveyorized vapor degreasers, ~~and~~ conveyorized degreasers, and industrial cleaning solvent operations. Open top vapor degreasers are a subset of non-conveyorized vapor degreasers. The owner or operator of a unit subject to this section shall ensure that no such unit is used unless the requirements of this section are satisfied. Section X.E. does not take effect until January 1, 2017.

X.A.2. Definitions

X.A.2.a. "Cold-Cleaner" means a container of non-aqueous liquid solvent held below its boiling point, which is designed, used, or intended for cleaning solid objects in a batch-loaded process. A "cold-cleaner" may have provisions for heating the solvent. It does not include vapor degreasers or continuously loaded conveyorized degreasers.

X.A.2.b. "Composite Partial Vapor Pressure" means the sum of the partial pressures of the VOC compounds in a solvent.

X.A.2.~~b~~c. "Conveyorized Degreaser" means an apparatus that performs degreasing or other cleaning functions through the use of non-aqueous liquid solvent and/or solvent vapors within a container, and which has a conveyor mechanism allowing continuous loading of items conveyed into and out of the solvent.

X.A.2.~~c~~d. "Freeboard" in a vapor degreaser means the vertical distance from the top of the vapor zone (as established by normal operations within the specifications of the degreaser manufacturer) to the top of the degreaser.

For cold-cleaners "freeboard" means the vertical distance from the surface of the solvent liquid to the top of the degreaser.

If all sides are not even, the vertical distance to the top of the lowest side shall be used to make the determination of freeboard.

X.A.2.~~d~~e. "Freeboard Ratio" means the ratio of the freeboard to the width of the solvent surface.

X.A.2.f. "Industrial Cleaning Solvent" means a VOC-containing liquid used to perform industrial cleaning solvent operations.

X.A.2.g. "Industrial Cleaning Solvent Operation" means the use of an industrial cleaning solvent for cleaning industrial operations such as spray gun cleaning, spray booth cleaning, large manufactured parts cleaning, equipment cleaning, floor cleaning, line cleaning, parts cleaning, tank cleaning, and small manufactured parts cleaning. Residential and janitorial cleaning are not considered industrial cleaning solvent operations.

X.A.2.~~e~~h. "Non-Conveyorized Vapor Degreaser" means an apparatus, which uses non-aqueous solvent vapors within some type of container to degrease or otherwise clean solid objects in a batch-loaded process. It excludes continuously loaded conveyorized degreasers.

X.A.2.i. “Residential and Janitorial Cleaning” means the cleaning of a building or building components including, but not limited to, floors, ceilings, wall, windows, doors, stairs, bathrooms, furnishings, and exterior surfaces of office equipment, excluding the cleaning of work areas where manufacturing or repair activity is performed.

X.A.2.fj. "Solvent Metal Cleaning" means the process of cleaning soils from metal surfaces by cold cleaning, conveyorized degreasing, or non-conveyorized vapor degreasing.

X.A.3. Transfer of waste solvent and used solvent

In any disposal or transfer of waste or used solvent, at least 80 percent by weight of the solvent/waste liquid shall be retained (i.e., no more than 20 percent of the liquid solvent/solute mixture shall evaporate or otherwise be lost during transfers).

X.A.4. Storage of waste solvent and used solvent

Waste or used solvent shall be stored in closed containers unless otherwise required by law.

X.A.5. Any control device shall meet the applicable requirements of Subsections IX.A.3.a, b, c, e and IX.A.8.a. and b.

X.B. Control of Solvent Cold-Cleaners

X.B.1. Control Equipment

X.B.1.a. Covers

X.B.1.a.(i) All cold-cleaners shall have a properly fitting cover.

X.B.1.a.(ii) Covers shall be designed to be easily operable with one hand under any of the following conditions:

X.B.1.a.(ii)(A) Solvent true vapor pressure is greater than 15 torr (0.3 psia) at 38°C (100°F).

X.B.1.a.(ii)(B) The solvent is agitated by an agitating mechanism.

X.B.1.a.(ii)(C) The solvent is heated.

X.B.1.b. Drainage Facility

X.B.1.b.(i) All cold-cleaners shall have a drainage facility that captures the drained liquid solvent from the cleaned parts.

X.B.1.b.(ii) For cold-cleaners using solvent which has a vapor pressure greater than 32 torr (0.62 psia) measured at 38°C (100°F) either:

X.B.1.b.(ii)(A) There shall be an internal drainage facility within the confines of the cold-cleaner, so that parts are enclosed under the (closed) cover to drain after cleaning, or if such a facility will not fit within;

X.B.1.b.(ii)(B) An enclosed, external drainage facility that captures the drained solvent liquid from the cleaned parts.

X.B.1.c. A permanent, clearly visible sign shall be mounted on or next to the cold-cleaner. The sign shall list the operating requirements.

X.B.1.d. Solvent spray apparatus shall not have a splashing, fine atomizing, or shower type action but rather should produce a solid, cohesive stream. Solvent spray shall be used at a pressure that does not cause excessive splashing.

For solvents with a true vapor pressure above 32 torr (0.62 psia) at 38°C (100°F), or, for solvents heated above 50°C (120°F), one of the following techniques shall be used:

X.B.1.d.(i) A freeboard ratio greater than or equal to 0.7.

X.B.1.d.(ii) A water or a non-volatile liquid cover. The cover liquid shall not be soluble in the solvent and shall not be more dense than the solvent and the depth of the cover liquid shall be sufficient to prevent the escape of solvent vapors.

X.B.2. Operating requirements

X.B.2.a. The cold-cleaner cover shall be closed whenever parts are not being handled within the cleaner confines.

X.B.2.b. Cleaned parts shall be drained for at least 15 seconds and/or until dripping ceases. Any pools of solvent shall be tipped out on the clean part back into the tank.

X.C. Control of Non-Conveyorized Vapor Degreasers

X.C.1. Control Equipment

X.C.1.a. The non-conveyorized vapor degreaser shall have a cover which shall be designed and operated so that it can be easily opened and closed through the use of mechanical assists such as spring loading, counterweights, etc.; opening and closing the cover shall not disturb the vapor zone.

X.C.1.b. Safety Switches

The following two types of switches shall be installed on vapor degreasers:

X.C.1.b.(i) Condenser flow switch and thermostat - (shuts off sump heat if the condenser coolant is either not circulating or is too warm); and

X.C.1.b.(ii) Spray safety switch - (shuts off spray pump if the vapor level drops more than four (4) inches).

X.C.1.c. Control Device

X.C.1.c.(i) For non-conveyorized vapor degreasers with an open area (with the cover open) of one square meter (10.8 ft_2) or less, either the freeboard ratio shall be greater than or equal to 0.75, or one of the control devices in (ii) below shall be used.

X.C.1.c.(ii) For non-conveyorized vapor degreasers with an open area (with the cover open) greater than one (1) square meter, (10.8 ft_2), at least one of the following control systems shall be used:

X.C.1.c.(ii)(A) Both a powered cover and a freeboard ratio greater than or equal to 0.75.

X.C.1.c.(ii)(B) A refrigerated chiller with a cooling capacity equivalent to or greater than the applicable specifications in Appendix C.

X.C.1.c.(ii)(C) An enclosed design: A system where the cover(s) or door(s) opens only when a dry part is entering or exiting the degreaser.

X.C.1.c.(ii)(D) A carbon adsorption system with ventilation greater than or equal to 15 cubic meters each minute per square meter (50 cfm/ft_2) of air/vapor area (when the cover(s) is [are] open), exhausting less than 25 parts per million (by volume) of solvent averaged over one complete adsorption cycle.

X.C.1.d. A permanent, clearly visible sign shall be mounted on or next to the degreaser. The sign shall list the operating requirements.

X.C.2. Operating Requirements

X.C.2.a. Keep cover closed at all times except when processing work loads into or out of the degreaser.

X.C.2.b. The following operations shall be performed to minimize solvent carry-out:

X.C.2.b.(i) Rack parts to allow full drainage.

X.C.2.b.(ii) Move parts as slowly as is practicable in and out of the degreaser. A maximum of one foot every five seconds by hand or a maximum of 5.5 cm/sec. (10.8ft/min) for a mechanically operated system.

X.C.2.b.(iii) Allow the workload to clean in the vapor zone at least 30 seconds or until condensation ceases.

X.C.2.b.(iv) Tip out any pools of solvent that remain on the cleaned parts before removal from the vapor zone.

X.C.2.b.(v) Allow parts to dry within the degreaser at least 15 seconds and/or until visually dry.

X.C.2.c. Solvents shall not be used to clean porous or absorbent materials; for example, cloth, leather, wood, rope, etc.

X.C.2.d. Work loads shall not occupy more than half of the degreaser's open top area.

X.C.2.e. Spraying shall not be done above the vapor level.

X.C.2.f. Solvent leaks shall be repaired immediately, or the degreaser shall be shut down.

X.C.2.g. Exhaust ventilation shall not exceed twenty (20) cubic meters per minute per square meter (65.6 cfm per sq. ft.) of degreaser open area, unless greater exhaust rates are necessary to meet Occupational and Safety Health Act requirements. Ventilation fans shall not be used near the degreaser opening, unless necessary to meet Occupational and Safety Health Act requirements.

X.C.2.h. The water separator shall function so that no visible water is present in the solvent exiting the separator.

X.D. Control of Conveyorized Degreasers

X.D.1. Control Equipment

X.D.1.a. Control Device

For all conveyorized degreasers with a solvent surface area greater than two (2) square meters (21.5 square feet), the degreasing shall be controlled by at least one of the following:

X.D.1.a.(i) Carbon adsorption system, with ventilation greater or equal to 15 cubic meters per minute per square meter (49.2 cf/m ft_2) of air/vapor interface for vapor degreasers (of air/liquid interface for non-vapor types) when down-time covers are open, and exhausting less than 25 parts per million of solvent (by volume) averaged over a complete adsorption cycle.

X.D.1.a.(ii) For vapor degreasers only: a refrigerated chiller with a cooling capacity equivalent to or greater than the applicable specifications in Appendix D.

X.D.1.b. Prevention of Carry-out

A drying tunnel, tumbling basket(s), or other demonstrably effective method(s) shall be employed to prevent cleaned parts from carrying out solvent liquid or vapor.

X.D.1.c. Safety Switches

X.D.1.c.(i) The following two (2) switch-circuits (or equivalent) shall be installed.

X.D.1.c.(i)(A) A spray safety switch shall shut off the spray pump and/or the conveyor if the vapor level drops more than four (4) inches.

X.D.1.c.(i)(B) A vapor level control thermostat shall shut off sump heat when the vapor level rises too high.

X.D.1.c.(ii) All conveyorized degreasers shall have a condenser thermostat and flow-detector switch (or equivalent) which shuts off sump heat if coolant is too warm or is not circulating.

X.D.1.d. Minimized Openings: Degreaser entrance and exit openings shall silhouette workloads so that the average clearance between parts (or parts-and the edge of the degreaser opening) is either:

X.D.1.d.(i) less than 10 centimeters (4 inches) or;

X.D.1.d.(ii) less than 10 percent of the width of the opening

X.D.1.e. Covers shall be provided to close off all the entrance(s) and exit(s) when the conveyor is not in use.

X.D.1.f. A permanent, clearly visible sign shall be mounted on or next to the degreaser. The sign shall list the operating requirements.

X.D.2. Operating Requirements

X.D.2.a. Exhaust ventilation shall not exceed 20 m^3/minute per square meter of degreaser opening (65.6 cf/m per square foot), unless necessary to meet OSHA requirements. Work place fans shall not be located near, nor directed at degreaser openings, unless necessary to meet OSHA requirements. Exhaust flow shall be measured by EPA reference methods 1 and 2 of 40 CFR Part 60.

X.D.2.b. Carry-out emissions shall be minimized by:

X.D.2.b.(i) Racking parts in such a manner to achieve best drainage.

X.D.2.b.(ii) Maintaining the vertical component of conveyor speed at less than 3.3 meters per minute (10.8 feet per minute).

X.D.2.c. Repair solvent leaks immediately, or shut down the degreaser.

X.D.2.d. The water separator shall function with an efficiency sufficient to prevent water from being visible in the solvent exiting the separator.

X.D.2.e. Down-time cover(s) shall be placed over entrances and exits of conveyorized degreasers immediately after the conveyor and exhaust are shut down. Covers shall be retained in position until immediately before start-up.

X.E. Control of Industrial Cleaning Solvent Operations

X.E.1. Control Requirements

The owner or operator of an industrial cleaning solvent operation whose total combined uncontrolled actual VOC emissions from the use of industrial cleaning solvents are equal to or greater than three (3) tons per year (excluding VOC emissions from solvents used for cleaning operations that are exempt under Section X.E.4.) must:

X.E.1.a. Limit the VOC content of cleaning solvents to less than or equal to 0.42 lb of VOC/gal (50 grams VOC/liter); or

X.E.1.b. Limit the composite partial vapor pressure of the cleaning solvent to 8 millimeters of mercury (mmHg) at 20 degrees Celsius (68 degrees Fahrenheit); or

X.E.1.c. Reduce emissions with an emission control system having an overall control efficiency of 90% or greater.

X.E.2. Operating Requirements

The owner or operator of an industrial cleaning solvent operation must implement the following operating requirements at all times to reduce VOC emissions from fugitive sources:

X.E.2.a. Cover open containers and used applicators;

X.E.2.b. Minimize air circulation around cleaning operations;

X.E.2.c. Properly dispose of used solvent and shop towels; and

X.E.2.d. Implement good air pollution control practices that minimize emissions, including, but not limited to, using only volumes necessary for cleaning and maintaining cleaning equipment to repair solvent leaks.

X.E.3. Recordkeeping Requirements

X.E.3.a. Keep annual records such as safety data sheets or other analytical data from the industrial cleaning solvent manufacturer showing the VOC type and VOC content and total amount of VOC-containing solvent used in solvent cleaning operations to demonstrate compliance with the control requirements of Section X.E.1.; and

X.E.3.b. Retain records for a period of two (2) years and make records available for inspection by the Division upon request.

X.E.4. Exemptions

Industrial cleaning solvent operations that are subject to an emissions requirement in a federally enforceable New Source Performance Standard in 40 CFR Part 60, National Emission Standard for Hazardous Air Pollutants in 40 CFR Part 63, a Best Available Control Technology requirement of Regulation 3 Part B, a Lowest Achievable Emissions Reduction requirement of Regulation 3 Part D, or another federally enforceable requirement of Regulation 7 are not subject to Section X.E.

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XII. Volatile Organic Compound Emissions from Oil and Gas Operations

XII.A. Applicability

XII.A.1. Except as provided in Section XII.A.2. through 5., this Section applies to oil and gas exploration and production operations, natural gas compressor stations and natural gas drip stations:

XII.A.1.a. that collect, store, or handle condensate in the 8-hour Ozone Control Area (State Only: or any ozone nonattainment or attainment/maintenance area),

XII.A.1.b. that are located upstream of a natural gas plant,

XII.A.1.c. for which the owner or operator filed, or was required to file, an APEN pursuant to Regulation Number 3, and

XII.A.1.d. (State Only) that emit any amount of uncontrolled actual volatile organic compound emissions with the following exceptions.

XII.A.1.d.(i) (State Only) Volatile organic compounds emitted during the first 90 days from the date of first production for new and modified condensate storage tanks as defined in Section XII.B. shall be equipped with a control device pursuant to Sections XII.D., and comply with applicable monitoring, recordkeeping, and reporting requirements; and

XII.A.1.d.(ii) All dehydrators regardless of uncontrolled actual emissions are subject to XII.H.

XII.A.2. Oil refineries are not subject to this Section XII.

XII.A.3. Natural gas-processing plants and qualifying natural gas compressor stations located in an ozone nonattainment or attainment maintenance area are subject to Section XII.G.

XII.A.4. Glycol natural gas dehydrators located at an oil and gas exploration and production operation, natural gas compressor station, drip station or gas processing plant in an ozone nonattainment or attainment maintenance area are only subject to Sections XII.B. and XII.H.

XII.A.5. The requirements of this section XII.A shall not apply to any owner or operator in any calendar year in which the APENs for all of the atmospheric condensate storage tanks associated with the affected operations owned or operated by such person reflect a total of less than 30 tons-per-year of actual uncontrolled emissions of VOCs in the 8-Hour Ozone Control Area. Such requirements shall, however, apply to such owner or operator in any subsequent calendar year in which the APENs for atmospheric condensate storage tanks associated with such affected operations reflect a total of 30 tons per year or more of actual uncontrolled emissions of VOCs in the 8-Hour Ozone Control Area.

XII.B. Definitions Specific to Section XII

XII.B.1. “Affected Operations” means oil and gas exploration and production operations, natural gas compressor stations and natural gas drip stations to which this Section XII applies.

XII.B.2. “Air Pollution Control Equipment”, as used in this Section XII, means a combustion device or vapor recovery unit. Air pollution control equipment also means alternative emissions control equipment, pollution prevention devices and processes that comply with the requirements of Section XII.D.2.b. that are approved by the Division.

XII.B.3. “Atmospheric Storage Tanks or Atmospheric Condensate Storage Tanks” means a type of condensate storage tank that vents, or is designed to vent, to the atmosphere.

XII.B.4. “Auto-Igniter” means a device which will automatically attempt to relight the pilot flame in the combustion chamber of a control device in order to combust volatile organic compound emissions.

XII.B.5. “Calendar Week” shall mean a week beginning with Sunday and ending with Saturday.

XII.B.6. “Condensate Storage Tank” shall mean any tank or series of tanks that store condensate and are either manifolded together or are located at the same well pad.

XII.B.7. “Downtime” shall mean the period of time when a well is producing and the air pollution control equipment is not in operation.

XII.B.8. “Existing” shall mean any atmospheric condensate storage tank that began operation before February 1, 2009, and has not since been modified.

XII.B.9. “Glycol Natural Gas Dehydrator” means any device in which a liquid glycol (including, ethylene glycol, diethylene glycol, or triethylene glycol) absorbent directly contacts a natural gas stream and absorbs water.

XII.B.10. “Modified or Modification” shall mean any physical change or change in operation of a stationary source that results in an increase in actual uncontrolled volatile organic compound emissions from the previous calendar year that occurs on or after February 1, 2009. For atmospheric condensate storage tanks, a physical change or change in operation includes but is not limited to drilling new wells and recompleting, refracturing or otherwise stimulating existing wells.

XII.B.11. “New” shall mean any atmospheric condensate storage tank that began operation on or after February 1, 2009.

XII.B.12. “Stabilized” when used to refer to stored condensate, means that the condensate has reached substantial equilibrium with the atmosphere and that any emissions that occur are those commonly referred to within the industry as “working and breathing losses”.

XII.B.13. (State Only) “Surveillance System” means monitoring pilot flame presence or temperature in a combustion device either by visual observation or with an electronic device to record times and duration of periods where a pilot flame is not detected at least once per day.

XII.B.14. “System-Wide” when used to refer to emissions and emission reductions in Section XII.D., shall mean collective emissions and emission reductions from all atmospheric condensate storage tanks under common ownership within the 8-hour Ozone Control Area or other specific Ozone Nonattainment or Attainment Maintenance Area for which uncontrolled actual volatile organic compound emissions are equal to or greater than two tons per year.

XII.C. General Provisions to Section XII

XII.C.1. General Requirements for Air Pollution Control Equipment – Prevention of Leakage

XII.C.1.a. All air pollution control equipment used to demonstrate compliance with this Section XII. shall be operated and maintained consistent with manufacturer specifications and good engineering and maintenance practices. The owner or operator shall keep manufacturer specifications on file. In addition, all such air pollution control equipment shall be adequately designed and sized to achieve the control efficiency rates required by this Section XII and to handle reasonably foreseeable fluctuations in emissions of volatile organic compounds. Fluctuations in emissions that occur when the separator dumps into the tank are reasonably foreseeable.

XII.C.1.b. All condensate collection, storage, processing and handling operations, regardless of size, shall be designed, operated and maintained so as to minimize leakage of volatile organic compounds to the atmosphere to the maximum extent practicable.

XII.C.1.c. All air pollution control equipment used to demonstrate compliance with ~~this~~ Section XII.D. must meet a control efficiency of at least 95% ~~unless otherwise provided in Section XII.D.2.B~~. Failure to properly install, operate, and maintain air pollution control equipment at the locations indicated in the Division-approved spreadsheet shall be a violation of this regulation.

XII.C.1.d. If a flare or other combustion device is used to control emissions of volatile organic compounds to comply with Section XII.D., it shall be enclosed, have no visible emissions, and be designed so that an observer can, by means of visual observation from the outside of the enclosed flare or combustion device, or by other convenient means, such as a continuous monitoring device, approved by the Division, determine whether it is operating properly.

XII.C.1.e. ~~(State Only)~~ All combustion devices used to control emissions of volatile organic compounds to comply with Section XII.D. shall be equipped with and operate an auto-igniter as follows:

XII.C.1.e.(i) (State Only) For ~~all new and modified~~ condensate storage tanks that are constructed or modified after May 1, 2009, and before January 1, 2017, and controlled by a combustion device, auto-igniters shall be installed and operational, beginning the date of first production after any new tank installation or tank modification.

XII.C.1.e.(ii) (State Only) For all existing condensate storage tanks controlled by a combustion device in order to comply with the emissions control requirements of Section~~s~~ XII.D.2., auto-igniters shall be installed and operational beginning May 1, 2009, for condensate storage tanks with actual uncontrolled emissions of greater than or equal to 50 tons per year, and beginning May 1, 2010, for all other existing condensate storage tanks controlled by a combustion device, or within 180 days from first having installed the combustion device, whichever date comes later.

XII.C.1.e.(iii) All combustion devices installed on or after January 1, 2017, must be equipped with an operational auto-igniter upon installation of the combustion device.

XII.C.1.f. (State Only) If a combustion device is used to control emissions of volatile organic compounds, surveillance systems shall be employed and operational as follows:

XII.C.1.~~F~~f.(i) (State Only) Beginning May 1, 2010, for all existing condensate storage tanks with uncontrolled actual emissions of 100 tons per year or more based on data from the previous twelve consecutive months.

XII.C.1.~~F~~f.(ii) (State Only) For all new and modified condensate storage tanks controlled by a combustion device for the first 90 days surveillance systems shall be employed and operational beginning 180 days from the date of first production after the tank was newly installed, or after the well was newly drilled, re-completed, re-fractured or otherwise stimulated, if uncontrolled actual emissions projected for the first twelve months based on data from the first 90 days of operation from the condensate storage tank are 100 tons or more of uncontrolled VOCs.

XII.C.2. The emission estimates and emission reductions required by ~~this~~ Section XII.D. shall be demonstrated using one of the following emission factors:

XII.C.2.a. In the 8-Hour Ozone Control Area

XII.C.2.a.(i) For atmospheric condensate storage tanks at oil and gas exploration and production operations, a default emission factor of 13.7 pounds of volatile organic compounds per barrel of condensate shall be used unless a more specific emission factor has been established pursuant to Section XII.C.2.a.(ii)(B). The Division may require a more specific emission factor that complies with Section XII.C.2.a.(ii)(B).

XII.C.2.a.(ii) For atmospheric condensate storage tanks at natural gas compressor stations and natural gas drip stations, a specific emission factor established pursuant to this Section XII.c.2.a.(ii) shall be used. A specific emission factor developed pursuant to Section XII.C.2.a.(ii)(B) may also be used for atmospheric storage tanks at oil and gas exploration and production operations and, once established, or required by the Division, shall be used for such operations.

XII.C.2.a.(ii)(A) For atmospheric condensate storage tanks at natural gas compressor stations and natural gas drip stations a source may use a specific emissions factor that was used for reporting emissions from the source on APENs filed on or before February 28, 2003. The Division may, however, require the source to develop and use a more recent specific emission factor pursuant to Section XII.C.2.a.(ii)(B) if such a more recent emission factor would be more reliable or accurate.

XII.C.2.a.(ii)(B) Except as otherwise provided in XII.C.2.a.(i), a specific emission~~s~~ factor shall be one for which the Division has no objection, and which is based on collection and analysis of a representative sample of condensate pursuant to a test method approved by the Division ~~and EPA. The Division shall consult with and provide EPA 30 days in which to comment on the test method. EPA shall be deemed to have approved the test method for purposes of this Section XII.C.2.a.(ii) if it does not object during such 30-day period~~.

XII.C.2.b. (State Only) For any other Ozone Nonattainment Area or Attainment/Maintenance Areas

XII.C.2.b.(i) (State Only) For atmospheric condensate storage tanks at oil and gas exploration and production operations, the source shall use a default basin-specific uncontrolled volatile organic compound emission factor established by the Division unless a source-specific emission factor has been established pursuant to Section XII.C.2.b.(iii). If the Division has established no default emission factor, if the Division has reason to believe that the default emission factor is no longer representative, or if it deems it otherwise necessary, the Division may require use of an alternative emission factor that complies with Section XII.C.2.b.(iii).

XII.C.2.b.(ii) (State Only) For atmospheric condensate storage tanks at natural gas compressor stations and natural gas drip stations, the source shall use a source-specific volatile organic compound emission factor established pursuant to Section XII.C.2.b.(iii). If the Division has reason to believe that the source-specific emission factor is no longer representative, or if it deems it otherwise necessary, the Division may

require use of an alternative emission factor that complies with Section XII.C.2.b.(iii).

XII.C.2.b.(iii) (State Only) Establishment of or Updating Approved Emission Factors

XII.C.2.b.(iii)(A) (State Only) The Division may require the source to develop and/or use a more recent default basin-specific or source-specific volatile organic compound emission factor pursuant to Section XII.C.2.b., if such emission factor would be more reliable or accurate.

XII.C.2.b.(iii)(B) (State Only) For atmospheric condensate storage tanks at oil and gas exploration and production operations, the source may use a source-specific volatile organic compound emission factor for which the Division has no objection, and which is based on collection and analysis of a representative sample of condensate pursuant to a test method approved by the Division.

XII.C.2.b(iii)(C) (State Only) For atmospheric storage tanks at natural gas compressor stations and natural gas drip stations, a source may use a volatile organic compound emissions factor that was used for reporting emissions from the source on APENs filed on or before February 28, 2003, or an alternative source-specific volatile organic compound emission factor established pursuant to Section XII.C.2.b.

XII.C.2.b.(iii)(D) (State Only) A default basin-specific volatile organic compound emissions factor shall be one for which the Division has no objection, and which is based on collection and analysis of a representative sample of condensate or an alternative method, pursuant to a test method approved by the Division, except as otherwise provided in XII.C.2.b.(i).

XII.C.2.b.(iii)(E) (State Only) A source-specific volatile organic compound emissions factor shall be one for which the Division has no objection, and which is based on collection and analysis of a representative sample of condensate pursuant to a test method approved by the Division.

XII.D. Emission Controls

The owners and operators of affected operations shall employ air pollution control equipment to reduce emissions of volatile organic compounds from atmospheric condensate storage tanks associated with affected operations by the dates and amounts listed below. Emission reductions shall not be required for each and every unit, but instead shall be based on overall reductions in uncontrolled actual emissions from all the atmospheric storage tanks associated with the affected operations for which the owner or operator filed, or was required to file, an APEN pursuant to Regulation Number 3, due to either having exceeded reporting thresholds or retrofitting with air pollution control equipment in order to comply with system-wide control requirements.

XII.D.1. (State Only) New and Modified Condensate Tanks

Beginning February 1, 2009, owners or operators of any new or modified atmospheric condensate storage tank at exploration and production sites shall collect and control emissions by

routing emissions to and operating air pollution control equipment pursuant to Section XII.D. The air pollution control equipment shall have a control efficiency of at least 95%, and shall control volatile organic compounds during the first 90 calendar days after the date of first production after the tank was newly installed, or after the well was newly drilled, re-completed, re-fractured or otherwise stimulated. The air pollution control equipment and associated monitoring equipment required pursuant to XII.C.1. may be removed after the first 90 calendar days as long as the source can demonstrate compliance with the applicable system-wide standard.

XII.D.2. System-Wide Control Strategy

XII.D.2.a. The owners and operators of all atmospheric condensate storage tanks that emit greater than two tons per year of actual uncontrolled volatile organic compounds and are subject to this Section XII.D.2.a. in the 8-hour Ozone Control Area (State Only: or any other specific Ozone Nonattainment area or Attainment/Maintenance Area) shall employ air pollution control equipment to reduce emissions of volatile organic compounds from atmospheric condensate storage tanks by the dates and amounts listed below. The dates and requisite reductions are as follows:

XII.D.2.a.(i) For the period May 1 through September 30, 2005 such emissions shall be reduced by 37.5% from uncontrolled actual emissions on a daily basis.

XII.D.2.a.(ii) For the period of May 1 through September 30 of 2006, such emissions shall be reduced by 47.5% from uncontrolled actual emissions on a daily basis.

XII. D.2.a.(iii) For the period of May 1 through September 30 of each year from 2007 through 2008, such emissions shall be reduced by 75% from uncontrolled actual emissions on a weekly basis.

XII.D.2.a.(iv) Emission reductions achieved between January 1 and April 30, 2005 shall be averaged with emission reductions achieved between October 1 and December 31, 2005. For these two time periods, emissions shall be reduced by 30% from uncontrolled actual emissions and shall be calculated as an average of the emission reductions achieved during the seven months covered by the two periods.

XII.D.2.a.(v) Emission reductions achieved between January 1 and April 30, 2006 shall be averaged with emission reductions achieved between October 1 and December 31, 2006. Emissions shall be reduced by 38% from uncontrolled actual emissions, calculated as an average of the emission reduction achieved during the seven months covered by the two periods.

XII.D.2.a.(vi) For the period between January 1, 2007 and April 30, 2007, such emissions shall be reduced by 38% from uncontrolled actual emissions , For the period between October 1, 2007, and December 31, 2007, such emissions shall be reduced by 60% from uncontrolled actual emissions, calculated for each period as an average of the emission reduction achieved during the months covered by each period.

XII.D.2.a.(vii) Beginning with the year 2008, and each year thereafter, emission reductions achieved between January 1 and April 30 shall be averaged with emission reductions achieved between October 1 and

December 31. Emissions shall be reduced by 70% from uncontrolled actual emissions, calculated as an average of the emission reduction achieved during the seven months covered by the two periods with the exception of XII.D.2.a.(viii) - XII.D.2.a.(x).

XII.D.2.a.(viii) For the calendar weeks that include May 1, 2009 through April 30, 2010, such emissions shall be reduced by 81% from uncontrolled actual emissions on a calendar weekly basis from May 1 through September 30 and 70% from uncontrolled actual emissions on a calendar monthly basis during October 1 through April 30.

XII.D.2.a.(ix) For the calendar weeks that include May 1, 2010 through April 30, 2011, such emissions shall be reduced by 85% from uncontrolled actual emissions on a calendar weekly basis in the May 1 through September 30 and 70% from uncontrolled actual emissions on a calendar monthly basis during October 1 through April 30.

XII.D.2.a.(x) Beginning May 1, 2011 and each thereafter, such emissions shall be reduced by 90% from uncontrolled actual emissions on a calendar weekly basis in the May 1 through September 30 and 70% from uncontrolled actual emissions on a calendar monthly basis during October 1 through April 30.

XII.D.2.b. Alternative emissions control equipment and pollution prevention devices and processes installed and implemented after June 1, 2004, shall qualify as air pollution control equipment, and may be used in lieu of, or in combination with, combustion devices and/or vapor recovery units to achieve the emission reductions required by this Section XII.D.2.a., if the following conditions are met:

XII.D.2.b.(i) The owner or operator obtains a construction permit authorizing such use of the alternative emissions control equipment or pollution prevention device or process. The proposal for such equipment, device or process shall comply with all regulatory provisions for construction permit applications and shall include the following:

XII.D.2.b.(i)(A) A description of the equipment, device or process;

XII.D.2.b.(i)(~~b~~B) A description of where, when and how the equipment, device or process will be used;

XII.D.2.b.(i)(C) The claimed control efficiency and supporting documentation adequate to demonstrate such control efficiency;

XII.D.2.b.(i)(D) An adequate method for measuring actual control efficiency; and

XII.D.2.b.(i)(E) Description of the records and reports that will be generated to adequately track emission reductions and implementation and operation of the equipment, device or process, and a description of how such matters will be reflected in the spreadsheet and annual report required by Sections XII.F.3.~~4~~ and XII.F.~~4~~5.

XII.D.2.b.(ii) Public notice of the application is provided pursuant to Regulation Number 3, Part B, Section III.C.4.

XII.D.2.b.(iii) EPA approves the proposal. The Division shall transmit a copy of the permit application and any other materials provided by the applicant, all public comments, all Division responses and the Division's permit to EPA Region 8. If EPA fails to approve or disapprove the proposal within 45 days of receipt of these materials, EPA shall be deemed to have approved the proposal.

XII.E. Monitoring

The owner or operator of any condensate storage tank that is being controlled pursuant to this Section XII shall inspect or monitor the Air Pollution Control Equipment at least weekly to ensure that it is operating properly.

XII.E.1. Tanks controlled by Air Pollution Control Equipment other than a combustion device shall follow manufacturer's recommended maintenance. Air Pollution Control Equipment shall be periodically inspected to ensure proper maintenance and operation according to the Division-approved operation and maintenance plan.

~~XII.E.2. (State Only) New and modified tanks controlled by a combustion device shall be inspected on a weekly basis to document that the required auto-igniter is properly functioning by either visible observation or other means approved by the Division and check and document that the valves for piping of gas to the pilot light are open.~~

XII.E.~~3~~2. The owner or operator of any condensate storage tank~~s~~ that is being controlled pursuant to ~~subject to the system-wide control strategy under~~ Section XII.~~D.2.a. that have installed combustion devices~~ shall inspect or monitor the Air Pollution Control Equipment at least weekly to ensure that it is operating. The inspection shall include the following:

XII.E.~~3~~2.a. ~~Check~~ For combustion devices, a check ~~for and document on a weekly basis~~ that the pilot light is lit by either visible observation or other means approved by the Division. For devices equipped with an auto-igniter, a check that the auto-igniter is properly functioning; ~~and;~~

XII.E.2.b. For combustion devices, a check ~~for and document~~ that the valves for piping of gas to the pilot light are open;

~~–~~XII.E.~~3~~2.~~b~~c. (State Only) In addition to complying with Section~~s~~ XII.E.~~3~~2.a. and XII.E.2.b., the owner or operator or tanks subject to the system-wide control strategy under Section XII.D.2.a. that have installed combustion devices may use a surveillance system to maintain records on combustion device operation.

XII.E.4. The owner or operator of all tanks subject to Section XII.D. shall document the time and date of each inspection, the person conducting the inspection, a notation that each of the checks required under this Section XII.E. were completed, description of any problems observed during the inspection, description and date of any corrective actions taken, and name of individual performing corrective actions. Further, all tanks subject to Section XII.D. shall comply with the following:

XII.E.4.a. For combustion devices, ~~-~~the owner or operator shall visually check for and document, on a weekly basis, the presence or absence of smoke;

XII.E.4.b. For vapor recovery units, the owner or operator shall check for and document on a weekly basis that the unit is operating and that vapors from the condensate tank are being routed to the unit;

XII.E.4.c. For all control devices, the owner or operator shall check for and document on a weekly basis that the valves for the piping from the condensate tank to the air pollution control equipment are open;

XII.E.4.d. For all atmospheric condensate storage tanks, the owner or operator shall check for and document on a weekly basis that the thief hatch is closed and latched.

XII.E.4.e. Beginning January 1, 2017, owners or operators of atmospheric condensate storage tanks with uncontrolled actual emissions of VOCs equal to or greater than six (6) tons per year based on a rolling twelve-month total must conduct and document audio, visual, olfactory ("AVO") inspections of the storage tank at the same frequency as liquids are loaded out from the storage tank. These inspections are not required more frequently than every seven (7) days but must be conducted at least every thirty one (31) days.

XII.E.5. (State Only) For atmospheric condensate storage tanks equipped with an surveillance system or other Division-approved monitoring system, the owner or operator shall check weekly that the system is functioning properly and that necessary information is being collected. Any loss of data or failure to collect required data may be treated by the Division as if the data were not collected.

XII.F. Recordkeeping and Reporting

The owner or operator of any atmospheric condensate storage tank subject to control pursuant to Section XII.D.2. shall maintain records and submit reports to the Division as required:

XII.F.1. The AIRS number assigned by the Division shall be marked on all condensate storage tanks required to file an APEN.

XII.F.2. If air pollution control equipment is required to comply with Section XII.D.2. visible signage shall be located with the control equipment identifying the AIRS number for each atmospheric condensate storage tank that is being controlled by that equipment.

XII.F.3. Recordkeeping for Tanks Subject to the System-Wide Control Strategy under Section XII.D.2.

The owner or operator shall, at all times, track the emissions and specifically volatile organic compound emissions reductions on a calendar weekly and calendar monthly basis to demonstrate compliance with the applicable emission reduction requirements of Section XII.D.2. This shall be done by maintaining a Division-approved spreadsheet of information describing the affected operations, the air pollution control equipment being used, and the emission reductions achieved, as follows.

XII.F.3.a. The Division-approved spreadsheet shall:

XII.F.3.a(i) List all atmospheric condensate storage tanks subject to this Section XII by name and AIRS number, or if no AIRS number has been assigned the site location. The spreadsheet also shall list the monthly production volumes for each tank. The spreadsheet shall list the most recent measurement of such production at each tank, and the time period covered by such measurement of production.

XII.F.3.a(ii) List the emission factor used for each atmospheric condensate storage tank. The emission factors shall comply with Section XII.C.2.

XII.F.3.a(iii) List the location and control efficiency value for each unit of air pollution control equipment. Each atmospheric condensate storage tank being controlled shall be identified by name and an AIRS number.

XII.F.3.a(iv) List the production volume for each tank, expressed as a weekly and monthly average based on the most recent measurement available. The weekly and monthly average shall be calculated by averaging the most recent measurement of such production, which may be the amount shown on the receipt from the refinery purchaser for delivery of condensate from such tank, over the time such delivered condensate was collected. The weekly and monthly average from the most recent measurement will be used to estimate weekly and monthly volumes of controlled and uncontrolled actual emissions for all weeks and months following the measurement until the next measurement is taken.

XII.F.3.a(v) Show the calendar weekly and calendar monthly-uncontrolled actual emissions and the calendar weekly and calendar monthly controlled actual emissions for each atmospheric condensate storage tank.

XII.F.3.a(vi) Show the total system-wide calendar weekly and calendar monthly-uncontrolled actual emissions and the total system-wide calendar weekly and calendar monthly controlled actual emissions.

XII.F.3.a(vii) Show the total system-wide calendar weekly and calendar monthly percentage reduction of emissions.

XII.F.3.a(viii) Note any downtime of air pollution control equipment, and shall account for such downtime in the weekly control efficiency value and emission reduction totals. The notations shall include the date, time and duration of any scheduled downtime. For any unscheduled downtime, the spreadsheet shall record the date and time the downtime was discovered and the date and time the air pollution control equipment was last observed to be operating.

XII.F.3.a(ix) Be maintained in a manner approved by the Division and shall include any other information requested by the Division that is reasonably necessary to determine compliance with this Section XII.

XII.F.3.a(x) Be updated on a calendar weekly and calendar monthly basis and shall be promptly provided by e-mail or fax to the Division upon its request. The U.S. mail may also be used if acceptable to the Division.

XII.F.3.b. Failure to properly install, operate, and maintain air pollution control equipment at the locations indicated in the spreadsheet shall be a violation of this regulation.

XII.F.3.c. A copy of each calendar weekly and calendar monthly spreadsheet shall be retained for five years. A spreadsheet may apply to more than one week if there are no changes in any of the required data and the spreadsheet clearly identifies the weeks it covers. The spreadsheet may be retained electronically. However, the Division may treat any loss of data or failure to maintain the Division-approved spreadsheet, as if the data were not collected.

XII.F.3.d. Each owner or operator shall maintain records of the inspections required pursuant to Section XII.E. and retain those records for five years. These records shall include the time and date of the inspection, the person conducting the inspection, a notation that each of the checks required under Section XII.C. and XII.E. were completed and a description of any problems observed during the inspection, and a description and date of any corrective actions taken.

XII.F.3.e. (State Only) Each owner or operator shall maintain records of required surveillance system or other monitoring data and shall make these records available promptly upon Division request.

XII.F.3.f. (State Only) Each owner or operator shall maintain records on when an atmospheric condensate storage tank is newly installed, or when a well is newly drilled, re-completed, re-fractured or otherwise stimulated. Records shall be maintained per well associated with each tank and the date of first production associated with these activities.

XII.F.4. Reporting for Tanks Subject to the System-Wide Control Strategy under Section XII.D.2.a.

On or before April 30, 2006, and semi-annually by April 30 and November 30 of each year thereafter, each owner or operator shall submit a report using Division-approved format describing the air pollution control equipment used during the preceding calendar year (for the April 30 report) and during the preceding ozone season (for the November 30 report) and how each company complied with the emission reductions required by Section XII.D.2. during those periods for the 8-hour Ozone Control Area or other specific Ozone Non-attainment or Attainment-Maintenance area. Such reports shall be submitted to the Division on a Division-approved form provided for that purpose.

XII.F.4.a. The report shall list all condensate storage tanks subject or used to comply with Section XII.D.2. and the production volumes for each tank. Production volumes may be estimated by the amounts shown on the receipt from refinery purchasers for delivery of condensate from such tanks.

XII.F.4.b. The report shall list the emission factor used for each tank. The emission factors shall comply with Section XII.C.2.

XII.F.4.c. The report shall list the location and control efficiency value for each piece of air pollution control equipment, and shall identify the atmospheric condensate storage tanks being controlled by each.

XII.F.4.d. The April 30 report shall show the calendar monthly-uncontrolled actual emissions and the controlled actual emissions for each atmospheric condensate storage tank for January 1 through April 30, May 1 through September 30 and October 1 through December 31 of the previous year. The November 30 report shall show such calendar weekly information for the weeks including May 1st through September 30th only.

XII.F.4.e. The April 30 report shall show the calendar monthly total system-wide uncontrolled actual emissions and the total system-wide controlled actual emissions for January 1 through April 30, May 1 through September 30 and October 1 through December 31 of the previous year. The November 30 report shall show such calendar weekly information for the weeks including May 1st through September 30th only.

XII.F.4.f. The April 30 report shall show the calendar monthly total system-wide percentage reduction of emissions for May 1 through September 30 of the previous year, and for the combined periods of January 1 through April 30 and October 1 through December 31 of the previous year. The November 30 report shall show such calendar weekly information for the weeks including May 1 through September 30 period only.

XII.F.4.g. The report shall note any downtime of air pollution control equipment, and shall account for such downtime in the weekly control efficiency value and emission reduction totals. The notations shall include the date, time and duration of any scheduled downtime. For any unscheduled downtime, the date and time the downtime was discovered and the last date the air pollution control equipment was observed to be operating should be recorded in the report.

XII.F.4.h. The report shall state whether the required emission reductions were achieved on a weekly basis during the preceding ozone season (calendar weeks including May 1 through September 30) for the November 30 report, and whether the required emission reductions were achieved on a calendar monthly basis during the preceding year for the April 30 report. If the required emission reductions were not achieved, the report shall state why not, and shall identify steps being taken to ensure subsequent compliance.

XII.F.4.i. The report shall include any other information requested by the Division that is reasonably necessary to determine compliance with this Section XII.

XII.F.4.j. A copy of each semi-annual report shall be retained for five years.

XII.F.4.k. In addition to submitting the semi-annual reports, on or before the 30th of each month commencing in June 2007, the owner or operator of any condensate storage tank that is required to control volatile organic compound emissions pursuant to Sections XII.A. and XII.D. shall notify the Division of any instances where the air pollution control equipment was not properly functioning during the previous month. The report shall include the time and date that the equipment was not properly operating, the time and date that the equipment was last observed operating properly, and the date and time that the problem was corrected. The report shall also include the specific nature of the problem, the specific steps taken to correct the problem, the AIRS number of each of the condensate tanks being controlled by the equipment or if no AIRS number has been assigned the site name, and the estimated production from those tanks during the period of non-operation.

XII.F.4.l. Commencing in 2007, on or before April 30 of each year, the owner or operator shall submit a list identifying by name and AIRS number or if no AIRS number has been assigned the site name, each condensate storage tank that is being controlled to meet the requirements set forth in ~~this~~ Section XII.D.2. On the 30th of each month during ozone season (May through September) and on November 30 and February 28, the owner or operator shall submit a list identifying any condensate storage tank whose control status has changed since submission of the previous list.

XII.F.4.m. (State Only) Semi-annual report submittals shall be signed by a responsible official who shall also sign the Division-approved compliance certification form for atmospheric condensate storage tanks. The compliance certification shall include both a certification of compliance with all applicable requirements of ~~this~~ Section XII. If any non-compliance is identified, citation, dates and durations of deviations from this Section XII., associated reasoning,

and compliance plan and schedule to achieve compliance. Compliance certifications for state only conditions shall be identified separately from compliance certifications required under the State Implementation Plan.

XII.F.4.n. (State Only) Each Division-approved self-certification form, and compliance certification submitted pursuant to ~~this~~ Section XII. shall contain a certification by a responsible official of the truth, accuracy and completeness of such form, report or certification stating that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.

XII.F.5. The record-keeping and reporting required in Section~~s~~ XII. above shall not apply to the owner or operator of any natural gas compressor station or natural gas drip station that is authorized to operate pursuant to a construction permit or Title V operating permit issued by the Division if the following criteria are met:

XII.F.5.a. Such permits are obtained by the owner or operator on or after the effective date of this provision and contain the provisions necessary to ensure the emissions reductions required by ~~this~~ Section XII.~~A~~D;

XII.F.5.b. The owners and operators of such natural gas compressor stations or natural gas drip stations do not own or operate any exploration and production operation(s); and

XII.F.5.c. Total emissions from atmospheric condensate storage tanks associated with such natural gas compressor stations or drip stations subject to APEN reporting requirements under Regulation Number 3 owned or operated by the same person do not exceed 30 tons per year in the 8-hour Ozone Control Area.

XII.G. Gas-processing plants located in the 8-hour Ozone Control Area (State Only: or any specific Ozone Nonattainment or Attainment/Maintenance Area) shall comply with requirements of this Section~~s~~ XII.G., as well as the requirements of Sections XII.B., XII.C.1.a., XII.C.1.b., XII.H.~~,~~ and XVI.

XII.G.1. For fugitive VOC emissions from leaking equipment, the leak detection and repair (LDAR) program as provided at 40 C~~.~~F~~.~~R~~.~~ Part 60, Subpart KKK (~~-~~see Regulation Number 6, Part A, Subpart KKK) shall apply, regardless of the date of construction of the affected facility~~,~~ unless subject to applicable LDAR program as provided at 40 CFR Part 60, Subparts OOOO or OOOOa (see Regulation Number 6, Part A, Subparts OOOO and OOOOa).

XII.G.2. Air pollution control equipment shall be installed and properly operated to reduce emissions of volatile organic compounds from any atmospheric condensate storage tank (or tank battery) used to store condensate that has not been stabilized that has uncontrolled actual emissions of greater than or equal to two tons per year. Such air pollution control equipment shall have a control efficiency of at least 95%.

XII.G.3. Existing natural gas processing plants within the 8-hour Ozone Control Area shall comply with the requirements of this Section XII.G. by May 1, 2005. (State Only: Existing natural gas processing plants within any new Ozone Nonattainment or Attainment/Maintenance Area shall comply with this regulation within three years after the nonattainment designation.)

XII.G.4. The provisions of ~~this Section XII.B., and~~ Sections XII.B., XII.C., XII.G., and XVI., shall apply upon the commencement of operations to any natural gas processing plant that

commences operation in the 8-Hour Ozone Control Area or Ozone Nonattainment (State Only: or Attainment/Maintenance Area) after the effective date of this subsection.

~~XII.G.5. The requirements of this Section XII. shall not apply to the owner or operator of any natural gas compressor station or natural gas drip station located in an Ozone Nonattainment or Attainment/Maintenance Area if:~~

~~XII.G.5.a. Air pollution control equipment is installed and properly operated to reduce emissions of volatile organic compounds from all atmospheric condensate storage tanks (or tank batteries) that have uncontrolled actual emissions of greater than or equal to two tons per year;~~

~~XII.G.5.b. The air pollution control equipment is designed to achieve a VOC control efficiency of at least 95% on a rolling 12-month basis and meets the requirements of Sections XII.C.1.A. and XII.C.1.B;~~

~~XII.G.5.c. The owner or operator of such natural gas compressor station or natural gas drip station does not own or operate any exploration and production facilities in the Ozone Non-attainment or Attainment-maintenance Area; and~~

~~XII.G.5.d. The owner or operator of such natural gas compressor station or natural gas drip station does the following and maintains associated records and reports for a period of five years:~~

~~XII.G.5.d.(i) documents the maintenance of the air pollution control equipment according to manufacturer specifications;~~

~~XII.G.5.d.(ii) conducts an annual opacity observation once each year on the air pollution control equipment to verify opacity does not exceed 20% during normal operations;~~

~~XII.G.5.d.(iii) maintains records of the monthly stabilized condensate throughput and monthly actual VOC emissions; and~~

~~XII.G.5.d.(iv) reports compliance with these requirements to the Division annually.~~

~~XII.G.6. A natural gas compressor station or natural gas drip station subject to this Section XII.G. at which a glycol natural gas dehydrator and/or natural gas-fired stationary or portable engine is operated shall be subject to Sections XII.H. and/or XVI.~~

XII.H. Emission Reductions from glycol natural gas dehydrators

XII.H.1. Beginning May 1, 2005, still vents and vents from any flash separator or flash tank on a glycol natural gas dehydrator located at an oil and gas exploration and production operation, natural gas compressor station, drip station or gas-processing plant in the 8-Hour Ozone Control Area and subject to control requirements pursuant to Section XII.H.3., shall reduce uncontrolled actual emissions of volatile organic compounds by at least 90 percent on a rolling twelve-month basis through the use of a condenser or air pollution control equipment.

XII.H.2. (State Only) Beginning January 30, 2009, still vents and vents from any flash separator or flash tank on a glycol natural gas dehydrator located at an oil and gas exploration and production operation, natural gas compressor station, drip station or gas-processing plant in any Ozone Nonattainment or Attainment/Maintenance Area and subject to control

requirements pursuant to Section XII.H.3., shall reduce uncontrolled actual emissions of volatile organic compounds by at least 90 percent on a rolling twelve-month basis through the use of a condenser or air pollution control equipment.

XII.H.3. The control requirements ~~above~~ of Sections XII.H.1. and XII.H.2. shall apply where:

XII.H.3.a. Actual uncontrolled emissions of volatile organic compounds from the glycol natural gas dehydrator are equal to or greater than one ton per year; and

XII.H.3.b. The sum of actual uncontrolled emissions of volatile organic compounds from any single glycol natural gas dehydrator or grouping of glycol natural gas dehydrators at a single stationary source is equal to or greater than 15 tons per year. To determine if a grouping of dehydrators meets or exceeds the 15 tons per year threshold, sum the total actual uncontrolled emissions of volatile organic compounds from all individual dehydrators at the stationary source, including those with emissions less than one ton per year.

XII.H.4. For purposes of Section XII.H., emissions from still vents and vents from any flash separator or flash tank on a glycol natural gas dehydrator shall be calculated using a method approved in advance by ~~the EPA and~~ the Division. ~~The Division shall consult with and provide EPA 30 days in which to comment on the test method. EPA shall be deemed to have approved the test method for purposes of this Section XII.H if it does not object during such 30-day period.~~

XII.H.5. Monitoring and recordkeeping

XII.H.5.a. Beginning January 1, 2017, owners or operators of glycol natural gas dehydrators subject to the control requirements of Sections XII.H.1. or XII.H.2. must check on a weekly basis that any condenser or air pollution control equipment used to control emissions of volatile organic compounds is operating properly, and document:

XII.H.5.a.(i) The date of each inspection;

XII.H.5.a.(ii) The person conducting the inspection;

XII.H.5.a.(iii) A description of any problems observed during the inspection;

XII.H.5.a.(iv) A description and date of any corrective actions taken; and

XII.H.5.a.(v) The name of the person performing the corrective action.

XII.H.5.b. The owner or operator must check and document on a weekly basis that the pilot light on a combustion device is lit, that the valves for piping of gas to the pilot light are open, and visually check for the presence or absence of smoke.

XII.H.5.c. The owner or operator must document the maintenance of the condenser or air pollution control equipment, consistent with manufacturer specifications and good engineering and maintenance practices.

XII.H.5.d. The owner or operator must retain records for a period of five years and make these records available to the Division upon request.

XII.H.6. Reporting

XII.H.6.a. On or before April 30, 2017, and semi-annually by April 30 and November 30 of each year thereafter, the owner or operator must submit the following information using Division approved format:

XII.H.6.a.(i) A list of the glycol natural gas dehydrator(s) subject to Section XII.H.;

XII.H.6.a.(ii) A list of the condenser or air pollution control equipment used to control emissions of volatile organic compounds from the glycol natural gas dehydrator(s); and

XII.H.6.a.(iii) The date(s) of inspection(s) where the condenser or air pollution control equipment was found not operating properly or where smoke was observed.

XII.I. The requirements of Section XII. shall not apply to the owner or operator of any natural gas compressor station or natural gas drip station located in an Ozone Nonattainment or Attainment/Maintenance Area if:

XII.I.1. Air pollution control equipment is installed and properly operated to reduce emissions of volatile organic compounds from all atmospheric condensate storage tanks (or tank batteries) that have uncontrolled actual emissions of greater than or equal to two tons per year;

XII.I.2. The air pollution control equipment is designed to achieve a VOC control efficiency of at least 95% on a rolling 12-month basis and meets the requirements of Sections XII.C.1.a. and XII.C.1.b;

XII.I.3. The owner or operator of such natural gas compressor station or natural gas drip station does not own or operate any exploration and production facilities in the Ozone Non-attainment or Attainment-maintenance Area; and

XII.I.4. The owner or operator of such natural gas compressor station or natural gas drip station does the following and maintains associated records and reports for a period of five years:

XII.I.4.a. documents the maintenance of the air pollution control equipment according to manufacturer specifications;

XII.I.4.b. conducts an annual opacity observation once each year on the air pollution control equipment to verify opacity does not exceed 20% during normal operations;

XII.I.4.c. maintains records of the monthly stabilized condensate throughput and monthly actual VOC emissions; and

XII.I.4.d. reports compliance with these requirements to the Division annually.

XII.I.5. A natural gas compressor station or natural gas drip station subject to this Section XII.G. at which a glycol natural gas dehydrator and/or natural gas-fired stationary or portable engine is operated shall be subject to Sections XII.H. and/or XVI.

XIII. Graphic Arts and Printing

XIII.A. ~~General Provisions~~Packaging Rotogravure, Publication Rotogravure, and Flexographic Printing

XIII.A.1. Definitions

For the purpose of this section, the following definitions apply:

XIII.A.1.a. "Flexographic Printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastometric materials.

XIII.A.1.b. "Packaging Rotogravure Printing" means rotogravure printing upon paper, paperboard, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels for articles to be sold.

XIII.A.1.c. "Publication Rotogravure Printing" means rotogravure printing upon paper, which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, and other types of printed materials.

XIII.A.1.d. "Roll Printing" means the application of words, designs, and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

XIII.A.1.e. "Rotogravure Printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique, which involves an intaglio or recessed image areas in the form of cells.

XIII.A.2. Applicability

XIII.A.2.a. This section applies to all packaging rotogravure, publication rotogravure, and flexographic printing facilities whose potential emissions of volatile organic compounds before control (determined at design capacity and 8760 hrs/year, or at maximum production, and accounting for any capacity or production limitations in a federally-enforceable permit) are equal to or more than 90,000 Kg per year (100 tons/year). Potential emissions are to be estimated by extrapolating historical records of actual consumption of solvent and ink. (e.g., the historical use of 20 gallons of ink for 4,000 annual hours would be extrapolated to 43.8 gallons for 8760 hours.)The before-control volatile organic compound emissions calculations shall be the summation of all volatile organic compounds in the inks and solvents (including cleaning liquids) used.

XIII.~~B~~A.3. Provisions for Specific Processes

XIII.~~B~~A.~~1~~3.a. No owner or operator of a facility subject to this section and employing VOC-containing ink shall operate, cause, allow, or permit the operation of the facility unless:

XIII.~~B~~A.~~1~~3.a.(i) The volatile fraction of ink, as it is applied to the substrate, contains 25.0 percent or less (by volume) of VOC and 75.0 percent or more (by volume) of water; or

XIII.~~B~~A.~~1~~3.~~b~~a.(ii) The ink (minus water) as it is applied to the substrate, contains 60.0 percent or more (by volume) non-volatile material; or

XIII.~~B~~A.~~1~~3.~~c~~a.(iii) The owner or operator installs and operates a control device and capture system in accordance with ~~Paragraphs~~ Sections XIII.A~~B~~.3.b.~~2~~. and XII.A.3.c.; or

XIII.~~B~~A.~~1~~3.~~d~~a.(iv) A combination of solvent-borne inks and low solvent inks that achieve a 70% (volume) overall reduction of solvent usage (compared to an all solvent borne ink usage) is used; or

XIII.~~B~~A.~~1~~3.~~e~~a. (v) Flexographic and packaging rotogravure printing facilities limit emissions to 0.5 pounds of VOC per pound of solids in the ink. The limit includes all solvent added to the ink: solvent in the purchased ink, solvent added to cut the ink to achieve desired press viscosity, and solvent added to ink on the press to maintain viscosity during the press run. (Publication rotogravure facilities shall not use this option); or

XIII.~~B~~A.~~1~~3.~~f~~a. (vi) Crossline averaging is used. The requirements of Section IX.A.5.d apply.

XIII.~~B~~A.~~2~~3.b. A capture system shall be used in conjunction with the emission control system in ~~Subparagraph~~ Section XIII.~~B~~A.~~1~~3.a. ~~(above)~~. ~~-~~The design and operation of a capture system shall be consistent with good engineering practice, and in conjunction with control equipment shall be required to provide for an overall reduction in volatile organic compound emissions of at least:

XIII.~~B~~A.~~2~~3.~~a~~b.(i) 75.0 percent where a publication rotogravure process is employed;

XIII.~~B~~A.~~2~~3.b.(ii) 65.0 percent where a packaging rotogravure process is employed; or

XIII.~~B~~A.~~2~~3.~~c~~b.(iii) 60.0 percent where a flexographic printing process is employed.

XIII.~~B~~A.3.c. The design, operation, and efficiency of any capture system used in conjunction with any emission control system shall be certified in writing by the source owner or operator and approved by the Division. Testing of any capture system may be required by the Division on a case-by-case basis, in cases where a total enclosure is not used or when material balance results are questionable. Testing of capture system efficiency shall meet the requirements of Subsection IX.A.5.e.

XIII.~~B~~A.~~4~~3.d. The overall reduction in VOC emissions specified in ~~Subsection~~ Section XII.A~~B~~.~~2~~3.b. above shall be calculated by material balance methods approved by the Division, or by determination of capture and control device efficiencies. The overall VOC emission reduction rate equals the (percent capture efficiency X percent control device efficiency)/100.

XIII.~~C~~A.4. Testing and Monitoring

The owner or operator of a source subject to the requirements of this section is also subject to the requirements of Section IX.A.3., IX.A.7, IX.A.9, and IX.A.10. In Section IX.A.3., EPA reference method 24A shall be the test method used for publication rotogravure inks, while EPA Reference

method 24 data is acceptable for all other inks. Test methods as set forth in Appendix A, Part 60, Chapter I, Title 40, of the Code of Federal Regulations (CFR), in effect July 1, 1993.

XIII.~~D~~A.5. The owner or operator of a source subject to the requirements of this section is also subject to the requirements of Section IX.A.8. "A Guideline for Graphic Arts Calculations" shall be used for compliance determination.

XIII.B. Lithographic and Letterpress Printing

XIII.B.1. General Provisions

XIII.B.1.a. Definitions

XIII.B.1.a.(i) “Alcohol” means any of the hydroxyl-containing organic compounds with a molecular weight equal to or less than 74.12, which includes methanol, ethanol, propanol, and butanol.

XIII.B.1.a.(ii) “Alcohol substitute” means nonalcohol additives that contain VOCs and are used in the fountain solution to reduce the surface tension of water or prevent ink piling.

XIII.B.1.a.(iii) “Cleaning material” means a VOC-containing material used to remove ink and debris from the printing press area, operating surfaces of the printing press and, printing press parts. Blanket wash is a type of cleaning material.

XIII.B.1.a.(iv) “Fountain solution” means a mixture of water, nonvolatile printing chemicals, and a liquid additive that reduces the surface tension of the water so that it spreads easily across the printing plate surface. The fountain solution wets the non-image areas so that the ink is maintained within the image areas.

XIII.B.1.a.(v) “Heatset” means any printing operation where heat is required to evaporate ink oil from the printing ink.

XIII.B.1.a.(vi) “Lithographic printing” means a printing process where the image and non-image areas are chemically differentiated (the image area is oil receptive and the non-image area is water receptive). This printing process differs from other printing methods, where the image is a raised or recessed surface.

XIII.B.1.a.(vii) “Letterpress printing” means a printing process in which the image area is raised relative to the non-image area and the paste ink is transferred to the substrate directly from the image surface.

XIII.B.1.a.(viii) “Non-heatset” means any printing operation where the printing inks are set without the use of heat. For the purpose of Section XIII.B., ultraviolet-cured and electron beam-cured inks are considered non-heatset.

XIII.B.1.a.(ix) “Offset lithographic printing” means a printing process that transfers the ink film from the lithographic plate to an intermediary surface (blanket), which in turn transfers the ink film to the substrate.

XIII.B.1.a.(x) “Sheet-fed printing” means a printing process where individual sheets of paper or substrate are fed into the printing press.

XIII.B.1.a.(xi) “Web printing” means a printing process where continuous rolls of substrate material are fed to the press and rewound or cut to size after printing.

XIII.B.1.b. Applicability

XIII.B.1.b.(i) The work practice requirements in Section XIII.B.1.c. apply to all lithographic and letterpress printing operations.

XIII.B.1.b.(ii) The VOC content limit for inks in Section XIII.B.1.d. applies to lithographic and letterpress printing operations where total combined uncontrolled actual VOC emissions from each printing operation, including related cleaning materials and fountain solutions, are equal to or greater than three (3) tons per year, excluding heatset web offset and heatset web letterpress printing operations that comply with the control requirements in Section XIII.B.4.

XIII.B.1.b.(iii) The cleaning material requirements in Section XIII.B.2. apply to letterpress printing operations where total combined uncontrolled actual VOC emissions from each printing operation, including related cleaning materials and fountain solutions, are equal to or greater than three (3) tons per year.

XIII.B.1.b.(iv) The cleaning material and fountain solution requirements in Sections XIII.B.2. and XIII.B.3. apply to offset lithographic printing operations where total combined uncontrolled actual VOC emissions from each printing operation, including related cleaning materials and fountain solutions, are equal to or greater than three (3) tons per year.

XIII.B.1.b.(v) The control requirements in Section XIII.B.4. apply to heatset web offset lithographic and heatset web letterpress printing operations where total combined uncontrolled actual VOC emissions from each printing operation, including related cleaning materials and fountain solutions, are equal to or greater than 25 tons per year.

XIII.B.1.c. Work Practice Requirements

Lithographic and letterpress printing operations must implement the following work practices at all times to reduce VOC emissions from fugitive sources:

XIII.B.1.c.(i) Cover open containers and keep cleaning materials in closed containers when not in use;

XIII.B.1.c.(ii) Minimize evaporation loss where cleaning materials, fountain solutions, and inks are being used;

XIII.B.1.c.(iii) Properly dispose of used cleaning materials, fountain solutions, and used shop towels; and

XIII.B.1.c.(iv) Implement good air pollution control practices that minimize emissions, including, but not limited to, using only volumes necessary for

cleaning and maintain cleaning equipment to repair cleaning materials leaks.

XIII.B.1.d. VOC Content Limit for Inks

All lithographic and letterpress printing operations, excluding heatset web offset and heatset web letterpress printing operations that comply with the control requirement in Section XIII.B.4., must use low-VOC inks, which average less than 30% (by weight) VOC on a monthly basis.

XIII.B.2. Offset lithographic printing and letterpress printing operations must comply with the following cleaning materials requirements;

XIII.B.2.a. All cleaning materials must contain less than 70% (by weight) VOC or have a VOC composite vapor pressure less than 10 mmHg at 20˚C.

XIII.B.2.b. Exemptions

The following materials and operations are exempt from the cleaning material requirements in Section XIII.B.2.a.:

XIII.B.2.b.(i) Printing operations that use less than or equal to 110 gallons per year of non-compliant cleaning materials.

XIII.B.2.b.(ii) Cleaners used on electronic components of a press.

XIII.B.2.c.(iii) Pre-press cleaning operations.

XIII.B.2.c.(iv) Post-press cleaning operations.

XIII.B.2.c.(v) Floor cleaning supplies (other than those used to clean dried ink).

XIII.B.2.c.(vi) Cleaning performed in parts washers or cold cleaners that are subject to Section V.

XIII.B.3. Offset lithographic printing operations must comply with the following fountain solution requirements:

XIII.B.3.a. Heatset web offset lithographic printing operations must:

XIII.B.3.a.(i) Use a fountain solution containing 1.6% alcohol (by weight) or less;

XIII.B.3.a.(ii) Use a fountain solution containing 3% alcohol (by weight) or less if the fountain solution is refrigerated to below 60˚F (15.5˚C); or

XIII.B.3.a.(iii) Use a fountain solution containing 5% alcohol substitute (by weight) or less and no alcohol.

XIII.B.3.b. Sheet-fed printing operations must

XIII.B.3.b.(i) Use a fountain solution containing 5% alcohol (by weight) or less;

XIII.B.3.b.(ii) Use a fountain solution containing 8.5% alcohol (by weight) or less if the fountain solution is refrigerated to below 60˚F (15.5˚C); or

XIII.B.3.b.(iii) Use a fountain solution containing 5% alcohol substitute (by weight) or less and no alcohol.

XIII.B.3.b.(iv) The following are exempt from the fountain solution requirements in Section XIII.B.3.b.:

XIII.B.3.b.(iv)(A) Fountain solution use associated with a sheet-fed printing press with maximum sheet size 11x17 inches or smaller.

XIII.B.3.b.(iv)(B) Fountain solution use associated with a sheet-fed printing press having a total fountain solution reservoir less than one (1) gallon.

XIII.B.3.c. Non-heatset web printing must use a fountain solution containing 5% alcohol substitute (by weight) or less and no alcohol.

XIII.B.4. Heatset web offset lithographic and heatset web letterpress printing operations must comply with the following control requirements:

XIII.B.4.a. Heatset web offset lithographic and heatset web letterpress printing operations must control VOC emissions from heatset dryers by 90%.

XIII.B.4.b. If the control device was first installed on or after January 1, 2017, heatset web offset lithographic and heatset web letterpress printing operations must control VOC emissions from heatset dryers by 95%.

XIII.B.4.c. Where inlet VOC concentration is low and a 90 or 95% control efficiency is not achievable, heatset web offset lithographic and heatset web letterpress printing operations may reduce the control device outlet concentration to 20 ppmv (as hexane on a dry basis).

XIII.B.4.d. The following are exempt from the control requirements in Section XIII.B.4.:

XIII.B.4.d.(i) Heatset presses used for book printing.

XIII.B.4.d.(ii) Heatset presses with maximum web width of 22 inches or less.

XIII.B.4.d.(iii) Waterborne or radiation (ultra-violet or electron beam) cured materials that are not heatset.

XIII.B.5. Monitoring

The owner or operator of a heatset web offset lithographic or heatset web letterpress printing operation required to demonstrate compliance with Section XIII.B.4. must install, calibrate, maintain, and operate a temperature monitoring device, according to the manufacturer's specifications, at the outlet of the control device.

XIII.B.6. Recordkeeping

Owners and operators of lithographic and letterpress printing operations subject to Sections XIII.B.1.d. and XIII.B.2.-.5. must keep the following records for two (2) years and make them available for inspection by the Division upon request.

XIII.B.6.a. Records demonstrating that a listed exemption to this Section XIII.B. applies.

XIII.B.6.b. If applicable, monthly records of the type, alcohol content or alcohol substitute content, and total volume of fountain solution used in printing operations.

XIII.B.6.c. If applicable, monthly records of the type, VOC content or composite vapor pressure, and total volume of the cleaning materials used in printing operations.

XIII.B.6.d. If applicable, monthly records of the type, VOC content, and total volume of inks used in printing operations.

XIII.B.6.e. Monthly records demonstrating compliance with the control requirements in Section XIII.B.4.

>>>>>>>

XVI. Control of Emissions from Stationary and Portable Engines and Other Combustion Equipment in the 8-~~hour~~ Hour Ozone Control Area

XVI.A. Requirements for new and existing engines.

XVI.A.1 The owner or operator of any natural gas-fired stationary or portable reciprocating internal combustion engine with a manufacturer's design rate greater than 500 horsepower commencing operations in the 8-hour Ozone Control Area on or after June 1, 2004 shall employ air pollution control technology to control emissions, as provided in Section XVI.B.

XVI.A.2 Any existing natural gas-fired stationary or portable reciprocating internal combustion engine with a manufacturer's design rate greater than 500 horsepower, which existing engine was operating in the 8-hour Ozone Control Area prior to June 1, 2004, shall employ air pollution control technology on and after May 1, 2005, as provided in Section XVI.B.

XVI.B. Air pollution control technology requirements

XVI.B.1 For rich burn reciprocating internal combustion engines, a non-selective catalyst reduction and an air fuel controller shall be required. A rich burn reciprocating internal combustion engine is one with a normal exhaust oxygen concentration of less than 2% by volume.

XVI.B.2 For lean burn reciprocating internal combustion engines, an oxidation catalyst shall be required. A lean burn reciprocating internal combustion engine is one with a normal exhaust oxygen concentration of 2% by volume, or greater.

XVI.B.3 The emission control equipment required by this Section XVI.B shall be appropriately sized for the engine and shall be operated and maintained according to manufacturer specifications.

XVI.C. The air pollution control technology requirements in ~~this~~ Sections XVI.A. and XVI.B. shall not apply to:

XVI.C.1 Non-road engines, as defined in Regulation Number 3.

XVI.C.2 Reciprocating internal combustion engines that the Division has determined will be permanently removed from service or replaced by electric units on or before May 1, 2007. The owner or operator of such an engine shall provide notice to the Division of such

intent by May 1, 2005 and shall not operate the engine identified for removal or replacement in the 8-hour Ozone Control Area after May 1, 2007.

XVI.C.3 Any emergency power generator exempt from APEN requirements pursuant to Regulation Number 3.

XVI.C.4 Any lean burn reciprocating internal combustion engine operating in the 8-hour Ozone Control Area prior to June 1, 2004, for which the owner or operator demonstrates to the Division that retrofit technology cannot be installed at a cost of less than $ 5,000 per ton of VOC emission reduction. Installation costs and the best information available for determining control efficiency shall be considered in determining such costs. In order to qualify for such exemption, the owner or operator must submit an application making such a demonstration, together with all supporting documents, to the Division by May 1, 2005. Any reciprocating internal combustion engine qualifying for this exemption shall not be moved to any other location within the 8-hour Ozone Control Area.

XVI.D. Combustion process adjustment

XVI.D.1. As of January 1, 2017, this Section XVI.D. applies to the following combustion equipment with uncontrolled actual emissions of NOx equal to or greater than one (1) ton per year, and that are located at existing major sources of NOx, as listed in Section XIX.A.

XVI.D.1.a. Boiler: an enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water.

XVI.D.1.b. Process heater: an enclosed device using controlled flame and a primary purpose to transfer heat indirectly to a process material or to a heat transfer material for use in a process.

XVI.D.1.c. Stationary combustion turbine: a simple cycle stationary combustion turbine, regenerative/recuperative cycle stationary combustion turbine, stationary cogeneration cycle combustion system, or combined cycle steam/electric generating system.

XVI.D.1.d. Duct burner: a device that combusts fuel and is placed in the exhaust duct from another source (e.g., stationary combustion turbine, internal combustion engine, kiln) to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a heat recovery steam generating unit.

XVI.D.1.e. Engine: a stationary reciprocating internal combustion engine (internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile), stationary compression ignition internal combustion engine (non-spark ignition internal combustion engine, except combustion turbines, that converts heat energy into mechanical work and is not mobile), stationary spark ignition internal combustion engine (engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle).

XVI.D.2. Combustion process adjustment

XVI.D.2.a. When burning the fuel that provides the majority of the heat input since the last combustion process adjustment and when operating at a firing rate typical of normal operation, the owner or operator must conduct the following

inspections and adjustments of boilers, process heaters, stationary combustion turbines, and duct burners as applicable:

XVI.D.2.a.(i) Inspect the burner and combustion controls and clean or replace components as necessary.

XVI.D.2.a.(ii) Inspect the flame pattern and adjust the burner or combustion controls as necessary to optimize the flame pattern.

XVI.D.2.a.(iii) Inspect the system controlling the air-to-fuel ratio and ensure that it is correctly calibrated and functioning properly.

XVI.D.2.a.(iv) Measure the concentration in the effluent stream of carbon monoxide and nitrogen oxide in ppm, by volume, before and after the adjustments in Sections XVI.D.2.a.(i)-(iii).

XVI.D.2.b. When burning the fuel that provides the majority of the heat input since the last combustion process adjustment and when operating at a firing rate typical of normal operation, the owner or operator must conduct the following inspections and adjustments of engines as applicable:

XVI.D.2.b.(i) Change oil and filters as necessary.

XVI.D.2.b.(ii) Inspect air cleaners, fuel filters, hoses, and belts and clean or replace as necessary.

XVI.D.2.b.(iii) Inspect spark plugs and replace as necessary.

XVI.D.2.c. The owner or operator must optimize combustion to minimize generation of carbon monoxide and nitrogen oxide consistent with manufacturer's specifications, if available, or best combustion engineering practice.

XVI.D.2.d. As an alternative to the requirements described in Sections XVI.D.2.a.-c.:

XVI.D.2.d.(i) The owner or operator may conduct the combustion process adjustment according to the manufacturer recommended procedures; or

XVI.D.2.d.(ii) The owner or operator of combustion equipment that is subject to and required to conduct a period tune-up or combustion adjustment by the applicable requirements of a New Source Performance Standard in 40 CFR Part 60 or National Emission Standard for Hazardous Air Pollutants in 40 CFR Part 63 may conduct tune-ups or adjustments according to the schedule and procedures of the applicable requirements of 40 CFR Part 60 or 40 CFR Part 63.

XVI.D.2.e. Frequency

XVI.D.2.b.(i) The owner or operator must conduct the initial combustion process adjustment by April 1, 2017.

XVI.D.2.b.(ii) The owner or operator must conduct subsequent combustion process adjustments at least once every twelve (12) months after the initial combustion adjustment, or on the applicable schedule according to Section XVI.D.2.d.(ii).

XVI.D.3. Recordkeeping

XVI.D.3.a. The owner or operator must create a report once every calendar year, including

XVI.D.3.a.(i) The date of the adjustment(s);

XVI.D.3.a.(ii) Whether the combustion adjustment process under Sections XVI.D.2.a.-c. was followed, and what procedures were performed;

XVI.D.3.a.(iii) Whether a combustion adjustment process under XVI.D.2.d. was followed, and what procedures were performed; and

XVI.D.3.a.(iv) A description of any corrective action taken.

XVI.D.2.a.(v) If multiple fuels are used, record the type of fuel burned and heat input provided by each fuel.

XVI.D.3.b. The owner or operator must retain manufacturer recommended procedures, specifications, and maintenance schedule if utilized under Section XVI.D.2.d. for the life of the equipment, and make available to the Division upon request.

XVI.D.3.c. The owner or operator must retain annual reports for at least 5 years, and make available to the Division upon request.

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XIX. 2008 Ozone State Implementation Plan Reasonably Available Control Technology Limits

XIX.A. The following major sources, that emit or have the potential to emit 100 tons per year of VOC or NOx as of January 1, 2017, and are located in the 8-hour Ozone Control Area, were analyzed in Colorado's Moderate Area SIP for the 2008 8-Hour Ozone NAAQS.

XIX.A.1. Anheuser-Busch, Fort Collins Brewery (069-0060) and Nutri-Turf (123-0497) (major for VOC and NOx)

XIX.A.2. Ball Metal Beverage Container Corporation (059-0010 major for VOC)

XIX.A.3. Buckley Air Force Base (005-0028 major for NOx)

XIX.A.4. Carestream Health (123-6250 major for NOx)

XIX.A.5. Cemex Construction Materials (013-0003 major for VOC and NOx)

XIX.A.6. Colorado Interstate Gas, Latigo (005-0055 major for NOx)

XIX.A.7. Colorado Interstate Gas, Watkins (001-0036 major for VOC and NOx)

XIX.A.8. Colorado State University (069-0011 major for NOx)

XIX.A.9. CoorsTek (059-0066 major for VOC)

XIX.A.10. CordenPharma (013-0025 major for VOC)

XIX.A.11. DCP Midstream, Enterprise (123-0277 major for VOC and NOx)

XIX.A.12. DCP Midstream, Greeley (123-0099 major for VOC and NOx)

XIX.A.13. DCP Midstream, Lucerne (123-0107 major for VOC and NOx)

XIX.A.14. DCP Midstream, Marla (123-0243 major for VOC and NOx)

XIX.A.15. DCP Midstream, Platteville (123-0595 major for VOC and NOx)

XIX.A.16. DCP Midstream, Roggen (123-0049 major for VOC and NOx)

XIX.A.17. DCP Midstream, Spindle (123-0015 major for VOC and NOx)

XIX.A.18. DCP Midstream, Kersey/Mewbourn (123-0090 major for VOC and NOx)

XIX.A.19. Denver Regional Landfill, Front Range Landfill, Timberline Energy (123-0079 major for NOx)

XIX.A.20. Elkay Wood Products (001-1602 major for VOC)

XIX.A.21. IBM Corporation (013-0006 major for NOx)

XIX.A.22. Kerr-McGee Gathering, Frederick (123-0184 major for VOC and NOx)

XIX.A.23. Kerr-McGee Gathering, Hudson (123-0049 major for VOC and NOx)

XIX.A.24. Kerr-McGee Gathering, Fort Lupton/Platte Valley/Lancaster (123-0057 major for VOC and NOx)

XIX.A.25. Kodak Alaris (123-0003 major for VOC)

XIX.A.26. Metal Container Corporation (123-0134 major for VOC)

XIX.A.27. Metro Wastewater Reclamation District, Suez Denver Metro (001-0097 major for NOx)

XIX.A.28. MillerCoors Golden Brewery, Rocky Mountain Metal Container (059-0006), MMI/EtOH (059-0828), and Trigen Colorado Golden Energy Corporation (059-0820) (major for VOC and NOx)

XIX.A.29. Owens-Brockway Glass (123-4406 major for NOx)

XIX.A.30. Phillips 66 Pipeline, Denver Terminal (001-0015 major for VOC)

XIX.A.31. Plains End (059-0864 major for VOC and NOx)

XIX.A.32. Public Service, Cherokee (001-0001 major for NOx)

XIX.A.33. Public Service, Denver Steam Plant (031-0041 major for NOx)

XIX.A.34. Public Service, Fort Lupton (123-0014 major for NOx)

XIX.A.35. Public Service, Fort Saint Vrain (123-0023 major for NOx)

XIX.A.36. Public Service, Rocky Mountain Energy Center (123-1342 major for NOx)

XIX.A.37. Public Service, Valmont (013-0001 major for NOx)

XIX.A.38. Public Service, Yosemite (123-0141 major for NOx)

XIX.A.39. Public Service, Zuni (031-0007 major for NOx)

XIX.A.40. Rocky Mountain Bottle Company (059-0008 major for NOx)

XIX.A.41. Sinclair Transportation Company, Denver Terminal (001-0019 major for VOC)

XIX.A.42. Spindle Hill Energy (123-5468 major for NOx)

XIX.A.43. Suncor Energy, Denver Refinery Plants 1 and 2 (001-0003 major for VOC and NOx)

XIX.A.44. Thermo Cogeneration, JM Shafer (123-0250 major for NOx)

XIX.A.45. Thermo Power and Electric (123-0126 major for NOx)

XIX.A.46. Tri-State Generation, Frank Knutson (001-1349 major for NOx)

XIX.A.47. TXI Operations (059-0409 major for NOx)

XIX.A.48. University of Colorado Boulder (013-0553 major for NOx)

XIX.A.49. WGR Asset Holding, Wattenberg (001-0025 major for VOC and NOx)

XIX.B. This Section B. establishes specific RACT requirements for the following major sources. The sources must comply with the following specific limits and monitoring/recordkeeping requirements as expeditiously as practicable, but no later than January 1, 2017.

Table 6 – Ozone RACT Determinations *

Facility	Emission Limit or Standard	Monitoring/recordkeeping
Anheuser-Busch – facility, boilers (pt 001, 002)	Facility: 213.27 tpy VOC	Maintain records of VOC emissions on a rolling 12-month total
	Boilers (pt 001, 002): 520.3 tpy NOx	Monitor NOx using a continuous emission monitor
Buckley Air Force – engines	Bldg 416 (pt 102), Bldg 433 (pt 103), Bldg 465 (pt 104), Bldg	Maintain records of NOx emissions on a rolling 12-month

	1201 (pt 105): 198.6 tpy NOx Engine (pt 120): 1.56 tpy NOx Engine (pt 118): 3.44 tpy NOx Engine (pt 119): 2.84 tpy NOx Engine test cell (pt 101): 6.79 tpy NOx Engine (pt 124): 2.02 tpy NOx Building 494 (pt 128): 3 tpy NOx Engines (pt 138): 8.6 tpy NOx Engines (pt 139): 2.4 tpy NOx	total
Carestream Health – boilers (pt 004)	Boilers (pt 004): 133.4 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total
Cemex – dryer (pt 002), kiln (pt 007)	Dryer (pt 002): 144.8 tpy VOC Kiln (pt 007): 138 tpy VOC	Maintain records of VOC emissions on a rolling 12-month total
Colorado State University – boilers (pt 003, 005, 007, 013)	Boilers (pt 003, 005, 007): 127.7 tpy NOx Boiler (pt 013): 5.4 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total
CoorsTek – facility	Facility: 101.16 tpy VOC	Maintain records of VOC emissions on a rolling 12-month total
DCP Midstream, Greeley – engine (pt 102)	Engine (pt 102): 3.02 tpy NOx, 0.6 tpy VOC	Maintain records of NOx and VOC emissions on a rolling 12-month total

DCP Midstream, Kersey/Mewbourn – engine (pt 101), turbines (pt 111, 112, 118, 119)	Engine (pt 101): 5.1 tpy NOx, 3.19 tpy VOC Turbines (pt 111, 112) each: 13.14 tpy NOx Turbines (pt 118, 119): 17.49 tpy NOx	Maintain records of NOx and VOC emissions on a rolling 12-month total
DCP Midstream, Lucerne – turbines (pt 044, 045)	Turbines (pt 044, 045) each: 15 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total
DCP Midstream, Spindle – engines (pt 059, 075)	Engine (pt 059): 5 tpy NOx, 2.2 tpy VOC Engine (pt 075): 22.9 tpy NOx, 4.9 tpy VOC	Maintain records of NOx and VOC emissions on a rolling 12-month total
Denver Regional Landfill, Front Range Landfill, Timberline Energy – flare (pt 007 and 013, engines (010, 011)	Flare (pt 007): 39.4 tpy NOx Flare (pt 013): 17.87 tpy NOx Engines (pt 010, 022): 76.32 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total
Elkay Wood (pt 001)	Average VHAP across finishing material coatings (stains, sealers and topcoats, thinners): 0.8 lbs VHAP/lb solids Foam adhesives: 0.2 lbs VHAP/lb solids Other contact adhesives: 0.2 lbs VHAP/lb solids Strippable spray booth coatings: 0.8 lbs VOC/lb solids	Maintain monthly records demonstrating compliant coatings
IBM – engines (pt 088, 090, 092), boilers (pt 001, 011, 095)	Engines (pt 088): 41.6 tpy NOx	Maintain records of NOx emissions on a rolling 12-month

	Engines (pt 090): 20.7 tpy NOx Engines (pt 092): 21.65 tpy NOx Engine (pt 094): 3 tpy NOx Boilers (pt 001, 011): 50.6 tpy NOx Boiler (pt 095): 5.1 tpy NOx	total
Kerr-McGee, Fort Lupton/Platte Valley/Lancaster – gas turbine (pt 052)	Turbine (pt 052): 49 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total
Metro Wastewater & Suez Denver Metro – Suez turbines (pt 001), engines and flares (pt 009 and 017), boilers (pt 010), Metro engines (pt 012, 018, 021)	Suez turbines, engines, flares (pt 001, 009, 010, 017): 86.85 tpy NOx Metro engine (pt 012): 19.27 tpy NOx Metro engines (pt 018, 021): 4.77 g/hp-hr NOx+NMHC	Maintain records of NOx emissions on a rolling 12-month total
MillerCoors Golden Brewery – facility	Facility: 469.6 tpy VOC	Maintain records of VOC emissions on a rolling 13-4 week block total
MMI/EtOH – facility	Facility: 10.7 tpy VOC	Maintain records of VOC emissions on a rolling 12-month total
Nutri-Turf – facility	Facility: 236 tpy VOC	Maintain records of VOC emissions on a rolling 12-month total
Owens-Brockway – furnaces (pt 001, 002)	Furnaces (pt 001, 002): 220.67 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total

Public Service Company, Cherokee – boiler 4 (pt 004), turbines (pt 028, 029)	Boiler (pt 004): 0.12 lb/mmBtu NOx Turbines (pt 028, 029) each: 148.1 tpy NOx	Monitor NOx using a continuous emission monitor
Public Service Company, Denver Steam – boilers (pt 001, 002)	Boilers (pt 001, 002): 544.7 tpy NOx (100% natural gas) or 341.1 tpy NOx (100% No. 2 fuel oil)	Maintain records of fuel use and NOx emissions on an annual basis
Public Service Company, Fort Lupton – turbines (pt 001, 002)	Turbines (pt 001, 002): 2,032 tpy NOx (100% natural gas) or 5,057 tpy NOx (100% Nos. 1 and/or 2 fuel oil)	Maintain records of fuel use and NOx emissions on an annual basis
Public Service Company, Fort Saint Vrain – turbines (pt 004, 005, 008, 010, 011), boiler (pt 001)	Turbines (pt 004, 005): 496.1 tpy NOx Turbine (pt 008): 199.1 tpy NOx Turbines (pt 010, 011): 39.9 tpy NOx	Monitor NOx using a continuous emission monitoring system
	Boiler (pt 001): 32.6 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total
Public Service Company, Rocky Mountain Energy Center – turbines (pt 001, 002)	Turbines (pt 001, 002): 240.4 tpy NOx	Monitor NOx using a continuous emission monitoring system
Public Service Company, Valmont – turbine (pt 002)	Turbine (pt 002): 2,197 tpy NOx	Maintain records of fuel use and NOx emissions on an annual basis
Public Service Company, Zuni – boilers (pt 001-003)	Boilers (pt 001-003): 2,074 tpy NOx (100% natural gas) or 2,536 tpy NOx (100% No. 6 fuel oil)	Maintain records of fuel use and NOx emissions on an annual basis

Rocky Mountain Bottle – furnaces (pt 001)	Furnaces (pt 001): 424 tpy NOx	Monitor NOx using a continuous emission monitoring system
Spindle Hill – turbines (pt 001, 002)	Turbines (pt 001, 002): 223.3 tpy NOx	Monitor NOx using a continuous emission monitoring system
Suncor – boilers (pt 309, 019, 021, 023), engines (pt 150, 151)	Boilers (pt 309): 24.8 tpy NOx Boiler (pt 021): 19.45 tpy NOx, 2.6 tpy VOC Boiler (pt 023: 28.21 tpy NOx, 3.77 tpy VOC	Monitor NOx using a continuous emission monitoring system
	Boiler (pt 019): 154.8 tpy NOx, 3.1 tpy VOC Engines (pt 150, 151): 2.7 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total
Thermo Cogeneration, JM Shafer – turbines (pt 001-005)	Turbines (pt 001-005): 589 tpy NOx	Monitor NOx using a continuous emission monitoring system
Thermo Power and Electric – turbines (pt 001, 002)	Turbines (pt 001, 002) each: 535.5 tpy NOx	Monitor NOx using a continuous parametric monitoring system
Trigen Colorado Energy Corporation – boilers (pt 001, 002)	Boilers (pt 001, 002) each: 346 tpy NOx (100% natural gas) or 216 tpy NOx (100% No. 2 fuel oil)	Maintain records of fuel use, heat input, and NOx emission estimate on an annual basis
Tri-State Generation and Transmission, Frank Knutson – turbines (pt 001, 003)	Turbines (pt 001, 003): 244.1 tpy NOx	Monitor NOx using a continuous emission monitor
TXI – kiln (pt 001)	Kiln (pt 001): 248 tpy NOx	Maintain records of NOx emissions on a rolling 12-month

		total
University of Colorado – Powerhouse turbines (pt 003, 005), Powerhouse boilers (pt 001, 002), Williams boilers (pt 001, 002), East boilers (012, 013)	Powerhouse turbines (pt 003, 005) each: 75 ppmvd NOx Powerhouse (pt 001, 002, 003, 005): 250 tpy NOx	Monitor NOx using a continuous emission monitor
	Williams boilers (pt 001, 002): 43 tpy NOx East boilers (pt 012, 013): 29.7 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total
WGR Wattenberg – turbines (pt 021, 022)	Turbines (pt 021, 022): 17.7 tpy NOx	Maintain records of NOx emissions on a rolling 12-month total

* RACT for major sources listed in Section XIX.A. that are not also listed in Section XIX.B. was determined to be existing regulatory requirements, see the [RACT SIP, TSD] for more detail.

XIX.C. Major sources listed in Table 6 must comply with the following recordkeeping and reporting requirements:

XIX.C.1. Maintain compliance monitoring records for at least 5 years, and make available to the Division upon request.

XIX.C.2. Submit a compliance report once every calendar year, including:

XIX.C.2.a. Identify the emission limit or standard that is the basis of the compliance certification;

XIX.C.2.b. Identify the compliance status of the source; and

XIX.C.2.c. Identify whether compliance was continuous or intermittent.

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~~XIX~~XX. Statements of Basis, Specific Statutory Authority and Purpose

~~XIX~~XX.A. December 21, 1995 (Section II.B)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, Section 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act, Section 25-7-110.5, C.R.S.

Basis

Regulations 3, 7 and the Common Provisions establish lists of Negligibly Reactive Volatile Organic Compounds (NRVOCs). The revisions adopted consolidate the list of NRVOCs into the Common Provisions, assuring that the same list of NRVOCs apply to all the Colorado Regulations. This provides more consistency in those chemicals regulated as VOCs.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act provides the authority for the Colorado Air Quality Control Commission to adopt and modify Regulations pertaining to organic solvents and photochemical substances. Section 25-7-109(2)(f) and 25-7-109(2)(g), C.R.S., grant the Commission the authority to promulgate regulations pertaining to Organic solvents and photochemical substances. The Commission's action is taken pursuant to authority granted and procedures set forth in Sections 25-7-105, 25-7-109, and 25-7-110, C.R.S.

Purpose

These revisions to Regulations Number 3, 7, and the Common Provisions are intended to clarify substances that are negligibly reactive VOCs, which are reflected in the EPA list of non-photochemically reactive VOCs. By consolidating the list (which consists of the EPA list of non-photochemically VOCs), and adopting the EPA definition by reference, a single list of negligibly reactive VOCs will apply uniformly to all Colorado Air Quality Control Commission Regulations.

This revision will also include EPA's recent addition of acetone to the negligibly reactive VOC list. The addition of acetone to the list of negligibly reactive VOC's provides additional flexibility to sources looking for an alternative to more photochemically reactive VOCs. Because the EPA has added acetone to their list of non-photochemically reactive VOCs many industries, which make and supply products to Colorado industries, are planning to substitute acetone for more reactive VOCs. This change in the content of products purchased by industry for use in Colorado would adversely affect industries in Colorado if acetone remains a regulated VOC in Colorado. By adopting acetone as a negligibly reactive VOC industries will be able to take advantage of and benefit from this possible shift in product contents.

~~XIX~~XX.B. March 21, 1996 (Sections I.A.1-4; II.D; II.E)

The changes to Regulation Number 7 were adopted as part of the Commission's decision to redesignate the Denver metro area as an attainment and maintenance area for ozone, together with the relevant amendments to the Ambient Air Quality Standards regulation and Regulation Number 3. The Ozone Maintenance Plan, also adopted by the Commission on March 21, 1996 as part of the redesignation, based part of its demonstration of maintenance on the continued existence of rules regulating VOC emissions. Such rules include the application of the permit requirements of Regulation Number 3 to gasoline stations, and the continued application of Regulation Number 7 for the control of VOC in nonattainment areas. The VOC controls in Regulation Number 7 were adopted into the SIP in May 1995, after Denver attained the ozone standard. The maintenance demonstration was based on future inventories that assumed the continuance of existing VOC controls in the Denver Metro area.

Pursuant to Section 25-7-107(2.5), C.R.S., the Commission is required to take expeditious action to redesignate the area as an attainment area for ozone. The CAA requires the submittal of a maintenance plan demonstrating maintenance of the ozone standard for any such redesignation request. The changes to Regulation Number 7 are consistent with continued maintenance of the ozone standard and are not otherwise more stringent than the relevant federal requirements.

The purpose of the revisions to Regulation Number 7, Section I.A is to provide a de minimis source with an opportunity to obtain an exemption from the requirements of Regulation Number 7 through rule-making. This revision will be submitted to the EPA for inclusion in the State Implementation Plan (SIP).

Upon inclusion of this revision in the SIP, exemptions from Regulation Number 7 adopted by the Commission shall apply for purposes of both federal and state law, pending review by the state legislature pursuant to § 25-7-133(2), C.R.S. The rule revision includes several limitations on the scope of such exemptions:

1. The aggregate of all emissions from de minimis sources may not exceed five tons of emissions per day. The purpose of this limitation is to protect the projections contained in the emissions inventory, and to prevent growth in such emissions from exceeding the National Ambient Air Quality Standard (NAAQS) for ozone.

2. An exemption may not be granted if the Division demonstrates that such exemption will cause or contribute to air pollution levels that exceed the NAAQS, even if the total aggregate emissions from such sources is less than five tons per day.

3. The Commission rule prohibits more than one rule-making hearing per year to consider potential de minimis exemptions in the aggregate. The purpose of this provision is to prevent the granting of case-by-case exemptions, and to conserve agency resources. The granting of exemptions on a case-by-case basis would grant an unfair advantage for those sources that are able to have their case heard by the Commission before other, similarly situated sources, submit a request for a de minimis exemption. However, upon a showing of an emergency, and at the discretion of the Commission, the Commission may always grant an exemption on a case-by-case basis.

4. The Commission rule provides that the growth in emissions due to such de minimis exemptions may not exceed the growth that was included in the emissions inventory in the SIP.

5. The Commission rule requires the de minimis exemptions to be included in a permit that is subject to review and comment by the public and by EPA.

The rule revision proposed by the Regional Air Quality Council (RAQC) did not include these limitations. However, the Commission may not have used the rule as proposed by RAQC to grant unlimited exemptions from the requirements of Regulation Number 7 because such an action would undermine the regulation and the maintenance demonstration contained in the SIP. The limitations adopted by the Commission were the subject of an alternative proposal submitted by the Division. The purpose of the limit is to ensure that the de minimis exemption provision cannot be used to jeopardize attainment of the NAAQs. Such a limit is necessary in order to obtain EPA approval of this SIP revision. The alternative proposal submitted by the Division and adopted by the Commission will have no regulatory impact on any person, facility, or activity. Even without an express provision limiting the de minimis exemptions to five tons per day, the Commission generally would not have granted de minimis exemptions in excess of that amount because such emissions are not accounted for in the emissions inventory and would undermine the maintenance demonstration. Furthermore, the alternative proposed by the Division does not, by itself, create an exemption from any regulatory requirement. The alternative simply limits the scope of the exemptions that may become fully effective without a SIP revision. However, the rule does not in any way limit the Commission's authority to amend the SIP.

The emissions inventory submitted to EPA anticipated growth in emissions in both the area source and minor source categories, as well as the major source category. In order to ensure that any growth in emissions due to the granting of de minimis exemptions will not cause total emissions to exceed the growth projections for these categories, the Division will keep track of the permitted allowable emissions that may result from sources and source categories entitled to such exemptions. In addition, the growth in emissions from area, major and minor source categories will be tracked when the Division performs the periodic inventories described in the SIP for the years 1999, 2002 and 2003. Any permitted growth in emissions due to de minimis exemptions will be added to the emissions for the source categories as reflected in the most recent periodic inventory. No further de minimis exemptions will be granted if the total growth in emissions exceeds the growth projections contained in the SIP. In addition, if the total growth exceeds the growth projections contained in the SIP, one or more of the contingency measures

will be implemented to offset such growth, or the SIP will be revised as necessary to ensure continued maintenance of the standard.

The purpose of the addition of Regulation Number 7, Section II.E. is to provide sources with a process to obtain approval of an alternative emission control plan, compliance method, test method, or test procedure without waiting for EPA to approve of a site-specific SIP revision. The rule provides that any such alternative must be just as effective as the relevant regulatory provision, and that such effectiveness must be demonstrated using equally effective test methods and procedures. The changes to this section delegate the authority to the Division to approve of such alternatives. Since rulemaking is not required under Paragraph E, the language allowing a source to assert that the relevant regulatory provision does not represent RACT has been omitted from this section. Such a change to the substantive requirements of Regulation Number 7 would require a rule change.

The rule revision proposed by the RAQC provided that alternative emissions control plans and compliance methods must be just as effective as those contained in the rule, but did not describe the test methods to be used to demonstrate such effectiveness. The Division proposed an alternative rule requiring such effectiveness to be demonstrated using test methods and procedures that are just as effective as those set out in the rule, or that have otherwise been approved by EPA. Such criteria for test methods and procedures are necessary in order to obtain EPA approval of this SIP revision. However, even without this language in the rule the Division would have required approved test methods and procedures in order to approve of proposed alternatives. The Division's alternative proposal provides the needed certainty in the most flexible manner possible. Furthermore, the alternative proposed by the Division does not impose any new regulatory requirement. Instead, it merely establishes criteria for allowing persons subject to the regulation to propose, in their discretion, an alternative means of complying with the existing regulatory requirements. Therefore, the alternative proposal submitted by the Division and adopted by the Commission will have no regulatory impact on any person, facility, or activity.

The rule revisions provide that no permit may be issued based on the provisions allowing for the creation of de minimis exemptions and the approval of alternative compliance plans without first revising the SIP unless EPA first approves of such regulatory revisions as part of the State Implementation Plan. The purpose of this condition is to address the possible disapproval of these revisions by EPA. In the event these changes are not approved by EPA, the remaining regulatory provisions of Regulation Number 7 will remain in full force and effect, and therefore, the EPA may approve of the maintenance plan and the redesignation request.

The revisions to Regulation Number 7 are procedural changes that are not intended to reduce air pollution.

For clarification, the Commission adopted these regulation revisions as follows:

REGULATION REVISION	OZONE SIP AND MAINTENANCE PLAN
Section I.A.1	Exists in Appendix C of the Ozone Maintenance Plan to become a part of that document approved March 21, 1996
Sections I.A.2, 3, 4; Section II.D, II.E	Adopted as subsequent regulation revisions to be submitted to the Governor and EPA separately and concurrently as a revision to the Ozone SIP (and Maintenance Plan)

The specific statutory authority to promulgate the rules necessary for redesignation is set out in §§ 25-7-105(1)(a)(I) and (2); -106(1)(a); -107 (1) and (2.5); and -301. The authority to adopt such rules includes the authority to adopt exceptions to the rules, and the process for applying for any such exemptions.

~~XIX~~XX.C. November 21, 1996 (Section XII)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, Section 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act, Section 25-7-110.5, C.R.S.

Basis

Regulations 3, 7 and the Common Provisions establish lists of Negligibly Reactive Volatile Organic Compounds (NRVOCs). The revisions adopted update the list of NRVOCs so that the state list remains consistent with the federal list. Additionally because perchloroethylene will no longer be listed as a VOC in Regulation Number 7, Section XII, Control of VOC Emissions from Dry Cleaning Facilities using Perchloroethylene as a Solvent, is being deleted.

Regulation Number 8 and 3 list the federal Hazardous Air Pollutants (HAPs). In the June 8, 1996 Federal Register the EPA removed Caprolactam (CAS 105-60-2) from the federal list of Hazardous Air Pollutants. The conforming changes in Regulation Number 3 Appendices B, C and D have been made to keep the list of federal HAPs in Regulation Number 3 consistent with the federal list. The list of HAPs in Regulation Number 8 has been removed and a reference to the list in Regulation Number 3 has been added.

Specific Statutory Authority

The Colorado Air Pollution Prevention and Control Act provides the authority for the Colorado Air Quality Control Commission to adopt and modify Regulations pertaining to organic solvents and photochemical substances. Section 25-7-109(2)(f) and 25-7-109(2)(g), C.R.S., grant the Commission the authority to promulgate regulations pertaining to organic solvents and photochemical substances. Sections 25-7-105(1)(I)(b) and 25-7-109(2)(h) provide authority to adopt emission control regulations and emission control regulations relating to HAPs respectively. The Commission's action is taken pursuant to authority granted and procedures set forth in Sections 25-7-105, 25-7-109, and 25-7-110, C.R.S.

Purpose

These revisions to Regulations Number 3, 7, 8 and the Common Provisions are intended to update the state lists of NRVOCs, the Ozone SIP, and HAPs for consistency with the federal lists.

~~XIX~~XX.D. October 15, 1998 (Section II.F)

The Gates Rubber Co. Site-specific Revision

The Gates Rubber Co. (Gates), by and through its attorney, submitted this Statement of Basis, Specific Statutory Authority and Purpose for amendments to Regulation Number 7, Control of Emissions of Volatile Organic Compounds.

Basis

Regulation Number 3 contains a certification and trading of emission reduction credits section (Section V), which sets forth the definitions and process for obtaining emission credits and using those credits. This section was amended to permit the use of emission reduction credits (ERC) to satisfy reasonably available control technology (RACT) requirements. The criteria for approval of ERC transactions specifies that they must involve like pollutants (for volatile organic compounds, the same degree of toxicity and photochemical reactivity), must be within the same nonattainment area, may not be used to satisfy Federal technology control requirements and may not be inconsistent with standards or regulations or to circumvent new source performance standards, best available control technology, lowest available emission rate technology controls or NESHAPs.

Regulation Number 7 sets forth CTG and RACT emission limitations, equipment requirements and work practices intended to control emission of volatile organic compounds (VOC) from new and existing stationary sources. The control measures specified in Regulation Number 7 are designed to reduce the ambient concentrations of ozone in ozone nonattainment areas and to maintain adequate air quality in other areas.

Specific Statutory Authority

The provisions of C.R.S. §§ 25-7-105 and 25-7-109 to 110 provide the specific statutory authority for the amendments to this regulation adopted by the Commission. The Commission has also adopted in compliance with C.R.S. § 24-4-103(4), this Statement of Basis, Specific Statutory Authority and Purpose.

Purpose

The purpose of this amendment to Regulation Number 7 is to establish a source specific rule for Gates to allow the use of emission reduction credits to satisfy the RACT requirements for VOC emissions pursuant to Regulation Number 7 for surface coatings operations not specifically listed in Section IX of Regulation Number 7. Regulation Number 3 provides specific authorization to use emission reduction credit transactions as an alternative compliance method to satisfy CTG and RACT requirements.

Specifically, the VOC certified emissions reduction credits to be used in this emission credit transaction in an amount up to 12 tons per year are from Coors Brewing Company pursuant to their emissions reduction credit Permit. The emission reduction credits will be used to satisfy the general requirements that all sources apply RACT. These emission reduction credits will be used by Gates so that Gates can use solvent-based surface coatings which contain VOCs periodically in lieu of the water-based coatings normally used on its 10 Cord coating line (S033, S034, and S035). these credits will allow Gates to meet RACT requirements without applying control technology to the 10 Cord line, other than the currently installed catalytic incinerator on the emissions from the drying oven from the fourth dip, which reduces those emissions by at least 90%.

The relevant portion of Regulation Number 3, which applies to the Gates credit transaction is Section V.F., entitled "Criteria for Approval of all Transactions." The first requirement is that the transaction involve like pollutants. In the present case, the emission credit transaction involves the exchange of VOC pollutants. Coors credits for methanol will be exchanged for m-pyrol. Exhaust from the catalytic incinerator, which contains unconverted toluene and xylene, is routed to the curing ovens of the other zones of the 10 Cord line, including the first zone. The Division has previously found that, excluding the emissions from the non-compliant coatings addressed in this rule, the 10 Cord line has met RACT standards. The use of the non-compliant coatings adds no HAPs to the Gates emissions. Other non-criteria reportable pollutants are present at well below APEN de minimis quantities under scenario 2, which is applicable to the 10 Cord line. Regulation Number 3 further requires that toxic or VOC pollutants involve the same degree of toxicity and photochemical reactivity or else a greater reduction may be required. Since these pollutants are both toxics and VOCs (except that m-pyrol is not a toxic), both have been addressed.

All of these compounds are commonly used in the surface coating industry with appropriate safeguards during their use. With respect to toxicity of the Gates compounds, m-pyrol is not listed as a toxic compound on either the federal or state lists. Methanol, the VOC in the Coors credit, is a Bin C HAP. Because the m-pyrol in the non-compliant coatings is not a HAP, the Gates VOCs have equal or lower toxicity than those being purchased from Coors. Therefore, HAP emissions will be reduced in the airshed.

The photochemical reactivities of VOCs are important because of their impact on the ozone formation process in an airshed. The Air Pollution Control Division relied upon the work of Dr. William P.L. Carter, Professor at the University of California, whose article entitled "Development of Ozone Reactivity Scales for Volatile Organic Compounds" describes relative photochemical reactivity scales and comparisons. Dr. Carter notes that there are a number of ways to quantify VOC reactivities, but the most relevant measure

of VOC effects on ozone is the actual change in ozone formation in an airshed. This results from changing the emissions of the VOC in that airshed which depends not only on how rapidly the VOC reacts and the nature of its atmospheric reaction mechanism, but also the nature of the airshed where it is emitted, including the effects of other pollutants which are present.

Dr. Carter further states that the VOC effect on ozone in the atmosphere can only be estimated using computer airshed models. The effect of changing the emissions of a given VOC on ozone formation in a particular episode will, in general, depend on the magnitude of the emissions change and on whether the VOC is being added to, subtracted from, or replacing a portion of the base case emissions.

Dr. Carter's derived relative reactivity scale includes reactive organic gases whose indices for maximum incremental reactivity (MIR) range from 0.004 to 6.5. The MIR values were updated in 1997. The VOCs and their respective MIR involved with this exchange are as follows:

Methanol0.16
m-Pyrol0.57

The pending emission credits of VOCs being used in the proposed emissions credit transaction are for methanol. The VOCs emitted from uncontrolled use of solvent-based coatings at Gates are from m-pyrol. Regulation Number 3 provides that if the VOCs are not of the same photochemical reactivity, a greater offset may be required. The Commission required that, based on a past ERC trade for Pioneer Metal Finishing, that methanol credits in a 1.1:1 offset ratio be exchanged for toluene and xylenes. Here, however, the Commission finds that m-pyrol and methanol have similar photochemical reactivities, so no offset will be required.

The second requirement states that the transaction must not result in an increased concentration, at the point of maximum impact of hazardous air pollutants. This provision was derived from the EPA Emissions Trading Policy Statement and referred to NESHAP requirements involved in bubble transactions. If this provision is interpreted to apply generally to a facility which is limited by an existing permit to some level of VOC emissions on a twenty-four hour basis, any additional VOCs allowed pursuant to an emission transaction would by its application increase the concentration of VOCs at the maximum point of impact. Since it appears to have been intended to limit NESHAP offsets in bubble transactions, and no NESHAPs are applicable in the Gates transaction, and recognizing the earlier action of the Commission in approving the use of ERC transactions to satisfy CTG requirements and in approving a previous ERC transaction for Pioneer Metal Finishing, the Commission determined that this requirement should not apply to this transaction.

The next requirement states that no transaction may be approved which is inconsistent with any standard established by the Federal Act, the state Air Quality Control Act or the regulations promulgated under either, or to circumvent NSPS requirements or BACT or LAER, although the Commission may approve a transaction using a certified emission reduction credit in lieu of a specified CTG method or RACT. The emissions involved in this transaction at Gates are not subject to NSPS, BACT, or LAER. Regulation Number 7 applies only RACT to the Gates operations involved. Regulation Number 3 clearly permits the use of emission reduction credits to satisfy RACT.

The emission must involve sources which are located within the same nonattainment area. In the present case, both Gates, whose operations are located at 900 S. Broadway, Denver, Colorado, who is proposing to use the credits, and the source of the credits, Verticel, whose operations were located at 4607 South Windermere Street, Englewood, Colorado, are located in the Denver nonattainment area, less than five miles apart.

The next requirement prohibits the use of emission reduction credits to meet applicable technology-based requirements for new sources, such as NSPS, BACT, or LAER. As stated above, the Gates operations involved in this transaction are not subject to NSPS, BACT, or LAER or any other technology-based requirement except for RACT requirements for which an ERC transaction may be used to satisfy such requirements.

The next requirement states that VOC trades will be considered equal in ambient effect where the trade is a pound for pound trade in the same control strategy demonstration area. It appears that this requirement, which was taken from the EPA Emissions Trading Policy Statement, made the assumption that the "pound for pound" trend would have an equal impact on the ambient environment, with respect to ozone. Since there was no independent photochemical reactivity equivalency requirement in the 1986 Policy Statement, this requirement appears to be redundant with the requirement for insuring the same degree of photochemical reactivity among traded pollutants.

For VOC trades involving surface coating, the requirements state that emissions must be calculated on a solids-applied basis and must specify the maximum time period over which the emissions may be averaged, not to exceed 24 hours. The proposed emissions credit transaction is based on a 24-hour period. With respect to the solids-applied basis calculation, this transaction will be calculated on the basis of the pounds of VOCs from uncontrolled solvent-based coatings.

The emissions credit transaction will require a SIP revision. The source specific rule for Gates will be forwarded to EPA for approval. The state emission permit for Gates pursuant to the emissions credit transaction will be state effective (but not federally effective) until the SIP revision is approved by EPA.

Gates proposed the following VOC emissions limitation in its state permit taking into consideration the pounds per year VOC emissions allowed by this emissions credit transaction:

1. A daily maximum limitation of 400 lbs. of VOC emissions from uncontrolled solvent-based surface coatings, calculated on a monthly basis for compliance purposes. Calculations will be performed by the 30th of the following month.

2. An annual limitation of no more than 24,000 lbs. (12 tons) of VOC emissions from uncontrolled solvent-based surface coatings.

Gates proposes to calculate the annual total VOC limitation on a rolling 12-month basis. Gates further proposes to keep monthly totals of non-compliant surface coatings used and to calculate daily usage based on monthly usage divided by the number of days non-compliant surface coatings were used. Records of usages and calculations will be kept and produced at the Division's request.

This source-specific rule has a negligible or no effect upon the other provisions of the ozone SIP.

It is contemplated that a State construction permit will be issued to Gates upon final approval by the Commission. Should the approval come after the issuance of Gates' Title V operating permit, the terms of the construction permit will be added to the operating permit.

~~XIX~~XX.E January 11, 2001 (Sections III.C, IX.L.2.c (1), and X.D.2 through XI.A.3.)

Readoption of Changes to Regulation Number 7 that were not printed in the Regulation or the Colorado Code of Regulations.

Background

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Administrative Procedures Act, C.R.S. (1988), Sections 24-4-103(4) and (12.5) for adopted or modified regulations.

Basis

During a review of the version of Regulation Number 7 adopted by the Air Quality Control Commission and the version of Regulation Number 7 published in the Colorado Code of Regulations, several

significant discrepancies have been identified. This rule making will clarify the Commission's intent to adopt the following revisions to Regulation Number 7:

1. Section III.C regarding General Requirements for Storage of Volatile Organic Compounds omits the following revision:

   "Beer production and associated beer container storage and transfer operations involving volatile organic compounds with a true vapor pressure of less than 1.5 PSIA at actual conditions are exempt from the provisions of Section III.B, above."

2. Section IX.L2.c.i contains discrepancies in reference to the permit number of Coors Brewing Company Emissions Reduction Credit Permit issued on July 25, 1994.

3. Section X.D.2 through Section XI.A.3 was omitted from the CCR as published in the current version of Regulation Number 7.

Authority

Sections 25-7-109, C.R.S. (1997) authorize the Commission to adopt emission control regulations.

Purpose

Re-adoption of the proposed rule will eliminate the discrepancies between the Commission's adopted provisions within Regulation Number 7 and those contained within the Colorado Code of Regulations. Adoption of the amendments will benefit the regulated community by providing sources with consistent information.

~~XIX~~XX.F. November 20, 2003 (Sections I.A.2 through I.A.4, II.D and II.E).

The Commission repealed the provisions establishing a procedure for granting exemptions for de minimis sources, and the procedure for approving alternative compliance plans without source-specific SIP revisions. The Commission had adopted the repealed provisions in March 1996, but had delayed the effective date pending EPA approval through the SIP revision process. Earlier this year, EPA informed the Commission of its intent to disapprove the provisions unless they were withdrawn. Thus, the provisions that are the subject of this rulemaking action never took effect. The Commission hereby repeals such provisions in order to avoid disapproval of the earlier SIP submittal, and to remove extraneous provisions from Regulation Number 7. Such repeal is required in order to comply with federal requirements, and is not otherwise more stringent than the requirements of the federal act.

Sections 25-7-105(1)(a)(I) and 25-7-301 authorize the Commission to adopt and revise a comprehensive SIP, and to regulate emissions from stationary sources, as necessary to maintain the national ambient air quality standard for ozone in accordance with the federal act.

~~XIX~~XX.G. (March 2004, Sections I.A, I.B., XII, and XVI

The March 2004 revisions were adopted in conjunction with the Early Action Compact Ozone Action Plan, which is a SIP revision for attainment of the 8-hour ozone standard by December 31, 2007. The Commission adopted four new control measures in Regulation Number 7 to reduce emissions of volatile organic compounds (VOC). The control measures require the installation of air pollution control technology to control: (1) VOC emissions from condensate operation at oil and gas (E&P) facilities; (2) emissions from stationary and portable reciprocating internal combustion engines; (3) certain VOC emissions from gas-processing plants; and, (4) emissions from dehydrators at oil and gas operations.

The new requirements in Sections XII, and XVI apply to a larger geographic area than the pre-existing requirements of Regulation Number 7, as set out in Section I.A. of the rule. The reference to the "Denver

Metro Attainment Maintenance Area", which is not a defined term, in Section I.A was changed to refer to the "Denver 1-hour ozone attainment/maintenance area", which is defined in the Ambient Air Quality Standards Rule. Similarly, the reference to the "Denver Metropolitan Nonattainment Area Ozone Maintenance State Implementation Plan" was changed to the "Ozone Redesignation Request and Maintenance Plan for the Denver Metropolitan Area," which is the correct name of the document submitted to EPA in May 2001.

Regarding VOC emissions from condensate operations, the Commission has determined that an overall reduction of 47.5% VOCs is required of each E&P operation so as to meet the requirements of the SIP. Further the Commission decided not to take a unit-by-unit approach, but rather, the amendments take a more flexible approach to regulating such emissions by requiring sources that have filed, or were required to file, APENs to choose emission controls and locations for applying those controls. This approach also minimizes the risk that sources may reconfigure tanks to avoid implementing the regulation.

Section XII.A.6 provides an exemption for owners and operators with less than 30 tpy of flash emissions subject to APEN reporting requirements. Regulation Number 7 previously included more general exemptions for emissions from condensate operations, but such pre-existing exemptions should have been repealed as part of this revision to Regulation Number 7. To the extent any pre-existing exemption for condensate operations remains, such pre-existing exemption shall not be construed to supersede the requirements of Section XII.

The rule also requires annual reports describing how E&P sources will achieve the requisite emission reductions. Such reports are necessary so that the Division can determine whether or not the emission reductions are being achieved.

Section XII.B of Regulation Number 7 is required to ensure that existing and new natural gas processing plants employ air pollution control technology to control emissions from leaking equipment, and atmospheric condensate storage tanks (and tank batteries). The Commission is specifically requiring a leak detection and repair (LDAR) program for all gas plants, according to the provisions of 40 C.F.R. Part 60, Subpart KKK, regardless of the date of construction of the affected facility. This is necessary to ensure these large facilities are well controlled and VOC emissions minimized.

Section XII. C. pertains to control of VOC emissions from natural gas dehydration operations. The Commission determined that, in order to meet the requirements of the SIP, emissions must be reduced from all dehydration operations located in the 8-hour Ozone Control Area if such operations produce emissions above the minimum threshold specified in the rule. Further the Commission decided that flexibility should be allowed in how emissions are reduced, so several options are listed from which a source owner or operator may choose. If other equally effective measures or control devices are available, the Division may, on a case-by-case basis, approve the use of such alternatives.

Similarly, Section XVI establishes controls for reciprocating internal combustion engines. Both "lean" and "rich" burn engines are addressed and though the Commission has specified the default control technology to be applied to each engine type, the Division is allowed to approve alternative technology if a demonstration can be made that the alternative is at least as effective as the listed device in reducing VOC emissions. Parties to the rulemaking hearing provided evidence that suitable, cost-effective control equipment may not be available for some existing engines. The rule adopted by the Commission includes an exemption for lean burn engines if the owner demonstrates that such emissions controls would cost $5,000 or more per ton of VOC removed. In calculating such costs, the Division shall use an appropriate amortization period and current discount rate. The Commission directs the Division to further investigate the question of whether controls are available and suitable for lean burn engines, and to recommend any revisions necessary for the regulation applicable to such engines. New engines locating in the control area must comply with the requirements effective June 1, 2004, but existing engines have until May 1, 2005 to come into compliance. Since the rule provides an exemption for existing engines that cannot be controlled for less than $5,000 per ton, the rule must make the distinction between new and existing engines so that engines will not be moved into the area during prior to May 2005 and subsequently apply for such an exemption.

The Commission recognizes that, at this point in time, the controls required by the rule amendments constitute Reasonably Available Control Technology (RACT), at a minimum, and in some cases, the controls mandated by this regulation may, in fact, constitute Best Available Control Technology (BACT). This means that this regulation shall not be used: (a) to preclude a source from asserting that one of the controls mandated herein constitutes BACT or Lowest Achievable Emissions Rate (LAER) for a new source or major modification, (b) require the Division or Commission to mandate different control technologies as BACT, or (c) preclude the Division or Commission from requiring additional or more stringent air pollution control technologies as necessary or appropriate to comply with applicable BACT or LAER requirements for new sources and major modifications.

By its terms, the New Source Performance Standard (NSPS) applicable to leaking equipment at onshore natural gas processing plants (40 C.F.R. Part 60, Subpart KKK) applies to "affected facilities" and "process units" at such facilities as those terms are defined in the standard. In general, plants that were constructed prior to January 20, 1984 are exempt from the standard, unless subsequently modified or reconstructed, or newly constructed after that date. Since process units at a single gas plant can be distinct, certain gas plants may contain equipment that is not presently subject to the NSPS because of its date of construction. The control requirement in Section XII.B would extend leak detection and repair program requirements to such equipment.

The statutory authority for the revisions to regulation Number 7 is set out in Sections 25-7-105(1)(a) and (1)(b); 25-7-106(1)(c), (5) and (6); and 25-7-109(1)(a) and (2), C.R.S.

The March 2004 revisions to Regulation Number 7 are based on reasonably available, validated, reviewed, and sound scientific methodologies. All validated, reviewed and sound scientific methodologies and information made available by interested parties has been considered. Evidence in the record supports the finding that the rule shall result in a demonstrable reduction in air pollution. The Commission chose the most cost-effective mix of control strategies available to comply with the 8-hour ozone NAAQS. Where possible, the regulations provide the regulated community with flexibility to achieve the necessary reductions. The Commission chose the regulatory alternative that will maximize the air quality benefits in the most cost-effective manner.

~~XIX~~XX.H (December 2004, SECTIONS I.A., II.A, XII and XVI)

The December 2004 revisions were adopted to respond to U.S. EPA comments on the Ozone Action Plan the Commission adopted in March 2004. EPA required the rule revision in order to make the control measures incorporated into the State Implementation Plan practically enforceable as required by the federal Clean Air Act. The Federal Act requires all of the regulatory provisions adopted in this rulemaking action, and none of the provisions are more stringent than the requirements of the federal act.

The revised rule includes a process for obtaining emission reduction credit for pollution prevention measures. In order to qualify for emission reduction credit a pollution prevention measures must, among other things, be included in a permit even if it does not involve the construction of an air pollution source and would not otherwise trigger a requirement for a permit. The revisions to the regulation do not, however, create a requirement for sources to obtain a permit for pollution prevention measures for which the source will not take emissions reduction credit.

The Commission has the statutory authority to adopt the revisions pursuant to Sections 25-7-105(1)(a) and (1)(b); 25-7-106(1)(c), (5) and (6); and 25-7-109(1)(a) and (2), C.R.S.

The control measures necessary to achieve the 8-hour ozone standard were adopted in March 2004. The December 2004 rule changes do not impose new emission control requirements or emission reduction requirements on industry. Instead, the December 2004 rule revisions are intended to make the previously adopted requirements more enforceable, and to make sure that the requisite emission reductions occur during the ozone season when they are needed. Thus, the December 2004 are administrative in nature in that they are intended to assist with the administration and enforcement of the previously adopted controls. The Commission recognizes that the December 2004 rule amendments

impose additional recordkeeping and reporting requirements, and therefore costs, on the regulated community. The changes, however, are not intended to achieve further reduction in emissions of volatile organic compounds beyond the reduction requirements adopted in March 2004. They are instead intended to make the March 2004 revisions fully enforceable and acceptable to EPA. Since the December 2004 rule changes are administrative in nature, the requirements of Section 25-7-110.8 C.R.S. do not apply.

~~XIX~~XX.I. December 17, 2006 (Section XII)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4), C.R.S. for new and revised regulations.

Basis

Regulation Number 7, Section XII imposes emission control requirements on oil and gas condensate tanks located in Adams, Arapahoe, Boulder, Douglas and Jefferson Counties, the Cities and Counties of Broomfield and Denver and parts of Larimer and Weld Counties ("8-Hour Ozone Control Area"). The condensate tank requirements, along with other requirements applicable to oil and gas operations and natural gas fired reciprocating internal combustion engines, were initially promulgated in March 2004, and later revised in December 2004, in connection with an Early Action Compact Ozone Action Plan ("EAC") entered into between the State of Colorado and the United States Environmental Protection Agency. The purpose of the EAC is to prevent exceedances of the 8-Hour Ozone Standard and avoid a nonattainment designation for the area. Pursuant to the EAC, Colorado committed to limiting Volatile Organic Compound ("VOC") emissions from condensate tanks located in the 8-Hour Ozone Control Area to 91.3 tons per day ("TPD") as of May 1, 2007 and 100.9 TPD as of May 1, 2012. Because of unanticipated growth of condensate tank emissions since 2004, the control requirements for condensate tanks adopted during the 2004 rulemaking are insufficient to meet these daily emission numbers. The current revisions require a greater level of control of condensate tank emissions in the 8-Hour Ozone Control Area in order to meet the commitments set forth in the EAC and to prevent future exceedances of the 8-Hour Ozone Standard. These revisions are based on reasonably available, validated, reviewed and sound scientific methodologies. All validated, reviewed and sound scientific methodologies made available by interested parties have been considered. Evidence in the record supports the finding that the rule shall result in a demonstrable reduction in air pollution, and will reduce the risk to human health or the environment or otherwise provide benefits justifying the costs. Among the options considered, the regulatory option chosen will maximize the air quality benefits in the most cost-effective manner.

Specific Statutory Authority

The specific statutory authority for these revisions is set forth in Section, 25-7-105(1)(a), C.R.S., which gives the Air Quality Control Commission authority to promulgate rules and regulations necessary for the proper implementation of a comprehensive state implementation plan that will assure attainment of national ambient air quality standards. Additional authority for these revisions is set forth in Sections, 25-7-106 and 25-7-109, which allow the Commission to promulgate emission control regulations and recordkeeping requirements applicable to air pollution sources. Specifically, Section 25-7-106(1)(c) authorizes the Commission to adopt emission control regulations that are applicable to specified areas within the state. Section 25-7-109(1)(a) authorizes the Commission to adopt emission control regulations. Section 25-7-109(3)(b) authorizes the Commission to adopt emission control regulations for the storage and transfer of petroleum products and any other volatile organic compounds.

Purpose

The Revisions to Section XII were adopted in order to meet the commitments with respect to condensate tank emissions set forth in the Early Action Compact Ozone Action Plan entered into between the State of Colorado and U.S. EPA, prevent exceedances of the 8-Hour Ozone Standard, and simplify recordkeeping and reporting requirements.

To accomplish these goals the revised regulation raises the system-wide control requirements for the ozone season from the current 47.5% to 75% commencing in 2007 and 78% in 2012. While the rule establishes a higher percentage reduction in 2012 the Commission recognizes that given the uncertainty of emissions growth over the next 6 years, this reduction requirement may be too high and may need to be revisited as the 2012 deadline approaches. For the non-ozone season the required reduction has been raised from 38% to 60% commencing October 2007, and 70% commencing January 1, 2008. Determination of compliance during the ozone season under the revisions will be on a weekly basis instead of a daily basis, in recognition of the fact that condensate production is not typically measured on a daily basis. Under the previous version of the Rule, production could be tracked on something greater than a daily basis and the total divided by the number of days to obtain a daily number. As such, the prior rule did not truly give a daily average and thus the move to a weekly average is of little substance. Apart from this change, calculation of emissions for compliance purposes will remain the same as under the previous version of the rule.

In addition to raising the system-wide reduction requirements, the current rule adds significant new monitoring, record-keeping and reporting requirements, and a "backstop" threshold requirement to have emission controls on all condensate storage tanks with uncontrolled actual emissions of 20 tpy or more of VOC flash emission, as a state-only requirement within the EAC area pursuant to Section XVII.C.1. of Regulation Number 7. Owners and operators will continue to keep a spreadsheet that tracks emission reductions and submit an Annual Report as required under the previous version of the rule. Owners and operators are now also required to submit a semi-annual report on November 30 of each year detailing their emissions during the preceding ozone season. Additional record keeping has been added so as to require that a weekly checklist be maintained detailing inspections of control devices. This checklist will assist operators in the inspection and maintenance practice and provide a record that proper inspections have been done. If the inspections show a problem with the control device, the owner or operator will be required to notify the Division of problems on a monthly basis. This requirement will allow the Division to track problems on a more timely basis and ensure compliance with the rule. Finally, a provision has been added to require owners or operators to submit a list of all their controlled tanks on April 30 of each year and notify the Division monthly during ozone season if the control status of any tank changes.

~~XIX~~XX.J. December 17, 2006 (Sections I.A.1.b. and XVII)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4), C.R.S. for new and revised regulations.

Basis

The Air Quality Control Commission has adopted these state-only provisions as a means of reducing air emissions from oil and gas operations throughout Colorado. Due to the large growth in oil and gas production in a number of regions of the state emissions from oil and gas operations have rapidly increased over the past few years and are expected to increase further in the foreseeable future. These revisions are a proactive measure designed to eliminate air emissions that could threaten attainment of ambient air quality standards and adversely affect visibility in Class I Areas. These revisions are based on reasonably available, validated, reviewed and sound scientific methodologies. All validated, reviewed and sound scientific methodologies made available by interested parties have been considered. Evidence in the record supports the finding that the rule shall result in a demonstrable reduction in air pollution, and will reduce the risk to human health or the environment or otherwise provide benefits justifying the costs. Among the options considered, the regulatory option chosen will maximize the air quality benefits in the most cost-effective manner.

Specific Statutory Authority

The specific statutory authority for these revisions is set forth in Sections 25-7-106 and 25-7-109 of the Colorado Air Pollution Prevention and Control Act ("Act"), which allow the Commission to promulgate emission control regulations and recordkeeping requirements applicable to air pollution sources. Additional authority is set forth in Section 25-7-105.1, which allows the Commission to adopt state-only

standards. Specifically, Section 25-7-106(1)(c) authorizes the Commission to adopt emission control regulations that are applicable to the entire state. Section 25-7-109(1)(a) authorizes the Commission to adopt emission control regulations. Section 25-7-109(3)(b) authorizes the Commission to adopt emission control regulations for the storage and transfer of petroleum products and any other volatile organic compounds.

Purpose

The Revisions to Section XVII were adopted in order to reduce air emissions from oil and gas operations and natural gas fired reciprocating internal combustion engines in Colorado. These revisions constitute a forward-looking approach to deal with a rapidly growing source of air emissions, and are designed to reduce the possibility of future problems with respect to the attainment of National Ambient Air Quality Standards and state and federal Class I Area visibility goals. Since the requirements are not mandated under federal law and are not currently necessary to meet National Ambient Air Quality Standards they are being adopted as a state-only requirement in accordance with the Act and as provided for under the Federal Clean Air Act.

These revisions establish emission control requirements for condensate storage tanks, glycol dehydrators and natural gas fired reciprocating internal combustion engines in Colorado. These provisions require that condensate tank and dehydrator controls meet a 95% percent control efficiency. As in the EAC Area, this requirement does not contemplate stack testing in order to verify the control efficiency. The insertion of the word average allows operators some downtime without a violation occurring so long as the downtime does not result in an average control efficiency of less than 95% considering the actual engineered control efficiency. For the purposes of XVII.C.4.b. observed operation of flare auto-igniters can include telemetric monitoring systems, physical on-site function tests or auditory confirmation of the auto-igniter function.

The requirements applicable to glycol dehydrators mirror the requirements applicable in the 8-Hour Ozone Control Area set forth in Section XII, and should be interpreted consistently with those provisions notwithstanding the addition of clarifying language. For example, language has been added clarifying that grouping of dehydrators is limited to dehydrators at a single site. Similarly, the word “production” has been added to the definition of condensate tank to clarify that the requirements, as within the EAC, do not apply to produced water tanks.

Determination of whether a condensate tank’s emissions are at or above the threshold is based on the emissions from the tank during the preceding twelve-month period. If a tank has been in service for less than twelve months, applicability shall be based on uncontrolled actual emissions over the service period of the tank multiplied out to twelve months. Accordingly, if a tank has been in service for three months, applicability of the control requirements will be based on the uncontrolled actual emissions from the tank for those three months multiplied by four. If emissions from a controlled tank decrease, operators may remove the controls when emissions from the previous twelve-month period falls below the applicable threshold. Operators will remain responsible, however, for controlling a tank if a subsequent emission increase results in emissions being over the applicable threshold during the preceding twelve months. For tanks serving newly drilled, recompleted or restimulated wells (including refrac’d wells) the owner or operator will have 90 days to determine anticipated production and, if necessary install a control device. In determining anticipated production the owner or operator may use an appropriate decline factor to determine expected emissions over the first 12 months after the new drilling, recompletion or re-stimulation. If the owner or operator determines that emissions will be below the 20 tpy threshold following the new drilling, recompletion or restimulation, the owner or operator shall notify the Division of this determination.

Certain differences with the requirements applicable to the 8-Hour Ozone Control Area have been included in order to provide greater flexibility to operators in other areas of the state and in light of the fact that the regulation represents a proactive attempt to avoid future impacts from oil and gas emissions. Specifically, the standards for obtaining approval of an alternative pollution control device have been relaxed to promote innovative control strategies. Additionally, a provision has been added to allow an

extension of the control requirement deadlines at the Division's discretion for good cause shown. This provision allows the Division to extend a deadline where shortages of control equipment, and crews may prevent an operator from meeting the deadlines, particularly in areas where access is limited by the weather or other issues. With respect to Section VII.B.1.c. of the General Provisions, the Commission has determined that as a general rule during normal operations no emissions should be visible from the air pollution control equipment. Normal operations include reasonably foreseeable fluctuations in emissions from the condensate tank, including the fluctuations that occur during a separator dump. However, a transient (lasting less than 10 seconds) "puff" of smoke when the main burner ignites or shuts down would not be considered a violation of the "no visible emission" standard. Finally, a provision has been included that exempts units subject to the rule if such units are also subject to a control standard under the MACT, BACT or NSPS Programs. This exception is of most importance for new and newly relocated engines that may become subject to a currently pending NSPS Standard under Subpart JJJJ.

The engine provisions only apply to engines that are constructed or relocated into Colorado after the applicability date and do not impose requirements on units that are currently located in the state.

The Commission recognizes that the adopted emission control requirements represent a first step in addressing rapidly growing emissions from oil and gas operations throughout the state. Accordingly the Commission directs the Division to provide an annual update on emission growth trends, environmental impacts, modeling and monitoring efforts, the adequacy of emission controls to protect the NAAQS and the health impacts of emissions from the oil and gas sector.

~~XIX~~XX.K. December 12, 2008 (Title, Sections I, II, VI – XIII, XVII, XVIII, and Appendices A-F)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4), C.R.S. for new and revised regulations.

Basis

The Air Quality Control Commission has adopted revisions throughout Regulation Number 7 to address ozone formation in the 8-Hour Ozone Nonattainment Area (NAA), including the 9-county Denver Metropolitan Area and North Front Range (DMA/NFR) NAA. Specifically, the Commission has adopted revisions to reduce an ozone precursor, volatile organic compound (VOC) emissions, and thus reduce ozone formation. These revisions are necessary to ensure attainment with the current 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) set at 0.08 parts per million (ppm), and to achieve additional ozone reductions in light of both the new ozone NAAQS set at 0.075 ppm and the Governor's July 27, 2007 directive to proactively and pragmatically reduce ozone levels.

As of November 20, 2007, the EPA's deferral of a nonattainment designation for the area in question expired, signifying that the area is now considered nonattainment, or in violation of the 1997 8-hour Ozone NAAQS of 0.08 ppm for ground level ozone. The DMA/NFR includes all of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson Counties as well as portions of Larimer and Weld Counties. This area is now known as the DMA/NFR NAA.

Pursuant to the Federal Clean Air Act, Colorado must prepare and submit a revision to the State Implementation Plan (SIP) to the EPA no later than June 30, 2009 that demonstrates attainment of the 8-Hour Ozone NAAQS no later than 2010. The Commission has adopted an Attainment Plan that satisfies this requirement. The Attainment Plan demonstrates attainment with no additional control measures.

Photochemical grid dispersion modeling indicates that without further emission controls, Colorado will attain the 8-hour standard by 2010. The dispersion modeling reflects that Colorado would attain the standard by a narrow margin. Photochemical dispersion modeling analysis is the primary tool used to assess present and future air quality trends, and is required for EPA to approve the state attainment demonstration in the SIP.

In addition, pursuant to EPA guidance, if modeling results indicate that the highest ozone levels will fall between 0.082 and 0.087 ppm, Colorado must conduct a "weight of evidence" analysis and other supplemental analyses in order to corroborate the modeling results. Colorado's model results are within this range, and thus the state has conducted this analysis. The analysis supports the conclusion that Colorado will attain the standard by 2010.

The Commission is also adopting State-only revisions to Regulation Number 7 to further address ozone formation in the DMA/NFR NAA. Specifically, the Commission has adopted revisions to reduce an ozone precursor, volatile organic compound (VOC) emissions, and thus reduce ozone formation. These revisions help Colorado make progress toward eventual compliance with the new ozone NAAQS set at 0.075 ppm as well as the Governor's directive to proactively and pragmatically reduce ozone levels.

Statutory Authority

The statutory authority for these revisions is set forth in the Colorado Air Pollution Prevention and Control Act ("Act"), C.R.S. § 25-7-101, et seq., specifically, C.R.S. §25-7-105(12) (authorizing rules necessary to implement the provisions of the emission notice and construction permit programs and the minimum elements of the operating permit program), 109(1)(a), (2) and (3) (authorizing rules requiring effective practical air pollution controls for significant sources and categories of sources, including rules pertaining to nitrogen oxides and hydrocarbons, photochemical substances, as well as rules pertaining to the storage and transfer of petroleum products and any other VOCs), and § 25-7-301 (authorizing the development of a program for the attainment and maintenance of the NAAQS).

Purpose

These revisions to Regulation Number 7 are part of an overall ozone reduction strategy. The Commission intends that this overall ozone reduction strategy accomplishes six objectives: A) reduce VOC and nitrogen oxides' (NOx) emissions from oil and gas operations in the Ozone NAA and across the state, B) revise the control requirements for condensate tanks by a refined system-wide control strategy in the Ozone NAA, C) expand VOC RACT requirements for listed source categories for 100 tpy sources such that all Ozone NAAs are subject to Regulation Number 7's RACT requirements, D) clarify how the RACT requirements in Regulations 3 and 7 interact in the Ozone NAA, E) improve the Division's inventory of condensate emissions and other relevant sources in the NAA; and F) make typographical, grammatical and formatting changes for greater clarity and readability.

In support of objectives A-D and F above, the Commission adopts these revisions to Regulation Number 7 to revise condensate tank regulations, set pneumatic controller regulations, expand RACT applicability and make associated corrections (Regulation Number 7, Sections I, II, VI – XIII, XVII, XVIII, and Appendices A-F).

In the course of this proceeding, the Division and certain parties supported a compromise proposal regarding the control of condensate tanks. The Commission finds this proposal to be appropriate with certain changes noted herein. The Commission is requiring an increase from 75% to 81% control on a system-wide basis in 2009; to 85% control on a system-wide basis in 2010; and to 90% control on a system-wide basis in 2011 in the 8-Hour Ozone NAA. The Commission is adopting new VOC controls for pneumatic controllers in the 8-Hour Ozone NAA in Regulation Number 7, Section XVIII.

These system-wide control percentages achieve significant ozone precursor reductions in 2009, 2010 and 2011, with emphasis on significant VOC emissions reductions in 2010, during the monitoring period for the attainment demonstration. These revisions will help to ensure that the non-attainment area realizes the necessary reductions during the 2010 attainment year. Further, these revisions are an important step in putting the State on a path towards attaining the 2008 8-Hour ozone standard. A number of parties including the Regional Air Quality Council and the North Front Range Metropolitan Planning Organization supported this proposal to secure VOC reductions from this source at these levels and according to this schedule. The system-wide approach has been approved by the Commission in the past, as well as by EPA in revisions to the State Implementation Plan. The Commission decided to defer decision making on

the implementation of a 95% system-wide level of control, given concerns regarding the notable incremental cost associated with control to the equivalent of 2 tpy tanks as well as concerns regarding the flexibility intended to be afforded by a system-wide approach. Tank operators also expressed concern about the loss of incentive to over-control their systems to meet the standard, and the difficulty for small operators to control at the 95% system-wide level at this time. The proposed control percentages continue to afford flexibility in operations to condensate tank operators, while ensuring attainment of the standard by 2010. Therefore, the Commission is deferring further control for future modeling, air quality analysis, and/or administrative review, whether to control this source in the future at the 95% system-wide control level or through some other approach for purposes of the 2008 8-Hour standard.

The provisions of the compromise proposal, including the commensurate emissions reductions, support the State Implementation Plan's ability to assure attainment and maintenance of the 1997 8-Hour Ozone NAAQS. Inclusion of these provisions enhances the Weight of Evidence demonstration supporting attainment by 2010 pursuant to this State Implementation Plan. The Commission recognizes parties subject to the compromise Regulation Number 7 provisions for condensate tank system-wide emissions reductions concur that these provisions are appropriate for inclusion in the State Implementation Plan.

Further the Commission intends to expand the applicability of RACT requirements to existing, new and modified sources in Ozone NAAs outside of the historic one-hour Ozone NAA or attainment/maintenance area (Regulation Number 7, Sections I and II). The Commission further intends to clarify how the control technology requirements of Regulation Number 7 interact with Regulation 3, Part B, Section II.D.2.

Finally, the Commission intends to make grammatical, typographical, formatting revisions, and other editing revisions throughout Regulation Number 7.

Condensate Tank Emissions Control

Condensate storage tank control requirements in Regulation Number 7, Section XII are revised by reorganizing the rule, adding/revising definitions, adding monitoring requirements, revising recordkeeping and reporting requirements, and setting additional control requirements for tanks. The current requirements are reorganized by specifying applicability, definitions, general provisions, emissions controls, monitoring, and recordkeeping and reporting sections. The terms new, existing, modified/modification, auto-igniter, and surveillance system were defined.

Tanks serving newly drilled, recompleted or stimulated wells are required to employ air pollution control equipment during the first 90 days of production. After the first 90 calendar days, the control device may be removed. This requirement is designed to address the fact that production, and thus emissions, is at their greatest during the period immediately after drilling, recompletion or stimulation, and the fact that the actual production/emission level is not known prior to drilling, recompletion or stimulation. By requiring controls on all tanks serving newly drilled, recompleted or stimulated wells, the proposed rule significantly reduces emissions during the initial period, while allowing owners and operators to remove control devices afterward, as part of the overall system-wide control regime. All tanks over 2 tpy must participate in the overall system-wide program. Furthermore, since Regulation Number 7's system-wide program is essentially RACT for condensate tanks in the NAA, new and modified 2 tpy or greater condensate tanks (affected by Regulation 3 RACT) may also move their control devices after the first 90 days when participating in the overall system-wide control regime, as long as the overall system-wide requirements are being met. Such flexibility is provided as to avoid two regulatory programs: one for tanks that might never be allowed to move their control devices under Regulation 3 RACT and one for tanks that would be allowed the flexibility under a system-wide program. Finally, it is the intent of this rule that sources may use their 2 tpy or greater "modified" tanks emissions (i.e., during those tanks' first 90 days of production) in the source's overall system wide calculation. After 90 days, sources must include – whether controlled or otherwise - the 2 tpy or greater "modified" tanks in the overall system-wide calculation. In the case of modified tanks that fall below 2 tpy, it is not the intent of the commission for sources to include these less than 2 tpy tanks in any system-wide calculation. However, sources may use the less than 2 tpy controlled tanks, if necessary to demonstrate system-wide compliance.

The Commission is requiring the installation and operation of auto-igniters for each combustion device. In many cases, condensate tanks are remotely located and unmanned. Auto-igniters will provide greater assurance that the control devices are functioning, under these circumstances. Auto-igniters may be relied on to identify when the pilot is not lit and attempt to relight it, and ensure control operation. The Commission is also requiring surveillance on batteries with uncontrolled emissions greater than 100 tpy. Operators must use surveillance to document the duration of time when the pilot is not lit, and to discover if repairs are necessary to ensure proper control operation. The Commission is targeting this size of battery in order to strike a balance between the need to more carefully monitor performance among the largest batteries, the cost associated with surveillance and the division's capacity to manage the information. The Commission acknowledges that three well operators, Encana, Anadarko and Noble Energy, have agreed to participate with the Division in a pilot program regarding the implementation of electronic surveillance systems.

With regard to recordkeeping and reporting requirements, operators will still record estimated emissions each week (as part of the current Regulation Number 7 requirements) and will report this information to the Division semi-annually. In addition, the Division has revised these requirements so that sources now must keep monthly records throughout the year and provide any of those records within 5 business days of a division request. Further, operators may only use a Division-approved spreadsheet to submit emissions records. Further, a responsible official must now certify the accuracy of the data in the semi-annual reports. This level of recordkeeping and reporting will allow the Division greater capacity to verify compliance and additional availability to work with sources (especially smaller operators). The Commission intends that record-keeping and reporting requirements for surveillance apply only to tanks with uncontrolled emissions greater than 100 tpy.

Controls on 2 Tons Per Year Tanks and Lower

The Commission intends that substantial emissions reductions be achieved from condensate storage tanks and that industry retain the flexibility to decide which tanks to control in order to achieve those reductions. The rule has been revised to subject any condensate storage tank to this rule in the Applicability Section, but stipulates in the Emission Control Section that in order to determine the appropriate system-wide emissions reductions, only two ton per year tanks be considered. In doing this, the Commission intends that tanks that emit actual uncontrolled volatile organic compound emissions of two tons per year or more be considered in determining compliance with the system-wide emissions reductions for the specific ozone non-attainment or attainment maintenance area, and that industry have the flexibility to control smaller tanks in those specific ozone non-attainment or attainment maintenance areas if needed in order to meet the applicable system-wide emissions reductions. For example, if a company owns 20 tanks that emit actual uncontrolled volatile organic compound emissions of two tons per year in a specific ozone non-attainment area, and 15 tanks that emit less than two tons per year, the company would determine its required emission reductions of the production through the 20 two tpy tanks, but be able to control any of the 15 additional less than 2 tpy tanks in order to comply with the system-wide emissions reduction or maintain the desired over control as buffer. However, all tanks controlled in order to comply with the system-wide emissions reduction standard must have filed an APEN and obtained a valid permit in order to be considered as part of the compliance demonstration.

Calendar Weekly and Calendar Monthly Records and Reports

The Commission intends that records and associated reports demonstrating compliance with the weekly emission reduction requirement shall start with the calendar week containing May 1st and end with the calendar week containing September 30th, or other specified dates in the rule. A calendar week begins midnight Sunday morning and ends the following Saturday evening at midnight. Thus, where May 1st falls on any day other than Sunday, the calendar week of May 1st begins on midnight of the preceding Sunday morning. Similarly, the weekly emission reduction requirement applies to the full calendar week that includes September 30th. So, if September 30th falls somewhere in the middle of a calendar week, the emissions reduction requirement applies to that calendar week in full, beginning midnight Sunday morning and ending the following Saturday evening at midnight.

Consequently, calendar monthly records and associated reports demonstrating compliance with the monthly emission reduction requirement shall apply to midnight the morning of day 1 through midnight the evening of the last day of each specific calendar month.

The Commission intentionally broadened the definition of surveillance to provide that: 1) electronic surveillance is not specifically required, and other means to gather information from remote locations is allowed; and 2) data only had to be gathered on an daily basis. The Commission intends that currently required surveillance need only monitor combustion device flame presence or temperature once every day, in order to balance the need to gather adequate data on combustion device operation with the amount of data to be gathered, handled and processed. The Commission believes this is a fair approach considering that only the largest atmospheric condensate storage tanks (those with actual uncontrolled volatile organic compound emissions equal to or greater than 100 tons per year) are subject to this surveillance requirement.

Finally, the Commission intends that the monitoring be completed to ensure compliance, and has determined that failing to monitor as required, losing monitoring data, and failing to maintain monitoring data should be treated similarly to recordkeeping requirements. Thus, these actions "may be treated by the Division as if the data were not collected."

The Commission intends that system-wide emissions control requirements apply to each specific ozone non-attainment or attainment maintenance area and not collectively to all ozone non-attainment or attainment maintenance areas state-wide. This means that the system-wide emissions control requirements apply specifically to the Ozone Control Area (a.k.a. the Denver Metropolitan Area/North Front Range Ozone Control Area), separately from any future designated ozone non-attainment area. Each new ozone non-attainment area designated in the future shall be subject to the system-wide control requirements by themselves. This is needed to ensure that necessary controls are achieved and maintained in each ozone non-attainment or attainment maintenance area, and that these controls are not removed and offset by system-wide controls in some other ozone non-attainment area.

Pneumatics Emissions Control

This revision establishes new VOC controls for pneumatic controllers in the 8-hour Ozone NAA in Regulation Number 7, Section XVIII. Pneumatic controllers are widely used in the oil and gas industry to control or monitor process parameters such as liquid level, gas level, pressure, valve position, liquid flow, gas flow and temperature. Pneumatic controllers of interest are instruments that are actuated using natural gas pressure (of which some natural gas may be bled to the atmosphere from the pneumatic controller and some may be vented from the associated valve). Natural gas-actuated pressure relief devices are not intended to be covered by this rule. There are high-bleed controllers designed to emit more than six standard cubic feet of gas per hour (scfh) to the atmosphere, and low-bleed controllers that emit six scfh or less. Historically, high-bleed controllers have been used.

A 2003 EPA study reported that emissions from pneumatic controllers are collectively one of the largest sources of methane emissions in the natural gas industry. Estimated annual nationwide methane emissions are approximately 31 billion cubic feet (Bcf) from the production sector, 16 Bcf from the processing sector, and 14 Bcf from the transmission sector. As stated above, by definition, high-bleed pneumatic controllers emit more than six scfh of natural gas to the atmosphere. The highest bleed rate listed in one source, a table published by the EPA, is 42 cubic feet per hour (cfh). The average bleed rate for high-bleed pneumatic controllers in the NAA is 21 cfh. Natural gas is primarily composed of methane, but also contains other compounds including VOCs and hazardous air pollutants (HAPs). VOC emissions from pneumatic controllers within the NAA were 24.8 tons per day (tpd) for the 2006 baseline and have been projected to be 31.1 tpd for the 2010 baseline. These emissions represent 14.0 and 15.1 percent of the total VOC emissions from oil and gas sources in the NAA in 2006 and 2010, respectively. Therefore, emission reductions related to this source category have the potential to be significant.

These rules require that most high-bleed controllers must be replaced with the equivalent of low-bleed or better pneumatic controllers by May 1, 2009. There is an exception that allows high-bleed controllers that

the Division agrees are necessary for safety purposes. Operators must inspect and maintain in-use high-bleed controllers on a monthly basis. Operators must also keep logs of the number of in-use high-bleed controllers, as well as the reasoning that high-bleed controller remains in place, and the inspection and maintenance of the in-use high-bleed controllers. These revisions further require operators to physically tag the in-use high-bleed controllers to enable the Division to track compliance.

The oil and gas industry has already begun replacing high-bleed controllers with low-bleed controllers, understanding the financial gain of minimizing the bleed rate of pneumatic controllers.

RICE Controls

Reciprocating internal combustion engine (RICE) requirements of Regulation Number 7, Section XVI applies in what was the early action compact area (now the Ozone NAA). These revisions extend the RICE requirements' applicability to a state-wide basis.

Expand and Clarify RACT Requirements

Regulation Number 7 is revised to expand its application to all subject sources in any Ozone NAA and Attainment/Maintenance Areas. This previously applied to the one-hour attainment/maintenance area nonattainment area. Accordingly, this regulation will apply to some sources that were previously outside of its geographic scope. It is intended that existing sources become subject to previously adopted Control Technique Guidelines (CTGS) or general RACT requirements, and are given time to comply to implement the general RACT requirements. Specifically, existing sources that have not been modified are allowed three years from the date of ozone non-attainment designation to implement general RACT requirements. All new or modified sources become subject to these general RACT requirements upon commencing operation after the new ozone non-attainment designation date. This revision is considered a measured approach to ensuring the consistent use of best practices across the NAA as well as reductions in ozone precursors considered necessary to attaining the 8-hour ozone standard.

This revision expands Regulation Number 7's applicability to any Ozone NAA or attainment/maintenance area. This is done intentionally to apply Regulation Number 7 requirements to current as well as any future Ozone NAA or attainment maintenance areas in Colorado.

Additionally, this revision clarifies how the Regulation 3 RACT requirements interact with Regulation Number 7. This revision specifies that pursuant to Regulation Number 7, Section II.C. all existing sources that emit 100 tons per year of VOC emissions and that are located in the 8-hour Ozone NAA become subject to RACT.

Further, Regulation Number 7 is currently unclear on whether or not existing sources that are modified become subject to new source requirements. This revision clarifies that existing sources that are modified are subject to the Regulation Number 3, Part B, Section II.D. requirements and are considered to be a new source for the purposes of Regulation Number 7.

This revision also clarifies that the both case-by-case and general RACT requirements of Regulation Number 7, Section II.C. only apply to existing, new and modified sources. For sources at which all air pollution generating activities at that source are already subject to RACT or BACT, the RACT analysis would show that all activities are already subject to RACT or BACT. For any other air pollution generating activities not covered by RACT or BACT, the source would only have to complete a RACT analysis specific to those activities.

Typographical, Grammatical, Formatting and Other Changes

The commission changed the title of Regulation Number 7 to include NOx. An outline of the sections is provided to better understand the contents of Regulation Number 7. Outdated sections are removed (i.e. Section II.F.1. specific to Gates Rubber Company, which is now out of business). Section XII, specific to

condensate tanks in the Ozone NAA is reorganized for clarity. One appendix (new Appendix A) is added to provide maps of Ozone NAAs and chronologies of attainment designations, of which certain requirements key off. Finally, sections and appendices are renumbered and formatted as necessary.

Section 110.5 and 110.8 Analysis

Some of these revisions are not intended to be incorporated into Colorado's SIP. To the extent these revisions could be construed to exceed the requirements of federal law, the Commission provides the following additional statement, consistent with C.R.S. § 25-7-110.5(5)(a):

(I) These rules are intended to reduce uncontrolled emissions of ozone precursor pollutants. The rules thereby serve to attain and maintain compliance with the National Ambient Air Quality Standard (NAAQS) for Ozone. However, there are no comparable federal requirements that apply to the sources in question.

(II) There are no applicable federal requirements, other than the duty to attain the ozone NAAQS. There is considerable flexibility in meeting the NAAQS. However, there are very limited sources of uncontrolled anthropogenic ozone precursor emissions to target in order to reduce ozone. Consequently, the sources in question, as a significant source of uncontrolled VOCs and NOx, must be targeted in order to attain the standard.

(III) There are no applicable federal requirements, other than the duty to attain the ozone NAAQS. The ozone NAAQS was not determined taking into account concerns that are unique to Colorado.

(IV) These rules may prevent or reduce the need for costly retrofit to meet more stringent requirements at a later date. The DMA/NFR non-attainment area has violated the 0.08 ppm ozone NAAQS. Colorado will soon be required to comply with the new ozone NAAQS of 0.075 ppm. Colorado Governor Ritter has directed that Colorado air quality planning agencies implement measures to reduce ozone to a level below the NAAQS. If these rules are not adopted now, it may be necessary to require more costly retrofitting in order to meet the Governor's directive as well as the new NAAQS.

(V) Since there are no applicable federal requirements, there is no timing issue with regard to implementing federal requirements. However, these controls are intended to help the DMA/NFR attain the NAAQS. If the standard is not attained by the 2010 ozone season, the area may face a "moderate" non-attainment designation.

(VI) The adopted rules will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth.

(VII) The adopted rules establish reasonable equity for sources subject to the rules by providing the same standards for similarly situated sources.

(VIII) If the state rules were not adopted, other sectors may face a disproportionate share of the burden of reducing precursor pollutants.

(IX) There are no corresponding federal requirements.

(X) Demonstrated technology is available to comply. Sources are already using the control devices intended to be used to comply with these rules. However, sources face an additional burden of implementing auto-igniters and surveillance. The Commission anticipates a reasonable degree of delay in securing and installing the technology in question and has accommodated the sources by providing for a reasonable delay for the application of these requirements.

(XI) The adopted rules will reduce VOC and NOx emissions, thereby contributing to the prevention of the formation of ozone through the most cost-effective means available.

(XII) Alternative rules requiring additional controls for other sources would also provide gains toward attaining the ozone NAAQS. However, oil and gas industry members are the largest anthropogenic stationary source of precursor pollutants in the State. A disproportionate benefit to this industry would accrue if their uncontrolled emissions remain at current levels compared to other stationary sources.

(XIII) A no-action alternative may address the ozone NAAQS. Modeling and other analysis suggests that the NAA would attain the standard by 2010 without these rules. However, this analysis suggests that ambient levels of ozone would be very close to the NAAQS. These rules provide more assurance of attaining the ozone NAAQS while also providing for reductions that are necessary to make progress toward the new ozone NAAQS. No action would only delay the necessary reductions.

Further, pursuant to C.R.S. § 25-7-110.8(1), the Commission makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of ground-level ozone.

(III) Evidence in this record supports the finding that the rules shall bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost effective, provide the regulated community flexibility, and achieve any necessary reduction in air pollution.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

~~XIX~~XX.L. January 7, 2011 Outline and Sections I. and XVII.

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, Section 24-4-103, C.R.S., and the Colorado Air Pollution Prevention and Control Act, Sections 25-7-110 and 25-7-110.5, C.R.S (the Act).

Specific Statutory Authority

The Colorado Air Quality Control Commission (Commission) promulgates this regulation pursuant to the authority granted in Sections 25-7-105(1)(c), C.R.S. (authority to adopt a prevention of significant deterioration program); 25-7-109(1)(a) (authority to require the use of air pollution controls); 25-7-109(2)(a) (authority to adopt emission control regulations pertaining to visible pollutants); and 25-7-114.4(1) (authority to adopt rules for the administration of permits).

Basis and Purpose

The Commission intends that the current Regulation Number 7, Section XVII.E.3.a. identifying technology-based control requirements for existing rich burn reciprocating internal combustion engines (RICE), or rich burn RICE that were constructed or modified prior to February 1, 2009, become a NOx emission control measure that is included as part of the Regional Haze SIP and become federally enforceable upon EPA approval.

The technology-based control requirements of Section XVII.E.3.a. reduce NOx. This proposal only changes the enforceability of these currently state-only requirements such that they become federally enforceable. This proposal does not change emission control, monitoring, recordkeeping or reporting requirements.

The Commission also intends that the following provisions, added in Section XVII.E.3.a.(i)(a) through (c), will continue to be effective under the Regional Haze SIP. Specifically, these provisions require good air pollution control practices and allow for exemptions from the requirements for existing rich burn RICE. The exemptions apply to any existing rich burn RICE either with uncontrolled actual emissions below permitting thresholds or that is subject to a New Source Performance Standard (NSPS), National Emission Standard for Hazardous Air Pollutants (NESHAP), or Best Available Control Technology (BACT) limit.

Existing lean burn RICE requirements are not incorporated into the Regional Haze SIP, as the associated controls do not reduce NOx or SO2.

Colorado has determined that it is reasonable and appropriate to make these RICE requirements federally enforceable in this first planning period, as part of the state's strategy for addressing reasonable progress towards achieving natural visibility conditions in federal Class I areas.

~~XIX~~XX.M. December 20, 2012 (Sections II, XII, and XVII)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4), Colorado Revised Statutes (C.R.S.) for new and revised regulations.

Basis

Regulation Number 7 is designed to implement substantive regulatory programs authorized under the Colorado Air Pollution Prevention and Control Act (Act) including provisions of the State Implementation Plan (SIP) addressed in C.R.S. Section 25-7-105(1)(a), emission control regulations addressed in C.R.S. Section 25-7-105(1)(b) and authorization of the development of a program for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) in C.R.S. Section 25-7-301, as well as other authorized programs under the Act. The current revisions have been promulgated in order to facilitate this goal. The revisions were made to address the U.S. Environmental Protection Agency's ("EPA") partial disapproval of Colorado's ozone SIP. On August 5, 2011, EPA published the "Approval and Promulgation of State Implementation Plans; State of Colorado; Attainment Demonstration for the 1997 8-Hour Ozone Standard, and Approval of Related Revisions" (76 Fed. Reg. 47443, August 5, 2011). EPA partially approved and partially disapproved revisions to Colorado's SIP adopted by the Air Quality Control Commission (Commission) in December 2008 and submitted to the EPA in June 2009.

Statutory Authority

The statutory authority for these revisions is set forth in the Colorado Air Pollution Prevention and Control Act, C.R.S. Section 25-7-101, et seq., specifically, C.R.S. Section 25-7-105(12) (authorizing rules necessary to implement the provisions of the emission notice and construction permit programs and the minimum elements of the operating permit program), 109(1)(a), (2) and (3) (authorizing rules requiring effective practical air pollution controls for significant sources and categories of sources, including rules pertaining to nitrogen oxides and hydrocarbons, photochemical substances, as well as rules pertaining to the storage and transfer of petroleum products and any other VOCs), and Section 25-7-301 (authorizing the development of a program for the attainment and maintenance of the NAAQS).

Purpose

The Commission revised Regulation Number 7 to address the EPA's partial disapproval of Colorado's Ozone State Implementation Plan ("SIP'). On August 5, 2011, the EPA issued a final action on Colorado's June 2009, Ozone SIP submittal, both approving Colorado's attainment demonstration for the 1997 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) and disapproving specific revisions to Regulation Number 7. 76 Fed. Reg. 47443, August 5, 2011. Specifically, the EPA disapproved both the repeal of Regulation Number 7, Section II.D. and all revisions to Section XII. as adopted by the

Commission in December 2008. As a basis for its action, the EPA stated that Colorado demonstrated attainment with the 1997 8-Hour Ozone NAAQS, however Colorado did not adequately provide an anti-backsliding demonstration for the revisions to Regulation Number 7 that were adopted by the AQCC in December 2008, and submitted to the EPA in June 2009.

The Commission intends that these 2012 revisions include both SIP and state-only revisions that address EPA's partial disapproval of SIP provisions in Sections II.D and XII , and make related state-only revisions to Section XVII. for consistency.

The Commission does not intend that these 2012 revisions add or strengthen emissions control measures of Section II.D., XII. or XVII. at this time. All SIP revisions are intended to specifically address those provisions that EPA included as part of its basis for disapproving revisions to Regulation Number 7.

While the EPA indicated general approval of the concept of the June 2009 SIP submittal, the EPA took exception to some of the details in the SIP revisions, characterized as "deficiencies," that formed the basis of EPA's disapproval during the SIP review process. EPA's objections to the 2009 SIP revisions and the Commission's responses are summarized as follows:

1. Section II.D. – Alternative Control Plans and Test Methods

EPA Objection: The EPA objected to the deletion of SIP approved language, allowing for alternative control plans and testing methods.

Commission Response: The Commission reinstated the SIP approved language.

2. Section XII.C.2 – Emission Factor Calculation Methodology for Condensate Tanks

EPA Objection: The EPA objected to the deletion of the term "gas-condensate-glycol separators" from the emission factor requirements for atmospheric condensate tanks.

Commission Response: The Commission made no revision to the rule text, and instead explained to EPA that this term was used in error as such a separator does not exist. The term used here is a misnomer, which the Commission believes refers to a flash tank located on a glycol dehydration unit, covered by Section XII.H. It is inappropriate to apply emission factor calculation methodology for atmospheric condensate tanks to glycol dehydrators because their emissions vary greatly.

3. Section XII.D.2.a. – System-wide Control Requirements for Condensate Tanks

EPA Objection: The EPA objected to the sunset of the system-wide control requirement in Section XII.D.2.a.(x), which ended the control requirement as of April 30, 2013.

Commission Response: The Commission revised the system-wide control requirements so that the system-wide control requirements do not sunset. Neither the Commission nor the parties to the December 2008 rulemaking intended for the system-wide control to end. The sunset was unintentionally caused when making other revisions to the rule text.

4. Section XII.E.3. – Monitoring Combustion Devices as Control for Condensate Tanks

EPA Objection: The EPA objected to providing a state-only monitoring option (electronic surveillance) as a substitution for the SIP required monitoring of combustion devices being used to control emissions from condensate tanks in accordance with Section XII.

Commission Response: The Commission removed the option of conducting state-only electronic monitoring in lieu of the SIP approved monitoring requirement. This allowance to substitute a SIP

required monitoring provision for a state-only monitoring provision was unintentional. None of the sources employing electronic surveillance may use it in place of the SIP approved requirement. If conducted, the electronic surveillance monitoring option must occur in addition to the SIP approved monitoring requirement.

5. Section XII.F.3. – Recordkeeping for Condensate Tanks

EPA Objection: The EPA objected to the lack of SIP required recordkeeping for the control requirement in Section XII.D.1., which requires all condensate tanks at exploration and production sites to be controlled during the first 90 days of well production.

Commission Response: The Commission revised Section XII.D.1. to specify it is state-only. The Commission and parties to the December 2008 rulemaking intended for this first 90 day control requirement to be state-only, which corresponds to the state-only designation on the recordkeeping requirements under Section XII.F.3. Therefore, the Commission made no revision to Section XII.F.3., and instead revised Section XII.D.1. to alleviate this discrepancy.

6. Section XII.F.5. – Recordkeeping and Reporting Exemption for Compressor Stations and Drip Stations

EPA Objection: The EPA objected to the removal of a SIP approved provision that exempted natural gas compressors or drip stations from recordkeeping and reporting requirements, where total emissions from such facilities are less than 30 tons per year.

Commission Response: The Commission reinstated the SIP approved 30 ton per year provision.

7. Section XII.G.2. – Control Equipment Requirement for Natural Gas Processing Plants

EPA Objection: The EPA objected to two aspects of the revisions to this section. The first objection was replacement of the term “APEN de minimus levels” with “greater than or equal to two tons per year.” The second objection was inclusion of a rolling 12-month averaging period for the 95% control requirement.

Commission Response: The Commission made no revision to the replacement of the term “APEN de minimus levels.” The Commission explained to the EPA that the associated modeling relied on evaluating condensate tanks with emissions greater than or equal to two tons of volatile organic compounds per year. Therefore, the change in reference does not constitute a lessening of the stringency of the rule. In addition, the Commission removed the rolling 12-month averaging period.

8. Section XII.G.5. – Recordkeeping and Reporting for Alternative Compliance Option

EPA Objection: The EPA objected to the reliance on Title V or construction permits as the location for recordkeeping and reporting requirements for condensate tanks at natural gas compressor or drip stations.

Commission Response: The Commission revised this section to specify recordkeeping and reporting requirements for condensate tanks at natural gas compressor and drip stations.

9. Section XII.H. – Control Requirements for Glycol Dehydrators

EPA Objection: The EPA stated this entire section lacked clarity and contained redundant language.

Commission Response: The Commission revised the section in its entirety, while maintaining the intent and applicability of the requirements. Along with this revision, the Commission specified that this control requirement is applicable only to glycol dehydrators with emissions equal to or greater than one ton per year, but that all glycol dehydrators at a stationary source must be included for comparison to the 15 ton per year threshold. The term stationary source is defined in the Common Provisions. Further, the Commission revised the provision to include emission calculation methodology requirements in Section XII. H.

Items 1-9 above are all SIP revisions.

In addition, the Commission is also revising the state-only Section XVII.D. for consistency with the 2012 SIP revisions. The Commission does not intend that this state-only revision change the applicability of the control requirements for glycol natural gas dehydrators.

Finally, the Commission made typographical, grammatical, and formatting revisions, as necessary.

~~XIX~~XX.N. February 23, 2014 (Sections II., XVII., and XVIII.)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4), the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-110 and 25-7-110.5., and the Air Quality Control Commission's ("Commission") Procedural Rules.

Basis

On October 18, 2012, the Commission partially adopted federal Standards of Performance for Crude Oil and Natural Gas Production, Transmission, and Distribution found in 40 C.F.R. Part 60, Subpart OOOO ("NSPS OOOO") into Regulation Number 6, Part A. During the partial adoption of NSPS OOOO, the Commission requested the Air Pollution Control Division ("Division") to consider full adoption at a later date and directed the Division to identify additional oil and gas control measures that complement and expand upon NSPS OOOO. This rulemaking is the result and further addresses the volatile organic compound ("VOC"), an ozone precursor, and other hydrocarbon emissions, such as methane, from the oil and gas sector.

The Commission supports the EPA's development of NSPS OOOO and believes that additional hydrocarbon control measures are warranted in Colorado for several reasons. First, the Denver Metropolitan Area/North Front Range is in nonattainment with EPA's current 8-Hour Ozone National Ambient Air Quality Standard ("NAAQS"); it is likely that EPA will lower the ozone NAAQS in the near future, potentially expanding Colorado's nonattainment area; and Division air monitors and other sampling indicate elevated levels of oil and gas related air emissions in oil and gas development areas. Second, Colorado has seen substantial growth of oil and gas development in recent years, which is a significant source of VOC emissions, and expects that growth to continue in the foreseeable future. In particular, oil and gas storage tanks contribute significantly to the VOC emissions from oil and gas development. Further, oil and gas operations also emit methane, a negligibly reactive ozone precursor and potent greenhouse gas. Third, oil and gas operators have had difficulty meeting the current 95% control requirements in Regulation Number 7 established for condensate tanks in 2004 and 2006 due to "flash" emissions. Fourth, improved technologies and business practices, many already utilized by Colorado oil and gas operators, can reduce emissions of hydrocarbons such as VOCs and methane in a cost-effective manner. These technologies and practices include, without limitation, auto-igniters, low- or no-bleed pneumatic controllers, stabilized liquids or reduced tank pressures, flares achieving at least 98% destruction efficiency, and leak detection and repair (including the use of infrared ("IR") cameras).

For these reasons and more, the Commission believes additional control measures beyond the current requirements in Regulation Number 7 and NSPS OOOO are appropriate. Colorado's considerable experience with the regulation of oil and gas sources involves both SIP and state-only requirements.

During the rulemaking process, various parties provided extensive evidence concerning whether the proposed revisions, in particular the STEM and LDAR requirements, should apply either statewide or only in the ozone nonattainment area. Based upon careful consideration of all the evidence provided during the rulemaking, the Commission determined it was appropriate to apply the proposed requirements statewide. Further, in addition to the extensive evidence concerning the benefits of statewide hydrocarbon emission reductions, the Commission believes that the tiered and phased nature of many of the requirements properly focuses on emissions. Under this tiered approach, lower emitting sources such as marginal, stripper, and coal bed methane wells will appropriately be subject to less rigorous and costly requirements. In addition, evidence in the rulemaking record and testimony of industry members supports the conclusion that the rules can be effectively implemented. Accordingly, the Commission concludes that the proposed rules are technologically feasible and cost-effective. Moreover, because these revisions apply on a state-wide, state-only basis, and are not a part of Colorado's SIP, the Commission, the Division, and stakeholders have the opportunity to further assess the implementation and effectiveness of these requirements, to better inform future actions.

Statutory Authority

The Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., ("Act"), C.R.S. § 25-7-105(1) directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in Section 25-7-102 and are necessary for the proper implementation and administration of Article 7. The Act broadly defines air pollutant and provides the Commission broad authority to regulate air pollutants. Section 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. Section 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution. Sections 109(1)(a), (2), and (3) of the Act authorize the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources, emission control regulations pertaining to nitrogen oxides and hydrocarbons, and emissions control regulations pertaining to the storage and transfer of petroleum products and other VOCs. Section 25-7-109(2)(c), in particular, provides broad authority to regulate hydrocarbons.

Purpose

The following section sets forth the Commission's purpose in adopting the revisions to Regulation Number 7, and includes the technological and scientific rational for the adoption of the revisions. The Commission adopts revisions to Regulation Number 7 to address hydrocarbon emissions from oil and gas facilities, including well production facilities and natural gas compressor stations. The Commission expands existing oil and gas control requirements and establishes additional monitoring, recordkeeping, and reporting requirements. For example, the revisions increase control requirements and improve capture efficiency requirements for oil and gas storage tanks. The Commission also seeks to minimize fugitive emissions from leaking components at natural gas compressor stations and well production facilities. Further, the Commission intends to minimize emissions at new and modified oil and gas wells and wells undergoing maintenance and during liquids unloading events. The Commission also expands control requirements for pneumatic devices and glycol natural gas dehydrators. The Commission believes that this combination of revisions is appropriate to complement the full adoption of NSPS OOOO, and to further reduce emissions produced by the oil and gas industry.

Among other things, these revisions:

- Expressly address hydrocarbon emissions in Section XVII. and XVIII.;
- Amend definitions in Section XVII.A. and XVIII.B.;
- Strengthen good air pollution control practices, require use of auto-igniters, remove the off-ramp for condensate tanks if subject to a NSPS, MACT, or BACT, and remove the

leak detection and repair requirements off-ramp for glycol natural gas dehydrators and internal combustion engines if subject to a NSPS, MACT, or BACT in Section XVII.B.;

- Expand condensate tank control requirements to apply state-wide, to all hydrocarbon liquid storage tanks, and to smaller storage tanks in Section XVII.C.;

- Limit venting and establish a storage tank emissions monitoring system ("STEM"), and associated recordkeeping and reporting requirements in Section XVII.C.;

- Expand glycol natural gas dehydrator control requirements in Section XVII.D.;

- Establish a leak detection and repair program for natural gas compressor stations and well production facilities in Section XVII.F.;

- Establish control measures for oil and gas wells in Section XVII.G.;

- Limit venting during well maintenance and liquids unloading in Section XVII.H.; and

- Expand pneumatic device requirements in Section XVIII.

The revisions also correct typographical, grammatical, and formatting errors found through the regulation.

The following explanations provide further insight into the Commission's intention for certain revisions and, where appropriate, the technological or scientific rationale for the revision.

Joint Applicability of NSPS OOOO and Regulation Number 7, Sections XII. and XVII.

It is possible for storage tanks to be subject to NSPS OOOO and Regulation Number 7, Sections XII. and XVII. While this creates some overlap between the different requirements, the requirements secure different emissions reductions. Regulation Number 7, Section XII. applies to condensate storage tanks in the 8-Hour Ozone Nonattainment Area, whereas NSPS OOOO applies to storage vessels that contain more than just condensate, such as produced water and crude oil. NSPS OOOO also applies to individual storage vessels, whereas Regulation Number 7, Sections XII. and XVII. apply to single tanks and, if manifolded together, the series of tanks in tank batteries. In addition, NSPS OOOO applies to storage vessels with six (6) tons per year ("tpy") of controlled actual VOC emissions, whereas Regulation Number 7, Sections XII. and XVII. base applicability on uncontrolled actual emissions. For these reasons, and considering that portions of Regulation Number 7, Section XII. are approved in Colorado's SIP, the Commission intends for the federal and state rules to jointly apply to storage tanks in Colorado.

Furthermore, because NSPS OOOO allows oil and gas operators to avoid applicability by establishing enforceable emission limits below NSPS OOOO applicability thresholds through a state, federal, or local requirement, most storage tanks subject to Regulation Number 7 will not be subject to NSPS OOOO monitoring or recordkeeping requirements. It is the Commission's intent that compliance with Regulation Number 7, Sections XII. and XVII. shall serve to establish legally and practically enforceable limits for the purpose of estimating emissions from storage vessels under NSPS OOOO. In those limited cases where storage tanks are subject to both NSPS OOOO and Regulation Number 7 control requirements, Regulation Number 7 will require some additional emissions monitoring. However, joint applicability is anticipated to be limited to those storage tanks whose uncontrolled actual VOC emissions are one hundred and twenty (120) tpy, the equivalent of the NSPS OOOO six (6) tpy VOC on a controlled actual basis. While this means that more storage tanks are regulated under Regulation Number 7, Section XVII., they are regulated on a state-only basis, and are not federally enforceable like NSPS OOOO. Thus, the Commission believes joint applicability is necessary and intentionally removed storage tanks from the exemption in Section XVII.B.4. that allowed sources subject to an NSPS, MACT, or BACT control requirement to avoid having to comply with Section XVII.

It is also possible for glycol natural gas dehydrators and internal combustion engines to be subject to both federal and Regulation Number 7, Section XVII. leak detection and repair requirements. NESHAP HH and HHH require glycol natural gas dehydrators at major sources of hazardous air pollutants ("HAP") that utilize a closed-vent system to conduct annual visual inspections for leaks and defects that could result in air emissions. NESHAP HH and HHH also require detected leaks and defects be repaired within fifteen days, as long as it is technically feasible to do so without a shutdown. NESHAP HH also requires triethylene glycol ("TEG") natural gas dehydrators located at area sources of HAPs that utilize a closed-vent system to conduct annual visual inspections. However, the revisions to Regulation Number 7 require more frequent inspections of all types of glycol natural gas dehydrators at all facilities, resulting in more emissions reductions than NESHAP HH and HHH. Therefore, the Commission believes joint applicability concerning leak detection and repair requirements is necessary.

Applicability of Parts of Regulation Number 7 to Hydrocarbons

Many of the control measures set forth in these revisions have the benefit of reducing both VOC and other hydrocarbon emissions, such as methane. Sections XVII. and XVIII. have been revised to reflect the Commission's intent that the provisions contained therein reduce emissions of the broader category of hydrocarbons.

Visible Emissions

Regulation Number 7, Sections XII. and XVII. have historically contained a prohibition on visible emissions from combustion devices, such as flares. The Commission is not proposing to relax this requirement. To address comments from diverse stakeholders, the Commission is clarifying how Division inspectors and the regulated community are to determine compliance with the prohibition on visible emissions. The Commission has qualified that visible emissions are emissions of smoke that are observed for a period in duration of greater than or equal to one (1) minute during a fifteen (15) minute time period, pursuant to EPA Method 22. The Commission expects that both Division inspectors and the regulated community will, if any smoke is observed, determine whether the emissions are considered visible emissions for purposes of Regulation Number 7. The regulated community may, alternatively, immediately shut-in the equipment to investigate the cause for smoke and perform repairs. While the presence of visible emissions constitutes a violation of the rules, the Commission recognizes that there may be instances where visible emissions occur notwithstanding the owner or operator's best efforts, such as when an upset or malfunction occurs. Accordingly, the Division should consider the owner or operator's efforts and whether the visible emissions resulted from factors outside the owner or operator's control in determining how to best enforce this requirement.

Definitions (Section XVII.A.)

The Commission has revised or added definitions for several terms. Further explanation for a few of these terms is set forth below.

"Approved instrument monitoring method" ("AIMM") means the methods and technologies utilized for monitoring storage tanks and components at well production facilities and natural gas compressor stations. The instrument being used for AIMM inspections must be capable of measuring hydrocarbon compounds at the applicable leak definition concentration specified in the revisions, and calibrated as appropriate. See EPA Method 21 at 6.0. In addition, while the definition lists EPA Method 21 and IR cameras, the Commission does not intend to limit industry to only EPA Method 21 and IR cameras as the Division may approve the use of additional monitoring devices and methods.

"Component" excludes compressor seals and open-ended valves and lines, which are defined separately, because they are designed to leak and are better addressed with equipment specific work practices, also included separately. Based on concerns that the requirements for small reciprocating compressors at well production facilities may not be cost-effective, the adopted work practices for reciprocating compressors are limited to reciprocating compressors located at natural gas compressor stations. Nevertheless, there is an issue as to whether compressors at well production facilities are a significant

source of emissions. The Commission, therefore, directs the Division to investigate whether reciprocating compressors at well production facilities are a significant source of emissions, and if so, whether there may be appropriate, cost-effective work practices to reduce fugitive emissions from reciprocating compressors at well production facilities. The Commission further directs the Division to brief the Commission on this investigation in March, 2015.

"Date of first production" is meant to coincide with the date reported to the Colorado Oil and Gas Conservation Commission's ("COGCC") as the "date of first production," as currently used in COGCC Form 5A. The Commission intends for oil and gas sources to use only one date for compliance with both COGCC and Commission requirements.

"Natural gas compressor stations" are subject to leak detection and repair requirements. This definition is meant to exclude compressors at well production facilities and gas processing plants. This definition is also meant to exclude natural gas compressor stations that are downstream of the natural gas processing plant at this time.

"Normal operation" is considered to include all operation, including maintenance and other activities, as long as the operation does not meet the definition of "malfunction" as set forth in the Common Provision regulations.

"Storage tank," means a single storage tank or a storage tank battery if the storage tanks are manifolded together. In recent years, it has become more common for multiple storage tank batteries, sometimes containing different hydrocarbon liquids, to be manifolded at the emissions line and routed to a common control device. To further clarify the concept of manifolded within the definition of "storage tank," the Commission revises the definition of storage tank to specify that a storage tank battery must be manifolded by liquid line, and not just by gas or emission line. This revision is in keeping with the rationale that a single tank could have been used to capture liquids in place of multiple small storage tanks in a battery. The Commission's definition, and Colorado's approach to emissions reporting and permitting for storage tanks, differs from EPA's definition of "storage vessel" and the description of an affected storage vessel facility in NSPS OOOO because EPA considers each individual tank, even those in a battery manifolded by liquid line, to be a storage vessel for comparison against the applicability threshold. The Commission intends to maintain this distinction and, therefore, deletes the previously used definition of "atmospheric condensate storage tank" and creates a new definition of "storage tank" which expands upon the definition of storage vessel in NSPS OOOO to include storage vessels manifolded together by liquid line.

"Well production facilities" are also subject to leak detection and repair requirements and storage tank maintenance requirements. This definition is meant to include all of the emission points, as well as any other equipment and associated piping and components, owned, operated, or leased by the producer located at the same stationary source (a defined term specific to permitting). The "owned, operated, or leased" qualifier in the definition is not meant to reduce the stringency of LDAR requirements in situations where there are multiple owners or operators of the well production facility. This definition is meant to exclude natural gas compressor stations from "well production facility" and avoid overlapping LDAR requirements. This definition is also meant to exclude natural gas storage wells.

Good Air Pollution Control Practices (Section XVII.B.)

The Commission intends that all oil and gas operations, including those below control thresholds or even below Regulation Number 3 APEN and permitting thresholds, adhere to good general air pollution control practices. Examples of what the Commission considers to be a good air pollution control practice include, but are not limited to:

- Keeping the thief hatch, pressure relief valve, or other access point on storage tanks closed and properly sealed during normal operation, unless being actively used during periods of maintenance or liquids loadout from the storage tank;

- Inspecting and repairing seals on thief hatches, access points, or other openings of storage tanks;

- Initiating timely action to address leaks or unpermitted emissions; and

- Maintaining equipment and the facility in good operating condition.

Venting vs. Leaking (Sections XVII.B., XVII.C., and XVII.F.)

The Commission believes that emissions caused by over pressurization of oil and gas equipment are foreseeable, are not adequately addressed by NSPS OOOO, and should be addressed in Colorado specific regulations. The Commission intends these revisions to address venting emissions from storage tank thief hatches, pressure relief valves, or other access points during normal operations. Access points are not limited to points of entry of liquids or gas into the storage tank but include any route from which emissions can escape. The Commission recognizes that pressure release valves and other devices are meant to operate as safety devices and that venting for safety purposes may occur due to sudden, unavoidable equipment failures or surges beyond normal or usual activities that could not have been reasonably foreseeable, avoided, or planned. For example, an unplanned third party outage resulting in increased pressure along the system may be the type of malfunction or scenario where venting may be necessary for safety purposes. The Commission does not intend to increase risk or compromise safety of personnel and equipment. However, inadequate design of a storage tank emissions capture system is not a legitimate reason for venting.

Therefore, the Commission intends that the malfunction affirmative defense in the Common Provisions regulation continue to be available to owners or operators, provided that the owners or operators demonstrate that the elements of the malfunction defense have been met. The Commission intends that the burden remain on the owner or operator to demonstrate that an emission should not be considered venting as provided in Section XVII.C.2. The Commission further recognizes that meeting the no venting requirement may be challenging in some cases, and accordingly has adopted additional provisions requiring owners and operators to develop a STEM plan to help ensure compliance, as discussed more fully below. In some cases, development and implementation of the STEM plan may be an iterative process involving ongoing improvements before continuous compliance with the no venting standard is achieved. With this in the mind, the Division should consider the efforts of owners and operators in developing and implementing their STEM plan as part of the Division's assessment about how best to enforce the no venting requirement.

In contrast with venting, leaking as used in Section XVII.F. more specifically relates to unintended emissions from components at well production facilities and natural gas compressor stations. Identification and repair of leaks in accordance with these revisions benefits the public, the environment, and the oil and gas industry. The Commission has determined that leaks discovered by the owner or operator or the Division inspector pursuant to the detection methods specified in Section XVII.F. shall not be subject to enforcement by the Division under certain circumstances. For example, if a leak is identified and the owner or operator is in the process of timely and properly addressing the leak in accordance with these revisions, the Division should afford the owner or operator the opportunity to fix the leak absent enforcement. However, by this provision, the Commission does not intend to exempt owners or operators from their obligation to operate without venting or to utilize good air pollution control practices at all times.

Storage Tanks Controls (Section XVII.C.)

EPA established a six (6) tpy VOC threshold on a controlled actual emissions basis for applying storage vessel controls. In contrast, Colorado uses the sum total emissions from a tank battery, where multiple tanks are manifolded together, on an uncontrolled actual emissions basis for applying reporting, permitting, and control requirements. This means that the EPA's six (6) tpy threshold on a controlled actual emissions basis applies to individual tanks having the equivalent of one hundred and twenty (120)

tpy VOC on an uncontrolled actual basis. Thus, more storage tanks are regulated under Regulation Number 7, Section XVII. than under NSPS OOOO.

The Commission intends that under Regulation Number 7, Section XVII., air pollution control equipment may be removed if: (1) the storage tank (including manifolded tanks) emissions fall below the uncontrolled actual six (6) tpy threshold, on a rolling twelve month basis; and (2) those controls are not required by other applicable requirements. Conversely, if storage tank emissions increase above the uncontrolled actual six (6) tpy threshold on a rolling twelve month basis, air pollution control equipment must be installed within sixty (60) days of discovery of the increase.

The Commission does not intend for the storage tank control, or related, requirements to apply to frac tanks that are located at a well production facility for less than 180 consecutive days.

Control Efficiency (Section XVII.C.)

The Commission expands the 95% control efficiency requirement to apply to storage tanks containing any hydrocarbon liquids (including condensate, crude oil, produced water, and intermediate hydrocarbon liquids), for consistency with NSPS OOOO. Produced water and crude oil storage tanks, which in years past were thought to have insignificant emissions, can instead be significant sources of emissions. This rule change is also a result, in part, of the removal of the APEN exemption in 2008 for tanks containing crude oil and less than 1% crude. The Commission intends that the air pollution control equipment achieve an average hydrocarbon control efficiency of at least 95%, and if a combustion device is used the device must have a design destruction efficiency of at least 98%, with few exceptions. The Commission recognizes and expects that most flares can control hydrocarbon emissions by 98% or more when properly operated.

Audio, Visual, Olfactory ("AVO") and Visual Inspections (Section XVII.C.)

The Commission intends that owners and operators of subject storage tanks (including storage tanks during the first ninety (90) days of production and storage tanks containing only stabilized liquids) conduct applicable AVO and visual inspections for venting or leaking. Visual inspections are in addition to AVO monitoring and require further inspections of the storage tank and associated equipment, such as thief hatches and air pollution control equipment. These inspections are not required to occur at the same time as loadout. Instead, loadout triggers the requirement for AVO and visual inspection, and indicates the frequency at which inspection is required.

Storage Tank Emission Management System ("STEM") Plan, Monitoring, and Recordkeeping (Section XVII.C.)

Owners and operators of storage tanks with uncontrolled actual emissions equal to or greater than six (6) tpy must develop, certify, and implement a STEM plan designed to ensure compliance with the "without venting" requirement of Section XVII.C.2., among other requirements. Through STEM, owners and operators must evaluate and employ appropriate control technologies, monitoring, maintenance, and operational practices to avoid venting of emissions from storage tanks. The Commission intends that sources have flexibility to develop STEM plans on an individual basis for each storage tank or for multiple storage tanks. However, upon request, the owner or operator must be able to identify to the Division what STEM plan applies to a storage tank and make that plan available for review. Owners and operators of storage tanks controlled during the first ninety (90) days of production or containing only stabilized liquids are not required to develop and implement a STEM plan. However, owners or operators of such storage tanks must still comply with applicable control, capture, monitoring, and recordkeeping requirements.

For purposes of clarification, the STEM plan is intended to include, but is not limited to, the following elements:

- A monitoring strategy including, at a minimum, the applicable inspection frequencies and methodologies;

- An identification of the personnel conducting the monitoring, and any training program, materials, or training schedule for such personnel. This element does not require training, but ensures that any training be documented to permit the owner or operator to demonstrate the quality and achievements of the STEM plan;

- The calibration methodology and schedule for emission detection equipment used in the monitoring;

- An analysis of the engineering design of the storage tank and air pollution control equipment, and where applicable, the technological or operational methods employed to prevent venting;

- An identification of the procedures to be employed to evaluate ongoing capture performance after implementation of the STEM plan;

- A procedure to update the STEM plan when capture performance is not adequate, the STEM design is not operating properly, when otherwise desired by the owner or operator, or when required by the Division; and

- The certification made by the appropriate personnel with actual knowledge of the STEM design for each storage tank.

In addition to AVO and visual inspections for storage tanks, STEM plans must include AIMM inspections on a frequency schedule that is tied to the uncontrolled actual VOC emissions from the storage tank. The Commission intends that the AIMM inspection satisfy any simultaneous AVO and visual inspection requirement.

The STEM plan should be maintained by the owner or operator for the life of the storage tank, while records of applicable monitoring only need to be retained for a period of two years. Upon sale or transfer of ownership of a storage tank, the relevant documentation and records should be transferred with the ownership. Owners and operators are encouraged to reevaluate any existing STEM plan for the storage tank upon purchase or acquisition of the storage tank.

Unsafe, Difficult, or Inaccessible to Monitor (Sections XVII.C. and XVII.F.)

The Commission does not intend to require owners or operators to conduct either AVO or AIMM inspections of unsafe, difficult, or inaccessible components or storage tanks and associated equipment. The Commission acknowledges that, in limited circumstances, unsafe to monitor may include unsafe weather or travel conditions. However, in those limited circumstances, the Commission expects the owner or operator to resume monitoring once the weather or travel conditions cease to be unsafe. Importantly, the Commission does not intend to allow owners or operators to delay required monitoring for the entire winter season.

Glycol Natural Gas Dehydrators (Section XVII.D.)

The Commission expanded the state-wide control requirements for glycol natural gas dehydrators. This revision requires that all existing glycol natural gas dehydrators with uncontrolled actual VOC emissions of six (6) tpy or greater be controlled with air pollution control equipment achieving at least a 95% reduction. This revision also requires that existing glycol natural gas dehydrators with uncontrolled actual VOC emissions of two (2) tpy or greater be controlled if the dehydrator is located within 1,320 feet of a building unit or designated outside activity area. The definitions for building unit and designated outside activity area are taken from COGCC regulations. The Commission does not intend to apply this proximity

requirement to the glycol natural gas dehydrator owner or operator's buildings, where public access to the building is also restricted. Further, because glycol natural gas dehydrators are different and unique sources, a similar proximity requirement for storage tanks is not appropriate at this time as storage tanks are more appropriately addressed based on emission thresholds. This revision also requires that all new glycol natural gas dehydrators with uncontrolled actual VOC emissions of two (2) tpy or greater be controlled with air pollution control equipment achieving at least 95% reduction. If a combustion device is used, it must have a design destruction efficiency of at least 98%, with few exceptions. The Commission recognizes and expects that most flares can control hydrocarbon emissions by 98% or more when properly operated.

Leak Detection and Repair Requirements (Section XVII.F.)

The Commission believes the detection and timely repair of leaks is important in the efforts to reduce hydrocarbon emissions. The use of appropriate inspection instruments and methods, such as IR cameras, enhances the detection and reduction of emissions. The leak detection and repair program more broadly targets leaks from components at natural gas compressor stations and well production facilities, even if such facilities do not include storage tanks. In contrast, STEM targets venting from storage tanks. The use of an AIMM as it relates to leak detection and repair frequency is generally intended to complement the STEM monitoring schedule. The Commission has created a phased schedule and tiered approach for leak detection and repair that is based on emissions, recognizing that smaller operators and facilities may have lower emissions and may need additional time to comply. Owners or operators have flexibility in how to meet the leak detection and repair requirements, including utilizing their own equipment and personnel or hiring a third party contractor. Owners or operators also have flexibility in timing the AVO and AIMM inspections to coordinate overlapping AVO and AIMM inspections, as well as inspections of facilities in the same area or on the same inspection frequency. The Commission intends that the AIMM inspection satisfy any simultaneous AVO inspection requirement. However, the Commission expects that owners and operators will also utilize this flexibility to ensure that inspections are appropriately spaced on the frequency schedule (e.g. quarterly inspections will occur every three months but not, for example, on March 31 and April 1).

The Commission distinguished between new and existing well production facilities by utilizing an October 1, 2014, commenced construction date and created an inspection phase-in schedule for existing facilities.

The Commission also distinguished the emissions thresholds for determining inspection frequencies for well production facilities with storage tanks and well production facilities without storage tanks. For well production facilities with storage tanks, the threshold determining inspection frequency is based on the uncontrolled actual VOC emissions from the highest emitting storage tank. For well production facilities without storage tanks, the threshold determining inspection frequency is based on "facility emissions." The Commission has determined that "facility emissions" means the controlled actual VOC emissions from all permanent equipment, including fugitive emissions calculated using the emission factors defined as less than 10,000 ppmv of Table 2-8 of the 1995 EPA Protocol for Equipment Leak Emission Estimates.

The Commission has defined a leak requiring repair in a manner that is dependent on the monitoring methodology. Leak detection methodologies have varied abilities to identify emission quantity and chemical makeup. EPA Method 21, for example, detects and quantifies hydrocarbon emission concentration, but does not speciate hydrocarbons (e.g., methane from other hydrocarbons) or identify the emission rate. Similarly, while IR cameras are becoming much more prevalent as a more affordable, time-saving, and user-friendly tool, they also do not speciate hydrocarbons or quantify the emission concentration. The Commission provides owners and operators flexibility in selecting a leak detection methodology.

If EPA Method 21 is utilized, the Commission set the threshold at which component leaks must be repaired at 2,000 parts per million ("ppm") hydrocarbons for existing natural gas compressor stations and 500 ppm for new (constructed after May 1, 2014) natural gas compressor stations and new and existing well production facilities. Where IR camera or AVO monitoring is utilized, a leak is any detectable emission not associated with normal equipment operation (e.g. the acceptable level of leaks from a

component designed to leak). These values were determined based in part on a review of current federal or state leak detection and repair requirements for natural gas processing plants, refineries, and other oil and gas sources. Leak detection values have decreased over time, in recognition of improved technologies and business practices. NSPS OOOO identifies leaks at natural gas processing plants at 500 ppm. Prior to NSPS OOOO, leaks were identified in other New Source Performance Standards (NSPS KKK and NSPS VVa) at 10,000 ppm. In addition, California, Wyoming, and Pennsylvania have varying leak detection and repair requirements and approaches to defining a leak. Some California air quality districts generally define a minor leak as between 1,000 and 10,000 ppm. Wyoming does not have a numerical limit. Pennsylvania essentially defines a leak at a well pad as anything with detectable emissions utilizing Method 21, as more than 2.5% methane or 500 ppm VOC, or no visible leaks using an IR camera. Upon consideration of all of the evidence presented, the Commission chose to define component leak at the foregoing thresholds.

The Commission expects that leaks that are not located specifically at a component will be addressed and repaired, in accordance with the general requirements to minimize emissions and employ good air pollution control practices. Further, the Commission finds that the repair deadlines set forth in Section XVII.F.7. provide flexibility for operational differences, including the potential range of leaks and degrees of repair difficulty that may be encountered.

The Commission anticipates that many operators will choose to utilize IR cameras, in light of their relative ease of use and increased reliance by both by industry and regulators within Colorado and across the country.

The Commission expects that owners and operators will remonitor leaks requiring repair with either the approved instrument monitoring method the owner or operator used to identify the leak or any method approved for remonitoring of leaks under EPA Method 21.

The Commission expects that in most instances the leak detection and repair requirements of this regulation will apply in lieu of leak detection and repair requirements in permits existing as of the promulgation date of the revisions. The Commission recognizes that leak detection and repair requirements in a few state permits may be federally enforceable, and this state-only regulation cannot supersede federal requirements. The Commission expects the Division and owners and operators to work cooperatively on the efficient implementation of leak detection and repair requirements, in those rare instances where there may be duplicative or competing requirements.

During the rulemaking, several parties requested more stringent requirements for all oil and gas operations located within 1,320 feet of a building unit or designated outside activity area. Residents living within close proximity to oil and gas operations, particularly those living within 1,320 feet of oil and gas operations, may understandably have heightened concerns regarding potential impacts of emissions from such facilities. It is the Commission's understanding that some oil and gas owners and operators implement practices beyond what is currently required under state law in order to minimize emissions and otherwise be good neighbors, including conducting increased site inspections. The Commission supports such practices.

Also during the rulemaking, various parties provided extensive evidence concerning the frequency of instrument monitoring method inspections, the timing of leak repair, and the costs and benefits associated with more or less frequent monitoring and repair. The Commission recognizes that additional information would benefit the Commission, Division, industry, and other stakeholders and therefore encourages the Division to work with energy companies, to evaluate the comparative effectiveness of various kinds of instrument based monitoring methods and program designs at a range of types, sizes, and frequencies at well production facilities and natural gas compressor stations.

The Commission also encourages the Division to work with industry and other stakeholders to evaluate emissions from and potential control strategies for downstream natural gas compressor stations and intermittent pneumatic controllers.

Lastly, several parties to the rulemaking requested greater transparency and public access to air quality information associated with oil and gas development. In particular, a coalition of local community organizations requested that owner and operators' annual reports as required by these rules be posted on the Division's website. The Commission believes these reports will provide important information when reviewing the efficacy of the inspection and maintenance program, as well as valuable information to interested citizens, particularly those who live in close proximity to oil and gas facilities. Therefore, the Commission requests that the Division make this information available in the most efficient means possible, which may include posting on the Division's website individual reports and/or a compilation summary. In addition, the Commission requests an annual briefing on these regulations. Such briefing will assist the Commission and interested stakeholders to understand the data and implementation issues relating to this new program, as well as other initiatives covered in this rulemaking. The Commission believes that this information would also be valuable to all parties.

Well Maintenance and Liquids Unloading (Section XVII.H.)

Over time, liquids build up inside a well and reduce flow out of the well. These liquids can slow and even block gas flow in wet gas wells and are removed during a well blowdown, also called liquids unloading. As a result of recent information, EPA has significantly increased their emission factor for liquids unloading. The uncontrolled emission factor is based upon fluid equilibrium calculations used to estimate the amount of gas needed to blow down a column of fluids blocking a well and Natural Gas STAR partner data on the amount of additional venting after a blowdown. Similar to the issues with well maintenance and well completion emissions, considerable uncertainty for liquid unloading emissions arises from the limited data sources used and the applicability of Natural Gas STAR program activities to calculate industry baseline emissions. This is especially important as liquid unloading emissions are estimated to comprise 33% of the uncontrolled methane emissions from the natural gas industry in the latest greenhouse gas inventory. EPA's Natural Gas STAR program advocates the use of a plunger lift system to reduce the need for liquids unloading, and indicates that such systems may pay for themselves in about one year. The Commission has determined that the use of technologies and practices to minimize venting, including plunger lift systems, are available and economically feasible, and encourages their use in Colorado.

Pneumatic Controllers (Section XVIII.)

The Commission recognized in a December 2008, rulemaking that pneumatic devices are a significant source of emissions. In addition, a 2013 University of Texas study concluded that methane emissions from pneumatics are higher than EPA previously estimated. Therefore, expanding the current low-bleed pneumatic device requirements statewide and further reducing emissions is appropriate and cost-effective. However, the Commission does not intend to expand the pneumatic device requirements to intermittent pneumatic controllers at this time. Further, while the use of low-bleed pneumatic controllers will result in a significant reduction of VOC and methane emissions from Colorado oil and gas facilities, no-bleed pneumatic controllers are currently commercially available to further reduce emissions from these sources. However, because these devices can only be used at facilities with adequate electric power, and given the high cost of electrifying a facility, the Commission is only requiring the use of no-bleed pneumatic controllers at facilities that are connected to the electric grid, using electricity to power equipment, and where technically and economically feasible.

<u>Additional Considerations</u>

In accordance with C.R.S. §§ 25-7-105.1 and 25-7-133(3) the Commission states the rules in Sections XVII. and XVIII. of Regulation Number 7 adopted in this rulemaking are state-only requirements and are not intended as additions or revisions to Colorado's SIP at this time.

In accordance with C.R.S. § 25-7-110.5(5)(b), the Commission determines:

(I) The revisions to Regulation Number 7 address VOC and other hydrocarbon emissions from oil and gas facilities, including storage tanks, glycol natural gas dehydrators,

pneumatic controllers, well production facilities, and natural gas compressor stations. In addition to NSPS OOOO, NSPS Kb, and NSPS KKK, NESHAP HH, and NESHAP HHH may also apply to such oil and gas facilities. However, the Regulation Number 7 revisions apply on a broader basis to more storage tanks, glycol natural gas dehydrators, leaking components, and pneumatic controllers, and address more hydrocarbon emissions. For example, the Regulation Number 7 revisions address more glycol natural gas dehydrators than the major source provisions of NESHAP HH and HHH as well as more glycol natural gas dehydrators than the area source provisions of NESHAP HH, which are limited to TEG dehydrators. Similarly, the Regulation Number 7 revisions address more storage tanks than the major source provisions of NESHAP HH, as well as NSPS Kb, which exempt certain storage vessels storing condensate or petroleum prior to custody transfer. In addition, the Regulation Number 7 revisions address more component leaks than the major source provisions of NESHAP HH, as well as NSPS KKK, which has a 10,000 ppm leak threshold and only applies at natural gas processing plants.

Compared to NSPS OOOO, the revisions to Regulation Number 7 will apply a low- or no-bleed control requirement to more pneumatic controllers because NSPS OOOO only requires zero bleed pneumatic controllers at natural gas processing plants, while the Regulation Number 7 revisions no-bleed provision applies to all facilities. The revisions to Regulation Number 7 will also require a leak detection and repair program for more oil and gas operations because NSPS OOOO only requires leak detection and repair for natural gas processing plants, AVO inspections for storage vessels with controlled actual emissions greater than six (6) tpy, and annual visual inspections for leaks for subject centrifugal compressors. In contrast, the revisions to Regulation Number 7 require a leak detection and repair program for all components at all well production facilities and natural gas compressor stations. Further, the revisions to Regulation Number 7 will require storage tanks with uncontrolled actual emissions equal to or greater than 6 tpy VOC to control emissions with 95% efficiency, while NSPS OOOO's threshold is 6 tpy controlled actual emissions (i.e. 120 tpy uncontrolled actual emissions). It is the Commission's determination that, given the current and projected levels of oil and gas development in Colorado combined with the advances in technology and business practices utilized by oil and gas operators, the revisions to Regulation Number 7 are appropriate to further address hydrocarbon emissions from this sector. Such emission reductions will, among other things, protect public health and the environment, address current and future ozone concerns specific to Colorado, reduce greenhouse gas emissions, and ensure the maximum beneficial use of a valuable natural resource.

(II) NSPS OOOO, and the other federal rules discussed in (I), are primarily technology-based in that they largely prescribe the use of specific technologies in order to comply. EPA has provided some flexibility in NSPS OOOO by allowing a storage vessel to avoid being subject to NSPS OOOO if the storage vessel is subject to any state, federal, or local requirement that brings the storage vessel's emissions below the NSPS OOOO threshold (greater than or equal to 6 tpy controlled actual VOCs). The Commission chose to set the revised Regulation Number 7 controls at 6 tpy on an uncontrolled actual emissions basis, and therefore provide Colorado's oil and gas operators a limit for calculating the controlled potential to emit of their storage vessels, which may be used to avoid NSPS OOOO applicability.

(III) Other federal requirements do not specifically and fully address the issues of concern to Colorado, or take into account concerns that are unique to Colorado. Specifically during the development of NSPS OOOO, Colorado submitted comments regarding, among other things, concerns with the storage vessel definition, storage vessel control requirements, and lack of leak detection and repair requirements. Colorado's concerns were not fully addressed in NSPS OOOO, therefore, the Commission believes the revisions to Regulation Number 7 are necessary to: (a) address hydrocarbon emissions

in a more comprehensive manner; (b) address oil and gas operations and equipment at lower thresholds than NSPS OOOO thresholds, yet that collectively have significant VOC and other hydrocarbon emissions in Colorado; (c) address venting of emissions from storage tanks at oil and gas facilities caused primarily by over pressurization; and (d) address leaks of fugitive hydrocarbon emissions, particularly from well production facilities and natural gas compressor stations.

(IV) Compliance with the control requirements in the revisions to Regulation Number 7 provide Colorado's oil and gas operators a limit for calculating the controlled potential to emit of their storage vessels, thereby allowing many of these sources to avoid regulation under NSPS OOOO. Additionally, the revisions may prevent or reduce the need for more costly retrofits at a later date. Colorado may be required to comply with a lower ozone NAAQS in the near future and the Denver Metro/North Front Range area is currently in nonattainment with the ozone NAAQS, while other areas in the State are seeing elevated ozone levels, including areas of increasing oil and gas development. The revised rules are proactive and intended to reduce ozone levels now by utilizing controls and techniques already being used by some Colorado oil and gas operators, or that are readily available.

(V) Adoption of these revisions at this time allows many of Colorado's oil and gas operators to utilize the controls established in the revisions to Regulation Number 7 to avoid NSPS OOOO storage vessel requirements. Postponement of adoption would potentially subject these sources to compliance with NSPS OOOO and then compliance with State requirements once State controls become effective.

(VI) The revisions to Regulation Number 7 do not place limits on the growth of Colorado's oil and gas industry. Instead, the rules address hydrocarbon emissions from the oil and gas sector in a cost-effective manner, allowing for continued growth of Colorado's oil and gas industry. Indeed, the oil and gas industry has already grown in Colorado while utilizing many of the technologies and practices set forth in these revisions.

(VII) The revisions to Regulation Number 7 establish reasonable equity for oil and gas owners and operators subject to these rules by providing the same standards for similarly situated and sized sources. Rules of general applicability have been developed along with tiered requirements and exclusions that tailor the rules to the regulated sources within the oil and gas sector. Furthermore, the application of the Regulation Number 7 revisions to oil and gas owners and operators regardless of location in the ozone nonattainment or attainment areas is equitable because the nonattainment area is not the only area in Colorado with ozone issues. For example, the Rangely monitor in western Colorado shows violations of the 2008 ozone standard and existing modeling shows that either the nonattainment area has increased its contribution to background ozone or ozone concentrations in the attainment area flowing into the nonattainment area have increased. Notably, the Division's inventory shows that the oil and gas industry contributes more than 50% of the VOC emissions outside the nonattainment area. This monitoring, modeling, and inventory data, considered with the likelihood of a lower ozone NAAQS and the expected growth of the oil and gas sector state-wide, supports the application of the Regulation Number 7 revisions to oil and gas sources in both the nonattainment and attainment areas.

(VIII) The oil and gas industry is a large anthropogenic stationary source of VOCs, a precursor pollutant to ozone. If the revisions to Regulation Number 7 are not adopted, other aspects of oil and gas operations or other sectors may be looked to for additional emission reductions. In reductions must come from other operations or sectors at this time, the cost effectiveness would decrease because these revisions reduce emissions from the most significant contributors to VOC emissions and costs will be higher for less emissions reductions from less significant contributors.

(IX) The majority of sources subject to the revised rules in Regulation Number 7 will not be subject to federal procedural, reporting, or monitoring requirements. Those few sources subject to both NSPS OOOO (e.g. storage vessels emitting 120 tpy uncontrolled actual VOC emissions) or NESHAP HH and HHH (e.g. glycol natural gas dehydrators at major sources of HAPs and TEG glycol natural gas dehydrators at area sources of HAPs) and Regulation Number 7 will be required to comply with both regulations, see further discussion above. The procedural, reporting, and monitoring requirements of Regulation Number 7, to the extent different than federal requirements, are necessary to ensure compliance with and document the effectiveness of the revisions.

(X) Demonstrated technology is available to comply with the revisions to Regulation Number 7. Some of the revisions expand upon requirements already applicable in the 8-Hour Ozone Nonattainment Area state-wide, such as the requirements for auto-igniters and pneumatic controllers. In addition, oil and gas owners and operators are already using many of the control devices and techniques intended to be used to comply with these revisions. The lead-in time provides owners and operators time to install control devices and develop plans for compliance. Should unanticipated events occur, such as a lack of availability of control devices, the revisions provide for Division approved extensions to compliance.

(XI) As set forth in the Economic Impact Analysis, the revisions to Regulation Number 7 will contribute to the prevention of hydrocarbon emissions in a cost-effective manner. Significantly, the Commission expressly finds that the cost-effectiveness of the VOC emission reductions alone supports the revisions to Regulation Number 7. The reductions of other hydrocarbon emissions, such as methane, add to the already cost-effective and appropriate emission reduction requirements.

(XII) Alternative rules, such as the alternative proposals provided by several parties during the rulemaking process, requiring differing or additional controls for oil and gas facilities could also provide reductions in hydrocarbon emissions. The Commission could have adopted some or all of the proposed revisions or proposed alternatives. However, the proposed revisions to Regulation Number 7 were developed during a lengthy stakeholder process and provided a balanced approach, reducing emissions from the oil and gas industry while allowing the sector to continue to play a critical role in Colorado's economy and the nation's energy independence. The alternative proposals provided during the rulemaking process were primarily either more or less stringent versions of the proposed revisions, further illustrating the balanced approach of the proposed revisions. Furthermore, a no action alternative would very likely only delay future reductions in hydrocarbon emissions, including ozone precursor pollutants, necessary for reducing ozone in Colorado.

As part of adopting the revisions to Regulation Number 7, the Commission has taken into consideration each of the factors set forth in C.R.S. § 25-7-109(1)(b).

The incorporation by reference of NSPS OOOO in Regulation Number 6 does not affect the requirements of these revisions to Regulation Number 7. Instead, these revisions to Regulation Number 7 are designed and intended to address differences and overlaps between NSPS OOOO and current state requirements, and to include additional emission control measures for oil and gas production and equipment. To the extent that C.R.S. § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of hydrocarbon emissions.

(III) Evidence in the record supports the finding that the rules shall being about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

(V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

XX.O. October 20 & 21, 2016 (Sections I., X., XII., XIII., XVI., XIX.)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4), the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-110 and 25-7-110.5., and the Air Quality Control Commission's ("Commission") Procedural Rules.

Basis

On May 21, 2012, the Denver Metro/North Front Range ("DMNFR") area was designated as Marginal nonattainment for the 2008 8-hour Ozone National Ambient Air Quality Standard ("NAAQS"), effective July 20, 2012 (77 Fed. Reg. 30088). On May 4, 2016, the U.S. Environmental Protection Agency's ("EPA") published a final rule that determined that Colorado's Marginal ozone nonattainment area failed to attain the 2008 8-hour Ozone NAAQS by the applicable Marginal attainment deadline and therefore reclassified the DMNFR area to Moderate and required attainment of the NAAQS no later than July 20, 2018, based on 2015-2017 ozone season data. Due to the reclassification, additional planning requirements were triggered, including the requirement to submit revisions to the State Implementation Plan ("SIP") that address the Clean Air Act's ("CAA") Moderate nonattainment area requirements, as set forth in CAA Section 182(b) and the final SIP Requirements Rule for the 2008 Ozone NAAQS (*See* 80 Fed. Reg. 12264 (March 6, 2015)).

Statutory Authority

The Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., ("Act"), C.R.S. § 25-7-105(1)(a) directs the Commission to promulgate such rules and regulations necessary for the proper implementation and administration of a comprehensive state implementation plan that will assure attainment and maintenance of national ambient air quality standards. Section 25-7-301 directs the Commission to develop a program providing for the attainment and maintenance of each national ambient air quality standard in each nonattainment area of the state. Section 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. Section 25-7-106(1)(c) and (2) also authorize the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution, and monitoring and recordkeeping requirements. Section 109(1)(a) authorizes the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources of air pollutants.

Purpose

The Regional Air Quality Council ("RAQC") and the Colorado Department of Public Health and Environment, Air Pollution Control Division ("Division") have conducted a public process to develop the associated SIP and supporting rule revisions. Separately, EPA has expressed concerns with approving

previous Regulation Number 7 revisions related to oil and gas control requirements and submitted in 2009 and 2013 for inclusion in Colorado's ozone SIP.

In response to these related but separate issues, the Commission revised Regulation Number 7 to strengthen Colorado's ozone SIP; include reasonably available control technology ("RACT") requirements for lithographic and letterpress printing, industrial cleaning solvents, and major sources of volatile organic compounds ("VOC") or nitrogen oxides ("NOx"). Apart from the Moderate nonattainment area ozone SIP, the Commission revised Regulation Number 7 to address EPA's monitoring, recordkeeping, reporting, and other concerns with previously submitted Regulation Number 7 revisions. More specifically, the Commission revised the applicability of Regulation Number 7 in Section I.A.1.; included the existing combustion device auto-igniter requirements in Section XII.C.1.e. and XII.E.2. in Colorado's ozone SIP; included existing audio, visual, olfactory ("AVO") storage tank inspection requirements for condensate storage tanks in Colorado's ozone SIP in Section XII.E.4.e.; updated federal rule references for natural gas processing plants in Section XII.G.1.; renumbered the current Sections XII.G.5. and XII.G.6. under Section XII.I.; added monitoring, recordkeeping, and reporting requirements for glycol natural gas dehydrators in Sections XII.H.5. and XII.H.6.; addressed other EPA concerns in Sections XII.C.1.c., XII.C.1.d., XII.C.2.a.(ii)(B), XII.E.3., and XII.H.4.; added requirements for lithographic and letterpress printing in Section XIII.B.; added requirements for industrial cleaning solvents in Section X.E.; and added requirements for major sources in Sections XVI. and XIX.

The revisions also correct typographical, grammatical, and formatting errors found through the regulation.

The following explanations provide further insight into the Commission's intention for certain revisions and, where appropriate, the technological or scientific rationale for the revision.

Ozone reclassification SIP revisions

Auto-igniter and storage tank AVO

Regulation Number 7, Section XII.C.1.e. includes auto-igniter requirements for combustion devices used to control emissions of VOCs. Pursuant to Section XII.E., the auto-igniter must be inspected weekly to ensure it is properly functioning. Prior to the revision, these requirements were "state-only". The Commission revised these provisions to include the auto-igniter installation, operation, and monitoring requirements in the SIP.

Regulation Number 7, Section XII.E. includes requirements for owners or operators of condensate storage tanks subject to Section XII.D. to inspect combustion devices, vapor recovery units, control devices, and thief hatches. These are SIP requirements. Regulation Number 7, Section XVII.C.1.d. also requires of owners or operators of storage tanks subject to Section XVII. to conduct AVO and additional visual inspection at the same frequency as liquids load-out. The requirements of Section XVI.C.1.d. are enforceable on a "state-only" basis. The Commission revised Section XII. to include in the SIP the requirement that owners and operators conduct AVO inspections of condensate storage tanks with uncontrolled actual VOC emissions of 6 tons per year ("tpy") or greater, making them federally enforceable.

8-hour ozone control area

All provisions of Regulation 7 currently apply to the Denver 1-hour ozone nonattainment and attainment/maintenance area. The 1-hour ozone area does not include all of Adams and Arapahoe counties or the portions of Larimer and Weld counties included in the 8-hour ozone control hour. Therefore, to ensure that all sources in the 8-hour ozone nonattainment area are subject to applicable RACT requirements in Regulation Number 7 on a federally enforceable basis, the Commission revised Regulation Number 7, Section I.A.1.a. to state that all provisions apply to both the 1-hour and 8-hour ozone areas.

Lithographic and letterpress printing RACT

Pursuant to CAA Section 182(b), Colorado's ozone SIP must provide for implementation of RACT at sources of VOC for which EPA has issued a Control Technique Guideline ("CTG"). EPA's Offset Lithographic Printing and Letterpress Printing CTG addresses VOC emissions from the use of fountain solutions, cleaning materials, and inks at lithographic and letterpress printing operations. The CTG recommends controlling VOC emissions from heatset printing with dryer emissions of at least 25 tpy of VOC from heatset inks with add-on control technology. The CTG recommends controlling VOC emissions from cleaning materials and fountain solutions at printing operations with facility emissions equal to or greater than 15 lb/day by limiting the VOC content of cleaning materials and fountain solutions. The CTG also recommends work practices. Colorado has sources in the ozone nonattainment area in this CTG VOC source category but did not have regulatory RACT requirements. Therefore, the Commission included these requirements in Section XIII.B. as RACT. However, rather than an applicability threshold of 15 lbs/day, the Commission adopted an applicability threshold of 3 tpy. The Commission further included a printing ink VOC content limit, work practices, and monitoring and recordkeeping requirements that are not specified as presumptive RACT in the CTG but are intended to correspond to current permit requirements. With respect to the work practice requirement that sources minimize evaporation loss where cleaning materials, fountain solutions, and inks are being used, the Commission notes that this requirement is not intended to prevent sources from using cleaning materials, fountain solutions, and inks in well-ventilated areas when necessary to protect employee health and safety.

Industrial cleaning solvents RACT

EPA's Industrial Cleaning Solvent CTG addresses solvent use in cleaning operations such as spray gun cleaning, spray booth cleaning, large manufactured components cleaning, parts cleaning, equipment cleaning, line cleaning, floor cleaning, tank cleaning, and small manufactured components cleaning. The CTG applies to facilities with VOC emissions from the use of industrial cleaning solvents equal to or greater than 15 lb/day of VOC. The CTG recommends a cleaning solvent VOC content limit and work practices. Colorado has sources in the ozone nonattainment area in this CTG VOC source category but did not have regulatory RACT requirements. Therefore, the Commission included these requirements in Section X.E. as RACT. However, rather than an applicability threshold of 15 lbs/day, the Commission adopted an applicability threshold of 3 tpy. The Commission included language to clarify that VOC emissions that are exempt from the industrial cleaning solvent rule do not count toward this 3 tpy threshold. Therefore, when determining whether a facility meets the applicability threshold of 3 tpy, a source should include facility-wide emissions from all industrial cleaning solvent operations and subtract those emissions that are subject to a federally enforceable emissions requirement. Lastly, the Commission included minimal recordkeeping requirements that are not specified as presumptive RACT in the CTG but are intended to align with current permit recordkeeping requirements.

Major VOC and NOx source RACT

Colorado has major sources of VOC or NOx (sources that emit or have the potential to emit greater than 100 tpy) in the DMNFR. While many of these sources are currently subject to regulatory RACT requirements, some of the sources or emissions points are subject to RACT requirements in federally enforceable permits or New Source Performance Standard ("NSPS") or National Emission Standard for Hazardous Air Pollutants ("NESHAP"). However, as a Moderate nonattainment area, Colorado must specifically identify the major source RACT requirements in the SIP.

Specifically, the Commission adopted a combustion adjustment process for combustion equipment at major sources of NOx in Section XVI.E., expanding on work practices currently required in federal NSPS and NESHAP. The combustion adjustment process was modeled after NESHAP DDDDD, which applies to boilers and process heaters at major HAP sources, and NESHAP ZZZZ, which establishes various requirements for stationary reciprocating internal combustion engines. The combustion adjustment is intended to apply to some equipment that is not subject to work practices under the NESHAPs. The Commission acknowledges that not all equipment subject to Section XVI.D. will be subject to every combustion adjustment process requirement provided in Section XVI.D.2.a.

The Commission also established source specific RACT requirements for major sources of VOC or NOx in the ozone nonattainment area as of January 1, 2017, in Section XIX. In Section XIX.A., the Commission listed all major sources of VOC or NOx subject to the Moderate nonattainment area RACT SIP. The Commission determined that little, if any, additional controls could be implemented by January 1, 2017, as RACT for the major sources of VOC and NOx. The Commission also determined that not all major sources, or major source emission points (using AIRS ID points), were subject to existing regulatory RACT requirements in Regulation Number 7 or federally enforceable emission limits in Colorado's Regional Haze SIP. Therefore, in Section XIX.B., the Commission established source specific requirements for some sources to further satisfy Colorado's RACT obligation for Colorado's major VOC and NOx sources. Sources not specifically included in Section XIX.B., were determined to be subject to other, existing regulatory RACT requirements (see Moderate ozone SIP revision, RACT chapter 6 for additional detail). In establishing RACT for the sources in Section XIX.B. Table 6, the Commission relied on current, federally enforceable requirements in permits or applicable NSPS or NESHAP. Similarly, the Commission relied on federally enforceable permits and applicable NSPS or NESHAP to establish monitoring, recordkeeping, and reporting requirements for sources in Table 6. The Commission intended these monitoring, recordkeeping, and reporting requirements to align with the current, federally enforceable monitoring, recordkeeping, and reporting requirements in source permits.

Current SIP review

In 2009, the Commission submitted revisions to Regulation Number 7, Section XII. to EPA related to the 1997 ozone NAAQS attainment plan. In 2011, EPA approved the attainment demonstration but disapproved portions of the Regulation 7 revisions. In 2013, the Commission submitted revisions to Regulation 7, Section XII. to EPA to address EPA's disapproval. During the review of the 2013 submittal, EPA noted additional concerns with the monitoring, recordkeeping, and reporting requirements for natural gas processing plants and glycol natural gas dehydrators, as well as other concerns unrelated to the attainment demonstration for the SIP revision required following the reclassification of the DMNFR to Moderate Nonattainment.

Natural gas processing plants

Regulation Number 7, Section XII.G.1. identifies a leak detection and repair ("LDAR") program applicable to natural gas processing plants. This "LDAR program" includes all applicable requirements in NSPS KKK. EPA has promulgated new LDAR programs for natural gas processing plants in NSPS OOOO and NSPS OOOOa. Therefore, the Commission updated references to applicable federal NSPS (i.e., NSPS OOOO and NSPS OOOOa) monitoring, recordkeeping, and reporting requirements for natural gas processing plants in the SIP.

Glycol natural gas dehydrators

Regulation Number 7, Section XII.H. includes a 90% control requirement for glycol natural gas dehydrators. This is a SIP requirement. During the review of the 2013 submittal, EPA noted additional concerns with the monitoring, recordkeeping, and reporting requirements for glycol natural gas dehydrators. Therefore, the Commission added monitoring, recordkeeping, and reporting requirements for glycol natural gas dehydrators in the SIP to address EPA's concerns with ensuring compliance with the control requirement.

EPA requested revisions

EPA also noted concerns with other previously submitted provisions in Section XII. EPA requested minor changes to Section XII.C.1.c., and a reversion to previously approved SIP language in Sections XII.C.1.d. and XIII.E.3.a. to address concerns with discretionary language. In response, the Commission revised Section XII.C.1.c. and reverted to previously approved SIP language in Sections XII.C.1.d. and XII.E.3.a., as requested by EPA.

Additional Considerations

Colorado must revise Colorado's ozone SIP to address the ozone Moderate Nonattainment area requirements. The CAA does not expressly require all of the provisions adopted by the Commission. Rather, federal law establishes the 8-hour ozone NAAQS and requires the State to develop a SIP adequate to attain the NAAQS. Therefore, the Commission adopted certain revisions to Regulation Number 7 to ensure attainment with the 2008 8-hour ozone NAAQS and satisfy Colorado's Moderate nonattainment area RACT obligations. The Commission also adopted revisions to Regulation Number 7 to address EPA concerns that are unrelated to the reclassification to Moderate. These revisions do not exceed or differ from the federal act due to state flexibility in developing nonattainment area SIPs; however, in accordance with C.R.S. § 25-7-110.5(5)(b), the Commission nonetheless determines:

(I) The revisions to Regulation Number 7 address combustion device auto-igniters, condensate storage tank inspections, and glycol natural gas dehydrators at oil and gas facilities and equipment leaks at natural gas processing plants. NSPS OOOO, NSPS OOOOa, NSPS Kb, NSPS KKK, NESHAP HH, and NESHAP HHH may also apply to such oil and gas facilities. However, the Regulation Number 7 revisions apply on a broader basis to more storage tanks and glycol natural gas dehydrators. For example, Regulation Number 7 addresses more glycol natural gas dehydrators than the major source provisions of NESHAP HH and HHH as well as more glycol natural gas dehydrators than the area source provisions of NESHAP HH, which are limited to tri ethylene glycol ("TEG") dehydrators. The Commission revised Regulation Number 7 to include glycol natural gas dehydrator monitoring, recordkeeping, and reporting requirements to ensure compliance with the current 90% system-wide control requirement in Section XII.D. Similarly, Regulation Number 7 addresses more storage tanks than the major source provisions of NESHAP HH, as well as NSPS Kb, which exempt certain storage vessels storing condensate or petroleum prior to custody transfer. Regulation Number 7 also addresses a broader set of storage tanks than NSPS OOOO and NSPS OOOOa, which address only those storage tanks with emissions greater than 6 tpy controlled actual emissions (i.e., 120 tpy uncontrolled actual emissions) and do not require auto-igniters on combustion devices. The Commission revised Regulation Number 7 to include the auto-igniter and condensate storage tank AVO inspections in Colorado's SIP to strengthen Colorado's SIP and support Colorado's 2017 emissions inventory. In addition, Regulation Number 7 addresses more equipment leaks at natural gas processing plants than NSPS KKK, which only applies to natural gas processing plants constructed, reconstructed, or modified after January 20, 1984. The Commission revised Regulation Number 7 to reference the more recent equipment leak detection and repair requirements in NSPS OOOO and NSPS OOOOa.

(II) The revisions to Regulation Number 7 also address RACT requirements for lithographic and letterpress printing, industrial cleaning solvents, and major sources of VOC and NOx in Colorado's ozone nonattainment area. EPA published CTGs for lithographic and letterpress printing and industrial cleaning solvents in 2006. The Commission revised Regulation Number 7 to include regulatory RACT requirements for these VOC source categories. Colorado's major sources of VOC and NOx are subject to various and numerous NSPS or NESHAP applicability, Regulation Number 7 RACT requirements, or RACT/beyond RACT analyses. However, while these requirements are included in federally enforceable permits and federally enforceable NSPS and NESHAP, some of the requirements are not currently included in Colorado's SIP, as is required for a moderate nonattainment area. The Commission revised Regulation Number 7 to include regulatory RACT requirements for Colorado's major sources of VOC and NOx. Specifically, the Commission revised Regulation Number 7 to include source specific regulatory RACT requirements and a combustion adjustment process for combustion equipment at major sources of NOx. MACT DDDDD, MACT JJJJJJ, MACT ZZZZ, MACT YYYY, NSPS GG, NSPS KKKK, NSPS IIII, and NSPS JJJJ may apply to such combustion equipment.

However, the Regulation Number 7 revisions apply on a broader basis to more combustion equipment.

(III) The federal rules discussed in (I), are primarily technology-based in that they largely prescribe the use of specific technologies in order to comply. EPA has provided some flexibility in NSPS OOOO and NSPS OOOOa by allowing a storage vessel to avoid being subject to NSPS OOOO if the storage vessel is subject to any state, federal, or local requirement that brings the storage vessel's emissions below the NSPS OOOO threshold.

(IV) The CAA establishes the 8-hour ozone NAAQS and requires the State to develop SIP revisions that will ensure attainment of the NAAQS. The ozone NAAQS was not determined taking into account concerns unique to Colorado. In addition, Colorado cannot rely exclusively on a federally enforceable permit or federally enforceable NSPS or NESHAP to satisfy Colorado's Moderate nonattainment area RACT obligations. Instead, Colorado must adopt RACT into its SIP directly, as the Commission has done here.

(V) Colorado will be required to comply with a lower ozone NAAQS in the near future. These current revisions may improve the ability of the regulated community to comply with new requirements needed to attain the lower NAAQS insofar as RACT analyses and efforts conducted to support the revisions adopted by the Commission may prevent or reduce the need to conduct additional RACT analyses for the more stringent NAAQS.

(VI) EPA has established a January 1, 2017, deadline for this SIP submission. There is no timing issue that might justify changing the time frame for implementation of federal requirements.

(VII) The revisions to Regulation Number 7 Section XII. strengthen Colorado's SIP, which currently addresses emissions from the oil and gas sector in a cost-effective manner, allowing for continued growth of Colorado's oil and gas industry. The revisions to Regulation Number 7 Sections X. and XIII. recognize products and practices currently utilized by printing and cleaning operations. The revisions to Regulation Number 7 Sections XVI. and XIX. are also specific to existing emission points at major sources of VOC and NOx, allowing for continued growth at Colorado's major sources.

(VIII) The revisions to Regulation Number 7 Section XII. establish reasonable equity for oil and gas owners and operators subject to these rules by providing the same standards for similarly situated and sized sources. The revisions to Regulation Number 7 Sections X., XIII., and XVI. similarly establish the categorical RACT requirements for similarly situated and sized sources. Where a source is not subject to a categorical RACT requirement, RACT is, by its nature, determined on a case-by-case basis.

(IX) If Colorado does not attain the 2008 ozone NAAQS by July 20, 2018, EPA will likely reclassify Colorado as a serious ozone nonattainment area, which automatically reduces the major source thresholds from 100 tons per year of VOC and NOx to 50 tons per year; thus subjecting more sources to major source requirements. If EPA does not approve Colorado's SIP, EPA may promulgate a Federal Implementation Plan; thus potentially determining RACT for Colorado's sources. Either of these outcomes may subject others to increased costs.

(X) Where necessary, the revisions to Regulation Number 7 include minimal monitoring, recordkeeping, and reporting requirements that correlate, where possible, to similar federal or state requirements.

(XI) Demonstrated technology is available to comply with the revisions to Regulation Number 7. Some of the revisions expand upon requirements already applicable, such as the requirements for auto-igniters, condensate storage tank inspections, and equipment leaks at natural gas processing plants. Other revisions reflect changes in industry practice and market forces, such as the VOC content of printing materials and cleaning solvents. Similarly, the revisions concerning major sources of VOC and NOx reflect current emission controls and work practices.

(XII) As set forth in the Economic Impact Analysis, the revisions to Regulation Number 7 contribute to the prevention of ozone in a cost-effective manner.

(XIII) Alternative rules could also provide reductions in ozone and help to attain the NAAQS. The Commission determined that the Division's proposal was reasonable and cost-effective. However, a no action alternative would very likely result in an unapprovable SIP.

As part of adopting the revisions to Regulation Number 7, the Commission has taken into consideration each of the factors set forth in C.R.S. § 25-7-109(1)(b).

Colorado must revise Colorado's ozone SIP to address the Moderate Nonattainment area requirements. However, to the extent that C.R.S. § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

(I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.

(II) Evidence in the record supports the finding that the rules shall result in a demonstrable reduction of the ozone precursors VOC and NOx.

(III) Evidence in the record supports the finding that the rules shall being about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.

(IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.

The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

COLORADO
Air Quality Control Commission
Department of Public Health & Environment

REVISED NOTICE OF RULEMAKING HEARING
(revisions to the notice are in redline)

Regarding proposed revisions to:

COLORADO'S STATE IMPLEMENTATION PLAN AND ASSOCIATED REGULATIONS

SUBJECT:
The Air Quality Control Commission will hold a rulemaking hearing to consider a proposed element to Colorado's State Implementation Plan (SIP) and revisions to associated regulations. There are four segments to this rulemaking hearing which will be addressed by the Commission individually:

Moderate Ozone Nonattainment Area SIP Element: proposed SIP Element for the Denver Metro and North Front Range Moderate Ozone Nonattainment Area.

Air Quality Standards, Designations and Emission Budgets: proposed revisions that incorporate new emission budgets for the Denver Metro and North Front Range Ozone Nonattainment Area, and other clarifying revisions.

Regulation Number 7: proposed revisions associated with the moderate ozone nonattainment classification and separate revisions to address EPA concerns with previous SIP rule language submittals. The proposed revisions 1) incorporate State-only requirements for combustion device auto-igniters into the SIP; 2) establish condensate storage tank audio, visual and olfactory inspection requirements; 3) establish Reasonably Available Control Technology (RACT) requirements for both printing operations and general industrial cleaning solvent use; 4) provide for the implementation of RACT for major sources of VOC and NOx; 5) establish RACT for combustion sources; and 6) adjust the applicability of Regulation Number 7 accordingly. The proposed revisions also address EPA's concerns with previous SIP submittals that 1) establish monitoring, recordkeeping and reporting requirements for glycol natural gas dehydrators and natural gas processing plants; 2) remove references to EPA approval of emission factors; and 3) renumber, revise or revert to previously approved SIP language in other provisions. Finally, the proposed revisions make other typographical, grammatical and formatting changes.

Regulation Number 11: proposed revisions associated with the moderate ozone nonattainment classification that remove State-only references in Part A, making the Automobile Inspection and Readjustment (AIR) program currently operating in those portions of Larimer and Weld county that are part of the Denver Metro and North Front Range ozone nonattainment area a federally enforceable requirement of Colorado's SIP.

All required documents for this hearing can be found on the Commission website at: https://www.colorado.gov/pacific/cdphe/aqcc or on the Commission FTP site at: ftp:ft.dphe.state.co.us/apc/aqcc

HEARING SCHEDULE:

DATE: November 17 & 18, 2016
TIME: 9:00 AM
PLACE: Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, Sabin Conference Room
Denver, CO 80246

PUBLIC COMMENT:

The Commission encourages all interested persons to provide their views either orally at the hearing or in writing prior to or at the hearing. The Commission encourages that written comments be submitted by **November 1, 2016** so that Commissioners have the opportunity to review the information prior to the hearing.

Information should be printed and include: your name, address, phone number, email address, and the name of the group that you may be representing (if applicable).

Written submissions should be mailed to:

Colorado Air Quality Control Commission
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, EDO-AQCC-A5
Denver, Colorado 80246

Electronic submissions should be emailed to: cdphe.aqcc-comments@state.co.us

Public testimony will be taken on November 17 & 18, 2016. An approximate time for public comment will be posted in the meeting agenda.

PARTY STATUS:

Any person may obtain party status for the purpose of this hearing by complying with the requirements of the Commission's Procedural Rules. A petition for party status must be filed by electronic mail with the Office of the Air Quality Control Commission no later than close of business on **August 19, 2016.** The petition must: *1) identify the applicant; 2) provide the name, address, telephone and facsimile numbers, and email address of the applicants representative; and 3) briefly summarize what, if any, policy, factual, and legal issues the applicant has with the proposal(s) as of the time of filing the application.* Electronically mailed copies must also be received, by this same date, by the Division staff person and the Assistant Attorneys General representing the Division and the Commission as identified.

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Requests received beyond the stated deadline shall only be considered upon a written motion for good cause shown. The Commission reserves the right to deny party status to anyone that does not comply with the Commission's Procedural Rules.

ALTERNATE PROPOSAL:
The submittal of an alternate proposal must be accompanied by an electronic copy of the alternate proposed rule and all other associated documents as required by the Commission's Procedural Rules, and must be filed by electronic mail with the Office of the Commission by **close of business October 13, 2016**. Alternate proposals must also be filed by electronic mail with the Division staff person and with each of the Assistant Attorneys General.

STATUS CONFERENCE:
A status conference will be held **August 26, 2016 at 1:00 p.m.,** at the Department of Public Health and Environment, Sabin/Cleere Conference Room to ascertain and discuss the issues involved, and to ensure that parties are making all necessary efforts to discuss and resolve such issues prior to the submission of prehearing statements. Attendance at this status conference is mandatory for anyone who has requested party status.

PREHEARING CONFERENCE/PREHEARING STATEMENTS:

Attendance at the prehearing conference is mandatory for all parties to this hearing. A prehearing conference will be held **October 20, 2016 at 9:00 a.m.** at the Department of Public Health and Environment, Sabin/Cleere Conference Room. All parties must submit by electronic mail a prehearing statement to the Commission Office by close of business **October 13, 2016.** In addition, any exhibits to the prehearing statements or alternate proposals must be submitted in a separate electronic transmission to the Commission Office by close of business **October 13, 2016.** Electronically mailed copies of these documents must be delivered by that date to all persons who have been granted party status and to the Division point of contact and each of the Assistant Attorneys General identified above by close of business **October 13, 2016**. Rebuttals to the prehearing statement, and any exhibits thereto, may be submitted to the Commission Office and all other parties by close of business **October 27, 2016**.

EXCEPTIONS TO FILE DOCUMENTS BY ELECTRONIC MAIL:

The Commission's Procedural Rules provide for an exception to file documents by electronic mail. Any person may petition the Commission to file documents in paper copy format if they are unable for any reason to comply with the requirements of the Commission's Procedural Rules. If granted an exception to electronic filing pursuant to the provisions of Subsection III.I.3. of the Commissions Procedural Rules, the applicant for party status shall file an original and fifteen copies in the Office of the Air Quality Control Commission, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246., and shall also deliver copies to each party, the Assistant Attorneys General representing the Commission and Division, and the Division staff person for the proceedings by electronic mail or as otherwise provided by the exception granted under Subsection III.I.3.

STATUTORY AUTHORITY FOR THE COMMISSION'S ACTIONS:

The rulemaking hearing will be conducted in accordance with Sections 24-4-103 and 25-7-110, 110.5 and 110.8 C.R.S., as applicable and amended, the Commission's Procedural Rules, and as otherwise stated in this notice. This list of statutory authority is not intended as an exhaustive list of the Commission's statutory authority to act in this matter.

Moderate Ozone Nonattainment Area SIP Element: C.R.S. § 25-7-105(1)(a) directs the Commission to promulgate such rules and regulations necessary for the proper implementation and administration of a comprehensive SIP that will assure attainment and maintenance of national ambient air quality standards. Section 25-7-301 directs the Commission to develop a program providing for the attainment and maintenance of each national ambient air quality standard in each nonattainment area of the state.

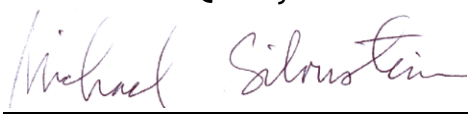
Air Quality Standards, Designations and Emission Budgets: The authority to establish emissions budgets and to establish criteria for transportation conformity determinations is included in the general authority to adopt a SIP set out in Section 25-7-105(1), C.R.S.

Regulation Number 7: The Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., ("Act"), C.R.S. § 25-7-105(1)(a) directs the Commission to promulgate such rules and regulations necessary for the proper implementation and administration of a comprehensive SIP that will assure attainment and maintenance of national ambient air quality standards. Section 25-7-301 directs the Commission to develop a program providing for the attainment and maintenance of each national ambient air quality standard in each nonattainment area of the state. Section 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. Section 25-7-106(1)(c) and (2) also authorize the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution, and monitoring and recordkeeping requirements. Section 109(1)(a) authorizes the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources of air pollutants.

Regulation Number 11: The Commission has the duty and authority to adopt the revisions. 40 C.F.R. § 51.350(4) provides that "Any area classified as moderate ozone nonattainment, and not required to implement enhanced I/M under paragraph (a)(1) of this section, shall implement basic I/M in any 1990 Census-defined urbanized area in the nonattainment area." Further, the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., C.R.S. § 25-7-105(1)(a), 25-7-301, and 25-7-302 direct the Commission to promulgate such rules and regulations necessary for the proper implementation and administration of a comprehensive SIP that will assure attainment and maintenance of national ambient air quality standards. Section 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program.

Dated this 29th day of August 2016 at Denver, Colorado

Colorado Air Quality Control Commission



Michael Silverstein, Administrator

Notice of Proposed Rulemaking

Tracking number

2016-00421

Department

1000 - Department of Public Health and Environment

Agency

1001 - Air Quality Control Commission

CCR number

5 CCR 1001-13

Rule title

REGULATION NUMBER 11 MOTOR VEHICLE EMISSIONS INSPECTION PROGRAM

Rulemaking Hearing

Date

11/17/2016

Time

09:00 AM

Location

Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246

Subjects and issues involved

To consider proposed revisions associated with the moderate ozone nonattainment classification that remove State-only references in Part A, making the Automobile Inspection and Readjustment (AIR) program currently operating in those portions of Larimer and Weld county that are part of the Denver Metro and North Front Range ozone non-attainment area a federally enforceable requirement of Colorados SIP.

Statutory authority

Sections 51.350(4), 257101,257105(1)(a), 257301,and 257302,257106,244103 and 257110,110.5 and 110.8 C.R.S., as applicable and amended.

Contact information

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 11

Motor Vehicle Emissions Inspection Program

5 CCR 1001-13

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

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PART A General Provisions, Area of Applicability, Schedules for Obtaining Certification of Emissions Control, Definitions, Exemptions, and Clean Screening/Remote Sensing

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II. DEFINITIONS

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43. "North Front Range Area" is the portion of the Program Area located in Larimer and Weld Counties as set forth in Section 42-4-304(20) as amended by Senate Bill 09-003. ~~The North Front Range area is a State-Only program and is not part of any State Implementation Plan with the US EPA.~~

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V. EXPANSION OF THE ENHANCED EMISSIONS PROGRAM TO THE NORTH FRONT RANGE AREA

V.A. Program Commencement

Beginning November 1, 2010, unless the Division comes back to the Commission and the Commission agrees to a later date, motor vehicles registered in the North Front Range Area, and vehicles operating in the North Front Range Area that meet the requirements of Section 42-4-310(1)(c)(I), C.R.S. shall be subject to an Enhanced emissions inspection as defined in Section 42-4-304(8.5). Notwithstanding the above, the Estes Park Area, located west of Range Seventy-one (71) West, shall be excluded from the Enhanced Emissions Program. Such inspection shall be the same as the inspection required in the Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson county portions of the Program Area ~~The Vehicle Emissions Inspection program in the North Front Range area is a State-Only program and is not part of any state implementation plan with the US EPA~~.

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PART H Statements of Basis, Specific Statutory Authority and Purpose

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XXXII. AMENDMENTS

ADOPTED OCTOBER 16, 2014

Basis and Purpose

These revisions to Regulation Number 11 are intended to clarify and make more transparent existing provisions, delete obsolete language, delete certain qualifying criteria and standards, and introduce more flexibility to the Automobile Inspection and Readjustment (AIR) Program. The changes primarily relate to recent changes the Air Quality Control Commission (Commission) made to the program that resulted in new requirements that will become effective starting January 1, 2015.

Seven changes were made in this rule making. 1) Changes that removed incomplete and obsolete qualifying criteria for certain vehicles that are unable to be tested on the IM240 chassis dynamometer; 2) modified the use of the roadside remote sensing clean screen 'Low Emitter Index' to allow for greater utilization of this customer convenience element; 3) permitted self-inspecting gasoline vehicle fleets to utilize the more effective and convenient OBD II testing procedure on all 1996 model year and newer vehicles; 4) revised Appendix A and deleted Appendix B that removed obsolete specifications and procedures for inspection analyzer calibration gases; 5) established a definition for Tampering and revised language to clarify and modernize provisions for issuance or repair waivers; 6) corrected certain typographical, grammatical, and formatting errors; and 7) allowed for the use of two remote sensing readings collected at the same location on the same day to qualify vehicles for clean screening, and delegated authority to the Division to authorize or deny the use of same-day observations from a single unit at any given location.

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedures Act, Section 24-4-103, C.R.S., and the statutory authority provided in Sections 42-4-301 through 42-4-316, C.R.S.

Federal Requirements

The current inspection and maintenance program, except in the North Front Range is contained in Colorado's ozone State Implementation Plan (SIP). Any revision to the program requires that air quality credits achieved from the program are not lost.

In general, EPA rules require certain nonattainment areas implement Inspection and Maintenance programs as part of a SIP. Under the Clean Air Amendments of 1990, the Denver metropolitan area was required to implement an "Enhanced" Inspection and Maintenance Program, specifically for carbon monoxide. Since that time, the state has come into attainment with carbon monoxide, but the program remains a necessary element of Colorado's ozone SIP. The North Front Range area of the program operates as a state-only program

Specific Statutory Authority

Sections 42-4-306 (1) and (3)(b)(V)(B) authorize the Commission to remove incomplete and obsolescent qualifying criteria for certain vehicles that are unable to be tested on the IM240. Sections 42-4-307.7 (4) and (6) authorize the Commission to modify roadside remote sensing clean screen 'Low Emitter Index criteria. Section 42-4-306 (14)(b) authorizes the Commission to permit self-inspecting gasoline vehicle fleets to utilize the more effective and more convenient OBD II testing procedures. Section 42-4-306 (3)(a)(1)(A) authorizes the Commission to remove obsolete specifications and procedures for inspection analyzer calibration gases. And, Section 42-4-306 (16)(a)(1) authorizes the Commission to clarify and modernize provisions for issuance of repair waivers.

Findings Pursuant to 25-7-110.8, C. R. S.

Revisions are being made to clarify provisions in the rule and to provide increased program flexibility and convenience. These changes do not increase the regulatory burden on the motoring public, while maintaining the current air quality benefits received from the program, in a cost effective manner, at similar or minimally reduced costs to the current program

The rule is based on reasonably available, validated, reviewed, and sound scientific methodologies. All validated, reviewed, and sound scientific methodologies and information made available by interested parties have been considered. Evidence in the record supports the finding that the rule shall result in a continued demonstrable reduction in air pollution. The rule revision is the most cost-effective alternative, provides the regulated community flexibility, and reduces risks to human health and the environment by achieving necessary reductions in air pollution. The revised rule will maximize the air quality benefits of the regulation in the most cost-effective manner.

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XXXIII. AMENDMENTS

ADOPTED OCTOBER 20 & 21, 2016

Basis and Purpose

The Denver Metro/North Front Range ozone nonattainment area ("DMNFR") did not attain the 2008 ozone NAAQS by the attainment deadline of July 20, 2015; therefore, on May 4, 2016, EPA reclassified the DMNFR as a Moderate Nonattainment area with an attainment date of July 20, 2018. As a Moderate Nonattainment area, Colorado must revise the SIP to include, among other things, an attainment demonstration, baseline year and attainment year inventories, reasonably available control technology ("RACT") and reasonably available control measures ("RACM") requirements, and nitrogen oxides (NOx) and volatile organic compound (VOC) emission offsets ratios for major source permits.

To comply with the Clean Air Act (CAA), the Commission has incorporated the state-only area of the Automobile Inspection and Readjustment (AIR) Program into the State Implementation Plan (SIP). The state-only portions of the AIR Program are those areas located in Larimer and Weld counties. Incorporation of the state-only portions of the AIR Program permits Colorado to take credit for the motor vehicle emissions reductions received from operation of the AIR program in these areas.

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedures Act, Section 24-4-103, C.R.S., the statutory authority provided in Sections 42-4-301 through 42-4-316, C.R.S., and the Commission's Procedural Rules.

Federal Requirements

As a "Moderate" ozone nonattainment area, Colorado is required to operate and maintain a gasoline motor vehicle inspection program. Including the North Front Range area into the ozone SIP allows Colorado to claim full program benefits in Colorado's SIP. The current inspection and maintenance program, except in the North Front Range, is presently contained in Colorado's ozone element of the State Implementation Plan (SIP).

Specific Statutory Authority

The Commission has the duty and authority to adopt the revisions. 40 C.F.R. § 51.350(4) provides that "Any area classified as moderate ozone nonattainment, and not required to implement enhanced I/M under paragraph (a)(1) of this section, shall implement basic I/M in any 1990 Census-defined urbanized area in the nonattainment area."

Further, the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., C.R.S. § 25-7-105(1)(a), 25-7-301, and 25-7-302 direct the Commission to promulgate such rules and regulations necessary for the proper implementation and administration of a comprehensive state implementation plan that will assure attainment and maintenance of national ambient air quality standards. Section 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program.

Findings pursuant to 25-7-110.5(5), C.R.S.

The Commission finds that the revisions adopted do not exceed the requirements of the federal Clean Air Act or differ from the federal act or rules thereunder.

Findings pursuant to § 25-7-110.8, C.R.S.

Colorado must revise its ozone SIP to address the Moderate Nonattainment area requirements. However, to the extent that C.R.S. § 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

a. These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and a technical review of the AIR Program was undertaken that utilized sound scientific principles. The Commission has considered all information submitted by interested parties.

b. Evidence in the record demonstrates the AIR Program areas in Larimer and Weld counties produce demonstrable emission reductions. Extending AIR Program covered by the SIP into these areas will allow the state to take emissions credit in the SIP for these areas.

c. Modifications to Regulation Number 11 will result in benefits to public health and to the environment by making the AIR Program federally enforceable.

d. This action is cost effective and provides flexibility. No program costs are associated with this action.

e. The rule change maximizes benefits to air quality in a cost-effective manner. The rule change ensures keeping the air quality benefits generated in Larimer and Weld counties as part of a federally enforceable SIP, with no additional program costs.

Further, the Commission corrected any typographical, grammatical and formatting errors found within the regulation.

COLORADO
Air Quality Control Commission
Department of Public Health & Environment

REVISED NOTICE OF RULEMAKING HEARING
(revisions to the notice are in redline)

Regarding proposed revisions to:

COLORADO'S STATE IMPLEMENTATION PLAN AND ASSOCIATED REGULATIONS

SUBJECT:
The Air Quality Control Commission will hold a rulemaking hearing to consider a proposed element to Colorado's State Implementation Plan (SIP) and revisions to associated regulations. There are four segments to this rulemaking hearing which will be addressed by the Commission individually:

Moderate Ozone Nonattainment Area SIP Element: proposed SIP Element for the Denver Metro and North Front Range Moderate Ozone Nonattainment Area.

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Regulation Number 7: proposed revisions associated with the moderate ozone nonattainment classification and separate revisions to address EPA concerns with previous SIP rule language submittals. The proposed revisions 1) incorporate State-only requirements for combustion device auto-igniters into the SIP; 2) establish condensate storage tank audio, visual and olfactory inspection requirements; 3) establish Reasonably Available Control Technology (RACT) requirements for both printing operations and general industrial cleaning solvent use; 4) provide for the implementation of RACT for major sources of VOC and NOx; 5) establish RACT for combustion sources; and 6) adjust the applicability of Regulation Number 7 accordingly. The proposed revisions also address EPA's concerns with previous SIP submittals that 1) establish monitoring, recordkeeping and reporting requirements for glycol natural gas dehydrators and natural gas processing plants; 2) remove references to EPA approval of emission factors; and 3) renumber, revise or revert to previously approved SIP language in other provisions. Finally, the proposed revisions make other typographical, grammatical and formatting changes.

Regulation Number 11: proposed revisions associated with the moderate ozone nonattainment classification that remove State-only references in Part A, making the Automobile Inspection and Readjustment (AIR) program currently operating in those portions of Larimer and Weld county that are part of the Denver Metro and North Front Range ozone nonattainment area a federally enforceable requirement of Colorado's SIP.

All required documents for this hearing can be found on the Commission website at: https://www.colorado.gov/pacific/cdphe/aqcc or on the Commission FTP site at: ftp:ft.dphe.state.co.us/apc/aqcc

HEARING SCHEDULE:

DATE: November 17 & 18, 2016
TIME: 9:00 AM
PLACE: Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, Sabin Conference Room
Denver, CO 80246

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Moderate Ozone Nonattainment Area SIP Element: C.R.S. § 25-7-105(1)(a) directs the Commission to promulgate such rules and regulations necessary for the proper implementation and administration of a comprehensive SIP that will assure attainment and maintenance of national ambient air quality standards. Section 25-7-301 directs the Commission to develop a program providing for the attainment and maintenance of each national ambient air quality standard in each nonattainment area of the state.

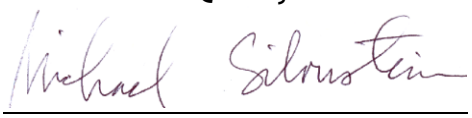
Air Quality Standards, Designations and Emission Budgets: The authority to establish emissions budgets and to establish criteria for transportation conformity determinations is included in the general authority to adopt a SIP set out in Section 25-7-105(1), C.R.S.

Regulation Number 7: The Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., ("Act"), C.R.S. § 25-7-105(1)(a) directs the Commission to promulgate such rules and regulations necessary for the proper implementation and administration of a comprehensive SIP that will assure attainment and maintenance of national ambient air quality standards. Section 25-7-301 directs the Commission to develop a program providing for the attainment and maintenance of each national ambient air quality standard in each nonattainment area of the state. Section 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. Section 25-7-106(1)(c) and (2) also authorize the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution, and monitoring and recordkeeping requirements. Section 109(1)(a) authorizes the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources of air pollutants.

Regulation Number 11: The Commission has the duty and authority to adopt the revisions. 40 C.F.R. § 51.350(4) provides that "Any area classified as moderate ozone nonattainment, and not required to implement enhanced I/M under paragraph (a)(1) of this section, shall implement basic I/M in any 1990 Census-defined urbanized area in the nonattainment area." Further, the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., C.R.S. § 25-7-105(1)(a), 25-7-301, and 25-7-302 direct the Commission to promulgate such rules and regulations necessary for the proper implementation and administration of a comprehensive SIP that will assure attainment and maintenance of national ambient air quality standards. Section 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program.

Dated this 29th day of August 2016 at Denver, Colorado

Colorado Air Quality Control Commission



Michael Silverstein, Administrator

Notice of Proposed Rulemaking

Tracking number

2016-00422

Department

1000 - Department of Public Health and Environment

Agency

1001 - Air Quality Control Commission

CCR number

5 CCR 1001-14

Rule title

AIR QUALITY STANDARDS, DESIGNATIONS AND EMISSION BUDGETS

Rulemaking Hearing

Date

11/17/2016

Time

09:00 AM

Location

Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246

Subjects and issues involved

To consider proposed revisions that incorporate new emission budgets for the Denver Metro and North Front Range Ozone Non-attainment Area, and other clarifying revisions.

Statutory authority

Sections 257105(1), 244103 and 257110, 110.5 and 110.8 C.R.S., as applicable and amended.

Contact information

Name

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Title

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

AIR QUALITY STANDARDS, DESIGNATIONS AND EMISSION BUDGETS

5 CCR 1001-14

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

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V. Emission Budgets for Attainment/Maintenance Areas in the State of Colorado

V.A. Budgets

V.A.1. The following Motor Vehicle Emission Budgets shall be utilized to assess the conformity of Transportation Plans, TIPs, and where appropriate, Projects, for the applicable periods and geographic areas indicated:

Denver Attainment/Maintenance Area (Modeling Domain)	PM10: 2015 through 2021: 54 tons/day; 2022 and beyond: 55 tons/day. Nitrogen Oxides: 2015 through 2021: 70 tons/day; 2022 and beyond: 56 tons/day Trading provisions: Trading of PM10 for NOx, or NOx for PM10 to adjust emission budgets for purposes of demonstrating transportation conformity shall be allowed using the emission trading formula as follows: For trades necessary to increase a primary PM10 budget, 15.0 tons/day of NOx will be taken from the NOx budget to increase the primary PM10 budget by 1.0 tons/day, a ration of 15 to 1. For trades necessary to increase a NOx budget, 1.0 tons/day of primary PM10 will be taken from the primary PM10 budget to increase the NOx budget by 12.0 tons/day, a ratio of 1 to 12. Implementation of trading provisions: In the event the MPO cannot demonstrate consistency with the specific PM10 and NOx mobile source emission budgets, the trading provisions may be utilized only after the MPO has considered all reasonably available local control measures to meet the budgets. The MPO must demonstrate the need for trading through the usual consultation procedures for state implementation plan development delineated in Section IV (F) of AQCC Regulation Number 10, Criteria for

	Analysis of Conformity. If trading is utilized, the MPO shall include the following information in the transportation conformity determination: (1) The budget for primary PM10 and NOx for each required year of the conformity determination, before trading is employed; (2) The portion of the original budget to be used to supplement a wanting budget, for each required year for the conformity determination; (3) The increased budget that results from trading, along with relevant calculations, and (4) the resulting primary PM10 and NOx budgets for each required year of the conformity demonstration. The MPO shall then compare projected emissions to the adjusted PM10 and NOx motor vehicle emission budgets to demonstrate conformity.
Denver Attainment Maintenance Area	Ozone Precursors (attainment/maintenance area boundary) NOx 2002 and beyond 134 tpsd VOC 2002 and beyond 119 tpsd (tpsd = tons per summer day) Carbon Monoxide (attainment/maintenance area boundary) 2013 through 2020: 1625 tons/day; 2021 and beyond: 1600 tons/day.
Denver Metro Area/North Front Range 8-Hour Ozone Nonattainment Area (for the 1997 8-Hour Ozone NAAQS; to be superseded by the emissions budgets associated with the 2008 8-Hour Ozone NAAQS upon the effective date of EPA's determination of adequacy for transportation conformity purposes)	Regional Emissions Budgets NOx: 122.9 tons/day VOCs: 109.2 tons/day Southern Sub-Regional Emissions Budgets NOx: 102.4 tons/day VOCs: 89.7 tons/day Northern Sub-Regional Emissions Budgets NOx: 20.5 tons/day VOCs: 19.5 tons/day
Denver Metro Area/North Front Range 8-Hour Ozone Nonattainment Area (for the 2008 8-Hour Ozone NAAQS; these emissions budgets will supersede the previous	Regional Emissions Budgets NOx: 73 tons/day VOCs: 55 tons/day Southern Sub-Regional Emissions Budgets NOx: 61 tons/day

emissions budgets upon the effective date of EPA's determination of adequacy for transportation conformity purposes)	VOCs: 47 tons/day Northern Sub-Regional Emissions Budgets NOx: 12 tons/day VOCs: 8 tons/day
Aspen Attainment/Maintenance Area	PM10 2023 and Beyond: 1,146 lbs./day
Cañon City	PM10 2020 and Beyond: 1,613 lbs./day
Lamar (Modeling Area)	PM10 2025 and Beyond: 764 lbs./day
Pagosa Springs (Modeling Area)	PM10 2021 and Beyond: 946 lbs./day
Steamboat Springs (Modeling Area)	PM10 2015 through 2023: 21,773 lbs./day PM10 2024 and Beyond: 1,103.2 lbs./day
Telluride (Modeling Area)	PM10 2021 and Beyond: 1,008 lbs./day
Longmont Attainment/Maintenance Area	Carbon Monoxide 2010 through 2014: 43 tons/day 2015-2019: 43 tons/day 2020 and Beyond: 43 tons/day
Colorado Springs Attainment/Maintenance Area	Carbon Monoxide 2010 and Beyond: 531 tons/day
Ft. Collins Attainment/Maintenance Area	Carbon Monoxide 2005 through 2009: 99 tons/day2010 through 2014: 98 tons/day2015 and Beyond: 94 tons/day
Greeley Area Attainment/Maintenance Area	Carbon Monoxide 2005 through 2009: 63 tons/day2010 through 2014: 62 tons/day2015 and Beyond: 60 tons/day

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VIII. STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

VIII.DD. Revision to Emission Budgets for Nonattainment Areas in the State of Colorado

Adopted: October 20 & 21, 2016

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act Sections 25-7-110 and 25-7-110.5, C.R.S. ("the Act").

Basis

The Commission revised the emission budgets contained in the Air Quality Standards, Designations and Emission Budgets Regulation to reflect emission budgets used in the 2008 Ozone SIP for the "Moderate" classification, consistent with federal requirements.

Statutory Authority

The authority to establish emissions budgets and to establish criteria for transportation conformity determinations is included in the general authority to adopt a State Implementation Plan ("SIP") set out in Section 25-7-105(1), C.R.S.

Purpose

Ozone Reclassification

In 2008, the U.S. Environmental Protection Agency ("EPA") revised the 8-Hour Ozone NAAQS. The Clean Air Act requires areas designated nonattainment a NAAQS to adopt or revise their Ozone SIP to make reasonable further progress towards attainment and attain the NAAQS. The Denver Metro/North Front Range nonattainment area ("DM/NFR") was classified as a Marginal Nonattainment Area for the 2008 8-Hour Ozone NAAQS in 2012, with an attainment date of July 20, 2015. The DM/NFR did not attain the 2008 8-Hour- Ozone NAAQS in 2015; therefore, effective June 3, 2016, EPA reclassified the DM/NFR as a Moderate Nonattainment Area with an attainment date of July 20, 2018. *See* 81 Fed. Reg. 26714 (May 4, 2016). A Moderate Nonattainment Area classification requires that the associated SIP include an attainment demonstration, reasonably available control technology ("RACT") and reasonably available control measures ("RACM") requirements, reasonable further progress reductions in volatile organic compound ("VOC") and/or nitrogen oxides ("NOx") emissions in the area, contingency measures should the area fail to meet a milestone or to attain the standard, a vehicle inspection and maintenance program, and NOx and VOC emission offsets ratios for major source permits. As discussed more fully below, the proposed revisions to Section V. of the Air Quality Standards Regulation are necessary to meet reasonable further progress milestones and demonstrate attainment of the 2008 8-Hour Ozone NAAQS.

Motor Vehicle Emission Budgets

Section V. of the Air Quality Standards Regulation contains motor vehicle emission budgets for attainment/maintenance areas in Colorado. Motor vehicle emission budgets are utilized to assess conformity with Colorado's Ozone SIP. Section 176(c) of the Clean Air Act requires that transportation plans, transportation improvement programs ("TIPs"), and projects adopted by a metropolitan planning organization[6] are consistent with ("conform to") the appropriate SIP. Conformity with the appropriate SIP means that the transportation activities will not cause new violations of the NAAQS, worsen existing violations, or delay timely attainment of the NAAQS. Pursuant to EPA regulations implementing Section 176(c) (40 CFR Parts 51 and 93), mobile source emissions resulting from such plans and programs ultimately must be demonstrated to be consistent with the motor vehicle emission budgets set forth in the applicable SIP. *See* 40 CFR Part 93. Motor vehicle emission budgets are required by federal regulations which afford the State flexibility in determining what the budgets should be. *See* 40 CFR 51.390.

The Commission revised the motor vehicle emission budgets to reflect budgets used in the 2008 Ozone SIP for the "Moderate" classification. These emission budgets will supersede the emission budgets associated with the 1997 8-Hour Ozone NAAQS upon the effective date of EPA's determination of adequacy for transportation conformity purposes.

[6] In the DM/NFR Nonattainment Area, the metropolitan planning organization responsible for such projects is the Denver Regional Council of Governments or "DRCOG" and the North Front Range Metropolitan Planning Organization or "NFRMPO."

Specifically, the DM/NFR Nonattainment Area emissions budgets were revised as follows: the regional emissions budget for NOx was changed from 122.9 to 73 tons per day; the regional emissions budget for VOCs was changed from 109.2 to 55 tons per day; the southern sub-regional emissions budget for NOx was changed from 102.4 to 61 tons per day; the southern sub-regional emissions budget for VOCs was changed from 89.7 to 47 tons per day; the northern sub-regional emissions budget for NOx was changed from 20.5 to 12 tons per day, and; the northern sub-regional emissions budget for VOCs was changed from 19.5 to 8 tons per day.

Federal Requirements

The emission budgets established in this rule support the attainment demonstration for the 2008 8-Hour Ozone NAAQS and therefore comply with, and do not exceed, federal requirements.

Findings pursuant to Section 25-7-110.8

The motor vehicle emission budgets are based on EPA-approved methods for calculating VOC and NOx emissions as required by federal regulations. They reduce the potential for air pollution by capping emissions from mobile sources. All methodologies and information made available by interested parties have been considered. In proposing these revisions, the Division chose the most-cost-effective alternative.

Further, the Commission corrected any typographical, grammatical and formatting errors found within the regulation.

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Moderate Ozone Nonattainment Area SIP Element: C.R.S. § 25-7-105(1)(a) directs the Commission to promulgate such rules and regulations necessary for the proper implementation and administration of a comprehensive SIP that will assure attainment and maintenance of national ambient air quality standards. Section 25-7-301 directs the Commission to develop a program providing for the attainment and maintenance of each national ambient air quality standard in each nonattainment area of the state.

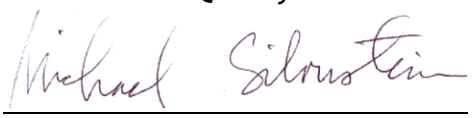
Air Quality Standards, Designations and Emission Budgets: The authority to establish emissions budgets and to establish criteria for transportation conformity determinations is included in the general authority to adopt a SIP set out in Section 25-7-105(1), C.R.S.

Regulation Number 7: The Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., ("Act"), C.R.S. § 25-7-105(1)(a) directs the Commission to promulgate such rules and regulations necessary for the proper implementation and administration of a comprehensive SIP that will assure attainment and maintenance of national ambient air quality standards. Section 25-7-301 directs the Commission to develop a program providing for the attainment and maintenance of each national ambient air quality standard in each nonattainment area of the state. Section 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. Section 25-7-106(1)(c) and (2) also authorize the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution, and monitoring and recordkeeping requirements. Section 109(1)(a) authorizes the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources of air pollutants.

Regulation Number 11: The Commission has the duty and authority to adopt the revisions. 40 C.F.R. § 51.350(4) provides that "Any area classified as moderate ozone nonattainment, and not required to implement enhanced I/M under paragraph (a)(1) of this section, shall implement basic I/M in any 1990 Census-defined urbanized area in the nonattainment area." Further, the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., C.R.S. § 25-7-105(1)(a), 25-7-301, and 25-7-302 direct the Commission to promulgate such rules and regulations necessary for the proper implementation and administration of a comprehensive SIP that will assure attainment and maintenance of national ambient air quality standards. Section 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program.

Dated this 29th day of August 2016 at Denver, Colorado

Colorado Air Quality Control Commission



Michael Silverstein, Administrator

Notice of Proposed Rulemaking

Tracking number

2016-00426

Department

1000 - Department of Public Health and Environment

Agency

1003 - Water Quality Control Commission (1003 Series)

CCR number

5 CCR 1003-2

Rule title

REGULATION NO. 100 - WATER AND WASTEWATER FACILITY OPERATORS CERTIFICATION REQUIREMENTS

Rulemaking Hearing

Date

11/29/2016

Time

09:00 AM

Location

Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246

Subjects and issues involved

Clarifications, grammatical corrections, stylistic changes, simplification of sentences, removal of duplicative and obsolete language, reorganization for a more logical flow and updating of citations; creation of new sections for severability, applicability, automatic exemptions, discretionary exemptions, exceptions; addition of a definition for graywater treatment facility and a requirement for a certified operator for certain graywater treatment works.

Statutory authority

C.R.S. 25-9-101 through 25-9-110

Contact information

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Title

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COLORADO
Water & Wastewater Facility
Operators Certification Board
Department of Public Health & Environment

NOTICE OF PUBLIC RULEMAKING HEARING

BEFORE THE

WATER AND WASTEWATER FACILITY OPERATORS CERTIFICATION BOARD

SUBJECT:

For consideration of proposed revisions to Regulation No. 100, "Water and Wastewater Facility Operators Certification Requirements" (5 CCR 1003-2). The revisions to Regulation No. 100 proposed by the Water Quality Control Division, along with proposed Statement of Basis, Statutory Authority and Purpose, are attached to this notice as Exhibit 1. Proposed new language is shown with double-underlining and proposed deletions are shown with ~~strikeouts~~.

HEARING SCHEDULE:

DATE:	Tuesday, November 29, 2016
TIME:	9:00 a.m.
PLACE:	Florence Sabin Conference Room Colorado Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246

WRITTEN AND ORAL COMMENTS:

The Operators Certification Board encourages all interested persons to provide their opinions or recommendations regarding the matters to be addressed in this rulemaking hearing. Oral comments on the proposed rule will be received at the hearing. Depending on the number of people wishing to speak, a time limit for oral comments may be established.

In order to enhance the Board members' ability to review and consider public comments on the proposal, the submission of written comments in advance of the hearing is strongly encouraged. Initial written comments are due by October 17, 2016 and any written responsive comments must be received by November 16, 2016.

Anyone providing written comments should deliver an electronic copy to cdphe.wwfocb@state.co.us. All written comments will be available to the public on the Board's website.

SPECIFIC STATUTORY AUTHORITY:

The provisions of C.R.S. 25-9-101 through 25-9-110 provide the specific statutory authority for consideration of the regulatory provisions proposed by this notice. Should the Operators

Certification Board adopt the regulatory language as proposed in this notice or alternative provisions, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

Dated this 31st day of August 2016 at Denver, Colorado.

WATER AND WASTEWATER FACILITY OPERATORS CERTIFICATION BOARD

Digitally signed by Trisha Oeth
DN: cn=Trisha Oeth, o, ou=Water Quality Control Commission, email=trisha.oeth@state.co.us, c=US
Date: 2016.08.31 07:37:00 -06'00'

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Trisha Oeth, Administrator

EXHIBIT 1
WATER QUALITY CONTROL DIVISION

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER AND WASTEWATER FACILITY OPERATORS CERTIFICATION REQUIREMENTS

REGULATION NO. 100

5 CCR 1003-2

100.1 AUTHORITY AND PURPOSE

100.1.1 Authority

This regulation is promulgated pursuant to the sections 25-9-101 through 110, C.R.S.

100.1.2 Purpose

Article 9 of Title 25, C.R.S., requires that every water treatment facility, domestic or industrial wastewater treatment facility, wastewater collection system and water distribution system be under the supervision of a certified operator, holding a certificate in a class equal to or higher than the class of the facility or system.

Certification under this statute is available to all persons who meet the minimum qualifications of a given classification as described in section 100.~~9~~13. Operators are encouraged to apply for certification in the highest classification consistent with their qualifications.

100.1.3 Severability

The provisions of these regulations are severable. If any regulation, rule, section, paragraph, or other portion of the *Water and Wastewater Facility Operators Certification Requirements* is, for any reason, held inoperative, unconstitutional, void or invalid, the validity of the remaining portions shall not be affected.

100.1.4 Applicability

The *Water and Wastewater Facility Operators Certification Requirements* apply to:

(a) Each person who meets the qualification for certification.

(b) The owners of water and wastewater facilities.

(c) In accordance with Article 9 of Title 25, section 104.4, C.R.S., the Board has the authority to exempt certain water and wastewater facilities from operating under the supervision of a certified operator in responsible charge if the exemption does not endanger the public health or the environment.

100.1.5 Automatic Exemptions

(a) The following facilities are exempt from the requirement to operate under the supervision of a certified operator in responsible charge:

(i) Water treatment facilities that are not "public water systems" subject to the *Colorado Primary Drinking Water Regulations*, 5 CCR 1002-11.

(ii) Water distribution systems whose entire distribution system falls within the jurisdiction of the *Water Well Construction and Pump Installation Contractors Act*, C.R.S. 37-91-101, et seq.

(iii) Water distribution systems that are not "public water systems" subject to the *Colorado Primary Drinking Water Regulations*, 5 CCR 1002-11.

(iv) Industrial wastewater treatment facilities that satisfy the following criteria:

(A) The quality of the wastewater discharged is such that discharge permit limits can be met utilizing only passive treatment (treatment in which chemical, mechanical, or biological treatment techniques are not utilized) or no treatment;

(B) The facility has designated a responsible person who is specifically responsible for overseeing the facility's operation and for ensuring compliance with the facility's discharge permit, including monitoring and reporting requirements. "Responsible person" means an individual, designated by the owner of a wastewater facility, who is specifically responsible for overseeing the facility's operation and for ensuring compliance with the facility's discharge permit and who receives relevant training with respect to these duties including, as appropriate, specific measures used to meet effluent limits, monitoring, inspection, planning, reporting, and documentation requirements; and

(C) Discharge under one of the following general industrial permits:

(I) Industrial stormwater permit,

(II) Construction stormwater permit,

(III) Municipal stormwater permit,

(IV) Industrial facilities that discharge under the following general permits:

(1) Construction Dewatering Activities;

(2) Aquatic Animal Production;

(3) Sand and Gravel Process Water and Stormwater;

(4) Minimal Industrial Discharge;

(5) Subterranean Dewatering and Well Development;

(6) Hydrostatic Testing of Pipelines,

(7) Tanks and Similar Vessels;

(8) Non-Contact Cooling Water;

(9) Pesticides; or

(10) Commercial Washing of Outdoor Structures.

(v) Category A, B, and C graywater treatment facilities as defined in *Graywater Control Regulation*, 5 CCR 1002-86.

(b) Facilities that discharge pursuant to a general industrial permit for Water Treatment Plant Wastewater Discharge are not required to be under the supervision of a industrial wastewater treatment certified operator in responsible charge if the facility is under the supervision of a water treatment certified operator in responsible charge who is specifically responsible for overseeing the facility's operation and for ensuring compliance with the facility's discharge permit, including monitoring and reporting requirements.

100.1.6 Discretionary Exemptions

~~100.6.1(b)(iii)~~(a) ~~A facility which discharges pursuant to either an individual industrial wastewater discharge permit or a general industrial permit not listed in 100.6.1(b)(i) above may request classification by the Board as a class 2 facility.~~Wastewater Facilities - Any wastewater facility that does not qualify for an automatic exemption under section 100.1.5 may request an exemption from the Board from the requirement to operate under the supervision of a certified operator in responsible charge. In determining whether to grant such an exemption, the Board may consider:

(i) Discharges of limited duration;

(ii) The sensitivity of the receiving waters;

(iii) The level of toxic pollutants in the discharge;

(iv) Situations where chemical, mechanical, or biological treatment techniques are not required to meet permit limits, including sedimentation ponds at mining operations for construction materials, as defined by section 34-32.5-103 (3), C.R.S.;

(b) Water Facilities - Any water facility that does not qualify for an automatic exemption under section 100.1.5 may request an exemption from the Board from the requirement to operate under the supervision of a certified operator in responsible charge. In determining whether to grant such an exemption, the Board may consider:

(i) The classification of the facility as public or nonpublic under the *Colorado Primary Drinking Water Regulations, 5 CCR 1002-11*;

(ii) The applicability of the *Colorado Primary Drinking Water Regulations*, 5 CCR 1002-11, to the facility or class of facilities; and

(iii) A distribution system having a minimal number of connections.

(c) Industrial Wastewater Treatment Facilities - Any industrial wastewater treatment facility that does not qualify for exemption under section 100.1.5 may request exemption from the requirement to operate under the supervision of a certified operator in responsible charge. In determining whether to grant such an exemption, the facility must demonstrate to the Board's satisfaction that:

(i) The quality of the industrial wastewater discharged is such that discharge permit limits can be met utilizing only passive treatment (treatment in which chemical, mechanical, or biological treatment techniques are not utilized) or no treatment; and

(ii) The facility has designated a responsible person who is specifically responsible for overseeing the facility's operation and for ensuring compliance with the facility's discharge permit, including monitoring and reporting requirements. "Responsible person" means an individual, designated by the owner of an industrial wastewater facility, who is specifically responsible for overseeing the facility's operation and for ensuring compliance with the facility's discharge permit and who receives relevant training with respect to these duties including, as appropriate, specific measures used to meet effluent limits, monitoring, inspection, planning, reporting, and documentation requirements.

(~~v~~d) The Division shall evaluate a written request for exemption from the facility and shall provide the Board with a ~~classification~~ recommendation based ~~up~~on the criteria in ~~part (A) of this subsection and upon the criteria listed in sections 25-9-104(4)(a) through (d), C.R.S.~~ sections 100.1.6(a-c), as appropriate.

~~100.6.1(b)(iii)(C)~~(~~v~~ie) The Board shall approve or deny such ~~classification~~ requests at a regularly scheduled Board meeting.

~~100.6.1(b)(iv)~~(~~v~~iif) The Board has the authority to ~~reclassify~~ remove a facility exemption~~any facility~~ if the facility fails to comply with the requirements of its discharge permit or if the facility's operational practices result in a direct, negative impact on the public health or the environment.

~~100.6.1(b)(ii)~~(g) If at any time the facility does not meet the applicable conditions of section~~s 100.6.1(b)(ii)~~100.1.6(a-c), the facility must notify the Division, in writing, and begin operating under the supervision of a certified operator in responsible charge within 30 days of the change in operations.

100.1.7 Exceptions

The Board may make exceptions to this regulation, if the exception is not in conflict with its enabling statute, sections 25-9-101 et. seq., C.R.S., and does not endanger public health or the environment~~, through an adjudicatory hearing process~~ in accordance with section ~~100.~~24-4-105, C.R.S.

100.2 DEFINITIONS

(1) "BOARD" means the Water and Wastewater Facility Operators Certification Board created by section 25-9-103, C.R.S.

(2) "CERTIFICATE" means the certificate of competency issued by the Board stating that the operator named thereon has met the requirements for the specified classification of the certification program.

(3) "CERTIFIED OPERATOR" means any person who has responsibility for the operation of any water and wastewater facility and is certified in Colorado as a "Certified Water Professional" ("CWP") in accordance with the provisions of this regulation. For purposes of this regulation, having "responsibility for the operation" of a water and wastewater facility refers generally to being qualified to perform various operational activities at such facilities in the capacity of a CWP.

(4) "CERTIFIED OPERATOR IN RESPONSIBLE CHARGE" means the certified operator ~~who is~~ designated by the water or wastewater facility owner to be responsible for making process control and/or system integrity decisions about water quality or quantity that may affect public health or the environment. A facility owner may designate one or more certified operators to serve in this capacity. Such an operator must be certified at a level equal to or higher than the classification of the facility he or she is operating.

(5) "CLASSIFICATION OF A WATER OR WASTEWATER FACILITY" means the level of operational complexity and/or size of a water or wastewater facility as determined by the Division.

(6) "DEPARTMENT" means the Colorado Department of Public Health and Environment.

(7) "DIVISION" means the Water Quality Control Division within the Colorado Department of Public Health and Environment.

(8) "DOMESTIC WASTEWATER TREATMENT FACILITY" means any facility or group of units used for the treatment of domestic wastewater or for the reduction and handling of solids and gases removed from such wastes, whether or not such facility or group of units is discharging into state waters. "Domestic wastewater treatment facility" specifically excludes on-site wastewater treatment systems.

(9) "GRAYWATER TREATMENT FACILITY" means a graywater treatment works as defined in the *Graywater Control Regulation*, 5 CCR 1002-86.

(10) "INDUSTRIAL WASTEWATER TREATMENT FACILITY" means any facility or group of units used for the pretreatment, treatment, or handling of industrial waters, wastewater, reuse water, and wastes that are discharged into state waters. "Industrial wastewater treatment facility" includes facilities that clean up contaminated ground water or spills; except that such term does not include facilities designed to operate for less than one year or facilities with in-situ discharge.

(~~10~~11) "OPERATOR" means any person who performs activities and/or tasks pertinent to the operation of a water or wastewater facility. An operator may or may not be certified.

(~~11~~12) "OWNER" means (a) the supplier of water as defined in 5 CCR 1002-11; (b) the person or persons required to apply for a discharge permit in accordance with 5 CCR 1002-61; or (c) the person with legal responsibility for a wastewater collection system or a graywater treatment facility. For purposes of this definition, "person" means an individual, corporation, partnership, association, state or political subdivision thereof, federal agency, tribal agency, state agency, municipality, commission, or interstate body.

(~~12~~13) "PLANT DESIGN FLOW" means the maximum flow rate (water) or the hydraulic capacity (wastewater) approved for a water or wastewater treatment facility by the Division.

(~~13~~14) "TRAINING UNIT" means the credit given for an increment of training approved as applicable to the fulfillment of certificate renewal requirements. Ten contact hours shall be required to equal one training unit. A "contact hour" means a classroom or supervised hour of attendance or hour of participation recognized by the Board as a training unit.

(~~14~~15) "VALIDATED EXAMINATION" means an examination that is independently reviewed by subject matter experts to ensure that the examination is based on a job analysis and is related to the classification of the system or facility.

(~~15~~16) "WASTEWATER COLLECTION SYSTEM" means a system of pipes, conduits, and associated appurtenances that transports domestic wastewater from the point of entry to a domestic wastewater treatment facility. The term does not include collection systems that are within the property of the owner of the facility.

(~~16~~17) "WASTEWATER TREATMENT FACILITY" means either a domestic wastewater treatment facility or an industrial wastewater treatment facility.

(~~17~~18) "WATER AND/OR WASTEWATER FACILITY" means a water treatment facility, domestic wastewater treatment facility, industrial wastewater treatment facility, water distribution system, or wastewater collection system.

(~~18~~19) "WATER DISTRIBUTION SYSTEM" means any combination of pipes, tanks, pumps, or other facilities that delivers water from a source or treatment facility to a consumer.

(~~19~~20) "WATER TREATMENT FACILITY" means the facility or facilities within the water distribution system that can alter the physical, chemical, or bacteriological quality of the water.

100.3 ~~ADMINISTRATIVE FUNCTIONS~~WATER QUALITY CONTROL DIVISION AND CONTRACTOR DUTIES; APPEALS OF DETERMINATIONS

100.3.1 The Colorado Water Quality Control Division oversees state-wide implementation of this regulation with respect to owner compliance and operator discipline. The local city, city and county, or county with a local graywater control program has exclusive enforcement authority regarding compliance with the ordinance or resolution and, if applicable, rule, including the certified operator in responsible charge requirements for graywater facilities.

100.3.~~2~~1 In carrying out its responsibilities to administer the operator certification program pursuant to Article 9 of Title 25, C.R.S., the Board may select and appoint, through contract, one or more independent nonprofit corporations ("contractors") to~~or its designee may~~ carry out ~~any of~~ the following duties, including but not limited to:

(a) administering the operator certification program;

(b) with the prior approval of the Board for each agreement, a nonprofit corporation contracted by the ~~B~~board may enter into subsidiary agreements with other nonprofit corporations, educational institutions, and for-profit corporations to carry out the duties assigned by the Board.

(~~b~~c) collecting program fees for administration of the operator certification program;

(~~c~~d) administering validated examinations for operator certification;

(~~d~~e) maintaining records of certified operators;

~~(e) maintaining records of water and wastewater facilities;~~

(f) notifying operators of expiration of certificates;

(g) providing information on accredited training programs and training requirements;

(h) preparing and/or furnishing validated examinations and related materials;

(i) collecting fees for examinations and administration of examinations;

(j) setting times, dates, and places for holding examinations;

(k) ensuring the accurate and unbiased grading of examinations;

(l) evaluating work experience of applicants;

(m) evaluating and approving training units for renewal of certificate;

(n) evaluating and ~~approving~~ making recommendations for requests for certification based upon reciprocity;

(o) recording results of examinations;

(p) notifying applicants of their examination results;

(q) recommending issuance of certificates or issuing certificates in accordance with Board criteria; or

~~(r) conducting failed exam reviews; or~~

(~~s~~r) preparing and distributing annual reports.

100.3.3 The Board retains the final authority for all actions and decisions carried out on behalf of the Board by a nonprofit corporation, educational institution, or for-profit corporation.

100.3.4 Any ~~certified operator, certified operator in responsible charge, or other~~ person affected or aggrieved by a decision of the Division or the Board's contractor(s) may request a hearing before the Board within thirty (30) days of notice of such decision by submitting a request containing the following information:

(a) identification of the person(s) requesting the hearing and the subject matter of the request;

(b) the statutory and/or regulatory authority and factual basis for the request; and

(c) the relief requested.

~~100.21.3~~100.3.5 The Board shall grant any hearing request made pursuant to section 100.3.4 ~~100.21.1 or 100.21.2 of this regulation~~ and shall schedule and conduct an adjudicatory hearing in accordance with section 24-4-105, C.R.S.

100.4 WATER TREATMENT FACILITY CLASSIFICATION

100.4.1 Water treatment facilities shall be classified in accordance with the following four classes; Class D, Class C, Class B, or Class A. Class A is the highest level of classification and Class D is the lowest level of classification. The Division may make changes in classification in accordance with the needs created by particular complexities of any specific water treatment facility based on consideration of facility specific factors, including, but not limited to:

(a) special features of design;

(b) source of supply which make operation more difficult than normal; or

(c) a combination of such conditions.

100.4.2 Table – Criteria for Water Treatment Facility Classes A, B, C, and D

	Plant Design Flow (in MGD)			
Description of the Facility	Below 2	2 – 5	5.01 – 9.99	10 or more
Ground Water Systems	.	.	.	.
(a) Ground water source with no treatment or with no additional treatment beyond chlorine disinfection.	D	D	C	B
(b) Ground water source with ultraviolet or ozone disinfection.	D	C	C	B
(c) Ground water source utilizing chemical addition and/or a treatment technology (for example, ion exchange, reverse osmosis, membrane filters, or activated carbon) for the specific purpose of meeting secondary drinking water standards.	C	C	B	B
All Water Systems				
(d) Any source utilizing bag or cartridge filtration to comply with primary drinking water standards[1]. "Bag or cartridge filtration" means a filtration system consisting of a fixed filter housing into which flexible (bag) or rigid (cartridge) filters are inserted. Both bag and cartridge filters are disposable and cannot be backwashed or re-used.	D	--	--	--

(e) Any source utilizing a treatment technology (for example, slow sand, diatomaceous earth, membrane filtration, ion exchange, activated carbon filtration, reverse osmosis) with disinfection to comply with primary drinking water standards and which is not listed in sections 100.4.2(d) or 100.4.2(f) ~~of this regulation~~.	C	B	B	A
(f) Any source utilizing conventional or direct filtration with disinfection to comply with primary drinking water standards. "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal. "Direct filtration treatment" means a series of processes including coagulation and filtration, but excluding sedimentation, resulting in substantial particulate removal.	B	A	A	A
Chemical Addition	.	.	.	.
(g) Any source utilizing chemical treatment for the specific purpose of complying with secondary drinking water standards[2].	C	C	B	B
(h) Any source utilizing additional chemical treatment, with the exception of corrosion control in the distribution system and disinfection for the specific purpose of complying with primary drinking water standards[1].	B	B	A	A
(i) Any source utilizing chemical treatment for the specific purpose of controlling corrosion (i.e., lead and copper) in the distribution system.	C	C	B	B
(j) Any source utilizing fluoridation.	C	C	C	B
Other	.	.	.	.
(k) Water vending machines connected to a public water system that does not currently meet primary drinking water standards[1].	C	C	C	C

[1] "Primary drinking water standard" means any of the set of enforceable maximum contaminant levels for drinking water regulated under the Colorado Primary Drinking Water Regulations, 5 CCR 1002-11.

[2] "Secondary drinking water standard" means any of the set of secondary maximum contaminant levels for drinking water regulated under the Colorado Primary Drinking Water Regulations, 5 CCR 1002-11. These standards are not enforceable, but are intended as guidelines.

100.4.3 The classification of any water treatment facility may be changed at the discretion of the Division ~~by reason of~~based on changes in any condition or circumstance ~~on which~~since the last classification ~~was predicated~~ determination.

100.4.4 Any drinking water treatment facility that utilizes a combination of two or more of the treatment processes described in section 100.4.2 ~~of this regulation~~ shall be classified in accordance with the highest level of treatment process utilized.

100.4.5 Water treatment facilities that ~~are not "public water systems" subject to the *Colorado Primary Drinking Water Regulations*, 5 CCR 1002-11, shall be exempt from the requirement to operate under the supervision of a certified operator in responsible charge, and thus~~ meet the exemption criteria in section 100.1.5(a) are exempt from the requirement to operate under the supervision of a certified operator in responsible charge and shall not be classified.

100.5 DOMESTIC WASTEWATER TREATMENT FACILITY CLASSIFICATION

100.5.1 Domestic wastewater treatment facilities and category D non-single family, indoor toilet and urinal flushing graywater treatment facilities shall be classified in accordance with the following four classes: Class D, Class C, Class B, or Class A. Class A is the highest level of classification and Class D is the lowest level of classification. The Division may make changes in classification in accordance with the needs created by particular complexities of any specific domestic wastewater treatment facility based on consideration of facility specific factors, including, but not limited to:

(a) design features or other characteristics that make the facility more difficult to operate than usual;

(b) facility design flow;

(c) the character and volume of wastes to be treated;

(d) the facility's design being approved under the Department's variance procedure;

(e) a waste unusually difficult to treat;

(f) flow conditions, use classifications and/or water quality standards assigned to the waters receiving the treated effluent that require an unusually high degree of plant operational control in order to meet permit conditions; or

(g) combinations of such conditions or circumstances.

100.5.2 Table – Criteria for Domestic Wastewater Treatment Facility Classes A, B, C, and D

Description of the Facility	Plant Design Flow (in MGD)				
	Below 0.5	0.5-1.00	1.01-2.00	2.01-4.00	Above 4.00
(a) Waste stabilization ponds, including aerated and non-aerated types	D	C	C	B	B
(b) Trickling filter or rotating biological contactor	C	C	B	B	A
(c) Extended aeration process sequencing batch reactors (SBR)	C	B	B	B	A

designed to operate in the extended aeration loading range.					
(d) All other activated sludge processes and extended aeration where used beyond secondary treatment (i.e., nitrification) and chemical and/or physical processes providing a high degree of treatment other than polishing ponds.	B	B	B	B	A
(e) Recirculating sand filtration	D	C	C	C	C
(f) Wetlands used as a part of the water treatment process	Will be classified in alignment with the last treatment process prior to release of the effluent into the wetland for further treatment.				

100.53 The classification of any domestic wastewater treatment facility may be changed at the discretion of the Division ~~by reason of~~ based on changes in any condition or circumstance ~~on which~~since the last classification ~~was predicated~~ determination.

100.5.4 Any domestic wastewater treatment facility that utilizes a combination of two or more of the treatment processes described in section 100.5.2 ~~of this regulation~~ shall be classified in accordance with the highest level of treatment process utilized.

100.6 INDUSTRIAL WASTEWATER TREATMENT FACILITY CLASSIFICATION

~~100.6.1 Classification~~

~~(a) Industrial wastewater treatment facilities shall be classified as Class 1 or Class 2 facilities. Class 2 facilities shall be exempt from the requirement to operate under the supervision of a certified operator in responsible charge. Facilities not classified as Class 2 facilities shall be classified as Class 1 facilities.~~

~~(b) Class 2 Facilities~~

~~(i) Class 2 facilities shall include facilities:~~

~~(c) Class 1 Industrial Wastewater Treatment Facilities.~~

100.6.1 ~~Class 1 i~~Industrial wastewater treatment facilities shall be ~~further~~ classified in accordance with the following four classes: Class D, Class C, Class B, or Class A. Class A is the highest level of classification and Class D is the lowest level of classification. The Division may make changes in classification in accordance with the needs created by particular complexities of any specific industrial wastewater treatment facility based on consideration of facility specific factors, including, but not limited to:

(a) design features or other characteristics that make the plant more difficult to operate;

(b) treatment of a waste that is unusually difficult to process adequately;

(c) flow conditions, use classifications and/or water quality standards assigned to the waters receiving the treated effluent requiring an unusually high degree of plant operation control in order to meet permit conditions; or

(d) any combination of the above conditions or circumstances.

100.6.2 Table – Criteria for Industrial Wastewater Treatment Facility Classes A, B, C, and D ~~(under the "Class 1" Category)~~

CLASSIFICATION	TREATMENT PROCESS[1]
Class A	Chemical conversion (e.g., cyanide destruction, hexavalent chromium reduction); Ion exchange; Electrolytic conversion; Filtration by reverse osmosis.
Class B	Chemical coagulation and flocculation; Adsorptive processes (e.g., activated carbon); Ultrafiltration; Microfiltration; Chemical precipitation; Suspended, fixed, or a combination of biological processes (e.g., activated sludge, trickling filters, rotating biological contactors).
Class C	Standard clarification (including waste ponds for settling that regularly utilize chemical addition); Filtration (e.g., mixed media, pressure); Neutralization; Solids Dewatering (e.g., sand or surfaced drying beds, mechanical); Airstripping; Sludge Digestion.
Class D	Particulate settling ponds; Simple gravity flow filtration without chemical addition; Physical water/gas separation without chemical addition; Cooling water discharge without chemical addition.

[1] Treatment processes are listed as examples and are not all inclusive.

100.6.3 The classification of any ~~Class 1~~ industrial wastewater treatment facility may be changed at the discretion of the Division ~~by reason of~~based on changes in any condition or circumstance~~s on which~~ since the last classification ~~was predicated~~ determination.

100.6.4 Any ~~Class 1~~ industrial wastewater treatment facility that regularly utilizes a combination of two or more of the treatment processes described in section 100.6.2 ~~of this regulation~~ shall be classified in accordance with the highest level of treatment process utilized.

100.6.5 Industrial wastewater treatment facilities that meet the automatic exemption criteria in section 100.1.5(a) are exempt from the requirement to operate under the supervision of a certified operator in responsible charge and shall not be classified.

~~100.6.1(b)(ii)If at any time the facility does not meet the conditions of section 100.6.1(b)(i), the facility must notify the Division, in writing, and begin operating under the supervision of a certified operator in responsible charge within 30 days of the change in operations.~~

100.7 WATER DISTRIBUTION SYSTEM CLASSIFICATION

100.7.1 Water distribution systems shall be classified in accordance with the following four classes: Class 1, Class 2, Class 3 or Class 4. Class 4 is the highest level of classification and Class 1 is the lowest level of classification. The Division may make changes in classification in accordance with the needs created by particular complexities of any specific water distribution system based on consideration of system specific factors, including, but not limited to:

(a) unusual factors affecting the complexity of transmission, mixing of sources, or potential public health hazards;

(b) size and/or length of the system's water mains;

(c) whether or not there are automatic control valves, including but not limited to, pressure reducing or altitude valves;

(d) number and/or size and/or types of meters;

(e) existence of storage tanks in the system;

(f) existence of multiple pressure zones;

(g) maximum pressure in the system;

(h) existence of booster stations;

(i) number of service connections; or

(j) quantity of water distributed.

100.7.2 Table – Criteria for Water Distribution System Classes 1, 2, 3, and 4

CLASS	POPULATION SERVED
Class 1	3,300 or Less
Class 2	3,301 - 25,000
Class 3	25,001 – 100,000
Class 4	Over 100,000

100.7.3 The classification of any water distribution system may be changed at the discretion of the Division ~~by reason of~~ based on changes in any condition or circumstance~~s on which~~since the last classification ~~was predicated~~ determination.

100.7.4 Water distribution systems that meet the exemption criteria in section 100.1.5(a) are exempt from the requirement to operate under the supervision of a certified operator in responsible charge and ~~are not "public water systems" subject to the *Colorado Primary Drinking Water Regulations*, 5 CCR 1002-11, shall be exempt from the requirement to operate under the supervision of a certified operator in responsible charge, and thus~~ shall not be classified.

~~100.7.5 An entire distribution system that falls within the jurisdiction of the *Water Well Construction and Pump Installation Contractors Act*, C.R.S. 37-91-101, et seq., shall be exempt from the requirement to operate under the supervision of a certified operator in responsible charge, and thus shall not be classified.~~

100.8 WASTEWATER COLLECTION SYSTEM CLASSIFICATION

100.8.1 Wastewater collection systems shall be classified in accordance with the following four classes: Class 1, Class 2, Class 3 or Class 4. Class 4 is the highest level of classification and Class 1 is the lowest level of classification. The Division may make changes in classification in accordance with the needs created by particular complexities of any specific wastewater collection system based on consideration of facility specific factors, including, but not limited to:

(a) any unusual factors affecting the complexity of collection;

(b) whether there is the potential for mixing of sources; or

(c) the presence of any potential public health hazards.

100.8.2 Table – Criteria for Wastewater Collection System Classes 1, 2, 3, and 4

CLASS	POPULATION SERVED
Class 1	3,300 or Less
Class 2	3,301 - 25,000
Class 3	25,001 – 100,000
Class 4	Over 100,000

100.8.3 The classification of any wastewater collection system may be changed at the discretion of the Division ~~for~~ based on changes in any condition or circumstance~~s on which~~since the last classification ~~was predicated~~ determination.

100.~~18~~9 RESPONSIBILITIES AND DUTIES OF WATER AND WASTEWATER FACILITY OWNERS

100.~~9~~18.1 Supervision by a Certified Operator in Responsible Charge

(a) No owner of a water or wastewater facility shall allow the facility to be operated without the direct supervision of one or more certified operators in responsible charge.

"Direct supervision" means that the certified operators in responsible charge have supervisory responsibility and authority with respect to the operation of the water or wastewater facility and for the activities and functions of other facility operators.

(b) The owner designates the certified operators in responsible charge of the water or wastewater facility by completing and submitting the appropriate division contact update form.

(c) Owners shall ensure that their agreements with the certified operators in responsible charge are sufficiently detailed and formal to reflect all the duties as outlined in section 100.~~16~~11.

(d) Contracts for limited services do not fulfill the owner's obligation, under section 100.~~18~~9.1(a), to place the facility under the supervision of one or more certified operators in responsible charge. Contracts for limited services, such as compliance sampling, do not rise to the level of a contract for a certified operator in responsible charge.

100.9~~18~~.2 Decisions Reserved to Certified Operator in Responsible Charge

Each owner of a water or wastewater facility shall ensure that all process control and/or facility integrity decisions about water quality or quantity or wastewater effluent quality or quantity that may affect public health or the environment are made by either a certified operator in responsible charge or by another operator certified at a level equal to or above the classification of the facility he or she is operating in accordance with the facility's written operating plan as described in section 100.~~16~~11.6.

100.9~~18~~.3 Availability of Certified Operator in Responsible Charge

Each owner of a water or wastewater facility shall ensure that a certified operator in responsible charge is available or ensure that operations are conducted in accordance with the facility's written operating plan as described in section 100.~~16~~11.6 whenever the facility is in operation.

Available" means either on-site or able to be contacted as needed to make decisions and to initiate appropriate actions in a timely manner.

100.9~~18~~.4 Reporting Requirement

Each owner of a water or wastewater facility shall submit the appropriate division contact update form, no later than thirty (30) days following the date the facility is initially placed on-line and thereafter, no later than thirty (30) days after changes to any of the following information:

(a) name, mailing address, phone number, and email address (if available) of the facility legal representative providing the information;

(b) full legal name and operator identification number of the certified operators in responsible charge;

(c) identification of the facility or facilities for which each certified operator in responsible charge has responsibility; or

(d) the Public Water System Identification (PWSID) number, the Colorado Discharge Permit System (CDPS) permit number, or general permit certification number for all facilities listed.

100.~~18~~9.5 Certified Operator in Responsible Charge Certification Requirements

(a) Each water and wastewater facility shall have at least one certified operator in responsible charge certified as shown in the following table:

(b) Table – Criteria for Certified Operator in Responsible Charge

Facility or System Classification	Certified Operator in Responsible Charge Minimum Required Certification Levels
Water ~~Systems~~Facilities	
Water Treatment	
A	A
B	A or B
C	A, B, or C
D	A, B, C, D, S[1] or T[2]
Water Distribution	
4	4
3	4 or 3
2	4, 3 or 2
1	4, 3, 2, 1, or S[1]
Domestic Wastewater ~~Systems~~Facilities	
Wastewater Treatment	
A	A
B	A or B
C	A, B, or C
D	A, B, C, D, or S[3]
Wastewater Collection	
4	4

3	4 or 3
2	4, 3 or 2
1	4, 3, 2, 1, or S[3]
Industrial Wastewater ~~Systems~~Facilities	
A	A
B	A or B
C	A, B, or C
D	A, B, C, or D, or S[3]

[1] Applicable only in accordance with section 100.~~189~~.5(d)
[2] Applicable only in accordance with section 100.~~189~~.5(c)
[3] Applicable only in accordance with section 100.~~189~~.5(e)

(c) Class T certificate is only valid for operating facilities that meet all of the following criteria:

(i) are classified as transient non-community public water systems;

(ii) that draw water from ground water sources not under the direct influence of surface water;

(iii) serve fewer than 100 individuals per day;

(iv) utilize treatment consisting only of non-gaseous chlorine disinfection; and

(v) would be classified as a Class "D" water treatment facility and/or as a Class "1" water distribution system under the provisions of this regulation.

(d) Class S Water certificate is only valid for operating facilities that meet all of the following criteria:

(i) serve no more than 3,300 persons; and

(ii) would be classified as a Class "D" water treatment facility and/or as a Class "1" water distribution system under the provisions of this regulation.

(e) Class S Wastewater certificate is only valid for operating facilities that meet all of the following criteria:

(i) serve no more than 3,300 persons; and

(ii) would be classified as a Class "D" wastewater treatment facility and/or as a Class "1" wastewater collection system under the provisions of this regulation.

100.~~18~~9.6 The Division shall investigate any instances of possible violations of the requirements of sections 100.~~18~~ 9.1 – 100.9.5 ~~of this regulation~~ by any owner of a water or wastewater facility. The Division shall enforce compliance with these requirements in accordance with the procedures in section~~s~~ 25-9-110~~(3), (4), and (6)~~, C.R.S.

100.9.7 Any water or wastewater facility owner who seeks a hearing in response to a Division finding of a violation under sections 100.~~18~~9.1 – 100.9.5 or a Department assessment of a civil penalty for such violation may request a hearing in accordance with section 24-4-105, C.R.S., before the Board by submitting to the Division, within thirty (30) days of notice of such finding or assessment, a request containing the following:

(a) identification of the person(s) requesting the hearing and the subject matter of the request;

(b) the statutory and/or regulatory authority and factual basis for the request; and

(c) the relief requested.

100.~~15~~10 RESPONSIBILITIES AND DUTIES OF A CERTIFIED OPERATOR ~~DUTIES~~

100. ~~15~~10.1 In the performance of their duties, certified operators shall exercise a level of reasonable care and judgment consistent with the experience and training appropriate to their level of certification as defined in these regulations.

100.~~15~~10.2 Certified operators shall protect the public health and the environment by properly performing and/or supervising the activities pertinent to controlling the operation of a water or wastewater facility in accordance with a written operating plan as described in section 100.1~~16~~.6 as appropriate to their level of certification, including but not limited to the following:

(a) controlling the selection of or flow from a source to a water or wastewater facility and controlling the selection of or flow from a water or wastewater facility to a receiving body or system;

(b) controlling the processing of raw and/or treated and/or finished water/wastewater;

(c) preparing and/or controlling chemical addition for water or wastewater treatment;

(d) observing and taking necessary actions in response to variations in operating conditions;

(e) interpreting meter and/or gauge readings and adjusting facility processes based on such interpretations;

(f) controlling the operation and maintenance of valves and/or gates;

(g) controlling the operation and maintenance of pumps;

(h) maintaining logs and/or records;

(i) collecting and/or analyzing process control samples; and

(j) reporting instances of non-compliance or situations that could result in non-compliance to the certified operator in responsible charge.

100.~~15~~10.3 When acting in the capacity of a certified operator, certified operators shall refrain from behaving in a threatening, intimidating, demeaning or similar manner in verbal or written communications or in interactions with the public, the regulated community and regulators.

100.~~13.6~~10.4 Certified operators shall update the Board or its contractor~~designee~~ with any changes to mailing address, telephone number, or email within 30 days of such change.

100.~~16~~11 RESPONSIBILITIES AND DUTIES OF A CERTIFIED OPERATOR IN RESPONSIBLE CHARGE ~~DUTIES~~

100.~~16~~11.1 Certified operators in responsible charge are designated by the owner of the water or wastewater facility and have supervisory responsibility for the operation of the facility and for the operational activities and functions of other facility operators.

100.~~16~~11.2 Process control and/or system integrity decisions with respect to drinking water quality or quantity that may affect the public health or the environment are reserved to certified operators in responsible charge.

100.~~16~~11.3 Process control and/or facility integrity decisions with respect to effluent quality or quantity that may affect the public health or the environment are reserved to certified operators in responsible charge.

~~100.16.4 Certified operator(s) in responsible charge of a water or wastewater facility must hold a valid certificate equal to or greater than the classification of the water or wastewater facility they operate.~~

100.~~16~~11.4 Certified operators in responsible charge of a water or wastewater facility must hold a valid certificate equal to or greater than the classification of the water or wastewater facility they operate.

100.~~16~~11.5 Certified operators in responsible charge shall protect the public health and the environment in the conduct of their duties. The certified operators in responsible charge are accountable for the operation and maintenance of the water or wastewater facility and are responsible for understanding the requirements of the applicable permits, laws and regulations. These duties include the following:

(a) controlling, supervising or actively participating in the planning, operation and maintenance of a water or wastewater facility;

(b) making process control and system integrity decisions on the operation and maintenance of the water or wastewater facility;

(c) making decisions and initiating actions regarding the operation of the water or wastewater facility in a timely manner;

(d) inspecting and testing new, modified, or repaired facilities prior to placing or returning such facilities into service;

(e) developing maintenance programs;

(f) developing and maintaining the written operating plan as described in section 100.~~16~~11.6;

(g) reporting instances of non-compliance or situations that could result in non-compliance as appropriate to facility owners and the Department; and

(h) performing other functions of direct responsibility, including those enumerated in section 100.~~15~~10.

100.~~16~~11.6 Written Operating Plan - Certified operators in responsible charge of a water or wastewater facility may delegate tasks or activities, including those listed in section 100.10, to other facility operators when delineated by a written operating plan.

(a) Such tasks may be performed by the facility operators even if the certified operator in responsible charge is not on-site.

(b) The operating plan must be precise in defining the limits of such tasks or activities.

(i) The operating plan must be reviewed and updated, as needed, at least once each calendar year by a certified operator in responsible charge.

(ii) The operating plan must be available to the facility owner and other facility operators at all times. The operating plan must be available for inspection by the Department upon request.

(c) Any operational activity beyond the limits defined in the operating plan requires the immediate and direct consultation with and participation of a certified operator in responsible charge or another operator holding a certificate equal to or above the classification of the facility he or she is operating.

(d) Certified operators in responsible charge remain accountable for the consequences of the performance of such tasks or activities by other facility operators under their charge.

100.~~20~~.12 DISCIPLINARY PROCEEDINGS

100.~~20.3~~12.1 The Division shall investigate any instances of possible misconduct by certified operators or certified operators in responsible charge. The Division shall present the results of the investigation and its recommendations for any disciplinary action, including reprimand or suspension or revocation of a certificate, to the Board in accordance with section 24-4-104, C.R.S.

100.~~20.1~~12.2 Certified Operators – In accordance with the procedures in sections 24-4-104 and 105, C.R.S., t~~T~~he Board may reprimand a certified operator, and/or suspend or revoke the certificate of any certified operator who violates the requirements of this regulation, including, but not limited to the following:

(a) failing to exercise reasonable care and judgment consistent with the operator's level of certification and degree of responsibility for the operation of a water or wastewater facility;

(b) failing to properly perform and/or supervise activities pertinent to controlling the operation of a water or wastewater facility, including, but not limited to the tasks described in section 100.~~15~~ 10 of this regulation;

(c) willfully or negligently violating, causing, or allowing the violation of this regulation, 5 CCR 1003-2; the *Colorado Primary Drinking Water Regulations*, 5 CCR 1002-11; the *Colorado Discharge Permit System Regulations*, 5 CCR 1002-61, or a discharge permit issued thereunder; or any other relevant regulations;

(d) submitting false or misleading information on any document provided to the Department, Division, Board, or contractor ~~designee~~ of the Board;

(e) using fraud or deception in the course of employment as a certified operator;

(f) failing to conform with minimum standards of performance of a certified operator's duty;

(g) engaging in dishonest conduct during an examination;

(h) obtaining a certificate through fraud, deceit, or the submission of materially inaccurate application information;

(i) representing oneself as holding a valid operator's certificate after the expiration, suspension, or revocation of the certificate; or

(j) when acting in the capacity of a certified operator, behaving in a threatening, intimidating, demeaning or similar manner in verbal or written communications or in interactions with the public, the regulated community or regulators.

100.~~20.2~~ 12.3 Certified Operators in Responsible Charge - In accordance with the procedures in sections 24-4-104 and 105, C.R.S., ~~The~~ the Board may reprimand a certified operator in responsible charge, and/or suspend or revoke the certificate of any certified operator in responsible charge, who:

(a) fails to meet the requirements of a certified operator in responsible charge as defined in section 100.~~16~~ 11~~of this regulation~~; and/or

(b) willfully or negligently causes, instructs, or allows any other person or operator under his or her charge, direction, or supervision to act in a manner inconsistent with a certified operator's duties and obligations as described in section 100.~~15~~ 10 or other relevant parts of this regulation, or to act in a manner inconsistent with ~~the Colorado Primary Drinking Water Regulations, 5 CCR 1002-11; the Colorado Discharge Permit System Regulation, 5 CCR 1002-61; or a discharge permit issued thereunder; or~~ any other relevant regulations or permits.

~~100.20.3 The Division shall investigate any instances of possible misconduct by certified operators or certified operators in responsible charge. The Division shall present the results of the investigation and its recommendations for any disciplinary action, including reprimand or suspension or revocation of a certificate, to the Board in accordance with section 24-4-104, C.R.S.~~

~~100.20.4~~ 100.12.4 Reprimand

A reprimand is an official admonition for wrongdoing issued to a certified operator by the Board in the form of a letter, which includes the facts and circumstances leading to the reprimand, the statutory and regulatory provisions at-issue, and a warning of more serious consequences for future wrongdoings.

~~100.20.5~~ 100.12.5 Suspension

(a) The Board may suspend a certificate for a period not to exceed three (3) years.

(b) At the end of the suspension period, an operator may resume prior duties without being required to submit a new application for certification.

(c) If an operator's certificate is due for renewal during the period of suspension, the operator shall remain subject to the renewal deadline and shall renew the certificate in a timely manner.

(d) Certificates renewed during a suspension period shall become valid for a period of three (3) years, effective on the ending date of the suspension period.

~~100.20.6~~ 100.12.6 Revocation

(a) Following the revocation of a certificate, an operator may not apply for another certificate in the same classification category as that of the revoked certificate for a period of three (3) years.

(b) ~~any~~ Any operator whose certificate is revoked shall be treated as a new applicant for purposes of this regulation and must meet all the initial certification requirements, including passing the appropriate certification examination.

~~100.20.7~~ 100.12.7 Emergency Suspension or Revocation

The Division may immediately suspend or revoke certificates where such immediate action is necessary to protect the public health or the environment.

~~100.20.8~~ 100.12.8 Following the suspension or revocation of his or her certificate, an operator shall not represent that he or she holds a certificate in the classification category for which the certificate was suspended or revoked. No person shall operate a water or wastewater facility ~~in reliance~~with ~~on~~ a suspended or revoked certificate.

100.~~10~~13 APPLICATION TO SIT FOR CERTIFICATION EXAMINATION, QUALIFICATIONS, EDUCATION, EXPERIENCE AND SUBSTITUTIONS

100.~~10~~13.1 A person desiring to be certified to operate a water or wastewater facility shall first file an application to sit for examination with the Board or its contractor~~designee~~.

100.~~10~~13.2 The Board shall designate the number of examination cycles during each calendar year.

100.~~10~~13.3 For each examination cycle, the Board or its contractor~~designee~~ shall specify an application deadline.

100.~~10~~13.4 All applications for certification examinations shall be made on forms provided by the Board or its contractor~~designee~~.

100.~~10~~13.5 Completed application materials and fees must be received by the Board or its contractor~~designee~~ on or before the application deadline for each examination cycle.

100.~~10~~13.6 While an applicant may apply for more than one examination during a cycle, that applicant may apply for only one level of certification for each certification category (water treatment facility, domestic or industrial wastewater treatment facility, distribution system or collection system).

100.~~10~~13.7 The applicant must specify examination category (i.e. water, domestic or industrial wastewater, distribution, collection, Class S water system, l Class S wastewater, or Class T), level of certification sought, examination date, and testing location and may only take the specified examination once during each examination cycle.

100.~~10~~13.8 The Board or its ~~designee~~ contractor shall review applications and supporting documents, determine the eligibility of applicants to sit for the examination, and notify the applicants of their status. Any application disapproval notification shall specify the reason(s) the application does not meet the minimum requirements.

100.~~10~~13.9 If an application is disapproved, the applicant may request a re-review of the application, including consideration of any clarifying information that the applicant may choose to submit regarding the identified basis for disapproval.

(a) Any such request for re-review must be received by the Board or its ~~designee~~ contractor within two weeks of the date of the disapproval notification letter.

(b) All additional factual information supporting the application must be received with the re-review request.

100.~~10~~13.10 If an application is disapproved after re-review by the Board's contractor, the applicant may appeal this decision~~termination~~ to the Board in accordance with the procedures in section 24-4-105, C.R.S.

(a) Any such appeal must be received in the Board's office within two weeks of the date of the second disapproval notification letter.

(b) No new factual information will be accepted during the Board appeal process, except for good cause shown.

~~100.9~~100.13.11 Qualifications for Certification ~~Of Operators~~

~~100.9.1 Continuity of Certification~~

~~(a) Operators certified under the system of classification and certification in place prior to January 30, 2001, including distribution and collection system operators who passed the voluntary examination administered by the Colorado Water Distribution and Wastewater Collection Certification Council, shall be deemed compliant with this provision and fully capable of operating facilities as described herein.~~

~~(b) Operators holding Class 3 water distribution or wastewater collection certifications issued prior to January 1, 2008 shall be deemed to have met the requirements for the Class 4 certification and shall be issued Class 4 certifications.~~

~~100.9.2~~(a) Basic Requirements for Certification by Examination

(~~a~~i) Applicants shall be evaluated by the Board or its ~~designee~~ contractor as to education, experience, and knowledge related to the classification level for which the applicant seeks to be certified.

(~~b~~ii) An applicant must pass a validated examination designated for the category and level of facility for which application is being made with a minimum passing score of 70 percent.

(~~c~~iii) To qualify to sit for an examination, an applicant must meet the minimum education requirements, the minimum experience or cross-experience requirements, and the prior certification requirements as set forth in section 100.~~9.8~~13.11(g).

~~100.9.3~~(b) Minimum Educational Requirements for Certification by Examination

(~~a~~i) Applicants must have a high school diploma or a general equivalency diploma (GED), except as provided in section 100.~~9.3(c)~~13.11(b)(iii).

(~~b~~ii) Experience and relevant training may substitute for a high school diploma or GED. Applicants substituting experience and relevant training for the high school diploma or GED shall:

(~~i~~A) have an additional six (6) months of qualifying experience; and

(~~ii~~B) demonstrate the completion of 1.0 training units in a course approved as a substitute for entry-level experience requirements.

(~~c~~iii) Applicants for certification as Class D, Class 1, Class S, or Class T operators of water or wastewater facilities who are enrolled in the last semester of Board approved courses or programs which are specifically designed to prepare secondary students to operate water or wastewater facilities may be approved to take the examination before earning a high school diploma.

(~~i~~A) Such an approval shall be based on a case-by-case determination that such courses or programs are directly and specifically relevant to the operation of water and wastewater facilities.

(~~ii~~B) After passing the examination, the certificate will be issued upon submitting proof of the high school diploma to the Board or its ~~designee~~contractor.

~~100.9.4~~(c) Experience Determinations for Certification by Examination

(~~a~~i) No more than one year of experience will be credited for employment/activities during any one calendar year.

(~~b~~ii) For water or wastewater facilities that require less than a full time operator for proper operation, the experience of an operator of such a facility who works less than half time will be counted as half-time experience; the experience of an operator of such a facility who works half-time or more will be counted as full-time experience.

(~~c~~iii) The aggregate time spent operating multiple facilities shall be considered in any determination of whether to credit full-time experience or half-time experience.

(~~d~~iv) Experience obtained in the operation of a seasonal water or wastewater facility will be credited only for that portion of the year during which the facility is in operation.

(~~e~~v) Except as described in section 100.~~9.9~~13.11(h) ~~below~~, the certification examination application deadline is the experience cut-off date in determining whether an operator has the required experience to take a certification examination at a particular level.

(~~f~~vi) To meet the experience requirement to test for a particular level of certification, the experience relied upon does not have to be at the level of the examination for which application is being made.

~~100.9.5~~(d) Evaluation of Experience. For purposes of this section, domestic and industrial wastewater treatment facility experience shall be considered interchangeable. In evaluating experience of operators the Board or its ~~designee~~ contractor will be guided by:

(~~a~~i) whether and to what degree the experience required technical knowledge of the operation of a water or wastewater facility;

(~~b~~ii) whether and to what degree the experience was actual on-site operating experience with the daily operational aspects of a facility that could affect water quality or quantity; and

(~~c~~iii) whether or not the experience included the responsible charge of a water or wastewater facility.

~~100.9.6~~(e) Once specific experience or relevant training is credited toward the satisfaction of either the experience or education requirements of this section, that same experience and/or training may not be further credited to meet other requirements of this section.

~~100.9.7~~(f) Prior Certification Requirements. To qualify to sit for an examination, an applicant must hold a certificate for the same certification category (water treatment facility, domestic or industrial wastewater treatment facility, distribution system or collection system) and in the class immediately below the class for which application is being made. Prior certification requirements are shown in the table below.

~~100.9.8~~(g) Table - Prior Certification and Experience Requirements

Certification Class	Prior Certification Required[1]	Minimum Experience Required
Class T	None	No minimum experience requirement
Class S, Class D, or Class 1	None	1 Month

Class C	Class D or Class S	2 Years
Class 2	Class 1 or Class S	2 Years
Class B	Class C	3 Years
Class 3	Class 2	3 Years
Class A	Class B	4 Years
Class 4	Class 3	4 Years

[1] Prior certification must be for the same certification category as that of the examination being applied for.

~~100.9.9~~(h) Special Rules for Satisfying the Minimum Experience Requirements for Class D, Class 1, Class S and Class T Certifications:

(~~a~~i) Applicants for certification as Class D, Class1, Class S, or Class T operators of water or wastewater facilities may be approved to take the examination before accruing the necessary experience for the issuance of a certificate.

(~~b~~ii) After passing the examination, the certificate will be issued upon showing completion of satisfactory experience to the Board or its ~~designee~~contractor.

(~~c~~iii) The required experience may be obtained either under the supervision of a certified operator in responsible charge or through the successful completion of an approved training course or course of study.

(~~d~~iv) Any education courses used to satisfy the basic experience requirement for a Class D, Class 1, Class S, or Class T certificate may not be used to satisfy the certificate renewal requirements for that same certification.

100.13.12 Substituting education and cross experience ~~substituted~~ for the experience requirements

~~100.12.1~~(a) ~~Substitution~~ Substituting~~of~~ Education for Experience Requirements

(~~a~~i) Post-secondary education may also be substituted for the experience requirements of section 100.~~9~~ 13.11(c) based on ~~the basis of~~ successful completion of formal academic credit hours, as approved by the Board or its contractor~~designee~~ in accordance with section 100.13.12(b), for all or a portion of an academic year. For education substitution for experience, academic credit hours shall be calculated as follows:

(~~i~~A) 15 semester hours = ½ academic year = 6 months experience; 15 quarter hours = 1/3 academic year = 4 months experience;

(~~ii~~B) Training units: 300 contact hours or 30 training units = 15 quarter hours = 4 months experience;

(~~iii~~C) thirty (30) semester hours and/or forty-five (45) quarter hours shall constitute one (1) year's formal education and may be substituted for one (1) year of experience.

(~~b~~ii) Consideration of Field(s) of Study

(~~i~~A) Credit for up to fifty percent (50%) of the applicable experience requirement of section 100.~~9~~ 13.11 may be granted for satisfactorily completing structured programs of study in a degree or certificate granting educational institution or equivalent for technically oriented programs which the Board or its ~~designee~~ contractor has determined are directly relevant to the operation of water and wastewater facilities, including but not limited to post high school education in the environmental control field, engineering or related science. Experience credit shall be granted based upon the number of academic years required to complete the program, in accordance with ~~sub~~section 100.~~12.1~~13.12(a).

(~~ii~~B) Credit for up to twenty-five (25%) of the applicable experience requirement of section 100.~~9~~ 13.11 may be granted for satisfactorily completing structured programs of study in a degree granting educational institution or equivalent, regardless of field of study. Experience credit shall be granted based upon the number of academic years required to complete the program, in accordance with ~~sub~~section 100.~~12.1~~13.12(a).

(~~c~~iii) In instances where an approved degree or certificate program has not been completed, credit for up to fifty percent (50%) of the applicable experience requirement of section 100.~~9~~ 13.11 may be granted for the completion of individual technically oriented courses as approved by the Board or its contractor~~designee~~ as relevant to the operation of water and wastewater facilities, including but not limited to post high school education in the environmental control field, engineering or related science, in accordance with ~~sub~~section 100.~~12.~~13.12(a).

(~~d~~iv) At least fifty percent (50%) of any experience requirement of section 100.~~9~~ 13.11 of this regulation shall be met by actual on-site operating experience in a water or wastewater facility, except that Class D, Class 1, and Class S applicants may satisfy the experience requirements exclusively with formal academic education credits or training units, in accordance with ~~sub~~section 100.~~9~~13.11(h).

~~100.12.2~~(b) Approval of Training, Educational Courses, and Institutions When Substituting Education for Experience

(~~a~~i) The Board or its ~~designee~~contractor may approve, for purposes of substituting education for experience, courses or programs which are specifically designed to prepare secondary students to operate water or wastewater facilities. Such an approval shall be based on a case-by-case determination that such courses or programs are directly and specifically relevant to the operation of water and wastewater facilities.

(~~b~~ii) Approval of technically-oriented courses or programs, for purposes of substituting education for experience, shall be determined by the Board

or its contractor~~designee~~ based on a determination that such courses or programs are directly relevant to the operation of water and wastewater facilities. Such courses and programs may include, but are not limited to, post-secondary education in the environmental control field, engineering, microbiology, chemistry, or other related science.

(~~c~~iii) Approval of educational institutions for purposes of substituting education for experience shall be determined by the Board or its ~~designee~~ contractor based on accreditation by recognized regional associations for such institutions in the United States. For educational institutions outside the United States, the applicant shall be required to establish to the satisfaction of the Board or its contractor~~designee~~ the equivalency and suitability of the courses of study claimed for credit.

(~~d~~iv) Other educational programs, including but not limited to, specialized operator training courses, seminars, workshops, correspondence or computer courses, and technical conferences, may be credited toward education for purposes of substitution for experience as approved by the Board or its contractor~~designee~~. Such programs will receive credit in training units on the following basis:

(~~i~~A) Ten (10) contact hours shall be required to equal one training unit. A contact hour means a classroom or supervised hour of attendance or hour of participation, recognized by the Board as a training unit, successfully completed by an applicant.

(~~ii~~B) Three (3) training units shall equal one semester credit hour or two training units shall equal one quarter credit hour for purposes of equivalency.

~~100.12.3~~(c) Substitution of Cross-Experience for Experience Requirements

(~~a~~i) Cross-experience may be substituted for the experience requirements of section 100.~~9~~ 13.11 for certification as a Class C, Class B, or Class A water treatment facility operator, domestic or industrial wastewater treatment facility operator; or for a Class 2, Class 3, or Class 4 water distribution or wastewater collection system operator, except that at least fifty percent (50%) of any experience requirement of section 100.~~9~~ 13.11 shall be met by actual on-site operating experience in the specific certification category, water or wastewater, for which application is being made.

(~~b~~ii) For the purpose of this section, “cross-experience” means that:

(~~i~~A) qualifying experience as an operator in a water treatment facility may be substituted for up to fifty percent (50%) of the experience requirement for certification as an operator of a wastewater treatment facility;

(~~ii~~B) qualifying experience as an operator in a wastewater treatment facility may be substituted for up to fifty percent (50%) of the experience requirement for certification as an operator of a water treatment facility;

(~~iii~~C) qualifying experience as an operator in a water distribution system may be substituted for up to fifty percent (50%) of the experience requirement for certification as an operator of a wastewater collection system; or

(~~iv~~D) qualifying experience as an operator in a wastewater collection system may be substituted for up to fifty percent (50%) of the experience requirement for certification as an operator of a water distribution system.

100.13.~~11~~13 Examinations

~~100.11.1~~(a) ~~-~~The Board or its contractor~~designee~~ shall oversee the preparation and administration of validated examinations to be used in determining whether or not the applicant has the necessary skills, knowledge, ability and judgment appropriate for the level of certification sought.

~~100.11.2~~(b) Examinations shall be held at places and times set by the Board or its contractor~~designee~~. Advance announcements of the date and locations of examinations shall be made by the Board or its contractor~~designee~~.

~~100.11.3~~(c) ~~-~~All examinations shall be written or administered electronically, except in such cases as the Board or its contractor~~designee~~ decide, on a case-by-case basis, represent proper exceptions to this requirement.

~~100.11.4~~ (d) All examinations will be graded by the Board or its contractor~~designee~~, and the applicants shall be notified of the results.

~~100.11.5~~(e) ~~-~~Examinees shall be provided an analysis of their examination performance indicating the level of knowledge demonstrated for each topic tested.

~~100.11.6~~(f) ~~-~~Separate validated examinations will be prepared for each category and level of certification available. The appropriate range and balance of examination material shall be developed from formal job analyses and the need-to-know criteria resulting from such analyses.

~~100.11.7~~(g) ~~-~~Applicants who fail an examination may retest during subsequent, regularly scheduled examination cycles upon complying with all applicable application procedures including the payment of appropriate fees.

~~100.11.8~~(h) ~~-~~Any form of cheating on the part of an applicant will invalidate the results of his or her examination and may result in the applicant being barred from ~~taking~~ sitting for an examination~~s~~ for a period of 1 to 5 years, as determined by the Board following a hearing in accordance with section 24-4-104, ~~pursuant to Article 4 of Title 24,~~ C.R.S.

100.~~13~~14 APPLICATION FOR NEW CERTIFICATES AND CERTIFICATES BY RECIPROCITY

100.14.1 The Board or its contractor~~designee~~ shall award to the applicant a certificate designating the appropriate certification level upon satisfactory fulfillment of the requirements of section 100.~~13.1~~14.3~~, 100.13.2~~ or 100.~~13.5~~14.4, as appropriate, and payment of all applicable program fees listed in section 100.~~19~~16.2.

100.14.2 New ~~operator~~ certificates shall be valid for three (3) years from the date of the certification eligibility notification letter. ~~Renewal~~ Renewed certificates shall be valid for three (3) years from the date of expiration of the prior certificate, not from the issue date of the renewed certificate.

100.~~13.1~~14.3 Application for New Certificates

(a) After receiving written notification of eligibility to apply for the certificate, the applicant must complete and submit the certificate application. Applicants must meet all certification requirements and shall submit the following, where applicable:

(i) verification of the experience requirements for Class D, Class 1, Class S and Class T certification pursuant to section 100.~~9.9~~13.11(h);

(ii) a copy of a high school diploma pursuant to section 100.~~9.3(c)~~13.11(b);

(iii) a current mailing address, telephone number and email address (if available); and

(iv) verification of lawful presence in the United States in accordance with section 24-76.5-101 et.seq, C.R.S.

(b) An applicant shall complete the certification process within three (3) years from the date of the certification eligibility notification letter.

100.~~13.5~~ 14.4 Application for Certificates by Reciprocity

(~~b~~a) Operators must submit a written application for certification by reciprocity to the Board or its contractor~~designee~~.

(~~a~~b) Certificates may be issued by the Board or its contractor~~designee~~, without examination, on a case-by-case basis, to persons in a comparable classification who have met the following requirements:

(i) Passed an adequate, validated examination and who hold a valid certificate in another state, territory or possession of the United States, or other country as issued by one of these entities or, at the discretion of the Board, by another certifying entity, provided the requirements for certification of operators under which the person's certificate was issued do not conflict with the provisions of Article 9 of Title 25, C.R.S., and are of a standard not lower than that specified by these regulations.

(ii) Obtained qualifying experience in the state, territory or possession of the United States, or other country in which they hold a valid certificate.

(c) After receiving written notification of approval by the Board for certification in Colorado, applicants shall follow the instructions provided in the approval letter to complete the certification process.

(d) Certificates by reciprocity shall be considered "new" certificates subject to all requirements of sections 100.~~13.1~~14.3 and 100.~~19~~16.

100.~~14~~15 ~~PROFESSIONAL DEVELOPMENT - TRAINING UNIT REQUIREMENTS FOR RENEWAL OF CERTIFICATION~~CERTIFICATE RENEWAL, EXPIRATION, REVOCATION AND TRAINING UNIT REQUIREMENTS

100.~~13.2~~15.1 Application for Renewal of Certificates

(a) Certified operators must submit a complete written application for renewal to the Board or its contractor~~designee~~ six to eight weeks prior to the expiration date of the certificate~~, in order to avoid expiration of a certificate under section 100.13.3~~.

(b) Renewal applications must demonstrate that the certified operator satisfies the requirements ~~of this regulation~~ for renewal, including ~~meeting~~ the ~~renewal~~ training unit requirements ~~stated~~ in section 100.~~14~~15.5.

(c) Renewal applications must include verification of lawful presence in the United States in accordance with sections 24-76.5-101 et.seq, C.R.S.

(d) The Board or its contractor~~designee~~ shall provide all application forms for renewal of certificates.

(e) Renewal Process for Certified Operators Absent Due to Military Service

(i) "Military service" means service in the uniformed services, as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. §§ 4301-4335, as the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to any such duty, and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.

(ii) During the period a certified operator is participating in military service, his or her certificate(s) shall be tolled relative to certification renewal and training unit requirements (i.e., for every day a certified operator is in military service, all certifications held by that operator will be put on hold for purposes of meeting the renewal and training unit deadlines). In addition to the number of days in service, an extra 90-day grace period shall be afforded to certified operators upon return from military service for purposes of meeting renewal and training unit deadlines. The Board or its contractor~~designee~~ shall have the discretion to extend this grace period to address extenuating circumstances on a case-by-case basis.

(iii) If the two-year renewal window for any certificate expires while a certified operator is in military service, the operator's certificate(s) will not become invalid during the period the operator is in service. Upon return from military service, the certified operator will have the amount of time accrued while in military service, plus an additional 90 days to obtain the required training unit credits and to submit a renewal application. The operator's certificate(s) will remain valid during that extended time period. In no case will the certified operator be subject to any late fees at the time of submitting a renewal application that is in conformance with section 100.~~13.2~~15.1(e).

(iv) It is the certified operator's responsibility to alert the Board or its contractor~~designee~~ of intervening military service at the time of filing a renewal application. Such notification shall include the dates the operator was in "service in the uniformed services" in accordance with the USERRA definition. Certified operators shall be expected to provide a signature swearing under the penalty of perjury to the veracity of all statements regarding military service.

100.~~13.3~~ 15.2 Expired Certificates

(a) A certificate becomes invalid on its expiration date.

(b) Following expiration of a certificate, the operator shall not represent that he or she holds a certificate in the class for which the certificate expired.

(c) No certified operator in responsible charge of a water or wastewater facility shall operate a facility ~~in reliance on~~with an expired certificate.

~~(d)~~100.15.3 Restoration of Expired Certificates

(a) An operator may apply for renewal for two years following expiration of the certificate. The Board or its contractor~~designee~~ will renew the certificate if the operator pays the renewal and applicable late fees, as listed in section 100.~~19~~16.2~~(d)~~, and satisfies all applicable renewal requirements.

(~~e~~b) Certificates ~~which are~~ renewed after their expiration date shall be valid for three years from the date of expiration of the prior certificate, not from the issue date of renewed certificate.

100.~~13~~15.4 Revocation of Non-Renewed Certificates

(a) Any certificate not renewed by the operator within two years of its expiration is automatically revoked.

(b) Any operator whose certificate is revoked shall be treated as a new applicant for purposes of this regulation and must meet all the initial certification requirements, including passing the appropriate certification examination.

100.~~14.1~~ 15.5 Training Units

(a) In addition to the other requirements of this regulation, all certified operators must earn the appropriate number of training units, as specified in ~~this~~ section 100.15.5, before the operator's certificate will be renewed.

(~~a~~b) At least fifty percent (50%) of the training units for certificate renewal must be for courses approved for credit in the specific field of the certificate being renewed.

(~~b~~c) Up to fifty percent (50%) of the training units for certificate renewal may come from courses approved for credit in a field other than that of the certificate being renewed, including supplemental training courses.

(~~c~~d) The maximum number of training units from a specific course that may be credited toward the renewal of a single certificate is the training unit equivalent of the actual number of approved hours in the course.

(~~d~~e) If applicable, the training units from one course may be applied toward the renewal of more than one certificate.

(f) Training units may only be used once in each category to renew a certificate.

(g) Training units are earned during the three-year period a certificate is valid. Training units may not carry over from one three-year period to the next.

(h) For training that occurs over multiple dates, the training units will be considered to have been obtained on the date of completion of the training course or class.

(i) If an operator takes a training course prior to taking a certification examination, passes the examination, and obtains a certificate at a new level, the training course completed prior to the examination will not count toward training units for renewal of the new certificate. Should a certified operator complete such a training course and not pass a new certification examination, that training course can be used, if applicable, to meet the training unit requirements for renewal of the operator's current certificate.

(j) Late renewal

(i) Training classes taken after the expiration date of a certificate, but before the automatic revocation date, may be used to renew the expired certificate.

(ii) If an operator completes training units after the expiration date of a certificate, but before the certificate is renewed and does not use the training units to renew the previous certificate, the training units may be used for the subsequent renewal.

(iii) It is the certified operator's responsibility to keep track of when the training unit credits have been used and will be responsible to verify and affirm on the renewal application that he or she is not using the credits more than once.

(iv) In the event that a certified operator uses training credits more than once, that could be grounds for disciplinary action, including revocation of a certificate.

100.~~14.2~~15.6 Table – Training Unit Requirements for Operator Certificate Renewal

Certified Operator Class	Training Unit Requirement
Class T	1.2 Training Units
Class D or Class 1	1.2 Training Units
Class S	1.8 Training Units
Class C or Class 2	1.8 Training Units
Class B or	2.4 Training Units

Class 3	
Class A or Class 4	3.0 Training Units

100.~~14.3~~15.7 All training unit subject matter ~~for which training units~~ will be ~~granted must be~~ determined by the Board or its ~~designee~~ contractor to be relevant and necessary to the successful operation of a water or wastewater facility.

(a) The Board or its contractor~~designee~~ shall approve as "core training" courses with topics that are directly applicable to aspects of water and wastewater facility operations that may affect public health or the environment, or the need to maintain compliance with established requirements. Training units from such courses may be used to satisfy the training units requirements for the renewal of an operator's certificate in accordance with sections 100.~~14.1~~15.5 and 100.15.6.

(b) Eligible "core training" topics may include the following subjects:

(i) operation and maintenance of facility mechanical systems, electrical equipment or hydraulics;

(ii) physical treatment, chemical treatment, biological treatment;

(iii) physical testing, chemical testing, biological testing, or disinfection;

(iv) regulatory compliance; or

(v) other relevant topics approved by the Board or its contractor~~designee~~.

(c) The Board or its contractor~~designee~~ may approve as "supplemental training" any courses that are found to provide useful operator knowledge but are not directly related to water or wastewater facility operations. Training units from courses approved as "supplemental training" may be used to satisfy the training unit requirements for renewal of an operator's certificate in accordance with sections 100.~~14.1~~15.5 and 100.15.6.

100.~~14.4~~ 15.8 Training units shall be awarded to certified operators for teaching a classroom course that has been approved by the Board or its contractor~~designee~~. The training units awarded shall be double the training units approved for the course. If a course is given multiple times in a given year under a single course approval number, double training units will be given the first time the course is taught, and no additional training units will be granted for repeat presentations of the same course with the same course approval number.

100.~~14.5~~ 15.9 Institutions, seminar presenters, and others may seek approval of their training or educational courses or programs by application to the Board or its contractor~~designee~~. Such an application must demonstrate that their proposed material, curricula, contact hour equivalency, and facilities meet the criteria established in section 100.~~12.2~~15.7.

100.~~19~~16 FEES

100.~~19~~16.1 Application fees for new ~~certification~~certificates, ~~renewal~~ renewed ~~of certification~~certificates, and ~~issuance of a~~ certificates ~~upon a Board finding of~~by reciprocity shall be $15, and shall be nonrefundable.

100.~~19~~16.2 Program fees shall consist of the following.

(a) Examination fees in the amount of $45.00 will be charged for each examination the applicant signs up to take. Examination fees are based on the cost of preparing, administering, and scoring the certification examination.

(b) An additional fee of $35.00 per examination will be charged applicants who choose to take certification examinations electronically. This fee is based upon the added cost to the program of making electronic testing available.

(c) Administration fees will be charged upon issuance of all new and renewal certificates and will be based on the cost of administering the operator certification program. Administration fees shall be:

(i) $55.00 for each new ~~certification~~ certificate by examination; and

(ii) $70.00 for each renewal ~~certification~~ certificate and each new ~~certification~~ certificate by reciprocity.

(iii) For all new and renewed certificates, a standard 6 x 9 inch certificate is available at no additional cost. A 9 x 11 inch certificate may be requested by the operator for a $5.00 fee.

(d) There shall be a $20.00 fee to cover the cost of replacing certification documentation.

(e) There shall be a $50.00 late fee, in addition to the regular administration fee, for issuance of certificates for new ~~certification~~ certificates or ~~certification~~ certificates by reciprocity requested sixty-one (61) days or more after the date of the letter notifying the applicant of eligibility to receive certification.

(f) There shall be a $50.00 late fee, in addition to the regular administration fee, for the renewal of any certificate for which the renewal application is submitted after the expiration date of the certificate being renewed.

(g) Training unit approval fees shall be $50.00 for each course submitted for review, except that:

(i) Accredited or equivalent educational institutions as referenced in subsection 100.~~12~~ 13.12(b) shall not be required to submit courses for review in order for such courses to be used to satisfy training unit requirements; if such institutions choose to submit courses for review, the $50.00 fee will apply and the applicable courses will be posted along with other approved courses;

(ii) An individual attending a course that has not been approved for training units may apply for training unit credit for that course for a fee of $25.00, provided that the course will then be approved only for the individual operator requesting approval; and

(iii) The $50.00 fee may be waived by the Board or its contractor~~designee~~ on a case-by-case basis upon a determination that:

(A) The course is offered for open enrollment at no cost to those taking the course and with no compensation to the course sponsor;

(B) Payment of the fee would constitute a financial hardship for the course sponsor; and

(C) In the absence of the fee waiver, it is unlikely that this training opportunity would be available to operators.

100.17 ~~AUTHORIZATION FOR CONTINUED OPERATION OF~~RESTRICTED WATER DISTRIBUTION AND WASTEWATER COLLECTION SYSTEMS ~~CERTIFICATES~~

~~100.17.1 Operators of water distribution and/or wastewater collection systems certified prior to January 30, 2001, under the voluntary program administered by the Colorado Water and Wastewater Collection Systems Certification Council, Inc., shall be considered compliant with the certification requirements of this provision. Upon expiration of current certificates issued under this voluntary program, all new and renewed certificates shall be valid for a period of three years. Such certification shall be renewable upon payment of appropriate fees and obtaining the required training units.~~

Existing operators of water distribution or wastewater collection systems as of January 30, 2001, whose responsibility includes making process control and/or system integrity decisions about water quality or quantity that may affect the public health or environment, may continue to operate the specific system in which they are currently employed ~~for a period of two years from the issuance of an authorization for continued operation without meeting the certification requirements of this regulation, provided that they have the requisite minimum experience levels provided in section 100.9 and~~ so long as the following requirements are satisfied:

~~(a) The owner of the existing water distribution or wastewater collection system applies to the Board or its designee for issuance of an authorization for such operator to continue operation without compliance with the otherwise applicable certification requirements of this regulation. The owner must submit such application to the Board or its designee within one year of January 30, 2001.~~

(~~b~~a) ~~Such an~~The operator shall not operate any other system until he or she meets the initial certification requirements for that system and obtains a certificate appropriate for that system.

(~~c~~b) ~~Authorization for continued system operation under t~~This provision is non-transferable, applies only to the specific system and operator and does not authorize operation of the system by any other operator.

~~(d) Within two (2) years from the issuance of an authorization for continued operation under this provision, an operator must obtain a certificate, restricted to the operation of the specific system, by meeting all requirements for obtaining certificate renewal including payment of fees, acquiring the minimum training units, and demonstrating to the Board or its designee all requisite skills, knowledge, ability and judgment for the type of system.~~

(~~e~~c) If the classification of a facility ~~or system~~ changes to a higher level, ~~the authorization to continue operation under~~ this provision expires, and is no longer valid ~~unless the classification change occurs without any significant physical change in the system as determined by the Board or its designee~~.

(~~f~~d) Any operator authorized to continue operation under this provision who chooses to work for a different facility ~~or system~~ must meet all the initial certification requirements for that facility. ~~or system, including obtaining a certificate appropriate to that facility or system, passage of a validated written examination, and satisfaction of the minimum experience requirements of this regulation.~~

100.~~22~~ ~~18~~- 29 RESERVED

~~. . . .~~

100.53 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE: NOVEMBER 29, 2016 RULEMAKING; EFFECTIVE JANUARY 30, 2017

Provisions of section 25-9-104, C.R.S., provide the specific statutory authority for the adoption of these amendments to the established regulatory provisions of Regulation 100 governing the requirements for water and wastewater facility operators (5 CCR 1003-2). The board hereby adopts, in compliance with section 24-4-103(4), C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

The board held a rulemaking hearing on November 29, 2016. After receiving testimony from the division and members of the public, the board determined that it was necessary to revise Regulation 100 as follows:

Generally, the board made grammatical corrections, stylistic changes, and used simple declarative sentences when possible to avoid confusion or ambiguity. The board also made clarifications, removed duplicates and obsolete language, updated citations and numbering, and changed section titles to be more specific. The sections of the regulation were reorganized for a more logical flow and to increase readability. Sections 100.1 through 100.13 describe the various components of the operator certification program, including facility classification criteria. Sections 100.13 through 100.17 detail the certification process and requirements for obtaining and renewing certificates.

Section 100.1.3. The board created a new section titled “Severability” to make it known that if, for any reason, a portion of the regulation is held inoperative, unconstitutional, void or invalid, the validity of the remaining portions is not affected.

Section 100.1.4. The board created a new section titled “Applicability.” For clarity, the board defined the categories of persons to which the regulation applies.

Section 100.1.5. The board created a new section titled “Automatic Exemptions.” It is divided into four subsections covering water treatment facilities and water distribution systems, as well as certain industrial wastewater treatment facilities. Each subsection includes the criteria which, if met, automatically results in an automatic exemption from the requirement for the facility/system to operate under the supervision of a certified operator in responsible charge. Under these subsections, if the criteria are met, there is no requirement for a facility to request an exemption from the board.

Section 100.1.6. The board created a new section titled “Discretionary Exemptions.” This new section outlines the procedure for facilities that do not meet the “automatic exemption” criteria of section 100.1.5 to request an exemption from the requirement to operate under the supervision of a certified operator in responsible charge. This section is comprised of a combination of language from 25-9-104.4, C.R.S. (covering water and wastewater facilities), and from section 100.6, which is specific to industrial wastewater treatment facilities. The board also removed the requirement that that was previously in section 100.6 for an adjudicatory hearing to address an industrial wastewater treatment facility exemption request. The division will evaluate exemption requests made under this section and make a recommendation to the board. The board will make a decision regarding the request at a regularly scheduled meeting.

Section 100.1.7. The board created a new section titled “Exceptions” which makes clear that the board has the authority to make exceptions to the requirements in Regulation 100 if the exception is not contrary to statute and does not endanger the public health or environment.

Section 100.2(9). The board added the definition for graywater treatment facility. In this rulemaking, the board is adding a requirement for a certified operator in responsible charge for certain graywater treatment works as defined in the *Graywater Control Regulation*, # 86, 5 CCR 1002-86.

Section 100.3. The board added a provision to clarify the role of the Water Quality Control Division, which details the scope of division enforcement authority and oversight and reserves all enforcement and oversight regarding graywater facilities to the local city, city and county, or county with a local graywater control program in accordance with the *Graywater Control Regulation*, # 86, 5 CCR 1002-86.

The board also clarified the duties delegated to its contractor and removed two provisions that were not accurate. Throughout the regulation for consistency, the board deleted the term “the board’s designee” and replaced it with “the board’s contractor.”

Section 100.3.2. For clarity, the board added this provision from section 25-9-104.2(4), C.R.S. stating that the board retains final authority over all actions and decisions of its contractors and subcontractors.

Section 100.3.3. To accomplish better flow of the regulation, this section was moved from the former section 100.21, “Hearings and Appeals,” and placed into this section of the regulation because it outlines the process for appealing decisions of the division and the board’s contractor(s).

Section 100.6. The board added category D non-single family, indoor toilet and urinal flushing graywater treatment facilities, as defined in the *Graywater Control Regulation*, 5 CCR 1002-86, to domestic wastewater treatment facilities that require supervision by an ORC. Treated graywater is not potable water and is not required to be treated to potable water standards prior to recycling. Using non-potable water in homes, apartments or condominiums, schools, businesses, hotels, dormitories, etc. may increase the possibility of exposure to pathogens or other substances from partially treated water and could pose a public health risk. Current research is showing an increase in risk with each additional contributor to a graywater system, such as apartments, condominium units, hotel rooms, or numbers of people.

Ensuring that graywater treatment processes are functioning properly is a critical component in protecting public health. A certified operator is specifically trained to understand and oversee operation of treatment processes. Based on this increased risk from multiple contributors and the unique role of a certified operator in protecting public health, the board is requiring an ORC for non-single family graywater treatment facilities that supply non-potable water for toilet and urinal flushing.

The board is not requiring an ORC for category A and C single family graywater systems and category B non-single family subsurface irrigation graywater systems as defined in the *Graywater Control Regulation*, 5 CCR 1002-86.

Section 100.9.7. To accomplish better flow of the regulation, the board moved this provision dealing with the appeal rights of facility owners regarding a violation of the responsibility to have an ORC from the former section 100.21, “Hearings and Appeals.”

Section 100.15.5 (f)-(j). For clarification and transparency, the board added certain provisions from Policy #15-3 regarding timing of training units.

Section 100.15.8. The board clarified the criteria for a certified operator to receive double training units for teaching a board approved classroom course.

Notice of Proposed Rulemaking

Tracking number

2016-00399

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-1 Part 21

Rule title

Colorado Low Income Radon Mitigation Assistance (LIRMA) Program

Rulemaking Hearing

Date

10/19/2016

Time

10:00 AM

Location

Sabin-Cleere Conference Room of the Colorado Department of Public Health and Environment, Bldg. A, First Floor, 4300 Cherry Creek Drive, South, Denver

Subjects and issues involved

To consider the promulgation of 6 CCR 1007-1, Rules and Regulations Pertaining to Radiation Control, Part 21, Colorado Low Income Radon Mitigation Assistance (LIRMA) Program.

Statutory authority

Section 25-1-108, 25-1.5-101(1)(l), 25-11-104, 25-11-114, 25-16-104.5, and 25-16-104.6, C.R.S.

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COLORADO
Department of Public Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

To: Members of the State Board of Health

From: Jennifer Opila, Manager, Colorado Radiation Control Program
Chrystine Kelley, Radon Program
Hazardous Materials and Waste Management Division

Through: Gary W. Baughman, Director, Hazardous Materials and Waste Management Division GWB

Date: July 21, 2016

Subject: **Request for Rulemaking Hearing**
Proposed new rule 6 CCR 1007-1, Part 21, Colorado Low Income Radon Mitigation Assistance (LIRMA) Program, with a request for the rulemaking hearing to occur in October of 2016

The Division is proposing a new regulation Part 21, titled *Colorado Low Income Radon Mitigation Assistance (LIRMA) Program*. Part 21 is a rule which applies specifically to the department's implementation of a monetary assistance program used to pay for the installation of radon mitigation systems in qualified owner-occupied low income homes.

Radon is a naturally occurring radioactive gas that comes from the breakdown of uranium in the soil. Radon is known to cause lung cancer and it can seep into our homes and workplaces through cracks and openings in floors and crawlspaces. When this happens, radon becomes part of the air we breathe. Radon has no color, odor or taste. Each year, about 21,000 deaths in the United States are attributed to radon-caused lung cancer. It's the second leading cause of lung cancer in the United States after smoking.

High radon levels have been found in all 50 states and in all parts of Colorado. In Colorado, about half the homes have radon levels higher than the U.S. Environmental Protection Agency recommended action level of 4 picoCuries per liter (pCi/L).

The regulatory part is being proposed as a result of House Bill 16-1141 which was passed during the 2016 legislative session. The proposed rule will outline the general criteria for qualified owner-occupied homeowners to apply for assistance to pay for the installation of radon mitigation systems, the selection process used by the department in selecting applicants, and to specify reporting requirements for the program.

Further details of the proposed rule are listed in a Statement of Basis and Purpose and Specific Statutory Authority for the proposed rule, which, along with a Regulatory Analysis and supporting information, is available at: https://www.colorado.gov/cdphe/radregs

In early June, 2016, approximately 900 stakeholders were notified of the proposed rule and were provided the opportunity to comment. Additionally, a stakeholder meeting was scheduled in late June to present and discuss the new mitigation assistance program and the proposed new rule, but no stakeholders attended the meeting. During the comment period,

one written comment letter was received which focused on the program documents (procedures and forms) but which did not impact the proposed rule.

At the August 2016 request for rulemaking, the Radiation Program requests that the Board of Health set a rulemaking hearing for October 19 of 2016 in order to meet a January 1, 2017 statutorily driven deadline to have the rule in place.

cc: Deborah Nelson, Administrator, State Board of Health

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STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY
for proposed rule
6 CCR 1007-1, Part 21,
Colorado Low Income Radon Mitigation Assistance (LIRMA) Program

Basis and Purpose.
The Colorado Radiation Control Act, Title 25, Article 11, Colorado Revised Statutes (the Act), requires the State Board of Health to formulate, adopt and promulgate rules and regulations pertaining to radiation control.

Section 25-11-104(2) of the Act specifies that Colorado's radiation regulations be consistent with U.S. Nuclear Regulatory Commission (NRC) requirements necessary to maintain compatibility (and status as an Agreement State), and the Suggested State Regulations for Control of Radiation (SSRCR) of the Conference of Radiation Control Program Directors, Inc., except when the Board of Health concludes, on the basis of detailed findings, that a substantial deviation from the SSRCR is warranted. There are currently no federal regulations or model regulations available which address radon mitigation assistance programs.

The Department is proposing the Part 21 rule to meet the intent and requirements for establishing a low income mitigation assistance program as specified in HB 16-1141. HB 16-1141 requires the Board of Health to set the program requirements, including the eligibility requirements for financial assistance. The proposed rule includes: definitions, eligbility requirements, application processing standards, criteria for awarding funds to homeowners, the process and critieria for becoming a LIRMA eligible certified radon mitigation contractor, and reporting requirements. Funds will be paid directly to the LIRMA eligible certified radon mitigation contractor that is selected by the homeowner. This approach allows for homeowner lead decision-making but minimizes the administrative burden to homeowners and the Department.

Specific Statutory Authority.
These rules are promulgated pursuant to the following statutory provisions: 25-1-108, 25-1.5-101(1)(l), 25-11-104, 25-11-114, 25-16-104.5, and 25-16-104.6, C.R.S.

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

__X__ Yes, the bill number is HB 16-1141; rules are __ authorized _X_ required.
_____ No

Is this rulemaking due to a federal statutory or regulatory change?

_____ Yes
__X__ No

Does this rule incorporate materials by reference?

_____ Yes
__X___ No

Does this rule create or modify fines or fees?

_____ Yes
__X___ No

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REGULATORY ANALYSIS

for proposed rule

6 CCR 1007-1, Part 21,

Colorado Low Income Radon Mitigation Assistance (LIRMA) Program

1. **A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

   Currently, there are no state based programs in Colorado available to fund the installation of radon mitigation systems in low-income households.

   As specified by statute and based upon funding of $100K annually, an estimated 100 qualified low-income owner-occupied homeowners will benefit from the program and proposed rule by having radon mitigation systems installed in their homes. Such homeowners may not otherwise be able to afford a radon mitigation system. The installation of a mitigation system in these low income homes is intended to help reduce the risk from radon induced lung cancer.

   No persons are expected to bear the costs of the proposed rule.

   Entities using radioactive materials or radiation producing (x-ray) machines are not impacted by or regulated under the rule. Entities, such as radon mitigation contractors who provide mitigation system installation and services to households that are not under the LIRMA Program would not be impacted by or regulated under the rule.

2. **To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.**

   The quantitative impact of the proposed rule on homeowners is to allow them to save an estimated out-of-pocket expense of $800-1,500 per home to pay for the installation of a radon mitigation system.

   The qualitative impact of the proposed rule will be to meet the requirements of state statute. The proposed rule is also expected to improve indoor air quality due to the reduction in radon levels entering the home.

3. **The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

   The department received 0.8 FTE to implement the requirements of HB 16-1141. For the portion of the bill that concerns the LIRMA program, the expected cost to the department is approximately $15,000 in the first year (~0.15 FTE). This estimate is based upon 2 hours spent for each homeowner application review and processing and is based on receipt of an estimated 100 applications per year (assuming an assumed hourly rate of $50 per hour). The cost of review and processing for mitigation

contractor applications is $5,000 in the first year, based upon a 1 hour application review period and an assumed hourly rate of $50 per hour. It is anticipated that the cost will decline significantly after the first year of the program following the initial registration of contractors.

Since this program is non-regulatory in nature, it is expected that there would be no time spent on enforcement related activities.

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Exposure to radon is considered the second leading cause of lung cancer after smoking. The Environmental Protection Agency (EPA) estimates that residential radon causes approximately 21,000 lung cancer deaths in the United States each year.[1]

The benefits of the proposed rule will be to allow for a balanced implementation of a statutorily driven requirement for a radon mitigation assistance program for low income homeowners. The installation of radon mitigation systems in low income owner-occupied homes is expected to help to reduce the risk from radon induced lung cancers in these households.

The EPA estimates that approximately 650 lung cancer deaths per year are averted because of radon mitigation and prevention efforts in the U.S.[1] Extrapolating this to Colorado's entire population indicates that potentially 10 lung cancer deaths per year could potentially be avoided in all Colorado homes as a result of mitigation and prevention activities, a portion of which would be low income households.

The probable costs of implementing the program will primarily be the staff time involved in managing the LIRMA program and review and processing of contractor and homeowner applications. The funding for staff time is however accounted for in the fiscal note associated with the legislation which establishes and provides funding for the LIRMA program. Since this program is non-regulatory in nature, it is expected that there would be no time spent on enforcement related activities.

The benefit of the proposed rule is expected to outweigh the cost of the rule.

Inaction on the proposed new rule would potentially result in not meeting the requirements of state law.

[1] Environmental Protection Agency EPA Assessment of Risks From Radon in Homes. Washington, DC: Office of Radiation and Indoor Air; June 2003.

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The purpose of the proposed rule is to have a clear and specific process for implementing the requirements of state law for a low-income mitigation assistance program. Currently, there are limited funding resources available to assist low income homeowners with mitigation system costs in Colorado. In addition to meeting the requirements of state law, the establishment of this rule and the LIRMA Program will provide a method for state funding of mitigation system installations in qualified low-income households and thereby help to reduce the risk of radon induced lung cancers in Colorado.

There are believed to be no less costly or intrusive methods to implement this statutorily driven program.

6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.

The proposed rule is mandated by state law through HB 16-1141. There are no other state programs that facilitate radon mitigation assistance. The program evaluated a number of different ways to distribute the funds to the low-income individuals and/or the radon mitigation contractors and has determined that the method in the proposed rule is the most effective and efficient.

7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.

The annual income table in the proposed rule is based upon the most recent U.S. Housing and Urban Development (HUD) criteria for low income households.[2] This table is subject to change at the discretion and frequency determined by the federal government. Updates to the low income table typically occur one or more times each year. The LIRMA Program will periodically update the table contained within the regulation as needed.

The short and long term consequences of not implementing the proposed requirements will be inconsistency with state statute.

The average cost for the installation of a radon mitigation system typically ranges from $800 to $1,500 per installation. By current state statute, funding for the program is capped at $100K annually.

[2] https://www.huduser.gov/portal/datasets/il/il16/index_il2016.html

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STAKEHOLDER COMMENTS
for proposed rule
6 CCR 1007-1, Part 21,
Colorado Low Income Radon Mitigation Assistance (LIRMA) Program

Early Stakeholder Engagement: The following individuals and/or entities were included in the development of these proposed rules:

On June 9, and June 20, 2016, approximately 900 stakeholders were notified of the opportunity to comment on the proposed draft rule. The entities notified represented:
- Approximately 100 environmental and public health directors and staff;
- Approximately 160 certified radon measurement and mitigation contractors;
- Approximately 40 radon State Indoor Radon Grant (SIRG) grantees;
- Approximately 200 local public and environmental health officials via the CDPHE office of planning and partnerships, the Colorado healthy housing coalition, and the Health and Environmental Justice (HEEJ) Collaborative;
- Approximately 20 organizations representing or otherwise communicating with low income persons;
- Approximately 371 "other stakeholders" who have specifically signed up to receive notification of proposed radiation regulations and who represent a wide variety of interests.

Although a stakeholder meeting was scheduled, no stakeholders attended the meeting in person or via telephone.

The Colorado Radiation Advisory Committee reviewed and discussed the proposed regulation during the June 2, 2016 regular meeting. The committee provided a few minor suggested comments and did not express any specific concerns or issues regarding the proposed rule.

This rulemaking does not include a local government mandate. The burden of regulatory conformity to this rule primarily applies to the department in implementing the LIRMA program as well as to the homeowner or mitigation contractor applicants to the program. Executive Order 5 (EO5) does not apply.

The following individuals and/or entities were notified that this rule-making was proposed for consideration by the Board of Health:

In addition to the notice of opportunity to comment on the proposed rule discussed above, stakeholders were provided with the anticipated rulemaking schedule for both the request for rulemaking and the rulemaking hearing dates. This rulemaking timeline information is also posted on the Department website area specific to the proposed new rule. If approved by the Colorado Board of Health, a formal rulemaking hearing notice will be sent prior to the rulemaking hearing date currently scheduled for October 2016.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

There are no major factual and policy issues identified as a result of the proposed new rule. No stakeholders attended the scheduled stakeholder meeting. One stakeholder provided minor technical comments in written form on the program documents (procedures and policy manual and forms) some of which were incorporated into the documents. No comments were provided on the proposed rule.

Please identify health equity and environmental justice (HEEJ) impacts. Does this proposal impact Coloradoans equally or equitably? Does this proposal provide an opportunity to advance HEEJ? Are there other factors that influenced these rules?

The proposed rule will positively impact (benefit) and advance health equity and environmental justice activities in Colorado. The rule and the LIRMA program will benefit those Coloradoans who have elevated radon levels in their home but may not otherwise be able to afford the cost of installing a mitigation system due to income limitations. The installation of mitigation systems in low income owner-occupied households is expected to help reduce the risk of radon induced lung cancer in lower income households who apply for assistance.

NOTE: The governor signed this measure on 4/21/2016.

HOUSE BILL 16-1141

BY REPRESENTATIVE(S) Becker K. and Coram, Arndt, Court, Duran, Esgar, Garnett, Ginal, Hamner, Kraft-Tharp, Lontine, Mitsch Bush, Moreno, Winter, Hullinghorst;
also SENATOR(S) Jahn and Roberts, Guzman, Heath, Jones, Kefalas, Kerr, Martinez Humenik, Merrifield, Newell, Todd.

CONCERNING THE PROTECTION OF COLORADO RESIDENTS FROM THE HAZARDS ASSOCIATED WITH NATURALLY OCCURRING RADIOACTIVE MATERIALS IN BUILDINGS, AND IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 25-11-114 as follows:

25-11-114. Legislative declaration - public education regarding radon gas - assistance to low-income individuals for radon mitigation in their homes. (1) THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT:

(a) RADON, AN ODORLESS, COLORLESS, RADIOACTIVE GAS, IS THE LEADING CAUSE OF LUNG CANCER DEATHS AMONG NONSMOKERS IN THE

_____

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

NATION AND IS THE SECOND LEADING CAUSE OF LUNG CANCER DEATHS OVERALL;

(b) RADON ORIGINATES FROM THE DECAY OF NATURALLY OCCURRING URANIUM IN COLORADO GRANITE, SOIL, AND BEDROCK AND CAN ACCUMULATE IN STRUCTURES AT DANGEROUS RISK LEVELS TO HUMANS;

(c) INDOOR RADON RANKS AMONG THE MOST SERIOUS ENVIRONMENTAL HEALTH PROBLEMS;

(d) COLORADO RANKS SEVENTH IN THE NATION FOR HIGHEST POTENTIAL RADON RISK;

(e) ALL OF COLORADO'S COUNTIES ARE AT HIGH RISK FOR RADON AND FIFTY PERCENT OF COLORADO HOMES HAVE RADON LEVELS THAT SHOULD BE MITIGATED;

(f) AN ESTIMATED FIVE HUNDRED COLORADANS DIE FROM RADON-INDUCED LUNG CANCER ANNUALLY, CAUSING MORE DEATHS THAN DRUNK DRIVING, HOUSE FIRES, CARBON MONOXIDE, AND DROWNING COMBINED; AND

(g) INCREASED EDUCATION AND AWARENESS OF THE HARMFUL EFFECTS OF RADON EXPOSURE WILL HELP SAVE THE LIVES OF COLORADANS AND REDUCE THE BURDEN OF HEALTH CARE COSTS FROM RADON-INDUCED LUNG CANCER.

(2) THE DEPARTMENT SHALL ESTABLISH A RADON EDUCATION AND AWARENESS PROGRAM. AS A PART OF THE PROGRAM, THE DEPARTMENT SHALL:

(a) PROVIDE RADON INFORMATION AND EDUCATION STATEWIDE TO CITIZENS, BUSINESSES, AND OTHERS IN NEED OF INFORMATION;

(b) WORK COLLABORATIVELY WITH RADON CONTRACTORS AND CITIZENS TO RESOLVE QUESTIONS AND CONCERNS REGARDING THE INSTALLATION OF SAFE, HEALTHY, AND EFFICIENT RADON MITIGATION SYSTEMS; AND

(c) COLLABORATE WITH LOCAL GOVERNMENTS TO PROVIDE INFORMATION ON BEST PRACTICES FOR RADON MITIGATION STRATEGIES.

(3) EFFECTIVE JANUARY 1, 2017, THE DEPARTMENT SHALL ESTABLISH A RADON MITIGATION ASSISTANCE PROGRAM TO PROVIDE FINANCIAL ASSISTANCE TO LOW-INCOME INDIVIDUALS FOR RADON MITIGATION IN THEIR HOMES. THE STATE BOARD OF HEALTH SHALL SET THE PROGRAM REQUIREMENTS, INCLUDING ELIGIBILITY REQUIREMENTS FOR FINANCIAL ASSISTANCE.

(4) THE DEPARTMENT SHALL USE MONEY IN THE HAZARDOUS SUBSTANCE RESPONSE FUND, ESTABLISHED IN SECTION 25-16-104.6, TO FINANCE THE RADON EDUCATION AND AWARENESS PROGRAM AND THE RADON MITIGATION ASSISTANCE PROGRAM.

SECTION 2. In Colorado Revised Statutes, 25-16-104.5, **amend** (1.7) (b) (II) as follows:

25-16-104.5. Solid waste user fee - imposed - rate - direction - legislative declaration - repeal. (1.7) (b) (II) The portions of the fee imposed under this subsection (1.7) that are collected for the costs described in subparagraphs (II) and (III) of paragraph (a) of this subsection (1.7) shall be transmitted to the department for deposit into the hazardous substance response fund created in section 25-16-104.6. The department may expend ~~moneys~~ MONEY from the portion of the fee collected under subparagraph (III) of paragraph (a) of this subsection (1.7) to compensate the department of law for all or a portion of the expenses incurred for services rendered under the federal act, as billed to the department by the department of law. THE DEPARTMENT MAY EXPEND MONEY FROM THE FEES COLLECTED UNDER THIS SUBSECTION (1.7) TO FINANCE THE RADON EDUCATION AND AWARENESS PROGRAM, ESTABLISHED IN SECTION 25-11-114 (2), AND THE RADON MITIGATION ASSISTANCE PROGRAM, ESTABLISHED IN SECTION 25-11-114 (3).

SECTION 3. In Colorado Revised Statutes, 39-29-116, **amend** (3) (a) and (6); and **repeal** (4) as follows:

39-29-116. Uranium mill tailings remedial action program fund **- creation - oversight committee - repeal.** (3) (a) The state treasurer may accept and credit to the uranium mill tailings remedial action program fund

any donations received by the state for the express purpose of projects for the cleanup of uranium mill tailings. The donations may include any amounts made available from the local government severance tax fund and the local government mineral impact fund as directed by the executive director of the department of local affairs pursuant to section 39-29-110 and section 34-63-102, C.R.S. ~~and with the approval of the oversight committee as created in subsection (4) of this section.~~ It is the intent of the general assembly that a minimum of six million dollars be retained in the local government severance tax fund and the local government mineral impact fund for grants and loans to local communities.

(4) ~~(a) There is hereby created a uranium mill tailings remedial action oversight committee, referred to in this subsection (4) as the "oversight committee". The oversight committee shall consist of five members as set forth in paragraph (a.5) of this subsection (4). The department of public health and environment shall annually report on or before September 15 of each year to the oversight committee at a meeting called by the chairperson of the oversight committee on the progress of the cleanup of uranium mill tailing sites pursuant to the uranium mill tailings remedial action program, the proposed and final transfers or disposition of the land of any of the sites, the proposed program activities, any direct and indirect costs associated with the monitoring, notification, and handling of designated uranium mill tailings that are authorized in section 25-11-303, C.R.S., and financing requested for the next fiscal year. The oversight committee shall review such report and obtain any additional information it needs in order to prepare a recommendation to the joint budget committee on the proposed funding amounts and sources for the next fiscal year. The recommendation shall be made within forty-five days of the oversight committee meeting at which the department of public health and environment presents its annual report.~~

~~(a.5) (I) Repealed.~~

~~(II) On and after July 1, 2007, the oversight committee shall consist of the executive director of the department of local affairs and one member appointed by the speaker of the house of representatives, by the minority leader of the house of representatives, by the president of the senate, and by the minority leader of the senate. All of the legislative members shall be from districts that include uranium mill tailing sites designated for cleanup under the federal "Uranium Mill Tailings Radiation Control Act of 1978",~~

~~42 U.S.C. sec. 7901 et seq., as amended. During odd-numbered years, the member appointed by the president of the senate shall be the chairperson of the oversight committee and the member appointed by the speaker of the house of representatives shall be the vice-chairperson of the oversight committee, and, during even-numbered years, the member appointed by the speaker of the house of representatives shall be the chairperson of the oversight committee and the member appointed by the president of the senate shall be the vice-chairperson of the oversight committee.~~

(b)~~The terms of the members appointed by the speaker of the house of representatives, the president of the senate, the minority leader of the house, and the minority leader of the senate and who are appointed pursuant to subparagraph (II) of paragraph (a.5) of this subsection (4) shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the speaker, the president, the minority leader of the house, and the minority leader of the senate shall appoint or reappoint members in the same manner as provided in paragraph (a.5) of this subsection (4). Thereafter, the terms of the members appointed or reappointed by the speaker, the president, the minority leader of the house, and the minority leader of the senate shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker, the president, the minority leader of the house, and the minority leader of the senate shall be made as soon as practicable after such convening date. The person making the original appointment or reappointment shall fill any vacancy by appointment for the remainder of an unexpired term. Oversight committee members appointed or reappointed by the speaker, the president, the minority leader of the house, and the minority leader of the senate shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.~~

(c)~~The legislative members of the oversight committee shall be reimbursed for necessary expenses in connection with the performance of their duties, including attendance at a meeting of the joint budget committee to present the oversight committee's recommendations, and shall be paid the same per diem as other members of interim committees in attendance at meetings.~~

(6) This section is repealed, effective July 1, ~~2017~~ 2027.

SECTION 4. In Colorado Revised Statutes, 25-16-104.6, **amend** (2) introductory portion; and **add** (2) (h) as follows:

25-16-104.6. Fund established - administration - revenue sources - use. (2) The general assembly may appropriate up to two and one-half percent of the ~~moneys~~ MONEY in the hazardous substance response fund for the department's costs of administration and its costs of collection of fees or civil penalties pursuant to section 25-16-104.5. In addition, the department is authorized, subject to appropriation by the general assembly, to use the ~~moneys~~ MONEY in the fund for the following purposes:

(h) TO FINANCE THE RADON EDUCATION AND AWARENESS PROGRAM, ESTABLISHED IN SECTION 25-11-114 (2), AND THE RADON MITIGATION ASSISTANCE PROGRAM, ESTABLISHED IN SECTION 25-11-114 (3).

SECTION 5. Appropriation. (1) For the 2016-17 state fiscal year, $199,456 is appropriated to the department of public health and environment for use by the hazardous materials and waste management division. This appropriation is from the hazardous substance response fund created in section 25-16-104.6 (1) (a), C.R.S. To implement this act, the division may use this appropriation as follows:

(a) $48,803 for personal services related to radiation management, which amount is based on an assumption that the division will require an additional 0.8 FTE; and

(b) $150,653 for operating expenses related to radiation management.

SECTION 6. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
REPRESENTATIVES

Bill L. Cadman
PRESIDENT OF OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
REPRESENTATIVES

Effie Ameen
SECRETARY OF OF
THE SENATE

APPROVED

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO

DRAFT 1 07/21/16

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Hazardous Materials and Waste Management Division

RADIATION CONTROL - COLORADO LOW INCOME RADON MITIGATION ASSISTANCE (LIRMA) PROGRAM

6 CCR 1007-1 Part 21

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

Adopted by the Board of Health October 19, 2016

Part 21: COLORADO LOW INCOME RADON MITIGATION ASSISTANCE (LIRMA) PROGRAM

21.1 Definitions

A. "Certified test kit" means a radon test kit (and analysis) that is certified by the National Radon Proficiency Program (NRPP) or the National Radon Safety Board (NSRB).

B. "Certified radon measurement contractor" means a contractor that is certified to conduct testing by the National Radon Proficiency Program (NRPP) or the National Radon Safety Board (NSRB).

C. "Colorado Low Income Radon Mitigation Assistance Program" (LIRMA) means the assistance program created to address local community needs through an assistance process established pursuant to Section 25-11-114, C.R.S. administered by the Hazardous Materials and Waste Management Division (HMWMD) at the Colorado Department of Public Health and Environment (CDPHE).

D. "Conflict of Interest" consists of one or more the following conditions:

1. Any individual who has a personal or financial interest that could reasonably be perceived as an interest that may influence an individual in his or her official duties.

E. "Department" means the Colorado Department of Public Health and Environment or CDPHE.

F. "Division" means the Hazardous Materials and Waste Management Division (HMWMD).

G. "Financial interest" means an interest held by an individual which is an ownership or vested interest in an entity or employment, or investment interests, or a prospective employment for which negotiations have begun, or a directorship or officership in an entity, or immediate family members.

H. "Fiscal year" means the period commencing July 1 of a calendar year and concluding June 30 of the following calendar year.

I. "Homeowner" means, for purposes of this regulation, a Colorado resident who owns a dwelling as demonstrated by that person's name appearing on a warranty deed or deed of trust, and who lives in the home as their primary residence.

J. "LIRMA eligible certified radon mitigation contractor" means a company that has applied for eligibility to the LIRMA Program in accordance with the LIRMA Program policies and procedure manual and has been approved to participate in the program.

21.2 Program goal

The assistance program is created to address local community needs by funding the installation of radon mitigation systems and post-installation radon testing in low income homes showing elevated levels of radon. The program is intended to reduce the incidence of lung cancer caused by radon in qualified homeowner-occupied homes in Colorado.

21.3 Homeowner eligibility for mitigation system assistance

The following contains the criteria under which homeowners may receive assistance (funding) for the installation of radon mitigation systems under the Colorado LIRMA Program:

A. The home must be a homeowner-occupied home located within the State of Colorado. The following types of homes are eligible for the LIRMA Program:

1. Single family dwelling unit;

2. One-to four unit buildings. The unit occupied by the owner is eligible for mitigation assistance under the program;

3. Condominium or cooperative unit; or

4. Manufactured homes.

Rental units and/or properties listed for sale are not eligible for the LIRMA Program.

B. The homeowner applicant must be:

1. A resident of Colorado. Proof of residency must be established at the time of application; and

2. Be considered a low-income household and meet the low income limits specified in Table 21-1 below.

Table 21-1. Table of annual income limits based on total Adjusted Gross Income from prior years federal income taxes.

Statewide Income Limits For Colorado								
Family Household Size								
# of Persons in Household:	1	2	3	4	5	6	7	8
Low Income	$41,400	$47,300	$53,200	$59,100	$63,850	$68,600	$73,300	$78,050

C. Assistance with mitigation system installation will be provided for qualified homes with radon levels exceeding 4 picocuries per liter (4 pCi/L) as tested using a certified test kit or certified radon measurement contractor. Initial radon testing will not be paid for or reimbursed under this program.

D. Homes with mitigation systems currently installed are not eligible for mitigation assistance funding or reimbursement under this program.

E. Following mitigation system installation:

1. The LIRMA eligible certified radon mitigation contractor will provide the homeowner with a certified test kit; and

2. The homeowner shall conduct the provided radon test no sooner than 24 hours and within 7 days of the mitigation system installation. The homeowner must submit the radon test results to the LIRMA Program within 30 days of the test.

F. Homes under the governance or requirements of a home owners association (HOA) must have approval of the mitigation plan from the HOA.

21.4 Homeowner applications for assistance

A. Applicants (homeowners) seeking funding to pay for radon mitigation and post-mitigation radon testing shall complete the LIRMA Homeowners Application as provided by the LIRMA Program.

B. In addition to any other penalty imposed by law, any applicant who knowingly or intentionally provides false information to the department when applying for assistance may be denied funding and shall be ineligible to receive any future funds under these rules.

C. Within 30 days of receiving a homeowner application for assistance, the LIRMA Program will review the application and will:

1. Approve the application; or

2. Deny the application; or

3. Request additional information from the applicant.

D. Applicants who submit an incomplete application or who submit incomplete information or documents in the application process will be given 30 days to correct or submit the necessary information. Applicants who fail to provide the necessary information within 30 days of the LIRMA Program request will result in the application being abandoned and no mitigation system funding will be provided except where the applicant resubmits a full application with all necessary information and documents. The LIRMA Program will make all reasonable efforts to contact the applicant to request the additional information or documentation.

E. Timeline for assistance applications

1. Applications for assistance may be submitted throughout the year as funds remain available. Once funding is no longer available, the LIRMA Program will cease to process applications until additional funding becomes available. If funding is not available at the time of application, the applicant may request that the LIRMA Program hold the application (for up to 45 days) while the program awaits additional funding. Unless otherwise indicated, the LIRMA Program will not hold applications for longer than 45 days while waiting for funding.

   If it has been longer than 45 days since the application was received by the LIRMA Program, the applicant will be required to reapply and resubmit all necessary documentation.

F. Request for application forms

1. Upon request the LIRMA Program will mail or email blank application forms to any person(s) requesting such forms. A maximum of 10 application forms will be mailed at any time. Application forms are also posted on the department website.

21.5 Criteria for selecting awards to homeowners

A. The LIRMA Program shall receive and review applications and select applicants on a first-come, first-served basis and will be evaluated based upon the following criteria:

1. The funds are available during the current state fiscal year/funding cycle to fund the radon mitigation system and post mitigation testing at the time the application is received;

2. The radon test results indicate that radon levels in the livable areas of the home exceed the EPA recommended radon action level of 4 picocuries per liter (4 pCi/L) for radon as tested by one of the following accepted testing methods:

a. A short term radon test using a certified test kit;

b. A long term radon test using a certified test kit; or

c. A test or measurement performed by a certified radon measurement contractor;

All radon testing must be completed within a 12 month period prior to receipt of the LIRMA Program homeowner application.

3. The applicant has provided documentation that they own and occupy the home as their primary residence;

4. The applicant meets the low income criteria in accordance with Table 21-1.

B. The LIRMA Program shall have final authority to approve or deny the funding awards based upon the documentation submitted or otherwise obtained by the department.

21.6 Homeowner assistance limits

A. Assistance amounts shall be limited to a maximum of $1,500.00 per homeowner applicant unless otherwise approved in advance by the LIRMA Program. All funds will be paid directly to the LIRMA eligible certified radon mitigation contractor.

B. A person may not apply for assistance more than one time in a calendar year.

21.7 Awarding of assistance monies and appeals

A. The LIRMA Program shall award funds and will specify the amount of the assistance based upon the contractor's mitigation plan and the LIRMA Program statement of work requirements for LIRMA eligible certified radon mitigation contractors.

B. For the current application year, all award decisions by the LIRMA Program are final and not subject to appeal or further review. However, any applicant may provide feedback on the LIRMA Program implementation and processes at any time in order to facilitate continuous improvement, efficiency, and effectiveness of the program.

21.8 Application process to become a LIRMA eligible certified radon mitigation contractor

A. Radon mitigation contractors seeking to become a LIRMA eligible certified radon mitigation contractor shall:

1. Follow the requirements of the LIRMA Program as prescribed by the department;

2. Complete the Radon Contractor's LIRMA Application form as prescribed by the department;

B. In addition to any other penalty imposed by law, any contractor applicant who knowingly or intentionally provides false information to the department when applying to become a LIRMA eligible certified radon mitigation contractor may be restricted from participating in the LIRMA Program or from receiving mitigation funds under the LIRMA Program.

C. Within 30 days of receiving a contractor application, the LIRMA Program will review the application and will:

1. Approve the application; or

2. Deny the application; or

3. Request additional information from the contractor applicant.

D. Contractor applicants who submit an incomplete application or who submit incomplete information or documents in the application process will be given 30 days to correct or submit the necessary information. Applicants who fail to provide the necessary information within 30 days of the LIRMA Program request will result in the application being abandoned and the contractor will not be added to the LIRMA eligible contractor list except where the applicant resubmits a full application with all necessary information and documents. The LIRMA Program will make all reasonable efforts to contact the contractor applicant to request the needed additional information or documentation.

E. Timeline for contractor applications

1. Contractor applications may be submitted throughout the year. Approved applicants will be added to the eligibility list within 30 days of the approval.

F. Delisting of contractors from approved list

1. At the discretion of the LIRMA Program, a mitigation contractor may be delisted (removed) from the LIRMA eligible certified radon mitigation contractor list.

G. Mitigation contractor responsibilities

1. In addition to requirements specified by the LIRMA Program, contractors shall adhere to the following requirements:

a. Installation of mitigation systems shall be completed in accordance with the signed statement of work, completed in a timely manner within 60 days of the approval of the mitigation plan;

b. Following mitigation system installation, a post-mitigation test showing levels have been reduced below 4 pCi/L will be required for reimbursement to the mitigation contractor.

c. Any mitigation contractor who knowingly or intentionally provides false information to the department as part of a mitigation system installation may be restricted from participating in the LIRMA Program or from receiving mitigation funds under the LIRMA Program.

H. Request for application forms

1. Upon request the LIRMA Program will mail or email contractor application forms to any person(s) requesting such forms. A maximum of 10 application forms will be mailed per request. Application forms are also posted on the department website.

21.9 Reporting requirements

The LIRMA Program will make information about the LIRMA Program impact available on an annual basis.

21.10 Conflict of interest

A. Any CDPHE Staff involved in reviewing or approving applications must disclose any potential or actual conflict of interest, as defined in section 21.1, to the Radiation Program Manager. If the Radiation Program Manager determines that the person has a potential conflict of interest, the Radiation Program Manager shall assign an alternate person to review, or assist in the review, of any application for which a conflict of interest may exist.

COLORADO
Board of Health
Department of Public Health & Environment

Notice of Public Rule-Making Hearing Scheduled for October 19, 2016

NOTICE is hereby given pursuant to the provisions of Section 24-4-103, C.R.S., that the Colorado Board of Health will conduct a public rule-making hearing on October 19, 2016 at 10 a.m. in the Sabin-Cleere Conference Room of the Colorado Department of Public Health and Environment, Bldg. A, First Floor, 4300 Cherry Creek Drive, South, Denver, CO 80246, to consider the promulgation of 6 CCR 1007-1, Rules and Regulations Pertaining to Radiation Control, Part 21, Colorado Low Income Radon Mitigation Assistance (LIRMA) Program. The proposed rules have been developed by the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and Environment pursuant to Section 25-1-108, 25-1.5-101(1)(l), 25-11-104, 25-11-114, 25-16-104.5, and 25-16-104.6, C.R.S.

The agenda for the meeting and the proposed amendments will also be available on the Board's website, https://www.colorado.gov/pacific/cdphe/boh, at least seven (7) days prior to the meeting. The proposed rules, together with the proposed statement of basis and purpose, specific statutory authority and regulatory analysis will be available for inspection at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 at least five working days prior to the hearing. Copies of the proposed rules may be obtained by contacting the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division HMWMD-B2, 4300 Cherry Creek Drive S., Denver, CO 80246, (303) 692-3454.

The Board encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Chair, oral testimony at the hearing may be limited to three minutes or less depending on the number of persons wishing to comment. Pursuant to 6 CCR 1014-8, §3.02.1, written testimony must be submitted no later than five (5) calendar days prior to the rulemaking hearing. Written testimony is due by 5:00 p.m., Thursday, October 13, 2016. Persons wishing to submit written comments should submit them to: Colorado Board of Health, ATTN: Jamie L. Thornton, Program Assistant, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South EDO-A5, Denver, Colorado 80246-1530 or by e-mail at: cdphe.bohrequests@state.co.us

Dated this 10th day of August, 2016.

Deborah Nelson
Board of Health Administrator

Notice of Proposed Rulemaking

Tracking number

2016-00434

Department

1100 - Department of Labor and Employment

Agency

1101 - Division of Employment and Training

CCR number

7 CCR 1101-2

Rule title

REGULATIONS CONCERNING EMPLOYMENT SECURITY

Rulemaking Hearing

Date

10/20/2016

Time

02:00 PM

Location

633 17th Street,12th Floor, Conference Room 12A, Denver, CO 80202

Subjects and issues involved

Amend rules to clarify what factors are considered when an individual who has an unemployment claim fails to act in a timely manner.

To delete rules that applied to § 8-73-114, C.R.S., because that section of law was repealed.

To add a new rule allowing the Director of the Division to waive consideration of requirements associated with approved training in instances when an industry crisis threatens the regional or state economic stability.

Statutory authority

The authority for the amendments of the rules is in § 8-72-102 C.R.S.
Rules. (1) The director of the division has the power to adopt, amend, or rescind, in accordance with section 24-4-103, C.R.S., reasonable and necessary rules relating to the administration of the Colorado Employment Security Act and governing hearings and proceedings under such act.

Contact information

Name

Jeff Fitzgerald

Title

Director, Division of Unemployment Insurance

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3033189399

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PART II CLAIMS FOR BENEFITS

2.1 REGISTRATION AND FILING CLAIMS

2.1.1 Statutory References. 8-70-111 (2)(a), 8-70-112, 8-73-107 (1)(a)(b)(e)(h), and 8-74-101 (1), C.R.S.

2.1.10 Exceptions to Time Limits. ~~The division may, for good cause shown, permit any act required under this section with respect to a claim for benefits, including registering for work as instructed by the division, to be performed outside the required time period without loss of eligibility, but no act may be permitted more than six months beyond the last day of the applicable time period. For the purposes of this subsection, good cause shall have the meaning set forth in regulation 12.1.8.~~ ACTS UNDER THIS SECTION 2.1 MAY BE PERMITTED OUT OF TIME ONLY UNDER LIMITED CIRCUMSTANCES, BUT REGARDLESS OF WHETHER AN INDIVIDUAL HAS MET THE REQUIREMENTS THIS SECTION 2.1.10, NO ACT UNDER THIS SECTION 2.1 SHALL BE PERMITTED MORE THAN SIX MONTHS BEYOND THE LAST DAY OF THE APPLICABLE TIME PERIOD. EXCEPTIONS FOR UNTIMELY ACTS THAT OCCUR WITHIN THE ALLOTTED SIX MONTHS MAY BE GRANTED ONLY IF THE FOLLOWING STANDARDS APPLY.

.1 **WORK REGISTRATION AND REQUESTED REPORTS**. THE DIVISION MAY, FOR GOOD CAUSE SHOWN, PERMIT AN INDIVIDUAL TO REGISTER FOR WORK OR PROVIDE REQUESTED REPORTS TO THE DIVISION OUTSIDE THE REQUIRED TIME PERIOD WITHOUT LOSS OF ELIGIBILITY. FOR THE PURPOSES OF THIS SUBSECTION, GOOD CAUSE SHALL HAVE THE MEANING SET FORTH IN REGULATION 12.1.8.

.2 **CONTINUED CLAIMS**. THE DIVISION MAY PERMIT FILING A CONTINUED CLAIM OUT OF TIME AS SET FORTH IN REGULATION 2.1.7 ONLY IF THE INDIVIDUAL ESTABLISHES TO THE SATISFACTION OF THE DIVISION THAT HE OR SHE EXERCISED NO CONTROL OVER THE CIRCUMSTANCES OF THE UNTIMELY FILING. BEING UNAWARE OF THE NEED TO TIMELY FILE SHALL NOT BE CONSIDERED A FACTOR OUTSIDE AN INDIVIDUAL'S CONTROL.

.3 **INITIAL, ADDITIONAL, REOPENED CLAIMS**. WHEN AN INITIAL, ADDITIONAL, OR REOPEN CLAIM IS FILED, THE FIRST WEEK OF THAT CLAIM SHALL BE DETERMINED IN ACCORDANCE WITH REGULATION 2.3.5. THE DIVISION MAY PERMIT A CHANGE IN THE FIRST WEEK OF AN INITIAL, ADDITIONAL, OR REOPENED CLAIM ONLY IF THE INDIVIDUAL ESTABLISHES TO THE SATISFACTION OF THE DIVISION THAT HE OR SHE EXERCISED NO CONTROL OVER THE CIRCUMSTANCES OF THE UNTIMELY FILING. BEING UNAWARE OF THE NEED TO TIMELY FILE SHALL NOT BE CONSIDERED A FACTOR OUTSIDE THE INDIVIDUAL'S CONTROL.

2.1.11 Cancellation of Initial Claim. When a benefit year is established as a result of a valid initial claim, such claim may be cancelled only when:

.1 Part XIII of the regulations concerning interstate and combined-wage claimants applies, or

.2 The claimant requests cancellation in person, by mail, by facsimile machine, by division-approved electronic means, or by telephone within twelve calendar days from the date of such filing. REQUESTS TO CANCEL A VALID INITIAL CLAIM MADE AFTER THE TWELVE-DAY PERIOD SHALL BE DENIED WITHOUT CONSIDERATION OF GOOD CAUSE OR WHETHER THE INDIVIDUAL EXERCISED ANY CONTROL OVER THE CIRCUMSTANCES OF THE UNTIMELY REQUEST.

2.3 WEEK OF UNEMPLOYMENT

2.3.1 Statutory References: 8-70-103 (19)(28)(30), 8-70-112, 8-73-107 (1)(d)(f)(h), and 8-74-101, C.R.S.

2.3.2 Week of Unemployment. Except as provided in regulations 2.3.4 and 2.3.5, a week of unemployment shall be the calendar week in which the individual files an initial, additional, or reopened claim with the division and each calendar week immediately following any such week for which said individual has filed a continued claim as provided by regulation or has failed to do so ~~for good cause~~ AND HAS ESTABLISHED TO THE SATISFACTION OF THE DIVISION THAT HE OR SHE EXERCISED NO CONTROL OVER THAT FAILURE. However, no week shall be considered a week of unemployment unless the individual has worked less than thirty-two hours during such week, earned less than his or her weekly benefit amount, and has filed an initial, additional, or reopened claim not later than Wednesday of that week or has filed a continued claim pursuant to regulation 2.1.7.

2.3.3 Area Served by Itinerant Service Point. A week of unemployment for an individual who resides in an area served only by an itinerant service point of the division shall be the calendar week in which such individual became unemployed, if such individual files an initial, additional, or reopened claim at such itinerant service point at the first opportunity thereafter, and each calendar week immediately following such week for which such individual has filed a continued claim as provided by regulation or has failed to do so ~~for good cause~~ AND HAS ESTABLISHED TO THE SATISFACTION OF THE DIVISION THAT HE OR SHE EXERCISED NO CONTROL OVER THAT FAILURE. However, no week shall be considered a week of unemployment unless the individual has worked less than thirty-two hours during such week and earned less than his or her weekly benefit amount.

2.3.4 Failure to Meet Requirements. A week of unemployment for an individual who has failed to timely file an initial, additional, or reopened claim for benefits as provided in these regulations shall be the EARLIEST CALENDAR WEEK IN WHICH THE INDIVIDUAL ESTABLISHED TO THE SATISFACTION OF THE DIVISION THAT HE OR SHE EXERCISED NO CONTROL OVER THE CIRCUMSTANCES OF THE FAILURE TO ACT TIMELY~~ calendar week in which such individual became unemployed, if the individual establishes, in accordance with these regulations, that he or she has good cause for such failure~~. Thereafter,

weeks of unemployment shall be the calendar weeks immediately following any such week for which the individual has filed a continued claim as provided by regulation, or has failed to do so ~~for good cause~~ AND HAS ESTABLISHED TO THE SATISFACTION OF THE DIVISION THAT HE OR SHE EXERCISED NO CONTROL OVER THAT FAILURE. However, no week shall be considered a week of unemployment unless the individual has worked less than thirty-two hours during such week and earned less than his or her weekly benefit amount.

2.6 APPROVED-TRAINING COURSE

2.6.1 Statutory Reference: 8-73-107 (4), ~~and 8-73-114,~~ C.R.S.

2.6.2 Approved Training. The claimant must produce evidence of continued attendance and satisfactory progress in an approved-training course when requested by the division. In determining whether or not a training course will be approved for an individual claiming benefits under the provisions of 8-73-107 (4), C.R.S., the division shall consider, among other factors, the following:

.1 Whether the claimant's skills are such that reasonable employment opportunities do not exist or have substantially diminished in the labor-market area of the claimant to the extent that, in the judgement of the division, the individual has little or no prospect of obtaining suitable employment;

.2 Whether the claimant possesses the qualifications and aptitudes to successfully complete the program of training;

.3 Whether there is a reasonable expectation that the claimant will complete the training course;

.4 Whether the training relates to an occupation or skill for which there are, or are expected to be, reasonable employment opportunities for the claimant; and

.5 Whether the training course is reasonably designed to result in the claimant's prompt reemployment in suitable work.

~~**2.6.4 Enhanced Unemployment Insurance Compensation Benefits**.~~

~~.1 Availability of Enhanced Benefits. Enhanced benefit payments will be made only until the total amount available to cover all costs to the state of Colorado under section 903(g) of the federal "Social Security Act" as specified in 8-73-114, C.R.S., are substantially exhausted or June 30, 2014 whichever comes first.~~

~~.2 Authorization to Participate. A Colorado local workforce center will determine whether a claimant is authorized to participate and the Division will adjust and pay continued unemployment insurance claims to include the enhanced unemployment insurance compensation for authorized participants who are eligible.~~

~~.1 The authorization to participate made by workforce centers is not appealable within the Division.~~

~~.3 Eligibility Determinations. Eligibility determinations for the continuation of enhanced unemployment insurance compensation to the authorized participants will be issued by the Division to participants only after a claimant is subsequently deemed ineligible under 8-73-114 and only for reasons other than funds no longer~~

~~being substantially available under the aforementioned acts. Eligibility determinations will not be issued when funds are no longer substantially available. The eligibility determinations issued by the Division are appealable as described in Part XI of the Regulations.~~

2.6.5 APPROVED TRAINING FOR INDUSTRIES IN CRISIS. IN THE EVENT OF A LOCALIZED OR STATE WIDE DOWNTURN IN A PARTICULAR INDUSTRY, SUCH AS UNEXPECTED MASS LAYOFFS OR OTHER TRIGGERS THAT THREATEN THE ECONOMIC STABILITY OF THE REGIONAL OR STATE ECONOMY, THE DIVISION MAY, AT THE DISCRETION OF THE DIVISION DIRECTOR, WAIVE CONSIDERATION OF ANY OF THE FACTORS SET FORTH IN REGULATION 2.6.2.

COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT
STATEMENT OF BASIS AND PURPOSE FOR PROPOSED PERMANENT RULES
PUBLIC HEARING MARCH 23, 2016

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

The following amendments are proposed to improve the Unemployment Insurance Division's administration of Articles 70 through 83, Title 8, Colorado Revised Statutes (C.R.S).

Registration and Filing Claims (Part II)

Amend rules to clarify what factors are considered when an individual who has an unemployment claim fails to act in a timely manner.

Week of Unemployment (Part II)

Amend rules to clarify what factors are considered when an individual who has an unemployment claim fails to act in a timely manner.

Approved Training Course (Part II)

To delete rules that applied to § 8-73-114, C.R.S., because that section of law was repealed.

To add a new rule allowing the Director of the Division to waive consideration of requirements associated with approved training in instances when an industry crisis threatens the regional or state economic stability.

2. If emergency, give reasons

3. Authority for rule

The authority for the amendments of the rules is in § 8-72-102 C.R.S.

Rules. (1) The director of the division has the power to adopt, amend, or rescind, in accordance with section 24-4-103, C.R.S., reasonable and necessary rules relating to the administration of the ª Colorado Employment Security Actº and governing hearings and proceedings under such act.

Notice of Proposed Rulemaking

Tracking number

2016-00429

Department

500,1008,2500 - Department of Human Services

Agency

2504 - Child Support Enforcement (Volume 6)

CCR number

9 CCR 2504-1

Rule title

RULE MANUAL VOLUME 6, CHILD SUPPORT ENFORCEMENT RULES

Rulemaking Hearing

Date

10/07/2016

Time

10:00 AM

Location

South Branch Library, Hopeful and Discovery Meeting Rooms, 103 S. Harris Street, Breckenridge, CO 80424

Subjects and issues involved

HB 16-1165 changed the threshold income requirement under which parents are required to provide medical insurance for their children subject to a child support order and authorizes the Div of Child Support Services to administratively attach proceeds from insurance settlements due to obligors that owe past-due child support.

Pursuant to 45 CFR 303.31, and 14-10-115, C.R.S., parents are obligated to provide medical support for the children that are subject to a child support order. An exception is made where the cost of the childs share of the medical insurance premium is not reasonable, now defined as 5% or more of the parents gross income. The rule that included the 20% provision now needs to be changed to 5% in order to comply with the legislation.

New rules to implement the administrative attachment of insurance claim payments, awards, and settlements through the Child Support Lien Network or a similar program. An obligor will qualify for the administrative enforcement remedy when there is an arrears balance of $500.00 or more, totaled across all of the obligors orders. Any fees assessed will be recovered from the monies collected. A notice will be generated to the obligor when a case is matched with the remedy, and that notice will include information as to the administrative review process. An obligor will have 30 days from issuance of the notice to request an administrative review of the case.

Statutory authority

"26-1-107, C.R.S. (2015) ; 26-1-109, C.R.S. (2015); 26-1-111, C.R.S. (2015)
26-13-122.7, C.R.S; 14-10-115, C.R.S; 26-13-121.5, C.R.S;
42 U.S.C. 666; 45 CFR 303.31"

Contact information

Name

Tracy Rumans

Title

Rule Author

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6.240.2 MEDICAL SUPPORT ENFORCEMENT

The National Medical Support Notice (NMSN) must be sent to the obligor's employer if the obligor is ordered to provide health insurance, the obligor is eligible for health insurance, the health insurance is accessible to the child(ren), and the monthly premiums are reasonable in cost.

A. A notice must be sent to the obligor, informing him/her that the NMSN was sent to his/her employer and describing the rights and conditions regarding the issuance of the NMSN. The obligor has ten (10) calendar days from the date of the mailing to object with the Child Support Enforcement Unit if the obligor believes there is a mistake in identity and he/she is not the obligor, there is no order for the obligor to provide health insurance, the health insurance is not accessible to the children, or the monthly premiums are not reasonable in cost.

1. Health insurance is considered not accessible to the child(ren) if the child(ren) resides outside the geographic area of coverage.

2. A premium amount is considered reasonable in cost if the premium payments (child(ren)s' portion) are less than ~~twenty percent (20%)~~ FIVE PERCENT (5%) of the paying parent's gross income or application of the premium payment (child(ren)s' portion) on the guidelines does not result in a Monthly Support Obligation of fifty dollars($50) or less.

B. The Child Support Enforcement Unit will have ten (10) calendar days from the date the objection is mailed to determine if the objection is valid. If the obligor objects to the enforcement of the NMSN claiming it exceeds the reasonable cost standard, the Child Support Enforcement Unit must determine if the premium amount is ~~twenty percent (20%)~~ FIVE PERCENT (5%) or more of the obligor's gross monthly income.

C. If the obligor's objection is valid, the Child Support Enforcement Unit must send a notice of termination to the obligor's employer with a copy to the obligor. If the obligor's objection is not valid, the Child Support Enforcement Unit must notify the obligor that the NMSN will remain in effect and that the obligor has the right to object with the court.

D. In subsidized adoption cases, CSE units have the option of enforcing medical support through a NMSN. Verification of the subsidized adoption is required if the Child Support Enforcement Unit chooses not to enforce.

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6.904 ADMINISTRATIVE LIEN AND ATTACHMENT OF INSURANCE CLAIM PAYMENTS, AWARDS, AND SETTLEMENTS

THE COLORADO DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILD SUPPORT SERVICES, SHALL ATTACH THE INSURANCE CLAIM PAYMENTS, AWARDS, OR SETTLEMENTS DUE TO AN OBLIGOR WHO IS RESPONSIBLE FOR THE PAYMENT OF PAST-DUE CHILD SUPPORT OBLIGATIONS OR PAST-DUE MAINTENANCE OR MAINTENANCE WHEN COMBINED WITH CHILD SUPPORT OBLIGATIONS.

6.904.1 SELECTION

OBLIGORS SHALL BE SELECTED FOR AN ADMINISTRATIVE LIEN AND ATTACHMENT OF POTENTIAL CLAIM PAYMENTS, AWARDS, OR SETTLEMENTS ON ALL OF THEIR COURT ORDERS IF THEY OWE MORE THAN $500.00, ACROSS ALL ORDERS, IN PAST-DUE CHILD SUPPORT, PAST-DUE MAINTENANCE OR MAINTENANCE WHEN COMBINED WITH CHILD SUPPORT.

PURSUANT TO SECTION 26-13-122.7 C.R.S., AN INSURANCE CLAIM PAYMENT ONLY INCLUDES THE PORTION OF THE CLAIM, AWARD, OR SETTLEMENT PAYABLE TO THE OBLIGOR OR THE OBLIGOR'S REPRESENTATIVE. ANY FEES ASSESSED SHALL BE RECOVERED FROM THE MONIES COLLECTED. IF THE LIEN IS INACTIVATED, THE COUNTY CHILD SUPPORT ENFORCEMENT UNIT MAY INCUR THE DATA MATCH FEE.

6.904.2 NOTICES

A NOTICE OF ADMINISTRATIVE LIEN AND ATTACHMENT WILL BE SENT TO THE INSURANCE COMPANY, AND A COPY OF THE NOTICE OF ADMINISTRATIVE LIEN AND ATTACHMENT ALONG WITH THE OBLIGOR'S RIGHT TO REQUEST AN ADMINISTRATIVE REVIEW IS SENT TO THE OBLIGOR. THE OBLIGOR HAS THIRTY (30) CALENDAR DAYS FROM THE DATE ON THE NOTICE TO REQUEST, IN WRITING, AN ADMINISTRATIVE REVIEW. WHEN A WRITTEN REQUEST IS RECEIVED, THE COUNTY CHILD SUPPORT ENFORCEMENT WORKER SHALL FOLLOW SECTION 6.805.

6.904.3 POINT OF CONTACT

THE COLORADO DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILD SUPPORT SERVICES, IS THE SINGLE POINT OF CONTACT BETWEEN CHILD SUPPORT ENFORCEMENT AND THE CHILD SUPPORT LIEN NETWORK, OR SIMILAR PROGRAM, AND THE INSURANCE COMPANIES.

****

Title of Proposed Rule: Implementing HB 16-1165 Child Support Commission Bill

Rule-making#: 16-6-1-1

Office, Division, & Program: Office of Economic Security, Child Support Services
Rule Author: Tracy Rumans
Phone: (303) 866-5428
E-Mail: tracy.rumans@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.
(State what the rule says or does, explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. How do these rule changes align with the outcomes that we are trying to achieve, such as those measured in C-Stat?)

The purpose of the proposed rule is to implement legislation passed by the General Assembly during the 2016 legislative session under House Bill 16-1165. The legislation changed the threshold income requirement under which parents are required to provide medical insurance for their children subject to a child support order. The legislation also authorizes the Division of Child Support Services (DCSS) to administratively attach proceeds from insurance settlements due to obligors that owe past-due child support.

Pursuant to 45 CFR 303.31, and 14-10-115, C.R.S., parents are obligated to provide medical support for the children that are subject to a child support order. An exception to this requirement is made where the cost of the child's share of the medical insurance premium is not reasonable, which is now defined as five percent (5%) or more of the parent's gross income. This is a change from the 20% of a parent's gross income threshold that was previously used to define reasonable cost. Therefore, the rule that included the 20% provision now needs to be changed to 5% in order to comply with the legislation.

A new section of rules is being created to implement the administrative attachment of insurance claim payments, awards, and settlements through the Child Support Lien Network (CSLN) or a similar program. An obligor will qualify for the administrative enforcement remedy when there is an arrears balance of $500.00 or more, totaled across all of the obligor's orders. Any fees assessed will be recovered from the monies collected. A notice will be generated to the obligor when a case is matched with the remedy, and that notice will include information as to the administrative review process. An obligor will have 30 days from issuance of the notice to request an administrative review of the case.

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:

Authority for Rule:
State Board Authority: 26-1-107, C.R.S. (2015) - State Board to promulgate rules; 26-1-109, C.R.S. (2015) - state department rules to coordinate with federal programs; 26-1-111, C.R.S. (2015) - state department to promulgate rules for public assistance and welfare activities.

Title of Proposed Rule: Implementing HB 16-1165 Child Support Commission Bill

Rule-making#: 16-6-1-1

Office, Division, & Program: Office of Economic Security, Child Support Services
Rule Author: Tracy Rumans
Phone: (303) 866-5428
E-Mail: tracy.rumans@state.co.us

Program Authority:
(give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority)

26-13-122.7, C.R.S.—authorizes the state department to administratively attach insurance claim payments, awards, or settlements, and requires promulgation of rules by the state board concerning procedures to be followed by the state department.

14-10-115, C.R.S.—requires a child support order to include a provision for the parent to provide medical support when the cost is less than 5% of the parent's gross income.

26-13-121.5, C.R.S.—requires enforcement of medical support provisions.

42 U.S.C. 666—requires child support order to include provision for medical support.

45 CFR 303.31—federal regulation governing medical support.

Does the rule incorporate material by reference?		Yes	X	No
Does this rule repeat language found in statute?		Yes	X	No

If yes, please explain.

The program has sent this proposed rule-making package to which stakeholders?

Office of Economic Security (OES) Sub-PAC
County Human Services Directors and designees
County Child Support Services Administrators
Regional Partners—Federal Office of Child Support Enforcement
IV-D Attorneys
Child Support Lien Network
Colorado Department of Health Care Policy & Financing
Mountain States Employers Council, Inc.
Colorado Judicial Department
Colorado Legal Services
Ken Sanders, Manager of the Center on Fathering

[Note: Changes to rule text are identified as follows: deletions are shown as "strikethrough", additions are in "all caps", and changes made between initial review and final adoption are in brackets.]

Attachments:
Regulatory Analysis
Overview of Proposed Rule
Stakeholder Comment Summary

Title of Proposed Rule: Implementing HB 16-1165 Child Support Commission Bill

Rule-making#: 16-6-1-1

Office, Division, & Program: Office of Economic Security, Child Support Services
Rule Author: Tracy Rumans
Phone: (303) 866-5428
E-Mail: tracy.rumans@state.co.us

REGULATORY ANALYSIS

(*complete each question; answers may take more than the space provided*)

1. List of groups impacted by this rule:

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

Custodial parties that are owed past-due child support will benefit from this rule. Parents that are required to provide medical insurance at a cost of up to 20% of their gross income will benefit from this rule.

County child support services offices will benefit with a reduced workload impact by using the administrative attachment remedy instead of pursuing collection through the current judicial process required to intercept insurance settlements.

State staff will bear the burden of administering the implementation of the administrative lien and attachment of insurance settlements.

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?

Custodial parties that are owed past-due child support will benefit from this rule by being able to receive payments intercepted through the administrative lien and attachment of insurance settlements. Estimated collections from the administrative attachment of insurance settlements are projected to exceed $369,000 for Colorado families per year.

Parents will also benefit by being able to provide medical insurance to their children when the cost is actually affordable, without being required to spend an unreasonable portion of their gross income on the coverage. Additionally, more parents will be able to pay their full child support amount without having to pay a large health insurance premium.

State staff will bear the burden, in the short-term, of updating ACSES, developing procedures, and conducting training of county staff. Staff resources that currently deliver training will be utilized.

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…."

Office, Division, & Program: Office of Economic Security, Child Support Services

Rule Author: Tracy Rumans

Phone: (303) 866-5428

E-Mail: tracy.rumans@state.co.us

REGULATORY ANALYSIS (continued**)**

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)*

Changes to the Automated Child Support Enforcement System (ACSES) will be completed with funds already available to the program.

Costs of training will be absorbed within current state positions that currently conduct training.

The fees associated with the administrative attachment of an insurance settlement will be deducted from the proceeds. The expected amount of the fee is $48.50 per match.

County Fiscal Impact

There are no expected county fiscal impacts associated with this rule change. In the event a county administrator determines that an interception of an insurance settlement should not take place after the match has been placed, the match fee may be assessed against the county.

Federal Fiscal Impact

There are no federal fiscal impacts associated with this rule change.

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

There are no other fiscal impacts associated with this rule change.

4. Data Description:

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

Because this rule is required in order to implement legislation, other data sources were not obtained in developing the rule. However, based on data from other states, estimated collections from the administrative attachment of insurance settlements are projected to exceed $369,000 for Colorado families per year.

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…"

Office, Division, & Program: Office of Economic Security, Child Support Services

Rule Author: Tracy Rumans

Phone: (303) 866-5428

E-Mail: tracy.rumans@state.co.us

REGULATORY ANALYSIS (continued**)**

No other alternatives to rule-making are available because the rules must be changed and created in order to comply with the legislation. The medical support rule must be changed to comply with the statutory change in definition of reasonable cost, and the administrative lien and attachment legislation requires rules to be promulgated.

Title of Proposed Rule: Implementing HB 16-1165 Child Support Commission Bill

Rule-making#: 16-6-1-1

Office/Division or Program: Office of Economic Security Child Support Services

Rule Author: Tracy Rumans

Phone: (303) 866-5428
E-mail: Tracy.rumans@state.co.us

OVERVIEW OF PROPOSED RULE

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

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
6.240.2	Medical premium amount is considered reasonable in cost if the premium payments are less than 20% of the paying parent's gross income	Change 20% to 5%	x	
6.904	None	Creates new rule Section 6.904, et seq., "Administrative Lien and Attachment of Insurance Claim Payments, Awards, and Settlements"	x	
6.904.1	None	Outlines the selection criteria for the administrative lien and attachment remedy	x	
6.904.2	None	Outlines the noticing procedure and the obligor's right to request an administrative review		x
6.904.3	None	State department defined as point of contact for administrative remedy		x

Title of Proposed Rule: Implementing HB 16-1165 Child Support Commission Bill

Rule-making#: 16-6-1-1

Office/Division or Program: Office of Economic Security, Child Support Services
Rule Author: Tracy Rumans
Phone: (303) 866-5428
E-mail: Tracy.rumans@state.co.us

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):

Colorado Child Support Services Program Area

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:

Office of Economic Security (OES) Sub-PAC
County Human Services Directors and designees
County Child Support Services Administrators
Regional Partners—Federal Office of Child Support Enforcement
IV-D Attorneys
Child Support Lien Network
Colorado Department of Health Care Policy & Financing
Mountain States Employers Council, Inc.
Colorado Judicial Department
Colorado Legal Services
Ken Sanders, Manager of the Center on Fathering

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?

[X] Yes [ ] No

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

Colorado Department of Health Care Policy & Financing

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

[X] Yes [ ] No

Date presented July 7, 2016.

What issues were raised? None.

If not presented, explain why.

Title of Proposed Rule: Implementing HB 16-1165 Child Support Commission Bill

Rule-making#: 16-6-1-1

Office/Division or Program: Rule Author: Tracy Rumans Phone: (303) 866-5428
Office of Economic Security E-mail:
Child Support Services Tracy.rumans@state.co.us

Comments were received from stakeholders on the proposed rules:

[X] 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.

Section 6.240.2

Jeff Ball, IV-D Administrator for El Paso County Child Support Services

> Shouldn't the medical support section refer to obligor or obligee? I know that is not the focus of the legislative change, but it is an opportunity to clean up a Vol. 6 section you are amending anyway. Also, perhaps add something about health insurance provided for children through health-exchange purchased insurance, Medicaid or CHIP is a reasonable substitute for employer-provided health insurance.
>
> Response: The legislation being implemented uses the term "parent" and does not reference an obligor or obligee. The language in the rule is meant to track the legislation and not expand the definition of who is required to provide medical coverage. The policy that insurance provided through the health-exchange, Medicaid, or CHIP meets the requirement of providing insurance for the child has previously been communicated and does not require a change to Volume 6.

Sherri Deetz, IV-D Administrator, Gunnison and Hinsdale Counties

> We barely get anyone providing health insurance with the 20%. With 5% that coverage will be even less. People that want to and can afford to provide insurance do so, with or without the % rule. With all the changes in the provisions for health insurance with the Federal government and Medicaid eligibility, I'm not sure why CSS even has a requirement to enforce health insurance. I always get an order for either party to provide it when available, but that is as far as I go.
>
> Response: The change to Volume 6 reflects the legislation that was passed by the General Assembly. CSS is required to establish and enforce medical support pursuant to federal law, and the provisions related to that requirement remain in place in the rules.

Tina Harkness, Director, Northern Regional Office, Mountain States Employers Council, Inc.

> Thank you for the opportunity to provide feedback on the proposed changes. I shared your email with my colleagues. My colleagues and I help employers comply with income withholding orders for support and national medical support notices. Of these changes, the one that comes up in questions to us is the "reasonable cost" measure for health

insurance. We were surprised to see it drop from 20 to only 5%. We might have recommended "reasonable cost" be tied to what is considered affordable under the ACA which is 9.5%. But, that was our only feedback.

Just to clarify, will it continue to be the employee's responsibility to pursue with FSR that insurance is unaffordable?

Response: The rule change is based on legislation that was already passed, which included the 5% threshold. The legislation was based on the recommendations of the Child Support Commission, and the 5% was recommended by federal regulation. The responsibility of the employer and the employee will remain the same. The employer will respond to the National Medical Support Notice, now by determining if the cost of insurance is less than 5% of the parent's gross income, and the employee is responsible for pursuing coverage if ordered to do so.

Carolyn Gibson, IV-D Administrator, Child Support Services, Routt County

I wonder if we should include, in the first paragraph of 6.240.2, 'no other health insurance is currently in place' as one other reason to send off the NMSN. The primary reason NMSN's don't get sent out when an obligor is ordered to provide health insurance is when the obligee (or obligor) already has a current health insurance plan in place.

Response: As the only change made by the legislation to the provisions of medical support was to reduce the threshold amount of cost considered reasonable, the change to the rule was also limited to that issue. Your suggestion may be considered for future policy changes as to the enforcement of medical support.

Section 6.904

Jeff Ball, IV-D Administrator for El Paso County Child Support Services

Regarding CSLN, why do you mention maintenance only? We should only be collecting maintenance as a IV-D entity if it is in conjunction with a child support order.

Response: The language in the rule uses the same definition of past-due support that can be intercepted as contained in the legislation. Maintenance is only collected when in conjunction with a child support order, and the rule does follow that requirement. Maintenance is not mentioned by itself, but when combined with child support obligations.

Section 6.904.1

Kristie Kleven, Fremont County CSE/Fraud Supervisor

Office/Division or Program: Rule Author: Tracy Rumans Phone: (303) 866-5428
Office of Economic Security E-mail:
Child Support Services Tracy.rumans@state.co.us

Looks great, the only question I would have is how much is the fee for the data match if incurred under 6.904.1?

Response: Currently, the fee is $48.50 per match.

General

Joni L. Reynolds, Executive Director, Health and Human Services, Gunnison County

Thank you for sharing the information for review! We appreciate the opportunity to provide input. Our one recommendation would be to change all: "Child Support Enforcement" entries to "Child Support Services".

Response: Colorado Revised Statutes section 26-13-101, et seq., is titled the “Child Support Enforcement Act,” and all references in statute to the program use this name. Volume 6, therefore, also uses the term “Child Support Enforcement.” In order to be consistent, the same term is used here. Revisions to the statute and rule to reflect the updated name of the program may be considered in the future.

Notice of Proposed Rulemaking

Tracking number

2016-00427

Department

2505,1305 - Department of Health Care Policy and Financing

Agency

2505 - Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

CCR number

10 CCR 2505-10

Rule title

MEDICAL ASSISTANCE - STATEMENT OF BASIS AND PURPOSE, AND RULE HISTORY

Rulemaking Hearing

Date

10/14/2016

Time

09:00 AM

Location

303 East 17th Avenue, 11th Floor, Denver, CO 80203

Subjects and issues involved

see attached

Statutory authority

25.5.1-301 through 303 (CRS 2015)

Contact information

Name

Chris Sykes

Title

Medical Services Board Coordinator

Telephone

303-866-4416

Email

chris.sy

COLORADO
Department of Health Care Policy & Financing
Medical Services Board

NOTICE OF PROPOSED RULES

The Medical Services Board of the Colorado Department of Health Care Policy and Financing will hold a public meeting on Friday, October 14, 2016, beginning at 9:00 a.m., in the eleventh floor conference room at 303 East 17th Avenue, Denver, CO 80203. Reasonable accommodations will be provided upon request for persons with disabilities. Please notify the Board Coordinator at 303-866-4416 or chris.sykes@state.co.us or the 504/ADA Coordinator hcpf504ada@state.co.us at least one week prior to the meeting.

A copy of the full text of these proposed rule changes is available for review from the Medical Services Board Office, 1570 Grant Street, Denver, Colorado 80203, (303) 866-4416, fax (303) 866-4411. Written comments may be submitted to the Medical Services Board Office on or before close of business the Wednesday prior to the meeting. Additionally, the full text of all proposed changes will be available approximately one week prior to the meeting on the Department's website at www.colorado.gov/hcpf/medical-services-board.

This notice is submitted to you for publication, pursuant to § 24-4-103(3)(a) and (11)(a), C.R.S.

MSB 16-05-19-A, Revision to the Medical Assistance Special Financing Rule Concerning Colorado Dental Health Care Program for Low-Income Seniors, Section 8.960

Medical Assistance. This amended rule will be effective October 30, 2016. This rule change incorporates immediate dentures, partial dentures made with cast metal framework with resin bases, removal of torus palatinus/mandibularis, and denture program payment modifications into Appendix A.

The authority for this rule is contained in 25.5-1-301 through 25.5-1-303 C.R.S. (2015), and 25.5-3-404, C.R.S. (2015).

MSB 16-07-18-A, Revision to the Special Financing Division Colorado Indigent Care Program Rule Concerning Halfway House Residents, Section 8.904F

Medical Assistance. Revision to the Special Financing Division Colorado Indigent Care Program Rule Concerning Halfway House Residents. Rule #MSB 16-07-18-A amends Section 8.904F, Applicants Not Eligible, to coincide with recent policy changes made by Medicaid to allow these individuals to become eligible for the Colorado Indigent Care Program.

The authority for this rule is contained in 25.5-1-301 through 25.5-1-303, C.R.S (2016), 25.5-3-101 through 25.5-3-111, C.R.S. (2016).

MSB 16-06-21-A, Revision to the Medical Assistance Rates Section Rule Concerning Definitions, Section 8.500.1 Provider Reimbursement, Section 8.500.14

Medical Assistance. The Department waiver application for Home and Community Based Waiver Services (HCBS) for Persons with Developmental Disability (DD) requires that reimbursement paid to state and local government providers differ from private providers and cannot exceed the actual cost of providing services. Therefore, the rules concerning provider reimbursement, 10 C.C.R. 2505-10, Sections 8.500.1 and 8.500.14, are being expanded to include reimbursement for state and local government providers.

The authority for this rule is contained in 25.5-1-301 through 25.5-1-303, C.R.S. (2015), and 25.5-1-404, C.R.S. (2015).

MSB 16-01-20-A, Revision to the Medical Assistance Special Financing Division Colorado Indigent Care Program Rule Concerning Establishing Lawful Presence, Section 8.904C

Medical Assistance. Revision to the Special Financing Division Colorado Indigent Care Program Rule Concerning Establishing Lawful Presence. Rule #MSB 16-01-20-A amends Section 8.904C, Establishing Lawful Presence, to comply with verification of lawful presence requirements for applicants seeking public benefits promulgated by the Department of Revenue.

The authority for this rule is contained in 25.5-1-301 through 25.5-1-303, C.R.S. (2015), 24-76.5-101 et. al., C.R.S. (2015), and 25.5-3-101 through 25.5-3-111, C.R.S (2015).

MSB 16-08-09-A, Revision to the Medical Assistance Rule Concerning Recipient Appeals, Section 8.057

Medical Assistance. Rule #MSB 16-08-09-A amends Section 8.057, the Colorado General Assembly passed HB 16-1277, requiring applicant's or recipients receive 60 days to file an appeal and the right to a county dispute resolution conference. The rule revision will also comply with the fair hearings standards.

The authority for this rule is contained in 25.5-1-301 through 25.5-1-303, C.R.S. (2015), 42 CFR 431.244(f)(2), and HB 16-1277.

MSB 16-08-19-A, Revision to the Medical Assistance Rule Concerning Home and Community Based Services for Persons with Spinal Cord Injury, Section 8.517

Medical Assistance. The statute authorizing the Home and Community-Based Services Waiver for Persons with Spinal Cord Injury (HCBS-SCI) is contained in Section 25-6-1301. This statute specifies that subject to available funds, the waiver shall not have a waiting list. In order to increase the provider network and allow greater accessibility and choice of providers to the growing population of SCI waiver participants, 10 C.C.R. 2505-10 Section 80517.11 C.R.S. is being modified to change the minimum qualifications for Complementary and Integrative Health Service providers.

The authority for this rule is contained in 25.5-1-301 through 25.5-1-303, C.R.S. (2011) and 25-6-1301 C.R.S.

Notice of Proposed Rulemaking

Tracking number

2016-00430

Department

500,1008,2500 - Department of Human Services

Agency

2509 - Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-1

Rule title

OVERVIEW OF CHILD WELFARE SERVICES

Rulemaking Hearing

Date

10/07/2016

Time

10:00 AM

Location

South Branch Library, Hopeful and Discovery Meeting Rooms, 103 S. Harris Street, Breckenridge, CO 80424

Subjects and issues involved

To implement new guidance regarding placement with kin in order to promote consistent practice statewide. The current rules are vague and confusing causing multiple interpretations of the rule and inconsistent practice statewide. County departments have requested a rule revision to clarify expectations when placing with kin and the Child Welfare Sub-PAC and PAC approved a Policy Submittal request for revision to the kinship rules.

Statutory authority

"26-1-107, C.R.S. (2015); 26-1-109, C.R.S. (2015); 26-1-111, C.R.S. (2015); 19-1-103, C.R.S.(2015); 26-6-106.5 C.R.S. (2015)
"

Contact information

Name

Jeannie Berzinskas

Title

Rule Author

Telephone

303-866-4617

Email

jeannie.bersinskas@state.co.us

COLORADO
Department of Human Services

RULEMAKING COVER PACKET

Title of Proposed Rule:	Clarification of Practice for Placement with Kin
CDHS Tracking #:	16-5-27-1
Revising official Rule #s:	12 CCR 2509-1

Office, Division, & Program: Division of Child Welfare

Rule Author: Jeannie Berzinskas

Phone: (303) 866-4617

E-Mail: jeannie.berzinskas@state.co.us

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

a. [X] Board [ ] Executive Director

b. [X] Regular [ ] Emergency

This package is submitted to State Board Administration as:

[X] Initial Circulation (check all that apply)

- [X] that creates a rule(s)
- [X] that revises a rule(s)
- [X] that is technical clean-up of a rule(s)

[ ] Update #

- [ ] that revises a proposed rule
- [ ] that is technical clean-up of a proposed rule

[ ] Cancel

Specify reason(s) for update or cancellation:

Number of rules included for repeal _____ Number of new rules:

Number of rules included for revision _____ Number reviewed:

What month is being requested for this rule to first go before the State Board? October 2016

What date is being requested for this rule to be effective? January 1, 2017

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

Approved		Date:
Conditional		Comments:
Disapproved		

Pre-Board	1st Board	2nd Board	Effective Date
	10/15/16	11/4/16	1/1/17

Approved to go to AG: 8/17/16

Office, Division, & Program: Division of Child Welfare
Rule Author: Jeannie Berzinskas
Phone: (303) 866-4617
E-Mail: jeannie.berzinskas@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.
(State what the rule says or does, explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. How do these rule changes align with the outcomes that we are trying to achieve, such as those measured in C-Stat?)

To implement new guidance regarding placement with kin in order to promote consistent practice statewide. The current rules are vague and confusing causing multiple interpretations of the rule and inconsistent practice statewide. County departments have requested a rule revision to clarify expectations when placing with kin and the Child Welfare Sub-PAC and PAC approved a Policy Submittal request for revision to the kinship rules.

Authority for Rule:
State Board Authority: 26-1-107, C.R.S. (2015) - State Board to promulgate rules; 26-1-109, C.R.S. (2015) - state department rules to coordinate with federal programs; 26-1-111, C.R.S. (2015) - state department to promulgate rules for public assistance and welfare activities.

Program Authority:
(give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority)

19-1-103, C.R.S.(2015) – definitions; and 26-6-106.5 C.R.S. (2015) Foster care – kinship care – rules applying generally – rule making.

Does the rule incorporate material by reference?		Yes	X	No
Does this rule repeat language found in statute?		Yes	X	No

If yes, please explain.

The program has sent this proposed rule-making package to which stakeholders?

Child Welfare Sub-PAC; Policy Advisory Committee (PAC); Colorado Counties, Inc. (CCI); Colorado Association of Family and Children's Agencies (CAFCA); Court Appointed Special Advocates (CASA); Colorado Coalition of Adoptive Families (COCAF); Colorado Department of Public Health and Environment (CDPHE); Colorado Human Services Directors Association (CHSDA); Colorado State Foster Parent Association; Colorado Trails User Group (CTUG); Division of Child Welfare Child Protection, Permanency, Placement Services, and Youth Services Teams, Fostering Colorado; Colorado Kinship Alliance; Foster and Kinship Care Coordinators; Office of the Child's Representative (OCR); Rocky Mountain Children's Law Center; Child Protection Task Group; Pathways to Success Model Youth System Project Steering Committee and Workgroups, Permanency Task Group; Kinship Task Group; and CDHS Administrative Review Division.

[Note: Changes to rule text are identified as follows: deletions are shown as "strikethrough", additions are in "all caps", and changes made between initial review and final adoption are in brackets.]

Attachments:
Regulatory Analysis
Overview of Proposed Rule
Stakeholder Comment Summary

REGULATORY ANALYSIS

(*complete each question; answers may take more than the space provided*)

1. List of groups impacted by this rule:

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

Section 7.000.2 (12 CCR 2509-1), adds definitions for "conviction" and "pattern of misdemeanor" that will provide a common and consistent understanding of the terms. Currently these definitions exist in a different section of rule and are being relocated to definitions for consistency. Children, youth, kinship caregivers, foster care and kinship foster care providers, county departments of human or social services, CPAs, community providers, and other constituents will benefit from definitions being located in a centralized location. County departments of human or social services and CPAs may bear a minimal burden to notify staff and community partners of the location change.

Section 7.304 (12 CCR 2509-4), revises and adds rules to clarify a number of pertinent issues involving living arrangements with kin including, legal custody status when a child/youth is placed in a non-certified kinship home (county involved vs. family arrangement); removal requirements; and consistent data entry when a child or youth is residing with kin. The rule establishes a practice framework outlining the possible options when placing with kinship caregivers.

County departments of human or social services, community providers, and other constituents will benefit from clarification provided in the rule, which will promote consistency in practice when placing with kinship caregivers. Children and youth will benefit from a consistent process regardless of county of residence.

The long-term impact for county departments of human or social services, children, youth, and their families, is placement will be with the most appropriate provider.

County departments of human or social services will bear the burden of ensuring their staff are familiar with the new framework for placing children/youth with kin.

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?

In State Fiscal Year (SFY) 2015, the average daily placement was 5,222 children and youth, and of these:

- 1,872 (36%) were in non-certified kinship care; and,
- 280 (5%) were in a kinship foster care home.

Section 7.000.2 definitions may have a short-term impact prompting county departments of human or social services and CPAs to familiarize themselves with the new location. For the long-term, a consistent location for definitions will provide a consistent understanding for county departments, providers, and the general public.

Section 7.304.21 rule additions and revisions regarding placements with kin may have a short-term impact for county departments of human or social services requiring a review of their processes to align their internal policy with the outlined framework. For the long-term, consistency of policy and practice with kinship caregivers will be improved statewide.

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)*

These new rules provide a framework for consistent kinship practice. The State is not anticipating any fiscal impact.

County Fiscal Impact

Many county departments are already practicing within this framework and would not incur additional costs. County departments participated in this rule-making process. County departments did not identify any county fiscal impact.

Federal Fiscal Impact

A fiscal impact is not anticipated because the rules provide a framework for consistent kinship practice. This framework does not impact families' current eligibility for federal funding.

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

A fiscal impact is not anticipated because the rules provide a framework for consistent kinship practice. This framework does not impact families' current eligibility for current programs.

4. Data Description:

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

Statewide Automated Child Welfare Information System (Trails) report regarding the number of children and youth placed in out-of-home care in SFY 2015.

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…"

The alternative to this rule-making is leaving kinship rules as they are. This is not an option because the current rules are vague and outdated. There is not statewide consistency for practice with kin families. County departments have been asking for rule clarification and would object to leaving the rules stagnant.

OVERVIEW OF PROPOSED RULE

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

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment			
7.000.2	Definitions	Adds the definitions of "convicted" and "pattern of misdemeanor" to this section. Makes a technical change to separate the definitions of "Reasonable efforts" and "RED teams."	X	Yes		No
7.304.21, A	Definitions and purpose of kinship care	Repeal duplicative language				
7.304.21, B	Purpose of kinship care	Adds the terms "Youth" and "for but not limited to"				
7.304.21, C	Kinship placement when the county department does not have legal custody or authority of placement	Renumbers sections and adds a new section of rule with a continuum of kinship living arrangements				
7.304.21, D	Kinship placement when the county department has legal custody or authority for placement	As a result of renumbering, this section is now kinship placement when the county department does not have legal custody or authority for placement. Also repeals language regarding target group eligibility.				
7.304.21, D, 2	Provision of services to kin	Repeals language for technical clean up and adds the term "Youth" for consistency in language				
7.304.21, D, 3	Family assessment/home study	Revises language to include a county specific assessment				
7.304.21, D, 4	States legal representation is not required	Repeals information about the non-requirement of legal representation and adds language about the requirement of an application				
7.304.21, D, 5	Forms of support	Technical changes for consistency in language				
7.304.21, D, 6,	Background check requirements	Technical changes for consistency in language				
7.304.21, D, 6, b	Background check requirements	Repeal definitions of "convicted" and "pattern of misdemeanor" (moved to definitions for consistency) and repeals language for technical cleanup				
7.304.21, D, 7-9	Actions taken dependent on	Renumber for better				

	results of a background check	sequencing and repeals language for technical cleanup				
7.304.21, D, 10	Documentation of background checks	Repeals language for technical cleanup				
7.304.21, D, 11	Encourages county departments to conduct background checks on prospective kinship providers	Repeal as it is not a requirement				
7.304.21, E, 1	Eligible populations	Adds the term "Youth" for consistency in language				
7.304.21, E, 1, c-e	Advisement of options	Move to 7.304.21, E, 2 for better sequencing and technical cleanup				
7.304.21, E, 2, a		Adds the term "Youth" for consistency in language and adds advisement of options				
7.304.21, E, 2 b	Including kin in planning process	Adds the term "when considering"				
7.304.21, E, 2, e	Emergency visitation	Repeals emergency visitation as it is replaced by process in 7.304.21, C				
7.304.21, E, 2, f	Emergency placements	Technical changes for grammatical errors and consistency in language				
7.304.21, E, 2, f, 1)	Background checks	Repeals language about what counties are encouraged to do rather than what they are required to do				
7.304.21, E, 2, f, 2)	Background checks	Adds the terms "shall" and "unless ordered by the court"				
7.304.21, E, 2, f, 8)	Background checks	Repeals language about what counties are encouraged to do rather than what they are required to do and a technical change to correct a grammatical error				
7.304.21, E, 2, f, 10)	Documentation of background checks	Repeals language about specific areas in the State Automated Child Welfare Information System where items must be documented				
7.304.21, E, 2, f, 11)	Background checks	Technical change to correct a grammatical error				
7.304.21, E, 3, a	Funding options available for kinship placements	Technical changes for consistency in language				
7.304.21, E, 3, a, 13)		Adds Relative Guardianship Assistance Program as a type of support				
7.304.21, E, 5	Services to children	Technical change to add the term "youth"				
7.304.21, E, 6, a	Permanency planning in kinship care	Technical change to add the term "youth"				

Office, Division, & Program: Division of Child Welfare
Rule Author: Jeannie Berzinskas
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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):

Kinship Task Group; Permanency Unit; Child Protection Unit; and Child Welfare Leadership Team.

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:

Child Welfare Sub-PAC; Policy Advisory Committee (PAC); Colorado Counties, Inc. (CCI); Colorado Association of Family and Children's Agencies (CAFCA); Court Appointed Special Advocates (CASA); Colorado Coalition of Adoptive Families (COCAF); Colorado Department of Public Health and Environment (CDPHE); Colorado Human Services Directors Association (CHSDA); Colorado State Foster Parent Association; Colorado Trails User Group (CTUG); Division of Child Welfare Child Protection, Permanency, Placement Services, and Youth Services Teams, Fostering Colorado; Colorado Kinship Alliance; Foster and Kinship Care Coordinators; Office of the Child's Representative (OCR); Rocky Mountain Children's Law Center; Child Protection Task Group; Pathways to Success Model Youth System Project Steering Committee and Workgroups, Permanency Task Group; Kinship Task Group; and CDHS Administrative Review Division.

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 [X] No

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

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

[X] Yes [ ] No

Date presented ___June 2, 2016_____.

What issues were raised?

Clarification of when a family assessment is needed, during the assessment phase, or only during a case.

If not presented, explain why.

Comments were received from stakeholders on the proposed rules:

[X] 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.

Please see attached spreadsheet for stakeholder comments.

Kinship Rule Proposal
Stakeholder Feedback

Section	Feedback	Revision or rationale (if no change made)
7.000.2 "Convicted"	• There is a definition of convicted in the Children's Code 19-1-103 (29.3) and should be used in rule	• Definition of conviction has been revised so the wording aligns with the definition in Title 19 instead of using different language.
7.000.2 "Pattern of Misdemeanors"	• Need clarification of these definitions. They indicate that the misdemeanor convictions can be of "ANY TYPE", but then goes on to indicate that it has to be a combination of a certain type? Specifically two convictions of 3rd degree assault, AND/OR any misdemeanor including domestic violence.	• This language is consistent with other sections of rule including Volume III CCCAP rules. To change the language would cause inconsistency and possibly further confusion.
7.304.21 A	NO FEEDBACK	
7.304.21 B	• The new language "FOR BUT NOT LIMITED TO" seems inappropriate. The list under B seems like the purpose of kinship care, so it seems it would read better as "IN ORDER TO."	• Revised wording to the stakeholder recommendation of "in order to."
7.304.21 B, 1	• Instead of "across the life span" say "across the child's life span"	• Revised wording to get at the intent of the stakeholder comment, but also not duplicate language. Now reads "their life span"
7.304.21 C, 1	• Children/youth should read child(ren)/youth. This is true throughout the document. Also check for child and/or youth and make the language consistent throughout. • Is there a way to clarify these as non-court involved cases?	• Revised language in entire document to read "child(ren)/youth" • These rules are based on who has custody (parent/guardian/kin or county department). To include court-involvement into the language would cause confusion as it can overlap with court involvement in many cases.
7.304.21 C, 2	• What forms of support are they available for? • Should the language be at initial response or anytime during the assessment?	• Revised the citation to reflect the forms of support are listed in 7.304.21, E, 3 and not in D, 3. • The "prior to initial response.." language was stricken from 2, A) to alleviate confusion as this scenario could happen any time during the assessment period.
7.304.21 C, 3	**A.** • Says the assessment cannot close until the child has been returned to their caregiver or documentation of legal custody	• Wording was changed to reflect the intent of assessment closure not occurring unless the child(ren)/youth being returned to their

Section	Feedback	Revision or rationale (if no change made)
	to the kin. It needs to be clarified to give the 3 options of intent: 1) returned to parents; 2) custody to kin; and 3) a case is opened. • What does "legal authority" mean? • It seems like 1-3 under A could be moved in front of A? • "Documentation is obtained demonstrating", can this just be a ROC note or does it need to be legal documentation (hard copy or in ICON)? • Suggested language of adding the following to …..obtained demonstrating that legal authority has been granted to the relatives/kin OR IT HAS BEEN CONFIRMED AND DOCUMENTEDIN THE STATEWIDE COMPUTER SYSTEM THAT THE SAFETY CONCERNS HAVE BEEN MITIGATED AND THERE ARE NO ONGOING SAFETY CONCERNS. • This rule is not very clear regarding fingerprints- spell out whether fingerprints are required **B.** • You reference if a child cannot return home by the conclusion of an assessment or family assessment response services plan, the assessment shall be closed. By rule, once a family assessment response services plan is created, a FAR has become a case (moved the services phase v. assessment phase). In other words, it would already be a case if it has a family assessment response services plan. • Refers to the completion of an assessment. Should it include the 60-day timeframe? (1) "A removal is not opened" should it also say in the SACWIS? • Indicates a removal will not be opened when the child cannot be returned home by the end of the assessment. However, this placement occurred under a safety plan. Safety plans are supposed to be short term (~ week). If an assessment lasts 60 days, and a child cannot be returned home by that time, wouldn't a voluntary case have to be opened, or custody legally given to either the kin or the county? And if the county receives custody, then a removal would be opened. • Language suggestion: IF CHILDREN/YOUTH CANNOT RETURN HOME BY THE CONCLUSION OF AN ASSESSMENT OR FAMILY ASSESSMENT RESPONSE SERVICES PLAN *BECAUSE OF ONGOING SAFETY CONCERNS,* THE ASSESSMENT SHALL BE CLOSED AND A	parents/custodians; custody is given to kin; or a case is opened. • Spoke with commenter about the suggested language of mitigating concerns and clarified the third option of opening a case. The intent of the rule is to eliminate the practice of mitigating the safety concern by the child(ren)/youth going to stay with a relative and the assessment closing with the parents having no recourse for mitigating the concerns and getting their child(ren)/youth returned to them. • "Legal authority" is not being defined in this rule to prevent language from being too prescriptive and hindering flexibility for county specific needs. • "Documentation is obtained demonstrating …" is clarified to state that it must be documented in SACWIS. • This section of rule cites the rules to be followed in this scenario, which includes fingerprint checks. To mention fingerprints here would be duplicative. B. • According to the CPS team, a FAR services plan does not necessarily mean a case and the language should remain as is. • The second through fourth bullet points are covered in the language revision of # 3.

Section	Feedback	Revision or rationale (if no change made)
	CASE SHALL BE OPENED. Does this need a wording change.	
7.304.21 C, 4	A. • Should it say the county assumes legal authority of the child(ren)/youth and they…."are considered to be in OOH care and a removal is required"…should we add to be opened in the SACWIS? • What happens if it is the JD court orders placement to kin? What background checks are completed? Where does this fit in rule? B/C. • B and C seem contradictory again. B says it can't be closed, and C says it shall be closed.	A. • Language was revised to mirror the format of # 3 and addresses the concerns outlined in bullet 1 in A and the bullet in B/C. • There is a section of rules outlining practice of JD cases and adding information here would be duplication.
7.304.21 D, 1	• Should the language read court involved (vs. non-court involved in letter C)? • Are children/youth whose cases are initially addressed through a safety plan but are then taken into legal custody by the county, documented?	• These rules are based on who has custody (parent/guardian/kin or county department). To include court-involvement into the language would cause confusion in many cases.
7.304.21 D, 2	• Please clarify viable option- is this temporary or permanent? If permanent, it contradicts the remainder of this rule. • Are the "… services to kin shall be used to help provide permanency for the child/youth" for children/youth who cannot be returned to parent's home, the same services as those identified, at a minimum, in Section 7.304.21, E, 3?	• After obtaining initial feedback, the majority of people stated they understood that returning to the parent's home is not a viable option right now and that this is not necessarily referring to a permanent situation. Language to be left as is.
7.304.21 D, 3	• The Kinship Task Group is not in favor of a state approved, county specific assessment as it is seen as too much oversight. • Is there a timeframe for when the SAFE has to be completed? And requirements about where/how it is documented? • This rule sounds like the county department is required to complete a SAFE kinship evaluation regardless of our type of involvement. This process should be required ONLY if the department facilitated the placement AND the child is with kin for more than 30 days. My suggested wording: *IF THE COUNTY DEPARTMENT FACILITATED THE PLACEMENT AND THE CHILDREN/YOUTH ARE PLACED WITH THE KIN FOR 30 DAYS OR LONGER, THE COUNTY DEPARTMENT SHALL* COMPLETE A FAMILY ASSESSMENT USING THE DEPARTMENT'S MODIFIED STRUCTURED ANALYSIS FAMILY EVALUATION (SAFE) OR A STATE APPROVED, COUNTY SPECIFIC ASSESSMENT FOR NON-CERTIFIED KINSHIP FAMILIES TO DETERMINE CHARACTER AND SUITABILITY	• There are currently 2 drafts of this section: the one approved by DCW and the proposal from the Kinship Task Group. • The timeframe for completion is not being added as the group writing the proposed language feels that the assessment would begin at the time of placement/change in living arrangement and be ongoing as additional information surfaced. • DCW would not be in favor of leaving a child in a home for 30 days that has been assessed as assessment begins prior to or at the time of placement/change in living arrangement.

Section	Feedback	Revision or rationale (if no change made)
	OF THE FAMILY, APPROPRIATENESS OF THE HOME AND CHILD CARE PRACTICES. IT IS NOT REQUIRED THAT THE COUNTY DEPARTMENT COMPLETE THE FOSTER CARE CERTIFICATION PROCESS. • Are the non-certified kin assessments maintained at both the county and state level, and/or documented in Trails?	
7.304.21 D, 4	• Is there a timeframe for completion? • This rule sounds like the kin always need to complete an application to provide care for children and youth, regardless of the department's involvement. My suggested wording: *IF THE COUNTY DEPARTMENT FACILITATED THE PLACEMENT, THE COUNTY DEPARTMENT SHALL* ENSURE COMPLETION OF A SIGNED ORIGINAL APPLICATION TO PROVIDE CARE FOR CHILDREN AND YOUTH OR A STATE APPROVED, COUNTY SPECIFIC KINSHIP APPLICATION. • Are original applications to provide kinship care for children/youth maintained at both the county and state level, and/or documented in Trails? What oversight is in place to ensure that counties follow this requirement?	• Add language to the application stating it must be documented in the SACWIS. • Language added to clarify that the application must be initiated at the time of change in living arrangement. • Oversight of the completion of the application will occur through the impending non-certified kin review process.
7.304.21 D, 5	NO FEEDBACK	
7.304.21 D, 6	• Says a background check needs to be done on all "cases". Is this really intended to be only at case, or is it supposed to include at time of assessment? Also, it looks like this only applies at the closing of an assessment when the child couldn't be returned home by the conclusion of the assessment. That means we were fine with the child living with the kin for up to 60 days without doing a background check, but now need to do them once it moves to a case? Should "of the county department" be added between "involvement" and "facilitation" (take out "in the") and add "for the child(ren)/youth to include" at the end of that sentence? B. • I think the cite included, 7.304.21 D 2 f will change as a result of this rule change, so it should be updated here. • Question about frequency of all background checks. Sex offender states must be done annually.	• DCW would not endorse a child/youth living in a home for up to 60 days without background checks being completed. • Language was slightly revised to clarify that background checks have to be completed prior to placement/change in living arrangement, not that checks need to be completed on people who lived in the home prior. B. • This was an oversight. Citation for the first bullet point has been changed. • After reviewing the statute again, nothing states that sex offender checks must be done annually for non-certified kinship placements, nor have counties been trained to this. It is proposed that "annually" be stricken from the rule.
7.304.21 D, 7	• Has cites that will change as a result of this rule change and	• This comment refers to language that is stricken.

Section	Feedback	Revision or rationale (if no change made)
	will need to be updated (7.304.21 D 9 & 10) • This rule also needs clarification that the county department facilitated the placement. My suggested wording: *IF THE COUNTY DEPARTMENT FACILITATED THE PLACEMENT , THE COUNTY DEPARTMENT SHALL* RECEIVE AFFIRMATION OF THE PLACEMENT EITHER THROUGH A COURT ORDER OR COUNTY DIRECTOR(S) AFFIRMATION TO PLACE OR ALLOW CONTINUED PLACEMENT OF A CHILD AND/OR YOUTH WITH A NON-CERTIFIED KIN OR OTHER ADULT LIVING IN THE HOME THAT WOULD OTHERWISE BE DISQUALIFIED IN SECTION 7.304.21, C, 8 AND 9.	The only other section of rule that would refer back to this section is Placement Activities in 7.304.62. That section was reviewed to ensure all citations were correct. • Facilitation of placement language is not being added as the department may not have been involved in the initial facilitation, but choosing to continue the placement. Background checks would be required in those situations.
7.304.21 D, 8	• Has cites that will change as a result of this rule change and will need to be updated	• This comment refers to language that is stricken. The only other section of rule that would refer back to this section is Placement Activities in 7.304.62. That section was reviewed to ensure all citations were correct.
7.304.21 D, 9	• Uses "as soon as possible", will there be any guidance as to what this means? It appears that the concerns need to be addressed within 2 weeks of placement, so the plan would have to be before that. • Also, "in the contact log in the resource section or in the record" is recommended to be taken out in a later part of the draft (on page 12).	• The concerns need to be remedied within 2 weeks, so a plan would need to be completed prior to that. Adding a timeframe for completion of the plan is fairly prescriptive and not flexible to county department needs. • This language was already stricken.
7.304.21 D, 10	• This should use the same language that was used on page 6, #8. (18 and older)	• The proposal is to strike number 10 as it is addressed elsewhere in rule.
7.304.21 D, 11	NO FEEDBACK	
7.304.21 E, 1	NO FEEDBACK	
7.304.21 E, 2	A. • It indicates that some information shall be documented in Trails. Should a similar requirement also apply to 7.304.21 E 1 & 2? • Also, "The information including date(s) information was provided shall be .... I think there should be a comma between "The information," and "provided, shall" • This section states that kinship care providers should be advised of the types of support available to them; however, it is not for each placement type. For example, if kin do not meet all certification standards, they may accept APR instead of kinship foster care if they are not aware that certain non-safety standards can be waived. We request that the language	A. • E, 1 outlines the eligibility requirements and does not require any documentation. • Language was revised to clarify that information provided, not just the dates, should be included in the documentation. This revision also changes the punctuation. • E, 2, a, 2) mentions the ability to have non-safety standards waived and cites the applicable rule section. Rule language will not be changed here. • "Family Preservation" refers to services, not permanency outcomes. Language is fine as

Section	Feedback	Revision or rationale (if no change made)
	be modified to include this clarification. • "Kinship caregivers for Title IV-E eligible children/youth are entitled to the same level of reimbursement as non-related providers." There is a state-&-county assistance program for non iv-e eligible foster and adopted children (which, at least for adopted kids, is almost -- with 1 exception -- identical to the IV-e program); I'm guessing since these children are with non-certified kin, that this kind of support would not be available to these families? • Is 'family preservation' equivalent to accepting permanent guardianship/APR? Is this defined in regulation? • Does a kinship caregiver have an appeals option if the county director/designee does not allow a 'waiver for non-safety certification standards' and if so, is the county mandated to provide the appeals process to families? We would otherwise be concerned that waivers may not be approved in circumstances where they would be appropriate. F. • Change emergency placement rules to "e" • (2/3)Seems like some of the timeframes throughout here conflict. Some say you can't place a child if a person residing in the home has certain charges, but you have until 5 days after the placement to run the fingerprint background check. • (8) a and b, what is the timeframe? • Use the same "adult"/18 years and older language. 8c says "placement, and annually, and". The other two places in the document prior, they do not put commas in that sentence. • (11) a, c, d what is the timeframe? d is the only place that requirement exists (when the rest of the requirements are the same elsewhere).	written. • 7.708.74 clearly states that kinship caregivers do not have the right to appeal the decision related to non-safety waivers. F. • Language still exists in "e" regarding provisional certification, so emergency placement will be left in "f" • Because this is an emergency placement, an NCIC check would be completed, giving the county department some knowledge of criminal histories. This check must be completed prior to placement and fingerprint based checks must be completed within 5 days. • Timeframe is mentioned numerous times throughout the rule; prior to placement. • Removed commas from c) for consistency.
7.304.21 E, 3	NO FEEDBACK	
7.304.21 E, 4	NO FEEDBACK	
7.304.21 E, 5	NO FEEDBACK	
7.304.21 E, 6	• Should the following language, "The preferred permanent placement shall be adoption, legal guardianship, or permanent custody" be amended to specifically include the Relative Guardianship Assistance Program (RGAP), or is this implicit in either 'legal guardianship' or 'permanent custody'?	• The language will not be changed as not all permanent placements will be eligible for the Relative Guardianship Assistance Program
GENERAL FEEDBACK	• A primary concern regarding the kinship care rules continues to	

Section	Feedback	Revision or rationale (if no change made)
	be those cases where families are not being informed by counties of all placement options, despite CDHS regulations mandating this. This is especially concerning given that: 1) many kinship families can have lower incomes and less resources than non-relative foster-adopt families; and 2) of the average daily placement of children/youth in care in SFY 2015, 36% (1,872) were in non-certified kinship care. • Commenter would be glad to provide contact information for kinship families who were not informed of the possible placement options. In foster care adoptions, by state and federal law, parents are allowed to request a post-finalization adoption assistance if they were not informed about the option of adoption assistance prior to the adoption, and the child would otherwise have met eligibility (7.306.41, F – "There are situations after finalization when adoptive parents can request a state level fair hearing before an Administrative Law Judge concerning the adopted child's eligibility for adoption assistance benefits or the amount of those benefits.") There does not appear to be a similar protection for kinship caregivers. Section 7.304.21 E, a, 2, c states that "Kinship caregivers for Title IV-E eligible children/youth are entitled to the same level reimbursement as non-related providers" – they should also be entitled to the same appeals protocol in the event that they are not properly informed of all placement options. Commenter is requesting that the current language be amended to include language similar to 7.306.41, F for kinship care providers.	

(12 CCR 2509-1)

7.000.2 DEFINITIONS [Rev. eff. 1/1/16]

A. The following are definitions of commonly used terms used in these rules:

****

"Child Welfare Services" are the services and payments for services (other than medical services covered by the "Colorado Medical Assistance Act") available, directly or indirectly, through the state and county departments for the benefit of eligible persons pursuant to rules adopted by the State Department or State Board of Human Services.

"Client" means any person applying for or receiving child welfare services from a county department.

"Colorado Safety Assessment Tool" means the tool in the State automated case management system that guides a case worker through a safety assessment process.

"Concurrent planning" means the simultaneous preparation of plans to:

1) assist the child's parents or caregivers in completing a treatment plan that, when completed successfully will allow the child to return home safely; and,
2) place the child in a setting that will become the child's permanent home if the parents or caregivers are unable to successfully complete their treatment plan.

"Continuously available" means the assignment of a person to be near an operable telephone, pager system, cellular telephone, or to have such arrangements made through agreements with the local law enforcement agencies.

"CONVICTED", FOR THE PURPOSES OF THE CRIMINAL HISTORY RECORD INFORMATION CHECK, MEANS A PLEA OF GUILTY ACCEPTED BY THE COURT, INCLUDING A PLEA OF GUILTY ENTERED PURSUANT TO A DEFERRED SENTENCE UNDER SECTION 18-1.3-102, C.R.S., A VERDICT OF GUILTY BY A JUDGE OR JURY, OR A PLEA OF NO CONTEST ACCEPTED BY THE COURT, OR HAVING RECEIVED A DISPOSITION AS A JUVENILE OR HAVING BEEN ADJUDICATED A JUVENILE DELINQUENT BASED ON THE COMMISSION OF ANY ACT THAT CONSTITUTES SEXUAL ASSAULT, AS DEFINED IN SUBSECTION (96.5) OF 19-1-103, C.R.S.

"County Department" means a county department of human or social services or, if applicable, the county agency responsible for providing child welfare services as defined by Section 26-5- 101(3), C.R.S.

"De novo" means that when an issue is reviewed, affording no deference to the original decision.

"Dedicated Child Abuse and Neglect Reporting Telephone Line" is a county department telephone number that is used to receive calls related to child abuse and/or neglect. Calls to county departments' dedicated child abuse and neglect reporting telephone lines will be routed through the statewide hotline system for recording and data collection purposes and routed to the county departments' hotline workers.

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"Non-certified kinship care" means a child and/or youth is being cared for by a relative or kin, who has a significant relationship with the child and/or youth, in circumstances when there is a safety concern by a county department in the home of the parent or legal guardian and the relative or kin has not met the foster care certification requirements for a kinship foster care home or has chosen not to pursue certification.

"PATTERN OF MISDEMEANORS" FOR THE PURPOSES OF THE CRIMINAL HISTORY RECORD INFORMATION CHECK SHALL BE DEFINED AS:

A) THREE (3) OR MORE CONVICTIONS OF 3RD DEGREE ASSAULT AS DESCRIBED IN SECTION 18-3-204, C.R.S., AND/OR ANY MISDEMEANOR, THE UNDERLYING FACTUAL

BASIS OF WHICH HAS BEEN FOUND BY ANY COURT ON THE RECORD TO INCLUDE AN ACT OF DOMESTIC VIOLENCE AS DEFINED IN SECTION 18-6-800.3, C.R.S. ; OR,

B) FIVE (5) MISDEMEANOR CONVICTIONS OF ANY TYPE, WITH AT LEAST TWO (2) CONVICTIONS OF 3RD DEGREE ASSAULT AS DESCRIBED IN SECTION 18- 3-204, C.R.S., AND/OR ANY MISDEMEANOR, THE UNDERLYING FACTUAL BASIS OF WHICH HAS BEEN FOUND BY ANY COURT ON THE RECORD TO INCLUDE AN ACT OF DOMESTIC VIOLENCE AS DEFINED IN SECTION 18-6- 800.3, C.R.S.; OR,

C) SEVEN (7) MISDEMEANOR CONVICTIONS OF ANY TYPE

"Personal Contact" is a method of contact in which two people exchange information in person or through live communication either via telephone or other emerging communications technology.

"Potential disqualifying factor" for the purpose of completing a background check for non-certified kinship care and kinship foster care homes, means information that may preclude the placement of a child and/or youth by a county department of human or social services or a child placement agency into a prospective home. Factors include, but are not limited to:

1. A criminal conviction that may be prohibited;
2. Confirmed child abuse and/or neglect in the state automated case management system or another state's child abuse and neglect registry, and following a review of the information, it is determined that any safety concerns can be mitigated;
3. The court orders and affirms the placement of the child or youth with kin; or,
4. Additional documented information that was acquired that raises concern about safety in the home.

"Preponderance of evidence" means credible evidence that a claim is more likely true than not.

"Present danger" means an immediate, significant, and clearly observable threat to child safety that is actively occurring and will likely result in moderate to severe harm to a child.

****

"Reasonable and prudent parent standard" means careful and sensible parental decisions that maintain the health, safety, and best interests of the child or youth while encouraging the emotional and developmental growth of the child or youth that a provider shall use when determining whether to allow a child or youth in foster care under the responsibility of the county or in non-secure residential settings under the responsibility of the Division of Youth Corrections (DYC) to participate in extracurricular, enrichment, cultural, and social activities based upon the criteria in Section 7.701.200 (12 CCR 2509-8).

"Reasonable efforts" means the exercise of diligence and care throughout county department involvement with children, youth, and families. ~~"RED Team" is the acronym for Review, Evaluate and Direct. The RED Team is a group decision making process that utilizes the framework and agency response guide to determine county department response to referrals.~~

"RED TEAM" IS THE ACRONYM FOR REVIEW, EVALUATE AND DIRECT. THE RED TEAM IS A GROUP DECISION MAKING PROCESS THAT UTILIZES THE FRAMEWORK AND AGENCY RESPONSE GUIDE TO DETERMINE COUNTY DEPARTMENT RESPONSE TO REFERRALS.

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COLORADO
Department of Human Services

RULEMAKING COVER PACKET

Title of Proposed Rule:	Clarification of Practice for Placement with Kin
CDHS Tracking #:	16-5-27-1
Revising official Rule #s:	12 CCR 2509-1

Office, Division, & Program: Division of Child Welfare

Rule Author: Jeannie Berzinskas

Phone: (303) 866-4617

E-Mail: jeannie.berzinskas@state.co.us

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

a. [X] Board [ ] Executive Director

b. [X] Regular [ ] Emergency

This package is submitted to State Board Administration as:

[X] Initial Circulation (check all that apply)

- [X] that creates a rule(s)
- [X] that revises a rule(s)
- [X] that is technical clean-up of a rule(s)

[ ] Update #

- [ ] that revises a proposed rule
- [ ] that is technical clean-up of a proposed rule

[ ] Cancel

Specify reason(s) for update or cancellation:

Number of rules included for repeal _____ Number of new rules:

Number of rules included for revision _____ Number reviewed:

What month is being requested for this rule to first go before the State Board? October 2016

What date is being requested for this rule to be effective? January 1, 2017

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

Approved		Date:
Conditional		Comments:
Disapproved		

Pre-Board	1st Board	2nd Board	Effective Date
	10/15/16	11/4/16	1/1/17

Approved to go to AG: 8/17/16

Office, Division, & Program: Division of Child Welfare
Rule Author: Jeannie Berzinskas
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STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.
(State what the rule says or does, explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. How do these rule changes align with the outcomes that we are trying to achieve, such as those measured in C-Stat?)

To implement new guidance regarding placement with kin in order to promote consistent practice statewide. The current rules are vague and confusing causing multiple interpretations of the rule and inconsistent practice statewide. County departments have requested a rule revision to clarify expectations when placing with kin and the Child Welfare Sub-PAC and PAC approved a Policy Submittal request for revision to the kinship rules.

Authority for Rule:
State Board Authority: 26-1-107, C.R.S. (2015) - State Board to promulgate rules; 26-1-109, C.R.S. (2015) - state department rules to coordinate with federal programs; 26-1-111, C.R.S. (2015) - state department to promulgate rules for public assistance and welfare activities.

Program Authority:
(give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority)

19-1-103, C.R.S.(2015) – definitions; and 26-6-106.5 C.R.S. (2015) Foster care – kinship care – rules applying generally – rule making.

Does the rule incorporate material by reference?		Yes	X	No
Does this rule repeat language found in statute?		Yes	X	No

If yes, please explain.

The program has sent this proposed rule-making package to which stakeholders?

Child Welfare Sub-PAC; Policy Advisory Committee (PAC); Colorado Counties, Inc. (CCI); Colorado Association of Family and Children's Agencies (CAFCA); Court Appointed Special Advocates (CASA); Colorado Coalition of Adoptive Families (COCAF); Colorado Department of Public Health and Environment (CDPHE); Colorado Human Services Directors Association (CHSDA); Colorado State Foster Parent Association; Colorado Trails User Group (CTUG); Division of Child Welfare Child Protection, Permanency, Placement Services, and Youth Services Teams, Fostering Colorado; Colorado Kinship Alliance; Foster and Kinship Care Coordinators; Office of the Child's Representative (OCR); Rocky Mountain Children's Law Center; Child Protection Task Group; Pathways to Success Model Youth System Project Steering Committee and Workgroups, Permanency Task Group; Kinship Task Group; and CDHS Administrative Review Division.

[Note: Changes to rule text are identified as follows: deletions are shown as "strikethrough", additions are in "all caps", and changes made between initial review and final adoption are in brackets.]

Attachments:
Regulatory Analysis
Overview of Proposed Rule
Stakeholder Comment Summary

REGULATORY ANALYSIS

(*complete each question; answers may take more than the space provided*)

1. List of groups impacted by this rule:

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

Section 7.000.2 (12 CCR 2509-1), adds definitions for "conviction" and "pattern of misdemeanor" that will provide a common and consistent understanding of the terms. Currently these definitions exist in a different section of rule and are being relocated to definitions for consistency. Children, youth, kinship caregivers, foster care and kinship foster care providers, county departments of human or social services, CPAs, community providers, and other constituents will benefit from definitions being located in a centralized location. County departments of human or social services and CPAs may bear a minimal burden to notify staff and community partners of the location change.

Section 7.304 (12 CCR 2509-4), revises and adds rules to clarify a number of pertinent issues involving living arrangements with kin including, legal custody status when a child/youth is placed in a non-certified kinship home (county involved vs. family arrangement); removal requirements; and consistent data entry when a child or youth is residing with kin. The rule establishes a practice framework outlining the possible options when placing with kinship caregivers.

County departments of human or social services, community providers, and other constituents will benefit from clarification provided in the rule, which will promote consistency in practice when placing with kinship caregivers. Children and youth will benefit from a consistent process regardless of county of residence.

The long-term impact for county departments of human or social services, children, youth, and their families, is placement will be with the most appropriate provider.

County departments of human or social services will bear the burden of ensuring their staff are familiar with the new framework for placing children/youth with kin.

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?

In State Fiscal Year (SFY) 2015, the average daily placement was 5,222 children and youth, and of these:

- 1,872 (36%) were in non-certified kinship care; and,
- 280 (5%) were in a kinship foster care home.

Section 7.000.2 definitions may have a short-term impact prompting county departments of human or social services and CPAs to familiarize themselves with the new location. For the long-term, a consistent location for definitions will provide a consistent understanding for county departments, providers, and the general public.

Section 7.304.21 rule additions and revisions regarding placements with kin may have a short-term impact for county departments of human or social services requiring a review of their processes to align their internal policy with the outlined framework. For the long-term, consistency of policy and practice with kinship caregivers will be improved statewide.

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)*

These new rules provide a framework for consistent kinship practice. The State is not anticipating any fiscal impact.

County Fiscal Impact

Many county departments are already practicing within this framework and would not incur additional costs. County departments participated in this rule-making process. County departments did not identify any county fiscal impact.

Federal Fiscal Impact

A fiscal impact is not anticipated because the rules provide a framework for consistent kinship practice. This framework does not impact families' current eligibility for federal funding.

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

A fiscal impact is not anticipated because the rules provide a framework for consistent kinship practice. This framework does not impact families' current eligibility for current programs.

4. Data Description:

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

Statewide Automated Child Welfare Information System (Trails) report regarding the number of children and youth placed in out-of-home care in SFY 2015.

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…"

The alternative to this rule-making is leaving kinship rules as they are. This is not an option because the current rules are vague and outdated. There is not statewide consistency for practice with kin families. County departments have been asking for rule clarification and would object to leaving the rules stagnant.

OVERVIEW OF PROPOSED RULE

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

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment			
7.000.2	Definitions	Adds the definitions of "convicted" and "pattern of misdemeanor" to this section. Makes a technical change to separate the definitions of "Reasonable efforts" and "RED teams."	X	Yes		No
7.304.21, A	Definitions and purpose of kinship care	Repeal duplicative language				
7.304.21, B	Purpose of kinship care	Adds the terms "Youth" and "for but not limited to"				
7.304.21, C	Kinship placement when the county department does not have legal custody or authority of placement	Renumbers sections and adds a new section of rule with a continuum of kinship living arrangements				
7.304.21, D	Kinship placement when the county department has legal custody or authority for placement	As a result of renumbering, this section is now kinship placement when the county department does not have legal custody or authority for placement. Also repeals language regarding target group eligibility.				
7.304.21, D, 2	Provision of services to kin	Repeals language for technical clean up and adds the term "Youth" for consistency in language				
7.304.21, D, 3	Family assessment/home study	Revises language to include a county specific assessment				
7.304.21, D, 4	States legal representation is not required	Repeals information about the non-requirement of legal representation and adds language about the requirement of an application				
7.304.21, D, 5	Forms of support	Technical changes for consistency in language				
7.304.21, D, 6,	Background check requirements	Technical changes for consistency in language				
7.304.21, D, 6, b	Background check requirements	Repeal definitions of "convicted" and "pattern of misdemeanor" (moved to definitions for consistency) and repeals language for technical cleanup				
7.304.21, D, 7-9	Actions taken dependent on	Renumber for better				

	results of a background check	sequencing and repeals language for technical cleanup				
7.304.21, D, 10	Documentation of background checks	Repeals language for technical cleanup				
7.304.21, D, 11	Encourages county departments to conduct background checks on prospective kinship providers	Repeal as it is not a requirement				
7.304.21, E, 1	Eligible populations	Adds the term "Youth" for consistency in language				
7.304.21, E, 1, c-e	Advisement of options	Move to 7.304.21, E, 2 for better sequencing and technical cleanup				
7.304.21, E, 2, a		Adds the term "Youth" for consistency in language and adds advisement of options				
7.304.21, E, 2 b	Including kin in planning process	Adds the term "when considering"				
7.304.21, E, 2, e	Emergency visitation	Repeals emergency visitation as it is replaced by process in 7.304.21, C				
7.304.21, E, 2, f	Emergency placements	Technical changes for grammatical errors and consistency in language				
7.304.21, E, 2, f, 1)	Background checks	Repeals language about what counties are encouraged to do rather than what they are required to do				
7.304.21, E, 2, f, 2)	Background checks	Adds the terms "shall" and "unless ordered by the court"				
7.304.21, E, 2, f, 8)	Background checks	Repeals language about what counties are encouraged to do rather than what they are required to do and a technical change to correct a grammatical error				
7.304.21, E, 2, f, 10)	Documentation of background checks	Repeals language about specific areas in the State Automated Child Welfare Information System where items must be documented				
7.304.21, E, 2, f, 11)	Background checks	Technical change to correct a grammatical error				
7.304.21, E, 3, a	Funding options available for kinship placements	Technical changes for consistency in language				
7.304.21, E, 3, a, 13)		Adds Relative Guardianship Assistance Program as a type of support				
7.304.21, E, 5	Services to children	Technical change to add the term "youth"				
7.304.21, E, 6, a	Permanency planning in kinship care	Technical change to add the term "youth"				

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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):

Kinship Task Group; Permanency Unit; Child Protection Unit; and Child Welfare Leadership Team.

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:

Child Welfare Sub-PAC; Policy Advisory Committee (PAC); Colorado Counties, Inc. (CCI); Colorado Association of Family and Children's Agencies (CAFCA); Court Appointed Special Advocates (CASA); Colorado Coalition of Adoptive Families (COCAF); Colorado Department of Public Health and Environment (CDPHE); Colorado Human Services Directors Association (CHSDA); Colorado State Foster Parent Association; Colorado Trails User Group (CTUG); Division of Child Welfare Child Protection, Permanency, Placement Services, and Youth Services Teams, Fostering Colorado; Colorado Kinship Alliance; Foster and Kinship Care Coordinators; Office of the Child's Representative (OCR); Rocky Mountain Children's Law Center; Child Protection Task Group; Pathways to Success Model Youth System Project Steering Committee and Workgroups, Permanency Task Group; Kinship Task Group; and CDHS Administrative Review Division.

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 [X] No

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

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

[X] Yes [ ] No

Date presented ___June 2, 2016_____.

What issues were raised?

Clarification of when a family assessment is needed, during the assessment phase, or only during a case.

If not presented, explain why.

Comments were received from stakeholders on the proposed rules:

[X] 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.

Please see attached spreadsheet for stakeholder comments.

Kinship Rule Proposal
Stakeholder Feedback

Section	Feedback	Revision or rationale (if no change made)
7.000.2 "Convicted"	• There is a definition of convicted in the Children's Code 19-1-103 (29.3) and should be used in rule	• Definition of conviction has been revised so the wording aligns with the definition in Title 19 instead of using different language.
7.000.2 "Pattern of Misdemeanors"	• Need clarification of these definitions. They indicate that the misdemeanor convictions can be of "ANY TYPE", but then goes on to indicate that it has to be a combination of a certain type? Specifically two convictions of 3rd degree assault, AND/OR any misdemeanor including domestic violence.	• This language is consistent with other sections of rule including Volume III CCCAP rules. To change the language would cause inconsistency and possibly further confusion.
7.304.21 A	NO FEEDBACK	
7.304.21 B	• The new language "FOR BUT NOT LIMITED TO" seems inappropriate. The list under B seems like the purpose of kinship care, so it seems it would read better as "IN ORDER TO."	• Revised wording to the stakeholder recommendation of "in order to."
7.304.21 B, 1	• Instead of "across the life span" say "across the child's life span"	• Revised wording to get at the intent of the stakeholder comment, but also not duplicate language. Now reads "their life span"
7.304.21 C, 1	• Children/youth should read child(ren)/youth. This is true throughout the document. Also check for child and/or youth and make the language consistent throughout. • Is there a way to clarify these as non-court involved cases?	• Revised language in entire document to read "child(ren)/youth" • These rules are based on who has custody (parent/guardian/kin or county department). To include court-involvement into the language would cause confusion as it can overlap with court involvement in many cases.
7.304.21 C, 2	• What forms of support are they available for? • Should the language be at initial response or anytime during the assessment?	• Revised the citation to reflect the forms of support are listed in 7.304.21, E, 3 and not in D, 3. • The "prior to initial response.." language was stricken from 2, A) to alleviate confusion as this scenario could happen any time during the assessment period.
7.304.21 C, 3	**A.** • Says the assessment cannot close until the child has been returned to their caregiver or documentation of legal custody	• Wording was changed to reflect the intent of assessment closure not occurring unless the child(ren)/youth being returned to their

Section	Feedback	Revision or rationale (if no change made)
	to the kin. It needs to be clarified to give the 3 options of intent: 1) returned to parents; 2) custody to kin; and 3) a case is opened. • What does "legal authority" mean? • It seems like 1-3 under A could be moved in front of A? • "Documentation is obtained demonstrating", can this just be a ROC note or does it need to be legal documentation (hard copy or in ICON)? • Suggested language of adding the following to …..obtained demonstrating that legal authority has been granted to the relatives/kin OR IT HAS BEEN CONFIRMED AND DOCUMENTEDIN THE STATEWIDE COMPUTER SYSTEM THAT THE SAFETY CONCERNS HAVE BEEN MITIGATED AND THERE ARE NO ONGOING SAFETY CONCERNS. • This rule is not very clear regarding fingerprints- spell out whether fingerprints are required **B.** • You reference if a child cannot return home by the conclusion of an assessment or family assessment response services plan, the assessment shall be closed. By rule, once a family assessment response services plan is created, a FAR has become a case (moved the services phase v. assessment phase). In other words, it would already be a case if it has a family assessment response services plan. • Refers to the completion of an assessment. Should it include the 60-day timeframe? (1) "A removal is not opened" should it also say in the SACWIS? • Indicates a removal will not be opened when the child cannot be returned home by the end of the assessment. However, this placement occurred under a safety plan. Safety plans are supposed to be short term (~ week). If an assessment lasts 60 days, and a child cannot be returned home by that time, wouldn't a voluntary case have to be opened, or custody legally given to either the kin or the county? And if the county receives custody, then a removal would be opened. • Language suggestion: IF CHILDREN/YOUTH CANNOT RETURN HOME BY THE CONCLUSION OF AN ASSESSMENT OR FAMILY ASSESSMENT RESPONSE SERVICES PLAN *BECAUSE OF ONGOING SAFETY CONCERNS,* THE ASSESSMENT SHALL BE CLOSED AND A	parents/custodians; custody is given to kin; or a case is opened. • Spoke with commenter about the suggested language of mitigating concerns and clarified the third option of opening a case. The intent of the rule is to eliminate the practice of mitigating the safety concern by the child(ren)/youth going to stay with a relative and the assessment closing with the parents having no recourse for mitigating the concerns and getting their child(ren)/youth returned to them. • "Legal authority" is not being defined in this rule to prevent language from being too prescriptive and hindering flexibility for county specific needs. • "Documentation is obtained demonstrating …" is clarified to state that it must be documented in SACWIS. • This section of rule cites the rules to be followed in this scenario, which includes fingerprint checks. To mention fingerprints here would be duplicative. B. • According to the CPS team, a FAR services plan does not necessarily mean a case and the language should remain as is. • The second through fourth bullet points are covered in the language revision of # 3.

Section	Feedback	Revision or rationale (if no change made)
	CASE SHALL BE OPENED. Does this need a wording change.	
7.304.21 C, 4	A. • Should it say the county assumes legal authority of the child(ren)/youth and they…."are considered to be in OOH care and a removal is required"…should we add to be opened in the SACWIS? • What happens if it is the JD court orders placement to kin? What background checks are completed? Where does this fit in rule? B/C. • B and C seem contradictory again. B says it can't be closed, and C says it shall be closed.	A. • Language was revised to mirror the format of # 3 and addresses the concerns outlined in bullet 1 in A and the bullet in B/C. • There is a section of rules outlining practice of JD cases and adding information here would be duplication.
7.304.21 D, 1	• Should the language read court involved (vs. non-court involved in letter C)? • Are children/youth whose cases are initially addressed through a safety plan but are then taken into legal custody by the county, documented?	• These rules are based on who has custody (parent/guardian/kin or county department). To include court-involvement into the language would cause confusion in many cases.
7.304.21 D, 2	• Please clarify viable option- is this temporary or permanent? If permanent, it contradicts the remainder of this rule. • Are the "… services to kin shall be used to help provide permanency for the child/youth" for children/youth who cannot be returned to parent's home, the same services as those identified, at a minimum, in Section 7.304.21, E, 3?	• After obtaining initial feedback, the majority of people stated they understood that returning to the parent's home is not a viable option right now and that this is not necessarily referring to a permanent situation. Language to be left as is.
7.304.21 D, 3	• The Kinship Task Group is not in favor of a state approved, county specific assessment as it is seen as too much oversight. • Is there a timeframe for when the SAFE has to be completed? And requirements about where/how it is documented? • This rule sounds like the county department is required to complete a SAFE kinship evaluation regardless of our type of involvement. This process should be required ONLY if the department facilitated the placement AND the child is with kin for more than 30 days. My suggested wording: *IF THE COUNTY DEPARTMENT FACILITATED THE PLACEMENT AND THE CHILDREN/YOUTH ARE PLACED WITH THE KIN FOR 30 DAYS OR LONGER, THE COUNTY DEPARTMENT SHALL* COMPLETE A FAMILY ASSESSMENT USING THE DEPARTMENT'S MODIFIED STRUCTURED ANALYSIS FAMILY EVALUATION (SAFE) OR A STATE APPROVED, COUNTY SPECIFIC ASSESSMENT FOR NON-CERTIFIED KINSHIP FAMILIES TO DETERMINE CHARACTER AND SUITABILITY	• There are currently 2 drafts of this section: the one approved by DCW and the proposal from the Kinship Task Group. • The timeframe for completion is not being added as the group writing the proposed language feels that the assessment would begin at the time of placement/change in living arrangement and be ongoing as additional information surfaced. • DCW would not be in favor of leaving a child in a home for 30 days that has been assessed as assessment begins prior to or at the time of placement/change in living arrangement.

Section	Feedback	Revision or rationale (if no change made)
	OF THE FAMILY, APPROPRIATENESS OF THE HOME AND CHILD CARE PRACTICES. IT IS NOT REQUIRED THAT THE COUNTY DEPARTMENT COMPLETE THE FOSTER CARE CERTIFICATION PROCESS. • Are the non-certified kin assessments maintained at both the county and state level, and/or documented in Trails?	
7.304.21 D, 4	• Is there a timeframe for completion? • This rule sounds like the kin always need to complete an application to provide care for children and youth, regardless of the department's involvement. My suggested wording: *IF THE COUNTY DEPARTMENT FACILITATED THE PLACEMENT, THE COUNTY DEPARTMENT SHALL* ENSURE COMPLETION OF A SIGNED ORIGINAL APPLICATION TO PROVIDE CARE FOR CHILDREN AND YOUTH OR A STATE APPROVED, COUNTY SPECIFIC KINSHIP APPLICATION. • Are original applications to provide kinship care for children/youth maintained at both the county and state level, and/or documented in Trails? What oversight is in place to ensure that counties follow this requirement?	• Add language to the application stating it must be documented in the SACWIS. • Language added to clarify that the application must be initiated at the time of change in living arrangement. • Oversight of the completion of the application will occur through the impending non-certified kin review process.
7.304.21 D, 5	NO FEEDBACK	
7.304.21 D, 6	• Says a background check needs to be done on all "cases". Is this really intended to be only at case, or is it supposed to include at time of assessment? Also, it looks like this only applies at the closing of an assessment when the child couldn't be returned home by the conclusion of the assessment. That means we were fine with the child living with the kin for up to 60 days without doing a background check, but now need to do them once it moves to a case? Should "of the county department" be added between "involvement" and "facilitation" (take out "in the") and add "for the child(ren)/youth to include" at the end of that sentence? B. • I think the cite included, 7.304.21 D 2 f will change as a result of this rule change, so it should be updated here. • Question about frequency of all background checks. Sex offender states must be done annually.	• DCW would not endorse a child/youth living in a home for up to 60 days without background checks being completed. • Language was slightly revised to clarify that background checks have to be completed prior to placement/change in living arrangement, not that checks need to be completed on people who lived in the home prior. B. • This was an oversight. Citation for the first bullet point has been changed. • After reviewing the statute again, nothing states that sex offender checks must be done annually for non-certified kinship placements, nor have counties been trained to this. It is proposed that "annually" be stricken from the rule.
7.304.21 D, 7	• Has cites that will change as a result of this rule change and	• This comment refers to language that is stricken.

Section	Feedback	Revision or rationale (if no change made)
	will need to be updated (7.304.21 D 9 & 10) • This rule also needs clarification that the county department facilitated the placement. My suggested wording: *IF THE COUNTY DEPARTMENT FACILITATED THE PLACEMENT , THE COUNTY DEPARTMENT SHALL* RECEIVE AFFIRMATION OF THE PLACEMENT EITHER THROUGH A COURT ORDER OR COUNTY DIRECTOR(S) AFFIRMATION TO PLACE OR ALLOW CONTINUED PLACEMENT OF A CHILD AND/OR YOUTH WITH A NON-CERTIFIED KIN OR OTHER ADULT LIVING IN THE HOME THAT WOULD OTHERWISE BE DISQUALIFIED IN SECTION 7.304.21, C, 8 AND 9.	The only other section of rule that would refer back to this section is Placement Activities in 7.304.62. That section was reviewed to ensure all citations were correct. • Facilitation of placement language is not being added as the department may not have been involved in the initial facilitation, but choosing to continue the placement. Background checks would be required in those situations.
7.304.21 D, 8	• Has cites that will change as a result of this rule change and will need to be updated	• This comment refers to language that is stricken. The only other section of rule that would refer back to this section is Placement Activities in 7.304.62. That section was reviewed to ensure all citations were correct.
7.304.21 D, 9	• Uses "as soon as possible", will there be any guidance as to what this means? It appears that the concerns need to be addressed within 2 weeks of placement, so the plan would have to be before that. • Also, "in the contact log in the resource section or in the record" is recommended to be taken out in a later part of the draft (on page 12).	• The concerns need to be remedied within 2 weeks, so a plan would need to be completed prior to that. Adding a timeframe for completion of the plan is fairly prescriptive and not flexible to county department needs. • This language was already stricken.
7.304.21 D, 10	• This should use the same language that was used on page 6, #8. (18 and older)	• The proposal is to strike number 10 as it is addressed elsewhere in rule.
7.304.21 D, 11	NO FEEDBACK	
7.304.21 E, 1	NO FEEDBACK	
7.304.21 E, 2	A. • It indicates that some information shall be documented in Trails. Should a similar requirement also apply to 7.304.21 E 1 & 2? • Also, "The information including date(s) information was provided shall be .... I think there should be a comma between "The information," and "provided, shall" • This section states that kinship care providers should be advised of the types of support available to them; however, it is not for each placement type. For example, if kin do not meet all certification standards, they may accept APR instead of kinship foster care if they are not aware that certain non-safety standards can be waived. We request that the language	A. • E, 1 outlines the eligibility requirements and does not require any documentation. • Language was revised to clarify that information provided, not just the dates, should be included in the documentation. This revision also changes the punctuation. • E, 2, a, 2) mentions the ability to have non-safety standards waived and cites the applicable rule section. Rule language will not be changed here. • "Family Preservation" refers to services, not permanency outcomes. Language is fine as

Section	Feedback	Revision or rationale (if no change made)
	be modified to include this clarification. • "Kinship caregivers for Title IV-E eligible children/youth are entitled to the same level of reimbursement as non-related providers." There is a state-&-county assistance program for non iv-e eligible foster and adopted children (which, at least for adopted kids, is almost -- with 1 exception -- identical to the IV-e program); I'm guessing since these children are with non-certified kin, that this kind of support would not be available to these families? • Is 'family preservation' equivalent to accepting permanent guardianship/APR? Is this defined in regulation? • Does a kinship caregiver have an appeals option if the county director/designee does not allow a 'waiver for non-safety certification standards' and if so, is the county mandated to provide the appeals process to families? We would otherwise be concerned that waivers may not be approved in circumstances where they would be appropriate. F. • Change emergency placement rules to "e" • (2/3)Seems like some of the timeframes throughout here conflict. Some say you can't place a child if a person residing in the home has certain charges, but you have until 5 days after the placement to run the fingerprint background check. • (8) a and b, what is the timeframe? • Use the same "adult"/18 years and older language. 8c says "placement, and annually, and". The other two places in the document prior, they do not put commas in that sentence. • (11) a, c, d what is the timeframe? d is the only place that requirement exists (when the rest of the requirements are the same elsewhere).	written. • 7.708.74 clearly states that kinship caregivers do not have the right to appeal the decision related to non-safety waivers. F. • Language still exists in "e" regarding provisional certification, so emergency placement will be left in "f" • Because this is an emergency placement, an NCIC check would be completed, giving the county department some knowledge of criminal histories. This check must be completed prior to placement and fingerprint based checks must be completed within 5 days. • Timeframe is mentioned numerous times throughout the rule; prior to placement. • Removed commas from c) for consistency.
7.304.21 E, 3	NO FEEDBACK	
7.304.21 E, 4	NO FEEDBACK	
7.304.21 E, 5	NO FEEDBACK	
7.304.21 E, 6	• Should the following language, "The preferred permanent placement shall be adoption, legal guardianship, or permanent custody" be amended to specifically include the Relative Guardianship Assistance Program (RGAP), or is this implicit in either 'legal guardianship' or 'permanent custody'?	• The language will not be changed as not all permanent placements will be eligible for the Relative Guardianship Assistance Program
GENERAL FEEDBACK	• A primary concern regarding the kinship care rules continues to	

Section	Feedback	Revision or rationale (if no change made)
	be those cases where families are not being informed by counties of all placement options, despite CDHS regulations mandating this. This is especially concerning given that: 1) many kinship families can have lower incomes and less resources than non-relative foster-adopt families; and 2) of the average daily placement of children/youth in care in SFY 2015, 36% (1,872) were in non-certified kinship care. • Commenter would be glad to provide contact information for kinship families who were not informed of the possible placement options. In foster care adoptions, by state and federal law, parents are allowed to request a post-finalization adoption assistance if they were not informed about the option of adoption assistance prior to the adoption, and the child would otherwise have met eligibility (7.306.41, F – "There are situations after finalization when adoptive parents can request a state level fair hearing before an Administrative Law Judge concerning the adopted child's eligibility for adoption assistance benefits or the amount of those benefits.") There does not appear to be a similar protection for kinship caregivers. Section 7.304.21 E, a, 2, c states that "Kinship caregivers for Title IV-E eligible children/youth are entitled to the same level reimbursement as non-related providers" – they should also be entitled to the same appeals protocol in the event that they are not properly informed of all placement options. Commenter is requesting that the current language be amended to include language similar to 7.306.41, F for kinship care providers.	

(12 CCR 2509-1)

7.000.2 DEFINITIONS [Rev. eff. 1/1/16]

A. The following are definitions of commonly used terms used in these rules:

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"Child Welfare Services" are the services and payments for services (other than medical services covered by the "Colorado Medical Assistance Act") available, directly or indirectly, through the state and county departments for the benefit of eligible persons pursuant to rules adopted by the State Department or State Board of Human Services.

"Client" means any person applying for or receiving child welfare services from a county department.

"Colorado Safety Assessment Tool" means the tool in the State automated case management system that guides a case worker through a safety assessment process.

"Concurrent planning" means the simultaneous preparation of plans to:

1) assist the child's parents or caregivers in completing a treatment plan that, when completed successfully will allow the child to return home safely; and,
2) place the child in a setting that will become the child's permanent home if the parents or caregivers are unable to successfully complete their treatment plan.

"Continuously available" means the assignment of a person to be near an operable telephone, pager system, cellular telephone, or to have such arrangements made through agreements with the local law enforcement agencies.

"CONVICTED", FOR THE PURPOSES OF THE CRIMINAL HISTORY RECORD INFORMATION CHECK, MEANS A PLEA OF GUILTY ACCEPTED BY THE COURT, INCLUDING A PLEA OF GUILTY ENTERED PURSUANT TO A DEFERRED SENTENCE UNDER SECTION 18-1.3-102, C.R.S., A VERDICT OF GUILTY BY A JUDGE OR JURY, OR A PLEA OF NO CONTEST ACCEPTED BY THE COURT, OR HAVING RECEIVED A DISPOSITION AS A JUVENILE OR HAVING BEEN ADJUDICATED A JUVENILE DELINQUENT BASED ON THE COMMISSION OF ANY ACT THAT CONSTITUTES SEXUAL ASSAULT, AS DEFINED IN SUBSECTION (96.5) OF 19-1-103, C.R.S.

"County Department" means a county department of human or social services or, if applicable, the county agency responsible for providing child welfare services as defined by Section 26-5- 101(3), C.R.S.

"De novo" means that when an issue is reviewed, affording no deference to the original decision.

"Dedicated Child Abuse and Neglect Reporting Telephone Line" is a county department telephone number that is used to receive calls related to child abuse and/or neglect. Calls to county departments' dedicated child abuse and neglect reporting telephone lines will be routed through the statewide hotline system for recording and data collection purposes and routed to the county departments' hotline workers.

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"Non-certified kinship care" means a child and/or youth is being cared for by a relative or kin, who has a significant relationship with the child and/or youth, in circumstances when there is a safety concern by a county department in the home of the parent or legal guardian and the relative or kin has not met the foster care certification requirements for a kinship foster care home or has chosen not to pursue certification.

"PATTERN OF MISDEMEANORS" FOR THE PURPOSES OF THE CRIMINAL HISTORY RECORD INFORMATION CHECK SHALL BE DEFINED AS:

A) THREE (3) OR MORE CONVICTIONS OF 3RD DEGREE ASSAULT AS DESCRIBED IN SECTION 18-3-204, C.R.S., AND/OR ANY MISDEMEANOR, THE UNDERLYING FACTUAL

BASIS OF WHICH HAS BEEN FOUND BY ANY COURT ON THE RECORD TO INCLUDE AN ACT OF DOMESTIC VIOLENCE AS DEFINED IN SECTION 18-6-800.3, C.R.S. ; OR,

B) FIVE (5) MISDEMEANOR CONVICTIONS OF ANY TYPE, WITH AT LEAST TWO (2) CONVICTIONS OF 3RD DEGREE ASSAULT AS DESCRIBED IN SECTION 18- 3-204, C.R.S., AND/OR ANY MISDEMEANOR, THE UNDERLYING FACTUAL BASIS OF WHICH HAS BEEN FOUND BY ANY COURT ON THE RECORD TO INCLUDE AN ACT OF DOMESTIC VIOLENCE AS DEFINED IN SECTION 18-6- 800.3, C.R.S.; OR,

C) SEVEN (7) MISDEMEANOR CONVICTIONS OF ANY TYPE

"Personal Contact" is a method of contact in which two people exchange information in person or through live communication either via telephone or other emerging communications technology.

"Potential disqualifying factor" for the purpose of completing a background check for non-certified kinship care and kinship foster care homes, means information that may preclude the placement of a child and/or youth by a county department of human or social services or a child placement agency into a prospective home. Factors include, but are not limited to:

1. A criminal conviction that may be prohibited;
2. Confirmed child abuse and/or neglect in the state automated case management system or another state's child abuse and neglect registry, and following a review of the information, it is determined that any safety concerns can be mitigated;
3. The court orders and affirms the placement of the child or youth with kin; or,
4. Additional documented information that was acquired that raises concern about safety in the home.

"Preponderance of evidence" means credible evidence that a claim is more likely true than not.

"Present danger" means an immediate, significant, and clearly observable threat to child safety that is actively occurring and will likely result in moderate to severe harm to a child.

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"Reasonable and prudent parent standard" means careful and sensible parental decisions that maintain the health, safety, and best interests of the child or youth while encouraging the emotional and developmental growth of the child or youth that a provider shall use when determining whether to allow a child or youth in foster care under the responsibility of the county or in non-secure residential settings under the responsibility of the Division of Youth Corrections (DYC) to participate in extracurricular, enrichment, cultural, and social activities based upon the criteria in Section 7.701.200 (12 CCR 2509-8).

"Reasonable efforts" means the exercise of diligence and care throughout county department involvement with children, youth, and families. ~~"RED Team" is the acronym for Review, Evaluate and Direct. The RED Team is a group decision making process that utilizes the framework and agency response guide to determine county department response to referrals.~~

"RED TEAM" IS THE ACRONYM FOR REVIEW, EVALUATE AND DIRECT. THE RED TEAM IS A GROUP DECISION MAKING PROCESS THAT UTILIZES THE FRAMEWORK AND AGENCY RESPONSE GUIDE TO DETERMINE COUNTY DEPARTMENT RESPONSE TO REFERRALS.

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Notice of Proposed Rulemaking

Tracking number

2016-00431

Department

500,1008,2500 - Department of Human Services

Agency

2509 - Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-4

Rule title

CHILD WELFARE SERVICES

Rulemaking Hearing

Date

10/07/2016

Time

10:00 AM

Location

South Branch Library, Hopeful and Discovery Meeting Rooms, 103 S. Harris Street, Breckenridge, CO 80424

Subjects and issues involved

Section 7.000.2 (12 CCR 2509-1), adds definitions for conviction and pattern of misdemeanor that will provide a common and consistent understanding of the terms. Currently these definitions exist in a different section of rule and are being relocated to definitions for consistency. Children, youth, kinship caregivers, foster care and kinship foster care providers, county departments of human or social services, CPAs, community providers, and other constituents will benefit from definitions being located in a centralized location. County departments of human or social services and CPAs may bear a minimal burden to notify staff and community partners of the location change.

Section 7.304 (12 CCR 2509-4), revises and adds rules to clarify a number of pertinent issues involving living arrangements with kin including, legal custody status when a child/youth is placed in a non-certified kinship home (county involved vs. family arrangement); removal requirements; and consistent data entry when a child or youth is residing with kin. The rule establishes a practice framework outlining the possible options when placing with kinship caregivers.

Statutory authority

"26-1-107, C.R.S. (2015); 26-1-109, C.R.S. (2015); 26-1-111, C.R.S. (2015); 19-1-103, C.R.S.(2015); 26-6-106.5 C.R.S. (2015)
"

Contact information

Name

Jeannie Berzinskas

Title

Rule Author

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jeannie.bersinskas@state.co.us

RULEMAKING COVER PACKET

Title of Proposed Rule:	Clarification of Practice for Placement with Kin
CDHS Tracking #:	16-5-27-2
Revising official Rule #s:	12 CCR 2509-4

Office, Division, & Program: Division of Child Welfare	Rule Author: Jeannie Berzinskas	Phone: (303) 866-4617 E-Mail: jeannie.berzinskas@state.co.us

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

a. [X] Board [ ] Executive Director

b. [X] Regular [ ] Emergency

This package is submitted to State Board Administration as:

[X] Initial Circulation (check all that apply)

- [X] that creates a rule(s)
- [X] that revises a rule(s)
- [X] that is technical clean-up of a rule(s)

[ ] Update # _____

- [ ] that revises a proposed rule
- [ ] that is technical clean-up of a proposed rule

[ ] Cancel

Specify reason(s) for update or cancellation:

Number of rules included for repeal _____	Number of new rules:
Number of rules included for revision _____	Number reviewed:
What month is being requested for this rule to first go before the State Board?	October 2016
What date is being requested for this rule to be effective?	January 1, 2017

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

Approved		Date:
Conditional		Comments:
Disapproved		

Pre-Board	1st Board	2nd Board	Effective Date

Title of Proposed Rule: Clarification of Practice for Placement with Kin
Rule-making#: 16-5-27-2

Office, Division, & Program:	Rule Author:	Phone: (303) 866-4617
Division of Child Welfare	Jeannie Berzinskas	E-Mail: jeannie.berzinskas@state.co.us

10/15/16 11/4/16 1/1/17

STATEMENT OF BASIS AND PURPOSE

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

(State what the rule says or does, explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. How do these rule changes align with the outcomes that we are trying to achieve, such as those measured in C-Stat?)

To implement new guidance regarding placement with kin in order to promote consistent practice statewide. The current rules are vague and confusing causing multiple interpretations of the rule and inconsistent practice statewide. County departments have requested a rule revision to clarify expectations when placing with kin and the Child Welfare Sub-PAC and PAC approved a Policy Submittal request for revision to the kinship rules.

Authority for Rule:

State Board Authority: 26-1-107, C.R.S. (2015) - State Board to promulgate rules; 26-1-109, C.R.S. (2015) - state department rules to coordinate with federal programs; 26-1-111, C.R.S. (2015) - state department to promulgate rules for public assistance and welfare activities.

Program Authority:

(give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority)

19-1-103, C.R.S.(2015) – definitions; and 26-6-106.5 C.R.S. (2015) Foster care – kinship care – rules applying generally – rule making.

Does the rule incorporate material by reference?		Yes	X	No
Does this rule repeat language found in statute?		Yes	X	No

If yes, please explain.

The program has sent this proposed rule-making package to which stakeholders?

Child Welfare Sub-PAC; Policy Advisory Committee (PAC); Colorado Counties, Inc. (CCI); Colorado Association of Family and Children's Agencies (CAFCA); Court Appointed Special Advocates (CASA); Colorado Coalition of Adoptive Families (COCAF); Colorado Department of Public Health and Environment (CDPHE); Colorado Human Services Directors Association (CHSDA); Colorado State Foster Parent Association; Colorado Trails User Group (CTUG); Division of Child Welfare Child Protection, Permanency, Placement Services, and Youth Services Teams, Fostering Colorado; Colorado Kinship Alliance; Foster and Kinship Care Coordinators; Office of the Child's Representative (OCR); Rocky Mountain Children's Law Center; Child Protection Task Group; Pathways to Success Model Youth System Project Steering Committee and Workgroups, Permanency Task Group; Kinship Task Group; and CDHS Administrative Review Division.

[Note: Changes to rule text are identified as follows: deletions are shown as "strikethrough", additions are in "all caps", and changes made between initial review and final adoption are in brackets.]

Office, Division, & Program: Division of Child Welfare
Rule Author: Jeannie Berzinskas
Phone: (303) 866-4617
E-Mail: jeannie.berzinskas@state.co.us

REGULATORY ANALYSIS

(*complete each question; answers may take more than the space provided*)

1. List of groups impacted by this rule:

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

Section 7.000.2 (12 CCR 2509-1), adds definitions for "conviction" and "pattern of misdemeanor" that will provide a common and consistent understanding of the terms. Currently these definitions exist in a different section of rule and are being relocated to definitions for consistency. Children, youth, kinship caregivers, foster care and kinship foster care providers, county departments of human or social services, CPAs, community providers, and other constituents will benefit from definitions being located in a centralized location. County departments of human or social services and CPAs may bear a minimal burden to notify staff and community partners of the location change.

Section 7.304 (12 CCR 2509-4), revises and adds rules to clarify a number of pertinent issues involving living arrangements with kin including, legal custody status when a child/youth is placed in a non-certified kinship home (county involved vs. family arrangement); removal requirements; and consistent data entry when a child or youth is residing with kin. The rule establishes a practice framework outlining the possible options when placing with kinship caregivers.

County departments of human or social services, community providers, and other constituents will benefit from clarification provided in the rule, which will promote consistency in practice when placing with kinship caregivers. Children and youth will benefit from a consistent process regardless of county of residence.

The long-term impact for county departments of human or social services, children, youth, and their families, is placement will be with the most appropriate provider.

County departments of human or social services will bear the burden of ensuring their staff are familiar with the new framework for placing children/youth with kin.

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?

In State Fiscal Year (SFY) 2015, the average daily placement was 5,222 children and youth, and of these:

- 1,872 (36%) were in non-certified kinship care; and,
- 280 (5%) were in a kinship foster care home.

Section 7.000.2 definitions may have a short-term impact prompting county departments of human or social services and CPAs to familiarize themselves with the new location. For the long-term, a consistent location for definitions will provide a consistent understanding for county departments, providers, and the general public.

Section 7.304.21 rule additions and revisions regarding placements with kin may have a short-term impact for county departments of human or social services requiring a review of their processes to align their internal policy with the outlined framework. For the long-term, consistency of policy and practice with kinship caregivers will be improved statewide.

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)*

These new rules provide a framework for consistent kinship practice. The State is not anticipating any fiscal impact.

County Fiscal Impact

Many county departments are already practicing within this framework and would not incur additional costs. County departments participated in this rule-making process. County departments did not identify any county fiscal impact.

Federal Fiscal Impact

A fiscal impact is not anticipated because the rules provide a framework for consistent kinship practice. This framework does not impact families' current eligibility for federal funding.

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

A fiscal impact is not anticipated because the rules provide a framework for consistent kinship practice. This framework does not impact families' current eligibility for current programs.

4. Data Description:

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

Statewide Automated Child Welfare Information System (Trails) report regarding the number of children and youth placed in out-of-home care in SFY 2015.

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…"

The alternative to this rule-making is leaving kinship rules as they are. This is not an option because the current rules are vague and outdated. There is not statewide consistency for practice with kin families. County departments have been asking for rule clarification and would object to leaving the rules stagnant.

Title of Proposed Rule: Clarification of Practice for Placement with Kin
Rule-making#: 16-5-27-2

Office, Division, & Program: Division of Child Welfare
Rule Author: Jeannie Berzinskas
Phone: (303) 866-4617
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OVERVIEW OF PROPOSED RULE

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

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment			
				Yes		No
7.000.2	Definitions	Adds the definitions of "convicted" and "pattern of misdemeanor" to this section. Makes a technical change to separate the definitions of "Reasonable efforts" and "RED teams."				
7.304.21, A	Definitions and purpose of kinship care	Repeal duplicative language				
7.304.21, B	Purpose of kinship care	Adds the terms "Youth" and "for but not limited to"	X			
7.304.21, C	Kinship placement when the county department does not have legal custody or authority of placement	Renumbers sections and adds a new section of rule with a continuum of kinship living arrangements	X			
7.304.21, D	Kinship placement when the county department has legal custody or authority for placement	As a result of renumbering, this section is now kinship placement when the county department does not have legal custody or authority for placement. Also repeals language regarding target group eligibility.	X			
7.304.21, D, 2	Provision of services to kin	Repeals language for technical clean up and adds the term "Youth" for consistency in language	X			
7.304.21, D, 3	Family assessment/home study	Revises language to include a county specific assessment	X			
7.304.21, D, 4	States legal representation is not required	Repeals information about the non-requirement of legal representation and adds language about the requirement of an application	X			
7.304.21, D, 5	Forms of support	Technical changes for consistency in language				
7.304.21, D, 6,	Background check requirements	Technical changes for consistency in language	X			
7.304.21, D, 6, b	Background check requirements	Repeal definitions of "convicted" and "pattern of misdemeanor" (moved to definitions for consistency) and repeals language for technical cleanup	X			
7.304.21, D, 7-9	Actions taken dependent on results of a background check	Renumber for better sequencing and repeals language for technical cleanup	X			

7.304.21, D, 10	Documentation of background checks	Repeals language for technical cleanup				
7.304.21, D, 11	Encourages county departments to conduct background checks on prospective kinship providers	Repeal as it is not a requirement				
7.304.21, E, 1	Eligible populations	Adds the term "Youth" for consistency in language				
7.304.21, E, 1, c-e	Advisement of options	Move to 7.304.21, E, 2 for better sequencing and technical cleanup				
7.304.21, E, 2, a		Adds the term "Youth" for consistency in language and adds advisement of options	X			
7.304.21, E, 2 b	Including kin in planning process	Adds the term "when considering"				
7.304.21, E, 2, e	Emergency visitation	Repeals emergency visitation as it is replaced by process in 7.304.21, C				
7.304.21, E, 2, f	Emergency placements	Technical changes for grammatical errors and consistency in language	X			
7.304.21, E, 2, f, 1)	Background checks	Repeals language about what counties are encouraged to do rather than what they are required to do				
7.304.21, E, 2, f, 2)	Background checks	Adds the terms "shall" and "unless ordered by the court"	X			
7.304.21, E, 2, f, 8)	Background checks	Repeals language about what counties are encouraged to do rather than what they are required to do and a technical change to correct a grammatical error	X			
7.304.21, E, 2, f, 10)	Documentation of background checks	Repeals language about specific areas in the State Automated Child Welfare Information System where items must be documented				
7.304.21, E, 2, f, 11)	Background checks	Technical change to correct a grammatical error	X			
7.304.21, E, 3, a	Funding options available for kinship placements	Technical changes for consistency in language				
7.304.21, E, 3, a, 13)		Adds Relative Guardianship Assistance Program as a type of support				
7.304.21, E, 5	Services to children	Technical change to add the term "youth"				
7.304.21, E, 6, a	Permanency planning in kinship care	Technical change to add the term "youth"				

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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):

Kinship Task Group; Permanency Unit; Child Protection Unit; and Child Welfare Leadership Team.

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:

Child Welfare Sub-PAC; Policy Advisory Committee (PAC); Colorado Counties, Inc. (CCI); Colorado Association of Family and Children's Agencies (CAFCA); Court Appointed Special Advocates (CASA); Colorado Coalition of Adoptive Families (COCAF); Colorado Department of Public Health and Environment (CDPHE); Colorado Human Services Directors Association (CHSDA); Colorado State Foster Parent Association; Colorado Trails User Group (CTUG); Division of Child Welfare Child Protection, Permanency, Placement Services, and Youth Services Teams, Fostering Colorado; Colorado Kinship Alliance; Foster and Kinship Care Coordinators; Office of the Child's Representative (OCR); Rocky Mountain Children's Law Center; Child Protection Task Group; Pathways to Success Model Youth System Project Steering Committee and Workgroups, Permanency Task Group; Kinship Task Group; and CDHS Administrative Review Division.

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 [X] No

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

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

[X] Yes [ ] No

Date presented June 2, 2016.

What issues were raised?

Clarification of when a family assessment is needed, during the assessment phase, or only during a case.

Comments were received from stakeholders on the proposed rules:

[ ] Yes [ ] No

Please see attached spreadsheet for stakeholder comments.

Kinship Rule Proposal
Stakeholder Feedback

Section	Feedback	Revision or rationale (if no change made)
7.000.2 "Convicted"	• There is a definition of convicted in the Children's Code 19-1-103 (29.3) and should be used in rule	• Definition of conviction has been revised so the wording aligns with the definition in Title 19 instead of using different language.
7.000.2 "Pattern of Misdemeanors"	• Need clarification of these definitions. They indicate that the misdemeanor convictions can be of "ANY TYPE", but then goes on to indicate that it has to be a combination of a certain type? Specifically two convictions of 3rd degree assault, AND/OR any misdemeanor including domestic violence.	• This language is consistent with other sections of rule including Volume III CCCAP rules. To change the language would cause inconsistency and possibly further confusion.
7.304.21 A	NO FEEDBACK	
7.304.21 B	• The new language "FOR BUT NOT LIMITED TO" seems inappropriate. The list under B seems like the purpose of kinship care, so it seems it would read better as "IN ORDER TO."	• Revised wording to the stakeholder recommendation of "in order to."
7.304.21 B, 1	• Instead of "across the life span" say "across the child's life span"	• Revised wording to get at the intent of the stakeholder comment, but also not duplicate language. Now reads "their life span"
7.304.21 C, 1	• Children/youth should read child(ren)/youth. This is true throughout the document. Also check for child and/or youth and make the language consistent throughout. • Is there a way to clarify these as non-court involved cases?	• Revised language in entire document to read "child(ren)/youth" • These rules are based on who has custody (parent/guardian/kin or county department). To include court-involvement into the language would cause confusion as it can overlap with court involvement in many cases.
7.304.21 C, 2	• What forms of support are they available for? • Should the language be at initial response or anytime during the assessment?	• Revised the citation to reflect the forms of support are listed in 7.304.21, E, 3 and not in D, 3. • The "prior to initial response.." language was stricken from 2, A) to alleviate confusion as this scenario could happen any time during the assessment period.
7.304.21 C, 3	**A.** • Says the assessment cannot close until the child has been returned to their caregiver or documentation of legal custody	• Wording was changed to reflect the intent of assessment closure not occurring unless the child(ren)/youth being returned to their

Section	Feedback	Revision or rationale (if no change made)
	to the kin. It needs to be clarified to give the 3 options of intent: 1) returned to parents; 2) custody to kin; and 3) a case is opened. • What does "legal authority" mean? • It seems like 1-3 under A could be moved in front of A? • "Documentation is obtained demonstrating", can this just be a ROC note or does it need to be legal documentation (hard copy or in ICON)? • Suggested language of adding the following to …..obtained demonstrating that legal authority has been granted to the relatives/kin OR IT HAS BEEN CONFIRMED AND DOCUMENTEDIN THE STATEWIDE COMPUTER SYSTEM THAT THE SAFETY CONCERNS HAVE BEEN MITIGATED AND THERE ARE NO ONGOING SAFETY CONCERNS. • This rule is not very clear regarding fingerprints- spell out whether fingerprints are required **B.** • You reference if a child cannot return home by the conclusion of an assessment or family assessment response services plan, the assessment shall be closed. By rule, once a family assessment response services plan is created, a FAR has become a case (moved the services phase v. assessment phase). In other words, it would already be a case if it has a family assessment response services plan. • Refers to the completion of an assessment. Should it include the 60-day timeframe? (1) "A removal is not opened" should it also say in the SACWIS? • Indicates a removal will not be opened when the child cannot be returned home by the end of the assessment. However, this placement occurred under a safety plan. Safety plans are supposed to be short term (~ week). If an assessment lasts 60 days, and a child cannot be returned home by that time, wouldn't a voluntary case have to be opened, or custody legally given to either the kin or the county? And if the county receives custody, then a removal would be opened. • Language suggestion: IF CHILDREN/YOUTH CANNOT RETURN HOME BY THE CONCLUSION OF AN ASSESSMENT OR FAMILY ASSESSMENT RESPONSE SERVICES PLAN *BECAUSE OF ONGOING SAFETY CONCERNS,* THE ASSESSMENT SHALL BE CLOSED AND A	parents/custodians; custody is given to kin; or a case is opened. • Spoke with commenter about the suggested language of mitigating concerns and clarified the third option of opening a case. The intent of the rule is to eliminate the practice of mitigating the safety concern by the child(ren)/youth going to stay with a relative and the assessment closing with the parents having no recourse for mitigating the concerns and getting their child(ren)/youth returned to them. • "Legal authority" is not being defined in this rule to prevent language from being too prescriptive and hindering flexibility for county specific needs. • "Documentation is obtained demonstrating …" is clarified to state that it must be documented in SACWIS. • This section of rule cites the rules to be followed in this scenario, which includes fingerprint checks. To mention fingerprints here would be duplicative. B. • According to the CPS team, a FAR services plan does not necessarily mean a case and the language should remain as is. • The second through fourth bullet points are covered in the language revision of # 3.

Section	Feedback	Revision or rationale (if no change made)
	CASE SHALL BE OPENED. Does this need a wording change.	
7.304.21 C, 4	A. • Should it say the county assumes legal authority of the child(ren)/youth and they…."are considered to be in OOH care and a removal is required"…should we add to be opened in the SACWIS? • What happens if it is the JD court orders placement to kin? What background checks are completed? Where does this fit in rule? B/C. • B and C seem contradictory again. B says it can't be closed, and C says it shall be closed.	A. • Language was revised to mirror the format of # 3 and addresses the concerns outlined in bullet 1 in A and the bullet in B/C. • There is a section of rules outlining practice of JD cases and adding information here would be duplication.
7.304.21 D, 1	• Should the language read court involved (vs. non-court involved in letter C)? • Are children/youth whose cases are initially addressed through a safety plan but are then taken into legal custody by the county, documented?	• These rules are based on who has custody (parent/guardian/kin or county department). To include court-involvement into the language would cause confusion in many cases.
7.304.21 D, 2	• Please clarify viable option- is this temporary or permanent? If permanent, it contradicts the remainder of this rule. • Are the "… services to kin shall be used to help provide permanency for the child/youth" for children/youth who cannot be returned to parent's home, the same services as those identified, at a minimum, in Section 7.304.21, E, 3?	• After obtaining initial feedback, the majority of people stated they understood that returning to the parent's home is not a viable option right now and that this is not necessarily referring to a permanent situation. Language to be left as is.
7.304.21 D, 3	• The Kinship Task Group is not in favor of a state approved, county specific assessment as it is seen as too much oversight. • Is there a timeframe for when the SAFE has to be completed? And requirements about where/how it is documented? • This rule sounds like the county department is required to complete a SAFE kinship evaluation regardless of our type of involvement. This process should be required ONLY if the department facilitated the placement AND the child is with kin for more than 30 days. My suggested wording: *IF THE COUNTY DEPARTMENT FACILITATED THE PLACEMENT AND THE CHILDREN/YOUTH ARE PLACED WITH THE KIN FOR 30 DAYS OR LONGER, THE COUNTY DEPARTMENT SHALL* COMPLETE A FAMILY ASSESSMENT USING THE DEPARTMENT'S MODIFIED STRUCTURED ANALYSIS FAMILY EVALUATION (SAFE) OR A STATE APPROVED, COUNTY SPECIFIC ASSESSMENT FOR NON-CERTIFIED KINSHIP FAMILIES TO DETERMINE CHARACTER AND SUITABILITY	• There are currently 2 drafts of this section: the one approved by DCW and the proposal from the Kinship Task Group. • The timeframe for completion is not being added as the group writing the proposed language feels that the assessment would begin at the time of placement/change in living arrangement and be ongoing as additional information surfaced. • DCW would not be in favor of leaving a child in a home for 30 days that has been assessed as assessment begins prior to or at the time of placement/change in living arrangement.

Section	Feedback	Revision or rationale (if no change made)
	OF THE FAMILY, APPROPRIATENESS OF THE HOME AND CHILD CARE PRACTICES. IT IS NOT REQUIRED THAT THE COUNTY DEPARTMENT COMPLETE THE FOSTER CARE CERTIFICATION PROCESS. • Are the non-certified kin assessments maintained at both the county and state level, and/or documented in Trails?	
7.304.21 D, 4	• Is there a timeframe for completion? • This rule sounds like the kin always need to complete an application to provide care for children and youth, regardless of the department's involvement. My suggested wording: *IF THE COUNTY DEPARTMENT FACILITATED THE PLACEMENT, THE COUNTY DEPARTMENT SHALL* ENSURE COMPLETION OF A SIGNED ORIGINAL APPLICATION TO PROVIDE CARE FOR CHILDREN AND YOUTH OR A STATE APPROVED, COUNTY SPECIFIC KINSHIP APPLICATION. • Are original applications to provide kinship care for children/youth maintained at both the county and state level, and/or documented in Trails? What oversight is in place to ensure that counties follow this requirement?	• Add language to the application stating it must be documented in the SACWIS. • Language added to clarify that the application must be initiated at the time of change in living arrangement. • Oversight of the completion of the application will occur through the impending non-certified kin review process.
7.304.21 D, 5	NO FEEDBACK	
7.304.21 D, 6	• Says a background check needs to be done on all "cases". Is this really intended to be only at case, or is it supposed to include at time of assessment? Also, it looks like this only applies at the closing of an assessment when the child couldn't be returned home by the conclusion of the assessment. That means we were fine with the child living with the kin for up to 60 days without doing a background check, but now need to do them once it moves to a case? Should "of the county department" be added between "involvement" and "facilitation" (take out "in the") and add "for the child(ren)/youth to include" at the end of that sentence? B. • I think the cite included, 7.304.21 D 2 f will change as a result of this rule change, so it should be updated here. • Question about frequency of all background checks. Sex offender states must be done annually.	• DCW would not endorse a child/youth living in a home for up to 60 days without background checks being completed. • Language was slightly revised to clarify that background checks have to be completed prior to placement/change in living arrangement, not that checks need to be completed on people who lived in the home prior. B. • This was an oversight. Citation for the first bullet point has been changed. • After reviewing the statute again, nothing states that sex offender checks must be done annually for non-certified kinship placements, nor have counties been trained to this. It is proposed that "annually" be stricken from the rule.
7.304.21 D, 7	• Has cites that will change as a result of this rule change and	• This comment refers to language that is stricken.

Section	Feedback	Revision or rationale (if no change made)
	will need to be updated (7.304.21 D 9 & 10) • This rule also needs clarification that the county department facilitated the placement. My suggested wording: *IF THE COUNTY DEPARTMENT FACILITATED THE PLACEMENT , THE COUNTY DEPARTMENT SHALL* RECEIVE AFFIRMATION OF THE PLACEMENT EITHER THROUGH A COURT ORDER OR COUNTY DIRECTOR(S) AFFIRMATION TO PLACE OR ALLOW CONTINUED PLACEMENT OF A CHILD AND/OR YOUTH WITH A NON-CERTIFIED KIN OR OTHER ADULT LIVING IN THE HOME THAT WOULD OTHERWISE BE DISQUALIFIED IN SECTION 7.304.21, C, 8 AND 9.	The only other section of rule that would refer back to this section is Placement Activities in 7.304.62. That section was reviewed to ensure all citations were correct. • Facilitation of placement language is not being added as the department may not have been involved in the initial facilitation, but choosing to continue the placement. Background checks would be required in those situations.
7.304.21 D, 8	• Has cites that will change as a result of this rule change and will need to be updated	• This comment refers to language that is stricken. The only other section of rule that would refer back to this section is Placement Activities in 7.304.62. That section was reviewed to ensure all citations were correct.
7.304.21 D, 9	• Uses "as soon as possible", will there be any guidance as to what this means? It appears that the concerns need to be addressed within 2 weeks of placement, so the plan would have to be before that. • Also, "in the contact log in the resource section or in the record" is recommended to be taken out in a later part of the draft (on page 12).	• The concerns need to be remedied within 2 weeks, so a plan would need to be completed prior to that. Adding a timeframe for completion of the plan is fairly prescriptive and not flexible to county department needs. • This language was already stricken.
7.304.21 D, 10	• This should use the same language that was used on page 6, #8. (18 and older)	• The proposal is to strike number 10 as it is addressed elsewhere in rule.
7.304.21 D, 11	NO FEEDBACK	
7.304.21 E, 1	NO FEEDBACK	
7.304.21 E, 2	A. • It indicates that some information shall be documented in Trails. Should a similar requirement also apply to 7.304.21 E 1 & 2? • Also, "The information including date(s) information was provided shall be .... I think there should be a comma between "The information," and "provided, shall" • This section states that kinship care providers should be advised of the types of support available to them; however, it is not for each placement type. For example, if kin do not meet all certification standards, they may accept APR instead of kinship foster care if they are not aware that certain non-safety standards can be waived. We request that the language	A. • E, 1 outlines the eligibility requirements and does not require any documentation. • Language was revised to clarify that information provided, not just the dates, should be included in the documentation. This revision also changes the punctuation. • E, 2, a, 2) mentions the ability to have non-safety standards waived and cites the applicable rule section. Rule language will not be changed here. • "Family Preservation" refers to services, not permanency outcomes. Language is fine as

Section	Feedback	Revision or rationale (if no change made)
	be modified to include this clarification. • "Kinship caregivers for Title IV-E eligible children/youth are entitled to the same level of reimbursement as non-related providers." There is a state-&-county assistance program for non iv-e eligible foster and adopted children (which, at least for adopted kids, is almost -- with 1 exception -- identical to the IV-e program); I'm guessing since these children are with non-certified kin, that this kind of support would not be available to these families? • Is 'family preservation' equivalent to accepting permanent guardianship/APR? Is this defined in regulation? • Does a kinship caregiver have an appeals option if the county director/designee does not allow a 'waiver for non-safety certification standards' and if so, is the county mandated to provide the appeals process to families? We would otherwise be concerned that waivers may not be approved in circumstances where they would be appropriate. F. • Change emergency placement rules to "e" • (2/3)Seems like some of the timeframes throughout here conflict. Some say you can't place a child if a person residing in the home has certain charges, but you have until 5 days after the placement to run the fingerprint background check. • (8) a and b, what is the timeframe? • Use the same "adult"/18 years and older language. 8c says "placement, and annually, and". The other two places in the document prior, they do not put commas in that sentence. • (11) a, c, d what is the timeframe? d is the only place that requirement exists (when the rest of the requirements are the same elsewhere).	written. • 7.708.74 clearly states that kinship caregivers do not have the right to appeal the decision related to non-safety waivers. F. • Language still exists in "e" regarding provisional certification, so emergency placement will be left in "f" • Because this is an emergency placement, an NCIC check would be completed, giving the county department some knowledge of criminal histories. This check must be completed prior to placement and fingerprint based checks must be completed within 5 days. • Timeframe is mentioned numerous times throughout the rule; prior to placement. • Removed commas from c) for consistency.
7.304.21 E, 3	NO FEEDBACK	
7.304.21 E, 4	NO FEEDBACK	
7.304.21 E, 5	NO FEEDBACK	
7.304.21 E, 6	• Should the following language, "The preferred permanent placement shall be adoption, legal guardianship, or permanent custody" be amended to specifically include the Relative Guardianship Assistance Program (RGAP), or is this implicit in either 'legal guardianship' or 'permanent custody'?	• The language will not be changed as not all permanent placements will be eligible for the Relative Guardianship Assistance Program
GENERAL FEEDBACK	• A primary concern regarding the kinship care rules continues to	

Section	Feedback	Revision or rationale (if no change made)
	be those cases where families are not being informed by counties of all placement options, despite CDHS regulations mandating this. This is especially concerning given that: 1) many kinship families can have lower incomes and less resources than non-relative foster-adopt families; and 2) of the average daily placement of children/youth in care in SFY 2015, 36% (1,872) were in non-certified kinship care. • Commenter would be glad to provide contact information for kinship families who were not informed of the possible placement options. In foster care adoptions, by state and federal law, parents are allowed to request a post-finalization adoption assistance if they were not informed about the option of adoption assistance prior to the adoption, and the child would otherwise have met eligibility (7.306.41, F – "There are situations after finalization when adoptive parents can request a state level fair hearing before an Administrative Law Judge concerning the adopted child's eligibility for adoption assistance benefits or the amount of those benefits.") There does not appear to be a similar protection for kinship caregivers. Section 7.304.21 E, a, 2, c states that "Kinship caregivers for Title IV-E eligible children/youth are entitled to the same level reimbursement as non-related providers" – they should also be entitled to the same appeals protocol in the event that they are not properly informed of all placement options. Commenter is requesting that the current language be amended to include language similar to 7.306.41, F for kinship care providers.	

(12 CCR 2509-4)

7.304.2 PLACEMENT OPTIONS

7.304.21 Kinship Care [Rev. eff. 1/1/16]

A. Definition: Refer to Section 7.000.2 (12 CCR 2509-1) for the definition of “kin” and “non-certified kinship care”.

~~1. Maintain children in their families in order to provide meaningful emotional and cultural ties across the life span.~~

~~2. Minimize the trauma of out-of-home placement.~~

~~3. Support and strengthen families' ability to protect their children and to provide permanency.~~

B. Kinship care shall be utilized ~~to~~ ~~FOR BUT NOT LIMITED~~ IN ORDER TO:

1. Maintain child(ren)/YOUTH in their families in order to provide meaningful emotional and cultural ties across ~~the~~ THEIR life span.

2. Minimize the trauma of out-of-home placement.

3. Support and strengthen families' ability to protect their child(ren)/YOUTH and to provide permanency.

C. KINSHIP CARE: ASSESSMENT AND DECISION-MAKING

1. IF DURING AN ASSESSMENT IT IS DISCOVERED THAT THE CHILD(REN)/YOUTH AND THEIR PARENTS ARE LIVING WITH KIN:

   A) THE CHILD(REN)/YOUTH ARE NOT CONSIDERED TO BE IN OUT-OF-HOME CARE AS THE CHILD(REN)/YOUTH ARE LIVING WITH THEIR PARENTS.

   B) THE RULES FOR ASSESSMENT APPLY (SEE SECTION 7.104 ET SEQ.).

2. IF DURING AN ASSESSMENT IT IS DISCOVERED THAT THE CHILD(REN)/YOUTH ARE NOT LIVING WITH THEIR PARENTS, BUT WITH RELATIVES/KIN:

   A) THE CHILD(REN)/YOUTH ARE NOT CONSIDERED TO BE IN OUT-OF-HOME CARE AS THE CHILD(REN)/YOUTH ARE LIVING WITH RELATIVES THROUGH ARRANGEMENTS MADE BY THE FAMILY.

   B) THE RULES FOR ASSESSMENT APPLY (SEE SECTION 7.104 ET SEQ.).

   C) THESE KINSHIP PROVIDERS MAY BE ELIGIBLE FOR FORMS OF SUPPORT LISTED IN SECTION 7.304.21, ~~D~~ E, 3.

3. IF DURING AN ASSESSMENT IT IS DISCOVERED THAT THE CHILD(REN)/YOUTH ARE IN CURRENT OR IMPENDING DANGER WITH THEIR CAREGIVER(S) AND THE FAMILY AGREES TO A TEMPORARY LIVING ARRANGEMENT WITH RELATIVES/KIN THROUGH THE USE OF A SAFETY PLAN:

   A) THE ASSESSMENT CANNOT BE CLOSED UNTIL ONE OF THE FOLLOWING:

      1) THE CHILD(REN)/YOUTH HAVE BEEN RETURNED TO THE CARE OF THEIR CAREGIVER(S);

      2) DOCUMENTATION IS OBTAINED DEMONSTRATING THAT LEGAL AUTHORITY HAS BEEN GRANTED TO THE RELATIVES/KIN (DOCUMENTED IN THE STATE AUTOMATED CHILD WELFARE INFORMATION SYSTEM); OR,

      3) A CASE HAS BEEN OPENED.

   B) THE CHILD(REN)/YOUTH ARE NOT CONSIDERED TO BE IN OUT-OF-HOME CARE AS THE ARRANGEMENTS ARE MADE THROUGH A SAFETY PLAN.

   C) THESE KINSHIP PROVIDERS MAY BE ELIGIBLE FOR FORMS OF SUPPORT LISTED IN SECTION 7.304.21, E, 3.

   D) IF A CASE IS NOT OPENED, THE RULES FOR ASSESSMENT APPLY (SEE SECTION 7.104 ET SEQ.).

   E) IF A CASE IS OPENED, THE PERMANENCY GOAL IS IDENTIFIED AS RETURN HOME FROM KINSHIP CARE AND THE CHILD(REN)/YOUTH IS CONSIDERED IN KINSHIP CARE. A REMOVAL IS NOT OPENED AND THE RULES FOR NON-CERTIFIED KINSHIP CARE APPLY WHEN THE COUNTY DEPARTMENT HAS NOT ASSUMED LEGAL AUTHORITY FOR PLACEMENT OR TAKEN LEGAL CUSTODY APPLY (SEE SECTION 7.304.21, D)

4. IF DURING AN ASSESSMENT IT IS DISCOVERED THAT THE CHILD(REN)/YOUTH ARE IN CURRENT OR IMPENDING DANGER WITH THEIR CAREGIVER(S) AND THE FAMILY WILL NOT AGREE TO A TEMPORARY LIVING ARRANGEMENT WITH RELATIVES/KIN THROUGH THE USE OF A SAFETY PLAN:

   A) THE ASSESSMENT CANNOT BE CLOSED UNTIL ONE OF THE FOLLOWING OCCURS:

      1) THE CHILD(REN)/YOUTH HAVE BEEN RETURNED TO THE CARE OF THEIR CAREGIVER(S);

      2) DOCUMENTATION IS OBTAINED DEMONSTRATING THAT LEGAL AUTHORITY HAS BEEN GRANTED TO THE RELATIVES/KIN (DOCUMENTED IN THE STATE AUTOMATED CHILD WELFARE INFORMATION SYSTEM); OR,

      3) A CASE HAS BEEN OPENED.

B) CHILD(REN)/YOUTH ARE CONSIDERED TO BE IN OUT-OF-HOME CARE AND A REMOVAL IS REQUIRED.

C) THESE KINSHIP PROVIDERS MAY BE ELIGIBLE FOR FORMS OF SUPPORT LISTED IN SECTION 7.304.21, E, 3.

D) THE RULES FOR KINSHIP CARE APPLY WHEN THE COUNTY DEPARTMENT HAS ASSUMED LEGAL AUTHORITY FOR PLACEMENT OR TAKEN LEGAL CUSTODY (SEE SECTION 7.304.21, E).

~~C~~D. Kinship care services when the county department has not assumed legal authority for placement or taken legal custody~~: When a child meets target group eligibility and his/her parent(s) do not pose an ongoing threat to the child,~~ the county department shall:

1. Enable the family to make voluntary arrangements for temporary custody or guardianship by kin.

2. ~~For children who meet the out-of-home eligibility criteria, the county department shall p~~Provide parents and kin caring for the child(REN)/YOUTH ~~in-home family preservation~~ services to ensure the child(REN)/YOUTH's safety, well-being, and smooth transition back to the parent's home. When return to parent's home is not a viable option, ~~family preservation~~ services to kin shall be used to help to provide permanency for the child(REN)/YOUTH. The child(REN)/YOUTH may receive such in-home services without court involvement.

3. ~~It is not required that the county department complete the kinship care or foster care certification process in these cases. A family assessment using the Department's modified Structured Analysis Family Evaluation (SAFE) uncertified kinship families to determine the character and suitability of the family, appropriateness of the home and child care practices may be completed.~~

   CONDUCT A FAMILY ASSESSMENT OF THE NON-CERTIFIED KINSHIP FAMILY AT THE BEGINNING OF THE CHANGE IN A CHILD(REN)/YOUTH'S LIVING ARRANGEMENT. THE PURPOSE OF THIS ASSESSMENT IS TO DETERMINE APPROPRIATENESS OF THE PLACEMENT AND MUST ADDRESS AT MINIMUM THE AREAS OF SAFETY, PARENTING SKILLS & PHILOSOPHY, POTENTIAL FOR PERMANENCY, NEEDS OF THE KINSHIP FAMILY, THEIR SUPPORT SYSTEM, STRENGTHS AND ISSUES TO CONSIDER.

4. ~~The county department is not required to provide legal representation to kinship families.~~ ENSURE INITIATION OF A SIGNED ORIGINAL APPLICATION TO PROVIDE CARE FOR CHILD(REN)/YOUTH OR A STATE APPROVED, COUNTY SPECIFIC KINSHIP APPLICATION AT THE TIME OF CHANGE IN A CHILD(REN)/YOUTH'S LIVING ARRANGEMENT AND DOCUMENT COMPLETION IN THE STATE AUTOMATED CHILD WELFARE INFORMATION SYSTEM.

5. ~~These kinship providers are eligible for all forms of support listed in Section 7.304.21, D E, 3, except certified foster care payments.~~ ADVISE THE KINSHIP PROVIDERS OF THE TYPES OF SUPPORT LISTED IN 7.304.21, E, 3.

6. ~~Prior to facilitating a placement~~ INVOLVEMENT IN THE FACILITATION OF A CHANGE IN LIVNG ARRANGEMENT, ~~complete a background check in all cases for each adult (18 years and older) living the home for the following:~~

COMPLETE A BACKGROUND CHECK IN ALL CASES FOR EACH ADULT (18 YEARS AND OLDER) LIVING IN THE HOME. THESE CHECKS SHALL BE COMPLETED PRIOR TO THE CHILD(REN)/YOUTH'S CHANGE IN LIVING ARRANGEMENT AND DOCUMENTED IN THE STATE AUTOMATED CASE MANAGEMENT SYSTEM:

a. Child abuse and/or neglect records in every state where any adult residing in the home has lived in the five years immediately preceding the date of application, except that child abuse and neglect records in other states where an adult has resided shall be initiated no later than seven (7) working days following placement.

b. Fingerprint-based criminal history record information checks from the Colorado Bureau of Investigation (CBI) and the Federal Bureau of Investigation (FBI) shall be conducted prior to placement unless it is an emergency placement (see Section 7.304.21,~~D~~, E, 2, f) in order to determine if any adult who resides in the home has been convicted (SEE SECTION 7.000.2 [12 CCR 2509-1]) of:

1) Child abuse, as specified in Section 18-6-401, C.R.S.;

2) A crime of violence, as defined in Section 18-1.3-406, C.R.S.;

3) An offense involving unlawful sexual behavior, as defined in Section 16- 22-102 (9), C.R.S.;

4) A felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in Section 18-6-800.3, C.R.S.;

5) A felony involving physical assault, battery, or a drug-related offense within five years of the date of application ~~for a certificate~~;

6) A pattern of misdemeanor convictions within the ten (10) years immediately preceding submission of the application. (SEE SECTION 7.000.2 [12 CCR 2509-1]) ~~"Pattern of misdemeanor" shall be defined as:~~

~~a) Three (3) or more convictions of 3rd degree assault as described in Section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of~~

~~which has been found by any court on the record to include an act of domestic violence as defined in Section 18-6-800.3, C.R.S. ; or,~~

~~b) Five (5) misdemeanor convictions of any type, with at least two (2) convictions of 3rd degree assault as described in Section 18- 3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in Section 18-6- 800.3, C.R.S.; or,~~

~~c) Seven (7) misdemeanor convictions of any type; or,~~

7) Any offense in any other state, the elements of which are substantially similar to the elements of any one of the offenses described in 1-6, above.

~~"Convicted" means a conviction by a jury or a court and shall also include a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, an adjudication, and a plea of guilty or nolo contendere. This does not apply to a diversion, deferral or plea for a juvenile who participated in diversion (defined in Section 19-1-103(44), C.R.S.), and does not apply to an adult who successfully completed the child abuse and/or neglect diversion program (defined in Section 19-3-310, C.R.S.).~~

c. Review the court case management system of the State Judicial Department and include a copy of the information in the case record; and,

d. Review the CBI sex offender registry and the national sex offender public website operated by the United States Department of Justice at initial placement ~~and annually,~~ and include a copy of the information in the case record:

1) Known names and addresses of each adult residing in the home; and,

2) Address only of the non-certified kinship care home.

7. RECEIVE AFFIRMATION OF THE PLACEMENT EITHER THROUGH A COURT ORDER OR COUNTY DIRECTOR(S) AFFIRMATION TO PLACE OR ALLOW CONTINUED PLACEMENT OF A CHILD(REN)/YOUTH WITH A NON-CERTIFIED KIN OR OTHER ADULT LIVING IN THE HOME THAT WOULD OTHERWISE BE DISQUALIFIED IN SECTION 7.304.21, D, 8 AND 9.

8. ~~7. A county department of human or social services shall n~~Not place a child(REN) ~~and~~/~~or~~ youth in the home if the kin or any adult eighteen (18) years of age or older who resides in the home has been convicted of any offense described in Section ~~C~~ D, 6, B, 1-7, is a registered sex offender or, following a review of a finding of child abuse and/or neglect in the state automated case management system, it is determined the placement is unsafe.

9. ~~8.~~ EVALUATE THE APPROPRIATENESS OF THE PLACEMENT. If a disqualifying factor (refer to Section 7.000.2, 12 CCR 2509-1) is identified following the placement of a child(REN) ~~and~~/~~or~~ youth in a non-certified kinship care home, ~~the county department of human or social services shall evaluate the appropriateness of continuing the placement.~~ A plan shall be developed AND DOCUMENTED IN THE STATE AUTOMATED CASE MANAGEMENT SYSTEM to address the concerns as soon as possible and the concerns shall be remedied no later than two weeks after the date of placement. ~~Document the following in the state automated case management system in the contact log in the resource section or in the record~~:

    a. Review the circumstances of the placement;

    b. Evaluate the vulnerability of the child(REN) ~~and~~/~~or~~ youth, including age and development;

    c. Safety issues impacting the child(REN) ~~and~~/~~or~~ youth;

    d. Supports needed by the non-certified kinship caregiver(s); and,

    e. Identify alternative solutions to removal of the child(REN)/ ~~or~~ youth from the placement, and document the solution in the family service plan including, but not limited to, the family's current status in the following domains:

        1) Risk and safety;

        2) Level of functioning;

        3) Strengths;

        4) Specific areas of concern to be addressed;

        5) Services and supports needed; and,

        6) Changes that must occur to mitigate the concerns.

~~9. A county department of human or social services m May place or allow continued placement of a child and/or youth with a non-certified kin or other adult living in the home that would otherwise be disqualified in Section 7.304.21, C, 7 and 8, if the county department of human or social services initiates court involvement and the court orders and affirms the placement of the child and/or youth with kin at the earliest possible court date or, if the county director affirms the placement of the child and/or youth.~~

10. ~~County departments of human or social services shall document that a background check was initiated and completed for all adults living in the home in the staff requirements screen in the state automated case management system.~~

~~11. County departments of human or social services are encouraged to conduct a background check of prospective non-certified kinship care providers and other adults residing in the home as quickly as possible.~~

~~D~~E. Kinship care services when the county department has assumed legal authority for placement or ~~taken~~ BEEN GRANTED legal custody:

1. Eligible Populations: The child(REN)/YOUTH shall meet the following criteria for placement in kinship care through the child welfare system:

    a. Program Area 4, 5, or 6 target groups and out-of-home placement criteria.

    b. Legal authority for placement as defined in Section 7.304.51 and the Children's Code through a court order, a Dependency and Neglect or Delinquency action, emergency removal by law enforcement, or a voluntary placement, followed within 90 calendar days by a Petition for Review of Need for Placement (PRNP).

    ~~c. Kinship care providers shall be advised of all support options available to them through the county department, including: Timeframes?~~

    ~~1) Family preservation,~~

    ~~2) Certification for kinship foster care, and~~

    ~~3) The relative guardianship assistance program.~~

    d. ~~In the decision making process, funding and support options which encourage kinship care as a form of family preservation rather than a placement service shall be of primary consideration. However, if the kinship caregiver(s) meets all of the standards for foster home certification, they may choose to be certified as a family foster home. Kinship providers for Title IV-E eligible children are entitled to the same level of reimbursement as non-related providers. Kinship caregivers may elect to receive no payment. Other funding and support services, including in-kind or concrete services, can be put into place as mutually agreed upon with the provider.~~

    e. ~~Relative kinship care providers and potential relative kinship care providers shall be informed about the relative guardianship assistance program (see Section 7.311, et seq.). The information shall be documented in the State Department's automated system.~~

2. Placement with Kinship Care Providers:

    a. When out-of-home placement is necessary, the county department shall determine whether there are available and willing kin to provide for the child(REN)/YOUTH.

1) KINSHIP CARE PROVIDERS SHALL BE ADVISED OF THE TYPES OF SUPPORT AVAILABLE TO THEM THROUGH THE COUNTY DEPARTMENT INCLUDING:
A) FAMILY PRESERVATION,
B) CERTIFICATION FOR KINSHIP FOSTER CARE, AND
C) THE RELATIVE GUARDIANSHIP ASSISTANCE PROGRAM (SEE SECTION 7.311, ET SEQ).

2) IN THE DECISION MAKING PROCESS, FUNDING AND TYPES OF SUPPORT INCLUDING:
A) KINSHIP CARE MAY BE CONSIDERED A MEANS OF FAMILY PRESERVATION RATHER THAN A PLACEMENT SERVICE.
B) THE KINSHIP CAREGIVER(S) MAY BECOME A FOSTER CARE HOME. IF THE KINSHIP CAREGIVER PREFERS TO BE A KINSHIP FOSTER CARE HOME, THE COUNTY DIRECTOR OR HIS/HER DESIGNEE MAY ALLOW A WAIVER OF NON-SAFETY CERTIFICATION STANDARDS (SEE SECTION 7.708.7 (12 CCR 2509-8).
C) KINSHIP CAREGIVERS FOR TITLE IV-E ELIGIBLE CHILD(REN)/YOUTH ARE ENTITLED TO THE SAME LEVEL OF REIMBURSEMENT AS NON-RELATED PROVIDERS. KINSHIP CAREGIVERS MAY ELECT TO RECEIVE NO PAYMENT.
D) OTHER FUNDING AND SUPPORT SERVICES, INCLUDING IN-KIND OR CONCRETE SERVICES, CAN BE PUT INTO PLACE AS MUTUALLY AGREED UPON WITH THE PROVIDER.

3) RELATIVE KINSHIP CARE PROVIDERS AND POTENTIAL RELATIVE KINSHIP CARE PROVIDERS SHALL BE INFORMED ABOUT THE TYPES OF SUPPORT NOTED IN 7.304.21, E, 2, A, 1). THE INFORMATION PROVIDED, INCLUDING THE DATE(S), SHALL BE DOCUMENTED IN THE STATEWIDE AUTOMATED CHILD WELFARE INFORMATION SYSTEM.

b. Parent(s) shall be included as part of the planning process WHEN CONSIDERING placement with kin unless there are documented reasons for their unavailability to participate.

c. If kin are available and willing, the county department shall assess the suitability of kin in accordance with the foster care certification requirements found at Sections 7.500 and 7.708.

d. If the parent(s) do not agree to a specific kinship placement, the county department shall request court ordered assessment for possible placement with kin, identify other kinship placement possibilities, and/or revisit possible kinship placement at a later time if out-of-home placement continues to be necessary. If the assessment is favorable, and the parent(s) still object to the kinship placement, the county department may request that the court order the kinship placement.

e. When removal from parents or guardians occurs on an emergency basis, child(ren) ~~and~~/~~or~~ youth may be placed with kinship providers who may be provisionally certified as a kinship foster care home in accordance with Section

7.500.311, C and D~~, or the certifying authority may allow the child and/or youth to visit on an emergency visitation basis~~.

~~For emergency visitation:~~

~~1) The kinship foster home assessment shall begin as soon as possible and kinship foster care certification requirements shall be completed within ninety (90) sixty (60) calendar days;~~

~~2) The family must sign the State prescribed forms.~~

~~3) The county department shall complete a background check for each adult (18 years and older) living in the home for the following:~~

~~a) Child abuse/neglect records in every state where any adult residing in the home has lived in the five years immediately preceding the date of application;~~

~~b) Fingerprint-based criminal history record information checks from the Colorado Bureau of Investigation (CBI) and the Federal Bureau of Investigation (FBI) shall be initiated as soon as possible and no later than the requirements for emergency placements (see Section 7.304.21, D, 2).~~

f. When an emergency placement is necessary and a prospective relative or other available person is identified, and a child(REN) ~~and~~/~~or~~ youth is placed into temporary custody by law enforcement and/or the court places temporary custody with a county department of human or social services~~, the following actions shall occur~~ AND PRIOR TO PLACEMENT OF A CHILD(REN) ~~AND~~/~~OR~~ YOUTH IN THE HOME:

1) ~~Prior to the placement of a child and/or youth in the home,~~ tThe county department shall contact local law enforcement to conduct an initial name-based state and federal criminal history record check. The results of the criminal record check shall be provided verbally to the county department. The county department of human or social services or law enforcement shall immediately conduct an initial criminal history record check of the relative or other available person and all adults in the home. If law enforcement is completing the criminal history check, the county department of human or social services shall request a verbal report regarding each person's criminal history from federal and state databases, and include the results in the case record. ~~County departments of human or social services are encouraged to conduct background check of prospective non-certified kinship care providers and other adults residing in the home as quickly as possible.~~

2) The child(REN) ~~and~~/~~or~~ youth ~~may~~ SHALL not be placed in the home if the criminal history record information check reflects one or more convictions of the criminal offenses listed in Subsection 7.304.21, D, 2, f, 7) UNLESS ORDERED BY THE COURT.

3) A relative or other available person who is not disqualified as an emergency placement and who authorizes the child(REN) ~~and~~/~~or~~ youth to be placed in the home shall report to law enforcement or the county department of human or social services if a fingerprint machine is available to submit fingerprints as soon as possible and no later than five calendar days after the child(REN) ~~and~~/~~or~~ youth is placed in the home or no later than fifteen calendar days when documented urgent circumstances exist. The cost of the fingerprints is the responsibility of the relative or other available person.

4) The county department shall confirm timely submission of fingerprints from the prospective provider:

a) With law enforcement: The county department shall contact the local law enforcement agency within fifteen (15) days following the placement of the child(REN) ~~and~~/~~or~~ youth to assure the potential provider reported for the purpose of obtaining fingerprints within the specified timeframe. If the potential prospective provider did not comply, then the child(REN) ~~and~~/~~or~~ youth shall be removed immediately from the physical custody of the person by the county department of human or social services or local law enforcement officer, unless otherwise ordered by the court; or,

b) When the county department of human or social services has a fingerprint machine: if the prospective provider did not comply, the child(REN) ~~and~~/~~or~~ youth shall be removed immediately from the physical custody of the person by the county department of human or social services or local law enforcement officer unless otherwise ordered by the court.

5) A fingerprint-based criminal history record information check will be conducted by CBI using state and national CBI and FBI records. The local law enforcement agency is the authorized agency to receive the results.

6) If the fingerprint-based criminal history record information check indicates the person has a disqualifying criminal history, the county department of human or social services or local law enforcement officer shall immediately remove the child(REN) ~~and~~/~~or~~ youth from the emergency placement and shall not place a child(REN) ~~and~~/~~or~~ youth with the person who has the criminal history without court involvement and an order of the court affirming placement of the child(REN) ~~and~~/~~or~~ youth with the person.

7) A county department of human or social services or local law enforcement shall not make an emergency placement or continue the emergency placement of a child(REN) ~~and~~/~~or~~ youth with a person who has been convicted of one or more of the following offenses:

a) Child abuse, as specified in Section 18-6-401, C.R.S.;

b) A crime of violence, as defined in Section 18 1.3 406, C.R.S.;

c) An offense involving unlawful sexual behavior, as defined in Section 16-22-102(9), C.R.S.;

d) A felony, the underlying actual basis of which has been found by the court on the record to include an act of domestic violence, as defined in Section 18-6-800.3, C.R.S.;

e) A felony involving physical assault or a drug-related offense, committed within the preceding five years;

f) Violation of a protection order, as described in Section 18-6- 803.5, C.R.S.;

g) A crime involving homicide; or,

h) An offense in any other state the elements of which are substantially similar to the elements of any one of the offenses described in a-g, above.

8) If a relative or other person was not disqualified as an emergency placement based upon the fingerprint-based criminal history record information check and the child(REN) ~~and~~/~~or~~ youth was placed in the emergency placement, the county department of human or social services shall complete the following checks for the relative or available person and all adults in the home. ~~County departments of human or social services are encouraged to conduct a background check of the prospective non-certified kinship care provider and other adults residing in the home as soon as possible~~:

a) Review the court case management system of the State Judicial Department and include a copy of the information in the case record;

b) Review the state automated case management system and the child abuse and/or neglect registries in all states the adults living in the home have resided in the five years preceding the date of application and include a copy of the information in the case record; and,

c) Review the CBI sex offender registry and the national sex offender public website operated by the United States Department of Justice at initial

placement~~,~~ and annually~~,~~ and include a copy of the information in the case record:

i) Known names and addresses of each adult residing in the home; and,

~~i~~ ii) Address only of the kinship home.

9) If information is found as a result of any checks of the relative or other available person that continued placement is unsafe, the county department of human or social services shall remove the child(REN) ~~and~~/~~or~~ youth.

10) If a disqualifying factor (refer to Section 7.002) and/or a concern about the safety of the child(REN)/~~ or~~ youth is identified following the placement of the child(REN)/~~ or~~ youth, the department of human or social services shall evaluate the appropriateness of continuing the placement. A plan shall be developed to address the concerns as soon as possible and the concerns shall be remedied no later than two weeks after the date of placement. The following shall be documented in the state automated case management system ~~in the contact log in the resource section or in the record~~:

a) Review the circumstances of the placement;

b) Evaluate the vulnerability of the child(REN) ~~and~~/~~or~~ youth, including age and development;

c) Safety issues impacting the child(REN) ~~and~~/~~or~~ youth;

d) Supports needed by the non-certified kinship caregiver(s); and,

e) Identify alternative solutions to removal of the child(REN)/ ~~or~~ youth from the placement, and document the solution in the family service plan including, but not limited to, the family's current status in the following domains:

i) Risk and safety;

ii) Level of functioning;

iii) Strengths;

iv) Specific areas of concern to be addressed;

v) Services and supports needed; and,

vi) Changes that must occur to mitigate the concerns.

11) Fingerprint-based criminal history record information checks are not required if the relative or other available person in the home completed them within the

three months preceding date of placement. The following checks shall be completed and included in the case record, and documented in the state automated case management system:

a) State automated case management system;

b) The CBI sex offender registry and the national sex offender public website operated by the United States Department of Justice at initial placement and annually:

i) Known names and addresses of each adult residing in the home; and,

~~ii~~ ii) Address only of the kinship home.

c) Court case management system of the State Judicial Department; and,

d) Contact law enforcement to determine if any additional criminal history occurred or complete an online CBI name-based check.

g. Substitution of Fingerprints for Foster Care Certification

1) If the county department of human or social services or a child placement agency (when applicable) intends to accept an application for foster care, CBI shall be notified within five calendar days after requesting fingerprint-based criminal history record information checks in order to prompt flagging and automatic notification to the county department of human or social services or child placement agency when there are new criminal charges; and,

2) The substitute fingerprint process meets the requirement for an applicant for foster care certification pursuant to Section 26-6-106.3, C.R.S.

h. The reasonable and prudent parent standard requirements for a kinship provider or kinship foster parent to approve activities for a child(REN)/~~or~~ youth in foster care requires the following action: The county department of human or social services or child placement agency shall train the caregiver how to determine whether an extracurricular, enrichment, cultural, or social activity is consistent with the reasonable and prudent parent standard, when approving an age or developmentally appropriate activity identified in Section 7.701.200 (12 CCR 2509-8).

3. Decision Making:

a. As part of the assessment process, the county department of human or social services shall determine, with the kinship care provider, which funding options and support services will be necessary to support the placement. If THE CHILD(REN)/YOUTH IS eligible, at a minimum, the following funding sources shall be considered to support the child(ren)/YOUTH in a kinship care placement:

1) Child Support by the absent parent(s). For Child Support, a referral shall be made to ~~IV-D~~ CHILD SUPPORT SERVICES;

2) Social Security and/or other death benefits;

3) Supplemental Security Income; see Section 7.001.44 (12 CCR 2509-1);

4) Supplemental Security for Disability Income;

5) Temporary Assistance to Needy Families - for kinship care to be supported by Temporary Assistance to Needy Families, the caretaker must meet the Temporary Assistance to Needy Families definition in Section 3.600 of the Income Maintenance manual (9 CCR 2503-1);

6) Tricare or other medical benefits;

7) Medicaid, ~~if eligible~~;

8) Core Services, ~~if eligible~~ (Section 7.303);

9) Child Welfare Child Care, ~~if eligible~~;

10) Colorado Child Care Assistance Program, ~~if eligible~~;

11) In-Kind Services or Donations;

12) ~~Kinship f~~Foster care maintenance payment, ~~if eligible~~; see Section 7.500.31, A (12 CCR 2509-6);

13) IV-E OR STATE RELATIVE GUARDIANSHIP ASSISTANCE PROGRAM; SEE SECTION 7.311 ET SEQ.

14~~3~~) IV-E or state adoption assistance, ~~if eligible~~.

b. This decision making process shall address the needs of the child(REN)/YOUTH, family and kin and focus on how the goals of safety, permanency, and child(REN)/YOUTH well-being can be most effectively achieved for the child(REN)/YOUTH.

c. The kinship care provider shall be advised of all support options available, and shall be advised of the grievance process available to certified and licensed providers.

d. Requests for approval for any exceptions for relatives to the foster care rules outlined in Section 7.708 (12 CCR 2509-8) shall be submitted by the county department of human or social services or child placement agency to the State Child Care Appeal Panel in accordance with procedures established by the Colorado Department of Human Services.

4. Services to kinship care providers shall:

a. Include training, support and services specific to the needs of kinship care providers.

b. Include supervision as described in the child(REN)/YOUTH's Family Services Plan and in Section 7.500.313, A (12 CCR 2509-6).

5. Services to children/YOUTH in all kinship care placements shall: Include the requirements of Section 7.301 (12 CCR 2509-4), assessment and case planning section.

6. Permanency Planning in Kinship Care

a. When a child(REN)/YOUTH has been placed by the county department into temporary kinship care and reasonable efforts to reunite the child(REN)/YOUTH with the parents are not successful, the county department shall consider permanent placement with the kinship care provider or other appropriate kin. The preferred permanent placement shall be adoption, legal guardianship, or permanent custody.

b. The grandparent, aunt, uncle, brother or sister must file a request with the court no later than twenty (20) days after the motion for termination has been filed, if the provider wishes to be considered as the guardian or to take legal custody of the child(REN)/YOUTH. Following the order of termination of the parent-child(REN)/YOUTH legal relationship, the court shall give preference to this provider if it has been determined to be in the best interest of the child(REN)/YOUTH and the attachment of the child(REN)/YOUTH to the current caregiver has been considered.

RULEMAKING COVER PACKET

Title of Proposed Rule:	Clarification of Practice for Placement with Kin
CDHS Tracking #:	16-5-27-2
Revising official Rule #s:	12 CCR 2509-4

Office, Division, & Program: Division of Child Welfare	Rule Author: Jeannie Berzinskas	Phone: (303) 866-4617 E-Mail: jeannie.berzinskas@state.co.us

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

a. [X] Board [ ] Executive Director

b. [X] Regular [ ] Emergency

This package is submitted to State Board Administration as:

[X] Initial Circulation (check all that apply)

- [X] that creates a rule(s)
- [X] that revises a rule(s)
- [X] that is technical clean-up of a rule(s)

[ ] Update # _____

- [ ] that revises a proposed rule
- [ ] that is technical clean-up of a proposed rule

[ ] Cancel

Specify reason(s) for update or cancellation:

Number of rules included for repeal _____	Number of new rules:
Number of rules included for revision _____	Number reviewed:
What month is being requested for this rule to first go before the State Board?	October 2016
What date is being requested for this rule to be effective?	January 1, 2017

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

Approved		Date:
Conditional		Comments:
Disapproved		

Pre-Board	1st Board	2nd Board	Effective Date

Title of Proposed Rule: Clarification of Practice for Placement with Kin
Rule-making#: 16-5-27-2

Office, Division, & Program:	Rule Author:	Phone: (303) 866-4617
Division of Child Welfare	Jeannie Berzinskas	E-Mail: jeannie.berzinskas@state.co.us

10/15/16 11/4/16 1/1/17

STATEMENT OF BASIS AND PURPOSE

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

(State what the rule says or does, explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. How do these rule changes align with the outcomes that we are trying to achieve, such as those measured in C-Stat?)

To implement new guidance regarding placement with kin in order to promote consistent practice statewide. The current rules are vague and confusing causing multiple interpretations of the rule and inconsistent practice statewide. County departments have requested a rule revision to clarify expectations when placing with kin and the Child Welfare Sub-PAC and PAC approved a Policy Submittal request for revision to the kinship rules.

Authority for Rule:

State Board Authority: 26-1-107, C.R.S. (2015) - State Board to promulgate rules; 26-1-109, C.R.S. (2015) - state department rules to coordinate with federal programs; 26-1-111, C.R.S. (2015) - state department to promulgate rules for public assistance and welfare activities.

Program Authority:

(give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority)

19-1-103, C.R.S.(2015) – definitions; and 26-6-106.5 C.R.S. (2015) Foster care – kinship care – rules applying generally – rule making.

Does the rule incorporate material by reference?		Yes	X	No
Does this rule repeat language found in statute?		Yes	X	No

If yes, please explain.

The program has sent this proposed rule-making package to which stakeholders?

Child Welfare Sub-PAC; Policy Advisory Committee (PAC); Colorado Counties, Inc. (CCI); Colorado Association of Family and Children's Agencies (CAFCA); Court Appointed Special Advocates (CASA); Colorado Coalition of Adoptive Families (COCAF); Colorado Department of Public Health and Environment (CDPHE); Colorado Human Services Directors Association (CHSDA); Colorado State Foster Parent Association; Colorado Trails User Group (CTUG); Division of Child Welfare Child Protection, Permanency, Placement Services, and Youth Services Teams, Fostering Colorado; Colorado Kinship Alliance; Foster and Kinship Care Coordinators; Office of the Child's Representative (OCR); Rocky Mountain Children's Law Center; Child Protection Task Group; Pathways to Success Model Youth System Project Steering Committee and Workgroups, Permanency Task Group; Kinship Task Group; and CDHS Administrative Review Division.

[Note: Changes to rule text are identified as follows: deletions are shown as "strikethrough", additions are in "all caps", and changes made between initial review and final adoption are in brackets.]

Office, Division, & Program: Division of Child Welfare
Rule Author: Jeannie Berzinskas
Phone: (303) 866-4617
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REGULATORY ANALYSIS

(*complete each question; answers may take more than the space provided*)

1. List of groups impacted by this rule:

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

Section 7.000.2 (12 CCR 2509-1), adds definitions for "conviction" and "pattern of misdemeanor" that will provide a common and consistent understanding of the terms. Currently these definitions exist in a different section of rule and are being relocated to definitions for consistency. Children, youth, kinship caregivers, foster care and kinship foster care providers, county departments of human or social services, CPAs, community providers, and other constituents will benefit from definitions being located in a centralized location. County departments of human or social services and CPAs may bear a minimal burden to notify staff and community partners of the location change.

Section 7.304 (12 CCR 2509-4), revises and adds rules to clarify a number of pertinent issues involving living arrangements with kin including, legal custody status when a child/youth is placed in a non-certified kinship home (county involved vs. family arrangement); removal requirements; and consistent data entry when a child or youth is residing with kin. The rule establishes a practice framework outlining the possible options when placing with kinship caregivers.

County departments of human or social services, community providers, and other constituents will benefit from clarification provided in the rule, which will promote consistency in practice when placing with kinship caregivers. Children and youth will benefit from a consistent process regardless of county of residence.

The long-term impact for county departments of human or social services, children, youth, and their families, is placement will be with the most appropriate provider.

County departments of human or social services will bear the burden of ensuring their staff are familiar with the new framework for placing children/youth with kin.

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?

In State Fiscal Year (SFY) 2015, the average daily placement was 5,222 children and youth, and of these:

- 1,872 (36%) were in non-certified kinship care; and,
- 280 (5%) were in a kinship foster care home.

Section 7.000.2 definitions may have a short-term impact prompting county departments of human or social services and CPAs to familiarize themselves with the new location. For the long-term, a consistent location for definitions will provide a consistent understanding for county departments, providers, and the general public.

Section 7.304.21 rule additions and revisions regarding placements with kin may have a short-term impact for county departments of human or social services requiring a review of their processes to align their internal policy with the outlined framework. For the long-term, consistency of policy and practice with kinship caregivers will be improved statewide.

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)*

These new rules provide a framework for consistent kinship practice. The State is not anticipating any fiscal impact.

County Fiscal Impact

Many county departments are already practicing within this framework and would not incur additional costs. County departments participated in this rule-making process. County departments did not identify any county fiscal impact.

Federal Fiscal Impact

A fiscal impact is not anticipated because the rules provide a framework for consistent kinship practice. This framework does not impact families' current eligibility for federal funding.

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

A fiscal impact is not anticipated because the rules provide a framework for consistent kinship practice. This framework does not impact families' current eligibility for current programs.

4. Data Description:

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

Statewide Automated Child Welfare Information System (Trails) report regarding the number of children and youth placed in out-of-home care in SFY 2015.

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…"

The alternative to this rule-making is leaving kinship rules as they are. This is not an option because the current rules are vague and outdated. There is not statewide consistency for practice with kin families. County departments have been asking for rule clarification and would object to leaving the rules stagnant.

Title of Proposed Rule: Clarification of Practice for Placement with Kin
Rule-making#: 16-5-27-2

Office, Division, & Program: Division of Child Welfare
Rule Author: Jeannie Berzinskas
Phone: (303) 866-4617
E-Mail: jeannie.berzinskas@state.co.us

OVERVIEW OF PROPOSED RULE

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

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment			
				Yes		No
7.000.2	Definitions	Adds the definitions of "convicted" and "pattern of misdemeanor" to this section. Makes a technical change to separate the definitions of "Reasonable efforts" and "RED teams."				
7.304.21, A	Definitions and purpose of kinship care	Repeal duplicative language				
7.304.21, B	Purpose of kinship care	Adds the terms "Youth" and "for but not limited to"	X			
7.304.21, C	Kinship placement when the county department does not have legal custody or authority of placement	Renumbers sections and adds a new section of rule with a continuum of kinship living arrangements	X			
7.304.21, D	Kinship placement when the county department has legal custody or authority for placement	As a result of renumbering, this section is now kinship placement when the county department does not have legal custody or authority for placement. Also repeals language regarding target group eligibility.	X			
7.304.21, D, 2	Provision of services to kin	Repeals language for technical clean up and adds the term "Youth" for consistency in language	X			
7.304.21, D, 3	Family assessment/home study	Revises language to include a county specific assessment	X			
7.304.21, D, 4	States legal representation is not required	Repeals information about the non-requirement of legal representation and adds language about the requirement of an application	X			
7.304.21, D, 5	Forms of support	Technical changes for consistency in language				
7.304.21, D, 6,	Background check requirements	Technical changes for consistency in language	X			
7.304.21, D, 6, b	Background check requirements	Repeal definitions of "convicted" and "pattern of misdemeanor" (moved to definitions for consistency) and repeals language for technical cleanup	X			
7.304.21, D, 7-9	Actions taken dependent on results of a background check	Renumber for better sequencing and repeals language for technical cleanup	X			

7.304.21, D, 10	Documentation of background checks	Repeals language for technical cleanup				
7.304.21, D, 11	Encourages county departments to conduct background checks on prospective kinship providers	Repeal as it is not a requirement				
7.304.21, E, 1	Eligible populations	Adds the term "Youth" for consistency in language				
7.304.21, E, 1, c-e	Advisement of options	Move to 7.304.21, E, 2 for better sequencing and technical cleanup				
7.304.21, E, 2, a		Adds the term "Youth" for consistency in language and adds advisement of options	X			
7.304.21, E, 2 b	Including kin in planning process	Adds the term "when considering"				
7.304.21, E, 2, e	Emergency visitation	Repeals emergency visitation as it is replaced by process in 7.304.21, C				
7.304.21, E, 2, f	Emergency placements	Technical changes for grammatical errors and consistency in language	X			
7.304.21, E, 2, f, 1)	Background checks	Repeals language about what counties are encouraged to do rather than what they are required to do				
7.304.21, E, 2, f, 2)	Background checks	Adds the terms "shall" and "unless ordered by the court"	X			
7.304.21, E, 2, f, 8)	Background checks	Repeals language about what counties are encouraged to do rather than what they are required to do and a technical change to correct a grammatical error	X			
7.304.21, E, 2, f, 10)	Documentation of background checks	Repeals language about specific areas in the State Automated Child Welfare Information System where items must be documented				
7.304.21, E, 2, f, 11)	Background checks	Technical change to correct a grammatical error	X			
7.304.21, E, 3, a	Funding options available for kinship placements	Technical changes for consistency in language				
7.304.21, E, 3, a, 13)		Adds Relative Guardianship Assistance Program as a type of support				
7.304.21, E, 5	Services to children	Technical change to add the term "youth"				
7.304.21, E, 6, a	Permanency planning in kinship care	Technical change to add the term "youth"				

Office, Division, & Program: Division of Child Welfare
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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):

Kinship Task Group; Permanency Unit; Child Protection Unit; and Child Welfare Leadership Team.

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:

Child Welfare Sub-PAC; Policy Advisory Committee (PAC); Colorado Counties, Inc. (CCI); Colorado Association of Family and Children's Agencies (CAFCA); Court Appointed Special Advocates (CASA); Colorado Coalition of Adoptive Families (COCAF); Colorado Department of Public Health and Environment (CDPHE); Colorado Human Services Directors Association (CHSDA); Colorado State Foster Parent Association; Colorado Trails User Group (CTUG); Division of Child Welfare Child Protection, Permanency, Placement Services, and Youth Services Teams, Fostering Colorado; Colorado Kinship Alliance; Foster and Kinship Care Coordinators; Office of the Child's Representative (OCR); Rocky Mountain Children's Law Center; Child Protection Task Group; Pathways to Success Model Youth System Project Steering Committee and Workgroups, Permanency Task Group; Kinship Task Group; and CDHS Administrative Review Division.

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 [X] No

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

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

[X] Yes [ ] No

Date presented June 2, 2016.

What issues were raised?

Clarification of when a family assessment is needed, during the assessment phase, or only during a case.

Comments were received from stakeholders on the proposed rules:

[ ] Yes [ ] No

Please see attached spreadsheet for stakeholder comments.

Kinship Rule Proposal
Stakeholder Feedback

Section	Feedback	Revision or rationale (if no change made)
7.000.2 "Convicted"	• There is a definition of convicted in the Children's Code 19-1-103 (29.3) and should be used in rule	• Definition of conviction has been revised so the wording aligns with the definition in Title 19 instead of using different language.
7.000.2 "Pattern of Misdemeanors"	• Need clarification of these definitions. They indicate that the misdemeanor convictions can be of "ANY TYPE", but then goes on to indicate that it has to be a combination of a certain type? Specifically two convictions of 3rd degree assault, AND/OR any misdemeanor including domestic violence.	• This language is consistent with other sections of rule including Volume III CCCAP rules. To change the language would cause inconsistency and possibly further confusion.
7.304.21 A	NO FEEDBACK	
7.304.21 B	• The new language "FOR BUT NOT LIMITED TO" seems inappropriate. The list under B seems like the purpose of kinship care, so it seems it would read better as "IN ORDER TO."	• Revised wording to the stakeholder recommendation of "in order to."
7.304.21 B, 1	• Instead of "across the life span" say "across the child's life span"	• Revised wording to get at the intent of the stakeholder comment, but also not duplicate language. Now reads "their life span"
7.304.21 C, 1	• Children/youth should read child(ren)/youth. This is true throughout the document. Also check for child and/or youth and make the language consistent throughout. • Is there a way to clarify these as non-court involved cases?	• Revised language in entire document to read "child(ren)/youth" • These rules are based on who has custody (parent/guardian/kin or county department). To include court-involvement into the language would cause confusion as it can overlap with court involvement in many cases.
7.304.21 C, 2	• What forms of support are they available for? • Should the language be at initial response or anytime during the assessment?	• Revised the citation to reflect the forms of support are listed in 7.304.21, E, 3 and not in D, 3. • The "prior to initial response.." language was stricken from 2, A) to alleviate confusion as this scenario could happen any time during the assessment period.
7.304.21 C, 3	**A.** • Says the assessment cannot close until the child has been returned to their caregiver or documentation of legal custody	• Wording was changed to reflect the intent of assessment closure not occurring unless the child(ren)/youth being returned to their

Section	Feedback	Revision or rationale (if no change made)
	to the kin. It needs to be clarified to give the 3 options of intent: 1) returned to parents; 2) custody to kin; and 3) a case is opened. • What does "legal authority" mean? • It seems like 1-3 under A could be moved in front of A? • "Documentation is obtained demonstrating", can this just be a ROC note or does it need to be legal documentation (hard copy or in ICON)? • Suggested language of adding the following to …..obtained demonstrating that legal authority has been granted to the relatives/kin OR IT HAS BEEN CONFIRMED AND DOCUMENTEDIN THE STATEWIDE COMPUTER SYSTEM THAT THE SAFETY CONCERNS HAVE BEEN MITIGATED AND THERE ARE NO ONGOING SAFETY CONCERNS. • This rule is not very clear regarding fingerprints- spell out whether fingerprints are required **B.** • You reference if a child cannot return home by the conclusion of an assessment or family assessment response services plan, the assessment shall be closed. By rule, once a family assessment response services plan is created, a FAR has become a case (moved the services phase v. assessment phase). In other words, it would already be a case if it has a family assessment response services plan. • Refers to the completion of an assessment. Should it include the 60-day timeframe? (1) "A removal is not opened" should it also say in the SACWIS? • Indicates a removal will not be opened when the child cannot be returned home by the end of the assessment. However, this placement occurred under a safety plan. Safety plans are supposed to be short term (~ week). If an assessment lasts 60 days, and a child cannot be returned home by that time, wouldn't a voluntary case have to be opened, or custody legally given to either the kin or the county? And if the county receives custody, then a removal would be opened. • Language suggestion: IF CHILDREN/YOUTH CANNOT RETURN HOME BY THE CONCLUSION OF AN ASSESSMENT OR FAMILY ASSESSMENT RESPONSE SERVICES PLAN *BECAUSE OF ONGOING SAFETY CONCERNS,* THE ASSESSMENT SHALL BE CLOSED AND A	parents/custodians; custody is given to kin; or a case is opened. • Spoke with commenter about the suggested language of mitigating concerns and clarified the third option of opening a case. The intent of the rule is to eliminate the practice of mitigating the safety concern by the child(ren)/youth going to stay with a relative and the assessment closing with the parents having no recourse for mitigating the concerns and getting their child(ren)/youth returned to them. • "Legal authority" is not being defined in this rule to prevent language from being too prescriptive and hindering flexibility for county specific needs. • "Documentation is obtained demonstrating …" is clarified to state that it must be documented in SACWIS. • This section of rule cites the rules to be followed in this scenario, which includes fingerprint checks. To mention fingerprints here would be duplicative. B. • According to the CPS team, a FAR services plan does not necessarily mean a case and the language should remain as is. • The second through fourth bullet points are covered in the language revision of # 3.

Section	Feedback	Revision or rationale (if no change made)
	CASE SHALL BE OPENED. Does this need a wording change.	
7.304.21 C, 4	A. • Should it say the county assumes legal authority of the child(ren)/youth and they…."are considered to be in OOH care and a removal is required"…should we add to be opened in the SACWIS? • What happens if it is the JD court orders placement to kin? What background checks are completed? Where does this fit in rule? B/C. • B and C seem contradictory again. B says it can't be closed, and C says it shall be closed.	A. • Language was revised to mirror the format of # 3 and addresses the concerns outlined in bullet 1 in A and the bullet in B/C. • There is a section of rules outlining practice of JD cases and adding information here would be duplication.
7.304.21 D, 1	• Should the language read court involved (vs. non-court involved in letter C)? • Are children/youth whose cases are initially addressed through a safety plan but are then taken into legal custody by the county, documented?	• These rules are based on who has custody (parent/guardian/kin or county department). To include court-involvement into the language would cause confusion in many cases.
7.304.21 D, 2	• Please clarify viable option- is this temporary or permanent? If permanent, it contradicts the remainder of this rule. • Are the "… services to kin shall be used to help provide permanency for the child/youth" for children/youth who cannot be returned to parent's home, the same services as those identified, at a minimum, in Section 7.304.21, E, 3?	• After obtaining initial feedback, the majority of people stated they understood that returning to the parent's home is not a viable option right now and that this is not necessarily referring to a permanent situation. Language to be left as is.
7.304.21 D, 3	• The Kinship Task Group is not in favor of a state approved, county specific assessment as it is seen as too much oversight. • Is there a timeframe for when the SAFE has to be completed? And requirements about where/how it is documented? • This rule sounds like the county department is required to complete a SAFE kinship evaluation regardless of our type of involvement. This process should be required ONLY if the department facilitated the placement AND the child is with kin for more than 30 days. My suggested wording: *IF THE COUNTY DEPARTMENT FACILITATED THE PLACEMENT AND THE CHILDREN/YOUTH ARE PLACED WITH THE KIN FOR 30 DAYS OR LONGER, THE COUNTY DEPARTMENT SHALL* COMPLETE A FAMILY ASSESSMENT USING THE DEPARTMENT'S MODIFIED STRUCTURED ANALYSIS FAMILY EVALUATION (SAFE) OR A STATE APPROVED, COUNTY SPECIFIC ASSESSMENT FOR NON-CERTIFIED KINSHIP FAMILIES TO DETERMINE CHARACTER AND SUITABILITY	• There are currently 2 drafts of this section: the one approved by DCW and the proposal from the Kinship Task Group. • The timeframe for completion is not being added as the group writing the proposed language feels that the assessment would begin at the time of placement/change in living arrangement and be ongoing as additional information surfaced. • DCW would not be in favor of leaving a child in a home for 30 days that has been assessed as assessment begins prior to or at the time of placement/change in living arrangement.

Section	Feedback	Revision or rationale (if no change made)
	OF THE FAMILY, APPROPRIATENESS OF THE HOME AND CHILD CARE PRACTICES. IT IS NOT REQUIRED THAT THE COUNTY DEPARTMENT COMPLETE THE FOSTER CARE CERTIFICATION PROCESS. • Are the non-certified kin assessments maintained at both the county and state level, and/or documented in Trails?	
7.304.21 D, 4	• Is there a timeframe for completion? • This rule sounds like the kin always need to complete an application to provide care for children and youth, regardless of the department's involvement. My suggested wording: *IF THE COUNTY DEPARTMENT FACILITATED THE PLACEMENT, THE COUNTY DEPARTMENT SHALL* ENSURE COMPLETION OF A SIGNED ORIGINAL APPLICATION TO PROVIDE CARE FOR CHILDREN AND YOUTH OR A STATE APPROVED, COUNTY SPECIFIC KINSHIP APPLICATION. • Are original applications to provide kinship care for children/youth maintained at both the county and state level, and/or documented in Trails? What oversight is in place to ensure that counties follow this requirement?	• Add language to the application stating it must be documented in the SACWIS. • Language added to clarify that the application must be initiated at the time of change in living arrangement. • Oversight of the completion of the application will occur through the impending non-certified kin review process.
7.304.21 D, 5	NO FEEDBACK	
7.304.21 D, 6	• Says a background check needs to be done on all "cases". Is this really intended to be only at case, or is it supposed to include at time of assessment? Also, it looks like this only applies at the closing of an assessment when the child couldn't be returned home by the conclusion of the assessment. That means we were fine with the child living with the kin for up to 60 days without doing a background check, but now need to do them once it moves to a case? Should "of the county department" be added between "involvement" and "facilitation" (take out "in the") and add "for the child(ren)/youth to include" at the end of that sentence? B. • I think the cite included, 7.304.21 D 2 f will change as a result of this rule change, so it should be updated here. • Question about frequency of all background checks. Sex offender states must be done annually.	• DCW would not endorse a child/youth living in a home for up to 60 days without background checks being completed. • Language was slightly revised to clarify that background checks have to be completed prior to placement/change in living arrangement, not that checks need to be completed on people who lived in the home prior. B. • This was an oversight. Citation for the first bullet point has been changed. • After reviewing the statute again, nothing states that sex offender checks must be done annually for non-certified kinship placements, nor have counties been trained to this. It is proposed that "annually" be stricken from the rule.
7.304.21 D, 7	• Has cites that will change as a result of this rule change and	• This comment refers to language that is stricken.

Section	Feedback	Revision or rationale (if no change made)
	will need to be updated (7.304.21 D 9 & 10) • This rule also needs clarification that the county department facilitated the placement. My suggested wording: *IF THE COUNTY DEPARTMENT FACILITATED THE PLACEMENT , THE COUNTY DEPARTMENT SHALL* RECEIVE AFFIRMATION OF THE PLACEMENT EITHER THROUGH A COURT ORDER OR COUNTY DIRECTOR(S) AFFIRMATION TO PLACE OR ALLOW CONTINUED PLACEMENT OF A CHILD AND/OR YOUTH WITH A NON-CERTIFIED KIN OR OTHER ADULT LIVING IN THE HOME THAT WOULD OTHERWISE BE DISQUALIFIED IN SECTION 7.304.21, C, 8 AND 9.	The only other section of rule that would refer back to this section is Placement Activities in 7.304.62. That section was reviewed to ensure all citations were correct. • Facilitation of placement language is not being added as the department may not have been involved in the initial facilitation, but choosing to continue the placement. Background checks would be required in those situations.
7.304.21 D, 8	• Has cites that will change as a result of this rule change and will need to be updated	• This comment refers to language that is stricken. The only other section of rule that would refer back to this section is Placement Activities in 7.304.62. That section was reviewed to ensure all citations were correct.
7.304.21 D, 9	• Uses "as soon as possible", will there be any guidance as to what this means? It appears that the concerns need to be addressed within 2 weeks of placement, so the plan would have to be before that. • Also, "in the contact log in the resource section or in the record" is recommended to be taken out in a later part of the draft (on page 12).	• The concerns need to be remedied within 2 weeks, so a plan would need to be completed prior to that. Adding a timeframe for completion of the plan is fairly prescriptive and not flexible to county department needs. • This language was already stricken.
7.304.21 D, 10	• This should use the same language that was used on page 6, #8. (18 and older)	• The proposal is to strike number 10 as it is addressed elsewhere in rule.
7.304.21 D, 11	NO FEEDBACK	
7.304.21 E, 1	NO FEEDBACK	
7.304.21 E, 2	A. • It indicates that some information shall be documented in Trails. Should a similar requirement also apply to 7.304.21 E 1 & 2? • Also, "The information including date(s) information was provided shall be .... I think there should be a comma between "The information," and "provided, shall" • This section states that kinship care providers should be advised of the types of support available to them; however, it is not for each placement type. For example, if kin do not meet all certification standards, they may accept APR instead of kinship foster care if they are not aware that certain non-safety standards can be waived. We request that the language	A. • E, 1 outlines the eligibility requirements and does not require any documentation. • Language was revised to clarify that information provided, not just the dates, should be included in the documentation. This revision also changes the punctuation. • E, 2, a, 2) mentions the ability to have non-safety standards waived and cites the applicable rule section. Rule language will not be changed here. • "Family Preservation" refers to services, not permanency outcomes. Language is fine as

Section	Feedback	Revision or rationale (if no change made)
	be modified to include this clarification. • "Kinship caregivers for Title IV-E eligible children/youth are entitled to the same level of reimbursement as non-related providers." There is a state-&-county assistance program for non iv-e eligible foster and adopted children (which, at least for adopted kids, is almost -- with 1 exception -- identical to the IV-e program); I'm guessing since these children are with non-certified kin, that this kind of support would not be available to these families? • Is 'family preservation' equivalent to accepting permanent guardianship/APR? Is this defined in regulation? • Does a kinship caregiver have an appeals option if the county director/designee does not allow a 'waiver for non-safety certification standards' and if so, is the county mandated to provide the appeals process to families? We would otherwise be concerned that waivers may not be approved in circumstances where they would be appropriate. F. • Change emergency placement rules to "e" • (2/3)Seems like some of the timeframes throughout here conflict. Some say you can't place a child if a person residing in the home has certain charges, but you have until 5 days after the placement to run the fingerprint background check. • (8) a and b, what is the timeframe? • Use the same "adult"/18 years and older language. 8c says "placement, and annually, and". The other two places in the document prior, they do not put commas in that sentence. • (11) a, c, d what is the timeframe? d is the only place that requirement exists (when the rest of the requirements are the same elsewhere).	written. • 7.708.74 clearly states that kinship caregivers do not have the right to appeal the decision related to non-safety waivers. F. • Language still exists in "e" regarding provisional certification, so emergency placement will be left in "f" • Because this is an emergency placement, an NCIC check would be completed, giving the county department some knowledge of criminal histories. This check must be completed prior to placement and fingerprint based checks must be completed within 5 days. • Timeframe is mentioned numerous times throughout the rule; prior to placement. • Removed commas from c) for consistency.
7.304.21 E, 3	NO FEEDBACK	
7.304.21 E, 4	NO FEEDBACK	
7.304.21 E, 5	NO FEEDBACK	
7.304.21 E, 6	• Should the following language, "The preferred permanent placement shall be adoption, legal guardianship, or permanent custody" be amended to specifically include the Relative Guardianship Assistance Program (RGAP), or is this implicit in either 'legal guardianship' or 'permanent custody'?	• The language will not be changed as not all permanent placements will be eligible for the Relative Guardianship Assistance Program
GENERAL FEEDBACK	• A primary concern regarding the kinship care rules continues to	

Section	Feedback	Revision or rationale (if no change made)
	be those cases where families are not being informed by counties of all placement options, despite CDHS regulations mandating this. This is especially concerning given that: 1) many kinship families can have lower incomes and less resources than non-relative foster-adopt families; and 2) of the average daily placement of children/youth in care in SFY 2015, 36% (1,872) were in non-certified kinship care. • Commenter would be glad to provide contact information for kinship families who were not informed of the possible placement options. In foster care adoptions, by state and federal law, parents are allowed to request a post-finalization adoption assistance if they were not informed about the option of adoption assistance prior to the adoption, and the child would otherwise have met eligibility (7.306.41, F – "There are situations after finalization when adoptive parents can request a state level fair hearing before an Administrative Law Judge concerning the adopted child's eligibility for adoption assistance benefits or the amount of those benefits.") There does not appear to be a similar protection for kinship caregivers. Section 7.304.21 E, a, 2, c states that "Kinship caregivers for Title IV-E eligible children/youth are entitled to the same level reimbursement as non-related providers" – they should also be entitled to the same appeals protocol in the event that they are not properly informed of all placement options. Commenter is requesting that the current language be amended to include language similar to 7.306.41, F for kinship care providers.	

(12 CCR 2509-4)

7.304.2 PLACEMENT OPTIONS

7.304.21 Kinship Care [Rev. eff. 1/1/16]

A. Definition: Refer to Section 7.000.2 (12 CCR 2509-1) for the definition of “kin” and “non-certified kinship care”.

~~1. Maintain children in their families in order to provide meaningful emotional and cultural ties across the life span.~~

~~2. Minimize the trauma of out-of-home placement.~~

~~3. Support and strengthen families' ability to protect their children and to provide permanency.~~

B. Kinship care shall be utilized ~~to~~ ~~FOR BUT NOT LIMITED~~ IN ORDER TO:

1. Maintain child(ren)/YOUTH in their families in order to provide meaningful emotional and cultural ties across ~~the~~ THEIR life span.

2. Minimize the trauma of out-of-home placement.

3. Support and strengthen families' ability to protect their child(ren)/YOUTH and to provide permanency.

C. KINSHIP CARE: ASSESSMENT AND DECISION-MAKING

1. IF DURING AN ASSESSMENT IT IS DISCOVERED THAT THE CHILD(REN)/YOUTH AND THEIR PARENTS ARE LIVING WITH KIN:

   A) THE CHILD(REN)/YOUTH ARE NOT CONSIDERED TO BE IN OUT-OF-HOME CARE AS THE CHILD(REN)/YOUTH ARE LIVING WITH THEIR PARENTS.

   B) THE RULES FOR ASSESSMENT APPLY (SEE SECTION 7.104 ET SEQ.).

2. IF DURING AN ASSESSMENT IT IS DISCOVERED THAT THE CHILD(REN)/YOUTH ARE NOT LIVING WITH THEIR PARENTS, BUT WITH RELATIVES/KIN:

   A) THE CHILD(REN)/YOUTH ARE NOT CONSIDERED TO BE IN OUT-OF-HOME CARE AS THE CHILD(REN)/YOUTH ARE LIVING WITH RELATIVES THROUGH ARRANGEMENTS MADE BY THE FAMILY.

   B) THE RULES FOR ASSESSMENT APPLY (SEE SECTION 7.104 ET SEQ.).

   C) THESE KINSHIP PROVIDERS MAY BE ELIGIBLE FOR FORMS OF SUPPORT LISTED IN SECTION 7.304.21, ~~D~~ E, 3.

3. IF DURING AN ASSESSMENT IT IS DISCOVERED THAT THE CHILD(REN)/YOUTH ARE IN CURRENT OR IMPENDING DANGER WITH THEIR CAREGIVER(S) AND THE FAMILY AGREES TO A TEMPORARY LIVING ARRANGEMENT WITH RELATIVES/KIN THROUGH THE USE OF A SAFETY PLAN:

   A) THE ASSESSMENT CANNOT BE CLOSED UNTIL ONE OF THE FOLLOWING:

      1) THE CHILD(REN)/YOUTH HAVE BEEN RETURNED TO THE CARE OF THEIR CAREGIVER(S);

      2) DOCUMENTATION IS OBTAINED DEMONSTRATING THAT LEGAL AUTHORITY HAS BEEN GRANTED TO THE RELATIVES/KIN (DOCUMENTED IN THE STATE AUTOMATED CHILD WELFARE INFORMATION SYSTEM); OR,

      3) A CASE HAS BEEN OPENED.

   B) THE CHILD(REN)/YOUTH ARE NOT CONSIDERED TO BE IN OUT-OF-HOME CARE AS THE ARRANGEMENTS ARE MADE THROUGH A SAFETY PLAN.

   C) THESE KINSHIP PROVIDERS MAY BE ELIGIBLE FOR FORMS OF SUPPORT LISTED IN SECTION 7.304.21, E, 3.

   D) IF A CASE IS NOT OPENED, THE RULES FOR ASSESSMENT APPLY (SEE SECTION 7.104 ET SEQ.).

   E) IF A CASE IS OPENED, THE PERMANENCY GOAL IS IDENTIFIED AS RETURN HOME FROM KINSHIP CARE AND THE CHILD(REN)/YOUTH IS CONSIDERED IN KINSHIP CARE. A REMOVAL IS NOT OPENED AND THE RULES FOR NON-CERTIFIED KINSHIP CARE APPLY WHEN THE COUNTY DEPARTMENT HAS NOT ASSUMED LEGAL AUTHORITY FOR PLACEMENT OR TAKEN LEGAL CUSTODY APPLY (SEE SECTION 7.304.21, D)

4. IF DURING AN ASSESSMENT IT IS DISCOVERED THAT THE CHILD(REN)/YOUTH ARE IN CURRENT OR IMPENDING DANGER WITH THEIR CAREGIVER(S) AND THE FAMILY WILL NOT AGREE TO A TEMPORARY LIVING ARRANGEMENT WITH RELATIVES/KIN THROUGH THE USE OF A SAFETY PLAN:

   A) THE ASSESSMENT CANNOT BE CLOSED UNTIL ONE OF THE FOLLOWING OCCURS:

      1) THE CHILD(REN)/YOUTH HAVE BEEN RETURNED TO THE CARE OF THEIR CAREGIVER(S);

      2) DOCUMENTATION IS OBTAINED DEMONSTRATING THAT LEGAL AUTHORITY HAS BEEN GRANTED TO THE RELATIVES/KIN (DOCUMENTED IN THE STATE AUTOMATED CHILD WELFARE INFORMATION SYSTEM); OR,

      3) A CASE HAS BEEN OPENED.

B) CHILD(REN)/YOUTH ARE CONSIDERED TO BE IN OUT-OF-HOME CARE AND A REMOVAL IS REQUIRED.

C) THESE KINSHIP PROVIDERS MAY BE ELIGIBLE FOR FORMS OF SUPPORT LISTED IN SECTION 7.304.21, E, 3.

D) THE RULES FOR KINSHIP CARE APPLY WHEN THE COUNTY DEPARTMENT HAS ASSUMED LEGAL AUTHORITY FOR PLACEMENT OR TAKEN LEGAL CUSTODY (SEE SECTION 7.304.21, E).

~~C~~D. Kinship care services when the county department has not assumed legal authority for placement or taken legal custody~~: When a child meets target group eligibility and his/her parent(s) do not pose an ongoing threat to the child,~~ the county department shall:

1. Enable the family to make voluntary arrangements for temporary custody or guardianship by kin.

2. ~~For children who meet the out-of-home eligibility criteria, the county department shall p~~Provide parents and kin caring for the child(REN)/YOUTH ~~in-home family preservation~~ services to ensure the child(REN)/YOUTH's safety, well-being, and smooth transition back to the parent's home. When return to parent's home is not a viable option, ~~family preservation~~ services to kin shall be used to help to provide permanency for the child(REN)/YOUTH. The child(REN)/YOUTH may receive such in-home services without court involvement.

3. ~~It is not required that the county department complete the kinship care or foster care certification process in these cases. A family assessment using the Department's modified Structured Analysis Family Evaluation (SAFE) uncertified kinship families to determine the character and suitability of the family, appropriateness of the home and child care practices may be completed.~~

   CONDUCT A FAMILY ASSESSMENT OF THE NON-CERTIFIED KINSHIP FAMILY AT THE BEGINNING OF THE CHANGE IN A CHILD(REN)/YOUTH'S LIVING ARRANGEMENT. THE PURPOSE OF THIS ASSESSMENT IS TO DETERMINE APPROPRIATENESS OF THE PLACEMENT AND MUST ADDRESS AT MINIMUM THE AREAS OF SAFETY, PARENTING SKILLS & PHILOSOPHY, POTENTIAL FOR PERMANENCY, NEEDS OF THE KINSHIP FAMILY, THEIR SUPPORT SYSTEM, STRENGTHS AND ISSUES TO CONSIDER.

4. ~~The county department is not required to provide legal representation to kinship families.~~ ENSURE INITIATION OF A SIGNED ORIGINAL APPLICATION TO PROVIDE CARE FOR CHILD(REN)/YOUTH OR A STATE APPROVED, COUNTY SPECIFIC KINSHIP APPLICATION AT THE TIME OF CHANGE IN A CHILD(REN)/YOUTH'S LIVING ARRANGEMENT AND DOCUMENT COMPLETION IN THE STATE AUTOMATED CHILD WELFARE INFORMATION SYSTEM.

5. ~~These kinship providers are eligible for all forms of support listed in Section 7.304.21, D E, 3, except certified foster care payments.~~ ADVISE THE KINSHIP PROVIDERS OF THE TYPES OF SUPPORT LISTED IN 7.304.21, E, 3.

6. ~~Prior to facilitating a placement~~ INVOLVEMENT IN THE FACILITATION OF A CHANGE IN LIVNG ARRANGEMENT, ~~complete a background check in all cases for each adult (18 years and older) living the home for the following:~~

COMPLETE A BACKGROUND CHECK IN ALL CASES FOR EACH ADULT (18 YEARS AND OLDER) LIVING IN THE HOME. THESE CHECKS SHALL BE COMPLETED PRIOR TO THE CHILD(REN)/YOUTH'S CHANGE IN LIVING ARRANGEMENT AND DOCUMENTED IN THE STATE AUTOMATED CASE MANAGEMENT SYSTEM:

a. Child abuse and/or neglect records in every state where any adult residing in the home has lived in the five years immediately preceding the date of application, except that child abuse and neglect records in other states where an adult has resided shall be initiated no later than seven (7) working days following placement.

b. Fingerprint-based criminal history record information checks from the Colorado Bureau of Investigation (CBI) and the Federal Bureau of Investigation (FBI) shall be conducted prior to placement unless it is an emergency placement (see Section 7.304.21,~~D~~, E, 2, f) in order to determine if any adult who resides in the home has been convicted (SEE SECTION 7.000.2 [12 CCR 2509-1]) of:

1) Child abuse, as specified in Section 18-6-401, C.R.S.;

2) A crime of violence, as defined in Section 18-1.3-406, C.R.S.;

3) An offense involving unlawful sexual behavior, as defined in Section 16- 22-102 (9), C.R.S.;

4) A felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in Section 18-6-800.3, C.R.S.;

5) A felony involving physical assault, battery, or a drug-related offense within five years of the date of application ~~for a certificate~~;

6) A pattern of misdemeanor convictions within the ten (10) years immediately preceding submission of the application. (SEE SECTION 7.000.2 [12 CCR 2509-1]) ~~"Pattern of misdemeanor" shall be defined as:~~

~~a) Three (3) or more convictions of 3rd degree assault as described in Section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of~~

~~which has been found by any court on the record to include an act of domestic violence as defined in Section 18-6-800.3, C.R.S. ; or,~~

~~b) Five (5) misdemeanor convictions of any type, with at least two (2) convictions of 3rd degree assault as described in Section 18- 3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in Section 18-6- 800.3, C.R.S.; or,~~

~~c) Seven (7) misdemeanor convictions of any type; or,~~

7) Any offense in any other state, the elements of which are substantially similar to the elements of any one of the offenses described in 1-6, above.

~~"Convicted" means a conviction by a jury or a court and shall also include a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, an adjudication, and a plea of guilty or nolo contendere. This does not apply to a diversion, deferral or plea for a juvenile who participated in diversion (defined in Section 19-1-103(44), C.R.S.), and does not apply to an adult who successfully completed the child abuse and/or neglect diversion program (defined in Section 19-3-310, C.R.S.).~~

c. Review the court case management system of the State Judicial Department and include a copy of the information in the case record; and,

d. Review the CBI sex offender registry and the national sex offender public website operated by the United States Department of Justice at initial placement ~~and annually,~~ and include a copy of the information in the case record:

1) Known names and addresses of each adult residing in the home; and,

2) Address only of the non-certified kinship care home.

7. RECEIVE AFFIRMATION OF THE PLACEMENT EITHER THROUGH A COURT ORDER OR COUNTY DIRECTOR(S) AFFIRMATION TO PLACE OR ALLOW CONTINUED PLACEMENT OF A CHILD(REN)/YOUTH WITH A NON-CERTIFIED KIN OR OTHER ADULT LIVING IN THE HOME THAT WOULD OTHERWISE BE DISQUALIFIED IN SECTION 7.304.21, D, 8 AND 9.

8. ~~7. A county department of human or social services shall n~~Not place a child(REN) ~~and~~/~~or~~ youth in the home if the kin or any adult eighteen (18) years of age or older who resides in the home has been convicted of any offense described in Section ~~C~~ D, 6, B, 1-7, is a registered sex offender or, following a review of a finding of child abuse and/or neglect in the state automated case management system, it is determined the placement is unsafe.

9. ~~8.~~ EVALUATE THE APPROPRIATENESS OF THE PLACEMENT. If a disqualifying factor (refer to Section 7.000.2, 12 CCR 2509-1) is identified following the placement of a child(REN) ~~and~~/~~or~~ youth in a non-certified kinship care home, ~~the county department of human or social services shall evaluate the appropriateness of continuing the placement.~~ A plan shall be developed AND DOCUMENTED IN THE STATE AUTOMATED CASE MANAGEMENT SYSTEM to address the concerns as soon as possible and the concerns shall be remedied no later than two weeks after the date of placement. ~~Document the following in the state automated case management system in the contact log in the resource section or in the record~~:

    a. Review the circumstances of the placement;

    b. Evaluate the vulnerability of the child(REN) ~~and~~/~~or~~ youth, including age and development;

    c. Safety issues impacting the child(REN) ~~and~~/~~or~~ youth;

    d. Supports needed by the non-certified kinship caregiver(s); and,

    e. Identify alternative solutions to removal of the child(REN)/ ~~or~~ youth from the placement, and document the solution in the family service plan including, but not limited to, the family's current status in the following domains:

        1) Risk and safety;

        2) Level of functioning;

        3) Strengths;

        4) Specific areas of concern to be addressed;

        5) Services and supports needed; and,

        6) Changes that must occur to mitigate the concerns.

~~9. A county department of human or social services m May place or allow continued placement of a child and/or youth with a non-certified kin or other adult living in the home that would otherwise be disqualified in Section 7.304.21, C, 7 and 8, if the county department of human or social services initiates court involvement and the court orders and affirms the placement of the child and/or youth with kin at the earliest possible court date or, if the county director affirms the placement of the child and/or youth.~~

10. ~~County departments of human or social services shall document that a background check was initiated and completed for all adults living in the home in the staff requirements screen in the state automated case management system.~~

~~11. County departments of human or social services are encouraged to conduct a background check of prospective non-certified kinship care providers and other adults residing in the home as quickly as possible.~~

~~D~~E. Kinship care services when the county department has assumed legal authority for placement or ~~taken~~ BEEN GRANTED legal custody:

1. Eligible Populations: The child(REN)/YOUTH shall meet the following criteria for placement in kinship care through the child welfare system:

    a. Program Area 4, 5, or 6 target groups and out-of-home placement criteria.

    b. Legal authority for placement as defined in Section 7.304.51 and the Children's Code through a court order, a Dependency and Neglect or Delinquency action, emergency removal by law enforcement, or a voluntary placement, followed within 90 calendar days by a Petition for Review of Need for Placement (PRNP).

    ~~c. Kinship care providers shall be advised of all support options available to them through the county department, including: Timeframes?~~

    ~~1) Family preservation,~~

    ~~2) Certification for kinship foster care, and~~

    ~~3) The relative guardianship assistance program.~~

    d. ~~In the decision making process, funding and support options which encourage kinship care as a form of family preservation rather than a placement service shall be of primary consideration. However, if the kinship caregiver(s) meets all of the standards for foster home certification, they may choose to be certified as a family foster home. Kinship providers for Title IV-E eligible children are entitled to the same level of reimbursement as non-related providers. Kinship caregivers may elect to receive no payment. Other funding and support services, including in-kind or concrete services, can be put into place as mutually agreed upon with the provider.~~

    e. ~~Relative kinship care providers and potential relative kinship care providers shall be informed about the relative guardianship assistance program (see Section 7.311, et seq.). The information shall be documented in the State Department's automated system.~~

2. Placement with Kinship Care Providers:

    a. When out-of-home placement is necessary, the county department shall determine whether there are available and willing kin to provide for the child(REN)/YOUTH.

1) KINSHIP CARE PROVIDERS SHALL BE ADVISED OF THE TYPES OF SUPPORT AVAILABLE TO THEM THROUGH THE COUNTY DEPARTMENT INCLUDING:
A) FAMILY PRESERVATION,
B) CERTIFICATION FOR KINSHIP FOSTER CARE, AND
C) THE RELATIVE GUARDIANSHIP ASSISTANCE PROGRAM (SEE SECTION 7.311, ET SEQ).

2) IN THE DECISION MAKING PROCESS, FUNDING AND TYPES OF SUPPORT INCLUDING:
A) KINSHIP CARE MAY BE CONSIDERED A MEANS OF FAMILY PRESERVATION RATHER THAN A PLACEMENT SERVICE.
B) THE KINSHIP CAREGIVER(S) MAY BECOME A FOSTER CARE HOME. IF THE KINSHIP CAREGIVER PREFERS TO BE A KINSHIP FOSTER CARE HOME, THE COUNTY DIRECTOR OR HIS/HER DESIGNEE MAY ALLOW A WAIVER OF NON-SAFETY CERTIFICATION STANDARDS (SEE SECTION 7.708.7 (12 CCR 2509-8).
C) KINSHIP CAREGIVERS FOR TITLE IV-E ELIGIBLE CHILD(REN)/YOUTH ARE ENTITLED TO THE SAME LEVEL OF REIMBURSEMENT AS NON-RELATED PROVIDERS. KINSHIP CAREGIVERS MAY ELECT TO RECEIVE NO PAYMENT.
D) OTHER FUNDING AND SUPPORT SERVICES, INCLUDING IN-KIND OR CONCRETE SERVICES, CAN BE PUT INTO PLACE AS MUTUALLY AGREED UPON WITH THE PROVIDER.

3) RELATIVE KINSHIP CARE PROVIDERS AND POTENTIAL RELATIVE KINSHIP CARE PROVIDERS SHALL BE INFORMED ABOUT THE TYPES OF SUPPORT NOTED IN 7.304.21, E, 2, A, 1). THE INFORMATION PROVIDED, INCLUDING THE DATE(S), SHALL BE DOCUMENTED IN THE STATEWIDE AUTOMATED CHILD WELFARE INFORMATION SYSTEM.

b. Parent(s) shall be included as part of the planning process WHEN CONSIDERING placement with kin unless there are documented reasons for their unavailability to participate.

c. If kin are available and willing, the county department shall assess the suitability of kin in accordance with the foster care certification requirements found at Sections 7.500 and 7.708.

d. If the parent(s) do not agree to a specific kinship placement, the county department shall request court ordered assessment for possible placement with kin, identify other kinship placement possibilities, and/or revisit possible kinship placement at a later time if out-of-home placement continues to be necessary. If the assessment is favorable, and the parent(s) still object to the kinship placement, the county department may request that the court order the kinship placement.

e. When removal from parents or guardians occurs on an emergency basis, child(ren) ~~and~~/~~or~~ youth may be placed with kinship providers who may be provisionally certified as a kinship foster care home in accordance with Section

7.500.311, C and D~~, or the certifying authority may allow the child and/or youth to visit on an emergency visitation basis~~.

~~For emergency visitation:~~

~~1) The kinship foster home assessment shall begin as soon as possible and kinship foster care certification requirements shall be completed within ninety (90) sixty (60) calendar days;~~

~~2) The family must sign the State prescribed forms.~~

~~3) The county department shall complete a background check for each adult (18 years and older) living in the home for the following:~~

~~a) Child abuse/neglect records in every state where any adult residing in the home has lived in the five years immediately preceding the date of application;~~

~~b) Fingerprint-based criminal history record information checks from the Colorado Bureau of Investigation (CBI) and the Federal Bureau of Investigation (FBI) shall be initiated as soon as possible and no later than the requirements for emergency placements (see Section 7.304.21, D, 2).~~

f. When an emergency placement is necessary and a prospective relative or other available person is identified, and a child(REN) ~~and~~/~~or~~ youth is placed into temporary custody by law enforcement and/or the court places temporary custody with a county department of human or social services~~, the following actions shall occur~~ AND PRIOR TO PLACEMENT OF A CHILD(REN) ~~AND~~/~~OR~~ YOUTH IN THE HOME:

1) ~~Prior to the placement of a child and/or youth in the home,~~ tThe county department shall contact local law enforcement to conduct an initial name-based state and federal criminal history record check. The results of the criminal record check shall be provided verbally to the county department. The county department of human or social services or law enforcement shall immediately conduct an initial criminal history record check of the relative or other available person and all adults in the home. If law enforcement is completing the criminal history check, the county department of human or social services shall request a verbal report regarding each person's criminal history from federal and state databases, and include the results in the case record. ~~County departments of human or social services are encouraged to conduct background check of prospective non-certified kinship care providers and other adults residing in the home as quickly as possible.~~

2) The child(REN) ~~and~~/~~or~~ youth ~~may~~ SHALL not be placed in the home if the criminal history record information check reflects one or more convictions of the criminal offenses listed in Subsection 7.304.21, D, 2, f, 7) UNLESS ORDERED BY THE COURT.

3) A relative or other available person who is not disqualified as an emergency placement and who authorizes the child(REN) ~~and~~/~~or~~ youth to be placed in the home shall report to law enforcement or the county department of human or social services if a fingerprint machine is available to submit fingerprints as soon as possible and no later than five calendar days after the child(REN) ~~and~~/~~or~~ youth is placed in the home or no later than fifteen calendar days when documented urgent circumstances exist. The cost of the fingerprints is the responsibility of the relative or other available person.

4) The county department shall confirm timely submission of fingerprints from the prospective provider:

a) With law enforcement: The county department shall contact the local law enforcement agency within fifteen (15) days following the placement of the child(REN) ~~and~~/~~or~~ youth to assure the potential provider reported for the purpose of obtaining fingerprints within the specified timeframe. If the potential prospective provider did not comply, then the child(REN) ~~and~~/~~or~~ youth shall be removed immediately from the physical custody of the person by the county department of human or social services or local law enforcement officer, unless otherwise ordered by the court; or,

b) When the county department of human or social services has a fingerprint machine: if the prospective provider did not comply, the child(REN) ~~and~~/~~or~~ youth shall be removed immediately from the physical custody of the person by the county department of human or social services or local law enforcement officer unless otherwise ordered by the court.

5) A fingerprint-based criminal history record information check will be conducted by CBI using state and national CBI and FBI records. The local law enforcement agency is the authorized agency to receive the results.

6) If the fingerprint-based criminal history record information check indicates the person has a disqualifying criminal history, the county department of human or social services or local law enforcement officer shall immediately remove the child(REN) ~~and~~/~~or~~ youth from the emergency placement and shall not place a child(REN) ~~and~~/~~or~~ youth with the person who has the criminal history without court involvement and an order of the court affirming placement of the child(REN) ~~and~~/~~or~~ youth with the person.

7) A county department of human or social services or local law enforcement shall not make an emergency placement or continue the emergency placement of a child(REN) ~~and~~/~~or~~ youth with a person who has been convicted of one or more of the following offenses:

a) Child abuse, as specified in Section 18-6-401, C.R.S.;

b) A crime of violence, as defined in Section 18 1.3 406, C.R.S.;

c) An offense involving unlawful sexual behavior, as defined in Section 16-22-102(9), C.R.S.;

d) A felony, the underlying actual basis of which has been found by the court on the record to include an act of domestic violence, as defined in Section 18-6-800.3, C.R.S.;

e) A felony involving physical assault or a drug-related offense, committed within the preceding five years;

f) Violation of a protection order, as described in Section 18-6- 803.5, C.R.S.;

g) A crime involving homicide; or,

h) An offense in any other state the elements of which are substantially similar to the elements of any one of the offenses described in a-g, above.

8) If a relative or other person was not disqualified as an emergency placement based upon the fingerprint-based criminal history record information check and the child(REN) ~~and~~/~~or~~ youth was placed in the emergency placement, the county department of human or social services shall complete the following checks for the relative or available person and all adults in the home. ~~County departments of human or social services are encouraged to conduct a background check of the prospective non-certified kinship care provider and other adults residing in the home as soon as possible~~:

a) Review the court case management system of the State Judicial Department and include a copy of the information in the case record;

b) Review the state automated case management system and the child abuse and/or neglect registries in all states the adults living in the home have resided in the five years preceding the date of application and include a copy of the information in the case record; and,

c) Review the CBI sex offender registry and the national sex offender public website operated by the United States Department of Justice at initial

placement~~,~~ and annually~~,~~ and include a copy of the information in the case record:

i) Known names and addresses of each adult residing in the home; and,

~~i~~ ii) Address only of the kinship home.

9) If information is found as a result of any checks of the relative or other available person that continued placement is unsafe, the county department of human or social services shall remove the child(REN) ~~and~~/~~or~~ youth.

10) If a disqualifying factor (refer to Section 7.002) and/or a concern about the safety of the child(REN)/~~ or~~ youth is identified following the placement of the child(REN)/~~ or~~ youth, the department of human or social services shall evaluate the appropriateness of continuing the placement. A plan shall be developed to address the concerns as soon as possible and the concerns shall be remedied no later than two weeks after the date of placement. The following shall be documented in the state automated case management system ~~in the contact log in the resource section or in the record~~:

a) Review the circumstances of the placement;

b) Evaluate the vulnerability of the child(REN) ~~and~~/~~or~~ youth, including age and development;

c) Safety issues impacting the child(REN) ~~and~~/~~or~~ youth;

d) Supports needed by the non-certified kinship caregiver(s); and,

e) Identify alternative solutions to removal of the child(REN)/ ~~or~~ youth from the placement, and document the solution in the family service plan including, but not limited to, the family's current status in the following domains:

i) Risk and safety;

ii) Level of functioning;

iii) Strengths;

iv) Specific areas of concern to be addressed;

v) Services and supports needed; and,

vi) Changes that must occur to mitigate the concerns.

11) Fingerprint-based criminal history record information checks are not required if the relative or other available person in the home completed them within the

three months preceding date of placement. The following checks shall be completed and included in the case record, and documented in the state automated case management system:

a) State automated case management system;

b) The CBI sex offender registry and the national sex offender public website operated by the United States Department of Justice at initial placement and annually:

i) Known names and addresses of each adult residing in the home; and,

~~ii~~ ii) Address only of the kinship home.

c) Court case management system of the State Judicial Department; and,

d) Contact law enforcement to determine if any additional criminal history occurred or complete an online CBI name-based check.

g. Substitution of Fingerprints for Foster Care Certification

1) If the county department of human or social services or a child placement agency (when applicable) intends to accept an application for foster care, CBI shall be notified within five calendar days after requesting fingerprint-based criminal history record information checks in order to prompt flagging and automatic notification to the county department of human or social services or child placement agency when there are new criminal charges; and,

2) The substitute fingerprint process meets the requirement for an applicant for foster care certification pursuant to Section 26-6-106.3, C.R.S.

h. The reasonable and prudent parent standard requirements for a kinship provider or kinship foster parent to approve activities for a child(REN)/~~or~~ youth in foster care requires the following action: The county department of human or social services or child placement agency shall train the caregiver how to determine whether an extracurricular, enrichment, cultural, or social activity is consistent with the reasonable and prudent parent standard, when approving an age or developmentally appropriate activity identified in Section 7.701.200 (12 CCR 2509-8).

3. Decision Making:

a. As part of the assessment process, the county department of human or social services shall determine, with the kinship care provider, which funding options and support services will be necessary to support the placement. If THE CHILD(REN)/YOUTH IS eligible, at a minimum, the following funding sources shall be considered to support the child(ren)/YOUTH in a kinship care placement:

1) Child Support by the absent parent(s). For Child Support, a referral shall be made to ~~IV-D~~ CHILD SUPPORT SERVICES;

2) Social Security and/or other death benefits;

3) Supplemental Security Income; see Section 7.001.44 (12 CCR 2509-1);

4) Supplemental Security for Disability Income;

5) Temporary Assistance to Needy Families - for kinship care to be supported by Temporary Assistance to Needy Families, the caretaker must meet the Temporary Assistance to Needy Families definition in Section 3.600 of the Income Maintenance manual (9 CCR 2503-1);

6) Tricare or other medical benefits;

7) Medicaid, ~~if eligible~~;

8) Core Services, ~~if eligible~~ (Section 7.303);

9) Child Welfare Child Care, ~~if eligible~~;

10) Colorado Child Care Assistance Program, ~~if eligible~~;

11) In-Kind Services or Donations;

12) ~~Kinship f~~Foster care maintenance payment, ~~if eligible~~; see Section 7.500.31, A (12 CCR 2509-6);

13) IV-E OR STATE RELATIVE GUARDIANSHIP ASSISTANCE PROGRAM; SEE SECTION 7.311 ET SEQ.

14~~3~~) IV-E or state adoption assistance, ~~if eligible~~.

b. This decision making process shall address the needs of the child(REN)/YOUTH, family and kin and focus on how the goals of safety, permanency, and child(REN)/YOUTH well-being can be most effectively achieved for the child(REN)/YOUTH.

c. The kinship care provider shall be advised of all support options available, and shall be advised of the grievance process available to certified and licensed providers.

d. Requests for approval for any exceptions for relatives to the foster care rules outlined in Section 7.708 (12 CCR 2509-8) shall be submitted by the county department of human or social services or child placement agency to the State Child Care Appeal Panel in accordance with procedures established by the Colorado Department of Human Services.

4. Services to kinship care providers shall:

a. Include training, support and services specific to the needs of kinship care providers.

b. Include supervision as described in the child(REN)/YOUTH's Family Services Plan and in Section 7.500.313, A (12 CCR 2509-6).

5. Services to children/YOUTH in all kinship care placements shall: Include the requirements of Section 7.301 (12 CCR 2509-4), assessment and case planning section.

6. Permanency Planning in Kinship Care

a. When a child(REN)/YOUTH has been placed by the county department into temporary kinship care and reasonable efforts to reunite the child(REN)/YOUTH with the parents are not successful, the county department shall consider permanent placement with the kinship care provider or other appropriate kin. The preferred permanent placement shall be adoption, legal guardianship, or permanent custody.

b. The grandparent, aunt, uncle, brother or sister must file a request with the court no later than twenty (20) days after the motion for termination has been filed, if the provider wishes to be considered as the guardian or to take legal custody of the child(REN)/YOUTH. Following the order of termination of the parent-child(REN)/YOUTH legal relationship, the court shall give preference to this provider if it has been determined to be in the best interest of the child(REN)/YOUTH and the attachment of the child(REN)/YOUTH to the current caregiver has been considered.

Notice of Proposed Rulemaking

Tracking number

2016-00428

Department

500,1008,2500 - Department of Human Services

Agency

2518 - Adult Protective Services

CCR number

12 CCR 2518-1

Rule title

ADULT PROTECTIVE SERVICES

Rulemaking Hearing

Date

10/07/2016

Time

10:00 AM

Location

South Branch Library, Hopeful and Discovery Meeting Rooms, 103 S. Harris Street, Breckenridge, CO 80424

Subjects and issues involved

The purpose of this proposed rule change is to update all Adult Protective Services (APS) rules to:

Align the rules with changes made to statute as a result of SB15-109 and HB16-1394,
Remove redundant rules and requirements,
Better align rules with current practice and the Colorado APS data system (CAPS),
Better align rules with child protective services rules, as deemed appropriate,
Improve APS practices that impact services for at-risk adults, and
Make technical corrections.

Statutory authority

26-1-107, C.R.S. (2015); 26-1-109, C.R.S. (2015); 26-1-111, C.R.S. (2015); 26-3.1-108, C.R.S. (2015)

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Title of Proposed Rule:	Adult Protective Services Program Revisions		
CDHS Tracking #:	15-5-8-1		
Revising official Rule #s:	12 CCR 2518-1, Volume 30		
Office, Division, & Program:	Rule Author: Peggy Rogers	Phone: 303-866-2829	
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STATEMENT OF BASIS AND PURPOSE

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

(State what the rule says or does, explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. How do these rule changes align with the outcomes that we are trying to achieve, such as those measured in C-Stat?)

The rules at 12 CCR 2518-1 are the program rules for the Adult Protective Services (APS) program, as authorized by Title 26, Article 3.1, C.R.S. The APS program provides protective services for at-risk adults who are experiencing mistreatment or are self-neglecting. The purpose of this proposed rule change is to update all Adult Protective Services (APS) rules to:

- Align the rules with changes made to statute as a result of SB15-109 and HB16-1394,
- Remove redundant rules and requirements,
- Better align rules with current practice and the Colorado APS data system (CAPS),
- Better align rules with child protective services rules, as deemed appropriate,
- Improve APS practices that impact services for at-risk adults, and
- Make technical corrections.

Several legislative changes have occurred over the past few years that make updates to the rules necessary. In July 2014, significant changes were made to the Adult Protective Services (APS) program. SB13-111 created mandatory reporting for at-risk elders and established a new Colorado APS data system (CAPS). Mandatory reporting for at-risk elders and the CAPS data system were implemented starting on July 1, 2014. SB15-109 expanded mandatory reporting to include adults with intellectual and developmental disabilities effective July 1, 2016. HB16-1394 made changes to definitions and other areas of the APS statute, in conjunction with SB15-109. In addition, in September 2015, Colorado APS was awarded a Federal Grant through the Administration for Community Living (ACL) that changed the APS intake and assessment processes, which must be incorporated into rule.

The last update to the APS Rules was in the Fall of 2014. Since that time, there have been a number of issues that have surfaced that were unanticipated when the last rule changes were implemented. Many of these issues have been identified during data analysis for C-Stat, through formal quality assurance case and program reviews, through conversations and training sessions with county departments, and in conversations with collaborating agencies that work with at-risk adults. SB15-109 and HB16-1394 are also driving additional changes. The APS Task Group, formed by the PAC and the Economic Security Sub-PAC, met monthly from November 2015 to April 2016 to develop the recommended rule changes. Six webinars were held for county department directors and APS staff during the weeks of May 2, 2016 and May 9, 2016 to review the recommendations and solicit feedback and comments. The Task Group met in June 2016 to review the feedback from the webinars and received via email to make these final recommendations.

New rules and/or key changes to current rule include the following:

- HB16-1394 made minor changes to the definitions of various forms of mistreatment in the Adult Protective Services (APS) statute and are therefore being updated in rule. (30.100)

- The rule that requires the county departments to notify the state department of a change in APS staffing is being updated. The current rule allows county departments three working days from the staffing change to notify the state department. The rule is being updated so that notification must be made within

three working days but no later than the employee's last day of employment. This change is being made to ensure that access to the APS data system, CAPS, can be removed as soon as an APS staff person is no longer going to be working for the county department or in the APS program. CAPS documentation contains personal identifying information (PII) and HIPAA protected personal health information (PHI), which must be secured timely. (30.210,C)

- Proposed revisions to rules include expanding the types of college majors and degrees that would qualify a person for an APS caseworker position at the Professional Entry and Journey levels. (30.310)

- A proposed change is being made to rules related to the requirement for a "flagged" background check from "strongly urged" to "shall". A flagged background check ensures that the county department would be notified if an APS staff member with direct access to at-risk adults, were to be arrested after their original background check was completed. This may be critical information to client safety. However, several county departments indicated that they do not include a flagged check in their contract with the outside company that completes background checks for the county, therefore, they would be unable to meet this rule requirement without renegotiating the contract. The Department is therefore, withdrawing the requirement at this time. (30.320,C)

- Changes to rules related to training requirements for county APS staff are being proposed. (30.330) Training is a key component to ensuring that reports of mistreatment and self-neglect of at-risk adults are being investigated correctly and appropriate protective services identified and implemented. APS serves a varied population, including frail elderly, persons with traumatic brain injury or neurological impairments, persons with an intellectual or developmental disability, and persons with complex cognitive, medical, physical, or behavioral health limitations. Current training requirements are not very timely for new APS staff and are not very comprehensive related to continuing education requirements. The goal for the rule changes are to make gradual improvements to training requirements that can be readily met by county departments while ensuring that staff working with at-risk adults are better trained to provide those protective services. The changes are as follows:
    - Training requirements for new APS staff are being changed. (30.330,A) Currently, new APS staff have up to one year to complete some aspects of new worker training. The Task Group believes that this time needs to be shortened and recommends the following changes:
        - Time allowed to complete the Pre-Academy Workbook (PAW), which is the first basic introduction to the APS program requirements, is being shortened from the current three (3) months for full time APS staff or six (6) months for part time APS staff to one (1) month for all new APS staff. APS caseworkers will not be allowed to be assigned cases until the PAW has been completed.
        - Time allowed to attend APS Training Academy for APS staff who are less than 25% FTE in the APS program and are the only APS staff person for the county department, is being shortened from the current twelve (12) months to nine (9) months. All other APS staff would be required to attend the four-day training within six (6) months of employment in the APS program, rather than the current nine (9) months.
    - Continuing Education requirements for APS staff on the job longer than one year are being increased. (30.330,B) Currently the requirements are less than those required of Child Protective Services (CPS) staff. Increasing the requirements will begin to move training requirements to be more in line with CPS training requirements, and are as follows:
        - Full time caseworkers would increase to 40 hours per year from the current 30 hours. This would align with continuing education requirements for full time CPS caseworkers.

- Full time APS supervisor's requirement would increase from the current 20 hours per year to 30 hours. This requirement is still 10 hours short of aligning with the CPS supervisor requirement.
- Full time APS case aides would increase from 15 hours per year to 20 hours per year. There is not a similar requirement for CPS case aides.
- Prorated hours for part-time staff would increase accordingly.

- Changes are being proposed related to the APS supervisor's responsibility for conducting reviews of the casework conducted by their caseworkers. Current rules require supervisors to formally review 15% of all cases each month using the case review scorecard in CAPS. The proposed rule change would allow supervisors to continue this method of review OR choose the new method developed for these rules that would mirror the supervisor requirements for case review in CPS, i.e., that the supervisor review and approve every case at certain key points in the case. For APS this would be at two or three key times in the case: 1) when the initial investigation, assessment, and case plan has been completed; 2) at the six month time in the case, if the case is still open (only about 2% of APS cases are open six months or longer); and 3) at case closure. These points of review mirror similar processes in CPS that require supervisory approval. (30.340,A)

- Rules are being added to the Intake rules that address the issue of which county has jurisdiction to respond to a new report of mistreatment. Currently, APS has rules related to this in the County Assignment section (30.710). The Task Group felt that these rules were better moved to the section of rules where those decisions are being made. So, for initial jurisdictional questions, the rules are being moved to the Intake section of rules (30.410). Additionally, there continues to be concerns voiced by the Task Group that even with the current rules, there are disputes of jurisdiction among the counties that sometimes slows down the response to the report. Task Group members who work in both APS and CPS recommended mirroring language recently implemented in the CPS rules that have helped to lessen these same types of disputes related to CPS reports; the Group agreed to that recommendation.

- A new rule is being added to require the county department to make a decision about a new intake within three working days following the date of the report. This is the time frame for responding to a new report and so the decision about the type of response should be made by this time. This fills a gap in rules. (30.420,F)

- Rules were changed to allow a law enforcement welfare check to substitute for one attempt at contact during non-business hours for emergency and non-emergency reports. Current rule does not allow the welfare check to substitute but with the changes to law enforcement's responsibilities related to mandatory reporting and responding to reports of mistreatment, this change provides additional flexibility for county departments. Rules were added to address follow up requirements when the initial response was a phone call to ascertain the client's safety rather than a face-to-face visit. These rules are filling a gap in the current rules. The rules reflect similar requirements as follow up visits for other types of responses. (30.430,B and 30.430,C)

- Rules are being added to the Investigation rules that address the issue of which county has jurisdiction to investigate a report of mistreatment. Currently, APS has rules related to this in the County Assignment section (30.710). The Task Group felt that these rules were better moved to the section of rules where those decisions are being made. So, for jurisdictional questions that arise during the investigation, the rules are being moved to the Investigation section of rules (30.510, D) and section 30.710 is being

repealed. Additionally, there continues to be concerns voiced by the Task Group that there even with current rules, there are disputes related to jurisdiction among the counties that sometimes slows down the investigation and subsequent provision of services. Task Group members who work in both APS and CPS recommended mirroring language recently implemented in the CPS rules that have helped to lessen these same types of disputes related to CPS; the Group agreed to that recommendation.

- Rules are being added to the Investigation section to ensure that thorough investigations are conducted in coordination with other agencies, when appropriate. Rules related to joint investigations are currently at section 30.820, Collaboration. These rules are being moved to the Investigation section where this collaboration process occurs and Section 30.820 is being repealed. The rules are being updated to reflect current processes related to joint investigations. The rules in this section are also being updated to reflect the requirements to thoroughly investigate the allegations and the client's strengths and needs, by interviewing persons with potential knowledge of the allegations or of the client's needs and gathering and documenting evidence to support or refute the allegations and client needs. When these steps are not completed when investigating a report, the problems and needs of that at-risk adult are not accurately identified so that they can be addressed through the provision of protective services, thus leaving the at-risk adult in continuing danger. (30.520)

- Rules related to the client's functional Assessment, specifically related to "assessment status areas" are being repealed; however, an assessment will still be required. The assessment is a required element in CAPS and therefore, the details of the individual assessment factors are not needed in rule. (30.530)

- Rules related to the Provision of Services, i.e., implementing the case plan developed as a result of the investigation and assessment findings, are being updated. Currently, rules related to the provision of services are found at Sections 30.620 (Provision of Services), 30.650 (also titled Provision of Services), and 30.720 (Courtesy Visits). Rules from sections 30.650 and 30.720 are being moved to section 30.620 and are being updated. Sections 30.650 and 30.720 are being repealed. The updates to the rules include the following:
    - Language is being cleaned up to be clearer and more concise. (30.620)
    - Rules are being added to reflect documentation necessary to determine that a client may not have the capacity to refuse protective services. (30.620,C)
    - Rules are being added to reflect the options for involuntary intervention when a client is at immediate risk of harm and likely does not have the capacity to understand the risks of refusing protective services. (30.620, D)
    - The requirement for ongoing client contact as long as the case remains open is being changed from the current requirement of a face-to-face contact with the client every 30 days to a requirement for a contact once a month, with no more than 35 days between contacts. For clients who live in a facility providing 24/7 supervision, there is a current allowance for a phone call to facility staff to check on the client every other month in lieu of the face-to-face visit. This rule is being modified to ensure that if the client has been alleged to have been mistreated at the facility, the phone call is not appropriate until the facility has put appropriate safety measures in place. Rules are being updated to better outline the requirements of the monthly contact visits. These rules ensure that the worker is continuing to assess any changes to the client's needs, are monitoring services for appropriateness, are documenting any significant incidents experienced by the client, and are documenting their work towards implementing protective services. (30.620,F)
    - The rules related to courtesy visits are being updated to reflect current processes. (30.620,G)

- The rules related to cases in which the client moves to a new county or to another state are being updated to reflect current processes. (30.620, H-K)
- The rules related to the re-assessment process, required every six months as long as the case is opened, have been streamlined to reduce redundancy and reflect current processes. (30.620,L)

- Rules are being changed in the Case Closure section to reflect a more streamlined process for closing the case that reduces redundant documentation that was not beneficial to the outcome of the case. Rules are also being updated to reflect other current practices. (currently at 30.660; new section number will be 30.650)

Clarifying changes to current rule include the following:

- APS has always had a statutory mandate to investigate mistreatment in the community and in facilities; county department APS staff have asked that a definition of "Facility" be added to rule. (30.100)

- Rules related to the storage of documentation of APS reports and cases are being updated to provide additional clarification due to CAPS being a "paperless" system. (30.250)

- Rule is expanding those eligible for access to CAPS from only direct APS staff to APS staff and other county department staff with a business need, e.g., county director, unit/department administrator, or APS data analyst. (30.250)

- A rule is being proposed to add the current practice of annually signing the CAPS Security and Confidentiality agreement. This rule and the current practice will help to ensure that access to CAPS is limited to active CAPS users, another process to protect client PII and PHI. (30.250)

- A rule is being proposed to allow the State Department to remove access to CAPS if user is accessing information inappropriately. (30.250)

- Rules related to Documentation are being updated to provide clarity related to report and case documentation requirements. (30.260)

- Rules are being updated to "urge", though not require, counties to utilize the RED team process for evaluating reports to determine if the report should be screened in for investigation or screened out because it does not meet eligibility requirements for APS intervention. The current rule is "may use". Language is being added to ensure that either the RED team or a supervisor is reviewing and determining whether the report should be screened in or out and the type of response needed (emergency vs non-emergency) and urging, though not requiring, use of the RED team evaluation process. (30.340 and 30.420)

- Language is being added to ensure that reports are taken related to mistreatment of at-risk adults, whether the adult lives in the community or in a facility. (30.410)

- Language was updated to better reflect the requirements for follow up attempts at contact when the initial response to a report was not a face-to-face visit with the client. (30.430,C)

- Rules were clarified around those cases that are screened in for investigation but may not need a face-to-face response by APS. These rules do not change the requirement but make the requirement more easily understood. (30.430,E).

- Rules were clarified related to investigation and assessment, particularly related to the APS mandate to investigate reports or mistreatment or self-neglect of an at-risk adult no matter where the mistreatment occurred. (30.510, A-B)

- Rules related to Case Plan Development are being updated to reflect the current process in CAPS, which were implemented to reduce redundant documentation that did not improve the outcome of the case and was time consuming for the caseworkers. (30.610)

- Rules related to usage of the Client Services funds for purchasing needed goods and services for APS clients are being updated to provide additional clarification on the acceptable use of these funds. (30.610,F)

- Language in the rules related to Court Intervention (30.630) are being updated to be clearer.

Technical corrections to current rule include the following:

- The term "data system" is being replaced throughout with the name of the data system, CAPS, for simplicity and clarity. A new definition of CAPS is added and the definition of "Data System" is repealed. (30.100)

- The term "referral" is being replaced with the current terminology "report". Most of these changes were completed with the rule changes approved in 2014, but a few instances of the old term were missed and are being corrected in this rule making.

- The phrase "mistreatment, exploitation, and self-neglect" is being replaced by "mistreatment and self-neglect" to reflect the change in statutory definitions as a result of HB16-1394.

- The term "imminent" is being replaced by "immediate" throughout. Task Group members indicated that this term was more easily understood and applied by APS staff and aligns with the terminology used by CPS.

- A rule is being repealed in the Eligibility section (30.230,B) as it is redundant to rules in the Report Categorization section (30.420)

- The term "hours" is being replaced by "days" in determining the response to an emergency report. This does not change the response time frame but Task Group members felt that "non-business days" was clearer than "non-business hours". (30.430, B)

- The long-term care ombudsman is being removed from rule as a contact for ascertaining a client's immediate safety. The ombudsman cannot share information with APS unless they have explicit consent from the client and are not emergency responders, therefore, this option for ascertaining a client's safety is not a predictable no appropriate option. (30.430, B)

- A redundant rule was repealed at 30.430,B.
- Rule language was changed to be more concise and was brought into alignment with current practice of ensuring an initial response. (30.430,C)
- A rule was repealed related to a client who is competent and able to arrange their own services. Clients who are able to do this are not at-risk adults, by definition, and so would not continue to have an open case. (30.430,E)

Authority for Rule:

State Board Authority: 26-1-107, C.R.S. (2015) - State Board to promulgate rules; 26-1-109, C.R.S. (2015) - state department rules to coordinate with federal programs; 26-1-111, C.R.S. (2015) - state department to promulgate rules for public assistance and welfare activities.

Program Authority: 26-3.1-108, C.R.S. (2015) Rules. The state department shall promulgate appropriate rules for the implementation of this article.

Does the rule incorporate material by reference?		Yes	X	No
Does this rule repeat language found in statute?	X	Yes		No

If yes, please explain.

Some definitions are repeated in rule from statute. Ensuring that the definitions are in rule provides APS staff the ability to easily understand their program requirements within one document.

The program has sent this proposed rule-making package to which stakeholders?

Policy Advisory Committee (PAC); Economic Security Sub-PAC; Child Welfare Sub-PAC; County Departments of Human/Social Services; Colorado Human Services Directors Association (CHSDA); Colorado Counties, Inc. (CCI); Colorado Commission on Aging (CCOA); Colorado Legal Services; Colorado Senior Lobby; Community Centered Boards; Colorado Department of Public Health and Environment, Health Facilities Division; Colorado Department of Health Care Policy and Financing, Division for Intellectual and Developmental Disabilities; Disability Law Colorado; Area Agencies on Aging; ARC of Colorado.

Attachments:
Regulatory Analysis
Overview of Proposed Rule
Stakeholder Comment Summary

REGULATORY ANALYSIS

(*complete each question; answers may take more than the space provided*)

1. List of groups impacted by this rule:

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

Groups that will benefit from these rules are at-risk adults and APS staff. County department APS staff will be responsible for implementing the program requirements for all at-risk adults. The State Department APS staff will be responsible for providing oversight of the counties through training and quality assurance activities.

The rules will lead to improved APS casework practice in many areas and the result will be to improve protective services provided to at-risk adults as the rules are fully implemented by county department APS staff.

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 APS program has experienced significant change in the past several years as a result of a number of legislative changes to the APS program requirements. With the implementation of mandatory reporting of mistreatment of at-risk elders in SFY 2014-15, APS is now receiving nearly 17,000 reports a year, a 41% increase from the prior year. Additional funding for APS staff and training has been received by county APS programs to be used to improve services for at-risk adults who are experiencing mistreatment or self-neglect. Additionally, with the implementation of the new APS data system (CAPS), it is possible to see the gaps in understanding of what a thorough investigation and appropriate implementation of protective services entails, due in large part to the deficit in training and quality assurance resources available for the APS program since the law was enacted in 1983. These rule changes are recommended in an effort to continue to improve services and outcomes for the vulnerable populations that the APS program serves. For example, the RED team process for reviewing, evaluating, and deciding (RED) how to respond to a report of suspected mistreatment has been proven over time to be a more precise process for making decisions about reports. These rule changes would further encourage the use of RED by every county, with the Task Group's agreement that ultimately in the years to come, this process would become a required process for every APS program.

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: There is no fiscal impact to the State because any required changes to the CAPS data system as a result of these new rules are currently funded through a contract with the vendor and/or through a Federal grant.

County Fiscal Impact: There is no fiscal impact to the County Departments as the removal of the flagged background check requirement removes any fiscal impact.

Federal Fiscal Impact: There are no new fiscal impacts. APS receives approximately $2 million dollars in federal Title XX funds that is provided to the county departments as part of the APS Administration

Allocation. The State Department received a federal grant to make improvements to the APS data system (CAPS) in September 2015 and these funds are being used to make updates to the intake and assessment areas of the system, which will address the changes in these proposed rules.

Other Fiscal Impact *(such as providers, local governments, etc.)*: There is no other fiscal impact identified as the APS is a county department administered, State Department supervised program.

4. Data Description:

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

Research conducted by Hermann Ebbinghaus (1885), which has been subsequently verified by other research studies, identifies the "forgetting curve" for remembering details of a training or event over time. These studies were used to guide the decision to begin shortening the allowed time frame for documenting casework events from 14 days to 10 days. Based on stakeholder feedback the Department has decided to leave the time frame at 14 days at this time.

Quality assurance activities that include formal and informal case reviews, data integrity activities, and C-Stat activities that have included hundreds of informal case reviews provided insight into the need to add and clarify rules for county APS staff to ensure that quality investigation, client needs assessments, and appropriate and adequate case planning and service implementation was being conducted. In formal case reviews, only 19% of caseworkers met the compliance goal for quality casework of 90% or higher and 31% received scores of 75 to 89%. The remaining 50% of workers scored below 75%, with 15% of the total caseworkers reviewed scoring less than 50%. Informal reviews conducted through c-stat activities and other quality assurance and data integrity reviews also show that their investigations are not complete leading to incorrect findings and case planning, documentation in the case does not detail the client's strengths and needs or the caseworker's actions in the case, and services needed to improve safety and reduce risk are not accurately identified or implemented.

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.

There is no alternative to these proposed changes:

- Updates due to changes in the statute for the APS program
- Those changes made to better reflect current processes in the APS data system (CAPS)
- Changes made to make some technical corrections, repeal duplicative rules, clarify language, and to move current rules to more appropriate sections of the APS rules

New rules are being added to address improved casework practices that are necessary for improved outcomes of intervention for at-risk adults served by the APS program. These practices might be addressed through training but those attempts have not been as successful as needed to ensure good outcomes for all vulnerable adults served by the APS program. Since the Fall of 2014, the State Department has provided training and technical assistance on these areas of improvement through regional training, quarterly training meetings, weekly email updates and reminders, webinar training, and through one-on-one technical assistance for supervisors and caseworkers on monthly basis. But, with half of all caseworkers still scoring below average on case reviews conducted in the past nine months, it is now necessary to ensure that minimum requirements are outlined clearly in rule.

Title of Proposed Rule:	Adult Protective Services Program Revisions		
CDHS Tracking #:	15-5-8-1		
Revising official Rule #s:	12 CCR 2518-1, Volume 30		
Office, Division, & Program:	Rule Author: Peggy Rogers	Phone: 303-866-2829	
		E-Mail: peggy.rogers@state.co.us	

OVERVIEW OF PROPOSED RULE

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

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.100 (Definitions) 30.430,B,4,e (Response Priority) 30.520,B,1 (Investigation) 30.830,A (Adult Protection Teams)	Definitions of "client" and "RED Team" and other rules cited have the outdated term "referral".	Update definitions and rules with current term of "report" in place of "referral".		X
30.100 30.210, F. 30.220, B, 1 30.220, B, 2 30.250, I, 2 30.250, I, 3 30.250, K 30.260, A 30.260, B 30.310, D 30.330, C 30.340, A, 4d 30.340, D, 1 30.410, C 30.410, D 30.420, C 30.420, C, 2 30.430, B, 4f 30.430, B, 5e 30.430, D, 2 30.530, C, 1 30.610, D 30.640, B, 4 30.830, F	Use of the term "the data system."	Update all rules to use "CAPS" in place of "the data system."		X
30.100	Definition of "Abuse"	Update definition to reflect statutory change, per HB16-1394.		X
30.100	Definition of "At-risk Adult"	Update definition to reflect statutory change, per HB16-1394.		X
30.100	None	Add definition of CAPS, Colorado Adult Protective Services data system		X
30.100	Definition of "Caretaker"	Update definition to reflect statutory change, per HB16-1394.		X
30.100	Definition of "Caretaker Neglect"	Update definition to reflect statutory change, per HB16-1394.		X
30.100	Definition of "case planning" does not include "improving safety" as a purpose.	Update definition of "case planning" to include the term "and improve safety."		X

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.100	Definition of "Collateral Contact"	Update definition to add "facility staff" to the list of examples.		X
30.100	Definition of "data system".	Repeal definition. New CAPS definition replaces this definition.		X
30.100	Definition of "Exploitation"	Update definition to reflect statutory change, per HB16-1394.		X
30.100	None	Add definition of "Facility" to provide clarification of what constitutes a facility.		X
30.100	Definition of "Mistreatment"	Update definition to reflect statutory change, per HB16-1394.		X
30.100 30.230,B,1 30.240,A 30.250,K 30.330,A,5 30.340,A,1 30.340,B,1 30.410,A 30.410,D,3 30.420,A,2 30.420,F 30.420,G 30.430,B 30.520,A 30.620,D,1 30.620,D,2 30.640,A,1 30.660,D,3 30.810,C,2 30.810,D,1 30.810,E,1 30.810,F,1	Phrase "mistreatment, exploitation, and self-neglect"	Replaces with new terminology of "mistreatment and self-neglect".		X
30.100	None	Add definition of "Undue Influence" to reflect statutory change, per HB16-1394.		X
30.210, B	Grammatical error regarding placement of the phrase "make reasonable efforts to."	Move the phrase "make reasonable effort to" from after "The county department shall" to make the sentence flow better and read "The county department shall utilize funding appropriated by the State Legislature to make reasonable efforts to…"		X

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.210, C.	Current rule states that county departments shall report changes of staffing to the state department within 3 working days of change.	Rule is rewritten to reflect need to protect PII and PHI in CAPS by notifying the State Department when a CAPS user leaves the APS program. Rule reflects how notification must be made. Changes the time frame for reporting changes from three working days to "…three working days…but no later than the CAPS user's last day of employment."	X	
30.230,B	Currently states under number one that protective services are provided to at-risk adults who need assessment for health, welfare, protection, and/or safety.	Remove "who need assessment…" to reduce redundancy. All screened in reports need assessment for health, safety, welfare, and protection.		X
30.250, I, 3	Currently states that only APS staff has access to CAPS.	Change to allow access for persons with a business need.		X
30.250, I, 6	None	Adds a rule regarding the need for CAPS users to sign the security confidentiality agreement.	X	
30.250, J	Rule regarding violating confidentiality.	Adds a rule that CAPS users shall not access information in CAPS that is not necessary to serve the client. Allows the State Department to remove access to CAPS for violations.		X
30.250, K	None	Adds clarifying language to include APS case information not in CAPS as confidential.		X
30.260, A	Rule regarding required documentation of reports and cases.	Add language that clarifies what elements are required to be thoroughly documented in CAPS.		X
30.260,B,1	Rule requiring a release of information signed by the client be attached to the case in CAPS.	Clarifies that a release is not mandatory, but should be completed when appropriate.		X
30.260,C	None	Adds a rule to require all documentation, notes, and evidence for the case be entered into CAPS and then destroyed. Provides exception for original legal documents, such as guardianship orders or birth certificates.		X
30.310, A	Rule regarding education and experience requirements for hire.	Add "criminal justice" to the list of fields that qualify for the education requirement. Changes the term "obtained" to "completed" to clarify experience requirement. Allows a Master's degree substitution for Journey Level to be in any field allowed in the list of degrees.		X

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.320, C, 3	Rule regarding background checks for prospective employees.	Change "strongly urged to require" to "shall" to require counties to flag background checks for future arrests and convictions. No change is being made per stakeholder feedback.	**X**	
30.320,C,5,a	Lists criminal offenses that disqualify an applicant from employment as an APS worker.	Technical correction to remove Title 18, Article 18.5 (drug taskforce) from the list.		X
30.330, A, 1	Rule regarding completion of the Pre-Academy Workbook for new hires and transfers.	Change from full-time caseworkers having 3 months and part-time caseworkers having 6 months to complete it to all new caseworkers shall complete it within 1 month of hire and not being assigned cases until it is complete.		X
30.330, A, 2	Rule regarding completion of the APS training academy.	Counties with only 1 caseworker that is less than 25%FTE shall complete the training academy in 9 months, instead of the current 12 months. All other counties with at least 1 caseworker 25% or higher FTE shall complete it in 6 months instead of the current 9 months.		X
30.330, A, 4	Rule regarding completion of the Pre- Academy Workbook by case aides.	Change to requiring new case aides to complete the workbook within 1 month of hire instead of the current 3 months.		X
30.330, B, 1	Rule regarding ongoing training hours requirements for caseworkers.	Increases requirement to 40 hours per fiscal year instead of the current 30 hour requirement. Removes "state approved and provided" from the rule regarding reading reports and professional journals for the non-state provided training options.	X	
30.330, B, 2	Rule regarding ongoing training hours requirements for supervisors.	Increases requirement to 30 hours per fiscal year instead of the current 20 hours. Change the number of state provided hours from 10 to 15 hours.		X
30.330, B, 3	Rule regarding ongoing training hours requirements for case aides.	Increases requirement to 20 hours per fiscal year instead of the current 15.		X
30.330, B, 4	Rule regarding ongoing training hours requirements for part time APS staff.	The required number of hours required is prorated for part-time APS staff. Those requirements are increased for each quartile of FTE, in relation to the increased requirements for full time staff.	X	
30.340, A	Rule regarding supervisor duties.	Add "or lead worker" to the rule to allow for lead workers to complete these duties in lieu of the supervisor.		X
30.340,A,1	Cites another section of rule.	Updates the citation.		X
30.340, A, 2	Rule regarding RED Team process.	Changes the language from "may" to "are urged to" for use of the RED team process. Updates rule citation.		X

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.340, A, 4	Rule regarding the case review requirement for supervisors.	Update rule A,4 to a phrase to "review cases to ensure". Clarifies language related to documentation. Moves 15% review requirement to A,5.		
30.340, A, 5	None	Moves 30.340,A,4 to this rule. Allows supervisor to continue to review 15% of all cases using the formal case review tool or choose a new option of reviewing and approving every case at three key points in the case.	X	
30.340,B,1	Cites another section of rule.	Updates the citation.		X
30.340, D	Rule regarding the role of screeners.	Change the term "call" to "intake" screeners to more accurately name the role. Change the location of the documentation of intake reports to include CAPS and the Web2Case form.		X
30.410, A	Rule regarding intake of reports.	Add clarifying language "occurring in the community or in a facility" to provide better guidance on APS jurisdiction to investigate.		X
30.410, C	Rule regarding intake of reports.	Change the language to include documenting the report in the Web2Case form or CAPS.		X
30.410, E and F	Rules regarding county assignment are currently found at 30.710.	Repeal 30.710. Adds rules relating to county assignment or jurisdiction for reports that have not yet been screened in/out to 30.410,E as this location better relates to the rules about Intake. New rules provide simpler method of determining jurisdiction.		X
30.410, G	Rule regarding the transfer of an intake that was reported to the wrong county within eight (8) hours.	Change the term "forward" to "transfer" to more accurately match the process in CAPS. Change the timeframe for transferring a report made to the wrong county to one (1) hour after determining the report was made to the wrong county.	X	
30.420, A and D	Rule regarding evaluating new reports.	Add the language "utilizing the RED team framework or supervisory review" for determining if a report meets APS criteria to clarify the two approved options for this process.		X
30.420,C	Technical correction	Changes "shall" to "will" for the CAPS system generation of a screen in/out recommendation.		X
30.420,E	None	Adds rule to provide guidance on the RED team framework should counties choose to utilize the RED team process.	X	
30.420, F	Rule regarding process for reports that do not meet criteria for APS response.	Add a 3 day timeframe to screen out reports when they do not meet APS criteria.		X

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.420, F, 2	Rule regarding providing information to reporting parties when the report is screened out.	Change the term "shall" to "may" provide information to reporting parties.		X
30.430, B	Rule regarding emergency response timeframes.	Change the term "imminent" to "immediate."	X	
30.430, B, 3	Rule regarding emergency response timeframes.	Change the term "hours" to "days" for clarity. Remove "long term care ombudsman" from other professionals to reach to ascertain immediate safety.	X	
30.430, B, 4	Technical correction.	Change "or" to "and"; change "hours" to "days" in rules on follow up contact attempts for emergency response reports.		X
30.430, B, 4,a	Rule regarding follow up on emergency response timeframes.	Change the current rule that allows for law enforcement to substitute for one attempt at contact to allow law enforcement to substitute for attempts at contact during non-business days. Add rule that counties shall follow up the next working day.		X
30.430, B, 4,b	Rule regarding follow up on emergency response timeframes.	Add "such as in the intensive care unit" for clarification.		X
30.430, B, 4,d	Rule regarding follow up on emergency response timeframes.	Technical correction - add "day of" and change "attempt" to "attempts" to provide clarity.		X
30.430, B, 4,e	Rule regarding closing case if contact is unsuccessful.	Change "referral" to "case" to update to current terminology. Change timeframe for closing the case to 35 calendar days from current 20 calendar days from last contact attempt.		X
30.430, B, 4,f	Rule regarding follow up on emergency response timeframes.	Remove "in the data system" to make it more concise.		X
30.430, B, 5	Rule regarding follow up on emergency response timeframes.	Add the language "If the initial response was not face-to-face contact with the client, but…" to provide clarity.		X
30.430, B, 5,a	Rule regarding follow up on emergency response timeframes.	Add "such as in the intensive care unit" for clarification.		X
30.430, B, 5,c	Rule regarding follow up on emergency response timeframes.	Technical correction - Add "day of" and change "attempt" to "attempts" to provide clarity.		X
30.430, B, 5,d	Rule regarding follow up on emergency response timeframes.	Change timeframe for closing the case to 35 calendar days from current 20 calendar days from last contact attempt.		
30.430, C	Rule regarding non-emergency response.	Updates language to provide clarity and approved supervisory or RED Team decision-making process.		X

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.430, C, 2	Rule regarding non-emergency response.	Change "a face-to-face contact" to "an initial response" to update to current terminology. Add rule to define an initial response, based on current process.		X
30.430, C, 3	Rule regarding non-emergency response.	Change the language to reflect the process for follow up when the initial response was not a face-to-face contact and the worker was unable to ascertain safety by phone to reflect the options for initial responses. Clarify the language that the county shall attempt face-to-face contact every other working day.		X
30.430, C, 3,a	Rule regarding non-emergency response.	Adds a rule that states a law enforcement welfare check can be substituted for one attempt at contact to allow for flexibility for the caseworker.		X
30.430, C, 3,e	Rule regarding non-emergency response.	Change timeframe for closing the case to 35 calendar days from current 20 calendar days from last contact attempt.		X
30.430, C, 4	None	Adds rules that define the follow up required when a worker is able to ascertain safety for the initial response, but has not yet had a face-to-face contact with the client.		X
30.430, E	Rule regarding re-evaluation of whether a face-to-face response is needed for a non-emergency response case.	Change "provide telephone response and assistance" to clarify what is an appropriate phone contact to make for phone collaboration. Change the term "telephone response and assistance" to "phone collaboration" in the second sentence to update to current terminology.		X
30.430, E,5	Rules regarding cases appropriate for "phone collaboration to resolve concerns.	Repeal #5 as clients that fit that description do not usually meet the criteria for "at-risk adult" and APS should not be involved.		X
30.510, A and B	Rule regarding conducting investigations and client assessments.	Update language related to the investigation. Adds clarifying language that the investigation must be completed regardless of the client's consent, as it is required by statute. Adds provision that if assessment confirms the client is not an at-risk adult, therefore not meeting criteria for APS intervention, the investigation does not need to be completed. Moves rules related to client assessment to new section "30.510,B".		X

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.510, D	Rules regarding county assignment are currently found at 30.710.	Repeal 30.710. Adds rules relating to county jurisdiction after reports have been screened in for investigation to 30.510, D as this location better relates to the rules about Investigation. New rules allow transfer of the case and require receiving county to investigate, unless they have new information that would allow them to close the case.		X
30.520, A, 1	Rule regarding the investigation process and requirements.	Change the term "imminent" to "immediate."		X
30.520, A, 2	Rules regarding collaboration with other investigative agencies are currently found at 30.820.	Repeal 30.820. Move rules related to entities to consider as part of a collaborative investigation to 30.520, as they better align with the Investigation, and update language.	X	
30.520, A, 3	Rule regarding client interview being unannounced and in private.	Add clarifying language that states if not unannounced or in private, worker will document the reason.		X
30.520, A, 5	Rule regarding the requirement to interview the alleged perpetrator, when appropriate and safe.	Add requirement to document why an alleged perp was not interviewed.		X
30.520, A, 6	Rule regarding collecting evidence.	Adds suggestions for evidence that can and should be collected, as appropriate.	X	
30.520, A, 8	Rule requiring identification of the perpetrator.	Repeal the term "self-neglect, as there is no perpetrator in self-neglect cases.		X
30.520, A, 9	Rule requiring investigation of mistreatment identified during investigation.	Adding the clarifying language that states new/additional allegations that are identified must be documented in CAPS.		X
30.520, B, 1	Rule regarding the time frame for completing the investigation.	Adds requirement to document in CAPS throughout the investigative process. Establishes a time frame to document interviews within ten (10) days of the interview. Moves rule related to being unable to complete an investigation in the timeframe to B,4. Repeals the rules at the current "B2" and moves them to the new "B 1-3" and updates language related to the elements of the investigation that must be documented. The change to 14 days to 10 days is no longer being made per stakeholder feedback. The time frame will remain at 14 days at this time.	X	
30.520, B, 2	Rule regarding documenting investigative information.	Repeal current rule. Added to 30.520, B, 1 through 3, above.		X
30.530 A	Rule regarding the assessment process and requirements.	Change "assess" to "complete a baseline assessment of" to reflect current practice. Change "imminent" to "immediate."		X

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.530, B	Rule regarding the assessment tool in CAPS.	Update language to make is clear that risk and safety need to be assessed, per current practice. Removes the five status areas that need to be assessed (B1-5, and C). The assessment tool is established in CAPS so naming areas of the assessment is not necessary.		X
30.530, C	Currently 30.530,D, 1 and 2. Rules regarding documentation of the assessment.	Updates the language to indicate what is required for the assessment to be completed timely. Moves rule related to being unable to complete an assessment in the timeframe to C,2. Repeal current rule C,2, as it is included in the new C,1.		X
30.610, C	Rule regarding the case plan process and requirements.	Rules in this section are being rewritten to reflect current practice, which was changed to reduce redundancy and put into place a more efficient and effective case plan requirement.		X
30.610, F	Rule regarding the use of client services funds.	Rules in this section are being rewritten to more clearly reflect when APS Client Services funds may and may not be utilized.		X
30.620, A	Rule regarding providing services in least restrictive manner.	Repeal section 30.650. Move current 30.650,B to 30.620 as the content is related to what takes place after the investigation and assessment. This move makes the rules easier to find and more cohesive.	X	
30.620, B	Rule regarding provision of services for adults with capacity to make decisions.	Removes redundant language and clarifies what steps are needed if it appears the client has capacity to make decisions and either refuses or consents to services.		X
30.620, C	Rules related to provision of services when the client appears to lack capacity.	Add clarification on what must be documented related to the client's suspected incapacity; adds possible interventions for ensuring the immediate safety and health of a client who is suspected to lack capacity. Repeal current rule 30.620,B,3 as it is redundant to rule 30.620,C,4.		X

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.620, E	Currently at 30.650 -Provision of services. Rules regarding ongoing contact with clients throughout the provision of services.	Repeal Section 30.650. Move rules from 30.650 to this section. Change the requirement for monthly contact with clients in the community from every 30 days to once a month, not to exceed 35 days since the previous monthly contact. For clients living in a facility, adds a requirement the contact every other month that can be by phone, cannot be a phone contact if there is concern with the facility providing adequate care. Reduces time frame to document monthly contact from 14 days to 10 days. Clarifies what is required in implementing a case plan. Adds requirement to update case information, as changes occur month to month. The change from 14 days to 10 days is no longer being made, per stakeholder feedback. The timeframe will remain at 14 days at this time.	X	
30.620, F	Currently 30.720 – Courtesy Visits. Rules regarding courtesy visits with a client for another county.	Repeal Section 30.720. Move those rules to this section to make rules more cohesive. Updates rules to reflect current practice. Changes time frame to document the courtesy visit from 14 days to 10 days. The change from 14 days to 10 days is no longer being made, per stakeholder feedback. The timeframe will remain at 14 days at this time.	X	
30.620, G through J	Currently at 30.710, rules related to a client relocating to another county while the case remains open.	Repeal Section 30.710. Move rules to this section to make rules more cohesive. Update rules to reflect current practice related to case transfers in CAPS. Shortens the length of time a case may remain with the former county department once a client has moved.		X
30.620, K	Currently at 30.650,D. Rules related to the six month reassessment requirement.	Repeal Section 30.650. Move reassessment rules to this section and update to reflect current practice, which is a simpler and more efficient process than current rule.		X
30.630, A	Rule regarding emergency court intervention.	Updates the rule to be specific to emergency situations in which the county may need to intervene through the courts.		X
30.630, A,1	Rule regarding steps to take prior to seeking court intervention.	Adds language to specify that the county ensures all factors are met and documented prior to petitioning the court. Adds a rule at (b) that the county should ensure that court intervention will resolve the safety concern. Moves current section “C” to “A,1,c”.	X	

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.630, B, 4	Rule regarding documentation requirements when the county department has been named the guardian or conservator.	Adds language that the client's case record must be updated with the fiduciary information.		X
30.630,E	Technical correction.	Change "provide" to "providing" to be grammatically correct.		X
30.640,A,1	Rule regarding appointment of the county as representative payee.	Technical correction to remove "the potential for" before "significant harm."		X
30.650	Section on the Provision of Protective Services.	Repeal Section. Rules have been recodified under 30.520 and 30.620.		X
30.660, A	Timeframe for closing a case.	Updates rule to require case closure within 35 days of last client contact, rather than current 30 days. Adds rule allowing the case to remain open longer if county is actively looking for the client.		X
30.660,B	Timeframe for closing a case for a client placed in a facility.	Updates rule to shorten the time from the current three (3) months to 35 days, unless there is good cause.		X
30.660,D	Case closure reasons.	Updates the rule to close the case when allegations are unsubstantiated and there are no other identified needs, per the client assessment. Updates the rule to allow closure of the case if the client refuses contact or refuses services. Adds additional closure reasons, including services unavailable, client incarcerated, and client moved out of state.		X
30.660,E	Case closure procedures	Updates rules to reflect current case closure practices, which were changed to reduce redundancy and create a more efficient closure process.		X
30.700 30.710 30.720	Rules section County Assignment and Courtesy Visits	Repeal. Rules have been recodified in Sections 30.410, 30.510, and 30.620		X
30.820	Rule regarding collaboration with other agencies.	Repeal to reduce redundancy. Rules have been recodified in Sections 30.500 and nearly the same rules were found in Section 30.810.		X
30.830	Rule related to which counties are required to have an AP Team.	Technical correction from "referrals" to the current term "screened in reports". Addition of the phrase "and improve safety."		X

Title of Proposed Rule:	Adult Protective Services Program Revisions		
CDHS Tracking #:	15-5-8-1		
Revising official Rule #s:	12 CCR 2518-1, Volume 30		
Office, Division, & Program:	Rule Author: Peggy Rogers	Phone: 303-866-2829	
		E-Mail: peggy.rogers@state.co.us	

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):

APS Task Group created by the Economic Security Sub-PAC. This task group was moved under the Child Welfare Sub-PAC in May 2016. The APS task group consisted of representatives from the State Department APS unit and from sixteen (16) counties who were nominated by their county director and approved by the Colorado Human Services Directors Association. The county departments represented on the task group were: Adams, Arapahoe, Archuleta, Boulder, Denver, Douglas, Eagle, El Paso, Jefferson, Larimer, Mesa, Montrose, Morgan, Park, Pueblo, and Weld.

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:

Policy Advisory Committee (PAC); Economic Security Sub-PAC; Child Welfare Sub-PAC; County Departments of Human/Social Services; Colorado Human Services Directors Association (CHSDA); Colorado Counties, Inc. (CCI); Colorado Commission on Aging (CCOA); Colorado Legal Services; Colorado Senior Lobby; Community Centered Boards; Colorado Department of Public Health and Environment, Health Facilities Division; Colorado Department of Health Care Policy and Financing, Division for Intellectual and Developmental Disabilities; Disability Law Colorado; Area Agencies on Aging; ARC of Colorado.

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 [X] No

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

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

[X] Yes [ ] No

Date presented __June 2, 2016_____.

What issues were raised? Concerns related to shortening the time frame for documenting case actions from 14 to 10 calendar days. The rules have been revised to keep the 14 day time frame. Concerns for requiring a flagged background check. That proposed change has been removed.

If not presented, explain why.

Comments were received from stakeholders on the proposed rules:

[X] 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.

The rules were emailed to county department directors and APS staff for review and feedback in late April 2016. The State held six webinar sessions between May 2 and May 12, 2016 for county directors, Adult Protective Services (APS) managers and supervisors, and APS caseworkers to go over the proposed rule changes in detail. Over eighty (80) APS staff and county directors representing more than 30 counties attended these webinars and provided feedback and suggestions for improvements and changes to the rules. In May 2016, the APS Task Group was provided the feedback from the webinars and the proposed changes as a result of the feedback. Per the APS Task Group request, the comments for the rules were initially reviewed and discussed via email among task group members. The State Department also met with the County Human Services Directors Association Steering Committee members on June 2, 2016 to discuss the rule process. A final meeting of the APS task group was held June 10, 2016 during which the task group members discussed and made final decisions related to the rules that had been commented upon by county departments. The APS task group supports the final rule recommendations, as drafted in this Initial Circulation.

Below is a summary of comments received via the rules webinar sessions and subsequent emails and the actions to address the comments.

30.330 Training Requirements; 30.530 Investigation; 30.620 Provision of Services; and 30.830 Adult Protection Teams: One proposed rule revision that received stakeholder feedback had to do with the timeframe for casework and other documentation to be entered into the CAPS data system that can be found in multiple sections of the rules, as listed. The proposed rule change was to decrease the amount of time caseworkers have to enter documentation to 10 calendar days from 14 calendar days. This change was proposed to improve the quality and accuracy of the documentation based on available scientific research on memory. However, representatives from counties identified this as a concern during the webinars and in meetings with Department staff, explaining that they felt this was an unnecessary change. They requested to keep the 14 day documentation requirement. The APS Task Group considered the request and developed a compromise to reduce the time allowed for documenting key casework related information to 10 days, including interviews of clients and alleged perpetrators and monthly contact visit notes. The Task Group determined that the time allowed for documentation of non-casework related information, such as continuing education hours completed, would remain at 14 days. Roughly 75% of task group members supported this compromise. However, after further discussion with the Child Welfare Sub-PAC, the sub-PAC members were strongly opposed to shortening the time frame to 10 days for casework practice, indicating that with an expected 30% increase in reports due to implementation of SB15-109, shortening the time frame at this time would impair the Department's ability to manage their workload. The Department has determined that it will leave the 14 day documentation time frame in place at this time.

30.210 APS Program Administration: A change to the rules to require counties to notify the State of change in staffing "immediately" as opposed to within "three working days" was proposed to ensure that persons no longer working in the APS program would have their access to the APS data system, CAPS, removed. CAPS contains a great deal of personal identifying information (PII) and HIPAA protected personal health information (PHI) that must be protected and kept secure. Two counties felt that the change to require county departments to notify the

state immediately upon learning of a change in staffing was an unnecessary time constraint to give to counties. These two counties felt that "one business day" to make the notification was more reasonable. Two other counties felt that the reduction of time to notify the State enhanced best practices and would result in a better outcome for protecting confidential information. One county noted a concern related to their IT department's inability to access CAPS to submit the change in staffing. A compromise was drafted, with unanimous support of the task group, to require notification "within three (3) working days upon learning of a change in APS staffing but no later than the CAPS user's last day of employment."

30.260 Documentation: Several counties voiced concern over including the language "preferably in the county attorney's office" regarding the secure housing of hard copy documents relating to case files due to the lack of a county attorney's office at their department. Compromise language was drafted during the email review by the task group to secure those documents "in a secured location."

30.320 Background Check Requirements. A proposed change related to the requirement for a "flagged" background check from "strongly urged" to "shall". A flagged background check ensures that the county department would be notified if an APS staff member with direct access to at-risk adults, were to be arrested after their original background check was completed. This may be critical information to client safety. However, a county department indicated that due to its current contract with a company performing the background checks for the county department, it and other counties with similar contracts, would be unable to conform to rule under their current contracts. The Department, therefore, decided to delay this rule change at this time.

30.330 Training Requirements: Initial rule recommendations for counties with only one caseworker who is less than 25% FTE in APS was to require all ten (10) hours of continuing education be state-provided training. One small county recommended that small counties be able to attend local training for a portion of their required training hours. Two counties were in support of the training being all state provided. Upon review by the APS task group, it was unanimously recommended that part of the training requirement could be met through local training opportunities. Counties did not want to remove the ability to read journal articles to meet the ongoing training hours. The rule was left in but was altered to remove the statement, "…provided or approved by the State Department APS unit…" as the Department is no longer able to provide or approve articles.

30.340 Staff Duties and Responsibilities: During the initial task group meetings, there was discussion about the 15% case review requirement. At that time, the consensus of the APS Task Group was to continue with the 15% requirement, but also offer the option of utilizing the enhanced supervision profile for caseworkers which would allow for supervisors/lead workers to review cases at key junctures, reducing the amount that would be reviewed at each time, thus creating a more efficient process. Counties would have the option to choose their specific method of reviewing casework. During the webinars, one county suggested lowering the 15% supervisory case review requirement to 10%. The State Department has identified a need for increased quality assurance reviews of casework and therefore supports then initial recommendation of the task group to provide the county the option of reviewing 15% of all cases or reviewing each case at key casework process points. There were no further objections from the task group.

30.410 Intake: One county asked that the timeframe requirement for transferring reports to the correct county when they are received in the wrong county remain at eight (8) hours, or one business day, instead of reducing to one (1) hour, as was initially recommended by the Task Group. Another county was in support of this recommendation, while one county felt that one (1) hour was sufficient and addressed the concern of timeliness of initial response when reports are transferred. Upon further consideration by the Task Group, just over 60% support keeping the one hour requirement as the recommendation.

30.420 Report Categorization: Two counties recommended that the elements of the RED Team framework be removed from rule due to the possibility of these elements changing in the future and the thought that this was better defined in training, rather than rule. Because the RED Team framework is being added to CAPS, the task group unanimously determined it was not necessary to include in the rules.

30.430 Response Priority: During the webinars, three counties asked for the State to add a five (5) day response time frame to rule to mirror child protection practices. One of these counties wanted the increased time to allow for counties to do more research on the client if the report was going to be screened out for not meeting criteria of an at-risk adult or no mistreatment. One county noted support in keeping the APS response time frames as is. Counties statewide are meeting the initial response time frame 98% of the time. There does not appear to be a business need to add a five (5) working day response time for reports and it does not seem to be in the best interest of the population served by the APS program. Many APS clients are isolated with no contact with other people. A five working day response could mean that clients were not seen for nearly two weeks following receipt of the report. In addition, the child welfare time frame is to be used when there are no safety concerns identified in the report. In APS, if there is no identified mistreatment, the report is screened out. The State Department supports continuing the APS response time frames as is. There were no further objections from the task group.

30.430 Response Priority: The APS Task Group proposed to add to rule that attempts at client contact should be made at different times of the day, which was perceived by several caseworkers to mean there had to be multiple attempts in the same day, which was not the task group's intent. During email review of the comments, some task group members suggested removing the new rule from the recommendations while others thought it could remain if the language were clarified and moved to a different section of the rules. During the final meeting and discussion, the task group was split equally on this and so the rule was removed from the rule recommendations.

30.430 Response Priority: One county asked for clarification on why the Long Term Care Ombudsman (LTCO) was removed from the list of suggested professionals to reach out to and ascertain a client's immediate safety for an initial response. Two counties support the removal of the LTCO from this list. During email discussions, it was explained that the long-term care ombudsmen are unable to respond immediately to a situation, as law enforcement or hospital staff can, where determination of the client's immediate safety is necessary. Additionally, the ombudsman cannot share information with APS without expressed consent of the client. The removal remains the recommendation.

30.520 Investigation: APS Task Group recommended repealing rules at Section 30.820 related to collaborative/joint investigations, including a list of agencies that could work with APS on an investigation, and move them to the Investigation section of the rule as that's when a joint investigation determination would be made. The rule in the new location was updated to be more concise and lists the five key agencies that could partner with APS in investigating mistreatment. Two counties opposed including the list, citing that it is best practice and should be addressed in training rather than included in rule. Two counties supported the addition of this element and the suggested agencies, as it provides more clarity and guidance for caseworkers. Upon further discussion, the task group was unanimous in its recommendation to keep the list in rule.

30.520 Investigations: Rules were added to the current rules related to interviewing collaterals, to add guidance as to who a collateral might be. Other guidance was added to the rules related to the collection and documentation of evidence. One county suggested that all lists that help to define the expectation of the rule be removed and addressed through training. Two counties supported the additional guidance and clarification to assist caseworkers in ensuring their investigations are thorough and complete and they are meeting all required

elements. Upon further discussion, it was determined that the definition of "collateral" already contained all of the new elements in the proposed rule with the exception of "facility staff". A unanimous decision was made to update the definition to add "facility staff" and remove the new list of collaterals from the rule in this section. The task group also discussed the additional lists related to the collection and documentation of evidence and agreed unanimously to include both lists in the rule recommendations.

30.620 Provision of Services: Rules from 30.650 were moved to this section related to the monthly client contact requirement for all open APS cases. Rules were proposed to change the current contact requirement of every 30 days to "once a month, but no more than 35 days from the last client contact." Counties were strongly in favor of this rule recommendation.

30.620 Provision of Services: Rules from 30.650 were moved to this section related to the monthly client contact requirement for all open APS cases. These rules detail the purpose of the monthly contact. The rules that were moved were updated related to the ongoing investigation and assessment of client needs to provide better clarity of that purpose and two new purposes was added related to monitoring of services in place and the continued pursuit of safety improvement and risk reduction. One county asked that all requirements for evaluation during monthly contacts and their documentation be removed from rule, describing them as "overly prescriptive." One county noted support in keeping the criteria. Upon further discussion and review, the task group unanimously agreed to keep the rule recommendations in place.

30.620 Provision of Services: Rules were added that detail appropriate options for involuntary case planning. These options apply to at-risk adults who are have immediate safety and health concerns but who are refusing services, but likely lack the capacity to refuse services. Two counties asked to remove the list of suggested interventions for coordinating for a client's immediate safety and provide training around these options, instead. One county noted support in keeping these suggested interventions in rule as additional guidance for caseworkers. Upon further consideration the more than 90% of the task group members agreed to leave the options in the rule recommendations.

30.620 Provision of Services: Rules from 30.710 were moved to this section related to case jurisdiction when a client moves to a new county during provision of services. One of these rules provides guidance for those clients who are wards of the county department. One county expressed concern that the rule would allow a county to go to the court and have the guardianship transferred to a new county without consent of the new county. The State clarified for this county that this is not a new rule and that, as the rule states, counties cannot transfer guardianships without the receiving county's acceptance and collaboration on petitioning the court. No other counties provided feedback on this item. The rule was left as is.

30.630 Court Intervention: The task group recommended the addition of a rule that guardianship or conservatorship would only be sought for APS clients who have a facility placement. One county felt that it was unnecessary to include that the county should secure placement for the client prior to pursuing court intervention. They expressed that they often will pursue court intervention to appoint a conservator for a client so that they may continue to live independently in the community as a least restrictive option. Another county thought that a home placement for a ward who could afford to pay for 24/7 care and supervision was appropriate. As the rule change was written, this would not be an option for counties moving forward. The State does not recommend that counties take on guardianship for clients living in the community due to the liability and increased difficulty in being able to ensure their safety. However, upon further discussion by the task group, nearly 70% agreed the rule should not be recommended going forward and so is not included in this Initial Circulation.

30.650 Case Closure: The closure reason related to the allegations being unsubstantiated was updated in the initial rule recommendations to add "…and there are no other identified needs." Two counties felt that the language of "no other identified needs" was too vague. One county was in support of leaving the language as is. Upon further input and suggestion from task group members, the rule was amended to read, "…there are no other identified needs as determined by the assessment."

[3/23/15 downloaded from SoS web site]

(12 CCR 2518-1)

30.000 ADULT PROTECTIVE SERVICES

30.100 DEFINITIONS [Rev. eff. 9/1/14]

The following definitions shall apply to these rules.

"Abuse", pursuant to Section 26-3.1-101~~(7)(a)~~(1), C.R.S., means ~~mistreatment that occurs where there is infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation; or, where unreasonable confinement or restraint is imposed; or where there is subjection to nonconsensual sexual conduct or contact classified as a crime under the "Colorado Criminal Code", Title 18, Article 3, Part 4, C.R.S.~~ ANY OF THE FOLLOWING ACTS OR OMISSIONS COMMITTED AGAINST AN AT-RISK ADULT:

A. THE NONACCIDENTAL INFLICTION OF PHYSICAL PAIN OR INJURY, AS DEMONSTRATED BY, BUT NOT LIMITED TO, SUBSTANTIAL OR MULTIPLE SKIN BRUISING, BLEEDING, MALNUTRITION, DEHYDRATION, BURNS, BONE FRACTURES, POISONING, SUBDURAL HEMATOMA, SOFT TISSUE SWELLING, OR SUFFOCATION;

B. CONFINEMENT OR RESTRAINT THAT IS UNREASONABLE UNDER GENERALLY ACCEPTED CARETAKING STANDARDS; OR

C. SUBJECTION TO SEXUAL CONDUCT OR CONTACT CLASSIFIED AS A CRIME UNDER THE "COLORADO CRIMINAL CODE", TITLE 18, C.R.S.

"Adult Protective Services (APS) Program" means the State Department supervised, county department administered program that has the authority to investigate and/or assess allegations of mistreatment and self-neglect of at-risk adults. The APS Program offers protective services to prevent, reduce, or eliminate the current or potential risk of mistreatment or self-neglect to the at-risk adult using community based services and resources, health care services, family and friends when appropriate, and other support systems. The APS Program focuses on the at-risk adult and those services that may prevent, reduce, or eliminate further mistreatment or self-neglect. The APS Program refers possible criminal activities to law enforcement and/or the district attorney for criminal investigation and possible prosecution.

"Allegation" means a statement asserting an act or suspicion of mistreatment or self-neglect involving an at-risk adult.

"Assessment" means the process of evaluating a client's functional abilities to determine the client's level of risk and, in cooperation with the client whenever possible, to identify service needs for the case plan.

"Assumed responsibility", as used in the definition of caretaker, means a person who is providing or has provided recurring assistance to help meet the basic needs of an at-risk adult. The assumption of responsibility can attach by entering into a formal or informal agreement, whether paid or unpaid; by identifying oneself as a caretaker to others; or based on the nature of the situation or relationship between the caretaker and the at-risk adult.

"At-risk adult", pursuant to Section 26-3.1-101~~(1)~~(1.5), C.R.S., means an individual eighteen years of age or older~~:~~ WHO IS SUSCEPTIBLE TO MISTREATMENT OR SELF-NEGLECT BECAUSE THE INDIVIDUAL IS UNABLE TO PERFORM OR OBTAIN SERVICES NECESSARY FOR HIS OR HER HEALTH, SAFETY, OR WELFARE, OR LACKS SUFFICIENT UNDERSTANDING OR CAPACITY TO MAKE OR COMMUNICATE RESPONSIBLE DECISIONS CONCERNING HIS OR HER PERSON OR AFFAIRS.

~~A. Who is susceptible to mistreatment because he/she is unable to perform or obtain services necessary for his/her health, safety, or welfare; or,~~

~~B. Who lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person or affairs.~~

~~C. Persons are not considered "at-risk" solely because of age and/or disability.~~

"CAPS" MEANS THE COLORADO ADULT PROTECTIVE SERVICES (APS) STATE DEPARTMENT PRESCRIBED DATA SYSTEM THAT THE COUNTY DEPARTMENT SHALL USE TO DOCUMENT APS PROGRAM ACTIVITIES, INCLUDING ALL REPORTS AND CASEWORK, ADULT PROTECTION TEAM ACTIVITIES, APS STAFF QUALIFICATIONS, FTE, ONGOING TRAINING, COOPERATIVE AGREEMENTS, AND OTHER ACTIVITIES REQUIRED BY RULE.

"Caretaker", pursuant to Section 26-3.1-101(2), C.R.S., means a person who ~~is responsible for the care of an at-risk adult as a result of a family or legal relationship or a person who has assumed responsibility for the care of an at-risk adult or is paid to provide care or services to an at-risk adult.~~

A. IS RESPONSIBLE FOR THE CARE OF AN AT-RISK ADULT AS A RESULT OF A FAMILY OR LEGAL RELATIONSHIP;

B. HAS ASSUMED RESPONSIBILITY FOR THE CARE OF AN AT-RISK ADULT; OR,

C. IS PAID TO PROVIDE CARE, SERVICES, OR OVERSIGHT OF SERVICES TO AN AT-RISK ADULT.

"Caretaker neglect", pursuant to Section 26-3.1-101(2.3)**(a)**, C.R.S., means neglect that occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, HABILITATION, ~~or~~ supervision, OR OTHER TREATMENT NECESSARY FOR THE HEALTH, SAFETY, OR WELFARE OF THE AT-RISK ADULT is not secured for an at-risk adult or is not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise,~~;~~ ~~except that the withholding, withdrawing, or refusing of any treatment, including but not limited to resuscitation, cardiac pacing, mechanical ventilation, dialysis, artificial nutrition and hydration, any medication or medical procedure or device, in accordance with any valid medical directive or order, or as described in a palliative plan of care, shall not be deemed caretaker neglect. As used in this subsection (2.3), "medical directive or order" includes, but is not limited to, a medical durable Power of Attorney, a declaration as to medical treatment executed pursuant to Section 15-18-104, C.R.S., a Medical Order for Scope of Treatment form executed pursuant to Article 18.7 of Title 15, C.R.S., and a CPR Directive executed pursuant to Article 18.6 of Title 15, C.R.S.~~ OR A CARETAKER KNOWINGLY USES HARASSMENT, UNDUE INFLUENCE, OR INTIMIDATION TO CREATE A HOSTILE OR FEARFUL ENVIRONMENT FOR AN AT-RISK ADULT.

(b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (2.3), THE WITHHOLDING, WITHDRAWING, OR REFUSING OF ANY MEDICATION, ANY MEDICAL PROCEDURE OR DEVICE, OR ANY TREATMENT, INCLUDING BUT NOT LIMITED TO RESUSCITATION, CARDIAC PACING, MECHANICAL VENTILATION, DIALYSIS, ARTIFICIAL NUTRITION AND HYDRATION, ANY MEDICATION OR MEDICAL PROCEDURE OR DEVICE,

IN ACCORDANCE WITH ANY VALID MEDICAL DIRECTIVE OR ORDER, OR AS DESCRIBED IN A PALLIATIVE PLAN OF CARE, IS NOT DEEMED CARETAKER NEGLECT.

(c) AS USED IN THIS SUBSECTION (2.3), "MEDICAL DIRECTIVE OR ORDER" INCLUDES A MEDICAL DURABLE POWER OF ATTORNEY, A DECLARATION AS TO MEDICAL TREATMENT EXECUTED PURSUANT TO SECTION 15-18-104, C.R.S., A MEDICAL ORDER FOR SCOPE OF TREATMENT FORM EXECUTED PURSUANT TO ARTICLE 18.7 OF TITLE 15, C.R.S., AND A CPR DIRECTIVE EXECUTED PURSUANT TO ARTICLE 18.6 OF TITLE 15, C.R.S.

"Case" means a report that contains information indicating that there is an at-risk adult and a mistreatment category, and the report is screened in for investigation and/or further assessment.

"Caseload average" means the fiscal year monthly average sum of new reports plus ongoing cases per caseworker. The fiscal year caseload average is calculated as: [(fiscal year total of new reports/12) + (beginning cases on July 1 + ongoing cases on June 30/2)]/FTE on June 30 = caseload average.

"Case Planning" means using the information obtained from the investigation and/or assessment to identify, arrange, and coordinate protective services in order to reduce the client's level of risk for mistreatment AND IMPROVE SAFETY.

"Clergy member", pursuant to Section 26-3.1-101(2.5), C.R.S., means a priest; rabbi; duly ordained, commissioned, or licensed minister of a church; member of a religious order; or recognized leader of any religious body.

"Client" means an actual or possible at-risk adult for whom a ~~referral~~REPORT has been received and the county department has made a response, via telephone resolution or open case.

"Collateral contact" means a person who has knowledge about the client's situation that supports, refutes, or corroborates information provided by a client, reporter, or other person involved in the case. Examples of contacts include, but are not limited to, family members, law enforcement, health care professionals, service providers, FACILITY STAFF, neighbors, and friends.

"County Department" means a county department of human/social services.

~~"Data system" means the State Department prescribed data system that the county department shall use to document APS Program activities, including all reports and casework, Adult Protection Team activities, APS staff qualifications, FTE, ongoing training, cooperative agreements, and other activities required by rule.~~

"Enhanced supervision" means ~~the data system~~ CAPS security access that prevents a caseworker from finalizing an investigation, assessment, case plan, or case closure without supervisory approval.

"Exploitation" means an act or omission committed by a person that:

A. Uses deception, harassment, intimidation, or undue influence to permanently or temporarily deprive an at-risk adult of the use, benefit, or possession of ~~his or her money, assets, or property~~ ANYTHING OF VALUE;

~~B. In the absence of legal authority~~:

~~1~~B. Employs the services of a third party for the profit or advantage of the person or another person to the detriment of the at-risk adult; ~~or,~~

~~2~~C. Forces, compels, coerces, or entices an at-risk adult to perform services for the profit or advantage of the person or another person against the will of the at-risk adult; or,

~~C~~D. Misuses the property of an at-risk adult in a manner that adversely affects the at-risk adult's ability to receive health care or health care benefits or to pay bills for basic needs or obligations.

"FACILITY" MEANS MEDICAL AND LONG-TERM CARE FACILITIES THAT PROVIDE 24 HOUR CARE AND OVERSIGHT FOR RESIDENTS, AND INCLUDES GROUP AND HOST HOMES, ALTERNATIVE CARE FACILITIES, STATE REGIONAL CENTERS, AND STATE MENTAL HEALTH FACILITIES.

"Financial institution" means a state or federal bank, savings bank, savings and loan association or company, building and loan association, trust company, or credit union.

"Fiscal Year" means the State Department fiscal year, which begins July 1 and ends June 30.

"FTE" means Full Time Equivalent. The actual percentage of time a person works on the APS program shall be considered that person's FTE.

"Inconclusive finding" means that indicators of mistreatment, exploitation, or self-neglect may be present but the investigation could not confirm the evidence to a level necessary to substantiate the allegation.

"Investigation" means the process of determining if an allegation(s) of mistreatment involving an at-risk adult can be substantiated by a preponderance of evidence.

"Least restrictive intervention" means acquiring or providing services, including protective services, for the shortest duration and to the minimum extent necessary to remedy or prevent mistreatment.

"Minor impact" means the client may experience some difficultly with the assessment risk indicator, but there is very little impact on the client's overall health, safety, and/or welfare and no intervention is necessary to improve overall safety.

"Mistreatment", pursuant to Section 26-3.1-101(7), C.R.S., means ~~an act or omission that threatens the health, safety, or welfare of an at-risk adult or that exposes an at-risk adult to a situation or condition that poses imminent risk of death, serious bodily injury, or bodily injury to the at-risk adult. Mistreatment includes, but is not limited to:~~

A. Abuse; ~~that occurs:~~

~~1. Where there is infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation;~~

~~2. Where unreasonable confinement or restraint is imposed; or,~~

~~3. Where there is subjection to nonconsensual sexual conduct or contact classified as a crime under the "Colorado Criminal Code", Title 18, C.R.S.~~

B. Caretaker neglect~~.~~;

C. EXPLOITATION;

D. AN ACT OR OMISSION THAT THREATENS THE HEALTH, SAFETY, OR WELFARE OF AN AT-RISK ADULT; OR,

E. AN ACT OR OMISSION THAT EXPOSES AN AT-RISK ADULT TO A SITUATION OR CONDITION THAT POSES AN IMMINENT RISK OF BODILY INJURY TO THE AT-RISK ADULT.

"Person(s)" means one or more individuals, limited liability companies, partnerships, associations, corporations, legal representatives, trustees, receivers, or the State Department of Colorado, and all political subdivisions and agencies thereof.

"Protective Services" means services to prevent the mistreatment and self-neglect of an at-risk adult initiated and provided by the county department authorized to administer the Adult Protective Services Program. Such services include, but are not limited to:

A. Receipt and investigation of reports of mistreatment~~, exploitation,~~ and self-neglect;

B. Assessment of the at-risk adult's physical, environmental, resources and financial, medical, mental and behavioral, and support system needs;

C. Protection from mistreatment;

D. Coordination, implementation, delivery, and monitoring of services necessary to address the at-risk adult's safety, health, and welfare needs;

E. Assistance with applications for public benefits and other services; and,

F. Initiation of protective and probate proceedings under Colorado Revised Statutes.

"Reassessment" means the process of updating the assessment status areas and the case plan, including the status of any services implemented and any new services and/or goals identified since the last assessment.

"RED Team" is an acronym that stands for Review, Evaluate, and Direct. The RED Team is a decision making process that utilizes a structured framework to determine the county department's response to ~~referrals~~REPORTS.

"Report" means an oral or written report of suspected mistreatment or self-neglect of a suspected at-risk adult, received by the county department.

"Risk" means conditions and/or behaviors that create increased difficulty or impairment to the client's ability to ensure health, safety, and welfare.

"Safety" means the extent to which a client is free from harm or danger, or to which harm or danger is lessened.

"Self-Determination" means the right to decide for one's self; the ability or right to make one's own decisions without interference from others.

"Self-Neglect", pursuant to Section 26-3.1-101(10), C.R.S., means an act or failure to act whereby an at-risk adult substantially endangers his/her health, safety, welfare, or life by not seeking or obtaining services necessary to meet the adult's essential human needs. Refusal of medical treatment, medications, devices, or procedures by an adult or in accordance with a valid medical directive or order, or as described in a palliative plan of care, shall not be deemed self-neglect. Refusal of food and water in the context of a life-limiting illness shall not, by itself, be evidence of self-neglect. "Medical directive or order" includes, but is not limited to, a medical durable power of attorney, a declaration as to medical treatment executed pursuant to Section 15-18-104, C.R.S., a medical orders for scope of treatment form

executed pursuant to Article 18.7 of Title 15, C.R.S., and a CPR directive executed pursuant to Article 18.6 of Title 15, C.R.S.

“Significant impact” means that the client’s impairment diminishes the client’s health, safety, and/or welfare and intervention is necessary to improve overall safety.

"Staffing a case" means the review of an APS case between the supervisor and caseworker to ensure the appropriateness of the investigation findings, client assessment, case plan, service provision, need for ongoing services, plans to terminate services, documentation, and overall intervention as it relates to APS rules and best practices. Staffing a case may include the county department APS unit, the State Department APS unit, and/or the APS Team in addition to the supervisor and caseworker.

"State Department" means the Colorado Department of Human Services.

"Substantiated finding" means that the investigation established by a preponderance of evidence that mistreatment, exploitation, or self-neglect has occurred.

“UNDUE INFLUENCE” MEANS THE USE OF INFLUENCE TO TAKE ADVANTAGE OF AN AT-RISK ADULT’S VULNERABLE STATE OF MIND, NEEDINESS, PAIN, OR EMOTIONAL DISTRESS.

"Unsubstantiated finding" means the investigation did not establish any evidence that mistreatment or self-neglect has occurred.

30.200 ADULT PROTECTIVE SERVICES PROGRAM ADMINISTRATION AND OVERVIEW

30.210 APS PROGRAM ADMINISTRATION [Rev. eff. 9/1/14]

A. The Adult Protective Services (APS) Program is mandated by Title 26, Article 3.1, of the Colorado Revised Statutes. The county department shall administer the APS Program in accordance with the statutes and rules governing the APS Program and in general State Department fiscal and program regulations.

B. The county department shall ~~make reasonable efforts to~~ utilize funding appropriated by the State Legislature to MAKE REASONABLE EFFORTS TO maintain a fiscal year caseload average of twenty-five to one (25:1), as intended by S.B. 13-111.

C. ~~The county department shall report to the State Department the active caseworker, case aide, and supervisory staff, including FTE, beginning July 1, 2014, and within three (3) working days whenever APS staff changes occur.~~IN ORDER TO ENSURE THE SECURITY OF CAPS AND THE PERSONAL IDENTIFYING INFORMATION (PII) AND PERSONAL HEALTH INFORMATION (PHI) CONTAINED WITHIN, THE COUNTY DEPARTMENT SHALL NOTIFY THE STATE DEPARTMENT THROUGH A CAPS SUPPORT REQUEST WITHIN THREE (3) WORKING DAYS UPON LEARNING OF A CHANGE IN APS STAFFING, BUT NO LATER THAN THE CAPS USER’S LAST DAY OF EMPLOYMENT. AN EMAIL TO THE STATE DEPARTMENT MAY SUBSTITUTE FOR A CAPS SUPPORT TICKET IN THE EVENT A CAPS SUPPORT TICKET CAN NOT BE SUBMITTED.

D. The county department shall make reasonable efforts to advise county residents of services available through the APS Program by such methods as Adult Protection Team mandated community education, as defined at Section 30.830, B, 4, press releases, presentations, pamphlets, and other mass media.

E. The county department shall handle responses to requests for services from other agencies, including the State Department, other county departments, or another state’s APS Program, in the same manner and time frames as requests received from within the county.

F. The county department shall report to the State Department at such times and in such manner and form as the State Department requires, including through ~~the data system~~CAPS, manually generated reports, quality improvement and assurance processes, and other forms of reporting.

30.220 APS PROGRAM REVIEW AND OVERSIGHT [Rev. eff. 9/1/14]

A. The county department shall be subject to the provisions outlined in Section 26-1-111, C.R.S., requiring the State Department to ensure that the county department complies with requirements provided by statute, State Board of Human Services and Executive Director rules, federal laws and regulations, and contract and grant terms.

B. The county department shall be subject to routine quality control and program monitoring, to minimally include:

1. Targeted review of ~~the data system~~CAPS documentation;

2. Review and analysis of data reports generated from ~~the data system~~CAPS;

3. Case review;

4. Targeted program review conducted via phone, email, or survey; and,

5. Onsite program review.

C. The focus of the monitoring shall be to identify:

1. Compliance with program statute and rules;

2. Best practices that can be shared with other county departments; and,

3. Training needs.

D. The county department shall be subject to a performance improvement plan to correct areas of identified non-compliance.

E. The county department shall be subject to corrective action and sanction, as outlined in 9 CCR 2501-1 if the county fails to make improvements required under the performance improvement plan.

30.230 ELIGIBILITY [Rev. eff. 9/1/14]

A. Protective services are provided to persons that meet the definition of “at-risk adult” as defined in Section 30.100. Persons shall not be considered “at-risk” solely because of age and/or disability.

B. Protective services are provided to at-risk adults:

~~1.~~ ~~Who need assessment for health, welfare, protection, and/or safety; and/or,~~

~~2~~1. Who need short term services due to a report of actual or ~~potential~~SUSPECTED mistreatment~~, exploitation,~~ or self-neglect; and/or,

~~3~~2. Who need ongoing protection as the result of substantiation of mistreatment or self-neglect; and/or,

43. For whom the county department has been appointed guardian and/or conservator, or has been designated as representative payee; and/or,

54. Who are residents of long term care facilities, such as nursing homes and assisted living residences, who must relocate due to the closure of the facility and:

a. The county department has been appointed guardian and/or conservator; or,

b. They are in need of protective services due to a lack of case management and/or assistance from any other reliable source.

65. Without regard to income, resources, or lawful presence.

30.240 APS PRINCIPLES – CONSENT, SELF DETERMINATION, AND LEAST RESTRICTIVE INTERVENTION [Rev. eff. 9/1/14]

A. The client's consent is not required for the county department to investigate or assess allegations of mistreatment, exploitation, or self-neglect.

B. The final decision as to acceptance of protective services shall rest with the client unless the client has been adjudicated incapacitated by the court or as outlined in Section 30.600.

C. Protective services provided to and other services arranged for the client shall constitute the least restrictive intervention and be those services provided for the shortest duration and to the minimum extent necessary to meet the needs of the client.

D. It shall not be construed that a person is being mistreated when he or she is being furnished or is relying upon treatment or practices that:

1. Rely on the tenets and practices of that person's recognized church or religious denomination; or,

2. Do not violate local, state, or federal laws.

E. Choice of lifestyle or living arrangements shall not, by itself, be evidence of self-neglect.

30.250 CONFIDENTIALITY [Rev. eff. 9/1/14]

A. Information received as a result of a report to APS and subsequent investigation and casework services shall be confidential and shall not be released without a court order for good cause except in limited circumstances, as defined in Section 30.250, E.

B. The county department shall treat all information related to the report and the case, whether in written or electronic form, as confidential according to applicable statutes, including, but not limited to, the following:

1. Identifying information, such as the name, address, relationship to the at-risk adult, date of birth, or Social Security Number of the:

a. At-risk adult;

b. At-risk adult's family members;

c. Reporting party;

d. Alleged perpetrator; and,

e. Other persons involved in the case.

2. Allegations, assessment, and investigative findings, including, but not limited to:

a. Initial report of allegations and concerns;

b. The client's physical, environmental, resources and financial, medical, mental and behavioral, and social systems status;

c. Medical and behavioral diagnoses, past medical conditions, and disabilities;

d. Services provided to or arranged for the adult;

e. Information learned as a result of a criminal investigation;

f. Information obtained during the APS investigation and the substantiation or non-substantiation of the allegations; AND,

g. Legal protections in place including, but not limited to, wills, advance directives, powers of attorney, guardianship, conservatorship, representative payeeship, and protective orders.

C. Individuals or groups requesting information regarding APS reports and/or investigations shall be informed of the confidential nature of the information and shall be advised that a court order is required to release information held by the county department, except as provided at Section 30.250, E. These persons or groups include, but are not limited to:

1. Federal and state legislators;

2. Members of other governmental authorities or agencies, including county commissioners, city councils, school boards, and other city and county department boards, councils, officials, and employees;

3. Courts and law enforcement agencies;

4. Attorneys, guardians, conservators, agents under powers of attorney, representative payees, and other fiduciaries;

5. Family members, reporting parties, or other interested parties;

6. Any alleged perpetrator; and,

7. Media representatives.

D. In a criminal or civil proceeding or in any other circumstance in which the APS report and/or case record is subpoenaed or any request for disclosure has been made, or any county department or State Department representative is ordered to testify concerning an APS report or case, the court shall be advised, through proper channels, of the statutory provisions, rules, and policies concerning disclosure of information.

1. Confidential information shall not be released unless so ordered by the court for good cause.

2. Courts with competent jurisdiction may determine good cause. Although it is not an exhaustive list, the following are examples of court proceedings in which a court may determine that good cause exists for the release of confidential information:

   a. Guardianship or conservatorship proceeding in which either the county is the petitioner or has been ordered to testify;

   b. Review of Power of Attorney under the Uniform Power of Attorney Act, as outlined at Title 15, Article 14, Part 7, Colorado Revised Statutes (C.R.S.);

   c. Review of a fiduciary under Title 15, Article 10. Part 5, C.R.S.; and/or,

   d. Criminal trial.

E. Information held by the State Department or county department may be released without a court order only when:

1. Coordination with professionals and collateral contacts is necessary to investigate mistreatment, exploitation, or self-neglect and/or to resolve health and/or safety concerns.

2. It is essential for the provision of protective services, including establishing eligibility for, arrangement and implementation of services and benefits, and appointment of a guardian and/or conservator.

3. A review of a Power of Attorney is requested under the Uniform Power of Attorney Act, as outlined at C.R.S. Title 15, Article 14, Part 7 or review of a fiduciary under C.R.S. Title 15, Article 10, Part 5.

4. A case is reviewed with the adult protection team, in accordance with the adult protection teams by-laws, and when in executive session with members who have signed a confidentiality agreement.

5. A criminal complaint or indictment is filed based on the APS report and investigation.

6. There is a death of a suspected at-risk adult and formal charges or a grand jury indictment have been brought.

7. The coroner is investigating a death suspected to be a result of mistreatment or self-neglect.

8. The client requests his/her file and provides a written release of information, in accordance with the county department's policy. The county department shall review the request to determine whether the client has the ability to provide informed consent related to the release of the file.

F. Whenever there is a question about the legality of releasing information or the ability of the client to provide informed consent, the requestor, whether the client or another person, shall be advised to submit a written request to the appropriate court to order the county department to produce the desired records or information within the custody or control of the county department.

G. Information released under Section 30.250, D and E, shall be the minimum information necessary to secure the services, conduct the investigation, or otherwise respond to the court order or request for information. The county department shall:

1. Provide the information only to persons deemed essential to the court order, criminal investigation, Adult Protection team activities, the provision of services, or client request;

2. Edit the information prior to its release to physically remove or redact sensitive information not essential to the court order, criminal investigation, Adult Protection Team activities, provision of services and benefits, or client request;

3. Always redact the reporting party information and other documentation that could identify the reporting party unless specifically ordered by a court or the reporter has given written consent to release his/her information;

4. Always redact all HIPAA protected information and any other confidential information which is protected by law unless specifically ordered by a court; and,

5. Redact all other report and case information not directly related to the request.

H. When a court order or other written request for the release of information related to an APS report or case is received, as outlined in Sections 30.250, D and E, the county department shall:

1. Comply within the time frame ordered by the court, or in accordance with county department policy; and,

2. Provide a written notice with the information to be released regarding the legality of sharing confidential information.

I. All confidential APS information and data shall be processed, filed and stored using safeguards that prevent unauthorized personnel from acquiring, accessing, or retrieving the information.

1. Client files shall be kept in a secured area when not in use.

2. Passwords ~~to the APS data system~~ TO CAPS shall be kept secured.

3. The State Department shall ensure that only ~~APS~~ STATE AND COUNTY staff persons WITH A BUSINESS NEED TO DO SO SHALL have access to ~~the APS data system.~~CAPS.

4. Laptops and other mobile devices used to document in the field shall be protected and encrypted in compliance with HIPAA security requirements.

5. Email correspondence that contains APS confidential information shall be sent through secure encryption programs.

6. ALL CAPS USERS MUST ELECTRONICALLY SIGN THE CAPS SECURITY AND CONFIDENTIALITY AGREEMENT ANNUALLY.

J. COUNTY DEPARTMENTS SHALL NOT ACCESS INFORMATION IN CAPS THAT IS NOT NECESSARY TO SERVE THE CLIENT. VIOLATIONS MAY RESULT IN LOSS OF ACCESS TO CAPS, AT THE DISCRETION OF THE STATE DEPARTMENT.

~~J.~~K. Any person who willfully violates confidentiality or who encourages the release of information related to the mistreatment~~, exploitation,~~ and self-neglect of an at-risk adult from ~~the data system~~CAPS or THE APS case file, to persons not permitted access to such information, commits a Class 2 petty offense and shall be punished as provided in Section 26-3.1-102(7)(c), C.R.S.

~~K~~L. Clients shall be referred to the Colorado Address Confidentiality Program (ACP) as appropriate to determine their eligibility for services including the legal substitute mailing address and mail forwarding services. The State Department and county department shall comply with any applicable provisions for APS clients enrolled in the ACP.

30.260 DOCUMENTATION [Rev. eff. 9/1/14]

A. The county department shall THOROUGHLY document all Adult Protective Services (APS) reports and case information in ~~the data system~~CAPS. There shall be no parallel paper or electronic system used to enter APS documentation. DOCUMENTATION SHALL INCLUDE ALL ASPECTS OF THE APS CASE, INCLUDING:

1. INITIAL REPORT;

2. INVESTIGATION;

3. ASSESSMENT;

4. CASE PLAN;

5. CONTACT RECORDS FOR THE CLIENT, ALLEGED PERPETRATOR, REPORTER, AND ALL COLLATERALS AND SUPPORTS;

6. ONGOING CASE NOTES;

7. CASE CLOSURE; AND,

8. ANY OTHER PROCESSES RELATED TO THE CASE.

B. All documents and evidence critical to the APS case record shall be scanned into ~~the data system~~CAPS, to include:

1. ~~The~~A release of information form(s) signed by the client~~;~~, WHEN APPROPRIATE;

2. All of the client's Powers of Attorney(s), living will declaration, and/or other advance directives, as applicable;

3. All documents, reports, and correspondence related to guardianship, conservatorship, and representative payeeship, whether county department held or private, as applicable; and,

4. Other documentation, such as medical reports, results of psychiatric evaluations, photographic documentation, and other evidence collected during the investigation and assessment.

C. ALL DOCUMENTATION PERTAINING TO APS REPORTS AND CASES, INCLUDING INTERVIEW AND CASE NOTES, EVIDENCE GATHERED, SUCH AS PHOTOS, MEDICAL RECORDS, AND BANK STATEMENTS SHALL BE KEPT IN A SECURE LOCATION UNTIL DOCUMENTED IN CAPS AND THEN SHALL BE DESTROYED.

a. HARDCOPY AND ELECTRONIC APS FILES CREATED PRIOR TO JULY 1, 2014 SHALL BE KEPT IN A SECURED LOCATION.

b. ALL APS FILES CREATED JULY 1, 2014 OR LATER SHALL BE DOCUMENTED IN CAPS AND THE FILE/NOTES DESTROYED.

c. ORIGINAL LEGAL DOCUMENTS SUCH AS GUARDIANSHIP, REPRESENTATIVE PAYEESHIP, BIRTH CERTIFICATES, OR TAX DOCUMENTS MAY BE RETAINED IN A HARDCOPY FILE, IN ADDITION TO CAPS, THAT IS IN A SECURED LOCATION.

~~C~~.D. Case records shall be retained for a minimum of three (3) years, plus the current year, after the date of case closure.

30.300 STAFF QUALIFICATIONS, TRAINING, AND DUTIES

30.310 EDUCATION AND EXPERIENCE QUALIFICATIONS [Rev. eff. 9/1/14]

A. The county department shall ensure that all personnel who supervise or provide professional services in the APS program possess the following minimum qualifications for education and experience:

1. The Professional Entry (Training) Level position shall require a Bachelor's degree with an equivalent of thirty (30) semester or forty-five (45) quarter hours in human behavioral sciences or health care related courses, such as, social work, sociology, psychology, psychiatry, gerontology, nursing, special education, family intervention techniques, diagnostic measures, therapeutic techniques, guidance and counseling, CRIMINAL JUSTICE, ~~or~~ other human behavioral sciences, or A medical field relevant to the APS ~~P~~program and/or at-risk adults.

2. Professional Journey Level position shall meet the requirements for the Professional Entry (Training) Level position and shall have obtained the skills, knowledge, and abilities to perform duties at the fully independent working level, as follows:

   a. ~~The required degree plus o~~One (1) year of professional casework in a public or private social services agency ~~obtained~~ COMPLETED after the degree is obtained; or,

   b. A Master's degree in ~~social work.~~A FIELD AS LISTED IN 30.310, A, 1.

3. The Casework Supervisor position shall meet the requirements for the Professional Journey Level position plus have at least three years professional casework experience at the journey level obtained after the Bachelor's or Master's degree. County department managers, administrators, and directors with direct supervision shall meet this requirement.

4. The Case Aide and Intake Screener positions, if available in the county department, shall have obtained a high school diploma or a General Equivalency Diploma (GED) plus have at least six (6) months full time public contact in human services or a related field. Substitution for public contact is successful completion of a certificate program in gerontology and/or at least six, college level credit hours in a human behavioral sciences or health care field.

B. If proven recruitment difficulty exists or the APS staff person was hired to perform APS duties prior to November 1, 1998, the county department may request a waiver of these requirements by submitting a request to the State Department Adult Protective Services unit. The request shall include:

1. The position for which the county department is requesting a waiver, including the percentage of time the position will be performing the duties of the APS program (% FTE).

2. Justification of the need for a waiver, to include:

   a. Documentation of the recruiting effort;

   b. Educational background of the proposed candidate, including degrees and post degree training, such as completion of a gerontology certificate, post graduate coursework, or other relevant training courses;

   c. Years of direct experience working with at-risk adults or other vulnerable populations applicable to the APS Program and clients; and,

   d. Other relevant qualities and information that demonstrate the candidate would be acceptable as a training level caseworker.

3. A plan on how and when the candidate will meet the coursework requirement or will otherwise meet the educational requirements of the position.

4. If the waiver request is not approved and the county department disagrees with the decision, the county department may request review of the decision by the Executive Director of the State Department.

D. All APS staff education and experience shall be documented in ~~the data system~~CAPS.

30.320 BACKGROUND CHECK REQUIREMENTS [Eff. 8/1/12]

A. The county department shall complete a criminal background check on all prospective APS employees who, while in their employment, have direct, unsupervised contact with any actual or potential at-risk adult.

B. If the county department has not previously requested and received a criminal background check on a current employee hired on or after June 1, 2010, the county department shall immediately request a fingerprint criminal background check. The county department shall pay the fee.

C. The county department shall require a fingerprint background check for all prospective employees.

1. The county department shall submit to the Colorado Bureau of Investigation (CBI) a complete set of fingerprints taken by a qualified law enforcement agency to obtain any criminal record held by the CBI.

2. The background check shall include a check of the records at the Colorado Bureau of Investigation and the Federal Bureau of Investigation.

3. The county department is strongly urged to require the background check be flagged for future notification of arrest and/or conviction.

4. The prospective employee shall pay the fee for the criminal record check unless the county department chooses to pay the fee.

5. The prospective employee's employment shall be conditional upon a satisfactory criminal background check.

   a. The current employee or applicant shall be disqualified from employment, regardless of the length of time that may have passed since the discharge of the sentence imposed, for any felony criminal offenses as defined in Title 18, Articles

2-10, 12-13, 15-18.5, 20, 23 of the Colorado Revised Statutes, or any felony offense in any other state the elements of which are substantially similar to the elements of any of the offenses included herein.

b. At the county department's discretion, a person shall be disqualified from employment either as an employee or as a contracting employee if less than ten years have passed since the person was discharged from a sentence imposed for conviction of any of the following criminal offenses:

1) Third degree assault, as described in Section 18-3-204, C.R.S.;

2) Any misdemeanor, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in Section 18-6-800.3, C.R.S.;

3) Violation of a protection order, as described in Section 18-6-803.5, C.R.S.;

4) Any misdemeanor offense of child abuse, as defined in Section 18-6-401, C.R.S.;

5) Any misdemeanor offense of sexual assault on a client by a psychotherapist, as defined in Section 18-3-405.5, C.R.S.;

6) Any misdemeanor offense of arson, burglary and related offenses, robbery, or theft, as defined in Title 18, Articles 1-4, C.R.S.;

7) A pattern of misdemeanor convictions within the ten years immediately preceding the date of submission of the application, or;

8) Any misdemeanor offense in any other state, the elements of which are substantially similar to the elements of any of the offenses described above.

4. Prospective employees who are transferring from one county department to another are not required to be re-fingerprinted if they complete the following process:

a. New employees must obtain their CBI clearance letter or a photocopy of their processed fingerprint card from their former employer. They must attach it to a new fingerprint card, with the top portion completed.

b. The new fingerprint card must include the new employer's address. "Transfer – County Department" must be inserted in the "Reason Fingerprinted" block.

c. The CBI clearance letter (or photocopy of the old fingerprint card) and the new fingerprint card shall be sent with payment by the county department to the CBI.

d. County departments that have accounts with CBI are not required to send payment, but the county department shall enter its CBI account number in the OCA block of the new fingerprint card.

30.330 TRAINING REQUIREMENTS [Rev. eff. 9/1/14]

A. The county department shall ensure that all new APS staff completes required APS training, as follows:

1. New entry and journey level caseworkers shall successfully complete the Pre-Academy Workbook (PAW) WITHIN ONE (1) MONTH OF HIRE OR TRANSFER TO THE APS PROGRAM AND SHALL NOT BE ASSIGNED CASES UNTIL THE PAW HAS BEEN COMPLETED. THE CASEWORKER SHALL DOCUMENT COMPLETION OF THE PAW IN CAPS.

   ~~a. Full time APS caseworkers shall complete the PAW within three (3) months of hire or transfer to the APS Program.~~

   ~~b. Part time APS caseworkers shall complete the PAW within six (6) months of hire or transfer to the APS Program.~~

2. New entry and journey level caseworkers shall SUCCESSFULLY complete the APS training academy. ~~within nine months of hire or transfer to the APS Program.~~

   a. Small ~~counties~~ COUNTY DEPARTMENTS with only one (1) caseworker who is less than a twenty-five percent (25%) FTE in APS shall complete the training academy within ~~twelve (12~~)NINE (9) months of hire or transfer to the APS Program. Caseworkers are strongly urged to request support from the State Department on any cases opened prior to attending training academy.

   b. ALL OTHER COUNTY DEPARTMENTS WITH AT LEAST ONE (1) CASEWORKER~~Counties~~ with a twenty-five percent (25%) or higher FTE in APS shall complete the training academy within ~~nine (9)~~ SIX (6) months of hire or transfer to the APS Program.

3. New supervisors, managers, administrators, and/or county department directors with direct casework supervision duties shall successfully complete the web-based APS supervisor training within six (6) months of hire, transfer to the APS Program, or promotion from a caseworker position. The web-based training requirements shall be waived if the supervisor, manager, administrator, or director attends the APS training academy.

4. New case aides shall SUCCESSFULLY complete the Pre-Academy Workbook (PAW) within ~~three (3)~~ ONE (1) months of hire or transfer to the APS Program. Case aides may attend APS training academy, space permitting.

5. APS intake screeners or other county department staff designated to receive reports of alleged mistreatment~~, exploitation,~~ and self-neglect of at-risk adults ~~shall complete the web-based enhanced screening training within sixty (60) days of hire or transfer to their position. Intake screeners~~ may complete the Pre-Academy Workbook (PAW).

B. The county department shall ensure that any APS staff member on the job longer than twelve (12) months completes ongoing training relevant to the APS Program and client populations. Attendance at any specific training event is at the supervisor's discretion.

   1. Caseworkers shall successfully complete at least ~~thirty (30)~~ FORTY (40) hours of ongoing training per fiscal year related to the APS Program, target populations, and the provision of casework services, as follows:

      a. At least fifteen (15) hours shall be State Department provided training specifically related to the APS Program, which may include:

         1) Statewide or regional training;

2) Quarterly training meetings;

3) County department onsite training; and/or,

4) Live webinar or self-directed web-based training.

b. Additional training options relevant to the APS Program, target populations, and/or the provision of casework services shall include, but are not limited to:

1) National APS organizations' webinar training;

2) Child Welfare Training Academy coursework that has cross-over relevance and has been approved by the State Department APS unit;

3) Other state or national APS conferences; AND/OR,

4) Regional training or conference conducted by agencies or professionals that work with older adults or people with disabilities including, but not limited to, a community centered board, Alzheimer's association, Colorado legal assistance developer, Colorado Coalition for Elder Rights and Abuse Prevention (CCERAP), Colorado Long-Term Care Ombudsman, local law enforcement, AP team, APS supervisor or county department attorney.~~; and/or,.~~

5) Reading reports or professional journals ~~provided or approved by the State Department APS unit~~ about current APS best practices, research, and interventions.

2. Supervisors, managers, administrators, and/or county department directors with direct casework supervision duties shall successfully complete at least ~~twenty (20~~) THIRTY (30) hours of ongoing training per fiscal year related to the APS Program, target populations, the provision of casework services, or general supervision of employees, as follows:

a. At least ~~ten (10)~~ FIFTEEN (15) hours shall be State Department provided training specifically related to the APS Program, as outlined for caseworkers.

b. Additional training options include those outlined for caseworkers plus training options related to general employee supervision.

3. Case aides shall successfully complete at least ~~fifteen (15)~~ TWENTY (20) hours of ongoing training per fiscal year, as outlined for caseworkers. At least seven (7) hours shall be State Department provided training.

4. Required training hours as outlined in Section 30.330, B, 1-3, shall be prorated for part time APS staff.

a. Persons working less than twenty-five percent (25%) in APS shall complete a minimum of:

1) ~~Six (6)~~ TEN (10) hours for caseworkers, SIX (6) OF WHICH SHALL BE STATE PROVIDED; AND,

2) ~~Four (4)~~ FIVE (5) hours for supervisors, managers, administrators, and/or county directors with direct casework supervision duties, THREE (3) OF WHICH SHALL BE STATE PROVIDED; and,

3) ~~Three (3)~~ FOUR (4) hours for case aides, TWO (2) OF WHICH SHALL BE STATE PROVIDED.

b. Persons working twenty-five through forty nine percent (25-49%) in APS shall complete a minimum of:

1) ~~Fifteen (15)~~TWENTY (20) hours for caseworkers, AT LEAST TEN (10) SHALL BE STATE PROVIDED;

2) ~~Eight (8)~~TEN (10) hours for supervisors, managers, administrators, and/or county directors with direct casework supervision duties, AT LEAST SIX (6) SHALL BE STATE PROVIDED; and,

3) ~~Eight (8)~~TEN (10) hours for case aides, AT LEAST FIVE (5) SHALL BE STATE PROVIDED.

c. Persons working fifty through seventy-four percent (50-74%) in APS shall complete a minimum of:

1) ~~Twenty-two (22~~) THIRTY (30) hours for caseworkers, AT LEAST FIFTEEN (15) SHALL BE STATE PROVIDED;

2) ~~Fifteen (15)~~ TWENTY (20) hours for supervisors, managers, administrators, and/or county directors with direct casework supervision duties, AT LEAST FIFTEEN (15) SHALL BE STATE PROVIDED; and,

3) ~~Eleven (11)~~TWELVE (12) hours for case aides, AT LEAST SIX (6) SHALL BE STATE PROVIDED.

d. Persons working seventy-five through one hundred percent (75-100%) in APS shall complete the full training requirement outlined in 30.330, B, 1-3.

C. All training hours shall be documented in ~~the data system~~CAPS within fourteen (14) calendar days of completion of the training.

30.340 STAFF DUTIES AND RESPONSIBILITIES [Rev. eff. 9/1/14]

A. The direct supervisor OR LEAD WORKER shall, at a minimum:

1. Receive reports of mistreatment~~, exploitation,~~ and self-neglect as outlined in Section~~s~~ 30.400~~10 through 30.430~~.

2. Evaluate the report, ~~and~~ determine the response, and develop a plan for caseworker safety, as outlined in Section~~s~~ 30.400~~10 through 30.430~~. Counties ~~may~~ ARE URGED TO use the RED Team process.

3. Staff open cases of each caseworker monthly to ensure cases meet program requirements related to the provision of protective services.

4. REVIEW CASES TO ENSURE: ~~Use the APS case review tool in the data system~~CAPS ~~each month to review a minimum of fifteen percent (15%) TWENTY-FIVE (25%) of each caseworker's cases that were open and/or closed that month to ensure:~~

a. Timely casework;

b. Investigation, assessment, and case planning were thorough and complete;

c. Case closure, if applicable, was appropriate; and,

d. Documentation in ~~the data system~~CAPS is ~~thorough~~COMPLETE and ~~complete~~ACCURATE.

5. REVIEW OF CASES SHALL BE COMPLETED USING ONE OF TWO APPROVED METHODS:

a. USING THE CASE REVIEW SCORE CARD IN CAPS, EACH MONTH REVIEW FIFTEEN PERCENT (15%) OF EACH CASEWORKER'S CASES THAT WERE OPEN AND/OR CLOSED DURING THE MONTH; OR,

b. APPROVE EVERY COUNTY APS CASE AT THREE KEY JUNCTURES OF THE APS CASEWORK PROCESS UTILIZING THE AUTOMATED APPROVAL PROCESS IN CAPS, AS FOLLOWS:

i. UPON COMPLETION OF THE INITIAL INVESTIGATION, ASSESSMENT, AND CASE PLAN;

ii. UPON COMPLETION OF A SIX MONTH REASSESSMENT FOR CASES OPEN LONGER THAN SIX MONTHS; AND,

iii. AT CASE CLOSURE.

~~5~~6. Assess APS caseworkers' professional development needs and provide opportunities for training.

~~6~~7. Respond to APS reports or have a contingency plan to respond within assigned time frames, including emergencies, and to provide protective services when no caseworker is available.

B. APS caseworkers shall, at a minimum:

1. Receive reports of mistreatment~~, exploitation,~~ and self-neglect as outlined in Section~~s~~ 30.400~~10 through 30.430~~;

2. Investigate allegations and assess the client's safety and needs as outlined in Section 30.500;

3. Develop, implement, and monitor case plans, conduct required client visits, and provide protective services as outlined in Section 30.600;

4. Document case findings as outlined throughout 12 CCR 2518-1; AND,

5. Assume responsibility for own learning and required training hours.

C. APS case aides may assist caseworkers in completing non-professional level tasks that do not require casework expertise, but shall not perform the duties of the caseworker or supervisor, such as completing:

1. The investigation and/or assessment;

2. The case plan;

3. The required monthly client contact visits; or,

4. Required reports to the court, for cases in which the county department is the guardian or conservator.

D. APS ~~call~~ INTAKE screeners or administrative support staff may:

1. Receive and document intake reports in ~~the data system~~ CAPS OR THROUGH THE CAPS WEB2CASE FORM;

2. Assign all reports to the supervisors for determination of appropriate response; and,

3. Direct urgent calls to the appropriate internal and external authorities.

30.400 REPORT RECEIPT AND RESPONSE

30.410 INTAKE [Rev. eff. 9/1/14]

A. The county department shall receive oral or written reports of at-risk adult mistreatment~~, exploitation,~~ and self-neglect, OCCURRING IN THE COMMUNITY OR IN A FACILITY.

B. The county department shall have an established process during business and non-business hours for receiving such reports.

C. The county department shall input oral reports directly in ~~the data system~~CAPS OR THE CAPS WEB2CASE FORM. Written reports received via email, fax, or mail shall be documented in ~~the data system~~CAPS within one (1) business day of receipt. If unable to enter the report in the system within one business day, the county department shall document the reason.

D. ~~The data system~~ CAPS shall guide the information gathered for the report to include:

1. The client's demographic information, such as name, gender, date of birth or approximate age, address, current location if different from permanent address, and phone number;

2. The reporter's demographic information, unless the reporter requests anonymity, such as name, phone number, address, relationship to client and, if applicable, the reporter's agency or place of business;

3. Allegations of mistreatment~~, exploitation,~~ or self-neglect;

4. Safety concerns for the client;

5. Safety concerns for the caseworker; and,

6. The alleged perpetrator's information, such as name, gender, address, phone number, and relationship to the client, when mistreatment is alleged.

E. THE COUNTY DEPARTMENT SHALL DETERMINE JURISDICTION FOR RESPONDING TO THE REPORT.

1. THE COUNTY DEPARTMENT WITH JURISDICTION FOR RESPONDING TO A REPORT IS THE COUNTY IN WHICH THE ADULT RESIDES.

2. WHEN THE ADULT IS HOMELESS, AS DEFINED IN 42 U.S.C. SECTION 11302, THE COUNTY DEPARTMENT WITH JURISDICTION IS THE COUNTY IN WHICH THE ADULT'S PRIMARY NIGHTTIME RESIDENCE IS LOCATED.

3. IF JURISDICTION IS UNABLE TO BE DETERMINED BY 1 OR 2, ABOVE, THE COUNTY DEPARTMENT WITH JURISDICTION IS THE COUNTY IN WHICH THE ADULT IS CURRENTLY PRESENT.

4. IF AN EMERGENCY RESPONSE IS NECESSARY, THE COUNTY DEPARTMENT WHERE THE ADULT IS LOCATED AT THE TIME OF THE REPORT IS THE RESPONSIBLE COUNTY DEPARTMENT UNTIL JURISDICTION IS DETERMINED.

F. COUNTY DEPARTMENTS SHALL UTILIZE ALL AVAILABLE RESOURCES TO DETERMINE JURISDICTION, SUCH AS:

1. HISTORY WITHIN CAPS;

2. COLORADO BENEFITS MANAGEMENT SYSTEM (CBMS);

3. COLORADO COURTS;

4. WHERE SERVICES ARE BEING PROVIDED; AND/OR,

5. THE ADULT'S SCHOOL.

~~E~~G. If a county department receives a report and determines that the report was made to the wrong county, the receiving county department shall ~~forward~~TRANSFER the report to the responsible county department as soon as possible, but no later than ~~eight (8)~~ ONE (1) hour~~S~~ after determining the correct county.

30.420 REPORT CATEGORIZATION [Rev. eff. 9/1/14]

A. The county department shall review and evaluate the report UTILIZING THE RED TEAM FRAMEWORK OR SUPERVISORY REVIEW to determine whether THE:

1. ~~The c~~Client meets the definition of an at-risk adult; and,

2. ~~The a~~Allegations involve mistreatment~~, exploitation,~~ or self-neglect.

~~3~~B. The county department shall not investigate reports of verbal and/or emotional abuse when no other mistreatment indicators exist because verbal and/or emotional abuse are not included as mistreatment in C.R.S. Title 26, Article 3.1.

~~B~~C. ~~The data system~~CAPS ~~shall~~ WILL generate a response recommendation.

1. The APS supervisor shall have the final decision to screen in or out the report.

2. The APS supervisor shall document in ~~the data system~~CAPS why the ~~data system~~ CAPS recommendation was reversed.

~~C~~D. The county shall document and screen all reports received from law enforcement, as a result of Section 18-6.5-108(2)(b), C.R.S., UTILIZING THE RED TEAM FRAMEWORK OR SUPERVISORY REVIEW, to determine if the victim and the allegations meet AP eligibility criteria outlined in Sections 30.230 and 30.420, A.

E. COUNTY DEPARTMENTS ARE URGED TO DEVELOP AND IMPLEMENT A PROCESS UTILIZING THE RED TEAM FRAMEWORK IN CAPS TO REVIEW REPORTS TO DETERMINE REPORT CATEGORIZATION AND RESPONSE TIME FRAMES. THE SUPERVISOR OR LEAD WORKER HAS THE DISCRETION TO OVERRULE THE RED TEAM DECISION.

~~D~~F. Reports that do not involve an at-risk adult and mistreatment~~, exploitation,~~ or self-neglect, as outlined in Section 30.420, A, shall be screened out NO LATER THAN THE THIRD WORKING DAY AFTER THE RECEIPT OF THE REPORT. The county department shall not conduct an investigation.

1. The county department ~~shall~~MAY provide information and/or referral(s) to the reporting party, as appropriate.

2. The county department may inform the reporting party of the decision not to investigate.

3. The county department shall document the reason the report was screened out.

~~E~~G. Reports that involve an at-risk adult and mistreatment~~, exploitation,~~ or self-neglect, as outlined in Section 30.420, A, shall be screened in and are determined to be a case.

30.430 RESPONSE PRIORITY [Rev eff. 9/1/14]

A. The county department shall determine a time frame response to the case based upon the reported level of risk.

B. When factors present indicate the client is in clear and ~~imminent~~ IMMEDIATE danger or urgent and significant risk of harm due to the severity of the mistreatment~~, exploitation,~~ or self-neglect, or due to the vulnerability or physical frailty of the client, the county department shall:

1. Determine the case to be an emergency;

2. Call 911, if appropriate based on the circumstances of the report; and,

3. Make an initial response as soon as possible, but no later than twenty-four (24) hours including non-business ~~hours~~ DAYS, after the receipt of the report. An initial response shall be:

   a. A face-to-face visit with the client; or,

   b. An attempted face-to-face visit with the client; or,

   c. An outreach to another professional, such as law enforcement~~, Long Term Care Ombudsman,~~ or hospital staff, to ascertain the client's immediate safety.

4. If the initial response was not a face-to-face contact with the client ~~or~~ AND the county department was unable to ascertain the client's safety, the county department shall attempt a face-to-face client contact each day following the initial attempt at contact, including non-business days.

   a. A law enforcement welfare check may be substituted for ~~one~~ attemptS at contact DURING NON-BUSINESS DAYS. ~~but does not qualify as the face-to-face contact.~~ THE COUNTY DEPARTMENT SHALL FOLLOW UP ON THE NEXT WORKING DAY.

b. If the county department has confirmed the client to be unavailable or safe, SUCH AS IN THE INTENSIVE CARE UNIT (ICU), the reason for delayed response shall be documented.

c. Initial and subsequent attempts at contact shall begin immediately when the client becomes or is expected to become available.

d. Following the third DAY OF unsuccessful attemptS at contact, the county department may choose to send a letter requesting an appointment with the client.

e. If attempts at contact remain unsuccessful, the county department shall close the ~~referral~~CASE no later than ~~twenty (20)~~THIRTY-FIVE (35) calendar days after the last attempt at contact.

f. The county department shall document ~~in the data system~~ all attempts to contact the client.

5. IF THE INITIAL RESPONSE WAS NOT A FACE-TO-FACE CONTACT WITH THE CLIENT ~~If~~ BUT the county department was able to ascertain safety, it shall make a face-to-face client contact on the first working day following the report. ~~If the client is unavailable, such as in ICU, the county shall document why the face-to-face could not be completed~~.

a. If the county department has confirmed the client to be unavailable, SUCH AS IN THE INTENSIVE CARE UNIT (ICU), the reason shall be documented.

b. Initial and subsequent attempts at contact shall begin immediately when the client becomes or is expected to become available.

c. Following the third DAY OF unsuccessful attemptS at contact, the county department may choose to send a letter requesting an appointment with the client.

d. If attempts at contact remain unsuccessful, the county department shall close the case no later ~~twenty (20)~~ THIRTY-FIVE (35) calendar days after the last attempt at contact.

e. The county department shall document ~~in the data system~~ all attempts to contact the client.

C. When ~~factors present~~ THE REPORT AND SUBSEQUENT SUPERVISORY REVIEW AND/OR RED TEAM PROCESS indicate the client is not in ~~imminent~~ IMMEDIATE danger or urgent risk of harm but mistreatment~~, exploitation,~~ or self-neglect is present or LIKELY PRESENT, ~~conditions exist that might reasonably result in mistreatment, exploitation, or self-neglect,~~ the county department shall:

1. Determine the case to be a non-emergency.

2. Make AN INITIAL RESPONSE ~~A face-to-face contact with the client~~ no later than three (3) working days beginning the day after the county department's receipt of the report. AN INITIAL RESPONSE SHALL BE:

a. A FACE-TO FACE VISIT WITH THE CLIENT; OR

b. AN ATTEMPTED FACE-TO-FACE WITH THE CLIENT;

c. AN OUTREACH TO ANOTHER PROFESSIONAL SUCH AS LAW ENFORCEMENT OR HOSPITAL STAFF, TO ASCERTAIN THE CLIENT'S IMMEDIATE SAFETY.

~~a~~3. When the initial ~~attempt~~ RESPONSE WAS NOT A~~at~~ face-to-face contact with the client OR THE COUNTY DEPARTMENT WAS UNABLE TO ASCERTAIN THE CLIENT'S SAFETY, ~~is unsuccessful, an attempt at face-to-face~~ THE COUNTY DEPARTMENT SHALL ATTEMPT A FACE-TO-FACE CLIENT contact ~~shall be made~~ every other WORKING day for a minimum of three attempts.

a. A LAW ENFORCEMENT WELFARE CHECK MAY BE SUBSTITUTED FOR ONE ATTEMPT AT CONTACT, AND QUALIFIES AS ONE OF THE THREE REQUIRED ATTEMPTS AT CONTACT.

~~1)~~b. If the county department has confirmed the client to be unavailable or safe, the reason for delayed response shall be documented.

~~2)~~c. Initial and subsequent attempts at contact shall begin immediately when the client becomes or is expected to become available.

~~b~~d. Following the third unsuccessful attempt at contact, the county department may choose to send a letter requesting an appointment with the client.

~~c.~~e. If attempts at contact remain unsuccessful, the county department shall close the case no later than ~~twenty (20)~~THIRTY-FIVE (35) calendar days after the last attempted contact.

~~d.~~f. The county department shall document all attempts to contact the client.

4. IF THE COUNTY DEPARTMENT WAS ABLE TO ASCERTAIN SAFETY,

a. THE COUNTY DEPARTMENT SHALL ATTEMPT A FACE-TO-FACE CLIENT CONTACT WITHIN THE RESPONSE TIME FRAME OR BEGINNING ON THE FIRST WORKING DAY AFTER ASCERTAINING SAFETY IF SAFETY WERE ASCERTAINED ON THE LAST DAY OF THE RESPONSE TIME FRAME. ATTEMPTS AT CONTACT SHALL CONTINUE EVERY OTHER WORKING DAY FOR A MINIMUM OF THREE ATTEMPTS.

b. IF THE COUNTY DEPARTMENT HAS CONFIRMED THE CLIENT TO BE UNAVAILABLE, THE REASON SHALL BE DOCUMENTED.

c. INITIAL AND SUBSEQUENT ATTEMPTS AT CONTACT SHALL BEGIN IMMEDIATELY WHEN THE CLIENT BECOMES OR IS EXPECTED TO BECOME AVAILABLE.

d. FOLLOWING THE THIRD UNSUCCESSFUL ATTEMPT AT CONTACT, THE COUNTY DEPARTMENT MAY CHOOSE TO SEND A LETTER REQUESTING AN APPOINTMENT WITH THE CLIENT.

e. IF ATTEMPTS AT CONTACT REMAIN UNSUCCESSFUL, THE COUNTY DEPARTMENT SHALL CLOSE THE CASE NO LATER THAN THIRTY-FIVE (35) CALENDAR DAYS AFTER THE LAST ATTEMPT AT CONTACT.

f. THE COUNTY DEPARTMENT SHALL DOCUMENT ALL ATTEMPTS TO CONTACT THE CLIENT.

D. Prior to the initial face-to-face client contact visit, the county department shall determine whether:

1. The visit and investigation should be made in conjunction with law enforcement and/or personnel from other agencies in accordance with the county department's cooperative agreements;

2. The client is in ~~the data system~~CAPS and/or is otherwise known to the county department;

3. Safety concerns exist, based on historical data and information provided in the report, requiring the caseworker to be accompanied by:

a. Law enforcement;

b. The supervisor;

c. Another case worker; or,

d. Emergency, medical, and/or mental health personnel, if known or suspected medical or psychiatric conditions exist.

E. If the case originally appears to indicate a need for a face-to-face investigation but further assessment determines that a face-to-face contact is not required to resolve potential safety and risk concerns, the county department may ~~provide telephone response and assistance~~ COLLABORATE WITH OTHER PROFESSIONALS OR RESPONSIBLE FAMILY OR SUPPORTS TO RESOLVE THE SAFETY CONCERNS. Cases appropriate for ~~telephone response and assistance~~ PHONE COLLABORATION include those:

1. That present heightened worker safety concerns and upon consultation, law enforcement directs APS not to respond.

2. That present heightened worker safety concerns due to environmental or infectious disease concerns and upon consultation, first responders, public health officials, and/or code enforcement directs APS not to respond.

3. In which it is determined that responsible family is aware of the concerns and is working appropriately to address the concerns.

4. Regarding a chronic situation in which APS has had a visit with the competent client in the past thirty (30) calendar days and determined APS intervention is unwanted or could not resolve the concern.

~~5. In which the client is competent and able, with assistance from APS or other support systems, to arrange services.~~

~~6~~5. Regarding clients that have a case manager in place, such as a Single Entry Point (SEP) case manager, and calls between APS and the case manager can resolve the reporter's concerns.

~~7~~6. In which the client is hospitalized or institutionalized prior to the initial visit, and the county has determined that ongoing protective services is not required.

30.500 INVESTIGATION AND ASSESSMENT

30.510 INVESTIGATION AND ASSESSMENT OVERVIEW [Rev. eff. 9/1/14]

A. The county department shall ~~begin~~CONDUCT ~~an~~ A THOROUGH AND COMPLETE investigation into the allegations UNLESS THE INITIAL VISIT AND ASSESSMENT CONFIRMS THAT THE CLIENT IS NOT AN AT-RISK ADULT. ~~and an assessment of the client's risk, safety, and strengths during the initial face-to-face visit to further clarify the level of risk of mistreatment, exploitation, or self-neglect to the client and the client's immediate needs.~~ INVESTIGATION IS REQUIRED BY STATUTE AND THE CLIENT CANNOT REFUSE AN INVESTIGATION.

B. THE COUNTY DEPARTMENT SHALL CONDUCT AN ASSESSMENT OF THE CLIENT'S RISK, SAFETY, AND STRENGTHS DURING THE INITIAL FACE-TO-FACE VISIT TO FURTHER CLARIFY THE LEVEL OF RISK OF MISTREATMENT OR SELF-NEGLECT TO THE CLIENT AND THE CLIENT'S IMMEDIATE NEEDS, WHENEVER POSSIBLE.

~~B~~C. The investigation and assessment may be conducted independent of one another or simultaneously, depending on the nature of the allegations.

D. IF UPON INITIAL INVESTIGATION, THE COUNTY DEPARTMENT DETERMINES A DIFFERENT COUNTY HAS JURISDICTION, THE ORIGINATING COUNTY DEPARTMENT SHALL TRANSFER THE CASE IN CAPS. THE COUNTY DEPARTMENT DETERMINED TO HAVE JURISDICTION SHALL UPHOLD THE SCREENING DECISION AND CONDUCT THE INVESTIGATION AND ASSESSMENT, UNLESS:

1. ADDITIONAL OR NEW INFORMATION RELATED TO THE SAFETY OF THE ADULT OR ALLEGED MISTREATMENT OR SELF-NEGLECT INDICATING THE CASE MAY BE CLOSED IS GATHERED BY THE COUNTY DEPARTMENT DETERMINED TO HAVE JURISDICTION.

2. THE BASIS FOR THE DECISION TO CLOSE THE CASE SHALL BE DOCUMENTED IN CAPS.

30.520 INVESTIGATION [Rev. eff. 9/1/14]

A. The county department shall conduct an investigation to determine findings related to allegations of mistreatment~~, exploitation~~ or self-neglect. The investigation shall include, but may not be limited to:

1. Determining the need for protective services. If the client is in clear and ~~imminent~~ IMMEDIATE danger, the county shall intervene immediately by notifying the proper emergency responders~~;~~.

2. DETERMINING IF THE INVESTIGATION SHOULD BE CONDUCTED JOINTLY WITH ANOTHER ENTITY, SUCH AS:

   a. LAW ENFORCEMENT AND/OR THE DISTRICT ATTORNEY;

   b. COMMUNITY CENTERED BOARD;

   c. HEALTH FACILITIES DIVISION;

   d. ATTORNEY GENERAL'S MEDICAID FRAUD UNIT; AND/OR,

   e. THE LONG-TERM CARE OMBUDSMAN.

~~2~~3. Conducting a face-to-face interview with the client, unannounced and in private, whenever possible, AND IF NOT UNANNOUNCED AND/OR IN PRIVATE, THE REASON SHALL BE DOCUMENTED IN CAPS~~;~~.

~~3~~4. Conducting interviews with collateral contacts.

~~4~~5. Interviewing the alleged perpetrator(s), with or without law enforcement, when appropriate and safe, AND IF THE PERPETRATOR IS NOT INTERVIEWED, THE REASON SHALL BE DOCUMENTED IN CAPS.

~~5~~6. Collecting evidence and documenting with photographs or other means, when appropriate, SUCH AS:

a. POLICE REPORTS;

b. ANY AVAILABLE INVESTIGATION REPORT FROM A CURRENTLY OR PREVIOUSLY INVOLVED FACILITY AND THE OCCURRENCE REPORT FROM THE HEALTH FACILITIES DIVISION;

c. MEDICAL AND MENTAL HEALTH RECORDS;

d. BANK RECORDS;

e. CARE PLANS FOR ANY PERSON IN A FACILITY OR RECEIVING OTHER SERVICES THAT REQUIRE A CARE PLAN AND ANY DAILY LOGS OR CHARTS; AND/OR,

f. STAFFING RECORDS AND EMPLOYEE WORK SCHEDULES WHEN INVESTIGATING IN A FACILITY.

~~6~~7. Making a finding regarding the substantiation or unsubstantiation of the allegations~~;~~.

~~7~~8. Determining the identity of, and making a finding related to, the perpetrator(s) of the mistreatment ~~OR exploitation or self-negect;~~.

~~8~~9. Determining whether there are additional mistreatment concerns not reported in the initial allegations and investigating AND DOCUMENTING any NEWLY identified concerns~~;~~. ~~and,~~

~~9~~10. Notifying law enforcement when criminal activity is suspected.

~~B. The county department shall~~

~~1.~~B. THE COUNTY DEPARTMENT SHALL ~~C~~complete ~~and document~~ the investigation ~~in the data system~~ within forty-five (45) calendar days of the receipt of the ~~referral~~REPORT, ENSURING THAT DOCUMENTATION OF THE INVESTIGATION IS OCCURRING IN CAPS THROUGHOUT THE INVESTIGATION PROCESS, AS FOLLOWS: ~~. If the investigation cannot be completed within this time frame, the county department shall document the reason why in the data system.~~

1. ALL INTERVIEWS, CONTACTS, OR ATTEMPTED CONTACTS WITH THE CLIENT, COLLATERALS, ALLEGED PERPETRATORS, AND OTHER CONTACTS DURING THE INVESTIGATION SHALL BE DOCUMENTED WITHIN FOURTEEN (14) CALENDAR DAYS OF RECEIPT OF THE INFORMATION.

~~2. Document the investigation in the data system to minimally include window fields and narrative of the:~~

~~a. Allegations;~~

~~b. Mistreatment category(ies) identified by the reporter and any additional mistreatment, exploitation, or self-neglect identified during the investigation, including a finding for each category;~~

~~b. Worker safety issues, if different from the information in the initial report;~~

~~d. Client interview information;~~

~~e. Alleged perpetrator(s) information, including a finding for each perpetrator, if applicable;~~

~~f. Collateral interview information;~~

~~g. Evidence collected;~~

~~h. Determination of whether the allegation(s) and any additional mistreatment, exploitation or self-neglect identified during the investigation are substantiated, unsubstantiated, or are inconclusive; and,~~

~~i. Date referred to law enforcement or the District Attorney, and a description of law enforcement or District Attorney (DA) involvement, if any~~.

2. ALL EVIDENCE COLLECTED DURING THE INVESTIGATION SHALL BE SCANNED AND ATTACHED TO THE CASE BY THE CONCLUSION OF THE INVESTIGATION.

3. FINDINGS FOR THE ALLEGATIONS AND ALLEGED PERPETRATOR SHALL BE DOCUMENTED NO LATER THAN FORTY-FIVE (45) CALENDAR DAYS FROM RECEIPT OF THE REPORT.

4. IF THE INVESTIGATION CANNOT BE COMPLETED WITHIN THIS TIME FRAME, THE COUNTY DEPARTMENT SHALL DOCUMENT THE REASON WHY.

30.530 ASSESSMENT [Rev. eff. 9/1/14]

A. The county department shall COMPLETE A BASELINE ASSESSMENT OF~~assess~~ the client to determine if there is a need for protective services. If the client is in clear and ~~imminent~~ IMMEDIATE danger, the county shall intervene immediately by notifying the proper authorities or arranging for appropriate emergency responders.

B. The county department shall determine ~~for each indicator a level of impact to~~ the client's RISK AND safety~~, health, and well-being by assessing the client's strengths and needs~~ USING THE ASSESSMENT TOOL IN CAPS. ~~in the following five (5) assessment status areas, as applicable:~~

~~1. Physical status, including the client's ability to perform various activities of daily living;~~

~~2. Environmental status, including the conditions within the client's residence, the availability of food and drinking water, and the functionality of heating, plumbing, and electrical systems;~~

3. Resources and financial status, including the client's income, ability to access income, changes in financial circumstances, unpaid bills, and signs of exploitation;

4. Medical status, including the client's current and previous medical conditions, hospitalizations, prescribed medications, insurance, and hearing, vision or dental needs; and,

5. Mental and behavioral status, including the client's capacity to make decisions; ability to manage money or medication, ability to receive or communicate information; ability to plan and sequence; behaviors that threaten the safety of the client or others; a history of mental health conditions; and, any recent loss.

C. The county department shall assess the client's support system status, including family members, friends, involvement with organizations, and any other natural support.

D. The county department shall:

1C. THE COUNTY DEPARTMENT SHALL Ccomplete and document the assessment in the data systemCAPS within forty-five (45) calendar days of the receipt of the report, AS FOLLOWS: If the assessment cannot be completed within this time frame, the county department shall document the reason why in the data system.

1. ALL IMPACTS AND MITIGATING SERVICES, AND THE NARRATIVE SUMMARY SHALL BE DOCUMENTED AND THE ASSESSMENT MARKED COMPLETE NO LATER THAN FORTY-FIVE (45) CALENDAR DAYS FROM RECEIPT OF THE REPORT.

2. Document the assessment in the data system to minimally include window fields and narrative of:

a. The observations in each of the six assessment status areas, as applicable; and,

b. The level of impact for all status area risk factor(s); and,

c. If a mitigating service is in place to improve safety.

2. IF THE ASSESSMENT CANNOT BE COMPLETED WITHIN THIS TIME FRAME, THE COUNTY DEPARTMENT SHALL DOCUMENT THE REASON WHY.

30.600. CASE PLANNING AND IMPLEMENTATION

30.610. CASE PLAN DEVELOPMENT [Rev. eff. 9/1/14]

A. The county department shall develop a case plan for protective services based upon the findings of the investigation and assessment and in accordance with APS principles.

B. A case plan shall not be developed when the allegations are unsubstantiated and there is no other identified need.

C. The case plan shall be documented in the data system and shall include:

1. Client strengths, including services in place, support systems, resources, and the client's personal abilities;

2. Client needs, including the nature of the protective issue and/or needs of the client and why the client is unable to meet his/her own needs without APS intervention;

31. THE service goals NEEDS NECESSARY TO SUCCESSFULLY ACHIEVE SAFETY IMPROVEMENT FOR ANY IDENTIFIED RISK FACTORS, CHARACTERIZED WITH A SIGNIFICANT IMPACT, FOR WHICH THERE IS NO ADEQUATE MITIGATING SERVICE IN PLACE AT THE TIME OF APS INITIAL RESPONSE; at a minimum to include a goal for all unmitigated factors with an SIGNIFICANT impact to the client's safety, including why the goal was identified, why it is the least restrictive intervention, how it will meet the client's needs and desires and reduce risk, the person responsible for implementing the goal, and the implementation date; and,

2. THE PERSON RESPONSIBLE FOR ARRANGING EACH IDENTIFIED SERVICE NEED, AND IF OTHER THAN THE COUNTY DEPARTMENT, DOCUMENT THE INDIVIDUAL'S AGREEMENT TO ARRANGE THE SERVICE NEED; AND,

43. Client's and/or client's fiduciary's input into the development of the case plan, including the client's and/or the fiduciary's consent to the overall plan and the specific goals as outlined in Section 30.620. THE STATUS OF ALL IDENTIFIED SERVICE NEEDS.

D. The county department shall:

1D. THE COUNTY DEPARTMENT SHALL Ccomplete and document the case plan in the data system within forty-five (45) calendar days of the receipt of the report. If the case plan cannot be completed within this time frame, the county department shall document the reason why in CAPS. the data system.

2. Document the case plan in the data system to minimally include window fields and narrative of the required elements outlined in Section 30.610, C.

E. The county department shall implement services, upon consent of the client, that are available in the community and that the client is eligible to receive at no or reduced cost or is able to pay for privately.

1. The county department shall not be required to provide and/or pay for services that are not available in the community or those that the client is not eligible to receive at no or reduced cost or is able to pay for privately; but,

2. The county department is urged to explore all available options, including private companies, to secure needed services.

F. If services are unavailable through other government programs or local service providers and the APS client is unable to pay for the services, the county shall utilize APS client services funds, within available appropriations, to purchase GOODS AND services for the APS client. APS county services funds shall be utilized:

1. THE COUNTY DEPARTMENT SHALL NOT OPEN AN APS CASE ONLY TO PURCHASE A SERVICE FOR A COMMUNITY MEMBER AND SHALL NOT USE APS CLIENT SERVICES FUNDS FOR ANY SERVICE THAT DOES NOT BENEFIT THE APS CLIENT.

1.2. APS client services funds shall be utilized in emergency situations, to include, but not limited to, emergency shelter, food, or utilities; and/or, CLIENT SERVICES FUNDS MAY BE USED IN THE FOLLOWING SITUATIONS:

a. EMERGENCY SITUATIONS, SUCH AS EMERGENCY SHELTER, FOOD, MEDICINE, OR UTILITIES;

b. WHEN THE PURCHASE(S) RESOLVES THE IMMEDIATE NEED; OR,

~~2~~c. For one-time, temporary, or short-term needs while the APS client is waiting for other service providers or funding sources to be approved and services begun; and/or,

3. GOODS AND SERVICES ACCEPTABLE FOR PURCHASE WITH CLIENT SERVICES FUNDS SHALL BE THE MINIMUM NECESSARY TO RESOLVE THE SAFETY CONCERN.

~~3~~4. ~~To~~ CLIENT SERVICES FUNDS MAY BE USED TO develop a county or regional contract with an agency or professional to provide a specific service for multiple APS clients throughout the contract duration, such as a specialist to conduct in-home capacity evaluations, a registered nurse to do in-home medical evaluations, or a long-term care facility to provide emergency shelter beds.

30.620 PROVISION OF SERVICES [Rev. eff. 9/1/14]

A. THE COUNTY DEPARTMENT SHALL PROVIDE PROTECTIVE SERVICES FOR THE SHORTEST DURATION NECESSARY TO ENSURE THE CLIENT'S SAFETY BY IMPLEMENTING CASE PLAN GOALS AS QUICKLY AS POSSIBLE IN ORDER TO STABILIZE THE CLIENT'S SITUATION AND PREVENT FURTHER MISTREATMENT OR SELF-NEGLECT.

~~A~~B. If the client appears to have capacity to make decisions:~~, the client's consent or refusal to the provision of protective services shall be obtained. and documented in the data system~~.

~~1.~~ ~~Consent or refusal shall be obtained within forty-five (45) calendar days of receipt of the report and documented. in the data system.~~

~~2~~1. ~~A~~ THE COUNTY DEPARTMENT SHALL ENCOURAGE THE CONSENTING client ~~who consents shall be encouraged~~ to sign a release of information that covers general, medical, and/or money management, as appropriate to the client's needs.

~~3~~2. ~~If a~~ THE client MAY refuse~~s~~ protective services, but THE COUNTY DEPARTMENT IS ENCOURAGED TO ATTEMPT TO OBTAIN THE CLIENT'S consent~~s~~ to additional visits or phone calls from the caseworker IF THE SITUATION APPEARS TO REQUIRE FURTHER SERVICES. ~~t~~The caseworker shall document the consent OR REFUSAL TO ADDITIONAL VISITS OR PHONE CALLS.~~to visits or calls in the data system and continue to conduct home visits to assess the client's need for protective services.~~

43. Clients with capacity may refuse any or all services and may revoke consent at any time.

~~5~~3. Caseworkers shall provide clients who refuse services with the county department contact information for future reference.

~~B~~C. If a client is suspected to lack capacity to make decisions, is at risk for harm, and refuses to consent to services, the county department shall document the client's inability to provide consent. ~~in the data system. The county department shall ensure immediate safety and:~~

~~1. Make its best effort to obtain an evaluation of the client's decision making capacity from a qualified professional; and,~~

~~2. Intervene as necessary to provide for the immediate safety and health of the client.~~

~~3. These situations shall be staffed with the supervisor and/or county attorney to:~~

~~a. Determine the client's risk and safety;~~

~~b. Assess the client's ability to consent;~~

~~c. Determine urgency of safety concerns if intervention is not taken;~~

~~d. Review previous interventions; and,~~

~~e. Ensure the intervention is done ethically and is the least restrictive intervention to ensure the client's safety.~~

1. DOCUMENTATION SHALL INCLUDE:

   a. OBSERVATIONS OF CLIENT BEHAVIORS AND ACTIONS;

   b. MEDICAL DOCUMENTATION OF CLIENT'S SUSPECTED INCAPACITY AND SAFETY CONCERNS TO SUPPORT INVOLUNTARY CASE PLANNING; AND/OR,

   c. INVESTIGATIVE EVIDENCE.

2. THE COUNTY DEPARTMENT SHALL ENSURE IMMEDIATE SAFETY AND MAKE ITS BEST EFFORT TO OBTAIN AN EVALUATION OF THE CLIENT'S DECISION MAKING CAPACITY FROM A QUALIFIED PROFESSIONAL.

3. THESE SITUATIONS SHALL BE STAFFED WITH THE SUPERVISOR AND/OR COUNTY ATTORNEY TO:

   a. DETERMINE THE CLIENT'S RISK AND SAFETY;

   b. ASSESS THE CLIENT'S ABILITY TO CONSENT;

   c. DETERMINE URGENCY OF SAFETY CONCERNS IF INTERVENTION IS NOT TAKEN;

   d. REVIEW PREVIOUS INTERVENTIONS; AND,

   e. ENSURE THE INTERVENTION IS DONE ETHICALLY AND IS THE LEAST RESTRICTIVE INTERVENTION TO ENSURE THE CLIENT'S SAFETY.

4. INTERVENE IF APPROPRIATE AND AVAILABLE TO COORDINATE WITH THE RESPONSIBLE AGENCY FOR THE IMMEDIATE SAFETY AND HEALTH OF THE CLIENT, SUCH AS:

   a. GAINING ACCESS TO THE CLIENT BY GETTING ASSISTANCE FROM LAW ENFORCEMENT, FAMILY, OR ANOTHER PERSON THE CLIENT TRUSTS;

   b. EMERGENCY HOSPITALIZATION;

   c. HOME CLEAN UP, WHEN THERE IS A CLEAR BIOHAZARD;

d. MENTAL HEALTH HOLD, PER TITLE 27, ARTICLE 65, C.R.S.;

e. FREEZING BANK ACCOUNTS TO PREVENT FURTHER LOSS OF ASSETS;

f. EMERGENCY PROTECTION ORDER, PER TITLE 13, ARTICLE 14, C.R.S.;

g. AUTHORIZATION OF A MEDICAL PROXY DECISION MAKER, PER TITLE 15, ARTICLE 18.5, C.R.S.;

h. REQUESTING A JUDICIAL REVIEW OF A FIDUCIARY, PER TITLE 15, ARTICLE 10, PART 5, C.R.S., AND TITLE 15, ARTICLE 14, PART 7, C.R.S.;

i. CONTACTING THE SOCIAL SECURITY ADMINISTRATION OR OTHER PENSION ADMINISTRATOR TO SECURE A REPRESENTATIVE PAYEE;

j. PETITIONING THE COURT FOR EMERGENCY GUARDIANSHIP AND/OR SPECIAL CONSERVATORSHIP, PER TITLE 15 ARTICLE 14, PARTS 3 AND 4, C.R.S., OR,

k. ALCOHOL AND DRUG INVOLUNTARY COMMITMENT, PER TITLE 27, ARTICLE 81, PART 112 AND TITLE 27, ARTICLE 82, PART 108.

~~C~~D. If a client lacks capacity and has a fiduciary to make decisions on behalf of the client, the county department shall consult with supervisors, the county director, the county attorney, law enforcement, and/or the district attorney to determine whether the county department should petition the court for a review of the fiduciary's actions if:

1. The fiduciary refuses to allow the provision of protective services, which places the client at-risk for continued mistreatment~~, exploitation~~ or self-neglect; or,

2. There are allegations and evidence of mistreatment ~~or exploitation~~ of the client by the client's fiduciary.

3. The county department shall petition the court under the appropriate statute:

a. Uniform Power of Attorney Act, as outlined in Title 15, Article 14, Part 7, C.R.S.;

b. Guardianship or conservatorship statutes as outlined in Title 15, Article 14, Parts 3 and 4, C.R.S.; and/or,

c. Fiduciary oversight statute, as outlined in Title 15, Article 10, Part 5, C.R.S.

~~D~~E. THE COUNTY DEPARTMENT SHALL MAINTAIN ONGOING CLIENT CONTACT AS LONG AS THE CASE IS OPEN.

1. FOR CLIENTS LIVING IN THE COMMUNITY, A FACE-TO-FACE CLIENT CONTACT SHALL OCCUR AT LEAST ONCE EVERY MONTH, NOT TO EXCEED THIRTY FIVE CALENDAR DAYS (35) FROM THE LAST FACE-TO-FACE CONTACT.

2. FOR CLIENTS LIVING IN A FACILITY, A FACE-TO-FACE CLIENT CONTACT SHALL OCCUR AT LEAST ONCE EVERY MONTH, NOT TO EXCEED THIRTY FIVE CALENDAR DAYS (35) FROM THE LAST FACE-TO-FACE CONTACT.

a. THE COUNTY DEPARTMENT HAS THE OPTION OF SUBSTITUTING A PHONE CALL TO THE DIRECT CARE PROVIDER TO ASCERTAIN THE

CLIENT'S CURRENT STATUS, IN LIEU OF A FACE-TO-FACE VISIT FOR EVERY OTHER REQUIRED MONTHLY FACE-TO-FACE CONTACT.

b. IF IT HAS BEEN REPORTED THAT THE CLIENT HAS BEEN MISTREATED AT THE FACILITY, WHETHER CAUSED BY A STAFF PERSON, VISITOR, OR OTHER RESIDENT, AND THE FACILITY HAS NOT APPROPRIATELY RESOLVED THE CAUSE OF THE MISTREATMENT OR PUT ADEQUATE SAFETY MEASURES IN PLACE, THEN A PHONE CALL TO ASCERTAIN THE CLIENT'S CURRENT STATUS IS NOT APPROPRIATE AND THE REQUIRED MONTHLY CONTACT SHALL BE A FACE-TO-FACE VISIT.

3. DURING THE MONTHLY CONTACT, THE COUNTY DEPARTMENT SHALL:

a. CONTINUE THE INVESTIGATION OF ALLEGATIONS, IF APPLICABLE;

b. CONTINUE ASSESSMENT OF CLIENT'S STRENGTHS AND NEEDS, INCLUDING CHANGES TO THE CLIENT'S STATUS;

c. PURSUE THE CONTINUED SAFETY IMPROVEMENT AND REDUCTION AND/OR MITIGATION OF RISK;

d. MONITOR THE EFFECTIVENESS OF ARRANGED SERVICES TO DETERMINE WHETHER CONTINUED APS INTERVENTION IS NEEDED; AND,

e. DOCUMENT INFORMATION GATHERED DURING THE CONTACT PER THE ABOVE MONTHLY CONTACT REQUIREMENTS AND UPDATE ALL CONTACT RECORDS AS INFORMATION IS OBTAINED AND/OR CHANGES OCCUR FOR THE CLIENT, ALLEGED PERPETRATOR, REPORTING PARTY, AND SUPPORTS WITHIN FOURTEEN (14) CALENDAR DAYS OF THE VISIT.

F. COUNTY DEPARTMENTS MAY COMPLETE MONTHLY VISITS FOR OTHER COUNTY DEPARTMENTS AS A COURTESY, AS FOLLOWS:

1. WHEN A CLIENT TEMPORARILY OR PERMANENTLY RELOCATES TO A LICENSED FACILITY MORE THAN SEVENTY-FIVE (75) MILES OUTSIDE THE COUNTY BOUNDARY AND THE COUNTY DEPARTMENT OF ORIGINAL JURISDICTION MAINTAINS THE CASE, THE COUNTY DEPARTMENT SHALL ENSURE ONGOING PROTECTIVE SERVICES.

2. MONTHLY CONTACTS, REQUIRED BY SECTION 30.620, E, MAY BE CONDUCTED BY THE COUNTY OF ORIGINAL JURISDICTION OR MAY BE CONDUCTED VIA COURTESY VISITS BY THE COUNTY DEPARTMENT IN WHICH THE FACILITY IS LOCATED OR BY ANOTHER COUNTY DEPARTMENT THAT IS VISITING THE FACILITY.

3. NO COUNTY DEPARTMENT SHOULD BE EXPECTED TO PROVIDE MORE THAN THREE COURTESY VISITS PER TWELVE (12) MONTH PERIOD, AT THE REQUEST OF THE COUNTY DEPARTMENT OF ORIGINAL JURISDICTION. COUNTY DEPARTMENTS MAY NEGOTIATE TO PROVIDE MORE THAN THREE COURTESY VISITS.

4. UPON COMPLETION OF EACH COURTESY VISIT, THE COUNTY DEPARTMENT THAT CONDUCTED THE VISIT SHALL DOCUMENT THE MONTHLY CONTACT IN

CAPS, AS REQUIRED IN SECTION 30.620, E WITHIN FOURTEEN (14) CALENDAR DAYS OF THE MONTHLY CONTACT.

5. A COUNTY DEPARTMENT CONDUCTING A COURTESY VISIT SHALL NOT DOCUMENT THE VISIT AS A NEW REPORT OR CASE FOR THE PURPOSE OF DATA COLLECTION.

G. IF THE CLIENT PERMANENTLY RELOCATES TO ANOTHER COUNTY AND THE CLIENT NO LONGER NEEDS PROTECTIVE SERVICES, OR THE CLIENT PERMANENTLY RELOCATES TO ANOTHER STATE, THE COUNTY DEPARTMENT SHALL CLOSE THE CASE, AS OUTLINED IN SECTION 30.660.

H. IF THE CLIENT RELOCATES TO ANOTHER COUNTY AND THE CLIENT CONTINUES TO NEED PROTECTIVE SERVICES, THE COUNTY DEPARTMENT SHALL UPDATE THE CASE, AS FOLLOWS, AND TRANSFER THE CASE TO THE CLIENT'S NEW COUNTY OF RESIDENCE WITHIN FIVE (5) CALENDAR DAYS OF LEARNING THE MOVE IS PERMANENT.

1. UPDATE THE CLIENT, PERPETRATOR, REPORTING PARTY, AND COLLATERAL CONTACT INFORMATION; AND,

2. UPDATE THE INVESTIGATION, ASSESSMENT, CASE PLAN, AND CASE NOTES TO INCLUDE ALL INFORMATION GATHERED TO DATE; AND,

3. CALL THE RECEIVING COUNTY DEPARTMENT SUPERVISOR TO STAFF THE CASE PRIOR TO THE TRANSFER.

I. WHEN A CLIENT RELOCATES TO A NEW COUNTY, THE CASE MAY REMAIN WITH THE FORMER COUNTY DEPARTMENT ONLY WHEN:

1. THE CASE IS WITHIN THIRTY-FIVE (35) CALENDAR DAYS OF RESOLUTION AND THE FORMER COUNTY DEPARTMENT CHOOSES TO RETAIN THE CASE; AND/OR,

2. THE FORMER COUNTY DEPARTMENT HOLDS REPRESENTATIVE PAYEESHIP AND CHOOSES TO RETAIN THE CASE; AND/OR,

3. THE FORMER COUNTY DEPARTMENT HOLDS GUARDIANSHIP OR CONSERVATORSHIP.

a. AS SPECIFIED IN A WRITTEN AGREEMENT, EITHER THE FORMER OR RECEIVING COUNTY DEPARTMENT MAY PROVIDE PROTECTIVE SERVICES.

b. EITHER COUNTY DEPARTMENT MAY, WITH THE AGREEMENT OF THE RECEIVING COUNTY DEPARTMENT, PETITION THE COURT FOR A TRANSFER OF GUARDIANSHIP AND/OR CONSERVATORSHIP TO THE RECEIVING COUNTY DEPARTMENT.

J. COUNTY DEPARTMENTS SHALL WORK COLLABORATIVELY TO PROVIDE PROTECTIVE SERVICES TO CLIENTS, AS NEEDED.

K. THE COUNTY DEPARTMENT SHALL REASSESS THE CLIENT'S NEEDS AND REVIEW THE PROVISION OF PROTECTIVE SERVICES AT LEAST EVERY 180 DAYS AS LONG AS THE CASE REMAINS OPEN, BY:

1. COMPLETING AND DOCUMENTING A NEW ASSESSMENT ON OR BEFORE THE REASSESSMENT DUE DATE;

2. DETERMINING THE APPROPRIATENESS OF CONTINUED PROTECTIVE SERVICES, BASED ON THE NEW ASSESSMENT; AND,

3. UPDATING THE CLIENT SERVICES IN THE CASE PLAN.

30.630 COURT INTERVENTION [Rev. eff. 9/1/14]

A. When the investigation and assessment indicates probable incapacity and there is IMMEDIATE DANGER TO THE CLIENT'S HEALTH, SAFETY, AND WELFARE AND THE CLIENT IS UNABLE AND/OR UNWILLING TO ACCEPT SERVICES, ~~no other alternative to protect the client from mistreatment, exploitation or self-neglect,~~ the county department is urged to seek court intervention to petition the court for an order authorizing ~~the provision of specific protective services and/or for~~ the appointment of aN EMERGENCY guardian and/or SPECIAL conservator IN ORDER TO RESOLVE THE IMMEDIATE SAFETY CONCERN(S).

1. Prior to reaching a decision to petition the court FOR GUARDIANSHIP OR CONSERVATORSHIP, the COUNTY DEPARTMENT SHALL ENSURE THAT THE following factors ARE MET AND HAVE BEEN DOCUMENTED: ~~shall be investigated and documented in the data system~~:

   a. No other method of intervention will meet the client's needs; AND,

   b. THE COURT INTERVENTION WILL RESOLVE SAFETY CONCERNS; AND,

   c. THE GUARDIANSHIP IS NOT BASED SOLELY TO MAKE MEDICAL DECISIONS ON BEHALF OF THE CLIENT AS THE COUNTY DEPARTMENT IS PROHIBITED BY TITLE 15 ARTICLE 18.5, C.R.S. FROM PETITIONING THE COURT SOLELY FOR THIS REASON; AND,

   ~~b~~d. The degree of incapacity, as supported by medical or psychiatric evidence, and the degree of risk, as supported by investigative evidence, warrants this action; OR,

   ~~c~~e. The suspected incapacity of the client and the degree of risk, as supported by the investigative evidence, warrants this action and medical or psychiatric evidence of incapacity cannot be obtained without court intervention.

2. The type of court intervention sought shall be the least restrictive intervention required to meet the needs of the client and only for those areas in which the client lacks the capacity or ability to understand the consequences of decisions, as medically or psychiatrically substantiated.

B. In the absence of other responsible parties, such as family or friends, the county department is urged to accept guardianship and/or conservatorship.

1. The county department shall consult with an attorney prior to filing a petition and throughout the process.

2. The county department shall provide all information deemed necessary by legal counsel.

3. A representative of the county department shall be prepared to testify in support of the petition.

4. When a county department is appointed by the court to act as guardian or conservator, a copy of the letter of appointment and all other court documents and reports shall be maintained in CAPS~~ the data system~~ AND THE CLIENT'S CASE RECORD UPDATED TO REFLECT FIDUCIARY INFORMATION.

~~C. The county department shall not petition the court for guardianship solely to make medical decisions. The county department may accept such guardianship, if another agency or person petitions the court and the county department is appointed by the court.~~

~~D~~.C. The county department may choose to accept or reject any appointment of guardianship, based upon county department policy.

~~E~~.D. The county department shall initiate proceedings to withdraw as guardian and/or conservator when:

1. Medical or psychiatric evidence indicates a guardian and/or conservator is no longer necessary;

2. Another appropriate guardian or conservator has been identified; or,

3. The county department is no longer able to fulfill guardianship responsibilities, as appointed.

~~F~~.E. When a person or agency other than the county department is requesting appointment as the guardian and/or conservator of the client, the county department shall assist responsible parties, as needed, in identifying legal counsel or provideING other assistance in initiating the petition(s).

30.640 REPRESENTATIVE PAYEE [Rev. eff. 9/1/14]

A. The county department shall only apply for appointment as a representative payee when no other reliable person or agency is available and willing to seek the appointment and:

1. The reported financial issues pertaining to mistreatment~~, exploitation,~~ and/or self-neglect have been substantiated and determined to present ~~the potential for~~ significant harm to the client's health, safety, or welfare without intervention; and,

2. Other less restrictive intervention options have been assessed and found to be inadequate to protect and assist the client; and,

3. Medical, psychiatric, and/or financial evidence exists to show the client is unable to manage his/her personal finances.

B. The county department shall follow the procedures and guidelines for payees as set forth by the SSA or other organization(s).

C. The county department shall initiate procedures, as outlined by the SSA or other organization(s), to discontinue its services as representative payee when:

1. Medical, psychiatric, and/or financial evidence indicates a payee is no longer necessary;

2. Another appropriate payee has been identified; ~~or,~~

3. The county department is no longer able to fulfill payee responsibilities, as appointed; or,

4. The client dies.

30.645 TRUST ACCOUNTS [Eff. 4/1/13]

A. The county department shall ensure that all guardianships, conservatorships, representative payeeships, and personal needs accounts that are held by the county department, and in which the county department has some financial authority or responsibility, have an established trust account.

B. The established trust account shall bear the name of the county department or the name and the title of the director of the county department as trustee for the client or as otherwise required by the Social Security Administration (SSA).

1. Withdrawals from savings, checking, or investment accounts shall require two signatures, neither of which may be the caseworker or the bookkeeper.

2. Shortages in trust accounts are the responsibility of the county department.

C. The county department shall manage any trust account established pursuant to such department's fiduciary duty as a guardian, conservator, representative payee, or other purpose in accordance with any State and Federal requirements for said accounts.

30.650 PROVISION OF PROTECTIVE SERVICES [Rev. eff. 9/1/14]

THIS SECTION HAS BEEN RECODIFIED UNDER 30.500 AND 30.620.

~~A. The county department shall maintain ongoing client contact as long as the case is open, to include, at a minimum:~~

~~1. A face-to-face client contact shall occur at least every thirty (30) calendar days.~~

~~a. When the client resides in a supervised in-home or facility setting that reduces the possibility of further mistreatment, exploitation or self-neglect, a face-to-face contact shall occur at least every sixty (60) calendar days b. A face-to-face or telephone contact shall be made with the caretaker or responsible collateral at the facility at least once midway through the sixty (60) day period.~~

~~2. Continued investigation, as needed;~~

~~3. Continued assessment of the client's needs; and,~~

~~4. Implementation of the case plan goal(s) and update of the case plan as goals are completed and/or added.~~

~~B. The county department shall provide protective services for the shortest duration necessary to ensure the client's safety by implementing case plan goals as quickly as possible in order to stabilize the client's situation and prevent further mistreatment, exploitation or self-neglect.~~

~~C. The county department shall document all monthly contacts and other significant case information in the data system within fourteen (14) days of the contact or receipt of the information, to minimally include:~~

~~1. Observations made during required client contact visits and/or collateral contacts;~~

~~2. New linformation learned as a result of ongoing investigation and assessment; and,~~

~~3. Court and/or fiduciary related information.~~

D. ~~The county department shall reassess the client's needs and the provision of protective services at least every six months as long as the case remains open, by:~~

1. ~~Completing a new assessment and case plan on or before the reassessment due date;~~

2. ~~Staffing the case to determine the appropriateness of continuing protective services, based on the new assessment and case plan; and,~~

3. ~~Documenting the reassessment within fourteen (14) days of completing the reassessment, to minimally include:~~

   a. ~~Completing a new the assessment as outlined in Section 30.53040, C, 2;~~

   b. ~~Completing a new case plan as outlined in Section 30.610710, D, 2; and,~~

   c. ~~Updates to the data system of any other changes~~ in the case

30.660 CASE CLOSURE [Rev. eff. 9/1/14]

A. Cases not requiring additional protective services shall be closed within thirty-FIVE (3~~0~~5) calendar days of the last ~~phone, mail, or face-to-face contact~~ MONTHLY CONTACT with the client.

1. IF THE CLIENT CANNOT BE LOCATED AND YOU HAVE SENT A LETTER TO THE CLIENT OR ARE REACHING OUT TO OTHERS WHO MIGHT KNOW THE CLIENT'S LOCATION, THE CASE MAY REMAIN OPEN UNTIL THE COUNTY DEPARTMENT EXHAUSTS ALL ATTEMPTS TO LOCATE THE CLIENT.

2. THE COUNTY DEPARTMENT SHALL DOCUMENT ALL ATTEMPTS TO LOCATE THE CLIENT.

B. Cases in which the client is relocated to a long-term care facility may remain open for up to ~~three (3) months~~ THIRTY-FIVE (35) CALENDAR DAYS in order to ENSURE THE PLACEMENT IS APPROPRIATE FOR THE CLIENT'S NEEDS. THE COUNTY DEPARTMENT MAY KEEP THE CASE OPEN PAST THE THIRTY-FIVE (35) DAYS IF THERE IS GOOD CAUSE AND THE DEPARTMENT DOCUMENTS THE REASON IN CAPS. ~~monitor the continuing need for long-term care.~~

C. Cases in which the county department has been appointed as the client's guardian, conservator, and/or representative payee shall remain open for the duration of the court order or for as long as the county remains as the representative payee.

D. A decision to close a case shall be made for any or all of the following reasons:

1. After investigation and assessment, the client does not meet the definition of an at-risk adult.

2. After investigation and assessment, the allegations are determined to be unsubstantiated AND THERE ARE NO OTHER IDENTIFIED NEEDS AS DETERMINED BY THE ASSESSMENT.

3. The investigation and assessment substantiates situations of ~~actual or potential~~ mistreatment~~, exploitation~~ or self-neglect and the client is competent to make decisions and refuses services.

4. If, after repeated and documented efforts, the whereabouts of the client cannot be established OR THE CLIENT REFUSES CONTACT.

5. The client no longer needs protective services.

6. Service goals are completed.

7. Repeated efforts at service delivery have proven to be ineffective and no additional alternatives exist.

8. CRITICAL SERVICES NECESSARY TO IMPROVE SAFETY ARE UNAVAILABLE IN THE COMMUNITY OR TO THE CLIENT.

9. THE CLIENT MOVED OUT OF THE STATE.

10. THE CLIENT HAS BEEN SENTENCED TO INCARCERATION FOR LONGER THAN THIRTY (30) CALENDAR DAYS.

~~8~~11. The client died.

E. The county department shall document the case closure ~~in the data system~~, to minimally include:

1. ~~Completion of a~~ A final assessment, IF APPLICABLE, to determine the safety improvement as a result of APS intervention;

2. Update of all case, CLIENT, PERPETRATOR, REPORTING PARTY, AND COLLATERAL CONTACT INFORMATION ~~windows~~ to reflect the most current data and information; ~~and,~~

3. REASON FOR CASE CLOSURE;

4. WHETHER THERE IS CONTINUED PERPETRATOR INVOLVEMENT; AND,

~~3~~5. ~~Completion of tThe case disposition window to include a~~ A narrative to address the OVERALL OUTCOME OF APS INTERVENTION, TO INCLUDE WHY SAFETY WAS OR WAS NOT INCREASED AND WHY RISK WAS OR WAS NOT DECREASED.

~~a. Reason for case closure;~~

~~b. Ongoing client needs;~~

~~c. Continuing perpetrator involvement, if applicable; and,~~

~~d. Safety outcome;~~

30.700 COUNTY ASSIGNMENT AND COURTESY VISITS

30.710 COUNTY ASSIGNMENT [Rev. eff. 9/1/14]

THIS SECTION HAS BEEN RECODIFIED UNDER 30.410, 30.510, and 30.620.

~~A. The county department of permanent residence shall receive and respond to reports, except in the following situations:~~

1. When the client does not have an open case and is temporarily located in a county other than his or her permanent county of residence, the county in which the adult is temporarily located shall be the originating county and shall provide services.

    a. When the client returns to his or her permanent county of residence, the case shall be closed as outlined in Section 30.660.

        1) If the client continues to need protective services, the originating county shall make a report to the permanent county of residence within one business day of learning of the move.

        2) The receiving county department shall review and screen the report and shall establish a timeframe for investigation as specified in Section 30.430.

    b. Homeless clients shall be provided services by the originating county until the client is no longer located within the county or is located more than seventy-five (75) miles from the originating county department office, whichever is further.

2. When the client has an open APS case in his or her permanent county of residence, and is temporarily located in a county other than his or her permanent county of residence, the county department of permanent residence shall provide protective services for the client.

    a. The county of permanent residence may close the case, as outlined in section 30.660, if the client's move is permanent.

        1) If the client continues to need protective services, the originating county shall make a report to the permanent county of residence within one business day of learning of the move.

        2) The receiving county department shall review and screen the report and shall establish a timeframe for investigation as specified in Section 30.430.

    b. The county of permanent residence may request courtesy visits by the county of temporary residence, as outlined in Section 30.720, B, if the client's current location is temporary.

B. When a client relocates to a new county, the case may remain with the former county department only when:

1. Opening a case in another county would adversely affect the client's health, safety, or welfare; and/or,

2. The case is within three months of resolution and the former county department chooses to retain the case; and/or,

3. The former county department holds representative payeeship and chooses to retain the case; and/or,

4. The former county department holds guardianship or conservatorship.

    a. As specified in a written agreement, either the former or receiving county department may provide protective services.

b. ~~Either county department may, with the agreement of the receiving county department, petition the court for a transfer of guardianship and/or conservatorship to the receiving county department.~~

C. ~~County departments shall work collaboratively to provide protective services to clients, as needed.~~

30.720 COURTESY VISITS [Rev. eff. 9/1/14]

THIS SECTION HAS BEEN RECODIFIED UNDER 30.620

A. ~~When a client temporarily or permanently relocates to a licensed facility more than seventy-five (75) miles outside the county boundary and the county department of original residence maintains the case, as outlined in Section 30.710, B, the county departments shall ensure ongoing protection services.~~

B. ~~Bi-monthly face-to-face visits, required by Section 30.650, A, may be conducted by the county of original residence or may be conducted via courtesy visits by the county department in which the facility is located or by another county department that is visiting the facility.~~

C. ~~No county department shall be required to provide more than three courtesy visits per twelve (12) month period, at the request of the county department of original residence. County departments may negotiate to provide more than three courtesy visits.~~

D. ~~The county department of original residence shall obtain written confirmation of the schedule of courtesy visits.~~

E. ~~Upon completion of each courtesy visit, the county department that conducted the visit shall document in the data system the adult's current situation, including recommendations for continuing the existing, or providing additional, services within fourteen (14) calendar days.~~

F. ~~In months where a face-to-face visit is not required by rule, oversight through telephone contact with appropriate facility staff, such as the administrator, social worker, or nursing staff shall be provided by the county department of original residence.~~

G. ~~A county department conducting a courtesy visit shall not document the visit as a new report or case for the purpose of data collection.~~

30.800 COMMUNITY COLLABORATION

30.810 COOPERATIVE AGREEMENTS [Rev. eff. 9/1/14]

A. Per Section 26-3.1-103(2), C.R.S., the county department shall develop cooperative agreements in conjunction with its local:

1. Law enforcement agencies;

2. District Attorney;

3. Long-Term Care Ombudsman; and,

4. Community Centered Board.

B. The focus of such agreements shall be the coordination of investigations and protective services that promotes the protection of at-risk adults and each agreement shall provide that each agency shall maintain the confidentiality of the information exchanged pursuant to joint investigations.

C. The agreement with law enforcement shall include, at a minimum:

1. A process outlining the role of law enforcement for receiving, assessing, referring, and responding to reports received during the county department's non-business hours, if applicable;

2. A procedure regarding sharing of reports of mistreatment~~, exploitation,~~ and self-neglect between the local law enforcement agency(ies) and the county department;

3. Procedures for the provision of assistance from one agency upon the request of the other agency;

4. Procedures to coordinate investigative duties; and,

5. The beginning and ending date of the agreement, the term of which shall not exceed five years.

D. The agreement with the District Attorney shall, at a minimum, include:

1. A procedure regarding the sharing of reports of mistreatment~~, exploitation,~~ and self-neglect between the District Attorney and the county department;

2. Procedures for the provision of assistance from one agency upon the request of the other agency;

3. Procedures to coordinate investigative duties; and,

4. The beginning and ending date of the agreement, the term of which shall not exceed five years.

E. The agreement with the Long-Term Care Ombudsman shall, at a minimum, include:

1. A procedure regarding the sharing of reports of mistreatment~~, exploitation,~~ and self-neglect from one agency to the other;

2. Procedures for the provision of assistance from one agency upon the request of the other agency;

3. Procedures to coordinate investigative duties; and,

4. The beginning and ending date of the agreement, the term of which shall not exceed five years.

F. The agreement with the Community Centered Board shall, at a minimum, include:

1. A procedure regarding the sharing of reports of mistreatment~~, exploitation,~~ and self-neglect from one agency to the other;

2. Procedures for the provision of assistance from one agency upon the request of the other agency;

3. Procedures to coordinate investigative duties; and,

4. The beginning and ending date of the agreement, the term of which shall not exceed five years.

30.820 COLLABORATION [Eff. 8/1/12]

THIS SECTION HAS BEEN RECODIFIED UNDER 30.500 AND 30.810.

~~A. The county department shall collaborate with other government and community agencies, such as but not limited to, mental health centers and Area Agencies on Aging, to coordinate services that promote the protection of at-risk adults.~~

~~B. The county department is urged to develop cooperative agreements with those agencies to help ensure the best outcomes for clients.~~

C. ~~The county department shall coordinate investigations in facilities, which include~~:

~~1. Medical and long-term care facilities, group homes, and alternative care facilities, required to be licensed by the Colorado Department of Public Health and Environment (CDPHE); and,~~

~~2. Any site or home that provides care for less than three persons and are not required to be licensed by CDPHE; but,~~

~~3. Does not apply to an adult's private residence in which 24-hour care is provided only to that adult.~~

D. ~~Investigations in facilities may require multi-agency cooperation and the county department may be asked to monitor or assist with an investigation conducted by another agency, such as:~~

~~1. Law enforcement;~~

~~2. District Attorney's office;~~

~~3. Colorado Attorney General's office;~~

~~4. Colorado Department of Public Health and Environment (CDPHE);~~

~~5. Colorado Department of Human Services:~~

~~a. Alcohol and Drug Abuse Division (ADAD);~~

~~b. Division of Mental Health;~~

~~c. Division of Child Welfare; or,~~

~~d. Division for Developmental Disabilities;~~

~~6. Long-Term Care Ombudsman Program; and/or,~~

~~7. Legal Center for People with Disabilities and Older People.~~

~~E. The county department shall conduct the investigation in a facility when:~~

1. ~~The county department is the adult's guardian;~~

2. ~~There are significant indicators of financial exploitation;~~

3. ~~There is significant physical injury to the resident as a result of mistreatment;~~

4. ~~Allegations of sexual assault or sexual abuse are made, and law enforcement is not going to be involved;~~

5. ~~Law enforcement indicates abuse occurred and is likely to continue but not enough evidence exists to bring criminal charges; or,~~

6. ~~Resident abuse by a person living outside the facility has occurred, and law enforcement is not going to be involved.~~

~~F. APS will usually not investigate reports in facilities involving:~~

1. ~~Resident to resident abuse, unless the facility, the CDPHE, and/or the Long-Term Care Ombudsman is unwilling or unable to resolve the issue;~~

2. ~~Staff to resident abuse, unless the CDPHE and/or law enforcement are unwilling or unable to resolve the issue;~~

3. ~~Occurrences reported by licensed facilities to the CDPHE or law enforcement; or,~~

4. ~~Resident's rights, quality of care, administrative policies and procedures, staffing, involuntary discharge, or issues regarding physical surroundings.~~

30.830 ADULT PROTECTION TEAMS [Rev. eff. 9/1/14]

A. The director of each county department with ten (10) or more ~~referrals~~ SCREENED IN REPORTS of at-risk adult mistreatment and/or self-neglect in the prior state fiscal year is required to establish or coordinate an Adult Protection Team.

1. The county department may establish its own Team or may coordinate with another contiguous county department(s) that is required to coordinate a Team.

2. The Team shall meet quarterly, at a minimum.

3. The county department shall determine the level of decision making authority for the Team. The role of the Team may be advisory only.

B. The purpose of the Team shall be to:

1. Review the processes used to report and investigate mistreatment and self-neglect of at-risk adults;

2. Staff particular cases or possible cases with Team members, such as those that:

   a. Have proven difficult to resolve and Team members may be able to identify solutions;

   b. Are situations where early intervention by other community systems may prevent mistreatment; and/or,

c. Are valuable for educating Team members on APS program processes and requirements.

3. Facilitate interagency cooperation regarding services to at-risk adults including the development of solutions and action steps necessary to reduce risk AND IMPROVE SAFETY; and,

4. Provide community education on the mistreatment and self-neglect of at risk adults. The county department shall be the primary training agency, but may utilize training provided by team members or another designee. The county department shall:

a. Determine the topic to be presented, based upon county department or community need;

b. Use materials developed by the county department, the State Department, national associations, or other professional adult protective services agencies;

c. At a minimum, provide five (5) training activities per fiscal year, in any combination of the following:

1) A live presentation to a community or professional group;

2) Participation in a senior or community forum, such as:

a) Providing an article for a newsletter or local community newspaper; or,

b) Providing brochures or other written materials at a county department or other community event.

3) Sponsorship of a community Elder Abuse Awareness Day or similar event.

C. The director of the county department or the director's designee shall identify and recruit team members consistent with professional groups as specified in Section 26-3.1-102(1)(b), C.R.S., and other relevant community agencies.

D. Each Team member shall be advised of the confidential nature of his/her responsibilities in accordance with Section 26-3.1-102(7), C.R.S., and shall be required to sign a confidentiality agreement annually.

E. The Team shall develop and adopt written By-laws or a Memorandum of Understanding that minimally include the Team's:

1. Purpose;

2. Structure, including:

a. Meeting facilitation. Teams that conduct education to the community as part of the Team meeting shall adjourn to executive session prior to staffing any case or discussing any APS client or community member;

b. Frequency of meetings; and,

c. Composition of the Team.

3. Rules for membership, including:

   a. Member duties;

   b. Process for resignation and causes for termination from the Team.

4. Process for handling potential conflicts of interest.

F. The county department shall enter all Team activities in ~~the data system~~CAPS within fourteen (14) calendar days of the activity.

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3. Rules for membership, including:

   a. Member duties;

   b. Process for resignation and causes for termination from the Team.

4. Process for handling potential conflicts of interest.

F. The county department shall enter all Team activities in ~~the data system~~CAPS within fourteen (14) calendar days of the activity.

Title of Proposed Rule:	Adult Protective Services Program Revisions		
CDHS Tracking #:	15-5-8-1		
Revising official Rule #s:	12 CCR 2518-1, Volume 30		
Office, Division, & Program:	Rule Author: Peggy Rogers	Phone: 303-866-2829	
		E-Mail: peggy.rogers@state.co.us	

STATEMENT OF BASIS AND PURPOSE

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

(State what the rule says or does, explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. How do these rule changes align with the outcomes that we are trying to achieve, such as those measured in C-Stat?)

The rules at 12 CCR 2518-1 are the program rules for the Adult Protective Services (APS) program, as authorized by Title 26, Article 3.1, C.R.S. The APS program provides protective services for at-risk adults who are experiencing mistreatment or are self-neglecting. The purpose of this proposed rule change is to update all Adult Protective Services (APS) rules to:

- Align the rules with changes made to statute as a result of SB15-109 and HB16-1394,
- Remove redundant rules and requirements,
- Better align rules with current practice and the Colorado APS data system (CAPS),
- Better align rules with child protective services rules, as deemed appropriate,
- Improve APS practices that impact services for at-risk adults, and
- Make technical corrections.

Several legislative changes have occurred over the past few years that make updates to the rules necessary. In July 2014, significant changes were made to the Adult Protective Services (APS) program. SB13-111 created mandatory reporting for at-risk elders and established a new Colorado APS data system (CAPS). Mandatory reporting for at-risk elders and the CAPS data system were implemented starting on July 1, 2014. SB15-109 expanded mandatory reporting to include adults with intellectual and developmental disabilities effective July 1, 2016. HB16-1394 made changes to definitions and other areas of the APS statute, in conjunction with SB15-109. In addition, in September 2015, Colorado APS was awarded a Federal Grant through the Administration for Community Living (ACL) that changed the APS intake and assessment processes, which must be incorporated into rule.

The last update to the APS Rules was in the Fall of 2014. Since that time, there have been a number of issues that have surfaced that were unanticipated when the last rule changes were implemented. Many of these issues have been identified during data analysis for C-Stat, through formal quality assurance case and program reviews, through conversations and training sessions with county departments, and in conversations with collaborating agencies that work with at-risk adults. SB15-109 and HB16-1394 are also driving additional changes. The APS Task Group, formed by the PAC and the Economic Security Sub-PAC, met monthly from November 2015 to April 2016 to develop the recommended rule changes. Six webinars were held for county department directors and APS staff during the weeks of May 2, 2016 and May 9, 2016 to review the recommendations and solicit feedback and comments. The Task Group met in June 2016 to review the feedback from the webinars and received via email to make these final recommendations.

New rules and/or key changes to current rule include the following:

- HB16-1394 made minor changes to the definitions of various forms of mistreatment in the Adult Protective Services (APS) statute and are therefore being updated in rule. (30.100)

- The rule that requires the county departments to notify the state department of a change in APS staffing is being updated. The current rule allows county departments three working days from the staffing change to notify the state department. The rule is being updated so that notification must be made within

three working days but no later than the employee's last day of employment. This change is being made to ensure that access to the APS data system, CAPS, can be removed as soon as an APS staff person is no longer going to be working for the county department or in the APS program. CAPS documentation contains personal identifying information (PII) and HIPAA protected personal health information (PHI), which must be secured timely. (30.210,C)

- Proposed revisions to rules include expanding the types of college majors and degrees that would qualify a person for an APS caseworker position at the Professional Entry and Journey levels. (30.310)

- A proposed change is being made to rules related to the requirement for a "flagged" background check from "strongly urged" to "shall". A flagged background check ensures that the county department would be notified if an APS staff member with direct access to at-risk adults, were to be arrested after their original background check was completed. This may be critical information to client safety. However, several county departments indicated that they do not include a flagged check in their contract with the outside company that completes background checks for the county, therefore, they would be unable to meet this rule requirement without renegotiating the contract. The Department is therefore, withdrawing the requirement at this time. (30.320,C)

- Changes to rules related to training requirements for county APS staff are being proposed. (30.330) Training is a key component to ensuring that reports of mistreatment and self-neglect of at-risk adults are being investigated correctly and appropriate protective services identified and implemented. APS serves a varied population, including frail elderly, persons with traumatic brain injury or neurological impairments, persons with an intellectual or developmental disability, and persons with complex cognitive, medical, physical, or behavioral health limitations. Current training requirements are not very timely for new APS staff and are not very comprehensive related to continuing education requirements. The goal for the rule changes are to make gradual improvements to training requirements that can be readily met by county departments while ensuring that staff working with at-risk adults are better trained to provide those protective services. The changes are as follows:
    - Training requirements for new APS staff are being changed. (30.330,A) Currently, new APS staff have up to one year to complete some aspects of new worker training. The Task Group believes that this time needs to be shortened and recommends the following changes:
        - Time allowed to complete the Pre-Academy Workbook (PAW), which is the first basic introduction to the APS program requirements, is being shortened from the current three (3) months for full time APS staff or six (6) months for part time APS staff to one (1) month for all new APS staff. APS caseworkers will not be allowed to be assigned cases until the PAW has been completed.
        - Time allowed to attend APS Training Academy for APS staff who are less than 25% FTE in the APS program and are the only APS staff person for the county department, is being shortened from the current twelve (12) months to nine (9) months. All other APS staff would be required to attend the four-day training within six (6) months of employment in the APS program, rather than the current nine (9) months.
    - Continuing Education requirements for APS staff on the job longer than one year are being increased. (30.330,B) Currently the requirements are less than those required of Child Protective Services (CPS) staff. Increasing the requirements will begin to move training requirements to be more in line with CPS training requirements, and are as follows:
        - Full time caseworkers would increase to 40 hours per year from the current 30 hours. This would align with continuing education requirements for full time CPS caseworkers.

- Full time APS supervisor's requirement would increase from the current 20 hours per year to 30 hours. This requirement is still 10 hours short of aligning with the CPS supervisor requirement.
- Full time APS case aides would increase from 15 hours per year to 20 hours per year. There is not a similar requirement for CPS case aides.
- Prorated hours for part-time staff would increase accordingly.

- Changes are being proposed related to the APS supervisor's responsibility for conducting reviews of the casework conducted by their caseworkers. Current rules require supervisors to formally review 15% of all cases each month using the case review scorecard in CAPS. The proposed rule change would allow supervisors to continue this method of review OR choose the new method developed for these rules that would mirror the supervisor requirements for case review in CPS, i.e., that the supervisor review and approve every case at certain key points in the case. For APS this would be at two or three key times in the case: 1) when the initial investigation, assessment, and case plan has been completed; 2) at the six month time in the case, if the case is still open (only about 2% of APS cases are open six months or longer); and 3) at case closure. These points of review mirror similar processes in CPS that require supervisory approval. (30.340,A)

- Rules are being added to the Intake rules that address the issue of which county has jurisdiction to respond to a new report of mistreatment. Currently, APS has rules related to this in the County Assignment section (30.710). The Task Group felt that these rules were better moved to the section of rules where those decisions are being made. So, for initial jurisdictional questions, the rules are being moved to the Intake section of rules (30.410). Additionally, there continues to be concerns voiced by the Task Group that even with the current rules, there are disputes of jurisdiction among the counties that sometimes slows down the response to the report. Task Group members who work in both APS and CPS recommended mirroring language recently implemented in the CPS rules that have helped to lessen these same types of disputes related to CPS reports; the Group agreed to that recommendation.

- A new rule is being added to require the county department to make a decision about a new intake within three working days following the date of the report. This is the time frame for responding to a new report and so the decision about the type of response should be made by this time. This fills a gap in rules. (30.420,F)

- Rules were changed to allow a law enforcement welfare check to substitute for one attempt at contact during non-business hours for emergency and non-emergency reports. Current rule does not allow the welfare check to substitute but with the changes to law enforcement's responsibilities related to mandatory reporting and responding to reports of mistreatment, this change provides additional flexibility for county departments. Rules were added to address follow up requirements when the initial response was a phone call to ascertain the client's safety rather than a face-to-face visit. These rules are filling a gap in the current rules. The rules reflect similar requirements as follow up visits for other types of responses. (30.430,B and 30.430,C)

- Rules are being added to the Investigation rules that address the issue of which county has jurisdiction to investigate a report of mistreatment. Currently, APS has rules related to this in the County Assignment section (30.710). The Task Group felt that these rules were better moved to the section of rules where those decisions are being made. So, for jurisdictional questions that arise during the investigation, the rules are being moved to the Investigation section of rules (30.510, D) and section 30.710 is being

repealed. Additionally, there continues to be concerns voiced by the Task Group that there even with current rules, there are disputes related to jurisdiction among the counties that sometimes slows down the investigation and subsequent provision of services. Task Group members who work in both APS and CPS recommended mirroring language recently implemented in the CPS rules that have helped to lessen these same types of disputes related to CPS; the Group agreed to that recommendation.

- Rules are being added to the Investigation section to ensure that thorough investigations are conducted in coordination with other agencies, when appropriate. Rules related to joint investigations are currently at section 30.820, Collaboration. These rules are being moved to the Investigation section where this collaboration process occurs and Section 30.820 is being repealed. The rules are being updated to reflect current processes related to joint investigations. The rules in this section are also being updated to reflect the requirements to thoroughly investigate the allegations and the client's strengths and needs, by interviewing persons with potential knowledge of the allegations or of the client's needs and gathering and documenting evidence to support or refute the allegations and client needs. When these steps are not completed when investigating a report, the problems and needs of that at-risk adult are not accurately identified so that they can be addressed through the provision of protective services, thus leaving the at-risk adult in continuing danger. (30.520)

- Rules related to the client's functional Assessment, specifically related to "assessment status areas" are being repealed; however, an assessment will still be required. The assessment is a required element in CAPS and therefore, the details of the individual assessment factors are not needed in rule. (30.530)

- Rules related to the Provision of Services, i.e., implementing the case plan developed as a result of the investigation and assessment findings, are being updated. Currently, rules related to the provision of services are found at Sections 30.620 (Provision of Services), 30.650 (also titled Provision of Services), and 30.720 (Courtesy Visits). Rules from sections 30.650 and 30.720 are being moved to section 30.620 and are being updated. Sections 30.650 and 30.720 are being repealed. The updates to the rules include the following:
    - Language is being cleaned up to be clearer and more concise. (30.620)
    - Rules are being added to reflect documentation necessary to determine that a client may not have the capacity to refuse protective services. (30.620,C)
    - Rules are being added to reflect the options for involuntary intervention when a client is at immediate risk of harm and likely does not have the capacity to understand the risks of refusing protective services. (30.620, D)
    - The requirement for ongoing client contact as long as the case remains open is being changed from the current requirement of a face-to-face contact with the client every 30 days to a requirement for a contact once a month, with no more than 35 days between contacts. For clients who live in a facility providing 24/7 supervision, there is a current allowance for a phone call to facility staff to check on the client every other month in lieu of the face-to-face visit. This rule is being modified to ensure that if the client has been alleged to have been mistreated at the facility, the phone call is not appropriate until the facility has put appropriate safety measures in place. Rules are being updated to better outline the requirements of the monthly contact visits. These rules ensure that the worker is continuing to assess any changes to the client's needs, are monitoring services for appropriateness, are documenting any significant incidents experienced by the client, and are documenting their work towards implementing protective services. (30.620,F)
    - The rules related to courtesy visits are being updated to reflect current processes. (30.620,G)

- The rules related to cases in which the client moves to a new county or to another state are being updated to reflect current processes. (30.620, H-K)
- The rules related to the re-assessment process, required every six months as long as the case is opened, have been streamlined to reduce redundancy and reflect current processes. (30.620,L)

- Rules are being changed in the Case Closure section to reflect a more streamlined process for closing the case that reduces redundant documentation that was not beneficial to the outcome of the case. Rules are also being updated to reflect other current practices. (currently at 30.660; new section number will be 30.650)

Clarifying changes to current rule include the following:

- APS has always had a statutory mandate to investigate mistreatment in the community and in facilities; county department APS staff have asked that a definition of "Facility" be added to rule. (30.100)

- Rules related to the storage of documentation of APS reports and cases are being updated to provide additional clarification due to CAPS being a "paperless" system. (30.250)

- Rule is expanding those eligible for access to CAPS from only direct APS staff to APS staff and other county department staff with a business need, e.g., county director, unit/department administrator, or APS data analyst. (30.250)

- A rule is being proposed to add the current practice of annually signing the CAPS Security and Confidentiality agreement. This rule and the current practice will help to ensure that access to CAPS is limited to active CAPS users, another process to protect client PII and PHI. (30.250)

- A rule is being proposed to allow the State Department to remove access to CAPS if user is accessing information inappropriately. (30.250)

- Rules related to Documentation are being updated to provide clarity related to report and case documentation requirements. (30.260)

- Rules are being updated to "urge", though not require, counties to utilize the RED team process for evaluating reports to determine if the report should be screened in for investigation or screened out because it does not meet eligibility requirements for APS intervention. The current rule is "may use". Language is being added to ensure that either the RED team or a supervisor is reviewing and determining whether the report should be screened in or out and the type of response needed (emergency vs non-emergency) and urging, though not requiring, use of the RED team evaluation process. (30.340 and 30.420)

- Language is being added to ensure that reports are taken related to mistreatment of at-risk adults, whether the adult lives in the community or in a facility. (30.410)

- Language was updated to better reflect the requirements for follow up attempts at contact when the initial response to a report was not a face-to-face visit with the client. (30.430,C)

- Rules were clarified around those cases that are screened in for investigation but may not need a face-to-face response by APS. These rules do not change the requirement but make the requirement more easily understood. (30.430,E).

- Rules were clarified related to investigation and assessment, particularly related to the APS mandate to investigate reports or mistreatment or self-neglect of an at-risk adult no matter where the mistreatment occurred. (30.510, A-B)

- Rules related to Case Plan Development are being updated to reflect the current process in CAPS, which were implemented to reduce redundant documentation that did not improve the outcome of the case and was time consuming for the caseworkers. (30.610)

- Rules related to usage of the Client Services funds for purchasing needed goods and services for APS clients are being updated to provide additional clarification on the acceptable use of these funds. (30.610,F)

- Language in the rules related to Court Intervention (30.630) are being updated to be clearer.

Technical corrections to current rule include the following:

- The term "data system" is being replaced throughout with the name of the data system, CAPS, for simplicity and clarity. A new definition of CAPS is added and the definition of "Data System" is repealed. (30.100)

- The term "referral" is being replaced with the current terminology "report". Most of these changes were completed with the rule changes approved in 2014, but a few instances of the old term were missed and are being corrected in this rule making.

- The phrase "mistreatment, exploitation, and self-neglect" is being replaced by "mistreatment and self-neglect" to reflect the change in statutory definitions as a result of HB16-1394.

- The term "imminent" is being replaced by "immediate" throughout. Task Group members indicated that this term was more easily understood and applied by APS staff and aligns with the terminology used by CPS.

- A rule is being repealed in the Eligibility section (30.230,B) as it is redundant to rules in the Report Categorization section (30.420)

- The term "hours" is being replaced by "days" in determining the response to an emergency report. This does not change the response time frame but Task Group members felt that "non-business days" was clearer than "non-business hours". (30.430, B)

- The long-term care ombudsman is being removed from rule as a contact for ascertaining a client's immediate safety. The ombudsman cannot share information with APS unless they have explicit consent from the client and are not emergency responders, therefore, this option for ascertaining a client's safety is not a predictable no appropriate option. (30.430, B)

- A redundant rule was repealed at 30.430,B.
- Rule language was changed to be more concise and was brought into alignment with current practice of ensuring an initial response. (30.430,C)
- A rule was repealed related to a client who is competent and able to arrange their own services. Clients who are able to do this are not at-risk adults, by definition, and so would not continue to have an open case. (30.430,E)

Authority for Rule:

State Board Authority: 26-1-107, C.R.S. (2015) - State Board to promulgate rules; 26-1-109, C.R.S. (2015) - state department rules to coordinate with federal programs; 26-1-111, C.R.S. (2015) - state department to promulgate rules for public assistance and welfare activities.

Program Authority: 26-3.1-108, C.R.S. (2015) Rules. The state department shall promulgate appropriate rules for the implementation of this article.

Does the rule incorporate material by reference?		Yes	X	No
Does this rule repeat language found in statute?	X	Yes		No

If yes, please explain.

Some definitions are repeated in rule from statute. Ensuring that the definitions are in rule provides APS staff the ability to easily understand their program requirements within one document.

The program has sent this proposed rule-making package to which stakeholders?

Policy Advisory Committee (PAC); Economic Security Sub-PAC; Child Welfare Sub-PAC; County Departments of Human/Social Services; Colorado Human Services Directors Association (CHSDA); Colorado Counties, Inc. (CCI); Colorado Commission on Aging (CCOA); Colorado Legal Services; Colorado Senior Lobby; Community Centered Boards; Colorado Department of Public Health and Environment, Health Facilities Division; Colorado Department of Health Care Policy and Financing, Division for Intellectual and Developmental Disabilities; Disability Law Colorado; Area Agencies on Aging; ARC of Colorado.

Attachments:
Regulatory Analysis
Overview of Proposed Rule
Stakeholder Comment Summary

REGULATORY ANALYSIS

(*complete each question; answers may take more than the space provided*)

1. List of groups impacted by this rule:

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

Groups that will benefit from these rules are at-risk adults and APS staff. County department APS staff will be responsible for implementing the program requirements for all at-risk adults. The State Department APS staff will be responsible for providing oversight of the counties through training and quality assurance activities.

The rules will lead to improved APS casework practice in many areas and the result will be to improve protective services provided to at-risk adults as the rules are fully implemented by county department APS staff.

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 APS program has experienced significant change in the past several years as a result of a number of legislative changes to the APS program requirements. With the implementation of mandatory reporting of mistreatment of at-risk elders in SFY 2014-15, APS is now receiving nearly 17,000 reports a year, a 41% increase from the prior year. Additional funding for APS staff and training has been received by county APS programs to be used to improve services for at-risk adults who are experiencing mistreatment or self-neglect. Additionally, with the implementation of the new APS data system (CAPS), it is possible to see the gaps in understanding of what a thorough investigation and appropriate implementation of protective services entails, due in large part to the deficit in training and quality assurance resources available for the APS program since the law was enacted in 1983. These rule changes are recommended in an effort to continue to improve services and outcomes for the vulnerable populations that the APS program serves. For example, the RED team process for reviewing, evaluating, and deciding (RED) how to respond to a report of suspected mistreatment has been proven over time to be a more precise process for making decisions about reports. These rule changes would further encourage the use of RED by every county, with the Task Group's agreement that ultimately in the years to come, this process would become a required process for every APS program.

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: There is no fiscal impact to the State because any required changes to the CAPS data system as a result of these new rules are currently funded through a contract with the vendor and/or through a Federal grant.

County Fiscal Impact: There is no fiscal impact to the County Departments as the removal of the flagged background check requirement removes any fiscal impact.

Federal Fiscal Impact: There are no new fiscal impacts. APS receives approximately $2 million dollars in federal Title XX funds that is provided to the county departments as part of the APS Administration

Allocation. The State Department received a federal grant to make improvements to the APS data system (CAPS) in September 2015 and these funds are being used to make updates to the intake and assessment areas of the system, which will address the changes in these proposed rules.

Other Fiscal Impact *(such as providers, local governments, etc.)*: There is no other fiscal impact identified as the APS is a county department administered, State Department supervised program.

4. Data Description:

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

Research conducted by Hermann Ebbinghaus (1885), which has been subsequently verified by other research studies, identifies the "forgetting curve" for remembering details of a training or event over time. These studies were used to guide the decision to begin shortening the allowed time frame for documenting casework events from 14 days to 10 days. Based on stakeholder feedback the Department has decided to leave the time frame at 14 days at this time.

Quality assurance activities that include formal and informal case reviews, data integrity activities, and C-Stat activities that have included hundreds of informal case reviews provided insight into the need to add and clarify rules for county APS staff to ensure that quality investigation, client needs assessments, and appropriate and adequate case planning and service implementation was being conducted. In formal case reviews, only 19% of caseworkers met the compliance goal for quality casework of 90% or higher and 31% received scores of 75 to 89%. The remaining 50% of workers scored below 75%, with 15% of the total caseworkers reviewed scoring less than 50%. Informal reviews conducted through c-stat activities and other quality assurance and data integrity reviews also show that their investigations are not complete leading to incorrect findings and case planning, documentation in the case does not detail the client's strengths and needs or the caseworker's actions in the case, and services needed to improve safety and reduce risk are not accurately identified or implemented.

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.

There is no alternative to these proposed changes:

- Updates due to changes in the statute for the APS program
- Those changes made to better reflect current processes in the APS data system (CAPS)
- Changes made to make some technical corrections, repeal duplicative rules, clarify language, and to move current rules to more appropriate sections of the APS rules

New rules are being added to address improved casework practices that are necessary for improved outcomes of intervention for at-risk adults served by the APS program. These practices might be addressed through training but those attempts have not been as successful as needed to ensure good outcomes for all vulnerable adults served by the APS program. Since the Fall of 2014, the State Department has provided training and technical assistance on these areas of improvement through regional training, quarterly training meetings, weekly email updates and reminders, webinar training, and through one-on-one technical assistance for supervisors and caseworkers on monthly basis. But, with half of all caseworkers still scoring below average on case reviews conducted in the past nine months, it is now necessary to ensure that minimum requirements are outlined clearly in rule.

Title of Proposed Rule:	Adult Protective Services Program Revisions		
CDHS Tracking #:	15-5-8-1		
Revising official Rule #s:	12 CCR 2518-1, Volume 30		
Office, Division, & Program:	Rule Author: Peggy Rogers	Phone: 303-866-2829	
		E-Mail: peggy.rogers@state.co.us	

OVERVIEW OF PROPOSED RULE

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

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.100 (Definitions) 30.430,B,4,e (Response Priority) 30.520,B,1 (Investigation) 30.830,A (Adult Protection Teams)	Definitions of "client" and "RED Team" and other rules cited have the outdated term "referral".	Update definitions and rules with current term of "report" in place of "referral".		X
30.100 30.210, F. 30.220, B, 1 30.220, B, 2 30.250, I, 2 30.250, I, 3 30.250, K 30.260, A 30.260, B 30.310, D 30.330, C 30.340, A, 4d 30.340, D, 1 30.410, C 30.410, D 30.420, C 30.420, C, 2 30.430, B, 4f 30.430, B, 5e 30.430, D, 2 30.530, C, 1 30.610, D 30.640, B, 4 30.830, F	Use of the term "the data system."	Update all rules to use "CAPS" in place of "the data system."		X
30.100	Definition of "Abuse"	Update definition to reflect statutory change, per HB16-1394.		X
30.100	Definition of "At-risk Adult"	Update definition to reflect statutory change, per HB16-1394.		X
30.100	None	Add definition of CAPS, Colorado Adult Protective Services data system		X
30.100	Definition of "Caretaker"	Update definition to reflect statutory change, per HB16-1394.		X
30.100	Definition of "Caretaker Neglect"	Update definition to reflect statutory change, per HB16-1394.		X
30.100	Definition of "case planning" does not include "improving safety" as a purpose.	Update definition of "case planning" to include the term "and improve safety."		X

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.100	Definition of "Collateral Contact"	Update definition to add "facility staff" to the list of examples.		X
30.100	Definition of "data system".	Repeal definition. New CAPS definition replaces this definition.		X
30.100	Definition of "Exploitation"	Update definition to reflect statutory change, per HB16-1394.		X
30.100	None	Add definition of "Facility" to provide clarification of what constitutes a facility.		X
30.100	Definition of "Mistreatment"	Update definition to reflect statutory change, per HB16-1394.		X
30.100 30.230,B,1 30.240,A 30.250,K 30.330,A,5 30.340,A,1 30.340,B,1 30.410,A 30.410,D,3 30.420,A,2 30.420,F 30.420,G 30.430,B 30.520,A 30.620,D,1 30.620,D,2 30.640,A,1 30.660,D,3 30.810,C,2 30.810,D,1 30.810,E,1 30.810,F,1	Phrase "mistreatment, exploitation, and self-neglect"	Replaces with new terminology of "mistreatment and self-neglect".		X
30.100	None	Add definition of "Undue Influence" to reflect statutory change, per HB16-1394.		X
30.210, B	Grammatical error regarding placement of the phrase "make reasonable efforts to."	Move the phrase "make reasonable effort to" from after "The county department shall" to make the sentence flow better and read "The county department shall utilize funding appropriated by the State Legislature to make reasonable efforts to…"		X

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.210, C.	Current rule states that county departments shall report changes of staffing to the state department within 3 working days of change.	Rule is rewritten to reflect need to protect PII and PHI in CAPS by notifying the State Department when a CAPS user leaves the APS program. Rule reflects how notification must be made. Changes the time frame for reporting changes from three working days to "…three working days…but no later than the CAPS user's last day of employment."	X	
30.230,B	Currently states under number one that protective services are provided to at-risk adults who need assessment for health, welfare, protection, and/or safety.	Remove "who need assessment…" to reduce redundancy. All screened in reports need assessment for health, safety, welfare, and protection.		X
30.250, I, 3	Currently states that only APS staff has access to CAPS.	Change to allow access for persons with a business need.		X
30.250, I, 6	None	Adds a rule regarding the need for CAPS users to sign the security confidentiality agreement.	X	
30.250, J	Rule regarding violating confidentiality.	Adds a rule that CAPS users shall not access information in CAPS that is not necessary to serve the client. Allows the State Department to remove access to CAPS for violations.		X
30.250, K	None	Adds clarifying language to include APS case information not in CAPS as confidential.		X
30.260, A	Rule regarding required documentation of reports and cases.	Add language that clarifies what elements are required to be thoroughly documented in CAPS.		X
30.260,B,1	Rule requiring a release of information signed by the client be attached to the case in CAPS.	Clarifies that a release is not mandatory, but should be completed when appropriate.		X
30.260,C	None	Adds a rule to require all documentation, notes, and evidence for the case be entered into CAPS and then destroyed. Provides exception for original legal documents, such as guardianship orders or birth certificates.		X
30.310, A	Rule regarding education and experience requirements for hire.	Add "criminal justice" to the list of fields that qualify for the education requirement. Changes the term "obtained" to "completed" to clarify experience requirement. Allows a Master's degree substitution for Journey Level to be in any field allowed in the list of degrees.		X

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.320, C, 3	Rule regarding background checks for prospective employees.	Change "strongly urged to require" to "shall" to require counties to flag background checks for future arrests and convictions. No change is being made per stakeholder feedback.	**X**	
30.320,C,5,a	Lists criminal offenses that disqualify an applicant from employment as an APS worker.	Technical correction to remove Title 18, Article 18.5 (drug taskforce) from the list.		X
30.330, A, 1	Rule regarding completion of the Pre-Academy Workbook for new hires and transfers.	Change from full-time caseworkers having 3 months and part-time caseworkers having 6 months to complete it to all new caseworkers shall complete it within 1 month of hire and not being assigned cases until it is complete.		X
30.330, A, 2	Rule regarding completion of the APS training academy.	Counties with only 1 caseworker that is less than 25%FTE shall complete the training academy in 9 months, instead of the current 12 months. All other counties with at least 1 caseworker 25% or higher FTE shall complete it in 6 months instead of the current 9 months.		X
30.330, A, 4	Rule regarding completion of the Pre- Academy Workbook by case aides.	Change to requiring new case aides to complete the workbook within 1 month of hire instead of the current 3 months.		X
30.330, B, 1	Rule regarding ongoing training hours requirements for caseworkers.	Increases requirement to 40 hours per fiscal year instead of the current 30 hour requirement. Removes "state approved and provided" from the rule regarding reading reports and professional journals for the non-state provided training options.	X	
30.330, B, 2	Rule regarding ongoing training hours requirements for supervisors.	Increases requirement to 30 hours per fiscal year instead of the current 20 hours. Change the number of state provided hours from 10 to 15 hours.		X
30.330, B, 3	Rule regarding ongoing training hours requirements for case aides.	Increases requirement to 20 hours per fiscal year instead of the current 15.		X
30.330, B, 4	Rule regarding ongoing training hours requirements for part time APS staff.	The required number of hours required is prorated for part-time APS staff. Those requirements are increased for each quartile of FTE, in relation to the increased requirements for full time staff.	X	
30.340, A	Rule regarding supervisor duties.	Add "or lead worker" to the rule to allow for lead workers to complete these duties in lieu of the supervisor.		X
30.340,A,1	Cites another section of rule.	Updates the citation.		X
30.340, A, 2	Rule regarding RED Team process.	Changes the language from "may" to "are urged to" for use of the RED team process. Updates rule citation.		X

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.340, A, 4	Rule regarding the case review requirement for supervisors.	Update rule A,4 to a phrase to "review cases to ensure". Clarifies language related to documentation. Moves 15% review requirement to A,5.		
30.340, A, 5	None	Moves 30.340,A,4 to this rule. Allows supervisor to continue to review 15% of all cases using the formal case review tool or choose a new option of reviewing and approving every case at three key points in the case.	X	
30.340,B,1	Cites another section of rule.	Updates the citation.		X
30.340, D	Rule regarding the role of screeners.	Change the term "call" to "intake" screeners to more accurately name the role. Change the location of the documentation of intake reports to include CAPS and the Web2Case form.		X
30.410, A	Rule regarding intake of reports.	Add clarifying language "occurring in the community or in a facility" to provide better guidance on APS jurisdiction to investigate.		X
30.410, C	Rule regarding intake of reports.	Change the language to include documenting the report in the Web2Case form or CAPS.		X
30.410, E and F	Rules regarding county assignment are currently found at 30.710.	Repeal 30.710. Adds rules relating to county assignment or jurisdiction for reports that have not yet been screened in/out to 30.410,E as this location better relates to the rules about Intake. New rules provide simpler method of determining jurisdiction.		X
30.410, G	Rule regarding the transfer of an intake that was reported to the wrong county within eight (8) hours.	Change the term "forward" to "transfer" to more accurately match the process in CAPS. Change the timeframe for transferring a report made to the wrong county to one (1) hour after determining the report was made to the wrong county.	X	
30.420, A and D	Rule regarding evaluating new reports.	Add the language "utilizing the RED team framework or supervisory review" for determining if a report meets APS criteria to clarify the two approved options for this process.		X
30.420,C	Technical correction	Changes "shall" to "will" for the CAPS system generation of a screen in/out recommendation.		X
30.420,E	None	Adds rule to provide guidance on the RED team framework should counties choose to utilize the RED team process.	X	
30.420, F	Rule regarding process for reports that do not meet criteria for APS response.	Add a 3 day timeframe to screen out reports when they do not meet APS criteria.		X

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.420, F, 2	Rule regarding providing information to reporting parties when the report is screened out.	Change the term "shall" to "may" provide information to reporting parties.		X
30.430, B	Rule regarding emergency response timeframes.	Change the term "imminent" to "immediate."	X	
30.430, B, 3	Rule regarding emergency response timeframes.	Change the term "hours" to "days" for clarity. Remove "long term care ombudsman" from other professionals to reach to ascertain immediate safety.	X	
30.430, B, 4	Technical correction.	Change "or" to "and"; change "hours" to "days" in rules on follow up contact attempts for emergency response reports.		X
30.430, B, 4,a	Rule regarding follow up on emergency response timeframes.	Change the current rule that allows for law enforcement to substitute for one attempt at contact to allow law enforcement to substitute for attempts at contact during non-business days. Add rule that counties shall follow up the next working day.		X
30.430, B, 4,b	Rule regarding follow up on emergency response timeframes.	Add "such as in the intensive care unit" for clarification.		X
30.430, B, 4,d	Rule regarding follow up on emergency response timeframes.	Technical correction - add "day of" and change "attempt" to "attempts" to provide clarity.		X
30.430, B, 4,e	Rule regarding closing case if contact is unsuccessful.	Change "referral" to "case" to update to current terminology. Change timeframe for closing the case to 35 calendar days from current 20 calendar days from last contact attempt.		X
30.430, B, 4,f	Rule regarding follow up on emergency response timeframes.	Remove "in the data system" to make it more concise.		X
30.430, B, 5	Rule regarding follow up on emergency response timeframes.	Add the language "If the initial response was not face-to-face contact with the client, but…" to provide clarity.		X
30.430, B, 5,a	Rule regarding follow up on emergency response timeframes.	Add "such as in the intensive care unit" for clarification.		X
30.430, B, 5,c	Rule regarding follow up on emergency response timeframes.	Technical correction - Add "day of" and change "attempt" to "attempts" to provide clarity.		X
30.430, B, 5,d	Rule regarding follow up on emergency response timeframes.	Change timeframe for closing the case to 35 calendar days from current 20 calendar days from last contact attempt.		
30.430, C	Rule regarding non-emergency response.	Updates language to provide clarity and approved supervisory or RED Team decision-making process.		X

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.430, C, 2	Rule regarding non-emergency response.	Change "a face-to-face contact" to "an initial response" to update to current terminology. Add rule to define an initial response, based on current process.		X
30.430, C, 3	Rule regarding non-emergency response.	Change the language to reflect the process for follow up when the initial response was not a face-to-face contact and the worker was unable to ascertain safety by phone to reflect the options for initial responses. Clarify the language that the county shall attempt face-to-face contact every other working day.		X
30.430, C, 3,a	Rule regarding non-emergency response.	Adds a rule that states a law enforcement welfare check can be substituted for one attempt at contact to allow for flexibility for the caseworker.		X
30.430, C, 3,e	Rule regarding non-emergency response.	Change timeframe for closing the case to 35 calendar days from current 20 calendar days from last contact attempt.		X
30.430, C, 4	None	Adds rules that define the follow up required when a worker is able to ascertain safety for the initial response, but has not yet had a face-to-face contact with the client.		X
30.430, E	Rule regarding re-evaluation of whether a face-to-face response is needed for a non-emergency response case.	Change "provide telephone response and assistance" to clarify what is an appropriate phone contact to make for phone collaboration. Change the term "telephone response and assistance" to "phone collaboration" in the second sentence to update to current terminology.		X
30.430, E,5	Rules regarding cases appropriate for "phone collaboration to resolve concerns.	Repeal #5 as clients that fit that description do not usually meet the criteria for "at-risk adult" and APS should not be involved.		X
30.510, A and B	Rule regarding conducting investigations and client assessments.	Update language related to the investigation. Adds clarifying language that the investigation must be completed regardless of the client's consent, as it is required by statute. Adds provision that if assessment confirms the client is not an at-risk adult, therefore not meeting criteria for APS intervention, the investigation does not need to be completed. Moves rules related to client assessment to new section "30.510,B".		X

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.510, D	Rules regarding county assignment are currently found at 30.710.	Repeal 30.710. Adds rules relating to county jurisdiction after reports have been screened in for investigation to 30.510, D as this location better relates to the rules about Investigation. New rules allow transfer of the case and require receiving county to investigate, unless they have new information that would allow them to close the case.		X
30.520, A, 1	Rule regarding the investigation process and requirements.	Change the term "imminent" to "immediate."		X
30.520, A, 2	Rules regarding collaboration with other investigative agencies are currently found at 30.820.	Repeal 30.820. Move rules related to entities to consider as part of a collaborative investigation to 30.520, as they better align with the Investigation, and update language.	X	
30.520, A, 3	Rule regarding client interview being unannounced and in private.	Add clarifying language that states if not unannounced or in private, worker will document the reason.		X
30.520, A, 5	Rule regarding the requirement to interview the alleged perpetrator, when appropriate and safe.	Add requirement to document why an alleged perp was not interviewed.		X
30.520, A, 6	Rule regarding collecting evidence.	Adds suggestions for evidence that can and should be collected, as appropriate.	X	
30.520, A, 8	Rule requiring identification of the perpetrator.	Repeal the term "self-neglect, as there is no perpetrator in self-neglect cases.		X
30.520, A, 9	Rule requiring investigation of mistreatment identified during investigation.	Adding the clarifying language that states new/additional allegations that are identified must be documented in CAPS.		X
30.520, B, 1	Rule regarding the time frame for completing the investigation.	Adds requirement to document in CAPS throughout the investigative process. Establishes a time frame to document interviews within ten (10) days of the interview. Moves rule related to being unable to complete an investigation in the timeframe to B,4. Repeals the rules at the current "B2" and moves them to the new "B 1-3" and updates language related to the elements of the investigation that must be documented. The change to 14 days to 10 days is no longer being made per stakeholder feedback. The time frame will remain at 14 days at this time.	X	
30.520, B, 2	Rule regarding documenting investigative information.	Repeal current rule. Added to 30.520, B, 1 through 3, above.		X
30.530 A	Rule regarding the assessment process and requirements.	Change "assess" to "complete a baseline assessment of" to reflect current practice. Change "imminent" to "immediate."		X

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.530, B	Rule regarding the assessment tool in CAPS.	Update language to make is clear that risk and safety need to be assessed, per current practice. Removes the five status areas that need to be assessed (B1-5, and C). The assessment tool is established in CAPS so naming areas of the assessment is not necessary.		X
30.530, C	Currently 30.530,D, 1 and 2. Rules regarding documentation of the assessment.	Updates the language to indicate what is required for the assessment to be completed timely. Moves rule related to being unable to complete an assessment in the timeframe to C,2. Repeal current rule C,2, as it is included in the new C,1.		X
30.610, C	Rule regarding the case plan process and requirements.	Rules in this section are being rewritten to reflect current practice, which was changed to reduce redundancy and put into place a more efficient and effective case plan requirement.		X
30.610, F	Rule regarding the use of client services funds.	Rules in this section are being rewritten to more clearly reflect when APS Client Services funds may and may not be utilized.		X
30.620, A	Rule regarding providing services in least restrictive manner.	Repeal section 30.650. Move current 30.650,B to 30.620 as the content is related to what takes place after the investigation and assessment. This move makes the rules easier to find and more cohesive.	X	
30.620, B	Rule regarding provision of services for adults with capacity to make decisions.	Removes redundant language and clarifies what steps are needed if it appears the client has capacity to make decisions and either refuses or consents to services.		X
30.620, C	Rules related to provision of services when the client appears to lack capacity.	Add clarification on what must be documented related to the client's suspected incapacity; adds possible interventions for ensuring the immediate safety and health of a client who is suspected to lack capacity. Repeal current rule 30.620,B,3 as it is redundant to rule 30.620,C,4.		X

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.620, E	Currently at 30.650 -Provision of services. Rules regarding ongoing contact with clients throughout the provision of services.	Repeal Section 30.650. Move rules from 30.650 to this section. Change the requirement for monthly contact with clients in the community from every 30 days to once a month, not to exceed 35 days since the previous monthly contact. For clients living in a facility, adds a requirement the contact every other month that can be by phone, cannot be a phone contact if there is concern with the facility providing adequate care. Reduces time frame to document monthly contact from 14 days to 10 days. Clarifies what is required in implementing a case plan. Adds requirement to update case information, as changes occur month to month. The change from 14 days to 10 days is no longer being made, per stakeholder feedback. The timeframe will remain at 14 days at this time.	X	
30.620, F	Currently 30.720 – Courtesy Visits. Rules regarding courtesy visits with a client for another county.	Repeal Section 30.720. Move those rules to this section to make rules more cohesive. Updates rules to reflect current practice. Changes time frame to document the courtesy visit from 14 days to 10 days. The change from 14 days to 10 days is no longer being made, per stakeholder feedback. The timeframe will remain at 14 days at this time.	X	
30.620, G through J	Currently at 30.710, rules related to a client relocating to another county while the case remains open.	Repeal Section 30.710. Move rules to this section to make rules more cohesive. Update rules to reflect current practice related to case transfers in CAPS. Shortens the length of time a case may remain with the former county department once a client has moved.		X
30.620, K	Currently at 30.650,D. Rules related to the six month reassessment requirement.	Repeal Section 30.650. Move reassessment rules to this section and update to reflect current practice, which is a simpler and more efficient process than current rule.		X
30.630, A	Rule regarding emergency court intervention.	Updates the rule to be specific to emergency situations in which the county may need to intervene through the courts.		X
30.630, A,1	Rule regarding steps to take prior to seeking court intervention.	Adds language to specify that the county ensures all factors are met and documented prior to petitioning the court. Adds a rule at (b) that the county should ensure that court intervention will resolve the safety concern. Moves current section “C” to “A,1,c”.	X	

Section Numbers	Current Regulation	Proposed Change	Stakeholder Comment	
			Yes	***No***
30.630, B, 4	Rule regarding documentation requirements when the county department has been named the guardian or conservator.	Adds language that the client's case record must be updated with the fiduciary information.		X
30.630,E	Technical correction.	Change "provide" to "providing" to be grammatically correct.		X
30.640,A,1	Rule regarding appointment of the county as representative payee.	Technical correction to remove "the potential for" before "significant harm."		X
30.650	Section on the Provision of Protective Services.	Repeal Section. Rules have been recodified under 30.520 and 30.620.		X
30.660, A	Timeframe for closing a case.	Updates rule to require case closure within 35 days of last client contact, rather than current 30 days. Adds rule allowing the case to remain open longer if county is actively looking for the client.		X
30.660,B	Timeframe for closing a case for a client placed in a facility.	Updates rule to shorten the time from the current three (3) months to 35 days, unless there is good cause.		X
30.660,D	Case closure reasons.	Updates the rule to close the case when allegations are unsubstantiated and there are no other identified needs, per the client assessment. Updates the rule to allow closure of the case if the client refuses contact or refuses services. Adds additional closure reasons, including services unavailable, client incarcerated, and client moved out of state.		X
30.660,E	Case closure procedures	Updates rules to reflect current case closure practices, which were changed to reduce redundancy and create a more efficient closure process.		X
30.700 30.710 30.720	Rules section County Assignment and Courtesy Visits	Repeal. Rules have been recodified in Sections 30.410, 30.510, and 30.620		X
30.820	Rule regarding collaboration with other agencies.	Repeal to reduce redundancy. Rules have been recodified in Sections 30.500 and nearly the same rules were found in Section 30.810.		X
30.830	Rule related to which counties are required to have an AP Team.	Technical correction from "referrals" to the current term "screened in reports". Addition of the phrase "and improve safety."		X

Title of Proposed Rule:	Adult Protective Services Program Revisions		
CDHS Tracking #:	15-5-8-1		
Revising official Rule #s:	12 CCR 2518-1, Volume 30		
Office, Division, & Program:	Rule Author: Peggy Rogers	Phone: 303-866-2829	
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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):

APS Task Group created by the Economic Security Sub-PAC. This task group was moved under the Child Welfare Sub-PAC in May 2016. The APS task group consisted of representatives from the State Department APS unit and from sixteen (16) counties who were nominated by their county director and approved by the Colorado Human Services Directors Association. The county departments represented on the task group were: Adams, Arapahoe, Archuleta, Boulder, Denver, Douglas, Eagle, El Paso, Jefferson, Larimer, Mesa, Montrose, Morgan, Park, Pueblo, and Weld.

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:

Policy Advisory Committee (PAC); Economic Security Sub-PAC; Child Welfare Sub-PAC; County Departments of Human/Social Services; Colorado Human Services Directors Association (CHSDA); Colorado Counties, Inc. (CCI); Colorado Commission on Aging (CCOA); Colorado Legal Services; Colorado Senior Lobby; Community Centered Boards; Colorado Department of Public Health and Environment, Health Facilities Division; Colorado Department of Health Care Policy and Financing, Division for Intellectual and Developmental Disabilities; Disability Law Colorado; Area Agencies on Aging; ARC of Colorado.

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 [X] No

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

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

[X] Yes [ ] No

Date presented __June 2, 2016_____.

What issues were raised? Concerns related to shortening the time frame for documenting case actions from 14 to 10 calendar days. The rules have been revised to keep the 14 day time frame. Concerns for requiring a flagged background check. That proposed change has been removed.

If not presented, explain why.

Comments were received from stakeholders on the proposed rules:

[X] 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.

The rules were emailed to county department directors and APS staff for review and feedback in late April 2016. The State held six webinar sessions between May 2 and May 12, 2016 for county directors, Adult Protective Services (APS) managers and supervisors, and APS caseworkers to go over the proposed rule changes in detail. Over eighty (80) APS staff and county directors representing more than 30 counties attended these webinars and provided feedback and suggestions for improvements and changes to the rules. In May 2016, the APS Task Group was provided the feedback from the webinars and the proposed changes as a result of the feedback. Per the APS Task Group request, the comments for the rules were initially reviewed and discussed via email among task group members. The State Department also met with the County Human Services Directors Association Steering Committee members on June 2, 2016 to discuss the rule process. A final meeting of the APS task group was held June 10, 2016 during which the task group members discussed and made final decisions related to the rules that had been commented upon by county departments. The APS task group supports the final rule recommendations, as drafted in this Initial Circulation.

Below is a summary of comments received via the rules webinar sessions and subsequent emails and the actions to address the comments.

30.330 Training Requirements; 30.530 Investigation; 30.620 Provision of Services; and 30.830 Adult Protection Teams: One proposed rule revision that received stakeholder feedback had to do with the timeframe for casework and other documentation to be entered into the CAPS data system that can be found in multiple sections of the rules, as listed. The proposed rule change was to decrease the amount of time caseworkers have to enter documentation to 10 calendar days from 14 calendar days. This change was proposed to improve the quality and accuracy of the documentation based on available scientific research on memory. However, representatives from counties identified this as a concern during the webinars and in meetings with Department staff, explaining that they felt this was an unnecessary change. They requested to keep the 14 day documentation requirement. The APS Task Group considered the request and developed a compromise to reduce the time allowed for documenting key casework related information to 10 days, including interviews of clients and alleged perpetrators and monthly contact visit notes. The Task Group determined that the time allowed for documentation of non-casework related information, such as continuing education hours completed, would remain at 14 days. Roughly 75% of task group members supported this compromise. However, after further discussion with the Child Welfare Sub-PAC, the sub-PAC members were strongly opposed to shortening the time frame to 10 days for casework practice, indicating that with an expected 30% increase in reports due to implementation of SB15-109, shortening the time frame at this time would impair the Department's ability to manage their workload. The Department has determined that it will leave the 14 day documentation time frame in place at this time.

30.210 APS Program Administration: A change to the rules to require counties to notify the State of change in staffing "immediately" as opposed to within "three working days" was proposed to ensure that persons no longer working in the APS program would have their access to the APS data system, CAPS, removed. CAPS contains a great deal of personal identifying information (PII) and HIPAA protected personal health information (PHI) that must be protected and kept secure. Two counties felt that the change to require county departments to notify the

state immediately upon learning of a change in staffing was an unnecessary time constraint to give to counties. These two counties felt that "one business day" to make the notification was more reasonable. Two other counties felt that the reduction of time to notify the State enhanced best practices and would result in a better outcome for protecting confidential information. One county noted a concern related to their IT department's inability to access CAPS to submit the change in staffing. A compromise was drafted, with unanimous support of the task group, to require notification "within three (3) working days upon learning of a change in APS staffing but no later than the CAPS user's last day of employment."

30.260 Documentation: Several counties voiced concern over including the language "preferably in the county attorney's office" regarding the secure housing of hard copy documents relating to case files due to the lack of a county attorney's office at their department. Compromise language was drafted during the email review by the task group to secure those documents "in a secured location."

30.320 Background Check Requirements. A proposed change related to the requirement for a "flagged" background check from "strongly urged" to "shall". A flagged background check ensures that the county department would be notified if an APS staff member with direct access to at-risk adults, were to be arrested after their original background check was completed. This may be critical information to client safety. However, a county department indicated that due to its current contract with a company performing the background checks for the county department, it and other counties with similar contracts, would be unable to conform to rule under their current contracts. The Department, therefore, decided to delay this rule change at this time.

30.330 Training Requirements: Initial rule recommendations for counties with only one caseworker who is less than 25% FTE in APS was to require all ten (10) hours of continuing education be state-provided training. One small county recommended that small counties be able to attend local training for a portion of their required training hours. Two counties were in support of the training being all state provided. Upon review by the APS task group, it was unanimously recommended that part of the training requirement could be met through local training opportunities. Counties did not want to remove the ability to read journal articles to meet the ongoing training hours. The rule was left in but was altered to remove the statement, "…provided or approved by the State Department APS unit…" as the Department is no longer able to provide or approve articles.

30.340 Staff Duties and Responsibilities: During the initial task group meetings, there was discussion about the 15% case review requirement. At that time, the consensus of the APS Task Group was to continue with the 15% requirement, but also offer the option of utilizing the enhanced supervision profile for caseworkers which would allow for supervisors/lead workers to review cases at key junctures, reducing the amount that would be reviewed at each time, thus creating a more efficient process. Counties would have the option to choose their specific method of reviewing casework. During the webinars, one county suggested lowering the 15% supervisory case review requirement to 10%. The State Department has identified a need for increased quality assurance reviews of casework and therefore supports then initial recommendation of the task group to provide the county the option of reviewing 15% of all cases or reviewing each case at key casework process points. There were no further objections from the task group.

30.410 Intake: One county asked that the timeframe requirement for transferring reports to the correct county when they are received in the wrong county remain at eight (8) hours, or one business day, instead of reducing to one (1) hour, as was initially recommended by the Task Group. Another county was in support of this recommendation, while one county felt that one (1) hour was sufficient and addressed the concern of timeliness of initial response when reports are transferred. Upon further consideration by the Task Group, just over 60% support keeping the one hour requirement as the recommendation.

30.420 Report Categorization: Two counties recommended that the elements of the RED Team framework be removed from rule due to the possibility of these elements changing in the future and the thought that this was better defined in training, rather than rule. Because the RED Team framework is being added to CAPS, the task group unanimously determined it was not necessary to include in the rules.

30.430 Response Priority: During the webinars, three counties asked for the State to add a five (5) day response time frame to rule to mirror child protection practices. One of these counties wanted the increased time to allow for counties to do more research on the client if the report was going to be screened out for not meeting criteria of an at-risk adult or no mistreatment. One county noted support in keeping the APS response time frames as is. Counties statewide are meeting the initial response time frame 98% of the time. There does not appear to be a business need to add a five (5) working day response time for reports and it does not seem to be in the best interest of the population served by the APS program. Many APS clients are isolated with no contact with other people. A five working day response could mean that clients were not seen for nearly two weeks following receipt of the report. In addition, the child welfare time frame is to be used when there are no safety concerns identified in the report. In APS, if there is no identified mistreatment, the report is screened out. The State Department supports continuing the APS response time frames as is. There were no further objections from the task group.

30.430 Response Priority: The APS Task Group proposed to add to rule that attempts at client contact should be made at different times of the day, which was perceived by several caseworkers to mean there had to be multiple attempts in the same day, which was not the task group's intent. During email review of the comments, some task group members suggested removing the new rule from the recommendations while others thought it could remain if the language were clarified and moved to a different section of the rules. During the final meeting and discussion, the task group was split equally on this and so the rule was removed from the rule recommendations.

30.430 Response Priority: One county asked for clarification on why the Long Term Care Ombudsman (LTCO) was removed from the list of suggested professionals to reach out to and ascertain a client's immediate safety for an initial response. Two counties support the removal of the LTCO from this list. During email discussions, it was explained that the long-term care ombudsmen are unable to respond immediately to a situation, as law enforcement or hospital staff can, where determination of the client's immediate safety is necessary. Additionally, the ombudsman cannot share information with APS without expressed consent of the client. The removal remains the recommendation.

30.520 Investigation: APS Task Group recommended repealing rules at Section 30.820 related to collaborative/joint investigations, including a list of agencies that could work with APS on an investigation, and move them to the Investigation section of the rule as that's when a joint investigation determination would be made. The rule in the new location was updated to be more concise and lists the five key agencies that could partner with APS in investigating mistreatment. Two counties opposed including the list, citing that it is best practice and should be addressed in training rather than included in rule. Two counties supported the addition of this element and the suggested agencies, as it provides more clarity and guidance for caseworkers. Upon further discussion, the task group was unanimous in its recommendation to keep the list in rule.

30.520 Investigations: Rules were added to the current rules related to interviewing collaterals, to add guidance as to who a collateral might be. Other guidance was added to the rules related to the collection and documentation of evidence. One county suggested that all lists that help to define the expectation of the rule be removed and addressed through training. Two counties supported the additional guidance and clarification to assist caseworkers in ensuring their investigations are thorough and complete and they are meeting all required

elements. Upon further discussion, it was determined that the definition of "collateral" already contained all of the new elements in the proposed rule with the exception of "facility staff". A unanimous decision was made to update the definition to add "facility staff" and remove the new list of collaterals from the rule in this section. The task group also discussed the additional lists related to the collection and documentation of evidence and agreed unanimously to include both lists in the rule recommendations.

30.620 Provision of Services: Rules from 30.650 were moved to this section related to the monthly client contact requirement for all open APS cases. Rules were proposed to change the current contact requirement of every 30 days to "once a month, but no more than 35 days from the last client contact." Counties were strongly in favor of this rule recommendation.

30.620 Provision of Services: Rules from 30.650 were moved to this section related to the monthly client contact requirement for all open APS cases. These rules detail the purpose of the monthly contact. The rules that were moved were updated related to the ongoing investigation and assessment of client needs to provide better clarity of that purpose and two new purposes was added related to monitoring of services in place and the continued pursuit of safety improvement and risk reduction. One county asked that all requirements for evaluation during monthly contacts and their documentation be removed from rule, describing them as "overly prescriptive." One county noted support in keeping the criteria. Upon further discussion and review, the task group unanimously agreed to keep the rule recommendations in place.

30.620 Provision of Services: Rules were added that detail appropriate options for involuntary case planning. These options apply to at-risk adults who are have immediate safety and health concerns but who are refusing services, but likely lack the capacity to refuse services. Two counties asked to remove the list of suggested interventions for coordinating for a client's immediate safety and provide training around these options, instead. One county noted support in keeping these suggested interventions in rule as additional guidance for caseworkers. Upon further consideration the more than 90% of the task group members agreed to leave the options in the rule recommendations.

30.620 Provision of Services: Rules from 30.710 were moved to this section related to case jurisdiction when a client moves to a new county during provision of services. One of these rules provides guidance for those clients who are wards of the county department. One county expressed concern that the rule would allow a county to go to the court and have the guardianship transferred to a new county without consent of the new county. The State clarified for this county that this is not a new rule and that, as the rule states, counties cannot transfer guardianships without the receiving county's acceptance and collaboration on petitioning the court. No other counties provided feedback on this item. The rule was left as is.

30.630 Court Intervention: The task group recommended the addition of a rule that guardianship or conservatorship would only be sought for APS clients who have a facility placement. One county felt that it was unnecessary to include that the county should secure placement for the client prior to pursuing court intervention. They expressed that they often will pursue court intervention to appoint a conservator for a client so that they may continue to live independently in the community as a least restrictive option. Another county thought that a home placement for a ward who could afford to pay for 24/7 care and supervision was appropriate. As the rule change was written, this would not be an option for counties moving forward. The State does not recommend that counties take on guardianship for clients living in the community due to the liability and increased difficulty in being able to ensure their safety. However, upon further discussion by the task group, nearly 70% agreed the rule should not be recommended going forward and so is not included in this Initial Circulation.

30.650 Case Closure: The closure reason related to the allegations being unsubstantiated was updated in the initial rule recommendations to add "…and there are no other identified needs." Two counties felt that the language of "no other identified needs" was too vague. One county was in support of leaving the language as is. Upon further input and suggestion from task group members, the rule was amended to read, "…there are no other identified needs as determined by the assessment."

[3/23/15 downloaded from SoS web site]

(12 CCR 2518-1)

30.000 ADULT PROTECTIVE SERVICES

30.100 DEFINITIONS [Rev. eff. 9/1/14]

The following definitions shall apply to these rules.

"Abuse", pursuant to Section 26-3.1-101~~(7)(a)~~(1), C.R.S., means ~~mistreatment that occurs where there is infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation; or, where unreasonable confinement or restraint is imposed; or where there is subjection to nonconsensual sexual conduct or contact classified as a crime under the "Colorado Criminal Code", Title 18, Article 3, Part 4, C.R.S.~~ ANY OF THE FOLLOWING ACTS OR OMISSIONS COMMITTED AGAINST AN AT-RISK ADULT:

A. THE NONACCIDENTAL INFLICTION OF PHYSICAL PAIN OR INJURY, AS DEMONSTRATED BY, BUT NOT LIMITED TO, SUBSTANTIAL OR MULTIPLE SKIN BRUISING, BLEEDING, MALNUTRITION, DEHYDRATION, BURNS, BONE FRACTURES, POISONING, SUBDURAL HEMATOMA, SOFT TISSUE SWELLING, OR SUFFOCATION;

B. CONFINEMENT OR RESTRAINT THAT IS UNREASONABLE UNDER GENERALLY ACCEPTED CARETAKING STANDARDS; OR

C. SUBJECTION TO SEXUAL CONDUCT OR CONTACT CLASSIFIED AS A CRIME UNDER THE "COLORADO CRIMINAL CODE", TITLE 18, C.R.S.

"Adult Protective Services (APS) Program" means the State Department supervised, county department administered program that has the authority to investigate and/or assess allegations of mistreatment and self-neglect of at-risk adults. The APS Program offers protective services to prevent, reduce, or eliminate the current or potential risk of mistreatment or self-neglect to the at-risk adult using community based services and resources, health care services, family and friends when appropriate, and other support systems. The APS Program focuses on the at-risk adult and those services that may prevent, reduce, or eliminate further mistreatment or self-neglect. The APS Program refers possible criminal activities to law enforcement and/or the district attorney for criminal investigation and possible prosecution.

"Allegation" means a statement asserting an act or suspicion of mistreatment or self-neglect involving an at-risk adult.

"Assessment" means the process of evaluating a client's functional abilities to determine the client's level of risk and, in cooperation with the client whenever possible, to identify service needs for the case plan.

"Assumed responsibility", as used in the definition of caretaker, means a person who is providing or has provided recurring assistance to help meet the basic needs of an at-risk adult. The assumption of responsibility can attach by entering into a formal or informal agreement, whether paid or unpaid; by identifying oneself as a caretaker to others; or based on the nature of the situation or relationship between the caretaker and the at-risk adult.

"At-risk adult", pursuant to Section 26-3.1-101~~(1)~~(1.5), C.R.S., means an individual eighteen years of age or older~~:~~ WHO IS SUSCEPTIBLE TO MISTREATMENT OR SELF-NEGLECT BECAUSE THE INDIVIDUAL IS UNABLE TO PERFORM OR OBTAIN SERVICES NECESSARY FOR HIS OR HER HEALTH, SAFETY, OR WELFARE, OR LACKS SUFFICIENT UNDERSTANDING OR CAPACITY TO MAKE OR COMMUNICATE RESPONSIBLE DECISIONS CONCERNING HIS OR HER PERSON OR AFFAIRS.

~~A. Who is susceptible to mistreatment because he/she is unable to perform or obtain services necessary for his/her health, safety, or welfare; or,~~

~~B. Who lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person or affairs.~~

~~C. Persons are not considered "at-risk" solely because of age and/or disability.~~

"CAPS" MEANS THE COLORADO ADULT PROTECTIVE SERVICES (APS) STATE DEPARTMENT PRESCRIBED DATA SYSTEM THAT THE COUNTY DEPARTMENT SHALL USE TO DOCUMENT APS PROGRAM ACTIVITIES, INCLUDING ALL REPORTS AND CASEWORK, ADULT PROTECTION TEAM ACTIVITIES, APS STAFF QUALIFICATIONS, FTE, ONGOING TRAINING, COOPERATIVE AGREEMENTS, AND OTHER ACTIVITIES REQUIRED BY RULE.

"Caretaker", pursuant to Section 26-3.1-101(2), C.R.S., means a person who ~~is responsible for the care of an at-risk adult as a result of a family or legal relationship or a person who has assumed responsibility for the care of an at-risk adult or is paid to provide care or services to an at-risk adult.~~

A. IS RESPONSIBLE FOR THE CARE OF AN AT-RISK ADULT AS A RESULT OF A FAMILY OR LEGAL RELATIONSHIP;

B. HAS ASSUMED RESPONSIBILITY FOR THE CARE OF AN AT-RISK ADULT; OR,

C. IS PAID TO PROVIDE CARE, SERVICES, OR OVERSIGHT OF SERVICES TO AN AT-RISK ADULT.

"Caretaker neglect", pursuant to Section 26-3.1-101(2.3)**(a)**, C.R.S., means neglect that occurs when adequate food, clothing, shelter, psychological care, physical care, medical care, HABILITATION, ~~or~~ supervision, OR OTHER TREATMENT NECESSARY FOR THE HEALTH, SAFETY, OR WELFARE OF THE AT-RISK ADULT is not secured for an at-risk adult or is not provided by a caretaker in a timely manner and with the degree of care that a reasonable person in the same situation would exercise,~~;~~ ~~except that the withholding, withdrawing, or refusing of any treatment, including but not limited to resuscitation, cardiac pacing, mechanical ventilation, dialysis, artificial nutrition and hydration, any medication or medical procedure or device, in accordance with any valid medical directive or order, or as described in a palliative plan of care, shall not be deemed caretaker neglect. As used in this subsection (2.3), "medical directive or order" includes, but is not limited to, a medical durable Power of Attorney, a declaration as to medical treatment executed pursuant to Section 15-18-104, C.R.S., a Medical Order for Scope of Treatment form executed pursuant to Article 18.7 of Title 15, C.R.S., and a CPR Directive executed pursuant to Article 18.6 of Title 15, C.R.S.~~ OR A CARETAKER KNOWINGLY USES HARASSMENT, UNDUE INFLUENCE, OR INTIMIDATION TO CREATE A HOSTILE OR FEARFUL ENVIRONMENT FOR AN AT-RISK ADULT.

(b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (2.3), THE WITHHOLDING, WITHDRAWING, OR REFUSING OF ANY MEDICATION, ANY MEDICAL PROCEDURE OR DEVICE, OR ANY TREATMENT, INCLUDING BUT NOT LIMITED TO RESUSCITATION, CARDIAC PACING, MECHANICAL VENTILATION, DIALYSIS, ARTIFICIAL NUTRITION AND HYDRATION, ANY MEDICATION OR MEDICAL PROCEDURE OR DEVICE,

IN ACCORDANCE WITH ANY VALID MEDICAL DIRECTIVE OR ORDER, OR AS DESCRIBED IN A PALLIATIVE PLAN OF CARE, IS NOT DEEMED CARETAKER NEGLECT.

(c) AS USED IN THIS SUBSECTION (2.3), "MEDICAL DIRECTIVE OR ORDER" INCLUDES A MEDICAL DURABLE POWER OF ATTORNEY, A DECLARATION AS TO MEDICAL TREATMENT EXECUTED PURSUANT TO SECTION 15-18-104, C.R.S., A MEDICAL ORDER FOR SCOPE OF TREATMENT FORM EXECUTED PURSUANT TO ARTICLE 18.7 OF TITLE 15, C.R.S., AND A CPR DIRECTIVE EXECUTED PURSUANT TO ARTICLE 18.6 OF TITLE 15, C.R.S.

"Case" means a report that contains information indicating that there is an at-risk adult and a mistreatment category, and the report is screened in for investigation and/or further assessment.

"Caseload average" means the fiscal year monthly average sum of new reports plus ongoing cases per caseworker. The fiscal year caseload average is calculated as: [(fiscal year total of new reports/12) + (beginning cases on July 1 + ongoing cases on June 30/2)]/FTE on June 30 = caseload average.

"Case Planning" means using the information obtained from the investigation and/or assessment to identify, arrange, and coordinate protective services in order to reduce the client's level of risk for mistreatment AND IMPROVE SAFETY.

"Clergy member", pursuant to Section 26-3.1-101(2.5), C.R.S., means a priest; rabbi; duly ordained, commissioned, or licensed minister of a church; member of a religious order; or recognized leader of any religious body.

"Client" means an actual or possible at-risk adult for whom a ~~referral~~REPORT has been received and the county department has made a response, via telephone resolution or open case.

"Collateral contact" means a person who has knowledge about the client's situation that supports, refutes, or corroborates information provided by a client, reporter, or other person involved in the case. Examples of contacts include, but are not limited to, family members, law enforcement, health care professionals, service providers, FACILITY STAFF, neighbors, and friends.

"County Department" means a county department of human/social services.

~~"Data system" means the State Department prescribed data system that the county department shall use to document APS Program activities, including all reports and casework, Adult Protection Team activities, APS staff qualifications, FTE, ongoing training, cooperative agreements, and other activities required by rule.~~

"Enhanced supervision" means ~~the data system~~ CAPS security access that prevents a caseworker from finalizing an investigation, assessment, case plan, or case closure without supervisory approval.

"Exploitation" means an act or omission committed by a person that:

A. Uses deception, harassment, intimidation, or undue influence to permanently or temporarily deprive an at-risk adult of the use, benefit, or possession of ~~his or her money, assets, or property~~ ANYTHING OF VALUE;

~~B. In the absence of legal authority~~:

~~1~~B. Employs the services of a third party for the profit or advantage of the person or another person to the detriment of the at-risk adult; ~~or,~~

~~2~~C. Forces, compels, coerces, or entices an at-risk adult to perform services for the profit or advantage of the person or another person against the will of the at-risk adult; or,

~~C~~D. Misuses the property of an at-risk adult in a manner that adversely affects the at-risk adult's ability to receive health care or health care benefits or to pay bills for basic needs or obligations.

"FACILITY" MEANS MEDICAL AND LONG-TERM CARE FACILITIES THAT PROVIDE 24 HOUR CARE AND OVERSIGHT FOR RESIDENTS, AND INCLUDES GROUP AND HOST HOMES, ALTERNATIVE CARE FACILITIES, STATE REGIONAL CENTERS, AND STATE MENTAL HEALTH FACILITIES.

"Financial institution" means a state or federal bank, savings bank, savings and loan association or company, building and loan association, trust company, or credit union.

"Fiscal Year" means the State Department fiscal year, which begins July 1 and ends June 30.

"FTE" means Full Time Equivalent. The actual percentage of time a person works on the APS program shall be considered that person's FTE.

"Inconclusive finding" means that indicators of mistreatment, exploitation, or self-neglect may be present but the investigation could not confirm the evidence to a level necessary to substantiate the allegation.

"Investigation" means the process of determining if an allegation(s) of mistreatment involving an at-risk adult can be substantiated by a preponderance of evidence.

"Least restrictive intervention" means acquiring or providing services, including protective services, for the shortest duration and to the minimum extent necessary to remedy or prevent mistreatment.

"Minor impact" means the client may experience some difficultly with the assessment risk indicator, but there is very little impact on the client's overall health, safety, and/or welfare and no intervention is necessary to improve overall safety.

"Mistreatment", pursuant to Section 26-3.1-101(7), C.R.S., means ~~an act or omission that threatens the health, safety, or welfare of an at-risk adult or that exposes an at-risk adult to a situation or condition that poses imminent risk of death, serious bodily injury, or bodily injury to the at-risk adult. Mistreatment includes, but is not limited to:~~

A. Abuse; ~~that occurs:~~

~~1. Where there is infliction of physical pain or injury, as demonstrated by, but not limited to, substantial or multiple skin bruising, bleeding, malnutrition, dehydration, burns, bone fractures, poisoning, subdural hematoma, soft tissue swelling, or suffocation;~~

~~2. Where unreasonable confinement or restraint is imposed; or,~~

~~3. Where there is subjection to nonconsensual sexual conduct or contact classified as a crime under the "Colorado Criminal Code", Title 18, C.R.S.~~

B. Caretaker neglect~~.~~;

C. EXPLOITATION;

D. AN ACT OR OMISSION THAT THREATENS THE HEALTH, SAFETY, OR WELFARE OF AN AT-RISK ADULT; OR,

E. AN ACT OR OMISSION THAT EXPOSES AN AT-RISK ADULT TO A SITUATION OR CONDITION THAT POSES AN IMMINENT RISK OF BODILY INJURY TO THE AT-RISK ADULT.

"Person(s)" means one or more individuals, limited liability companies, partnerships, associations, corporations, legal representatives, trustees, receivers, or the State Department of Colorado, and all political subdivisions and agencies thereof.

"Protective Services" means services to prevent the mistreatment and self-neglect of an at-risk adult initiated and provided by the county department authorized to administer the Adult Protective Services Program. Such services include, but are not limited to:

A. Receipt and investigation of reports of mistreatment~~, exploitation,~~ and self-neglect;

B. Assessment of the at-risk adult's physical, environmental, resources and financial, medical, mental and behavioral, and support system needs;

C. Protection from mistreatment;

D. Coordination, implementation, delivery, and monitoring of services necessary to address the at-risk adult's safety, health, and welfare needs;

E. Assistance with applications for public benefits and other services; and,

F. Initiation of protective and probate proceedings under Colorado Revised Statutes.

"Reassessment" means the process of updating the assessment status areas and the case plan, including the status of any services implemented and any new services and/or goals identified since the last assessment.

"RED Team" is an acronym that stands for Review, Evaluate, and Direct. The RED Team is a decision making process that utilizes a structured framework to determine the county department's response to ~~referrals~~REPORTS.

"Report" means an oral or written report of suspected mistreatment or self-neglect of a suspected at-risk adult, received by the county department.

"Risk" means conditions and/or behaviors that create increased difficulty or impairment to the client's ability to ensure health, safety, and welfare.

"Safety" means the extent to which a client is free from harm or danger, or to which harm or danger is lessened.

"Self-Determination" means the right to decide for one's self; the ability or right to make one's own decisions without interference from others.

"Self-Neglect", pursuant to Section 26-3.1-101(10), C.R.S., means an act or failure to act whereby an at-risk adult substantially endangers his/her health, safety, welfare, or life by not seeking or obtaining services necessary to meet the adult's essential human needs. Refusal of medical treatment, medications, devices, or procedures by an adult or in accordance with a valid medical directive or order, or as described in a palliative plan of care, shall not be deemed self-neglect. Refusal of food and water in the context of a life-limiting illness shall not, by itself, be evidence of self-neglect. "Medical directive or order" includes, but is not limited to, a medical durable power of attorney, a declaration as to medical treatment executed pursuant to Section 15-18-104, C.R.S., a medical orders for scope of treatment form

executed pursuant to Article 18.7 of Title 15, C.R.S., and a CPR directive executed pursuant to Article 18.6 of Title 15, C.R.S.

“Significant impact” means that the client’s impairment diminishes the client’s health, safety, and/or welfare and intervention is necessary to improve overall safety.

"Staffing a case" means the review of an APS case between the supervisor and caseworker to ensure the appropriateness of the investigation findings, client assessment, case plan, service provision, need for ongoing services, plans to terminate services, documentation, and overall intervention as it relates to APS rules and best practices. Staffing a case may include the county department APS unit, the State Department APS unit, and/or the APS Team in addition to the supervisor and caseworker.

"State Department" means the Colorado Department of Human Services.

"Substantiated finding" means that the investigation established by a preponderance of evidence that mistreatment, exploitation, or self-neglect has occurred.

“UNDUE INFLUENCE” MEANS THE USE OF INFLUENCE TO TAKE ADVANTAGE OF AN AT-RISK ADULT’S VULNERABLE STATE OF MIND, NEEDINESS, PAIN, OR EMOTIONAL DISTRESS.

"Unsubstantiated finding" means the investigation did not establish any evidence that mistreatment or self-neglect has occurred.

30.200 ADULT PROTECTIVE SERVICES PROGRAM ADMINISTRATION AND OVERVIEW

30.210 APS PROGRAM ADMINISTRATION [Rev. eff. 9/1/14]

A. The Adult Protective Services (APS) Program is mandated by Title 26, Article 3.1, of the Colorado Revised Statutes. The county department shall administer the APS Program in accordance with the statutes and rules governing the APS Program and in general State Department fiscal and program regulations.

B. The county department shall ~~make reasonable efforts to~~ utilize funding appropriated by the State Legislature to MAKE REASONABLE EFFORTS TO maintain a fiscal year caseload average of twenty-five to one (25:1), as intended by S.B. 13-111.

C. ~~The county department shall report to the State Department the active caseworker, case aide, and supervisory staff, including FTE, beginning July 1, 2014, and within three (3) working days whenever APS staff changes occur.~~IN ORDER TO ENSURE THE SECURITY OF CAPS AND THE PERSONAL IDENTIFYING INFORMATION (PII) AND PERSONAL HEALTH INFORMATION (PHI) CONTAINED WITHIN, THE COUNTY DEPARTMENT SHALL NOTIFY THE STATE DEPARTMENT THROUGH A CAPS SUPPORT REQUEST WITHIN THREE (3) WORKING DAYS UPON LEARNING OF A CHANGE IN APS STAFFING, BUT NO LATER THAN THE CAPS USER’S LAST DAY OF EMPLOYMENT. AN EMAIL TO THE STATE DEPARTMENT MAY SUBSTITUTE FOR A CAPS SUPPORT TICKET IN THE EVENT A CAPS SUPPORT TICKET CAN NOT BE SUBMITTED.

D. The county department shall make reasonable efforts to advise county residents of services available through the APS Program by such methods as Adult Protection Team mandated community education, as defined at Section 30.830, B, 4, press releases, presentations, pamphlets, and other mass media.

E. The county department shall handle responses to requests for services from other agencies, including the State Department, other county departments, or another state’s APS Program, in the same manner and time frames as requests received from within the county.

F. The county department shall report to the State Department at such times and in such manner and form as the State Department requires, including through ~~the data system~~CAPS, manually generated reports, quality improvement and assurance processes, and other forms of reporting.

30.220 APS PROGRAM REVIEW AND OVERSIGHT [Rev. eff. 9/1/14]

A. The county department shall be subject to the provisions outlined in Section 26-1-111, C.R.S., requiring the State Department to ensure that the county department complies with requirements provided by statute, State Board of Human Services and Executive Director rules, federal laws and regulations, and contract and grant terms.

B. The county department shall be subject to routine quality control and program monitoring, to minimally include:

1. Targeted review of ~~the data system~~CAPS documentation;

2. Review and analysis of data reports generated from ~~the data system~~CAPS;

3. Case review;

4. Targeted program review conducted via phone, email, or survey; and,

5. Onsite program review.

C. The focus of the monitoring shall be to identify:

1. Compliance with program statute and rules;

2. Best practices that can be shared with other county departments; and,

3. Training needs.

D. The county department shall be subject to a performance improvement plan to correct areas of identified non-compliance.

E. The county department shall be subject to corrective action and sanction, as outlined in 9 CCR 2501-1 if the county fails to make improvements required under the performance improvement plan.

30.230 ELIGIBILITY [Rev. eff. 9/1/14]

A. Protective services are provided to persons that meet the definition of “at-risk adult” as defined in Section 30.100. Persons shall not be considered “at-risk” solely because of age and/or disability.

B. Protective services are provided to at-risk adults:

~~1.~~ ~~Who need assessment for health, welfare, protection, and/or safety; and/or,~~

~~2~~1. Who need short term services due to a report of actual or ~~potential~~SUSPECTED mistreatment~~, exploitation,~~ or self-neglect; and/or,

~~3~~2. Who need ongoing protection as the result of substantiation of mistreatment or self-neglect; and/or,

43. For whom the county department has been appointed guardian and/or conservator, or has been designated as representative payee; and/or,

54. Who are residents of long term care facilities, such as nursing homes and assisted living residences, who must relocate due to the closure of the facility and:

a. The county department has been appointed guardian and/or conservator; or,

b. They are in need of protective services due to a lack of case management and/or assistance from any other reliable source.

65. Without regard to income, resources, or lawful presence.

30.240 APS PRINCIPLES – CONSENT, SELF DETERMINATION, AND LEAST RESTRICTIVE INTERVENTION [Rev. eff. 9/1/14]

A. The client's consent is not required for the county department to investigate or assess allegations of mistreatment, exploitation, or self-neglect.

B. The final decision as to acceptance of protective services shall rest with the client unless the client has been adjudicated incapacitated by the court or as outlined in Section 30.600.

C. Protective services provided to and other services arranged for the client shall constitute the least restrictive intervention and be those services provided for the shortest duration and to the minimum extent necessary to meet the needs of the client.

D. It shall not be construed that a person is being mistreated when he or she is being furnished or is relying upon treatment or practices that:

1. Rely on the tenets and practices of that person's recognized church or religious denomination; or,

2. Do not violate local, state, or federal laws.

E. Choice of lifestyle or living arrangements shall not, by itself, be evidence of self-neglect.

30.250 CONFIDENTIALITY [Rev. eff. 9/1/14]

A. Information received as a result of a report to APS and subsequent investigation and casework services shall be confidential and shall not be released without a court order for good cause except in limited circumstances, as defined in Section 30.250, E.

B. The county department shall treat all information related to the report and the case, whether in written or electronic form, as confidential according to applicable statutes, including, but not limited to, the following:

1. Identifying information, such as the name, address, relationship to the at-risk adult, date of birth, or Social Security Number of the:

a. At-risk adult;

b. At-risk adult's family members;

c. Reporting party;

d. Alleged perpetrator; and,

e. Other persons involved in the case.

2. Allegations, assessment, and investigative findings, including, but not limited to:

a. Initial report of allegations and concerns;

b. The client's physical, environmental, resources and financial, medical, mental and behavioral, and social systems status;

c. Medical and behavioral diagnoses, past medical conditions, and disabilities;

d. Services provided to or arranged for the adult;

e. Information learned as a result of a criminal investigation;

f. Information obtained during the APS investigation and the substantiation or non-substantiation of the allegations; AND,

g. Legal protections in place including, but not limited to, wills, advance directives, powers of attorney, guardianship, conservatorship, representative payeeship, and protective orders.

C. Individuals or groups requesting information regarding APS reports and/or investigations shall be informed of the confidential nature of the information and shall be advised that a court order is required to release information held by the county department, except as provided at Section 30.250, E. These persons or groups include, but are not limited to:

1. Federal and state legislators;

2. Members of other governmental authorities or agencies, including county commissioners, city councils, school boards, and other city and county department boards, councils, officials, and employees;

3. Courts and law enforcement agencies;

4. Attorneys, guardians, conservators, agents under powers of attorney, representative payees, and other fiduciaries;

5. Family members, reporting parties, or other interested parties;

6. Any alleged perpetrator; and,

7. Media representatives.

D. In a criminal or civil proceeding or in any other circumstance in which the APS report and/or case record is subpoenaed or any request for disclosure has been made, or any county department or State Department representative is ordered to testify concerning an APS report or case, the court shall be advised, through proper channels, of the statutory provisions, rules, and policies concerning disclosure of information.

1. Confidential information shall not be released unless so ordered by the court for good cause.

2. Courts with competent jurisdiction may determine good cause. Although it is not an exhaustive list, the following are examples of court proceedings in which a court may determine that good cause exists for the release of confidential information:

   a. Guardianship or conservatorship proceeding in which either the county is the petitioner or has been ordered to testify;

   b. Review of Power of Attorney under the Uniform Power of Attorney Act, as outlined at Title 15, Article 14, Part 7, Colorado Revised Statutes (C.R.S.);

   c. Review of a fiduciary under Title 15, Article 10. Part 5, C.R.S.; and/or,

   d. Criminal trial.

E. Information held by the State Department or county department may be released without a court order only when:

1. Coordination with professionals and collateral contacts is necessary to investigate mistreatment, exploitation, or self-neglect and/or to resolve health and/or safety concerns.

2. It is essential for the provision of protective services, including establishing eligibility for, arrangement and implementation of services and benefits, and appointment of a guardian and/or conservator.

3. A review of a Power of Attorney is requested under the Uniform Power of Attorney Act, as outlined at C.R.S. Title 15, Article 14, Part 7 or review of a fiduciary under C.R.S. Title 15, Article 10, Part 5.

4. A case is reviewed with the adult protection team, in accordance with the adult protection teams by-laws, and when in executive session with members who have signed a confidentiality agreement.

5. A criminal complaint or indictment is filed based on the APS report and investigation.

6. There is a death of a suspected at-risk adult and formal charges or a grand jury indictment have been brought.

7. The coroner is investigating a death suspected to be a result of mistreatment or self-neglect.

8. The client requests his/her file and provides a written release of information, in accordance with the county department's policy. The county department shall review the request to determine whether the client has the ability to provide informed consent related to the release of the file.

F. Whenever there is a question about the legality of releasing information or the ability of the client to provide informed consent, the requestor, whether the client or another person, shall be advised to submit a written request to the appropriate court to order the county department to produce the desired records or information within the custody or control of the county department.

G. Information released under Section 30.250, D and E, shall be the minimum information necessary to secure the services, conduct the investigation, or otherwise respond to the court order or request for information. The county department shall:

1. Provide the information only to persons deemed essential to the court order, criminal investigation, Adult Protection team activities, the provision of services, or client request;

2. Edit the information prior to its release to physically remove or redact sensitive information not essential to the court order, criminal investigation, Adult Protection Team activities, provision of services and benefits, or client request;

3. Always redact the reporting party information and other documentation that could identify the reporting party unless specifically ordered by a court or the reporter has given written consent to release his/her information;

4. Always redact all HIPAA protected information and any other confidential information which is protected by law unless specifically ordered by a court; and,

5. Redact all other report and case information not directly related to the request.

H. When a court order or other written request for the release of information related to an APS report or case is received, as outlined in Sections 30.250, D and E, the county department shall:

1. Comply within the time frame ordered by the court, or in accordance with county department policy; and,

2. Provide a written notice with the information to be released regarding the legality of sharing confidential information.

I. All confidential APS information and data shall be processed, filed and stored using safeguards that prevent unauthorized personnel from acquiring, accessing, or retrieving the information.

1. Client files shall be kept in a secured area when not in use.

2. Passwords ~~to the APS data system~~ TO CAPS shall be kept secured.

3. The State Department shall ensure that only ~~APS~~ STATE AND COUNTY staff persons WITH A BUSINESS NEED TO DO SO SHALL have access to ~~the APS data system.~~CAPS.

4. Laptops and other mobile devices used to document in the field shall be protected and encrypted in compliance with HIPAA security requirements.

5. Email correspondence that contains APS confidential information shall be sent through secure encryption programs.

6. ALL CAPS USERS MUST ELECTRONICALLY SIGN THE CAPS SECURITY AND CONFIDENTIALITY AGREEMENT ANNUALLY.

J. COUNTY DEPARTMENTS SHALL NOT ACCESS INFORMATION IN CAPS THAT IS NOT NECESSARY TO SERVE THE CLIENT. VIOLATIONS MAY RESULT IN LOSS OF ACCESS TO CAPS, AT THE DISCRETION OF THE STATE DEPARTMENT.

~~J.~~K. Any person who willfully violates confidentiality or who encourages the release of information related to the mistreatment~~, exploitation,~~ and self-neglect of an at-risk adult from ~~the data system~~CAPS or THE APS case file, to persons not permitted access to such information, commits a Class 2 petty offense and shall be punished as provided in Section 26-3.1-102(7)(c), C.R.S.

~~K~~L. Clients shall be referred to the Colorado Address Confidentiality Program (ACP) as appropriate to determine their eligibility for services including the legal substitute mailing address and mail forwarding services. The State Department and county department shall comply with any applicable provisions for APS clients enrolled in the ACP.

30.260 DOCUMENTATION [Rev. eff. 9/1/14]

A. The county department shall THOROUGHLY document all Adult Protective Services (APS) reports and case information in ~~the data system~~CAPS. There shall be no parallel paper or electronic system used to enter APS documentation. DOCUMENTATION SHALL INCLUDE ALL ASPECTS OF THE APS CASE, INCLUDING:

1. INITIAL REPORT;

2. INVESTIGATION;

3. ASSESSMENT;

4. CASE PLAN;

5. CONTACT RECORDS FOR THE CLIENT, ALLEGED PERPETRATOR, REPORTER, AND ALL COLLATERALS AND SUPPORTS;

6. ONGOING CASE NOTES;

7. CASE CLOSURE; AND,

8. ANY OTHER PROCESSES RELATED TO THE CASE.

B. All documents and evidence critical to the APS case record shall be scanned into ~~the data system~~CAPS, to include:

1. ~~The~~A release of information form(s) signed by the client~~;~~, WHEN APPROPRIATE;

2. All of the client's Powers of Attorney(s), living will declaration, and/or other advance directives, as applicable;

3. All documents, reports, and correspondence related to guardianship, conservatorship, and representative payeeship, whether county department held or private, as applicable; and,

4. Other documentation, such as medical reports, results of psychiatric evaluations, photographic documentation, and other evidence collected during the investigation and assessment.

C. ALL DOCUMENTATION PERTAINING TO APS REPORTS AND CASES, INCLUDING INTERVIEW AND CASE NOTES, EVIDENCE GATHERED, SUCH AS PHOTOS, MEDICAL RECORDS, AND BANK STATEMENTS SHALL BE KEPT IN A SECURE LOCATION UNTIL DOCUMENTED IN CAPS AND THEN SHALL BE DESTROYED.

a. HARDCOPY AND ELECTRONIC APS FILES CREATED PRIOR TO JULY 1, 2014 SHALL BE KEPT IN A SECURED LOCATION.

b. ALL APS FILES CREATED JULY 1, 2014 OR LATER SHALL BE DOCUMENTED IN CAPS AND THE FILE/NOTES DESTROYED.

c. ORIGINAL LEGAL DOCUMENTS SUCH AS GUARDIANSHIP, REPRESENTATIVE PAYEESHIP, BIRTH CERTIFICATES, OR TAX DOCUMENTS MAY BE RETAINED IN A HARDCOPY FILE, IN ADDITION TO CAPS, THAT IS IN A SECURED LOCATION.

~~C~~.D. Case records shall be retained for a minimum of three (3) years, plus the current year, after the date of case closure.

30.300 STAFF QUALIFICATIONS, TRAINING, AND DUTIES

30.310 EDUCATION AND EXPERIENCE QUALIFICATIONS [Rev. eff. 9/1/14]

A. The county department shall ensure that all personnel who supervise or provide professional services in the APS program possess the following minimum qualifications for education and experience:

1. The Professional Entry (Training) Level position shall require a Bachelor's degree with an equivalent of thirty (30) semester or forty-five (45) quarter hours in human behavioral sciences or health care related courses, such as, social work, sociology, psychology, psychiatry, gerontology, nursing, special education, family intervention techniques, diagnostic measures, therapeutic techniques, guidance and counseling, CRIMINAL JUSTICE, ~~or~~ other human behavioral sciences, or A medical field relevant to the APS ~~P~~program and/or at-risk adults.

2. Professional Journey Level position shall meet the requirements for the Professional Entry (Training) Level position and shall have obtained the skills, knowledge, and abilities to perform duties at the fully independent working level, as follows:

   a. ~~The required degree plus o~~One (1) year of professional casework in a public or private social services agency ~~obtained~~ COMPLETED after the degree is obtained; or,

   b. A Master's degree in ~~social work.~~A FIELD AS LISTED IN 30.310, A, 1.

3. The Casework Supervisor position shall meet the requirements for the Professional Journey Level position plus have at least three years professional casework experience at the journey level obtained after the Bachelor's or Master's degree. County department managers, administrators, and directors with direct supervision shall meet this requirement.

4. The Case Aide and Intake Screener positions, if available in the county department, shall have obtained a high school diploma or a General Equivalency Diploma (GED) plus have at least six (6) months full time public contact in human services or a related field. Substitution for public contact is successful completion of a certificate program in gerontology and/or at least six, college level credit hours in a human behavioral sciences or health care field.

B. If proven recruitment difficulty exists or the APS staff person was hired to perform APS duties prior to November 1, 1998, the county department may request a waiver of these requirements by submitting a request to the State Department Adult Protective Services unit. The request shall include:

1. The position for which the county department is requesting a waiver, including the percentage of time the position will be performing the duties of the APS program (% FTE).

2. Justification of the need for a waiver, to include:

   a. Documentation of the recruiting effort;

   b. Educational background of the proposed candidate, including degrees and post degree training, such as completion of a gerontology certificate, post graduate coursework, or other relevant training courses;

   c. Years of direct experience working with at-risk adults or other vulnerable populations applicable to the APS Program and clients; and,

   d. Other relevant qualities and information that demonstrate the candidate would be acceptable as a training level caseworker.

3. A plan on how and when the candidate will meet the coursework requirement or will otherwise meet the educational requirements of the position.

4. If the waiver request is not approved and the county department disagrees with the decision, the county department may request review of the decision by the Executive Director of the State Department.

D. All APS staff education and experience shall be documented in ~~the data system~~CAPS.

30.320 BACKGROUND CHECK REQUIREMENTS [Eff. 8/1/12]

A. The county department shall complete a criminal background check on all prospective APS employees who, while in their employment, have direct, unsupervised contact with any actual or potential at-risk adult.

B. If the county department has not previously requested and received a criminal background check on a current employee hired on or after June 1, 2010, the county department shall immediately request a fingerprint criminal background check. The county department shall pay the fee.

C. The county department shall require a fingerprint background check for all prospective employees.

1. The county department shall submit to the Colorado Bureau of Investigation (CBI) a complete set of fingerprints taken by a qualified law enforcement agency to obtain any criminal record held by the CBI.

2. The background check shall include a check of the records at the Colorado Bureau of Investigation and the Federal Bureau of Investigation.

3. The county department is strongly urged to require the background check be flagged for future notification of arrest and/or conviction.

4. The prospective employee shall pay the fee for the criminal record check unless the county department chooses to pay the fee.

5. The prospective employee's employment shall be conditional upon a satisfactory criminal background check.

   a. The current employee or applicant shall be disqualified from employment, regardless of the length of time that may have passed since the discharge of the sentence imposed, for any felony criminal offenses as defined in Title 18, Articles

2-10, 12-13, 15-18.5, 20, 23 of the Colorado Revised Statutes, or any felony offense in any other state the elements of which are substantially similar to the elements of any of the offenses included herein.

b. At the county department's discretion, a person shall be disqualified from employment either as an employee or as a contracting employee if less than ten years have passed since the person was discharged from a sentence imposed for conviction of any of the following criminal offenses:

1) Third degree assault, as described in Section 18-3-204, C.R.S.;

2) Any misdemeanor, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in Section 18-6-800.3, C.R.S.;

3) Violation of a protection order, as described in Section 18-6-803.5, C.R.S.;

4) Any misdemeanor offense of child abuse, as defined in Section 18-6-401, C.R.S.;

5) Any misdemeanor offense of sexual assault on a client by a psychotherapist, as defined in Section 18-3-405.5, C.R.S.;

6) Any misdemeanor offense of arson, burglary and related offenses, robbery, or theft, as defined in Title 18, Articles 1-4, C.R.S.;

7) A pattern of misdemeanor convictions within the ten years immediately preceding the date of submission of the application, or;

8) Any misdemeanor offense in any other state, the elements of which are substantially similar to the elements of any of the offenses described above.

4. Prospective employees who are transferring from one county department to another are not required to be re-fingerprinted if they complete the following process:

a. New employees must obtain their CBI clearance letter or a photocopy of their processed fingerprint card from their former employer. They must attach it to a new fingerprint card, with the top portion completed.

b. The new fingerprint card must include the new employer's address. "Transfer – County Department" must be inserted in the "Reason Fingerprinted" block.

c. The CBI clearance letter (or photocopy of the old fingerprint card) and the new fingerprint card shall be sent with payment by the county department to the CBI.

d. County departments that have accounts with CBI are not required to send payment, but the county department shall enter its CBI account number in the OCA block of the new fingerprint card.

30.330 TRAINING REQUIREMENTS [Rev. eff. 9/1/14]

A. The county department shall ensure that all new APS staff completes required APS training, as follows:

1. New entry and journey level caseworkers shall successfully complete the Pre-Academy Workbook (PAW) WITHIN ONE (1) MONTH OF HIRE OR TRANSFER TO THE APS PROGRAM AND SHALL NOT BE ASSIGNED CASES UNTIL THE PAW HAS BEEN COMPLETED. THE CASEWORKER SHALL DOCUMENT COMPLETION OF THE PAW IN CAPS.

   ~~a. Full time APS caseworkers shall complete the PAW within three (3) months of hire or transfer to the APS Program.~~

   ~~b. Part time APS caseworkers shall complete the PAW within six (6) months of hire or transfer to the APS Program.~~

2. New entry and journey level caseworkers shall SUCCESSFULLY complete the APS training academy. ~~within nine months of hire or transfer to the APS Program.~~

   a. Small ~~counties~~ COUNTY DEPARTMENTS with only one (1) caseworker who is less than a twenty-five percent (25%) FTE in APS shall complete the training academy within ~~twelve (12~~)NINE (9) months of hire or transfer to the APS Program. Caseworkers are strongly urged to request support from the State Department on any cases opened prior to attending training academy.

   b. ALL OTHER COUNTY DEPARTMENTS WITH AT LEAST ONE (1) CASEWORKER~~Counties~~ with a twenty-five percent (25%) or higher FTE in APS shall complete the training academy within ~~nine (9)~~ SIX (6) months of hire or transfer to the APS Program.

3. New supervisors, managers, administrators, and/or county department directors with direct casework supervision duties shall successfully complete the web-based APS supervisor training within six (6) months of hire, transfer to the APS Program, or promotion from a caseworker position. The web-based training requirements shall be waived if the supervisor, manager, administrator, or director attends the APS training academy.

4. New case aides shall SUCCESSFULLY complete the Pre-Academy Workbook (PAW) within ~~three (3)~~ ONE (1) months of hire or transfer to the APS Program. Case aides may attend APS training academy, space permitting.

5. APS intake screeners or other county department staff designated to receive reports of alleged mistreatment~~, exploitation,~~ and self-neglect of at-risk adults ~~shall complete the web-based enhanced screening training within sixty (60) days of hire or transfer to their position. Intake screeners~~ may complete the Pre-Academy Workbook (PAW).

B. The county department shall ensure that any APS staff member on the job longer than twelve (12) months completes ongoing training relevant to the APS Program and client populations. Attendance at any specific training event is at the supervisor's discretion.

   1. Caseworkers shall successfully complete at least ~~thirty (30)~~ FORTY (40) hours of ongoing training per fiscal year related to the APS Program, target populations, and the provision of casework services, as follows:

      a. At least fifteen (15) hours shall be State Department provided training specifically related to the APS Program, which may include:

         1) Statewide or regional training;

2) Quarterly training meetings;

3) County department onsite training; and/or,

4) Live webinar or self-directed web-based training.

b. Additional training options relevant to the APS Program, target populations, and/or the provision of casework services shall include, but are not limited to:

1) National APS organizations' webinar training;

2) Child Welfare Training Academy coursework that has cross-over relevance and has been approved by the State Department APS unit;

3) Other state or national APS conferences; AND/OR,

4) Regional training or conference conducted by agencies or professionals that work with older adults or people with disabilities including, but not limited to, a community centered board, Alzheimer's association, Colorado legal assistance developer, Colorado Coalition for Elder Rights and Abuse Prevention (CCERAP), Colorado Long-Term Care Ombudsman, local law enforcement, AP team, APS supervisor or county department attorney.~~; and/or,.~~

5) Reading reports or professional journals ~~provided or approved by the State Department APS unit~~ about current APS best practices, research, and interventions.

2. Supervisors, managers, administrators, and/or county department directors with direct casework supervision duties shall successfully complete at least ~~twenty (20~~) THIRTY (30) hours of ongoing training per fiscal year related to the APS Program, target populations, the provision of casework services, or general supervision of employees, as follows:

a. At least ~~ten (10)~~ FIFTEEN (15) hours shall be State Department provided training specifically related to the APS Program, as outlined for caseworkers.

b. Additional training options include those outlined for caseworkers plus training options related to general employee supervision.

3. Case aides shall successfully complete at least ~~fifteen (15)~~ TWENTY (20) hours of ongoing training per fiscal year, as outlined for caseworkers. At least seven (7) hours shall be State Department provided training.

4. Required training hours as outlined in Section 30.330, B, 1-3, shall be prorated for part time APS staff.

a. Persons working less than twenty-five percent (25%) in APS shall complete a minimum of:

1) ~~Six (6)~~ TEN (10) hours for caseworkers, SIX (6) OF WHICH SHALL BE STATE PROVIDED; AND,

2) ~~Four (4)~~ FIVE (5) hours for supervisors, managers, administrators, and/or county directors with direct casework supervision duties, THREE (3) OF WHICH SHALL BE STATE PROVIDED; and,

3) ~~Three (3)~~ FOUR (4) hours for case aides, TWO (2) OF WHICH SHALL BE STATE PROVIDED.

b. Persons working twenty-five through forty nine percent (25-49%) in APS shall complete a minimum of:

1) ~~Fifteen (15)~~TWENTY (20) hours for caseworkers, AT LEAST TEN (10) SHALL BE STATE PROVIDED;

2) ~~Eight (8)~~TEN (10) hours for supervisors, managers, administrators, and/or county directors with direct casework supervision duties, AT LEAST SIX (6) SHALL BE STATE PROVIDED; and,

3) ~~Eight (8)~~TEN (10) hours for case aides, AT LEAST FIVE (5) SHALL BE STATE PROVIDED.

c. Persons working fifty through seventy-four percent (50-74%) in APS shall complete a minimum of:

1) ~~Twenty-two (22~~) THIRTY (30) hours for caseworkers, AT LEAST FIFTEEN (15) SHALL BE STATE PROVIDED;

2) ~~Fifteen (15)~~ TWENTY (20) hours for supervisors, managers, administrators, and/or county directors with direct casework supervision duties, AT LEAST FIFTEEN (15) SHALL BE STATE PROVIDED; and,

3) ~~Eleven (11)~~TWELVE (12) hours for case aides, AT LEAST SIX (6) SHALL BE STATE PROVIDED.

d. Persons working seventy-five through one hundred percent (75-100%) in APS shall complete the full training requirement outlined in 30.330, B, 1-3.

C. All training hours shall be documented in ~~the data system~~CAPS within fourteen (14) calendar days of completion of the training.

30.340 STAFF DUTIES AND RESPONSIBILITIES [Rev. eff. 9/1/14]

A. The direct supervisor OR LEAD WORKER shall, at a minimum:

1. Receive reports of mistreatment~~, exploitation,~~ and self-neglect as outlined in Section~~s~~ 30.400~~10 through 30.430~~.

2. Evaluate the report, ~~and~~ determine the response, and develop a plan for caseworker safety, as outlined in Section~~s~~ 30.400~~10 through 30.430~~. Counties ~~may~~ ARE URGED TO use the RED Team process.

3. Staff open cases of each caseworker monthly to ensure cases meet program requirements related to the provision of protective services.

4. REVIEW CASES TO ENSURE: ~~Use the APS case review tool in the data system~~CAPS ~~each month to review a minimum of fifteen percent (15%) TWENTY-FIVE (25%) of each caseworker's cases that were open and/or closed that month to ensure:~~

a. Timely casework;

b. Investigation, assessment, and case planning were thorough and complete;

c. Case closure, if applicable, was appropriate; and,

d. Documentation in ~~the data system~~CAPS is ~~thorough~~COMPLETE and ~~complete~~ACCURATE.

5. REVIEW OF CASES SHALL BE COMPLETED USING ONE OF TWO APPROVED METHODS:

a. USING THE CASE REVIEW SCORE CARD IN CAPS, EACH MONTH REVIEW FIFTEEN PERCENT (15%) OF EACH CASEWORKER'S CASES THAT WERE OPEN AND/OR CLOSED DURING THE MONTH; OR,

b. APPROVE EVERY COUNTY APS CASE AT THREE KEY JUNCTURES OF THE APS CASEWORK PROCESS UTILIZING THE AUTOMATED APPROVAL PROCESS IN CAPS, AS FOLLOWS:

i. UPON COMPLETION OF THE INITIAL INVESTIGATION, ASSESSMENT, AND CASE PLAN;

ii. UPON COMPLETION OF A SIX MONTH REASSESSMENT FOR CASES OPEN LONGER THAN SIX MONTHS; AND,

iii. AT CASE CLOSURE.

~~5~~6. Assess APS caseworkers' professional development needs and provide opportunities for training.

~~6~~7. Respond to APS reports or have a contingency plan to respond within assigned time frames, including emergencies, and to provide protective services when no caseworker is available.

B. APS caseworkers shall, at a minimum:

1. Receive reports of mistreatment~~, exploitation,~~ and self-neglect as outlined in Section~~s~~ 30.400~~10 through 30.430~~;

2. Investigate allegations and assess the client's safety and needs as outlined in Section 30.500;

3. Develop, implement, and monitor case plans, conduct required client visits, and provide protective services as outlined in Section 30.600;

4. Document case findings as outlined throughout 12 CCR 2518-1; AND,

5. Assume responsibility for own learning and required training hours.

C. APS case aides may assist caseworkers in completing non-professional level tasks that do not require casework expertise, but shall not perform the duties of the caseworker or supervisor, such as completing:

1. The investigation and/or assessment;

2. The case plan;

3. The required monthly client contact visits; or,

4. Required reports to the court, for cases in which the county department is the guardian or conservator.

D. APS ~~call~~ INTAKE screeners or administrative support staff may:

1. Receive and document intake reports in ~~the data system~~ CAPS OR THROUGH THE CAPS WEB2CASE FORM;

2. Assign all reports to the supervisors for determination of appropriate response; and,

3. Direct urgent calls to the appropriate internal and external authorities.

30.400 REPORT RECEIPT AND RESPONSE

30.410 INTAKE [Rev. eff. 9/1/14]

A. The county department shall receive oral or written reports of at-risk adult mistreatment~~, exploitation,~~ and self-neglect, OCCURRING IN THE COMMUNITY OR IN A FACILITY.

B. The county department shall have an established process during business and non-business hours for receiving such reports.

C. The county department shall input oral reports directly in ~~the data system~~CAPS OR THE CAPS WEB2CASE FORM. Written reports received via email, fax, or mail shall be documented in ~~the data system~~CAPS within one (1) business day of receipt. If unable to enter the report in the system within one business day, the county department shall document the reason.

D. ~~The data system~~ CAPS shall guide the information gathered for the report to include:

1. The client's demographic information, such as name, gender, date of birth or approximate age, address, current location if different from permanent address, and phone number;

2. The reporter's demographic information, unless the reporter requests anonymity, such as name, phone number, address, relationship to client and, if applicable, the reporter's agency or place of business;

3. Allegations of mistreatment~~, exploitation,~~ or self-neglect;

4. Safety concerns for the client;

5. Safety concerns for the caseworker; and,

6. The alleged perpetrator's information, such as name, gender, address, phone number, and relationship to the client, when mistreatment is alleged.

E. THE COUNTY DEPARTMENT SHALL DETERMINE JURISDICTION FOR RESPONDING TO THE REPORT.

1. THE COUNTY DEPARTMENT WITH JURISDICTION FOR RESPONDING TO A REPORT IS THE COUNTY IN WHICH THE ADULT RESIDES.

2. WHEN THE ADULT IS HOMELESS, AS DEFINED IN 42 U.S.C. SECTION 11302, THE COUNTY DEPARTMENT WITH JURISDICTION IS THE COUNTY IN WHICH THE ADULT'S PRIMARY NIGHTTIME RESIDENCE IS LOCATED.

3. IF JURISDICTION IS UNABLE TO BE DETERMINED BY 1 OR 2, ABOVE, THE COUNTY DEPARTMENT WITH JURISDICTION IS THE COUNTY IN WHICH THE ADULT IS CURRENTLY PRESENT.

4. IF AN EMERGENCY RESPONSE IS NECESSARY, THE COUNTY DEPARTMENT WHERE THE ADULT IS LOCATED AT THE TIME OF THE REPORT IS THE RESPONSIBLE COUNTY DEPARTMENT UNTIL JURISDICTION IS DETERMINED.

F. COUNTY DEPARTMENTS SHALL UTILIZE ALL AVAILABLE RESOURCES TO DETERMINE JURISDICTION, SUCH AS:

1. HISTORY WITHIN CAPS;

2. COLORADO BENEFITS MANAGEMENT SYSTEM (CBMS);

3. COLORADO COURTS;

4. WHERE SERVICES ARE BEING PROVIDED; AND/OR,

5. THE ADULT'S SCHOOL.

~~E~~G. If a county department receives a report and determines that the report was made to the wrong county, the receiving county department shall ~~forward~~TRANSFER the report to the responsible county department as soon as possible, but no later than ~~eight (8)~~ ONE (1) hour~~S~~ after determining the correct county.

30.420 REPORT CATEGORIZATION [Rev. eff. 9/1/14]

A. The county department shall review and evaluate the report UTILIZING THE RED TEAM FRAMEWORK OR SUPERVISORY REVIEW to determine whether THE:

1. ~~The c~~Client meets the definition of an at-risk adult; and,

2. ~~The a~~Allegations involve mistreatment~~, exploitation,~~ or self-neglect.

~~3~~B. The county department shall not investigate reports of verbal and/or emotional abuse when no other mistreatment indicators exist because verbal and/or emotional abuse are not included as mistreatment in C.R.S. Title 26, Article 3.1.

~~B~~C. ~~The data system~~CAPS ~~shall~~ WILL generate a response recommendation.

1. The APS supervisor shall have the final decision to screen in or out the report.

2. The APS supervisor shall document in ~~the data system~~CAPS why the ~~data system~~ CAPS recommendation was reversed.

~~C~~D. The county shall document and screen all reports received from law enforcement, as a result of Section 18-6.5-108(2)(b), C.R.S., UTILIZING THE RED TEAM FRAMEWORK OR SUPERVISORY REVIEW, to determine if the victim and the allegations meet AP eligibility criteria outlined in Sections 30.230 and 30.420, A.

E. COUNTY DEPARTMENTS ARE URGED TO DEVELOP AND IMPLEMENT A PROCESS UTILIZING THE RED TEAM FRAMEWORK IN CAPS TO REVIEW REPORTS TO DETERMINE REPORT CATEGORIZATION AND RESPONSE TIME FRAMES. THE SUPERVISOR OR LEAD WORKER HAS THE DISCRETION TO OVERRULE THE RED TEAM DECISION.

~~D~~F. Reports that do not involve an at-risk adult and mistreatment~~, exploitation,~~ or self-neglect, as outlined in Section 30.420, A, shall be screened out NO LATER THAN THE THIRD WORKING DAY AFTER THE RECEIPT OF THE REPORT. The county department shall not conduct an investigation.

1. The county department ~~shall~~MAY provide information and/or referral(s) to the reporting party, as appropriate.

2. The county department may inform the reporting party of the decision not to investigate.

3. The county department shall document the reason the report was screened out.

~~E~~G. Reports that involve an at-risk adult and mistreatment~~, exploitation,~~ or self-neglect, as outlined in Section 30.420, A, shall be screened in and are determined to be a case.

30.430 RESPONSE PRIORITY [Rev eff. 9/1/14]

A. The county department shall determine a time frame response to the case based upon the reported level of risk.

B. When factors present indicate the client is in clear and ~~imminent~~ IMMEDIATE danger or urgent and significant risk of harm due to the severity of the mistreatment~~, exploitation,~~ or self-neglect, or due to the vulnerability or physical frailty of the client, the county department shall:

1. Determine the case to be an emergency;

2. Call 911, if appropriate based on the circumstances of the report; and,

3. Make an initial response as soon as possible, but no later than twenty-four (24) hours including non-business ~~hours~~ DAYS, after the receipt of the report. An initial response shall be:

   a. A face-to-face visit with the client; or,

   b. An attempted face-to-face visit with the client; or,

   c. An outreach to another professional, such as law enforcement~~, Long Term Care Ombudsman,~~ or hospital staff, to ascertain the client's immediate safety.

4. If the initial response was not a face-to-face contact with the client ~~or~~ AND the county department was unable to ascertain the client's safety, the county department shall attempt a face-to-face client contact each day following the initial attempt at contact, including non-business days.

   a. A law enforcement welfare check may be substituted for ~~one~~ attemptS at contact DURING NON-BUSINESS DAYS. ~~but does not qualify as the face-to-face contact.~~ THE COUNTY DEPARTMENT SHALL FOLLOW UP ON THE NEXT WORKING DAY.

b. If the county department has confirmed the client to be unavailable or safe, SUCH AS IN THE INTENSIVE CARE UNIT (ICU), the reason for delayed response shall be documented.

c. Initial and subsequent attempts at contact shall begin immediately when the client becomes or is expected to become available.

d. Following the third DAY OF unsuccessful attemptS at contact, the county department may choose to send a letter requesting an appointment with the client.

e. If attempts at contact remain unsuccessful, the county department shall close the ~~referral~~CASE no later than ~~twenty (20)~~THIRTY-FIVE (35) calendar days after the last attempt at contact.

f. The county department shall document ~~in the data system~~ all attempts to contact the client.

5. IF THE INITIAL RESPONSE WAS NOT A FACE-TO-FACE CONTACT WITH THE CLIENT ~~If~~ BUT the county department was able to ascertain safety, it shall make a face-to-face client contact on the first working day following the report. ~~If the client is unavailable, such as in ICU, the county shall document why the face-to-face could not be completed~~.

a. If the county department has confirmed the client to be unavailable, SUCH AS IN THE INTENSIVE CARE UNIT (ICU), the reason shall be documented.

b. Initial and subsequent attempts at contact shall begin immediately when the client becomes or is expected to become available.

c. Following the third DAY OF unsuccessful attemptS at contact, the county department may choose to send a letter requesting an appointment with the client.

d. If attempts at contact remain unsuccessful, the county department shall close the case no later ~~twenty (20)~~ THIRTY-FIVE (35) calendar days after the last attempt at contact.

e. The county department shall document ~~in the data system~~ all attempts to contact the client.

C. When ~~factors present~~ THE REPORT AND SUBSEQUENT SUPERVISORY REVIEW AND/OR RED TEAM PROCESS indicate the client is not in ~~imminent~~ IMMEDIATE danger or urgent risk of harm but mistreatment~~, exploitation,~~ or self-neglect is present or LIKELY PRESENT, ~~conditions exist that might reasonably result in mistreatment, exploitation, or self-neglect,~~ the county department shall:

1. Determine the case to be a non-emergency.

2. Make AN INITIAL RESPONSE ~~A face-to-face contact with the client~~ no later than three (3) working days beginning the day after the county department's receipt of the report. AN INITIAL RESPONSE SHALL BE:

a. A FACE-TO FACE VISIT WITH THE CLIENT; OR

b. AN ATTEMPTED FACE-TO-FACE WITH THE CLIENT;

c. AN OUTREACH TO ANOTHER PROFESSIONAL SUCH AS LAW ENFORCEMENT OR HOSPITAL STAFF, TO ASCERTAIN THE CLIENT'S IMMEDIATE SAFETY.

~~a~~3. When the initial ~~attempt~~ RESPONSE WAS NOT A~~at~~ face-to-face contact with the client OR THE COUNTY DEPARTMENT WAS UNABLE TO ASCERTAIN THE CLIENT'S SAFETY, ~~is unsuccessful, an attempt at face-to-face~~ THE COUNTY DEPARTMENT SHALL ATTEMPT A FACE-TO-FACE CLIENT contact ~~shall be made~~ every other WORKING day for a minimum of three attempts.

a. A LAW ENFORCEMENT WELFARE CHECK MAY BE SUBSTITUTED FOR ONE ATTEMPT AT CONTACT, AND QUALIFIES AS ONE OF THE THREE REQUIRED ATTEMPTS AT CONTACT.

~~1)~~b. If the county department has confirmed the client to be unavailable or safe, the reason for delayed response shall be documented.

~~2)~~c. Initial and subsequent attempts at contact shall begin immediately when the client becomes or is expected to become available.

~~b~~d. Following the third unsuccessful attempt at contact, the county department may choose to send a letter requesting an appointment with the client.

~~c.~~e. If attempts at contact remain unsuccessful, the county department shall close the case no later than ~~twenty (20)~~THIRTY-FIVE (35) calendar days after the last attempted contact.

~~d.~~f. The county department shall document all attempts to contact the client.

4. IF THE COUNTY DEPARTMENT WAS ABLE TO ASCERTAIN SAFETY,

a. THE COUNTY DEPARTMENT SHALL ATTEMPT A FACE-TO-FACE CLIENT CONTACT WITHIN THE RESPONSE TIME FRAME OR BEGINNING ON THE FIRST WORKING DAY AFTER ASCERTAINING SAFETY IF SAFETY WERE ASCERTAINED ON THE LAST DAY OF THE RESPONSE TIME FRAME. ATTEMPTS AT CONTACT SHALL CONTINUE EVERY OTHER WORKING DAY FOR A MINIMUM OF THREE ATTEMPTS.

b. IF THE COUNTY DEPARTMENT HAS CONFIRMED THE CLIENT TO BE UNAVAILABLE, THE REASON SHALL BE DOCUMENTED.

c. INITIAL AND SUBSEQUENT ATTEMPTS AT CONTACT SHALL BEGIN IMMEDIATELY WHEN THE CLIENT BECOMES OR IS EXPECTED TO BECOME AVAILABLE.

d. FOLLOWING THE THIRD UNSUCCESSFUL ATTEMPT AT CONTACT, THE COUNTY DEPARTMENT MAY CHOOSE TO SEND A LETTER REQUESTING AN APPOINTMENT WITH THE CLIENT.

e. IF ATTEMPTS AT CONTACT REMAIN UNSUCCESSFUL, THE COUNTY DEPARTMENT SHALL CLOSE THE CASE NO LATER THAN THIRTY-FIVE (35) CALENDAR DAYS AFTER THE LAST ATTEMPT AT CONTACT.

f. THE COUNTY DEPARTMENT SHALL DOCUMENT ALL ATTEMPTS TO CONTACT THE CLIENT.

D. Prior to the initial face-to-face client contact visit, the county department shall determine whether:

1. The visit and investigation should be made in conjunction with law enforcement and/or personnel from other agencies in accordance with the county department's cooperative agreements;

2. The client is in ~~the data system~~CAPS and/or is otherwise known to the county department;

3. Safety concerns exist, based on historical data and information provided in the report, requiring the caseworker to be accompanied by:

a. Law enforcement;

b. The supervisor;

c. Another case worker; or,

d. Emergency, medical, and/or mental health personnel, if known or suspected medical or psychiatric conditions exist.

E. If the case originally appears to indicate a need for a face-to-face investigation but further assessment determines that a face-to-face contact is not required to resolve potential safety and risk concerns, the county department may ~~provide telephone response and assistance~~ COLLABORATE WITH OTHER PROFESSIONALS OR RESPONSIBLE FAMILY OR SUPPORTS TO RESOLVE THE SAFETY CONCERNS. Cases appropriate for ~~telephone response and assistance~~ PHONE COLLABORATION include those:

1. That present heightened worker safety concerns and upon consultation, law enforcement directs APS not to respond.

2. That present heightened worker safety concerns due to environmental or infectious disease concerns and upon consultation, first responders, public health officials, and/or code enforcement directs APS not to respond.

3. In which it is determined that responsible family is aware of the concerns and is working appropriately to address the concerns.

4. Regarding a chronic situation in which APS has had a visit with the competent client in the past thirty (30) calendar days and determined APS intervention is unwanted or could not resolve the concern.

~~5. In which the client is competent and able, with assistance from APS or other support systems, to arrange services.~~

~~6~~5. Regarding clients that have a case manager in place, such as a Single Entry Point (SEP) case manager, and calls between APS and the case manager can resolve the reporter's concerns.

~~7~~6. In which the client is hospitalized or institutionalized prior to the initial visit, and the county has determined that ongoing protective services is not required.

30.500 INVESTIGATION AND ASSESSMENT

30.510 INVESTIGATION AND ASSESSMENT OVERVIEW [Rev. eff. 9/1/14]

A. The county department shall ~~begin~~CONDUCT ~~an~~ A THOROUGH AND COMPLETE investigation into the allegations UNLESS THE INITIAL VISIT AND ASSESSMENT CONFIRMS THAT THE CLIENT IS NOT AN AT-RISK ADULT. ~~and an assessment of the client's risk, safety, and strengths during the initial face-to-face visit to further clarify the level of risk of mistreatment, exploitation, or self-neglect to the client and the client's immediate needs.~~ INVESTIGATION IS REQUIRED BY STATUTE AND THE CLIENT CANNOT REFUSE AN INVESTIGATION.

B. THE COUNTY DEPARTMENT SHALL CONDUCT AN ASSESSMENT OF THE CLIENT'S RISK, SAFETY, AND STRENGTHS DURING THE INITIAL FACE-TO-FACE VISIT TO FURTHER CLARIFY THE LEVEL OF RISK OF MISTREATMENT OR SELF-NEGLECT TO THE CLIENT AND THE CLIENT'S IMMEDIATE NEEDS, WHENEVER POSSIBLE.

~~B~~C. The investigation and assessment may be conducted independent of one another or simultaneously, depending on the nature of the allegations.

D. IF UPON INITIAL INVESTIGATION, THE COUNTY DEPARTMENT DETERMINES A DIFFERENT COUNTY HAS JURISDICTION, THE ORIGINATING COUNTY DEPARTMENT SHALL TRANSFER THE CASE IN CAPS. THE COUNTY DEPARTMENT DETERMINED TO HAVE JURISDICTION SHALL UPHOLD THE SCREENING DECISION AND CONDUCT THE INVESTIGATION AND ASSESSMENT, UNLESS:

1. ADDITIONAL OR NEW INFORMATION RELATED TO THE SAFETY OF THE ADULT OR ALLEGED MISTREATMENT OR SELF-NEGLECT INDICATING THE CASE MAY BE CLOSED IS GATHERED BY THE COUNTY DEPARTMENT DETERMINED TO HAVE JURISDICTION.

2. THE BASIS FOR THE DECISION TO CLOSE THE CASE SHALL BE DOCUMENTED IN CAPS.

30.520 INVESTIGATION [Rev. eff. 9/1/14]

A. The county department shall conduct an investigation to determine findings related to allegations of mistreatment~~, exploitation~~ or self-neglect. The investigation shall include, but may not be limited to:

1. Determining the need for protective services. If the client is in clear and ~~imminent~~ IMMEDIATE danger, the county shall intervene immediately by notifying the proper emergency responders~~;~~.

2. DETERMINING IF THE INVESTIGATION SHOULD BE CONDUCTED JOINTLY WITH ANOTHER ENTITY, SUCH AS:

   a. LAW ENFORCEMENT AND/OR THE DISTRICT ATTORNEY;

   b. COMMUNITY CENTERED BOARD;

   c. HEALTH FACILITIES DIVISION;

   d. ATTORNEY GENERAL'S MEDICAID FRAUD UNIT; AND/OR,

   e. THE LONG-TERM CARE OMBUDSMAN.

~~2~~3. Conducting a face-to-face interview with the client, unannounced and in private, whenever possible, AND IF NOT UNANNOUNCED AND/OR IN PRIVATE, THE REASON SHALL BE DOCUMENTED IN CAPS~~;~~.

~~3~~4. Conducting interviews with collateral contacts.

~~4~~5. Interviewing the alleged perpetrator(s), with or without law enforcement, when appropriate and safe, AND IF THE PERPETRATOR IS NOT INTERVIEWED, THE REASON SHALL BE DOCUMENTED IN CAPS.

~~5~~6. Collecting evidence and documenting with photographs or other means, when appropriate, SUCH AS:

a. POLICE REPORTS;

b. ANY AVAILABLE INVESTIGATION REPORT FROM A CURRENTLY OR PREVIOUSLY INVOLVED FACILITY AND THE OCCURRENCE REPORT FROM THE HEALTH FACILITIES DIVISION;

c. MEDICAL AND MENTAL HEALTH RECORDS;

d. BANK RECORDS;

e. CARE PLANS FOR ANY PERSON IN A FACILITY OR RECEIVING OTHER SERVICES THAT REQUIRE A CARE PLAN AND ANY DAILY LOGS OR CHARTS; AND/OR,

f. STAFFING RECORDS AND EMPLOYEE WORK SCHEDULES WHEN INVESTIGATING IN A FACILITY.

~~6~~7. Making a finding regarding the substantiation or unsubstantiation of the allegations~~;~~.

~~7~~8. Determining the identity of, and making a finding related to, the perpetrator(s) of the mistreatment ~~OR exploitation or self-negect;~~.

~~8~~9. Determining whether there are additional mistreatment concerns not reported in the initial allegations and investigating AND DOCUMENTING any NEWLY identified concerns~~;~~. ~~and,~~

~~9~~10. Notifying law enforcement when criminal activity is suspected.

~~B. The county department shall~~

~~1.~~B. THE COUNTY DEPARTMENT SHALL ~~C~~complete ~~and document~~ the investigation ~~in the data system~~ within forty-five (45) calendar days of the receipt of the ~~referral~~REPORT, ENSURING THAT DOCUMENTATION OF THE INVESTIGATION IS OCCURRING IN CAPS THROUGHOUT THE INVESTIGATION PROCESS, AS FOLLOWS: ~~. If the investigation cannot be completed within this time frame, the county department shall document the reason why in the data system.~~

1. ALL INTERVIEWS, CONTACTS, OR ATTEMPTED CONTACTS WITH THE CLIENT, COLLATERALS, ALLEGED PERPETRATORS, AND OTHER CONTACTS DURING THE INVESTIGATION SHALL BE DOCUMENTED WITHIN FOURTEEN (14) CALENDAR DAYS OF RECEIPT OF THE INFORMATION.

~~2. Document the investigation in the data system to minimally include window fields and narrative of the:~~

~~a. Allegations;~~

~~b. Mistreatment category(ies) identified by the reporter and any additional mistreatment, exploitation, or self-neglect identified during the investigation, including a finding for each category;~~

~~b. Worker safety issues, if different from the information in the initial report;~~

~~d. Client interview information;~~

~~e. Alleged perpetrator(s) information, including a finding for each perpetrator, if applicable;~~

~~f. Collateral interview information;~~

~~g. Evidence collected;~~

~~h. Determination of whether the allegation(s) and any additional mistreatment, exploitation or self-neglect identified during the investigation are substantiated, unsubstantiated, or are inconclusive; and,~~

~~i. Date referred to law enforcement or the District Attorney, and a description of law enforcement or District Attorney (DA) involvement, if any~~.

2. ALL EVIDENCE COLLECTED DURING THE INVESTIGATION SHALL BE SCANNED AND ATTACHED TO THE CASE BY THE CONCLUSION OF THE INVESTIGATION.

3. FINDINGS FOR THE ALLEGATIONS AND ALLEGED PERPETRATOR SHALL BE DOCUMENTED NO LATER THAN FORTY-FIVE (45) CALENDAR DAYS FROM RECEIPT OF THE REPORT.

4. IF THE INVESTIGATION CANNOT BE COMPLETED WITHIN THIS TIME FRAME, THE COUNTY DEPARTMENT SHALL DOCUMENT THE REASON WHY.

30.530 ASSESSMENT [Rev. eff. 9/1/14]

A. The county department shall COMPLETE A BASELINE ASSESSMENT OF~~assess~~ the client to determine if there is a need for protective services. If the client is in clear and ~~imminent~~ IMMEDIATE danger, the county shall intervene immediately by notifying the proper authorities or arranging for appropriate emergency responders.

B. The county department shall determine ~~for each indicator a level of impact to~~ the client's RISK AND safety~~, health, and well-being by assessing the client's strengths and needs~~ USING THE ASSESSMENT TOOL IN CAPS. ~~in the following five (5) assessment status areas, as applicable:~~

~~1. Physical status, including the client's ability to perform various activities of daily living;~~

~~2. Environmental status, including the conditions within the client's residence, the availability of food and drinking water, and the functionality of heating, plumbing, and electrical systems;~~

3. Resources and financial status, including the client's income, ability to access income, changes in financial circumstances, unpaid bills, and signs of exploitation;

4. Medical status, including the client's current and previous medical conditions, hospitalizations, prescribed medications, insurance, and hearing, vision or dental needs; and,

5. Mental and behavioral status, including the client's capacity to make decisions; ability to manage money or medication, ability to receive or communicate information; ability to plan and sequence; behaviors that threaten the safety of the client or others; a history of mental health conditions; and, any recent loss.

C. The county department shall assess the client's support system status, including family members, friends, involvement with organizations, and any other natural support.

D. The county department shall:

1C. THE COUNTY DEPARTMENT SHALL Ccomplete and document the assessment in the data systemCAPS within forty-five (45) calendar days of the receipt of the report, AS FOLLOWS: If the assessment cannot be completed within this time frame, the county department shall document the reason why in the data system.

1. ALL IMPACTS AND MITIGATING SERVICES, AND THE NARRATIVE SUMMARY SHALL BE DOCUMENTED AND THE ASSESSMENT MARKED COMPLETE NO LATER THAN FORTY-FIVE (45) CALENDAR DAYS FROM RECEIPT OF THE REPORT.

2. Document the assessment in the data system to minimally include window fields and narrative of:

a. The observations in each of the six assessment status areas, as applicable; and,

b. The level of impact for all status area risk factor(s); and,

c. If a mitigating service is in place to improve safety.

2. IF THE ASSESSMENT CANNOT BE COMPLETED WITHIN THIS TIME FRAME, THE COUNTY DEPARTMENT SHALL DOCUMENT THE REASON WHY.

30.600. CASE PLANNING AND IMPLEMENTATION

30.610. CASE PLAN DEVELOPMENT [Rev. eff. 9/1/14]

A. The county department shall develop a case plan for protective services based upon the findings of the investigation and assessment and in accordance with APS principles.

B. A case plan shall not be developed when the allegations are unsubstantiated and there is no other identified need.

C. The case plan shall be documented in the data system and shall include:

1. Client strengths, including services in place, support systems, resources, and the client's personal abilities;

2. Client needs, including the nature of the protective issue and/or needs of the client and why the client is unable to meet his/her own needs without APS intervention;

31. THE service goals NEEDS NECESSARY TO SUCCESSFULLY ACHIEVE SAFETY IMPROVEMENT FOR ANY IDENTIFIED RISK FACTORS, CHARACTERIZED WITH A SIGNIFICANT IMPACT, FOR WHICH THERE IS NO ADEQUATE MITIGATING SERVICE IN PLACE AT THE TIME OF APS INITIAL RESPONSE; at a minimum to include a goal for all unmitigated factors with an SIGNIFICANT impact to the client's safety, including why the goal was identified, why it is the least restrictive intervention, how it will meet the client's needs and desires and reduce risk, the person responsible for implementing the goal, and the implementation date; and,

2. THE PERSON RESPONSIBLE FOR ARRANGING EACH IDENTIFIED SERVICE NEED, AND IF OTHER THAN THE COUNTY DEPARTMENT, DOCUMENT THE INDIVIDUAL'S AGREEMENT TO ARRANGE THE SERVICE NEED; AND,

43. Client's and/or client's fiduciary's input into the development of the case plan, including the client's and/or the fiduciary's consent to the overall plan and the specific goals as outlined in Section 30.620. THE STATUS OF ALL IDENTIFIED SERVICE NEEDS.

D. The county department shall:

1D. THE COUNTY DEPARTMENT SHALL Ccomplete and document the case plan in the data system within forty-five (45) calendar days of the receipt of the report. If the case plan cannot be completed within this time frame, the county department shall document the reason why in CAPS. the data system.

2. Document the case plan in the data system to minimally include window fields and narrative of the required elements outlined in Section 30.610, C.

E. The county department shall implement services, upon consent of the client, that are available in the community and that the client is eligible to receive at no or reduced cost or is able to pay for privately.

1. The county department shall not be required to provide and/or pay for services that are not available in the community or those that the client is not eligible to receive at no or reduced cost or is able to pay for privately; but,

2. The county department is urged to explore all available options, including private companies, to secure needed services.

F. If services are unavailable through other government programs or local service providers and the APS client is unable to pay for the services, the county shall utilize APS client services funds, within available appropriations, to purchase GOODS AND services for the APS client. APS county services funds shall be utilized:

1. THE COUNTY DEPARTMENT SHALL NOT OPEN AN APS CASE ONLY TO PURCHASE A SERVICE FOR A COMMUNITY MEMBER AND SHALL NOT USE APS CLIENT SERVICES FUNDS FOR ANY SERVICE THAT DOES NOT BENEFIT THE APS CLIENT.

1.2. APS client services funds shall be utilized in emergency situations, to include, but not limited to, emergency shelter, food, or utilities; and/or, CLIENT SERVICES FUNDS MAY BE USED IN THE FOLLOWING SITUATIONS:

a. EMERGENCY SITUATIONS, SUCH AS EMERGENCY SHELTER, FOOD, MEDICINE, OR UTILITIES;

b. WHEN THE PURCHASE(S) RESOLVES THE IMMEDIATE NEED; OR,

~~2~~c. For one-time, temporary, or short-term needs while the APS client is waiting for other service providers or funding sources to be approved and services begun; and/or,

3. GOODS AND SERVICES ACCEPTABLE FOR PURCHASE WITH CLIENT SERVICES FUNDS SHALL BE THE MINIMUM NECESSARY TO RESOLVE THE SAFETY CONCERN.

~~3~~4. ~~To~~ CLIENT SERVICES FUNDS MAY BE USED TO develop a county or regional contract with an agency or professional to provide a specific service for multiple APS clients throughout the contract duration, such as a specialist to conduct in-home capacity evaluations, a registered nurse to do in-home medical evaluations, or a long-term care facility to provide emergency shelter beds.

30.620 PROVISION OF SERVICES [Rev. eff. 9/1/14]

A. THE COUNTY DEPARTMENT SHALL PROVIDE PROTECTIVE SERVICES FOR THE SHORTEST DURATION NECESSARY TO ENSURE THE CLIENT'S SAFETY BY IMPLEMENTING CASE PLAN GOALS AS QUICKLY AS POSSIBLE IN ORDER TO STABILIZE THE CLIENT'S SITUATION AND PREVENT FURTHER MISTREATMENT OR SELF-NEGLECT.

~~A~~B. If the client appears to have capacity to make decisions:~~, the client's consent or refusal to the provision of protective services shall be obtained. and documented in the data system~~.

~~1.~~ ~~Consent or refusal shall be obtained within forty-five (45) calendar days of receipt of the report and documented. in the data system.~~

~~2~~1. ~~A~~ THE COUNTY DEPARTMENT SHALL ENCOURAGE THE CONSENTING client ~~who consents shall be encouraged~~ to sign a release of information that covers general, medical, and/or money management, as appropriate to the client's needs.

~~3~~2. ~~If a~~ THE client MAY refuse~~s~~ protective services, but THE COUNTY DEPARTMENT IS ENCOURAGED TO ATTEMPT TO OBTAIN THE CLIENT'S consent~~s~~ to additional visits or phone calls from the caseworker IF THE SITUATION APPEARS TO REQUIRE FURTHER SERVICES. ~~t~~The caseworker shall document the consent OR REFUSAL TO ADDITIONAL VISITS OR PHONE CALLS.~~to visits or calls in the data system and continue to conduct home visits to assess the client's need for protective services.~~

43. Clients with capacity may refuse any or all services and may revoke consent at any time.

~~5~~3. Caseworkers shall provide clients who refuse services with the county department contact information for future reference.

~~B~~C. If a client is suspected to lack capacity to make decisions, is at risk for harm, and refuses to consent to services, the county department shall document the client's inability to provide consent. ~~in the data system. The county department shall ensure immediate safety and:~~

~~1. Make its best effort to obtain an evaluation of the client's decision making capacity from a qualified professional; and,~~

~~2. Intervene as necessary to provide for the immediate safety and health of the client.~~

~~3. These situations shall be staffed with the supervisor and/or county attorney to:~~

~~a. Determine the client's risk and safety;~~

~~b. Assess the client's ability to consent;~~

~~c. Determine urgency of safety concerns if intervention is not taken;~~

~~d. Review previous interventions; and,~~

~~e. Ensure the intervention is done ethically and is the least restrictive intervention to ensure the client's safety.~~

1. DOCUMENTATION SHALL INCLUDE:

   a. OBSERVATIONS OF CLIENT BEHAVIORS AND ACTIONS;

   b. MEDICAL DOCUMENTATION OF CLIENT'S SUSPECTED INCAPACITY AND SAFETY CONCERNS TO SUPPORT INVOLUNTARY CASE PLANNING; AND/OR,

   c. INVESTIGATIVE EVIDENCE.

2. THE COUNTY DEPARTMENT SHALL ENSURE IMMEDIATE SAFETY AND MAKE ITS BEST EFFORT TO OBTAIN AN EVALUATION OF THE CLIENT'S DECISION MAKING CAPACITY FROM A QUALIFIED PROFESSIONAL.

3. THESE SITUATIONS SHALL BE STAFFED WITH THE SUPERVISOR AND/OR COUNTY ATTORNEY TO:

   a. DETERMINE THE CLIENT'S RISK AND SAFETY;

   b. ASSESS THE CLIENT'S ABILITY TO CONSENT;

   c. DETERMINE URGENCY OF SAFETY CONCERNS IF INTERVENTION IS NOT TAKEN;

   d. REVIEW PREVIOUS INTERVENTIONS; AND,

   e. ENSURE THE INTERVENTION IS DONE ETHICALLY AND IS THE LEAST RESTRICTIVE INTERVENTION TO ENSURE THE CLIENT'S SAFETY.

4. INTERVENE IF APPROPRIATE AND AVAILABLE TO COORDINATE WITH THE RESPONSIBLE AGENCY FOR THE IMMEDIATE SAFETY AND HEALTH OF THE CLIENT, SUCH AS:

   a. GAINING ACCESS TO THE CLIENT BY GETTING ASSISTANCE FROM LAW ENFORCEMENT, FAMILY, OR ANOTHER PERSON THE CLIENT TRUSTS;

   b. EMERGENCY HOSPITALIZATION;

   c. HOME CLEAN UP, WHEN THERE IS A CLEAR BIOHAZARD;

d. MENTAL HEALTH HOLD, PER TITLE 27, ARTICLE 65, C.R.S.;

e. FREEZING BANK ACCOUNTS TO PREVENT FURTHER LOSS OF ASSETS;

f. EMERGENCY PROTECTION ORDER, PER TITLE 13, ARTICLE 14, C.R.S.;

g. AUTHORIZATION OF A MEDICAL PROXY DECISION MAKER, PER TITLE 15, ARTICLE 18.5, C.R.S.;

h. REQUESTING A JUDICIAL REVIEW OF A FIDUCIARY, PER TITLE 15, ARTICLE 10, PART 5, C.R.S., AND TITLE 15, ARTICLE 14, PART 7, C.R.S.;

i. CONTACTING THE SOCIAL SECURITY ADMINISTRATION OR OTHER PENSION ADMINISTRATOR TO SECURE A REPRESENTATIVE PAYEE;

j. PETITIONING THE COURT FOR EMERGENCY GUARDIANSHIP AND/OR SPECIAL CONSERVATORSHIP, PER TITLE 15 ARTICLE 14, PARTS 3 AND 4, C.R.S., OR,

k. ALCOHOL AND DRUG INVOLUNTARY COMMITMENT, PER TITLE 27, ARTICLE 81, PART 112 AND TITLE 27, ARTICLE 82, PART 108.

~~C~~D. If a client lacks capacity and has a fiduciary to make decisions on behalf of the client, the county department shall consult with supervisors, the county director, the county attorney, law enforcement, and/or the district attorney to determine whether the county department should petition the court for a review of the fiduciary's actions if:

1. The fiduciary refuses to allow the provision of protective services, which places the client at-risk for continued mistreatment~~, exploitation~~ or self-neglect; or,

2. There are allegations and evidence of mistreatment ~~or exploitation~~ of the client by the client's fiduciary.

3. The county department shall petition the court under the appropriate statute:

a. Uniform Power of Attorney Act, as outlined in Title 15, Article 14, Part 7, C.R.S.;

b. Guardianship or conservatorship statutes as outlined in Title 15, Article 14, Parts 3 and 4, C.R.S.; and/or,

c. Fiduciary oversight statute, as outlined in Title 15, Article 10, Part 5, C.R.S.

~~D~~E. THE COUNTY DEPARTMENT SHALL MAINTAIN ONGOING CLIENT CONTACT AS LONG AS THE CASE IS OPEN.

1. FOR CLIENTS LIVING IN THE COMMUNITY, A FACE-TO-FACE CLIENT CONTACT SHALL OCCUR AT LEAST ONCE EVERY MONTH, NOT TO EXCEED THIRTY FIVE CALENDAR DAYS (35) FROM THE LAST FACE-TO-FACE CONTACT.

2. FOR CLIENTS LIVING IN A FACILITY, A FACE-TO-FACE CLIENT CONTACT SHALL OCCUR AT LEAST ONCE EVERY MONTH, NOT TO EXCEED THIRTY FIVE CALENDAR DAYS (35) FROM THE LAST FACE-TO-FACE CONTACT.

a. THE COUNTY DEPARTMENT HAS THE OPTION OF SUBSTITUTING A PHONE CALL TO THE DIRECT CARE PROVIDER TO ASCERTAIN THE

CLIENT'S CURRENT STATUS, IN LIEU OF A FACE-TO-FACE VISIT FOR EVERY OTHER REQUIRED MONTHLY FACE-TO-FACE CONTACT.

b. IF IT HAS BEEN REPORTED THAT THE CLIENT HAS BEEN MISTREATED AT THE FACILITY, WHETHER CAUSED BY A STAFF PERSON, VISITOR, OR OTHER RESIDENT, AND THE FACILITY HAS NOT APPROPRIATELY RESOLVED THE CAUSE OF THE MISTREATMENT OR PUT ADEQUATE SAFETY MEASURES IN PLACE, THEN A PHONE CALL TO ASCERTAIN THE CLIENT'S CURRENT STATUS IS NOT APPROPRIATE AND THE REQUIRED MONTHLY CONTACT SHALL BE A FACE-TO-FACE VISIT.

3. DURING THE MONTHLY CONTACT, THE COUNTY DEPARTMENT SHALL:

a. CONTINUE THE INVESTIGATION OF ALLEGATIONS, IF APPLICABLE;

b. CONTINUE ASSESSMENT OF CLIENT'S STRENGTHS AND NEEDS, INCLUDING CHANGES TO THE CLIENT'S STATUS;

c. PURSUE THE CONTINUED SAFETY IMPROVEMENT AND REDUCTION AND/OR MITIGATION OF RISK;

d. MONITOR THE EFFECTIVENESS OF ARRANGED SERVICES TO DETERMINE WHETHER CONTINUED APS INTERVENTION IS NEEDED; AND,

e. DOCUMENT INFORMATION GATHERED DURING THE CONTACT PER THE ABOVE MONTHLY CONTACT REQUIREMENTS AND UPDATE ALL CONTACT RECORDS AS INFORMATION IS OBTAINED AND/OR CHANGES OCCUR FOR THE CLIENT, ALLEGED PERPETRATOR, REPORTING PARTY, AND SUPPORTS WITHIN FOURTEEN (14) CALENDAR DAYS OF THE VISIT.

F. COUNTY DEPARTMENTS MAY COMPLETE MONTHLY VISITS FOR OTHER COUNTY DEPARTMENTS AS A COURTESY, AS FOLLOWS:

1. WHEN A CLIENT TEMPORARILY OR PERMANENTLY RELOCATES TO A LICENSED FACILITY MORE THAN SEVENTY-FIVE (75) MILES OUTSIDE THE COUNTY BOUNDARY AND THE COUNTY DEPARTMENT OF ORIGINAL JURISDICTION MAINTAINS THE CASE, THE COUNTY DEPARTMENT SHALL ENSURE ONGOING PROTECTIVE SERVICES.

2. MONTHLY CONTACTS, REQUIRED BY SECTION 30.620, E, MAY BE CONDUCTED BY THE COUNTY OF ORIGINAL JURISDICTION OR MAY BE CONDUCTED VIA COURTESY VISITS BY THE COUNTY DEPARTMENT IN WHICH THE FACILITY IS LOCATED OR BY ANOTHER COUNTY DEPARTMENT THAT IS VISITING THE FACILITY.

3. NO COUNTY DEPARTMENT SHOULD BE EXPECTED TO PROVIDE MORE THAN THREE COURTESY VISITS PER TWELVE (12) MONTH PERIOD, AT THE REQUEST OF THE COUNTY DEPARTMENT OF ORIGINAL JURISDICTION. COUNTY DEPARTMENTS MAY NEGOTIATE TO PROVIDE MORE THAN THREE COURTESY VISITS.

4. UPON COMPLETION OF EACH COURTESY VISIT, THE COUNTY DEPARTMENT THAT CONDUCTED THE VISIT SHALL DOCUMENT THE MONTHLY CONTACT IN

CAPS, AS REQUIRED IN SECTION 30.620, E WITHIN FOURTEEN (14) CALENDAR DAYS OF THE MONTHLY CONTACT.

5. A COUNTY DEPARTMENT CONDUCTING A COURTESY VISIT SHALL NOT DOCUMENT THE VISIT AS A NEW REPORT OR CASE FOR THE PURPOSE OF DATA COLLECTION.

G. IF THE CLIENT PERMANENTLY RELOCATES TO ANOTHER COUNTY AND THE CLIENT NO LONGER NEEDS PROTECTIVE SERVICES, OR THE CLIENT PERMANENTLY RELOCATES TO ANOTHER STATE, THE COUNTY DEPARTMENT SHALL CLOSE THE CASE, AS OUTLINED IN SECTION 30.660.

H. IF THE CLIENT RELOCATES TO ANOTHER COUNTY AND THE CLIENT CONTINUES TO NEED PROTECTIVE SERVICES, THE COUNTY DEPARTMENT SHALL UPDATE THE CASE, AS FOLLOWS, AND TRANSFER THE CASE TO THE CLIENT'S NEW COUNTY OF RESIDENCE WITHIN FIVE (5) CALENDAR DAYS OF LEARNING THE MOVE IS PERMANENT.

1. UPDATE THE CLIENT, PERPETRATOR, REPORTING PARTY, AND COLLATERAL CONTACT INFORMATION; AND,

2. UPDATE THE INVESTIGATION, ASSESSMENT, CASE PLAN, AND CASE NOTES TO INCLUDE ALL INFORMATION GATHERED TO DATE; AND,

3. CALL THE RECEIVING COUNTY DEPARTMENT SUPERVISOR TO STAFF THE CASE PRIOR TO THE TRANSFER.

I. WHEN A CLIENT RELOCATES TO A NEW COUNTY, THE CASE MAY REMAIN WITH THE FORMER COUNTY DEPARTMENT ONLY WHEN:

1. THE CASE IS WITHIN THIRTY-FIVE (35) CALENDAR DAYS OF RESOLUTION AND THE FORMER COUNTY DEPARTMENT CHOOSES TO RETAIN THE CASE; AND/OR,

2. THE FORMER COUNTY DEPARTMENT HOLDS REPRESENTATIVE PAYEESHIP AND CHOOSES TO RETAIN THE CASE; AND/OR,

3. THE FORMER COUNTY DEPARTMENT HOLDS GUARDIANSHIP OR CONSERVATORSHIP.

a. AS SPECIFIED IN A WRITTEN AGREEMENT, EITHER THE FORMER OR RECEIVING COUNTY DEPARTMENT MAY PROVIDE PROTECTIVE SERVICES.

b. EITHER COUNTY DEPARTMENT MAY, WITH THE AGREEMENT OF THE RECEIVING COUNTY DEPARTMENT, PETITION THE COURT FOR A TRANSFER OF GUARDIANSHIP AND/OR CONSERVATORSHIP TO THE RECEIVING COUNTY DEPARTMENT.

J. COUNTY DEPARTMENTS SHALL WORK COLLABORATIVELY TO PROVIDE PROTECTIVE SERVICES TO CLIENTS, AS NEEDED.

K. THE COUNTY DEPARTMENT SHALL REASSESS THE CLIENT'S NEEDS AND REVIEW THE PROVISION OF PROTECTIVE SERVICES AT LEAST EVERY 180 DAYS AS LONG AS THE CASE REMAINS OPEN, BY:

1. COMPLETING AND DOCUMENTING A NEW ASSESSMENT ON OR BEFORE THE REASSESSMENT DUE DATE;

2. DETERMINING THE APPROPRIATENESS OF CONTINUED PROTECTIVE SERVICES, BASED ON THE NEW ASSESSMENT; AND,

3. UPDATING THE CLIENT SERVICES IN THE CASE PLAN.

30.630 COURT INTERVENTION [Rev. eff. 9/1/14]

A. When the investigation and assessment indicates probable incapacity and there is IMMEDIATE DANGER TO THE CLIENT'S HEALTH, SAFETY, AND WELFARE AND THE CLIENT IS UNABLE AND/OR UNWILLING TO ACCEPT SERVICES, ~~no other alternative to protect the client from mistreatment, exploitation or self-neglect,~~ the county department is urged to seek court intervention to petition the court for an order authorizing ~~the provision of specific protective services and/or for~~ the appointment of aN EMERGENCY guardian and/or SPECIAL conservator IN ORDER TO RESOLVE THE IMMEDIATE SAFETY CONCERN(S).

1. Prior to reaching a decision to petition the court FOR GUARDIANSHIP OR CONSERVATORSHIP, the COUNTY DEPARTMENT SHALL ENSURE THAT THE following factors ARE MET AND HAVE BEEN DOCUMENTED: ~~shall be investigated and documented in the data system~~:

   a. No other method of intervention will meet the client's needs; AND,

   b. THE COURT INTERVENTION WILL RESOLVE SAFETY CONCERNS; AND,

   c. THE GUARDIANSHIP IS NOT BASED SOLELY TO MAKE MEDICAL DECISIONS ON BEHALF OF THE CLIENT AS THE COUNTY DEPARTMENT IS PROHIBITED BY TITLE 15 ARTICLE 18.5, C.R.S. FROM PETITIONING THE COURT SOLELY FOR THIS REASON; AND,

   ~~b~~d. The degree of incapacity, as supported by medical or psychiatric evidence, and the degree of risk, as supported by investigative evidence, warrants this action; OR,

   ~~c~~e. The suspected incapacity of the client and the degree of risk, as supported by the investigative evidence, warrants this action and medical or psychiatric evidence of incapacity cannot be obtained without court intervention.

2. The type of court intervention sought shall be the least restrictive intervention required to meet the needs of the client and only for those areas in which the client lacks the capacity or ability to understand the consequences of decisions, as medically or psychiatrically substantiated.

B. In the absence of other responsible parties, such as family or friends, the county department is urged to accept guardianship and/or conservatorship.

1. The county department shall consult with an attorney prior to filing a petition and throughout the process.

2. The county department shall provide all information deemed necessary by legal counsel.

3. A representative of the county department shall be prepared to testify in support of the petition.

4. When a county department is appointed by the court to act as guardian or conservator, a copy of the letter of appointment and all other court documents and reports shall be maintained in CAPS~~ the data system~~ AND THE CLIENT'S CASE RECORD UPDATED TO REFLECT FIDUCIARY INFORMATION.

~~C. The county department shall not petition the court for guardianship solely to make medical decisions. The county department may accept such guardianship, if another agency or person petitions the court and the county department is appointed by the court.~~

~~D~~.C. The county department may choose to accept or reject any appointment of guardianship, based upon county department policy.

~~E~~.D. The county department shall initiate proceedings to withdraw as guardian and/or conservator when:

1. Medical or psychiatric evidence indicates a guardian and/or conservator is no longer necessary;

2. Another appropriate guardian or conservator has been identified; or,

3. The county department is no longer able to fulfill guardianship responsibilities, as appointed.

~~F~~.E. When a person or agency other than the county department is requesting appointment as the guardian and/or conservator of the client, the county department shall assist responsible parties, as needed, in identifying legal counsel or provideING other assistance in initiating the petition(s).

30.640 REPRESENTATIVE PAYEE [Rev. eff. 9/1/14]

A. The county department shall only apply for appointment as a representative payee when no other reliable person or agency is available and willing to seek the appointment and:

1. The reported financial issues pertaining to mistreatment~~, exploitation,~~ and/or self-neglect have been substantiated and determined to present ~~the potential for~~ significant harm to the client's health, safety, or welfare without intervention; and,

2. Other less restrictive intervention options have been assessed and found to be inadequate to protect and assist the client; and,

3. Medical, psychiatric, and/or financial evidence exists to show the client is unable to manage his/her personal finances.

B. The county department shall follow the procedures and guidelines for payees as set forth by the SSA or other organization(s).

C. The county department shall initiate procedures, as outlined by the SSA or other organization(s), to discontinue its services as representative payee when:

1. Medical, psychiatric, and/or financial evidence indicates a payee is no longer necessary;

2. Another appropriate payee has been identified; ~~or,~~

3. The county department is no longer able to fulfill payee responsibilities, as appointed; or,

4. The client dies.

30.645 TRUST ACCOUNTS [Eff. 4/1/13]

A. The county department shall ensure that all guardianships, conservatorships, representative payeeships, and personal needs accounts that are held by the county department, and in which the county department has some financial authority or responsibility, have an established trust account.

B. The established trust account shall bear the name of the county department or the name and the title of the director of the county department as trustee for the client or as otherwise required by the Social Security Administration (SSA).

1. Withdrawals from savings, checking, or investment accounts shall require two signatures, neither of which may be the caseworker or the bookkeeper.

2. Shortages in trust accounts are the responsibility of the county department.

C. The county department shall manage any trust account established pursuant to such department's fiduciary duty as a guardian, conservator, representative payee, or other purpose in accordance with any State and Federal requirements for said accounts.

30.650 PROVISION OF PROTECTIVE SERVICES [Rev. eff. 9/1/14]

THIS SECTION HAS BEEN RECODIFIED UNDER 30.500 AND 30.620.

~~A. The county department shall maintain ongoing client contact as long as the case is open, to include, at a minimum:~~

~~1. A face-to-face client contact shall occur at least every thirty (30) calendar days.~~

~~a. When the client resides in a supervised in-home or facility setting that reduces the possibility of further mistreatment, exploitation or self-neglect, a face-to-face contact shall occur at least every sixty (60) calendar days b. A face-to-face or telephone contact shall be made with the caretaker or responsible collateral at the facility at least once midway through the sixty (60) day period.~~

~~2. Continued investigation, as needed;~~

~~3. Continued assessment of the client's needs; and,~~

~~4. Implementation of the case plan goal(s) and update of the case plan as goals are completed and/or added.~~

~~B. The county department shall provide protective services for the shortest duration necessary to ensure the client's safety by implementing case plan goals as quickly as possible in order to stabilize the client's situation and prevent further mistreatment, exploitation or self-neglect.~~

~~C. The county department shall document all monthly contacts and other significant case information in the data system within fourteen (14) days of the contact or receipt of the information, to minimally include:~~

~~1. Observations made during required client contact visits and/or collateral contacts;~~

~~2. New linformation learned as a result of ongoing investigation and assessment; and,~~

~~3. Court and/or fiduciary related information.~~

D. ~~The county department shall reassess the client's needs and the provision of protective services at least every six months as long as the case remains open, by:~~

1. ~~Completing a new assessment and case plan on or before the reassessment due date;~~

2. ~~Staffing the case to determine the appropriateness of continuing protective services, based on the new assessment and case plan; and,~~

3. ~~Documenting the reassessment within fourteen (14) days of completing the reassessment, to minimally include:~~

   a. ~~Completing a new the assessment as outlined in Section 30.53040, C, 2;~~

   b. ~~Completing a new case plan as outlined in Section 30.610710, D, 2; and,~~

   c. ~~Updates to the data system of any other changes~~ in the case

30.660 CASE CLOSURE [Rev. eff. 9/1/14]

A. Cases not requiring additional protective services shall be closed within thirty-FIVE (3~~0~~5) calendar days of the last ~~phone, mail, or face-to-face contact~~ MONTHLY CONTACT with the client.

1. IF THE CLIENT CANNOT BE LOCATED AND YOU HAVE SENT A LETTER TO THE CLIENT OR ARE REACHING OUT TO OTHERS WHO MIGHT KNOW THE CLIENT'S LOCATION, THE CASE MAY REMAIN OPEN UNTIL THE COUNTY DEPARTMENT EXHAUSTS ALL ATTEMPTS TO LOCATE THE CLIENT.

2. THE COUNTY DEPARTMENT SHALL DOCUMENT ALL ATTEMPTS TO LOCATE THE CLIENT.

B. Cases in which the client is relocated to a long-term care facility may remain open for up to ~~three (3) months~~ THIRTY-FIVE (35) CALENDAR DAYS in order to ENSURE THE PLACEMENT IS APPROPRIATE FOR THE CLIENT'S NEEDS. THE COUNTY DEPARTMENT MAY KEEP THE CASE OPEN PAST THE THIRTY-FIVE (35) DAYS IF THERE IS GOOD CAUSE AND THE DEPARTMENT DOCUMENTS THE REASON IN CAPS. ~~monitor the continuing need for long-term care.~~

C. Cases in which the county department has been appointed as the client's guardian, conservator, and/or representative payee shall remain open for the duration of the court order or for as long as the county remains as the representative payee.

D. A decision to close a case shall be made for any or all of the following reasons:

1. After investigation and assessment, the client does not meet the definition of an at-risk adult.

2. After investigation and assessment, the allegations are determined to be unsubstantiated AND THERE ARE NO OTHER IDENTIFIED NEEDS AS DETERMINED BY THE ASSESSMENT.

3. The investigation and assessment substantiates situations of ~~actual or potential~~ mistreatment~~, exploitation~~ or self-neglect and the client is competent to make decisions and refuses services.

4. If, after repeated and documented efforts, the whereabouts of the client cannot be established OR THE CLIENT REFUSES CONTACT.

5. The client no longer needs protective services.

6. Service goals are completed.

7. Repeated efforts at service delivery have proven to be ineffective and no additional alternatives exist.

8. CRITICAL SERVICES NECESSARY TO IMPROVE SAFETY ARE UNAVAILABLE IN THE COMMUNITY OR TO THE CLIENT.

9. THE CLIENT MOVED OUT OF THE STATE.

10. THE CLIENT HAS BEEN SENTENCED TO INCARCERATION FOR LONGER THAN THIRTY (30) CALENDAR DAYS.

~~8~~11. The client died.

E. The county department shall document the case closure ~~in the data system~~, to minimally include:

1. ~~Completion of a~~ A final assessment, IF APPLICABLE, to determine the safety improvement as a result of APS intervention;

2. Update of all case, CLIENT, PERPETRATOR, REPORTING PARTY, AND COLLATERAL CONTACT INFORMATION ~~windows~~ to reflect the most current data and information; ~~and,~~

3. REASON FOR CASE CLOSURE;

4. WHETHER THERE IS CONTINUED PERPETRATOR INVOLVEMENT; AND,

~~3~~5. ~~Completion of tThe case disposition window to include a~~ A narrative to address the OVERALL OUTCOME OF APS INTERVENTION, TO INCLUDE WHY SAFETY WAS OR WAS NOT INCREASED AND WHY RISK WAS OR WAS NOT DECREASED.

~~a. Reason for case closure;~~

~~b. Ongoing client needs;~~

~~c. Continuing perpetrator involvement, if applicable; and,~~

~~d. Safety outcome;~~

30.700 COUNTY ASSIGNMENT AND COURTESY VISITS

30.710 COUNTY ASSIGNMENT [Rev. eff. 9/1/14]

THIS SECTION HAS BEEN RECODIFIED UNDER 30.410, 30.510, and 30.620.

~~A. The county department of permanent residence shall receive and respond to reports, except in the following situations:~~

1. When the client does not have an open case and is temporarily located in a county other than his or her permanent county of residence, the county in which the adult is temporarily located shall be the originating county and shall provide services.

    a. When the client returns to his or her permanent county of residence, the case shall be closed as outlined in Section 30.660.

        1) If the client continues to need protective services, the originating county shall make a report to the permanent county of residence within one business day of learning of the move.

        2) The receiving county department shall review and screen the report and shall establish a timeframe for investigation as specified in Section 30.430.

    b. Homeless clients shall be provided services by the originating county until the client is no longer located within the county or is located more than seventy-five (75) miles from the originating county department office, whichever is further.

2. When the client has an open APS case in his or her permanent county of residence, and is temporarily located in a county other than his or her permanent county of residence, the county department of permanent residence shall provide protective services for the client.

    a. The county of permanent residence may close the case, as outlined in section 30.660, if the client's move is permanent.

        1) If the client continues to need protective services, the originating county shall make a report to the permanent county of residence within one business day of learning of the move.

        2) The receiving county department shall review and screen the report and shall establish a timeframe for investigation as specified in Section 30.430.

    b. The county of permanent residence may request courtesy visits by the county of temporary residence, as outlined in Section 30.720, B, if the client's current location is temporary.

B. When a client relocates to a new county, the case may remain with the former county department only when:

1. Opening a case in another county would adversely affect the client's health, safety, or welfare; and/or,

2. The case is within three months of resolution and the former county department chooses to retain the case; and/or,

3. The former county department holds representative payeeship and chooses to retain the case; and/or,

4. The former county department holds guardianship or conservatorship.

    a. As specified in a written agreement, either the former or receiving county department may provide protective services.

b. ~~Either county department may, with the agreement of the receiving county department, petition the court for a transfer of guardianship and/or conservatorship to the receiving county department.~~

C. ~~County departments shall work collaboratively to provide protective services to clients, as needed.~~

30.720 COURTESY VISITS [Rev. eff. 9/1/14]

THIS SECTION HAS BEEN RECODIFIED UNDER 30.620

A. ~~When a client temporarily or permanently relocates to a licensed facility more than seventy-five (75) miles outside the county boundary and the county department of original residence maintains the case, as outlined in Section 30.710, B, the county departments shall ensure ongoing protection services.~~

B. ~~Bi-monthly face-to-face visits, required by Section 30.650, A, may be conducted by the county of original residence or may be conducted via courtesy visits by the county department in which the facility is located or by another county department that is visiting the facility.~~

C. ~~No county department shall be required to provide more than three courtesy visits per twelve (12) month period, at the request of the county department of original residence. County departments may negotiate to provide more than three courtesy visits.~~

D. ~~The county department of original residence shall obtain written confirmation of the schedule of courtesy visits.~~

E. ~~Upon completion of each courtesy visit, the county department that conducted the visit shall document in the data system the adult's current situation, including recommendations for continuing the existing, or providing additional, services within fourteen (14) calendar days.~~

F. ~~In months where a face-to-face visit is not required by rule, oversight through telephone contact with appropriate facility staff, such as the administrator, social worker, or nursing staff shall be provided by the county department of original residence.~~

G. ~~A county department conducting a courtesy visit shall not document the visit as a new report or case for the purpose of data collection.~~

30.800 COMMUNITY COLLABORATION

30.810 COOPERATIVE AGREEMENTS [Rev. eff. 9/1/14]

A. Per Section 26-3.1-103(2), C.R.S., the county department shall develop cooperative agreements in conjunction with its local:

1. Law enforcement agencies;

2. District Attorney;

3. Long-Term Care Ombudsman; and,

4. Community Centered Board.

B. The focus of such agreements shall be the coordination of investigations and protective services that promotes the protection of at-risk adults and each agreement shall provide that each agency shall maintain the confidentiality of the information exchanged pursuant to joint investigations.

C. The agreement with law enforcement shall include, at a minimum:

1. A process outlining the role of law enforcement for receiving, assessing, referring, and responding to reports received during the county department's non-business hours, if applicable;

2. A procedure regarding sharing of reports of mistreatment~~, exploitation,~~ and self-neglect between the local law enforcement agency(ies) and the county department;

3. Procedures for the provision of assistance from one agency upon the request of the other agency;

4. Procedures to coordinate investigative duties; and,

5. The beginning and ending date of the agreement, the term of which shall not exceed five years.

D. The agreement with the District Attorney shall, at a minimum, include:

1. A procedure regarding the sharing of reports of mistreatment~~, exploitation,~~ and self-neglect between the District Attorney and the county department;

2. Procedures for the provision of assistance from one agency upon the request of the other agency;

3. Procedures to coordinate investigative duties; and,

4. The beginning and ending date of the agreement, the term of which shall not exceed five years.

E. The agreement with the Long-Term Care Ombudsman shall, at a minimum, include:

1. A procedure regarding the sharing of reports of mistreatment~~, exploitation,~~ and self-neglect from one agency to the other;

2. Procedures for the provision of assistance from one agency upon the request of the other agency;

3. Procedures to coordinate investigative duties; and,

4. The beginning and ending date of the agreement, the term of which shall not exceed five years.

F. The agreement with the Community Centered Board shall, at a minimum, include:

1. A procedure regarding the sharing of reports of mistreatment~~, exploitation,~~ and self-neglect from one agency to the other;

2. Procedures for the provision of assistance from one agency upon the request of the other agency;

3. Procedures to coordinate investigative duties; and,

4. The beginning and ending date of the agreement, the term of which shall not exceed five years.

30.820 COLLABORATION [Eff. 8/1/12]

THIS SECTION HAS BEEN RECODIFIED UNDER 30.500 AND 30.810.

~~A. The county department shall collaborate with other government and community agencies, such as but not limited to, mental health centers and Area Agencies on Aging, to coordinate services that promote the protection of at-risk adults.~~

~~B. The county department is urged to develop cooperative agreements with those agencies to help ensure the best outcomes for clients.~~

C. ~~The county department shall coordinate investigations in facilities, which include~~:

~~1. Medical and long-term care facilities, group homes, and alternative care facilities, required to be licensed by the Colorado Department of Public Health and Environment (CDPHE); and,~~

~~2. Any site or home that provides care for less than three persons and are not required to be licensed by CDPHE; but,~~

~~3. Does not apply to an adult's private residence in which 24-hour care is provided only to that adult.~~

D. ~~Investigations in facilities may require multi-agency cooperation and the county department may be asked to monitor or assist with an investigation conducted by another agency, such as:~~

~~1. Law enforcement;~~

~~2. District Attorney's office;~~

~~3. Colorado Attorney General's office;~~

~~4. Colorado Department of Public Health and Environment (CDPHE);~~

~~5. Colorado Department of Human Services:~~

~~a. Alcohol and Drug Abuse Division (ADAD);~~

~~b. Division of Mental Health;~~

~~c. Division of Child Welfare; or,~~

~~d. Division for Developmental Disabilities;~~

~~6. Long-Term Care Ombudsman Program; and/or,~~

~~7. Legal Center for People with Disabilities and Older People.~~

~~E. The county department shall conduct the investigation in a facility when:~~

1. ~~The county department is the adult's guardian;~~

2. ~~There are significant indicators of financial exploitation;~~

3. ~~There is significant physical injury to the resident as a result of mistreatment;~~

4. ~~Allegations of sexual assault or sexual abuse are made, and law enforcement is not going to be involved;~~

5. ~~Law enforcement indicates abuse occurred and is likely to continue but not enough evidence exists to bring criminal charges; or,~~

6. ~~Resident abuse by a person living outside the facility has occurred, and law enforcement is not going to be involved.~~

~~F. APS will usually not investigate reports in facilities involving:~~

1. ~~Resident to resident abuse, unless the facility, the CDPHE, and/or the Long-Term Care Ombudsman is unwilling or unable to resolve the issue;~~

2. ~~Staff to resident abuse, unless the CDPHE and/or law enforcement are unwilling or unable to resolve the issue;~~

3. ~~Occurrences reported by licensed facilities to the CDPHE or law enforcement; or,~~

4. ~~Resident's rights, quality of care, administrative policies and procedures, staffing, involuntary discharge, or issues regarding physical surroundings.~~

30.830 ADULT PROTECTION TEAMS [Rev. eff. 9/1/14]

A. The director of each county department with ten (10) or more ~~referrals~~ SCREENED IN REPORTS of at-risk adult mistreatment and/or self-neglect in the prior state fiscal year is required to establish or coordinate an Adult Protection Team.

1. The county department may establish its own Team or may coordinate with another contiguous county department(s) that is required to coordinate a Team.

2. The Team shall meet quarterly, at a minimum.

3. The county department shall determine the level of decision making authority for the Team. The role of the Team may be advisory only.

B. The purpose of the Team shall be to:

1. Review the processes used to report and investigate mistreatment and self-neglect of at-risk adults;

2. Staff particular cases or possible cases with Team members, such as those that:

   a. Have proven difficult to resolve and Team members may be able to identify solutions;

   b. Are situations where early intervention by other community systems may prevent mistreatment; and/or,

c. Are valuable for educating Team members on APS program processes and requirements.

3. Facilitate interagency cooperation regarding services to at-risk adults including the development of solutions and action steps necessary to reduce risk AND IMPROVE SAFETY; and,

4. Provide community education on the mistreatment and self-neglect of at risk adults. The county department shall be the primary training agency, but may utilize training provided by team members or another designee. The county department shall:

a. Determine the topic to be presented, based upon county department or community need;

b. Use materials developed by the county department, the State Department, national associations, or other professional adult protective services agencies;

c. At a minimum, provide five (5) training activities per fiscal year, in any combination of the following:

1) A live presentation to a community or professional group;

2) Participation in a senior or community forum, such as:

a) Providing an article for a newsletter or local community newspaper; or,

b) Providing brochures or other written materials at a county department or other community event.

3) Sponsorship of a community Elder Abuse Awareness Day or similar event.

C. The director of the county department or the director's designee shall identify and recruit team members consistent with professional groups as specified in Section 26-3.1-102(1)(b), C.R.S., and other relevant community agencies.

D. Each Team member shall be advised of the confidential nature of his/her responsibilities in accordance with Section 26-3.1-102(7), C.R.S., and shall be required to sign a confidentiality agreement annually.

E. The Team shall develop and adopt written By-laws or a Memorandum of Understanding that minimally include the Team's:

1. Purpose;

2. Structure, including:

a. Meeting facilitation. Teams that conduct education to the community as part of the Team meeting shall adjourn to executive session prior to staffing any case or discussing any APS client or community member;

b. Frequency of meetings; and,

c. Composition of the Team.

3. Rules for membership, including:

   a. Member duties;

   b. Process for resignation and causes for termination from the Team.

4. Process for handling potential conflicts of interest.

F. The county department shall enter all Team activities in ~~the data system~~CAPS within fourteen (14) calendar days of the activity.

---

3. Rules for membership, including:

   a. Member duties;

   b. Process for resignation and causes for termination from the Team.

4. Process for handling potential conflicts of interest.

F. The county department shall enter all Team activities in ~~the data system~~CAPS within fourteen (14) calendar days of the activity.

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Liquor Enforcement

CCR number

1 CCR 203-2

Rule title

1 CCR 203-2 LIQUOR CODE 1 - eff 10/01/2016

Effective date

10/01/2016

COLORADO DEPARTMENT OF REVENUE
LIQUOR ENFORCEMENT DIVISION
CHANGES TO EXISTING RULES

1 C.C.R. 203-2

Regulation 47-506. Fees.

Below are the fees set by the State Licensing Authority pursuant to Sections 12-47-501(2) and 12-47-501(3), C.R.S.

Alternating Proprietor Licensed Premises	$150.00
Application for New License	$920.00
Application for New License with Concurrent Review	$1020.00
Application for Transfer License	$920.00
Art Gallery Permit	$71.25
Bed & Breakfast Permit	$50.00
Branch Warehouse or Warehouse Storage Permit	$100.00
Change of Corporate or Trade Name	$50.00
Change of Location	$150.00
Corporate/LLC Change (Per Person)	$100.00
Duplicate Liquor License	$50.00
Limited Liability Change	$100.00
Manager Registration (Hotel/Restaurant or Tavern)	$75.00
Master File Background	$250.00
Master File Location Fee (Per Location)	$25.00
Modification of License Premises (City or County)	$150.00
New Product Registration (Per Unit)	$0.00
Optional Premises Added to H&R License (Per Unit)	$100.00
Retail Warehouse Storage Permit	$100.00
Wine Festival Permit Wine	$25.00
Direct Shipment Permit	$50.00
Subpoena Testimony (Per Hour)	$50.00

Minimum of four (4) hours of appearance or on-call or travel time to court and mileage, meals, and lodging at state employee per-diem rate. Actual hourly rate for all hours in excess of four (4) hours.

COLORADO
Department of Revenue
Executive Director's Office
Physical Address:
1375 Sherman Street
Denver, CO 80203

Mailing Address:
P.O. Box 17087
Denver, CO 80217-0087

Statement of Adoption

To: Patrick Maroney, Director of Liquor Enforcement Division

From: Barbara J. Brohl, Executive Director

Re: Statement of Adoption

Pursuant to the state Administrative Procedure Act, Title 24, Article 4, C.R.S. (2013), I, Barbara J. Brohl, Executive Director of the Colorado Department of Revenue and State Licensing Authority, promulgate the following additions and amendments to rules:

1 CCR 203-2, Liquor Enforcement Division Rules

Permanent Rule Regulation 47-506. Fees

The new and amended rules are adopted this 1st day of August, 2016.

Barbara J. Brohl
Executive Director
State Licensing Authority

CYNTHIA H. COFFMAN
Attorney General

DAVID C. BLAKE
Chief Deputy Attorney General

MELANIE J. SNYDER
Chief of Staff

FREDERICK R. YARGER
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
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Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2016-00301

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Liquor Enforcement

on 08/01/2016

1 CCR 203-2

LIQUOR CODE

The above-referenced rules were submitted to this office on 08/04/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 18, 2016 14:03:28

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission (1002 Series)

CCR number

5 CCR 1002-31

Rule title

5 CCR 1002-31 REGULATION NO. 31 - THE BASIC STANDARDS AND METHODOLOGIES FOR SURFACE WATER 1 - eff 12/31/2016

Effective date

12/31/2016

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER QUALITY CONTROL COMMISSION

REGULATION NO. 31

THE BASIC STANDARDS AND METHODOLOGIES FOR SURFACE WATER (5 CCR 1002-31)

31.1 AUTHORITY AND SCOPE

This regulation is promulgated pursuant to 25-8-101 et seq., and in particular, 25-8-203 and 25-8-204, C.R.S. It provides basic standards, an antidegradation rule and implementation process, and a system: for classifying state surface waters; for assigning water quality standards; for granting temporary modifications and for periodic review of the classifications and standards.

31.2 PURPOSE

This regulation establishing basic standards and an antidegradation rule and implementation process and establishing a system for classifying state surface waters, for assigning standards, and for granting temporary modifications (hereinafter referred to as "Regulation") is the foundation for the classification of the state surface waters of Colorado, as prescribed by the Colorado Water Quality Control Act.

It is intended to implement the state Act by maintaining and improving the quality of the state surface waters. This regulation is based on the best available knowledge to insure the suitability of Colorado's waters for beneficial uses including public water supplies, domestic, agricultural, industrial and recreational uses, and the protection and propagation of terrestrial and aquatic life.

It is further intended to be consistent with the 1983 and 1985 goals and objectives of the federal Act. This regulation shall be constructed in a manner consistent with these purposes and shall be considered part of the implementation of the 1983 and 1985 goals and objectives.

31.3 INTRODUCTION

This regulation presents a classification system which establishes beneficial use categories together with basic standards (section 31.11), an antidegradation rule (section 31.8), and numeric tables which define the conditions generally necessary to maintain and attain such beneficial uses. In addition, it establishes procedures for classifying the waters of the state, for assigning water quality standards, and for continued review of the classifications and standards.

The classifications set forth in section 31.13 will be assigned by applying the system to specific state surface waters, in accordance with proper procedures, including public hearings. The basic standards and the antidegradation rule will apply to all state surface waters at the effective date of this regulation. Whenever a specific stream segment or body of water receives a classification for one or more of the uses, additional numeric standards may be assigned. When appropriate, achieving water quality standards through innovative solutions or management approaches may be implemented through control regulations, TMDLs, Waste Load Allocations, antidegradation reviews, and permits. All classified uses will be protected. This does not mean that any entity has the right to rely on the presence of specific pollutants in the stream even though those pollutants may be utilized by the entity.

In assigning classifications and standards, the Commission shall take into consideration the water quality classifications and standards of downstream waters and shall ensure that as implemented through its policies, the water quality classifications and standards of downstream waters will be attained and maintained.

Water quality standards, temporary modifications of numeric standards, and classifications shall be reviewed at least once every three (3) years and revised where appropriate. No provisions of this regulation shall be interpreted so as to supercede, abrogate, or impair rights to divert water and apply water to beneficial uses.

31.4 DELETED

31.5 DEFINITIONS

See the Colorado Water Quality Control Act, section 25-8-101 et seq., C.R.S., and the codified water quality regulations additional definitions.

(1) "ACT" means the Colorado Water Quality Control Act, section 25-8-101 et seq., C.R.S..

(2) "ACUTE STANDARD" means the level not to be exceeded by the concentration for either a single sample or calculated as an average of all samples collected during a one-day period, except for temperature, which shall be based on the DM (see DM definition). As used in tables II and III, acute represents one-half of the LC-50 that protects 95 percent of the genera in a waterbody from lethal effects. The acute standard is implemented in combination with a selected duration and frequency of recurrence (section 31.9(1)). In determining attainment of the applicable acute standard, the representative nature of the data must be considered.

(3) "ANTIDEGRADATION RULE" means the rule established in section 31.8.

(4) "BASIC STANDARDS" means those standards as established in section 31.11.

(5) "BENEFICIAL USES" means those uses of state surface waters to be protected such as those identified in the classification system.

(6) "BMP" (Best Management Practices) means a practice or a combination of practices that is determined by a governmental agency after problem assessment, examination of alternative practices, and appropriate public participation, to be the most effective, practicable (including technological, economic; and institutional considerations) means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with quality goals.

(7) "CHRONIC STANDARD" means the level not to be exceeded by the concentration for either a single representative sample or calculated as an average of all samples collected during a thirty-day period, except for temperature, which shall be based on the WAT (see WAT definition). As used in tables II and III, chronic represents the level that protects 95 percent of the genera from chronic toxic effects. Chronic toxic effects include, but are not limited to, demonstrable abnormalities and adverse effects on survival, growth, or reproduction. The chronic standard is implemented in combination with a selected duration and frequency of recurrence (section 31.9(1)). In determining attainment of the applicable chronic standard, the representative nature of the data must be considered.

(8) "COLD WATER BIOTA" means aquatic life, including trout, normally found in waters where the summer weekly average temperature does not frequently exceed 20 ºC.

(9) "COMMISSION" means the Colorado Water Quality Control Commission.

(10) “COMPENSATORY WETLANDS” means wetlands developed for mitigation of adverse impacts to other wetlands (e.g. wetlands developed pursuant to section 404 of the federal Act).

(11) “CONSTRUCTED WETLANDS” means those wetlands intentionally designed, constructed and operated for the primary purpose of wastewater or stormwater treatment or environmental remediation provided under CERCLA, RCRA, or section 319 of the federal Act, if (a) such wetlands are constructed on non wetland sites that do not contain surface waters of the state, or (b) such wetlands are constructed on previously existing wetland sites, to the extent that approval or authorization under section 404 of the federal Act has been granted for such construction or it is demonstrated that such approval or authorization is not, or was not, required. This term includes, but is not limited to, constructed swales, ditches, culverts, infiltration devices, catch basins, and sedimentation basins that are part of a wastewater or stormwater treatment system or a system for environmental remediation mandated under CERCLA or RCRA. Compensatory wetlands shall not be considered constructed wetlands. Constructed wetlands are not state waters.

(12) “CREATED WETLANDS” means those wetlands other than compensatory wetlands created in areas which would not be wetlands in the absence of human modifications to the environment. Created wetlands include, but are not limited to wetlands created inadvertently by human activities such as mining, channelization of highway runoff, irrigation, and leakage from man-made water conveyance or storage facilities. Wetlands resulting from hydrologic modifications such as on-channel reservoirs or on-channel diversion structures that expand or extend the reach of adjacent classified state waters are not considered created wetlands.

(13) “DAILY MAXIMUM TEMPERATURE (DM)” means the highest two-hour average water temperature recorded during a given 24-hour period.

(14) “DISSOLVED METALS” means that portion of a water and suspended sediment sample which passed through a 0.40 or 0.45 um (Micron) membrane filter. Determinations of “Dissolved” constituents are made using the filtrate. This may include some very small (Colloidal) suspended particles which passed through the membrane filter as well as the amount of substance present in true chemical solution.

(15) “DIVISION” means the Division of Administration of the Colorado Department of Public Health and Environment of which the Water Quality Control Division is a part.

(16) “*E.coli*” means *Escherichia coli*.

(17) “EFFLUENT-DEPENDENT STREAM” means a stream that would be ephemeral without the presence of wastewater effluent, but has continuous or periodic flows for all or a portion of its reach as the result of the discharge of treated wastewater.

(18) “EFFLUENT-DOMINATED STREAM” means a stream that would be intermittent or perennial without the presence of wastewater effluent whose flow for the majority of the time is primarily attributable to the discharge of treated water (i.e. greater than 50 percent of the flow consists of treated wastewater for at least 183 days annually, for eight out of the last ten years).

(19) “EPHEMERAL STREAM” means a stream channel or reach of a stream channel that carries flow during, and for a short duration as the result of, precipitation events or snowmelt. The channel bottom is always above the groundwater table.

(20) "EXISTING QUALITY" means the numeric value that represents the quality of a water body and is generally used for comparison with the water quality standard. Existing quality shall be calculated as:

- Total ammonia, nitrate, and the dissolved metals: 85th percentile
- Total recoverable metals: 50th percentile
- Dissolved oxygen: 15^{th} percentile
- *E. coli:* geometric mean
- pH: the range between the 15th and 85th percentiles
- Temperature: for the purposes of implementing the acute and chronic standard, "existing quality" is the seasonal maximum DM and WAT and which allows one warming event with a 3-year average exceedance frequency. For data records less than or equal to 3 years, existing quality is equal to the maximum WAT and DM. For data records with 4-6 years, one warming event above the standard is permitted.

(21) "FEDERAL ACT" means the Clean Water Act, U.S.C. Section 1251 et seq., as amended.

(22) "FIRST (1st) ORDER STREAM" means a stream that has no tributaries, based on USGS mapping at 1:100,000 scale.

(23) "FLOODPLAIN" means any flat or nearly flat lowland that borders a stream, a lake, or an on-channel reservoir and that may be covered by its waters at flood or high stage as described by the parameter of the probable maximum flood or probable maximum high stage.

(24) "HIGHEST ATTAINABLE USE" means the modified use that is both closest to the uses specified in section 31.13 and attainable based on the evaluation of the factors in 31.6(2)(b) that preclude attainment of the use and any other information or analyses that were used to evaluate attainability.

(25) "LC-50" means the concentration of a parameter that is lethal to 50% of the test organisms within a defined time period.

(26) "MAXIMUM WEEKLY AVERAGE TEMPERATURE (MWAT)" means the largest WAT in the period of interest. For lakes and reservoirs, the summertime MWAT is assumed to be equivalent to the maximum WAT from at least three profiles distributed throughout the growing season (generally July-September).

(27) "MIXED LAYER" means that part of a lake that is well-mixed by wind action and can be expected to have relatively homogeneous physical and chemical conditions. In a thermally stratified lake, the mixed layer corresponds to the *epilimnion*; in an unstratified lake, the mixed layer extends to the bottom. The vertical extent of the mixed layer usually is determined by inspection of a vertical profile of temperature.

(28) "MIXING ZONE" means that area of a water body designated on a case-by-case basis by the Division which is contiguous to a point source and in which certain standards may not apply.

(29) "NUMERIC VALUE" means the measured concentration of a parameter.

(30) "PARAMETER" means the chemical constituents or other characteristics of the water such as algae, *E. coli*, total dissolved solids, dissolved oxygen, or the magnitude of radioactivity levels, temperature, pH, and turbidity, or other relevant characteristics.

(31) "PERMIT" means a National Pollutant Discharge Elimination System (NPDES) permit, a Colorado Discharge Permit System (CDPS) permit, or other state water quality permit.

(32) "POTENTIALLY DISSOLVED METALS" means that portion of a constituent measured from the filtrate of a water and suspended sediment sample that was first treated with nitric acid to a pH of less than 2.0 and let stand for 8 to 96 hours prior to sample filtration using a 0.4 or 0.45 μm membrane filter. Note the "Potentially Dissolved" method cannot be used where nitric acid will interfere with the analytical procedure used for the constituent measured.

(33) "PRIMARY CONTACT RECREATION" means recreational activities where the ingestion of small quantities of water is likely to occur. Such activities include but are not limited to swimming, rafting, kayaking, tubing, windsurfing, water-skiing, and frequent water play by children.

(34) "REGIONAL WASTEWATER MANAGEMENT PLAN" means a water quality planning document prepared pursuant to section 208 of the federal Act, sometimes referred to as "208 Plans" or "Water Quality Management Plans."

(35) "REPRODUCTIVE SEASON" means the portion of the year when fish migration, spawning, egg incubation, fry rearing or other reproductive functions occur.

(36) "SALINITY" means total dissolved solids (TDS).

(37) "SECOND (2nd) ORDER STREAM" means a stream which begins downstream of the confluence of two first (1st) order streams and ends downstream of the confluence of two second (2nd) order streams, based on USGS mapping at 1:100,000 scale.

(38) "STANDARD" means a narrative and/or numeric restriction established by the Commission applied to state surface waters to protect one or more beneficial uses of such waters. Whenever only numeric or only narrative standards are intended, the wording shall specifically designate which is intended.

(39) "STATE WATERS" means any and all surface and subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

(40) "TABLES" means tables I, II, and III, appended to this regulation, which set forth accepted levels for various parameters which will generally protect the beneficial uses of state surface waters.

(41) "THIRD (3rd) ORDER STREAM" means a stream which begins at the confluence of two second (2nd) order streams and ends downstream of the confluence of two third (3rd) order streams, based on USGS mapping at 1:100,000 scale.

(42) "TOTAL RECOVERABLE METALS" means that portion of a water and suspended sediment sample measured by the total recoverable analytical procedure described in "Methods for Chemical Analysis of Water and Wastes," U.S. Environmental Protection Agency, March, 1979, or its equivalent.

(43) "TRIBUTARY WETLANDS" means wetlands that are the head waters of surface waters or wetlands within the floodplain that are hydrologically connected to surface waters via either surface or ground water flows. The hydrologic connection may be intermittent or seasonal, but

must be of sufficient extent and duration to normally reoccur annually. Tributary wetlands do not include constructed or created wetlands.

(44) "USE ATTAINABILITY ANALYSIS" means an assessment of the factors affecting the attainment of aquatic life uses or other beneficial uses, which may include physical, chemical, biological, and economic factors.

(45) "USES" see Beneficial Uses.

(46) "WARM WATER BIOTA" means aquatic life normally found in waters where the summer weekly average temperature frequently exceeds 20 ° C.

(47) "WATER QUALITY-BASED DESIGNATION" means a designation adopted by the Commission for specific state surface waters pursuant to section 31.8(2), to identify which level of water quality protection such waters will receive under the Antidegradation Rule in section 31.8(1). Such designations are adopted pursuant to the Commission's authority to classify state waters, as set forth in section 25-8-203, C.R.S., and the procedural requirements for classifying state waters shall be applied in adopting such designations.

(48) "WATER EFFECT RATIO" means a ratio that is computed as a specific pollutant's acute or chronic toxicity value measured in water from the site covered by a standard, divided by the respective acute or chronic toxicity value in laboratory dilution water, as more specifically defined in 40 C.F.R. subsection 131.36(c) (1993).

(49) "WATER QUALITY STANDARD" see Standard.

(50) "WEEKLY AVERAGE TEMPERATURE (WAT)" means the average of daily average temperatures over a seven-day consecutive period, with a minimum of three data points spaced equally through each day. For lakes and reservoirs, the WAT is assumed to be equivalent to the average temperature of the mixed layer. The average temperature of the mixed layer is determined from a vertical profile of equally-spaced temperature measurements, separated by not more than one meter.

(51) "WETLANDS" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

31.6 PROCESS FOR ASSIGNING CLASSIFICATIONS

The Commission is responsible for classifying state waters as set forth in sections 25-8-202(1)(a), and 25-8-203, C.R.S. All state surface waters may be classified in one or more of the use classifications as set forth in section 31.13.

Waters shall be classified for the present beneficial uses of the water, or the beneficial uses that may be reasonably expected in the future for which the water is suitable in its present condition or the beneficial uses for which it is to become suitable as a goal. The assignment of one or more classifications to a portion of the state surface waters is based upon its current suitability for the designated uses or goals for future uses. Where the use classification is based upon a future use for which the waters are to become suitable, the numeric standards assigned to such waters to protect the use classification may require a temporary modification to the underlying numeric standard and an implementation plan for eliminating the temporary modification.

When assigning classifications to waters of a given area, the Commission will consider the goals, objectives, and requirements of federal and state statutes and regulations, recommendations of the

regional wastewater management plans (208 plans); 208 plans of adjoining regions; testimony, comments, and documents presented at public hearings on the issue; and other relevant information.

(1) Considerations in Assigning Classifications

The following will serve to guide the Commission in assigning classifications:

(a) Classifications should be directed towards the realization of the water quality goals as set forth in the federal and state Acts.

(b) It is state law and policy to prevent any water quality degradation that can interfere with present uses.

(c) Upstream classifications must not jeopardize downstream classifications or actual uses.

(d) Classification must protect all current classified and actual uses, unless it is determined after a public hearing that downgrading is justifiable. (See section 31.6(2)(b)).

(e) Classifications should be for the highest water quality attainable. Attainability is to be judged by whether or not the use classification can be attained in approximately twenty (20) years by any recognized control techniques that are environmentally, economically, and socially acceptable as determined by the Commission after public hearings. At a minimum, uses are deemed attainable if they can be achieved by the imposition of effluent limits required under the federal Act for point sources and cost-effective and reasonable best management practices for nonpoint source control, in accordance with duly adopted regulations.

(f) Relevant physical, chemical and biological characteristics are valid water quality concerns that may be taken into account in the classification process.

(2) Upgrading and Downgrading

(a) Upgrading

The state shall maintain those water use classifications which are currently being attained. Where existing classifications specify fewer designated water uses than those which are presently being attained, the Commission shall upgrade the designated classification to reflect the uses actually being attained.

(b) Downgrading

At a minimum, the state shall maintain those water use classifications currently designated, unless it can be demonstrated that the existing classification is not presently being attained and cannot be attained within a twenty (20) year time period. Nonattainability must be due to at least one or more of the following conditions:

(i) Naturally occurring pollutant concentrations prevent the attainment of the use within a twenty (20) year period; or

(ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating state water conservation requirements to enable uses to be met; or

(iii) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied within a twenty (20) year period or would cause more environmental damage to correct than to leave in place; or

(iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or

(v) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or

(vi) Controls more stringent than those required by section 301(b) and 306 of the federal Act would result in substantial and widespread economic and social impact; or

(vii) Agricultural practices which are considered satisfactory for the locality. It must be demonstrated that these agricultural practices preclude the present classifications. Satisfactory practices will be approved by the Commission based on evidence from areawide 208 agencies, soil conservation districts, agricultural extension services and other public input.

An additional reason for revising classifications will be where previous classifications had no basis in fact and did not reflect actual beneficial uses. Such corrections to classifications shall not be considered downgrading. See e.g., section 31.6(3)(b) regarding hearings pursuant to section 25-8-207, C.R.S.

(3) Procedures for Assigning or Changing Classifications

(a) General

(i) Assigning or changing a classification shall be accomplished by rule after a rulemaking hearing. Rulemaking hearings to consider a classification will be conducted according to the Procedural Regulations of the Commission. At a minimum, the Commission shall review classifications once every three years. Any interested person have shall have the right to petition the Commission to assign or change a stream classification. Such petition shall be open to the public inspection. Except as provided below, pursuant to section 24-4-103(7), C.R.S., action on such petition shall be within the discretion of the Commission. The Commission may also decide to consider a classification on its own motion.

(ii) In making a decision regarding a proposed classification, the Commission will consider the principles set forth in this regulation. The decision will be made by the Commission applying its expertise after analyzing the evidence presented at public hearing and considering the requirements of law, its own policies, and all other matters deemed pertinent in the discretion of the Commission.

(iii) Where the classifications of a water body segment do not include an aquatic life classification or recreation class E, P, or U, as a part of the triennial review of the segment the Division shall review any prior use attainability analyses or other basis for omission of one or more of the above classified uses. If the justification for the omission is determined not to be consistent with accepted use attainability procedures, the Division or other party, if any, advocating the omission shall perform a supplemental analysis to provide a basis for a Commission determination whether such uses are attainable. When the Commission wishes to remove an aquatic life class 1 or 2 or recreation class E, P, or U classification, the Division shall conduct or the Commission shall require the petitioner

to conduct, in consultation with the Division, a use attainability analysis to justify the proposed change.

(b) Section 25-8-207

(i) Procedural requirements relating to reviews pursuant to section 25-8-207, C.R.S., are set forth in the Procedural Regulations, Regulation No. 21, 5 CCR 1002-21.

(ii) The Commission shall, upon petition, or upon its own motion, review existing stream standards, classifications or water quality designations in subsection (iii) below. The Commission may revise stream standards, classifications and designations pursuant to the criteria listed in subsection (iv) below.

(iii) The Commission shall make a finding of inconsistency, taking into account sections 25-8-102 and 25-8-104, C.R.S., if a water quality designation does not conform with the provisions of section 25-8-209 or if the existing use classification(s) or water quality standards:

(A) are more stringent than is necessary to protect fish life, shellfish life, and wildlife in water body segments which are reasonably capable of sustaining such fish life, shellfish life, and wildlife from the standpoint of physical, streambed, flow, habitat, climatic and other pertinent characteristics. Where such characteristics are adequate to support the use, use classifications shall be adopted or retained to protect aquatic life which constitutes a significant source of food supply for the fish, shellfish, or wildlife that is the basis for the classified use; or

(B) were adopted based upon material assumptions that were in error or no longer apply.

(iv) As a result of any hearing held pursuant to this section, the Commission may revise or change use classifications, water quality standard(s) or water quality designations in accordance with the criteria contained in the Act or whenever necessary to insure compliance with the other provisions of this regulation.

(v) Where the Commission determines that an inconsistency exists, it shall declare the inconsistent classification, standards or designations void ab initio and shall simultaneously establish appropriate classifications, standards or designations.

(4) Segmentation

(a) For purposes of adopting site-specific classifications and water quality standards, the streams and other surface water bodies shall be identified according to river basin and/or subbasin and specific water segments.

(b) Segments may constitute a specified stretch of a river mainstem, a specific tributary, a specific lake or reservoir, or a generally defined grouping of waters within the basin (e.g., a specific mainstem segment and all tributaries flowing into that mainstem segment).

(c) Segments shall generally be delineated according to the points at which the use, physical characteristics or water quality characteristics of a watercourse are determined to change significantly enough to require a change in use classifications and/or water quality standards. In many cases, such transition points can be specifically identified from available water quality data. In other cases, however, the delineation of segments shall be based upon best judgments of where instream changes in uses, physical characteristics or water quality occur, based upon upstream and downstream data.

(d) Segment descriptions, unless specified by the Commission, are to mean that any boundary reference other than those that begin at the "source" means to be "immediately above" that reference.

31.7 PROCESS FOR ASSIGNING STANDARDS AND GRANTING, EXTENDING, OR REMOVING TEMPORARY MODIFICATIONS AND VARIANCES

Overview: Assigning or changing a standard or granting, removing before its expiration, or extending a temporary modification or variance shall be accomplished by a rule after a rulemaking hearing. The procedures for taking such action shall be the same as the procedures for assigning or changing classifications. See section 31.6(3)(a)(i).

(1) Assigning Standards

The Commission is responsible for promulgating water quality standards as set forth in section 25-8-204, C.R.S. Standards may be narrative and/or numeric and include the following:

(a) Basic Standards

The basic standards in section 31.11 shall apply to all state surface waters at the effective date of the regulation.

(b) Numeric Standards

A numeric standard may be assigned by the Commission either to apply on a statewide basis or to specific state surface waters. A numeric standard will be assigned by the Commission when it is presented with evidence that a particular numeric level for a parameter is the suitable limit for protecting the classified use. A numeric standard consists of a numeric level and may include a description as to how that numeric level is to be measured. Numeric standards will include appropriate averaging periods and appropriate frequencies of allowed excursions. A numeric standard may be exceeded due to temporary natural conditions such as unusual precipitation patterns, spring runoff or drought. Such uncontrollable conditions are not cause for changing the numeric standard.

A temporary modification of a numeric standard may be granted by the Commission if the numeric standard is not being met at the present time, but such numeric standard is necessary to allow the full attainment of the classified use.

Numeric standards will be assigned based on the evidence presented at the classification and numeric-standard-setting hearings. Numeric standards may not necessarily be assigned for all constituents listed in the tables. In making this determination, the Commission will consider the likelihood of such constituents being present in the waters in question naturally or due to point or nonpoint sources, and shall consider the significance of the constituents with respect to protection of the classified uses. Entities having specific water quality data for the waters being classified, such as 208 agencies, local municipalities and industries, and citizens' groups, the Water Quality Control Division, state and federal agencies, environmental organizations, and other interested persons are encouraged to present such information.

The Commission may use any of the following approaches to establish site-specific numeric standards, as it determines appropriate with respect to specific state surface waters. Existing site-specific standards shall remain in effect until superseded by revised standards promulgated pursuant to this section:

(i) Table Value Standards

The Commission may apply the numeric levels set forth in tables I, II, and III as site-specific standards when those levels are determined to be appropriate to protect the applicable classified uses, and the available site-specific information does not indicate that one of the following alternative approaches to numeric standards would be more appropriate. Acute and chronic standards may be adopted. Numeric standards may not necessarily be assigned for all constituents listed in the tables. Standards for metals may be established by site-specific adoption of the hardness-dependent equations in table III, instead of single-value numeric standards. The numeric levels for various parameters in tables I, II, and III, are levels determined by the Commission after careful analysis of all available information and are generally considered to protect the beneficial use classifications. They are intended to guide the Commission and others at the use classification and numeric-standard-setting hearings.

(ii) Ambient Quality-Based Standards

(A) Where ambient water quality levels are worse than specific numeric levels contained in tables I, II, and III, but are determined adequate to protect the highest attainable uses, the Commission may adopt one of the two following types of site-specific ambient quality-based standards:

(I) Feasibility-based Ambient Standard: Where water quality can be improved, but not to the level required by the current numeric standard, a feasibility-based numeric ambient standard may be adopted based on available representative data.

(II) Natural or Irreversible Ambient Standard: Where no improvement is feasible, or sources and causes are natural, a site-specific numeric standard may be adopted at existing quality based on available representative data. Site-specific acute standards for parameters in Table III shall be based on the 95^{th} percentile value of the available representative data.

(B) Ambient quality-based standards are authorized only where a comprehensive analysis and review is conducted:

(I) Which identifies the sources and causes of the elevated levels and characterizes existing conditions, including spatial and temporal variation;

(II) Where sources and causes are not natural, a comprehensive alternatives analysis identifies the improved water quality conditions (if any) that could result from feasible pollution control alternatives;

(III) Which includes a rationale for either retaining or revising the current use classification(s); and

(IV) Which characterizes the highest attainable use.

(iii) Site-Specific-Criteria-Based Standards

For state surface waters where an indicator species procedure (water effects ratio), recalculation procedure, use attainability analysis or other site-specific analysis has been completed in accordance with section 31.16(2)(b), or in accordance with comparable procedures deemed acceptable by the Commission, the Commission may adopt site-specific standards as determined to be appropriate by the site-specific study results. For

segments assigned aquatic life classifications, where factors other than water quality substantially limit the diversity and abundance of species present, the Commission may adopt site-specific acute or chronic standards as determined to be appropriate based upon available information regarding the waters and the habitat. Recurrence intervals for site-specific-criteria-based standards may be determined on a site-specific basis.

Site-specific-criteria-based standards and ambient quality-based standards for metals shall be based on dissolved metals whenever the Commission determines that the evidence presented is adequate to justify such standards. Site-specific standards for metals in effect prior to July 31, 1988 were generally based on total recoverable metals. Those standards shall remain in effect until superseded by revised standards promulgated pursuant to this section.

(iv) Standards For Surface Waters In Wetlands

(A) Tributary wetlands to which the interim classifications referenced in section 31.13(1)(e)(iv) apply, shall be subject to the following interim standard:

(1) Until such time as the Commission adopts site-specific standards for the tributary wetland, water quality in the wetland shall be maintained for each parameter at whichever of the following levels is less restrictive:

(a) ambient quality, or

(b) that quality which meets the numeric standards (except for numeric standards for pH, dissolved oxygen, and any standard established for the protection of a domestic water supply use) of the tributaries of the surface water segment to which the wetland is most directly hydrologically connected. Where the applicable numeric standard is based on section 31.16, table III, of this regulation, the numeric standard applicable to the wetland may be implemented taking into account the water effect ratio of the pollutant.

(2) Ambient quality shall be determined in accordance with section 31.7(1)(b)(ii) and shall take into account the location, sampling date, and quality of all available data. Ambient quality shall be determined as of the time the first regulatory action is undertaken which requires the identification of water quality standards for wetlands. If available information is not adequate to otherwise determine or estimate ambient quality, the interim standard set forth in section 31.7(1) (b) (iv) (A) (1) (b) shall apply.

(B) Wetlands for which the Commission has adopted a site-specific “wetlands” classification described in section 31.13(1)(e)(v), shall be subject to numeric standards and designations adopted by the Commission. The Commission shall adopt any numeric standards and designations determined to be appropriate in view of the functions and values to be protected for the wetlands in question.

(C) Created wetlands, shall be subject only to the narrative standards set forth in section 31.11, unless the Commission has adopted the wetlands classification and appropriate numeric standards. All created wetlands will have a use-protected designation unless determined otherwise as a result of a site-specific hearing.

(D) Compensatory wetlands shall be subject to the standards of the segment in which they are located, unless the Commission adopts a wetlands classification and appropriate numeric standards.

(E) All other wetlands which are state waters shall be subject only to the narrative standards set forth in section 31.11, unless the Commission has adopted the wetlands classification and appropriate numeric standards.

(F) The issuance and use of site-specific or individual permits under section 404 of the Clean Water Act, is not precluded by the provisions of sections 31.7, 31.11 or 31.13, except as provided in the 401 certification process under section 25-8-302, C.R.S.

(G) Wetlands water quality standards and classifications shall not be interpreted or applied in a manner that is inconsistent with sections 25-8-102(5) and 25-8-104, C.R.S.

(c) Site-Specific Narrative Standards

(i) Narrative standards may be assigned by the Commission to apply on a specific state surface water where numeric criteria are not required under federal law. Narrative standards will be assigned based on the evidence presented at the classification and numeric-standards-setting hearings, and must protect the classified uses.

(ii) The Commission may adopt a site-specific narrative standard where water quality currently is degraded as a result of historical mining activities and improvement is likely within 20 years, if it determines that such a standard is the most appropriate option to protect existing uses and to promote water quality improvement efforts for the segment(s) in question due to uncertainty regarding what water quality is attainable. Unless the Commission determines that a different approach is appropriate on a site-specific basis, it shall use a statement that the standard(s) for the pollutant(s) in question shall be the chemical concentrations, biological conditions, and/or physical conditions identified by a structured scientific use attainability analysis, or table value standards, if the use attainability analysis is not completed and submitted by a specified date and approved by the Commission. Generally, a numerical temporary modification based on existing ambient quality will also be adopted for the segment(s) and pollutant(s) in question.

(2) Considerations in Assigning Standards

In promulgating water quality standards, the Commission shall consider:

(a) The need for standards which regulate specified pollutants;

(b) Such information as may be available to the Commission as to the degree to which any particular type of pollutant is subject to treatment; the availability, practicality, and technical and economic feasibility of treatment techniques; the impact of treatment requirements upon water quantity; and the extent to which the discharge to be controlled is significant;

(c) The continuous, intermittent, or seasonal nature of the pollutant to be controlled;

(d) The existing extent of pollution or the maximum extent of pollution to be tolerated as a goal;

(e) Whether the pollutant arises from natural sources;

(f) Beneficial uses of water; and

(g) Such information as may be available to the Commission regarding the risk associated with the pollutants including its persistence, degradability, the usual or potential presence of the affected organism in any waters, the importance of the affected organisms, and the nature and extent of the effect of the pollutant on such organisms.

(3) Granting, Extending, and Removing Temporary Modifications to Numeric Standards

Where non-attainment of underlying standards has been demonstrated or predicted the Commission may grant a temporary modification to a numeric standard upon a showing that the conditions in subsection (a), below, exist. The presence of a modification will be indicated by adding the words "Temporary Modification" in the Temporary Modifications and Qualifiers column, and listing the parameter, the operative value and the expiration date. A temporary modification may be granted to an entire stream or water body or to any portion thereof. It may be granted at the time a numeric standard is assigned or at any later time. When the temporary modification expires or is removed by the Commission, the underlying numeric standard will be in full effect. In every case, the modification to the numeric standard shall be temporary. All temporary modifications must be re-examined not less than once every three (3) years.

In general, requests for a temporary modification are preferred over a more permanent downgrading of a present classification where it appears that the conditions causing the lower water quality might be temporary within a twenty (20) year time frame. The adoption of a temporary modification recognizes current conditions while providing an opportunity to resolve the uncertainty. Retaining a classification higher than the present usage will serve as a reminder that the conditions are correctable and may increase the priority for funding to attain the classified use.

(a) Conditions Justifying a Temporary Modification

The Commission may grant a temporary modification if:

(i) an existing permitted discharge has a demonstrated or predicted water quality-based effluent limit compliance problem, and

(ii) one of the following is shown to exist:

(A) there is significant uncertainty regarding the water quality standard necessary to protect current and/or future uses.

(B) there is significant uncertainty regarding the extent to which existing quality is the result of natural or irreversible human-induced conditions.

(b) Adequate Supporting Information

Adequate supporting information must be submitted including a justification for the interim narrative or numeric value, wherever possible raw data describing effluent and ambient quality, a plan for eliminating the need for the temporary modification, and a justification for the proposed expiration date.

(c) Eliminating the Need for A Temporary Modification

Regional wastewater management plans (208 plans) and plan updates, discharge permits, wasteload allocations, planning, design, and construction of new enlarged, or improved facilities, management practices, and other water quality controls and actions shall be geared toward fully attaining the classified use and underlying numeric standard and assist in eliminating the need for the temporary modification, in a manner consistent with the provisions of subsection 31.9.

(d) Operative Value During the Time of the Temporary Modification

In order to protect existing uses, the operative value during the time of the temporary modification will be set to represent the current condition of the waterbody by either:

(i) a numeric value representing the existing quality at the time of adoption, or

(ii) a narrative "current condition" that assures existing uses are protected and that the status quo is preserved during the term of the temporary modification.

(e) Duration of a Temporary Modification

When a temporary modification is granted, the duration of the temporary modification will be set by the Commission. The duration of a temporary modification shall be determined on a case-by-case basis, based upon all relevant factors, including how soon resolving the issues that necessitated adoption of the temporary modification is deemed feasible. In making a decision as to whether a temporary modification should be removed or extended, the Commission will consider the existence of an implementation plan for eliminating the need for the temporary modification, the progress being made in trying to implement such a plan, the impact of the temporary modification on the uses of the stream in the area of the temporary modification and upstream and downstream of that area, and all other relevant factors.

(f) Frequency of Commission Review

The Commission will hold an annual public hearing to review temporary modifications which expire within approximately two years of the hearing date. As a result of the hearing, the Commission may:

(i) Delete the temporary modification and allow the existing underlying standards to go into effect;

(ii) Delete the temporary modification and adopt a revised underlying standard;

(iii) Extend the expiration date of the current temporary modification, with or without a revised underlying standard; or

(iv) Adopt a revised temporary modification with an appropriate expiration date.

(4) Granting, Extending and Removing Variances to Numeric Standards

A variance to a water quality standard may be granted by the Water Quality Control Commission when the criteria of this subsection are met. The presence of the variance will be indicated in the appropriate water quality standards regulation. When the variance expires or is removed by the Commission, the underlying standard will be in full effect. In every case, the variance to the standard shall be temporary and must be re-examined not less than once every three years.

(a) Criteria for Granting a Discharger-Specific Variance

Variances to numeric standards are authorized only where a comprehensive alternatives analysis demonstrates that there are no feasible alternatives that would allow for the regulated activity to proceed without a discharge that exceeds water quality-based effluent limits. In addition, an applicant for a variance must satisfy both of the following criteria.

(i) Tests to Determine the Need for a Variance

(A) Limits of Technology: Demonstration that attaining the water quality standard is not feasible because, as applied to the point source discharge, pollutant removal techniques are not available or it is technologically infeasible to meet the standard;

(B) Economics: Demonstration that attaining the water quality standard is not feasible because meeting the standard, as applied to the point source discharge, will cause substantial and widespread adverse social and economic impacts in the area where the discharge is located. Considerations include such factors as the cost and affordability of pollutant removal techniques; or

(C) Other Consequences: Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place.

(ii) Demonstration that the conditions for granting a temporary modification are not met; or, if those conditions are met, determination by the Commission, after considering the site-specific circumstances, that granting a variance under this subsection is preferable as a matter of policy.

(b) Selection of Alternative Effluent Limits

An applicant for a variance shall submit a comprehensive alternatives analysis regarding pollutant removal techniques. Variances approved by the Commission shall be incorporated into the relevant standards tables based upon an evaluation of the alternatives analysis and consideration of the impact of the variance on the uses of the water body in the area of the variance and downstream of that area. A variance will be expressed as a temporary hybrid standard, which represents the highest degree of protection of the classified use that is feasible within 20 years, taking into consideration the factors in subsection 31.7(4)(a), as appropriate, and must maintain and protect existing uses in a manner consistent with federal requirements.

(i) The first number is the underlying standard previously adopted by the Commission for the segment and represents the long-term goal for the waterbody. The first number will be used for assessing attainment for the waterbody and for the development of effluent limitations.

(ii) The second number (or narrative condition) is the Commission's determination of the effluent concentration with the highest degree of protection of the classified use that is feasible for specific discharger named in the variance.

(iii) Control requirements, such as discharge permit effluent limitations, shall be established using the first number as the ambient water quality target, provided that no effluent limitation shall require an "end-of-pipe" discharge level more restrictive than the second number during the term of the variance for the named discharger.

(c) Duration of a Variance

When a variance is granted, the duration of the variance will be set by the Commission. The duration of a variance shall be determined on a case-by-case basis, based upon all relevant factors, including the potential for achieving more protective effluent levels.

(d) Considerations for Extending a Variance

A variance shall not be extended if the permittee did not submit the reports required under section 31.9(5) and substantially comply with all other conditions of the variance.

31.8 ANTIDEGRADATION

(1) Antidegradation Rule

(a) The highest level of water quality protection applies to certain waters that constitute an outstanding state or national resource. These waters, which are those designated outstanding waters pursuant to section 31.8(2)(a), shall be maintained and protected at their existing quality. Short-term degradation of existing quality is allowed for activities that result in long-term ecological or water quality benefit or clear public interest.

(b) An intermediate level of water quality protection applies to waters that have not been designated outstanding waters or use-protected waters. These waters shall be maintained and protected at their existing quality unless it is determined that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. For these waters, no degradation is allowed unless deemed appropriate following an antidegradation review in accordance with section 31.8(3), except as specified in (i) and (ii) below. Further, all applicable statutory and regulatory requirements for point sources and, if applicable control regulations have been adopted, all cost-effective and reasonable best management practices for nonpoint sources shall be met.

(i) For dissolved iron, dissolved manganese, and sulfate, concentrations may reach the applicable water supply standard without an antidegradation review provided degradation for Aquatic Life based standards is not significant.

(ii) For all other pollutants, no degradation is allowed, unless deemed appropriate following an antidegradation review in accordance with section 31.8(3).

(c) At a minimum, for all state surface waters existing classified uses and the level of water quality necessary to protect such uses shall be maintained and protected. No further water quality degradation is allowable which would interfere with or become injurious to these uses. The classified uses shall be deemed protected if the narrative and numerical standards are not exceeded.

The antidegradation review requirements in section 31.8(3) are not applicable to waters designated use-protected pursuant to section 31.8(2)(b). For these waters, only the protection specified in this subparagraph applies.

(d) Water quality designations and reviewable water provisions shall not be utilized in a manner that is contrary to the provisions of sections 25-8-102 and 25-8-104, C.R.S.

(2) Water Quality-Based Designations

Waters which satisfy the criteria in subparagraph (a) below may be designated by the Commission as "outstanding waters". Waters which satisfy the criteria in subparagraph (b) below may be designated "use-protected." Waters not satisfying either set of criteria will remain undesignated, and will be subject to the antidegradation review provisions set forth in section 31.8(3), below.

(a) Outstanding Waters Designation

Waters may be designated outstanding waters where the Commission makes all of the following three determinations:

(i) The existing quality for each of the following parameters is equal to or better than that specified in tables I, II, and III for the protection of aquatic life class 1, recreation class P and (for nitrate) domestic water supply uses:

Table I: dissolved oxygen, pH, *E. coli*

Table II: chronic ammonia, nitrate

Table III: chronic cadmium, chronic copper, chronic lead, chronic manganese, chronic selenium, chronic silver, and chronic zinc

The determination of existing quality shall be based on adequate representative data, from samples taken within the segment in question. Data must be available for each of the 12 parameters listed; provided, that if *E. coli* samples from within the segment are infeasible due to its location, and a sanitary survey demonstrates that there are no human sources present that are likely to impact quality in the segment in question, *E. coli* data will not be required. "Existing quality" shall be the 85th percentile of the data for ammonia, nitrate, and dissolved metals, the 50th percentile for total recoverable metals, the 15th percentile for dissolved oxygen, the geometric mean for *E. coli*, and the range between the 15th and 85th percentiles for pH.

In addition, the foregoing notwithstanding, this test shall not be considered to be met if the Commission determines that, due to the presence of substantial natural or irreversible human-induced pollution for parameters other than those listed above, the quality of the waters in question should not be considered better than necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water.

(ii) The waters constitute an outstanding natural resource, based on the following:

(A) The waters are a significant attribute of a State Gold Medal Trout Fishery, a National Park, National Monument, National Wildlife Refuge, or a designated Wilderness Area, or are part of a designated wild river under the Federal Wild and Scenic Rivers Act; or

(B) The Commission determines that the waters have exceptional recreational or ecological significance, and have not been modified by human activities in a manner that substantially detracts from their value as a natural resource.

(iii) The water requires protection in addition to that provided by the combination of water quality classifications and standards and the protection afforded reviewable water under section 31.8(3).

(b) Use-Protected Designation

These are waters that the Commission has determined do not warrant the special protection provided by the outstanding waters designation or the antidegradation review process.

(i) Waters shall be designated by the Commission use-protected if any of the criteria below are met, except that the Commission may determine that those waters with exceptional recreational or ecological significance should be undesignated, and deserving of the protection afforded by the antidegradation review provisions of section 31.8(3):

(A) The use classifications of the waters include aquatic life warm water class 2, except as provided in subsection (iii) below;

(B) The existing quality for at least three of the following parameters is worse than that specified in tables I, II and III for the protection of aquatic life class 1, recreation class P and (for nitrate) domestic water supply uses:

Table I: dissolved oxygen, pH, *E. coli*

Table II: chronic ammonia, nitrate

Table III: chronic cadmium, chronic copper, chronic lead, chronic manganese, chronic selenium, chronic silver, and chronic zinc

The determination of existing quality shall be based on adequate representative data, from samples taken within the segment in question. Data must be available for each of the 12 parameters listed; provided, that if *E. coli* samples from within the segment are infeasible due to its location, and a sanitary survey demonstrates that there are no human sources present that are likely to impact quality in the segment in question, *E. coli* data will not be required. "Existing quality" shall be as defined in 31.5; or

(C) The water body was an effluent-dominated or effluent-dependent stream during the period 2000-2009, except that the Commission may determine that the water body should be undesignated, and subject to the protection provided by the antidegradation review process, based on the water body's public resource value and ecological significance. (This provision shall be repealed effective 12/31/2019)

(ii) In addition, waters may be designated use-protected even though none of the preceding criteria apply if the Commission determines that due to the presence of substantial natural or irreversible human-induced pollution for parameters other than those listed in section 31.8(2)(b)(i)(B) the quality of the waters in question should not be considered better than necessary to support aquatic life class 1 and/or recreation class P uses. In making such a determination about a use-protected designation, the Commission may take into account evidence of exceedances of one or more of the parameters listed in section 31.8(2)(b)(i)(B).

(iii) Waters classified as aquatic life warm water class 2 shall not be designated use-protected solely on the basis of such classification if:

(A) There is adequate representative data available from samples taken within the segment in question for each of the 12 parameters listed in subsection 31.8(2)(b)(i)(B), above, and that data shows that the existing quality for at least 10 of the 12 parameters is equal to or better than that specified in tables I, II and III for the protection of aquatic life class 1, recreation class P and (for nitrate) domestic water supply uses; and

(B) The segment in question is not listed, and does not qualify for listing, for two or more pollutants on Colorado's Section 303(d) List of Water-Quality-Limited Segments Requiring Total Maximum Daily Loads, for an exceedance of chronic or "30-day" numeric standards.

(3) <u>Antidegradation Review Process</u>

(a) <u>Applicability</u>

These antidegradation review procedures shall apply to the review of regulated activities with new or increased water quality impacts that may degrade the quality of state surface waters that have not been designated as outstanding waters or use-protected waters, including waters previously designated as high quality class 2. These waters are referred to below as "reviewable waters." "Regulated activities" means any activities which require a discharge permit or water quality

certification under federal or state law, or which are subject to state control regulations unless the Commission has specified in the control regulation that the antidegradation review process is not applicable. Where possible, the antidegradation review should be coordinated or consolidated with the review processes of other agencies concerning a proposed activity in an effort to minimize costs and delays for such activities.

(b) Division and Commission Roles

For regulated activities, the significance determination set forth in section 31.8(3)(c) and the determination whether degradation is necessary to accommodate important economic or social development in the area in which the waters are located, pursuant to section 31.8(3)(d), shall be made by the Division, subject to a de novo review by the Commission in an adjudicatory hearing, on the Commission's own motion, pursuant to a petition by any interested person who has submitted written comments during the Division review process, or on the Commission's determination pursuant to section 24-4-105(2), C.R.S.

(c) Significance Determination

The initial step in an antidegradation review shall be a determination whether the regulated activity in question is likely to result in significant degradation of reviewable waters, with respect to adopted narrative or numeric standards. The significance determination will be based on the chronic numeric standard and flow for the pollutant of concern except for those pollutants which have only acute numeric standards in which case the acute standard and flow will be used. This significance determination shall be made with respect to the net effect of the new or increased water quality impacts of the proposed regulated activity, taking into account any environmental benefits resulting from the regulated activity and any water quality enhancement or mitigation measures impacting the segment or segments under review, if such measures are incorporated with the proposed regulated activity. The regulated activity shall be considered not to result in significant degradation, as measured in the reviewable waters segment, if:

(i) For bioaccumulative toxic pollutants, (i.e., those chemicals for which the bioaccumulation factor (BAF) is equal to or greater than 1000) the new or increased loading from the source under review is less than 10 percent of the existing total load to that portion of the segment impacted by the discharge for critical constituents; provided, that the cumulative impact of increased loadings from all sources shall not exceed 10 percent of the baseline total load established for the portion of the segment impacted by the discharge (the baseline total load shall be determined at the time of the first proposed new or increased water quality impacts to the reviewable waters.); and

(ii) For all pollutants:

(A) The flow rate or volume of a new or increased discharge under review is small enough that it will be diluted by 100 to 1 or more at low flow, as defined in section 31.9, by water in the stream; or

(B) The new activity or increased discharge from the source under review will consume, after mixing, less than 15 percent of the baseline available increment, provided that the cumulative increase in concentration from all sources shall not exceed 15 percent of the baseline available increment. The baseline available increment is the increment between low-flow pollutant concentrations and the relevant standards for critical constituents for that portion of the segment impacted by the discharge. Except as identified in (C) below, the baseline low-flow pollutant concentration shall represent the water quality as of September 30, 2000 (or the effective date when the use-protected designation is removed), and shall be determined at the time of the first proposed new or increased water quality impacts to the reviewable waters after that date.

(C) If water quality subsequently improves as the result of the remediation of impacts from past unpermitted releases of contaminants that affected the water quality as of September 30, 2000 (or the effective date when the use-protected designation is removed), the resulting improved water quality at the time of the proposed new water quality impacts shall be used as the baseline. However, if such improvement results from non-legally-mandated remediation, upon petition the Commission may determine an alternative baseline to be used for antidegradation review purposes, taking into account the site-specific circumstances, including the benefits of protecting improved water quality and the goal of not discouraging voluntary clean-up efforts, including water pollutant trading. Any individual or entity, including those involved in the remediation efforts, may petition the Commission, at any time, to establish an alternative baseline, including prior to proceeding with a remediation project.

(D) The regulated activity will result in only temporary or short term changes in water quality. This exception shall not apply where long-term operation of the regulated activity will result in an adverse change in water quality.

For the purposes of this subsection, the phrase "portion of the segment impacted by the discharge" means the portion of the stream from the discharge point to the first major tributary inflow, or as determined by the Division based on site-specific information at the time of the analysis.

(d) Necessity of Degradation Determination

If a determination has been made in accordance with section 31.8(3)(c) that a proposed regulated activity is likely to result in significant degradation of reviewable waters, a determination shall be made pursuant to this section whether the degradation is necessary to accommodate important economic or social development in the area in which the waters are located. The following provisions shall apply to this determination:

(i) The "area in which the waters are located" shall be determined from the facts on a case-by-case basis. The area shall include all areas directly impacted by the proposed regulated activity.

(ii) A determination shall be made from the facts on a case-by-case basis whether the proposed regulated activity is important economic or social development. If the activity proponent submits evidence that the regulated activity is important development, it shall be presumed important unless information to the contrary is submitted in the public review process. The determination shall take into account information received during the public comment period and shall give substantial weight to any applicable determinations by local governments or land use planning authorities.

(iii) If the proposed regulated activity is determined to be important economic or social development, a determination shall be made whether the degradation that would result from such regulated activity is necessary to accommodate that development. The degradation shall be considered necessary if there are no water quality control alternatives available that (A) would result in no degradation or less degradation of the state waters and (B) are determined to be economically, environmentally, and technologically reasonable. In situations where water quality control alternatives are identified that satisfy the tests in (A) and (B), the Division shall consider the proposed degradation to be unnecessary, and require implementation of a non-degrading or less degrading alternative as a condition of authorizing the proposed activity.

This determination shall be based on an assessment of whether such alternatives are available, based upon a reasonable level of analysis by the project proponent, consistent

with accepted engineering practice, and any information submitted by the public or which is otherwise available. The assessment shall address practical water quality control technologies, the feasibility and availability of which has been demonstrated under field conditions similar to those of the activity under review. The scope of alternatives considered shall be limited to those that would accomplish the proposed regulated activity's purpose. Any alternatives that would be inconsistent with section 25-8-104 of the Water Quality Control Act shall not be considered available alternatives.

In determining the economic reasonableness of any less-degrading water quality control alternatives, the Division may take into consideration any relevant factors, including but not limited to the following, if applicable:

(A) Whether the costs of the alternative significantly exceed the costs of the proposal;

(B) For publicly owned treatment works (POTWs) or public water supply projects, whether user charges resulting from the alternative would significantly exceed user charges for similarly situated POTWs or public water supply projects;

(C) For private industry, whether the alternative would have a significant adverse effect upon the project's profitability or competitive position (if the project proponent chooses to provide such information);

(D) For any dischargers, whether treatment costs resulting from the alternative would significantly exceed treatment costs for any similar existing dischargers on the segment in question.

(E) The relative, long-term, energy costs and commitments and availability of energy conservation alternatives.

(e) Public Participation and Intergovernmental Coordination

Procedural provisions relating to public participation and intergovernmental coordination and antidegradation reviews are set forth in the Procedural Rules, Regulation No. 21, section 21.16 (5 CCR 1002-21).

(f) Public Nomination-Water Quality Based Designations

Any person may nominate any state water for designation as outstanding waters or use-protected during triennial review or at any time. Such nomination shall include written documentation of the qualifications for such designation based upon the criteria in section 31.8(2)(a) or (b).

(g) Protection of Existing Uses

If, during an antidegradation review, it is determined that an existing use of the affected waterbody has not been classified, prior to completing the antidegradation review for an applicable regulated activity, an expeditious rulemaking hearing shall be held (on an emergency basis if necessary) to consider adoption of the additional classification.

31.9 IMPLEMENTATION OF STANDARDS

(1) Low Flow Exceptions

(a) Water quality standards shall apply at all times; provided, that in developing effluent limitations or other requirements for discharge permits, the Division shall normally define critical flow conditions using the following low-flow values:

(i) Generally: the empirically based 30-day average low flow with an average 1-in-3 year recurrence interval (30E3) for chronic standards and the empirically based 1-day low flow with an average 1-in-3 year recurrence interval (1E3) for acute standards, or the equivalent statistically-based flow.

(ii) Temperature limitations: the empirically based 7-day average low flow with an average 1-in-3 year recurrence interval (7E3), and the empirically based 1-day low flow with an average 1-in-3 year recurrence interval (1E3) for acute standards, or the equivalent statistically-based flow.

(iii) Total phosphorus and total nitrogen limitations: the annual median of the daily average flows with a 1 in 5 year recurrence interval.

(b) Data Requirements

The period of record for determining low flows shall be based on a minimum of ten years of flow data, except that, when ten years of data is not available, low flows may be determined, on a case-by-case basis, using a period of record of less than ten years. If more than ten years of flow data is available, it may be more appropriate to establish low flow conditions based on a longer period of record to more accurately reflect site specific conditions.

(c) Streams With Rapid Flow Changes

For streams with seasonal rapidly rising or falling hydrographs, the Division shall use, if so requested by a discharger, the procedure set forth in subparagraphs (i) through (v) below for calculating 30E3 values for those transitional flow periods of the year. For certain substances such as ammonia, the low flow exceptions may be based on periodic or seasonal flows as determined on a case-by-case basis by the Division.

(i) Averaging Procedure – Calculation of 30-day Forward Moving Harmonic Means - Moving harmonic means shall first be calculated for each consecutive thirty-day period in the period of record being considered.

(ii) Calculate Annual 30E3 Value - Determine the annual 30E3 value using the procedure set forth in Appendix A using

(A) 30-day forward moving harmonic means, and

(B) the excursion procedure for a 1-in-3 year recurrence interval.

(iii) Assigning Harmonic Means - Each 30-day harmonic mean shall then be assigned to a month. A harmonic mean shall be assigned to a specific month only if the harmonic mean is calculated using data for 15 or more days from that month.

(iv) Ranking of Harmonic Means - Harmonic means shall be ranked from the lowest to highest for each month of the year. The lowest harmonic mean for a month shall be used to establish the low flow value for that month using the procedure set forth in subparagraph (v) below.

(v) Establishing Monthly 30E3 Low Flows – The low flow for a month shall be either the lowest harmonic mean assigned to that month (as determined in subparagraphs (iii) and

(iv), above), or the annual low flow value (as determined in subparagraph (ii), above), whichever is greater.

(d) Waters Not Yet Classified

Discharges to waters not presently classified must meet established effluent limitation regulations, the basic standards, antidegradation rule and control regulations. Effluent flows which reach a classified body of water, even though the discharge point is to a water not yet classified, must be of a quality which will not cause the standards of the classified body of water to be violated.

(2) Compliance Schedules

Where the Commission has adopted new standards, temporary modifications or revised standards that have become more stringent, or where the Division has developed new interpretations of existing standards, including, but not limited to, implementation requirements through approved TMDLs and Wasteload Allocations and antidegradation reviews; the Division may include schedules of compliance in Colorado Discharge Permit System (CDPS) permits when it determines such schedules to be necessary and appropriate.

(3) Temperature Limits

The Division will determine whether temperature limits are to be included in permits utilizing the following approach.

(a) No temperature effluent limit will be applied if a discharge is to an effluent-dependent stream and there is no evidence that the aquatic life use may be negatively affected by the thermal component of the discharge. In implementing this provision, the Division will consider all readily-available and pertinent evidence regarding the potential for the thermal properties of a discharge to affect aquatic life.

(b) No temperature effluent limit will be applied to a discharge of water from a natural hot springs, so long as that water enters the receiving water in the vicinity of its natural outflow.

(c) Where neither (a) nor (b) above apply to a discharge, the Division will determine whether a limitation for temperature is to be included in a permit consistent with procedures developed in accordance with Section 61.8(2)(b)(i) of the CDPS Regulations. Where there are not adequate data to determine reasonable potential, the Division may require the permittee to collect and submit temperature data.

(d) At the time of permit renewal, where a site-specific recalculation procedure demonstrates that alternative numerical criteria are more appropriate for protection of aquatic life, these alternative criteria will be used for development of permit limits.

(e) Consistent with section 316(a) of the federal Clean Water Act, and federal implementing regulations, the Division may impose alternate effluent limitations with respect to the thermal component of such discharge.

(4) Temporary Modifications

Where a temporary modification is adopted, permits for discharges to the segment in question:

(a) For existing discharges, will not include a compliance schedule to meet limits based on the underlying standard during the period that the temporary modification is in effect. The Division, where necessary and within a reasonable period of the expiration of a temporary modification,

shall reopen any permit for a discharge to that segment and include a permit condition to attain limits based on the underlying standard.

(b) May include a permit condition requiring actions intended to eliminate the uncertainty regarding the appropriate underlying standard.

(c) Where a permit for an existing discharge is reissued while a temporary modification is in effect, the Division, based on best professional judgment, may determine limitations or other conditions for the parameter(s) in question based on an assessment of the level of effluent quality reasonably achievable without requiring significant investment in facility infrastructure (e.g., based on past facility performance). Such limit (numerical or otherwise) may be at or below the level derived from the temporary modification where such a requirement would not cause an undue economic burden, but not more restrictive than necessary to achieve the underlying standard.

(d) The Division, based on best professional judgment, may set effluent limits in permits for new or expanding discharges at a level that does not pose an unreasonable risk to downstream uses.

(5) Conditions on Discharger-Specific Variances

A discharger-specific variance applies only to the point source specified in the variance and to the pollutant specified in the variance. A permit action issued to implement a discharger-specific variance shall require:

(a) For existing discharges, compliance with an initial effluent limitation which, at the time the variance is approved, at a minimum represents the level currently achieved. At the time a variance is approved, unless the alternative limit is currently achieved, a permit condition will be specified which requires progress toward the alternative effluent limitation as quickly as feasible.

(b) For new discharges, compliance with an initial effluent limitation which, at the time the variance is approved, represents the highest degree of protection of the classified use that is currently feasible, taking into consideration the factors in subsection 31.7(4)(a)(ii), as appropriate.

(c) Ongoing investigation of treatment technologies, process changes, wastewater reuse, or other controls that may result in improvement in effluent quality, and submission of reports on the investigations to allow for timely consideration of the information during the scheduled review of the variance by the Commission.

(d) Conditions in the permit as necessary to administer the variance including, but not limited to, additional monitoring requirements.

31.10 MIXING ZONES

(1) Definitions

(a) Physical Mixing Zone

That portion of a water body, surrounding or downstream from a point source of discharge, wherein constituents of the discharge are not uniformly dispersed into the receiving waters. The physical mixing zone also can be referred to simply as the “mixing zone,” except where there is possible confusion with the regulatory mixing zone, as it is defined below, which differs from the physical mixing zone

(b) Exceedence Zone

That portion of a physical mixing zone within which a numeric water quality standard for a given water quality parameter is not met during critical conditions. The size of an exceedence zone may differ from one numeric standard to another at a given location.

(c) Regulatory Mixing Zone

The maximum size allowable for an exceedence zone at a given location. An acute regulatory mixing zone limits the size of exceedence zones for acute standards, and a chronic regulatory mixing zone limits the size of exceedence zones for chronic standards. The sizes of the acute and chronic regulatory mixing zones are related to the size of the receiving water, as explained in 31.10 (3).

(d) Stream Channel Width at Bankfull Stage

The width of a stream under flow conditions when the stream just begins to enter the lowest level of the floodplain.

(e) Average Water Body Surface Area

The average surface area for a lake shall be determined from historic data (five years or more if possible), and must be computed monthly or seasonally, as appropriate, to reflect significant monthly or seasonal changes in area.

(f) Stream, Lake, Wetland

For purposes of this regulation, streams will include Waters of the State that flow, regardless of size, and lakes will include Waters of the State that are not flowing, including reservoirs. Wetlands will be treated in the same manner as lakes.

(2) Exemptions from Restriction of Permit Limits by Mixing Zone Regulations

In the following instances, water quality standards-based effluent limits (permit limits) for discharges to streams will be calculated using the full chronic (30E3) and acute (1E3) low flow of the stream for dilution except where a more stringent approach is determined by the Division to be necessary to protect designated uses in the water body as a whole based on the factors identified in subsection 31.10(5). These exemptions do not apply to lakes.

(a) Exemption tables, other procedures developed or approved by the Division, or site-specific data indicate that the chronic regulatory mixing zone is larger than the physical mixing zone;

(b) The effluent flow at maximum permitted discharge is greater than twice the chronic low flow (30E3); or

(c) The ratio of the chronic low flow (30E3) to the maximum permitted or other appropriate effluent flow is greater than or equal to 20:1 and the operation is designated by the Division as a “minor.”

(3) Regulatory Mixing Zone Sizes

(a) Streams

The Division shall consider the following factors in determining the sizes of the regulatory mixing zones for streams:

(i) The size of the chronic regulatory mixing zone for any point source of discharge to a stream shall not be greater than a plan view area equal to six times the square of the stream channel width at bankfull stage.

(ii) Where the size of the physical mixing zone exceeds the size of the chronic regulatory mixing zone, the area of the acute regulatory mixing zone for a water quality parameter shall be established between 10 % and 25 % of the area of the chronic regulatory mixing zone for the same water quality parameter. The size of the acute regulatory mixing zone will be determined within this range based on a presumption that:

(A) For waters determined under subsection 31.8 to be "reviewable," the default acute regulatory mixing zone will be 10% as large as the chronic regulatory mixing zone.

(B) For waters determined under subsection 31.8 to be "use protected," the default acute regulatory mixing zone will be 25% as large as the chronic regulatory mixing zone.

An acute mixing zone may also be further reduced below default limits for reasons given in subsection 31.10(5). The permittee may request that the size of the acute regulatory mixing zone be higher than recommended by the Division, but no higher than 25% of the chronic regulatory mixing zone, on the basis of arguments related to cost/benefit analysis, economic reasonableness, ecological risks, use classification, or designation. The burden is on the permittee to bring appropriate information to the Division.

(iii) The sum total of the plan view areas of all chronic regulatory mixing zones for point sources of discharge into any reach of stream for a specified water quality parameter shall not occupy more than ten percent 10% of the total plan view area of such reach of river or stream, as measured at bankfull stage. The length (approximately 10 miles) and boundaries of the stream or river reach for these purposes shall be determined by the Division. Constraints on chronic regulatory mixing zones used to determine permit limits in discharge permits resulting from the cumulative impacts of multiple point sources of discharge into a stream reach shall be shared equitably among permittees and any other sources of discharge. The distribution of the allowable loads for the pollutant of concern shall be consistent with regulations applicable to total maximum daily loads and/or upon mutual agreement amongst the permittees.

(b) Lakes

The Division shall consider the following factors in determining the size of the regulatory mixing zones for lakes:

(i) For each point source of discharge, the size of the chronic regulatory mixing zone shall not be greater than 3% of the average inter-annual seasonal or monthly surface area. The Division may apply this limit to an entire lake or to a smaller, geographically distinguishable (bay, arm, etc.), portion of a lake.

(ii) Where the physical mixing zone exceeds the chronic regulatory mixing zone, the area of the acute regulatory mixing zone for lakes, for any water quality parameter, shall be established between 10% and 25% of the area of the chronic regulatory mixing zone for the same water quality parameter. The size of the acute mixing zone will be determined within this range based on a presumption that:

(A) For waters determined under subsection 31.8 to be “reviewable” the default acute regulatory mixing zone will be 10% as large as the chronic regulatory mixing zone.

(B) For waters determined under subsection 31.8 to be “use protected” the default acute regulatory mixing zone will be 25% as large as the chronic regulatory mixing zone.

An acute mixing zone may also be further reduced below default limits for reasons given in subsection 31.10 (5). The permittee may request that the size of the acute regulatory mixing zone be higher than recommended by the Division, but no higher than 25% of the chronic regulatory mixing zone, on the basis of arguments related to cost/benefit analysis, economic reasonableness, ecological risks, use classification, or designation. The burden is on the permittee to bring appropriate information to the Division.

(iii) The sum total of the plan view areas of all chronic regulatory mixing zones for point sources of discharge into lakes for a specified water quality parameter shall not occupy more than ten percent 10% of the total plan view area of such lake, or a geographically distinguishable portion thereof, at any seasonally average area. Constraints on chronic regulatory mixing zones used to determine limits in discharge permits resulting from the cumulative impacts of multiple point sources of discharge into lakes shall be shared equitably among permittees and any other sources of discharge. The distribution of the allowable loads for the pollutant of concern shall be consistent with regulations applicable to total maximum daily loads and/or upon mutual agreement amongst the permittees.

(iv) For artificial lakes supplied principally with potable water, mixing zones larger than those allowed above may be designated for purposes of CDPS permits. Appropriate mixing zone size limits shall be determined by the Division on a case-by-case basis, consistent with the constraints described in subsection 31.10(5). Such mixing zones shall be kept as small as practicable, on a parameter-by-parameter basis, and shall provide for protection of existing and designated uses in the water body as a whole.

(4) Use of Mixing Zone Regulations in Setting Permit Limits

(a) Streams

Computation of chronic or acute permit limits for point source discharges to streams shall be as follows:

(i) For discharges not exempted as explained in subsection 31.10(2), the permit limit for any parameter for which there is a water quality standard shall be that resulting in acute and chronic exceedance zones equal to or smaller than the respective acute and chronic regulatory mixing zones.

(ii) Where the annual acute low flow (1E3) of the receiving stream is zero, no dilution will be provided in calculating acute permit limits. Where the chronic low flow (30E3) of the receiving stream is equal to zero, no dilution will be provided in calculating chronic permit limits.

(b) Lakes

Computation of chronic or acute permit limits for point source discharges to lakes shall be as follows:

(i) The permit limit for any parameter for which there is a water quality standard shall be that resulting in acute and chronic exceedence zones equal to or smaller than the respective acute and chronic regulatory mixing zones as shown by site-specific analysis for each regulated substance.

(5) Additional Constraints on Mixing Zones

(a) Exceedence zones from multiple point sources of discharge shall not overlap to such an extent as to harm beneficial uses.

(b) Regulatory mixing zones shall comply with the narrative basic standards included in subsection 31.11(1), except that these requirements do not apply to the protection of any sessile organisms residing within acute and chronic regulatory mixing zones.

(c) Where sampling shows that the conditions described in subsection 31.10(3) are not attained, the mixing zone analysis will be revised as necessary to achieve compliance with subsection 31.10(3).

(d) The Division may limit or deny regulatory mixing zones on a site-specific basis for specific regulated substances. In doing so, the Division shall consider the following:

(i) The need to provide a zone of passage for aquatic life;

(ii) The likelihood of bioaccumulation of toxins in fish or wildlife;

(iii) The special importance of certain habitat such as fish spawning or nursery areas or habitat that supports threatened or endangered species;

(iv) Potential for human exposure to pollutants through drinking water or recreation;

(v) The possibility that aquatic life will be attracted to the effluent plume;

(vi) The potential for adverse effects on groundwater; or

(vii) The toxicity or persistence of the substance discharged.

(6) Mixing Zones for Whole Effluent Toxicity-based Permit Requirements

The provisions of this section 31.10 do not apply to the determination of whole effluent toxicity-based permit requirements.

31.11 BASIC STANDARDS APPLICABLE TO SURFACE WATERS OF THE STATE

All surface waters of the state are subject to the following basic standards; however, discharge of substances regulated by permits which are within those permit limitations shall not be a basis for enforcement proceedings under these basic standards:

(1) Except where authorized by permits, BMPs, 401 certifications, or plans of operation approved by the Division or other applicable agencies, state surface waters shall be free from substances attributable to human-caused point source or nonpoint source discharge in amounts, concentrations or combinations which:

(a) for all surface waters except wetlands;

(i) can settle to form bottom deposits detrimental to the beneficial uses. Depositions are stream bottom buildup of materials which include but are not limited to anaerobic sludges, mine slurry or tailings, silt, or mud; or

(ii) form floating debris, scum, or other surface materials sufficient to harm existing beneficial uses; or

(iii) produce color, odor, or other conditions in such a degree as to create a nuisance or harm existing beneficial uses or impart any undesirable taste to significant edible aquatic species or to the water; or

(iv) are harmful to the beneficial uses or toxic to humans, animals, plants, or aquatic life; or

(v) produce a predominance of undesirable aquatic life; or

(vi) cause a film on the surface or produce a deposit on shorelines; and

(b) for surface waters in wetlands;

(i) produce color, odor, changes in pH, or other conditions in such a degree as to create a nuisance or harm water quality dependent functions or impart any undesirable taste to significant edible aquatic species of the wetland; or

(ii) are toxic to humans, animals, plants, or aquatic life of the wetland.

(2) The radioactive materials in surface waters shall be maintained at the lowest practical level. In no case shall radioactive materials in surface waters be increased by any cause attributable to municipal, industrial, or agricultural practices or discharges to as to exceed the following levels, unless alternative site-specific standards have been adopted pursuant to subsection (4) below:

Radionuclide Standards	
Parameter	Picocuries per Liter
Americium 241*	0.15
Cesium 134	80
Plutonium 239, and 240*	0.15
Radium 226 and 228*	5
Strontium 90*	8
Thorium 230 and 232*	60
Tritium	20,000

*Radionuclide samples for these materials should be analyzed using unfiltered (total) samples. These Human Health based standards are 30-day average values for both plutonium and americium.

(3) The interim organic pollutant standards contained in the following Basic Standards for Organic Chemicals Table are applicable to all surface waters of the state for which the corresponding use classifications have been adopted, unless alternative site-specific standards have been adopted pursuant to sub-section (4) below.

Note that all standards in the Basic Standards for Organic Chemicals Table are being adopted as “interim standards.” These interim standards will remain in effect until alternative permanent standards are adopted by the Commission in revisions to this regulation or site-specific standards determinations. Although fully effective with respect to current regulatory applications, these

interim standards shall not be considered final or permanent standards subject to antibacksliding or downgrading restrictions.

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(Note: The following is in the Footnotes to Table of Basic Standards For Organic Chemicals*)*

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4 Applicable to all aquatic life segments.

5 Deleted

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(4) Site-Specific Radioactive Materials and Organic Pollutants Standards.

(a) In determining whether to adopt site-specific standards to apply in lieu of the statewide standards established in sections (2) and (3) above, the Commission shall first determine the appropriate use classifications, in accordance with section 31.13. If such a determination would result in removing an existing classification, the downgrading factors in section 31.6 (2)(B) shall apply.

(b) The Commission shall then determine whether numerical standards other than some or all of the statewide standards established in sections (2) and (3) above would be more appropriate for protection of the classified uses, taking into account the factors prescribed in section 25-8-204(4), C.R.S. and in section 31.7. The downgrading factors described in section 31.6(2)(B) shall not apply to the establishment of site-specific standards under this section.

(c) Site-specific standards to apply in lieu of statewide standards may be based upon consideration of the appropriateness of the assumptions used in the risk assessment based potency factors and reference dose values, including, but not limited to, consideration of the uncertainty factor, exposure assessment, bioaccumulation factor, exposed population factor, assumed consumption factor, risk comparisons, uncertainty analysis, and the availability of the toxics in the water column, considering persistence, hardness, pH, temperature or valence form in the water column.

(5) Nothing in this regulation shall be interpreted to preclude:

(a) An agency responsible for implementation of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 et seq., as amended, from selecting a remedial action that is more or less stringent than would be achieved by compliance with the statewide numerical standards established in this section, or alternative site-specific standards adopted by the commission, where a determination is made that such a variation is authorized pursuant to the applicable provisions of CERCLA.

(6) Except where the Commission adopts or has adopted a different standard on a site-specific basis, the less restrictive of the following two options shall apply as numerical standards for all surface waters with a “water supply” classification, if water supply is an actual use of the waters in question or of hydrologically connected ground water:

i. existing quality as of January 1, 2000; or

ii. the following table value criteria set forth in Tables II and III:

Iron	300 ug/l (dissolved)
Manganese	50 ug/l (dissolved)
Sulfate	250 mg/l

Provided, that if the existing quality of these constituents in such surface waters as of January 1, 2000, is affected by an unauthorized discharge with respect to which the Division has undertaken an enforcement action, the numerical standards shall be the ambient conditions existing prior to the unauthorized discharge or the above table value criteria, whichever is less restrictive.

Data generated subsequent to January 1, 2000 shall be presumed to be representative of existing quality as of January 1, 2000, if the available information indicates that there have been no new or increased sources of these pollutants impacting the segment(s) in question subsequent to that date.

For all surface waters with a "water supply" classification that are not in actual use as a water supply, the water supply table value criteria for sulfate, iron and manganese set forth in Tables II and III may be applied as numerical standards only if the Commission determines as the result of a site-specific rulemaking hearing that such standards are necessary and appropriate in accordance with section 31.7.

(7) Methylmercury Fish Tissue: Fish tissue concentrations shall not exceed 0.3 milligrams methylmercury per kilogram (0.3 mg/kg) of wet-weight fish tissue. Attainment of the standard will be assessed by comparing the average fish tissue methylmercury concentration for each species and size class to the 0.3 mg/kg standard.

31.12 SALINITY AND SUSPENDED SOLIDS

The Commission recognizes that excessive salinity and suspended solids levels can be detrimental to the water use classifications. The Commission has established salinity standards for the Colorado River Basin ("Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation of Salinity Control", Commission Regulation No. 39) but has not established or assigned other standards for salinity or suspended solids control practices to be developed through 208 plans, coordination with agricultural agencies, and further studies of existing water quality.

31.13 STATE USE CLASSIFICATIONS

Waters are classified according to the uses for which they are presently suitable or intended to become suitable. In addition to the classifications, one or more of the qualifying designations described in section 31.13(2), may be appended. Classifications may be established for any state surface waters, except that water in ditches and other manmade conveyance structures shall not be classified.

(1) Classifications

(a) Recreation

(i) Class E - Existing Primary Contact Use

These surface waters are used for primary contact recreation or have been used for such activities since November 28, 1975.

(ii) Class P - Potential Primary Contact Use

These surface waters have the potential to be used for primary contact recreation. This classification shall be assigned to water segments for which no use attainability analysis has been performed demonstrating that a recreation class N classification is appropriate, if a reasonable level of inquiry has failed to identify any existing primary contact uses of the water segment, or where the conclusion of a UAA is that primary contact uses may potentially occur in the segment, but there are no existing primary contact uses.

(iii) Class N - Not Primary Contact Use

These surface waters are not suitable or intended to become suitable for primary contact recreation uses. This classification shall be applied only where a use attainability analysis demonstrates that there is not a reasonable likelihood that primary contact uses will occur in the water segment(s) in question within the next 20-year period.

(v) Class U - Undetermined Use

These are surface waters whose quality is to be protected at the same level as existing primary contact use waters, but for which there has not been a reasonable level of inquiry about existing recreational uses and no recreation use attainability analysis has been completed. This shall be the default classification until inquiry or analysis demonstrates that another classification is appropriate.

(b) Agriculture

These surface waters are suitable or intended to become suitable for irrigation of crops usually grown in Colorado and which are not hazardous as drinking water for livestock.

(c) Aquatic Life

These surface waters presently support aquatic life uses as described below, or such uses may reasonably be expected in the future due to the suitability of present conditions, or the waters are intended to become suitable for such uses as a goal:

(i) Class I - Cold Water Aquatic Life

These are waters that (1) currently are capable of sustaining a wide variety of cold water biota, including sensitive species, or (2) could sustain such biota but for correctable water quality conditions. Waters shall be considered capable of sustaining such biota where physical habitat, water flows or levels, and water quality conditions result in no substantial impairment of the abundance and diversity of species.

(ii) Class 1 - Warm Water Aquatic Life

These are waters that (1) currently are capable of sustaining a wide variety of warm water biota, including sensitive species, or (2) could sustain such biota but for correctable water quality conditions. Waters shall be considered capable of sustaining such biota where physical habitat, water flows or levels, and water quality conditions result in no substantial impairment of the abundance and diversity of specifies.

(iii) Class 2- Cold and Warm Water Aquatic Life

These are waters that are not capable of sustaining a wide variety of cold or warm water biota, including sensitive species, due to physical habitat, water flows or levels, or uncorrectable water quality conditions that result in substantial impairment of the abundance and diversity of species.

(d) Domestic Water Supply

These surface waters are suitable or intended to become suitable for potable water supplies. After receiving standard treatment (defined as coagulation, flocculation, sedimentation, filtration, and disinfection with chlorine or its equivalent) these waters will meet Colorado drinking water regulations and any revisions, amendments, or supplements thereto.

(i) Direct Use Water Supply Lakes and Reservoirs Sub-classification

(A) For the purpose of this section, "plant intake" means the works or structures at the head of a conduit through which surface water is diverted from a source (e.g., lake) into the treatment plant.

(B) Direct Use Water Supply Lakes and Reservoirs (DUWS) are those water supply lakes and reservoirs where:

(I) There is a plant intake located in the lake or reservoir or a man-made conveyance from the lake or reservoir that is used regularly to provide raw water directly to a water treatment plant that treats and disinfects raw water, or

(II) The Commission, based on evidence in the record, determines that the reservoir will meet the criteria in 31.13(1)(d)(i)(B)(I) in the future.

(e) Wetlands

(i) The provisions of this section do not apply to constructed wetlands.

(ii) Compensatory wetlands shall have, as a minimum, the classifications of the segment in which they are located.

(iii) Created wetlands shall be considered to be initially unclassified, and shall be subject only to the narrative standards set forth in section 31.11, unless and until the Commission adopts the "wetlands" classification described below and appropriate numeric standards for such wetlands.

(iv) Tributary wetlands shall be considered tributaries of the surface water segment to which they are most directly connected and shall be subject to interim classifications as follows: such wetlands shall be considered to have the same classifications, except for drinking water supply classifications, as the segment of which they are a part, unless the "wetlands" classification and appropriate site-specific standards have been adopted to protect the water quality dependent functions of the wetlands. Interim numeric standards for these wetlands are described in section 31.7(1)(b)(iv).

(v) The Commission may adopt a "wetlands" classification based on the functions of the wetlands in question. Wetland functions that may warrant site-specific protection include ground water recharge or discharge, flood flow alteration, sediment stabilization, sediment or other pollutant retention, nutrient removal or transformation, biological diversity or uniqueness, wildlife diversity or abundance, aquatic life diversity or abundance, and recreation. Because some wetland functions may be mutually exclusive (e.g., wildlife abundance, recreation), the functions to be protected or restored will be determined on a wetland-by-wetland basis, considering natural wetland characteristics and overall benefits to the watershed. The initial adoption of a site-specific wetlands classification and related standards to replace the interim classifications and standards described above shall not be considered a downgrading.

(2) Qualifiers

The following qualifiers may be appended to any classification to indicate special considerations. Where a qualifier applies, it will be appended to the use classification; for example, “Class 1, Warm Water Aquatic Life (Goal)”.

(a) Goal

A qualifier which indicates that the waters are presently not fully suitable but are intended to become fully suitable for the classified use. “Goal” will be used to indicate that a temporary modification for one or more of the underlying numeric standards has been granted.

(b) Seasonal

A qualifier which indicates that the water may only be suitable for a classified use during certain periods of the year. During those periods when water is in the stream, the standards as defined in sections 31.7(1)(b) and 31.9(1) shall apply.

(c) Interrupted Flow

A qualifier which indicates that due to natural or human induced conditions the continuity of flow is broken not necessarily according to a seasonal schedule. This qualifier appended to a classification indicates that the flow conditions still permit the classified use during period of flow. The presence of water diversions in a stream does not change the classifications and standards and the standards do not require that flow be maintained in the stream.

(3) Areas Requiring Special Protection

In special cases where protection of beneficial uses requires standards not provided by the classification above, special standards may be assigned after full public notice and hearings. Cases where special protection may be needed include but are not limited to wildlife preserves and waterbodies endangered by eutrophication. In addition, the Commission may adopt site-specific criteria-based standards based on site-specific analyses to protect agriculture, water supply or recreational uses.

31.14 RESERVED

31.15 SEVERABILITY

The provisions of this regulation are severable, and if any provisions or the application of the provisions to any circumstances is held invalid, the application of such provision to other circumstances and the remainder of this regulation shall not be affected thereby.

31.16 TABLES

(1) INTRODUCTION

The numeric levels for parameters listed in Tables I, II, III shall be considered and applied as appropriate by the Commission in establishing site-specific numeric standards, in accordance with section 31.7.

For the purposes of integrating these parameters into NPDES discharge permits, the duration of the averaging period for the numeric level is designated in the tables. Chronic levels and 30-day levels are to be averaged as defined in section 31.5(7). Acute levels and 1-day levels are to be averaged as defined in section 31.5(2).

Certain toxic metals for Aquatic Life have different numeric levels for different levels of water hardness. Water hardness is being used here as an indication of differences in the complexing capacity of natural waters and the corresponding variation of metal toxicity. Other factors such as organic and inorganic ligands, pH, and other factors affecting the complexing capacity of the waters may be considered in setting site-specific numeric standards in accordance with section 31.7. Metals listed in Table III for aquatic life uses are stated in the dissolved form unless otherwise indicated.

(2) TESTING PROCEDURES

Various testing procedures to determine that numeric values for water quality parameters may be appropriate to present to the Water Quality Control Commission at stream classification hearings. (See section 31.6(3)). These include:

(a) Standard Test Procedures

(i) Code of Federal Regulations, Title 40, Part 136;

(ii) The latest approved EPA Methods for Chemical Analysis of Water and Wastes;

(iii) Standard Methods for the Examination of Water and Wastewater (current edition), American Public Health Association;

(iv) ASTM Standards, Part 31, Water;

(v) EPA Biological Field and Laboratory Methods.

(b) Toxicity testing and Criteria Development Procedures:

(i) The latest EPA Methods for Chemical Analysis of Water and Wastewater; ASTM, Standard Methods for Examination of Water, Wastewater;

(ii) Interim Guidance on Determination and Use of Water-Effect Ratio for Metals, EPA-823-B-94-001, U.S. Environmental Protection Agency, February, 1994.

(iii) Other approved EPA methods.

(c) Other Procedures:

Other procedures may be deemed appropriate by either the Water Quality Control Commission and/or the Water Quality Control Division.

(3) REFERENCES

Capital letters following levels in the tables indicate the sources of the level; they are referenced below. In some cases, the source is described in a footnote.

(A) EPA Quality Criteria for Water, July 1976, U.S. Environmental Protection Agency, U.S. Government Printing Office: 1977 0-222-904, Washington, D.C. 256 p.

(B) EPA - Water Quality Criteria 1972, Ecological Research Series, National Academy of Sciences, National Academy of Engineering, EPA-R3-73-033, March 1973, Washington, D.C. 594 p.

(C) Davies, P.H. and Goettl, J.P., Jr., July 1976, Aquatic Life - Water Quality Recommendations for Heavy Metal and Other Inorganics.

(D) Parametrix Inc., Attachment II, Parametrix Reports - Toxicology Assessments of As, Cu, Fe, Mn, Se, and Zn, May 1976, Bellevue, Washington, 98005. submitted to Water Quality Control Commission by Gulf Oil Corp., Inc., 161 p.

(E) EPA National Interim Primary Drinking Water Regulations, 40 Code of Federal Regulations, Part 141.

(F) EPA, March 1977, Proposed National Secondary Drinking Water Regulation, Federal Register, Vol. 42 No. 62, pp 17143-17147.

(G) Recommendations based on review of all available information by the Committee on Water Quality Standards and Stream Classification.

(H) American Fishery Society, June 1978, A Review of the EPA Red Book Quality Criteria for Water, (Preliminary Edition).

(I) Section 307 of the Clean Water Act, regulations promulgated pursuant to Section 307.

(J) Final Report of the Water Quality Standards and Methodologies Committee to the Colorado Water Quality Control Commission, June 1986.

(K) Proposed Nitrogenous Water Quality Standards for the State of Colorado, by the Nitrogen Cycle Committee of the Basic Standards Review Task Force, March 12, 1986 (Final Draft).

(L) Quality Criteria for Water, 1986, and Updates Through 1989, U.S. Environmental Protection Agency, U.S. Government Printing Office, EPA 440/5-86-001, Washington, D.C. 20460.

(M) m superscript: level modified by Commission

(N) 1999 Update of Ambient Water Quality Criteria for Ammonia (1999 Ammonia Update), U.S. Environmental Protection Agency, Office of Water, EPA-823-F-99-024, Washington, D.C. 20460.

(O) Raisbeck, M.F., S. L. Riker, C. M. Tate, R. Jackson, M. A. Smith, K. J. Reddy and J. R. Zygmunt. 2008. Water quality for Wyoming livestock and wildlife. University of Wyoming AES Bulletin B-1183.

TABLE I PHYSICAL AND BIOLOGICAL PARAMETERS								
Parameter	Recreational			Aquatic Life			Agriculture	Domestic Water Supply
	CLASS E (Existing Primary Contact) and CLASS U (Undetermined Use)	CLASS P (Potential Primary Contact Use)	CLASS N (Not Primary Contact Use)	CLASS 1 COLD WATER BIOTA	CLASS 1 WARM WATER BIOTA	CLASS 2		
PHYSICAL								
…								
Temperature (˚C) [5]				**Rivers & Streams: Tier I[a,g]:** June-Sept = 17.0 (ch), 21.7 (ac) Oct –May = 9.0 (ch), 13.0 (ac) **Tier II[b,g]:** Apr-Oct =18.3 (ch), 24.3 (ac) Nov-Mar = 9.0 (ch), 13.0 (ac) **Lakes & Res[h]:** Apr-Dec = 17.0 (ch), 21.2 (ac) Jan-Mar = 9.0 (ch), 13.0 (ac) **Large Lakes & Res[c,h]:** Apr-Dec = 18.3 (ch), 24.2 (ac) Jan-Mar = 9.0 (ch), 13.0 (ac)	**Rivers & Streams: Tier I[d]:** Mar-Nov = 24.2 (ch), 29.0 (ac) Dec-Feb = 12.1 (ch), 24.6 (ac) **Tier II[e]:** Mar-Nov = 27.5 (ch), 28.6(ac) Dec-Feb = 13.8 (ch), 25.2 (ac) **Tier III[f]:** Mar-Nov = 28.7 (ch), 31.8 (ac) Dec-Feb = 14.3 (ch), 24.9 (ac) **Lakes & Res:** Apr-Dec = 26.2 (ch), 29.3 (ac) Jan-Mar = 13.1 (ch), 24.1 (ac)	Same as Class 1		
…								
Note: Capital letters In parentheses refer to references listed in section 31.16(3); Numbers in parentheses refer to Table 1 footnotes.								

TABLE I PHYSICAL AND BIOLOGICAL PARAMETERS								
Parameter	Recreational			Aquatic Life			Agriculture	Domestic Water Supply
	CLASS E (Existing Primary Contact) and CLASS U (Undetermined Use)	CLASS P (Potential Primary Contact Use)	CLASS N (Not Primary Contact Use)	CLASS 1 COLD WATER BIOTA	CLASS 1 WARM WATER BIOTA	CLASS 2		
Temperature Definitions [a] Cold Stream Tier I temperature criteria apply where cutthroat trout and brook trout are expected to occur. [b] Cold Stream Tier II temperature criteria apply where cold-water aquatic species, excluding cutthroat trout or brook trout, are expected to occur. [c] Large Cold Lakes temperature criteria apply to lakes and reservoirs with a surface area equal to or greater than 100 acres surface area. [d] Warm Stream Tier I temperature criteria apply where common shiner, johnny darter, or orangethroat darter, or stonecat are expected to occur. [e] Warm Stream Tier II temperature criteria apply where brook stickleback, central stoneroller, creek chub, finescale dace, longnose dace, mountain sucker, Nnorthern redbelly dace, razorback sucker, or white sucker are expected occur, and none of the more thermally sensitive species in Tier I are expected to occur. [f] Warm Stream Tier III temperature criteria apply where warm-water aquatic species are expected to occur, and none of the more thermally sensitive species in Tiers I and II are expected to occur. [g] Mountain whitefish-based summer temperature criteria [16.9 (ch), 21.2 (ac)] apply when and where spawning and sensitive early life stages of this species are known to occur. [h] Lake trout-based summer temperature criteria [16.6 (ch), 22.4 (ac)] apply where appropriate and necessary to protect lake trout from thermal impacts.								

Table I – Footnotes

(1) Standards for dissolved oxygen are minima, unless specified otherwise. For the purposes of permitting, dissolved oxygen may be modeled for average conditions of temperature and flow for the worst case time period. Where dissolved oxygen levels less than these levels occur naturally, a discharge shall not cause a further reduction in dissolved oxygen in receiving water. (For lakes, also see footnote 9.)

(2) A 7.0 mg/liter standard (minimum), during periods of spawning of cold water fish, shall be set on a case-by-case basis as defined in the NPDES or CDPS permit for those dischargers whose effluent would affect fish spawning.

(3) The pH standards of 6.5 (or 5.0) and 9.0 are an instantaneous minimum and maximum, respectively to be applied as effluent limits. In determining instream attainment of water quality standards for pH, appropriate averaging periods may be applied, provided that beneficial uses will be fully protected.

(4) Suspended solid levels will be controlled by Effluent Limitation Regulations, Basic Standards, and Best Management Practices (BMPs).

(5) Temperature shall maintain a normal pattern of diel and seasonal fluctuations and spatial diversity with no abrupt changes and shall have no increase in temperature of a magnitude, rate, and duration deleterious to the resident aquatic life. These criteria shall not be interpreted or applied in a manner inconsistent with section 25-8-104, C.R.S.

a. The MWAT of a waterbody shall not exceed the chronic temperature criterion more frequently than one event in three years on average.

b. The DM of a waterbody shall not exceed the acute temperature criterion more frequently than one event in three years on average.

c. The following shall not be considered an exceedance of the criteria:

i. Air temperature excursion: ambient water temperature may exceed the criteria in Table 1 or the applicable site-specific standard when the daily maximum air temperature exceeds the 90th percentile value of the monthly maximum air temperatures calculated using at least 10 years of air temperature data.

ii. Low-flow excursion: ambient water temperature may exceed the criteria in Table 1 or the applicable site-specific standard when the daily stream flow falls below the acute critical low flow or monthly average stream flow falls below the chronic critical low flow, calculated pursuant to Regulation 31.9(1)

iii. Winter shoulder-season excursion: For the purposes of assessment, ambient water temperatures in cold streams may exceed the winter criteria in Table 1 or applicable site-specific winter standard for 30-days before the winter/summer transition, and 30-days after the summer/winter transition**,** provided that the natural seasonal progression of temperature is maintained and that temperature exceedances during these periods are not the result of anthropogenic activities in the watershed**.**

(6) Deleted

(7) *E.coli* criteria and resulting standards for individual water segments, are established as indicators of the potential presence of pathogenic organisms. Standards for *E. coli* are expressed as a two-month geometric mean. Site-specific or seasonal standards are also two-month geometric means unless otherwise specified.

(8) Deleted

(9) The dissolved oxygen standard applies to lakes and reservoirs as follows.

a. Recreation: In the upper portion of a lake or reservoir, dissolved oxygen shall not be less than the criteria in Table 1 or the applicable site-specific standard. In the lower portion of a lake or reservoir, dissolved oxygen may be less than the applicable standard except where a site-specific standard has been adopted. A site-specific dissolved oxygen standard will be established for the lower portion of a lake or reservoir where there is evidence that primary contact occurs within the lower portion.

b. Agriculture: In the upper portion of a lake or reservoir, dissolved oxygen shall not be less than the criteria in Table 1 or the applicable site-specific standard. In the lower portion of a lake or reservoir, dissolved oxygen may be less than the applicable standard except where a site-specific standard has been adopted. A site-specific dissolved oxygen standard will be established for the lower portion of a lake or reservoir where there is evidence that livestock watering or irrigation water is pumped from the lower portion.

c. Aquatic Life: In the upper portion of a lake or reservoir, dissolved oxygen shall not be less than the criteria in Table I or the applicable site-specific standard. In the lower portion of a lake or reservoir, dissolved oxygen may be less than the applicable standard as long as there is adequate refuge. Adequate refuge means that there is concurrent attainment of the applicable Table I temperature and dissolved oxygen criteria. A site-specific dissolved oxygen standard will be established for the lower portion of a lake or reservoir where the expected aquatic community has habitat requirements within the lower portion.

i. Fall turnover exclusion: Dissolved oxygen may drop 1 mg/l below the criteria in Table 1 in the upper portion of a lake or reservoir for up to seven consecutive days during fall turnover provided that profile measurements are taken at a consistent location within the lake or reservoir 7-days before, and 7-days after the profile with low dissolved oxygen. The profile measurements taken before and after the profile with low dissolved oxygen must attain the criteria in Table 1 in the upper portion of the lake or reservoir. The fall turnover exclusion does not apply to lakes or reservoirs with fish species that spawn in the fall unless there are data to show that adequate dissolved oxygen is maintained in all spawning areas, for the entire duration of fall turnover.

d. Water Supply: The dissolved oxygen criteria is intended to apply to the epilmnion and metalimnion strata of lakes and reservoirs. Dissolved oxygen in the hypolimnion may, due to the natural conditions, be less than the table criteria. No reductions in dissolved oxygen levels due to controllable sources is allowed.

TABLE II INORGANIC PARAMETERS								
PARAMETER	AQUATIC LIFE						AGRICULTURE	DOMESTIC WATER SUPPLY
	CLASS 1 Cold Water Biota		CLASS 1 Warm Water Biota		CLASS 2			
INORGANICS:								
Ammonia (mg/l as N) Total	chronic = elsp or elsa [1] acute = sp [1] (N)		chronic = Apr 1-Aug 31=elsp[1] Sept 1-Mar 29=elsa[1] acute = sa[1] (N)		Class 2 Cold/Warm have the same standards as Class 1 Cold/Warm (N)			
Total residual Chlorine (mg/l)	0.019 (L) (1-day)	0.011 (L) (30-day)	0.019 (L) (1-day)	0.011 (L) (30-day)	0.019 (L) (1-day)	0.011 (L) (30-day)		
Cyanide - Free (mg/l)	0.005(H) (1-day)		0.005(H) (1-day)		0.005(H) (1-day)		0.2(G) (1-day)	0.2(B,D[m]) (1-day)
Fluoride (mg/l)								2.0[3](E) (1-day)
Nitrate (mg/l as N)							100([2])(B)	10[4](K) (1-day)
Nitrite (mg/l as N)	TO BE ESTABLISHED ON A CASE BY CASE BASIS ([3])				A CASE BY CASE BASIS [3]		10([2])(B) (1-day)	1.0(2)[4](K) (1-day)
Sulfide as H_2S (mg/l)	0.002 undissociated(A) (30-day)		0.002 undissociated(A) (30-day)		0.002 undissociated(A) (30-day)			0.05(F) (30-day)
Boron (mg/l)							0.75(A,B) (30-day)	
Chloride (mg/l)								250(F) (30-day)
Sulfate (mg/l)								250(F) (30-day)
Asbestos								7,000,000 fibers/L[5]
NOTE: Capital letters in parentheses refer to references listed 31.16(3); numbers in parentheses refer to table II footnotes.								

Table II – Footnotes

(1)

Chronic:

For Fish Early Life Stage Present (elsp):

$$chronic\ elsp = \left[\frac{0.0577}{1+10^{7.688-pH}} + \frac{2.487}{1+10^{pH-7.688}}\right] * MIN\left(2.85, 1.45*10^{0.028(25-T)}\right)$$

For Fish Early Life Stage Absent (elsa):

$$chronic\ elsa = \left[\frac{0.0577}{1+10^{7.688-pH}} + \frac{2.487}{1+10^{pH-7.688}}\right] * 1.45*10^{0.028*(25-MAX(T,7))}$$

Acute:

For salmonids present (sp):

$$acute\ sp = \frac{0.275}{1+10^{7.204-pH}} + \frac{39.0}{1+10^{pH-7.204}}$$

For salmonids absent (sa):

$$acute\ sa = \frac{0.411}{1+10^{7.204-pH}} + \frac{58.4}{1+10^{pH-7.204}}$$

(2) In order to provide a reasonable margin of safety to allow for unusual situations such as extremely high water ingestion or nitrite formation in slurries, the NO3-N plus NO2-N content in drinking waters for livestock and poultry should be limited to 100ppm or less, and the NO2-N content alone be limited to 10ppm or less.

(3) Salmonids and other sensitive fish species present:

Acute= 0.10 (0.59 * [Cl-]+3.90) mg/l NO2-N

Chronic= 0.10 (0.29 * [Cl-]+0.53) mg/l NO2-N

(upper limit for Cl- =40 mg/l)

Salmonids and other sensitive fish species absent:

Acute= 0.20 (2.00 * [Cl-]+0.73) mg/l NO2-N

Chronic=0.10 (2.00 *[Cl-]+0.73) mg/l NO2-N

[Cl-] = Chloride ion concentration

(upper limit for Cl- =22 mg/l)

(4) The nitrate limit shall be calculated to meet the relevant standard in accordance with the provisions of Section 31.10 of this regulation, unless (this subsection 4 is repealed effective 12/31/2022):

a. The permittee provides documentation that a reasonable level of inquiry demonstrates that there is no actual domestic water supply use of the waters in question or of hydrologically connected ground water, or

b. The combined total of nitrate plus nitrite at the point of intake to the domestic water supply will not exceed 10 mg/l as demonstrated through modeling or other scientifically supportable analysis

(5) Asbestos standard applies to fibers 10 micrometers or longer.

TABLE III METAL PARAMETERS (Concentration in µg/l)						
METAL[1]	AQUATIC LIFE[1][3][4][J]		AGRICULTURE[2]	DOMESTIC WATER-SUPPLY[2]	WATER + FISH[7]	FISH INGESTION[10]
	ACUTE	CHRONIC				
Aluminum	$e^{(1.3695[\ln(\text{hardness})]+1.8308)}$ (tot.rec.)	87 or $e^{(1.3695[\ln(\text{hardness})]-0.1158}$ (tot.rec.)[11]			---	---
Antimony				6.0 (30-day)	5.6	640
Arsenic	340	150	100[A] (30-day)	0.02 – 10[13] (30-day)	0.02	7.6
Barium				1,000[E](1-day) 490 (30-day)	---	---
Beryllium			100[A,B] (30-day)	4.0 (30-day)	---	---
Cadmium	(1.136672-[ln(hardness) x (0.041838)])x $e^{0.9151[\ln(\text{hardness})]-3.1485}$ (Trout)=(1.136672-[ln(hardness)x (0.041838)])x $e^{0.9151[\ln(\text{hardness})]-3.6236}$	(1.101672-[ln(hardness) x(0.041838)] x $e^{0.7998[\ln(\text{hardness})]-4.4451}$	10[B] (30-day)	5.0[E] (1-day)	---	---
Chromium III[5]	$e^{(0.819[\ln(\text{hardness})]+2.5736)}$	$e^{(0.819[\ln(\text{hardness})]+0.5340)}$	100[B] (30-day)	50[E] (1-day)	---	---
Chromium VI[5]	16	11	100[B] (30-day)	50[E] (1-day)	100(30-day)	---
Copper	$e^{(0.9422[\ln(\text{hardness})]-1.7408)}$	$e^{(0.8545[\ln(\text{hardness})]-1.7428)}$	200[B]	1,000[F] (30-day)	1,300	---
Iron		1,000(tot.rec.)[A,C]		300(dis)[F] (30-day)	---	---
Lead	(1.46203-[(ln(hardness)* (0.145712)])*$e^{(1.273[\ln(\text{hardness})]-1.46)}$	(1.46203-[(ln(hardness)* (0.145712)])*$e^{(1.273[\ln(\text{hardness})]-4.705)}$	100[B] (30-day)	50[E] (1-day)	—	---
Manganese	$e^{(0.3331[\ln(\text{hardness})]+6.4676)}$	$e^{(0.3331[\ln(\text{hardness})]+5.8743)}$	200[B] (30-day)[12]	50(dis)[F] (30-day)	—	---
Mercury		FRV(fish)[6] = 0.01 (Total)		2.0[E] (1-day)	—	---
Molybdenum			300[O] (30-day)[15]	210 (30-day)		
Nickel	$e^{(0.846[\ln(\text{hardness})]+2.253)}$	$e^{(0.846[\ln(\text{hardness})]+0.0554)}$	200[B] (30-day)	100[E] (30-day)	610	4,600

TABLE III METAL PARAMETERS (Concentration in µg/l)						
METAL[1]	AQUATIC LIFE[1][3][4][J]		AGRICULTURE[2]	DOMESTIC WATER-SUPPLY[2]	WATER + FISH[7]	FISH INGESTION[10]
	ACUTE	CHRONIC				
Selenium[9]	18.4	4.6	20[B,D] (30-day)	50[E] (30-day)	170	4,200
Silver	½$e^{(1.72[\ln(\text{hardness})]-6.52)}$	$e^{(1.72[\ln(\text{hardness})]-9.06)}$ (Trout) = $e^{(1.72[\ln(\text{hardness})]-10.51)}$		100[F] (1-day)	—	---
Thallium		15[C]		0.5 (30-day)	0.24	0.47
Uranium[16]	$e^{(1.1021[\ln(\text{hardness})]+2.7088)}$	$e^{(1.1021[\ln(\text{hardness})]+2.2382)}$		16.8 – 30[13] (30-day)	---	---
Zinc	$0.978*e^{(0.9094[\ln(\text{hardness})]+0.9095)}$	$0.986*e^{(0.9094[\ln(\text{hardness})]+0.6235)}$ (sculpin)[14] = $e^{(2.140[\ln(\text{hardness})]-5.084)}$	2000[B] (30-day)	5,000[F] (30-day)	7,400	26,000
NOTE: Capital letters in parentheses refer to references listed in section 31.16(3); Numbers in parentheses refer to Table III footnote						

Table III – Footnotes

(1) Metals for aquatic life use are stated as dissolved unless otherwise specified.

Where the hardness-based equations in Table III are applied as table value water quality standards for individual water segments, those equations define the applicable numerical standards. As an aid to persons using this regulation, Table IV provides illustrative examples of approximate metals values associated with a range of hardness levels. This table is provided for informational purposes only.

(2) Metals for agricultural and domestic uses are stated as total recoverable unless otherwise specified.

(3) Hardness values to be used in equations are in mg/l as calcium carbonate and shall be no greater than 400 mg/l. The exception is for aluminum, where the upper cap on calculations is a hardness of 220 mg/l. For permit effluent limit calculations, the hardness values used in calculating the appropriate metal standard should be based on the lower 95 percent confidence limit of the mean hardness value at the periodic low flow criteria as determined from a regression analysis of site-specific data. Where insufficient site-specific data exists to define the mean hardness value at the periodic low flow criteria, representative regional data shall be used to perform the regression analysis. Where a regression analysis is not possible, a site-specific method should be used, e.g., where hardness data exists without paired flow data, the mean of the hardness during the low flow season established in the permit shall be used. In calculating a hardness value, regression analyses should not be extrapolated past the point that data exist. For determination of standards attainment, where paired metal/hardness data is available, attainment will be determined for individual sampling events. Where paired data is not available, the mean hardness will be used.

(4) Both acute and chronic numbers adopted as stream standards are levels not to be exceeded more than once every three years on the average.

(5) Unless the stability of the chromium valence state in receiving waters can be clearly demonstrated, the standard for chromium should be in terms of chromium VI. In no case can the sum of the instream levels of hexavalent and trivalent chromium exceed the water supply standard of 50 µg/l chromium in those waters classified for domestic water use.

(6) FRV means Final Residue Value and should be expressed as "Total" because many forms of mercury are readily converted to toxic forms under natural conditions. The FRV value of 0.01 µg/liter is the maximum allowed concentration of total mercury in the water. This value is estimated to prevent bioaccumulation of methylmercury in edible fish or shellfish tissue above the fish tissue standard for methylmercury of 0.3 mg/kg.

In waters supporting populations of fish or shellfish with a potential for human consumption, the Commission can adopt the FRV as the stream standard to be applied as a 30-day average. Alternatively, the Commission can adopt site-specific ambient based standards for mercury in accordance with section 31.7(1)(b)(ii) and (iii). Site-specific water-column standards shall be calculated from the site-specific bioaccumulation factor, using measured water column concentrations of total mercury and measured fish tissue concentrations of methylmercury. Fish tissue data shall be collected from species of the highest trophic level present in the water body. Fish tissue samples should include older, larger individuals present in the water body. A bioaccumulation factor should be calculated separately for each species sampled, and the highest bioaccumulation factor should be used to calculate the site-specific water column standard in order to prevent the average fish tissue concentrations from exceeding 0.3 mg/kg for all species.

(7) Applicable to all Class 1 aquatic life segments which also have a water supply classification or Class 2 aquatic life segments which also have a water supply classification designated by the Commission after rulemaking hearing. These Class 2 segments will generally be those where fish of a catchable size and which are normally consumed are present, and where there is evidence that fishing takes place on a recurring basis. The Commission may also consider additional evidence that may be relevant to a determination whether the conditions applicable to a particular segment are similar enough to the assumptions underlying the water plus fish ingestion criteria to warrant the adoption of water plus fish ingestion standards for the segment in question.

(8) The use of 0.1 micron pore size filtration for determining dissolved iron is allowed as an option in assessing compliance with the drinking water standard.

(9) Selenium is a bioaccumulative metal and subject to a range of toxicity values depending upon numerous site-specific variables.

(10) Applicable to the following segments which do not have a water supply classification: all Class 1 aquatic life segments or Class 2 aquatic life segments designated by the Commission after rulemaking hearing. These class 2 segments will generally be those where fish of a catchable size and which are normally consumed are present, and where there is evidence that fishing takes place on a recurring basis. The Commission may also consider additional evidence that may be relevant to a determination whether the conditions applicable to a particular segment are similar enough to the assumptions underlying the fish ingestion criteria to warrant the adoption of fish ingestion standards for the segment in question.

(11) Where the pH is equal to or greater than 7.0 in the receiving water after mixing, the chronic hardness-dependent equation will apply. Where pH is less than 7.0 in the receiving water after mixing, either the 87 µg/l chronic total recoverable aluminum criterion or the criterion resulting from the chronic hardness-dependent equation will apply, whichever is more stringent.

(12) This standard is only appropriate where irrigation water is applied to soils with pH values lower than 6.0.

(13) Whenever a range of standards is listed and referenced to this footnote, the first number in the range is a strictly health-based value, based on the Commission's established methodology for human health-based standards. The second number in the range is a maximum contaminant level, established under the federal Safe Drinking Water Act that has been determined to be an acceptable level of this chemical in public water supplies, taking treatability and laboratory detection limits into account. Control requirements, such as discharge permit effluent limitations, shall be established using the first number in the range as the ambient water quality target, provided that no effluent limitation shall require an "end-of-pipe" discharge level more restrictive than the second number in the range. Water bodies will be considered in attainment of this standard, and not included on the Section 303(d) List, so long as the existing ambient quality does not exceed the second number in the range.

(14) The chronic zinc equation for sculpin applies in areas where mottled sculpin are expected to occur and hardness is less than 102 ppm $CaCO_3$. The regular chronic zinc equation applies in areas where mottled sculpin are expected to occur, but the hardness is greater than 102 ppm $CaCO_3$.

(15) In determining whether adoption of a molybdenum standard is appropriate for a segment, the Commission will consider whether livestock or irrigated forage is present or expected to be present. The table value assumes that copper and molybdenum concentrations in forage are 7 mg/kg and 0.5 mg/kg respectively, forage intake is 6.8 kg/day, copper concentration in water is 0.008 mg/l, water intake is 54.6 l/day, copper supplementation is 48 mg/day, and that a Cu:Mo ratio of 4:1 is appropriate with a 0.075 mg/l molybdenum margin of safety. Numeric standards different than the table-value may be adopted on a site-specific basis where appropriate

justification is presented to the Commission. In evaluating site-specific standards, the relevant factors that should be considered include the presence of livestock or irrigated forage, and the total intake of copper, molybdenum, and sulfur from all sources (i.e., food, water, and dietary supplements). In general, site-specific standards should be based on achieving a safe copper:molybdenum total exposure ratio, with due consideration given to the sulfur exposure. A higher Cu:Mo ratio may be necessary where livestock exposure to sulfur is also high. Species specific information shall be considered where cattle are not the most sensitive species.

(16) When applying the table value standards for uranium to individual segments, the Commission shall consider the need to maintain radioactive materials at the lowest practical level as required by Section 31.11(2) of the Basic Standards regulation.

Table IV Table Value Standards for Selected Hardnesses (concentration in ug/L, dissolved)											
		Mean Hardness in mg/L calcium carbonate									
		25	50	75	100	150	200	250	300	350	400
Aluminum	Acute	512	1324	2307	3421	5960	8838	10071	10071	10071	10071
	Chronic	73	189	329	488	851	1262	1438	1438	1438	1438
Cadmium	Acute trout	0.5	0.9	1.3	1.7	2.4	3.1	3.8	4.4	5.1	5.7
	Acute	0.8	1.5	2.1	2.7	3.9	5.0	6.1	7.1	8.1	9.2
	Chronic	.15	.25	0.34	0.42	0.58	0.72	0.85	0.97	1.1	1.2
Chromium III	Acute	183	323	450	570	794	1005	1207	1401	1590	1773
	Chronic	24	42	59	74	103	131	157	182	207	231
Copper	Acute	3.6	7.0	10	13	20	26	32	38	44	50
	Chronic	2.7	5.0	7.0	9.0	13	16	20	23	26	29
Lead	Acute	14	30	47	65	100	136	172	209	245	281
	Chronic	0.5	1.2	1.8	2.5	3.9	5.3	6.7	8.1	9.5	11
Manganese	Acute	1881	2370	2713	2986	3417	3761	4051	4305	4532	4738
	Chronic	1040	1310	1499	1650	1888	2078	2238	2379	2504	2618
Nickel	Acute	145	260	367	468	660	842	1017	1186	1351	1513
	Chronic	16	29	41	52	72	94	113	132	150	168
Silver	Acute	0.19	0.62	1.2	2.0	4.1	6.7	9.8	13	18	22
	Chronic Trout	0.01	0.02	0.05	0.08	0.15	0.25	0.36	0.50	0.65	0.81
	Chronic	0.03	0.10	0.20	0.32	0.64	1.0	1.6	2.1	2.8	3.5
Uranium	Acute	521	1119	1750	2402	3756	5157	6595	8062	9555	11070
	Chronic	326	699	1093	1501	2346	3221	4119	5036	5968	6915
Zinc	Acute	45	85	123	160	231	301	368	435	500	565
	Chronic sculpin	6.1	27	64	118	N/A	N/A	N/A	N/A	N/A	N/A
	Chronic	34	65	93	121	175	228	279	329	379	428
Shaded values exceed drinking water supply standards.											

APPENDIX A. Calculation of a Biologically-Based Low Flow

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31.17 NUTRIENTS

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31.18 RESERVED.

31.19 RESERVED.

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31.53 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE; JUNE 13-15, 2016 RULEMAKING; FINAL ACTION AUGUST 8, 2016; EFFECTIVE DATE DECEMBER 31, 2016

The provisions of sections 25-8-202(1)(b), 25-8-204; and 25-8-402, C.R.S., provide the specific statutory authority for adoption. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

In this rulemaking the Commission considered revisions to criteria and revisions to implementation methodologies. The Commission adopted changes as detailed below.

I. TEMPERATURE

In 2007, the Commission adopted temperature criteria and implementation methods for Colorado's surface waters. The criteria were derived from laboratory-based studies of individual fish species' tolerance to elevated water temperatures. The implementation methods were developed based on review of other states' methods and adaptation of methods for implementation of other water quality standards. Since that time, the Division and stakeholders have gained a great deal of experience with empirical records showing spatial and temporal patterns of temperature in surface water and effluent. Experience has shown that the adopted standards often are not attainable due to natural environmental constraints that are closely tied to elevation and may be affected by other factors as well. Consequently, revisions may be needed to incorporate those natural constraints that are an appropriate incremental improvement to the current standards. The revisions discussed in this rulemaking build on a decade of practical experience gained from massive data collection efforts and they chart a path forward to improve the basis for the standards, incorporate the effects of elevation on attainability and ensure more consistent implementation.

There are four parts to the temperature standards that were discussed in this hearing. The first, Part A, is a change to the definition of existing quality to clarify the implementation of exceedance frequency. The second, Part B, revises criteria to incorporate new information about the temperature tolerances of fish. Part C provides policy direction to address consideration of temperature standards at elevations below which the physiologically-based temperature standards are not attained routinely. Part D provides policy direction to address consideration of temperature standards in the shoulder seasons.

A. Definition of Existing Quality

The Commission restructured the definition of existing quality (EQ) at 31.5(20) and modified the portion about temperature to allow one warming event above standards with a 3 year average exceedance frequency. EQ is a characteristic of the ambient condition that is used in two contexts: 1) comparing the ambient condition to water quality standards to determine whether standards are attained; and 2) characterizing the upstream water quality for calculating permit effluent limits. It has also been used when setting ambient standards. Changes were made to clarify the definition of EQ for temperature so that it can be consistently applied in each programmatic context.

The revised definition specifies that the value for EQ is the maximum DM and MWAT which allows for one warming event with a 3-year average exceedance frequency. The Commission recognizes the potential for natural systems to occasionally exceed numeric standards and that limited exceedances of the standard are expected. The Commission's intent is that thermal conditions should be sufficient for longer lived fish species to complete their lifecycles, and evidence derived from the literature suggests that 3 years is sufficient for most stream fish in Colorado. Additionally, the Commission recognizes that autocorrelation is inherent in stream temperatures, and that several days exceeding the standard may be the result of a single warming event. For standards attainment, the Commission intends that the average recurrence frequency of these warming events be limited to once every 3 years. (Table 1, footnotes 5a and 5b were edited to reflect this.) Therefore, where data records are 3 years or less, EQ will be the maximum DM or MWAT. For data records of 4 to 6 years, an allowance will be made for one warming event in either the summer or winter. For data records of 7 to 9 years two warming events are allowed. The definition of a "warming event" will be determined with statistically appropriate tests and representative data defined in the next 303(d) listing methodology process. In addition to consideration of the frequency of "warming events", the Commission would like the Division to look at the impacts of duration, multiplicity and cumulative effects.

For permitting, the Commission intends that EQ will also incorporate an allowable exceedance frequency for monthly determination. EQ will be the maximum DM or WAT with 3 or less years of representative upstream data. For data records with 4-6 years, the second highest monthly DM or WAT may be selected for one month in either winter or summer and the remaining months shall be the max DM or WAT. Allowances for each month are not appropriate because the allowable exceedance frequency (the recurrence interval) is based on the time that it takes for the aquatic community to recover from a harmful event.

The Commission retained the temperature excursions at 31.16 Table 1 – Footnote 5(c) so they could be addressed along with shoulder seasons and transition zones in a future rulemaking.

The requirement for "adequate refuge" has been awkwardly split between the temperature footnote (5(c)) and the dissolved oxygen footnote (9(c)). Footnote 5(d)(iii), the allowance for temperature exceedances in lakes where adequate dissolved oxygen is present below the mixed layer (the refuge allowance), was deleted. To maintain the requirement but simplify the regulation, in footnote 9(c), the reference to footnote 5(c)(iii) has been replaced by a clear statement that adequate refuge is required and a description of adequate refuge.

B. Temperature Criteria

Temperature Database Updates: As part of the Division's routine review, the Colorado Temperature Database was updated using the most recent literature regarding the thermal requirements of Colorado's fishes. This effort was an initial step to support revision of the warm water winter acute values (discussed below) and also allowed for general updates of cold and warm water acute and chronic values. New acute and/or chronic thermal tolerance information was found for several species, both cold and warm water, including brook trout, brown trout, cutthroat trout, lake trout, mountain whitefish, rainbow trout, black crappie, bonytail, channel catfish, largemouth bass, mountain sucker, and stonecat. Based on this information, the Commission adopted revisions to the existing temperature standards found in Table I.

A new critical thermal maxima value for lake trout was added to the database as part of the updates. This new acute value, combined with existing chronic data, allowed for the derivation of DM and MWAT values

for lake trout. Including lake trout in the Cold Lakes & Reservoirs and Cold Large Lakes & Reservoirs DM and MWAT calculations would result in MWAT values of 16.7°C for both tiers. Lake trout are currently managed in only 30 individual lakes/reservoirs, which are in a total of 17 segments; these segments comprise less than 9% of all lakes segments. Due to the relatively small number of segments containing lake trout, the Commission decided to not include the lake trout data in the derivation of statewide lakes/reservoirs temperature standards. Instead, the Commission adopted a footnote to Table I stating that where lake trout do occur and protection from thermal impacts is necessary and appropriate, the literature-based summer MWAT and DM for lake trout of 16.6°C and 22.4°C, respectively, should be applied. The Commission intends for these lake trout populations to be covered by the "adequate refuge" provision that requires concurrent attainment of the literature-based summer MWAT and DM values and dissolved oxygen standards.

A similar approach was taken for mountain whitefish. Early life stages of this species are known to be more thermally sensitive than other CS-I and CS-II species and adult mountain whitefish are known to migrate into cold tributaries to spawn. To ensure protection of sensitive early life stages, the Commission adopted a footnote to Table I stating that where and when spawning and sensitive life stages of mountain whitefish are known to occur, the literature-based summer MWAT and DM of 16.9°C and 21.2°C, respectively, should be applied.

Warm Water Winter Acute Table Values: When seasonal temperature standards were adopted in 2007, warm water winter acute and chronic standards were simply set at half the summer season values, recognizing a pattern seen in cold waters. The acute winter table values for warm water fish were revised based on lethal temperature thresholds established in laboratory experiments for fish acclimated to "winter" temperatures. This new method protects warm water fish in winter from acute effects. The Commission adopted the resulting warm tier temperature winter standards in Table I.

C. Additional Flexibility in Transition Zones

The physiologically-based summer temperature standards are not attainable in every year in every segment where they have been adopted. The attainability problem is not tied to specific watersheds or isolated locations, but is instead a statewide phenomenon that shows a clear spatial pattern related to elevation and could be affected by other factors. The problem arises from an unavoidable conflict between the historical distributions of fish species and the expectation that protective conditions for all life history stages can be sustained in every year throughout a segment. The environment varies naturally and fish move in response to environmental stimuli.

Temperature tiers have been adopted on the basis of the best available information concerning the fish species that have been found in the segment. The assignment of temperature tiers is logical and defensible, but an implementation problem arises if the assignment is accompanied automatically by the assumption that temperature standards are always attainable throughout the segment.

Water temperature in unimpacted streams is primarily governed by physical factors (e.g., solar radiation) that affect heat gain and loss, for which elevation is a practical surrogate. Current evidence shows that because of this natural phenomenon, maximum temperatures are expected to exceed the physiologically-based standards in some years at lower elevations for some temperature tiers.

The Division proposed a statewide elevation adjustment for the summer MWAT (the MWATelev) to define a modified expectation for maximum temperatures. The elevation range where the adjustment was proposed to be applied is called the transition zone. Several parties at the hearing disputed the sufficiency of the data presented by the Division, the extent to which anthropogenic influences were assessed and the validity of the Division's regression analysis. The Commission declined to adopt this approach in favor of a basin-by-basin consideration of attainability issues. This adjustment informs, but does not change, the narrative standard which requires maintenance of a normal pattern of increase and decrease in water temperature. The basin-by-basin approach will allow consideration of ambient -quality–based site-specific standards proposals in accordance with section 31.7(1) where elevation is the natural, irreversible factor. Unlike the basis for most other ambient-standards proposal, elevation occurs

everywhere and has a predictable effect on water temperature. The basin-by-basin approach will provide an opportunity to consider this elevation adjustment as one of multiple lines of evidence and more specifically the basin hearings will provide for consideration of site-specific contravening evidence. The Commission intends for the experiences of this approach to inform potential changes to the Basic Standards in the future. However, the Commission does not intend that this approach is a de facto adoption of statewide standards through segment specific changes.

At this time, the Commission has not considered the same adjustment to the Daily Maxima temperature standards. Such an adjustment could be considered on a site-specific basis and future analysis may identify the same statewide attainability issues that can be addressed in future rulemaking.

Lakes

Temperature standards for lakes apply to the upper, mixed layer where water temperatures are governed by physical factors (e.g., solar radiation). Elevation may prove to be a useful surrogate for the suite of physical factors driving temperature in lakes. The Division presented evidence based on 574 lake-years of data from 116 lakes sampled over a broad range of elevations during the last 20 years. To be included in this analysis, a lake had to have been sampled during a 6-week period in mid-summer (11 July to 21 August) when maximum temperatures (MWAT) are expected. Several lakes showed evidence of anthropogenic influence in the form of "tailwater" effects from upstream reservoirs (e.g., Morrow Point) or very short retention times (e.g., Estes); these were excluded.

Regression analysis was used to define the relationship between summer MWAT and elevation. Lines for individual years were compared to assess interannual variability, which was small for the slope. The exceedance frequency was addressed by developing a regression line for the 66.7th percentile MWAT at each of the 33 lakes with at least 5 years of qualifying data. Elevation explains more than 90% of the variability in MWATs for the lakes analyzed in this hearing.

$$MWATelev = -0.001651\ (elevation) + 32.43$$

At the time of the next routine review of each basin, the MWAT adjustment could be considered for lakes where the MWATelev is predicted to exceed the adopted standard. For example, the MWAT adopted for Cold Large Lakes currently is 18.3 oC, and the equation predicts that it is not routinely attainable in lakes at elevations below about 8560 ft and warm lakes below 3774 ft. This is consistent with the elevations of lakes for which site-specific temperature standards have already been adopted.

Streams

Like lakes, water temperatures in streams are governed by physical factors and elevation may be a useful surrogate for these factors. The Division presented evidence from analysis of water temperature records from 267 sites in Colorado over a broad range of elevations and throughout Colorado's varied landscape. Data from approximately 1162 site-years was used to examine the relationship between summer maximum temperatures and elevation. All sites were screened for likely anthropogenic influences from waste water treatment facilities and reservoirs (tailwaters). Of 10 different physical and geographic watershed and site attributes, site elevation most strongly predicts annual MWATs for the analyzed sites. Additionally, residuals (unexplained variance) from the relationship between each year's MWAT and elevation were analyzed to determine whether the remaining variance was related to the following attributes: slope, aspect, Strahler stream order, percent canopy cover, 30-year max air temperature, CHILI Index (an index of solar radiation, slope, latitude and aspect), watershed area, upstream active diversions count, and sum of absolute and conditional diversion rates. Regression analysis between the summer MWAT and elevation showed that over 80 percent of the variance is explained by elevation alone. Annual variability was examined by comparing the relationships for individual years; slopes were in close agreement. The exceedance frequency was addressed by developing a regression line for the 66.7th percentile MWAT at each of the 79 sites with at least 5 years of data. This value is an interpolated estimate of the once in three year exceedance value of existing quality. The resultant equation is:

MWATelev = -0.002145 (elevation) + 32.97

At the time of the next routine review of each basin, the MWAT adjustment could be considered for sites in the transition zone along with other lines of evidence. For example, for a site in a Cold Stream Tier II segment at 6800 feet elevation, the MWATelev of 18.5oC could be the operative standard instead of the 18.3oC standard for the segment.

D. Additional Flexibility in Shoulder Seasons

For each temperature tier, there are summer and winter criteria, and the shift from one season to the next occurs abruptly on a single date. The rigid, first-of the-month changeover of seasons does not reflect the natural pattern of gradual, predictable change in temperature, nor does it provide flexibility to allow for inter-annual variability in the timing and rate of temperature change. These two factors reflect the natural constraints on temporal patterns of water temperature in streams and lakes, partially as a function of elevation.

The Division proposed to revise the table values for each stream and lake temperature tier to substitute the existing narrative standard for the months on either side of the transitional date (i.e., the shoulder seasons). Support for applying the narrative standard was provided by the elevation-related trend in the duration of winter (i.e., consecutive days below the adopted winter standard) and the natural variability documented for the fall and spring transition dates at individual sites. The Commission declined to adopt this approach, in favor of a basin-by-basin consideration of these issues. The Commission intends for the experiences of this approach to inform potential changes to the Basic Standards in the future. However, the Commission does not intend that this approach is a de facto adoption of statewide standards through segment specific changes.

One approach that could be considered in hearings at the basin level is revising the segment-specific standards so the numeric criteria would apply only for the core winter and summer months. The narrative standard would continue to require a normal pattern with no abrupt changes.

Attainment of the narrative standard during the fall and spring could then be assessed for 303(d) purposes by determining the direction of the general temperature trend, using the average WAT of each month. If the surface water is cooling or warming at the appropriate season, then it would not result in an exceedance of the narrative temperature standard.

For the purposes of implementation in permits, the intent would be to ensure that the natural seasonal progression is maintained. For each of the months in the shoulder seasons, simple linear interpolation could be used to establish a value for the water quality standards that could be used in the mass balance equation for setting permit limits.

II. OTHER CRITERIA

A. Methylmercury (human health)

To protect human health, the Commission adopted a methylmercury fish tissue basic standard at new subsection 31.11(7) and revised Footnote 6 to Table III (Metal Parameters) at 31.16. This water quality criterion of 0.3 milligrams (mg) methylmercury per kilogram (kg) fish tissue wet weight describes the concentration of methylmercury that protects consumers of fish and shellfish among the general population. The criterion is consistent with EPA's section 304(a) water quality criterion for methylmercury. This new standard applies to all waters of the state because fish migrate and contribute to food webs that integrate large geographic areas; therefore, it is not sufficiently protective to apply the standard only in locations where fish are expected to be caught and consumed.

Adoption of this threshold as a standard in Regulation #31 recognizes the Commission's practice in the context of Regulation #93 (Colorado's Section 303(d) List of Impaired Waters and Monitoring and

Evaluation Lists). The Commission has made listing decisions using an average fish tissue criterion of 0.3 mg/kg as a numeric threshold for determining attainment of the aquatic life use.

Adoption of the 0.3 mg/kg methylmercury criterion does not represent a policy change. The current water column standard of 0.01 µg/L total mercury remains in place and is intended to be implemented alongside the fish tissue standard. The Commission expects that in some circumstances, site-specific water column standards may be developed where data are available.

B. Arsenic (water supply)

After the 2010 rulemaking hearing, EPA disapproved a modification of Footnote 14 to Table III (Metal Parameters) which applies to arsenic. This footnote stated that the arsenic effluent limits would be calculated so that the arsenic concentration at the point of intake to the domestic water supply would not exceed the standard. EPA disapproved this concept because standards must protect the designated use, whether or not the use is an "actual" use. In today's action the Commission deleted Footnote 14 and renumbered the remaining footnotes and deleted the reference to Footnote 14 in Table III. The Commission found that in the majority of segments, the footnote has no effect. Most segments have a water+fish standard for arsenic that is more stringent than the water supply standard.

C. Nitrate (water supply)

After the 2010 rulemaking hearing, EPA disapproved a modification of Footnote 4 to Table II (Inorganic Parameters) which applies to nitrate. As in the arsenic footnote described above, this footnote stated that the combined total of nitrate plus nitrite at the point of intake to a domestic water supply would not exceed 10 mg/L. EPA disapproved this concept because standards must protect the designated use whether or not the use is an "actual" use. In today's action the Commission repealed Footnote 4 with a delayed effective date of December 31, 2022. A delayed date allows time for stakeholders to bring forward site-specific proposals for use removal and/or resegmentation in the next round of basin hearings, and also time to obtain permit modifications before the footnote repeal date.

D. Acute Chlorine for Class 2 Waters

The Commission adopted an acute chlorine standard of 0.019 mg/L for Class 2 waters to protect aquatic life. In 2005, the chronic chlorine standard of 0.011 mg/L was adopted for Class 2 waters, and it is unclear why an acute standard was not also adopted at that time. Because chlorine is a fast-acting toxicant, both acute and chronic chlorine standards are necessary to protect the aquatic life use.

III. ANTIDEGRADATION PROVISIONS

A. Baseline Date for Significance Determination

The Commission adopted revisions to 31.8(3)(c) to clarify the procedures for segments where the antidegradation designation changed from Use Protected to undesignated (i.e. Reviewable) after the previously established baseline date of September 30, 2000. The revision added the phrase "or the effective date when the Use Protected designation is removed." At the same time, subsection 31.8 (3)(c)(ii)(B) was split into two sections for ease of application.

B. Temporary Impacts in Outstanding Waters

The Commission revised the regulatory language to clarify that short-term degradation associated with certain types of activities is consistent with the Outstanding Waters designation. The Commission does not intend this to change policy or procedures regarding determining the meaning of waters being "maintained and protected at their existing quality."

Examples of activities that result in long-term ecological or water-quality benefit include, among others: use of rotenone or other pesticides to remove invasive species; construction of fish barriers to prevent the spread of non-native species; construction of bridges at stream crossing to minimize damage to the stream and improve water quality; or construction of aquatic habitat improvement.

A determination that activities will result in only "short-term" degradation will occur as part of a permitting or 401 certification action by the Division. It is difficult to give an exact definition of "short-term" because of the variety of activities that might be considered. However, in broad terms, "short-term" should be weeks and months, not years. In some cases, projects may need to extend over multiple work seasons, but in all cases the impacts of a project over time must be considered. The Commission expects that in those actions the Division will ensure that conditions are imposed as necessary and appropriate to ensure that degradation occurs for the shortest amount of time possible.

Examples of "clear public interest" activities shall only be those that address public health, welfare and safety which could include in some cases: construction of public roads for the purpose of public safety, maintenance of public roads, bridges and roadways, including shoulder weed control; control of mosquitoes or other disease vectors; enhancement of significant historical and archaeological resources; and suppression of wildfires or fire pre-suppression or restoration activities.

C. Antidegradation: Iron, Manganese, and Sulfate (water supply)

The Commission revised section 31.8(1)(b) and added two new subsections (i) and (ii) to exempt dissolved iron, dissolved manganese, and sulfate from antidegradation consideration. Federal requirements for antidegradation protection only extend to assimilative capacity for criteria that protect CWA § 101(a)(2) uses (commonly known as "fishable/swimmable"). Dissolved iron and manganese and sulfate do not fall in those categories; rather they are water supply standards which originated as secondary Safe Drinking Water Act criteria. The Colorado framework treats these secondary water supply parameters differently.

The criteria for iron, manganese and sulfate remain in place, unchanged, to protect the water supply use. These criteria do not act as surrogates for any criteria that would protect a fishable/swimmable use (e.g., chloride acts as a surrogate for an aquatic life criterion). This exemption does not negate the requirement for an antidegradation review in regards to standards that protect other classified uses.

D. Default Use Protected Designation for Effluent-dependent/Effluent-dominated Waters

After the 2010 rulemaking hearing, EPA disapproved a modification of section 31.8(2) (b)(i)(c) which allows the Commission to designate a waterbody as Use Protected if the waterbody was effluent-dominated or effluent-dependent during the period of 2000-2009. EPA disapproved this concept because federal policy is that antidegradation designations are to be made based on the quality of the water, not on the source of the water.

In today's action the Commission repealed section 31.8(2)(b)(i)(C) with a delayed effective date of December 31, 2019. In taking this action, the Commission considered that for all reviewable waters, affected entities have an opportunity to submit an alternatives analysis (i.e., to support decisions regarding whether allowing water quality is necessary to accommodate important economic or social development). But the Commission also acknowledges stakeholder concerns regarding uncertainty about the process and criteria for alternatives analyses. Therefore, the Commission is repealing the provision with a delayed effective date to allow the Division and interested stakeholders time to work together to review alternative analyses submittals and approvals that have been done to date, and discuss whether a new alternatives analysis guidance document should be developed, and if so, to develop guidance prior to the repeal date. The delayed effective date is also intended to allow the Division and interested stakeholders time to engage in further discussions regarding an appropriate water quality test for effluent-dependant and effluent-dominated waters. The Commission may consider a proposal to amend or replace section 31.8(2)(b)(i)(C) in a rulemaking before the repeal effective date.

E. Alternatives Analysis – Selection of Alternative

The Commission added a sentence to section 31.8(3)(d)(iii) to better align the Basic Standards rule with the recently-revised EPA water quality standards regulation. This modification was adopted because the Colorado antidegradation rule did not explicitly address what outcome is required in situations where, as part of a necessity of degradation determination, one or more non-degrading or less degrading alternatives are identified. It now explicitly requires selection of a non-degrading or less degrading alternative. The Commission does not intend this to change current Colorado policy or procedures.

IV. REVISION OF SECTION. 31.14 "IMPLEMENTATION IN DISCHARGE PERMITS"

Substantial changes were made to the portions of the Basic Standards that address the way the standards are implemented in discharge permits. Many provisions that were in 31.14 were deleted to reduce redundancy with other regulations (namely, Regulation #61, "Colorado Discharge Permit System Regulations") and to eliminate language that has outlived its useful life. Other provisions were moved to section 31.9, to consolidate the provisions that address implementation of standards. Section 31.10 continues to contain the provisions that address Mixing Zones.

Restructuring: The title of section 31.9 was changed from "Flow Considerations" to "Implementation of Standards." Even before today's rulemaking, the section contained provisions that went beyond flow considerations. Most of the material from section 31.14 that was deemed to be still relevant was moved to section 31.9.

Results of Review of 31.14: Section 31.14 now is blank and the section is "reserved." The history of each subsection, its origin (where known), and fate are described below:

- 31.14(1): This section pre-dates 1987 and there is no record of how or why this section was added to the Basic Standards. It appears to never have been used. The reasons behind the reference to Regulation #71 (the Dillon Control Regulation) are unclear. For these reasons, this section was deleted.

- 31.14(2): This section pre-dates 1987 and there is no record of how or why this section was added to the Basic Standards. It was deleted because it is redundant with section 61.8, and is also in the federal rules for state programs at 40 CFR § 130.3.

- 31.14(3): This section pre-dates 1987 and there is no record of how or why this section was added to the Basic Standards. It was deleted because it is redundant with section 61.8, and is in the federal rules at 40 CFR § 130.7.

- 31.14(4): This section pre-dates 1987 and there is no record of how or why this section was added to the Basic Standards. The portion that authorizes Compliance Schedules was moved to 31.9(2) and expanded to match the language in Regulation #61. The portion that states that effluent limits "may" be established was deleted because there was a conflict between the Regulation # 61 version ("must") and this version ("may"). The portion that describes how effluent limits shall be established was moved to Regulation #61 to replace an existing cross-reference. The statement that a rulemaking hearing can subsequently be held was moved to the statement of basis and purpose provisions of Regulation #61.

- 31.14(5): This section was added in 1988 (see 31.24.l). The "innovation" language was added to 31.3 at the same time that this provision was added to 31.14. In order to capture the concept of using innovative approaches, such as trading programs, in various water quality contexts, the language "TMDLs, Waste Load Allocations antidegradation reviews, and permits" is also being added to 31.3. Section 31.14(5) is generally redundant with the concepts in 31.3 and is also captured at 61.8(3)(r) of Regulation #61.

A new section was also adopted during this rulemaking proceeding at 61.8(3)(u) to capture the "innovation" concept in the context of permits, and thus this section 31.14(5) was deleted.

- 31.14(6): There is no record of when this section was added. Section 61.8(4)(a) addresses this concept, and thus this section 31.14(6) was deleted.

- 31.14(7): This section was added in 1987 (see 31.22 C). This section is now redundant with Regulation #61, 61.8(2)(B)(vii), and thus this section 31.14(7) was deleted.

- 31.14(8): This section was added in 1988 (see 31.24 E and F). This material is covered in sections 31.7, 31.9 and 31.16, and thus this section 31.14(8) was deleted.

- 31.14(9): This section was added in 1989 (see 31.25 E). This section was deleted because practical quantification limits (PQLs) are now covered in a separate policy.

- 31.14(10): This section was added in 1989 (see 31.25 E). Section 61.8(4)(a) of Regulation #61 addresses this concept, and thus this section 31.14(10) was deleted.

- 31.14(11): This section was added in 1989 (see 31.25 E) when organic standards were added to Regulation #31. This section was deleted because this authority is already provided to the Division. It serves no purpose substantive now, and thus was deleted

- 31.14(12): This section was added in 1989 (see 31.25 E). Section 61.8(4)(a) of Regulation #61 addresses this concept, and thus this section was deleted.

- 31.14(13): This section was added in 2000. The Division is not aware of any current permits that have implemented this provision. Colorado's intake credit provisions are found at section 61.8(2)(d) of Regulation #61. It is not clear how this provision is intended to be used, and thus it was deleted.

- 31.14(14): This section was moved to 31.9.

- 31.14(15) and (16): These sections were consolidated and were moved to 31.9. The Commission made revisions to these provisions to align them with the Division's practice since 2007, as expressed in various basin regulations for implementing "current condition" temporary modifications. Specifically, the Commission added references to "existing discharges" to clarify that effluent limits based upon temporary modifications only apply to existing discharges, and that effluent limits for new and expanded discharges must generally be set to the underlying standard. Additionally, the previous reference to 31.14(4) was deleted because all compliance schedules must be issued in accordance with the provisions authorizing compliance schedules.

- 31.14(17): This section was moved to 31.9. The phrase "compliance schedule" in subsection (a) was changed to "permit condition" to allow more flexibility for permitting approaches.

V. OTHER CHANGES TO METHODOLOGIES

A. Site-specific Ambient-based Standards

The Commission adopted revisions to section 31.7(1)(b)(ii) that identify two types of ambient-based standards, "feasibility-based" and "natural or irreversible quality-based" standards, to recognize that in some cases water quality can be improved, but not to the level required by the table value.

Where the only sources and causes of the pollutant(s) are natural, ambient quality-based ambient standards continue to be the Commission's preference. However, where the sources and causes are to some extent anthropogenic, more clarity is needed to assure that classifications and standards are set to protect the highest water quality attainable.

The provision (the downgrading factors) that provides the authority for ambient-based standards is based on the same provisions that authorizes discharger-specific variances (DSVs) (40 CFR § 131.10(g) and 31.6(2)(b)), except that the cause is not a permitted point source, and this action would apply to the entire segment. Since it is the same regulatory foundation, it is appropriate to use the same feasibility bar for determining what improvements are appropriate. As with DSVs, this type of change to numeric standards is authorized only where a comprehensive alternatives analysis demonstrates that there are no feasible alternatives that would provide better water quality.

The Commission continues to believe that adopting ambient standards for a constituent(s) is preferable to downgrading or removing entire uses and their associated water quality standards. Adopting an ambient standard in effect creates a sub-category of the use and is a regulatory downgrade. These ambient standards protect the highest attainable use and are consistent with 31.6(1)(e), which requires that classifications should be for the highest water quality attainable. To that end, "highest attainable use" was defined and added to section 31.5.

The revisions also provide clarity regarding the analysis and documentation that is required to make the "no feasible alternatives" demonstration. The Commission encourages proponents to complete the Division's checklist to ensure that their supporting information is adequate.

B. Temporary Modifications set to Current Condition

The Commission revised section 31.7(3) to incorporate a new subsection (d) that explicitly addresses the operative value that is in place during the term of a temporary modification. These changes recognize current policy and are not meant to change that policy, only to clarify and expressly approve its use. This change authorizes the use of the narrative statement "current condition" as the operative value to preserve the status quo for the discharger and the waterbody during the term of the temporary modification. The Commission indicated that if the standards database can be adjusted to accommodate it, that future proposals for temporary modifications should include in the table the date on which the temporary modification was adopted. Temporary modifications are only appropriate where a compliance problem exists, and the adoption of the temporary modifications are intended to temporarily relax the control requirements, including direct discharge permits, indirect discharge permits, and other control mechanisms such as local limits while the uncertainty regarding the underlying standards is addressed. The Commission recognizes that during the temporary modification permitted dischargers' effluent quality may be marginally changed and that variability in effluent quality may occur. Because the status quo is to be maintained, the Commission does not intend that temporary modifications set at "current condition" apply to new or expanded discharges. Protection of existing uses means protection of the actual uses rather than protection of the full use classification. The Commission intends that the revisions to section 31.7(3) apply prospectively only, and do not retroactively change the basis for or implementation of previously adopted or extended temporary modifications set at "current conditions."

C. DSV Alternative Effluent Limits

The Commission revised section 31.7(4)(b) to clarify that the Division, not the Commission, sets the alternate effluent limits of a discharger-specific variance, and that these limits are to be expressed as a temporary hybrid standard. The hybrid approach establishes a cap on the effluent limit, but does not actually set the level of the effluent limit. The Commission added three new subsections (i), (ii) and (iii) to describe the format of the hybrid standard and how it is used by the Division to set control requirements such as discharge permit effluent limitations.

Based upon the results of a comprehensive alternatives analysis, the Commission will determine specifically which alternative(s) provide the highest degree of protection of the classified use that is

feasible. The alternative effluent limit establishes conditions to be met through implementation of the selected alternative(s). The Commission expects that in most cases, the alternative effluent limit will be a numeric limit. In cases where there is a high degree of uncertainty regarding the improvement or effluent concentrations that will be achieved, the Commission may adopt an alternative effluent limit as a narrative condition that identifies specific actions to be completed through implementation of the selected alternative(s).

D. Downstream Protection

The Commission adopted modifications at section 31.3 to more clearly identify that water quality classifications and standards must protect downstream waters. In the past, the Commission and Division have relied on section 31.6(1)(c) and Regulation #61 to provide this protection. This modification implements 40 CFR § 131.10(b) and is not intended to change Colorado's current practice that already considers and ensures the protection of downstream water quality during the development of designated uses and water quality standards.

VI. HOUSEKEEPING

The Commission added clarification to a number of items and corrected minor typographical errors:

- Definition of MWAT and WAT: The definitions of Maximum Weekly Average Temperature (MWAT at 31.5(26)) and Weekly Average Temperature (WAT at 31.5(50)) were clarified. The MWAT definition was shortened and does not repeat the details that are in the WAT definition. The word "mean" was inserted in the WAT definition to clarify that the WAT is calculated from daily average temperatures. This is consistent with the current implementation methods of the Permits and Assessment. The words "multiple" and "equally spaced" in the WAT definition were removed to reflect current assessment methodology.

- 31.6(4)(b): A missing parenthesis was added to this subsection.

- 31.6(2)(b)(iv): The phrase "result in attainment or the use" was to corrected to "result in attainment of the use."

- 31.7(3)(a)(ii)(C): This section was deleted as it describes a condition for granting a temporary modification that is addressed through the discharger-specific variance provisions, and was repealed effective 10/01/2013.

- 31.11(3): The content of Footnote 5 to the Table of Basic Standards for Organic Chemicals was deleted as unnecessary and replaced with the word "deleted." The Commission notes that practical quantification limits are now located in a Division policy document and not in Regulation #61.

- 31.16 Table III – Footnote 3: The word "aluminum" was added to replace the chemical abbreviation, and a space was deleted.

- 31.16 Table III – Footnote 5: The word "total" was deleted from the phrase "50 µg/L total chromium" to clarify that the sum of hexavalent and trivalent chromium is not to exceed 50 µg/L. Capitalization, spacing, and symbol use was also corrected for portions of this footnote.

PARTIES TO THE RULEMAKING

1. Metro Wastewater Reclamation District
2. Colorado Parks and Wildlife

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5. Colorado Monitoring Framework
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Office of the Attorney General

Tracking number: 2016-00109

Opinion of the Attorney General rendered in connection with the rules adopted by the

Water Quality Control Commission (1002 Series)

on 08/08/2016

5 CCR 1002-31

REGULATION NO. 31 - THE BASIC STANDARDS AND METHODOLOGIES FOR SURFACE WATER

The above-referenced rules were submitted to this office on 08/15/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

August 24, 2016 11:59:29

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission (1002 Series)

CCR number

5 CCR 1002-61

Rule title

5 CCR 1002-61 REGULATION NO. 61 - COLORADO DISCHARGE PERMIT SYSTEM 1 - eff 12/31/2016

Effective date

12/31/2016

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL COMMISSION

REGULATION NO. 61

COLORADO DISCHARGE PERMIT SYSTEM REGULATIONS
(5 CCR 1002-61)

. . . .

61.1(2) INCORPORATION BY REFERENCE

Throughout these regulations, standards and requirements promulgated by the U.S. Environmental Protection Agency have been adopted and incorporated by reference. The federal references cited herein include only those versions that were in effect as of June 14, 2016, and not later amendments to the incorporated material.

All material incorporated by reference is available at no cost in the online edition of the Code of Federal Regulations (CFR) hosted by the U.S. Government Printing Office. Requests for public inspection of materials incorporated by reference in this regulation should be made to the Permits Section, Water Quality Control Division, at the Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

. . . .

61.8(1) PROHIBITIONS

. . . .

(e) No permit shall be issued which allows a discharge that by itself or in combination with other pollution will result in pollution of the receiving waters in excess of the pollution permitted by an applicable water quality standard or applicable antidegradation requirement unless the permit contains effluent limitations and a schedule of compliance specifying treatment requirements or the Division has granted a variance from the water quality standard.

. . . .

61.8(2) DEFINITION OF EFFLUENT LIMITATIONS

Effluent limitations for each permit will, as a minimum, include the following effluent limitations and standards. Effluent limitations for land disposal systems shall, as a minimum, meet the applicable provisions of the "Regulations for Effluent Limitations" (Regulation 62, 5 CCR 1002-62) except that the limitation for residual chlorine at section 4(d) shall not apply.

(a) Technology Based Effluent Limitations

. . . .

(b) Water Quality Standards-Based Effluent Limitations

(i) Where the effluent limitations, as required by paragraph (1) of this section will not provide sufficient treatment to meet water quality standards, including narrative standards, for the

receiving waters, the Division will define more stringent effluent limitations based upon water quality standards in accordance with The Basic Standards and Methodologies for Surface Water, Regulation No. 31 et. seq (5 CCR 1002-31) and "The Basic Standards for Groundwater", (5 CCR 1002-41). Effluent limitations designed to meet water quality standards shall be based on application of appropriate physical, chemical, and biological factors reasonably necessary to achieve the levels of protection required by the standards. Such determination shall be made on a case-by-case basis.

. . . .

(F) Where a water quality standard has not been established for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or measurably contributes to an excursion above a narrative water quality standard, the Division must establish effluent limits using one or more of the following options:

(I) Establish effluent limits in a manner consistent with the commission's methodology for establishing numeric water quality standards and, if applicable, such limits shall be consistent with the criteria contained in Tables I, II and III of the Basic Standards, Regulation No. 31; or

(II) Establish effluent limits on an indicator parameter for the pollutant of concern, provided:

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limit;

(b) The permit rationale sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(d) The permit contains a reopener clause allowing the Division to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

. . . .

(c) Wasteload Allocation and Trading

(i) Where multiple discharges within a given segment of receiving waters require the definition of maximum loading and waste load allocations for that segment, the Division is responsible for defining the waste load allocations among the permittees affected, but such allocations will be made in cooperation and with collective assistance of these permittees.

(ii) Trading of existing wasteload allocations or reductions in load allocations among point and/or non-point sources may be used to set effluent limits based on duly promulgated

control regulations. In the establishment of effluent limits the Division may also take into account watershed-based water quality plans, federal lands use plans, or other enforceable measures allowed under state or federal requirements and impacting pollutant loadings.

(iii) Where the discharge contains a pollutant for which the receiving waters are impaired and a TMDL is required, a permit may be extended with the permittee's concurrence based on the imminent completion of the TMDL and/or other factors deemed relevant by the Division. If, in the Division's judgment, an extension is not appropriate, a renewal permit may be issued that allows the discharge to continue at a level up to the existing permitted point source load. Where the Commission has adopted a temporary modification for a parameter for which the segment receiving the discharge is impaired, effluent limits shall be set in accordance with the provisions of Regulation No. 31.

Within a reasonable time of EPA's approval of the TMDL, the Division shall reopen or reissue the permit and incorporate effluent limits consistent with the wasteload allocation established under the TMDL. Where necessary, the Division shall also include interim limits and a schedule of compliance to attain such limits.

61.8(3) CONDITIONS OF PERMITS

. . . .

(r) The permit shall include best management practices to control or abate the discharge of pollutants when numeric effluent limitations are infeasible, when the practices are reasonably necessary to achieve effluent limitations and standards, or when authorized under 304(e) of the federal act for control of toxic pollutants and hazardous substances.

. . . .

(u) Notwithstanding 61.8(3)(r), the permit shall, where appropriate, include control measures, innovative solutions, or other management approaches to control or abate the discharge of pollutants or the impacts from the discharge of pollutants when numeric effluent limitations are infeasible, when reasonably necessary to achieve effluent limitations, or to achieve and maintain an applicable water quality standard or antidegradation requirement.

. . . .

61.68 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE – JUNE 13-14, 2016 RULEMAKING HEARING, EFFECTIVE DATE DECEMBER 31, 2016

The provisions of sections 25-8-202(1)(d)(1) and 25-8-501 to 25-8-504, C.R.S., provide the specific statutory authority for the amendments to this regulation adopted by the Water Quality Control Commission (commission). The commission has also adopted, in compliance with section 24-4-103(4) C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

As part of the hearing on Regulation #31, the Basic Standards and Methodologies for Surface Water, the commission made substantial changes to section 31.14, "Implementation in Discharge Permits." The commission determined that it was appropriate to make four conforming changes to Regulation #61.

First, the cross reference to 31.14(15) contained in 61.8(1)(e) was eliminated since 31.14(15) is being deleted. While the provision formerly contained at section 31.14(15) is being moved to 31.9 the commission found that a cross reference was unnecessary.

Second, the statements contained in the former section 31.14(4) regarding how effluents limits are to be derived was moved to 61.8(2)(b)(i)(F)(I) to replace and eliminate the need for a cross-reference. The commission continues to find that in circumstances where the division establishes effluent limits in accordance with 61.8(2)(b)(i)(F)(I), that upon the request of any interested person, the Commission may hold a rulemaking hearing to consider the adoption of a numerical standard, which would then be binding.

Third, a cross reference contained at 61.8(2)(c) was modified since the provision will no longer be contained in section 31.14.

Fourth, a provision formerly contained at section 31.14(5) that addressed the integration of innovative solutions or management approaches into discharge permits was moved to a new section 61.8(3)(u). The commission determined that this provision is more appropriately included in Regulation #61. This new provision is an appropriate complementary regulatory tool to the existing section 61.8(3)(r), which authorizes the use of best management practices in discharge permits to control or abate the discharge of pollutants.

Since Regulation #61 was opened for the Regulation #31 hearing, the commission took the opportunity to update the incorporation by reference date in section 61.1(2). The effect of this change is to include the most recent versions of the federal materials that are already incorporated within Regulation #61, while maintaining consistency with the State Administrative Procedures Act, which requires that a rule incorporating materials by reference must indicate that later amendments or editions of the incorporated material are not part of the rule.

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Tracking number: 2016-00110

Opinion of the Attorney General rendered in connection with the rules adopted by the

Water Quality Control Commission (1002 Series)

on 08/08/2016

5 CCR 1002-61

REGULATION NO. 61 - COLORADO DISCHARGE PERMIT SYSTEM

The above-referenced rules were submitted to this office on 08/09/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 24, 2016 11:59:48

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of State

Agency

Secretary of State

CCR number

8 CCR 1505-1

Rule title

8 CCR 1505-1 ELECTIONS 1 - eff 09/30/2016

Effective date

09/30/2016

COLORADO SECRETARY OF STATE

8 CCR 1505-1
Election Rules

Rules as Adopted – Clean
August 11, 2016

Please note the following formatting key:

Font effect	Meaning
Italic blue font text	Publication notes and annotations

[Current 8 CCR 1505-1 is amended as follows:]

Amendments to Rule 1 concerning definitions:

1.1.8 "Ballots cast" means the total number of ballots received by the county clerk in an election. "Ballots cast" does not include mail ballot envelopes returned to the county clerk by the U.S. Postal Service as undeliverable.

[Current Rules 1.1.8 through 1.1.11 are renumbered accordingly as Rules 1.1.9 through 1.1.12]

1.1.13 "Damaged ballot" means a ballot that is torn, bent, or otherwise mutilated or rendered unreadable, so that it cannot be processed by the ballot scanner. Damaged ballots include:

(a) All ballots that contain a foreign substance that could interfere with the ballot scanner (e.g. food, drink, etc.).

(b) Ballots that are marked in a medium or manner that cannot be detected by a ballot scanner.

[Current Rules 1.1.13 through 1.1.28 are renumbered accordingly as Rules 1.1.14 through 1.1.29]

1.1.30 "Optical scanner or ballot scanner" means an optical or digital ballot scanner.

[Current Rules 1.1.30 through 1.1.48 are renumbered accordingly as Rules 1.1.31 through 1.1.49]

Amendments to Rule 2.3 concerning voter registration:

2.3 When processing a new voter registration application, the county clerk must mark the registration record "ID required" unless the elector provides his or her verifiable driver's license number or state identification number, or the elector is otherwise exempt under law. [Section 1-2-204(2)(f.5), C.R.S.]

Repeal of Rule 2.3.4.

Repeal of Rule 2.10.2:

2.10 New voter notification under section 1-2-509(3), C.R.S. During the 22 days before an election, the county clerk must defer processing undeliverable new voter notifications. After the election is closed, the clerk must determine an applicant "not registered" under section 1-2-509(3), C.R.S., only if the applicant did not vote in the election.

Amendments to Rule 2.11.1 concerning voter registration confidentiality:

2.11.1 Information about an agency's name and location for an application completed at a voter registration agency or driver's license office is confidential. [52 USC § 20504(c)(2)(D)(iii)]

Amendments to Rule 2.12.1 concerning list maintenance under section 8 of the National Voter Registration Act of 1993:

2.12.1 The Secretary of State will provide monthly National Change of Address (NCOA) data under section 1-2-302.5, C.R.S., to the county clerk by the fifth of each month.

(a) The county must process the data to update registration records and send notifications in accordance with section 1-2-302.5, C.R.S., by the end of each month.

(b) The county may not change a residential address to a non-residential address, like a post office box, based on the information in the NCOA data.

(c) When the county updates a voter registration record using NCOA data, the county must use the NCOA transaction source.

Amendments to Rule 2.14.1 concerning voter registration records and data:

2.14.1 The SCORE system must retain digital images of voter registration applications in perpetuity in accordance with section 1-5-301, C.R.S.

Amendments to Rule 3.3.3 concerning qualified political organizations:

3.3.3 To qualify for the ballot, a candidate must have been affiliated with the qualified political organization by the first business day in January of the election year, or if the organization has not been qualified, the candidate must have been registered as unaffiliated by the first business day in January of the election year.

New Rule 6.9 concerning election judges:

6.9 The county clerk must arrange for a criminal background check on each supervisor judge and each staff member with access to SCORE or electors' confidential or personally identifiable information.

6.9.1 The criminal background check must be conducted by or through the Colorado Bureau of Investigation, the county sheriff's department in accordance with section 24-72-305.6(3), C.R.S., or similar state or federal agency.

6.9.2 A person convicted of an election offense or an offense containing an element of fraud may not handle voter registration applications or conduct voter registration and list maintenance activities.

New Rule 7.5.1(e) concerning receipt and processing of ballots:

7.5.1 The county clerk must adequately light all stand-alone drop-off locations and use either an election official or a video security surveillance recording system as defined in Rule 1.1.43 to monitor each location.

(a) Freestanding drop-off locations must be monitored when they are open to receive ballots.

(b) If the drop-off location utilizes a drop-slot into a building, the ballots must be collected in a locked container, and both the drop-slot and container must be monitored.

(c) Signage at each drop-off location must inform voters that it is a violation of law for any person to collect more than ten ballots for mailing or delivery in any election, and that electioneering is prohibited within 100 feet of any drop-box.

(d) The minimum number of drop-off locations must be open during reasonable business hours as defined in Rule 7.9.1(a) and from 7:00 a.m. through 7:00 p.m. on election day.

(e) Video security surveillance is an election record under section 1-1-104(11), C.R.S. and must be retained by the county clerk in accordance with section 1-7-802, C.R.S.

Amendments to Rule 8.1.5 concerning watchers:

8.1.5 A watcher must complete a training provided by or approved by the Secretary of State before observing election activities where confidential or personally identifiable information may be within view. To verify completion of the training, a watcher must provide his or her training certificate of completion with the Certificate of Appointment.

Amendments to numbering in Rule 8.7.4:

8.7.4 Watchers must remain outside the immediate voting area while an elector is voting. The six-foot limit in Rule 1.1.27 applies only to voting.

Amendments to Rule 9.2 regarding mail ballot challenge:

9.2 challenging a mail ballot voter

9.2.1 If an individual challenges a mail ballot under section 1-9-207, C.R.S., the election judge must forward the ballot to two other election judges of different political party affiliations who must review the elector's eligibility to vote.

(a) If both election judges determine the elector is not eligible under section 1-9-207, C.R.S., the judges must follow the procedures in section 1-7.5-107.3(2), C.R.S.

(b) If both election judges determine the elector is eligible and that elector's signature is valid, the election judges must count the elector's ballot.

9.2.2 Unless the challenge is withdrawn, the county clerk must notify a voter whose ballot was challenged. The notification must include a copy of the challenge form, the disposition of the ballot, and a statement that the matter will be referred to the district attorney under section 1-9-209, C.R.S. The county clerk must provide a copy of the notification to the challenger upon request.

Amendments to Rule 10.5.2 regarding the state portion of the abstract:

10.5.2 A county must submit the state portion of the abstract and the ENR upload required by Rule 11.10.5 to the Secretary of State in the format approved by the Secretary of State. The state portion of the abstract must include:

(a) The summary of votes cast for each state race and each ballot question or issue;

and

(b) The total number of ballots counted in the election.

Amendments to Rule 10.11.2 regarding testing recount equipment:

10.11.2 The county clerk must test all optical scanners that will be used in the recount. The purpose of the test is to ensure that the tabulation machines are counting properly.

(a) The test deck must include 50 ballots or 1% of the total number of ballots counted in the election, whichever is greater, except that the total number of ballots tested may not exceed the total number of ballots comprising the county's test deck for the Logic and Accuracy test before the election. The ballots must be marked to test every option for the race or measure that will be recounted.

Amendments to Rule 10.11.3 regarding testing recount equipment:

10.11.3 The county clerk must test the VVPAT records from 1% of the DREs that had votes cast on the ballot style containing the race or measure being recounted.

(a) Sworn judges or staff must manually verify the results on the machines selected for the test.

(b) The test is limited to the race or measure that is recounted.

Amendments to Rule 10.12.4(d) regarding recounting ballots using "Ballot Now":

10.12.4 To recount ballots using "Ballot Now":

(d) Save all recount Cast Vote Records to the MBBs after verifying that the number of ballots processed matches the number of votes cast in the recount contest.

Amendments to Rule 10.12.7 regarding recounting ballots by hand:

10.12.7 Tabulation of ballots must be completed through a precise, controlled process that ensures each container of ballots is retabulated and resealed before tabulation of the next container begins.

Amendments to Rule 10.13.1 regarding canvass and reporting results for a recount:

10.13.1 Totals of recounted ballots must be reported in summary form as follows:

(a) Sum total of votes for each race or measure recounted, under-votes, and over-votes for each location;

(b) The totals must be a combined total, not totaled by individual precincts or location, unless the tabulation system allows.

Amendments to Rule 11.3.2(d) regarding Logic and Accuracy Test:

11.3.2 Logic and Accuracy Test

(d) Conducting the Test

(4) The Testing Board and designated election official must count the test

ballots as follows, if applicable:

(B) DREs:

(i) The Testing Board must test at least one DRE.

(ii) The Testing Board must randomly select the machines to test.

(iii) Each member of the Testing Board must separately cast his or her test ballots on the selected DREs. Each Testing Board member must cast at least one of his or her test ballots using the audio ballot playback and accessible input devices.

(iv) Each Testing Board member must examine the tabulation tape or report and verify that the DRE results match what the Testing Board member manually marked on his or her test ballots.

Amendments to Rule 11.3.3 regarding post-election audit:

11.3.3 Post-Election Audit. The designated election official must conduct the post-election audit mandated by sections 1-7-509(1)(b) and 1-7-514, C.R.S., in accordance with this rule.

(a) Selected voting devices

(1) No later than 48 hours after the close of polls on election night, the Secretary of State must notify the designated election official of the voting devices randomly selected for audit, based on the submitted hardware inventory list referred to in Rule 11.2.

(2) The Secretary of State will randomly select, from the voting devices used in the election, at least five percent of the central count ballot scanners; at least one ballot scanner used at a polling location; and five percent of DREs.

(b) The designated election official must appoint an audit board to conduct the post-election audit in accordance with section 1-7-509(1)(c), C.R.S. At least two canvass board members must observe the random audit. The designated election official, members of his or her staff, and other duly appointed election judges, may assist with the audit.

(c) Number of ballots to audit

(1) Paper ballots tabulated on ballot scanners. The board must audit at least 500 ballots or 20 percent of the ballots tabulated on each selected ballot scanner, whichever is less. The board may audit more than the minimum number of ballots required.

(2) Electronic ballots tabulated on DREs. The board must audit all ballots tabulated on the selected DREs.

(d) Conducting the audit

(1) Paper ballots tabulated on ballot scanners

(A) If the voting system is capable of generating batch-level tabulation reports for a selected ballot scanner, the board must randomly select a number of ballot batches tabulated on the ballot scanner that, in the aggregate, contain the minimum number of ballots to be audited. The board must manually verify that the votes on the ballots contained in each randomly selected batch match the voting system's tabulation of votes for that batch.

(B) If the voting system is not capable of generating batch-level tabulation reports for a selected ballot scanner, the board can choose to audit all of the ballots that were tabulated on the selected scanner, or randomly select and rescan the minimum number of ballots to be audited. If the board chooses to rescan the minimum number of ballots, the board also must:

(i) Reset the selected ballot scanner's results to zero and generate a zero report;

(ii) Rescan the randomly selected ballots for audit and generate a tabulation report from the selected ballot scanner; and

(iii) Manually verify that the votes on the randomly selected ballots match the tabulation report for those ballots generated from the selected ballot scanner.

(2) Ballots tabulated on DREs. The board must examine the VVPAT record of each selected DRE and manually verify that the votes reflected on the VVPAT match the tabulation report.

(e) If the board discovers discrepancies during the audit, the board must:

(1) Confirm that the manual count of the votes contained in the audited ballots is correct;

(2) Confirm that the manual count of the votes contained in the audited ballots properly reflects overvotes, stray marks on the ballot, and other indications of voter intent;

(3) Determine whether any discrepancy is attributable to a damaged ballot; and

(4) Take any other action necessary in accordance with the canvass board's powers as described in Part 1, Article 10 of Title 1, C.R.S.

(f) The designated election official must report the results of the audit in writing to the Secretary of State by 5:00 p.m. on the last day to canvass. The audit report may be submitted by mail, fax, or email. The audit report must contain:

(1) The make, model, and serial number of the voting devices audited;

(2) The number of ballots originally counted on each device or the number of

ballots audited;

(3) The count of the specific races on the summary report printed at the close of polls or the report generated for the audit;

(4) The count of the specific races as manually verified;

(5) Any other information required by section 1-7-514, C.R.S.; and

(6) The signatures of the audit board, the canvass board members who observed the audit, and the designated election official.

(g) The designated election official must segregate and seal the materials used during the post-election audit, including all tabulation reports, the audited ballots, and the audit report.

Amendments to Rule 11.10.1 concerning election night reporting:

11.10 Election Night Reporting. The county must use the Secretary of State's Election Night Reporting (ENR) system to report results for all primary, general, coordinated, and recall elections in accordance with this Rule.

11.10.1 A data entry county must upload a results data file to ENR containing the election results on the dates and times specified in Rules 11.10.3 through 11.10.5. The county must program its election database so that the results file exported from the voting system is formatted in accordance with the following requirements:

(a) Contest names: Except as otherwise provided in subsections (1) – (3) of this Rule, the results file must contain the contest names as they are certified for the ballot.

(1) For primary elections, the county must append to the end of the certified contest name the SCORE abbreviation of the political party affiliation of the candidates in the contest (e.g., "United States Senator – Dem," "State Senator – District 21 – REP," "County Treasurer – Lib,").

(2) For ballot measures other than judicial retention questions, the contest name must include the political subdivision that referred the measure to the ballot, the ballot measure type, and the number or letter as it appears on the ballot (e.g., "Adams County Ballot Issue 200," "City of Brighton Ballot Question 5A,").

(3) For Judicial Retention Questions, the contest name must include the court and the title and last name of the justice or judge standing for retention (E.g., "Supreme Court – Justice Erickson," "Court of Appeals – Judge Jones," "1st Judicial District– Judge Smith," "Adams County Court – Judge Doe,").

(b) Contest order: Except as otherwise provided in subsections (1) – (4) of this Rule, the results file must list the contests in the same order as they are certified for the ballot.

(1) For primary elections, the results file must list the contests in the order prescribed by section 1-5-403(5), C.R.S., grouped in ascending alphabetical order of the abbreviated names of the participating major

political parties, followed by the abbreviated names of participating minor political parties and qualified political organizations (e.g., “United States Senator – DEM,” “United States Senator – REP,” “United States Senator – GRN,” “United States Senator – LIB,” “United States Senator – UNI,”).

(2) The results file must list ballot measures in the order certified by the Secretary of State, followed by the ballot measures certified by other participating political subdivisions in the order and using the numbering conventions specified in Rule 4.5.2(f).

(3) A county using the Dominion, Hart, or Sequoia voting system must include and populate the contest sequence number field in its results files to define the order of contests on the ballot as required by this Rule.

(4) A county using the ES&S or Premier voting system must include and populate the contest ID field in its results file to define the order of contests as required by this Rule.

(c) Candidate names: The results file must include candidates’ names in proper case and include periods following initials (e.g., “John A. Smith”), and may not include the name or abbreviation of the candidate’s political party.

(d) Precinct names: If a county reports results by precinct, its results file may only include the ten-digit precinct number from SCORE.

(e) Provisional results: The results file must include a “provisional” precinct or counting group as a placeholder for separately reported provisional ballot results if required by section 1-8.5-110(2), C.R.S.

[Rule 11.10.2 is retained, unaltered]

Amendments to Rule 11.10.3:

11.10.3 No later than 14 days before the election, a data entry county must upload the LAT results file to ENR. At a minimum, the LAT results file must contain the results of the complete county test deck required under Rule 11.3.2(c)(1).The county must also provide the Secretary of State with a summary results report for the LAT results file.

Amendments to Rule 14.2 concerning voter registration drive training:

14.2 Training

14.2.1 To receive a VRD number, the VRD organizer must successfully complete the online training and test provided by the Secretary of State and submit a Statement of Intent and Training Acknowledgment form to the Secretary of State.

14.2.2 Before circulating, a VRD circulator must complete a training provided by the VRD organizer and submit a Training Acknowledgment form to the VRD organizer. The training must include, at a minimum, the content contained in the Secretary of State’s circulator training.

14.2.3 The VRD organizer training is provided online, but a VRD organizer may schedule a time to view the training at the Secretary of State’s office.

14.2.4 After completing the VRD organizer training, the VRD organizer must complete the

training test and answer the questions 100% correctly before the Secretary of State will issue a VRD number.

14.2.5 After completing the VRD organizer training and test, the VRD organizer must sign a Statement of Intent and Training Acknowledgment Form confirming that the training and test have been completed and that he or she was informed of rules, laws and penalties relating to voter registration drives.

14.2.6 A VRD organizer must complete the training and test every calendar year in which he or she intends to conduct a VRD.

14.3 Number Assigned

14.3.1 After successful completion of the required training and test, and submission of the Statement of Intent and Training Acknowledgment Form, the Secretary of State will assign a unique number to the VRD. After issuing a unique number to the VRD, the Secretary of State will:

(a) Advise the VRD organizer of their unique number;

(b) Notify the county clerks within 24 hours after each VRD number has been issued by the Secretary of State; and

(c) Post the agent and the name of the group conducting the drive on the Secretary of State website.

14.3.2 All assigned VRD numbers are valid through December 31 of the year that the number is assigned.

14.3.3 The VRD must assign each circulator a unique circulator identification number and maintain a record of each number issued. The circulator identification number must begin with the VRD's five-digit identification number (e.g., 16-999-0001).

Amendments to Rule 14.4 concerning Voter Registration Drive voter application forms:

14.4 Voter Registration Drive Voter Application Forms

14.4.1 The Secretary of State will approve a standard Colorado Voter Registration Drive Application Form. The VRD may also use the National Mail Voter Registration Form.

14.4.2 A VRD organizer can obtain Colorado Voter Registration Drive Application Forms from County Clerks and the Secretary of State.

14.4.3 The organizer is responsible for placing the VRD number on the application form.

14.4.4 The VRD organizer must receive a VRD number before he or she can receive the approved Colorado Voter Registration Drive Application Forms.

14.4.5 The circulator must include his or her unique circulator identification number on each voter registration form he or she submits.

14.4.6 Any voter registration drive that provides a voter registration application on its website or a link to such voter registration form must direct the applicant to return the completed form directly to the county clerk of the applicant's legal residence. No VRD may provide a voter registration form on its website or a link to such voter registration form which

instructs or directs, in any way, the applicant to return the completed form to anyone or any group other than directly to the county clerk of the applicant's legal residence or, in the case of overseas electors or UOCAVA electors, the county clerk or the Secretary of State.

14.4.7 A VRD organizer or circulator must provide the applicant a blue or black ink pen to complete the application, and may not highlight or otherwise mark the approved voter registration drive application form other than to write the VRD number and circulator information.

Amendments to Rule 18 concerning uniform ballot counting standards:

Rule 18. Uniform Counting Standards for Paper Ballots

18.1 In any election where a multiple page printed ballot is used, a voter must vote and return all pages of the ballot at the same time. Any voter who returns at least one page of a multiple page printed ballot will be considered to have voted and the county clerk or designated election official must count the votes on the submitted pages. The county clerk must not count votes on additional pages returned at a later time. The county clerk must appropriately mark, set aside, and preserve the ballots as election records in accordance with section 1-7-802, C.R.S.

18.2 Standards for hand counting paper ballots

18.2.1 In accordance with section 1-7-309, C.R.S., and Rule 18.5, judges counting ballots must consider the intent of the voter.

18.2.2 If a race or ballot measure is overvoted, the judges must not count any vote for that race or ballot measure.

18.2.3 If a race or ballot measure contains no markings by the voter, no tally will be made for that race or ballot measure. But all other candidate races or ballot measures properly marked by the voter on the ballot must be counted.

18.2.4 A ballot which has no markings for any candidate races or ballot measures must be tallied as a blank ballot.

18.3 Standards for counting paper ballots on ballot scanners

18.3.1 Procedures for counting paper ballots on ballot scanners at polling locations

(a) To the extent permitted by its voting system, the county must program ballot scanners to sort ballots with write-in votes to a segregated bin of the ballot box or digital media and to initially reject blank ballots and ballots with overvotes.

(b) Voters whose ballots are initially rejected by a ballot scanner as a blank or overvoted ballot must be given the opportunity to review and correct their ballot. If after review, a voter requests to submit the blank or overvoted ballot as originally marked, an election judge must assist the voter by overriding the initial rejection setting on the ballot scanner.

(c) At the conclusion of voting, ballots with write-in votes must be delivered to the central count location in a secure container for resolution in accordance with Rule 18.5.3.

18.3.2 Procedures for counting paper ballots on ballot scanners at central count locations

(a) Before tabulation, a resolution board must duplicate damaged ballots, and may duplicate ballots with marks that may identify the voter, in accordance with Rule 18.4. Election judges may visually inspect every ballot for the limited purpose of segregating damaged ballots and ballots with marks that may identify the voter.

(b) A county must sort ballots requiring resolution according to the capabilities of its voting system.

(1) If a county's voting system supports digital ballot resolution, the county must program the voting system to digitally queue for resolution blank ballots, ballots with write-in votes, and ballots with overvotes. Ballots with marginal or ambiguous markings must be sorted according to the system provider's specifications, or, if different, the applicable Conditions of Use issued by the Secretary of State. The digitally queued ballots must be resolved by election judges in accordance with Rule 18.5.

(2) If a county's voting system does not support digital ballot resolution, the county must program the central count ballot scanners to reject or sort blank ballots and ballots with overvotes, and to sort ballots with write-in votes. The resolution board must resolve all ballots initially rejected and sorted by the central count ballot scanners in accordance with Rule 18.5.

(c) A resolution board must resolve ballots sorted or rejected for resolution.

(1) In partisan elections, a resolution board must consist of at least two election judges affiliated with different major political parties.

(2) In nonpartisan elections, a resolution board must consist of at least two election judges.

(3) In counties with a voting system that does not support digital resolution, the county must have at least one resolution board.

(4) In counties with a voting system that supports digital resolution, a resolution board must work at each resolution workstation.

(5) The members of a resolution board for an election may change, but all members of the resolution board at any particular time must satisfy the eligibility requirements specified in this Rule 18.3.2(c).

18.4 Ballot Duplication

18.4.1 A resolution board must duplicate a voter's choices or selections on a damaged ballot onto a blank ballot of the same ballot style in accordance with Rule 18.4. During the duplication process, and to the extent necessary, the resolution board must also resolve overvotes, write-in votes, and ambiguous markings in accordance with Rule 18.5. During ballot duplication, two additional election judges must observe or review the work of each resolution board. In a partisan election, the observing election judges must be representatives of each major political party.

18.4.2 A resolution board must review the original ballot and the duplicated ballot, and consult the Voter Intent Guide if necessary, to ensure that each damaged ballot has been properly and accurately duplicated.

18.4.3 In order to match each damaged ballot to its corresponding duplicated ballot, the

resolution board must identify and mark each damaged and duplicated ballot with the type of ballot and a unique number, similar to the following example: mark the damaged ballot “Orig 0001,” and the counterpart duplicated ballot “Dupe 0001.”

18.4.4 The resolution board must maintain a written log itemizing all damaged ballots that it duplicates. The duplication log must include at least each damaged and duplicated ballot’s unique number, the date on which it was duplicated, the reason for duplication, and the printed names and signatures of the members of the resolution board.

18.4.5 A county clerk must count duplicated ballots in the same manner as all other paper ballots.

18.4.6 Before retention for storage, the resolution board must deposit all duplicated ballots and duplication logs in a sealable container that is clearly marked to identify its contents (e.g., “damaged ballots”). The county must maintain chain-of-custody and seal logs for the damaged ballot container at all times during the statutory election records retention period.

18.5 Ballot Resolution

18.5.1 A resolution board must resolve all blank ballots and ballots with overvotes, write-in votes, and ambiguous markings in accordance with the Secretary of State’s Voter Intent Guide.

18.5.2 Resolution of blank ballots. A resolution board must examine blank ballots to determine if the ballot is a true blank ballot or one that has been marked in a manner or medium that was not detected by the voting system.

(a) Counties without digital resolution capability. If the ballot is truly blank, the resolution board must re-scan the ballot and override the initial rejection setting. If the ballot is marked in a manner or medium that can be discerned by the resolution board but cannot be tabulated by the voting system, the resolution board must duplicate the ballot in accordance with Rule 18.4 and, to the extent necessary, resolve the ballot in accordance with Rule 18.5.

(b) Counties with digital resolution capability. If the ballot is truly blank, the resolution board must record the ballot as a blank ballot in the voting system’s resolution application. If the ballot is marked in a manner or medium that can be discerned by the resolution board but cannot be tabulated by the voting system, the resolution board must resolve the ballot in the voting system’s resolution application in accordance with Rules 18.5.2(b) and 18.5.3.

18.5.3 Resolution of write-in votes

(a) If a voter designates a vote for a named candidate on the ballot and writes in the name of the same candidate in the write-in area, the vote for the named candidate must be counted.

(b) If a voter votes for a named candidate in a ballot contest and writes in the name of a different candidate in the write-in area, the resolution board must resolve the markings as an overvote if the number of chosen candidates exceeds the maximum number of choices for that ballot contest.

(c) During any recount, if the number of undervotes in a ballot contest could change the outcome if attributed to an eligible write-in candidate, votes for that candidate

must be counted whether or not the target area designating the selection of a write-in candidate has been marked, provided that the number of candidates chosen does not exceed the number permitted in that office.

Amendments and numbering corrections to Rule 21.4.12(d)(5):

(d) The VVPAT must meet the following design requirements:

(5) Print and store paper record copies of at least 75 voted ballots without requiring the paper supply source, ink or toner supply, or any other similar consumable supply to be changed, assuming a fully printed double sided 18 inch ballot with a minimum of 20 contests.

Numbering corrections to Rule 21.4.14:

21.4.14 Ballot-level Cast Vote Records and Exports. All voting systems certified by the Secretary of State for use in Colorado on or after January 1, 2016 must meet the following requirements for ballot-level cast vote records and exports on or before December 31, 2016:

(a) The voting system must capture a ballot-level cast vote record (CVR) consisting of a single record for each ballot tabulated, showing the manner in which the voting system interpreted and tabulated the voter's markings on the ballot, as adjudicated and resolved by election judges, if applicable.

(b) The voting system must be able to aggregate in a single file and export all CVRs in comma-separated value (CSV) text format.

(c) The CVR export must contain the following fields, with values or data populated by the voting system:

(1) CVR Number. A sequential number from one to the number of CVRs in the export file. This can be used as an alternate method to identify each CVR.

(2) Batch ID. Identifies the batch in which the paper ballot corresponding to the CVR is located.

(3) Ballot Position. Identifies the position of the paper ballot corresponding to the CVR within the batch.

(4) Imprinted ID. If the scanner model supports imprinting a unique character string on the ballot during the scanning process, the voting system must populate this field with the unique character string.

(5) Ballot Style. Indicates the ballot style of the paper ballot corresponding to the CVR.

(6) Device ID. Identifies the scanning device by model, serial number, and/or scanning station identifier.

(7) Contest and Choice Names. Each contest and choice on any ballot in the election must have its own field so that voters' choices in all contests can be easily and independently tabulated after the CVR export is imported into a spreadsheet application.

(d) The header or field names in the CVR export must unambiguously correspond to names of the contests and choices on the paper ballots.

(e) The contests and choices must be listed in the same order as they appear on the ballots.

(f) A vote for a choice must be indicated by a “1”. No vote for a choice or an overvoted condition must be indicated by a “0”. Choices that are not applicable to the CVR must be left blank.

Numbering corrections and amendments to Rule 21.4.15(d):

(d) The ENR export file must include the following items or fields:

(1) Precinct Name. If the county defines the election to report results by precinct, an alphanumeric string consisting of a 10-digit precinct code.

(2) Ballot Style Name. If the county defines the election to report results by ballot style or district, a unique, alphanumeric string for each ballot style.

(3) Precinct ID. If the county defines the election to report results by precinct, a unique integer for each precinct or precinct split.

(4) Registered Voters. The number of registered voters eligible to vote each unique ballot style, or in each precinct or precinct split, as applicable.

(5) Ballots counted. The number of ballots counted for each unique ballot style, or each precinct or precinct split, as applicable.

(6) Contest Name. The contest name as it appears on the ballots. If the contest name contains carriage return(s) for ballot formatting purposes, then the carriage return(s) must not appear in the export.

(7) Contest ID. A unique integer for each contest.

(8) Contest Sequence Number. A unique integer that defines the sequence of contests as they appear on the ballots.

(9) Votes Allowed. The maximum number of choices that a voter may select in each contest (e.g., “Vote for 2”).

(10) Choice Name. The choice name as it appears on the ballots. Party affiliation may not be included in the choice name.

(11) Choice ID. A unique integer for each choice within a contest.

(12) Party Code. An indicator of party affiliation for each choice, if applicable.

(13) Vote Count. The total number of votes for each choice.

(14) Reporting Flag. The reporting flag field must contain a value of “0”.

(15) Precinct Sequence Number. A unique integer that defines the sequence of precincts.

(16) Choice Sequence Number. A unique integer that defines the sequence of candidates as they appear on the ballot.

Amendments to Rule 21.5.2(e) regarding testing preparation procedures:

21.5.2 General testing procedures and instructions

(e) Ballots must be cast and counted in all applicable counter types (or counter groups) as necessary based on the parts included in the voting system. These are, at a minimum, in-person, mail, and provisional ballots. Ballots may be run through components more than one time depending on components and counter group being tested to achieve a minimum number of ballots counted as follows for each group:

(1) Polling location / OS = 1,000;

(2) Polling location / DRE or BMD = 500;

(3) Mail = 1, 500; and

(4) Provisional = 500.

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Tracking number: 2016-00295

Opinion of the Attorney General rendered in connection with the rules adopted by the

Secretary of State

on 08/11/2016

8 CCR 1505-1

ELECTIONS

The above-referenced rules were submitted to this office on 08/11/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 30, 2016 10:38:59

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of State

Agency

Secretary of State

CCR number

8 CCR 1505-6

Rule title

8 CCR 1505-6 RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE 1 - eff 09/30/2016

Effective date

09/30/2016

COLORADO SECRETARY OF STATE

8 CCR 1505-6
Rules Concerning Campaign and Political Finance

Rules as Adopted – Clean
August 11, 2016

(*Italic blue font text* indicate publication notes and annotations)

[Current 8 CCR 1505-6 is amended as follows:]

Amendments to Rule 1.1 (insert quotation marks):

1.1 "Ballot measure" means ballot issue or ballot question.

Amendments to Rule 1.3:

1.3 "Committee" as used generally in these rules includes candidate committee, political committee, small donor committee, issue committee, small-scale issue committee, independent expenditure committee, political party, and political organization.

Amendments to Rule 1.7:

1.7 "Frequent filing schedule" means:

1.7.1 For state candidates and committees, the filing schedule outlined in sections 1-45-108 (2)(a)(I)(B), (2)(a)(I)(C), (2)(a)(I)(D), and (2)(a)(I)(E), C.R.S.;

1.7.2 For a county, municipal, and special district candidate or committee, the filing schedule outlined in section 1-45-108 (2)(a)(II), C.R.S.; and

1.7.3 For political committees, small donor committees, independent expenditure committees, and political organizations participating in a regular biennial school election, the filing schedule outlined in sections 1-45-108(2)(a)(I)(C), (2)(a)(I)(D), and (2)(a)(I)(E), C.R.S.

Amendments to Rule 1.8.2 (capitalization correction):

1.8.2 For a county, municipal, or special district candidate or committee, the annual filing schedule outlined in section 1-45-108(2)(a)(II), C.R.S.

Amendments to Rule 2.2.4(b) concerning managing unexpended campaign contribution for a candidate committee:

(b) Candidates seeking re-election to the same office

(1) A candidate committee may retain contributions to use in a subsequent election cycle for the same public office, in an amount not to exceed the

limit in Colo. Const. Article XXVIII, Section 3(3) (as adjusted by Rule 10.16).

(2) If a candidate committee retains contributions to use in a subsequent election cycle for the same office, the amount retained counts toward the limit on contributions from a political party. A candidate committee must return contributions it receives in excess of the political party limit within ten days.

New Rule 2.4.4 concerning personal financial disclosures:

2.4.4 Personal financial disclosures may be submitted by fax or email and are considered timely if received by 11:59 p.m. MT on the date due.

Amendments to Rule 3.1 concerning political committees and small donor committees:

3.1 A political committee or small donor committee may not make contributions to an issue committee or small-scale issue committee, except to the extent that a contribution is for the purchase of items such as event tickets, merchandise, or services. [Colo. Const. Article XXVIII, Section 2(12)(a)]

Amendments to Rule 4 concerning issue committees:

4.1 An issue committee may support or oppose more than one ballot measure if the committee registration form states each measure, describes each measure, and states whether the committee supports or opposes the measure.

[Colo. Const. Article XXVIII, Section 2(10)(a)(I) and (2)(10)(a)(II)]

4.2 If an issue committee supports or opposes a ballot measure on an upcoming ballot, the issue committee must file on a frequent filing schedule. See Rule 17.2.3.

4.3 Termination. An issue committee may file a termination report at any time if the following conditions are met:

4.3.1 The committee no longer has a major purpose of supporting or opposing a ballot measure and no longer intends to accept or make contributions or expenditures to support or oppose a ballot issue or ballot question; and

4.3.2 The committee's TRACER account reflects no cash on hand and no outstanding debts, obligations, or penalties.

4.4 Small-scale issue committees

4.4.1 A small-scale issue committee may support or oppose more than one ballot measure if the committee registration form states each measure, describes each measure, and states whether the committee supports or opposes the measure.

[Colo. Const. Article XXVIII, Section 2(10)(a)(I) and (2)(10)(a)(II)]

4.4.2 The notification required by section 1-45-108(1.5)(C)(III), C.R.S. must be submitted on the form provided by the Secretary of State.

4.4.3 The disclosure report required by section 1-45-108(1.5)(c)(i), C.R.S., must be filed with the appropriate officer within five calendar days after notification to the appropriate officer that the small-scale issue committee qualifies as an issue committee under section 1-45-108(1.5)(c)(III), C.R.S.

4.4.4 Upon conversion of a small-scale issue committee to an issue committee, the issue committee's first report of contributions and expenditures must reflect the small-scale issue committee's funds on hand as a beginning balance.

4.4.5 A small-scale issue committee may terminate by filing an affirmation indicating the committee has no outstanding debts or obligations and wishes to terminate.

4.4.6 A small-scale issue committee required to register under section 1-45-108(1.5), C.R.S. may register and report as an issue committee at any time.

Amendments to Rule 8.1.3 concerning committee registration:

8.1.3 An issue committee or small-scale issue committee must identify the ballot measure it will support or oppose, if known. If particular ballot measures are not known, the issue committee or small-scale issue committee must identify the policy position it will support or oppose.

Amendments to Rule 9.2 concerning resignation of the registered agent:

9.2.1 A committee may assign a new registered agent by filing an amended committee registration. For a candidate committee, upon resignation of the registered agent the candidate becomes the registered agent until a new agent is assigned. For all other committees, the registered agent's name remains on file until the committee assigns a new registered agent.

New Rule 9.3 concerning registered agent:

9.3 In the case of a candidate who is the registered agent for a candidate committee, if the Secretary of State receives verifiable information in writing that the candidate is deceased, the Secretary of State may immediately terminate the candidate committee in TRACER.

Amendments to Rules 10.2 and 10.3 concerning managing contributions and expenditures:

10.2 Except for independent expenditure committees and small-scale issue committees, committees must report contributions as follows:

[Subsequent rules remain; unaltered]

10.3 Except for independent expenditure committees and small-scale issue committees, committees must report expenditures as follows:

[Subsequent rules remain; unaltered]

Amendments to Rule 10.7.2 concerning contributions by anonymous contributor:

10.7.2 Anonymous contributions are contributions where the identity of the contributor or other required reporting information is unknown.

Amendments to Rule 10.14.2 concerning other income:

10.14.2 A committee must disclose all interest or dividends earned on its bank account, earned income from a commercially reasonable transaction, or transfers of money within a political party as other income on the committee's reports. These other receipts are not subject to contribution limits.

Amendments to Rule 10.17 regarding major contributor reports:

10.17 Major Contributor Reports.

10.17.1 Municipal committees required to file major contributor reports under section 1-45-108(2.5), C.R.S. must file with the municipal clerk.

10.17.2 Small-scale issue committees are not required to file major contributor reports under section 1-45-108(2.5), C.R.S.

Amendments to Rules 11.2 through 11.5 concerning electioneering communications:

11.2 Any person who expends $1,000 or more per calendar year on electioneering communication or regular biennial school electioneering communication must include the method of communication on the electioneering report.

11.3 Persons making electioneering communications or regular biennial school electioneering communications must maintain all financial records for 180 days after the general election or regular biennial school election, as applicable. If a complaint is filed against the person making electioneering communications or regular biennial school electioneering communications, the person must maintain financial records until final disposition of the complaint and any resulting litigation.

11.4 Electioneering communication reports must include the name of the candidate(s) unambiguously referred to in the electioneering communication or regular biennial school electioneering communication. [Colo. Const. Article XXVIII, Section 2(7)(a)(I)]

11.5 A committee need not file electioneering communication reports separate from regularly filed disclosure reports if the expenditure or spending subject to Colo. Const. Article XXVIII, Section 6 and Rule 11.4 is identified as an electioneering communication or regular biennial school electioneering communication. The disclosure of electioneering communication expenditures or spending on a regularly filed report must include the name of the candidate(s) referred to in the communication.

Amendments to Rules 15.1 through 15.4 concerning recall elections:

15.1 The recall election cycle begins on the date the recall petition is approved for circulation by the designated election official and ends on the last day of the final reporting period following the date of the recall election as defined in Rule 15.2.2.

15.1.1 If a recall petition is determined to be insufficient, the recall election cycle ends 25 days after the time for protest and final disposition of any protest or appeal of such determination.

15.1.2 If a recall election is canceled for any other reason, the recall election cycle ends 25 days after the deadline for filing the recall election petition, or 25 days after the event that caused the designated election official to cancel the election, whichever is later.

15.1.3 If a recall election is canceled, all committees that were participating in the recall election except small-scale issue committees must file a report five days after the end of the recall election cycle. The reporting period begins on the first day following the last day of the reporting period for the previous report. If there was no previous report, the reporting period begins on the date the committee registered. The reporting period ends on the last day of the election cycle.

15.2 Except for issue committees and small-scale issue committees, committees participating in a recall election must file reports on the fifth day of every month until disclosure under section 1-45-108(2.7), C.R.S. and Rule 15.5 begins.

15.2.1 The initial reporting period for committees formed for the purpose of the recall election begins on the date the committee registers with the appropriate filing office.

15.2.2 Subsequent reporting periods for a committee participating in the recall election begin on the first day of each month and end on the last day of that month, except that the final reporting period ends 25 days following the date the recall election was held.

15.2.3 All other committees whose original formation was not for the purpose of supporting or opposing a recall measure must notify the appropriate officer within ten days after deciding to support or oppose a recall or support or oppose a successor candidate. Once notified, the appropriate officer will place the committee on the recall filing calendar until the end of the recall election cycle.

15.3 The incumbent in a recall election is not a candidate for the successor election and may open an issue committee or small-scale issue committee to oppose the recall.

15.4 The aggregate contribution limits specified for a general election in Colo. Const. Article XXVIII, Section 3, as adjusted by these Rules, apply to the recall election with respect to each successor candidate.

Amendments to Rule 17.1 concerning filing calendars and reporting periods:

17.1 A committee other than a political organization or small-scale issue committee must file a disclosure report for every reporting period, even if the committee has no activity to report during the reporting period.

Amendments to Rule 17.2.2 concerning filing schedules:

17.2.2 A political committee, small donor committee, political party, independent expenditure committee, or political organization files on:

(a) A frequent filing schedule during any year in which a general election occurs and, if participating in a regular biennial school election, in any year in which a biennial school election occurs.

(b) An infrequent filing schedule during any year in which no general election occurs, except if the committee is participating in a regular biennial school election.

Rule 17.2.4 punctuation correction:

17.2.4 An issue committee must notify the Secretary of State within ten days after deciding that it will support or oppose a ballot measure on an upcoming ballot.

Amendments to Rule 17.6:

17.6 The following must file with the municipal clerk: A candidate in a municipal election, a candidate committee, a political committee supporting or opposing a municipal candidate, an issue committee or small-scale issue committee supporting or opposing a municipal ballot issue or ballot question, an independent expenditure committee supporting or opposing a municipal candidate, and a small donor committee making contributions to a municipal candidate. [Section 1-45-109(1)(b), C.R.S.]

New Rule 18.1.1(c) concerning requests for waiver or reduction of campaign finance penalties:

(c) Payment of the penalty for which a waiver has been requested voids the request.

Rules 18.2 and 18.3 are repealed and subsequent rules are renumbered accordingly:

18.2 Written complaints.

18.2.1 A written complaint filed under Colo. Const. Article XXVIII, Section 9(2)(a) must include the Secretary of State's complaint cover sheet, and must include the following information:

(a) The name, address, and signature of the complainant (if the complainant is represented by counsel, include the counsel's name, address, and signature);

(b) The name and address of each person alleged to have committed a violation; and

(c) The particulars of the violation.

18.2.2 If an incomplete complaint is received, the date on which the originally filed complaint was received is considered the filed date for purposes of Colo. Const. Article XXVIII, Section 9(2)(a), if a complete copy is received within ten days of notification from the Secretary of State that the complaint was incomplete.

18.2.3 Any person may submit a complaint by fax or electronic mail if a signed original is received by the Secretary of State no later than five calendar days thereafter. If the complaint is complete, the Secretary of State will promptly transmit the complaint to the Office of Administrative Courts in the Department of Personnel and Administration for consideration by an Administrative Law Judge, which will notify the respondents of the filing of the complaint and which will issue all other appropriate notices to the parties. [Colo. Const. Article XXVIII, Section 9(2)(a)]

18.3 The Secretary of State may enforce the decision of the Administrative Law Judge. The Secretary of State will not enforce the decision of the Administrative Law Judge during the pendency of any appeal of the decision, unless or until the appeal is exhausted or the decision is upheld by the court of appeals. [Colo. Const. Article XXVIII, Section 9(2)(a).]

Amendments to Rule 20.1 concerning redaction of sensitive information:

20.1 Any person who believes their safety or the safety of an immediate family member may be in jeopardy as a result of information disclosed on any campaign finance registration or report, personal financial disclosure, or gift and honoraria report filed with the Secretary of State, may apply to the Secretary of State to redact sensitive personal information from the online versions of such report(s).

Amendments to Rule 21.1.2(a) concerning coordination:

21.1.2 An independent expenditure or electioneering communication is created, produced, or distributed:

(a) After one or more substantial discussion(s) between the candidate or political party and the person making the expenditure or engaging in the spending,

(1) In which the person making the expenditure or engaging in the spending received non-public information about the candidate or political party's plans, projects, activities, or needs; and

(2) The information is material to the creation, production, or dissemination of an independent expenditure or electioneering communication; or

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Office of the Attorney General

Tracking number: 2016-00294

Opinion of the Attorney General rendered in connection with the rules adopted by the

Secretary of State

on 08/11/2016

8 CCR 1505-6

RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE

The above-referenced rules were submitted to this office on 08/11/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 30, 2016 10:38:40

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Human Services

Agency

Income Maintenance (Volume 3)

CCR number

9 CCR 2503-5

Rule title

9 CCR 2503-5 ADULT FINANCIAL PROGRAMS 1 - eff 10/01/2016

Effective date

10/01/2016

(9 CCR 2503-5)

3.500

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3.532 GRANT DETERMINATION

A. OAP grants shall be calculated on an individual basis, with just one client per case.

B. When a client has been found eligible based upon eligibility rules as outlined in Sections 3.520.6 and 3.520.71, the amount of the client's authorized OAP benefit shall be determined by deducting the client's total countable income from the OAP grant standard.

1. If determined eligible on the first of the month, the client shall receive his/her authorized benefit in the initial and subsequent months.

2. If determined eligible on any other day of the month, the client's first month benefit shall be prorated according to the number of days remaining in the month; the client shall receive their authorized benefit in subsequent months.

3. If a client is receiving services in another Adult Financial (AF) program in the month he/she turns sixty (60) years of age and is otherwise eligible for OAP, the client shall transition from the other AF program to OAP effective the first day of the client's birth month, and receive his/her authorized benefits for the birthday month and subsequent months.

C. If found eligible, the client's eligibility date shall be determined as follows:

1. If the client returns all verifications within the forty-five (45) day processing time frame, the eligibility date shall be the application date.

2. If the client returns all verifications after the forty-five (45) day processing time frame, but within sixty (60) calendar days of the original application date, the eligibility date shall be the date the verifications were returned.

3. If the client returns all verifications after sixty (60) days from the original application date, the client shall be required to re-apply for benefits.

D. If a client is actively attempting to sell, liquidate, or legally acquire a resource or secure available income, the county department shall not delay action on an application.

1. OAP shall be continued without adjustment until the resource or income is available. The county department is urged to monitor the attempts to access the resource or income.

2. If the client refuses or fails to make a reasonable effort to secure a potential resource or income, such resource or income shall be considered as if available, and timely and adequate notice shall be given regarding a proposed action to deny, reduce, or terminate assistance.

3. If the client secures the potential resource or income prior to the effective action date identified in the notice, the proposed action to deny, reduce, or terminate assistance shall be withdrawn by the county, and the case shall be corrected. Benefits may still be denied, reduced, or discontinued due to a change in income or resources.

E. The OAP benefit shall be made directly to the client or to a legally designated person, such as a representative payee, fiduciary, or conservator.

For OAP-C clients, the financial officer of the facility or the client's guardian shall establish a reserve for the client in the amount of the current Personal Needs Allowance (PNA) grant standard for the client's personal needs.

F. The client shall be eligible only for a monthly personal needs allowance when program requirements are met and the client is a resident of a facility at least thirty (30) consecutive days, as follows:

1. In a general medical and surgical hospital;

2. In a nursing home, assisted living residence, or, intermediate care facility, group home, host home, or other long-term care facility; or,

3. In a psychiatric facility when sixty-five (65) years of age or older.

G. The following persons are not eligible for a personal needs allowance or OAP benefit:

1. Inmates in a penal institution; or,

2. Residents in an unlicensed private or uncertified public facility.

H. For every full calendar month that the client is a resident in an approved facility, the OAP personal needs allowance maximum shall be seventy nine dollars ($79), effective October 1, 2016.

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3.543 GRANT DETERMINATION

A. AND grants shall be calculated on an individual basis with just one client per case.

B. When a client has been found eligible based upon eligibility rules as outlined in Sections 3.520.6 and 3.520.71, 3.520.72, and 3.520.73, the amount of the client's authorized AND benefit shall be determined by deducting the client's total countable income from the AND grant standard.

1. If determined eligible on the first of the month, the client shall receive his/her authorized benefit in the initial and subsequent months.

2. If determined eligible on any other day of the month, the client's first month benefit shall be prorated according to the number of days remaining in the month; the client shall receive their authorized benefit in subsequent months.

C. If found eligible, the client's eligibility date shall be determined as follows:

1. If the client returns all verifications within the sixty (60) day processing time frame, the eligibility date shall be the application date.

2. If the client returns all verifications after the sixty (60) day processing time frame, but within 90 days of the original application date, the eligibility date shall be the date the verifications were returned.

3. If the client returns all verifications after ninety (90) days from the original application date, the client shall be required to re-apply for benefits.

D. If a client is actively attempting to sell, liquidate, or legally acquire a resource or secure available income, the county department shall not delay action on an application.

1. AND shall be continued without adjustment until the resource or income is available. The county department is urged to monitor the attempts to access the resource or income.

2. If the client refuses or fails to make a reasonable effort to secure a potential resource or income, such resource or income shall be considered as if available, unless the client can show good cause. Timely and adequate notice shall be given regarding a proposed action to deny, reduce, or terminate assistance.

3. If upon receipt of the prior notice, the client secures the potential resource or income prior to the effective action date, the proposed action to deny, reduce, or terminate assistance shall be withdrawn, and the case shall be corrected. Benefits may still be denied, reduced, or discontinued due to a change in income or resources.

E. Except as specified below, the AND benefit shall be made directly to the client.

F. When the client lives in a facility or has a payee, legal fiduciary, or authorized representative, the payment shall be made to the payee, fiduciary, authorized representative, or facility on behalf of the client.

G. The client shall be eligible only for a monthly personal needs allowance when program requirements are met and the client is a resident of a facility at least thirty (30) consecutive days, as follows:

1. In a general medical and surgical hospital;

2. In a nursing home, assisted living residence, or, intermediate care facility, group home, host home, or other long-term care facility.

H. The following persons are not eligible for a personal needs allowance or AND benefit:

1. Inmates in a penal institution; or,

2. Residents in an unlicensed private or uncertified public facility.

I. For every full calendar month that the client is a resident in an approved facility, the AND personal needs allowance maximum shall be seventy nine dollars ($79), effective October 1, 2016.

J. If the Social Security Administration (SSA) is recovering any portion of the client's SSI payment due to an overpayment of benefits, AND-CS shall be calculated based on the gross SSI payment and not the received amount.

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3.570.11 Purpose of Program

A. Home Care Allowance (HCA) is a special cash payment made to a client for the purpose of securing in-home, personal care services.

1. HCA is a non-entitlement program; and,

2. Cannot be received while receiving Home and Community Based Services or Adult Foster Care; and,

3. HCA is designed to serve clients with the lowest functional abilities and the greatest need for paid care.

B. Effective October 1, 2016, the HCA grant standard maximums are as follows:

1. Tier 1 - $255.00

2. Tier 2 - $397.00

3. Tier 3 - $530.00

C. The tier grant standard maximums shall be lower for certain clients who have income greater than program limits, as defined in Section 3.570.13, B, or for clients with special circumstances, as defined in Section 3.570.13, D.

D. The HCA grant is not taxable income to the client. The payment made to the care provider using the HCA grant received by the client is income to the care provider and subject to taxation under State and Federal laws.

E. The HCA grant standards shall be adjusted to stay within available appropriations. Appeals shall not be granted for these adjustments.

F. In addition to the regular monthly HCA grant payments, supplemental payments necessary to comply with the federal Maintenance of Effort (MOE) requirements may be provided. These payments are supplements to regular grant payments, are not entitlements, and do not affect grant standards. Appeals shall not be allowed for MOE payment adjustments.

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3.570.21 Purpose of Program

A. Special Populations Home Care Allowance (SP-HCA) is a special cash payment made to a client for the purpose of securing in-home, personal care services.

1. SP-HCA is a non-entitlement program; and,

2. Cannot be received while receiving benefits from a Home and Community Based Services waiver other than Supportive Living Services (HCBS-SLS) or Children's Extensive Supports (HCBS-CES); and,

3. Is for clients that received Home Care Allowance (HCA) and HCBS-SLS or HCBS-CES services for at least one month between September 2011 and December 2011.

B. Effective October 1, 2016, the SP-HCA grant standard maximums are as follows:

1. Tier 1 - $255.00

2. Tier 2 - $397.00

3. Tier 3 - $530.00

C. The SP-HCA grant is not taxable income to the client. The payment made to the care provider using the SP-HCA grant received by the client is income to the care provider and subject to taxation under State and Federal laws.

D. The SP-HCA grant standards shall be adjusted to stay within available appropriations. Appeals shall not be granted for these adjustments.

E. In addition to the regular monthly SP-HCA grant payments, supplemental payments necessary to comply with the federal Maintenance of Effort (MOE) requirements may be provided. These payments are supplements to regular grant payments, are not entitlements, and do not affect grant standards. Appeals shall not be allowed for MOE payment adjustments.

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3.583 ELIGIBILITY

A. The AFC program provides twenty-four (24) hour care and supervision for clients who are:

1. Frail elderly or physically or emotionally disabled adults age eighteen (18) or older who do not require twenty-four (24) hour medical care but who cannot return to their home and need twenty-four (24) hour non-medical supervision; and,

2. Living in a non-medical facility of no more than sixteen (16) clients that is licensed by the Colorado Department of Public Health And Environment (CDPHE); and,

3. Receiving or eligible to receive Old Age Pension (OAP), Aid to the Needy Disabled-Colorado Supplement (AND-CS), or Supplemental Security Income (SSI).

B. AFC shall not be available to persons:

1. Receiving home care allowance; or,

2. With a developmental disability, as defined in 27-10.5-102, C.R.S.; or,

3. Receiving or eligible to receive behavioral or mental health services pursuant to any provision in Title 27, C.R.S.

C. Eligibility for the Adult Foster Care program shall be based on:

1. Financial eligibility; and,

2. Functional eligibility that includes the client's functional assessment, the client's need for twenty-four (24) hour supervision and assistance, and the client's appropriateness for the AFC program.

D. The county department shall determine financial eligibility for AFC.

1. The client's application shall be processed to determine eligibility for OAP or AND-CS, or the county department shall determine whether the client is receiving SSI benefits.

2. If approved for OAP or AND-CS or the client is receiving SSI, deduct the client's income and the OAP or AND-CS grant standard from the AFC maximum grant standard to determine the client's AFC benefit.

3. If a client is receiving or eligible to receive Home Care Allowance (HCA) or a Home and Community Based Services (HCBS) waiver that provides services for any person receiving or eligible to receive services pursuant to any provision in Title 27, C.R.S., eligibility for AFC cannot begin until the first day of the month following the discontinuation of HCA OR HCBS.

4. The AFC benefit shall be paid to the client. The client shall:

a. Keep $79.00 of the payment for personal needs; and,

b. Use the remainder of the AFC payment to pay a portion of the fee charged by the AFC provider; and,

c. Pay the remainder of the AFC charges using his/her income from OAP, AND/CS, or SSI.

5. AFC facilities shall charge a standard rate of payment for all AFC clients.

a. The AFC rate charged by the AFC facility shall be no greater than the current maximum AFC grant standard less seventy nine dollars ($79), effective October 1, 2016, for the client's personal needs.

b. AFC facilities shall charge private pay clients an amount at least equal to that charged to clients receiving an AFC benefit.

E. The Single Entry Point (SEP) shall determine functional eligibility.

To be functionally eligible, the client shall have an AFC eligible functional assessment score as outlined in Section 3.584. The functional assessment score is calculated by determining the client's functional capacity score and need for paid care score, as follows:

1. Functional Capacity: determined by assessing the client's ability to complete all activities of daily living (ADLs) and applying a score to his/her ability to complete the ADLs using the functional impairment scale; and,

2. Determining the client's appropriateness of placement in an AFC facility.

F. When the client is determined functionally eligible for the AFC program, the Single Entry Point (SEP) shall notify the county department. The county department shall notify the SEP when the client has been determined financially eligible for the AFC program.

G. The AFC payment effective date shall be the date that the client was admitted to the AFC facility or the date he/she is determined to be financially eligible, whichever is later. If the client is receiving or eligible to receive Home and Community Based Services (HCBS) pursuant to any provision in Title 27, C.R.S, the effective date is the first day of the month following the discontinuation of HCBS.

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Office of the Attorney General

Tracking number: 2016-00251

Opinion of the Attorney General rendered in connection with the rules adopted by the

Income Maintenance (Volume 3)

on 08/05/2016

9 CCR 2503-5

ADULT FINANCIAL PROGRAMS

The above-referenced rules were submitted to this office on 08/24/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 24, 2016 16:12:18

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Human Services

Agency

Income Maintenance (Volume 3)

CCR number

9 CCR 2503-9

Rule title

9 CCR 2503-9 COLORADO CHILD CARE ASSISTANCE PROGRAM 1 - eff 09/30/2016

Effective date

09/30/2016

(9 CCR 2503-9)

3.900 COLORADO CHILD CARE ASSISTANCE PROGRAM (CCCAP)

3.901 CCCAP MISSION AND APPROPRIATIONS

A. Mission

The purpose of CCCAP is to provide eligible households with access to high quality, affordable child care that supports healthy child development and school readiness while promoting household self-sufficiency and informed child care choices.

B. Appropriations

Nothing in these rules shall create a legal entitlement to child care assistance. Counties shall not be required to expend funds exceeding allocated state and federal dollars or exceeding any matching funds expended by the counties as a condition of drawing down federal and state funds.

When a county can demonstrate, through a written justification in its county CCCAP plan, that it has insufficient CCCAP allocations, a county is not required to implement a provision or provisions of rule(s) enacted under statutory provisions that are explicitly “subject to available appropriations.” The county is not required to implement that or those rules or statutory provision(s) for which it has demonstrated through its annual CCCAP plan that it has insufficient CCCAP allocations to implement, except for the entry income eligibility floor referenced in Section 3.905.1, J.

As part of its demonstration, the county shall include a list of priorities reflecting community circumstance in its county CCCAP plan that prioritizes the implementation of the rules and/or provisions of statute that are “subject to available appropriations.”

If the State Department determines the county CCCAP plan is not in compliance with these rules and/or provisions of statute, the State Department will first work with the county to address the concerns. If a resolution cannot be agreed upon, the State Department reserves the right to deny the county CCCAP plan. If the State Department denies the county CCCAP plan, the county and the state shall work together to complete a final approved county CCCAP plan that is in compliance with these rules and statute. A county may pursue an appeal of the State Department denial of the plan pursuant to Section 26-2-715(3), C.R.S.

3.902 PROGRAM FUNDING

A. The Colorado Child Care Assistance Program will be funded through annual allocations made to the counties. Nothing in these rules shall create a legal entitlement to child care assistance. Counties may use annual allocation for child care services which includes direct services and administration.

B. Each county shall be required to meet a level of county spending for the Colorado Child Care Assistance Program that is equal to the county's proportionate share of the total county funds set forth in the annual general Appropriation Act for the Colorado Child Care Assistance Program for that State fiscal year. The level of county spending shall be known as the county's maintenance of effort for the program for that State fiscal year.

3.903 DEFINITIONS

“Additional care needs” means a child who has a physical and/or mental disability and needs a higher level of care on an individualized basis than that of his/her peers at the same age; or, who is under court supervision, including a voluntary out-of-home placement prior to or subsequent to a petition review of the need for PLACEMENT (PRNP), and who has additional care needs identified by an individual health care plan (IHCP), individual education plan (IEP), physician’s/professional’s statement, child welfare, or individualized family service plan (IFSP).

“Adult caretaker” means a person in the home who is financially contributing to the welfare of the child and is the parent, adoptive parent, step-parent, legal guardian, or person who is acting in “loco parentis” and has physical custody of the child during the period of time child care is being requested.

“Adverse action” means any action by the counties or their designee which adversely affects the Adult caretaker or Teen parent’s eligibility for, or the Child Care Provider’s right to services provided or authorized under the Colorado Child Care Assistance Program.

“Affidavit” means a voluntary written declaration reflecting the personal knowledge of the declarant.

“Applicant” means the adult caretaker(s) or teen parent(s) who sign(s) the application form, re-determination form, and/or the client responsibilities agreement form.

“Application” is a State-approved form that may include, but is not limited to:

A. An original application (valid for sixty (60) days), which is the first application for the Colorado Child Care Assistance Program filed by prospective program participant; or,

B. A re-determination application filed by an enrolled program participant; or,

C. Any application for some additional program benefit by an enrolled program participant.

“Application date” means the date that the county receives the signed application. Required supporting documents may be submitted up to sixty (60) days after receipt of the signed completed application.

“Application date for pre-eligibility determinations” means the date that the application is received from the Child Care Provider or Applicant by the county. Required supporting documents may be submitted up to thirty (30) days after receipt of the signed application.

“Application process” all of the following:

A. The State-approved, signed low-income child care application form completed by the Adult caretaker or Teen parent or his/her authorized representative, which includes appeal rights. Counties with Head Start programs may accept the Head Start application in lieu of the low-income child care application for those children enrolled in the Head Start program; and,

B. The client responsibilities agreement form signed by the Adult caretaker or Teen parent; and,

C. The required verification supporting the information declared on the application form; and,

D. As a county option, an orientation for new applicants may be required.

“Assets” include but are not limited to the following:

A. Liquid resources such as cash on hand, money in checking or savings accounts, saving certificates, stocks or bonds, lump sum payments as specified in the section titled "nonrecurring lump sum payments".

B. Non-liquid resources such as any tangible property including, but not limited to, licensed and unlicensed automobiles and motorcycles, utility trailer, seasonal or recreational vehicles (such as any camper, motor home, boat, snowmobile, water skidoo, or airplane) and real property (such as buildings, land, and vacation homes).

“Attestation of mental competence” means a signed statement from a Qualified Exempt Child Care Provider declaring that no one in the home where the care is provided has been determined to be insane or mentally incompetent by a court of competent jurisdiction; or specifically that the mental incompetence or insanity is not of such a degree that the individual cannot safely operate as a Qualified Exempt Child Care Provider.

“Authorized care” means the amount and length of time care is provided by licensed or qualified exempt child care providers to whom social/human services will authorize payment.

“Authorization start date” means the date from which payments for child care services will be paid by the county.

“Base reimbursement rate” means the regular daily reimbursement rate paid by the county to the child care provider. This does not include the increase of rates of reimbursement for high-quality early childhood programs. Base reimbursement rates cannot include when a county rolls in their absences, holidays, registration fees, activity fees, and/or transportation fees in addition to their regular daily reimbursement rate.

“Cash assistance” means payments, vouchers, and other forms of benefits designed to meet a household’s ongoing basic needs such as food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses. Cash assistance may include supportive services to households based on the assessment completed. All state diversion payments of less than four (4) consecutive months are not cash assistance. For the purpose of child care, county diversion payments are not cash assistance.

“CCAP Card” is the tool used by adult caretakers, teen parents, or designees to access benefits and to record child attendance for the purposes of paying for authorized and provided child care.

“Child care authorization notice” means a state prescribed form given to the adult caretaker(s) Or teen parent(s) and the child care provider(s) of the adult caretaker or teen parent’s choosing which authorizes the purchase of child care and includes the listed on the child care authorization notice and will serve as notice to the adult caretaker(s) or teen parent(s), and child care provider(s) of approval or change of child care services. Colorado’s child care authorization notice(s) are vouchers for the purposes of the Colorado Child Care Assistance Program.

“CHATS” means the Child Care Automated Tracking System.

“Child Care Fiscal Agreement” means a State-approved agreement between counties or their designees and child care provider(s), which defines the rate payable to the child care provider(s) and responsibilities of the counties or their designees and the child care provider(s).

“Child care provider” means licensed individuals or businesses that provide less than twenty-four (24) hour care and are licensed or qualified exempt child care providers including child care centers, preschools, and child care homes. Qualified exempt child care providers include care provided in the child's own home, in the home of a relative, or in the home of a non-relative.

“Child Care Resource and Referral Agencies” (CCR&R) means agencies or organizations available to assist individuals in the process of choosing child care providers.

“Child care staff” means individuals who are designated by counties or their designees to administer all, or a portion of, the Colorado Child Care Assistance Program (CCCAP) and includes, but is not limited to, workers whose responsibilities are to refer children for child care assistance, determine eligibility, authorize care, process billing forms, and issue payment for child care subsidies.

“Child Welfare Child Care” means less than twenty four (24) hour child care assistance to maintain children in their own homes or in the least restrictive out-of-home care when there are no other child care options available. See rule manual Volume 7, Section 7.302, Child Welfare Child Care (12 CCR 2509-4).

“Citizen/legal resident” means a citizen of the United States, current legal resident of the United States, or a person lawfully present in the United States pursuant to Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, Public Law 104-193; Federal Register notices 62 FR 61344 and 63 FR 41657-41686. (No later amendments or editions are incorporated. Copies of this material may be inspected by contacting the Colorado Department of Human Services (CDHS), 1575 Sherman Street, Denver, Colorado; or any state publications depository library.) . Since the child is the beneficiary of child care assistance, the citizen/legal resident requirement only applies to the child who is being considered for assistance.

“Clear and convincing” means proof which results in a reasonable certainty of the truth of the ultimate fact in controversy. It is stronger than a preponderance of the evidence and is unmistakable or free from serious or substantial doubt.

“Colorado Child Care Assistance Program (CCCAP)” means a program of CDHS which provides child care subsidies to households in the following programs: Low-Income, Colorado Works, Protective Services, and Child Welfare. CDHS is responsible for the oversight and coordination of all child care funds and services.

“Colorado Works” is Colorado’s Temporary Assistance for Needy Families (TANF) program that provides public assistance to households in need. The Colorado Works program is designed to assist adult caretaker(s) or teen parent(s) in becoming self-sufficient by strengthening the economic and social stability of households.

“Colorado Works households” means members of the same Colorado Works Assistance unit/household who meet requirements of the Colorado Works program, through receipt of basic cash assistance or state diversion payments while working toward achieving self-sufficiency through eligible work activities and eventual employment where the adult caretaker(s) or teen parent(s) is included in the assistance unit, as defined in The Colorado Works Program Rules (9 CCR 2503-6).

“Collateral Contact” means 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.

“Confirmed abuse or neglect” means any report of an act or omission that threatens the health or welfare of a child that is found by a count, law enforcement agency, or entity authorized to investigate abuse or neglect to be supported by a preponderance of the evidence.

"Consumer Education" means information relayed to adult caretaker(s) or teen parent(s) about their child care options and other available services.

“Cooperation with Child Support Services (county option)” means applying for Child Support Services for all children who are in need of care within thirty (30) calendar-days of the completion and approval of the CCCAP application, and maintaining compliance with Child Support Services case(s) unless a good cause exemption exists. The county IV-D administrator or designee determines cooperation with Child Support Services.

“County or Counties” means the county departments of social/human services or other agency designated by the Board of County Commissioners as the agency responsible for the administration of CCCAP.

“Current immunizations” means immunization records, or a statement from a qualified medical professional showing that immunizations are current and up-to-date according to the recommended shot schedule issued by the Colorado Department of Public Health and Environment, for the child(ren) based on their current age unless there is a signed statement from the adult caretaker(s) or teen parent(s) indicating an exemption for religious or medical reasons.

“Discovery” means that a pertinent fact related to CCCAP eligibility was found to exist.

“Early care and education provider” means a school district or child care provider that is licensed pursuant to Part 1 of Article 6 of this Title or that participates in the Colorado preschool program pursuant to Article 28 of Title 22, C.R.S.

“Eligible activity”, for the purpose of Low Income Child Care, means the activity in which the Teen parent(s) or adult caretaker(s) are involved. This may include job search; employment; and/or education/training. For Teen parents, education/training, and teen parent education is an approved activity for all counties.

“Eligible child” means a child under the age of thirteen (13) years who needs child care services during a portion of the day, but less than twenty four (24) hours, and is physically residing with the eligible adult caretaker(s) or teen parent(s); or a child with additional care needs under the age of nineteen (19) who is physically or mentally incapable of caring for himself or herself or is under court supervision and is physically residing with the eligible adult caretaker(s) or teen parent(s). Any child served through the Colorado Works program or the low-income child care program shall be a citizen of the United States or a qualified alien.

“Employment” means holding a part-time or full-time job for which wages, salary, in-kind income or commissions are received.

“Entry income eligibility level” means the level above which an adult caretaker(s) or teen parent(s) is not eligible at original application. The level is set by each county between the base, which is at or above one hundred sixty-five percent (165%) of the federal poverty level, and the maximum ceiling, which is eighty-five percent (85%) of the Colorado state median income.

“Equivalent full-time units” mean all part-time units times a factor of .55 to be converted to full-time units. The full-time equivalent units added to the other full-time units shall be less than thirteen (13) in order to be considered part-time for parent fees.

“Exit income eligibility level” is the income level at the twelve (12) month re-determination of eligibility above which the county may deny continuing eligibility, and is based on the federal poverty levels. Each county sets their exit eligibility level, though it shall be higher than the entry income eligibility level and cannot exceed the maximum ceiling, which is eighty-five percent (85%) of the Colorado state median income. If the county-set entry income level is above one hundred eighty-five percent (185%) of the federal poverty level, the exit eligibility income level may be equal to the entry income eligibility level.

“Families experiencing homelessness” means families who lack a fixed, regular, and adequate nighttime residence and at least one of the following:

A. Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, or camping grounds due to the lack of alternative accommodations; are living in emergency or transitional shelters;

B. Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

C. Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and,

D. Migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in this definition A through C.

“Fingerprint-based criminal background check” means a complete set of fingerprints for anyone eighteen (18) years of age and older residing in the qualified exempt provider’s home, taken by a qualified law enforcement agency, and submitted to the Colorado Department of Human Services, Division of Early Care and Learning, for subsequent submission to the Colorado Bureau of Investigations (CBI). The individual(s) will also be required to submit a background check with the Federal Bureau of Investigation (FBI). Costs for all investigations are the responsibility of the person whose fingerprints are being submitted.

“Fraud/Fraudulent criminal act” means an adult caretaker(s), teen parent(s), or child care provider who has secured, attempted to secure, or aided or abetted another person in securing public assistance to which the adult caretaker(s) or teen parent(s) was not eligible by means of willful misrepresentation/withholding of information or intentional concealment of any essential facts. Fraud is determined as a result of any of the following:

A. Obtaining a “waiver of intentional program violation”; or,

B. An administrative disqualification hearing; or,

C. Civil or criminal action in an appropriate state or federal court.

“Funding concerns” means a determination by a county that actual or projected expenditures indicate a risk of overspending of that county’s available CCCAP allocation in a current fiscal year.

“Good cause exemption for child support” may include potential physical or emotional harm to the adult caretaker(s), teen parent(s) or child(ren); a pregnancy related to rape or incest; legal adoption or receiving pre-adoption services; or, when the county director or his/her designee has/have determined any other exemptions.

“Head Start” is a federally funded early learning program that provides comprehensive services to low-income pregnant women and households with children ages birth to five years of age through provision of education, health, nutrition, social and other services.

“High-quality early childhood program” means a program operated by a child care provider with a fiscal agreement through CCCAP; and, that is in the top three levels of the State Department's quality rating and improvement system, is accredited by a State Department-approved accrediting body, or is an Early Head Start or Head Start program that meets federal standards.

“Household” includes: all children in the home who are under eighteen (18) years of age; all children under nineteen (19) years of age who are still in high school and the responsibility of the adult caretaker(s); and the adult caretaker(s) or teen parent(s).

“In loco parentis” means a person who is assuming the parent obligations for a minor, including protecting his/her rights and/or a person who is standing in the role of the parent of a minor without having gone through the formal adoption process. Parent obligations include, but are not limited to, attending parent teacher conferences, regularly picking up and dropping children at child care, and regularly taking the child to doctor appointments.

“Incapacitated” means a physical or mental impairment which substantially reduces or precludes the adult caretaker or teen parent from providing care for his/her child(ren). Such a condition shall be documented by a physician's statement or other medical verification which establishes a causal relationship between the impairment and the ability to provide child care.

“Income eligibility” means that eligibility for child care subsidies is based on and determined by measuring the countable household income and size against eligibility guidelines

“Intentional Program Violation (IPV)” means an act committed by an adult caretaker(s) or teen parent(s) who has intentionally made a false or misleading statement or misrepresented, concealed or withheld facts for the purpose of establishing or maintaining a Colorado Child Care Assistance Program household’s eligibility to receive benefits for which they were not eligible; or has committed or intended to commit any act that constitutes a violation of the child care assistance program regulations or any state statute related to the use or receipt of CCCAP benefits for the purpose of establishing or maintaining the household’s eligibility to receive benefits.

“Involuntarily out of the home” means when an adult caretaker or teen parent is out of the home due to circumstances beyond his/her immediate control to include, but not be limited to, incarceration, resolution of immigration issues, and/or restraining orders.

“Job search” means the low-income child care eligible activity for a minimum of thirteen (13) weeks of child care in a twelve (12) month period. The twelve (12) month period begins with the first actual week of job search.

“Low-Income Program” means a child care component within CCCAP that targets households with an adult caretaker(s) or teen parent(s) who is/are in an eligible activity and who are not receiving child care assistance through Colorado Works/TANF, Child Welfare or Protective Services.

“Manual Claim” means reimbursement to the child care provider for services not automatically paid through chats.

“Maternity and/or paternity leave” is a temporary period of absence from the adult caretaker or teen parent’s employment, education, and/or training activity granted to expectant or new mothers and/or fathers immediately before and after child birth for up to twelve (12) consecutive weeks for the birth and care of a newborn child.

“Negative licensing action” means a Final Agency Action resulting in the denial, suspension, or revocation of a license issued pursuant to the Child Care Licensing Act; or the demotion of such a license to a probationary license. The Colorado Child Care assistance Program cannot do business with any child care provider who has a denied, suspended or revoked child care license.

“New employment verification” means verification of employment that has begun within the last sixty (60) days. It is verified by a county form, employer letter or through collateral contact which includes a start date, hourly wage or gross salary amount, hours worked per week, pay frequency, work schedule (if non-traditional care hours are requested), and verifiable employer contact information.

“Non-traditional care hours” means weekend, evening, or overnight care.

“Overpayment” means child care assistance received by the adult caretaker(s) or teen parent(s), or monies paid to a child care provider, which they were not eligible to receive.

“Parent” means a biological, adoptive or stepparent of a child.

“Parent fee or co-payment” means the household’s contribution to the total cost of child care paid directly to the child care provider(s) prior to any state/county child care funds being expended.

“Pay stubs” means a form or statement from the employer indicating the name of the employee, the gross amount of income, mandatory and voluntary deductions from pay (i.e. FICA, insurance, etc.), net pay and pay date, along with year-to-date gross income.

“Physical custody” means that a child is living with, or in the legal custody of, the adult caretaker(s) or teen parent(s) on the days/nights they receive child care assistance.

“Point of service device (POS)” means a device used by the adult caretaker(s), teen parent(s) or designee at the authorized child care provider location to record child's attendance.

“Post eligibility period” means ninety (90) days from the date of the re-determination at which time the household income exceeds the exit income eligibility level set by the county. Counties have the option of extending the post eligibility period to six (6) months.

“Primary adult caretaker” means the person listed first on the application and who accepts primary responsibility for completing forms and providing required verification.

“Protective services” means children that have been placed by the county in foster home care, kinship foster home care or non-certified kinship care and have an open child welfare case.

“Prudent person principle” means allowing the child care worker the ability to exercise reasonable judgment in executing his/her responsibilities in determining CCCAP eligibility.

“Qualified exempt child care facilities” means a facility that is approved, certified, or licensed by any other state department or agency or federal government department or agency, which has standards for operation of the facility and inspects or monitors the facility; and, has been declared exempt from the child care licensing act as defined in rule manual 7, section 7.701.11 (12 CCR 2509-8).

“Qualified exempt child care provider” means a family child care home provider who is not licensed but provides care for a child(ren) from the same family; or an individual who is not licensed but provides care for a child(ren) who is related to the individual if the child’s care is funded in whole or in part with money received on the child’s behalf from the publicly funded CCCAP under rule manual Volume 7, Section 7.701.33, A, 1, b. (12 CCR 2509-8).

“Recipient” means the person receiving the benefit. For the purposes of the Colorado Child Care Assistance Program, the recipient is the child.

“Recovery” means the act of collecting monies when an adult caretaker(s), teen parent(s) or child care provider has received childcare assistance benefits for which they were not eligible, commonly known as an "over payment".

“Re-determination (Redet)” is the process to update eligibility for CCCAP. This process is completed no earlier than every twelve (12) months which includes completion of the State-approved form, and providing the verification needed to determine continued eligibility.

“Regionally accredited institution of higher education” means a community college, college, or university which is a candidate for accreditation or is accredited by one of the following regional accrediting bodies: Middle States, Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Northwest Commission on Colleges and Universities, Southern Association of Colleges and Schools, Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges.

“Relative” means a blood or adoptive relative to include, but not limited to: a brother, sister, uncle, aunt, first cousin, nephew, niece, or persons of preceding generations denoted by grand, great, great-great, or

great-great-great; a stepbrother, stepsister; or, a spouse of any person included in the preceding groups even after the marriage is terminated by death or divorce.

“Risk-based audit” means audit selection based on a combination of the likelihood of an event occurring and the impact of its consequences. This may include, but not be limited to, the number, dollar amounts and complexity of transactions; the adequacy of management oversight and monitoring; previous regulatory and audit results; and/or reviews for separation of duty.

“Self-employment” means earned income for a person who is responsible for all taxes and/or other required deductions from income. A self-employed person shall show that his/her taxable income, divided by the number of hours worked, equals at least the federal minimum wage.

“Slot contracts (county option)” means the purchasing of slots at a licensed child care provider for children enrolled in CCCAP in communities where quality care may not otherwise be available to county-identified target populations and areas or to incentivize or maintain quality.

“State established age bands” means the breakdown of child age ranges used when determining child care provider base reimbursement rates.

“State or local public benefit” means any grant, contract, loan, professional license, or commercial license provided by an agency of a state or local government, or by appropriated funds of a state or local government.

“Substantiated” means that the investigating party has found a preponderance of evidence to support the complaint.

“Target population” means a population whose eligibility is determined by criteria different than other child care populations, and has a priority to be served regardless of waiting lists based upon appropriations. Current target populations include:

A. Households whose income is at or below 130% of the current federal poverty guidelines;

B. Teen parents;

C. Children with additional care needs;

D. Families experiencing homelessness; and,

E. Segments of population defined by county, based on local needs.

“Teen parent” means a parent under twenty-one (21) years of age who has physical custody of his/her child(ren) for the period that care is requested and is in an eligible activity such as attending junior high/middle school, high school, GED program, vocational/technical training activity, employment or job search.

“Tiered reimbursement” means a pay structure that reflects increasing rates of reimbursement for high-quality early childhood programs that receive CCCAP monies.

“Timely written notice” means that any adverse action shall be preceded by a prior notice period of fifteen (15) calendar-days. “Timely” means that written notice is provided to the household and child care provider at least by the business day following the date the action was entered into the eligibility system. The fifteen (15) calendar-day prior notice period constitutes the period during which assistance is continued and no adverse action is to be taken during this time.

“Training and education” means educational programs including regionally accredited post-secondary training for a Bachelor's degree or less, or a workforce training program such as vocational or technical job skills training, for at least any one hundred and four (104) weeks (twenty-four (24) months) when offered as secondary education for a period of up to two hundred and eight weeks (forty-eight (48) months) per eligible adult caretaker(s). Workforce training programs include educational activities such as high school diploma, high school equivalency examination, English as a Second Language, or adult basic education.

“Transition families” means households ending their participation in the Colorado Works Program due to employment or job training who have signed a client responsibilities agreement form and verified eligibility for Low-Income Child Care Assistance.

“Units” or “unit of care” means the period of time care is billed by a child care provider and paid for a household. (These units would be full-time, part-time, full-time/part-time, or full-time/full-time.)

“Voluntarily out of the home” means circumstances where an adult caretaker or teen parent is out of the home due to his/her choice to include, but not be limited to, job search, employment, military service, vacations, and/or family emergencies.

“Waiting list” means a list maintained by a county reflecting individuals who have submitted an application for the CCCAP program for whom the county is not able to enroll due to funding concerns.

“Willful misrepresentation/withholding of information” means an understatement, overstatement, or omission, whether oral or written, made by a household voluntarily or in response to oral or written questions from the department, and/or a willful failure by a household to report changes in income, if the household’s income exceeds eighty-five percent (85%) of the State median income within ten (10) days, or changes to the qualifying eligible activity within four weeks of the change.

3.904 APPLICANT RIGHTS

3.904.1 ANTI-DISCRIMINATION

Child care programs shall be administered in compliance with Title VI of the Civil Rights Act of 1964 (42 USC 2000(d)) located at http://www.fhwa.dot.gov/environment/title_vi.htm; Title II of the Americans with Disabilities Act (42 USC 12132(b)).

A. Counties or their designee shall not deny a person aid, services, or other benefits or opportunity to participate therein, solely because of age, race, color, religion, gender, national origin, political beliefs, or persons with a physical or mental disability.

B. No otherwise qualified individual with a physical or mental disability shall solely, by reason of his/her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity provided by the counties or their designee(s).

C. The county shall make services available to all eligible adult caretaker(s) and teen parents, subject to appropriations, including those with mental and physical disabilities and non-English speaking individuals, through hiring qualified staff or through purchase of necessary services.

3.904.2 CONFIDENTIALITY

The use or disclosure of information by the counties or their designee(s) concerning current or prior applicants and recipients shall be prohibited except for purposes directly connected with the activities listed below:

A. The administration of public assistance programs, Child Welfare, Head Start and Early Head Start programs, and related State Department activities.

B. Any investigation, recovery, prosecution, or criminal or civil proceeding in connection with the administration of the program.

C. The adult caretaker(s) or teen parent(s) applying for CCCAP may authorize a licensed child care provider or head start provider to assist them with the completion of a CCCAP application, including collection and organization of supporting documentation and submission of the application and supporting documents to a county. Authorization for application assistance and release of information shall be obtained on a department-approved form and included with the CCCAP application.

3.904.3 TIMELY WRITTEN NOTICE OF ADVERSE ACTION

A decision to take adverse action concerning an applicant or a child care provider for assistance payments will result in a written notice mailed to the applicant or child care provider within one (1) business day of the decision. The written notice is considered mailed when it is faxed, emailed, sent via other electronic systems, hand-delivered, or deposited with the postal service. Fifteen (15) calendar-days will follow the date of mailing the notice before adverse action is actually taken with the following exceptions, which require no prior notice:

A. When facts indicate an overpayment because of probable fraud or an intentional program violation and such facts have been verified to the extent possible.

B. When the proposed adverse action is based on a written or verbal statement from the adult caretaker(s) or teen parent(s) who states that he/she no longer wishes to receive assistance or services.

C. When the proposed adverse action is requested by another county or state department.

D. When the counties or their designee(s) have confirmed the death of a recipient or of Adult Care Taker or Teen parent.

E. The counties have the authority to terminate a fiscal agreement with any child care provider without advance notice if a child's health or safety is endangered or if the child care provider is under a negative licensing action.

3.904.4 ADULT CARETAKER OR TEEN PARENT AND CHILD CARE PROVIDER APPEAL RIGHTS

Counties' or designee(s)' staff shall advise adult caretakers or teen parents in writing of their right to a county dispute resolution conference or state level fair hearing pursuant to Sections 3.840 and 3.850 of Income Maintenance Volume 3 (9 CCR 2503-1).

Child care providers shall be informed of their right to a county dispute resolution conference included with their copy of the child care authorization notice pursuant to Section 3.840 of Income Maintenance Volume 3 (9 CCR 2503-1).

3.905 LOW INCOME CHILD CARE

Eligible Colorado Child Care Assistance Program participants shall be an adult caretaker(s) or teen parent(s) of a child, meet program guidelines, and are low income adult caretakers or teen parents who are in an eligible activity, and need child care assistance.

3.905.1 LOW INCOME CHILD CARE ELIGIBILITY

In order to be eligible for child care assistance the following criteria shall be met:

A. All adult caretakers and teen parents shall be verified residents of the county from which assistance is sought and received.

B. The adult caretaker(s) or teen parent(s) shall meet the following criteria:

1. Is actively participating in an eligible activity; and,

2. Meets the income eligibility guidelines set by the county and state departments; and,

3. Shall have physical custody of the child for the period they are requesting care.

C. The application process shall be completed and the primary adult caretaker or teen parent shall sign the required application forms. This includes:

1. The State Low Income Child Care Assistance Program application signed and completed by the applicant or their authorized representative, which includes appeal rights.

a. Counties with Head Start programs may accept the Head Start application in lieu of the Low-Income Child Care application for those children enrolled in the head start program and are encouraged to work with local Head Start programs to coordinate this effort.

b. Families enrolled in a Head Start or Early Head Start program at the time they apply for CCCAP, shall have a re-determination date that aligns with the Head Start or Early Head Start program year.

2. The client responsibilities agreement form;

3. The required verification supporting the information declared on the application form; including:

a. Proof of current residence;

b. Citizenship and identity of the child(ren);

c. Age of the child(ren) for which they are requesting care;

d. Immunizations if applicable;

e. Eligible activity;

f. Schedule (if non-traditional care hours are requested);

g. Income;

h. Incapacitation if applicable;

i. Custody arrangement and/or parenting schedule if applicable;

j. Child care provider; and,

k. Other verifications as determined by approved county plan.

4. An orientation for new applicants as a county option.

D. Eligible Households

1. The following household compositions qualify as eligible households:

a. Households with one adult caretaker or teen parent, where the adult caretaker or teen parent is engaged in an eligible activity, meets low-income eligibility guidelines, has physical custody of the child and needs child care.

b. Households with two adult caretakers or teen parents, when one-adult caretaker or teen parent is involuntarily out of the home. Such a household shall be considered a household with one adult caretaker or teen parent.

c. Households with two adult caretakers or teen parents that need child care, where:

1) Both adult caretakers or teen parents are engaged in an eligible activity; or,

2) One adult caretaker or teen parent is voluntarily absent from the home, but both adult caretakers or teen parents are in an eligible activity; or,

3) One adult caretaker or teen parent is engaged in an eligible activity and the other adult caretaker or teen parent is incapacitated such that, according to a physician or licensed psychologist, they are unable to care for the child(ren).

d. Protective services households refer to households where the child(ren) have been placed, by the county, in foster home care, kinship foster home care, or non-certified kinship care and that have an open child welfare case (county option).

2. Households are considered households with two adult caretakers or teen parents when two adults or teen parents contribute financially to the welfare of the child and/or assume parent rights, duties and obligations similar to those of a biological parent, even without legal adoption.

3. Two separate adult caretakers or teen parents who share custody but live in separate households may apply for the same child through separate applications, during periods that they have physical custody.

4. All adult caretakers or teen parents who are engaged in an eligible activity, have physical custody of the child and meet low-income eligibility guidelines.

5. Any unrelated individual who is acting as a primary adult caretaker for an eligible child, is required to obtain verification from the child's biological or adoptive parent, legal guardian, or a court order which identifies the unrelated individual as the child's adult caretaker.

6. An adult caretaker or teen parent, caring for children who are receiving basic cash assistance through the Colorado Works Program may be eligible for Low-Income Child Care if the adult caretaker or teen parent is not a member of the Colorado Works assistance unit; and, she/he meets all other Low-Income program criteria.

7. Adoptive parents (including those receiving adoption assistance) are eligible if they meet the low-income program requirements.

8. Adult caretaker(s) or teen parent(s) with an open and active CCCAP case who are participating in an eligible activity, and go on maternity/paternity leave. Not to exceed twelve (12) weeks in an eligibility/re-determination period.

9. Adult caretaker(s) or teen parent(s) with an open and active CCCAP case who are participating in an eligible activity, and go on verified medical leave and are unable to care for his/her children. Not to exceed twelve (12) weeks in an eligibility/re-determination period.

10. A separated primary adult caretaker or teen parent with a validly issued temporary order for parent responsibilities or child custody shall not be determined ineligible based on the other spouse’s or parent’s financial resources.

E. Ineligible Household Compositions

Incapacitated single adult caretakers or teen parents who are not in an eligible activity are not eligible for the low-income program.

F. Eligible Child

An “eligible child” is a child under the age of thirteen (13) years who needs child care services during a portion of the day, but less than twenty four (24) hours, and is physically residing with the eligible adult caretaker(s) or teen parent(s); or a child with additional care needs under the age of nineteen (19) who is physically or mentally incapable of caring for himself or herself or is under court supervision and is physically residing with the eligible adult caretaker(s) or teen parent(s).

1. All children who have had an application made on their behalf for or are receiving child care assistance shall verify that they are a U.S. citizen or qualified alien and provide proof of identity.

2. Children receiving child care from a qualified exempt child care provider who is unrelated to the child and care is provided outside of the child’s home and who are not attending school as defined by the Colorado Department of Education shall provide a copy of their immunization record to the county indicating that the children are age-appropriately immunized, unless exempt due to religious or medical reasons (see Sections 25-4-902 and 25-4-908, C.R.S.).

G. Eligible Activities

Adult caretakers or teen parents shall meet the criteria of at least one of the following activities:

1. Employment Criteria

    a. Adult caretakers or teen parents may be employed full or part time.

    b. Adult caretaker(s) or teen parent(s) shall verify that his/her gross income divided by the number of hours worked equals at least the current federal minimum wage.

    c. Owners of LLC's and S-Corporations, are considered employees of the corporation.

2. Self-Employed Criteria

    a. The adult caretaker(s) shall submit documentation listing his/her income and work-related expenses. All expenses shall be verified or they will not be allowed.

    b. The adult caretaker(s) shall submit an expected weekly employment schedule that includes approximate employment hours. This is required upon beginning self-employment, at application, and at re-determination.

    c. The adult caretaker(s) shall show that he/she has maintained an average income that exceeds their business expenses from self-employment.

    d. The adult caretaker(s) shall show that his/her taxable gross income divided by the number of hours worked equals at least the current federal minimum wage.

    e. Adult caretakers whose self-employment endeavor is less than twelve (12) months old, may be granted child care for six (6) months or until their next re-determination, whichever is longer, to establish their business. At the end of the launch period, adult caretakers shall provide documentation of income, verification of expenses and proof that they are making at least federal minimum wage for the number of hours worked. Projected income for the launch period shall be determined based upon the federal minimum wage times the number of declared number of hours worked.

3. Job Search Criteria

    a. Job search child care is available to eligible adult caretakers or teen parents for no fewer than thirteen (13) weeks of child care in a twelve (12) month period beginning with the first authorized week of job search activity. Any day utilized in a week is considered one (1) week used toward the time limited activity.

    b. Regular consistent care must be provided during the job search period.

    c. The amount of care authorized each day shall, at a minimum, be commensurate with the amount needed to complete the job search tasks.

d. Job search child care shall be approved when adult caretakers or teen parents lose their jobs while enrolled in the Low-Income program.

e. Subject to available appropriations, an adult caretaker or teen parent who is not employed at the time of application is eligible for CCCAP for thirteen (13) weeks of job search within a twelve (12) month period.

4. Training Criteria and Education

Subject to available appropriations, an adult caretaker(s) or teen parent(s) who is enrolled in a regionally accredited post-secondary education program or a workforce training (vocational/technical job skills training) program is eligible for CCCAP for at least two years (104 weeks) of the post-secondary education or workforce training program, provided all other eligibility requirements are met during those two years (104 weeks). A county may give priority for services to a working adult caretaker(s) or teen parent(s) over an adult caretaker(s) or teen parent(s) enrolled in postsecondary education or workforce training.

Counties' child care staff may refer adult caretakers and teen parents to community employment and training resources for assistance in making a training and postsecondary education decision.

a. Adult caretaker educational programs include post-secondary education for a first bachelor's degree or less, or workforce/vocational/technical job skills training when offered as secondary education, which result in a diploma or certificate, for at least any two years. This is limited to coursework for the degree or certificate.

b. In addition to the months of assistance available for post-secondary and vocational or technical training, up to twelve (12) months of assistance is allowable for high school equivalency examination, high school diploma, English as a Second Language or adult basic education.

c. Any week in which at least one (1) day is utilized for child care is considered one (1) week used toward the time limit.

H. Low-Income Eligibility Guidelines

1. Adult caretaker(s) or teen parent(s) gross income may not exceed the maximum defined by the county of residence of the applicant. Subject to available appropriations, each county shall determine its maximum gross monthly income guidelines not to exceed eighty-five percent (85%) of the state median income.

a. Entry income eligibility cannot be set below one hundred sixty-five percent (165%) of federal poverty level.

b. Exit income eligibility for a county whose entry income level is at or below one hundred eighty five percent (185%) of the federal poverty level shall be greater than their entry income level not to exceed eighty-five percent (85%) of the state median income.

2. Generally, the expected monthly income amount is based on the income received in the prior thirty (30) day period; except that, when the prior thirty (30) day period does not provide an accurate indication of anticipated income as referenced in the definition of "Income Eligibility" in Section 3.903 or under circumstances as specified below, a different period of time may be applicable:

a. For new or changed income, a period shorter than a month may be used to arrive at a projected monthly amount.

b. For contract employment in cases, such as in some school systems, where the employees derive their annual income in a period shorter than a year, the income shall be prorated over the term of the contract, provided that the income from the contract is not earned on an hourly or piecework basis.

c. For regularly received self-employment income, net earnings will usually be prorated and counted as received in a prior thirty (30) day period, except for farm income. For further information, see Section 3.905.1, K, 1-2, on self-employment under countable earned income.

d. For all other cases where receipt of income is reasonably certain but the monthly amount is expected to fluctuate, a period of up to twelve months may be used to arrive at an average monthly amount.

e. For income from rental property to be considered as self-employment income, the adult caretaker(s) or teen parent(s) shall actively manage the property at least an average of twenty (20) hours per week. Income from rental property will be considered as unearned income if the adult caretaker(s) or teen parent(s) are not actively managing the property an average of at least twenty (20) hours per week. Rental income, as self-employment or as unearned income, may be averaged over a twelve (12) month period to determine monthly income. Income from jointly owned property shall be considered as a percentage at least equal to the percentage of ownership or, if receiving more than percentage of ownership, the actual amount received.

f. For cases where a change in the monthly income amount can be anticipated with reasonable certainty, such as with Social Security cost-of-living increases or other similar benefit increases, the expected amount shall be considered in arriving at countable monthly income for the month received.

g. Income inclusions and exclusions (Section 3.905) shall be used in income calculations.

h. Irregular child support income, not including lump sum payments, may be averaged over a period of time up to twelve (12) months in order to calculate household income.

i. Non-recurring lump sum payments, including lump sum child support payments, may be included as income in the month received or averaged over a twelve (12) month period, whichever is most beneficial for the client.

3. Income Verification at Application and Re-determination

a. Earned Income

1) For ongoing employment, income received during the prior thirty (30) day period shall be used in determining eligibility unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate

indication of anticipated income, in which case, a county can require verification of up to twelve (12) of the most recent months of income to determine a monthly average. The adult caretaker(s) or teen parent(s) may also provide verification of up to twelve (12) of the most recent months of income if he/she chooses to do so if such verification more accurately reflects a household's current income level.

2) For employment that has begun or changed within the last sixty (60) days, a new employment verification letter may be used.

3) For self-employment income the person shall submit documentation listing his/her income and work-related expenses for the prior thirty (30) day period. On a case-by-case basis, if the prior thirty (30) day period does not provide an accurate indication of anticipated income, a county can require verification of up to twelve (12) of the most recent months of income and expenses to determine a monthly average. The adult caretaker(s) may also provide verification of up to twelve (12) of the most recent months of income and expenses if he/she chooses to do so if such verification more accurately reflects a household's current income level. All expenses shall be verified or they will not be allowed.

b. Unearned Income

Unearned income received during the prior thirty (30) day period shall be used in determining eligibility unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case, a county can require verification of up to twelve (12) of the most recent months of income to determine a monthly average. The adult caretaker(s) or teen parent(s) may choose to also provide verification of up to twelve (12) of the most recent months of income if such verification more accurately reflects a household's current income level.

c. Adult caretakers or teen parents shall self-declare that their liquid and non-liquid assets do not exceed one million dollars. If assets exceed one million dollars the household is ineligible for CCCAP.

d. If written documentation is not available at time of eligibility determination, verbal verification from the employer or other person issuing the payment may be obtained. Counties shall document the verbal verification in the case file to include the date that the information was received, who provided the information, and a contact phone number.

e. If income is not verified

1) At application

a) If verifications are not returned within the fifteen (15) day noticing period the application will be denied.

b) If all verification has not been submitted within sixty (60) calendar-days of the application date then the county shall require a new application.

2) At re-determination, if all verifications are not received within the fifteen (15) day noticing period, the CCCAP case will be closed.

I. Income Inclusions

1. Gross earnings, salary, armed forces pay (including but not limited to basic pay, basic assistance for housing (BAH) and basic assistance for subsistence (BAS), hazard duty pay, and separation pay), commissions, tips, and cash bonuses are counted before deductions are made for taxes, bonds, pensions, union dues and similar deductions. If child care is provided for an employment activity, then gross wages divided by the number of hours worked shall equal at least the current federal minimum wage.

2. Taxable gross income (declared gross income minus verified business expenses from one's own business, professional enterprise, or partnership) from non-farm self-employment.

a. These verified business expenses include, but are not limited to:

1) The rent of business premises; and,

2) Wholesale cost of merchandise; and,

3) Utilities; and,

4) Taxes; and,

5) Mileage expense for business purposes only; and,

6) Labor; and,

7) Upkeep of necessary equipment.

b. The following are not allowed as business expenses from self-employment:

1) Depreciation of equipment; and,

2) The cost of and payment on the principal of loans for capital asset or durable goods; and,

3) Personal expenses such as personal income tax payments, lunches, and transportation to and from work.

c. If child care is provided for a self-employment activity, then taxable gross wages divided by the number of hours worked shall equal at least the current federal minimum wage. To determine a valid monthly income taxable gross income may be averaged for a period of up to twelve (12) months.

3. Taxable gross income (gross receipts minus operating expenses from the operation of a farm by a person on his own account, as an owner, renter or sharecropper) from farm self-employment.

    a. Gross receipts include, but are not limited to:

        1) The value of all products sold; and,

        2) Government crop loans; and,

        3) Money received from the rental of farm equipment and/or farm land to others; and,

        4) Incidental receipts from the sale of wood, sand, gravel, and similar items.

    b. Operating expenses include, but are not limited to:

        1) Cost of feed, fertilizer, seed, and other farming supplies; and,

        2) Cash wages paid to farmhands; and

        3) Cash rent; and,

        4) Interest on farm mortgages; and,

        5) Farm building repairs; and,

        6) Farm taxes (not state and federal income taxes); and,

        7) Similar expenses.

    c. The value of fuel, food, or other farm products used for family living is not included as part of net income. If child care is provided for an employment activity, then taxable gross wages divided by the number of hours worked shall equal at least the current federal minimum wage. To determine a valid monthly income, taxable gross income may be averaged for a period of up to twelve months. For all other cases where receipt of income is reasonably certain but the monthly amount is expected to fluctuate, a period of up to twelve months shall be used to arrive at an average monthly amount.

4. An in-kind benefit is any gain or benefit received by the adult caretaker(s) or teen parent(s) as compensation for employment, which is not in the form of money such as meals, clothing, public housing or produce from a garden. A dollar amount shall be established for this benefit and it shall be counted as other income. The dollar amount is based on the cost or fair market value.

5. Vendor payments are money payments that are not payable directly to an adult caretaker or teen parent, but are paid to a third party for a household expense and are countable when the person or organization making the payment on behalf of a household is using funds that otherwise would need to be paid to the adult caretaker(s) or teen parent(s) and are part of the compensation for employment.

6. Railroad retirement insurance

7. Veterans Payments

a. Retirement or pension payments paid by defense finance and accounting services (DFAS) to retired members of the Armed Forces;

b. Pension payments paid by the veterans administration to disabled members of the Armed Forces or to survivors of deceased veterans;

c. Subsistence allowances paid to veterans through the GI bill. For education and on-the-job training; and,

d. “Refunds" paid to veterans as GI insurance premiums.

8. Pensions and annuities (minus the amount deducted for penalties, if early payouts are received from these accounts)

a. Retirement benefit payments;

b. 401(k) payments;

c. IRA payments;

d. Pension payments; or,

e. Any other payment from an account meant to provide for a retired person or their survivors.

9. Dividends

10. Interest on savings or bonds

11. Income from estates or trusts

12. Net rental income

13. Royalties

14. Dividends from stockholders

15. Memberships in association

16. Periodic receipts from estates or trust funds

17. Net income from rental of a house, store, or other property to others

18. Receipts from boarders or lodgers

19. Net royalties

20. Inheritance, gifts, and prizes

21. Proceeds of a life insurance policy, minus the amount expended by the beneficiary for the purpose of the insured individual's last illness and burial, which are not covered by other benefits

22. Proceeds of a health insurance policy or personal injury lawsuit to the extent that they exceed the amount to be expended or shall be expended for medical care

23. Strike benefits

24. Lease bonuses and royalties (e.g., oil and mineral)

25. Social Security pensions, survivor's benefits and permanent disability insurance payments made prior to deductions for medical insurance

26. Unemployment insurance benefits

27. Worker's compensation received for injuries incurred at work

28. Maintenance payments made by an ex-spouse as a result of dissolution of a marriage

29. Child support payments

30. Military allotments

31. Workforce innovation opportunity act (WIOA) wages earned in work experience or on-the-job training

32. Earned AmeriCorps income includes government payments from agricultural stabilization and conservation service and wages of AmeriCorps volunteers in service to America (vista) workers. Vista payments are excluded if the client was receiving CCCAP when he or she joined vista. If the client was not receiving CCCAP when he or she joined vista, the vista payments shall count as earned income.

33. CARES payments – refugee payments from Refugee Services

J. Income Exclusions

1. Earnings of a child in the household when not a teen parent

2. Supplemental Security Income (SSI) under Title XVI

3. Any payment made from the Agent Orange Settlement Fund, pursuant to P.L. No. 101-201

4. Nutrition related public assistance

   a. The value of Food Assistance benefits (SNAP)

   b. Benefits received under title VII, Nutrition Program for the Elderly, of The Older Americans Act (42 U.S.C. 3030A)

   c. 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

   d. Benefits received from the Special Supplemental Food Program for Women, Infants and Children (WIC)

5. Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act

6. Experimental Housing Allowance Program (EHAP) payments made by HUD under Section 23 of the U.S. Housing Act

7. Payments made from Indian judgment funds and tribal funds held in trust by the Secretary of the Interior and/or distributed per capita

8. Distributions from a native corporation formed pursuant to the Alaska Native Claims Settlement Act (ANCSA)

9. Major disaster and emergency assistance provided to individuals and families, and comparable disaster assistance provided by states, local governments and disaster assistance organizations

10. Payments received from the county or state for providing foster care, kinship care, or for an adoption subsidy

11. Payments to volunteers serving as foster grandparents, senior health aides, 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 (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 III of the Domestic Volunteer Services Act

12. Low-Income Energy Assistance Program (LEAP) benefits

13. Social security benefit payments and the accrued amount thereof to a recipient when an individual plan for self-care and/or self-support has been developed

14. Earned Income Tax Credit (EIC) payments

15. Monies received pursuant to the “Civil Liberties Act of 1988,” P.L. No. 100-383 (by eligible persons of Japanese ancestry or certain specified survivors, and certain eligible Aleuts)

16. Any grant or loan to any undergraduate student for educational purposes made or insured under any programs administered by the Commissioner of Education (Basic Educational Opportunity Grants, Supplementary Educational Opportunity Grants, National Direct Student Loans, and Guaranteed Student Loans); Pell Grant Program, the PLUS Program, the Byrd Honor Scholarship programs, and the College Work Study Program

17. Training allowances granted by WIA to enable any individual, whether dependent child or caretaker relative, to participate in a training program are exempt

18. Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects, and the youth employment and training programs under the Youth Employment and Demonstration Project Act

19. Any portion of educational loans, scholarships, and grants obtained and used under conditions that preclude their use for current living costs and that are earmarked for education

20. Financial assistance received under the Carl D. Perkins Vocational and Applied Technology Education Act that is made available for attendance costs. Attendance costs

include: tuition, fees, rental or purchase of equipment, materials, supplies, transportation, dependent care and miscellaneous personal expenses

21. Any money received from the Radiation Exposure Compensation Trust Fund, pursuant to Public Law No. 101-426 as amended by Public Law No. 101-510

22. Resettlement and Placement (R & P) vendor payments for refugees

23. Supportive service payments under the Colorado Works Program

24. Home Care Allowance under adult categories of assistance

25. Loans from private individuals as well as commercial institutions

26. Public cash assistance grants including Old Age Pension (OAP), Aid to the Needy Disabled (AND), and Temporary Assistance to Needy Families (TANF)/Colorado Works

27. Reimbursements for expenses paid related to a settlement or lawsuit

28. Irregular income in the certification period that totals less than ninety dollars ($90) in any calendar quarter, such as slight fluctuations in regular monthly income and/or that which is received too infrequently or irregularly to be reasonably anticipated

29. Income received for participation in grant funded research studies on early childhood development

K. Income Adjustments

1. Verified court-ordered child support payments for children not living in the household shall be deducted prior to applying the monthly gross income to the maximum gross monthly income guidelines and when calculating parent fees. To qualify for the adjustment, the child support shall be:

a. Court ordered and paid; and,

b. For a current monthly support order (not including arrears).

2. In order to be considered verified:

a. There shall be verification that payments are court ordered and actually paid;

b. Court ordered payments deducted shall be for current child support payments; and,

c. Such verification shall be made at the time of initial approval of eligibility for services and at the time of each re-determination of eligibility.

L. Child Support Services (County Option)

1. At the option of the county, the county may require households receiving Low-Income Child Care Assistance to apply for and cooperate with Child Support Services pursuant to Section 26-2-805, C.R.S.

2. Participating counties shall refer all dependent children with a non-custodial parent that are in need of care to the Child Support Services Unit or their delegates unless an active child support case exists or if a good cause exemption has been granted.

a. Counties shall inform all adult caretakers of their right to apply for a good cause exemption in writing at the time of application as well as any time while receiving child care. Counties shall extend benefits until a good cause determination is complete.

b. "Good cause" shall include, but not be limited to, the following:

1) Potential physical or emotional harm to a child or children; or,

2) Potential physical or emotional harm to an adult caretaker relative or teen parents; or,

3) Pregnancy or birth of a child related to incest or forcible rape; or,

4) Legal adoption in a court of law or a parent receiving pre-adoption services; or,

5) Other exemption reasons as determined by the county director or designee.

c. The county director or designee shall make determination of good cause exemption and shall determine if good cause needs to be reviewed at some future date.

d. If an adult caretaker has been approved for good cause in another public assistance program that requires child support Services, a good cause exemption shall be extended to CCCAP.

3. The adult caretaker(s) shall apply for and cooperate with the Child Support Services Unit or delegate agency within thirty (30) calendar-days of initial date of approval for child care. For ongoing child care cases, the county shall require the adult caretaker(s) to cooperate with Child Support Services within thirty (30) calendar-days of the date the county provides written notification of the requirement.

4. For Low-Income Child Care Assistance adult caretaker(s) "cooperation" is defined as:

a. Applying for Child Support Services within thirty (30) calendar-days of being notified of the requirement; and,

b. Maintaining an active Child Support Services case while receiving ongoing Low-Income Child Care Assistance benefits; and,

c. Cooperating with Child Support Services is required for all children that are requesting care in the ongoing child care household with an absent parent.

5. If CCCAP receives written notice within required timeframes from the Child Support Services Unit that the child care household has not cooperated, the following steps shall be taken:

a. The county or its designee child care staff shall notify the household within fifteen (15) calendar-days, in writing, that he/she has fifteen (15) calendar-days from the date the notice is mailed to cooperate, or request a good cause exemption, before the child care case and all authorizations shall be closed.

b. If the adult caretaker(s) fail(s) to cooperate within the required time frames and/or with the Child Support Services Unit, the CCCAP case shall be closed. Upon notification of a request for good cause, the county shall extend benefits until a good cause determination is complete, as long as the household meets all other eligibility criteria. The county shall make a good cause determination within fifteen (15) calendar-days of the request.

6. If a household's benefits are terminated due to failure to cooperate, that household may remain ineligible in all counties that have this option until cooperation is verified by the Child Support Services Unit or delegate agency.

7. At the time of referral from the Colorado Works Program to the Low-Income Child Care Assistance Program, the Low-Income Child Care Assistance Program shall notify households in writing within at least fifteen (15) calendar-days of the referral of his/her continued requirement to cooperate with the Child Support Services Unit.

8. The Child Care Assistance Program shall notify Child Support Services within at least fifteen (15) calendar-days when a household is transitioned from Colorado Works child care to Low-Income Child Care Assistance and the household’s continued requirement to cooperate.

9. Households shall not be required to cooperate with Child Support Services if:

a. Good cause has been established; or,

b. The child support case is closed pursuant to Section 6.260.51 (9 CCR 2504-1); or,

c. The Low-Income Child Care case is a two-parent household if there are no absent parents for any children in the home.

3.905.2 ADULT CARETAKER OR TEEN PARENT RESPONSIBILITIES

Primary adult caretaker(s) or teen parent(s) shall sign the application/re-determination form and releases along with providing verification of income to determine eligibility.

A. Primary adult caretaker(s) or teen parent(s) shall sign the state prescribed client responsibilities agreement form, which outlines child care program participation requirements.

B. Adult caretaker(s) or teen parent(s) agrees to pay the parent fee listed on the child care authorization notice and understands that it is due to the child care provider in the month that care is received.

C. Adult caretaker(s) or teen parent(s) have the responsibility to report and verify changes to income, only if the HOUSEHOLD'S income exceeds eighty-five percent (85%) of the State median income, in writing, within ten (10) calendar-days of the change. Also, if the adult caretaker(s) or teen parent(s) is no longer in his/her qualifying eligible activity, this shall be reported in writing within four (4) calendar weeks pursuant to Section 26-2-805(1)(e)(III), C.R.S. this does not include a temporary break in eligible activity such as a temporary job loss from the qualifying eligible activity or temporary change in participation in a training or education activity. A temporary break includes but is not limited to:

1. Absence from seasonal employment not to exceed three (3) months when returning to same employer;

2. Absence from employment due to extended medical leave, not to exceed three (3) months when returning to same employer;

3. Absence from employment due to maternity/paternity leave, not to exceed twelve (12) consecutive weeks as defined in section 3.903 when returning to same employer; or,

4. Temporarily not attending class between semesters not to exceed three (3) months.

D. Adult caretaker(s) or teen parent(s) shall provide current immunization records for child(ren) who receive child care from qualified exempt child care providers not related to the child(ren), where care is provided outside of the child's home and the child(ren) are not school age.

E. Adult caretaker(s) or teen parent(s) shall cooperate with the child support services unit or the delegate agency for all children with an absent parent, regardless of receipt of child care assistance for that child, as required by the county (see section 3.905 m).

F. Adult caretaker(s) or teen parent(s) shall report changes in child care providers prior to the change.

G. All adult caretaker(s) or teen parent(s) shall provide verification of their schedule related to their eligible activity at application, and re-determination only if non-traditional care hours are requested.

H. When the primary adult caretaker(s) or teen parent(s) is declaring the identity of his/her child due to the child not having identification as part of the application, an un-expired picture id that has been taken in the past ten (10) years issued by a school or U.S. federal or state governmental agency of the primary adult caretaker or teen parent is needed to verify the adult caretaker's identity.

I. When a child care case has closed and not more than thirty (30) days have passed from date of closure; the adult caretaker(s) or teen parent(s) may provide the verification needed to correct the reason for closure. If the household is determined to be eligible, services may resume as of the

date the verification was received by the county, despite a gap in services. The adult caretaker(s) or teen parent(s) would be responsible for payment during the gap in service.

J. Adult caretaker(s) or teen parent(s) shall not leave his/her CCAP card in the child care provider's possession at any time or he/she may be subject to disqualification per section 3.915.4, b.

K. Adult caretaker(s) or teen parent(s) are required to use the CCAP card(s) to check children in and out for the days of care authorized and attended. Non-cooperation with the use of the CCAP card(s) may result in case closure and/or non-payment of the child care subsidy as defined by county policy.

L. Adult caretaker(s) or teen parent(s) are required to inform their county CCCAP of non-receipt of CCAP card(s) within five business days of approval or replacement of CCAP card(s).

M. Adult caretaker(s) or teen parent(s) are required to inform their county CCCAP worker within two business days of lost, stolen or damaged CCAP card(s).

3.905.3 LOW INCOME CHILD CARE RE-DETERMINATION

A. A re-determination of eligibility shall be conducted no earlier than every twelve (12) months. The State-approved eligibility re-determination form shall be mailed to households at least forty-five (45) calendar-days prior to the re-determination due date. Adult caretaker(s) or teen parent(s) shall complete and return to Child Care staff by the re-determination due date. Adult caretaker(s) or teen parent(s) who do not return eligibility re-determination forms and all required verification may not be eligible for child care subsidies.

1. Employed and self-employed adult caretaker(s) or teen parent(s) shall submit documentation of the following:

a. Earned income

1) For ongoing employment, income received during the prior thirty (30) day period shall be used in determining eligibility unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case, a county can require verification of up to twelve (12) of the most recent months of income to determine a monthly average. The adult caretaker(s) or teen parent(s) may also provide verification of up to twelve (12) of the most recent months of income if he/she chooses to do so if such verification more accurately reflects a household’s current income level.

2) For employment that has begun or changed within the last sixty (60) days, a new employment verification letter may be used.

3) For self-employment income the person shall submit documentation listing his/her income and verification of work-related expenses for the prior thirty (30) day period. On a case-by-case basis, if the prior thirty (30) day period does not provide an accurate indication of anticipated income, a county can require verification of up to twelve (12) of the most

recent months of income and expenses to determine a monthly average. An adult caretaker may also provide verification of up to twelve (12) of the most recent months of income and expenses if he/she chooses to do so if such verification more accurately reflects a household's current income level. All expenses shall be verified or they will not be allowed.

b. Unearned income received during the prior thirty (30) day period shall be used in determining eligibility unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case, a county can require verification of up to twelve (12) of the most recent months of income to determine a monthly average. The adult caretaker(s) or teen parent(s) may also provide verification of up to twelve (12) of the most recent months of income if he/she chooses to do so if such verification more accurately reflects a household's current income level.

c. All adult caretaker(s) or teen parent(s) shall provide verification of their schedule related to their eligible activity at re-determination only if non-traditional care hours are requested.

d. Adult caretakers or teen parents shall self-declare that their liquid and non-liquid assets do not exceed one million dollars. If assets exceed one million dollars the household is ineligible for CCCAP.

2. Adult caretaker(s) or teen parent(s) in training shall submit documentation from the training institution which verifies school schedule (only if non-traditional care hours are requested), and verifies current student status.

3. Adult caretaker(s) or teen parent(s) shall submit current copies of immunization records as required by the county but no more than annually.

4. If written documentation is not available at time of eligibility determination, verbal verification from the employer or other person issuing the payment may be obtained. Counties shall document the collateral contact verification in the case file to include the date that the information was received, who provided the information, and a contact phone number. Acceptable collateral contacts include but are not limited to:

   a. Employers;

   b. Landlords;

   c. Social/migrant service agencies; and,

   d. Medical providers who can be expected to provide accurate third party verification.

B. Parent fees shall be reviewed at re-determination. An adjusted parent fee will be based on an average of at least the past thirty (30) days gross income or a best estimate of anticipated income in the event of new employment. Unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case a county can require evidence of up to twelve (12) of the most recent months of income. The adult caretaker(s) or teen parent(s) may also provide evidence of up to twelve (12) of the most recent months of income if they choose to do so if such evidence more accurately reflects the adult caretaker or teen parent's current income level. The fee change shall be effective the first full calendar month after the change is reported and verified, and timely written notice is provided.

C. For adult caretaker(s) or teen parent(s) whose children are enrolled in Head Start or Early Head Start, counties shall extend re-determination of eligibility to annually coincide with the Head Start or Early Head Start program schedule. These households are still responsible for notifying the county of any changes that may impact eligibility.

3.905.4 TRANSITION OFF LOW-INCOME ASSISTANCE

A. At the time of re-determination only, an adult caretaker(s) or teen parent(s) enrolled in CCCAP, whose household income exceeds the exit income eligibility levels set by the county but are still engaged in eligible activities, shall continue to receive the CCCAP subsidy for no less than ninety (90) calendar-days; except that in no event shall child care assistance be provided if the household income exceeds eighty- five percent (85%) of the Colorado state median income.

B. At the option of the county, households receiving Low-Income Child Care Assistance, who become ineligible at re-determination because their income exceeds the gross monthly income guidelines set by the county, may continue to receive assistance for up to six months following the date they became ineligible when the following criteria are met:

1. The household's gross monthly income does not exceed 85% of the state's median income, published annually by the U.S. Department of Health and Human Services, Administration for Children and Families, based on household size.

2. The household and the county work together to prepare the HOUSEHOLD for the transition off assistance.

3. Counties selecting this option shall notify the state department in advance of their selection of this option, including an outline of the county's transition plan strategies for households.

3.905.5 TERMINATION OF LOW INCOME CHILD CARE SERVICES

A. Child care authorizations and/or cases shall be terminated for the following eligibility related reasons:

1. Eligible child exceeds age limits

2. Household's income exceeds county eligibility guidelines at re-determination and the ninety (90) day post eligibility period has expired

3. Adult caretaker(s) or teen parent(s) did not pay parent fees, an acceptable payment schedule has not been worked out between the child care provider(s) and adult caretaker(s) or teen parent(s), or the adult caretaker(s) or teen parent(s) has/have not followed through with the payment schedule.

4. Adult caretaker(s) or teen parent(s) exceeds activity time limits

5. Adult caretaker(s) or teen parent(s) fails to comply with re-determination requirements

6. Adult caretaker(s) or teen parent(s) is not involved in an eligible activity

7. Adult caretaker(s) or teen parent(s) has become a participant in Colorado Works

8. Adult caretaker(s) or teen parent(s) did not submit required immunization records

9. Household's optional six (6) month post-eligibility period has expired

10. Adult caretaker(s) or teen parent(s) is/are no longer a resident of the county

11. Adult caretaker(s) or teen parent(s) is/are not cooperating with child support establishment, modification or enforcement services, at county option, and, if the adult caretaker(s) or teen parent(s) has/have applied for a good cause exemption, the county director or designee has determined that the adult caretaker(s) or teen parent(s) is/are not eligible for a good cause exemption

12. Adult caretaker(s) or teen parent(s) do not meet minimum wage requirement for employment or self-employment are not considered to be in an eligible activity

13. Household income exceeds eighty-five percent (85%) of State median income during eligibility period

14. Adult caretaker(s) or teen parent(s) did not select a child care provider willing to contract with the county to provide CCCAP services

B. Reason for termination shall be documented on the state prescribed closure form and mailed via postal service, emailed or other electronic systems, faxed or hand-delivered to the primary adult caretaker or teen parent and child care provider.

C. Upon termination from the child care program, the adult caretaker(s) or teen parent(s) will have thirty (30) days from the effective date of closure to correct or provide the information without having to reapply for benefits. Upon correcting or providing the information, eligibility will continue as of the date the missing information was provided to the county. Parent fees will be based on the previous amount specified until prior notice is provided of changes to future parent fees.

D. Nothing in this section shall preclude an adult caretaker(s) or teen parent(s) from voluntarily withdrawing from the Low-Income program.

3.906 COLORADO WORKS CHILD CARE

A. Adult caretakers or teen parents who have been approved for Colorado Works are eligible to receive Colorado Works child care during the Colorado Works assessment process.

B. To continue receiving Colorado Works child care after the assessment process has been completed, a referral form or individualized plan shall be completed and/or received indicating that the participant remains eligible for basic cash assistance. A referral form shall be received by the child care technician unless the Colorado Works technician processes the child care and clearly documents the need for child care in chats.

C. An adult caretaker, caring for children who are receiving basic cash assistance through the Colorado Works program may be eligible for low-income child care if the adult caretaker is not a part of the Colorado Works assistance unit; and, she/he meets all other low-income program criteria.

D. Counties may provide Colorado Works child care for households approved for state diversions not to exceed the state diversion period.

3.906.1 ELIGIBILITY FOR COLORADO WORKS CHILD CARE

A. Households are eligible for Colorado Works child care based on their Colorado Works certification period (not to exceed six (6) months). All Colorado Works child care cases shall be authorized until the end of the Colorado Works certification period unless the eligibility status for Colorado Works changes during the certification period.

B. It is the responsibility of the local Colorado Works program to notify the child care technician if the household becomes ineligible during the certification period at which time the Colorado Works child care case and authorization shall be set to close at the end of the month in which the household became ineligible, allowing for timely noticing.

C. Income is verified and shared by the local Colorado Works program.

1. Supportive service payments under the Colorado Works program are not countable income.

2. Temporary assistance to needy families (TANF)/Colorado Works payments are not countable income.

D. Eligible activity is determined and shared by the local Colorado Works program.

E. Child care schedule is determined and shared by the local Colorado Works program.

F. Residency is verified by the local Colorado Works program.

G. Citizenship and identity is verified by the local Colorado Works program.

H. Colorado Works participants shall provide current immunization records for child(ren) who receive child care from qualified exempt child care providers not related to the child(ren), where care is provided outside of the child's home and the child(ren) are not school age.

I. Counties that provide Colorado Works child care for households approved for state diversions require the same eligibility as outlined above. The eligibility period will match the state diversion period.

3.906.2 TRANSITION OFF COLORADO WORKS CHILD CARE

Counties shall provide low income child care assistance for a household transitioning off the Colorado Works program due to employment or job training without requiring the household to apply for low income child care but shall initially re-determine the household's eligibility within six (6) months after the transition.

A. A household that transitions off the Colorado Works program shall not be automatically transitioned to low income CCCAP if any of the following conditions apply:

1. The household leaves the Colorado Works Program due to an Intentional Program Violation (IPV) as determined in Section 3.500 or as outlined in county policy; or,

2. The household needs child care for activities other than employment or job training; or,

3. The household is leaving the Colorado Works program due to employment and will be at an income level that exceeds the county adopted income eligibility limit for the county's low income CCCAP; or,

4. If a household is not transitioned for the reasons outlined above, the county shall provide notice.

B. At the county's discretion, a household transitioning off the Colorado Works program that is eligible for low income CCCAP and resides in a county that has households on its waiting list may be added to the waiting list or be provided child care assistance without first being added to the waiting list.

C. If a household is not transitioned from Colorado Works to low-income child care, the county shall provide a fifteen (15) day notice.

3.907 PROTECTIVE SERVICES CHILD CARE

A. Protective services households refers to households when child(ren) have been placed by the county in foster home care, kinship foster home care, or non-certified kinship care and that have an open child welfare case. At the option of the county, the county may provide protective services child care utilizing child care development funds (CCDF).

B. Protective services child care is not twenty-four (24) hour care. Child care services for school-age children during regular school hours shall be different from, and cannot be substituted for, educational services that school districts are required to provide under the Colorado exceptional children's act.

3.907.1 ELIGIBILITY FOR PROTECTIVE SERVICES HOUSEHOLDS (COUNTY OPTION)

A. Protective services households are considered to be a household of one for purposes of determining income eligibility. The only countable income for a protective services household is the income that is received by the child(ren) that have been placed in kinship or foster care. Child support income shall not be included as income. Child support income is intercepted by the county child welfare department.

B. Protective services households shall be allowed up to sixty (60) days to provide verification of the child(ren)'s income.

C. Protective services households are not subject to eligible activity requirements.

D. Protective services households are not subject to residency verification requirements. The county with the open child welfare case shall be considered the county of residency.

E. Citizenship and identity

1. Protective services households shall be allowed up to six (6) months to provide verification of the child(ren)'s U.S. citizenship.

2. Protective services households shall be allowed up to sixty (60) days to provide the adult caretaker or teen parent's identification.

F. Protective services households shall be allowed up to sixty (60) days to provide verification of immunization if child care is provided by a qualified exempt child care provider not related to the child where care is provided outside of the home.

3.908 CHILD WELFARE CHILD CARE

A. Child Welfare child care is used as a temporary service to maintain children in their own homes or in the least restrictive out of-home care setting when there are no other child care options available. This may include parents, non-certified kinship care, kinship foster care homes, and foster care homes.

B. Child Welfare child care is not twenty-four (24) hour care. Child care services for school-age children during regular school hours shall be different from, and cannot be substituted for, educational services that school districts are required to provide under the Colorado exceptional children's act.

C. Eligibility for Child Welfare child care is determined on a case-by-case basis by the Child Welfare division using the criteria outlined in 7.302 (12 CCR 2509-4).

D. Child Welfare households are not subject to residency verification requirements. The county with the open child welfare case shall be considered the county of residency.

E. The county shall not provide Child Welfare child care utilizing CCDF.

3.909 ELIGIBILITY FOR FAMILIES EXPERIENCING HOMELESSNESS

A. Households shall meet the definition of families experiencing homelessness.

B. Households that meet the definition of “families experiencing homelessness” shall be provided a child care authorization during a stabilization period of at least sixty (60) consecutive calendar-days, within a twelve (12) month period, to allow the household the opportunity to submit verification for ongoing child care subsidies.

1. If verifications necessary to determine ongoing eligibility are received within the stabilization period, the household will continue to receive subsidized child care.

2. If verifications necessary to determine ongoing eligibility are not received within the stabilization period, the household will be determined ineligible and given proper adverse action notice.

3. Subsidized care provided during the stabilization period is considered non-recoverable by the county unless fraud has been established.

4. Eligible activity

   a. The adult caretaker(s) or teen parent(s) is not required to participate in an eligible activity during the stabilization period.

   b. If the adult caretaker(s) or teen parent(s) is participating in an eligible activity, they will have at least sixty (60) days to provide necessary verification.

5. Residency

   a. The adult caretaker(s) or teen parent(s) shall self-declare residency during the stabilization period by providing the location they are temporarily residing. Counties shall identify the zip code of this location in chats.

   b. The adult caretaker(s) or teen parent(s) may provide a mailing address or the county shall use general delivery or the county office address for client correspondence.

6. The adult caretaker(s) or teen parent(s) may self-declare citizenship and identity of the child(ren) during the stabilization period.

7. If child care is provided by a qualified exempt child care provider not related to the child where care is provided outside of the home, the requirement to provide verification of immunization status shall not be required during the stabilization period.

3.910 PARENT FEES

A. Parent fee revisions for child care during the twelve (12) month eligibility period may occur upon reported changes only if the change would result in a decrease of the parent fee

B. Parent fees shall be reviewed at re-determination. An adjusted parent fee will be based on an average of at least the past thirty (30) days gross income or a best estimate of anticipated income in the event of new employment or a change in the adult caretaker(s)' or teen parent(s)' regular monthly income. Unless, on a case-by-case basis, the prior thirty (30) day period does not provide an accurate indication of anticipated income, in which case a county can require evidence

of up to twelve (12) of the most recent months of income. The adult caretaker(s) or teen parent(s) may also provide evidence of up to twelve (12) of the most recent months of income if they choose to do so if such evidence more accurately reflects the adult caretaker's current income level.

C. Parent fees are based on gross countable income for the child care household compared to the household size and in consideration of the number of children in care. Parent fees are to be rounded to the nearest whole dollar.

D. Colorado Works households in a paid employment activity shall pay parent fees based on gross countable income as verified and shared by the local Colorado Works program.

E. For a household utilizing a child care provider in the top three levels of the state department's quality rating system, the parent fee shall be reduced by twenty percent (20%) of the regularly calculated parent fee. For households utilizing multiple child care providers, only one child care provider is required to be in the top three quality levels for the reduced parent fee to apply.

F. All adult caretaker(s) and teen parents are required to pay the fee as determined by the formula listed below, except in the following cases:

1. One or two teen parent households who are in middle/junior high, high school, GED, or vocational/technical training activity and for whom payment of a fee produces a hardship. The parent fee may be waived entirely and documented in the case file. The parent fee waiver shall be reviewed during each re-determination.

2. The household is eligible for a reduced parent fee based on the quality level of the child care provider

3. Colorado Works participants enrolled in activities other than paid employment

4. Child Welfare Child Care households as defined in the Social Services rule manual, Section 7.000.5 (12 CCR 2509-1)

5. Families Experiencing Homelessness as defined in section 3.909

6. Protective Service Households as defined in section 3.907

7. Families that have no income shall have no parent fee.

G. The initial or revised fee shall be effective the first full calendar month after the end of the timely written notice period. A parent fee shall not be assessed or changed retroactively.

H. The fee shall be paid in the month that care is received and shall be paid by the parent directly to the child care provider(s). Parent fees are used as the first dollars paid for care. The counties or their designee shall not be liable for the fee payment.

I. When more than one child care provider is being used by the same household, child care staff shall designate to whom the adult caretaker(s) or teen parent(s) pays a fee or in what proportion the fee shall be split between child care providers. The full parent fee shall be paid each month, but parent fees shall not exceed the reimbursement rate by CCCAP. The adult caretaker(s) or teen parent(s) shall determine if it is most beneficial to close their CCCAP case if the parent fee exceeds the cost of care.

J. Adult caretakers or teen parents will be informed of their responsibilities related to fee payment on their signed client responsibilities agreement form.

K. Loss of eligibility for child care subsidies may occur if the adult caretaker(s) or teen parents do not pay their parent fees; do not make acceptable payment arrangements with the child care providers; or, do not follow through with the arrangements. Notice of termination for such loss of eligibility shall be given in accordance with Section 3.905.5. Child care providers shall report non-payment of parent fees no later than sixty (60) calendar-days after the end of the month following the month the parent fees are due unless county policy requires it earlier. If a household's benefits are terminated for non-payment of parent fees, that household will remain ineligible until:

1. Delinquent parent fees are paid in full; or,

2. Adequate payment arrangements are made with the child care provider to whom the fees are owed and an agreement is signed by both parties; or,

3. County determination of verified good faith efforts to make payment to the child care provider(s), when the client was unable to locate the child care provider(s).

L. The adult caretaker(s) or teen parent(s) and child care provider(s) shall be given timely written notice of the parent fee amount, on the child care notice of authorization, at least eleven (11) calendar-days prior to the first of the month the parent fee is effective.

M. Parent fees shall be assessed based on the following formula:

PERCENT FPG	FOR FIRST CHILD-PERCENT OF HOUSEHOLD INCOME	EACH ADDITIONAL CHILD
At or below 100%	1%	NONE
Above 100% and at or below 103%	2%	$15
Above 103% and at or below 106%	3%	$15
Above 106% and at or below 109%	4%	$15
Above 109% and at or below 112%	5%	$15
Above 112% and at or below 115%	6%	$15
Above 115% and at or below 118%	7%	$15
Above 118% and at or below 121%	8%	$15
Above 121% and at or below 124%	9%	$15
Above 124% and at or below 130%	10%	$15
Above 130% and at or below 160%	11%	$25
Above 160% and at or below 185%	12%	$35
Above 185% and at or below 205%	13%	$40
Above 205% and at or below 225%	14%	$40
When income is above county set level but less than 85% state median	12%-25%	$40

N. When income is above county set level but less than eighty five percent (85%) state median, the parent fees shall be increased incrementally as outlined by the individual household transition plan up to the six month limit.

O. Parent fees, as assessed by the parent fee formula, may be reduced to no lower than five dollars ($5) for hardship reasons for up to six (6) months per hardship award. The county director or

his/her designee shall approve fee reductions and a written justification placed in the case file and noted in the case record in the Child Care Automated Tracking System (CHATS). Any hardship award may be extended so long as justification for extending the hardship award exists.

P. The state department shall notify counties annually of the current federal poverty guidelines and state median income limit. Counties shall update parent fees at the next scheduled re-determination.

Q. When all children in a household are in part-time care, the parent fee shall be assessed at fifty-five percent (55%) of the above-calculated fee. Part-time care is defined as an average of less than thirteen (13) full-time equivalent units of care per month.

R. When parent fees fluctuate between part-time and full-time, due to the authorized care schedule, the parent fee should be assessed at the lower rate if the majority of the months in the twelve (12) month eligibility period calculate to part-time care.

S. One or two teen parent households for whom payment of a parent fee produces a hardship may have their fee waived entirely. The parent fee waiver shall be documented in the case file and reviewed during each subsequent re-determination.

3.911 COUNTY RESPONSIBILITIES

A. Counties shall administer the Colorado Child Care Assistance Program in compliance with State Department fiscal and program regulations and in accordance with the terms associated with their allocation. Counties will be allocated child care funds annually.

B. Counties or their designee shall establish administrative controls to ensure appropriate internal controls and separation of duties (this means that the same employee shall not authorize and process payment for child care services). If these administrative controls create a hardship for the county, the county shall submit a waiver request and an internal county policy to the state department for approval. In no event will the state department approve a waiver of controls specified in federal or state statute or regulation/rule.

C. Counties shall use forms as specified when required by the State Department. Counties may add additional language to state forms but shall not remove language. This does not include the CCCAP application or re-determination. All changes to forms shall be submitted to and approved by the state department prior to use.

D. The counties shall respond to requests from the State Department, in a timely and attentive manner.

E. Counties shall make reasonable efforts to advise county residents of services available to target groups through press releases, presentations, pamphlets, and other mass media.

F. Counties shall use chats as designated by the state to administer CCCAP. Counties who do not use chats as prescribed by the state may not be reimbursed.

G. Counties shall establish controls over which county staff have the authority to override eligibility in CHATS. All overrides of eligibility shall be accompanied by documentation in CHATS.

H. The county shall document in chats case actions and contacts made under the appropriate comment screen, within two (2) business days of case action or contact.

I. Counties shall code child care expenditures to the appropriate program, as prescribed by the state. Failure to do so may result in non-reimbursement or other actions as deemed appropriate by the state.

J. Counties shall monitor expenditures of Child Care funds and may suspend enrollments, as necessary, to prevent over-expenditures in child care. “Reimbursable expenditures” are supported in whole or in part by State General Fund, Federal (pass through) or a combination of State and Federal money.

K. The county 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 unauthorized persons other than those involved in the administration of the CCCAP program. Data of any form shall be retained for the current year, plus three previous years, unless:

1. A statute, rule or regulation, or generally applicable policy issued by a county, state or federal agency that requires a longer retention period; or,

2. There has been a recovery, audit, negotiation, litigation or other action started before the expiration of the three-year period.

3. If a county shares building space with other county offices, it shall use locked files to store case material and instruct facility and other maintenance personnel concerning the confidential nature of information.

L. If the county opts to require Child Support Services the county shall coordinate with the county Child Care Assistance Program or delegate agency and the delegate county Child Support Services Unit. This includes, but is not limited to:

1. Developing a referral process to notify the delegate Child Support Services unit within its county within fifteen (15) calendar-days of determining that a household is eligible for CCCAP.

2. Determining good cause procedures. Counties shall notify the delegate Child Support Services unit within its county within fifteen (15) calendar-days of making the good cause determination.

3. Developing cooperation and non-cooperation procedures which shall include timelines and processes for inter-department communication.

4. Notifying Child Support Services no later than the end of the thirty (30) day reinstatement period of a low income case closure.

M. Counties shall post eligibility, authorization, and administration policies and procedures so they are easily accessible and readable to the layperson. The policies shall be sent to the State Department for compilation.

N. Counties shall provide adult caretakers, teen parents, child care providers and the general public with information as required by the state department including but not limited to:

1. Information on all available types of child care providers in the community: centers, family child care homes, qualified exempt child care providers and in-home child care. This information can be provided through child care resource and referral agencies.

2. Information regarding voter registration

3. Information on family support services including but not limited to:

   a. Colorado Works;

   b. Head Start and Early Head Start;

   c. Low-Income Energy Assistance Program (LEAP);

   d. Food Assistance program;

   e. Women, Infants And Children (WIC) program;

   f. Child And Adult Care Food program (CACFP);

   g. Medicaid And State Children's Health Insurance Program;

   h. Housing Information; and,

   i. Individuals with Disabilities Education Act (IDEA) programs and services.

4. Counties shall also provide information and referrals to services under early and periodic screening, diagnosis, and treatment (EPSDT) under Medicaid and Part C of IDEA (34 CFR 300)

5. Counties shall collect information on adult caretaker(s) or teen parent(s) receiving programs services listed in 3.911, N, 3-4 via the CCCAP application and shall enter the information into chats for reporting purposes.

O. If a county reduces its exit income eligibility levels, a household receiving child care assistance services when the change is implemented, if the household's income exceeds the new exit income eligibility level, shall continue to receive said services until the household's next eligibility

re-determination or for six months, whichever is longer, so long as the household income does not exceed eighty-five percent (85%) of the state median income.

P. Once determined eligible, households should remain eligible for a minimum of twelve (12) months. The county shall not discontinue child care services prior to a household's next eligibility re-determination unless:

1. The household's income exceeds eighty-five percent (85%) of the state median income;

2. The adult caretaker(s) or teen parent(s) is no longer in a qualifying eligible activity for the reasons that do not constitute a temporary break as defined in section 3.905.2,C; or,

3. The adult caretaker(s) or teen parent(s) no longer resides in the county of which they are currently receiving CCCAP.

Q. Counties shall maintain a current and accurate waiting list in the state identified human services case management system of adult caretakers and teen parents who have applied for the CCCAP program and are likely to be found eligible based on self-reported income and job, education, job search, or workforce training activity if potential program participants are not able to be served at the time of application due to county funding concerns. Counties may enroll adult caretakers and teen parents from waiting lists according to local priorities and may require an applicant to restate his or her intention to be kept on the waiting list every six months in order to maintain his or her place on the waiting list.

R. Counties shall review current applications for completeness, approve or deny the application, and provide timely written notice to the adult caretaker(s) or teen parent(s) of approval, or of missing verifications, no more than fifteen (15) calendar-days from the date the application was received by the county. Applications are valid for a period of sixty (60) calendar-days from the application date.

1. If verifications are not received within the fifteen (15) day noticing period the application will be denied.

2. If verification is received within sixty (60) calendar-days of the application date, counties will determine eligibility from the date the current verification was received if the eligibility

criteria is met.

3. If verification has not been completely submitted within sixty (60) calendar-days of the application date then the county shall require a new application.

S. Upon review of an application that was directed to the wrong county of residence, the receiving county shall forward the application and any verification within one (1) business day to the correct county. The county shall provide notification to the adult caretaker(s) or teen parent(s) that his/her application has been forwarded to the correct county.

T. Counties may access information already available on file or through system interfaces from other assistance programs within their county to use in child care eligibility determination at application and/or re-determination. Counties shall place a copy of this verification in the case file and/or make a notation in the chats system of the verification as appropriate.

U. Counties shall obtain immunization records for children who receive child care from qualified exempt child care providers not related to the child(ren), where care is provided outside of the child's home and the child(ren) are not school age at application and re-determination.

V. Counties are encouraged to use collateral contact whenever possible to verify information needed to determine eligibility, not including citizenship and identity.

W. Counties shall allow adult caretaker(s) or teen parent(s) who declare their children are citizens of the U.S. no more than six (6) months to obtain the documents needed to meet the citizenship documentation requirement for the children.

X. The county shall not require Social Security Numbers or cards for household members who apply for child care assistance.

Y. Counties shall verify the date of birth for all children receiving child care services.

Z. Counties shall use the prudent person principle when determining eligibility or authorizing care and shall document reasoning in the appropriate notes section of the child care automated tracking system.

AA. The counties or their designee shall verify the residence of any adult caretaker(s) or teen parent(s) receiving or applying for child care assistance to ensure that they live in the county where they are applying for assistance at the time of application or when a change in address is reported. For families experiencing homelessness, refer to section 3.909.

1. Verification of address may include but is not limited to:

a. Rent receipt/lease; or,

b. Mortgage statement; or,

c. Utility or other bill mailed no more than two months previously; or,

d. Voter registration; or,

e. Automobile registration; or,

f. A statement from the person who leases/owns the property; or,

g. Documentation from schools such as verification of enrollment, report card, or official transcript mailed no more than two months previously; or,

h. Official correspondence from any other government agency (e.g. IRS) mailed within the past two months; or

i. A statement from another department in your agency if they have verified the residence (e.g. Child Welfare, collateral contact); or

j. Paycheck stub received within the past two months

2. If the county of residence is questionable, a secondary means of verification may be requested such as but not limited to:

a. Records from the local county clerk and recorder's office; or,

b. Records from the local county assessor's office.

BB. County child care staff shall advise low-income adult caretaker(s) or teen parent(s) of their responsibilities in writing via the client responsibilities agreement at application and re-determination. Information that shall be reported during the twelve (12) month eligibility period is as follows:

1. Changes to income, if the household's income exceeds eighty-five percent (85%) of the State median income shall be reported within ten (10) calendar-days of the change.

2. Changes to an adult caretaker(s) or teen parent's qualifying eligible activity, which does not qualify as a temporary break as defined in section 3.905.2, C, must be reported within four (4) calendar weeks.

CC. Counties shall process any reported change and/or required verification within ten (10) calendar-days of receiving the information using the following guidelines:

1. Changes reported during the twelve (12) month eligibility period requiring immediate action:

a. Changes to income, if the household's income exceeds eighty-five percent (85%) of the state median income;

b. Changes to an adult caretaker or teen parent's qualifying eligibility activity, which does not qualify as a temporary break as defined in section 3.905.2, C;

c. Changes in county residency; and,

d. Changes that are beneficial to the household such as, but not limited to:

1) An increase in authorized care;

2) Changes that would result in a decrease of the parent fee;

3) A change of child care provider;

4) Change in household composition due to an additional child requesting care; and,

5) Change in mailing address.

2. Changes outside of the above guidelines should be documented in CHATS but shall not be acted upon until the adult caretaker or teen parent's re-determination.

DD. If the adult caretaker(s) or teen parent(s) moves out of county, the exiting county shall:

1. Keep the CCCAP case open for up to 30 days from the date of the move or from the date the move was reported, which ever occurred first, to allow the adult caretaker(s) or teen parent(s) to apply for CCCAP in the receiving county; and,

2. The exiting county and the receiving county shall communicate during this thirty (30) day period to mitigate service interruptions if the adult caretaker(s) or teen parent(s) is eligible in the receiving county.

EE. Counties shall respond to requests for information or assistance from other agencies within five (5) business days.

FF. Whenever possible in processing re-determinations of eligibility for adult caretaker(s) or teen parent(s) currently receiving CCCAP, counties shall use information that is already available in other sources to document any verification including citizenship and identity.

GG. Counties shall reduce parent fees by twenty percent (20%) of the regularly calculated parent fee when a household utilizes a quality child care provider rated in the top three levels of the state department's quality rating system. For households utilizing multiple child care providers, only one child care provider is required to be in the top three quality levels for the reduced parent fee to apply.

HH. The county shall not take action on report of unpaid parent fees if it is outside of the required reporting time frame.

II. Counties shall authorize care based on verified need, by establishing an authorization to cover the maximum amount of units needed to ensure care is available based on the adult caretaker or

teen parent's participation in an eligible activity, and shall not be linked directly to the adult caretaker or teen parent's activity schedule and should be based on the child's need for care.

JJ. Counties are encouraged to blend Head Start, Early Head Start and CCDF funding streams by authorizing care based on the child's need for care, regardless of the child's head start or early head start enrollment status, in order to provide seamless services to children dually enrolled in these programs.

KK. Counties shall align the CCCAP re-determination date with the Head Start or Early Head Start program year upon notification that a child is enrolled in a Head Start or Early Head Start program. The re-determination date shall not occur any earlier than twelve (12) months from the CCCAP application date.

LL. With regard to services to students enrolled in grades 1 through 12, no funds may be used for services provided during the regular school day, for any services for which the students received academic credit toward graduation, or for any instructional services, which supplant or duplicate the academic program of any public or private school, this applies to grades 1 through 12. Exceptions to this may include but are not limited to:

1. When a child is temporarily prohibited from attending his/her regular classes due to a suspension or expulsion; or,

2. When a child is temporarily out of school due to scheduled breaks; or,

3. When a child is temporarily out of school due to unexpected school closures.

MM. The authorization start date shall be the date a low income CCCAP case is determined eligible, except in the case of a pre-eligibility application.

NN. For pre-eligibility care reimbursable after eligibility has been determined and the county can provide subsidy for the potential program participant, authorization shall be dated to the date the pre-eligibility application was received by the county.

OO. The county shall generate a state-approved notice regarding changes to child care subsidies within one (1) business day and provide to the primary adult caretaker, teen parent and child care provider via postal service, e-mail or other electronic systems, fax, or hand-delivery, e-mail or other electronic systems e-mail or other electronic systems.

PP. If verification that is needed to correct the reason for closure of a child care case is received within thirty (30) calendar-days after the effective date of closure, eligibility shall be determined as of the date the verification was received regardless of any break in service period.

QQ. The county shall issue CCAP cards immediately upon case approval or initial authorization of child care services.

RR. The county shall issue replacement CCAP cards within two (2) business days of being notified of the loss or damage of a CCAP card by the adult caretaker(s) or teen parent(s).

SS. The county is responsible for notifying the state department when a fiscal agreement is terminated. The state department shall notify the county if the POS device has not been returned to the POS vendor within thirty (30) days.

TT. If the POS device is not returned to the POS device vendor, the county shall establish a recovery for the replacement cost of the POS device.

UU. The county shall make available the following child care provider information, including protective services information, to all staff whose responsibilities include child care subsidy services:

1. Information known to licensing staff.

2. Information from previous agency contacts.

3. Information obtained from the Child Care Fiscal Agreement renewals.

4. Information obtained from adult caretaker(s) or teen parent(s), caseworker visits, and other sources.

5. Information about corrective action intervention by the counties, their designee(s), or State Department.

VV. Counties are responsible for verifying proof of lawful physical residence in the United States for any qualified exempt child care provider(s).

WW. The counties or their designee will complete a review of the state administered system for child abuse and neglect on the qualified exempt child care provider(s) and any one in the qualified exempt child care provider’s household who is eighteen (18) years and over not including the adult caretaker(s) or teen parent(s).

XX. The counties or their designee shall screen the qualified exempt child care provider(s) and any other adult eighteen (18) years of age and older, not including the adult caretaker(s) or teen parent(s), for current or previous adverse county contact, including but not limited to, allegations of fraud or IPV.

YY. The county shall reimburse licensed child care providers based on the state established base payment and tiered reimbursement rates unless they have followed the county opt out process outlined in section 3.914.1 and it has been approved by the state department.

ZZ. The county-established licensed child care provider reimbursement rates shall include a system of tiered reimbursement based on quality levels for licensed child care providers that enroll children participating in CCCAP.

AAA. Prior to approving a fiscal agreement with any child care provider, the county shall compare the child care provider's private pay rates to the county's base reimbursement rates to ensure that the county base reimbursement rate does not exceed the child care provider's private reimbursement rates.

BBB. Counties shall have fiscal agreements signed by the child care provider and county staff prior to opening or amending them in CHATS.

CCC. Counties shall verify that child care providers are not excluded from receiving payments prior to signing a fiscal agreement. The county shall make this verification check through the Excluded Parties List System (EPLS) established by the General Services Division on the website at: www.sam.gov.

DDD. Counties shall pay child care providers for services provided that could not be paid through the automated system, based on county payroll policies. If payment is delayed for any reason, the county shall notify the child care provider(s) in a timely manner and document the circumstances in CHATS.

EEE. In any cases where payments to licensed centers or homes are delayed more than three (3) calendar months past the end of the month care was provided, county-only money shall be used to pay for this care.

FFF. County offices shall complete a random monthly review of Point of Service data sign in/out records. The county or its designee shall take necessary action as defined in the county fraud referral process if the review indicates:

1. That the child care provider(s) may have submitted an inaccurate report of attendance for a manual claim, the county or its designee shall contact the child care provider(s) and adult caretaker(s) or teen parent(s) to resolve the inaccuracy.

2. That either the adult caretaker(s) or teen parent(s) or the child care provider has attempted to defraud the program or receive benefits to which they were not eligible. The county or its designee shall report that information to the appropriate legal authority.

GGG. The county shall refer, within fifteen (15) calendar-days of establishing recovery, to the appropriate investigatory agency and/or the district attorney, any alleged discrepancy which may be a suspected fraudulent act by a household or child care provider of services.

HHH. Counties shall establish recoveries within twelve (12) months of discovery of the facts resulting in recovery.

III. Counties shall take whatever action is necessary to recover payments when households and/or child care providers owe money to the State Department because of overpayments, ineligibility and/or failure to comply with applicable state laws, rules or procedures.

JJJ. Counties shall report established recoveries that are the result of fraud to the state department.

3.911.1 ADDITIONAL COUNTY RESPONSIBILITIES FOR COLORADO WORKS CHILD CARE

A. The county will act within five (5) business days of receipt of a referral from Colorado Works for new or ongoing child care.

B. The county shall not terminate care on any Colorado Works (basic cash assistance) child care cases until the end of the month the Colorado Works case is closed. Since clients are eligible for Colorado Works for the entire month, they are also eligible for Colorado Works child care. This does not include Colorado Works diversion cases.

3.912 PRE-ELIGIBILITY DETERMINATIONS

An Early Care and Education provider may provide services to the household prior to the final determination of eligibility and shall be reimbursed for such services only if the county determines the household is eligible for services and there is no need to place the household on the waiting list. The start date of eligibility is defined in Section 3.911, R. If the household is found ineligible for services, the Early Care and Education provider shall not be reimbursed for any services provided during the period between his/her pre-eligibility determination and the county's final determination of eligibility.

The Early Care and Education provider or county may conduct a pre-eligibility determination for child care assistance for a potential program participant to facilitate the determination process.

A. The Early Care and Education provider may submit the prospective program participant's State-approved application, release of information, and documentation to the county for final determination of eligibility for child care assistance. The Early Care and Education provider shall signify on the first page of the application in the space provided that a pre-eligibility determination has been made.

B. The Early Care and Education provider or county may provide services to the household prior to final determination of eligibility, and the county shall reimburse an Early Care and Education Provider:

1. As of the date the county receives the application from the Early Care And Education provider for such services only if the county determines the prospective program participant is eligible for services; and,

2. There is no need to place the prospective program participant on a waiting list.

C. All supporting documentation for a pre-eligibility application submitted by an Early Care and Education Provider shall be received in thirty (30) calendar-days of the date the application was received or the application may be determined ineligible by the county. If all verifications are received between the thirty-first (31st) and sixtieth (60th) day, counties shall determine eligibility from the date the verification was received.

D. If the prospective program participant is found ineligible for services, the county shall not reimburse the Early Care and Education provider for any services provided during the period between its pre-eligibility determination and the county's final determination of eligibility.

E. If an Early Care and Education provider or county has conducted a pre-eligibility determination, they shall include documentation of the information on which the pre-eligibility determination has been made in or with the application. The documentation shall include household income, household composition, and eligible activity.

F. When a county conducts a pre-eligibility determination, the county shall notify the prospective child care provider with the referral for pre-eligibility authorization that payment for care provided prior to full eligibility may not occur if the adult caretaker(s) or teen parent(s) is ultimately deemed ineligible for the CCCAP program.

G. A child care provider may refuse to serve a county pre-eligibility authorized program participant.

3.913 CHILD CARE PROVIDERS

3.913.1 ELIGIBLE FACILITIES

A. Qualified Exempt Child Care Providers

1. Qualified exempt child care provider: A non-licensed family child care home in which less than twenty-four (24) hour care is given at any one time for only one child, two or more children who are siblings from the same household, or children who are a relative of the child care provider. This includes the following relationships for types of care:

    a. "Relative in-home care" means care provided by a relative in the child's own home by a person who does not meet the definition of "adult caretaker" or "teen parent".

    b. "Relative out-of-home care" means care provided by a relative in another location by a person who does not meet the definition of "adult caretaker" or "teen parent".

    c. "Non-relative in-home care" means care provided by a person, who is not related to the child, in the child's own home by a person who does not meet the definition of "adult caretaker" or "teen parent".

    d. "Non-relative out-of-home care" means care provided by a person, who is not related to the child, in another location by a person who does not meet the definition of "adult caretaker" or "teen parent".

2. The counties or their designee shall register qualified exempt child care providers and include the following information: name, address (not a P.O. Box #), phone number and social security number. Pursuant to Section 24-76.5-103, C.R.S., counties or their designee shall verify the lawful presence in the United States of all applicants for state or local public benefits, or federal benefits provided by CDHS, or by the county or their designee under the supervision of the State Department pursuant to Section 3.140.12, except as otherwise provided in subsection (3) of 24-76.5-103, C.R.S. Any contract provided by an agency of a state or local government is considered a public benefit.

3. Qualified Exempt Child Care Provider Requirements

a. Qualified exempt child care provider(s) shall be at least eighteen (18) years of age.

b. As a prerequisite to signing a fiscal agreement with a county or its designee, a qualified exempt child care provider shall sign an attestation of mental competence. The attestation affirms that he or she, and any adult residing in the qualified exempt child care provider home where care is provided, has not been adjudged by a court of competent jurisdiction to be insane or mentally incompetent to such a degree that the individual cannot safely care for children.

4. Background Checks

a. A qualified exempt child care provider and any adult eighteen years of age or older who resides in the exempt child care provider's home, not including the adult caretaker(s) or teen parent(s), shall be subject to a criminal background review once every five years including the following checks:

1) The Federal Bureau of Investigations (FBI) and the Colorado Bureau of Investigations (CBI) fingerprint-based criminal history records;

2) The state administered database for child abuse and neglect;

3) The CBI sex offender registry; and,

4) The national sex offender registry public website (effective September 30, 2017).

b. Information submitted to the CBI sex offender registry and the national sex offender registry public website shall include:

1) Known names and addresses of each adult residing in the home, not including the adult caretaker(s) or teen parents; and,

2) Addresses.

c. Upon submission of the completed background check packet, as determined by state procedures, a qualified exempt child care provider shall submit certified funds (i.e., money order or cashier's check) to cover all fees indicated below.

1) A fee for the administrative costs referred to in Section 7.701.4, F (12 CCR 2509-8).

2) A fee for each set of submitted fingerprints for any adult who resides in the home where the care is provided, eighteen (18) years of age or older, not including the adult caretaker(s) or teen parent(s), will be required. Payment of the fee for the criminal record check is the responsibility of the individual being checked.

3) Counties have the option to begin authorization and payment for child care services as of the date the state department receives the completed background check.

d. The qualified exempt child care provider(s) may continue to receive payment as long as the qualified exempt child care provider(s) or other adult is not ineligible due to the following circumstances:

1) Conviction of child abuse, as described in Section 18-6-401, C.R.S.;

2) Conviction of a crime of violence, as defined in Section 18-1.3-406, C.R.S.;

3) Conviction of any felony offense involving unlawful sexual behavior, as defined in Section 16-22-102 (9), C.R.S.;

4) Conviction of any felony that on the record includes an act of domestic violence, as defined in Section 18-6-800.3, C.R.S.;

5) Conviction of any felony involving physical assault, battery or a drug-related/alcohol offense within the five years preceding the date of the fingerprint-based criminal background check;

6) Conviction of any offense in another state substantially similar to the elements described in Items 1 through 5, above;

7) Has shown a pattern of misdemeanor convictions within the ten (10) years immediately preceding submission of the application. “Pattern of misdemeanor” shall include consideration of Section 26-6-108(2), C.R.S., regarding suspension, revocation and denial of a license, and shall be defined as:

8) Three (3) or more convictions of 3rd degree assault as described in Section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in Section 18-6-800.3, C.R.S.; or,

9) Five (5) misdemeanor convictions of any type, with at least two (2) convictions of 3rd degree assault as described in Section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in Section 18-6-800.3, C.R.S.; or,

10) Seven (7) misdemeanor convictions of any type.

11) Has been determined to be responsible in a confirmed report of child abuse or neglect.

e. A qualified exempt child care provider shall notify the county with whom he or she has contracted pursuant to a publicly funded state Child Care Assistance Program, within ten (10) calendar-days of any circumstances that result in the presence of any new adult in the residence.

5. Additional requirements for non-relative qualified exempt child care providers and other qualified child care facilities:

a. Completion of all pre-service health and safety trainings approved by the state department of human services, within three months of providing services as a qualified exempt child care provider under the Colorado Child Care Assistance Program.

b. An annual on-site health and safety inspection conducted by the state department of human services or its designee. The health and safety check list is incorporated by reference to provide further guidance; no further editions or amendments are included. Non-relative qualified exempt providers shall correct any health and safety inspection standards immediately after the inspection.

c. A qualified exempt child care provider who is a non-relative and provides services in the child's home or in the qualified exempt child care provider's home shall sign an attestation of mental competence.

d. Qualified exempt non-relative child care providers shall meet the mandatory child abuse and neglect reporting requirements.

e. If the non-relative qualified exempt child care provider fails to comply with any of the requirements in (a)-(d) above, the county shall deny or terminate a fiscal agreement.

6. For renewals, the county shall send fiscal agreements at least sixty (60) calendar-days prior to the end date of the previous fiscal agreement via postal service, fax, hand-delivery, e-mail or other electronic systems. Fiscal agreements are effective on day that the fiscal agreement is completed and signed by the child care provider, and received by the county.

7. Payment Methods

a. Payment for purchased child care shall be made to the child care provider(s) through an automated system if it is a qualified exempt child care provider(s) or licensed facility.

b. When a manual claim is needed, the child care form for attendance record and billing shall be prepared and signed by the child care provider monthly and used by the county to verify that the billing does not exceed the authorized number of units.

8. Qualified exempt child care providers who are denied a Fiscal Agreement or whose Fiscal Agreement is terminated may request an informal conference with staff responsible for the action, the supervisor for that staff and the county director or director's designee to discuss the basis for this decision and to afford the qualified exempt child care provider(s) with the opportunity to present information as to why the qualified exempt child care provider(s) feels the county should approve or continue the Fiscal Agreement. Any request for a conference shall be submitted in writing within fifteen (15) calendar-days of the date the qualified exempt child care provider is notified of the action. The county shall hold that conference within two (2) weeks of the date of the request. The county shall provide written notice of its final decision to the qualified exempt child care provider(s) within fifteen (15) business days after the conference.

9. Non-relative qualified exempt child care providers who are denied a fiscal agreement or whose fiscal agreement is terminated due to the department's decision regarding

adherence to health and safety standards may appeal the decision to the executive director of the state department of human services or his/her designee in writing within fifteen (15) days of the county's decision. The executive director's decision is a final agency decision subject to judicial review by the state district court under § 24-4-106, C.R.S.

10. Child care providers shall be provided with a written notice of the process of termination of the fiscal agreement on the fiscal agreement.

3.913.2 CHILD CARE PROVIDER RESPONSIBILITIES

A. Child care Providers shall maintain a valid child care license as required by Colorado statute unless exempt from the Child Care Licensing Act.

B. Child care Providers shall report to the county if their license has been revoked, suspended, denied, or placed on probation within three (3) calendar-days of receiving notification or a recovery will be established of all payments made as of the effective date of closure.

C. Child care providers shall report to the county and state licensing any changes in address no less than thirty (30) calendar-days prior to the change.

D. Child care providers shall report to the county and state licensing any changes in phone number within ten (10) calendar-days of the change.

E. Child care providers shall allow parents, adult caretakers, or teen parents immediate access to the child(ren) in care at all times.

F. Child care providers shall accept referrals for child care without discrimination with regard to race, color, national origin, age, sex, religion, marital status, sexual orientation, or physical or mental handicap.

G. Child care providers shall provide children with adequate food, shelter, and rest as defined in licensing rule (12 CCR 2509-8).

H. Child care providers shall maintain as strictly confidential all information concerning children and their families.

I. Child care providers shall protect children from abuse/neglect and report any suspected child abuse and neglect to the county or the Colorado Child Abuse and Neglect Hotline immediately.

J. Child care providers shall provide child care at the facility address listed on the fiscal agreement and ensure care is provided by the person or business listed on the fiscal agreement. Exceptions are defined in licensing rules (12 CCR 2509-8).

K. Child care providers will not be reimbursed for any care provided before the fiscal agreement start date and after the fiscal agreement end date.

L. Child care providers shall sign the child care fiscal agreement and all other county or state required forms. Payment shall not begin prior to the first of the month the fiscal agreement has been signed and received by the county.

M. Child care providers shall comply with POS requirements as defined in section 3.914.4.

N. Child care providers shall develop an individualized care plan (ICP) for children with additional care needs based upon the Individual Education Plan (IEP), or Individual Health Care Plan (IHCP), and provide a copy to the county eligibility worker on an annual basis or other alternate period of time determined in the plan.

O. Licensed child care providers shall maintain proof of current immunizations for the children in their care in accordance with Section 7.702 et seq. (12 CCR 2509-8). This rule does not apply to the following:

1. Qualified exempt child care Providers caring for children in the child's own home; or,

2. Qualified exempt child care Providers caring only for children related to the child care provider such as grandchildren, great-grandchildren, siblings, nieces, or nephews, etc.;

P. Child care Providers shall maintain paper or electronic sign in/out sheets that the person authorized to drop off/pick up the children has signed with the time the children arrive and leave each day they attend. These records shall be available for county review upon request and maintained for the current year plus three years.

Q. Child care providers shall report non-payment of parent fees no later than sixty (60) calendar-days after the end of the month the parent fees are due unless county policy requires it earlier. The unpaid parent fees can be reported by fax, e-mail or other electronic systems, in writing or on the billing form.

R. Child care providers shall notify the county of unexplained, frequent and/or consistent absences within ten (10) calendar-days of establishing a pattern.

S. Child care providers shall not charge counties more than their established private pay rates.

T. Child care providers shall not charge adult caretakers or teen parents rates in excess of those agreed upon in the fiscal agreement (this includes the agreed upon registration, mandatory activity and transportation fees if the county pays these fees).

U. Child care Providers shall offer free, age appropriate alternatives to voluntary activities.

V. Child care Providers shall only bill for care authorized and provided.

W. Child care Providers shall bill counties monthly for services authorized and attended but not paid through the Point of Service (POS) DEVICE. MANUAL PAYMENTS MAY BE DENIED based on county policies. Payment for services shall be forfeited if the original billing form is not submitted within sixty (60) calendar-days following the month of service.

X. Child care providers shall not hold, transfer, or use CCAP card(s). If intentional misuse is founded by any county or state agency, the child care provider will be subject to disqualification(s) as outlined in section 3.915.-

3.913.3 COMPLAINTS ABOUT CHILD CARE PROVIDERS

Counties and the public may access substantiated complaint files regarding complaints about procedures other than child abuse at the Colorado Department of Human Services, Division of Early Care and Learning, or on the CDHS website at https://gateway.cdhs.state.co.us/cccls/PublicFileReview.aspx.

A. Complaints about qualified exempt child care providers

Complaints shall be referred to the Colorado Department of Human Services, Division of Early Care and Learning Licensing staff or appropriate contracted agencies the same day as it is received by the county when:

1. The complaint is about a qualified exempt child care provider, who is alleged to be providing illegal care.

2. The complaint is related to issues with a qualified exempt child care provider such as violation of non- discrimination laws or denial of parent access (does not include investigation of illegal care).

B. Complaints about licensed child care providers

The following guidelines shall apply to complaints received by counties about licensed child care providers:

1. If the complaint concerns child abuse or neglect, the county shall immediately refer the complaint to the appropriate county protective services unit.

2. If the complaint concerns a difference of opinion between a child care provider and an adult caretaker(s) or teen parent(s), the counties shall encourage the child care provider and adult caretaker or teen parent to resolve their differences.

3. Complaints shall be referred to the Colorado Department of Human Services, Division of Early Care and Learning licensing staff the same day the county receives it when the complaint is about a family child care home or child care center and is related to non-compliance licensing issues.

3.914 PURCHASE OF SERVICES

3.914.1 CHILD CARE PROVIDER REIMBURSEMENT RATES

The state department shall establish licensed child care provider base payment rates for each county every other year. In addition to establishing licensed child care provider base payment rates the state department will establish tiered reimbursement rates based on quality levels for licensed child care providers that enroll children participating in CCCAP.

A. Counties may choose to opt out of the state established child care provider rates and shall complete the following to ensure payment rates are sufficient to ensure equal access:

1. Identify and explain what facts the county used to determine equal access using one or more of the following methods:

a. Payment rates are set at the seventy-fifth (75^{th}) percentile or higher of the most recent market rate survey

b. Using tiered rates/differential rates to increase access for targeted needs

c. Rates based on data on the cost to the child care provider of providing care meeting certain standards

d. Data on the size of the difference (in terms of dollars) between the payment rates and the 75th percentile in the most recent market rate survey, if rates are below the 75th percentile

e. Data on the proportion of children receiving subsidy being served by high quality child care providers

f. Data on where children are being served showing access to the full range of child care providers

g. Feedback from parents, including parent survey or parent complaints

h. Other method of ensuring equal access (subject to state approval)

2. Consult with the following entities:

a. Local early childhood council

b. Local resource and referral agency

c. Child care child care providers in the county who serve or want to serve children receiving CCCAP

3. Notify the state department of the decision to opt out of state established licensed child care provider base rate and/or tiered reimbursement rate through the use of the county plan approval process

4. The county may set payment rates for qualified exempt child care providers based on local need.

B. Payment rates shall be defined utilizing the state established, system supported age bands.

C. Rate types are selected by child care provider type (licensed home, licensed center, and qualified exempt child care providers). The state department has established rate type definitions to be used by all counties and deviation from the rate definitions shall not be permitted.

D. Payments shall be made in part time/full time daily rates.

1. Part-time is defined as zero (0) hours, zero (0) minutes, and one (1) second through five (5) hours, zero (0) minutes, and zero (0) seconds per day. Part time is paid at fifty-five percent (55%) of the full time rate, unless the county designates otherwise.

2. Full time is defined as five (5) hours, zero (0) minutes, and one (1) second through twelve (12) hours, zero (0) minutes, and zero (0) seconds.

3. Full-time/part time is defined as twelve (12) hours, zero (0) minutes, one (1) second through seventeen (17) hours, zero (0) minutes, zero (0) seconds of care.

4. Full time/full time is defined as seventeen (17) hours, zero (0) minutes, one (1) second through twenty-four (24) hours, zero (0) minutes, zero (0) seconds of care.

5. Counties may set rates for basic and alternative care as defined by the county and reported in the county plan.

E. Absences and Holidays

1. Counties shall pay for absences in accordance with the policy set by the county. Any absence policy set by the county shall address when the child is not in care to include, but not limited to, payments for scheduled school breaks, absences, and holidays.

2. Counties have the discretion to roll payments for absences and holidays into their regular daily child care provider reimbursement rates, or may pay for absences and holidays with a daily rate as they occur and pursuant to the county policies.

3. Tiered Absences and Holidays

   a. Whether a county rolls their absences and holidays in addition to their child care provider base reimbursement rate, or they pay them separately, and if a child utilizes care at multiple child care providers, counties shall reimburse child care providers proportionate to the quantity of care provided overall or in accordance with the child's actual use of care.

   b. Counties shall reimburse child care providers for absences and holidays per twelve (12) months of continuous eligibility based on the following schedule:

      1) For child care providers in the first level of the department's quality rating and improvement system, no fewer than six (6) absences or holidays;

      2) For child care providers in the second level of the department's quality rating and improvement system, no fewer than ten (10) absences or holidays;

      3) For child care providers in the top three levels of the department's quality rating and improvement system, no fewer than fifteen (15) absences or holidays.

F. Bonus Payments

Counties shall not at any time use federal Child Care Development Block Grant Funds (CCDBG), or state General Funds, for the payment of bonuses to child care providers serving children in the

CCCAP program. A county shall not use CCDBG or state General Funds to retroactively increase the daily rate paid to child care providers and issue a payment to child care providers based on that retroactive calculation.

G. Child care providers who contend that the county has not made payment for care provided under CCCAP in compliance with these rules may request an informal conference with staff, the appropriate supervisor, the county director or the director's designee, and, if requested by the child care provider(s), state program staff. Any request for a conference shall be submitted in writing within fifteen (15) calendar-days of the date of the action. The county shall hold that conference within two (2) weeks of the date of the request. The county shall provide written notice of its final decision within fifteen (15) business days of the conference. The purpose of the conference shall be limited to discussion of the payments in dispute and the relevant rules regarding payment.

3.914.2 SLOT CONTRACTS (COUNTY OPTION)

Slot contracts are used as a method to increase the supply and improve the quality of child care for county identified target populations and areas through collaborative partnerships that meet family and community needs. Slot contracts should also support continuity of care for households, funding stability for child care providers, and expenditure predictability for counties.

A. Counties may choose to enter into a slot contract not to exceed twelve (12) months per contract with a licensed child care provider to purchase a specified number of slots for children enrolled in CCCAP.

1. When a county chooses the option to use slot contracts with a licensed child care provider, the following steps shall be completed a minimum of sixty (60) days prior to the commencement of the slot contract:

a. County plan shall be updated in chats to include selection of the slot contract option.

b. At the time the county plan is updated a slot contract policy shall be submitted to the state department for approval. The policy shall include but is not limited to:

1) The county identified target populations and areas

2) How the county will determine the length of the slot contract

3) How the county will identify the need for the slot contract at a specific licensed child care provider

4) How the county will ensure a fair and equitable review and selection process when selecting a licensed child care provider in the case of multiple child care programs expressing interest in entering into slot contracts.

5) How the county will determine the number of slots they contract for with a licensed child care provider

6) Evidence that less-than-arm's length transactions are prohibited including, but not limited to, those in which; one party is able to control or substantially influence the actions of the other.

7) How the county will continuously monitor the success of a slot contract during the contract period to include but not limited to:

a) What the measure of success is for the slot contract and how it is determined.

b) Frequency of monitoring the success of the slot contract to be no less than quarterly.

c) Contract renegotiation for not reaching the set measure of success for the slot contract including under-utilization of paid slots during the designated monitoring period.

8) How the county will determine the need for a slot contract renewal

a) A proposed slot contract (state template or county developed), including the state-approved slot contract fiscal agreement, between the county and the child care provider shall be submitted to the state department for approval a minimum of thirty (30) days prior to the contract start date. The slot contract shall include the obligations that need to be met by each party and the steps that will be taken if either party fails to meet the identified obligations.

b) If the county determines a need for slot contract renewal or renegotiation, they shall provide documentation to the state department of the success of the initial slot contract and the need for an additional slot contract a minimum of sixty (60) days

prior to the end of the initial slot contract.

B. Counties shall submit the state developed monitoring tool based on the county determined review schedule.

C. Target population and areas may include but are not limited to:

1. Infants and toddlers;

2. Children with additional care needs;

3. Children needing care during nontraditional hours (i.e., evening, overnight and weekend care);

4. Children in underserved areas;

5. Areas where quality programs are in short supply for children enrolled in CCCAP; or,

6. Any other county identified target population or areas.

D. Criteria for assessing the need for slot contracts may include but is not limited to:

1. Counties shall demonstrate the rationale for identifying specific CCCAP populations or underserved areas in their county;

2. The demographic data source(s) shall be identified which supports the need to expand quality programs for specific CCCAP target populations and/or justifies needs based on underserved areas for all CCCAP households (demographic data may be based on zip codes or other geographic areas as determined by the county);

3. Counties are strongly encouraged to work with early childhood councils, resource and referral agencies, and other community based organizations to identify the need for contracts with specific populations or in specific areas of the county.

E. Licensed child care programs who enter into slot contract agreements with counties shall agree to be engaged in quality building at a minimum of a level two (2) quality rating through the Colorado

Shines QRIS program.

F. The state department will develop a contract template that meets the requirements of this rule and all state and federal contracting requirements.

1. Counties may adapt the contract template to include any county-specific requirements or may draft their own contract which shall be pre-approved by the state department prior to use.

2. The state department will assess and approve within thirty (30) days of receipt:

a. The updated county plan;

b. The county submitted slot contract policy; and,

c. The county submitted slot contract.

3. The state department will assess requests for slot contract renewals within thirty (30) days of receipt based on the supporting documentation provided by the county.

4. The state department will review the monitoring conducted by the county based on the county determined review schedule.

3.914.3 ARRANGEMENT FOR CHILD CARE SERVICES

A. Counties shall use the state prescribed child care authorization notice form to purchase care on a child-by-child basis and identify the amount of care and length of authorized care. Payment for care will be authorized for child care providers who have a license or who are qualified exempt child care providers and have a current, signed fiscal agreement with the.

B. Care is typically authorized for twelve (12) consecutive months except:

1. When an eligible child is or will be enrolled in a program that does not intend to operate for the entire eligibility period;

2. When an eligible child's adult caretaker(s) or teen parent(s) does not intend to keep the child enrolled with their initial child care provider(s) during the entire eligibility period; or,

3. When the adult caretaker(s) or teen parent(s) are participating in time limited activities such as job search or education/training.

C. When payment will be made to the child care provider(s), the county shall forward the child care authorization notice form to the child care provider(s) within seven (7) working days of determined eligibility. This time limit applies to original, changed and terminated actions. The state may not reimburse counties if the seven working day requirement is not met.

D. Child care will be paid for children under the age of thirteen (13) for a portion of a day, but less than twenty-four (24) hours. Child care for eligible activities will include reasonable transportation time from the child care location to eligible activity and from eligible activity to child care location.

E. Children over the age of thirteen (13) but up to age nineteen (19), who are physically or mentally incapable of caring for himself or herself or under court supervision, may be eligible for child care due to having additional care needs for a portion of a day but less than twenty-four (24) hours. Counties may pay more for children who have additional care needs based upon verified individual needs and documented in county policy, but rates cannot exceed the child care provider's published private pay rates.

F. Counties may pay for activity fees if the child care provider charges such fees, and if the child care fiscal agreement contains the child care provider's policy on activity fee costs. Counties shall set their own limit on activity fees with prior notice to the state department.

G. Counties may pay for transportation costs if the child care provider charges such costs, and if the child care fiscal agreement contains the child care provider's policy on transportation costs. Allowable costs include the child care provider's charges for transportation from the child care provider's facility to another child care or school facility. Transportation costs do not include travel between an adult caretaker’s or teen parent's home and the child care provider's facility. Counties shall set their own limit on transportation fees with prior notice to the state department.

H. Counties may pay for registration fees if the child care provider is licensed, and if the child care fiscal agreement contains the child care provider's policy on registration costs. Counties shall set their own limit on registration fees with prior notice to the state department.

I. Any money paid or payable to child care providers shall be subject to execution, levy, attachment, garnishment or other legal process.

J. Expenditures shall be necessary and reasonable for proper and efficient performance and administration. A cost is reasonable if, in its nature and amount, it meets all the following criteria:

1. Expenditures shall be compared to market prices for reasonableness.

2. Expenditures shall be compared to the market prices for comparable goods or services as a test for reasonableness.

3. Expenditures shall be ordinary and necessary.

4. Expenditures shall be of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the federal award.

5. Expenditures shall meet standards such as sound business practices and arms-length bargaining.

6. Expenditures shall have restraints or requirements imposed by such factors as: sound business practices; arms-length bargaining; Federal, State and other laws and

regulations; and, terms and conditions of the State and/or Federal award. “Arms-length bargaining” means both parties to a contract have relatively equal powers of negotiation upon entering the contract. Neither party has a disproportionate amount of power to strong-arm the other party. Less-than-arms-length transactions are prohibited and these include, but are not limited to, those where; one party is able to control or substantially influence the actions of the other.

7. Expenditures shall be the same as would be incurred by a prudent person.

8. Expenditures shall not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. A prudent person is one who considers their responsibilities to the governmental unit, its employees, the public at large, and the federal government.

3.914.4 POINT OF SERVICE (POS) SYSTEM

A. The adult caretaker(s) or teen parent(s) shall utilize the POS device in conjunction with the CCAP card as follows:

1. To record child's authorized and utilized daily attendance at the designated child care provider’s location.

2. In the event that the adult caretaker(s) or teen parent(s) misses one or more swipes to record daily attendance, they may record attendance on the POS device utilizing the previous check-in/out function.

3. The previous check-in/out function can be used to record missed swipes for the prior nine (9) day period. This function should not be used as a regular means of tracking attendance.

4. Adult caretakers or teen parents shall not leave his/her CCAP card in the child care provider's possession at any time or he/she may be subject to disqualification.

5. Adult caretakers or teen parents are required to inform their county CCCAP worker of non-receipt of CCAP card(s) within five (5) business days of approval or replacement of CCAP card(s).

6. Adult caretakers or teen parents are required to inform their county CCCAP worker within two (2) business days of lost, stolen or damaged CCAP card(s).

7. Non-cooperation with the use of the CCAP card(s) may result in case closure and/or non-payment of the child care subsidy as defined by county policy.

B. The child care provider will receive a POS device upon completion of the mandatory POS training and entering into a fiscal agreement with the county and shall utilize the POS device as follows:

1. To ensure that CCCAP adult caretakers or teen parents record child's authorized and utilized daily attendance at the designated child care provider's location.

2. To ensure that in the event that the adult caretaker(s) or teen parent(s) misses one or more swipes to record daily attendance, that they record attendance on the POS device utilizing the previous check-in/out function.

3. The previous check-in/out function can be used to record missed swipes for the prior nine (9) day period. This function should not be used as a regular means of tracking attendance.

4. The child care provider shall not have any adult caretaker or teen parents' CCCAP card in their possession at any time or the child care provider may be subject to disqualification.

5. In the event that a fiscal agreement is terminated for any reason, the child care providers shall return the point of service (POS) terminal in working condition, barring normal wear and tear, to the designated POS vendor within thirty (30) days of no longer doing business with the county or they shall be responsible for a recovery of the replacement cost. The child care provider shall call the designated POS vendor to request a paid return label to return the POS device.

6. Non-cooperation with the use of the POS device may result in non-payment of the child care subsidy as defined by county policy.

C. County POS device oversight:

1. The county shall issue CCAP cards immediately upon initial authorization of child care services.

2. The county shall issue replacement CCAP cards within two (2) business days of being notified by the adult caretaker(s) or teen parent(s) of loss, theft, or damage.

3. The county is responsible for notifying the state department when a fiscal agreement is terminated. The state department shall notify the county if the POS device has not been returned to the POS vendor.

4. If the POS device is not returned to the POS device vendor, the county shall establish a recovery for the replacement cost of the POS device.

3.914.5 COUNTY FISCAL AGREEMENT AUTHORITY

A. Counties have the authority to refuse to enter into a Fiscal Agreement with a child care provider. Counties have the authority to terminate a Fiscal Agreement after providing at least fifteen (15) calendar-days' notice by postal service mail, fax, hand-delivery, email or other electronic systems. The counties have the authority to terminate a Fiscal Agreement without advance notice if a child's health or safety is endangered or if the child care provider is under a negative licensing action as defined in Section 7.701.22, K (12 CCR 2509-8).

B. The county may notify the child care provider of an immediate termination verbally, but written notice of that action shall be forwarded to the child care provider within at least fifteen (15) calendar-days. Any notice regarding denial or termination of a Fiscal Agreement shall include information regarding the child care provider's right to an informal conference.

3.915 PROGRAM INTEGRITY

3.915.1 INTENTIONAL PROGRAM VIOLATION (IPV)

All adult caretakers or teen parents that apply for the Colorado Child Care Assistance Program (CCCAP) shall be provided with a written notice of the penalties for an Intentional Program Violation (IPV) on the child care application and statement of responsibility.

A. An IPV is an intentional act committed by an adult caretaker(s) or teen parent(s), for the purpose of establishing or maintaining the Colorado Child Care Assistance Program (CCCAP) household's eligibility to receive benefits for which they were not eligible. An adult caretaker or teen parent commits an IPV when he or she makes a false or misleading statement or omission in any application or communication, with knowledge of its false or misleading nature, for the purpose of establishing or maintaining the household's eligibility to receive benefits.

B. A county shall be required to conduct an investigation of any adult caretaker(s) or teen parent(s) who has applied for or received CCCAP whenever there is an allegation or reason to believe that an individual has committed an IPV as described below.

1. Following investigation, action shall be taken on cases where documented evidence exists to show an individual has committed one or more acts of IPV. Action shall be taken through:

a. Obtaining a "Waiver of Intentional Program Violation Hearing"; or,

b. Conducting an administrative disqualification hearing; or,

c. Referring case for civil or criminal action in an appropriate court of jurisdiction.

2. Overpayment collection activities shall be initiated immediately in all cases even if administrative disqualification procedures or referral for prosecution is not initiated.

3.915.2 CRITERIA FOR DETERMINING INTENTIONAL PROGRAM VIOLATION

A. 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.

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

3.915.3 INTENTIONAL PROGRAM VIOLATION/ADMINISTRATIVE DISQUALIFICATION HEARINGS (IPV/ADH)

An IPV/ADH shall 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.

A. A county may conduct an IPV/ADH or may use the Colorado Department of Personnel and Administration to conduct the IPV/ADH. A state prescribed form to request the administrative disqualification hearing for intentional program violation shall be used for this purpose.

The adult caretaker(s) or teen parent(s) may request that the Department of Personnel and Administration conduct the ADH/IPV in lieu of a county level hearing. Such a hearing shall be requested ten (10) calendar-days before the scheduled date of the county hearing.

B. Notice of the date of the administrative disqualification hearing on a form prescribed by the Colorado Department of Human Services shall be mailed to the last known address on record to the individual alleged to have committed an IPV at least thirty (30) calendar-days prior to the hearing date. The notice form shall include a statement that the individual may waive the right to appear at the administrative disqualification hearing, along with the hearing procedure form and client rights.

C. The Administrative Law Judge or hearing officer shall not enter a default against the participant or applicant for failure to file a written answer to the notice of IPV hearing form, but shall base the initial decision upon the evidence introduced at the hearing.

D. Upon good cause shown, the administrative hearing shall be rescheduled not more than once at the accused individual's request. The request for continuance shall be received by the appropriate hearing officer prior to the administrative 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.

E. An IPV/ADH shall not be requested against an accused adult caretaker(s) or teen parent(s) whose case is currently being referred for prosecution on a civil or criminal action in an appropriate state or federal court.

3.915.4 WAIVER OF ADMINISTRATIVE DISQUALIFICATION HEARING

A. Supporting evidence warranting the scheduling of an administrative disqualification hearing for an alleged IPV shall be documented with a county supervisory review. If the county determines there is evidence to substantiate that person has committed an IPV, the county shall allow that person the opportunity to waive the right to an administrative disqualification hearing.

B. A State-approved Notice of Alleged Intentional Program Violation form including the client's rights, the state-approved Waiver of Intentional Program Violation Hearing form, and the state-approved request for a state level Administrative Disqualification Hearing for Intentional Program Violation form shall be mailed to the individual suspected of an IPV. An investigator in the process of completing an investigation shall offer the waiver to the individual if the investigator is not intending to pursue criminal or civil action. The individual shall have fifteen (15) calendar-days from the date these forms are mailed by the county to return the completed Waiver of IPV hearing form.

C. When an adult caretaker(s) or teen parent(s) waives his/her right to an administrative disqualification hearing, a written notice of the disqualification penalty shall be mailed to the individual. This notice shall be on the State prescribed notice form.

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

3.915.5 DISQUALIFICATION FOR INTENTIONAL PROGRAM VIOLATION (IPV)

A. If the adult caretaker(s) or teen parent(s) signs and returns the request for waiver of IPV hearing form within the fifteen (15) day deadline or an individual is found to have committed an intentional program violation through the hearing process, the primary adult caretaker or teen parent shall be provided with a notice of the period of disqualification. The disqualification shall begin the first day of the month following the disqualification determination, allowing for authorization noticing, unless the household in which a disqualified person is living is ineligible for other reasons.

B. Once the disqualification has been imposed, the period shall run without interruption even if the participant becomes ineligible for the Colorado Child Care Assistance Program.

C. The penalty shall be in effect for:

1. Twelve (12) months upon the first occasion of any such offense;

2. Twenty-four (24) months upon the second occasion of any such offense and,

3. Permanently upon the third such offense.

D. The disqualification penalties affect any household to which the adult caretaker(s) or teen parent(s) is a member.

E. The penalty period shall remain in effect unless and until the finding is reversed by the State Department or a court of appropriate jurisdiction.

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

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

3.915.6 NOTIFICATION OF HEARING DECISION

A. If the local level hearing officer finds the adult caretaker(s) or teen parent(s) has committed an IPV as a result of a county hearing, a written notice shall be provided to notify the primary adult caretaker or teen parent of the decision. The local level hearing decision notice shall be a state prescribed form, which includes a statement that a state level hearing may be requested with the request form attached.

B. 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 adult caretaker(s) or teen parent(s) 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.

C. When a final decision is made, a written notice of the disqualification penalty shall be mailed to the adult caretaker(s) or teen parent(s). This notice shall be on a state prescribed notice form.

3.915.7 REFERRAL TO DISTRICT ATTORNEY

When the counties or their designee(s) determine that they have paid or are about to pay for child care as a result of a suspected criminal act, the facts used in the determination shall be reviewed with the counties' legal advisor, investigatory unit and/or a representative from the District Attorney's office. If the available evidence supports suspected criminal acts, the case shall 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 adult caretaker, teen parent, or child care provider.

The following actions may be taken:

A. If the District Attorney prosecutes, the amount of overpayment due will be taken into consideration and may be included in the court decision and order.

B. Interest may be charged from the month in which the amount of overpayment due was received by the collection entity until the date it is recovered. Interest shall be calculated at the legal rate.

C. If the District Attorney decides not to prosecute, the amount of overpayment due will continue to be recovered by all legal means. The county retains the option to pursue IPV/ADH or other administrative measures.

D. A referral is not a violation of the safeguards and restrictions provided by confidentiality rules and regulations.

3.915.8 CRIMINAL VERDICT DISQUALIFICATION

Upon determination of fraudulent acts, adult caretaker(s) or teen parent(s) who have signed the application, client responsibilities agreement, or re-determination will be disqualified from participation in the Colorado Child Care Assistance Program for the following periods, pursuant to Section 26-1-127, C.R.S. Such disqualification is mandatory and in addition to any other penalty imposed by law. Disqualification levels are:

A. Twelve months (12) for the first offense; or,

B. Twenty-four months (24) for a second offense; or,

C. Permanently for a third offense.

3.915.9 DISQUALIFICATION PERIOD

A. Upon determination of fraudulent criminal acts, the adult caretaker(s) or teen parent(s) shall be notified of the period of disqualification. The disqualification shall begin the first day of the month that follows the disqualification determination, allowing for authorization noticing and shall run uninterrupted from that date.

B. In collecting evidence of fraudulent activities the counties or their designee shall not violate the legal rights of the individual. When the county questions whether an action it contemplates might violate the legal rights of the individual, it shall seek the advice of its legal advisor.

3.915.91 DISQUALIFICATION PENALTIES

In addition to any criminal penalty imposed, the disqualification penalties affect the adult caretaker(s) or teen parent(s) the penalty period shall remain in effect unless the finding is reversed by the state department or a court of appropriate jurisdiction. The disqualification period shall follow the adult caretaker(s) and teen parent(s) regardless of the county of residence in Colorado. Penalties imposed are progressive regardless of the county of residence for each subsequent penalty level.

3.915.92 HEARING AND DISPUTE RESOLUTION RIGHTS

Adult caretaker(s) or teen parent(s) have the right to a county dispute resolution conference or state level fair hearing pursuant to Sections 3.840 and 3.850.

Child care providers shall be informed of their right to a county dispute resolution conference on the reverse side of their copy of the child care authorization notice pursuant to section 3.840, “county dispute resolution process”.

3.915.93 CHILD CARE RECOVERY

When the counties or their designee have determined that an adult caretaker(s) or teen parent(s) has received public assistance for which he or she was not eligible due to an increase in household income, that causes the household’s income exceeds eighty-five percent (85%) of the State median income, or a change in the qualifying eligible activity that was not reported within four weeks of its occurrence; or a child care provider has received child care payments they were not eligible for:

A. The county, or its designee(s), determines if the overpayment is to be recovered. Exception from recovery includes:

   1. The household who is without fault in the creation of the overpayment; and,

   2. The household who has reported any increase in income or change in resources or other circumstances affecting the household’s eligibility within the timely reporting requirements for the program.

B. The county or its designee determines whether there was willful misrepresentation and/or withholding of information and considers or rules out possible fraud;

C. The county or its designee determines the amount of overpayment;

D. The county or its designee notifies the household or child care provider(s) of the amount due and the reason for the recovery using the prior notice rules;

E. The county or its designee enters the amount of the overpayment and other specific factors of the situation in the case record, including the calculation used to determine the recovery amount.

3.915.94 TIMELINESS AND AMOUNT

A. A recovery for overpayment of public assistance is established when the overpayment occurred during the twelve (12) months preceding discovery and the facts to establish recovery have been received. However, when a single overpayment or several overpayments have been made within the prior twelve (12) months and the overpayments total less than fifty dollars ($50), a recovery for repayment is not made.

B. If an overpayment occurs due to willful misrepresentation or withholding of information and the county is unable to determine income and activity eligibility criteria for child care previously provided, either through verification from the client or child care provider(s) or access to other verification sources, the county shall recover the entire benefit for the affected months.

For willful misrepresentation and/or withholding of information, all overpayments will be pursued regardless of how long ago they occurred.

3.915.95 RECOVERY PROCESS

A. When it is determined that an overpayment has occurred, the counties or their designee shall:

1. Document the facts and situation that produced the overpayment and retain this documentation until the overpayment is paid in full or for three years plus the current year, whichever is longer.

2. Determine what benefits the household was eligible for and recover benefits for which the household was found to be ineligible, except in the case of willful misrepresentation or withholding of information.

3. Determine the payments for which the child care provider was not eligible and recover those payments.

4. Initiate timely written notice allowing for the fifteen (15) calendar day noticing period. Such notice shall include a complete explanation, including applicable rules, concerning the overpayment, recovery sought and appeal rights.

5. Take action to recover following the right of appeal and fair hearing process.

6. Pursue all legal remedies available to the county in order to recover the overpayment. Legal remedies include, but are not limited to:

a. Judgments;

b. Garnishments;

c. Claims on estates; and,

d. The state income tax refund intercept process.

7. In accordance with Sections 26-2-133 and 39-21-108, C.R.S., the state and counties or their designees may recover overpayments of public assistance benefits through the offset (intercept) of a taxpayer's State Income Tax Refund.

a. This method may be used to recover overpayments that have been:

1) Determined by final agency action; or,

2) Ordered by a court as restitution; or,

3) Reduced to judgment.

b. This offset (intercept) may include the current legal rate of interest on the total when fraud or intentional program violation has been determined. Offsets (intercepts) are applied to recoveries through use of a hierarchy. The hierarchy is:

1) Fraud recoveries, oldest to newest;

2) Court ordered recoveries, oldest to newest; and,

3) Client error recoveries, oldest to newest.

B. 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/her last-known address, that the state intends to use the tax refund offset (intercept) to recover the overpayment. In addition to the requirements of Section 26-2-133(2), C.R.S., the pre-offset (intercept) notice shall include the name of the counties claiming the overpayment, a reference to child care as the source of the overpayment, and the current balance owed. The taxpayer is entitled to object to the offset (intercept) by filing a request for a county dispute resolution conference or state hearing within thirty (30) calendar-days from the date that the pre-offset notice is mailed, faxed, emailed, sent via other electronic systems, or hand-delivered to the taxpayer. In all other respects, the procedures applicable to such hearings shall be those stated elsewhere in Section 3.840 and Section 3.850. At the hearing on the offset (intercept), the counties or their designee, or an Administrative Law Judge (ALJ), shall not consider whether an overpayment has occurred, but may consider the following issues if raised by the taxpayer in his/her request for a hearing whether:

1. The taxpayer was properly notified of the overpayment,

2. The taxpayer is the person who owes the overpayment,

3. The amount of the overpayment has been paid or is incorrect, or

4. The debt created by the overpayment has been discharged through bankruptcy.

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Office of the Attorney General

Tracking number: 2016-00417

Opinion of the Attorney General rendered in connection with the rules adopted by the

Income Maintenance (Volume 3)

on 08/23/2016

9 CCR 2503-9

COLORADO CHILD CARE ASSISTANCE PROGRAM

The above-referenced rules were submitted to this office on 08/25/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

August 30, 2016 15:04:46

Permanent Rules Adopted

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

CCR number

10 CCR 2505-10

Rule title

10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENT OF BASIS AND PURPOSE, AND RULE HISTORY 1 - eff 09/30/2016

Effective date

09/30/2016

DO NOT PUBLISH THIS PAGE

Title of Rule: Error: Reference source not found

Rule Number: MSB Error: Reference source not found

Division / Contact / Phone:Error: Reference source not found / Error: Reference source not found / Error: Reference source not found

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name:	Health Care Policy and Financing / Medical Services Board
2. Title of Rule:	MSB Error: Reference source not found, Error: Reference source not found
3. This action is an adoption of:	an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 10 C.C.R. 2505-10 8.515.85, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace current text at 8.515.85.J.7.a with the proposed text starting at 8.515.85.J.7.a through the end of .a. Replace the current text at 8.515.85.N.3 with the proposed text starting at 8.515.85.N.3 through the end of 8.515.85.O.1.b.ii. The effective date of this rule changes is 09/30/2016.

*to be completed by MSB Board Coordinator

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STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The rules set forth at 10 CCR 2505-10 8.515.85 are being revised to include language requiring Post-Eligibility Treatment of Income (PETI) calculations to be done for eligible clients receiving Supportive Living Program (SLP) services through the Brain Injury (BI) waiver. PETI is a mandatory process set forth in federal rule at 42 C.F.R. §435.726: Post-eligibility treatment of income of individuals receiving home and community-based services furnished under a waiver: Application of patient income to the cost of care. PETI calculations are done for each client receiving residential services who has income between 100% and 300% of SSI. If a client has income below that amount, a PETI is not done for them. PETI calculations are done by Case Management with a spreadsheet created by the Department. PETI protects part of the client's income, called the personal needs allowance, for federally-specified purposes, including spousal maintenance. PETI also requires clients to contribute to the cost of their residential services based on their income, and the Medicaid payment for services is correspondingly reduced. Clients with higher incomes will usually contribute more towards the cost of their services than clients with lower incomes. PETI calculations are already used for other residential services offered through the HCBS waivers.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or

   ☐ for the preservation of public health, safety and welfare.

   Explain:

Initial Review **07/08/16** Final Adoption **08/12/16**

Proposed Effective Date **09/30/16** Emergency Adoption

DOCUMENT #01

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3. Federal authority for the Rule, if any:

   42 C.F.R. §1396n(c), 42 C.F.R. §435.726

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2015);

   C.R.S. 25.5-6-704(6)

Initial Review **07/08/16** Final Adoption **08/12/16**

Proposed Effective Date **09/30/16** Emergency Adoption

DOCUMENT #01

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Title of Rule: Error: Reference source not found

Rule Number: MSB Error: Reference source not found

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REGULATORY ANALYSIS

5. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   Persons who receive residential SLP services through the BI waiver and have income between 100% and 300% of SSI will have part of their income protected for federally-specified purposes, such as spousal maintenance, child support, and non-covered medical costs, and will also be responsible for contributing to the cost of their services.

6. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   Without this rule change, the Department will not be compliant with a federal mandate found at 42 C.F.R. §435.726: Post-eligibility treatment of income of individuals receiving home and community-based services furnished under a waiver: Application of patient income to the cost of care. The Department would be in danger of losing federal funding for this service if it continues to be out of compliance. All people receiving SLP services would be in danger of losing their residential placement and services.

7. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   This rule should result in a minor cost savings to the Department, CDPHE, or DFPC. There is no anticipated effect on state revenues. The number of people that receive SLP services is currently between 150 and 170 per year, and the number of people that would be subject to PETI calculations fluctuates between 40% and 60% of that group.

8. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The probable costs of inaction would be that the Department would not be in compliance with a federal mandate, and at danger of losing federal funding for this service. The people receiving this service would be at high risk of institutionalization.

9. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There are no less costly methods of achieving this rule's purpose, which is to comply with a federal mandate. This rule change is the least intrusive method of complying with the federal mandate.

10. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

    There are no alternative methods than this rule change for complying with the federal requirement found at 42 C.F.R. §435.726.

8.515.85 SUPPORTIVE LIVING PROGRAM

8.515.85.J ENVIRONMENTAL AND MAINTENANCE REQUIREMENTS

1. A Supportive Living Program residence shall be designed, constructed, equipped, and maintained to ensure the physical safety of clients, personnel, and visitors as required by 6 CCR 1011-1, Ch. 7, § 1.111, regarding the interior and exterior environment:

    a. Interior Environment: All interior areas including attics, basements, and garages shall be safely maintained. The facility shall provide a clean, sanitary environment, free of hazards to health and safety.

        i. Potential Safety Hazards include:

            1) Cooking shall not be allowed in bedrooms. Residents may have access to an alternative area where minimal food preparation such as heating or reheating food or making hot beverages is allowed. In those facilities which make housing available to residents through apartments rather than resident bedrooms, cooking may be allowed in accordance with house rules. Only residents who are capable of cooking safely shall be allowed to do so. The facility shall document such assessment.

            2) Extension cords and multiple use electrical sockets in resident rooms shall be limited to one per resident.

            3) Power strips are permitted throughout the facility with the following limitations:

                a) The power strip must be provided with overcurrent protection in the form of a circuit breaker or fuse.

                b) The power strip must have a UL (underwriters laboratories) label.

                C) The power strips cannot be linked together when used.

                d) Extension cords cannot be plugged into the power strip.

                e) Power strips can have no more than six receptacles.

                f) The use will be restricted to one power strip per resident per bedroom.

            4) Personal Appliances shall be allowed in resident bedrooms only under the following circumstances:

                a) Such appliances are not used for cooking;

                b) Such appliances do not require use of an extension cord or multiple use electrical sockets;

                c) Such appliance is in good repair as evaluated by the administrator;

d) Such appliance is used by a resident who the administrator believes to be capable of appropriate and safe use. The facility shall document such assessment.

5) Electric blanket/Heating pad. In no event shall a heating pad or electric blanket be used in a resident room without either staff supervision or documentation that the administrator believes the resident to be capable of appropriate and safe use.

6) All interior areas including attics, basements, and garages shall be free from accumulations of extraneous materials such as refuse, discarded furniture, and old newspapers.

7) Combustibles such as cleaning rags and compounds shall be kept in closed metal containers.

8) Kerosene (fuel fired) heaters shall not be permitted within the facility. Electric or space heaters shall not be permitted within resident bedrooms and may only be used in common areas of the facility if owned, provided, and maintained by the facility.

9) Fire resistant wastebaskets. Enclosed areas on the premises where smoking is allowed shall be equipped with fire resistant wastebaskets. In addition, resident rooms occupied by smokers, even when house rules prohibit smoking in resident rooms, shall have fire resistant wastebaskets.

ii. Potential Infection/Injury Hazards

1) Insect/rodent infestations. The facility shall be maintained free of infestations of insects and rodents and all openings to the outside shall be screened.

2) Storage of hazardous substances. Solutions, cleaning compounds and hazardous substances shall be labeled and stored in a safe manner.

iii. Heating, Lighting, and Ventilation

1) Each room in the facility shall be installed with heat, lighting and ventilation sufficient to accommodate its use and the needs of the residents.

2) All interior and exterior steps and interior hallways and corridors shall be adequately illuminated.

iv. Water

1) There shall be an adequate supply of safe, potable water available for domestic purposes.

2) There shall be a sufficient supply of hot water during peak usage demands.

3) Hot water shall not measure more than 120 degrees Fahrenheit at taps which are accessible by resident.

v. There shall be a telephone available for regular telephone usage by residents and staff.

b. Exterior Environment

i. Potential Safety Hazards

1) Exterior premises shall be kept free of high weeds and grass, garbage and rubbish. Grounds shall be maintained to prevent hazardous slopes, holes, or other potential hazards.

2) Exterior staircases of three (3) or more steps and porches shall have handrails. Staircases and porches shall be kept in good repair.

2. The Supportive Living Program provider shall comply with all State and Local Laws/Codes regarding furnishings, equipment and supplies pursuant to 6 CCR 1011-1, Ch. 7, § 1.112 (Aug. 14, 2013), which is hereby incorporated by reference. The incorporation of these regulations excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.

3. Clients shall be allowed free use of all common living areas within the residence, with due regard for privacy, personal possessions, and safety of clients.

4. Supportive Living Program providers shall develop and implement procedures for the following:

a. Handling of soiled linen and clothing;

b. Storing personal care items;

c. General cleaning to minimize the spread of pathogenic organisms; and

d. Keeping the home free from offensive odors and accumulations of dirt and garbage.

5. The Supportive Living Program provider shall ensure that each client is furnished with his or her own personal hygiene and care items. These items are to be considered basic in meeting an individual's needs for hygiene and remaining healthy. Any additional items may be selected and purchased by the client at his or her discretion.

6. There shall be adequate bathroom facilities for individuals to access without undue waiting or burden.

7. The Supportive Living Program provider shall comply with all bathroom requirements regarding handrails, handholds, and other needs of clients pursuant to 6 CCR 1101-1 Ch. 7, § 1.112(4)

a. A full bathroom shall consist of at least the following fixtures: toilet, hand washing sink, toilet paper dispenser, mirror, tub or shower, and towel rack. b. There shall be a bathroom on each floor having resident bedrooms which is accessible without requiring access through an adjacent bedroom.

c. In any facility which is occupied by one or more residents utilizing an auxiliary aid, the facility shall provide at least one full bathroom as defined herein with fixtures positioned so as to be fully accessible to any resident utilizing an auxiliary aid.

d. Bathtubs and shower floors shall have non-skid surfaces.

e. Grab bars shall be properly installed at each tub and shower, and adjacent to each toilet in any facility which is occupied by one or more residents utilizing an auxiliary aid or as otherwise indicated by the needs of the resident population.

f. Toilet seats shall be constructed of non-absorbent material and free of cracks.

g. The use of common personal care articles, including soap and towels, is prohibited.

h. Toilet paper in a dispenser shall be available at all times in each bathroom of the facility.

i. Liquid soap and paper towels shall be available at all times in the common bathrooms of the facility.

8. Each client shall have access to telephones, both to make and to receive calls in privacy.

9. The Supportive Living Staff shall maintain a clean, safe, and healthy environment, including appropriate cleaning techniques and sanitary meal preparation and delivery according to 6 CCR 1011-1, Ch. 7, § 1.109, which requires the following:

a. For facilities with less than twenty (20) beds, food shall be prepared, handled and stored in a sanitary manner, so that it is free from spoilage, filth, or other contamination, and shall be safe for human consumption.

b. Hazardous materials shall not be stored with food supplies.

c. Facilities with twenty (20) beds or more shall comply with CDPHE's March 1, 2013 regulations on Colorado Retail Food Establishments at 6 CCR 1010-2, which are hereby incorporated by reference. The incorporation of these regulations excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.

8.515.85.K COMPLAINTS AND GRIEVANCES

Each client will have the right to voice grievances and recommend changes in policies and services to both the Department and/or the Supportive Living Program provider. Complaints and grievances made to the Department shall be made in accordance with the grievance and appeal process in 10 CCR 2505-10 § 8.209.

8.515.85.M RECORDS

1. Supportive Living Providers shall develop policies and procedures to secure client information against potential identity theft. Confidentiality of medical records shall be maintained in compliance with 45 C.F.R. §§ 160.101, et seq. and 164.102, et seq. (2014), which are hereby incorporated by reference. The incorporation of these regulations excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.

2. All medical records for adults (persons eighteen (18) years of age or older) shall be retained for no less than six (6) years after the last date of service or discharge from the Supportive Living Program. All medical records for minors shall be retained after the last date of service or discharge from the Supportive Living Program for the period of minority plus six (6) years.

8.515.85.N REIMBURSEMENT

1. Supportive Living Program services shall be reimbursed according to a per diem rate, using a methodology determined by the Department. Authority for the Department to define and limit covered services is found at C.R.S. § 25.5-1-202 (2013).

2. The methodology for calculating the per diem rate shall be based on a weighted average of client acuity scores.

3. The Department shall establish a maximum allowable room and board charge for clients in the Supportive Living Program. Increases in payment shall be permitted in a dollar-for-dollar relationship to any increase in the Supplemental Security Income grant standard if the Colorado Department of Human Services also raises grant amounts.

    a. Room and board shall not be a benefit of HCBS-BI residential services. Clients shall be responsible for room and board in an amount not to exceed the Department established rate.

8.515.85.O CALCULATION OF CLIENT PAYMENT (PETI)

1. When a client has been determined eligible for Home and Community Based Services (HCBS) under the 300% income standard, according to Section 8.100, the State may reduce Medicaid payment for SLP residential services. The case manager shall calculate the client payment (PETI) for 300% eligible HCBS-BI clients according to the following procedures:

    a. For 300% eligible clients who receive residential services, the case manager shall complete a State-prescribed form which calculates the client payment according to the following procedures:

        i. An amount equal to the current Old Age Pension standard, including any applicable income disregards, shall be deducted from the client's gross income to be used as the client maintenance allowance, from which the state-prescribed HCBS residential services room and board amount shall be paid: and

        ii. For an individual with financial responsibility for others:

1) If the individual is financially responsible for only a spouse, an amount equal to the state Aid to the Needy Disabled (AND) standard, less the amount of any spouse's income, shall be deducted from the client's gross income; or

2) If the individual is financially responsible for a spouse plus other dependents, or with financial responsibility for other dependents only, an amount equal to the appropriate Temporary Assistance to Needy Families (TANF) grant level less any income of the spouse and/or dependents (excluding income from part-time employment earnings of a dependent child who is either a full-time student or a part-time student as defined at Section 8.100.1) shall be deducted from the client's gross income; and

iii. Amounts for incurred expenses for medical or remedial care for the individual that are not subject to payment by Medicare, Medicaid, or other third party shall be deducted from the client's gross income as follows:

1) Health insurance premiums if health insurance coverage is documented in the eligibility system: deductible or co-insurance charges, and

2) Necessary dental care not to exceed amounts equal to actual expenses incurred, and

3) Vision and auditory care expenses not to exceed amounts equal to actual expenses incurred, and

4) Medications, with the following limitations:

a) The need for such medications shall be documented in writing by the attending physician. The documentation shall list the medication; state why it is medically necessary; be signed by the physician; and shall be renewed at least annually or whenever there is a change.

b) Medications which may be purchased with the client’s Medicaid Identification Card shall not be allowed as deductions.

c) Medications which may be purchased through regular Medicaid prior authorization procedures shall not be allowed.

d) The full cost of brand-name medications shall not be allowed if a generic form is available at a lower price.

e) Only the amount spent for medications which exceeds the current Old Age Pension Standard allowance for medicine chest expense shall be allowed as a deduction.

5) Other necessary medical or remedial care shall be deducted from the client's gross income, with the following limitations:

a) The need for such care shall be documented in writing by the attending physician. For this purpose, documentation on the URC certification form shall be considered adequate. The documentation shall list the service, supply, or equipment; state why it is medically necessary; be signed by the physician; and, shall be renewed at least annually or whenever there is a change.

b) Any service, supply or equipment that is available under regular Medicaid, with or without prior authorization, shall not be allowed as a deduction.

6) Deductions for medical and remedial care may be allowed up to the end of the next full month while the physician's prescription is being obtained. If the physician's prescription cannot be obtained by the end of the next full month, the deduction shall be discontinued.

7) When the case manager cannot immediately determine whether a particular medical or remedial service, supply, equipment or medication is a benefit of Medicaid, the deduction may be allowed up to the end of the next full month while the case manager determines whether such deduction is a benefit of the Medicaid program. If it is determined that the service, supply, equipment or medication is a benefit of Medicaid, the deduction shall be discontinued.

iv. Any remaining income-shall be applied to the cost of the SLP residential services, as defined at Section 8.515.85 and shall be paid by the client directly to the facility; and

v. If there is still income remaining after the entire cost of residential services are paid from the client's income, the remaining income shall be kept by the client and may be used as additional personal needs or for any other use that the client desires, except that the residential service provider shall not charge more than the Medicaid rate for that service.

b. Case managers shall inform HCBS-BI clients receiving residential services of their client payment obligation on a form prescribed by the state at the time of the first assessment visit by the end of each plan period; or within ten (10) working days whenever there is a significant change in the client payment amount.

i. Significant change is defined as fifty dollars ($50) or more.

ii. Copies of client payment forms shall be kept in the client files at the case management agency, and shall not be mailed to the State or its agent, except as required for a prior authorization request, according to Section 8.515.7, or if requested by the state for monitoring purposes.

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SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name:	Health Care Policy and Financing / Medical Services Board
2. Title of Rule:	MSB Error: Reference source not found, Error: Reference source not found
3. This action is an adoption of:	a repeal of existing rules

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.518, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). No

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.518 with the proposed text starting at 8.158 through the end. The effective date of the rule change is 09/30/2016.

*to be completed by MSB Board Coordinator

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STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The purpose of repealing the Consumer Directed Care for the Elderly (CDCE) rule is to remove an outdated rule that no longer applies to a current Medicaid program. The Colorado General Assembly expanded the CDCE pilot program in 2005 to include additional populations. At that time the CDCE regulation was not repealed. The Department completed a mandatory rule review in 2016 and identified this rule is no longer needed. The Consumer Directed Care regulations at section 8.510 now encompass the elderly, making section 8.518 duplicative and unnecessary. There are no Medicaid waiver members who utilize the CDCE program and the Department does not expend any funding on this program annually. Medicaid waiver members are able to receive consumer directed services through the Consumer Directed Attendant Support Services Program.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or

   ☐ for the preservation of public health, safety and welfare.

   Explain:

   N/A

3. Federal authority for the Rule, if any:

   N/A

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2015);

Initial Review **07/08/16** Final Adoption **08/12/16**

Proposed Effective Date **09/30/16** Emergency Adoption

DOCUMENT 02

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25.5-6-1102(6)
HB 05-1243

Initial Review	**07/08/16**	Final Adoption	**08/12/16**
Proposed Effective Date	**09/30/16**	Emergency Adoption	

DOCUMENT 02

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Rule Number: MSB Error: Reference source not found

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REGULATORY ANALYSIS

5. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   There are no classes of persons who will be affected by the repeal of this rule. The program that it regulated was discontinued in 2009.

6. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   The proposed rule repeal will not have a quantitative or qualitative impact as the program that it regulated was discontinued in 2009. The Department currently allocates no funding to the program regulated by the rule.

7. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   There are no probable costs to the department as a result of repealing the rule.

8. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   There are no probable costs to the repeal of the rule. The benefit to the rule repeal is that it will remove obsolete unnecessary regulation.

9. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There are not less costly methods for repealing the rule, since the rule repeal does not have a cost associated with it.

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10. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

    There are not alternative methods for achieving the purpose of the proposed rule.

8.518 REPEALED EFFECTIVE SEPTEMBER 30, 2016

DO NOT PUBLISH

Title of Rule: Error: Reference source not found

Rule Number: MSB Error: Reference source not found

Division / Contact / Phone: Error: Reference source not found / Error: Reference source not found / Error: Reference source not found

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name:	Health Care Policy and Financing / Medical Services Board
2. Title of Rule:	MSB Error: Reference source not found, Error: Reference source not found
3. This action is an adoption of:	new rules

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) § 8.100.1 and § 8.100.4.G , Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace current text at 8.100.1 paragraph 38 with the proposed text at 8.100.1 paragraph 38. Replace current text at 8.100.1 paragraph 76 with the proposed text at 8.100.1 paragraph 76. Replace current text at 8.100.4.G.3 with the proposed text at 8.100.4.G.3 . Replace the current text at 8.100.4.G.4 with the proposed text starting at 8.100.4.G.4 through the end of 8.100.4.G.4.a. This rule becomes effective 10/01/2016.

*to be completed by MSB Board Coordinator

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STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The proposed rule changes amend 10 CCR 2505-10 §8.100.1 §8.100.4.G. to incorporate changes to the rule mandated by the Patient Protection and Affordable Care Act of 2010 (ACA) as it pertains to parents or other caretaker relatives living with a dependent child under the age of 19 years old, will not be eligible to receive MAGI-Medicaid unless the child is receiving benefits under Medicaid, Child Health Plan Plus or through the Exchange, or otherwise enrolled in minimum essential coverage. Minimum Essential Coverage is defined as qualifying health care coverage which can include most Health First Colorado (Colorado's Medicaid Program), Child Health Plan Plus, private health plans purchased through Connect for Health Colorado, and employer-sponsored health insurance. This policy will be applied to the MAGI Adult expansion category for parents or caretaker relatives ages 19 through 64 with income that ranges from 69% to 133% of the federal poverty level. Among these changes: revision to the current policy regarding the MAGI-Adult categories by adding a requirement to verify if the dependent child living in the household is currently enrolled in minimum essential coverage before enrolling the parent or caretaker in this category. Other revisions include updating language under the Parent and Caretaker Relatives category whose income does not exceed 68% of the federal poverty level, to remove language that states the dependent child in the household needs be receiving Medical Assistance. Lastly, updating definitions under 8.100.1 for a dependent child and adding a new definition for minimum essential coverage.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or

   ☐ for the preservation of public health, safety and welfare.

   Explain:

Initial Review **07/08/16** Final Adoption **08/12/16**

Proposed Effective Date **09/30/16** Emergency Adoption

DOCUMENT #03

DO NOT PUBLISH

3. Federal authority for the Rule, if any:

   Patient Protection and Affordable Care Act of 2010 (ACA) and 42 CFR §435.119(c)(1)(2), 42 CFR §435.4, 42 CFR §435.116 section 5000A(f) of subtitle D of the Internal Revenue Code, as added by section 1401 of the Affordable Act.

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2015);

   25.5-5-5-101(1)(b), C.R.S, section 25.5.-5-201(1)(m), C.R.S

Initial Review	**07/08/16**	Final Adoption	**08/12/16**
Proposed Effective Date	**09/30/16**	Emergency Adoption	

DOCUMENT #03

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REGULATORY ANALYSIS

5. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule

With this proposed rule parents or other caretakers will not be eligible to receive MAGI-Adult Expansion unless their dependent child is receiving benefits under Medicaid, Child Health Plan Plus, through a private health plan purchased through Connect for Health Colorado, or other minimum essential coverage. The benefit of this rule change is to ensure that all children are receiving benefits and continuity of care which is a positive impact.

6. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

The proposed rule will require parents or caretaker relatives to maintain or enroll children into a health plan to avoid paying fees for being uninsured and to be eligible for Medical Assistance if the child is not enrolled on minimum essential coverage.

7. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The Department anticipates a change in total costs in FY 2016-17 of approximately $0. Though this change should not affect total funds, it would affect fund splits and this is primarily expected to consist of an increase in State funds and the impact to the State is

expected to be approximately $5,680,538 General Fund and $369,783 cash funds, with a negative offset to federal funds of $6,050,321. To arrive at these estimates, the Department assumed that this change would primarily affect clients in the MAGI Adults (without dependent children) expansion category, who have an indicator showing that a child is present in the home and would move to the MAGI Parents/Caretakers to 68% FPL category with this rule change. This assumption was driven by the current methodology that places clients in the MAGI Adults category when no information is known about the child, or when the child does not have Medicaid coverage specifically. For these calculations, the Department assumed that all MAGI Adults with the child indicator would be affected by this rule change. Currently, MAGI Parents/Caretakers 69-133% FPL receive the same federal match as MAGI Adults and also are already transferred manually from MAGI Adults to MAGI Parents/Caretakers 69-133% FPL based on a B% benchmark ID, so these clients should not be significantly affected by this change.

8. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The rule change would result in a cost to the Department and federal savings, for clients who have fallen under the 100% FMAP MAGI Adult eligibility category but would be moved to the standard match MAGI Parents/Caretakers 0-68% FPL eligibility category. The benefit of implementing this rule change would be that the Department would be in compliance with federal rule. Inaction could result in loss of federal match for the affected population, which would be more costly to the Department than this rule change, as the Department would lose federal matching funds. Inaction could also result in repayment of federal funds if the Department remains out of compliance with federal rule.

9. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The Department is not aware of less costly methods for achieving the purpose of the proposed rule at this time. This is the only method through which the Department can come into compliance with federal rule.

10. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

There are no alternative methods for the proposed rule that were considered.

8.100.1 Definitions

300% Institutionalized Special Income Group is a Medical Assistance category that provides Long-Term Care Services to aged or disabled individuals.

1619b is section 1619b of the Social Security Act which allows individuals who are eligible for Supplemental Security Income (SSI) to continue to be eligible for Medical Assistance coverage after they return to work.

AB - Aid to the Blind is a program which provides financial assistance to low-income blind persons.

ABD - Aged, Blind and Disabled Medical Assistance is a group of Medical Assistance categories for individuals that have been deemed to be aged, blind, or disabled by the Social Security Administration or the Department.

Adult MAGI Medical Assistance Group provides Medical Assistance to eligible adults from the age of 19 through the end of the month that the individual turns 65, who do not receive or who are ineligible for Medicare.

AND - Aid to Needy Disabled is a program which provides financial assistance to low-income persons over age 18 who have a total disability which is expected to last six months or longer and prevents them from working.

AFDC - Aid to Families with Dependent Children is the Title IV federal assistance program in effect from 1935 to 1997 which was administered by the United States Department of Health and Human Services. This program provided financial assistance to children whose families had low or no income.

AP-5615 is the form used to determine the patient payment for clients in nursing facilities receiving Long Term Care.

Alien is a person who was not born in the United States and who is not a naturalized citizen.

Ambulatory Services is any medical care delivered on an outpatient basis.

Annuity is an investment vehicle whereby an individual establishes a right to receive fixed periodic payments, either for life or a term of years.

Applicant is an individual who is seeking an eligibility determination for Medical Assistance through the submission of an application.

Application Date is the date the application is received and date-stamped by the eligibility site or the date the application was received and date-stamped by an Application Assistance site or Presumptive Eligibility site. In the absence of a date-stamp, the application date is the date that the application was signed by the client.

Application for Public Assistance is the designated application used to determine eligibility for financial assistance. It can also be used to determine eligibility for Medical Assistance.

Blindness is defined in this volume as the total lack of vision or vision in the better eye of 20/200 or less with the use of a correcting lens and/or tunnel vision to the extent that the field of vision is no greater than 20 degrees.

Burial Spaces are burial plots, gravesites, crypts, mausoleums, urns, niches and other customary and traditional repositories for the deceased's bodily remains provided such spaces are owned by the

individual or are held for his or her use, including necessary and reasonable improvements or additions to or upon such burial spaces such as: vaults, headstones, markers, plaques, or burial containers and arrangements for opening and closing the gravesite for burial of the deceased.

Burial Trusts are irrevocable pre-need funeral agreements with a funeral director or other entity to meet the expenses associated with burial for Medical Assistance applicants/recipients. The agreement can include burial spaces as well as the services of the funeral director.

Caretaker Relative is any relation by blood, marriage or adoption who is within the fifth degree of kinship to the dependent child, such as: a parent; a brother, sister, uncle, aunt, first cousin, first cousin once removed, nephew, niece, or persons of preceding generations denoted by prefixes of grand, great, great great, or great-great-great; a spouse of any person included in the above groups even after the marriage is terminated by death or divorce; or stepparent, stepbrother, stepsister, step-aunt, etc.

Case Management Services are services provided by community mental health centers, clinics, community centered boards, and EPSDT case managers to assist in providing services to Medical Assistance clients in gaining access to needed medical, social, educational and other services.

Cash Surrender Value is the amount the insurer will pay to the owner upon cancellation of the policy before the death of the insured or before maturity of the policy.

Categorically Eligible means persons who are eligible for Medical Assistance due to their eligibility for one or more Federal categories of public assistance.

CBMS - Colorado Benefits Management System is the computer system that determines an applicant’s eligibility for public assistance in the state of Colorado.

CDHS -Colorado Department of Human Services is the state department responsible for administering the social service and financial assistance programs for Colorado.

Children MAGI Medical Assistance group provides Medical Assistance coverage to tax dependents or otherwise eligible applicants through the end of the month that the individual turns 19 years old.

Child Support Services is a CDHS program that assures that all children receive financial and medical support from each parent. This is accomplished by locating each parent, establishing paternity and support obligations, and enforcing those obligations.

Citizen is a person who was born in the United States or who has been naturalized.

Client is a person who is eligible for the Medical Assistance Program. “Client” is used interchangeably with “recipient” when the person is eligible for the program.

CMS - Centers for Medicare and Medicaid Services is the Federal agency within the US Department of Health and Human Services that partners with the states to administer Medicaid and CHP+ via State Plans in effect for each State. Colorado is in Region VIII.

CHP+ - Child Health Plan Plus is low-cost health insurance for Colorado's uninsured children and pregnant women. CHP+ is public health insurance for children and pregnant women who earn too much to qualify for The Medical Assistance Program, but cannot afford private health insurance.

COLA - Cost of Living Adjustment is an annual increase in the dollar value of benefits made automatically by the United States Department of Health and Human Services or the state in OASDI, SSI and OAP cases to account for rises in the cost of living due to inflation.

Colorado State Plan is a written statement which describes the purpose, nature, and scope of the Colorado's Medical Assistance Program. The Plan is submitted to the CMS and assures that the program is administered consistently within specific requirements set forth in both the Social Security Act and the Code of Federal Regulations (CFR) in order for a state to be eligible for Federal Financial Participation (FFP).

Common Law Marriage is legally recognized as a marriage in the State of Colorado under certain circumstances even though no legally recognized marriage ceremony is performed or civil marriage contract is executed. Individuals declaring or publicly holding themselves out as a married couple through verbal or written methods may be recognized as legally married under state law. C.R.S. § 14-2-104(3).

Community Centered Boards are private non-profit organizations designated in statute as the single entry point into the long-term service and support system for persons with developmental disabilities.

Community Spouse is the spouse of an institutionalized spouse.

Community Spouse Resource Allowance is the amount of resources that the Medical Assistance regulations permit the spouse staying at home to retain.

Complete Application means an application in which all questions have been answered, which is signed, and for which all required verifications have been submitted.

The Department is defined in this volume as the Colorado Department of Health Care Policy and Financing which is responsible for administering the Colorado Medical Assistance Program and Child Health Plan Plus programs as well as other State-funded health care programs.

Dependent Child is a child who lives with a parent, legal guardian, caretaker relative or foster parent and is under the age of 18, or, is age 18 and a full-time student, and expected to graduate by age 19.

Dependent Relative for purposes of this rule is defined as one who is claimed as a dependent by an applicant for federal income tax purposes.

Difficulty of Care Payments is a payment to an individual as compensation for providing additional care to an individual who qualifies for foster care and lives in the home of the care provider. This additional care must be required due to a physical, mental, or emotional handicap suffered by the foster care individual.

Disability means the inability to do any substantial gainful activity (or, in the case of a child, having marked and severe functional limitations) by reason of a medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of l2 months or more.

Dual Eligible clients are Medicare beneficiaries who are also eligible for Medical Assistance.

Earned Income is defined for purposes of this volume as any compensation from participation in a business, including wages, salary, tips, commissions and bonuses.

Earned Income Disregards are the allowable deductions and exclusions subtracted from the gross earnings. Income disregards vary in amount and type, depending on the category of assistance.

Electronic Data Source is an interface established with a federal or state agency, commercial entity, or other data sources obtained through data sharing agreements to verify data used in determining eligibility. The active interfaces are identified in the Department's verification plan submitted to CMS.

Eligibility Site is defined in this volume as a location outside of the Department that has been deemed by the Department as eligible to accept applications and determine eligibility for applicants.

Employed means that an individual has earned income and is working part time, full time or is self-employed, and has proof of employment. Volunteer or in-kind work is not considered employment.

EPSDT- Early Periodic Screening, Diagnosis and Treatment is the child health component of the Medical Assistance Program. It is required in every state and is designed to improve the health of low-income children by financing appropriate, medically necessary services and providing outreach and case management services for all eligible individuals.

Equity Value is the fair market value of land or other asset less any encumbrances.

Ex Parte Review is an administrative review of eligibility during a redetermination period in lieu of performing a redetermination from the client. This administrative review is performed by verifying current information obtained from another current aid program.

Face Value of a Life Insurance Policy is the basic death benefit of the policy exclusive of dividend additions or additional amounts payable because of accidental death or other special provisions.

Fair Market Value is the average price a similar property will sell for on the open market to a private individual in the particular geographic area involved. Also, the price at which the property would change hands between a willing buyer and a willing seller, neither being under any pressure to buy or to sell and both having reasonable knowledge of relevant facts.

FBR - The Federal Benefit Rate is the monthly Supplemental Security Income payment amount for a single individual or a couple. The FBR is used by the Aged, Blind and Disabled Medical Assistance Programs as the eligibility income limits.

FFP - Federal Financial Participation as defined in this volume is the amount or percentage of funds provided by the Federal Government to administer the Colorado Medical Assistance Program.

FPL - Federal Poverty Level is a simplified version of the federal poverty thresholds used to determine financial eligibility for assistance programs. The thresholds are issued each year in the Federal Register by the Department of Health and Human Services (HHS).

Good Cause is the client's justification for needing additional time due to extenuating circumstances, usually used when extending deadlines for submittal of required documentation.

Good Cause for Child Support is the specific process and criteria that can be applied when a client is refusing to cooperate in the establishment of paternity or establishment and enforcement of a child support order due to extenuating circumstances.

HCBS are Home and Community Based Services are also referred to as "waiver programs". HCBS provides services beyond those covered by the Medical Assistance Program that enable individuals to remain in a community setting rather than being admitted to a Long-Term Care institution.

In-Kind Income is income a person receives in a form other than money. It may be received in exchange for work or service (earned income) or a non-cash gift or contribution (unearned income).

Inpatient is an individual who has been admitted to a medical institution on recommendation of a physician or dentist and who receives room, board and professional services for 24 hours or longer, or is expected to receive these services for 24 hours or longer.

Institution is an establishment that furnishes, in single or multiple facilities, food, shelter and some treatment or services to four or more persons unrelated to the proprietor.

Institutionalization is the commitment of a patient to a health care facility for treatment.

Institutionalized Individual is a person who is institutionalized in a medical facility, a Long-Term Care institution, or applying for or receiving Home and Community Based Services (HCBS) or the Program of All Inclusive Care for the Elderly (PACE).

Institutionalized Spouse is a Medicaid eligible client who begins a stay in a medical institution or nursing facility on or after September 30, 1989, or is first enrolled as a Medical Assistance client in the Program of All Inclusive Care for the Elderly (PACE) on or after October 10, 1997, or receives Home and Community Based Services (HCBS) on or after July 1, 1999; and is married to a spouse who is not in a medical institution or nursing facility. An institutionalized spouse does not include any such individual who is not likely to be in a medical institution or nursing facility or to receive HCBS or PACE for at least 30 consecutive days. Irrevocable means that the contract, trust, or other arrangement cannot be terminated, and that the funds cannot be used for any purpose other than outlined in the document.

Insurance Affordability Program (IAP) refers to Medicaid, Child Health Plan *Plus* (CHP+), and premium and cost-sharing assistance for purchasing private health insurance through state insurance marketplace.

Legal Immigrant is an individual who is not a citizen or national and has been permitted to remain in the United States by the United States Citizenship and Immigration Services (USCIS) either temporarily or as an actual or prospective permanent resident or whose extended physical presence in the United States is known to and allowed by USCIS.

Legal Immigrant Prenatal is a medical program that provides medical coverage for pregnant legal immigrants who have been legal immigrants for less than five years.

Limited Disability for the Medicaid Buy-In Program for Working Adults with Disabilities means that an individual has a disability that would meet the definition of disability under SSA without regard to Substantial Gainful Activity (SGA).

Long-Term Care is Medical Assistance services that provides nursing-home care, home-health care, personal or adult day care for individuals aged at least 65 years or with a chronic or disabling condition.

Long-Term Care Institution means class I nursing facilities, intermediate care facilities for the mentally retarded (ICF/MR) and swing bed facilities. Long-Term Care institutions can include hospitals.

Managed care system is a system for providing health care services which integrates both the delivery and the financing of health care services in an attempt to provide access to medical services while containing the cost and use of medical care.

Medical Assistance is defined as all medical programs administered by the Department of Health Care Policy and Financing. Medical Assistance/Medicaid is the joint state/federal health benefits program for individuals and families with low income and resources. It is an entitlement program that is jointly funded by the states and federal government and administered by the state. This program provides for payment of all or part of the cost of care for medical services.

Medical Assistance Required Household is defined for purposes of this volume as all parents or caretaker relatives, spouses, and dependent children residing in the same home.

Minimal Verification is defined in this volume as the minimum amount of information needed to process an application for benefits. No other verification can be requested from clients unless the information provided is questionable or inconsistent.

Minimum Essential Coverage is the type of coverage one must maintain to be in compliance with the Affordable Care Act in order to avoid paying a penalty for being uninsured. Minimum essential coverage may include but not limited to: Medicaid; CHP+; private health plans through Connect for Health Colorado; Medicare; job-based insurance, and certain other coverage.

MMMNA - Minimum Monthly Maintenance Needs Allowance is the calculation used to determine the amount of institutionalized spouse's income that the community spouse is allowed to retain to meet their monthly living needs.

MAGI - Modified Adjusted Gross Income refers to the methodology by which income and household composition are determined for the MAGI Medical Assistance groups under the Affordable Care Act. These MAGI groups include Parents and Caretaker Relatives, Pregnant Women, Children, and Adults. For a more complete description of the MAGI categories and pursuant rules, please refer to section 8.100.4.

MAGI-Equivalent is the resulting standard identified through a process that converts a state's net-income standard to equivalent MAGI standards.

MIA - Monthly Income Allowance is the amount of institutionalized spouse's income that the community spouse is allowed to retain to meet their monthly living needs.

MSP - Medicare Savings Program is a Medical Assistance Program to assist in the payment of Medicare premium, coinsurance and deductible amounts. There are four groups that are eligible for payment or part-payment of Medicare premiums, coinsurance and deductibles: Qualified Medicare Beneficiaries (QMBs), Specified Low-Income Medicare Beneficiaries (SLIMBs), Qualified Disabled and Working Individuals (QDWIs), and Qualifying Individuals – 1 (QI-1s).

Non-Filer is an individual who neither files a tax return nor is claimed as a tax dependent. For a more complete description of how household composition is determined for the MAGI Medical Assistance groups, please refer to the MAGI household composition section at 8.100.4.E.

Nursing Facility is a facility or distinct part of a facility which is maintained primarily for the care and treatment of inpatients under the direction of a physician. The patients in such a facility require supportive, therapeutic, or compensating services and the availability of a licensed nurse for observation or treatment on a twenty-four-hour basis.

OAP - Old Age Pension is a financial assistance program for low income adults age 60 or older.

OASDI - Old Age, Survivors and Disability Insurance is the official term Social Security uses for Social Security Act Title II benefits including retirement, survivors, and disability. This does not include SSI payments.

Outpatient is a patient who is not hospitalized overnight but who visits a hospital, clinic, or associated facility for diagnosis or treatment. Is a patient who does not require admittance to a facility to receive medical services.

PACE - Program of All-inclusive Care for the Elderly is a unique, capitated managed care benefit for the frail elderly provided by a not-for-profit or public entity. The PACE program features a comprehensive medical and social service delivery system using an interdisciplinary team approach in an adult day health center that is supplemented by in-home and referral services in accordance with participants' needs.

Parent and Caretaker Relative is a MAGI Medical Assistance group that provides Medical Assistance to adults who are parents or Caretaker Relatives of dependent children.

Patient is an individual who is receiving needed professional services that are directed by a licensed practitioner of the healing arts toward maintenance, improvement, or protection of health, or lessening of illness, disability, or pain.

PEAK – the Colorado Program Eligibility and Application Kit is a web-based portal used to apply for public assistance benefits in the State of Colorado, including Medical Assistance.

PNA - Personal Needs Allowance means moneys received by any person admitted to a nursing care facility or Long-Term Care Institution which are received by said person to purchase necessary clothing, incidentals, or other personal needs items which are not reimbursed by a Federal or state program.

Pregnant Women is a MAGI Medical Assistance group that provides Medical Assistance coverage to pregnant women whose MAGI-based income calculation is less than 185% FPL, including women who are 60 days post-partum.

Premium means the monthly amount an individual pays to participate in a Medicaid Buy-In Program.

Provider is any person, public or private institution, agency, or business concern enrolled under the state Medical Assistance program to provide medical care, services, or goods and holding a current valid license or certificate to provide such services or to dispense such goods.

Psychiatric Facility is a facility that is licensed as a residential care facility or hospital and that provides inpatient psychiatric services for individuals under the direction of a licensed physician.

Public Institution means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

Questionable is defined as inconsistent or contradictory tangible information, statements, documents, or file records.

Reasonable Compatibility refers to an allowable difference or discrepancy between the income an applicant self attests and the amount of income reported by an electronic data source. For a more complete description of how reasonable compatibility is used to determine an applicant's financial eligibility for Medical Assistance, please refer to the MAGI Income section at 8.100.4.C

Reasonable Explanation refers to the opportunity afforded an applicant to explain a discrepancy between self-attested income and income as reported by an electronic data source, when the difference is above the threshold percentage for reasonable compatibility.

Recipient is any person who has been determined eligible to receive benefits.

Resident is any individual who is living within the state and considers the state as their place of residence. Residents include any unempancipated child whose parent or other person exercising custody lives within the state.

RRB - Railroad Retirement Benefits is a benefit program under Federal law 45 U.S.C. § 231 et seq that became effective in 1935. It provides retirement benefits to retired railroad workers and families from a special fund, which is separate from the Social Security fund.

Secondary School is a school or educational program that provides instruction or training towards a high school diploma or an equivalent degree such as a High School Equivalency Diploma (HSED).

SGA – Substantial Gainful Activity is defined by the Social Security Administration. SGA is the term used to describe a level of work activity and earnings. Work is "substantial" if it involves performance of significant physical or mental activities or a combination of both, which are productive in nature. For work activity to be substantial, it does not need to be performed on a full-time basis. Work activity performed on a part-time basis may also be substantial gainful activity. "Gainful" work activity is work performed for pay or profit; or work of a nature generally performed for pay or profit; or work intended for profit, whether or not a profit is realized.

Single Entry Point Agency means the organization selected to provide case management functions for persons in need of Long-Term Care services within a Single Entry Point District.

Single Streamlined Application or “SSAp” is the general application for health assistance benefits through which applicants will be screened for Medical Assistance programs including Medicaid, CHP+, or premium and cost-sharing assistance for purchasing private health insurance through a state insurance marketplace.

SISC- Supplemental Income Status Codes are system codes used to distinguish the different types of state supplementary benefits (such as OAP) a recipient may receive. Supplemental Income Status Codes determine the FFP for benefits paid on behalf of groups covered under the Medical Assistance program.

SSA - Social Security Administration is an agency of the United States federal government that administers Social Security, a social insurance program consisting of retirement, disability, and survivors' benefits.

SSI - Supplemental Security Income is a Federal income supplement program funded by general tax revenues (not Social Security taxes) that provides income to aged, blind or disabled individuals with little or no income and resources.

SSI Eligible means an individual who is eligible to receive Supplemental Security Income under Title XVI of the Social Security Act, and may or may not be receiving the monetary payment.

TANF - Temporary Assistance to Needy Families is the Federal assistance program which provides supportive services and federal benefits to families with little or no income or resources. It is the Block Grant that was established under the Personal Responsibility and Work Opportunity Reconciliation Act in Title IV of the Social Security Act.

Tax Dependent is anyone expected to be claimed as a dependent by a Tax-Filer.

Tax-Filer is an individual, head of household or married couple who is required to and who files a personal income tax return.

Third Party is an individual, institution, corporation, or public or private agency which is or may be liable to pay all or any part of the medical cost of an injury, a disease, or the disability of an applicant for or recipient of Medical Assistance.

Title XIX is the portion of the federal Social Security Act which authorizes a joint federal/state Medicaid program. Title XIX contains federal regulations governing the Medicaid program.

TMA - Transitional Medical Assistance is a Medical Assistance category for families that lost Medical Assistance coverage due to increased earned income or loss of earned income disregards.

ULTC 100.2 is an assessment tool used to determine level of functional limitation and eligibility for Long-Term Care services in Colorado.

Unearned Income is the gross amount received in cash or kind that is not earned from employment or self-employment.

VA - Veterans Affairs is The Department of Veterans Affairs which provides patient care and Federal benefits to veterans and their dependents.

8.100.4.G. MAGI Covered Groups

1. For MAGI Medical Assistance, any person who is determined to be eligible for Medical Assistance based on MAGI at any time during a calendar month shall be eligible for benefits during the entire month.

2. Children applying for Medical Assistance whose total household income does not exceed 133% of the federal poverty level (MAGI-equivalent) shall be determined financially eligible for Medical Assistance. Refer to the MAGI-Medicaid income guidelines chart available on the Department's website.

    a. Children are eligible for Children's MAGI Medical Assistance through the end of the month in which they turn 19 years old. After turning 19, the individual may be eligible for a different Medical Assistance category.

3. Parents and Caretaker Relatives applying for Medical Assistance whose total household income does not exceed 60% of the federal poverty level (MAGI-equivalent) shall be determined financially eligible for Medical Assistance. Parents or Caretaker Relatives eligible for this category shall have a dependent child in the household.

    a. A dependent child is considered to be living in the home of the parent or caretaker relative as long as the parent or specified relative exercises responsibility for the care and control of the child even if:

        i) The child is under the jurisdiction of the court (for example, receiving probation services);

        ii) Legal custody is held by an agency that does not have physical possession of the child;

        iii) The child is in regular attendance at a school away from home;

        iv) Either the child or the relative is away from the home to receive medical treatment;

        v) Either the child or the relative is temporarily absent from the home;

        vi) The child is in voluntary foster care placement for a period not expected to exceed three months. Should the foster care plan change within the three months and the placement become court ordered, the child is no longer considered to be living in the home as of the time the foster care plan is changed.

4. Adults applying for Medical Assistance whose total household income does not exceed 133% of the federal poverty level shall be determined financially eligible for Medical Assistance. This category includes adults who are parents or caretaker relatives of dependent children whose income exceeds the income threshold to qualify for the Parents and Caretaker Relatives MAGI category and who meet all other eligibility criteria.

    a. A dependent child living in the household of a parent or caretaker relative shall have minimum essential coverage, in order for the parent or caretaker relative to be eligible for Medical Assistance under this category. Refer to section 8.100.4.G.3.a on who is considered a dependent child.

5. Pregnant Women whose household income does not exceed 185% of the federal poverty level (MAGI-equivalent) are eligible for the Pregnant Women MAGI Medical Assistance program. Medical Assistance shall be provided to a pregnant woman for a period beginning with the date of application for Medical Assistance through the last day of the month following 60 days from the date the pregnancy ends. Once eligibility has been approved, Medical Assistance coverage will be provided regardless of changes in the woman's financial circumstances.

6. A pregnant legal immigrant who has been a legal immigrant for less than five years is eligible for Medical Assistance if she meets the eligibility requirements for expectant mothers listed in 8.100.4.G.6. This population is referenced as Legal Immigrant Prenatal.

7. A child whose mother is receiving Medical Assistance at the time of the child's birth is continuously eligible for one year. This population is referred to as “Eligible Needy Newborn”. This coverage also applies in instances where the mother received Medical Assistance to cover the child’s birth through retroactive Medical Assistance. The child is not required to live with the mother receiving Medical Assistance to qualify as an Eligible Needy Newborn.

    a. To receive Medical Assistance under this category, the birth must be reported verbally or in writing to the County Department of Human Services or eligibility site. Information provided shall include the baby’s name, date of birth, and mother’s name or Medical Assistance number. A newborn can be reported at any time by any person. Once reported, a newborn meeting the above criteria shall be added to the mother’s Medical Assistance case, or his or her own case if the newborn does not reside with the mother, according to timelines defined by the Department. If adopted, the newborn’s agent does not need to file an application or provide a Social Security Number or proof of application for a Social Security Number for the newborn

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Tracking number: 2016-00306

Opinion of the Attorney General rendered in connection with the rules adopted by the

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

on 08/12/2016

10 CCR 2505-10

MEDICAL ASSISTANCE - STATEMENT OF BASIS AND PURPOSE, AND RULE HISTORY

The above-referenced rules were submitted to this office on 08/16/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 30, 2016 10:42:23

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Human Services

Agency

Food Assistance Program (Volume 4B)

CCR number

10 CCR 2506-1

Rule title

10 CCR 2506-1 RULE MANUAL VOLUME 4B, FOOD ASSISTANCE 1 - eff 10/01/2016

Effective date

10/01/2016

4.502 VERIFICATION REQUIREMENTS AT APPLICATION, REDETERMINATION, AND PERIODIC REPORT

B. Verification Requirements at Redetermination and Periodic Report

1. Eligibility factors not verified by the Income and Eligibility Verification System (IEVS) should be verified at redetermination only if they are incomplete, inaccurate, questionable, inconsistent, or outdated and would affect a household's eligibility or benefit level. Unchanged information shall not be verified unless the information is outdated.

2. A change in total monthly earned income of one hundred dollars ($100) or more for each member must be verified at redetermination.

3. At redetermination, all households shall verify the following information if the source has changed or the amount has changed by more than twenty-five dollars ($25) since the last time they were verified:

    a. Changes in unearned income;
    b. Allowable medical expenses. SEE SECTION 4.407.61(B).
    c. Legally-obligated child support;
    d. Dependent care expenses;

4.407.6 Excess Medical Deduction

A household shall receive a deduction for total medical expenses in excess of thirty-five dollars ($35) per month, incurred by any household member(s) who is elderly or disabled as defined in Section 4.304.41. Other household members who are not elderly or disabled, including spouses and dependents, cannot claim costs of their medical treatment and services.

A. The following medical costs, less the cost of reimbursements from another source, are allowable:.

1. Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner or other qualified health professional.

2. Hospitalization or outpatient treatment, nursing care, and nursing home care including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the Colorado Department of Public Health and Environment.

3. Prescription drugs when prescribed by a licensed practitioner authorized under state law and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional. Costs of medical supplies, sickroom equipment (including rental), or other prescribed equipment may also be allowable.

4. Health and hospitalization insurance policy premiums, Medicare premiums, and any cost-sharing expenses incurred by medical recipients.

5. Dentures, hearing aids, prosthetics, and eyeglasses prescribed by a physician skilled in eye disease or by an optometrist.

6. Securing and maintaining a service animal, such as a seeing-eye or hearing dog, including cost of food and veterinarian fees. The costs of caring for these animals may be

deducted only when the animal has received special training to provide a service to the client.

7. Reasonable transportation and lodging to obtain medical treatment or services. Mileage expenses shall be calculated based on the prevailing Internal Revenue Service (IRS) mileage rate used for medical purposes.

8. Wages to an attendant, homemaker, home health aide, child care services, or a housekeeper necessary due to age, infirmity, or illness. In addition, an amount equal to the maximum allotment for one (1) person is allowed if the household furnishes the majority of the attendant's meals. The allotment shall be the one in effect at the time of certification with an appropriate adjustment at the next certification.

   If attendant care costs qualify under both medical and dependent care deduction, the costs shall be allowed as a medical expense.

IN CASES WHEN THE HOUSEHOLD CLAIMS A DEDUCTION FOR BILLED MEDICAL EXPENSES AND THE HOUSEHOLD IS UNABLE TO VERIFY WHETHER OR NOT ANY REIMBURSEMENT WILL BE RECEIVED, NO MEDICAL EXPENSE DEDUCTION SHALL BE ALLOWED UNTIL THE HOUSEHOLD EITHER RECEIVES REIMBURSEMENT FOR ALL OR PART OF THE EXPENSE OR IS ABLE TO VERIFY THAT REIMBURSEMENT WILL NOT BE PROVIDED. WHEN SUCH REIMBURSEMENT IS RECEIVED AND/OR VERIFIED, THE NON-REIMBURSED PORTION OF THE CLAIMED MEDICAL EXPENSE IS ALLOWED.

B. Non-allowable medical costs include, but are not limited to:

1. Special diet expenses;

2. Premiums for health and accident policies, such as those payable in lump sum settlements for death or dismemberment, or policies for income maintenance such as those that continue mortgage or loan payments while the beneficiary is disabled;

3. Medical expenses that are reimbursable by insurance or other public or private sources;

4. Medical marijuana;-

5. Vitamins and supplements unless prescribed by a physician; AND

6. MEDICAL EXPENSES CARRIED FORWARD FROM PAST BILLING PERIODS UNLESS ONE OF THE FOLLOWING CONDITIONS IS MET:

   a. THE AMOUNT IS BEING CARRIED FORWARD PENDING REIMBURSEMENT INFORMATION; OR,

   b. THE HOUSEHOLD HAS MADE ARRANGEMENTS TO MAKE MONTHLY INSTALLMENTS ON THE PAST DUE BILLS. THE PAST DUE AMOUNT MUST BE DUE TO MISSED PAYMENTS UNDER A PREVIOUS REPAYMENT AGREEMENT WITH THE MEDICAL PROVIDER, AND THE PAYMENT PLAN IS NOW BEING RENEGOTIATED WITH THE PROVIDER. THE NEGOTIATION OF A PAYMENT PLAN WITH A COLLECTION AGENCY WILL NOT BE ACCEPTED AS A RENEGOTIATED PAYMENT PLAN; OR,

c. HOUSEHOLDS THAT BECOME CATEGORICALLY ELIGIBLE FOR FOOD ASSISTANCE BY REASON OF BECOMING A PURE SSI HOUSEHOLD SHALL BE ENTITLED TO EXCESS MEDICAL EXPENSES FOR THE PERIOD FOR WHICH THEY ARE AUTHORIZED TO RECEIVE SSI OR FROM THE DATE OF THE FOOD ASSISTANCE APPLICATION, WHICHEVER IS LATER. RESTORED BENEFITS SHALL BE ISSUED IF APPROPRIATE; OR,

d. MEDICAL EXPENSES THAT OCCUR AFTER THE DATE AN APPLICATION IS FILED AND REPORTED AT THE SUBSEQUENT APPLICATION FOR REDETERMINATION OR PERIODIC REPORT SHALL BE CONSIDERED IF THE MEDICAL EXPENSE HAS NOT PREVIOUSLY BEEN REPORTED AND ALLOWED AS A MEDICAL DEDUCTION. IF AT RECERTIFICATION THE HOUSEHOLD PROVIDES PREVIOUSLY UNREPORTED MEDICAL EXPENSES THAT OCCURRED PRIOR TO THE LAST CERTIFICATION PERIOD THAT ARE PAST DUE, THE COUNTY DEPARTMENT SHALL REVIEW THE MEDICAL EXPENSES UNDER PROVISIONS A THROUGH C OF THIS SUBSECTION.

4.407.61 Determining Monthly Medical Expenses

A. A HOUSEHOLD THAT CONTAINS A MEMBER WHO IS ELIGIBLE FOR A MEDICAL EXPENSE DEDUCTION IS ELIGIBLE FOR A DEDUCTION USING EITHER THE STANDARD MEDICAL EXPENSE DEDUCTION (SMED) OR USING ACTUAL MEDICAL EXPENSES. BEGINNING OCTOBER 1, 2016, THE SMED IS ONE HUNDRED SIXTY FIVE DOLLARS ($165).

THE SMED IS USED IF THE TOTAL VERIFIED MEDICAL EXPENSES ARE GREATER THAN THIRTY FIVE DOLLARS ($35) AND LESS THAN OR EQUAL TO THE SMED. THE HOUSEHOLD MAY CLAIM ACTUAL EXPENSES IF THE TOTAL VERIFIED EXPENSES, AFTER DEDUCTING THE FIRST THIRTY FIVE DOLLARS (35$), EXCEED THE SMED.

AT ...	THEN ALLOW ...	AND VERIFY ...
APPLICATION, IF THE HOUSEHOLD HAS MEDICAL EXPENSES GREATER THAN $35 AND LESS THAN OR EQUAL TO THE SMED,	THE SMED,	THE HOUSEHOLD HAS MEDICAL EXPENSES GREATER THAN $35.VERIFICATION MUST BE RECEIVED TO ALLOW THE SMED.
APPLICATION, IF THE HOUSEHOLD HAS MONTHLY MEDICAL EXPENSES GREATER THAN THE SMED AFTER SUBTRACTING THE FIRST $35,	ACTUAL MEDICAL EXPENSES,	THE ACTUAL MONTHLY MEDICAL EXPENSE(S). IF THE HOUSEHOLD CHOOSES NOT TO PROVIDE VERIFICATION OF EXPENSES EXCEEDING THE SMED, THEN ALLOW THE SMED INSTEAD OF ACTUAL EXPENSES. VERIFICATION OF EXPENSES EXCEEDING $35 MUST BE RECEIVED TO ALLOW THE SMED.
REDETERMINATION, IF:	THE SMED,	NO VERIFICATION IS

• THE HOUSEHOLD ALREADY HAS ACTUAL MEDICAL EXPENSES GREATER THAN $35 AND LESS THAN OR EQUAL TO THE SMED, AND • THERE IS NO CHANGE, OR THERE IS A CHANGE IN THE AMOUNT BUT THE MONTHLY MEDICAL EXPENSE IS STILL GREATER THAN $35 AND IS LESS THAN OR EQUAL TO THE SMED,		REQUIRED UNLESS THE HOUSEHOLD'S DECLARATION IS QUESTIONABLE.
REDETERMINATION, IF THE HOUSEHOLD DOES NOT ALREADY HAVE THE SMED ALLOWED AND THE HOUSEHOLD STATES AN ELIGIBLE MEMBER HAS MEDICAL EXPENSES GREATER THAN $35 AND LESS THAN OR EQUAL TO THE SMED,	THE SMED,	THE HOUSEHOLD HAS MEDICAL EXPENSES GREATER THAN $35. VERIFICATION MUST BE RECEIVED TO ALLOW THE SMED.
REDETERMINATION, IF THE HOUSEHOLD DOES NOT ALREADY HAVE ACTUAL MEDICAL EXPENSES BUDGETED AND THE HOUSEHOLD STATES AN ELIGIBLE MEMBER HAS MEDICAL EXPENSES GREATER THAN THE SMED AFTER SUBTRACTING THE FIRST $35,	ACTUAL MEDICAL EXPENSES,	THE ACTUAL MONTHLY MEDICAL EXPENSE(S). IF THE HOUSEHOLD CHOOSES NOT TO PROVIDE VERIFICATION OF EXPENSES EXCEEDING THE SMED, THEN ALLOW THE SMED INSTEAD OF ACTUAL EXPENSES. THE HOUSEHOLD MUST PROVIDE PROOF OF EXPENSES EXCEEDING $35 TO RECEIVE THE SMED.
REDETERMINATION, IF: • THE HOUSEHOLD HAS ACTUAL MEDICAL EXPENSES GREATER THAN THE SMED ALREADY ALLOWED, AND • THERE IS A CHANGE IN THE MONTHLY AMOUNT OF MORE THAN TWENTY-FIVE DOLLARS ($25),	• THE SMED IF THE NEW TOTAL IS GREATER THAN $35 AND LESS THAN OR EQUAL TO the SMED, OR • ACTUAL MEDICAL EXPENSES IF THE NEW TOTAL EXCEEDS THE SMED AFTER DEDUCTING THE FIRST $35	THE CHANGE IN MEDICAL EXPENSES.

B. Expenses incurred weekly or biweekly shall be converted to a monthly amount using exact dollars and cents and the conversion method outlined in Section 4.402, A. The excess over thirty-five dollars ($35) per month is allowed as a monthly deduction.

C. At the time of application and recertification, the household may elect to have one-time-only costs deducted in one month as a lump sum or averaged over the certification period to obtain a

monthly amount. If the household elects to average the expenses over the certification period, the thirty-five dollar ($35) deduction shall be taken for each month of the certification period.

When a one-time-only medical expense is reported during a certification period, the amount may be deducted in a lump sum or averaged over the remainder of the certification period. Averaging would begin the month the change would be effective. If the household elects to average the expenses over the remainder of the certification period, the thirty-five dollar ($35) deduction shall be taken for each remaining month of the certification period.

WHEN AVERAGING THE MEDICAL EXPENSES, THE SMED IS ALLOWED FOR EACH MONTH OF THE CERTIFICATION PERIOD, AS LONG AS THE HOUSEHOLD'S ALLOWABLE AVERAGED MONTHLY MEDICAL EXPENSE IS GREATER THAN $35. IF THE EXPENSE RECURS MONTHLY OR MORE OFTEN, AND THE MEDICAL EXPENSE EXCEEDS $35 AND IS LESS THAN OR EQUAL TO THE SMED EACH MONTH, THE SMED IS ALLOWED FOR EACH MONTH OF THE CERTIFICATION PERIOD. WHEN ALLOWABLE MEDICAL EXPENSES FOR THE HOUSEHOLD EXCEED THE SMED AFTER DEDUCTING THE FIRST $35, THE ACTUAL MEDICAL EXPENSES ARE BUDGETED. THE FOLLOWING CHART IS USED TO DETERMINE WHEN TO ALLOW THE SMED OR ACTUAL MEDICAL EXPENSES.

IF THE EXPENSE ...	THEN ALLOW THE ...
RECURS LESS OFTEN THAN MONTHLY AND THE AMOUNT AVERAGED FOR EACH MONTH IS LESS THAN OR EQUAL TO $35,	ACTUAL AMOUNT OF VERIFIED ACTUAL MEDICAL EXPENSE IN THE MONTH BILLED, OR USE THE SMED IN THE MONTH BILLED IF THE MEDICAL EXPENSE IS GREATER THAN $35 AND LESS THAN OR EQUAL TO THE SMED.
RECURS LESS OFTEN THAN MONTHLY AND THE AMOUNT AVERAGED FOR EACH MONTH IS GREATER THAN $35 AND LESS THAN OR EQUAL TO THE SMED EACH MONTH,	SMED FOR EACH MONTH OF THE CERTIFICATION PERIOD.
RECURS LESS OFTEN THAN MONTHLY AND THE AMOUNT AVERAGED FOR EACH MONTH IS GREATER THAN THE SMED,	AVERAGED AMOUNT OF ACTUAL VERIFIED MEDICAL EXPENSES FOR EACH MONTH. ALLOW THE SMED ONLY IF THE HOUSEHOLD CHOOSES TO USE THE SMED OR FAILS TO PROVIDE ENOUGH VERIFICATION TO QUALIFY FOR ACTUAL MEDICAL EXPENSES.
OCCURS ONE TIME AND THE AMOUNT AVERAGED OVER THE CERTIFICATION PERIOD IS LESS THAN OR EQUAL TO $35 A MONTH,	ACTUAL AMOUNT OF VERIFIED MEDICAL EXPENSES IN THE MONTH BILLED, OR USE THE SMED IN THE MONTH BILLED IF THE MEDICAL EXPENSE IS GREATER THAN $35 AND IS LESS THAN OR EQUAL TO THE SMED.
OCCURS ONE TIME AND THE AMOUNT AVERAGED OVER THE CERTIFICATION PERIOD IS GREATER THAN $35 AND LESS THAN OR EQUAL TO THE SMED EACH MONTH,	SMED FOR EACH MONTH OF THE CERTIFICATION PERIOD.
OCCURS ONE TIME AND THE AMOUNT AVERAGED OVER THE CERTIFICATION PERIOD IS GREATER THAN THE SMED EACH MONTH,	AVERAGED AMOUNT OF THE ACTUAL MEDICAL EXPENSES FOR EACH MONTH. ALLOW THE SMED ONLY IF THE HOUSEHOLD CHOOSES TO USE THE SMED OR FAILS TO PROVIDE ENOUGH VERIFICATION TO QUALIFY FOR ACTUAL MEDICAL EXPENSES.

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Office of the Attorney General

Tracking number: 2016-00249

Opinion of the Attorney General rendered in connection with the rules adopted by the

Food Assistance Program (Volume 4B)

on 08/05/2016

10 CCR 2506-1

RULE MANUAL VOLUME 4B, FOOD ASSISTANCE

The above-referenced rules were submitted to this office on 08/09/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 24, 2016 12:08:40

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Human Services

Agency

Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-2

Rule title

12 CCR 2509-2 REFERRAL AND ASSESSMENT 1 - eff 10/01/2016

Effective date

10/01/2016

DEPARTMENT OF HUMAN SERVICES

Social Services Rules

REFERRAL AND ASSESSMENT

12 CCR 2509-2

7.100 REFERRAL AND ASSESSMENT [Eff. 1/1/15]

7.101 DOCUMENTATION OF REFERRALS [Eff. 1/1/15]

All reports that meet the definition of a referral shall be entered into the state automated case management system. Any time a case is opened, it shall come through the referral or assessment process in the state automated case management system with the exception of Interstate Compact on the Placement of Children (ICPC), out of state subsidized adoption, and Division of Youth Corrections (DYC) Medicaid-only.

7.102 HOTLINE REQUIREMENTS [Eff. 1/1/15]

The establishment of a statewide child abuse and neglect reporting hotline system is intended to provide an additional resource for the public to make an initial report of suspected or known abuse and/or neglect.

7.102.1 COUNTY HOTLINE RESPONSIBILITIES [Eff. 1/1/15]

A. County departments shall establish a dedicated child abuse and neglect reporting telephone line to receive calls from the statewide child abuse and neglect reporting hotline system.

B. County departments shall ensure that all calls received through the statewide child abuse and neglect reporting hotline system will be answered by a live person designated by the county, which may include county staff, local law enforcement, the Hotline County Connection Center, and/or an answering service.

C. County departments shall ensure that any county department staff that responds to inquiries regarding child abuse and/or neglect or gathers information for reports of child abuse and/or neglect are trained and annually certified according to the requirements outlined in Section 7.603 (12 CCR 2509-7).

D. County departments shall ensure that all reports and inquiries received through the statewide child abuse and neglect reporting hotline system are documented in the state automated case management system as defined in Section 7.103.9.

E. When county departments select a routing method in the statewide child abuse and neglect reporting hotline system that prevents call data from being collected by the hotline system, county departments shall provide the State Department with designated monthly reports.

1. County Departments shall use a uniform template, provided by the State Department, to report the following:

a. Call volume,

b. Average call duration; and,

c. Average wait time.

2. The monthly reports shall be due to the State Department by the third business day of the following month.

7.102.2 HOTLINE COUNTY CONNECTION CENTER RESPONSIBILITIES [Eff. 1/1/15]

A. Hotline County Connection Center staff shall be continuously available twenty-four (24) hours a day, seven (7) days a week to receive and immediately route hotline calls to the appropriate county department.

The appropriate county department shall be determined by the following criteria in order of priority:

1. Residence of the child;

2. Current location of the child; or,

3. Incident location.

B. All Hotline County Connection Center staff shall be trained and annually certified according to the requirements outlined in Section 7.603 (12 CCR 2509-7).

C. Hotline County Connection Center staff shall ensure that all hotline calls are documented in the state automated case management system.

When requested by a county department and approved by the county's Board of County Commissioners and the Department's Executive Director, Hotline County Connection Center staff shall gather and document all information concerning intrafamilial, institutional, and third party reports of abuse and/or neglect as defined in Sections 7.101, 7.103.1, and 7.103.2.

7.102.3 TRANSFER OF HOTLINE RESPONSIBILITIES [Eff. 1/1/15]

A. County departments may request the Hotline County Connection Center to receive reports and inquiries from the child abuse and neglect reporting hotline on behalf of the county department subject to the Board of County Commissioners' approval and subsequent approval by the State Department's Executive Director. The request must be submitted in writing and approved by the State Department prior to implementation.

B. In the event of a natural disaster or other emergency situation in which county departments cannot receive reports or inquiries from the statewide child abuse and neglect reporting hotline system, county departments may request that the Hotline County Connection Center receive their reports or inquiries, until they are able to resume normal operations, by contacting the State Department's Executive Director or his/her designee.

C. County departments may request another county department to receive reports and inquiries from the statewide child abuse and neglect reporting hotline system on behalf of the county department subject to the Board of County Commissioners' approval. Documentation of agreement from both county departments must be submitted to the State Department's Executive Director or his/her designee prior to implementation.

Reports and inquiries taken by a county department or the Hotline County Connection Center on behalf of another county department must follow the requirements defined in Sections 7.101, 7.101.1, 7.103.1, and 7.103.2.

D. When the Hotline County Connection Center or another county department enters a report of child abuse and/or neglect into the state automated case management system on behalf of another county department, it shall transfer the referral to the appropriate county department through personal contact and the state automated case management system within one hour after the call is completed.

E. When a county department receives referrals from the Hotline County Connection Center or another county department, the county department shall confirm receipt of the referral within one hour through personal contact or the state automated case management system.

F. When the Hotline County Connection Center or another county department enters an inquiry into the state automated case management system on behalf of another county department, they shall transfer the inquiry to the appropriate county department as follows:

1. Inquiries regarding child abuse and/or neglect or inquiries regarding families involved in an open child welfare case shall be transferred to the appropriate county department through personal contact and the state automated case management system within one hour after the call is completed.

2. All other inquiries shall be transferred to the appropriate county department through the state automated case management system within one hour after the call is completed.

G. When a county department receives an inquiry from the Hotline County Connection Center or another county department, the county department shall confirm receipt of the inquiry as follows:

1. Inquiries regarding child abuse and/or neglect or inquiries regarding families involved in an open child welfare case shall be confirmed through personal contact or the state automated case management system within one hour of receipt.

2. All other inquiries shall be confirmed through the state automated case management system by the close of the next business day.

7.103 RECEIPT OF REFERRAL ALLEGING INTRAFAMILIAL OR THIRD PARTY ABUSE AND/OR NEGLECT– INFORMATION TO BE GATHERED [Eff. 1/1/15]

Upon receipt of a referral alleging intrafamilial or third party abuse and/or neglect, county departments shall gather and document as much of the following information, as available:

A. Reporting party's name, address, and telephone number, e-mail, fax, role, agency and relationship to the alleged victim child(ren) and family;

B. Alleged victim child(ren)'s name, address, current specific location, school (if applicable), birth date(s), and extent of injuries;

C. Family and household members, names, dates of birth, relationship to each other, and relationship to the alleged victim child(ren);

D. Name, date of birth, present location, and current or last known address of the person alleged to be responsible for the abuse and/or neglect;

E. The presenting problems and specific allegations of the abuse and/or neglect, and the nature of the environment;

F. The duration and nature of the alleged abuse and/or neglect and whether the conditions have worsened, improved, or remained unchanged;

G. The date, time and location the alleged victim child(ren) were last seen by the reporting party;

H. The nature of any concerns regarding the interactions between the caregivers;

I. The nature of any law enforcement involvement with the family;

J. Whether there are any weapons in the home;

K. The nature and extent of any drug use by family or household members;

L. The nature of any other environmental hazards in the home (e.g., vicious animals, methamphetamine labs, criminal activity, etc.);

M. The name, address and telephone number of other individuals who may have information about the referral;

N. The identity and contact information of collateral agencies and individuals involved with the family;

O. Records check result of internal and state automated case management system inquiries;

P. Date and time referral received;

Q. Family strengths and supports;

R. Possible solutions for resolving the presenting problem;

S. Race and primary language of the child and family;

T. Information as to whether or not the children have American Indian or Alaskan Native heritage, and if so, the Tribal affiliation; and,

U. Any actions taken by the referral source or reporting party.

7.103.1 Jurisdiction for Referrals Concerning Intrafamilial and Third-Party Abuse and/or Neglect [Eff. 1/1/15]

A. The county department with jurisdiction for responding to a referral concerning intrafamilial or third-party abuse is the department for the county in which the alleged victim child(ren) resides the majority of the time except when custody of the alleged victim child(ren) is shared equally between caregivers. When custody is shared equally between caregivers, the county department with jurisdiction is the department for the county in which the person(s) alleged to be responsible for the abuse and/or neglect reside, if known.

B. When a family is homeless as defined in 42 U.S.C. Section 11302, the county department with jurisdiction is the department for the county in which the alleged victim child(ren)'s primary nighttime residence is located.

C. If the jurisdiction is unable to be determined by A or B, above, the county department with jurisdiction is the department for the county in which the alleged victim child(ren) are currently present, as set forth in Section 19-3-201, C.R.S.

D. County departments shall use available resources to determine jurisdiction including, but not limited to:

1. Colorado benefits management system;

2. Alleged victim child(ren)'s school or daycare;

3. History within the state automated case management system;

4. Colorado courts;

5. Where services may be provided.

7.103.11 Transfer of Jurisdiction [Eff. 1/1/15]

A. If the county department that receives a referral determines that another county department has jurisdiction, the county department that received the referral shall:

1. Gather and document all information as available in Section 7.103.1, A;

2. Gather and document all information necessary to determine jurisdiction; and

3. Contact the county determined to have jurisdiction within the following timeframes:

a. If the referral is assigned an immediate response, within four (4) hours of determining jurisdiction.

b. If the referral is assigned either a three (3) day or five (5) day response, within one (1) business day of determining jurisdiction.

B. The county determined to have jurisdiction shall screen the referral.

C. When the county department that received the referral makes a decision based upon the referral prior to determining jurisdiction, the county department determined to have jurisdiction shall uphold that decision including assignment and response time, unless:

1. Additional or new information is gathered by the county department determined to have jurisdiction.

2. The additional or new information shall relate to the safety of the child.

3. The child welfare or county department director of the county department determined to have jurisdiction overrides the decision.

4. The authorization, information, and justification for any change shall be documented in the referral notes.

D. If an immediate response is necessary, the county department where the child is located at the time of the referral is the responsible county department while jurisdiction is determined.

7.103.2 RECEIPT OF REFERRAL ALLEGING INSTITUTIONAL ABUSE AND/OR NEGLECT – INFORMATION TO BE GATHERED [Eff. 1/1/15]

Upon the receipt of a referral alleging institutional abuse and/or neglect, the county department shall gather as much of the following information, as available:

A. Reporting party's name, address, telephone number, e-mail, facsimile, role, and relationship to alleged victim child(ren) and family;

B. Alleged victim child(ren)'s name, address, current specific location, school (if applicable), birth date(s), and extent of injuries;

C. The presenting problems and specific allegations of the abuse and/or neglect;

D. Name, address, and present location of the person(s) alleged to be responsible for the abuse and/or neglect. If the person(s) is a staff person(s), determine if the person(s) is still on duty or off duty. If the person(s) is another resident, determine where he/she is at the time this information is obtained;

E. Any indication that other children in the institution are or have been injured, abused, and/or neglected, and if so, their names addresses and current location;

F. Time, date, location and witness(es) of the incident;

G. Any other information which might be helpful in establishing the cause of the injury, abuse and/or neglect;

H. Name, address, and contact information of the parent(s)/guardian(s) of the alleged victim child(ren);

I. Name, address and telephone number of the institution and whether there is an after-hours telephone number for the institution;

J. Name and address of the agency holding legal custody of the alleged victim child(ren);

K. Historical and current information regarding the alleged victim child(ren), the facility and the person(s) alleged to be responsible for the abuse and/or neglect.

L. Whether the institution has been apprised of the allegation and if so, the action(s) that have been taken by the institution, such as:

1. Notification of the custodial county/agency.

2. Notification of the parent(s)/guardians.

3. Separation of the alleged victim child(ren) from the person(s) alleged to be responsible for the abuse and/or neglect.

4. Provision of medical treatment, and if no medical treatment has been provided whether in the reporter's opinion, an injury was sustained which would constitute a medical emergency.

7.103.21 Jurisdiction for Referrals Concerning Institutional Abuse and/or Neglect [Eff. 1/1/15]

The county in which the facility is located shall have jurisdiction for responding to a referral concerning institutional abuse.

7.103.3 INITIAL REVIEW [Eff. 1/1/15]

When available, the county department shall gather the information in Section 7.103.1, A and/or B, and conduct an initial review. The initial review shall decide the appropriateness of immediate assessment and/or RED Team review. It shall include, but not be limited to, the following actions:

A. Review the state automated case management system and any available county department files within twenty-four (24) hours for:

1. Prior referrals and/or involvement with the alleged victim child(ren), family, and person(s) alleged to be responsible for the abuse and/or neglect;

2. Actions taken; and,

3. Services provided to inform whether there is known or suspected abuse and/or neglect or serious threats of harm to a child.

B. As available and appropriate, obtain information from collateral sources such as schools, medical personnel, law enforcement agencies, or other care providers.

7.103.4 RED TEAMS [Eff. 1/1/15]

A. County departments shall develop and implement a process utilizing the RED Team framework to review referrals and determine response times. THE RED Team process shall be utilized for all referrals, with the exception of:

1. Referrals necessitating an immediate response;

2. Referrals necessitating a response prior to the next business day;

3. Referrals alleging institutional abuse and/or neglect; or,

4. Referrals alleging youth in conflict.

Counties may choose to utilize the RED Team process for the above exceptions.

B. The RED Team framework shall include, but not be limited to:

1. Danger/harm;

2. Complicating/risk factors;

3. Gray area;

4. Cultural considerations/race;

5. Safety;

6. Strengths/protective factors; and

7. Next steps.

C. All RED Team decisions shall be approved by a supervisor by the end of the calendar day and documented in the state automated case management system by the end of the next business day.

7.103.5 REFERRALS REQUIRING NO FURTHER ACTION [Eff. 1/1/15]

A. County departments may determine that a referral does not require further action and screen it out for the following reasons:

1. The current allegations have previously been assessed;

2. The alleged victim child(ren) are not located or reside in the State of Colorado. In this circumstance, the county department shall inform the other state or county department of the referral;

3. Referral does not meet criteria of abuse and/or neglect as defined in statutes and regulations;

4. Referral lacks sufficient information to locate the alleged victim child(ren);

5. Referral is duplicative of a previous referral. In this circumstance, the county department shall associate the duplicate referral with the previous referral in the state automated case management system);

6. The person alleged to be responsible for the abuse and/or neglect is a third (3rd) party and ten (10) years of age or older. In this circumstance, the county department shall send the referral to the appropriate law enforcement agency.

7. There is no current allegation of abuse and/or neglect; and,

8. Other (applicable for Program Area 4 only and requires documentation explanation in the state automated case management system).

7.103.6 CRITERIA FOR ASSIGNING A REFERRAL FOR ASSESSMENT [Eff. 1/1/15]

A. County departments shall assign a referral for assessment if it:

1. Contains specific allegations of known or suspected abuse and/or neglect as defined in Section 7.000.2;

2. Provides sufficient information to locate the alleged victim; and,

3. Identifies a victim under the age of eighteen (18).

B. Any time a case is opened, it shall come through the referral or assessment process in the state automated case management system with the exception of Interstate Compact on the Placement of Children (ICPC), out of state subsidized adoption, out of state Medicaid, Interstate Compact on Adoption and Medicaid Assistance (ICAMA), or Division of Youth Corrections (DYC) Medicaid-only.

7.103.61 Response Time for Referrals Assigned for Assessment [Eff. 1/1/15]

A. County departments shall assign the appropriate response time for assessments based upon the date the referral is received using the following criteria:

1. An immediate and/or same day response is required when a referral indicates that:

    a. There may be present danger of moderate to severe harm; or,

    b. The child's vulnerability and/or factors such as drug and alcohol abuse, violence, isolation, or risk of flight from one county to another county or state increase the need for immediate response.

2. A three (3) calendar day response is required when a referral indicates that:

    a. There may be impending danger of moderate to severe harm; or,

    b. The alleged victim child(ren)'s vulnerability and/or factors such as drug and alcohol abuse, violence, isolation, or risk of flight from one county to another county or state, increase the need for intervention in the near future.

    The three (3) calendar day count expires at the end of the third calendar day following receipt of the referral.

3. A five (5) working day response is required when a referral indicates an absence of safety concerns. The five (5) day count excludes the date the referral was received.

B. The decision of how quickly to initiate an assessment shall be based on specific reported information that is credible and that indicates whether a child may be unsafe or at risk of harm.

C. If a referral requiring an immediate and/or same day response is received after regular business hours, the time frame for response is immediate and/or up to eight (8) hours.

D. If the caseworker is unable to locate the alleged victim child(ren) within the assigned response time, reasonable efforts shall continue to locate the child according to the original assigned response time.

7.103.7 DIFFERENTIAL RESPONSE [Eff. 1/1/15]

A. County departments interested in participating in Differential Response shall conduct the following:

1. Submit a letter of interest to the State Department;

2. Form a County Differential Response Implementation Committee;

3. Attend Differential Response Training and Coaching Sessions as determined by the State Department;

4. Complete the Readiness Self-Assessment Process;

5. Demonstrate the ability to meet the State Department's performance expectations on safety and well-being measures; and,

6. Demonstrate county staff understands how to correctly enter information into the state automated case management system.

Upon successful completion of the above efforts, a county may be selected to participate in Differential Response by the Executive Director of the State Department.

B. County departments that implement Differential Response shall utilize the RED Team framework to review referrals, determine response times, and determine the appropriate track assignment in accordance with the approved RED Team process.

1. High Risk Assessment (HRA) is mandatory for a child fatality, near fatality, or egregious incident determined to be the result of abuse and/or neglect, institutional abuse, and intrafamilial sexual abuse. RED Teams may use discretion to assign a High Risk Assessment (HRA) based on the following factors: present danger, multiple previous referrals, and/or presenting case characteristics such as type of alleged maltreatment paired with high vulnerability of the alleged victim.

2. The Family Assessment Response (FAR) is for referrals with low to moderate risk. RED teams may use discretion to assign the Family Assessment Response (FAR) in assessments alleging a child fatality, near fatality, or egregious incident. If it is determined that a child fatality, near fatality or egregious incident is the result of abuse and/or neglect, the track shall be changed to a High Risk Assessment. Institutional abuse or intrafamilial sexual abuse shall not be assigned the Family Assessment Response (FAR).

3. All RED Team decisions shall be approved by a supervisor by the end of the calendar day and documented in the state automated case management system by the end of the next business day.

7.103.8 DUTIES TO REPORTING PARTIES – INFORMATION TO BE PROVIDED [Eff. 1/1/15]

A. Within thirty (30) calendar days of receiving a referral alleging abuse and/or neglect from a mandatory reporter listed in Section 19-1-307(2)(e.5)(I), C.R.S., the county department shall notify such individual when:

1. The county department is aware the individual is and continues to be officially and professionally involved in the ongoing care of the child who was the subject of the referral; and,

2. The mandatory reporter has a need to know in order to fulfill his or her professional and official role in maintaining the child's safety; and,

3. Unless the county department has actual knowledge that the mandatory reporter continues to be officially and professionally involved in the ongoing care of the child who was the subject of the report, a county department shall request written affirmation from a mandatory reporter stating that the reporter continues to be officially and professionally involved in the ongoing care of the child who was the subject of the report and describing the nature of the involvement.

B. The county department shall notify the mandatory reporter of the following information:

1. The name of the child and the date of the referral;

2. Whether the referral was accepted for assessment;

3. Whether the referral was closed without services;

4. Whether the assessment resulted in services related to the safety of the child;

5. The name of and contact information for the county caseworker responsible for the assessment; and,

6. Notice that the reporting mandatory reporter may request updated information within ninety (90) calendar days after the county department received the referral and information concerning the procedure for obtaining updated information.

7.103.9 DOCUMENTATION REQUIREMENTS – WHEN SUPERVISOR APPROVAL IS REQUIRED [Eff. 1/1/15]

A. All referrals including the information gathered pursuant to Sections 7.103.1 and 7.103.2 shall be entered into the state automated case management system by the end of the next business day following receipt of the referral.

B. The initial review shall be documented in the state automated case management system by the end of the next business day following receipt of the referral. The supervisor is to ensure that the review and the documentation have occurred.

C. The decision to screen out a referral for further action shall be documented in the state automated case management system by the end of the following business day that the decision is made. This shall include an explanation of the reasons why no further action was needed. The determination to screen out a referral for further action must be approved by a supervisor.

D. All RED Team decisions shall be approved by a supervisor by the end of the calendar day and documented in the state automated case management system by the end of the next business day.

7.104 ASSESSMENTS OF INTRAFAMILIAL, INSTITUTIONAL, AND THIRD-PARTY ABUSE AND/OR NEGLECT REFERRALS [Eff. 1/1/15]

A. The assessment shall begin with face-to-face contact with the alleged victim child(ren) and includes, but is not limited to:

1. Face-to-face contact with the primary caregiver;

2. Assessing for safety and taking action to secure safety, if indicated;

3. Assessing risk, needs, and strengths of child(ren) and families; and,

4. Obtaining culturally relevant and appropriate resources for the alleged victim child(ren) and their families.

B. At the point of first contact with the alleged victim child(ren), the assessment shall focus immediately on whether the child is safe, and include the following:

1. To assess for safety, county departments shall consider:

a. The safety threshold criteria current or impending danger of moderate to severe harm;

b. The ten (10) present or impending dangers referenced in Section 7.107.13;

c. Child/youth vulnerabilities/strengths;

d. Caregiver strengths/protective capacities; and,

e. Actions that respond to the current or impending danger.

2. If the child is unsafe, the caseworker shall analyze whether a safety plan can reasonably be expected to control current or impending danger while the assessment continues, and if so, develop a safety plan as described in Section 7.107.16. If a safety plan cannot reasonably be expected to control current or impending danger the caseworker shall, if necessary, initiate an out-of-home placement. Section 19-3-401, C.R.S., describes the process of taking children into custody. If the child is unsafe, the safety assessment, safety plan, or decision to initiate an out-of-home placement must be reviewed and approved by a supervisor as soon as possible and at most within twenty-four (24) hours.

3. For county departments implementing Differential Response, in the first sixty (60) calendar days of a Family Assessment Response (FAR), upon supervisory approval, the caseworker may change tracks to a High Risk Assessment (HRA) to assess, attain or maintain child safety due to lack of cooperation or additional information gathered during the assessment, or if requested to do so by the person(s) alleged to be responsible for the abuse and/or neglect.

4. For county departments implementing Differential Response, if at any point the safety cannot be sustained in a Family Assessment Response (FAR), the caseworker, with approval from the supervisor, shall open a case and/or request court orders. If at any point new information is gathered that contains information defined in Section 7.103 a new referral shall be generated.

C. Safety interventions shall be used continuously throughout all assessments. Safety interventions are defined as the actions and decisions required to:

1. Identify and assess threats to child safety;

2. Plan for an unsafe child(ren) to be protected;

3. Facilitate caregivers in taking responsibility for child protection; and,

4. Manage plans designed to assure child safety while a safe and permanent home is established.

D. When determining jurisdiction within open assessments, when there are safety concerns, consider the following:

1. The timeframes and completion of activities within the assessment including response time, completion of the safety and risk assessment, and the assessment closure;

2. Verification of the new residence and documentation of efforts to determine correct jurisdiction;

3. Considerations of distance between reported residence and new residence; and,

4. Assessment completion and the need for further services.

E. When determining jurisdiction within open assessments, when no further safety concerns are identified, the county with the open assessment shall complete the assessment.

7.104.1 INTRAFAMILIAL ABUSE AND/OR NEGLECT ASSESSMENT – TIMING AND ELEMENTS [Eff. 1/1/15]

A. If at any point during the assessment, a county department becomes aware of an allegation that a child/youth is, or may be, a victim of sex trafficking, the county department shall:

1. Report immediately, and no later than twenty-four (24) hours from when the county department becomes aware, to the local law enforcement agency; and,

2. Document the details of the report to law enforcement in the state automated case management system.

B. The assessment shall begin as soon as reasonably possible following receipt of the referral according to the assigned response time.

C. The assessment shall be conducted as set forth in Section 19-3-308(2), (3), (4) through 19-3-308.5, C.R.S., and the following:

1. The assessment shall include an interview, with or observation of the alleged victim child(ren) within the assigned response timeframe, according to the following procedures:

a. Interviews shall be face-to-face with the child if the child has the verbal ability to relate information relevant to safety decisions. If the child does not have such verbal ability, observation of the child is sufficient.

b. Interviews shall be conducted out of the presence of the person(s) alleged to be responsible for the abuse and/or neglect.

c. The requirements of section (B) above do not apply in a Family Assessment Response (FAR) where the initial interview may be conducted with the entire family, when doing so does not compromise the safety of the child(ren). Children may be interviewed outside the presence of the suspected person(s) responsible for the abuse and/or neglect at any point during the assessment. If domestic violence is alleged, the non-offending parent victim and alleged victim child(ren) shall be interviewed separate and apart from the alleged perpetrator.

d. Information obtained from the interview with the non-offending parent and victim child(ren) shall not be revealed to the alleged perpetrator of domestic violence, but shall be subject to the rules of discovery and governed by the confidentiality provisions under Section 7.605.

e. If the interview or observation cannot be accomplished within the assigned response timeframe, reasonable efforts to interview or observe the child(ren) shall continuously be made. These efforts shall continue until the interview or observation occurs or the assessment is completed.

2. The assessment shall include interviews with all children, caregivers, non-custodial parent(s), family members, and other persons identified through the assessment who may have information regarding the alleged abuse and/or neglect to determine:

a. Extent of child maltreatment, to include, but not limited to:

1) Impact to the child;

2) Type and severity of injuries, if applicable; and,

3) Child’s explanation of the maltreatment.

b. Circumstances surrounding the child maltreatment, to include, but not limited to:

1) Caretaker explanation of the maltreatment;

2) Environmental influences; and,

3) Contributory factors.

c. Child functioning on a daily basis;

d. Adults and caregiver functioning on a daily basis; and,

e. Parenting practices and disciplinary practices.

3. The assessment shall include visiting the alleged victim child(ren)'s place of residence or place of custody if:

a. The home conditions are the subject of the referral; or,

b. Information obtained in the interview process indicates assessment of the home environment is necessary due to safety issues or to determine findings.

4. The assessment shall determine the names and conditions of any children living in the same place as the alleged victim child(ren).

5. The assessment shall include consideration of race/ethnicity, religion, accepted work-related practices of agricultural communities, and accepted child-rearing practices of the culture in which the alleged victim child(ren) participates.

6. The assessment shall include a review of any current and/or prior involvement by any county department with any of the children in the home, the parents, the person alleged to be responsible for the abuse and/or neglect or any person residing in the home. This review shall:

a. Analyze each prior involvement for actions taken and services provided;

b. Determine whether there is a pattern of behavior in the family that is a threat to the safety of the child(ren) and take action to secure safety, if indicated, or seek more information to make a determination; and,

c. Include a review by the supervisor to ensure the review has occurred.

7. The assessment shall include making reasonable efforts to interview and advise the person(s) alleged to be responsible for the abuse and/or neglect of the referral and afford such person(s) an opportunity to respond to the allegations.

8. The assessment shall include use of the Colorado Safety Assessment tool as describe in Section 7.107.1.

9. The assessment shall include use of the Colorado Family Risk Assessment tool as described in Section 7.107.2.

10. The assessment shall include making reasonable efforts to prevent out-of-home placement, unless an emergency exists, and to maintain the family unit. Reasonable efforts include, but are not limited to:

a. Engaging family and extended family in safety planning as described in Section 7.107.16, if appropriate;

b. Providing in-home services, if appropriate and available;

c. Removing the person(s) alleged to be responsible for the abuse and/or neglect from the home rather than the child(ren), if possible;

d. Requesting the caregiver place the child and self in a safe environment; or,

e. Engaging family and extended family in securing a kinship placement.

7.104.11 Additional Requirements When Assessing Allegations of Sexual Abuse [Eff. 1/1/15]

A. When the assessment involves allegations of sexual abuse, the assessment shall include at a minimum in-state and out-of-state sex offender checks of the person(s) alleged to be responsible for the abuse and/or neglect. The sex offender check shall be conducted using the following:

1. County departments shall use Colorado Courts to check if a person alleged to be responsible for the abuse and/or neglect is a sex offender; or,

2. County departments shall use both the state and national websites to check if a person alleged to be responsible for the abuse and/or neglect is a sex offender; and/or,

3. County departments may check with law enforcement to check if a person alleged to be responsible for the abuse and/or neglect is a sex offender.

B. When conducting any website checks, county departments shall:

1. Use due diligence in following specific check criteria for each website; and,

2. Check for adult felony, misdemeanor, and/or juvenile adjudication records with a sexual offense.

C. County departments shall also:

1. Access or attempt to access government issued (tamper-resistive) photographic identification of the person alleged to be responsible for the abuse and/or neglect and document the full name(s), including nicknames and/or aliases, address(es) and date(s) of birth in the state automated case management system;

2. Access or attempt to access information from the person alleged to be responsible for the abuse and/or neglect on any possible involvement with law enforcement, probation, parole, corrections, community corrections, and/or child welfare services in Colorado, in any other state, and/or jurisdiction that may include federal, military, tribe, and/or country;

3. Immediately report any possible violations of sex offender registration to local law enforcement; and,

4. Report all law enforcement verified matches of sex offenders to the individual, supervising officer/agent or team responsible for community supervision and public safety.

7.104.12 Audio or Video Recording of the Interview or Observation [Eff. 1/1/15]

A. The interview or observation may be audio or video taped except when it is impracticable under the circumstances or will result in trauma to the child, as determined by the county department.

B. If audio or video recording is conducted, the following standards shall be followed:

1. The interview shall be conducted by a competent interviewer, and may occur at a child advocacy center, as defined in Section 19-1-103(19.5), C.R.S., that has a Memorandum of Understanding with the county department responsible for the assessment or by a competent interviewer for the county department.

2. The child shall be advised that audio or video taping of the interview is to be conducted and the advisement shall be documented in the state automated case management system. If the child objects to videotaping of the assessment, such taping shall not be conducted by the county department.

3. If it is the county department's policy to routinely video or audio tape interviews, and an exception is made, the reason for the exception shall be documented in the state automated case management system.

4. If there is a request by any party to the action to view or listen to an audio or video tape, the child and/or the guardian ad litem shall be notified in advance of the request, when possible.

5. Access to these audio or video tapes shall be subject to the rules of discovery and governed by the confidentiality provisions under Section 7.605.

7.104.13 Conclusion of Assessment – Timing, Findings, Services [Eff. 1/1/15]

7.104.131 Timing [Eff. 1/1/15]

A. High Risk Assessments (HRA) or Traditional Response Assessment shall be completed within sixty (60) calendar days of the date the referral was received.

B. The initial assessment phase of a Family Assessment Response (FAR) shall be approved by the supervisor and closed within sixty (60) calendar days from the date the referral was received.

Once services are identified or the assessment has reached sixty (60) calendar days, the Family Assessment Response (FAR) is considered to be in the service phase, and a FAR service plan shall have been completed in collaboration with the family that identifies the agreed upon services, the steps to be accomplished in accessing services, by what party, and time frames for implementation.

7.104.132 Findings and Services [Eff. 1/1/15]

A. County departments shall enter a finding of founded, inconclusive or unfounded, as an outcome of all high risk or traditional assessments in the state automated case management system no later than sixty (60) days after the receipt of the referral.

B. County departments may elect to defer entering a founded finding pursuant to Section 19-3-309.5, C.R.S. If the county department elects to defer entering a finding of founded abuse and/or neglect, the county shall enter into a pre-confirmation agreement known as a safety plan agreement, as authorized pursuant to Section 19-3-309.5, C.R.S, and follow the procedures described in Section 7.108.

C. A finding of “founded” may be made irrespective of whether a person alleged for the abuse and/or neglect was identified. In these circumstances, the person alleged for the abuse and/or neglect is labeled “unknown” in the state automated case management system.

D. In a Family Assessment Response (FAR), no finding shall be made.

E. Prior to closing an assessment, county departments shall refer all victim child(ren) under the age of five (5) to the appropriate state or local agency for developmental screening when the county department makes a finding of founded abuse and/or neglect.

F. County departments may refer any child under the age of five (5) to the appropriate state or local agency for developmental screening in a Family Assessment Response (FAR) or Traditional Response Assessment, if a parent consents and the child presents with needs that might benefit from a developmental screening as determined by the county department.

7.104.14 Documentation Required During Assessment [Eff. 1/1/15]

A. At the time of a new assessment, county departments shall document that a review related to prior involvement as set forth in Section 7.104.1, B, 6, has occurred. This shall be documented in the assessment closure section of the state automated case management system.

B. In assessments involving allegation of sexual abuse, the results of any website or sex offender registry check, and attempts to access other information as set forth in Section 7.104.11 shall be documented in the state automated case management system.

C. In assessments, the full name(s), including nicknames and/or aliases, address(es), and date(s) birth of the person(s) alleged to be responsible for the abuse and/or neglect shall be documented in the state automated case management system.

D. All interactions with the family, including efforts to engage the family and extended family, as part of the assessment shall be documented in the state automated case management system. Any specific evidence gathered, such as electronic media, photographs or videotapes shall be filed in the case record and referenced in the state automated case management system.

E. When an interview or observation of the alleged victim child(ren) is video or audio taped, the required advisement of the child shall be documented.

F. If it is the county department's policy to routinely video or audio tape interviews, and an exception is made, the reason for the exception shall be noted in the state automated case management system.

G. The responses to the Colorado Safety Assessment Tool shall be documented in the state automated case management system and shall identify any safety concerns that are or were observed during the assessment. Documentation is required as soon as possible and no later than fourteen (14) calendar days from the date the alleged victim child(ren) was interviewed or observed.

H. If a Family Assessment Response (FAR) is changed to a High Risk Assessment (HRA), the change shall be made in the state automated case management system and all information entered to date will be transferred.

I. Any reasonable efforts to prevent out-of-home placement shall be documented in the state automated case management system.

7.104.141 Documentation Required at Conclusion of Assessment [Eff. 1/1/15]

A. County departments shall document the completed assessment in the state automated case management system, including completion of the assessment closure summary template, and

supervisors shall approve the closure of the assessment. The assessment closure shall include the following:

1. Brief summary of initial concerns and additional concerns uncovered during the assessment;

2. Worker reflection of the history of state and county department records, criminal, Colorado courts, sex offender registries and how the history relates to the current assessment;

3. The concerns identified, the actions that were taken, or protective factors that exist which mitigate the harm, danger or risk;

4. Efforts to engage the family and extended family;

5. For High Risk Assessments (HRA), or traditional response assessments, the facts that support the findings; and,

6. Family and/or agency plan, if applicable.

B. In a HRA or traditional response assessment, county departments shall enter the findings of abuse and/or neglect in the state automated case management system even if there is a criminal or civil proceeding pending against the person found responsible for the abuse and/or neglect arising out of the same incident. The reported data shall include the following:

1. The name, address, gender, date of birth, and race of the victim child(ren);

2. The composition of the victim child(ren)'s immediate family;

3. At a minimum, the name and last known mailing address of the person found to be responsible for the abuse and/or neglect, the date of birth, and Social Security Number, if known;

4. The type of abuse and/or neglect;

5. The severity level of the abuse and/or neglect;

6. Any previous incidents of abuse and/or neglect of the victim child(ren) or siblings;

7. The name(s) and address(es) of any person(s) previously found responsible for abuse and/or neglect, if known;

8. The name of the source of the referral submitted to the county department, if known;

9. The county department that conducted the assessment of the referral; and,

10. The date the referral was made and the date the county department made the finding of founded abuse and/or neglect.

7.104.15 Notice [Eff. 1/1/15]

A. Notice of the outcome of an assessment shall be made as described below. Unless otherwise described below or authorized by law, no other entity shall receive notification.

B. Regardless of the outcome of the assessment and as allowable by law, county departments shall notify:

1. The parent(s), guardian(s), custodian(s), or caregiver(s) of the alleged victim child(ren) of the outcome of the assessments. Non-custodial parent(s) shall also be notified of the outcomes of the assessments unless is not in the best interests of the child(ren);

2. The person alleged to be responsible for the abuse and/or neglect of the outcome of the assessment;

3. The specified mandatory reporting party, identified in Section 7.103.8, B, of the name of the child and the date of the referral; whether the referral was accepted for assessment; whether the referral was closed without services; whether the assessment resulted in services related to the safety of the child; the name of and contact information for the county caseworker responsible for the assessment; and the county procedure for requesting updated information within ninety (90) calendar days after the county department received the referral; and,

4. Where applicable, the local licensing unit, the director or administrator of the facility, the agency with licensing or certifying authority and the State Department, Division of Child Welfare and Division of Early Care and Learning, if the abuse and/or neglect assessment involved a state-licensed or county-certified facility. The referral and assessment may be used for investigations and licensing action where the referral involves a licensed child care provider as defined in the Child Care Licensing Act, Section 26-6-101, C.R.S., et seq.

C. When the assessment results in a finding of founded abuse and/or neglect, county departments shall provide additional notice as described below:

1. County departments shall notify the local law enforcement agency and the District Attorney's Office of a founded report. Any copies of child abuse/neglect reports provided to law enforcement or the District Attorney's office shall be marked confidential.

2. County departments shall notify the person found responsible for child abuse and/or neglect of the finding by first-class mail to the responsible person's last known mailing address, using a form approved by the State Department. County departments shall retain a copy of the notice in the case file showing the date of mailing. The notice shall include the following information:

a. The type and severity level of the abuse and/or neglect, the date the referral was made to the county department, which county department completed the assessment, the date the county department made the finding in the state automated case management system, and information concerning persons or agencies that have access to the information.

b. The circumstances under which information contained in the state automated case management system will be provided to other individuals or agencies.

c. How to access the county's dispute resolution process. County departments are authorized to offer a county dispute resolution process to persons alleged to be responsible for abuse and/or neglect.

d. The right of the person found to be responsible for abuse and/or neglects to request a state level appeal as set forth in Sections 7.111 through 7.112. The

county department shall provide the State Department approved appeal form to the person found to be responsible for abuse and/or neglect.

e. Notice that the scope of the appeal is limited to challenges that the finding(s) are not supported by a preponderance of the evidence or that the actions found to be abuse and/or neglect do not meet the legal definitions of abuse and/or neglect. The State Department will be responsible for defending the determination at the state level fair hearing.

f. A full explanation of all alternatives and deadlines contained in Sections 7.111 through 7.112.

7.104.2 INSTITUTIONAL ABUSE AND/OR NEGLECT - GROUNDS FOR ASSESSMENT [Eff. 1/1/15]

This section addresses assessments of referrals alleging institutional abuse and/or neglect as defined in Section 7.000.2 except that a referral of a minor injury resulting from physical restraint shall not, by itself, require a full assessment unless there are surrounding circumstances that would indicate abusive and/or neglectful behavior by the care provider. Such circumstances include those referrals in which someone is specifically alleging the behavior to be abusive and/or neglectful and there has been a pattern of frequent injuries by the same caregiver and/or staff or of similar incidents in the same facility.

7.104.21 Agency Responsible for Conducting Institutional Abuse and/or Neglect Assessment [Eff. 1/1/15]

A. The county department in which the facility named in the referral is located shall conduct the assessment. The assessment shall follow the institutional abuse and/or neglect protocol described in Section 7.104.22.

B. The assessment shall be conducted by a qualified and neutral party in those situations in which the county department is the supervisory agency, such as for certified county foster and group homes. Such an assessment shall be arranged for by the responsible county department with either another county department, another agency within the community who accepts delegated responsibility, or a disinterested and qualified staff person within the county department.

7.104.22 Institutional Abuse and/or Neglect Assessment – Timing and Requirements [Rev. eff. 11/1/15]

The county department conducting the assessment shall assign priority in response time using the criteria set forth in Section 7.103.61, B.

A. A face-to-face interview with the alleged victim child(ren) according to procedures for interviewing children described in Section 7.104.1.

B. The assessment shall include the following actions:

1. A face-to-face interview with the alleged victim child(ren)according to procedures for interviewing children described in Section 7.104.1 and the following:

a. The alleged victim child(ren) shall be interviewed in a setting which is as neutral as possible and where confidentiality can be maintained;

b. The alleged victim child(ren) shall not be taken off the grounds for the interview unless the county department has court ordered custody or law enforcement has taken the child into protective custody;

c. The person(s) alleged to be responsible for the abuse and/or neglect and other related parties (i.e., foster parents, spouse or other facility staff) shall not be allowed to be present during the interview with the alleged victim child(ren); and,

d. The county department shall, if necessary, obtain a court order to access the alleged victim child(ren) if the facility refuses access.

2. The assessment shall determine if there are other victim child(ren) not named in the referral and immediately assess the safety of those individuals.

3. The assessment shall obtain the names and addresses of any other alleged victim child(ren) who may no longer be in the facility and interview those individuals, if appropriate.

4. The assessment shall include interviews of witnesses, including children and staff who may have additional information.

5. The assessment shall include making reasonable efforts to interview and advise the person(s) alleged to be responsible for the abuse and/or neglect of the referral and afford such person(s) an opportunity to respond to the allegations.

6. The assessment shall include obtaining a detailed description of the incident and of the injuries and an assessment of the appropriateness of physical management or restraint if this was involved.

7. If applicable, the assessment shall include documentation of compliance with the reasonable and prudent parent standard in Section 7.701.200, F.

D. If at any point during the assessment, a county department becomes aware that a child/youth is, or is alleged to be, a victim of sex trafficking, the county department shall:

1. Report immediately, and no later than twenty-four (24) hours from when the county department becomes aware, to the local law enforcement agency; and,

2. Document the details of the report to law enforcement in the state automated case management system.

7.104.23 Documentation – Report Required [Eff. 1/1/15]

A. A written report of the assessment documented in the state automated case management system shall be prepared by the county department that conducted the assessment within sixty (60) calendar days after receipt of the referral.

B. A report shall be provided as described below:

1. A written report shall be provided to the facility administrator/director.

2. A written report shall be provided to the agency with licensing/certifying authority.

3. The Institutional Abuse Review Team, Early Childhood and Learning Division, and the State Department's Twenty-Four (24) Hour Monitoring Team, when the incident involves a twenty-four (24) hour care facility shall be provided a report through the state automated case management system.

4. The same custodial counties as required in Section 7.104.24 shall be provided a report through the state automated case management system.

C. The report shall include, at a minimum, the following information:

1. Name(s) of person(s) alleged to be responsible for the abuse and/or neglect;

2. The name(s), age(s), and duration of the alleged victim child(ren)'s placement in the facility being assessed;

3. The name of the facility and the county in which it is located;

4. The name of director/administrator of the facility;

5. The approximate number of children served by the facility;

6. The age range of children served by the facility and type of children served (e.g., child with developmental disabilities);

7. A summary of activities involved in the assessment, including a list of the individuals interviewed;

8. A summary of findings or conclusions, including the information on which the findings or conclusions are based; and,

9. A summary of the recommendations and/or need for an identified corrective or remedial action.

7.104.24 Notice [Eff. 1/1/15]

A. The following individuals shall receive notice:

1. The licensing authority or certifying unit shall be notified that a referral concerning abuse and/or neglect has been received within one (1) working day after receipt of the referral.

2. The licensing authority or certifying unit shall be notified if the assessment indicates there is an immediate threat to the child(ren)'s health, safety, or welfare within one (1) working day of such determination.

3. Custodial agencies, including county departments, other states, and appropriate divisions of the State Department shall be notified as follows:

a. Immediately, if there are safety issues or if an injury requires medical treatment; and,

b. Following completion of the assessment, if a child in their custody was the subject of a referral or if the assessment reveals concerns regarding the child care practices which could negatively impact the child(ren).

4. Parents or legal guardians of alleged child(ren) victim(s) shall be notified as follows:

a. By the custodial counties when alleged abuse and/or neglect occurs in out-of-home care setting;

b. By the assessing county when there is no custodial county;

c. By the assessing county when alleged abuse and/or neglect occurs in less than twenty-four (24) hour child care with notification provided prior to an interview with child(ren), when possible;

d. When an assessment is being or has been conducted on a referral of abuse and/or neglect; and shall include the nature of the alleged abuse and/or neglect and the findings of the assessment; and,

e. If circumstances do not allow for direct contact, then notification of the allegations of abuse and/or neglect and findings shall be provided in writing.

5. Parents or legal guardians of uninvolved children in less than twenty-four (24) hour licensed child care settings shall be given notice of an assessment within seventy-two (72) hours when it has been determined by the State Department or county department that:

a. The incident of alleged child abuse and/or neglect that prompted the assessment is at the level of a moderate, severe, or fatal incident of abuse and/or neglect, or involves sexual abuse;

b. Notice to the parents or legal guardians of the uninvolved children is essential to the assessment of the specific allegation of abuse and/or neglect or is necessary for the safety of children cared for at the facility; and,

c. A determination has been made and a state or county department supervisor has provided written approval of the determination for which basis and approval may be in electronic form.

6. The director of the facility shall be:

a. Apprised of the allegation of abuse and/or neglect; and,

b. Advised regarding the results of the assessment and provided a verbal report immediately once a determination is made. If the county department is unable to make a determination regarding the person(s) alleged to be responsible for abuse and/or neglect, the director shall also be advised so that decisions regarding the continued employment of the employee can be made by the facility.

7.104.3 THIRD-PARTY ABUSE AND/OR NEGLECT – GROUNDS FOR ASSESSMENT [Eff. 1/1/15]

This section addresses assessments of referrals alleging abuse and/or neglect by a third-party, as defined in Section 7.000.2, who is not related to the alleged victim child(ren) in the contexts described in the previous sections addressing intrafamilial and institutional abuse and/or neglect.

7.104.31 Third-Party Abuse and/or Neglect Assessment – Timing and Requirements [Eff. 1/1/15]

A. When the referral alleges abuse and/or neglect by a third-party ten (10) years of age or older, the county department shall immediately forward the referral to the appropriate law enforcement agency for screening and investigation.

B. When the referral alleges the abuse and/or neglect by a child under ten (10) years of age, county departments shall be the agency responsible for the assessment. The assessment shall focus on:

1. Whether or not the incident occurred;

2. The entire situation including the actions or omissions of adults who are responsible for care of the children involved; and,

3. Any interventions that may be necessary to secure safety and address treatment needs.

C. If a county department reasonably believes that the protection and safety of a child is at risk due to an act or omission on the part of the persons responsible for the child's care, the county department shall make a referral concerning intrafamilial abuse and/or neglect.

7.104.32 Documentation – Report from Law Enforcement [Eff. 1/1/15]

County departments shall attempt to obtain a copy of the report summarizing any investigation that was conducted by law enforcement. If the report is obtained, it shall be the basis upon which the county department enters a founded finding of abuse and/or neglect into the state automated case management system.

7.105 (None)

7.106 ADDITIONAL CATEGORIES OF ASSESSMENTS [Eff. 1/1/15]

7.106.1 EGREGIOUS INCIDENTS OF ABUSE AND/OR NEGLECT, NEAR FATALITIES, OR CHILD FATALITIES [Eff. 1/1/15]

The requirements of this section address assessments of referrals of an incident of suspected abuse and/or neglect involving any of the following circumstances:

A. Significant violence, torture, use of cruel restraints, or other similar, aggravated circumstance;

B. A child has died; or,

C. A physician has determined that a child is in serious, critical, or life-threatening condition as a result of sickness or injury.

7.106.11 Assessment Procedures – Timing and Requirements [Eff. 1/1/15]

A. County departments shall conduct a High Risk Assessment (HRA), or traditional response assessment of egregious incidents of abuse and/or neglect, a near fatality, or a child fatality in intrafamilial and institutional settings in those cases in which:

1. There is reason to know or suspect that abuse and/or neglect caused or contributed to the incident; or,

2. The cause of the incident is unknown or the information given is not consistent with the degree or type of injury and/or subsequent death.

B. County departments shall:

1. Coordinate with the following agencies to ensure prompt notification of an incident of egregious abuse and/or neglect, near fatality, or fatality of a child, which is suspicious for abuse and/or neglect:

a. Law enforcement;

b. District attorney's office;

c. Coroner's office; and,

d. Hospitals.

2. Coordinate the assessment with law enforcement. At a minimum in cases in which there are no surviving children, county departments shall provide law enforcement and the coroner with information related to any prior involvement with the child, the family, or the person alleged to be responsible for the abuse and/or neglect.

3. Assess the condition of any surviving child(ren) and take action necessary to ensure their protection by:

a. Visiting the child(ren)'s home or place of custody;

b. Interviewing and/or observing the child(ren);

c. Examining the child(ren) to include an assessment of the child(ren)'s overall current physical, mental, or emotional condition;

d. Assessing the safety of the home environment, to include an interview with the parents, guardians, and/or legal custodians; and,

e. Seeking an emergency protective order only when there are reasonable grounds to believe that a surviving or non-injured child(ren) is at risk of severe emotional or physical harm in his/her home environment.

7.106.121 Additional Actions When County Department has had Prior/Current Involvement [Eff. 1/1/15]

A. When a county department has custody of the child and/or protective supervision, it shall immediately take the following actions:

1. Notify the parents, guardians, and/or legal custodians of the incident. If the parents, guardians, and/or legal custodians reside in another county or state, the county department shall coordinate with the county department of residence for the parents, guardians, and/or legal custodians to provide personal notification, whenever possible.

2. Notify the director of the county department of the incident. The county director shall also be immediately notified if the department has had prior child welfare involvement within the last three (3) years that was directly related to the egregious incident of abuse and/or neglect, near fatality or fatality to include referrals that have been screened out. A complete copy of the child's case record shall be made available to the director of the county department.

3. Notify the court, the attorney for the county department, and the Guardian Ad Litem (when one has been assigned) of the incident involving any child who is under the court's jurisdiction.

B. Upon notification of an egregious incident of abuse and/or neglect, near fatality or fatality in which the county department has had prior child welfare involvement within the last three (3) years with the child, family, or person alleged to be responsible for abuse and/or neglect, the director of the county department shall take the following actions:

1. Designate an individual(s) who will be responsible for assessing the egregious incident of abuse and/or neglect, near fatality or fatality. The assigned individual(s) shall not have had prior involvement with the family during a referral, assessment, case or other services with the county department. In the event of a conflict of interest, the county department shall arrange for the assessment to be conducted by another county department with personnel having appropriate training and skill.

2. Ensure that the county department conducts a complete internal administrative review of any child welfare involvement in the case prior to the egregious incident of abuse and/or neglect, near fatality or fatality. This review shall be referred to as the county department's internal review and shall be completed whenever the county department has had current or prior involvement with the child, family or person alleged to be responsible for the abuse and/or neglect, within the last three (3) years. The review shall include, at a minimum:

    a. Assessment of the interventions made by the county department.

    b. Evaluation of the case plan.

    c. Identified areas of strengths and/or weaknesses in the casework process.

    d. Analysis of any systemic issues that may have led to delays or oversights.

    e. Evaluation of the role played by other community agencies and the overall case coordination.

    f. Recommendations for staff training or changes in the system that would avoid other similar occurrences.

3. Submit a written report of the county department's internal review within sixty (60) calendar days of the initial notification of the egregious incident of abuse and/or neglect, near fatality or fatality to the State Department.

C. If another county department also has current and/or prior involvement with the child, family or person alleged to be responsible for the abuse and/or neglect within the three (3) year period of the incident of egregious abuse and/or neglect, near fatality or fatality (including referrals that were screened out), the State Department shall decide whether a county department internal review report will be required.

7.106.13 Reporting to the State [Eff. 1/1/15]

A. Within twenty-four (24) hours (excluding weekends and holidays) of a county department becoming aware of an egregious incident of abuse and/or neglect, or near fatality or fatality of any child, which is suspicious for abuse and/or neglect, the county department shall call or email the following known information to the State Department which shall also be documented on the state prescribed form:

1. Name and age of victim;

2. The referral identification number generated by the state automated case management system;

3. Known circumstances around the egregious incident of abuse and/or neglect, near fatality or fatality;

4. A description of physical injuries or medical condition of the child(ren) at the time of receipt of the information;

5. The names and ages of surviving or non-injured child(ren) who may be at risk;

6. A brief description of family/caregiver's prior involvement with child welfare, if any;

7. The actions taken by the county department to date and future actions to be taken;

8. The involvement of other professionals in the case;

9. Whether the child was in out-of-home placement at the time of the incident; and,

10. For fatal incidents, the county shall enter the child's date of death in the state automated case management system.

B. Upon notification of an egregious incident of abuse and/or neglect, near fatality or fatality, the county department shall take the required steps to restrict access to the state automated case management system to the current assessment of the egregious incident of abuse and/or neglect, near fatality or fatality, and any prior involvement in the state automated case management system regarding this child, the child's family members, and the person(s) suspected of the abuse and/or neglect. Access shall remain restricted until the conclusion of the state child fatality review, at such time the county department shall determine whether the records shall be unrestricted.

C. The county department shall provide the following information to the State Department within sixty (60) calendar days of the initial notification of the egregious incident of abuse and/or neglect, near fatality or fatality, to the extent possible, and no longer than sixty (60) calendar days without a written request from the county department for an extension and subsequent State Department approval granting an extension:

1. The completed referral/assessment summary in the state automated case management system;

2. Copies of any pertinent social, medical, and mental health evaluations of all involved subjects (child(ren), family, caregivers, etc.);

3. Coroner's records, including autopsy report;

4. Police reports of present investigation as well as any prior criminal history of all subjects;

5. A copy of any of the case record not obtainable in the state automated case management system;

6. When applicable, a written report of the county department internal review;

7. A statement of any human services and Medicaid assistance or services that were being provided to the child and are recorded in the state automated case management system, the Colorado Benefits Management System, or the Colorado child care automated tracking system, any member of the child's family, or the person alleged to be responsible for the abuse and/or neglect; and,

8. The age, income level, and education of the legal caregiver at the time of the fatality.

7.106.14 State Review of an Incident of Egregious Abuse or Neglect, Near Fatality or Fatality of a Child [Eff. 1/1/15]

When a county department becomes aware that an incident of egregious abuse and/or neglect, near fatality or fatality of a child has occurred, which is suspicious for a child abuse and/or neglect, the county department shall submit reports for review by the State Department in accordance with Section 7.106 of this rule, and cooperate with the State Department's review. The State Department shall conduct a multidisciplinary review of such cases, where the county was involved in the three years prior to the incident of egregious abuse and/or neglect, near fatality, or fatality. The State Department Child Fatality Review shall occur within thirty (30) days of the State Department receiving all required and relevant reports and information critical to an effective fatality review. These reviews shall include:

A. The circumstances around the incident of egregious abuse or neglect against a child, near fatality, or child fatality;

B. The services provided to the child, the child's family, and the perpetrator by the county department for any county with which the family has had previous involvement, as defined in paragraph (c) of subsection (2) of this section, within three years prior to the incident of egregious abuse or neglect against a child, near fatality, or fatality of a child due to abuse or neglect;

C. The county department's compliance with statutes, regulations, and relevant policies and procedures that are directly related to the incident of egregious abuse or neglect against a child, near fatality, or fatality;

D. Identification of strengths and best practices of service delivery to the child and the child's family;

E. Consideration of factors that may have contributed to conditions leading to the incident of egregious abuse or neglect against a child, near fatality, or fatality, including, but not limited to, lack of or unsafe housing, family and social supports, educational life, physical health, emotional and psychological health, and other safety, crisis, and cultural or ethnic issues;

F. The supports and services provided to siblings, family members, and agency staff after the incident of egregious abuse or neglect against a child, near fatality, or fatality; and,

G. The quality and sufficiency of coordination between state and local agencies.

7.106.15 CASE SPECIFIC REVIEW REPORT [Eff. 1/1/15]

The Department will author confidential and non-confidential case specific review reports in accordance with Section 26-1-139, C.R.S. As part of this process, the Department shall request a response to the case specific review report from any county having previous involvement with the family as defined in Section 26-1-139(2)(c), C.R.S., and include the response(s) in the final confidential and non-confidential report.

7.106.16 CHILD FATALITY REVIEW TEAM ANNUAL REPORT [Eff. 1/1/15]

By July 1 of each year, the Department will author an annual Child Fatality Review Team report. It shall contain the following information:

A. Policy recommendations based on the collection of reviews required by Section 26-1-139(5)(a), C.R.S.

B. Status of recommendations made in prior case specific, executive summary reports. This shall include all recommendations from publicly posted reports from the most recent, complete calendar year and all recommendations from prior years that were not completed at the time of the last annual report.

C. Aggregate demographic data. This may include, but not be limited to, data such as age of children at the time of the incident, race/ethnicity of the children, relationship of the perpetrator to the child, and other factors determined to be of importance.

D. A summary of review findings from reports completed on incidents from the most recent complete calendar year.

E. Joint recommendations made with the Colorado Department of Public Health and Environment's Child Fatality Prevention System as required by Section 25-20.5-407(1)(i), C.R.S.

7.106.2 MEDICAL NEGLECT OF INFANTS AND TODDLERS WITH DISABILITIES – GROUNDS FOR ASSESSMENT [Eff. 1/1/15]

The requirements of this section address assessments of referrals of medical neglect involving:

A. Infants less than one (1) year of age who were born with a life-threatening condition and who may have additional non-lethal physical or mental disabilities; or,

B. Toddlers under three (3) years of age who have been continuously hospitalized since birth, who were born extremely premature, or who have a long-term disability.

7.106.21 Agency Responsible for Conducting the Assessment [Eff. 1/1/15]

A. The county department responsible for conducting the assessment of a referral of medical neglect shall be the county in which the caregivers of the hospitalized infant reside.

B. If the caregivers' residence cannot be determined, the county department in which the hospital is located shall be responsible for conducting the assessment.

7.106.22 Assessment Procedures – Timing and Requirements [Eff. 1/1/15]

County departments shall:

A. Work with medical organizations, hospitals, and health care facilities to implement procedures that ensure a timely response and resolution of referrals of medical neglect;

B. Obtain all relevant medical data concerning the child. County departments shall seek a court order to obtain records if the request for such material is refused;

C. Coordinate with any existing hospital review committees, which may have evaluated and recommended treatment in the case under assessment;

D. If, after assessing the medical neglect referral, there are indications that the referral of medical neglect may be founded, the county department shall interview the parent(s); and,

E. Refer the matter to the local law enforcement agency in cases in which the infant has died before the assessment is completed and the county department has reason to suspect withholding of medically indicated treatment. The matter shall be referred to the law enforcement agency in the location where the child died. However, if it is determined that treatment was not medically

indicated, or that medically-indicated treatment had not been withheld, then the report shall be deemed unfounded.

7.106.23 Medical Decisions Regarding Infants and Toddlers [Eff. 1/1/15]

A. County department staff shall make no medical decisions regarding infants and toddlers and shall seek an independent medical consultation when indicated.

B. If the parent(s) wish to seek a second medical opinion, the county department shall provide referral assistance.

C. If the county department finds that an independent medical evaluation is necessary to determine the infant or toddler's medical prognosis, the county department shall recommend to the parent(s) that an independent medical evaluation be done.

D. If the county department determines that medically-indicated treatment or palliative care is being or will be withheld; and:

1. The infant or toddler's condition requires an urgent response, or,

2. Efforts by the county department or hospital personnel to obtain parental consent to treatment would be futile or already have failed, then the matter shall be brought to court under a petition. The petition may include a request to place temporary custody of the child with the county department to ensure proper medical treatment is provided. The county department shall immediately secure a court order if indicated.

7.106.3 ASSESSMENT OF MEDICAL NEGLECT IN WHICH RELIGIOUS CONSIDERATIONS ARE INVOLVED - GROUNDS FOR ASSESSMENT [Eff. 1/1/15]

County departments shall assess cases of medical neglect including those cases in which there is a failure to provide medical treatment based upon the parent's, guardian's, or custodian's religious beliefs and there is concern that such failure will result in a threat to child's health and welfare.

7.106.31 Assessment Procedures – Timing and Requirements [Eff. 1/1/15]

The assessment shall be conducted as described below:

A. The county department shall obtain a medical evaluation if the child's condition presents substantial concern for the child's health and welfare. This evaluation shall be obtained with the consent of the parents, guardians, or legal custodians. If such consent is refused, the county department shall seek a court order to obtain medical evaluation;

B. The county department shall consult with medical practitioners and consider whether the child's condition is life-threatening or will result in serious disability without professional medical care; and,

C. If the child's condition is determined to be life-threatening or could result in serious physical impairment or serious disability without professional medical care, the county department shall seek a court order authorizing the provision of the necessary medical care in the event that such care is refused by the parent, guardian, or legal custodian. The county department may, but is not required to, seek temporary custody of the child in order to obtain judicial authorization for treatment.

7.106.32 Spiritual Healing Considerations [Eff. 1/1/15]

If spiritual healing is involved, the county department shall follow the guidelines defined in Section 19-3-103(2)(a), (b), C.R.S., to decide whether the method is a “recognized” method of religious healing and whether such healing is considered to be medically effective for the child's condition.

7.106.33 Impact of Parental Interference on Findings [Eff. 1/1/15]

A. If a parent, guardian, legal custodian, or caregiver inhibits or interferes with the provision of medical evaluation or treatment according to a court order, that act would constitute neglect and in such circumstances a referral shall be made to law enforcement and the county department may file a dependency and neglect petition.

B. For purposes of entering founded findings of abuse and/or neglect into the state automated case management system, reporting to police for criminal investigation, and filing of dependency and neglect petitions, no child who is under treatment by a recognized method of religious healing shall, for that reason alone, be considered to have been neglected and dependent unless the child's parent, legal guardian, custodian, or caregiver inhibits or interferes with the provision of medical services according to court-ordered medical evaluation or treatment.

7.107 INSTRUMENTS, TOOLS, AND INTERVIEW PROCEDURES [Eff. 1/1/15]

The following instruments, tools, and procedures are intended to assist county departments in making informed and reliable decisions.

7.107.1 COLORADO SAFETY ASSESSMENT TOOL [Em. eff. 7/10/15; Rev. eff. 11/1/15]

There shall be a transition period for completion of training and access to the new Colorado Safety Assessment Tool in the state automated case management system. All county child welfare case carrying staff and supervisors shall be trained and have access to the new tool by January 1, 2017.

7.107.11 Parameters for Use of the Colorado Safety Assessment Tool [Eff. 1/1/15]

The Colorado Family Safety Assessment shall be completed:

A. At the time of initial response with the family;

B. If the family is not available at the time of initial response, the Colorado Family Safety Assessment shall be completed based on the information available and based on the interview or observation of the alleged victim child(ren). As soon as the family is available, an additional Colorado Family Safety Assessment shall be completed with the family;

C. As part of an assessment, including assessments of new allegations of abuse and/or neglect in open child welfare services cases;

D. Prior to end-dating a safety plan to determine whether or not the safety concerns still exist, if the safety plan is controlling for safety, and/or if the family is in need of additional services;

E. Whenever there is a significant change in family circumstances or situations that might pose a new or renewed threat to child safety;

F. Prior to reunification;

G. Prior to supervisory approval for closing services; and,

H. In all Program Area 5 referrals being assessed, except:

1. Institutional abuse assessments, as described in Section 7.104.22;

2. Fatality assessments when there are no surviving siblings; or,

3. When caregivers have abandoned the child.

7.107.12 Safety Threshold [Eff. 1/1/15]

The following criteria must be present to determine that a present or impending danger exists. Meeting these criteria indicates that the family's behavior, condition or situation threatens the safety of a child:

A. The threat to child safety is specific and observable;

B. Conditions reasonably could result in moderate to severe harm to a child;

C. This harm is likely to occur if not resolved;

D. A child is vulnerable to the threat of harm due to his/her age, verbal abilities, diagnosed medical conditions, diagnosed mental health conditions, diagnosed developmental delays, diagnosed developmental disabilities, limited physical capacities, and/or professional observation; and,

E. The caregiver(s) is unable or unwilling to control conditions and behaviors that threaten child safety.

7.107.13 Standardized Safety Concerns [Eff. 1/1/15]

A. The county department shall assess for child safety using the ten (10) standardized current or impending dangers. The ten standardized current or impending dangers are as follows:

1. Caregiver(s) substance use impacts ability to supervise, protect, and/or care for the child/youth.

2. Caregiver(s) is unwilling or unable to meet the child/youth's immediate needs for food, clothing, and shelter.

3. Caregiver(s) is unwilling or unable to meet the child/youth's significant medical or mental health care needs.

4. Caregiver(s) is unwilling or unable to take protective action in response to child/youth's inflicted or credible threat of moderate to severe harm to self.

5. Intimate partner violence exists in the home and places child in danger of physical and/or emotional harm.

6. The living situation is physically hazardous and/or immediately threatening to the child/youth's health or safety based on the child's age or development.

7. Caregiver(s) does not provide supervision necessary to protect the child/youth, based on the child/youth's age or development.

8. Moderate to severe physical injury caused by the caregiver(s) or adult household member.

9. Child/youth is in present danger of harm due to suspected or confirmed sexual abuse.

10. The caregiver(s) refuses access to the child or there is reason to believe the family will flee based on current concerns.

B. The list of current or impending danger definitions shall be referenced when assessing threats to child safety and prior to checking current or impending dangers in the Colorado Safety Assessment Tool.

7.107.14 Safety Assessment Conclusion [Eff. 1/1/15]

A. If none of the ten (10) present or impending dangers referenced in Section 7.107.13 are identified at the conclusion of the safety assessment process, then it is reasonable to conclude that the child is safe and no further safety intervention is required.

B. If assessment of the child and family determines that the child is safe and emergency out-of-home placement occurred prior to the completion of the safety assessment, efforts should be made to return responsibility for the child's safety back to the caregiver(s).

C. If assessment of the child and family determines that the child is unsafe, analysis and planning are necessary.

D. The caregiver strengths and protective capacity shall be assessed using the following criteria to determine whether a caregiver has the capacity and willingness to assure the child's protection and, if so, no further safety intervention is necessary:

1. Caregiver(s) has realistic expectation of the child/youth;

2. Caregiver(s) provides for child/youth's basic needs;

3. There is evidence of a supportive relationship between caregiver and child/youth;

4. Caregiver(s) has demonstrated effective problem solving;

5. Caregiver(s)' explanation is consistent with child/youth's injury or circumstances;

6. Caregiver(s) has supportive relationships with three (3) or more persons;

7. Caregiver(s) has demonstrated use of identified supportive relationships in providing safety and protection for the child/youth;

8. Child/youth has the cognitive, physical, and emotional capacity to actively participate in safety interventions;

9. Caregiver(s) is able and willing to actively participate in creating and carrying out a plan to protect the child/youth;

10. Caregiver(s) is able and willing to use resources necessary to create safety;

11. Caregiver(s) has exhibited the ability to put the child/youth's safety ahead of his/her own needs and wants;

12. Relevant community services or resources are immediately available;

13. Other documented strengths and protective capacities; and,

14. Other.

7.107.15 Safety Intervention Analysis [Eff. 1/1/15]

To determine whether an in-home safety plan can sufficiently manage the current or impending dangers, document how the following are met in the state automated case management system:

A. The home environment is stable enough to support an in-home safety plan;

B. Caregivers and support persons are able, willing, and available to assist in the development and implementation of an in-home safety plan and adult(s) other than the alleged person responsible for the danger to the child/youth are responsible for the implementation of the plan; and,

C. Resources are accessible at the level necessary to control all identified danger to the child/youth.

7.107.16 Safety Planning [Eff. 1/1/15]

A. A safety plan shall be developed for all children in current or impending danger if an in-home safety plan can reasonably be expected to control for all identified dangers. All children in the household assessed to be in current or impending danger shall be included in one plan.

B. Safety plans shall include the following:

1. Safety responses that are the least restrictive to ensure safety;

2. Safety responses that have an immediate impact on controlling for identified current or impending dangers;

3. Description of actions to be taken that address each specific current or impending danger, including frequency of each action and who is responsible for each action;

4. Safety response(s) that are readily accessible at the level required to ensure safety;

5. Identification of each family member and safety management provider participating in the plan;

6. Parental acknowledgement of current or impending dangers and a willingness to participate in the safety plan; and,

7. Caseworker activities to oversee the safety plan.

C. Parents, caregivers, and others who are a part of a safety plan shall sign the safety plan and receive a copy and the signatures and paper form shall be retained in the file.

D. Safety plans do not have to be developed if the safety analysis results in a decision that out-of home placement is the only plan that is sufficient to control for all identified current or impending dangers.

7.107.17 Documentation [Eff. 1/1/15]

A. The responses to the Colorado Safety Assessment Tool shall be documented in the state automated case management system and shall identify any safety concerns that are or were present during the assessment. Documentation is required as soon as possible and no later than (14) calendar days from the date the alleged victim child(ren) was interviewed or observed.

B. Safety plans shall be documented in the state automated case management system within fourteen (14) calendar days from the date the alleged victim child(ren) was interviewed or observed.

7.107.2 COLORADO FAMILY RISK ASSESSMENT TOOL [Em. eff. 7/10/15; Rev. eff. 11/1/15]

There shall be a transition period for completion of training and access to the new Colorado Family Risk Assessment Tool in the state automated case management system. All county child welfare case carrying staff and supervisors shall be trained and have access to the new tool by January 1, 2017.

7.107.21 Parameters for Use of the Colorado Family Risk Assessment Tool [Eff. 1/1/15]

A. The Colorado Risk Assessment Tool shall be completed:

1. With the familiy;

2. As part of any Program Area 5 assessment, except:

a. Institutional assessment;

b. Fatality assessment when there are no surviving siblings; or,

c. When caregivers have abandoned the child.

3. Whenever there is a significant change in family circumstances or situations that might pose a new or renewed threat to child safety;

4. Prior to reunification; and,

5. Prior to supervisory approval for closing services.

B. The Colorado Risk Assessment Tool shall be used to:

1. Determine risk for future abuse and/or neglect;

2. Aid in determining if services should be provided; and,

3. Aid in determining the appropriate level of services.

7.107.22 Procedures for Completing the Colorado Family Risk Assessment Tool [Eff. 1/1/15]

The Colorado Risk Assessment Tool shall be completed with the family, and shall address the following factors:

A. Current type of allegation;

B. Previous child welfare assessments, services, and placement;

C. Number of children in household;

D. Age of youngest child in household;

E. Age of primary caregiver;

F. Primary caregiver’s provision of physical care or supervision;

G. Caregiver(s)' use of alcohol and controlled substances;

H. Characteristics of children in the household, including mental health, behavioral problems, and physical or developmental disabilities;

I. Recent or historical domestic violence in the household;

J. Caregiver(s)' history of homelessness;

K. Caregiver(s)' history of mental health treatment;

L. Primary caregiver's history of abuse, neglect and/or placement in protective services; and

M. Caregiver(s)' involvement in disruptive or volatile adult relationships.

7.107.23 Risk Analysis [Eff. 1/1/15]

If the risk assessment score is high, the county shall hold a family engagement meeting to discuss next steps with the family.

7.107.24 Timing and Documentation [Eff. 1/1/15]

A. The completed Colorado Family Risk Assessment shall be documented in the state automated case management system within thirty (30) calendar days from the date the referral was received.

B. Family Engagement Meetings shall be documented in the framework in the state automated case management system.

C. If the county department decides to close the assessment with a high risk score, the county department shall document the reasons for closure.

7.107.3 YOUTH SAFETY ASSESSMENT TOOL (Reserved for Future Use)

7.108 DEFERRAL PROCESS – WHEN PERMITTED [Eff. 1/1/15]

A. County departments may follow the deferral process in the following circumstances:

1. When the person has had no previous allegations of abuse and/or neglect assessed;

2. When the abuse and/or neglect that the person is found to be responsible for is at the level of minor incident of abuse and/or neglect, pursuant to Section 7.000.2;

3. When the person found to be responsible for the abuse and/or neglect and the county department decide on a mutually agreeable method for resolving the issues related to the referral; and,

4. When the requirements set forth in the agreement for resolving the issues related to the referral of abuse and/or neglect can be completed within sixty (60) calendar days after the receipt of the referral.

B. County departments are not obligated to enter into any agreements to defer entering a finding of founded abuse and/or neglect into the state automated case management system.

C. The agreement shall be in writing and signed by the caseworker and the person found to be responsible for the abuse and/or neglect, and reviewed by the supervisor.

D. Upon deciding to enter into the deferral process, the county department shall document the decision in the state automated case management system.

7.108.1 DEFERRAL PROCESS COMPLETED [Eff. 1/1/15]

If the person who is found to be responsible for the abuse and/or neglect completes the agreement, as determined by the county department, the county department shall make an individual finding of "deferred" with an overall finding of founded into the state automated case management system regarding the referral of abuse and/or neglect related to the assessed incident.

7.108.2 DEFERRAL PROCESS NOT COMPLETED [Eff. 1/1/15]

If the person who is found to be responsible for the abuse and/or neglect does not complete the agreement, as determined by the county department, the county department shall make an entry for the individual and overall finding of "founded" into the state automated case management system regarding abuse and/or neglect related to the assessed incident.

7.109 ENTERING FOUNDED FINDINGS REPORTS OF CHILD ABUSE OR NEGLECT [Eff. 1/1/15]

In a High Risk Assessment or non-dual track counties, the county department shall enter the founded finding even if there is a criminal or civil proceeding pending against the person responsible arising out of the same incident. The reported data shall include the following:

A. The name, address, gender, date of birth, and race of the child(ren) victim(s);

B. The composition of the victim's immediate family;

C. At a minimum, the name and last known mailing address of the person found to be responsible for the child abuse or neglect, and the date of birth and Social Security Number, if known;

D. The type of abuse or neglect;

E. The severity of the abuse or neglect;

F. Any previous incidents of child abuse or neglect of child or siblings;

G. The name(s) and address(es) of any person(s) responsible for previously founded abuse or neglect, if known;

H. The name of the source of the referral submitted to the county department, if known;

I. The county department that investigated the referral; and,

J. The date the suspected abuse or neglect referral was made to the county department and the date the county department made a founded finding of the abuse or neglect.

7.110 NOTICE TO THE PERSON FOUND TO BE RESPONSIBLE FOR CHILD ABUSE OR NEGLECT [Eff. 1/1/15]

A. The county department shall notify the person found responsible for child abuse or neglect of the finding by first-class mail to the responsible person's last known mailing address, using a form approved by the State Department. The county department shall retain a copy of the notice in the case file showing the date of mailing.

B. At a minimum, the notice shall include the following information:

1. The type and severity level of the abuse or neglect, the date the referral was made to the county department, which county department completed the assessment, the date the county made the finding in the state automated case management system, and information concerning persons or agencies that have access to the information.

2. The circumstances under which information contained in the state automated case management system will be provided to other individuals or agencies.

3. How to access the county's dispute resolution process. Counties are authorized to offer a county dispute resolution process to persons alleged to be responsible for an incident of child abuse or neglect.

4. The right of the person found responsible to request a state level appeal as set forth in Section 7.111. The county shall provide the State Department approved appeal form to the person.

5. Notice that the scope of the appeal is limited to challenges that the finding(s) are not supported by a preponderance of the evidence or that the actions found to be child abuse or neglect do not meet the legal definitions of child abuse or neglect. The State Department will be responsible for defending the determination at the State level fair hearing.

6. A full explanation of all alternatives and deadlines contained in Sections 7.111 through 7.112.

7.111 STATE LEVEL APPEAL PROCESS [Eff. 1/1/15]

A. Persons found responsible for an incident of child abuse or neglect by the county department shall have the right to a state level appeal to contest the finding. The request for appeal of the decision shall first be submitted to the State Department unit designated to handle such appeals. If the State Department and the Appellant are unable or unwilling to resolve the appeal in accordance with the provisions set forth below in this section, the State Department shall forward the appeal to the Office of Administrative Courts (OAC) to proceed to a fair hearing before an Administrative Law Judge (ALJ).

B. The grounds for appeal shall consist of the following:

1. The findings are not supported by a preponderance of credible evidence; or,

2. The actions ultimately found to be abusive or neglectful do not meet the statutory or regulatory definitions of child abuse or neglect.

C. The person found to be responsible for child abuse or neglect shall have ninety (90) calendar days from the date of the notice of founded finding to appeal the finding in writing to the State Department. The written appeal shall be submitted on the State approved form provided by the county and shall include:

1. The contact information for the Appellant;

2. A statement detailing the basis for the appeal; and,

3. The county department notice of finding of responsibility for child abuse or neglect.

D. The state level appeal process must be initiated by the person responsible for child abuse or neglect or his/her legal representative. The Appellant need not hire an attorney to appeal the

county determination. If the individual is a minor child, the appeal may be initiated by his/her parents, legal custodian, or legal representative.

E. The appeal must be submitted to the State Department within ninety (90) calendar days of the date of the notice of founded finding. If the appeal is filed more than ninety (90) calendar days from the date of the notice of founded finding, the Appellant must show good cause for not appealing within the prescribed period as set forth in Section 7.000.2, A. Failure to request State review within this ninety-day (90) period without good cause shall be grounds for the State Department to not accept the appeal.

F. The founded finding shall be utilized for safety and risk assessment, employment, and background screening by the State Department while the administrative appeal process is pending.

G. The Appellant shall have the right to appeal even if a dependency and neglect action or a criminal prosecution for child abuse is pending arising out of the same report. The State Department shall hold in abeyance the administrative process pending the outcome of the dependency and neglect or criminal action if requested by the Appellant or if the State Department determines that awaiting the outcome of the court case is in the best interest of the parties. If the Appellant objects to the continuance, the continuance shall not exceed one hundred eighty (180) days without the Appellant having the opportunity to seek review of the extended continuance by an Administrative Law Judge. The pendency of other court proceeding(s) shall be considered to be good cause to continue the appeal past the one hundred eighty (180) day timeframe.

H. The following circumstances shall be considered to be admissions to the factual basis of the finding of responsibility for child abuse or neglect entered into the state automated case management system and shall be considered to be conclusive evidence of the person's responsibility for child abuse or neglect to support a motion for summary judgment submitted to the Office of Administrative Courts:

1. When a Dependency and Neglect Petition has been adjudicated against or a deferred adjudication entered against the Appellant on the basis of Sections 19-3-103 or 19-3-102 (1)(a), (b), or (c), C.R.S., arising out of the same factual basis as the founded finding in the state automated case management system;

2. The Appellant has been found guilty of child abuse, or has pled guilty or nolo contendere to child abuse as part of any plea agreement including, but not limited to, a deferred judgment agreement, arising out of the same factual basis as the founded finding in the state automated case management system; or,

3. The Appellant has been found guilty or has pled guilty or nolo contendere to a domestic violence related or alcohol traffic related offense arising out of the same factual basis as the founded report in the state automated case management system.

I. When an Appellant requests an appeal, the State Department shall request the records relied upon in making the finding from the county department responsible for entering the finding, which has been appealed. The county department shall submit the record to the State Department as soon as practicable within the time frame requested by the Department.

J. After the Appellant requests an appeal, the State Department shall inform the Appellant regarding the details of the appeal process, including timeframes and contact information.

1. The Appellant, as the party in interest, shall have access to the county record in order to proceed with the appeal. Appellant's use of the county file for any other purpose is prohibited unless otherwise authorized by law.

2. Prior to providing access to the Appellant, the State Department shall redact identifying information contained in the county file to comply with state and federal law regarding the confidentiality of child abuse or neglect records or other protected information including, but not limited to, reporting party name(s) and addresses, Social Security Number, foster parent identifying information, and information pertaining to other parties in the case that the appellant does not have a legal right to access.

K. The State Department is authorized to enter into settlement negotiations with the Appellant as part of the litigation process. The State Department is authorized to enter into settlement agreements that modify, overturn or expunge the reports as reflected in the state portion of the state automated case management system. The State Department is not authorized to make any changes in the county portion of the state automated case management system. In exercising its discretion, the State Department shall take into consideration the best interests of children, the weight of the evidence, the severity of the abuse or neglect, any pattern of abuse or neglect reflected in the record, the results of any local court processes, the rehabilitation of the Appellant, and any other pertinent information.

L. The State Department and the Appellant shall have one hundred twenty (120) days from the date that the State Department receives the appeal to resolve the issue(s) on appeal. The 120 day time limit may be extended by agreement of both the Appellant and the State Department if it is likely that the additional time will result in a fully executed settlement agreement or resolution of the appeal.

M. As soon as it is evident within the 120 days that the Appellant and the State Department will not resolve the issue(s) on appeal, the State Department shall forward a copy of the Appellant's original appeal document(s) to the Office of Administrative Courts in order to initiate the Office of Administrative Courts fair hearing process.

N. If, by the end of the 120 day period, the State Department has been unable to contact the Appellant using the information submitted by the Appellant, including by first class mail, and the Appellant has not contacted the State Department, the appeal shall be deemed abandoned. The finding entered by the county department shall be upheld in the state automated case management system without further right of appeal. The State Department shall notify the Appellant of this result by first class mail to the address submitted by the Appellant.

7.112 STATE FAIR HEARING BEFORE THE OFFICE OF ADMINISTRATIVE COURTS [Eff. 1/1/15]

A. When the Office of Administrative Courts receives the appeal documents from the State Department, the Office of Administrative Courts shall docket the appeal and enter a procedural order to the parties indicating the following:

1. The date and time for a telephone scheduling conference with the parties.

2. During the telephone scheduling conference, the Office of Administrative Courts shall determine the date for the hearing. Following the scheduling conference, the Office of Administrative Courts will issue a further procedural order and notice of hearing. The order/notice will contain the hearing date, the fourteen (14) day deadline for the notice of issues, the fourteen (14) day deadline for response and deadline for filing pre-hearing

statements. Any party requiring an extension or modification of any of the deadlines in the order may file a request with the Administrative Law Judge.

3. The notice of issues shall include the following:

   a. The specific allegations(s) that form the basis of the county department's finding that the Appellant was responsible for child abuse or neglect;

   b. The specific type and severity of child abuse asserted against Appellant and the legal authority supporting the finding; and,

   c. To the extent that the State Department determines that the facts contained in the state automated case management system support a modification of the type or severity of child abuse or neglect determined by the county department, the State Department shall so notify the county department and the Appellant of that modification and the process shall proceed on the modified finding(s).

4. The Appellant shall respond to the State Department's submittal by providing the factual and legal basis supporting the appeal to the State Department and to the Office of Administrative Courts.

5. If the Appellant fails to participate in the scheduling conference referenced above or fails to submit the response referenced herein, the Office of Administrative Courts shall deem the appeal to have been abandoned by the Appellant and render an Initial Decision Dismissing Appeal. In accordance with the procedures set forth below, the Office of Appeals may reinstate the appeal for good cause shown by the Appellant.

6. In the event that either party fails to respond to a motion to dismiss filed in the appeal, the Administrative Law Judge shall not consider the motion to be confessed and shall render a decision based on the merits of the motion.

B. The Administrative Law Judge shall conduct the appeal in accordance with the Administrative Procedure Act, Section 24-4-105, C.R.S. The rights of the parties include:

1. The State Department shall have the burden of proof to establish the facts by a preponderance of the evidence and that the facts support the conclusion that the Appellant is responsible for the child abuse or neglect indicated in the notice of issues provided by the State Department. The state automated case management system is not the only acceptable evidence for establishing that the finding is supported by a preponderance of evidence;

2. Each party shall have the right to present his or her case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination;

3. 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;

4. A telephonic hearing may be conducted as an alternative to a face-to-face hearing unless either party requests a face-to-face hearing in writing. The written request for a face-to-face hearing must be filed with the Office of Administrative Courts and the other party at least ten (10) calendar days before the scheduled hearing. A request for a face-to-face hearing may necessitate the re-setting of the hearing; and,

5. Where facilities exist that have videoconferencing technology local to the county department that made the founded finding, either party may request that the hearing be conducted via that technology. The requesting party shall investigate the feasibility of this approach and shall submit a written request outlining the arrangements that could be made for video conference. The Office of Administrative Courts shall hold the hearing via videoconferencing for the convenience of the parties whenever requested and feasible. A request for a hearing via videoconferencing may necessitate the re-setting of the hearing.

C. At the conclusion of the hearing, unless the Administrative Law Judge allows additional time to submit documentation, the Administrative Law Judge shall take the matter under advisement. After considering all the relevant evidence presented by the parties, the Administrative Law Judge shall render an Initial Decision for review by the Colorado Department of Human Services, Office of Appeals.

D. The Initial Decision shall uphold, modify or overturn/reverse the county finding. The Administrative Law Judge shall have the authority to modify the type and severity level of the child abuse or neglect finding to meet the evidence provided at the hearing. The Administrative Law Judge shall not order the county to modify its record; rather, the State Department shall indicate the outcome of the appeal in its portion of the state automated case management system.

E. When an Appellant fails to appear at a duly scheduled hearing having been given proper notice, without having given timely advance notice to the Office of Administrative Courts 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 the Administrative Law Judge shall enter an Initial Decision Dismissing Appeal. In accordance with the procedures set forth in Section 7.114, the Office of Appeals may reinstate the appeal for good cause shown by the Appellant.

7.113 TRANSITION TO THE NEW APPEAL PROCESS [Eff. 1/1/15]

Appeals shall be submitted to the Colorado Department of Human Services section authorized by the Executive Director to process these appeals, using the state approved appeal form provided to individuals who have been found responsible for an incident of child abuse or neglect.

7.114 STATE DEPARTMENT OFFICE OF APPEALS FUNCTIONS [Eff. 1/1/15]

A. Review of the Initial Decision and hearing record and entry of the Final Agency Decision shall be pursuant to state rules at Sections 3.850.72 - 3.850.73 (9 CCR 2503-8).

B. Review shall be conducted by a State adjudicator in the Office of Appeals not directly involved in any prior review of the county report being appealed.

C. The Final Agency Decision shall advise the Appellant of his/her right to seek judicial review in the State District Court, City and County of Denver, if the Appellant had timely filed Exceptions to the Initial Decision.

D. If the Appellant seeks judicial review of the Final Agency Decision, the State Department shall be responsible for defending the Final Agency Decision on judicial review.

E. In any action in any court challenging a county's founded finding of child abuse or neglect, the State Department will defend the statutes, rules, and state-mandated procedures leading up to the finding, and will defend all county actions that are consistent with statutes, rules, and state-mandated procedures. The State Department shall not be responsible for defending the county

department for actions that are alleged to be in violation of, or inconsistent with, state statutes, state rules or state-mandated procedures.

7.115 CONFIDENTIALITY OF APPEAL RECORDS [Eff. 1/1/15]

A. All records submitted by the parties as part of the state level appeal process and all notices, orders, agency notes created by or made part of the State Department's agency record shall be confidential and shall not be released or disclosed unless such release or disclosure is permitted by the applicable state statutes or Section 7.605.

B. Initial and Final Agency Decisions where information identifying the Appellant, victim(s), other family members, or other minors have been blocked out may be released to the public.

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Tracking number: 2016-00266

Opinion of the Attorney General rendered in connection with the rules adopted by the

Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

on 08/05/2016

12 CCR 2509-2

REFERRAL AND ASSESSMENT

The above-referenced rules were submitted to this office on 08/09/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 24, 2016 12:07:27

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Human Services

Agency

Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-3

Rule title

12 CCR 2509-3 PROGRAM AREAS, CASE CONTACTS, AND ONGOING CASE REQUIREMENTS 1 - eff 10/01/2016

Effective date

10/01/2016

DEPARTMENT OF HUMAN SERVICES

Social Services Rules

PROGRAM AREAS, CASE CONTACTS, AND ONGOING CASE REQUIREMENTS

12 CCR 2509-3

7.200 PROGRAM AREAS, CASE CONTACTS, AND ONGOING CASE REQUIREMENTS [Eff. 1/1/15]

7.200.1 PROGRAM AREA 3 - PROGRAM FOR PREVENTION AND INTERVENTION SERVICES FOR CHILDREN, YOUTH, AND FAMILIES AT RISK OF INVOLVEMENT WITH CHILD WELFARE [Eff. 1/1/15]

The Program Area 3 definition is located at 7.000.1, A (12 CCR 2509-1).

A. Prevention services are voluntary and based on a human services professional decision regarding the family's need and on youth and family choice. Services may include:

1. Services that reduce risk and increase protective factors to decrease the likelihood of child abuse and neglect; or,

2. Services provided when a child or youth is in conflict with his/her family members, community, or at risk for abuse or neglect and do not meet the definition of unsafe as found in Section 7.000.2, A (12 CCR 2509-1).

   Services cannot be provided when the child's circumstance meets the definition of unsafe as found in Section 7.000.2, A (12 CCR 2509-1).

B. Intervention services are voluntary and based on a human services professional decision regarding the family's need and youth and family choice. Services may include:

1. Proactive efforts to intervene when the immediate health, safety or well-being of a child is not at-risk; or,

2. Services provided after a referral has been screened out; or,

3. Services provided when a case is assessed as not requiring child protection or youth in conflict services and the case is closed; or,

4. Services provided when a child welfare case has been closed, the child is safe as defined in Section 7.000.2, A (12 CCR 2509-1), and additional supports would improve a family's protective factors and reduce the possibility of recurrence of abuse or neglect.

7.200.11 Eligibility Criteria [Eff. 1/1/15]

A. County Department

A county is eligible to provide Program Area 3 prevention and intervention services when the county has a state-approved service delivery plan. The service delivery plan shall be submitted as an addendum to the Core Services Plan and shall include the process for referral and assessment to the prevention and intervention service.

B. Families, Youth, and Children

Families, youth, and youth/children are eligible for prevention and intervention services if a child/youth is in conflict with his/her family members, in conflict with the community, or at risk of abuse or neglect and do not meet criteria for a child protection or youth in conflict case.

Families, youth, and children are eligible for prevention and intervention services if a human services professional has determined the family has a need for the service.

C. Community Agency or Another Division within the County Department

A community agency or another division within the county department is eligible to refer a family, youth, or child for prevention or intervention services, or to provide services to a family, youth, or child if so stated in the county's state-approved service delivery plan addendum to the Core Services Plan.

7.200.12 County Responsibilities [Rev. eff. 9/1/15]

The county department shall be responsible:

A. To deliver prevention and intervention services according to the state-approved service delivery plan that is an addendum to the Core Services Plan.

B. To ensure community agencies and/or other divisions within the county provide prevention and intervention services according to the state-approved service delivery plan.

C. To ensure community agencies and/or other division within the county department refer families, youth, and children to the prevention and intervention service according to the contract with the county Child Welfare Division.

D. To ensure community agencies and/or other divisions of human services offer prevention or intervention services according to the contract with the county department.

E. To ensure documentation in the approved state automated case management system of the names, age, ethnicity, gender, service provided, and the reason the service ended for families, youth, and children referred for or provided prevention and intervention services.

F. To ensure documentation in the approved state automated case management system of all required data elements of each funding source used for prevention and intervention services.

G. To follow the rules and requirements governing the specific funding stream the county elects to use to provide prevention and intervention services.

H. To follow the rules and regulations promulgated by the State Board of Human Services.

7.200.13 Funding Sources [Eff. 1/1/15]

Counties may use any available funding source to provide services under program area three, in accordance with the rules and requirements governing the specific funding stream utilized.

7.200.14 Referral [Eff. 1/1/15]

A. The county department shall provide a referral and intake process wherein all persons have the opportunity to apply for services. In the referral and intake process, the assigned social service staff shall accept applications and screen referrals.

B. A referral report shall be completed in all appropriate situations, and at a minimum must include:

1. Demographic information.

2. Referring source.

3. Results of initial assessment.

4. Dispositional decision.

C. The county department, if requested, shall provide the referring source with an explanation of the action taken as a result of the referral.

7.200.15 Initial Functional Assessment [Eff. 1/1/15]

An initial assessment by the county department of social services staff shall include:

A. The appropriateness of referral;

B. Determining if the case is open in the agency;

C. Awareness of agency and community resources and their current availability;

D. Initial assessment of problem and service needs;

E. Determining if another agency can better serve the client;

F. Information about risk factors that can be used in making decisions about urgency of service delivery; and,

G. Determining whether an emergency exists that meets the emergency assistance criteria in accordance with Section 7.601.83 (12 CCR 2509-7).

7.201 PROGRAM AREA 4 - YOUTH IN CONFLICT [Eff. 1/1/15]

The Program Area 4 definition and target group information is located at Section 7.000.1, B (12 CCR 2509-1).

7.201.1 INITIAL ASSESSMENT [Eff. 1/1/15]

A. The county department shall respond, either with a face-to-face intervention or by telephone, when notified by the court appointed detention screener or a law enforcement officer, of a child or

youth in the custody of a law enforcement agency who is inappropriate for secure detention but cannot be returned home.

B. The county department shall complete a needs assessment for children or youth who do not require physical restriction but for whom immediate removal from the home appears necessary for his/her protection or the protection of others. The county department shall provide needed services, other than secure detention, such as temporary placement, crisis intervention, or in home services.

C. A child or youth shall not be removed from the home without police protective custody or hold, a court order, or a signed voluntary placement agreement. Before or at the conclusion of the court-ordered placement (72 hours) or police hold (48 hours), the child or youth shall:

1. Be returned home; or,

2. Remain in court-ordered placement; or,

3. Continue in placement by virtue of a voluntary placement agreement signed by the parents/guardians.

D. The county department shall screen the child/youth for risk of sex trafficking in accordance with section 7.303.4 (A).

E**.** If at any point during the assessment, a county department becomes aware of an allegation that a child/youth is, or may be, a victim of sex trafficking, the county department shall:

1. Report immediately, and no later than twenty-four (24) hours from when the county department becomes aware, to the local law enforcement agency; and,

2. Document the details of the report to law enforcement in the state automated case management system.

7.202 PROGRAM AREA 5 - CHILDREN IN NEED OF PROTECTION [Eff. 1/1/15]

Program Area 5 definition and target group information is located at Section 7.000.1, C (12 CCR 2509-1). Intake information is located at Section 7.101, et.al. (12 CCR 2509-2).

Referral and assessment activities for Program Area 5 are located in Section 7.101, et al. (12 CCR 2509-2).

7.202.1 PROVISION OF ONGOING CHILD PROTECTION SERVICES (CPS) [Eff. 1/1/15]

A. If a safety plan exists, the assigned caseworker and supervisor shall review it as the first step in ongoing services planning.

B. Ongoing child protection services shall be based on the safety and risk issues identified in the safety assessment tool and plan, risk assessment tool, family social history and assessment summary in the Family Services Plan. Services shall be provided to protect the child(ren) or youth from further abuse or neglect through building parental capabilities and increasing parental involvement. This shall be accomplished in a manner that preserves the family when this can safely be done. When the family from whom the child(ren) or youth were removed cannot safely be preserved, services shall be provided that preserve the child(ren)'s or youth's continuity within the extended family and/or home community when feasible. The child(ren) or youth shall be placed in the least restrictive setting, consistent with the child(ren) or youth's and family's assessed needs. When the child(ren) or youth cannot safely return to the family from whom they

were removed, services shall be provided to achieve an alternative permanent plan that provides for a child(ren)'s or youth's safety and well-being in a timely manner.

C. At the point of case transfer, county departments shall assure pertinent information regarding child safety, permanency, and well-being are translated to the new assigned caseworker. This shall be accomplished through the following methods, based on the nature of the case and the workload ability of the county department:

1. Decision-making meeting involving caseworkers and/or supervisors, family and community providers;

2. Staffing between caseworkers and/or supervisors;

3. Written transfer summary; and/or,

4. Documentation in the state automated case management system.

D. The county department shall complete the safety assessment tool consistent with requirements outlined in Section 7.107.1 (12 CCR 2509-2).

E. The county department shall complete the risk assessment tool consistent with requirements outline in Section 7.107.2 (12 CCR 2509-2).

F. Monthly Contact

The primary purpose for case contacts shall be to assure child safety and well-being and move the case toward achieving identified treatment goals. Documentation in the state automated case management system of at least one monthly contact shall summarize progress toward these goals. In child protection cases in which the children or youth remain in the home and in child protection cases in which the children or youth are placed out of the home, the county department shall have face-to-face and telephone contact with the children or youth and parents and relevant collateral contacts as often as needed (while meeting the minimum expectations below) to reasonably attempt to assure the safety, permanency and well-being of the children.

1. A face-to-face contact with a parent, or the guardian to whom the child or youth shall return, or with a child or youth is defined as an in-person contact for the purpose of observation, conversation, intervention or interview about substantive case issues, such as safety, risk and needs assessment, safety and treatment planning that may help to reduce future risk of abuse and neglect, service agreement development and/or progress.

2. The primary purposes for contacts with parents are to assess the parent(s) ability to provide safely for the child or youth and make progress toward treatment plan goals. When a child protection case remains open with the county department, the county department shall maintain sufficient contact with parents or the guardian with whom the child or youth resides, or to whom the child or youth shall return, to lead to timely resolution of child safety issues and to move the case toward timely resolution of treatment plan goals. Such contact shall occur at least monthly and at least every other month there shall be face-to-face contact. Such contacts shall occur with parents at least until a motion for termination of parental rights is filed, in cases in which the child is not living in the home or in which it is no longer planned that the child will return home.

3. The primary purpose for child or youth contacts is to assure the child's safety and well-being regardless of the reason the case is open with the county department. For in-home

cases, the county department shall have at least monthly face-to-face contact with children or youth participating as a child in the case.

4. For the frequency of contact of children and youth in out-of-home placement, see Section 7.001.6, B (12 CCR 2509-1).

5. For all other types of contacts, the purpose of the contacts shall be determined by the stage of the case, by the level of safety, risk and needs of the case, and according to whether or not the county department representative is the primary service provider. In cases in which there are individuals and/or someone from another or other agencies who has/have the primary therapeutic relationship with the parent and/or the child or youth, these parties may be designated by the county department to fulfill additional contacts beyond the minimum contacts described above when additional contacts are needed to reasonably assure the safety, permanency and well-being of the child(ren) or youth in the case.

6. All case contacts with parents and child(ren) or youth by the county department shall be recorded in the state automated case management system, and shall reflect how the purpose of the visit was accomplished.

7. In exceptional situations, if the minimum case contacts are not able to be provided by the county in any given month, those reasons shall be documented by the county in the case file.

8. If direct contact is impossible due to the child's location, the following information shall be documented in the state automated case management system indicating:

   a. The case circumstances, including why the direct contact is not possible;

   b. How the contact shall occur to possibly include ICPC, and/or courtesy supervision; and,

   c. How the county department shall monitor progress.

9. All case contacts by parties designated by the county department, beyond the minimum contacts described above, to provide assessment, treatment and/or monitoring of the parents and children or youth, shall be recorded in the case file. The county department shall have the responsibility to determine that such needed contacts have occurred.

G. The county department shall provide courtesy supervision services when requested by another county or state when there is court jurisdiction and such services must continue in order to protect the child or youth. In cases where there is no court jurisdiction, the receiving county shall conduct an assessment to determine if services are needed in order to protect the child or youth. Services shall be provided if indicated. Other services include:

1. The requirement to utilize Interstate Compact on the Placement of Children (ICPC) procedures to obtain courtesy supervision shall not be used by a county to deny a request from another state to provide assessment of a child's safety.

2. When there is court jurisdiction, ICPC procedures shall be followed by the sending state in order to obtain courtesy supervision of a case in Colorado.

3. The contacts requirements in Section 7.204, shall apply to cases being provided courtesy supervision when there is court jurisdiction and also for voluntary cases for which it is determined that services are indicated.

H. If a child protection service client for whom services are still needed moves to another county or state, the county or state of current residence should be notified within ten (10) days and provided with written appropriate, relevant information. Change in venue procedures as outlined in Section 7.304.4 (12 CCR 2509-4), shall be followed. If there is no court order for services, the receiving county shall provide outreach and assessment services up to sixty (60) calendar days. If during the sixty (60) calendar days period it is determined that further services are not indicated or the family is unwilling to accept services, the receiving county shall close the case.

I. All Program Area 5 cases shall remain in that program area as long as the child or youth is at risk for abuse/neglect and the case plan is to reunify the family. Cases on appeal for termination of parent-child legal relationship shall remain in Program Area 5 until the termination is finalized.

7.202.2 ONGOING SERVICES FOR CASES OF MEDICAL NEGLECT OF INFANTS WITH DISABILITIES [Eff. 1/1/15]

The county department shall make available the following services:

A. Monitoring Court-Ordered Treatment

When either the court has ordered or the parent(s) have agreed upon a course of treatment, the county department shall monitor developments to ensure this treatment is provided. When there is a failure to provide treatment, the county department shall notify the court and immediately petition the court to take appropriate action.

B. Coordinating With Other Resources

The county department shall contact agencies that provide services to child(ren) with special needs, and help the parents with referrals to appropriate agencies that provide services for infants with similar disabilities and for their families. Referrals shall be made to agencies with financial resources for costs of medical and rehabilitative services. Information shall be provided regarding parental support groups and community educational resources. This information shall be made available, as is deemed appropriate under the circumstances, whether the county department has taken legal action or not.

7.203 PROGRAM AREA 6 - CHILDREN IN NEED OF SPECIALIZED SERVICES [Eff. 1/1/15]

The definition of Program Area 6 is located at Section 7.000.1, D (12 CCR 2509-1). Specific groups and target groups that are included within Program Area 6 are shown below.

7.203.1 CHILD WITH ADOPTION ASSISTANCE OR RELATIVE GUARDIANSHIP ASSISTANCE [Eff. 1/1/15]

Requirements for the Adoption Assistance Program and the Relative Guardianship Assistance Program were consolidated into their respective sections.

A. The Adoption Assistance Program is located in Section 7.306.4 (12 CCR 2509-4).

B. Relative Guardianship Assistance is located in Section 7.311 (12 CCR 2509-4).

7.203.2 CHILD WITH MEDICAID ONLY SERVICES [Eff. 1/1/15]

7.203.21 Target Groups [Eff. 1/1/15]

A. Children in foster care who have been determined Title IV-E eligible and have moved into or out of Colorado.

B. Children for who an adoption assistance agreement is in effect and who have moved into or out of Colorado. See Section 7.306.4 (12 CCR 2509-4) for details regarding children with adoption assistance.

C. Children with a Title IV-E Relative Guardianship Assistance agreement with a payment in effect and who have moved into or outside of Colorado.

D. Children eligible for Home and Community Based Services or Home Health Care Services as defined in Section 8.500 of the Department of Health Care Policy and Financing's Medical Assistance rules (10 CCR 2505-10). Children enrolled in the Home and Community Based-Developmentally Disabled Waiver Program administered through Community Centered Boards and the Department of Human Services, Developmental Disabilities.

7.203.22 Intake/Assessment [Eff. 1/1/15]

For children and youth moving to Colorado, the county department shall:

A. Verify from the Interstate Compact on the Placement of Children (ICPC) request from the sending state that the child or youth is eligible for IV-E foster care from the state of origin.

B. For adopted children and youth, include a copy of the Interstate Compact on Adoption and Medical Assistance (ICAMA) form and the adoption assistance agreement in the child's file or provide a copy of the Guardianship Assistance agreement.

C. Enter information about the child or youth into the state automated case management system and verify that a Medicaid card has been sent to the foster care provider, the adoptive parent, or the guardian.

D. Notify the foster care provider, the adoptive parent, or the guardian using the SS-4 Form that the child or youth is eligible for Medicaid only services from Colorado. In addition, advise the provider to notify the county department if foster care is stopped by the originating state or of any change of address. In the case of an adopted child or youth, or those with a guardian, advise the adoptive parent or guardian to notify the county department and the state of origin of any change of address.

E. Verify annually from the state of origin that the child or youth is eligible for Medicaid.

7.203.23 Procedures for Children Eligible for Home and Community Based Services or Home Health Care Services [Eff. 1/1/15]

A. The county department shall open a case Home and Community Based when an application for Home and Community Based Services (HCBS) or Home Health Care Services is completed. The county department shall provide services as required in Section 8.500 of the Department of Health Care Policy and Financing's Medical Assistance rules (10 CCR 2505-10) for children in Home and Community Based Services or Home Health Care Services Programs.

B. The county department shall close the case on the state automated case management system no later than the end of the month following the month that the child begins to receive services from the case management agency unless the child remains eligible for services under Program Areas 4 or 5.

7.203.3 CHILDREN WHOSE DISPOSITION IS NO LONGER REUNIFICATION WITH FAMILY [Eff. 1/1/15]

The target group includes children for whom all efforts at reunification with the family are exhausted. The parent-child legal relationship may or may not be terminated.

7.203.31 Eligibility [Eff. 1/1/15]

A. A child shall be eligible for services in this target group only if he/she has prior eligibility in another target group and has a permanent plan other than reunification.

B. Children in this target group shall receive services as addressed in the placement services, relative guardianship, legal guardianship, relinquishment, independent living, and adoption sections of these rules. Contact requirements for these children shall be in accordance with Section 7.001.6 (12 CCR 2509-1). These contacts shall be documented in the state automated case management system.

7.203.32 County Department Procedures [Eff. 1/1/15]

A. The county department shall document in the case file all efforts at reunification for the children in this target group.

B. The county department shall ensure that the Family Services Plan contains a plan for permanent placement with a relative, adoption, relative guardianship or legal guardianship/permanent custody, or other planned permanent living arrangement, as appropriate (see Section 7.301.24, N; 12 CCR 2509-4).

C. When the permanent plan is not adoption the county department shall document in the case file why adoption is not appropriate.

7.203.4 YOUNG ADULTS WHO HAVE EMANCIPATED FROM FOSTER CARE [Eff. 1/1/15]

Participation in Independent Living programs is voluntary for this population of emancipated young adults, ages eighteen (18) to twenty-one (21), who were in out-of-home care on their 18th birthday and who are in need of continuing support and services toward becoming self-sufficient.

7.203.41 Eligibility [Eff. 1/1/15]

Emancipated young adults, ages eighteen (18) to twenty-one (21), who were in out-of-home care on their 18th birthday are eligible to receive independent living services to assist them as they continue the transition to adulthood. Services may include independent living assessment, case planning, transitional services, room and board, and other services as identified in the county Title IV-E Independent Living Plan (see Section 7.305).

7.203.42 County Department Procedures [Eff. 1/1/15]

A. The county department of social services shall document in the case file the independent living services provided.

B. The county department of social services shall complete the Independent Living Plan as a part of the Family Services Plan.

C. Minimum contact requirements are to be determined by the participant and caseworker, but shall be quarterly, face-to-face, at a minimum to determine appropriateness of services and continued need of the participant.

7.204 CASE CONTACT REQUIREMENTS [Eff. 1/1/15]

The primary purposes for case contacts shall be to assure child safety and well-being and move the case toward achieving identified treatment goals regardless of the reason the case is open. For Program Areas 4, 5, and 6, and in cases in which children and youth remain in the home or are placed out of the home, the county department shall have face-to-face and telephone contact with the children and youth, parents, and relevant collateral contacts as often as needed to assure the safety, permanency and well-being of the children.

Case contacts shall be documented in the state automated case management system. Minimum contact requirements are as follows:

A. Program Areas 4, 5, and 6 In-Home Services

The county department shall have at least monthly face-to-face contact with the child or youth. The county department shall have at least monthly face-to-face or telephone contact with the parent, parent surrogate or guardian, with face-to-face contact occurring at least every other month.

B. Program Areas 4, 5, and 6 Out-of-Home Placement Services Concerning Children and Youth in Colorado

The primary caseworker, that caseworker's supervisor, or the designated visitation caseworker for each child or youth in out-of-home placement for whom the county department has responsibility shall have face-to-face contact with that child or youth at least once every calendar month.

The "designated visitation caseworker" is an individual assigned responsibility for visiting the child or youth. The visitation caseworker may be a caseworker employed by the county department or another county department; a caseworker or contract caseworker in another state; or, a professional within the state who meets the qualifications listed at Section 7.602 and training listed at Section 7.603 (12 CCR 2509-7).

The name and role of the visitation caseworker assigned responsibility for visiting the child or youth shall be recorded in the assigned screen of the state automated case management system and shall be updated if there is a change in the visitation caseworker. There shall be only one designated visitation caseworker for a child or youth at any one time.

Contact shall occur at a minimum of two face-to-face visits with the child or youth during the first thirty (30) days following the out-of-home placement, at least one of which shall be in the out-of-home placement, and a minimum of monthly face-to-face contact with the child or youth after the first month. A portion of every face-to-face contact shall occur out of the presence of the provider for the child or youth. No less than every other month, contact shall occur in the out-of-home placement where the child or youth resides and shall include visual assessment of where the child or youth sleeps.

The majority of monthly face-to-face contacts in a year shall occur in the child or youth's out-of-home placement. For children and youth in out-of-home placement, this is their place of residence. The child or youth shall be visited in his/her out-of-home placement during the first thirty (30) days of out-of-home placement and at least every other month while in out-of-home placement.

These requirements apply to children and youth for each month in which they spend more than half of the days of the month in out-of-home placement.

Children and youth designated as runaways who are in the county department's custody are included in the population of children and youth for whom the case contact requirements apply.

The caseworker who visits the child or youth shall have working knowledge of the case, including having conducted a recent review of contacts information in the state automated case management system prior to making a visit. The caseworker completing the visit shall record all contacts in the state automated case management system.

The designated visitation caseworker shall not have specific supervision responsibilities for the private placement facility where the child or youth is placed, nor shall the visitation caseworker be an employee of the placement facility where the child or youth is placed.

C. Program Ares 4, 5, and 6 Out-of-Home Placement Services Out of Colorado Concerning Children and Youth

The primary caseworker, that caseworker's supervisor, or the designated visitation caseworker or that caseworker's supervisor, for each child or youth in out-of-home placement out of Colorado shall have face-to-face contact with that child or youth at least once every calendar month.

For cases governed by the Interstate Compact on the Placement of Children (ICPC), the assigned or contracted caseworker in the state where the child or youth is placed may be the designated visitation caseworker. The Colorado caseworker assigned to the case shall document the designated visitation caseworker's visits in the state automated case management system if there is documentation in the case file from the designated visitation caseworker that describes the date, place, and content of the visit with the child or youth for cases governed by ICPC. If there is an out-of-state designated visitation caseworker, that person shall use other means than review of the state automated case management system to assure that he or she has current working knowledge of the case at the time visits are made to the child or youth. A written report on the contact shall be requested by the custodial agency.

D. Program Area 5 Out-of-Home Placement Concerning Parents

While a child or youth remains in out-of-home placement, the county department shall have at least monthly contact with the parent, parent surrogate or guardian, with face-to-face contact occurring at least every other month. Such contacts shall occur until a motion for termination of parental rights is filed, or until "Return Home" is no longer the primary permanency goal.

E. Program Areas 4 and 6 Out-of-Home Services

While a child or youth remains in out-of-home placement, the county department shall have at least monthly face-to-face or telephone contact with the parent, parent surrogate or guardian. Such contacts shall occur until a motion for termination of parental rights is filed, or until "Return Home" is no longer the primary permanency goal.

F. Finalized Subsidized Adoption Services

Contact shall occur every three (3) years through face-to-face, real-time video resources, telephone, electronic mail or mail.

G. Other Groups

For children or youth who are eligible for Home and Community Based Services or Home Health Care services, the contact requirements are a minimum of one face-to-face or telephone contact with the child or youth and family every six (6) months. At least one of the contacts annually must be face-to-face.

H. Contact Exceptions

If direct contact is impossible due to the child's location, the following information shall be documented in the state automated case management system indicating:

1. The case circumstances, including why the direct contact is not possible;

2. How the contact shall occur to possibly include ICPC, and/or courtesy supervision; and

3. How the county department shall monitor progress.

7.205 CASE CLOSURE [Eff. 1/1/15]

A. When there is no court jurisdiction and at least one of the following are met, services shall be terminated and the case shall be closed.

1. Specific program eligibility criteria are not met.

2. Client no longer needs the service.

3. Client has died.

4. Services are completed.

5. The child reaches his/her 21st birthday.

B. The worker shall document the following in the case record:

1. Reason(s) for case closure.

2. A summary of services provided, which includes progress made toward stated goals.

3. An assessment of risk of further child abuse or neglect for Program Area 5 cases.

C. The county department shall close a case in the state automated case management system no later than ninety (90) days after the last direct client contact. The county department shall assure the case is closed in the automated system as prescribed by the State.

D. The county department shall close a case in the state automated case management system if there has been no direct client contact with the child and parents for ninety (90) calendar days despite the repeated efforts of the county department to maintain contact.

E. Exceptions to the ninety (90) calendar day limit may be necessary in cases where the county department has custody of the child. In such cases the county department shall document efforts to terminate county custody or document why such efforts are not in the best interest of the child.

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Tracking number: 2016-00267

Opinion of the Attorney General rendered in connection with the rules adopted by the

Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

on 08/05/2016

12 CCR 2509-3

PROGRAM AREAS, CASE CONTACTS, AND ONGOING CASE REQUIREMENTS

The above-referenced rules were submitted to this office on 08/09/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 24, 2016 12:07:39

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Human Services

Agency

Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-4

Rule title

12 CCR 2509-4 CHILD WELFARE SERVICES 1 - eff 10/01/2016

Effective date

10/01/2016

12 CCR 2509-4

7.304.52 Family Search and Engagement [Rev. eff. 1/1/16]

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C. Family search and engagement shall occur for all children including American Indian/Alaskan Native children and youth at least every six (6) months throughout the life of the case until the child or youth has achieved permanency, except as noted in Section 7.304.52, B, 3, or when the following conditions exist:

1. A placement is stable with a relative or kin a minimum of six (6) consecutive months; and,

2. The relative or kin has committed to the legal permanence of the child or youth; and,

3. There is agreement among the parties that the relative or kin is the appropriate permanent option, the juvenile or district court finds it is the appropriate permanency plan, and it is in the best interest of the child or youth that family search and engagement be discontinued.

4. A non-relative foster care parent without a prior relationship to a youth twelve (12) years of age or older and his/her siblings residing in the same placement commits to the permanency of the youth and children. in addition, the juvenile or district court adopted a permanency plan of guardianship or Allocation Of Parental Responsibilities (APR) and the requirements in section 7.311.1, c, 2 (relative guardianship assistance program) are met.

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7.311.1 Eligibility Requirements [Rev. eff. 1/1/16]

Eligibility requirements for the prospective relative guardian and youth and/or child must be documented in the Family Services Plan in the child welfare case management system and are as follows, including the definition specific to relationships for a kinship foster home in § 19-1-103 (71.3), C.R.S.:

A. For the purpose of the Relative Guardianship Assistance Program, a relative is defined as:

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3. A person ascribed by the family as having a family-like relationship; or,

4. An individual that had a prior significant relationship with the youth or child.

*****

C. The prospective relative guardian was the:

1. Relative foster care parent for the youth or child for a minimum of six (6) consecutive months while the youth or child resided in the home, excluding breaks in full certification due to provisional or probationary certificates being issued, or other adverse action taken regarding the certificate or,

2. Non-relative foster care parent for a minimum of twelve (12) consecutive months while the youth resided in the home, excluding breaks in full certification due to any adverse action taken regarding the certificate if all of the following requirements are met:

   a. The youth is twelve (12) years of age or older; and,

   b. The youth consents to guardianship or allocation of parental responsibilities (apr) with the foster parent; and,

   c. The dependency and neglect court finds that the youth has a substantial psychological tie to the foster parent and it would be seriously detrimental to the emotional well-being of the youth to remove the youth from the foster parent's care as referenced in § 19-3-702 (5) (a) (III) and (5) (b), C.R.S.; and,

   d. the dependency and neglect court makes a finding pursuant to § 19-3-702 (5) (a) (III), C.R.S., that the foster parent is unable to adopt the youth because of exceptional circumstances, which do not include unwillingness to accept legal responsibility for the youth, but is willing and capable of providing the child with a stable and permanent environment; and,

   e. In the case of the sibling(s) of a child meeting the requirements in (a-d) residing in the same foster care home, the siblings must meet the requirements in (c-d).

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7.311.5 Relative Guardianship Assistance Program Services [Rev. eff. 12/1/12]

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B. The Relative Guardianship Assistance Program provides assistance to a relative guardian in a defined and limited manner so that permanency is achieved for an eligible youth or child where reunification and adoption are not appropriate goals. The following requirements are applicable to both programs:

   1. The county department may make relative guardianship assistance payments and/or provide Medicaid or medical assistance following the appointment of the relative guardian by the probate court or the approval of an allocation of parental responsibilities (APR) by a juvenile or district court and continue the assistance until the youth has reached eighteen (18) years of age.

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7.311.61 Title IV-E Relative Guardianship Assistance [Rev. eff. 11/1/15]

A. When a successor guardian is not identified in the original assistance agreement (or in an addendum to the assistance agreement dated prior to incapacitation or death of the relative guardian) and the relative guardianship is removed or an allocation of parental responsibilities is modified, the youth or child and the subsequent relative guardian must meet all Relative Guardianship Assistance Program eligibility requirements, including:

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B. After a youth or child has been determined eligible for Title IV-E relative guardianship assistance payments and/or Title IV-E Medicaid benefits, Title IV-E eligibility continues while there is a relative guardianship assistance agreement in effect:

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3. If the previous relative guardian is deceased, a copy of the death certificate must be provided.

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7.311.62 State-County Relative Guardianship Assistance (Non-Title IV-E) [Rev. eff. 11/1/15]

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C. When a successor guardian is not identified in the original assistance agreement (or in an addendum to the assistance agreement dated prior to incapacitation or death of the relative guardian) and the relative guardianship is removed or an allocation of parental responsibilities is modified, the youth or child and the subsequent relative guardian must meet all Relative Guardianship Assistance Program eligibility requirements, including:

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7.311.64 Successor Guardian [Eff. 11/1/15]

A. A successor guardian may be identified in the original Relative Guardianship Assistance Agreement or in an addendum to the assistance agreement dated prior to incapacitation or death of the relative guardian for continuity of relationship and permanency, and to prevent re-entry into foster care for a youth or child, due to incapacitation or death of the original guardian.

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3. Responsibilities of a successor guardian at the time of incapacitation or death of the original guardian and following appointment of guardianship include the following:

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d. Petition the probate court for guardianship or petition the juvenile or district court with jurisdiction for an allocation of parent responsibilities of the youth or child as soon as possible;

*****

4. Responsibilities of the county department include the following:

a. Upon notification of ~~the~~ incapacitation or death of a relative guardian, the county department shall suspend relative guardianship assistance payments and services identified in the original assistance agreement effective the date of incapacitation or death, until the successor guardian has attained guardianship of the youth or child through the probate court or an allocation of parental responsibilities through the juvenile or district court.

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7.311.72 Non-Recurring Relative Guardianship Expenses [Rev. eff. 12/1/12]

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C. Documentation for non-recurring relative guardianship expenses:

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3. Provide an itemized statement of the expenses to be reimbursed within one (1) year from the date of the probate court appointment of ~~the~~ relative guardianship or the date that the juvenile or district court approved an allocation of parental responsibilities.

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Tracking number: 2016-00264

Opinion of the Attorney General rendered in connection with the rules adopted by the

Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

on 08/05/2016

12 CCR 2509-4

CHILD WELFARE SERVICES

The above-referenced rules were submitted to this office on 08/16/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

August 24, 2016 12:07:09

Permanent Rules Adopted

Department

Department of Human Services

Agency

Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

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12 CCR 2509-4

Rule title

12 CCR 2509-4 CHILD WELFARE SERVICES 1 - eff 10/01/2016

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DEPARTMENT OF HUMAN SERVICES

Social Services Rules

CHILD WELFARE SERVICES

12 CCR 2509-4

7.300 CHILD WELFARE SERVICES

7.300.1 FAMILY ENGAGEMENT [Eff. 5/1/12]

County departments of human/social services shall adopt family engagement practices. Family engagement means joining with the family/kin to establish common goals of safety, well-being, and permanency throughout the involvement and is inclusive of other systems. This is an overarching theme of practice throughout service assessment, planning, and delivery. Family engagement practice shall include, but not be limited to, family meetings, cultural responsiveness, and reflect the core principles below:

A. It focuses on the strengths and interests of the child, youth, and family.

B. It promotes family and youth choice through family and youth-driven decisions.

C. It actively supports that all families receive timely access to culturally responsive services they identify as necessary to safely care for their children and youth, and results in meaningful family involvement.

D. It supports relationship building and community participation.

E. It fosters mutual trust and respect between families, youth, agency, and stakeholders.

F. It values the support network and relationships of each individual.

G. Information sharing is open, honest, and clear.

H. It extends beyond the immediate family members to those identified by the family as a source of support and strength and who will serve beyond the involvement of the child welfare system to help sustain the reunification and/or ability to safely parent the children.

7.301 ASSESSMENT AND FAMILY SERVICES PLANNING

7.301.1 ASSESSMENT [Eff. 1/15/15]

A. The Colorado Assessment Continuum (CAC) will be utilized throughout the case. The CAC includes the:

   1. Safety assessment and plan, referenced in Section 7.107.1 and Section 7.107.16 (12 CCR 2509-2).

   2. Risk assessment, referenced in Section 7.107.2 (12 CCF 2509-2).

B. Safety assessment and risk assessment are ongoing processes throughout the life of the case. Safety and risk assessments, as defined in this manual, shall be completed for each Program Area 5 case accepted for assessment by the county department and shall be the basis for case planning. Each of these assessments shall be entered into the automated case management system in accordance with the timeframes referenced in Section 7.301.1, A, 1 and 2.

1. The family, including relatives with caretaking responsibilities for children in the household, shall be involved in all phases of assessment and case planning.

2. Assessment tools or resources available through community agencies shall be incorporated in the assessment, based on the culture, ethnicity and other needs of the family.

3. As a result of this assessment/evaluation, the caseworker and family shall identify the family's current safety and risk, to include level of functioning, areas of strengths, specific areas of concern to be addressed, and changes that must occur to remedy the concerns that brought the family to the agency. This information shall be included in the Family Services Plan.

7.301.2 FAMILY SERVICES PLAN REQUIREMENTS [Eff. 09/1/07]

The county department shall complete the Family Services Plan document for each child receiving services to assure that the child's needs for safety, permanency, and well-being are met. The Family Services Plan shall incorporate the following principles:

A. A child’s safety is paramount;

B. Children belong in families;

C. Families need the support of communities; and,

D. Community partners are key to achieving strong outcomes for children and families.

7.301.21 Family Services Plan Timing Requirements [Rev. eff. 11/1/15]

The Family Service Plan document must be completed:

A. Within sixty (60) calendar days of the referral date in the automated case management system for children in their own homes, including Core Services program cases in which the children are not in out-of-home placement. There may be one Family Services Plan for the family in these cases.

B. Within sixty (60) calendar days of the referral date in the automated case management system for children in out-of-home placement, including those cases in which the children are receiving Core Services. There may be one Family Services Plan for the family; however, discrete sections in the treatment plan and in the placement information are required for each child in placement.

C. For youth fourteen (14) years of age and over in out-of-home placement, the plan for transition to independent living/emancipation shall be completed within sixty (60) calendar days of the youth's fourteenth (14^{th}) birthday or of case opening.

7.301.22 Family Service Plan Participants [Rev. eff. 7/1/14]

A. The county shall assure that the following parties participate in the development of the Family Services Plan and engagement activities:

1. Caseworker;

2. Parent(s) or legal guardians;

3. Child/youth;

4. Immediate and extended family members as appropriate to the service needs of the family, child, and youth; and,

5. Service providers, including kin caregivers, out-of-home caregivers, and in-home providers.

B. In addition to all parties being encouraged to sign the plan, all parties shall be engaged in activities that indicate involvement in service planning, including, but not limited to:

1. Family engagement meetings; or,

2. Ongoing contacts, which could include, but are not limited to: face to face, visitation, email, texts, technology with face to face capacity, emerging technology, or through signature on the Family Services Plan.

C. Activities shall be documented in the State Department's automated system and may be located in the record of contact notes, the framework field, ninety (90) day reviews, and progress reports to the court. Documentation shall reflect the various ways in which attempts were made to engage parents, child/youth, and providers.

7.301.23 Family Service Plan Documentation

The Family Services Plan shall document

A. That services to be provided are directed at the areas of need identified in the assessment. Outcomes to be achieved as a result of the services provided will be described in terms of specific, measurable, agreed upon, realistic, time-limited objectives and action steps to be accomplished by the parents, child, service providers and county staff.

B. That services to be provided are designed to assure that the child receives safe and proper care.

C. That services to be provided are culturally and ethnically appropriate. Appropriate cultural or ethnic considerations should include, but are not limited to, consideration of the child's family, community, neighborhood, faith or religious beliefs, school activities, friends, and the child's and family's primary language.

7.301.231 Integration of Safety and Risk Requirements [Rev. eff. 1/1/15]

Integration of safety and risk requirements into the case plan in the family services plan shall be accomplished in the following ways:

A. Safety and risk assessments completed in the assessment portion of the automated case management system shall automatically become a part of the case, when a case is opened.

B. Safety concerns identified on the safety assessment will be included in Part 3A, and will be the basis for developing treatment plan objectives.

C. Risk concerns identified on the assessment will be included in Part 3A, and shall be used in developing treatment plans.

D. In Part 5A, the following question shall be addressed: “Based on the information presented above, is there present or impending danger that must still be managed?”

7.301.24 Family Service Plan Out-of-Home Placement Documentation [Rev. eff. 3/1/16]

For child(ren) in out-of-home placement, the Family Services Plan documents:

A. That the child meets all of the out-of-home placement criteria listed in Section 7.304.3.

B. That when the child is part of a sibling group and the sibling group is being placed out of the home, if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by the county by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children. At the dispositional hearing, if a child is part of a sibling group and was not placed with his/her siblings, documentation shall be submitted to the court about whether it continues to be in the best interest of the child(ren) to be placed separately.

C. The problems to be resolved in order to facilitate reunification of the child and family, and to safely maintain the child in the home.

D. A description of the type of facility in which the child is placed, the reason(s) the placement is appropriate, and safe for the child. For children placed a substantial distance from the home of the parent(s) or in out-of-state placement, the county shall document how the placement meets the best interests of the child (see Section 7.304.54, J).

E. A description of how the home is in reasonable proximity to the home of the parents or relatives and to the school the child has attended, including requirements regarding planning for educational stability as outlined in Section 7.301.241.

F. That the placement is the least restrictive, safe, and most appropriate setting available consistent with the best interests and specific needs of the child. This includes documentation of initial and on-going efforts to place the child with kin.

   If the child is moved to a more restrictive placement after the initial placement, the Family Services Plan documents how the more restrictive placement meets the child's needs.

G. Health and educational information shall be documented in the State Department’s automated system and updated at the time of each case review, including addresses and other contact information about the child’s current:

   1. Education providers, including school, school district, and BOCES contacts who assist in the coordination of enrollment and services, and the child’s academic progress.

   2. Health care providers and the status of health care information.

H. Specific plans for how the county will carry out any court determinations or orders concerning the child.

I. A description of the services and resources needed by the foster parents or kinship providers to meet the needs of the child and how those services and resources will be provided.

J. A description of the services provided to reunite the family, including the plan for visitation, or to accomplish another permanency goal. The visitation plan shall specify the frequency, type of contact, and the person(s) who will make the visit. At a minimum the visitation plan shall provide the methods to meet the following:

1. The growth and development of the child;

2. The child's adjustment to placement;

3. The ability of the provider to meet the child's needs;

4. The appropriateness of the parent and child visitation, including assessment of risk;

5. The child's contact with parents, siblings, and other family members; and,

6. Visitation between the child and his/her family shall increase in frequency and duration as the goal of reuniting the family is approached.

K. For youth under the age of fourteen (14), a description of services and a plan for accomplishing tasks to prepare youth to be age appropriately self-sufficient, when independent living services are provided.

L. For youth age fourteen (14) and older, a description of services and a plan for accomplishing tasks to assist the youth in preparation for self sufficiency and independent living as early in placement as possible but no later than sixty (60) calendar days after the youth's fourteenth (14th) birthday.

M. Reasonable efforts have been made to maintain the child in the home, or prevent or eliminate the need for removal of the child from the home, or make it possible for the child to return to the home; or when applicable, documentation of the circumstances that exist in which reasonable efforts to prevent removal or reunite the child and the family are not required (see Section 7.304.53, B, 3).

N. The specified permanency goal for the child shall be based on the individual needs and best interests of the child. Permanency goals shall include one of the following:

- Remain home;
- Return home;
- Permanent placement with a relative through adoption;
- Permanent placement with a relative through legal guardianship or permanent custody;
- Adoption (non-relative);
- Legal guardianship/permanent custody (non-relative);
- Return home through reinstatement of parental rights;
- Other planned permanent living arrangement through emancipation;
- other planned permanent living arrangement through relative long term foster care;
- other planned permanent living arrangement through non-relative long term foster care.

Permanency goals shall include the projected date (month, day, and year) by which the goal is to be accomplished for each child receiving services.

1. The initial permanency goal for the child is to return home with the following exceptions:

    a. Children whose parents are both deceased or have both voluntarily relinquished custody;

    b. Children whose parents cannot be located after family search and engagement activities, which shall begin no later than three working days following placement and shall not exceed three months;

    c. Children whose parents have been guilty of repeated and/or severe abuse or neglect of the child or the child's siblings such that termination of parental rights of both parents is appropriate; or,

    d. Children for whom it appears, after investigation, that a safe return home will not be possible even with the provision of reasonable efforts.

2. After twelve months, the child's caseworker and supervisor shall include written justification on the Family Services Plan for continuation of the goal of return home.

3. After eighteen months, the extraordinary circumstances which exist and the reasons which support the permanency goal of return home shall be documented in the Family Services Plan. Approval of the return home permanency goal by the caseworker, supervisor and county administrative review is documented in the case record.

4. In concurrent planning cases the alternate permanency goal shall be documented.

5. The permanency goal of other planned permanent living arrangement through emancipation shall only be used for youth ages sixteen to twenty-one.

6. For a child who has been in foster care under the responsibility of the state for fifteen (15) of the last twenty-two (22) months, the county shall either file a motion for termination of parental rights no later than the end of the fifteenth (15th) month or document and submit to the court at the next review the compelling reason why it is in the child's best interest not to terminate parental rights.

O. The steps the agency is taking to find an adoptive or other permanent living arrangement for a child for whom the permanency plan is adoption or placement in another permanent home.

P. The permanency goal for the child would be to remain home barring case circumstances that would indicate the need for an alternative permanency goal when a teen mother and her child are placed together in the same foster home and if a case is opened on the child. The county must see the child when visiting the teen mother in the foster home.

Q. Requirements for use of Other Planned Permanent Living Arrangement goals as follows:

1. The county department may consider Other Planned Permanent Living Arrangement (OPPLA) as a permanency goal:

    For youth who are sixteen (16) years of age or over and are demonstrating exceptional circumstances that prevent the youth from returning home, adoption, legal guardianship or permanent custody.

2. The goal shall be reviewed through the use of a family engagement meeting or equivalent team that reviews permanency needs. All of the following shall be submitted to and considered by the review team, and the recommendation shall be submitted to the court.

    a. Documentation pertaining to the completion of an intensive and ongoing examination of kin and permanent connections. This process shall also address:

        1) A comprehensive assessment of the youth's strengths and needs. In addition to updating the assessment of the youth's strengths and needs, the updated assessment or staffing shall address the youth's capacity to live within a family setting.

        2) This review team shall also consider the youth’s desired permanency outcome.

    b. A detailed description of efforts made to achieve permanency through the other goals and identification of the barriers to achieve them.

    c. A detailed description of how OPPLA is in the best interest of the youth.

3. The following is to be documented and made available to the court at each court review.

    a. Documentation of the barriers to permanency to date and compelling reasons why the other permanency goals are not attainable.

    b. Documentation of the youth’s desired permanency outcome including giving the youth an opportunity to attend each hearing to voice his/her desired goal.

    c. Documentation of intensive, ongoing, and as of the date of the hearing, unsuccessful efforts to return the youth home or secure a placement for the youth with a fit and willing relative (including adult siblings), a legal guardian, or an adoptive parent, including thorough efforts that utilize technology (including social media) to find biological family members for the youth.

    d. Documentation of the steps taken to ensure that youth are being supported in engaging in age or developmentally appropriate activities and social events including:

        1) The youth’s foster family home or other placement is following the reasonable and prudent parent standard; and,

        2) The youth has regular, ongoing opportunities to engage in age or developmentally appropriate activities (including consulting with the youth in an age-appropriate manner about the opportunities of the youth to participate in the activities).

4. Documentation which includes the review team's reasons for approving Other Planned Permanent Living Arrangement (OPPLA) shall also be entered in the Family Service Plan as directed by the Division of Child Welfare.

5. The use of this goal shall be reviewed by a family engagement or equivalent review team at a minimum of every six (6) months. The county shall request that the court review the case every twelve (12) months to determine if the youth is demonstrating exceptional circumstances that prevent the youth from returning home, adoption, legal guardianship or permanent custody.

6. If this goal is not achieved through relative care, a family-like network of significant people shall be developed to provide the youth with a sense of belonging and with support expected to endure over a lifetime.

R. Reinstatement of Parental Rights

1. The county department of human or social services may explore the use of reinstatement of parental rights as a permanency option for:

   a. Youth twelve (12) years of age and older, or child(ren) younger than twelve (12) years of age if they are part of a sibling group where at least one of the child(ren) or youth is twelve or older and is pursuing reinstatement of parental rights; and,

   b. Child(ren) younger than twelve (12), if they are part of a sibling group where at least one of the child(ren) or youth is twelve or older, and is pursuing reinstatement of parental rights; and,

   c. Child(ren) or youth who currently do not have a legal parent; and,

   d. Child(ren) or youth who currently are not in an adoptive placement and not likely to be adopted within a reasonable period of time; and,

   e Child(ren) or youth who had all other permanency options exhausted; and,

   f. Cases when the termination of parental rights was ordered at least three-years prior or when it is determined by the court to be in the best interest of the child or youth when termination occurred less than three years prior to the date of the petition for reinstatement is being filed with the court; and,

   g. Child(ren) or youth and former parent(s) that consent to parental rights being reinstated; and,

   h. Child(ren) or youth where it is in their best interest, including the financial best interest, to have parental rights reinstated; and,

   i. Former parent(s) who have remedied the issues that led to the termination and those issues did not involve founded allegations of sexual abuse or an incident of egregious abuse or neglect against a child, a near fatality, or a suspicious fatality.

   j. The child is in the legal custody of a county department.

2. A county department of human or social services that identifies reinstatement as a permanency option shall complete an assessment of the former parent(s). Completion of the assessment and the results of the assessment will be documented in the statewide case management system. The assessment shall include all of the following:

   a. Completing the Colorado family risk assessment tool, which must include a visit and inspection of the former parent's home;

b. Reviewing the reasons for the termination of parental rights and determining if the concerns identified have been remedied and do not currently exist or present a safety concern;

c. Conducting the following background checks on the former parent(s) and any other adults eighteen (18) years of age or older in their home and share the results with all parties to the case:

1) Child abuse/and/or neglect records check in every state where any adult residing in the home has lived in the five years preceding the filing of the petition for reinstatement;

2) Fingerprint-based criminal history checks from the Colorado Bureau of Investigation (CBI), or other state background check if the parent lives in another state, and the Federal Bureau of Investigation (FBI);

3) Review the state Judicial Department's case management system and include in the case record; and,

4) Review the CBI sex offender registry and the national sex offender public website operated by the United States Department of Justice for:

a) Known names and addresses of each adult residing in the home; and,

b) Address only of the home.

3. A safety assessment shall be completed.

4. Upon the decision to pursue reinstatement of parental rights; only the county department, guardian ad litem, or a youth sixteen (16) years of age or older may file the petition for reinstatement.

a. The petition for reinstatement of parental rights should be filed in the county who has custody of the child(ren) or youth through the dependency and neglect court case.

b. The petition shall be filed in the dependency and neglect court case where the termination of parental rights occurred for the former parent(s) or in the event that the current open dependency and neglect case is a termination of the adoptive parent's rights, then the petition shall be filed in that court case, as it grants custody of the child(ren) or youth to the county.

c. If the county is contacted by a former parent inquiring about reinstatement, the county must notify the guardian ad litem (gal) within thirty (30) calendar days after the contact and provide them with the name and address of the former parent(s).

d. Once the court sets an initial hearing, the county shall develop and report to the court the following:

1) Whether the former parent(s) has remedied the conditions that led to the termination;

2) Based on the assessment of the former parent, including the outcome of the Colorado family risk assessment tool, the transition plan shall include supports or treatment needed for the child(ren) [or] youth and former parent(s) to help make the reinstatement a success;

3) Whether the former parent(s) can provide a safe and stable home for the child(ren) or youth;

4) A visitation or temporary placement plan with the former parent(s) for up to a six month trial period where custody remains with the department; this plan will be approved or modified at this initial hearing.

a) Updates about the visits, transition plan, and supports shall be provided at each review hearing and no later than thirty (30) calendar days prior to the expiration of the trial home period.

b) At any point the placement is deemed no longer safe or in the best interest of the child(ren) or youth, removal shall be in accordance with procedures outlined in Sections 19-3-401 and 19-3-403, C.R.S.

5) Whether the child(ren) or youth will lose or gain any benefits or services (Medicaid, Chafee, etc.) as a result of the reinstatement being granted.

5. If the court grants the order, the county shall select reinstatement of parental rights as the closure reason, in the state automated case management system.

6. If the court denies the order the county department shall:

a. Arrange for immediate placement of the child(ren) or youth, if the child(ren) or youth is still in the former parent's home;

b. Set a permanency hearing to determine a new permanency goal and plan for the child(ren) or youth.

7.301.241 Education Requirements for Children in Out-of-Home Placement [Rev. eff. 2/1/10]

A. County departments shall coordinate with the local school, school district, and/or Board of Cooperative Education Services (BOCES) to assure there is a plan for educational stability.

B. Documentation shall be entered into the family services plan to address relevant:

1. Provider responsibilities, and

2. Information related to the appropriateness of the out-of-home placement in relation to the educational placement including, but not limited to:

a. Efforts that are made such as considering the proximity of the placement to the child's school at the time of out-of-home placement/change in placement, providing transportation to maintain the child in the same school attended prior to the out-of-home placement/change in placement, or other factors that were considered, such as the appropriateness of the current educational placement.

b. Reasons why remaining in the same school is not in the best interests of the child and efforts that were made to coordinate with the local school, school district, and/or BOCES to assure enrollment in a new school, including timely provision or transfer of the educational records to the school as defined in Section 22-32-138, C.R.S.

1) The county department with legal custody of the child shall notify the sending school/school district of a transfer request as soon as possible. The school/school district must deliver the child's education information and records to the receiving school within five (5) school days.

Alternatively, the county department may request that the sending school/school district release of the child's records to a designated employee of the county department for the sole purpose of transferring the information to the new school.

2) The child shall be enrolled within five (5) school days following the receipt of the education records.

c. Efforts to assure that the child or youth meets the state compulsory school attendance requirements.

C. For procedures for educational assessments when children are in out-of-home care:

1. The caseworker shall make a written referral for an educational assessment to the designated representatives of the child's school district of jurisdiction before a non-emergency placement in a group home, group center, child placement agencies, or residential child care facility.

2. In emergency placements, the caseworker shall make a verbal notification within five working days and a written notification within ten working days after the placement.

3. Educational costs of placements made without the required referral are not reimbursable to the county department.

4. If the educational assessment determines that the child has an educational disability, which means that the child qualifies for 504 or special education services, the county and district of jurisdiction shall meet to determine if the educational needs of the child can be met in the placement or the Core Services program.

5. If the child is not educationally disabled, the county may be responsible for educational costs.

7.301.242 Procedures for Maintaining Education Records [Rev. eff. 4/1/12]

For children in out-of-home placement, the county department shall maintain records within the case file and/or in the fields available in the education section of the automated system that include, but are not limited to, identification of:

A. School name and address at the time of removal from the home.

B. Current school name, address, and telephone number.

C. Grade or classroom designation.

D. Annual grades.

E. Educational needs including, but not limited to, special education and summaries of the efforts of the county department to address the needs.

F. Educational plans based on individual needs, including an IEP.

G. Educationally based evaluations.

7.301.243 Early Intervention and Supports for Children Birth to Age of 3 in Out-of-Home Placement, Part C, of the Individuals with Disabilities Education Act (IDEA)

A. Documentation of referral, services, and planning shall be recorded in the education section of the automated system.

B. Infants and children under age 3 who may have delays in development or established conditions associated with a disability shall be referred to the local “Child Find” effort. The local “Child Find” may be the School District/Board of Cooperative Educational Services (BOCES), Early Childhood Connections (ECC) organization, or an appropriate community resource for assessment for the identification of needs that may impact the child's development.

C. The county department shall participate with the school district and/or ECC; or community resource, family, and other pertinent individuals to develop a plan to address identified service and support needs and for transition planning.

7.301.3 FAMILY SERVICES PLAN REVIEW AND UPDATES

A continuing reassessment and documentation of the Family Services Plan in relationship to progress to goals shall be done. If a significant change in client service needs occurs, a redetermination of eligibility and/or a reassessment of services shall occur and the Family Services Plan shall be amended, if applicable.

A. The Family Services Plan shall be reassessed prior to termination of the plan.

B. The reassessment should be performed jointly with the client and in situations where joint evaluation cannot occur, the reasons shall be documented in the case record.

1. Family members' signatures should be obtained on the plan at the time of the review.

2. Family members should be advised of the child welfare grievance resolution process of the county.

C. When assessment indicates reunification is appropriate, the Family Services Plan shall be updated to reflect the specific time frame and services necessary for the child to be safely returned to and maintained in the home.

D. The results of the review shall be documented in the case record.

E. The Family Services Plan shall be reviewed in conference with the caseworker and supervisor every 90 calendar days. The six month Administrative Review of children in out-of-home placement may substitute for a 90 days review. The conference shall address:

1. Appropriateness of the services being provided to the child, parent(s) and foster parent(s), if applicable;

2. If applicable, appropriateness of the child's placement and how it meets the child's needs;

3. That the child's safety is protected in the placement;

4. The child, the parents, and other appropriate family members are receiving the specific services mandated by the Family Services Plan and are progressing toward the specific objectives identified in the plan;

5. Identification of barriers hindering the progress;

6. Appropriateness of existing timetables;

7. Whether additional or different services are needed and how they will be provided;

8. Appropriateness of the child's permanency goal:

   a. Appropriateness of efforts to finalize a permanent plan;

   b. Appropriateness of efforts to finalize a permanent placement.

9. In those cases in which there are multiple service providers, whether the provision of services is coordinated to assure the timely delivery of mandated services.

F. The following cases are to be set for further review by the county department:

1. All cases in which a child has been placed in four different placements, excluding a return home;

2. All cases in which a child has a current goal of return home for more than twenty four months;

3. All cases in which the child has had a permanency goal of adoption for more than one year and has not been placed in an adoptive home; and,

4. All children who have been returned home and have re- entered care more than twice and have a current plan of return home.

5. All children for whom the permanency goal is another planned permanent living arrangement.

7.302 CHILD WELFARE CHILD CARE [Rev. eff. 4/1/12]

Child Welfare Child Care is a service to maintain children in their own homes or in the least restrictive out-of-home care when there are no other child care options available. Child Welfare Child Care is not twenty-four (24) hour care.

Child care services for school-age children during regular school hours must be different from, and cannot be substituted for, educational services that school districts are required to provide under the Colorado Exceptional Children's Act.

7.302.1 ELIGIBILITY CRITERIA

In addition to meeting eligibility requirements in the General Information and Policies section, the county department shall ensure that there are no other child care options available and the child is eligible for Program Area 4, 5, or 6 as described in this manual.

7.302.2 CHILD CARE ARRANGEMENT AND FAMILY SERVICES PLAN [Rev. eff. 4/1/12]

The county department shall:

A. Complete the relevant sections of the Family Services Plan.

B. Document how the child care plan provides for effective intervention for maintaining children in their own homes or in the least restrictive out-of-home care.

C. Provide the client with information concerning child care services.

D. Have face-to-face or telephone contact with the child and/or family a minimum of once a month, and with the provider a minimum of quarterly when the reason for the child care is child protection. These contacts shall include a discussion of current progress and future direction. If the child is in placement, the contact requirements in Section 7.001.6 (12 CCR 2509-1) shall be used.

E. Assess a client fee when applicable. Refer to Section 3.905, B (9 CCR 2503-1).

F. Develop written criteria to be used to determine when the State set parental fee should be waived.

G. Follow State rules for the Colorado Child Care Assistance Program (CCCAP) as found in rule manual Volume 3 “Income Maintenance”, Section 3.900 et seq. (9 CCR 2503-1).

7.303 CORE SERVICES PROGRAM

7.303.1 DEFINITIONS [Rev. eff. 1/1/15]

The Core Services Program consists of the following services:

A. “Aftercare Services”: any of the Core services provided to prepare a child for reunification with his/her family or other permanent placement and to prevent future out-of-home placement of the child.

B. “County Designed Services”: innovative and/or otherwise unavailable services proposed by a county that meet the goals of the Core Services Program.

C. “Day Treatment”: comprehensive, highly structured services that provide education to children and therapy to children and their families.

D. “Home Based Intervention”: services provided primarily in the home of the client and includes a variety of services which can include therapeutic services, concrete services, collateral services and crisis intervention directed to meet the needs of the child and family. See Section 7.303.14 for service elements of therapeutic, concrete, collateral, and crisis intervention services.

E. “Intensive Family Therapy”: therapeutic intervention typically with all family members to improve family communication, functioning, and relationships.

F. “Life Skills”: services provided primarily in the home that teach household management, effectively accessing community resources, parenting techniques, and family conflict management.

G. “Mental Health Services”: diagnostic and/or therapeutic services to assist in the development of the family services plan, to assess and/or improve family communication, functioning, and relationships.

H. “Sexual Abuse Treatment”: therapeutic intervention designed to address issues and behaviors related to sexual abuse victimization, sexual dysfunction, sexual abuse perpetration, and to prevent further sexual abuse and victimization.

I. “Special Economic Assistance” means emergency financial assistance of not more than $2,000 per family per year in the form of cash and/or vendor payment to purchase hard services. See Section 7.303.14 for service elements of hard services.

J. “Substance Abuse Treatment Services”: diagnostic and/or therapeutic services to assist in the development of the family service plan, to assess and/or improve family communication, functioning and relationships, and to prevent further abuse of drugs or alcohol.

7.303.11 Program Goals [Rev. eff. 1/1/14]

The goals of the Core Services Program are to:

A. Focus on the family strengths by directing intensive services that support and strengthen the family and/or protect the child;

B. Prevent out-of-home placement of the child;

C. Return children in placement to their own home; or,

D. Unite children with their permanent families.

E. Provide services that protect the child.

“To return children in placement to their own home or to unite children with their permanent families” is defined as return to the home of a parent, an adoptive placement, guardianship, independent living placement, foster-adoption placement or to live with a relative/kin if the goal for the child in the Family Services Plan is to remain in the placement on a permanent basis.

7.303.12 Access

County departments must make all of the Core services, except for county designed services, available to any client who meets the criteria for the service as documented in the Family Services Plan.

7.303.13 Program Eligibility [Rev. eff. 1/1/14]

In order to be eligible for the Core Services Program, each child, youth, and family shall:

A. Meet Program Area Three eligibility criteria; or,

B. Meet the criteria for Program Area 4, 5, or 6 target group; and,

1. Meet the Colorado out-of-home placement criteria at the time of each placement in any Core Services Program; and/or,

2. Require a more restrictive level of care but may be maintained at a less restrictive out-of-home placement or in his/her own home with Core Services.

7.303.14 Service Elements

Core Services Programs may include any of the following elements of service:

A. "CollateralServices": teaching families to work with community agencies such as health care, mental health treatment services, substance abuse treatment services, job training, information and referral, advocacy groups, housing assistance agencies, and schools.

B. "Concrete Services": concentrated assistance in the development and enhancement of parenting skills, stress reduction, problem solving, communication skills, budget and household management and recreational activities.

C. "Crisis Intervention Services": phone or in-home counseling, medical services, respite or other interventions available on a 24-hour basis.

D. "Diagnostic and Treatment Planning Services": various evaluations of the child and family to facilitate the development of the Family Services Plan and the move of the child to a permanent placement.

E. "Hard Services": the purchase of services or distribution of cash payments for the following:

- housing funds, including rent, repairs, utilities, or rent deposits
- food or money for food
- clothing
- transportation to include fares, auto repair, auto fuel, auto insurance or bus pass
- uncovered medical or dental expenses
- appliances, furniture
- emergency shelter
- employment related expenses, such as tools or dues

F. "Therapeutic Services": interactive parenting, family therapy, support groups, educational groups, problem solving methods, communication skills, and parent-child conflict management.

7.303.15 Service Time Frames

A. Services may be provided for up to eighteen (18) months.

B. One or more six month extensions to the initial eighteen months placement are optional if approved by an internal county department administrative review and documentation of approval is in the case record. The in-house review shall include casework or supervisory staff and one or more administrators not providing direct services to the family.

7.303.16 Workload Standards

A. Each worker engaged in home based intervention, intensive family therapy, and sexual abuse treatment programs shall have at least two (2) and not more than twelve (12) at risk families depending on the intensity of service needed per family.

B. Life skills shall have staff persons assigned to work no more than twenty (20) families.

C. Supervisory workload ratio shall be six (6) caseworkers per supervisor. Contractors shall provide comparable supervision.

7.303.17 Performance Indicators [Rev. eff. 4/1/12]

Core Services Program success shall be measured by the degree to which the following performance indicators identified in the Family Services Plan are achieved by clients.

A. "Family Conflict Management": The family shall demonstrate capacity to resolve conflicts and disagreements contributing to child maltreatment, running away, status offenses and delinquent behavior.

B. "Parental Competency": Parents will show ability to maintain sound relationships with their children and provide care, nutrition, hygiene, discipline, protection, instructions, and supervision.

C. "Household Management Competency": Parents will be able to provide safe environment for their children through competent household cleaning and maintenance, budgeting and purchasing, and structuring mealtime and families activities.

D. "Resources Access Competency": Parents will demonstrate ability to obtain help from the community and within the local, state, and federal governments.

E. "Personal and Individual Competency": Families will show awareness in terms of self-esteem, victim awareness, management of one's own history of victimization, sex education, peer relationships enhancement establishing appropriate physical and emotional boundaries for themselves and for their children, demonstrating assertive behavior, and assuming responsibility for one's own behavior.

F. "Academic, Behavioral and Emotional Competency": Children involved in day treatment settings will demonstrate ability to meet school requirements, to control behavior, and to control and communicate feelings.

G. "Competence in Maintaining Sobriety": Parents will be able to maintain sobriety and/or develop relapse plans to provide for the care, nutrition, hygiene, discipline, protection, instruction, and supervision of the child(ren). Child(ren) will be able to maintain sobriety and/or develop relapse plans to avoid running away, status offenses, or delinquent behavior.

The county department shall identify the degree to which the client met the treatment goals by entering the appropriate service leave reason on the Department's automated reporting system when closing the service on the Department's automated reporting system.

7.303.2 INTEGRATED CARE MANAGEMENT PROGRAM

7.303.21 Definition

Integrated Care Management (ICM) allows a county-optional, State-approved plan for the provision of selected child and family services. County ICM plans shall identify specific principles, activities, and program components to improve outcomes for children, youth, and families; to support best practices; to advance selected care management strategies; to improve quality and accountability; and, to provide cost efficient delivery of needed services.

7.303.22 Program Goals

The goals of the Integrated Care Management program shall include:

A. More efficient and responsive services systems for children, youth and families.

B. Increased flexibility and collaboration across multiple agencies and funding streams to meet consumer needs and avoid cost shifting between systems.

C. Encouragement and authorization for an integrated services system that incorporates blended funding and administration.

D. Focus on quality and outcome driven services with accountability for an entire array of services that families need.

E. Development of data systems to support these goals and to allow administrators and policy makers to better manage and evaluate.

7.303.23 Availability

Integrated Care Management is an optional program for individual county or groups of counties. Counties may elect to participate by operating a State approved Integrated Care Management program.

7.303.24 Program Eligibility

County departments shall define program eligibility criteria in the proposed plan, which must include all program components and define how each principle will be implemented. The county programs will be approved by the State Department.

7.303.25 Program Components

Each plan must contain the following program components. Counties may operationalize the program components as listed beneath each component or in another manner approved by the State Department.

A. Utilization Management (UM) - A system of inter-agency services review and approval procedures designed to ensure that the services provided to a specific child or family at a given time are cost-effective, clinically appropriate and least restrictive. The goal of utilization management is to provide the most appropriate, least restrictive service that meets the needs of the child and the family. Utilization management may include:

1. Application implemented with any or all of the services used by the county departments.

2. Concurrent review activities that focus on reducing or increasing any level of service and may be conducted by dedicated staff and/or a multi-agency review team.

3. Written UM guidelines including standardized UM processes and criteria for UM that may include definitions for key levels of care.

4. Provider profiling where data is supplementally tracked, differentiating provider performance and competencies.

B. Case Management (CM) - Refers to a process by which the services provided to a specific child or family are tracked and managed to achieve optimum, cost effective outcomes. Case management activities may include:

1. Identification and tracking of selected cases or types of cases.

2. Systematic management approach that integrates tracking and targeting of cases for identified, targeted interventions and outcomes.

3. Varying levels of case management across different providers integrating provider profiling and collaborative activities, such as involving providers in case management activities.

4. Procedures which minimize time between referral and delivery of care, and provide dedicated resources and support for any or all of service referrals.

5. Prevention and early intervention in which the county offers supports before more intensive intervention is needed.

C. Resource Strategies - Involve efforts to organize and manage resources to achieve the goals of the county department paying for care. Resource strategies may include:

1. Contract incentives employing shared risks or performance incentives to influence provider behavior and service delivery.

2. Provider resource structure offering efficiencies and standardized care approaches that promote efficient and appropriate care delivery.

3. Resource blending using collaborative efforts with other child and family serving agencies.

D. Information Management Strategies (IM) - the identification, collection, analysis and use of various types of data to further the county's mission and goals. IM may include:

1. Tracking information related to service use including identifying service utilization costs, aggregating and reporting.

2. Creating routine reports and IM activities including trend analyses by case type, provider, services category and other variables; or using complex multi-level analyses to identify cost drivers and adjust risks.

E. Collaborative Integration (CI) - Inclusion of consumers and agencies in the community in the development of the agency's vision, mission and goals and in the implementation of the ICM program. Formal efforts may be directed at coordinating services, integrating care and cooperation between agencies and consumers and may include:

1. Plans for integration, contractual agreements or blending of resources with community agencies.

2. Strategies to utilize formal and informal community based organizations and family support networks to ensure child safety and promote child and family well-being.

3. Plans to have formal inter-agency agreements, Memorandums of Understanding and contracts with community based organizations and a process to engage community partners.

F. Quality Improvement (QI) - Formal organizational processes that emphasize the ongoing improvement of both the process of service delivery and client outcomes through the incorporation of data driven approaches and the institution of systems of monitoring, feedback and organizational learning. QI activities may include:

1. Implementing a formal QI process, which may be narrowly, implemented expanding over time to agency-wide including a written plan and formal process.

2. Implementing a training schedule that trains staff on some aspect of any of the ICM principles or information obtained as a result of use of the principles, such as the outcome of the quality improvement process.

3. Implementing Quality Improvement activities for at least one high cost driver and having dedicated staff for QI activities.

7.303.3 COLLABORATIVE MANAGEMENT PROGRAM [Rev. eff. 8/1/15]

The Collaborative Management Program (CMP) is an optional county program approved by the Department of Human Services for a uniform system for agencies to share resources or to manage and integrate the treatment and services provided to children, youth, and families who would benefit from a multi-system approach to services and service delivery.

7.303.31 Program Goals [Rev. eff. 8/1/15]

The goals of the Collaborative Management Program include:

A. Reducing duplication and fragmentation of services to children, youth, and/or families who would benefit from integrated multi-agency services or approach;

B. Increasing the quality, appropriateness, and effectiveness of services provided to children, youth or families who would benefit from integrated multi-agency services or approach; and,

C. Encouraging cost sharing among service providers.

7.303.32 Availability [Rev. eff. 8/1/15]

A. Collaborative Management is an optional program for an individual county or groups of counties. Counties may elect to participate by entering into a Memorandum of Understanding (MOU) that is designed to promote a collaborative system to coordinate and manage the provision of services to children, youth, and families who would benefit from an integrated multi-system approach to service and service delivery. Counties must use the MOU template provided by the State and developed in conjunction with the Colorado Judicial Districts.

B. The MOU shall be between interested county departments of human/social services and local representatives of each of the following agencies:

1. The local judicial district(s), including probation services;

2. The health department, whether a county, district, or regional health department;

3. The local school district(s);

4. Each community mental health center;

5. Each Behavioral Health Organization (BHO);

6. The Division of Youth Corrections;

7. A managed service organization for the provision of treatment of services for alcohol and drug abuse; and,

8. A community domestic abuse program, if representation is available.

C. Counties electing to participate in the MOU may add non-mandatory partners or organizations and are encouraged to include a family member or family advocacy organization as defined in Section 26-18-102, C.R.S., and a youth member or youth advocacy organization.

D. Counties will be provided with guidance/instructions for the completion of the MOU established by the State Department to help in the completion of the MOU process.

E. Counties will be provided with a third quarter progress report by the State Department to help in the election of the performance measures for the MOU.

F. MOUs must be submitted to the Colorado Department of Human Services on or before May 1st of the fiscal year prior to the MOU agreement year for review and feedback. Completed MOUs, including all signatures, are due on June 30th of the fiscal year prior to the MOU agreement year. Any MOU received after that date will not be accepted and will result in a loss of funding for the next fiscal year.

G. Reviews of each county's MOU will be completed by the State Department and will consist of a review and completion of the MOU review checklist. The review checklist consists of the following areas:

1. A list of mandated partners;

2. MOU deadlines;

3. Oversight group documentation;

4. Target population review;

5. Services provided review;

6. Funding sources review;

7. Reinvestment of funds review;

8. Collaborative Management process review;

9. Performance–based measures review;

10. Confidentiality compliance review; and,

11. Review of required signatures.

H. Each Collaborative Management Program that meets the criteria will receive a signed letter of acceptance from the State Department approving the MOU for the next fiscal year within fifteen (15) days of such approval.

7.303.33 Program Components [Rev. eff. 8/1/15]

Each Memorandum of Understanding (MOU) shall contain the following program components.

A. Interagency Oversight Group (IOG)

A system of inter-agency oversight will be developed in the MOU through the creation of an Interagency Oversight Group (IOG). Each IOG must include a local representative of each party to the MOU, each of whom shall be a voting member of the IOG. In addition, the IOG may include advisory members.

1. The MOU shall define the following components of the IOG:

   a. Membership requirements;

   B. The status of each party as a voting member or advisory member;

   C. Procedures for election of officers;

   D. Procedures for resolving disputes by a majority vote of voting members; and,

   E. Procedures for the development of subcommittee groups.

2. These components shall be maintained in each IOG's by-laws or procedure guide.

B. Target Population

The CMP target population consists of at-risk children and youth ages birth through twenty one (21) years of age and their families who would benefit from a multi-system approach or integrated service plan as defined in the MOU. Each MOU must include the population that will be served through the designated Individualized Service and Support Team (ISST) or multi-system involved team(s) and CMP prevention programs. Children and youth who are at-risk will be determined in accordance with parties to the MOU.

1. The ISST or multi-system involved team must include multiple disciplines in the delivery of services for the target population.

2. CMP prevention programs must demonstrate a multi-systemic approach. Programs must demonstrate in the MOU that multiple disciplines were involved in the development or enhancement of the program or that multiple agencies are involved in the delivery of the service.

3. Programs must demonstrate that the program was developed to reduce bifurcated services aimed at the same outcome and demonstrate, if not provided through CMP, the bifurcated approach would bestow a burden to each of the systems. Each MOU must articulate how the joint approach will benefit children, youth, and/or families in their communities.

C. Elements of Collaborative Management

Each county/region MOU must establish a collaborative management process that addresses:

1. Risk sharing;

2. Resource pooling;

3. Performance expectations;

4. Outcome monitoring; and,

5. Staff training.

The definitions of each for the elements of Collaborative Management shall be maintained by each IOG's by-laws or procedure guide and provided as an appendix to the MOU on an annual basis.

D. Monitoring

The Department will monitor at least one CMP per quarter to ensure implementation of the collaborative management program in accordance with statutes, rules, and the MOU.

1. CMP monitoring will include:

a. A review of the IOG process;

b. A review of the by-laws or procedure guide ensuring it includes the elements required in statute and rule; and,

c. The accuracy and reliability of county-level program performance data.

2. A review of prevention programs to ensure that each is in compliance with the definitions outlined under target population in the MOU.

3. A review of the data reporting for all program components and expenditure data.

4. Each county/region must enter all participants served through the CMP program's target populations: demographics, services, outcomes, and expenditures in the designated data collection system as determined by the Department, so that it can be tracked and monitored.

7.303.34 Reporting [Rev. eff. 8/1/15]

Each IOG must provide an annual report to the State Department that includes:

A. The actual number of children, youth and/or families served through the Individualized Service and Support Team (ISST) or multi-system involved staffing and the outcomes of the services provided, including a description of any reduction in duplication or fragmentation of services provided and a description of any significant improvement in outcomes for children, youth and/or families;

B. The actual number of children, youth, and/or families served through the multi-systemic prevention program and the outcomes of the services provided, including a description of any reduction in duplication or fragmentation of services provided and a description of any significant improvement in outcomes for children, youth, and or families;

C. A description of estimated costs of implementing the Collaborative Management Program and any estimated cost-shifting or cost-savings that may have occurred;

D. An accounting of funds that were reinvested in additional services provided to children, youth, and/or families due to cost-savings that may have resulted from exceeding performance measures; and,

E. A description of any identified barriers to provide effective services.

7.303.35 Incentive Funding for Performance Measures [Rev. eff. 8/1/15]

In order to receive incentive funds, the county must implement Collaborative Management components, achieve performance measures indicated in its MOU, and have a signed Collaborative Management MOU accepted by the Colorado Department of Human Services, Division of Child Welfare, on or before June 30 of the current fiscal year.

A funding formula based on a Collaborative Management Program (CMP) site meeting three process measures and three performance measures will determine the CMP's portion of the incentive funding allocation.

A. Counties will receive the meaningful minimum based on county size and meeting process measures of Collaborative Management. IOGs will be required to meet three of the following six process measures in order to receive the meaningful minimum funds.

1. IOG Meeting Attendance

   Measure: mandatory members of the IOG will be present 75% of the time at the four required meetings in a fiscal year. Sign-in sheets and meeting minutes will confirm attendance.

2. Family Agency or Member Participation on the IOG

   Measure: a voting family member or agency will be in attendance at 50% of all IOG meetings held within the fiscal year. Sign-in sheets and meeting minutes will confirm attendance.

3. 75% of the Agencies Contribute Resources at Service Level, Either In-Kind or Actual Monies

   Measure: all integrated service plans identify two or more agencies in the plan. A copy of those service plans will be retained by the CMP coordinators.

4. Use of Evidence Based or Evidence Informed Practices

   Measure: at least one evidence based or evidence informed practice will be implemented under the IOG, as reflected in the expenditures section of the annual report.

5. Process of Continuous Quality Improvement Used by the IOG

   Measure: IOG will meet no less than quarterly and meeting minutes will reflect the continuous quality improvement practices used to inform and improve efforts.

6. Evidence of Cost-Sharing Among IOG Members

   Measure: cost-sharing will be reflected in the expenditures section of the annual report.

B. Performance measures issued by the department each fiscal year and population served will determine the remainder of the incentive funding allocation.

1. Population served will be actual number of clients served that year.

2. IOGs must choose three standard performance measures to strive to achieve in their MOU. For every performance measure achieved, a county will receive funding based on a weighting system. The weighting will be based on population served and number of outcomes achieved that were selected in their MOU.

7.303.36 General Fund Savings and Distribution [Rev. eff. 8/1/15]

County departments must elect to either retain the state general share of the county under-expenditure of the General Fund county child welfare block allocation or participate in surplus distribution for each fiscal year in their MOU. If a county/region chooses to retain the savings realized, they must specify the procedure by which such savings will be reinvested, including to which parties to the MOU such reinvested savings will be available.

The Department, after input from the Child Welfare Allocations Committee, shall develop the method for determining General Fund savings realized as the result of counties' implementation of a collaborative system of management of multi-agency services provided to children and families related to the funding sources specified in an MOU.

7.303.4 HUMAN TRAFFICKING [Eff. 11/1/15]

A. In any open Program Area 4, 5 or 6, when the county department of human or social services has reason to believe a child/youth is, or is at risk of being, a victim of sex trafficking the county department shall:

1. screen the child/youth for risk of sex trafficking using a state approved sex trafficking screen;

2. determine service needs;

3. Document the details of the SCREEN, assessment, and services in the state automated case management system;

4. Report immediately, and no later than twenty-four (24) hours from when the county department becomes aware, to the local law enforcement agency; and,

5. Document the details of the report to law enforcement in the state automated case management system.

B. If a child/youth who is in the legal custody of the county department of human or social services is missing then the county departments shall:

1. Report immediately and no later than twenty-four (24) hours from when the county department receives notification that the child/youth is missing, to the local law enforcement agency and to the National Center for Missing and Exploited Children (NCMEC). The county department shall document the details of the reports in the state automated case management system.

2. Make reasonable efforts to locate a child/youth who is missing and document those efforts a minimum of once per month in the state automated case management system:

3. Upon the return of the child/youth, make reasonable efforts to complete the

following activities and document those efforts in the state automated case management system:

a. Determine the primary factors that contributed to the child/youth being missing;

b. Determine the child/youth's experiences while missing, including conducting a sex trafficking screen to determine if the child/youth is a possible sex trafficking victim; and,

c. Respond to factors identified in 3, A and B, above, in current and subsequent services.

7.304 PLACEMENT SERVICES

7.304.1 DESCRIPTION [Rev. eff. 1/1/16]

A. Placement services are services provided to children in Program Areas 4, 5, and 6 who:

1. Meet the criteria for out-of-home placement and the target group criteria; and,

2. Are placed outside their homes because of a temporary emergency removal by law enforcement, court action, or a voluntary placement agreement; and,

3. Are in a placement approved by the county department.

B. The range of placement services for children for whom the goal is to return home includes kinship care, foster care homes, specialized group facilities, and residential child care facilities.

C. The range of placement services for children for whom the goal is not to return home includes adoption, kinship care, foster care homes, specialized group facilities, and residential child care facilities.

D. Placement options in this section do not apply to American Indian/Native Alaskan children. Refer to Section 7.309.7 for order of placement preference as required by the Indian Child Welfare Act.

7.304.2 PLACEMENT OPTIONS

7.304.21 Kinship Care [Rev. eff. 1/1/16]

A. Definition: Refer to Section 7.000.2 (12 CCR 2509-1) for the definition of "kin" and "non-certified kinship care".

1. Maintain children in their families in order to provide meaningful emotional and cultural ties across the life span.

2. Minimize the trauma of out-of-home placement.

3. Support and strengthen families' ability to protect their children and to provide permanency.

B. Kinship care shall be utilized to:

1. Maintain children in their families in order to provide meaningful emotional and cultural ties across the life span.

2. Minimize the trauma of out-of-home placement.

3. Support and strengthen families' ability to protect their children and to provide permanency.

C. Kinship care services when the county department has not assumed legal authority for placement or taken legal custody:

When a child meets target group eligibility and his/her parent(s) do not pose an ongoing threat to the child, the county department shall:

1. Enable the family to make voluntary arrangements for temporary custody or guardianship by kin.

2. For children who meet the out-of-home eligibility criteria, the county department shall provide parents and kin caring for the child in-home family preservation services to ensure the child's safety, well-being, and smooth transition back to the parent's home. When return to parent's home is not a viable option, family preservation service to kin shall be used to help to provide permanency for the child. The child may receive such in-home services without court involvement.

3. It is not required that the county department complete the kinship care or foster care certification process in these cases. A family assessment using the Department's modified Structured Analysis Family Evaluation (SAFE) for uncertified kinship families to determine the character and suitability of the family, appropriateness of the home and child care practices may be completed.

4. The county department is not required to provide legal representation to kinship families.

5. These kinship providers are eligible for all forms of support listed in Section 7.304.21, D, 3, except certified foster care payments.

6. Prior to facilitating a placement, complete a background check in all cases for each adult (18 years and older) living the home for the following:

a. Child abuse and/or neglect records in every state where any adult residing in the home has lived in the five years immediately preceding the date of application, except that child abuse and neglect records in other states where an adult has resided shall be initiated no later than seven (7) working days following placement.

b. Fingerprint-based criminal history record information checks from the Colorado Bureau of Investigation (CBI) and the Federal Bureau of Investigation (FBI) shall be conducted prior to placement unless it is an emergency placement (see Section 7.304.21, D, 2, f) in order to determine if any adult who resides in the home has been convicted of:

1) Child abuse, as specified in Section 18-6-401, C.R.S.;

2) A crime of violence, as defined in Section 18-1.3-406, C.R.S.;

3) An offense involving unlawful sexual behavior, as defined in Section 16-22-102 (9), C.R.S.;

4) A felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in Section 18-6-800.3, C.R.S.;

5) A felony involving physical assault, battery, or a drug-related offense within five years of the date of application for a certificate;

6) A pattern of misdemeanor convictions within the ten (10) years immediately preceding submission of the application. "Pattern of misdemeanor" shall be defined as:

a) Three (3) or more convictions of 3rd degree assault as described in Section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in Section 18-6-800.3, C.R.S. ; or,

b) Five (5) misdemeanor convictions of any type, with at least two (2) convictions of 3rd degree assault as described in Section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in Section 18-6-800.3, C.R.S.; or,

c) Seven (7) misdemeanor convictions of any type; or,

7) Any offense in any other state, the elements of which are substantially similar to the elements of any one of the offenses described in 1-6, above.

"Convicted" means a conviction by a jury or a court and shall also include a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, an adjudication, and a plea of guilty or nolo contendere. This does not apply to a diversion, deferral or plea for a juvenile who participated in diversion (defined in Section 19-1-103(44), C.R.S.), and does not apply to an adult who successfully completed the child abuse and/or neglect diversion program (defined in Section 19-3-310, C.R.S.).

c. Review the court case management system of the State Judicial Department and include a copy of the information in the case record; and,

d. Review the CBI sex offender registry and the national sex offender public website operated by the United States Department of Justice at initial placement and annually, and include a copy of the information in the case record:

1) Known names and addresses of each adult residing in the home; and,

2) Address only of the non-certified kinship care home.

7. A county department of human or social services shall not place a child and/or youth in the home if the kin or any adult eighteen (18) years of age or older who resides in the home has been convicted of any offense described in Section C, 6, B, 1-7, is a registered sex offender or, following a review of a finding of child abuse and/or neglect in the state automated case management system, it is determined the placement is unsafe.

8. If a disqualifying factor (refer to Section 7.000.2, 12 CCR 2509-1) is identified following the placement of a child and/or youth in a non-certified kinship care home, the county department of human or social services shall evaluate the appropriateness of continuing the placement. A plan shall be developed to address the concerns as soon as possible and the concerns shall be remedied no later than two weeks after the date of placement. Document the following in the state automated case management system in the contact log in the resource section or in the record:

    a. Review the circumstances of the placement;

    b. Evaluate the vulnerability of the child and/or youth, including age and development;

    c. Safety issues impacting the child and/or youth;

    d. Supports needed by the non-certified kinship caregiver(s); and,

    e. Identify alternative solutions to removal of the child or youth from the placement, and document the solution in the family service plan including, but not limited to, the family's current status in the following domains:

        1) Risk and safety;

        2) Level of functioning;

        3) Strengths;

        4) Specific areas of concern to be addressed;

        5) Services and supports needed; and,

        6) Changes that must occur to mitigate the concerns.

9. A county department of human or social services may place or allow continued placement of a child and/or youth with a non-certified kin or other adult living in the home that would otherwise be disqualified in Section 7.304.21, C, 7 and 8, if the county department of human or social services initiates court involvement and the court orders and affirms the placement of the child and/or youth with kin at the earliest possible court date or, if the county director affirms the placement of the child and/or youth.

10. County departments of human or social services shall document that a background check was initiated and completed for all adults living in the home in the staff requirements screen in the state automated case management system.

11. County departments of human or social services are encouraged to conduct a background check of prospective non-certified kinship care providers and other adults residing in the home as quickly as possible.

D. Kinship care services when the county department has assumed legal authority for placement or taken legal custody:

1. Eligible Populations: The child shall meet the following criteria for placement in kinship care through the child welfare system:

    a. Program Area 4, 5, or 6 target groups and out-of-home placement criteria.

b. Legal authority for placement as defined in Section 7.304.51 and the Children's Code through a court order, a Dependency and Neglect or Delinquency action, emergency removal by law enforcement, or a voluntary placement, followed within 90 calendar days by a Petition for Review of Need for Placement (PRNP).

c. Kinship care providers shall be advised of all support options available to them through the county department, including:

1) Family preservation,

2) Certification for kinship foster care, and

3) The relative guardianship assistance program.

d. In the decision making process, funding and support options which encourage kinship care as a form of family preservation rather than a placement service shall be of primary consideration. However, if the kinship caregiver(s) meets all of the standards for foster home certification, they may choose to be certified as a family foster home. Kinship providers for Title IV-E eligible children are entitled to the same level of reimbursement as non-related providers. Kinship caregivers may elect to receive no payment. Other funding and support services, including in-kind or concrete services, can be put into place as mutually agreed upon with the provider.

e. Relative kinship care providers and potential relative kinship care providers shall be informed about the relative guardianship assistance program (see Section 7.311, et seq.). The information shall be documented in the State Department's automated system.

2. Placement with Kinship Care Providers:

a. When out-of-home placement is necessary, the county department shall determine whether there are available and willing kin to provide for the child.

b. Parent(s) shall be included as part of the planning process placement with kin unless there are documented reasons for their unavailability to participate.

c. If kin are available and willing, the county department shall assess the suitability of kin in accordance with the foster care certification requirements found at Sections 7.500 and 7.708.

d. If the parent(s) do not agree to a specific kinship placement, the county department shall request court ordered assessment for possible placement with kin, identify other kinship placement possibilities, and/or revisit possible kinship placement at a later time if out-of-home placement continues to be necessary. If the assessment is favorable, and the parent(s) still object to the kinship placement, the county department may request that the court order the kinship placement.

e. When removal from parents or guardians occurs on an emergency basis, children and/or youth may be placed with kinship providers who may be provisionally certified as a kinship foster care home in accordance with Section

7.500.311, C and D, or the certifying authority may allow the child and/or youth to visit on an emergency visitation basis.

For emergency visitation:

1) The kinship foster home assessment shall begin as soon as possible and kinship foster care certification requirements shall be completed within sixty (60) calendar days;

2) The family must sign the State prescribed forms.

3) The county department shall complete a background check for each adult (18 years and older) living in the home for the following:

   a) Child abuse/neglect records in every state where any adult residing in the home has lived in the five years immediately preceding the date of application;

   b) Fingerprint-based criminal history record information checks from the Colorado Bureau of Investigation (CBI) and the Federal Bureau of Investigation (FBI) shall be initiated as soon as possible and no later than the requirements for emergency placements (see Section 7.304.21, D, 2).

f. When an emergency placement is necessary and a prospective relative or other available person is identified, and a child and/or youth is placed into temporary custody by law enforcement and/or the court places temporary custody with a county department of human or social services, the following actions shall occur:

1) Prior to the placement of a child and/or youth in the home, the county department shall contact local law enforcement to conduct an initial name-based state and federal criminal history record check. The results of the criminal record check shall be provided verbally to the county department. The county department of human or social services or law enforcement shall immediately conduct an initial criminal history record check of the relative or other available person and all adults in the home. If law enforcement is completing the criminal history check, the county department of human or social services shall request a verbal report regarding each person's criminal history from federal and state databases, and include the results in the case record.

   County departments of human or social services are encouraged to conduct background check of prospective non-certified kinship care providers and other adults residing in the home as quickly as possible.

2) The child and/or youth may not be placed in the home if the criminal history record information check reflects one or more convictions of the criminal offenses listed in Subsection 7.304.21, D, 2, f, 7).

3) A relative or other available person who is not disqualified as an emergency placement and who authorizes the child and/or youth to be placed in the home shall report to law enforcement or the county department of human or social services if a fingerprint machine is

available to submit fingerprints as soon as possible and no later than five calendar days after the child and/or youth is placed in the home or no later than fifteen calendar days when documented urgent circumstances exist. The cost of the fingerprints is the responsibility of the relative or other available person.

4) The county department shall confirm timely submission of fingerprints from the prospective provider:

   a) With law enforcement: The county department shall contact the local law enforcement agency within fifteen (15) days following the placement of the child and/or youth to assure the potential provider reported for the purpose of obtaining fingerprints within the specified timeframe. If the potential prospective provider did not comply, then the child and/or youth shall be removed immediately from the physical custody of the person by the county department of human or social services or local law enforcement officer, unless otherwise ordered by the court; or,

   b) When the county department of human or social services has a fingerprint machine: if the prospective provider did not comply, the child and/or youth shall be removed immediately from the physical custody of the person by the county department of human or social services or local law enforcement officer unless otherwise ordered by the court.

5) A fingerprint-based criminal history record information check will be conducted by CBI using state and national CBI and FBI records. The local law enforcement agency is the authorized agency to receive the results.

6) If the fingerprint-based criminal history record information check indicates the person has a disqualifying criminal history, the county department of human or social services or local law enforcement officer shall immediately remove the child and/or youth from the emergency placement and shall not place a child and/or youth with the person who has the criminal history without court involvement and an order of the court affirming placement of the child and/or youth with the person.

7) A county department of human or social services or local law enforcement shall not make an emergency placement or continue the emergency placement of a child and/or youth with a person who has been convicted of one or more of the following offenses:

   a) Child abuse, as specified in Section 18-6-401, C.R.S.;

   b) A crime of violence, as defined in Section 18 1.3 406, C.R.S.;

   c) An offense involving unlawful sexual behavior, as defined in Section 16-22-102(9), C.R.S.;

   d) A felony, the underlying actual basis of which has been found by the court on the record to include an act of domestic violence, as defined in Section 18-6-800.3, C.R.S.;

e) A felony involving physical assault or a drug-related offense, committed within the preceding five years;

f) Violation of a protection order, as described in Section 18-6-803.5, C.R.S.;

g) A crime involving homicide; or,

h) An offense in any other state the elements of which are substantially similar to the elements of any one of the offenses described in a-g, above.

8) If a relative or other person was not disqualified as an emergency placement based upon the fingerprint-based criminal history record information check and the child and/or youth was placed in the emergency placement, the county department of human or social services shall complete the following checks for the relative or available person and all adults in the home. County departments of human or social services are encouraged to conduct a background check of the prospective non-certified kinship care provider and other adults residing in the home as soon as possible:

a) Review the court case management system of the State Judicial Department and include a copy of the information in the case record;

b) Review the state automated case management system and the child abuse and/or neglect registries in all states the adults living in the home have resided in the five years preceding the date of application and include a copy of the information in the case record; and,

c) Review the CBI sex offender registry and the national sex offender public website operated by the United States Department of Justice at initial placement, and annually, and include a copy of the information in the case record:

i) Known names and addresses of each adult residing in the home; and,

Ii) Address only of the kinship home.

9) If information is found as a result of any checks of the relative or other available person that continued placement is unsafe, the county department of human or social services shall remove the child and/or youth.

10) If a disqualifying factor (refer to Section 7.002) and/or a concern about the safety of the child or youth is identified following the placement of the child or youth, the department of human or social services shall evaluate the appropriateness of continuing the placement. A plan shall be developed to address the concerns as soon as possible and the concerns shall be remedied no later than two weeks after the date of placement. The following shall be documented in the state automated

case management system in the contact log in the resource section or in the record:

a) Review the circumstances of the placement;

b) Evaluate the vulnerability of the child and/or youth, including age and development;

c) Safety issues impacting the child and/or youth;

d) Supports needed by the non-certified kinship caregiver(s); and,

e) Identify alternative solutions to removal of the child or youth from the placement, and document the solution in the family service plan including, but not limited to, the family's current status in the following domains:

i) Risk and safety;

ii) Level of functioning;

iii) Strengths;

iv) Specific areas of concern to be addressed;

v) Services and supports needed; and,

vi) Changes that must occur to mitigate the concerns.

11) Fingerprint-based criminal history record information checks are not required if the relative or other available person in the home completed them within the three months preceding date of placement. The following checks shall be completed and included in the case record, and documented in the state automated case management system:

a) State automated case management system;

b) The CBI sex offender registry and the national sex offender public website operated by the United States Department of Justice at initial placement and annually:

i) Known names and addresses of each adult residing in the home; and,

Ii) Address only of the kinship home.

c) Court case management system of the State Judicial Department; and,

d) Contact law enforcement to determine if any additional criminal history occurred or complete an online CBI name-based check.

g. Substitution of Fingerprints for Foster Care Certification

1) If the county department of human or social services or a child placement agency (when applicable) intends to accept an application for foster care, CBI shall be notified within five calendar days after requesting fingerprint-based criminal history record information checks in order to prompt flagging and automatic notification to the county department of human or social services or child placement agency when there are new criminal charges; and,

2) The substitute fingerprint process meets the requirement for an applicant for foster care certification pursuant to Section 26-6-106.3, C.R.S.

h. The reasonable and prudent parent standard requirements for a kinship provider or kinship foster parent to approve activities for a child or youth in foster care requires the following action:

The county department of human or social services or child placement agency shall train the caregiver how to determine whether an extracurricular, enrichment, cultural, or social activity is consistent with the reasonable and prudent parent standard, when approving an age or developmentally appropriate activity identified in Section 7.701.200 (12 CCR 2509-8).

3. Decision Making:

a. As part of the assessment process, the county department of human or social services shall determine, with the kinship care provider, which funding options and support services will be necessary to support the placement. If eligible, at a minimum, the following funding sources shall be considered to support the child(ren) in a kinship care placement:

1) Child Support by the absent parent(s). For Child Support, a referral shall be made to IV-D;

2) Social Security and/or other death benefits;

3) Supplemental Security Income; see Section 7.001.44 (12 CCR 2509-1);

4) Supplemental Security for Disability Income;

5) Temporary Assistance to Needy Families - for kinship care to be supported by Temporary Assistance to Needy Families, the caretaker must meet the Temporary Assistance to Needy Families definition in Section 3.600 of the Income Maintenance manual (9 CCR 2503-1);

6) Tricare or other medical benefits;

7) Medicaid, if eligible;

8) Core Services, if eligible (Section 7.303);

9) Child Welfare Child Care, if eligible;

10) Colorado Child Care Assistance Program, if eligible;

11) In-Kind Services or Donations;

12) Kinship foster care maintenance payment, if eligible; see Section 7.500.31, A (12 CCR 2509-6);

13) IV-E or state adoption assistance, if eligible.

b. This decision making process shall address the needs of the child, family and kin and focus on how the goals of safety, permanency, and child well-being can be most effectively achieved for the child.

c. The kinship care provider shall be advised of all support options available, and shall be advised of the grievance process available to certified and licensed providers.

d. Requests for approval for any exceptions for relatives to the foster care rules outlined in Section 7.708 (12 CCR 2509-8) shall be submitted by the county department of human or social services or child placement agency to the State Child Care Appeal Panel in accordance with procedures established by the Colorado Department of Human Services.

4. Services to kinship care providers shall:

a. Include training, support and services specific to the needs of kinship care providers.

b. Include supervision as described in the child's Family Services Plan and in Section 7.500.313, A (12 CCR 2509-6).

5. Services to children in all kinship care placements shall:

Include the requirements of Section 7.301 (12 CCR 2509-4), assessment and case planning section.

6. Permanency Planning in Kinship Care

a. When a child has been placed by the county department into temporary kinship care and reasonable efforts to reunite the child with the parents are not successful, the county department shall consider permanent placement with the kinship care provider or other appropriate kin. The preferred permanent placement shall be adoption, legal guardianship, or permanent custody.

b. The grandparent, aunt, uncle, brother or sister must file a request with the court no later than twenty (20) days after the motion for termination has been filed, if the provider wishes to be considered as the guardian or to take legal custody of the child. Following the order of termination of the parent-child legal relationship, the court shall give preference to this provider if it has been determined to be in the best interest of the child and the attachment of the child to the current caregiver has been considered.

7.304.3 OUT-OF-HOME PLACEMENT CRITERIA

Not every child at risk needs out-of-home placement. These criteria are designed to provide a decision making model to assist in determining whether Core Service Program services and/or out-of-home placement are indicated. All three criteria must be met.

Criterion 1: The child may be at imminent risk of out-of-home placement, as defined in Section 26-5.3-102(1)(b), C.R.S., because one or more of the following conditions exist:

A. Abandonment by or incarceration of parents/relatives/caretakers;

B. Abuse/neglect - as defined in the Children's Code;

C. Domestic violence - as defined in Section 18-6-800.3, C.R.S.;

D. Conditions that exist to such a degree for either the child or caretaker so that the caretaker is unable to care for the child:

   1. substance abuse; drug exposed infants

   2. mental illness

   3. disability

   4. physical illness

   5. homelessness

E. Beyond control of parents;

F. Danger to self, others, or community;

G. Infant or young child of teen parent in placement;

H. Delinquency - adjudicated delinquent meeting current out-of-home placement criteria written pursuant to Section 19-2-212, C.R.S.;

I. Relinquishment or termination of parental rights;

J. Child returning home from out-of-home placement or moving to less restrictive level-of-care.

Criterion 2: Before considering placement, an assessment is completed to determine the level of risk. If assessment of risk determines that the child is at imminent risk of out-of-home placement, then child/family strengths are determined, and the appropriate services and/or community supports (reasonable efforts) needed to address the existing Criterion #1 conditions are identified. When these services are not immediately available, or are absent, unsuccessful, or exhausted, placement in the Core Services Program and/or out-of-home may be considered.

Reasonable efforts include the intervention strategies and advocacy efforts used:

A. To identify/locate appropriate parent/relative/caretakers if necessary to prevent out-of-home placement;

B. To assess the parent/relative/caretaker's ability to protect children;

C. To assist the parent/relative/caretaker and/or child in accessing and utilizing the identified services to address the presenting conditions.

Criterion 3: When placement is the best choice of available options/alternatives at this time to reduce risk to the child while continuing reasonable efforts to resolve the conditions which led to imminent risk, then, placement in the Core Services Program and/or out-of-home may occur.

7.304.4 AGE AND RESIDENCY REQUIREMENTS AND PAYMENT RESPONSIBILITY FOR CHILDREN IN OUT-OF-HOME CARE [Rev. eff. 4/1/13]

A. A child is eligible for placement services on the basis of need from birth to age 18 when the child meets target group eligibility and all three of the placement criteria, regardless of whether the placement is voluntary or court ordered. A child from age 18 to age 21 continues to be eligible for placement services if the court had jurisdiction prior to the 18th birthday and the placement is court ordered.

B. All children residing or present in the state are eligible for placement services when the criteria in the Target Group sections 7.201, 7.202, and 7.203, the Out-of-Home Placement Criteria section 7.304.3, and the Authority for Placement section 7.304.51, are met.

C. The child's county of residence shall be the county department which has financial and case decision-making responsibility for a child in out-of-home placement shall be the child's county of residence. The child's residence follows the parents' residence unless one or more of the following circumstances exist:

1. When the parent-child legal relationship has been terminated, the child's residence is the county in which the county department has legal custody of the child.

2. When the court has transferred legal custody to a county department and the parent-child legal relationship has not been terminated, the child's residence is that county until the court transfers custody to some other entity, including changes of venue as described in the following section, 7.304.4, E.

3. When a county department has legal custody and the court has also appointed a guardian, the child's residence is that of the county department holding legal custody.

4. When a child is in parental custody, the child's residence is that of the parents, or of the last caretaker parent, unless there is a court order giving custody to one of the parents. In that case, the child's residence is that of the parent with legal custody.

5. When a child is in the legal custody of an individual, the child's residence is that of the individual.

D. Residence for school purposes may be determined on other factors, such as the type of facility in which the child is placed or the legal status of the child. See Educational Assessments in the Assessment and Case Planning section.

E. The county department shall transfer financial and service planning, and financial responsibility as follows:

If a parent whose residence is used to determine the county department's financial responsibility for a child in out-of-home placement moves to another Colorado county, the county department shall initiate procedures to transfer the financial responsibility to the new county, unless:

1. The court or the county department finds that the transfer of jurisdiction would be detrimental to the best interest of the child(ren); or,

2. The legal custodian has a history of frequent moves, except when there is evidence of stability in the most recent move, such as a signed lease whose term is six or more months, or there is other firm evidence of the intent to remain in the new residence for six or more months; or,

3. The case is within 3-6 months of resolution; or,

4. The custodial parent is committed to a state mental institute or correctional facility; or,

5. The custodial parent is residing temporarily in the receiving county to receive rehabilitation services, employment training, education, medical care, or shelter services; or,

6. Adjudication has not taken place; or,

7. Change in venue hinders achieving the child's permanency goal; or,

8. The case is an expedited permanency planning case, unless pursuant to Section 19-3-201(2), C.R.S., wherein it states that is shall be presumed that any transfer of proceedings without good cause shown that results in a delay in the judicial proceedings would be detrimental to the child's best interest. Such presumption may be rebutted in court by preponderance of evidence; or,

9. When parental rights have been terminated for the child(ren); or,

10. If the case involves a juvenile for whom a juvenile delinquency filing has been made, pursuant to Section 19-2-105(1)(b), C.R.S.

F. Each county shall designate a Change of Venue coordinator.

G. When a motion for a Change of Venue has been made by the sending county, the sending county shall mail the Change of Venue motion to all parties and attorneys of record in the case and to the county attorney in the receiving county.

H. Within fifteen (15) calendar days after a court signs an order granting a Change of Venue and transferring jurisdiction, the sending county shall:

1. Provide written case information, if not located in the state automated system, to the designated Change of Venue coordinator in the receiving county which shall include, but need not be limited to:

a. Permanency goals;

b. Target dates related to the case;

c. Evaluations;

d. A current Family Services Plan;

e. Court reports;

f. Dates of placement moves;

g. Progress of the child(ren) in placement;

h. All Title IV-E eligibility determinations; and,

i. Recommendations for continuing progress in the case.

2. Update all documentation in the case file and in the state automated system.

3. Provide information, to the extent known, concerning the physical location of the child's parents, guardians, legal custodians, and relatives.

4. Prepare the case for transfer by:

a. Scheduling a family engagement meeting involving all parties, county department caseworkers and supervisors, and community providers; or,

b. Conducting a case staffing between county caseworkers and supervisors in the sending and receiving county departments; or,

c. Submitting a written case transfer summary.

5. Forward a complete copy of the case file from the sending county attorney's office to the receiving county attorney's office. Privileged attorney-client communications do not need to be included in the transferred case file.

I. The child, family, and foster care provider shall be prepared for the transition by the sending county department.

J. The sending county department is responsible for financial and service planning for the case and for payment of services through the calendar month in which the Change of Venue becomes effective. This date is to be confirmed by the sending county department in writing and there shall be no lapse in financial coverage during this process. If venue does not change, the sending county department retains financial responsibility.

K. The receiving county department shall provide courtesy supervision and available services during this transition. If venue does not change, the sending county department retains financial responsibility.

L. If a child is born while the mother is committed to a state mental institute or correctional facility, the county of residence prior to commitment shall be the county of fiscal responsibility.

M. When a child is placed for adoption, the county department holding legal custody and guardianship shall have fiscal responsibility for the child until the adoption is finalized.

N. If a child needs placement out of the home following finalization of adoption, the child's residence is that of the adoptive parents.

O. Residence related to subsidized adoption is addressed in the Adoption Services section.

7.304.5 SPECIFIC PROCEDURES FOR OUT-OF-HOME PLACEMENT

7.304.51 Authority for Placement

The county department shall ensure that a child may enter any out-of-home placement only when:

A. Target group and placement criteria are met; and,

B. An emergency is determined to exist and s/he is removed from the home by a law enforcement officer, with or without a court order, or,

C. A parent has signed a voluntary placement agreement under conditions established by the county department and according to the Children's Code; or,

D. A juvenile court, or a court acting as a juvenile court (including a tribal court), has ordered the child to be placed out of the home and has transferred legal custody to the county department or a social services department of a federally recognized Indian tribe, for placement in a family care home or other child care facility.

7.304.52 Family Search and Engagement [Rev. eff. 1/1/16]

A. Family search and engagement shall:

1. Be commenced for the noncustodial parent within three (3) working days. The county department must provide notification to the absent parent of the following:

   a. The child or youth has been removed from the home; and,

   b. The option to participate in the care, treatment, or placement of the child or youth.

2. Be completed for all grandparent(s) and other adult relatives within thirty (30) calendar days. The county department of human or social services shall provide notification of the following information:

   a. The child or youth has been removed from the home;

   b. Options to participate in the care or placement of the child or youth;

   c. Options that may be lost by failing to respond to the notice;

   d. The requirements to become a foster parent, and services and supports available to the child and/or youth placed in the family foster care home; and,

   e. A description of the Relative Guardianship Assistance Program.

B. The county department shall assure that:

1. Parents are consulted regarding their suggestions for appropriate caretakers.

2. Children and youth are consulted as appropriate regarding their suggested relative caretakers.

3. When the court orders a delay in contacting specific relatives for good cause including, but not limited to, domestic or other family violence, then the county department shall discontinue the family search and engagement involving the relative until otherwise authorized by the court.

C. Family search and engagement shall occur for all children including American Indian/Alaskan Native children and youth at least every six (6) months throughout the life of the case until the child or youth has achieved permanency, except as noted in Section 7.304.52, B, 3, or when the following conditions exist:

1. A placement is stable with a relative or kin a minimum of six (6) consecutive months; and,

2. The relative or kin has committed to the legal permanence of the child or youth; and,

3. There is agreement among the parties that the relative or kin is the appropriate permanent option and that it is in the best interest of the child or youth that family search and engagement shall be discontinued.

D. A family engagement meeting shall occur within thirty (30) calendar days when any of the following conditions exist:

1. The child or youth is in a family-like permanent setting without the provider expressing formal intent to provide legal permanence at the time that any of the following conditions exist:

   a. The child or youth has been in out-of-home placement fifteen (15) of twenty-two (22) months; or,

   b. The child or youth has had two (2) or more unplanned moves within a twelve (12) month period; or,

   c. The child or youth is assigned a permanency goal of Other Planned Permanent Living Arrangement (OPPLA).

2. The child or youth is in out-of-home placement in a non-family-like setting without an approved permanency plan and any of the conditions in Section 7.304.52, D, 1, a-c, exist.

E. The county shall document all efforts in the Family Services Plan for the child or youth. Initial and ongoing family search and engagement results shall be reviewed and documented during ninety (90) day supervisory reviews.

7.304.53 Court-Related Procedures [Rev. eff. 1/1/16]

A. County department staff shall work with the courts in order to best serve families, children, and adults. This includes, but is not limited to:

1. Providing competent and appropriate testimony. When the case involves the Indian Child Welfare Act, testimony shall be provided by a qualified Indian expert witness (see Indian Child Welfare Act, “Definitions”, Section 7.309.1, E).

2. Identifying witnesses and evidence to be presented.

3. Being in compliance with the Indian Child Welfare Act.

4. Working with the legal representative of the county department and all other attorneys involved to serve the best interest of the child(ren) and family.

5. Ensuring that the court is provided names and addresses of parents, foster parents, pre-adoptive parents, and kin who are providing out of home care for a child in order that the

court can inform and allow these individuals an opportunity to be heard at all hearings and reviews involving the child.

B. The county department shall document the following court related procedures in the case file:

1. The child and family's legal status including custody, guardianship, parental rights, and other judgments issued by the court(s) of jurisdiction. The term “allocation of parental responsibilities” when used by the court shall be interpreted to mean custody for child welfare purposes. The term “allocation of parental responsibilities” shall not be used as a permanency goal.

2. Title IV-E related documents described in Section 7.001.41,B, of this staff manual.

3. The reasonable efforts which have been made to prevent removal of the child from her/his home, the reasonable efforts that have been or will be made to return the child to her/his home, and the reasonable efforts to finalize a permanent plan. The specific actions taken shall be documented and submitted to the court. When the case involves the Indian Child Welfare Act, “active efforts” rather than “reasonable efforts” must be provided (see Indian Child Welfare Act, “Definitions”, Section 7.309.1, A).

   When applicable, the county department shall document and submit to the court existing circumstances in which the court may determine that reasonable efforts are not required to prevent a child's removal from the home or to reunify the child and family. These circumstances are:

   a. A court has determined that the parent has subjected the child to aggravated circumstances as specified in Section 19-3-604(1) and (2), C.R.S.

   b. A court has determined that the parent has been convicted of:

      1) murder or voluntary manslaughter of another child of the parent; or,

      2) aiding or abetting, attempting, conspiring, or soliciting to commit murder; or, voluntary manslaughter of another child of the parent; or,

      3) felony assault that results in serious injury to the child or another child of the parent.

   c. The parental rights of the parent with respect to a sibling have been terminated involuntarily unless the prior sibling termination resulted from a parent delivering a child to a firefighter or a hospital staff member pursuant to the provisions of Section 19 3 304.5, C.R.S.

4. That the court and the parents are notified of any change in placement before the change unless the child is in immediate danger.

5. That a record is kept of all visits and of reasons planned visits did not occur.

6. That the court, the parents, and the child are given written notice ten days before any determination which affects the parent's visitation rights, unless the child's health or well being is endangered by delaying action or would be endangered if prior notice was given. The caseworker shall keep a copy of this notification in the case record.

7. The treatment plans, including the Family Services Plan and court ordered plan, that have been attempted to return the child to the family home.

8. That the county has requested the court, in its periodic reviews, to make findings regarding the continued necessity and appropriateness of placement, the extent of compliance with the case plan, the extent of progress which has been made toward alleviating or mitigating the causes necessitating the placement, and projecting a likely date by which the child may be returned home or placed in an alternate permanent living arrangement.

C. The county department shall file a dependency and neglect petition when there are protective service issues that either present imminent danger or indicate that the environment is injurious and the case requires court jurisdiction.

D. When protective issues are not significant, county departments may refer children with intellectual, physical, or emotional disabilities to community or home-based services. If home-based or community services are not sufficient or successful, the county department may offer voluntary out-of-home placements for children who meet the criteria. If voluntary out-of-home placements are not offered, the county department shall have a written policy stating that voluntary placements are not provided.

The county department shall ensure that a placement contract is signed before a voluntary placement is made. The county department shall:

1. File a Petition for Review of Need for Placement within 90 calendar days of placement, if the placement is expected to exceed 90 calendar days.

2. Ensure that the child's parents, guardian, and legal custodian are informed of the substance of the Petition for Review of Need for Placement.

3. File a review report with the court every six months, thereafter, or more frequently, when ordered by the court, until the placement is ended. When an Administrative Review conducted by the Administrative Review Division substitutes for a court review, a summary containing the same information as would be submitted to the court shall be completed and filed in the case record in accordance with 7.002.1, B. The county department shall submit this written summary with the Administrative Review findings to the court.

4. Ensure that a court decree giving the county placement and care responsibility is obtained within 180 calendar days of placement. The order must state that continued placement is in the best interests of the child and either that reasonable efforts have been made to reunite the child and family or that the plan is for the child not to return home.

5. Ensure that the permanency planning hearing order for voluntary placements conforms with the requirements discussed under that section.

E. When a child is returned to the home, the county shall request the court to return legal custody of the child to the parent or guardian, except in cases covered by the Interstate Compact for the Placement of Children.

F. When a child is removed from the home, the county department must initiate a request for temporary custody hearing per Sections 19-3-312 and 19-3-401, C.R.S. The Family Services Plan shall be used as an Interim Treatment Plan in Court involved cases, to be available 30

calendar days after the child's removal from the home or 30 calendar days after filing of the petition, whichever is earlier.

G. The county department shall notify the court of jurisdiction and other parties within 10 calendar days of receipt of a report that a child has run away from placement.

H. Copies of Administrative Review findings shall be filed in the case record and a summary of those findings shall be included in court reports. For those cases in which an Administrative Review substitutes for court reviews, counties shall submit a copy of the actual review findings to the court with the county's court report.

I. Recommendations to the court regarding out-of-home placement of a child who has been adjudicated a delinquent, shall contain specific facts and reasons supporting the recommendations and the cost of the recommended placement.

J. When a child is temporarily absent from placement because he or she is in detention, psychiatric or medical hospitalization, or on a trial visit home, the placement is considered to be continuous for up to six months for Federal review purposes if the county retains legal custody or has placement and care responsibility through a voluntary placement agreement or Petition to Review the Need for Placement. If the child returns to out-of-home placement during this time, a new removal order is not needed. Within the trial home visit time period, when the agency determines it is in the best interest of the child to continue to live in the planned permanent home, the county agency shall request the court to consider relieving the department of custody in these cases.

K. A trial home visit shall occur when it is necessary to assess the child's or youth's safety and well-being while residing in the planned permanent home. The time period of the trial home visit shall be determined by the agency and reviewed by the court as part of the reunification process prior to the permanent custodial return of the child or youth to the parents or planned caregivers.

1. Trial home visits shall be documented in the State Department's automated data system.

2. A trial home visit may exceed six months in duration if a court orders a longer trial home visit. If a trial home visit extends beyond six months and has not been authorized by the court or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that removal must then be considered a new removal and Title IV-E eligibility must be newly established. Under these circumstances, the judicial determination regarding contrary to the welfare and reasonable efforts to prevent removal are required.

L. Change in Venue procedures are outlined in Section 7.304.4, F, G, and H.

M. When court-ordered, the county department of human or social services shall share a foster care home, kinship foster care home, and/or non-certified kinship care home provider’s reports of fingerprint-based criminal history record information check generated from the Colorado Bureau of Investigation (CBI) and Federal Bureau of Investigation (FBI) with the guardian ad litem, related to the placement of a child and/or youth in out-of-home care.

7.304.54 Court Procedures Related to Permanency Planning [Rev. eff. 3/1/16]

A. The county department must develop a permanent plan for any child who is in out-of-home placement and is the subject of any court action, including Dependency and Neglect, Delinquency, or a Petition to Review the Need for Placement and a concurrent plan for cases filed under Section 19-3-102(2), C.R.S., regarding habitual abuse. The purpose of the plan is to establish treatment needs related to the stated goal for the child and to decide a method to provide a safe, stable, permanent environment for the child as quickly as possible.

B. The county department shall submit this plan at the permanency court hearing. That hearing must be held before twelve (12) months have elapsed from the date of the child's original out-of-home placement, and shall be held as soon as possible following the dispositional hearing. Following the initial permanency hearing, subsequent permanency hearings must be held every twelve months thereafter while the child remains in out-of-home care. These hearings shall be combined with a periodic review when possible.

C. The county department shall provide the court with documentation of the efforts made by the department to finalize the permanency plan for the child. The county department shall request the court to make a finding (if the evidence so warrants) that the department made reasonable efforts to finalize the permanency plan for the child.

D. Paper reviews, ex parte hearings, agreed orders or other actions or hearings which are not open to the participation of the parents of the child (if appropriate age) and foster parents or pre-adoptive parents are not permanency hearings.

E. When the court determines that reasonable efforts to return the child home are not required, the county shall request that the permanency hearing be held no later than thirty (30) calendar days after such court determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which such a determination is made.

F. The county department shall ensure and document that a request is made to the court for such a hearing in sufficient time to assure that the hearing is held within the twelve (12) month time frame. Permanency hearings shall be combined with a review hearing when possible.

G. The county department shall include, in the permanency plan, recommendations to the court on either:

1. Returning the child to his/her parent or guardian within the next six months; or,

2. Permanent placement with a relative through adoption; or,

3. Permanent placement with a relative through guardianship or permanent custody; or,

4. Adoption (non-relative); or,

5. Legal guardianship/permanent custody (no-relative); or,

6. Return home through reinstatement of parental rights; or,

7. Other planned permanent living arrangement through emancipation; or,

8. Other planned permanent living arrangement through relative long term foster care; or,

9. Other planned permanent living arrangement through non-relative long term foster care.

H. For permanency goals 8 or 9, the county department shall ensure that the plan contains the name or other identifier, such as the system provider number, if the name of the provider must be kept confidential, of the specific placement and the date that placement shall end.

I. For permanency goals 7, 8, and 9, the following requirements shall apply to the county department of human or social services for purposes of approving the case plan and the case review procedure for youth:

1. At each permanency hearing held with respect to the youth, provide documentation of the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made to address the following:

   a. Return the youth home;

   b. Secure a placement for the youth with a fit and willing relative (including adult siblings), a legal guardian, or an adoptive parent; and,

   c. Include efforts that utilize search technology (including social media) to find biological family members for the youth.

2. Provide compelling reasons why it continues not to be in the best interests of the youth to return home, be placed for adoption, with a legal guardian, or with a fit and willing relative.

J. The county department shall request that the court order contain specific findings regarding the above goals.

K. The county department shall assure that the permanency hearings determine whether an out-of-state placement continues to be appropriate and is in the best interest of the child.

L. The county department shall assure that the permanency hearings determine whether the permanency plan includes independent living services for a child sixteen years of age or older.

M. Permanency hearings are required to be held if a termination is under appeal, for children placed in a permanent foster home with a specific caregiver, and for children who are free for adoption and are placed in adoptive homes pending the finalization of the adoption.

N. The county department shall file for termination of parental rights no later than the end of the 15th month of placement for any child who has been in foster care under the responsibility of the state for 15 of the last 22 months unless there is a compelling reason submitted to the court identifying why it is in the child's best interest to not terminate parental rights.

O. The county department shall file for termination of parental rights no later than sixty (60) calendar days after the court determines that the child is an abandoned infant, unless there is a compelling reason submitted to the court identifying why it is in the child's best interest to not terminate parental rights.

P. The county department shall file for termination of parental rights no later than sixty (60) calendar days after a judicial determination is made that reasonable efforts to reunify the child with the parent are not required, unless there is a compelling reason submitted to the court identifying why it is in the child's best interest to not terminate parental rights.

Q. The county department shall discuss the purpose and responsibilities of relative guardianship with the parents or legal custodian of a youth or child and the importance of achieving permanency.

7.304.55 Court Procedures Related to Termination of the Parent-Child Legal Relationship [Rev. eff. 2/1/10]

A. The county department shall consider termination of the parent-child legal relationship as a part of the permanency planning process. Termination is a court action that permanently divests the

child and parent of all legal rights and responsibilities with respect to each other. It does not modify the child's status as an heir at law, which occurs when there is a final decree of adoption. Termination of the parent-child legal relationship with both parents frees a child for adoption.

B. When the county department files a petition for dependency and neglect, the petition shall include a statement related to termination of the parent-child legal relationship as required in the Colorado Children's Code, Section 19-3-502(3)(a), C.R.S..

C. The county department shall give primary consideration to the physical, mental, and emotional conditions and needs of the child when considering filing a motion for termination, and when making any reports and recommendations to the court.

D. The county department shall ensure that the child's psychological and medical conditions have been evaluated and that the results of those evaluations indicate that termination is in the best interest of the child.

E. The county department shall consider termination of the parent-child legal relationship based on a finding of parental unfitness as outlined in the Colorado Children's Code, Sections 19-3-604(1)(a) through 19-3-604(1)(c), C.R.S. and 19-5-105 (3.1), C.R.S.

F. The county department shall gather information to present the court with clear and convincing evidence regarding the criteria for termination and evidence beyond a reasonable doubt in the case of children eligible under the Indian Child Welfare Act.

G. In planning for termination of the parent-child legal relationship, the county department shall:

1. Work with the county's attorney in preparation of the court case.

2. Provide a treatment plan for the court's approval.

3. Cooperate with any guardian ad litem for the case.

4. Provide prepared staff to testify at the termination hearing, identify other witnesses, and assist in preparation of witnesses.

5. Keep parents, children, and appropriate interested parties informed regarding hearings and the status of the case.

6. File a motion for termination no less than 30 calendar days before the hearing.

H. Prior to and following termination of the parent-child legal relationship by the court, the county department shall:

1. Consider legal custody or adoption by relatives when in the child's best interests.

2. Determine resources available for an adoptive placement or alternative permanent plan which best meets the needs of the child.

3. When filing a motion to terminate parental rights, county staff shall begin efforts to recruit, identify, process and approve a qualified adoptive family for the child and document such efforts in the Family Services Plan.

4. Prepare a report for the court to be presented at a hearing scheduled within 90 calendar days following the date of termination. The report shall indicate what disposition of the child's case has occurred.

I. Permanency hearings are required to be held if a termination is under appeal or if a child is in a pre-adoptive placement following termination.

J. When the county department has legal custody/guardianship following termination of the parent-child legal relationship, the county department shall not close the child's case until:

1. The child is adopted; or,

2. The child reaches 18 years of age and the court does not continue its jurisdiction; or,

3. The child is emancipated before 18 years of age; or,

4. The court transfers legal custody to another individual or agency; or,

5. The court otherwise terminates the county department's legal responsibility.

7.304.6 PLACEMENT ACTIVITIES

7.304.61 Pre-Placement Activities [Rev. eff. 1/1/16]

A. The child shall have a medical examination before placement or a screening as soon as is reasonably possible after placement. The county department shall assure that the screening is consistent with the Early Periodic Screening Diagnosis and Treatment initial screening described in Section 8.286.01 of the Department of Health Care Policy and Financing's Medical Assistance manual (10 CCR 2505-10). If a medical, dental, or psychological evaluation is necessary and cannot be covered under Medicaid, third-party insurance, or other sources, the county department may purchase it under program services. See General Information and Policies section (7.000) and Resources, Reimbursement, and Reporting Section (7.400) of this manual.

B. Prior to the placement of a child in a child placement agency or county foster care home, the placing agency may review the written family assessment, home study, and background checks of the foster parent(s) for use in determining if the home is appropriate for the needs of the child.

C. When the child is part of a sibling group and the sibling group is being placed out of the home, if the county department locates an appropriate capable, willing, and available joint placement for all of the children in the sibling group, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by the county by a preponderance of evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children. If the child is a part of a sibling group, the county shall make thorough efforts to locate a joint placement for all of the children in the sibling group unless it is not in the best interests of the children to be placed as a group and these efforts do not unreasonably delay permanency for any child. Efforts to place siblings as a group shall be documented in the child’s case record.

D. The county department shall share all available information about the child, including relevant social, medical and educational history, behavior problems, court involvement, parental visitation plans, and other specific characteristics of the child, with the provider before placement. It shall share additional information when obtained. The county department shall inform foster parents of court hearings involving children in care.

E. A child's foster care placement shall not be delayed in order to recruit a same race home when a foster family is available who is of other ethnic or racial identity than that of the child.

F. The county department shall document all pre-placement activities in the case file.

G. The county department shall execute the Provider Contract and Agreement with county department certified foster homes and county department sponsored group homes, and the agreement to purchase Child Placement Agency or Residential Child Care Facility services with Child Placement Agencies and Residential Child Care Facilities before placement. The Agreement to Purchase form is child specific and shall be completed for each child placed through a Child Placement Agency or with a Residential Child Care Facility.

1. Placement contracts shall specify the responsibilities of the provider and the county department in the services to be delivered to the child and family in conjunction with the Family Services Plan. The placement contracts shall also require twenty-four (24) hour out-of-home care facilities to have staff present and trained in how to make decisions using the reasonable and prudent parent standard when approving extracurricular, enrichment, cultural, and social activities; and,

2. County departments shall provide twenty-four (24) hour out-of-home care providers with a copy of the policy that identifies activities that providers trained in the reasonable and prudent parent standard may approve, and activities that require county department approval.

7.304.62 Placement Activities [Rev. eff. 1/1/16]

The county department shall:

A. Give the provider a written record of the child's admission to the home at the time of placement.

B. Give the provider a written procedure or authorization for obtaining medical care for the child and assure that the provider receives the child's state identification number and Medicaid card for Medicaid eligible children in a timely manner.

C. Give the provider a copy of the Family Services Plan for the child at the time of placement or when it is completed following placement.

D. Document the above placement activities in the case file.

E. Add the placement in the Department's automated reporting system prior to the next payroll.

F. Within four weeks of the initial placement, give the provider a complete medical history for the child. The medical history shall contain, to the maximum degree possible, the information listed in the Department of Human Services Health Passport.

G. Provide the child with a full medical examination scheduled within fourteen (14) calendar days after placement and a full dental examination scheduled within eight (8) weeks after placement. The schedule of the appointments shall be documented in the case record. The county department shall maintain the medical and dental information in a record which is kept with the child during placement and upon return home, emancipation, or adoption. The county department shall document that ongoing medical and dental care is provided in a timely manner as defined by the department and by the health care provider. If the child received the required full medical examination at the time of the placement, then the regular schedule of appointments should be maintained in subsequent placements.

H. Document the exceptional circumstances which require an emergency or temporary placement to last longer than sixty (60) calendar days.

I. Except in emergency situations, make subsequent placements according to court order and shall notify all parties to the extent possible.

J. Not move a child from one short-term emergency placement to another unless all reasonable efforts to return the child to the child's home or to place the child in a more permanent setting have been exhausted and are documented in the Family Services Plan.

K. Not move a child more than twice unless such move results in a permanent placement or is determined to be in the best interests of the child and the reasons for the additional move are documented in the child's Family Services Plan.

L. Notify the guardian ad litem, parent(s) or legal guardian within one (1) business day upon a child's placement into a foster care home. The guardian ad litem's contact information shall be provided to the foster parents.

M. Provide notice of, and a right to be heard at, any Administrative Review to the child (if age appropriate), foster parents, pre-adoptive parents, or relatives providing care to a child and, upon written request, a written notice of the court hearing, which identifies the following:

1. The child's current court case number;

2. The date and time of the next court hearing; and,

3. The name of the magistrate or judge and the court division to which the case was assigned.

N. Not release personally identifying information. Upon receipt of written notice by a foster parent, employees of State and county departments, or others with the need to know, shall be prohibited from releasing personally identifiable information about a foster parent, other than the first name, to any adult member of the foster child's family, unless the foster parent subsequently provides written consent for the release of information.

O. Refer to Section 7.406.1, F, for the applicable criteria when a child will be absent from the designated out-of-home placement and the county elects to reimburse the provider using the seven (7) day or thirty (30) day policy.

P. Allow out-of-home care providers, who are trained in a reasonable and prudent parent standard, to authorize children and youth to participate in community-based activities without the need for a fingerprint-based criminal record background check for the adult(s) involved in the activities. A decision to allow participation shall be based on trained providers using a reasonable and prudent parent standard, as defined in Section 7.701.200, A (12 CCR 2509-1), and the procedures defined in Section 7.701.200 (12 CCR 2509-8).

Q. Respond to issues related to human trafficking as outlined in Section 7.303.4.

R. If a disqualifying factor (refer to Section 7.000.2 (12 CCR 2509-1)) is identified following the placement of a child and/or youth in a non-certified kinship care home, the county department of human or social services shall evaluate the appropriateness of continuing the placement. A plan shall be developed to address the concerns as soon as possible, and the concerns shall be remedied no later than two weeks after the date of placement. The following shall be documented in the state automated case management system in the contact log in the resource section or in the record:

1. The circumstances of the placement;

2. The vulnerability of the child and/or youth, including age and development;

3. Safety issues impacting the child and/or youth;

4. Supports needed by the non-certified kinship caregiver(s);

5. Identify alternative solutions to removal of the child and/or youth from the placement and document the solution in the family service plan including, but not limited to, the family's current status in the following domains:

   a. Risk and safety;

   b. Level of functioning;

   c. Strengths;

   d. Specific concerns to be addressed;

   e. Services and supports needed; and,

   f. Changes that must occur to mitigate the concerns.

6. When the disqualifying factor cannot be mitigated, the alternative solution and plan does not resolve the concerns about appropriateness of the placement, or timeframes are not met, the county department shall remove the child and/or youth from the placement.

7.304.63 Out of State Placement Activities

A. All out-of-state placements for kinship, foster, group, or residential care must comply with the Interstate Compact for the Placement of Children, Section 7.307.

B. County departments must follow federal guidelines and shall not place children out of state who are in care under a placement contract (voluntary placements). Such placements can only be made by a parent or guardian.

7.304.64 Visitation and Supervision

A. Contact between the county department and the child shall be documented in the child's case record.

B. In all cases where counties have primary responsibility for a child in out-of-home placement, an appropriate visitation plan shall be established and documented in the child's case record. The visitation plan shall specify the frequency and type of contact by the parents (unless parental visitation is determined to be detrimental to the child) and others with the child, as appropriate. At a minimum, the visitation plan should provide methods to meet the following interests and needs of the child:

1. The growth and development of the child;

2. The child's adjustment to the placement;

3. The ability of the provider to meet the child's needs;

4. The appropriateness of parent and child visitation, including assessment of risk;

5. The child's contact with parents, siblings, and other family members;

6. The child's permanency plan.

C. When a child in foster care and a sibling (defined in Section 7.000.5, Y) mutually request a visit or regular visits, or the guardian ad litem requests visits on behalf of a child, the county department shall perform and document the following activities in the visitation plan and contact notes:

1. That visits are scheduled in a reasonable amount of time and with sufficient frequency to promote continuity of the relationships.

2. That the county department has determined that it is not in the best interests of one or both of the children.

3. That there has been consultation with the District Attorney to determine whether a criminal action is pending in any jurisdiction where either sibling is a victim or witness, prior to arranging a visit.

4. That a visit is not required or permitted because it would violate a known existing protection order pending in any state.

5. A child in foster care shall be informed of the right to sibling visits.

D. Visitation between the child and his/her family shall increase in frequency and duration as the goal of reuniting the family is approached. The caseworker shall document this increase in visitation in the child's case record.

E. The county department will notify parents of any determination which affects their visitation rights. The caseworker shall keep a copy of this notification in the case record.

F. In cases where the goal is not to reunite the family, the caseworker shall discuss the issue of separation and help define the child's future relationship with the family. The caseworker shall document this discussion and planning in the case record.

7.304.65 Administrative Review [Rev. eff 7/1/10]

Definition:

Administrative Review means a review conducted by the Colorado Department of Human Services, Administrative Review Division, that is open to the participation of the parents of the child, the child (if age appropriate, as determined by the caseworker), and the out-of-home care provider, pre-adoptive parents, or relatives/kin who are providing out-of-home care for the child; and conducted by an Administrative Reviewer, who is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review. If there is no objection by any party to the action, the court may order that an Administrative Review substitute for a six (6) month periodic review. All attorneys of record must be invited to court ordered Administrative Reviews.

A. The county department shall participate in the statewide Administrative Review system for all children in foster care who meet the criteria for inclusion in the review system.

B. The county department shall provide all required case records, documentation and information to the Administrative Reviewer no later than 8:00 a.m. the day of the scheduled review to allow the reviewer sufficient time to read the case file in its entirety prior to each scheduled review. If the hard copy case record is not available to the reviewer by 8:00 a.m. the day of the scheduled review, case information shall be obtained through the Department’s statewide automated system.

C. The county department shall provide office space for case record review and face-to-face reviews, access to the Department’s statewide automated system, and teleconference capability.

D. The county department shall coordinate, with the Administrative Reviewer, timely scheduling of all initial and subsequent Administrative Reviews.

E. The county department shall invite parents, the child (if age appropriate as determined by the caseworker), out-of-home care providers, pre-adoptive parents, relatives/kin who are providing out-of-home care for the child, and the guardian ad litem to the Administrative Review in order that these individuals will have a right to be heard. All invitees shall be encouraged to attend.

F. If an Administrative Review has been ordered by the court and no objection has been made to the substitution of the Administrative Review for the six (6) month periodic court review, the county department shall also invite to the review all attorneys of record in the case. When an Administrative Review substitutes for a six month periodic court review, the county department shall complete a case summary containing the same information that would be submitted in a court report as required in Section 7.002.1, and the county shall submit this written summary with the Administrative Review findings to the court.

G. The county department shall send letters of invitation to all review participants at least two weeks prior to scheduled reviews, and ensure that invited parties are properly documented in the Department's statewide automated system prior to the time of the review. The parent or Indian custodian and the Indian child's tribe shall be sent notice at least two weeks prior to the scheduled review by registered mail with return receipt requested. Notification shall include date, time, location, and purpose of the review. If the case involves an Indian child, the requirements at 25 U.S.C. Section 1912(a) apply; no later amendments or editions are incorporated. Copies are available for public inspection by contacting the ARD Director during regular business hours at Colorado Department of Human Services, Administrative Review Division, 4045 S. Lowell Blvd., Denver, Colorado 80236; or at a state publications depository library.

H. The county department shall encourage all invitees to attend Administrative Reviews (see Section 7.304.661, A, regarding, provider attendance). If an individual is unable to attend, participation by conference call shall be offered.

I. Administrative Reviews shall be held at the county department having custody of the child, irrespective of the location of the child's placement.

J. Administrative Review Findings

1. Copies of Administrative Review findings shall be maintained in the Department's statewide automated system and a summary of those findings shall be included in court reports. For those cases in which an Administrative Review substitutes for a six month periodic court review, counties shall submit a copy of the actual review findings to the court with the county's court report.

2. For all narrative findings that contain "Issues for County Administration", the county is required to respond to the Administrative Review Division within the time frame specified in the narrative depending on the issue identified.

    a. A county response shall be sent to the Administrative Review Division.

b. If the county response is considered sufficient and timely, no further action is taken and the county shall be notified in writing within five (5) working days.

c. If the county's response is not timely or sufficient, notification will be given to the county and appropriate division(s) representative for further follow up/action.

d. An internal meeting will be held with the appropriate division(s) and their representatives within a maximum of twenty (20) working days to determine next steps and time frames for resolution.

e. If the issues are unresolved, a corrective action process may be pursued.

K. Confidentiality

1. The federal confidentiality requirements at Section 471(a)(8) of the Social Security Act provide safeguards which restrict the use of, or disclosure of, information concerning individuals served by the child welfare agency, and these same rules apply to the Administrative Review process.

2. Audio and/or video recording of Administrative Reviews shall not occur without releases of confidentiality forms signed by all parties to the case prior to recording.

7.304.66 Monitoring of Purchased Services for Out-of-Home Placement and Core Services

7.304.661 Out-of-Home Placement [Rev. eff/ 4/1/12]

A. The county department shall contract with providers for specific services using the state prescribed contracts. The contract shall specify the responsibilities of the provider and the county for services to be provided to the child and family, in conjunction with the Family Services Plan. The county department shall monitor the services purchased from Residential Child Care Facilities, Child Placement Agencies, Core Service Program and all out-of-home providers at least monthly, by face-to-face or telephone contact with the provider. The county department shall contract with providers to submit written quarterly progress reports to the county department and to attend Administrative Reviews in person or by conference call. The county department shall participate in staffings or planning meetings on a regular basis as defined in the case plan. The county shall contract with providers to comply with the county designated visitation plan as specified in the placement agreement.

B. The county department shall reassess the case plan with the provider at least every six months and document progress toward goals, including discharge planning. It shall make necessary modifications to the plan based on mutual treatment planning with the provider.

C. If there are problems or complaints concerning the care or treatment of a child in a purchased Residential Child Care Facility or Child Placement Agency placement, or Core Services Program services, or a report of violations of child care standards, the county department shall report the circumstances to the licensing or certifying authority within 24 hours. If the nature of the complaint involves an allegation of abuse or neglect, a report to the local investigating authority shall be made immediately.

7.304.662 Core Services

A. Counties with a state-approved Core Service Program plan may directly provide or purchase Core Service Programs.

B. If a Core Service Program is purchased, state rule requirements in this manual. Section 7.003, “Purchase of Services”, shall be followed.

C. When the county purchases Core Services, the county has the responsibility to select contractors who have the skills and resources to deliver the services for which they are contracting. Counties shall monitor all purchase of services contracts to insure that contracted services are delivered.

D. Core Services may be purchased and provided for a child placed out-of-state with written state department approval.

E. County departments shall adhere to state guidelines regarding coding and state reimbursement requirements for provided or purchased services.

F. County Core Service Programs may only be used for a child in out-of-home placement when services are not available through the contract with the out-of-home provider or the county negotiates a lower rate with the provider.

G. Core Service Programs may only be used for clients when the client's private insurance and/or other funding sources are exhausted, insufficient, or inappropriate.

H. Core Service Programs that have duplicative components cannot be provided/purchase at the same time.

7.304.67 Post-Placement Activities

A. The county department shall update the status of the child in the Department's automated reporting system within seven calendar days following termination of the placement.

B. The county department shall complete a written summary within 30 calendar days after termination of the placement. This summary may be included as part of a court report, six month summary, or case closing summary. The summary shall document that the caseworker has:

1. Discussed with the child and family the goals that have been achieved and not achieved.

2. Established a clear plan for follow-up services if needed.

3. Involved the foster care provider in the evaluation of services, progress, and the child's further needs.

C. The county department shall follow all required eligibility and documentation procedures to confirm the placement change.

7.304.7 RIGHTS AND RESPONSIBILITIES OF FOSTER PARENTS AND PROVIDERS

7.304.71 Rights of Foster Parents

A. The foster parents have a right to a notice of legal status on children in their care and a right to declare their intent to adopt or not to adopt.

B. For a relinquished child, the foster parents may be given custody of a child who has been in their home for more than a year.

C. The court may award guardianship of a child to a foster parent.

7.304.72 Rights of Kinship Care Providers

A. Children may be placed with a relative or other suitable person under the legal status of protective supervision.

B. The court may, if in the best interests of the child, give preference to a grandparent who is appropriate, capable, willing, and available to care for the child in decisions relating to legal custody and determination where and with whom a child shall live.

C. Grandparents have certain visitation rights under the law.

D. Evidence of grandparents' past conduct of any child abuse or neglect shall be considered when grandparents seek the placement or custody of their grandchildren.

E. When the parent-child relationship is terminated, grandparents, aunts, uncles, brothers, or sisters of a child may request guardianship and legal custody, and the court shall give preference to them if it determines that the placement is in the best interests of the child.

7.304.73 Rights of Denied Foster Parent Applicant [Rev. eff. 4/1/12]

Refer to Section 7.500.351, F, for this information.

7.304.74 Responsibilities of Foster Parents [Rev. eff. 1/1/16]

As the provider, the foster parents shall:

A. Participate with the county department as an active team member in case planning and service delivery, including attendance at staffings and meetings, as specified in each child's Family Services Plan. The provider's signature on the Family Services Plan is required for each child placed.

B. Work actively with families of origin as specified in each child's Family Services Plan.

C. Keep weekly records of each child's behavior and progress and submit those records monthly to the county department. Copies shall be maintained in the child's file kept by the provider.

D. Provide written notice to employees of the State Department and county departments or other individuals with a need to know, if the foster parent does not want personally identifiable information provided to adult members of the foster child's family. Written notice may be subsequently provided to the parties aforementioned for release of personally identifiable information to the foster child's family; such information shall include the consent to release information, the foster parent's signature, and the date.

7.305 EMANCIPATION SERVICES

7.305.1 INDEPENDENT LIVING [Rev. eff. 11/1/15]

Independent Living includes programs and services to prepare youth in out-of-home care for the transition from a structured living environment to living on their own. Services for all children and youth in out-of-home care should include efforts to build life skills and self-sufficiency competencies; however, such services are mandatory for youth fourteen (14) years of age and older.

7.305.2 SPECIFIC PROCEDURES [Rev. eff. 11/1/15]

A. The county department shall assess all youth in foster care who have reached the age of fourteen (14) for independent living services and complete the independent living section of the Family Services Plan (FSP). This assessment and planning for independent living is required regardless of the specified permanency goal of the case plan.

B. The county department's assessment shall include documentation of:

1. The youth's capacity for self-sufficiency and self-support by reviewing daily living skills.

2. An evaluation of individual, family, community, and financial support resources available to promote emancipation or semi-independent living.

C. Following assessment, the Independent Living Plan (ILP) shall be developed in consultation with the youth, caseworker, care provider(s), and, at the option of the youth, up to two (2) other significant persons chosen by the youth who are not the foster parent or caseworker for the youth and documented in the FSP in the state automated system. If the county department of human or social services has good cause to believe an individual selected by the youth will not act in his or her best interest, the planning team may designate another advocate for the youth.

1. The case plan and court report following a staffing or meeting shall describe the services to help the youth transition to successful adulthood including, but not limited to, participation in on-going opportunities to engage in age and developmentally appropriate activities, and, if the youth is pregnant and/or a parent, the supports provided to the youth.

2. The case plan shall document the rights of the youth to education, health, visitation, court participation, the right to stay safe and avoid exploitation, and the right to receive a credit report annually. A signed acknowledgement that the youth was provided a copy of these rights and that they were explained in an age or developmentally appropriate way shall be included in the case plan.

D. Criteria and Use of Independent Living Arrangements

The county department shall assess all youth in foster care who have reached the age of fourteen (14) for Independent Living Services and complete the independent living section of the Family Services Plan (FSP). This assessment and planning for independent living is required regardless of the specified permanency goal of the case plan.

E. Free Annual Credit Record Report for Youth Fourteen (14) Years of Age and Older in Foster Care

The following steps shall be taken:

1. The county department shall obtain free annual credit report information from the three credit reporting agencies designated by the Department for youth who are in foster care and are at least fourteen (14) years of age, and provide the information to the youth and Guardian ad Litem (GAL);

2. If the youth objects to obtaining the credit report, the county department shall inform the court and request that the court issue an order authorizing the county to obtain the credit report.

3. The county department shall maintain a copy of each credit report in the case record; and,

4. Should the annual report show evidence of any inaccuracies, the county department shall inform the court of the inaccuracies, refer the youth to a Colorado Department of Human Services approved governmental or non-profit entity to resolve the inaccuracies, and inform the GAL of the referral.

F. Emancipation Transition Plan

The youth, county department caseworker, provider(s), and other representatives of the youth as appropriate, shall jointly develop a detailed, formal emancipation transition plan a minimum of ninety (90) business days prior to the projected emancipation date of the youth. The plan shall include, but not be limited to, the following:

1. Assurance that the plan meets the specific self-sufficiency/cost of living standard in the county or state where the youth plans to reside.

2. An individualized written assessment used to develop the plan that is as detailed as the youth elects, and is signed and dated by the youth and the parties that developed the plan.

3. Personalization at the direction of the youth to meet the individual emancipation needs in order to help prevent homelessness.

4. Copies of verifiable vital documents required in Section 7.305.5.

5. Specific options for:

   a. Housing,

   b. Health insurance and health care decision-making information,

   c. Education,

   d. Local opportunities for safe mentors,

   e. Continuing after-care support services, and

   f. Work force supports and employment services.

6. The plan shall be documented in the State Department's automated system in the Family Services Plan, and a copy given to the youth free of charge.

7.305.3 NATIONAL YOUTH IN TRANSITION DATABASE (NYTD) [Rev. eff. 11/1/15]

The National Youth in Transition Database (NYTD) is a federal reporting requirement. Information is collected in NYTD about youth in foster care, including sex, race, ethnicity, date of birth, and foster care status. Information is also collected about the outcomes of youth who are in or have exited foster care.

7.305.31 Served Population [Eff. 10/1/10]

The served population consists of youth and children in out-of-home care, regardless of age, receiving independent living services that are paid for or provided by the state or county.

The county department shall enter the following information into various fields of the State's automated data system:

A. Basic Demographic Information

1. Date of birth;

2. Sex;

3. Race;

4. Hispanic/Latino ethnicity.

B. Youth/Child Characteristics

1. Adjudicated delinquent;

2. Out-of-home status;

3. Federally-recognized tribe;

4. Educational level;

5. Special education.

C. Independent Living Services

1. Independent living needs assessment;

2. Academic support;

3. Post-secondary educational support;

4. Career preparation;

5. Employment programs or vocational training;

6. Budget and financial management;

7. Housing education and home management training;

8. Health education and risk prevention;

9. Family support and healthy marriage education;

10. Mentoring;

11. Supervised independent living;

12. "Room and board" financial assistance;

13. Educational financial assistance; and,

14. Other financial assistance.

7.305.32 Baseline Population [Eff. 10/1/10]

The "Baseline Population" consists of any youth who is in out-of-home placement, for even one day, and that has reached age seventeen (17) as of October 1, 2010 through September 30, 2011, and every third year thereafter.

The county department shall assure that surveys for the "Baseline Population" are completed within forty-five (45) days of the youth turning age seventeen (17).

7.305.33 Follow-Up Population [Rev. eff. 11/1/15]

The "Follow-Up Population" consists of young people who were in the baseline population at age seventeen (17) who reach age nineteen (19) or age twenty-one (21) during the six-month survey period and who appear in the survey population or sample indicated in the Trails NYTD screen.

For youth open in a case and who are in the "Follow-Up Population", the county department or Division of Youth Corrections shall assure that the "follow-up surveys" are completed by the youth within the six (6) month period to which they are assigned.

For youth who have discharged from care who are in the "follow-up population", the county department or Division of Youth Corrections shall assist the Division of Child Welfare in locating and engaging youth to complete the survey during the period to which they are assigned.

7.305.34 [Eff. 10/1/10]

When a youth in either the Baseline or Follow-Up population is unable to participate, the county shall document the reason in the State's automated system. The reasons that shall be given are:

A. Youth declined participation;

B. Parent declined on behalf of the youth;

C. Youth is incapacitated;

D. Youth is incarcerated;

E. Runaway/missing youth;

F. Unable to locate the youth;

G. Youth has died.

7.305.4 CHAFEE FOSTER CARE INDEPENDENCE PROGRAM (CFCIP) – TITLE IV-E INDEPENDENT LIVING GRANT INITIATIVE [Rev. eff. 11/1/15]

The Chafee Foster Care Independence Program (CFCIP) is a federally funded statewide independent living program that is county administered.

The purpose of the Chafee Foster Care Independence Program is to provide age or developmentally appropriate independent living resources to youth in out-of-home care who are at risk of aging out of foster care. These services shall supplement existing independent living resources and programs in county departments, residential child care facilities and child placement agencies, and by federal statute, shall not replace or duplicate existing services. Chafee Foster Care Independence Program funds shall not be used for room and board for a youth under eighteen (18) years of age. The eligible population includes:

A. Youth currently in out-of-home care, fourteen (14) up to twenty-one (21) years of age, and in out-of-home care for a minimum of six (6) months if under seventeen (17) years of age; consecutive months are not required;

B. Youth eighteen (18) to twenty-one (21) years of age, who were in out-of-home care on or after their eighteenth (18th) birthday; and,

C. Youth sixteen (16) to twenty-one (21) years of age who meet requirements for relative guardianship assistance, and youth sixteen (16) to twenty-one (21) years of age who meet requirements for adoption assistance or who met such requirements on or after their sixteenth (16th) birthday.

7.305.41 County Responsibilities [Rev. eff. 11/1/15]

A. The designated host county department shall submit a county plan for State approval.

B. The county department shall comply in format, content, and time lines with the instructions for Chafee Foster Care Independence Program plans as published by the State Department in an agency letter which will also contain required instructions for program and financial reporting.

C. The county department shall administer the State approved plan in accordance with provisions of the plan.

D. Funds shall be used exclusively for the purposes specified in the plan.

E. County departments must submit amendments to approved plans when the county is proposing to add or delete a service to the plan. The county department shall submit amendments of the Chafee Foster Care Independence Program plan for approval to the State Department no less than thirty (30) business days before the amendment is to be effective.

F. The county department shall consider the following factors, in the prioritization of Chafee services on an individual basis:

1. Risk or history of human trafficking;

2. Risk or history of homelessness;

3. Whether the youth has emancipated from Child Welfare or exited the Division of Youth Corrections after attaining age eighteen (18), or is expected to do so;

4. Previous participation in Chafee services or transfer of services from another county or state;

5. Enrollment and progress in educational programs, internships or apprenticeships;

6. Enrollment and progress in workforce innovation and opportunity act programs or workforce development activities; and,

7. Connection to permanent, supportive adults and personal support systems.

7.305.42 Eligibility [Rev. eff. 11/1/15]

To be eligible for Chafee Foster Care Independence Program (CFCIP) services, the youth must:

A. Meet Program Area 4, 5, or 6 target group eligibility requirements, in a non-secure setting, with the Division of Youth Corrections, or meet requirements for ongoing Chafee services in the state where the youth emancipated, was adopted or entered Relative Guardianship, if other than Colorado.

B. Be at risk of aging out of foster care which includes youth:

1. Currently in out-of-home care, fourteen (14) up to twenty-one (21) years of age, and in out-of-home placement for a minimum of six (6) months if under age seventeen (17). Consecutive months are not required;

2. Sixteen (16) to twenty-one (21) years of age, who meet requirements for Relative Guardianship Assistance and entered Relative Guardianship on or after age sixteen (16);

3. Sixteen (16) to twenty-one (21) years of age, who meet requirements for Adoption Assistance and entered Adoption Assistance on or after age sixteen (16);

4. Eighteen (18) to twenty-one (21) years of age, who were in out-of-home care on or after their eighteenth (18th) birthday.

C. Have a current Family Services Plan in the State Department's automated system. For youth who emancipated, were adopted or entered Relative Guardianship in another state, have documented verification of eligibility from the state where the youth's case was closed. For youth who entered into a Relative Guardianship or Adoption Assistance agreement at age sixteen (16) or older, the following may be used in lieu of a Family Services Plan:

1. The Relative Guardianship or Adoption Assistance agreement; or,

2. An Independent Living Plan developed on or prior to the eighteenth (18th) birthday.

D. Participate on a voluntary basis. The youth may decide to refuse services, but shall be entitled to reconsider his or her choice and receive services at a later date.

E. Follow the plan developed with the youth and the county department regarding participation in the Chafee Foster Care Independence Program.

7.305.43 Educational and Training Voucher Program [Eff. 11/1/15]

The Educational and Training Voucher Program provides federally funded vouchers for postsecondary training and education to youth eligible for Chafee services in Section 7.305.42.

7.305.5 Vital Life Documents Prior to Emancipation [Rev. eff. 11/1/15]

A. All youth in foster care who have reached the age of eighteen (18), and who have been in foster care at least six (6) months, shall be provided with the following documents a minimum of ninety (90) business days prior to the projected emancipation date of the youth, unless there is no

record of the youth's birth or the identity of the youth cannot be established, in which case the basis for this shall be documented in the State automated system:

1. A certified birth certificate or, when applicable, an alien registration card (green card);

2. Tribal affiliation information for American Indian/Alaskan Native youth (see section 7.309.21, A and B);

3. A Social Security card;

4. A state identification card or a state driver's license;

5. A Health Passport and other pertinent health-related records, to include health care decision-making information, and health insurance information; and,

6. Educational records (see Section 7.301.242).

B. For all male youth with a permanency goal of "Other Planned Permanent Living Arrangement", the county shall facilitate registration for the Selective Service System.

7.306 ADOPTION SERVICES

The county department shall ensure that adoption services are provided as a service on the continuum of protective services to children. All children who are unable to return to their own home should be considered for adoption. Proceeding with termination of parental rights implies that the county will actively pursue adoption as the permanent plan for the child(ren).

7.306.1 PRE-PLACEMENT SERVICES

7.306.11 Evaluation of Child's Needs [Rev. eff. 3/2/11]

A. The county department shall assess the child's readiness for adoption.

B. The county department shall make thorough efforts to place siblings together in adoption and document such efforts in the Family Services Plan. When the child is part of a sibling group and the sibling group is being placed out of the home, if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by the county by a preponderance of evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

C. If the current caregiver is an appropriate resource, the worker will complete the Colorado Adoption Resource Registry (CARR) exclusion form and send the form to the State's adoption unit.

D. Available resources for adoption shall be assessed and a recruitment plan developed if there is no adoptive family identified. Recruitment efforts begin when the permanency goal becomes adoption and should use all resources available. The county shall document, in the Family Services Plan, efforts to recruit and locate a permanent home for any child whose parental rights have been terminated and who is in the guardianship of the county with the right to consent to adoption.

E. A child’s best interests shall be the primary consideration in determining placement.

7.306.12 Child's Right to Information

Information regarding a child's birth family shall be maintained in the adoption record.

7.306.13 Child's Social Study

Social history and medical information shall be collected on all children whose parental rights are relinquished or terminated.

A. Basic information shall include, but not be limited to:

1. Birth certificate

2. Legal custody documents

3. Record of placements

4. Family, social, educational, medical and genetic history

5. Emotional, psychological and developmental evaluations.

B. Information in the record should be updated when changes occur or additional information is available that would affect the child's readiness for adoption.

7.306.14 Colorado Adoption Resource Registry (CARR) [Rev. eff. 1/1/16]

A. Referral to Colorado Adoption Resource Registry

The county department shall submit a Child's Profile for photo listing or a Request for Exclusion to the Colorado Adoption Resource Registry:

1. If no adoptive home has been found for the child within 90 calendar days following relinquishment or termination of the parent-child relationship.

2. Following a disruption of an adoptive placement before legal finalization. The child shall be listed or excluded 90 calendar days from the date of the disruption.

3. Registration with CARR

a. A copy of the CARR form shall be sent via mail, email or fax to the State adoption unit.

b. A second copy of the CARR form and a clear, close-up picture of the child (and his/her siblings if the children are to be placed together) shall be sent to the adoption exchange for the purpose of featuring in various media resources.

4. Make a diligent search of the child’s record for possible permanent placement(s) or other permanent connections. Any possible resources should be interviewed as to their willingness and/or availability as a placement for the child.

5. Interview the child regarding possible permanent placement resources.

B. Exclusion from Colorado Adoption Resource Registry

The county department may decide that the best interest of the child will not be served by a Colorado Adoption Resource Registry photo listing. The county department shall determine the reason for the exclusion from listing and send the Request for Exclusion to the State adoption unit. The county shall use the following criteria for determining reasons for exclusion:

1. An adoptive family has been found for the child or the foster parents will petition to adopt within 90 calendar days of the date the child is legally free for adoption. If the foster parents do not petition to adopt within the 90 calendar days, the child(ren) shall be photo listed with the Colorado Adoption Resource Registry and another family will be recruited for the child(ren). If there is a compelling reason that the county department and State adoption unit agree is appropriate for delaying filing of the adoption petition, this reason is to be submitted to the State adoption unit by the county department. The State adoption unit will review the foster care placement until such time as the petition to adopt is filed or the child is photo listed with the Colorado Adoption Resource Registry.

   If an approved family has been identified as an adoptive home for a child and if the child has not moved into the adoptive placement within 90 calendar days of termination, the county shall photo list the child with the Colorado Adoption Resource Registry. If there is a compelling reason that the county department and the State adoption unit agree is appropriate for delaying filing of the adoption petition, this reason is to be submitted to the state review team by the county department. If the compelling reason for delaying filing the petition is approved, the state review team will review the foster care placement until such time as the petition to adopt is filed or the child is photo listed with the Colorado Adoption Resource Registry.

2. The child is:

   a. One whose court-approved permanency goal is legal guardian-ship or other planned permanent living arrangement.

   b. Placed with a relative or a relative is being considered as a placement resource for the child (adoption or foster care). All relatives who are providing care for a child who is legally free for adoption shall be counseled by a professional who is knowledgeable about permanency options regarding the importance of permanency through adoption, guardianship, or permanent custody. When a relative is being considered, the placement shall be made 90 calendar days from the date the child is legally free for adoption unless there is a documented extenuating circumstance.

   c. The CARR exclusion will be considered and approved or denied by the State adoption unit. Following are conditions that are not necessarily appropriate for denying any child the possibility of a permanent placement or a permanent connection in his/her life.

      1) Placement in a residential child care facility, detention or corrective center, or mental hospital, and placement is not indicated by the treatment plan for the child. The county department of human or social services is required to photo list a child with the Colorado Adoption Resource Registry ninety (90) calendar days prior to discharge from the facility if the plan is for the child to return to a group home or foster care home.

7.306.14 Colorado Adoption Resource Registry (CARR)

A. Referral to Colorado Adoption Resource Registry

The county department shall submit a Child's Profile for photo listing or a Request for Exclusion to the Colorado Adoption Resource Registry:

1. If no adoptive home has been found for the child within 90 calendar days following relinquishment or termination of the parent-child relationship.

2. Following a disruption of an adoptive placement before legal finalization. The child shall be listed or excluded 90 calendar days from the date of the disruption.

3. Registration with CARR

    a. A copy of the CARR form shall be sent via mail, email or fax to the State adoption unit.

    b. A second copy of the CARR form and a clear, close-up picture of the child (and his/her siblings if the children are to be placed together) shall be sent to the adoption exchange for the purpose of featuring in various media resources.

4. Make a diligent search of the child's record for possible permanent placement(s) or other permanent connections. Any possible resources should be interviewed as to their willingness and/or availability as a placement for the child.

5. Interview the child regarding possible permanent placement resources.

B. Exclusion from Colorado Adoption Resource Registry

The county department may decide that the best interest of the child will not be served by a Colorado Adoption Resource Registry photo listing. The county department shall determine the reason for the exclusion from listing and send the Request for Exclusion to the State adoption unit. The county shall use the following criteria for determining reasons for exclusion:

1. An adoptive family has been found for the child or the foster parents will petition to adopt within 90 calendar days of the date the child is legally free for adoption. If the foster parents do not petition to adopt within the 90 calendar days, the child(ren) shall be photo listed with the Colorado Adoption Resource Registry and another family will be recruited for the child(ren). If there is a compelling reason that the county department and State adoption unit agree is appropriate for delaying filing of the adoption petition, this reason is to be submitted to the State adoption unit by the county department. The State adoption unit will review the foster care placement until such time as the petition to adopt is filed or the child is photo listed with the Colorado Adoption Resource Registry.

    If an approved family has been identified as an adoptive home for a child and if the child has not moved into the adoptive placement within 90 calendar days of termination, the county shall photo list the child with the Colorado Adoption Resource Registry. If there is a compelling reason that the county department and the State adoption unit agree is appropriate for delaying filing of the adoption petition, this reason is to be submitted to the state review team by the county department. If the compelling reason for delaying filing the petition is approved, the state review team will review the foster care placement until

such time as the petition to adopt is filed or the child is photo listed with the Colorado Adoption Resource Registry.

2. The child is:

   a. One whose court-approved permanency goal is legal guardian-ship or other planned permanent living arrangement.

   b. Placed with a relative or a relative is being considered as a placement resource for the child (adoption or foster care). All relatives who are providing care for a child who is legally free for adoption shall be counseled by a professional who is knowledgeable about permanency options regarding the importance of permanency through adoption, guardianship, or permanent custody. When a relative is being considered, the placement shall be made 90 calendar days from the date the child is legally free for adoption unless there is a documented extenuating circumstance.

   c. The CARR exclusion will be considered and approved or denied by the State adoption unit. Following are conditions that are not necessarily appropriate for denying any child the possibility of a permanent placement or a permanent connection in his/her life.

      1) Placement in a residential child care facility, detention or corrective center, or mental hospital, and placement is not indicated by the treatment plan for the child. The county department is required to photo list a child with the Colorado Adoption Resource Registry 90 calendar days prior to discharge from the facility if the plan is for the child to return to a group home or family foster home.

      2) In therapy and adoptive placement is not indicated by the treatment plan for the child. The county department shall provide the review team with documentation that a therapist and others (e.g., guardians ad litem) have determined that it would not be in the child's best interest to recruit an adoptive home.

      3) One who is still being evaluated by specialists. The county department shall photo list the child(ren) with the Colorado Adoption Resource Registry if the evaluation is not completed within 90 calendar days of termination of parental rights.

      4) Twelve (12) years or older and is refusing adoption. The child shall be counseled by a professional who is knowledgeable about adoption and permanency for teens, recognizing that their consent is still required to proceed with an adoption.

7.306.15 Selection of an Adoptive Family for a Child [Rev. eff. 3/2/11]

A. The county department shall use all resources available to find a home for the child. The county shall not deny or delay the placement of a child for adoption when an approved family is available outside of the county or state. If a family with an approved home assessment from another county or state requests a fair hearing, it shall be provided to the family.

B. The county department shall comply with the Indian Child Welfare Act in placing any eligible Native American child. See Indian Child Welfare Act of 1978, in Section 7.309, et seq.

C. An adoptive placement shall not be delayed or denied when an adoptive family of another race, color, or national origin than that of the child is available.

D. Race, color, and national origin can only be considered in extraordinary circumstances.

7.306.16 Purchase of Adoption Services for a Child [Rev. eff. 3/2/11]

See Adoption Resources, Program Area 7, Purchase of Adoption Services from Agency Providers in Section 7.500.355.

7.306.2 PLACEMENT SERVICES [Eff. 02/01/2009]

The county department shall:

A. Conduct a face-to-face presentation interview with the prospective adoptive parent(s). If the adoptive resource is a two-parent family, both parents shall be present for the interview. The presentation interview shall be recorded via some type of audio-recording device. Two copies of the recording shall be made.

1. One copy shall be kept with the child's file.

2. The second copy shall be provided to the prospective adoptive family to accompany all of the written documentation that the family receives at the end of the presentation interview.

B. The county department shall provide all non-identifying information contained in the child's record to the prospective adoptive parent(s).

C. All of the information provided (physically and verbally) shall be documented on the State's approved form, signed by the family, then placed in the child's record.

D. If the family decides at a later time not to move forward with adoption or maintain a permanent relationship with the child, all information provided to the prospective adoptive family must be returned to the agency.

7.306.21 Placement Activities [Rev. eff. 7/1/10]

The county department shall complete the following documents and reports:

A. Consent form for out-of-state travel and medical care.

B. The Adoption Placement Agreement, at the time the child is legally free and placed in the home.

C. The information sharing form, at the time a child is legally free for adoption and the prospective adoptive parents have made a decision to proceed with the adoption.

D. At the time the county department changes the child's status from foster care to adoption, the Department's automated reporting system shall be closed in the child's birth name and opened under the new adoptive name. In addition, a new state identification number shall be reissued in the child's adoptive name.

E. When a child in an adoptive placement whose adoption is not finalized has a name change, and case and client I.D. number(s) change entered into the Department's statewide automated system, the county department shall provide the following information to the Administrative Reviewer: the child's biological name, Trails case and client I.D. numbers, and the new name, and new Trails case and client I.D. numbers.

F. The county shall request that the court expedite the finalization of the adoption when the child(ren) to be adopted has been in the home as a foster child(ren) for at least six months prior to the filing of the petition to adopt. Written documentation of the request shall be in the record. If the county does not request that the adoption be expedited, the State shall withhold State funds for the placement from the date of the adoption petition until the date of finalization.

G. The county shall file a motion with the court to open the hearing to the public when all parties have consented and when it is in the best interests of the child who is, or the children who are, the subject of the adoption hearing.

H. When a child is placed for adoption into another Colorado county, the county of residence where the child is placed shall open Medicaid when the child is receiving subsidized adoption assistance. The placing county shall send written notification to the resident county to expedite timely opening of the Medicaid benefits.

7.306.22 Social Security Benefits for Children in Adoptive Placement [Eff. 02/01/2009]

A. The county department shall inform adoptive parents of the potential eligibility for Social Security benefits of any child placed with them for adoption.

B. When a child becomes eligible for Social Security benefits and the child is receiving adoption assistance, the family must inform the agency of the receipt of these benefits.

7.306.3 POST-PLACEMENT SERVICES [Eff. 02/01/2009]

Following placement, the county department shall:

A. Provide services to the child and the adoptive parents to integrate the child into the family, unless the child is eligible for and receiving other post legal adoption services.

B. Review the information sharing acknowledgment form with the adoptive parent(s); all parties shall date and initial it before the finalization of the adoption.

C. Inform the family of the legal procedure for adoption, and complete and submit a report to the court regarding the adoptive placement as required by the Colorado Children's Code.

D. Place a copy of the adoption petition and the final decree of adoption in the child's record.

E. Close finalized adoption records of children for whom the county consented to the adoption and maintain in a secure location in the county department. Within ninety (90) days of the final adoption hearing, the county department shall prepare the adoption record for closing. All information related to the child and adoptive family gathered during the adoptive process shall be included in the closed (sealed) finalized adoption record.

7.306.31 Adoption Assistance [Eff. 02/01/2009]

Adoption assistance is a post-placement service (see Adoption Assistance Services, Section 7.306.4).

7.306.32 Adoption Placement Disruption

The child's county of custody shall formulate a new Family Services Plan or the approval of such plan if the placement disrupts prior to finalization.

7.306.33 Inter-Country Adoptions

The county department shall, only upon approval of the State adoption unit of the Colorado Department of Human Services, provide services to a child being adopted from a foreign country, either directly from the foreign country or through an agency in another state.

7.306.34 Adoption Records [Eff. 02/01/2009]

A. The county department shall maintain a record for the child in its custody who is approved for adoptive placement. It shall ensure that all documentation related to the child's adoption is in the record. The following must be included, but is not limited to:

1. Court order issued at the time of initial removal;
2. Voluntary placement agreement, if applicable;
3. Order for termination of parental rights or order for relinquishment of parental rights;
4. Child study (social history);
5. Adoptive family's application;
6. Adoptive family's home study and any updates, as necessary;
7. Documentation of the child's special needs (7.306.4, A, 3, d, 1-5);
8. Documentation of child's tribal affiliation, if applicable;
9. Time and date-stamped petition for adoption;
10. Final decree of adoption.

B. Upon completion of legal adoption, the county department shall close the case on the Department's automated reporting system within 30 calendar days, unless the child receives adoption assistance.

C. Within 90 calendar days of the date of finalization of the adoption, the county will send to the Division of Child Welfare basic data on the family and children for entry in the statewide database using the State's approved form. This information shall be supported and reflect what is in the automated case management system.

D. In adoption assistance cases, the county department shall maintain a separate record to include the following items as long as the adoption assistance agreement is in effect for the child and family. Upon termination of this adoption assistance agreement, the record shall be closed.

1. Current adoptive home study and any necessary updates;
2. Child's Summary and Application for Adoption Assistance;
3. Initial Adoption Assistance Agreement;
4. Court Order issued at time of initial removal;

5. Voluntary Placement Agreement, if applicable;

6. Subsequent Order on Review for Need of Placement, if applicable;

7. Review of Adoption Assistance Agreement and three year reviews of need for adoption assistance or any amendments of the original adoption assistance agreement;

8. Adoption Assistance Title IV-E Eligibility Determination Form;

9. Title IV-E Foster Care Eligibility Determination Form;

10. Title IV-E Redetermination of Eligibility Determination Form(s);

11. A copy of the Social Security Income Eligibility Notification;

12. Petition to Adopt time and date-stamped by the court;

13. Final Adoption Decree;

14. Orders terminating parental rights;

15. Appeal Petition of the termination and Final Order resolving appeal of the termination;

16. Indian Child Welfare cases, if known tribal affiliation;

17. Documentation of the child's special needs (7.306.4, A, 3, d, 1-5);

18. Motion to court to expedite the date of the final hearing, if applicable.

E. County departments providing adoption assistance to children from private non-profit adoption agencies or relatives shall maintain in a secure location at the county the records containing the adoption assistance information listed in subsection D, above.

F. County departments providing a subsequent adoption assistance agreement to children whose previous adoption was dissolved shall maintain, in a secure location at the county department, the records containing the adoption assistance information listed in subsection D, above. Additional required information includes:

1. New documentation assessing and identifying the child's continuing special needs; and,

2. All of the adoption assistance forms and documentation from the previous adoptive family.

G. County departments providing an adoption assistance agreement to children who were in foster care with their teen parents shall maintain, in a secure location at the county department, the records containing the adoption assistance information listed in subsection D, above. Additional required information must include proof of foster care payment made that includes both the child and his/her teen parent.

7.306.4 ADOPTION ASSISTANCE SERVICES [Rev. eff. 12/1/12]

Colorado operates two adoption assistance programs: the Title IV-E program and the state and county-only (non-Title IV-E) program.

A. Applicable to both programs:

1. The federal government participates in adoption assistance agreements on behalf of children who meet the eligibility criteria for the Title IV-E adoption assistance program.

2. The state and county participate in adoption assistance agreements on behalf of children who are not eligible for the Title IV-E program.

3. Adoption assistance is a program that provides assistance to adoptive parent(s) in certain defined and limited ways to provide for the needs of an eligible adopted child. Adoption assistance is intended to help or remove financial or other barriers to the adoption of Colorado children with special needs by providing assistance to the parent(s) in caring for and raising the child.

    a. The county department may make adoption assistance payments and/or provide Medicaid or medical assistance at the time of adoptive placement, continue them after the adoption has been finalized and continue them until the adopted child has reached the age of eighteen (18), or the age of twenty-one (21) years when the county department has determined that the child has a developmental or physical disability which warrants continuance of assistance.

    b. The determination for expiration of the agreement must be made and documented in the original negotiation and noted in the original paperwork for the adoption assistance agreement.

    c. The county department must determine that in each case a reasonable, but unsuccessful, effort to place the child for adoption has been made before negotiating adoption assistance, unless the best interests of the child would not be served by such an effort.

        1) Where appropriate, the current caregiver will be given priority as the prospective adoptive family. Reasonable effort requires listing with the Colorado Adoption Resource Registry and may include presentation in the media and consultation with the state.

        2) The only exception to this requirement is in situations where it would be against the best interests of the child, due to such factors as the existence of significant emotional ties with the prospective adoptive parents while in their care as a foster child, or adoption by a relative (in keeping with the statutory emphasis on the placement of children with relatives).

    d. There exists a specific factor or condition (special need) to conclude that the child cannot be adopted without providing adoption assistance or medical assistance. A “special need” is one or more of the following special, unusual, or significant factors that act as a barrier to the child’s adoption:

        1) Physical disability (such as hearing, vision, or physical impairment; neurological conditions; disfiguring defects; and, heart defects).

        2) Mental disability (such as developmental delay or mental retardation, perceptual or speech/language disability, or a metabolic disorder).

        3) Developmental disability resulting in educational delays or significant learning processing difficulties.

4) Educational disability that qualifies for section 504 of the rehabilitation act of 1973 or special education services.

5) Emotional disturbance (such as post-traumatic stress disorder, bi-polar disorder and other diagnoses).

6) Hereditary factors that have been documented by a physician or psychologist.

7) High risk children (such as HIV-positive, drug-exposed, or alcohol-exposed in utero).

8) Other conditions that act as a serious barrier to the child's adoption. Conditions may include, but are not limited to, a healthy child over the age of seven or a sibling group that should remain intact and medical conditions likely to require further treatment.

9) Ethnic background or membership in a minority group which may be difficult to place.

e. The county department shall not use an income eligibility requirement (income means test) for the prospective adoptive parent(s) in determining eligibility for adoption assistance.

f. Families applying for adoption of a child with special needs must be informed of the adoption assistance program. The particular agreement that is negotiated shall be based on the child's need and the family's circumstances.

g. Available public programs for which the child is eligible shall be used first to address the child's needs before an adoption assistance agreement is negotiated.

h. The county department may authorize the following types of adoption assistance agreements:

1) "Long-Term Adoption Assistance Agreement" means to partially meet a child's daily needs on an indefinite basis. A long-term agreement is made when the family's financial situation precludes adoption and is unlikely to change or when a child's needs take an excessive toll on the family's financial and emotional resources. This sort of monthly payment may continue until the family's or child's circumstances change, or the agreement terminates as outlined in Termination of Adoption Assistance, Section 7.306.59, of the Adoption Assistant agreement rules.

2) "Time-Limited Adoption Assistance Agreement" means to partially meet the everyday needs of the child for a specified period. These are start-up costs for those things that children placed for adoption do not always have, such as sufficient clothing. Agreement partially covers unmet needs that are time limited and non-renewable.

3) "Dormant" or "Medicaid Only Adoption Assistance Agreement" means there is no adoption assistance payment provided at this time. County departments shall document special needs for the child in the services record and in the State Department's automated system that the

potential need for financial adoption assistance exists and may need to be activated at a future time.

4. If the child is legally available for adoption and reunited with his/her birth parent(s), the child is not eligible for adoption assistance.

5. Medicaid is available to all Colorado children who have an adoption assistance agreement.

6. Families who adopt children who meet the criteria for adoption assistance are eligible for non-recurring adoption expenses.

7. The contact requirements in Section 7.001.6 shall be used prior to finalization and contacts shall be documented in the case file.

8. Case services payments may be part of an adoption assistance agreement; these payments can be made directly to the providers of service or to the adoptive parent(s).

B. Target groups for adoption assistance agreements:

1. Children whose special needs are a barrier to their adoption are legally available for adoption and are in the custody of a county department and the county has guardianship of the child with the right to consent for adoption.

2. Children who are in the custody of a relative, tribe, or licensed non-profit child placement agency and meet the eligibility criteria to participate in one of Colorado's adoption assistance programs.

3. The county department, agency, tribe, or relative requesting the adoption assistance agreement is financially responsible for the care of the child.

C. County requirements for adoption assistance:

1. The county department shall obtain and document the diagnoses and prognoses of the child's needs that are barriers to the adoption.

2. The documentation shall include, but is not limited to:

a. Medical

b. Psychological

c. Psychiatric

d. Placement history

e. Special needs: if the county department determines that the child is one with special needs for whom services will be purchased, it must confirm the special needs by a second opinion of a social worker, doctor, psychologist or mental health specialist who is outside the department.

f. Other appropriate reports.

3. The county department shall determine the child's eligibility for adoption assistance on the State-prescribed form no later than the calendar month that the adoption petition is filed.

4. The county department shall ensure that all parties sign the adoption assistance agreement before the adoption is finalized.

5. The family shall be informed in writing of its right to a fair hearing.

7.306.41 Title IV-E Adoption Assistance Program [Rev. eff. 12/1/12]

A. Pathways to Eligibility

Title IV-E adoption assistance services may be provided to children whose special needs are a barrier to their adoption, who are legally available for adoption, and:

1. Are in the custody of the county department via a court-ordered removal;

2. Have Social Security Income (SSI) eligibility;

3. Are IV-E eligible in a previous adoption;

4. Are in mutual foster care placement with a county department;

5. Were initially removed via voluntary placement agreement;

6. Were voluntarily relinquished to a public or private licensed non-profit child placement agency;

7. Are in the custody of a relative and the children are IV-E eligible;

8. Are otherwise IV-E eligible but do not meet AFDC requirements, and are eligible via the requirements in Section B, 7, of this section.

B. Requirements for Eligibility

1. A child must be removed from his/her home by a court order that contains the requirements in Section 7.001.41, B.

   a. For the purposes of Title IV-E adoption assistance only, there is no requirement for a "reasonable efforts" judicial determination; and,

   b. Aid to Families with Dependent Children (AFDC) related requirement defined in Section 7.001.41, D.

2. Have Social Security Income (SSI) eligibility.

   a. This factor must be met at any time prior to finalization of the adoption.

   b. If eligible, the child may simultaneously receive SSI and Title IV-E adoption assistance payments.

   c. If a child is SSI eligible, there are no requirements for the AFDC requirements or the statement regarding efforts to place the child without adoption assistance.

3. Are IV-E eligible in a previous adoption and the adoptive parents have relinquished, had their parental rights terminated, or died and the children are placed in a subsequent adoptive placement, then the children retain Title IV-E eligibility for adoption assistance in their new adoptive placement. Additional requirements for this pathway to eligibility include:

    a. A new determination regarding the children's continuing special needs.

    b. Completion of new adoption assistance agreements with the new prospective adoptive parents.

    c. If the previous adoptive parents are deceased, a copy of the death certificate must be provided.

4. Are in mutual foster care placement with a county department.

    a. The children must be placed with their teen parent; and,

    b. The foster care payment included both the children and the teen parent.

5. Are in foster care by voluntary placement agreement with a county department (a tribe or another public agency with which the state/county has a Title IV-E agreement). The child must meet the requirements outlined in Section 7.001.41, E.

    a. There must have been at least one Title IV-E foster care maintenance payment made on behalf of the children under the voluntary placement agreement.

    b. Under this factor, there is no specified amount of time that the children must have been in foster care under the voluntary placement agreement.

6. A child who was voluntarily relinquished to a public or private licensed non-profit agency must meet the requirements in Section 7.001.41, F., and:

    a. A petition was filed in court to place the child outside of the home within six months of the time the child lived with the relinquishing parent; and,

    b. A subsequent order was issued which included findings that it is in the best interests of the child to be placed out of the home; and,

    c. Legal orders placing the child in the custody of a public or private licensed non-profit child placement agency with authority to consent to the child's adoption.

    d. The agency must provide documentation of the efforts the agency made to place the children for adoption without an adoption assistance agreement when the child meets the AFDC-related requirements.

7. Effective on the dates listed in this section, if the child does not meet AFDC IV-E eligibility criteria, has special needs, and meets the following requirements in the Federal Fiscal Year in which the adoption assistance agreement is signed by all parties, the child will become categorically eligible for Title IV-E adoption assistance:

    a. October 1, 2009 (Federal Fiscal Year 2010)

        1) Turns sixteen (16) years of age or older at any time during this Federal Fiscal Year; or,

2) Has been in foster care for any sixty (60) consecutive months prior to finalization, or,

3) Is a sibling to a child who is eligible due to age or time in foster care and placed with the aforementioned sibling.

b. October 1, 2010 (Federal Fiscal Year 2011)

1) Turns fourteen (14) years of age or older at any time during this Federal Fiscal Year; or,

2) Has been in foster care for any sixty (60) consecutive months prior to finalization; or,

3) Is a sibling to a child who is eligible due to his age or time in foster care and placed with the aforementioned sibling.

c. October 1, 2011 (Federal Fiscal Year 2012)

1) Turns twelve (12) years of age or older at any time during this Federal Fiscal Year; or,

2) Has been in foster care for any sixty (60) consecutive months prior to finalization; or,

3) Is a sibling to a child who is eligible due to his age or time in foster care and placed with the aforementioned sibling.

d. October 1, 2012 (Federal Fiscal Year 2013)

1) Turns ten (10) years of age or older at any time during this Federal Fiscal Year; or,

2) Has been in foster care for any sixty (60) consecutive months prior to finalization; or,

3) Is a sibling to a child who is eligible due to his age or time in foster care and placed with the aforementioned sibling.

e. October 1, 2013 (Federal Fiscal Year 2014)

1) Turns eight (8) years of age or older at any time during this Federal Fiscal Year; or,

2) Has been in foster care for any sixty (60) consecutive months prior to finalization; or,

3) Is a sibling to a child who is eligible due to his age or time in foster care and placed with the aforementioned sibling.

f. October 1, 2014 (Federal Fiscal Year 2015)

1) Turns six (6) years of age or older at any time during this Federal Fiscal Year; or,

2) Has been in foster care for any sixty (60) consecutive months prior to finalization; or,

3) Is a sibling to a child who is eligible due to his age or time in foster care and placed with the aforementioned sibling.

g. October 1, 2015 (Federal Fiscal Year 2016)

1) Turns four (4) years of age or older at any time during this Federal Fiscal Year; or,

2) Has been in foster care for any sixty (60) consecutive months prior to finalization; or,

3) Is a sibling to a child who is eligible due to his age or time in foster care and placed with the aforementioned sibling.

h. October 1, 2016 (Federal Fiscal Year 2017)

1) Turns two (2) years of age or older at any time during this Federal Fiscal Year; or,

2) Has been in foster care for any sixty (60) consecutive months prior to finalization; or,

3) Is a sibling to a child who is eligible due to his age or time in foster care and placed with the aforementioned sibling.

i. Beginning on October 1, 2017 (Federal Fiscal Year 2018): rule 7.306.41, B, 7, applies to any child being adopted regardless of age, time in placement or sibling placement status.

8. Beginning on October 1, 2009 (Federal Fiscal Year 2010), if the youth reaches the age of sixteen (16) prior to the signatures on the adoption assistance agreement, the agreement can continue up to age twenty-one (21), if the youth meets one of the following criteria:

a. Completing secondary school (or equivalent); or,

b. Enrolled in post-secondary or vocational school; or,

c. Participating in a program or activity that promotes or removes barriers to employment; or,

d. Employed eighty (80) hours per month; or,

e. Determined incapable of any of the above due to a documented medical condition.

9. After children have been determined eligible for Title IV-E adoption assistance payments and/or Title IV-E Medicaid benefits, Title IV-E eligibility continues as long as there is an adoption assistance agreement in effect as outlined below:

a. The children meet the requirements regardless of the family's state of residence.

b. Eligibility may continue even though no payments or Medicaid benefit is currently paid; therefore, maintaining the potential Title IV-E benefits if needed later.

c. Until the expiration of the original agreement unless all parties to the agreement are in concurrence. This includes, but is not limited to, the situation where the family fails to complete and return paperwork related to the three-year review of the assistance agreement.

10. The county shall obtain documentation of school attendance or reasons for inability to attend. The documentation must demonstrate that each child who is eligible for adoption assistance and who has attained the minimum age for compulsory school attendance is:

a. Enrolled or in the process of enrolling in an institution that provides elementary or secondary education, or,

b. Instructed in elementary or secondary education at home in accordance with the home school statute, or,

c. In an independent study elementary or secondary education program in accordance with statute, and which is administered by the local school, school district, or Board of Cooperative Education (BOCES), or,

d. Incapable of attending school on a full-time basis due to the medical condition of the youth or child. The reasons shall be supported by regularly updated information in the educational plan maintained by the school, school district, or BOCES.

C. Foster Care Placement of a Child Under an Adoption Assistance Agreement

1. Title IV-E eligibility must be determined when a child is dually placed in foster care and adoption assistance. The child does not automatically retain the Title IV-E eligibility.

2. The State prescribed form must be completed using the adoptive parent's income.

3. The child, upon returning to the adoptive parent(s)' home, continues to be eligible for the Title IV-E adoption assistance agreement.

D. Eligibility Determination for Medicaid in Title IV-E Adoption Assistance

1. Children with an effective adoption assistance agreement are eligible for Medicaid in the state they reside. See Medical Resources section, 7.402 Medicaid for children covered by the Interstate Compact on Adoptions and Medical Assistance (ICAMA).

2. An adoption assistance payment is not required to extend Medicaid coverage.

3. Colorado is a member of the Interstate Compact on Adoption and Medical Assistance. Procedures for completing and complying with the compact are in the Medical Resources section, Children Moving from Colorado (Section 7.402.3, B.).

4. Medicaid eligibility shall be continued for IV-E eligible children who are out of the home for more than thirty (30) calendar days unless it is determined that they are eligible for Medicaid under another program by completing the State approved form.

5. Medicaid eligibility for all children receiving Medicaid shall be re-determined yearly only if the child continues to be eligible for Medicaid. This can be done by completing the State prescribed form or completing a form letter that the children continue to be eligible for Medicaid. This form letter shall be sent to other states by the county department to ensure continuation of Medicaid for a child who is residing out of state.

E. County Process for Title IV-E Adoption Assistance Agreements

1. Determine and document a child's special needs and eligibility for adoption assistance.

2. Utilize financial information regarding the family including assets, liabilities and insurance benefits in negotiating the initial agreement, and any subsequent increases in adoption assistance.

3. The adoption assistance agreement shall be established in accordance with the county department's written policy. The policy shall outline the criteria used for determining the amount of adoption assistance.

4. It is not permissible for a county to include a statement in the adoption assistance agreement that IV-E adoption assistance payments and/or services are subject to the appropriation of state funds.

5. Make a good faith effort to negotiate an adoption assistance agreement with the adoptive parent(s). The county shall base the negotiation on the special needs of the child and the circumstances of the adoptive parent(s). If the parties cannot come to an agreement, the county department shall establish the subsidy amount. If the family disagrees with the decision, a fair hearing can be requested.

6. Negotiate with the adoptive parents to request the amount that is needed by the family to meet the child's special needs. This may be less than the amount for which the child qualifies.

7. The county shall establish a maximum amount that could be provided to a family. The amount shall be no more than the rate that is being paid for the child's current out-of-home care or that would have been paid if the child were in paid out-of-home care today. The monthly respite care payment that is provided under the foster care program is not a benefit under the adoption assistance program.

8. If a child with developmental disabilities is receiving an allowance in addition to the foster care payment at the time the child is placed for adoption, the allowance may continue under the adoption assistance program if the child continues to meet the criteria outlined in "Child with Adoption assistance", Section 7.306.4, A.

9. County departments who pay more than the county's foster care rate based on the child's original or amended adoption assistance agreement shall reimburse the State for eighty percent (80%) of the payment that is over the foster care rate.

10. Use the State prescribed forms to document the negotiated agreement for IV-E adoption assistance and attach supporting documentation.

11. Complete and sign the adoption assistance agreement form specifying:

a. The dollar amount of the adoption assistance being provided, if applicable.

b. The duration date of the agreement:

1) Until the adopted child reaches the age of 18 years; or,

2) 21 years in the case of a child who is physically or mentally handicapped; or,

3) On a case-by-case basis, the duration of an agreement may be sooner than this time. All parties must be in agreement with the earlier termination date.

c. The services and dates of services that are covered by an effective adoption assistance agreement.

d. That the adoption assistance agreement must be signed and dated by all parties prior to the effective date of the agreement and before the adoption is finalized. If the county fails to completely execute the initial adoption assistance agreement prior to the effective date and prior to the finalization of the adoption, the assistance payment will become non-reimbursable by the State and IV-E moneys.

12. Review the agreement every three years from the date of the initial agreement.

a. Any change in the adoption assistance agreement shall be related to the original barrier(s), identified at the time the decision was made that adoption assistance was needed.

b. In Title IV-E adoption assistance agreements, the agreement cannot be changed in any way without the agreement of all parties. The only exception is when there is an across-the-board reduction or increase in the foster care maintenance payment rate. In that circumstance, the State may adjust the adoption assistance payment without the adoptive parent(s)' concurrence.

c. The county department shall not add additional needs for adoption assistance payment after the adoption decree has been issued that is not directly related to the originally identified special needs of the child, or unless genetic in nature.

13. The county or adoptive family may at any time negotiate changes to an existing adoption assistance agreement based on information related to the child's original condition or the family's circumstances.

F. There are situations after finalization when adoptive parents can request a state level fair hearing before an Administrative Law Judge concerning the adopted child's eligibility for adoption assistance benefits or the amount of those benefits. These situations include, but are not limited to:

1. Relevant facts regarding the child that were known and not presented to the adoptive parent(s) prior to the finalization of the adoption.

2. Denial of assistance based upon a means test of the adoptive family.

3. Erroneous determination that a child is ineligible for adoption assistance.

4. Denial of a request for a change in payment level due to a change in the adoptive parent(s)' circumstances.

5. Failure by the county or a non-profit child placement agency to advise the adoptive parent(s) about the availability of adoption assistance for children who have been identified with special needs.

6. Decrease in the amount of adoption assistance without the concurrence of the adoptive parent(s) (for Title IV-E adoption assistance agreements, only).

7.306.42 Non-Title IV-E Adoption Assistance [Eff. 02/01/2009]

A. Pathways to Eligibility

The following are ways to become eligible for non-Title IV-E adoption assistance:

1. The county department has guardianship of the person (children) with the authority to consent to adoption.

2. The county department has guardianship of the person (children) with the right to consent to adoption, but the current caregiver has custody of the children.

3. The child(ren) is not a citizen or a qualified alien but is being adopted by a U.S. citizen or qualified alien.

4. The child was not IV-E eligible in foster care.

5. The child was placed in foster care with the county department via voluntary placement agreement with the county, but:

   a. There was no subsequent petition with the court and a court order within 180 days of living with his/her specified relative that includes the "best interest" or "contrary to the welfare" language; or,

   b. There was no foster care payment made while in care under the voluntary placement agreement.

B. Foster Care Placement of a Child Under an Adoption Assistance Agreement

1. The State prescribed form must be completed to determine IV-E eligibility using the adoptive parent(s)' income.

2. The child, upon returning to the adoptive parent(s)' home, returns to the previous non-IV-E adoption assistance agreement.

C. Eligibility Determination for Medicaid in Non-Title IV-E Eligible

1. Colorado children who are eligible for an adoption assistance agreement, but are not IV-E eligible are eligible for Medicaid in Colorado or reciprocal states, only.

2. An adoption assistance payment is not required to extend Medicaid coverage.

3. Medicaid eligibility may or may not be continued for non-IV-E eligible children who are out of the home for more than thirty (30) calendar days depending on the county's individual policy.

4. Medicaid eligibility for all children receiving Medicaid shall be redetermined yearly only if the child continues to be eligible for Medicaid. This can be done by completing the State prescribed form.

D. Non-Title IV-E Adoption Assistance Payments

1. Determine and document a child's special needs and eligibility for adoption assistance.

2. Utilize financial information regarding the family including assets, liabilities and insurance benefits in negotiating the initial agreement, and any subsequent increases in adoption assistance.

3. The adoption assistance agreement shall be established in accordance with the county department's written policy. The policy shall outline the criteria used for determining the amount of adoption assistance.

4. Make a good faith effort to negotiate an adoption assistance agreement with the adoptive parent(s). The county shall base the negotiation on the special needs of the child and the circumstances of the adoptive parent(s). If the parties cannot come to an agreement, the county department shall establish the adoption assistance amount. If the family disagrees with the decision, a fair hearing can be requested.

5. Negotiate with the adoptive parents to request the amount that is needed by the family to meet the child's special needs; this may be less than the amount for which the child qualifies.

6. The county shall establish a maximum amount that could be provided to a family. The monthly respite care payment that is provided under the foster care program is not a benefit under the adoption assistance program.

7. If a child with developmental disabilities is receiving an allowance in addition to the foster care payment at the time the child is placed for adoption, the allowance may continue under the adoption assistance program if the child continues to meet the criteria outlined in "Child with Adoption assistance", Section 7.306.4, A, 3, d.

8. County departments who pay more than the county's foster care rate based on the child's original or amended adoption assistance agreement shall reimburse the State for eighty percent (80%) of the payment that is over the foster care rate.

9. Use the State prescribed forms to document the negotiated agreement for non-Title IV-E adoption assistance, and attach supporting documentation.

10. Complete and sign the Adoption assistance Agreement form specifying:

a. The dollar amount of the adoption assistance being provided, if applicable.

b. Duration of the agreement:

1) In non-Title IV-E adoption assistance agreements, duration is decided by county policy, according to the special needs of the child and family circumstances. It may not continue past the child's 21st birthday.

2) On a case-by-case basis, the duration of an agreement may be sooner than this time. All parties must be in agreement with the earlier termination date.

3) In the case of a child who turns eighteen (18), is still in high school, and has been eligible for Title IV-E adoption assistance, the child's eligibility must be changed from Title IV-E. New forms must be completed to reflect the change in the child's eligibility.

c. The services and dates of services that are covered by an effective adoption assistance agreement.

d. That the adoption assistance agreement must be signed and dated by all parties prior to the effective date of the agreement and before the adoption is finalized. If the county fails to completely execute the initial adoption assistance agreement prior to the effective date and prior to the finalization of the adoption, the assistance payment will become non-reimbursable by the State.

11. Review the agreement every three years from the date of the initial agreement.

a. Any change in the adoption assistance agreement shall be related to the original barrier(s), identified at the time the decision was made that adoption assistance was needed.

b. In non-Title IV-E adoption assistance agreements, any changes must be made related to the special needs of the child, the family circumstances and county policy.

c. The county department shall not add additional needs for adoption assistance payment after the adoption decree has been issued that is not directly related to the originally-identified special needs of the child, unless they are genetic in nature.

12. The county or adoptive family may at any time negotiate changes to an existing adoption assistance agreement based on information related to the child's original condition or the family's circumstances.

7.306.43 State Monitoring/Sanction Process of Adoption Assistance Programs in Counties

Monitoring will be conducted annually on county departments by State Child Welfare staff using a risk-based approach looking at the number and kinds of complaints received by consumers, advocates or the general public.

A. The state will randomly select cases from the adoption assistance caseload.

B. Each county will be given three opportunities to pass the review before a fiscal sanction is established.

1. Counties passing the initial Stage I review will be reviewed every three years.

2. If the county fails the initial review, a Stage II review will be conducted in the second year.

3. If the Stage II review is failed, the county will go to a Stage III the next year.

C. At each stage, the county will be given an opportunity to provide information to the state that will enable the case that is out of compliance to pass the review.

D. A county failing the review will be offered technical assistance based on issues identified during the review and will be required to develop a corrective action plan.

E. If the county fails all three stages, the reviewed cases that are out of compliance in the third stage will be converted to county-only funding in the third year.

7.306.44 Basis for Establishing the Amount of an Adoption Assistance Subsidy

This section has been moved in order to consolidate rules related to adoption assistance in one location. Refer to Sections 7.306.41 and 7.306.42.

7.306.45 Authorized Types of Adoption Assistance Subsidies

This section has been moved in order to consolidate rules related to adoption assistance in one location. Refer to Section 7.306.4.

7.306.5 INSTRUCTIONS FOR REIMBURSEMENT OF ADOPTION ASSISTANCE SERVICES

7.306.51 Medical Payments in Adoption Assistance Agreements

7.306.511 General Provisions

A. Medical adoption assistance agreement payments are made directly to adoptive parents for a service already received or to a vendor for treatment of a physical or developmental disabilities or emotional disturbance. A medical adoption assistance agreement shall relate directly to the barrier or barriers identified at the time the initial agreement is approved.

B. Medical adoption assistance agreements are not available for treatment of any physical or developmental disability or emotional disturbance diagnosed after finalization of the adoption.

C. Medical adoption assistance agreements may be used to supplement any other available resource such as an adoptive family's private insurance that pays part but not all for the child's treatment (physical, mental, and emotional).

D. Medical adoption assistance agreements can only be used for Medicaid cases if the service requested is something that would not be covered under the State Medicaid Plan and relates to the direct barrier/need identified at the time the child is placed for adoption.

E. Adoption assistance payments for medical services shall reflect the reasonable costs of those services in the child's community.

7.306.52 Reimbursable and Non-Reimbursable Adoption Assistance Case Services

Case services are a type of purchased program services that support a case plan for children in out-of-home placement or an adoption assistance agreement.

Case services are provided to meet a child's special needs identified when the child is placed for adoption and which are not covered by the adoption assistance or Medicaid assistance agreements.

To be eligible for case services in an adoption assistance agreement, the State prescribed form outlining the agreement must be in place and the case open in the Department's automated reporting system as an adoption assistance case.

A. Medical

1. Orthodontia

a. Cosmetic reasons - not reimbursable.

b. Special needs directly related to the reason for which the child was classified as special needs, e.g. cleft palate or injury related to an abuse will be reimbursable.

2. Eye Glasses

Eyeglasses are not reimbursable using case services dollars as Medicaid pays for one pair of glasses per year.

Payment for additional eye glasses in a year or contacts related to the child's special needs identified at the time of the initial adoption assistance agreement are reimbursable.

3. Medication

a. Routine that is not related to the child's special needs-not reimbursable.

b. If related to child's special needs-reimbursable. The medication must be prescribed by a licensed physician and related to the special need identified at the time the child was approved for adoption assistance.

4. Special Therapies - Speech, Occupational, and Physical

a. If not available through other community and family resources-reimbursable. School-age children should receive these services through the school system.

b. When these services are available in hospitals and clinics–not reimbursable as Medicaid covers these costs.

5. Special Equipment

Special medical needs/equipment, as prescribed by a physician may be reimbursable.

For severely physically challenged children, special exceptions should not exceed $2,000 without a supervisor's written authorization.

B. Psychological Services

1. Time-limited out-patient therapy for children living in states that do not accept Medicaid for this service-reimbursable, if related to the child's special needs and a written plan is obtained from the service provider which contains:

a. Diagnosis.

b. Prognosis.

c. Length of service.

d. Individuals who will be seen in therapy.

e. A cap on the amount of money to be spent for the psychological exam or therapy.

f. Frequency of contact (i.e., once a week, twice a month, etc.).

g. Type of therapy being provided (i.e., individual, group, family, etc.).

2. If time-limited out-patient therapy is available using Medicaid – not reimbursable.

3. Day treatment - not reimbursable as Medicaid provides for this service.

4. Residential child care facility - not reimbursable as Medicaid provides for this service.

5. In-patient psychiatric hospitalization - not reimbursable as Medicaid provides for this service.

(Children who are Medicaid eligible may receive some in-patient psychiatric services under the Medicaid Program.)

C. Educational Costs

1. Tutoring-not reimbursable.

School systems are mandated to provide all children with special needs a free appropriate public education.

2. School tuition-not reimbursable.

There will be no reimbursement for tuition expenses through the adoption assistance program. If the family wants the child to remain in his/her current private school placement, this is an expense for which they are responsible.

D. Respite and Day Care

1. Respite Care-reimbursable.

2. Day Care-not reimbursable except for IV-E children. If day care services are needed and the child is IV-E eligible at the time of adoption, the family should be referred for day care services as they are eligible for Title XX services.

E. Other Adoption Assistance Case Services

Adoption assistance case services for either IV-E or non-IV-E may be provided for a specified time to provide needed services, such as, but not limited to, transportation to facilitate adoptive placement. It is required that these time-limited services/funds are clearly provided on a case-by-case basis. This requirement must be clearly documented in the agreement.

7.306.53 Non-Recurring Adoption Expenses [Rev. eff. 2/1/10]

A. Reimbursement for the following non-recurring adoption expenses, not to exceed $800 per child, is available to parents adopting children with special needs:

1. Legal fees.

2. Adoption fees.

3. Other expenses related to the legal adoption of the child(ren).

B. The county department shall decide if an adopted child for whom reimbursement is being requested meets the criteria as a special needs child.

C. The county department shall use the State-prescribed forms for children not in the department's custody.

D. The county department shall use the State-prescribed forms for children in the department's custody.

E. If no county department holds custody, reimbursement for the non-recurring adoption expenses will be based on the adoptive family's county of residence.

F. Effective October 1, 2010, federal law specifically prohibits adoption assistance payments or non-recurring expenses on behalf of an “applicable child’ who is not a citizen or resident of the U.S. and was either adopted outside the U.S. or brought to the U.S. for the purpose of being adopted.

Colorado will provide non-recurring adoption assistance payment up to $800 per child for children adopted internationally or through a private licensed non-profit adoption agency when the family has been able to:

1. Make application prior to the adoption.

2. Provide evidence of the child’s special needs.

3. Provide evidence that the agency did child specific recruitment for the child identified.

4. Provide evidence the family has an approved home study.

5. Provide an itemized statement of the expenses to be reimbursed.

7.306.54 Continuing Adoption Assistance Agreements Beyond Age Eighteen

A. If a child is 18 years of age and has not graduated with a high school equivalency or vocational training, the county may continue the adoption assistance under the State and county-only program until the child finishes high school/vocational training or is 21 years of age. The county shall document in the record that the child is enrolled full-time in high school or vocational training and are making progress in the program.

B. If the child is eligible for a Title IV-E adoption assistance until the age of eighteen (18), that agreement must be terminated. Any new non-Title IV-E agreement must be signed by the county and the family upon or prior to the child’s 18th birthday.

C. A child who is identified in the original adoption assistance agreement as being developmentally disabled or physically handicapped, is between the age of 18-21, and continues to live at home, may continue to be eligible for the adoption assistance program as long as these disabilities were identified and documented in the original agreement paperwork or is genetic in nature.

D. If a county continues adoption assistance beyond the child's 18th birthday without the child meeting the criteria in A or B, above, the county will be sanctioned for the adoption assistance payments made beyond the child's 18th birthday.

7.306.55 Post-Legal Adoption Services

The county of residence shall offer Core services to eligible families with an adoption assistance agreement according to the needs of the family.

7.306.56 Accepting and Processing Applications for Adoption Assistance from Child Placement Agencies [Rev. eff. 2/01/10]

A. Colorado non-profit licensed adoption agencies can access adoption assistance if the child is in their custody and meets Title IV-E eligibility, as outlined in Section 7.001.41.

B. The county department where the adoptive family lives will process the application for assistance.

C. If the child is being placed out-of-state, the state in which the family resides will process the application.

D. The county department reviews the material submitted by the child placement agency and determines the child's eligibility for Title IV-E adoption assistance.

E. The county department shall advise the child placement agency and the family in writing within ten working days of the date of approval or denial and inform the family of its right to appeal the decision.

F. After the county department approves the adoption assistance, it shall open the case on the Department's automated reporting system.

G. Approved adoption assistance payments may begin as of the date of the signing of the agreement. The child placement agency is responsible for any costs before the initiation of the adoption assistance agreement and prior to finalization.

H. Adoption assistance available to the eligible child are:

1. Medicaid (Title XIX).

2. Adoption assistance payment.

3. Non-recurring adoption expenses.

I. Before finalization of the adoption, the child placement agency that arranged the adoption retains responsibility for continued services to the adoptive family should they be requested.

J. The county department shall terminate adoption assistance payments and eligibility for Medicaid as outlined in Termination of Adoption Assistance (7.306.59) and Title IV-E (7.306.41) sections.

7.306.57 Review of Eligibility for All Ongoing Adoption Assistance Agreements [Rev. eff. 2/1/10]

A. The county shall review the current adoption assistance agreement every three (3) years.

1. The county department shall initiate the written notice of the review for adoption assistance sixty (60) days prior to the three-year anniversary of the agreement.

2. The adoptive family may request a review of the agreement prior to the three-year review if changes in the needs of the child or family circumstances occur.

3. Any changes in the needs of the child shall relate to the original barrier(s), identified at the time the decision was made that adoption assistance was needed. The county department shall not add additional needs for adoption assistance payments after the adoption decree has been issued unless genetic in nature.

B. The county shall annually review documentation of school attendance or reasons for inability to attend. The documentation must demonstrate that each child who is eligible for adoption assistance and who has attained the minimum age for compulsory school attendance is:

1. Enrolled (or in the process of enrolling) in an institution that provides elementary or secondary education, or,

2. Instructed in elementary or secondary education at home in accordance with the home school statute, or,

3. In an independent study elementary or secondary education program in accordance with statute, and which is administered by the local school, school district, or board of cooperative education (BOCES), or,

4. Incapable of attending school on a full-time basis due to the medical condition of the youth or child. The reasons shall be supported by regularly updated information in the educational plan maintained by the school, school district, or BOCES.

7.306.58 Reinstatement of Subsidy

A. Non-Title IV-E adoption assistance agreements may be reinstated if the services requested relate to the child's special needs which were identified at the time of the original subsidy.

B. Reinstatement of adoption assistance agreements is not possible if the original adoptive parents no longer have legal custody of the child.

C. When adoptive parents have relinquished, have had their parental rights terminated, or have died and the child is placed in a subsequent adoptive placement, then the child retains IV-E eligibility for reinstatement of the adoption assistance agreement in his/her new adoptive placement.

7.306.59 Termination of Subsidy

A. The county department shall terminate adoption assistance agreements when the:

1. Family requests payments end; or,

2. Child reaches age 18 or until age 21, if the county has determined that the child has a developmental or physical disability which warrants continuation of assistance; or,

3. Adoptive parent(s) are no longer legally responsible for the support of the child; or,

4. Child is no longer receiving any support from the adoptive family; or,

5. County of responsibility verifies the child's death, or marriage.

B. Procedures for Adoption Assistance Payment, Adoption Case Services and Medicaid Adoption Assistance Agreement

1. When the child is receiving a non-Title IV-E adoption assistance agreement and the child is absent from the home for over 30 calendar days, the adoption assistance payment and adoption case services will be discontinued. (See Section 7.404, regarding Placement Fees for out-of-home care.) If the child is in placement in a facility where he/she comes home for holidays or visits, this is not to be used as justification for continuing the non-Title IV-E agreement. A state/county non-Title IV-E agreement can only be resumed when the child is returned home and the out-of-home placement has been discontinued on the Department's automated reporting system.

2. Children with a Title IV-E adoption assistance agreement who are out of the home for more than 30 calendar days will continue to receive an adoption assistance payment if it is a part of the child's adoption agreement. (See Section 7.404 regarding placement fees for out-of-home care.)

3. Medicaid eligibility shall continue for Title IV-E eligible children who are out of the home for more than 30 calendar days unless it is determined that they are eligible for Medicaid under another program by completing the State prescribed form (see County Department Requirements, Section 7.402.2).

7.306.6 RIGHT TO APPEAL

A. When the county department denies an application for adoption subsidy, or reduces or terminates the subsidy grant, the applicant or recipient shall have a right to appeal. See Section 3.850 of the Income Maintenance staff manual on Appeal and State Hearing (9 CCR 2503-1).

B. When a family who has been denied Title IV-E Subsidized Adoption benefits requests a state level Fair Hearing, it is the responsibility of the Administrative Law Judge to determine whether the applicant or recipient was wrongly denied eligibility or whether the amount of the subsidy was determined correctly. (See Section 7.306.41, E, for fair hearing circumstances.)

C. The adoptive parents have the burden of proving extenuating circumstances and adoption assistance eligibility at a state level Fair Hearing. The state and or/its designee can provide factual information to assist the family in establishing eligibility for Title IV-E adoption assistance.

D. When either state or federal law requires or results in a reduction or deletion of services, a hearing need not be granted.

7.307 INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC)

The purpose of the Interstate Compact on the Placement of Children is to ensure timely placements of children across state lines in the least restrictive and appropriate settings in the 50 states, District of Columbia, and the U.S. Virgin Islands. The sending and receiving state authorities shall have sufficient background information to make informed decisions concerning a proposed placement, to arrange for the provision of services to the child as needed, and to designate where planning, financial, and jurisdictional responsibility for the child lies.

7.307.1 USE AND OBSERVANCE OF THE COMPACT [Rev. eff. 4/1/12]

County departments, other Colorado licensed placement agencies, and when applicable, individual residents, shall follow all rules, regulations, and procedures of the Interstate Compact on the Placement of Children, as stated in Section 24-60-1801, 1802, C.R.S., and Section 19-1-115, C.R.S. Regulations I through XI are on file at the Colorado Department of Human Services, Interstate Compact Office, Child Welfare, 2nd Floor, 1575 Sherman Street, Denver, Colorado 80203-1714. Regulation I was amended on April 18, 2010. Regulation II was amended on April 30-May 1, 2011. Regulation III was amended on April 30-May1, 2011. Regulation IV was amended on April 29–May 2, 2001. Regulation V was amended in

April 2002. Regulation VI was amended on April 29-May 2, 2001. Regulation VII was amended on April 30-May 1, 2011. Regulation VIII was amended on April 30-May 3, 2000. Regulation IX was amended in April 2002. Regulation X was amended in April 2002. Regulation XI was adopted on April 18, 2010. These regulations are adopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting. The information incorporated here by reference may be examined at the Department of Human Services as indicated above, at any county department of social services, or at any state publications depository library.

7.307.2 DEFINITION OF "SENDING AGENCIES"

The Interstate Compact defines the persons and agencies who, when they place a child from one state into another state, shall follow Interstate Compact on the Placement of Children procedures. These persons and agencies are all called "sending agencies," and include the following:

A. A state in the United States, the District of Columbia or the U.S. Virgin Islands, or any officer or employee of a state in the United States, the District of Columbia, or the U.S. Virgin Islands.

B. A subdivision of a state in the United States, the District of Columbia or the U.S. Virgin Islands, or any officer or employee of the subdivision.

C. A court of a state in the United States, the District of Columbia, or the U.S. Virgin Islands.

D. Any person, corporation, association, or charitable agency of a state in the United States, the District of Columbia, or the U.S. Virgin Islands.

7.307.3 AGENCY-MADE PLACEMENTS

7.307.31 Interstate Compact on the Placement of Children Initiation Procedures

Compact procedures shall be initiated for children who are considered for placement out-of-state for:

A. Adoption; or

B. Homes of parents or relatives; or

C. Foster, group, or residential child care; and

D. Where the sending agency, such as a county department or the Court, holds legal custody or legal jurisdiction.

7.307.32 Interstate Compact on the Placement of Children Procedures

The county department director shall be the Compact Liaison in each Colorado county. At each director's discretion, duties of the Liaison may be delegated to staff within the county department. It is recommended that the designated liaison be at the Child Welfare Supervisor level or above. The director shall notify, in writing, the Deputy Compact Administrator of the name, title, and phone number of this designee who shall perform the day-to-day functions of the Interstate Compact on the Placement of Children Liaison and be available for Colorado and other state Interstate Compact on the Placement of Children offices to contact for assistance with Compact related situations in that county.

Interstate Compact on the Placement of Children procedures shall be followed when a child is:

A. In the custody of a county department or under the jurisdiction of a court in one state and is considered for placement with his or her parents, relatives, non-relatives, foster parents, adoptive parents, or into residential or group care in another state.

B. Under the jurisdiction of a county department, court, or private placement agency moves with his or her parents, relatives, foster parents, or prospective adoptive parents out-of-state.

C. An adjudicated delinquent ordered by the court into a non-public institution out-of-state.

D. An adjudicated delinquent who is not on probation or parole and is considered for placement with parents, relatives, foster parents, or prospective adoptive parents out-of-state.

E. To be placed for adoption out-of-state.

F. In the custody of a county department or under the protection of the court and has fled out-of-state and the local departments in both the sending and receiving states agree it may be in the child's best interest to remain in the site the child has chosen, pending the outcome of the home study.

G. In the custody of a county department or under court jurisdiction and has been taken out of state or been coerced to leave the state without the court's consent; however, before ordering the child's return, the court agrees to a home study being done to determine the status of the child's living arrangement out of state to determine if the child should be permitted to stay there.

H. In runaway status from another state and is taken into protective custody by a county department that subsequently learns that neither the parents nor any known relatives will grant the child access to their homes. In this situation, the county department shall file a Dependency and Neglect Petition on behalf of the child to enable the department to explore other relative placement possibilities out of state.

7.307.4 DIRECT PLACEMENTS OUT OF STATE BY PARENTS OR NON-AGENCY GUARDIANS

A. Interstate Compact on the Placement of Children procedures shall be initiated for children who are being considered for placement out of state by parents, guardians, or relatives, into facilities not designated as medical or educational in nature when a child is considered for placement

1. Out of state with a person other than a parent, step- parent, adult brother or sister, adult aunt or uncle, or grandparent.

2. Out of state into a foster home, adoptive home, group home, residential facility or non-public institutional setting.

3. With an out of state non-relative or non-agency guardian.

B. The parent or guardian shall contact the local Colorado county department or the Colorado Interstate Compact on the Placement of Children state office to request information and to be provided with copies of the Interstate Compact on the Placement of Children Request to Place Child (100-A). The parent or non-agency guardian is considered to be the “sending agency” in this situation. The parent or guardian will forward the Interstate Compact on the Placement of Children request to the Colorado state Interstate Compact on the Placement of Children office which will forward the documents to the receiving state Interstate Compact on the Placement of Children office.

7.307.5 REQUIREMENTS

7.307.51 Requirements When Colorado is the Sending State [Emer. Rule eff. 10/1/06; Perm. Rule eff. 12/1/2006]

The county department must determine, within fourteen (14) calendar days upon receipt of the home study report conducted by the receiving state, whether the placement is appropriate for the child.

The county department or licensed child placement agency holding legal custody or maintaining court-ordered protective supervision and considering placement of a dependent child into any site out-of-state shall:

A. Submit information required by the state.

B. Send a referral packet to the Deputy Compact Administrator in the receiving state and enter information from Forms 100-A and 100-B in the Child Welfare Automated Tracking System (see Section 7.307.7 on "Reporting requirements).

C. Complete and submit the Change of Status Form (100-B) to the receiving state.

D. Not be a party to sending or allowing a child to be taken across the state line without the "prior permission" of the receiving state Interstate Compact on the Placement of Children Administrator or his or her designated staff. Prior permission is defined as either permission or denial being granted on the 100-A or on a facsimile of the 100-A.

E. Continue to have financial responsibility for the support and maintenance of the child during the out-of-state placement unless the placement is with a parent or a care-provider who assumes financial responsibility for the child.

F. Be financially responsible for the return of the child if the placement disrupts and the decision is made to return the child.

G. Send quarterly progress report form to the out-of-state foster care provider on the state designated form.

H. Retain legal custody or the child remains under the court's jurisdiction; and,

I. Not agree to dismissal of the Petition or termination of local court jurisdiction without one of the following four conditions being met:

    1. The child has been adopted.

    2. The child has become self supporting or legally emancipated.

    3. The child is 18 or older.

    4. A minimum six month period of supervision has elapsed from date of Interstate Compact on the Placement of Children approval and the receiving state Interstate Compact on the Placement of Children Administrator or his/her designee has granted permission for dismissal of the Petition or termination of court jurisdiction.

7.307.52 Requirements When Colorado is the Receiving State [Rev. eff. 4/1/12]

When Colorado is the receiving state of an Interstate Compact on the Placement of Children Request for Placement, all such requests shall be sent by the sending state directly to the correct county department or to the Colorado Deputy Compact Administrator who shall forward the request packet to the correct county department or licensed Child Placement Agency.

A. Upon receipt, the county department Interstate Compact on the Placement of Children liaison or designee shall review the request for compliance with the Compact and all relevant Colorado and federal laws, and take appropriate action.

B. The county department staff or licensed Child Placement Agency staff assigned to the Interstate Compact on the Placement of Children cases shall:

1. Complete a home study within sixty (60) calendar days of receipt of the request from the sending state.

2. Provide protective services and supervision of the placement according to the treatment plan and case plan set up by the county department or court in the sending state.

3. Provide written progress reports as required.

4. Make determinations and recommendations to the sending agency for dismissal or continuation of the legal custody and jurisdiction in the sending state.

5. Provide services, including protective services, to families and children covered by the Interstate Compact on the Placement of Children and other approved Interstate or inter-country placements as are provided to other similar placement cases that are the responsibility of a county department.

C. These cases shall be subject to the same contact requirements as other Program Area 4, 5 or 6 cases. If circumstances prohibit such contact, the county department shall document exceptions to the minimum requirements on the alternative agency contact agreement with a signature of approval from the county department administrator or county director. Case contacts shall be documented in the State Department's automated system.

D. Requests for placement received from other states shall be opened as Program Area 6 in the State Department's automated system.

E. The receiving state (Colorado) may close its Interstate Compact on the Placement of Children case when one of the following conditions have been met:

1. The child has been adopted.

2. The child has become self supporting or legally emancipated.

3. The child has become eighteen (18) years of age.

4. The Colorado county liaison or state Interstate Compact on the Placement of Children Administrator has granted permission for dismissal of the petition or termination of court jurisdiction.

7.307.6 INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC) EXPEDITED PLACEMENT DECISION [Rev. eff. 10/1/13]

To fulfill its obligations under Interstate Compact on the Placement of Children, interstate cases must be processed in a time frame and manner comparable to intrastate cases and intrastate hardship cases.

The expedited placement is designed to eliminate delays in the placement of children in appropriate family homes across state lines.

A. All cases of expedited placement decision require an expedited placement decision court order.

B. In addition, an expedited placement decision can only be made when the placement of the child is with a parent, step-parent, adult brother or sister, adult uncle or aunt, grandparent, or his/her guardian.

7.307.61 Definition of an Expedited Placement Decision [Eff. 10/1/13]

"Expedited placement decision" means an approval or denial of a placement resource made by the receiving state within twenty (20) business days after receipt of a complete request from the sending state.

7.307.62 Sending State Expedited Placement Decision Court Order Findings [Rev. eff. 10/1/13]

A. A valid expedited placement decision court order from the sending state shall contain an express finding that one or more of the following circumstances applies to a particular case and sets forth the facts on which the court bases its finding:

The proposed placement resource is a relative as specified in 7.307.6, B, and either:

1. The child is four (4) years old or younger and his/her sibling(s) if being placed in the same home; or,

2. The child is in an emergency placement, or,

3. The court finds that the child or any child in the sibling group has a substantial relationship with the proposed placement resource.

B. In cases where the sending state court is not itself the sending agency, it is the responsibility of the sending agency to keep the court, which issued the priority order, informed of the status of the priority request.

7.307.63 County Department Processing of Sending State Expedited Placement Request [Eff. 10/1/13]

The county staff shall obtain a copy of the sending state's court order of expedited placement decision. County staff will ensure that the order sets forth the factual basis for a finding that an expedited placement decision applies to the child in question, whether the request includes a request for a provisional approval of the prospective placement and a factual basis for the request.

The county department shall also obtain a signed written statement by the assigned case manager in the sending state that affirms the following conditions are met:

A. The child must be placed with a parent, step-parent, adult (as defined by the laws of the receiving state) brother or sister, adult uncle or aunt, grandparent, or his/her guardian.

B. The relative or guardian is interested in being a placement resource and willing to cooperate with the ICPC process.

C. The name and correct address, all available telephone numbers, other contact information of the placement resource, and the date of birth and Social Security Numbers of all adults in the home.

D. Number and type of rooms in the residence of the placement resource to accommodate the child under consideration and the number of people, including children, who will be residing in the home.

E. Proof of sufficient financial resources or explanation for how children will be fed, clothed and cared for.

F. Acknowledgement that a criminal records and child abuse history check will be completed on any persons eighteen (18) years of age and older residing in the home.

G. Based upon current information known to the sending agency, it is unaware of any fact that would prohibit the child being placed with the placement resource and that it has completed and is prepared to send all required paperwork to the sending state ICPC office.

7.307.64 Expedited Placement Decision Requirements When Colorado is the Sending State [Rev. eff. 10/1/13]

A. The county department holding legal custody and considering placement of a dependent child into any site out-of-state shall complete an Interstate Compact on the Placement of Children request as outlined in Section 7.307.51 of these rules. The Interstate Compact on the Placement of Children referral packet shall include a valid expedited placement decision court order.

B. There are specific time frames in processing expedited placement decision requests.

1. Time periods in these procedures may be modified with a written agreement between the court which made the expedited order, the sending agency, the Colorado Interstate Compact on the Placement of Children county liaison and the receiving state Compact Administrator. Any such modifications shall apply only to the single case to which it is addressed.

2. The court sends a copy of its signed order for expedited placement decision to the sending agency within two (2) business days of the hearing or consideration of the request.

3. Within three (3) business days of receipt of the expedited placement decision court order, the county caseworker shall transmit the signed court order, completed forms, and supporting documentation to the Interstate Compact on the Placement of Children county liaison.

4. Within two (2) business days after receipt of the expedited placement decision request, the Interstate Compact on the Placement of Children county liaison shall transmit the complete expedited placement decision request and its accompanying documentation by overnight mailing to the receiving state Compact Administrator together with a notice form that the request is entitled to expedited processing.

7.307.65 Expedited Placement Decision Requirements When Colorado is the Receiving State [Rev. eff. 10/1/13]

A. Within two (2) business days after receipt of a complete expedited placement decision referral packet from the sending state, the Interstate Compact on the Placement of Children county liaison shall forward the referral to the county caseworker.

B. Within fifteen (15) business days, the county caseworker shall forward the completed home study to the Interstate Compact on the Placement of Children county liaison.

C. Within three (3) business days after receipt of the home study, the Interstate Compact on the Placement of Children (ICPC) county liaison shall approve or deny the placement and provide the home study report to the sending state by expedited transmission.

D. A county department is authorized to consent to the sending state's request to relinquish jurisdiction if the placement is approved with a parent from whom the child was not removed.

7.307.7 REPORTING

All cases provided Interstate Compact on the Placement of Children services shall be opened by the Colorado county departments on the Department's automated reporting system.

7.307.8 OTHER TYPES OF PLACEMENTS - CHILD MOVING OUT-OF-STATE WITH FOSTER PARENTS

When it is decided that a child should accompany his/her foster parents who are relocating out-of-state, the county department shall initiate Interstate Compact on the Placement of Children procedures to secure prior approval, whenever possible, for the placement from the receiving state.

7.307.9 EXCLUSION

Native American children placed by tribal authorities may be excluded or placed through Interstate Compact on the Placement of Children procedures at the choice of the tribal court.

7.308 RELINQUISHMENT COUNSELING SERVICES

If the child meets the target group requirements of Program Area 4, 5, or 6, county departments shall assure that relinquishment counseling services are provided:

A. To parents considering relinquishment.

B. To the child when twelve years of age or older, if appropriate.

C. When court-ordered.

7.308.1 COUNSELING AND REFERRAL ACTIVITIES

The county department shall assure that:

A. Relinquishment counseling, referral services, and legal activities are provided in accordance with Section 19-5-103, C.R.S.

B. If the child is an eligible Native American child, the parents are informed of the provisions of the Indian Child Welfare Act, or any tribal-state agreement with their tribe, and the requirements for notifying tribal authorities.

7.308.2 COURT ACTIVITIES

The county department shall assure that an affidavit is prepared and submitted to the court that includes the elements described in Section 19-5-103(1)(b)(II), C.R.S.

7.308.3 CONTACTS, RECORDS, AND DOCUMENTS

The county department shall maintain a case file which includes court documents. The county department shall maintain the closed adoption records in a secure location at the county. See Adoption Records, Section 7.306.34.

7.308.4 CONFIDENTIALITY OF CONTACTS AND RECORDS

The county department shall respect the confidential nature of the counseling and maintain confidentiality of all records and papers with respect to the relinquishment following the filing of a Petition for Relinquishment in that such records and papers are open to inspection only upon order of the court. The record shall show the parent's preference about future communications from the child.

7.309 INDIAN CHILD WELFARE ACT (ICWA) OF 1978

The Indian Child Welfare Act of 1978 is federal legislation that establishes standards for the placement of Native American children in foster care or adoptive homes.

All rights and privileges afforded to parents and children in any other section of this manual are applicable to rights and privileges for Native American parent(s), Indian Custodian(s), and children under jurisdiction of county departments.

7.309.1 DEFINITIONS

A. Active Efforts - efforts which have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

B. Emergency Placement - child(ren) must be in imminent physical damage or harm with clear and convincing evidence available to be presented before the court.

C. Indian Custodian - any Native American who has legal custody of a Native American child under tribal law, custom, or by state law, including those situations when the parent has transferred temporary physical care, custody, and control to another individual.

D. Native American Tribe - any Native American tribe, band, nation, or other organized group federally recognized as eligible for the services provided to Native Americans including Native Alaskans.

E. Qualified Indian Expert Witness - an individual who is experienced and knowledgeable about Indian culture, childrearing practices, and traditions.

F. Tribal Court - a court established and operated under the code or custom of a Native American tribe to have jurisdiction over child custody matters.

7.309.2 DETERMINATION OF ELIGIBILITY - INDIAN CHILD WELFARE ACT

7.309.21 Specific Eligibility Criteria

Native American children served under the Indian Child Welfare Act shall meet the following criteria for eligibility in addition to generic eligibility requirements for services in foster care or adoption.

A. The child must be:

1. unmarried; and,

2. under 18 years of age; and,

3. a member of a Native American tribe; or,

4. eligible for membership in a Native American tribe and the biological child of an eligible member of a Native American tribe.

B. In addition, the parent(s) or Indian Custodian(s) must be:

1. a member of a tribe; or,

2. eligible for membership of a tribe.

7.309.3 NOTIFICATION PROCEDURES - INDIAN CHILD WELFARE ACT

7.309.31 Notification Requirements - Indian Child Welfare Act

The county department must notify any potential tribal court of jurisdiction that a Native American child is in need of foster care or termination of the parent-child legal relationship, except in an emergency placement, as required by the Indian Child Welfare Act of 1978, including:

A. any involuntary placement of a child for foster care; or

B. any voluntary placement of any Native American child for foster care or petition for relinquishment as provided in the Tribal-State agreement under the Indian Child Welfare Act of 1978.

7.309.32 Initial Notification - Involuntary Placements - Indian Child Welfare Act

A. The county department shall give notice in involuntary placements by telephone within 48 hours, followed by a registered letter with return receipt requested, to the parent(s), Indian Custodian(s), if applicable, and the child's tribe.

B. The county department shall observe the following timelines (except for emergency placements) before a judicial request for placement can be made. The county department shall wait at least 10 working days after receiving the return receipt of notice before proceeding with a judicial request when the notice has been sent to:

1. The parent(s) or Indian Custodian(s). If the parent(s) or Indian Custodian(s) requests time to prepare for the proceeding, the county department shall petition the court to set the hearing 30 calendar days after receipt of notice.

2. The tribe. If the tribe requests time to prepare for the proceeding, the county department shall petition the court to set the hearing 30 calendar days after receipt of notice.

3. The Bureau of Indian Affairs.

7.309.33 Initial Notification - Voluntary Placements - Indian Child Welfare Act

A. The county department shall give notice to the tribe, when a placement is voluntary or a relinquishment is contemplated, in the same manner as noted immediately above, or according to the Tribal-State Agreement if the child is a Colorado Ute.

B. The county department shall file a Petition for the Review of Need of Placement by the 90th day of out-of-home care as outlined in Court Related Procedures, Section 7.304.53.

C. The county department shall follow step B. outlined in Section “Initial Notification-Involuntary Placements” when the child is placed due to a voluntary relinquishment.

7.309.34 Continuous Notification for Involuntary and Voluntary Placements - Indian Child Welfare Act

The county department shall be responsible for informing the tribal court of jurisdiction of placement moves for Native American child(ren).

7.309.4 TRANSFER OF JURISDICTION FROM STATE COURT TO TRIBAL COURT

A. Upon the tribe's petition for transfer of jurisdiction, the county department shall carry out the transfer to the tribe within 5 working days, unless either parent or the Indian Custodian(s) objects to a transfer or the court determines there is good cause not to transfer jurisdiction.

B. The county department shall prepare child(ren) for legal transfer to the tribal court of jurisdiction as appropriate to their age. Such preparation shall include:

1. Information about reasons for the transfer and its timing.

2. Involvement of the child in the plans for transfer (see Pre-Placement Activities, Section 7.304.61).

7.309.5 FOSTER CARE AND PRE-ADOPTIVE PLACEMENTS - INDIAN CHILD WELFARE ACT

The county department shall make every effort to make placements:

A. In the most appropriate least restrictive setting that most approximates a family and that best meets the needs of the child.

B. Within a reasonable distance to the child's home.

7.309.6 ORDER OF PREFERENCE - INDIAN CHILD WELFARE ACT (FOSTER CARE AND PRE-ADOPTIVE PLACEMENT)

The county department shall place eligible Native American children for foster care or pre-adoptive placement according to the following order of preference. It shall do so, unless the child's tribe has established another order, or without good cause to the contrary, as documented in the child's record.

For Out-of-Home Care/Pre-Adoptive Placement

A. Under Indian Child Welfare Act regulations, the county department shall use the following order of preference. The county department shall contact the appropriate tribe to identify if it has a different placement preference than the following:

1. Member of child's extended family.

2. Foster home licensed, approved or specified by the Native American child's tribe.

3. Native American foster home licensed/approved by an authorized non-Indian authority.

4. Institution for children approved by a tribal or state authorized licensing authority that has programs suitable to meet the needs of Native American children.

B. The county department shall follow a different order of preference if one is established by the tribe, so long as the placement is the most appropriate and least restrictive setting to meet the child's needs. Where appropriate, the preference of the Native American child or parent(s) shall

be considered, if a consenting parent has a desire for anonymity, the county department shall give weight to such desire in applying the preferences.

7.309.7 FOR VOLUNTARY PLACEMENTS - INDIAN CHILD WELFARE ACT (See Court Related Procedures, Section 7.304.53)

A. The county department shall not accept voluntary consent for foster or adoptive care unless all of these conditions are met:

1. The child is over 10 days old.

2. The consent is voluntary and obtained free of fraud or duress.

3. The consent is in writing and recorded before a judge.

4. The consent is accompanied by the judge's certificate ensuring that terms and consequences of the consent were fully explained in:

   a. Detail and fully understood by the parent(s) or Indian Custodian(s).

   b. English or interpreted into a language understood by the parent(s) or Indian Custodian(s).

B. The county department shall ensure that the Consent signed by the parent(s)/Indian Custodian(s) shall contain all of the following:

1. Name and birth date of child.

2. Name of child's tribe.

3. Child's enrollment number or other indication of membership in the tribe.

4. Name and address of consenting parent(s)/custodian(s).

5. Name and address of prospective parent(s), if known, for substitute care placements.

6. Name and address of person or agency through whom placement arranged, if any, or adoptive placements.

7.309.8 ADOPTIVE PLACEMENTS - INDIAN CHILD WELFARE ACT

7.309.81 Involuntary Termination of Parent-Child Relationship - Indian Child Welfare Act

When terminating the parent-child legal relationship of a child who is eligible under the Indian Child Welfare Act, the county department shall provide the court of jurisdiction with evidence beyond a reasonable doubt, including testimony of qualified expert witnesses (qualified in Native American cultural matters pertinent to the situation), that continued custody of the child by the parent(s) or Indian Custodian(s) is likely to result in serious emotional or physical damage to the child.

7.309.82 Relinquishment of Child for Adoption

A. A voluntary relinquishment of an Native American child may be done in a state court when the parent(s) chooses to file a relinquishment petition under Colorado statutes.

B. The county department shall not petition the court for relinquishment before 10 days after the child's birth.

C. The county department shall place the child into out-of-home care during the 10 day waiting period with a Request for Placement (Consents) that has been signed before the court by the mother (or father, if he holds custody). Consents given before the 10 days shall not be valid.

D. The county department shall follow the procedure outlined for court ordered placement in the "Initial Notification - Involuntary Placements" section. If the child is from either Ute tribe, the county department shall comply with the Tribal-State Agreement.

7.309.83 Order of Preference - Indian Child Welfare Act

The county department shall make placements of eligible Native American children for adoption according to the following order of preference, unless there is good cause to the contrary as determined by the court:

A. A member of the child's extended family.

B. Other members of the Native American child's tribe.

C. Other Native American families.

7.309.84 Disrupted or Changed Placement - Foster Care or Adoption - Indian Child Welfare Act Notice to Parent(s) and the Tribe

A. When a foster care placement is changed before a termination or relinquishment of the parent-child legal relationship, the county department shall notify the parent(s), Indian Custodian(s), and the tribe within 10 days of the child's change of placement.

B. When a final decree of adoption of a Native American child has been vacated or set aside or the adoptive parent(s) has voluntarily consented to the termination of his or her parental rights to the child, the county department shall notify the child's parent(s), Indian Custodian(s), or tribe of jurisdiction within 10 working days. These parties may petition for return of custody and the court shall grant such petition unless there is a showing that such return of custody is not in the best interests of the child. (See Order of Preference, Section 7.309.83.) This notice shall inform the recipient of her or his right to petition for return of custody of the child. The tribe shall also be notified of changes or disruptions in adoptive placements.

7.310 FAMILY STABILITY SERVICES (FSS)

A. Family Stability Services shall be provided within context of a support plan. The Family Services Plan or other existing plan may be utilized if it meets minimum qualifications; otherwise, the State shall provide a format for the support plan. The support plan shall identify at a minimum:

1. Family strengths;

2. Family's unique needs;

3. Appropriate service and supports based on strengths and needs; and,

4. Family generated goal(s) within service time frames.

B. The program goals of FSS are to assist in the provision of appropriate and necessary short-term services to help stabilize families in order to:

1. Preserve the family unit, including kin and adoptive families; or,

2. Reintegrate children with their families, including adoptive families.

7.310.1 DEFINITIONS

Family Stabilization Services consists of the following services areas:

A. “Respite Care”: a service to provide temporary care to children who are not in an out-of-home placement through the county departments of social/human services and to their families who request a short break in parenting in order to stabilize family environment. Respite may occur outside of the home and in the home settings for less than 24 hours. The family may choose appropriate respite care providers including, but not limited to, kin, friends and licensed providers depending on the needs of the family and available resources.

B. “In-home Services”: short-term, solution-focused services provided to children who are not in an out-of-home placement through the county departments and to their families, based on their unique needs in order to strengthen the home environment so that children do not need a higher level of intervention or out-of-home placement.

C. “Reintegration Services”: transition services to assist children and families to reintegrate following an out-of-home placement. Service elements would prepare children and their families for successful reunification.

7.310.2 PROGRAM ELIGIBILITY

A. County departments may make available Family Stability Services, subject to available resources, to families who meet the eligibility criteria. These services shall be provided through contracts or service agreements with private or nonprofit organizations or entities whenever possible.

B. In order to be eligible for the Family Stability Services:

1. Each family shall be in need of services to stabilize the home environment; or have been reunited with the child(ren) following an out-of-home placement.

2. Each family must also:

a. Voluntarily request such services; and,

b. Have utilized existing resources or existing services, which have not met the family's needs; and,

c. Have the potential to stabilize the family environment.

7.310.3 SERVICE ELEMENTS

Family stability services may include, but are not limited to, the following array of services in order to address the diverse needs of the family:

A. Crisis Intervention: Crisis services such as phone or in-home counseling, crisis counseling, respite care (less than 24 hour) or acute interventions aimed at alleviating the crisis.

B. Family Support Services: Family strengthening services such as parent education, family group conferencing, tutoring, mentoring, life skills training, home visitation, mediation, conflict resolution, family advocacy, support groups, recreational activities and linkages to other community resources.

C. Therapeutic Services: These services could include individual and family counseling, aftercare treatment, multi-systemic therapy, case management, and other therapeutic interventions.

7.310.4 SERVICE TIME FRAMES

Service time frames shall be outlined in the support plan.

A. Respite services must be less than 24 hours of continuous care and may be provided up to three (3) months. Respite services should be provided within 24 hours of identification of the need.

B. In-Home services may be provided up to three (3) months. The family should be linked to organized and/or natural supports within the community within one (1) week of the identification of the need.

C. Reintegration services may be provided up to three (3) months. The family should be linked to therapeutic services within one (1) week of identification of the need.

D. Extensions to the initial provision of service are optional; if a review process is described in the county Family Stability Services plan and the support plan indicates that the family will benefit from an extension of services in order to stabilize the home environment.

7.310.5 WORKLOAD STANDARDS

Workload standards shall be determined by the local county department and/or by community-based agencies and outlined in the county Family Stability Services plan.

7.310.6 PERFORMANCE INDICATORS [Rev. eff. 4/1/12]

Family Stability Services' success shall be measured by the degree to which the following performance indicators, as identified in the support plan, are achieved by clients:

A. Crisis Intervention

The family has improved family interactions and has demonstrated the ability to alleviate a crisis.

B. Family Support Services

The family has created and has shown its ability to utilize an informal or/and formal support system within the community that is readily accessible during stressful family situations to enable the members to remain safely together.

C. Therapeutic Services

The family has identified its strengths and demonstrated an increased capacity to advocate for itself and manage the day-to-day stressors of working as a family unit.

7.311 RELATIVE GUARDIANSHIP ASSISTANCE PROGRAM [Rev eff. 12/1/12]

The Relative Guardianship Assistance Program provides assistance to a relative guardian in a defined and limited manner so that permanency is achieved for an eligible youth or child. Relative guardianship

assistance is intended to help or remove financial or other barriers for a relative guardian, as defined in Section 7.311.1, of a Colorado youth or child by providing assistance to the relative guardian to care for and raise the youth or child. The Relative Guardianship Assistance Program elements are as follows:

A. Reunification and adoption efforts must have been exhausted and those goals have been ruled out based on individualized needs.

B. The program is most appropriate for older youth who choose not to be adopted and who want to maintain familial ties while living safely and achieving permanency with a relative guardian.

C. The program shall not supplant diligent reunification or adoption efforts.

D. Youth who are twelve (12) years and older and who refuse adoption shall receive ongoing counseling by a professional who is knowledgeable about adoption and permanency issues.

E. All requirements of this section relate solely to the Relative Guardianship Assistance Program and excludes any other type of guardianship.

7.311.1 ELIGIBILITY REQUIREMENTS [Rev. eff. 1/1/16]

Eligibility requirements for the prospective relative guardian and youth and/or child must be documented in the Family Services Plan in the State automated case management system and are as follows:

A. For the purpose of the Relative Guardianship Assistance Program, a relative is defined as:

1. An adult who is related to the youth or child in the fifth (5th) degree of kinship;

2. Related to the youth or child through marriage or adoption;

3. A person ascribed by the family as having a family-like relationship; or,

4. An individual that had a prior significant relationship with the youth or child.

B. The most recent removal occurred through a court order, or a voluntary placement agreement and subsequent court order for authority for placement that includes a judicial determination that continuation in the home would be contrary to the welfare of the youth or child; and,

C. The prospective relative guardian was the kinship foster care parent for the youth or child for a minimum of six (6) consecutive months while the youth or child resided in the home, excluding breaks in full certification due to provisional or probationary certificates being issued, or other adverse action taken regarding the certificate; and,

D. Reunification and adoption are not appropriate permanency goal options for the youth or child; and,

E. The youth or child demonstrates a strong attachment to the relative; and,

F. Youth who are age twelve (12) or older are consulted about their expressed wishes to be placed in a relative guardianship (refer to Section 7.311.2, A); and,

G. The prospective relative guardian has a strong commitment to caring for the youth or child permanently; and,

H. The reason why permanent placement with a prospective relative guardian and receipt of a relative guardianship assistance payment is in the best interests of the youth or child.

7.311.2 COUNTY DEPARTMENT RESPONSIBILITIES [Rev eff. 1/1/16]

The county department of human or social services shall assess and demonstrate the appropriateness of the youth or child for the Relative Guardianship Assistance Program.

Documentation in the Family Services Plan in the State automated case management system shall include:

A. Efforts to discuss adoption with the kinship foster care parent as the more permanent option for the youth and/or child and the reasons that the prospective relative guardian is unwilling to adopt. The goal of the discussion shall be to assure that the prospective guardian makes a fully informed decision regarding the permanency options that are available. The discussion shall include, but not be limited to, the following areas:

1. The legal differences between termination of parental rights for adoption and the transfer of guardianship;

2. The relationship with the birth or custodial family; and,

3. Visitation with the birth or custodial family and sibling as outlined in Section 7.311.21, B.

B. The prospective relative guardian understands the significance of permanency through guardianship and the importance in continuing to be a permanent family after the youth or child exits the relative guardianship assistance program.

C. Efforts to discuss the relative guardianship assistance arrangement with the parents or legal custodians of the youth or child, and if it was not discussed with the parents, provide the reasons why the efforts were not made.

D. If relinquishment or termination of parental rights occurred for the youth or child, how the requirements in Section 7.306 are met to assure that concerted efforts to achieve adoption were made and documented. When the goal of adoption is ruled out, the requirements in Section 7.306.14, B, 2 (Colorado Adoption Resource Registry) shall be met.

7.311.21 Placement with Siblings [Rev. eff. 1/1/16]

In addition to requirements in Section 7.301.24, the county department of human or social services shall document:

A. The efforts to place siblings together in the kinship foster care home.

B. The ongoing efforts to facilitate placement together, and the efforts to maintain frequent visitation and ongoing connections for siblings that live apart.

7.311.22 Inclusion of Siblings in a Relative Guardianship Assistance Agreement [Eff. 2/1/10]

A. Sibling(s) of a youth or child who meet all other requirements identified in Section 7.311.1 except the Title IV-E eligibility may be included in the same relative guardianship assistance agreement when there is agreement by the sibling(s) of the youth or child, prospective relative guardian, and

the county department that the arrangement is in the best interests of the sibling(s) of the youth or child. This may occur on or at a later date than the youth or child who is Title IV-E eligible, and

B. Relative guardianship assistance payments may be made on behalf of each sibling in the same relative guardianship assistance agreement.

7.311.3 RELATIVE GUARDIANSHIP ASSISTANCE RECORDS [Eff. 2/1/10]

A. Information in the record shall be updated when changes occur or additional information is available.

B. Upon termination of the Relative Guardianship Assistance Agreement the record shall be closed.

7.311.4 BENEFITS [Eff. 2/1/10]

Social/Supplemental Security benefits for a youth or child in a Relative Guardianship Assistance Agreement:

A. The county department shall inform the prospective relative guardian of the potential eligibility for Social/Supplemental Security benefits for any youth or child placed with them.

B. When a youth or child is eligible for Social/Supplemental Security benefits and is receiving relative guardianship assistance, the relative guardian must inform the agency of the receipt of these benefits.

7.311.41 Legal Residence of the Youth or Child in a Relative Guardianship Assistance Agreement for Medicaid [Eff. 2/1/10]

A. Following the court appointment of relative guardianship, if the youth or child resides in a different county than the county in which the relative guardianship was granted in Colorado, the county of residence where the youth or child is placed shall open Medicaid benefits.

B. The placing county department shall send written notification to the resident county to expedite timely opening of the Medicaid benefits.

7.311.42 For Chafee Foster Care Independence Program Services, see Section 7.305.4. [Eff. 2/1/10]

7.311.5 RELATIVE GUARDIANSHIP ASSISTANCE PROGRAM SERVICES [Rev. eff. 12/1/12]

A. The Relative Guardianship Assistance Program includes Title IV-E and a state and county-only (non Title IV-E) program.

1. The federal government participates in relative guardianship assistance agreements for youth and children who meet the eligibility criteria for the Title IV-E relative guardianship assistance program.

2. The state and county participate in relative guardianship assistance agreements for youth and children who are not eligible for the Title IV-E program.

B. The Relative Guardianship Assistance Program provides assistance to a relative guardian in a defined and limited manner so that permanency is achieved for an eligible youth or child where

reunification and adoption are not appropriate goals. The following requirements are applicable to both programs:

1. The county department may make relative guardianship assistance payments and/or provide Medicaid or medical assistance following the appointment of the relative guardian by the probate court and continue the assistance until the youth has reached eighteen (18) years of age.

2. The determination for expiration of the agreement must be made and documented in the original negotiation and noted in the original documents for the relative guardianship assistance agreement.

3. The county department must determine that in each case a reasonable, but unsuccessful, effort to place the youth or child for adoption has been made before negotiating relative guardianship assistance, unless the best interests of the youth or child would not be served by such an effort.

4. The county department may not use an income eligibility requirement (income means test) for the prospective relative guardian in determining eligibility for relative guardianship assistance.

5. The relative guardianship assistance agreement that is negotiated shall be based on the needs of the youth or child and the relative guardian's circumstances.

6. Public community-based programs or services that the youth or child is eligible for shall be accessed first to address the needs of the youth or child before a relative guardianship assistance agreement is negotiated.

7. The county department may authorize the following types of relative guardianship assistance agreements:

    a. A "long-term relative guardianship assistance agreement" is intended to partially meet the daily needs of a youth or child indefinitely. A long-term agreement is made when the relative guardian's financial situation is a barrier to achievement of relative guardianship and where it is unlikely to change. It may also occur when the needs of the youth or child creates an excessive hardship on the relative guardian's financial and emotional resources. This type of monthly payment may continue until the circumstances change for the youth, child or the relative guardian, or the agreement terminates as outlined in the relative guardianship assistance agreement.

    b. A "time-limited relative guardianship assistance agreement" is intended to partially meet the daily needs of the youth or child for a specified period. Funds may be used for start-up costs for items that the youth or child placed in relative guardianship may not have, such as sufficient clothing. The agreement partially covers unmet needs that are time-limited and non-renewable.

    c. A "core" relative guardianship assistance agreement (Title IV-E only) means there is a minimum monthly assistance payment of at least ten dollars ($10) and Medicaid provided. County departments shall document any specific needs that may occur in the future for the youth or child in the services record and in the State Department's automated system. The agreement identifies a potential need for increased financial relative guardianship assistance that may be activated at a future time.

d. A “dormant relative guardianship assistance agreement” (non-Title IV-E only) means there is no relative assistance payment provided. County departments shall document any specific needs that may occur in the future for the youth or child in the services record and in the State automated system. The agreement identifies a potential need for financial relative guardianship assistance that may be activated at a future time. Medicaid benefits may be accessed (refer to Section 7.311.62, B).

8. If the youth or child is reunited with the parent(s), previous legal custodian, or is adopted, eligibility for relative guardianship assistance is terminated.

9. A relative guardian who meets the criteria for relative guardianship assistance are eligible for non-recurring relative guardianship assistance expenses.

10. The contact requirements in Section 7.001.6 shall be met prior to court appointment of relative guardianship. The contacts shall be documented in the State Department’s automated system.

11. Case services payments may be part of the relative guardianship assistance agreement; these payments may be made directly to the providers of service or to the appointed relative guardian.

C. Applicable Groups for Relative Guardianship Assistance

1. Youth or children who are in the custody of the county department.

2. The county department requesting the assistance agreement is financially responsible for the care of the youth or child.

D. County Department Requirements for Relative Guardianship Assistance

1. While the Relative Guardianship Assistance agreement is in effect, a combined record for each youth or child and the relative guardian shall be maintained.

   A combined record shall contain documentation about each youth or child and the relative guardian, which is relevant to the guardianship assistance agreement including, but not limited to, application, Structured Analysis Family Evaluation (SAFE) home study and applicable update(s) related to the relative guardianship, medical records, placement history, specific needs requiring purchase of services, confirmation of second opinions of professionals outside of the county department (licensed social worker, doctor, psychologist, or mental health specialist), annual school reports, and other applicable reports or evaluations.

2. The county department shall prepare the documentation necessary for the youth or child for relative guardianship assistance on the State Department's prescribed form no later than one calendar month prior to the court appointment of the relative guardianship.

3. The county department shall review the information on the State Department's prescribed form with the relative kinship guardian. All parties shall date, sign, and initial the document before the court appoints the relative guardian.

4. The county department shall enter the legal relative guardianship information for each youth or child into the State Department's automated system within thirty (30) calendar days following the date that the court appoints the relative guardian. The eligibility determination shall be completed in the Title IV-E module within forty-five (45) calendar days following the date that the court appoints the relative guardian.

7.311.51 Provision of Services [Eff. 2/1/10]

Following the court appointment of the relative guardianship, the county department shall provide services to the youth or child and the relative guardian family as addressed in the guardianship assistance agreement to assure stability of permanency. This does not preclude providing additional services based on current or temporary circumstances including, but not limited to, core services.

7.311.6 RELATIVE GUARDIANSHIP ASSISTANCE AGREEMENT SERVICES [Rev. eff. 12/1/12]

A. The county department may make relative guardianship assistance payments and/or provide Medicaid or medical assistance at the time the relative guardianship is appointed by the court and continue the payments until the youth reaches the age of eighteen (18).

B. The expiration of the agreement must be determined and documented in the original negotiation and noted in the original paperwork for the relative guardianship assistance agreement.

C. The county department shall not use an income eligibility requirement (income means test) for the prospective relative guardian in determining eligibility for relative guardianship assistance.

D. The relative guardianship assistance agreement shall be negotiated in good faith and based upon the needs of the youth or child and circumstances of the relative guardian.

E. Public community-based programs or services that the youth or child is eligible for shall be accessed first to address the needs of the youth or child before a relative guardianship assistance agreement is negotiated.

F. If the youth or child is reunited with the birth parent(s) or legal custodians, the youth or child is not eligible for relative guardianship assistance.

G. Relative guardians of youth or children who meet the criteria for relative guardianship assistance are eligible for non-recurring relative guardianship expenses.

H. Relative guardianship assistance services may be provided for youth and children who meet the requirements, and:

1. The payment may not exceed the foster care reimbursement.

2. A binding relative Guardianship Assistance Agreement shall be negotiated and a copy provided to the relative guardian.

3. The relative guardian may renegotiate the agreement if the needs of the youth or child, or the circumstances of the relative guardian, change.

I. The amount of the assistance agreement and the manner that the payments will be provided shall be documented on the State prescribed forms.

7.311.61 Title IV-E Relative Guardianship Assistance [Rev. eff. 11/1/15]

A. When a successor guardian is not identified in the original assistance agreement and a relative guardianship is dissolved, the youth or child and the subsequent relative guardian must meet all Relative Guardianship Assistance Program eligibility requirements, including:

1. A new determination regarding the continuing needs of the youth or child;

2. Completion of a new relative guardianship assistance agreement with the new relative guardian; and/or,

3. If the previous relative guardian is deceased, a copy of the death certificate must be provided.

B. After a youth or child has been determined eligible for Title IV-E relative guardianship assistance payments and/or Title IV-E Medicaid benefits, Title IV-E eligibility continues while there is a relative guardianship assistance agreement in effect;

1. Eligibility continues as long as the youth or child meets the requirements regardless of the relative guardian's state of residence.

2. Title IV-E relative guardianship assistance benefits and/or Title IV-E Medicaid benefits must continue until the expiration of the original agreement unless all parties to the agreement are in concurrence. This includes, but is not limited to, a situation where the relative guardian fails to complete and return paperwork related to the three-year review of the assistance agreement.

3. If the previous relative kinship guardian is deceased, a copy of the death certificate must be provided.

C. Eligibility Determination for Medicaid in Title IV-E Relative Guardianship Assistance

1. A youth or child who is eligible to receive a Title IV-E payment is categorically eligible for Medicaid. A relative guardianship assistance payment is required to extend Medicaid coverage.

2. Medicaid eligibility shall continue for Title IV-E eligible youth and children who are out of the home for more than thirty calendar days unless it is determined that they are eligible for Medicaid under another program by completing the State Department's prescribed form (see county responsibility, Section 7.402.2).

3. Medicaid eligibility for the youth or child shall be re-determined annually only if the youth or child continues to be eligible for Medicaid. Complete the State Department's prescribed form or a form letter stating that the youth or child continues to be eligible for Medicaid. This document shall be sent to other states by the county department to ensure continuation of Medicaid for a youth or child who is residing out of state.

7.311.62 State-County Relative Guardianship Assistance (Non-Title IV-E) [Rev. eff. 11/1/15]

A. Non-Title IV-E relative guardianship assistance services may be provided to a youth or child who does not meet eligibility criteria as determined in the Title IV-E module, and:

1. The youth or child was not Title IV-E eligible in foster care.

2. The youth or child was placed in foster care with the county department through a court order or a voluntary placement agreement with the county; and,

   a. There was no subsequent petition with the court and a court order within 180 days of living with the specified relative that includes “best interest” or “contrary to the welfare language; or,

   b. There was no foster care payment made while in care under the voluntary placement agreement.

B. Medicaid Eligibility Determination for Non-Title IV-E Relative Guardianship Assistance

1. Youth and children who are eligible for a relative guardianship assistance agreement, but are not Title IV-E eligible may be eligible for:

   a. Medicaid through other categories of assistance; and/or,

   b. Temporary Assistance for Needy Families (TANF).

2. Medicaid eligibility may be continued when the youth or child is in out-of-home care for thirty (30) calendar days, depending on the county department’s policy.

3. Medicaid eligibility shall be redetermined annually only when the youth or child continues to be eligible for Medicaid. This shall be completed on the State Department’s prescribed form.

C. When a successor guardian is not identified in the original assistance agreement, and a relative guardianship is dissolved, the youth or child and the subsequent relative guardian must meet all Relative Guardianship Assistance Program eligibility requirements, including:

1. A new determination regarding the continuing needs of the youth or child; and,

2. Completion of a new relative guardianship assistance agreement with the new relative guardian; and/or,

3. If the previous relative guardian is deceased, a copy of the death certificate must be provided.

7.311.63 Negotiation of Relative Guardianship Assistance Agreements [Rev. eff. 12/1/12]

A. The county department shall:

1. Establish a policy regarding the criteria used for calculating the relative guardianship assistance agreements. The agreements shall be established in accordance with the written policy.

2. Determine specific needs of the youth or child and eligibility for relative guardianship assistance.

3. Utilize financial information regarding the relative guardian's family including assets, liabilities and insurance benefits in negotiating the initial agreement, and any subsequent increases in relative guardianship assistance.

4. Not include a statement in the relative guardianship assistance agreement that Title IV-E relative guardianship assistance payments and/or services are subject to the appropriation of state funds.

5. Make a good faith effort to negotiate a relative guardianship assistance agreement with the relative guardian and base the negotiation on the needs of the youth and child and the circumstances of the relative guardian. If the parties cannot agree, the county department shall establish the amount. If the relative disagrees with the decision, a fair hearing may be requested.

6. Negotiate with the relative guardian the amount that is needed by the relative guardian to meet the needs of the youth or child. This may be less than the amount for which the youth or child qualifies.

7. Establish a maximum rate that may be provided to a relative guardian; the rate cannot exceed the current foster care maintenance rate that was reimbursed for the out-of-home care of the youth, or that would have been reimbursed if the youth or child was currently in out-of-home care. The monthly respite care payment that is provided in the foster care rate is not a benefit under the relative guardianship assistance program.

8. Identify additional services and assistance that the youth or child will be eligible for and the procedures for applying for the services.

9. Use the State Department's prescribed forms to document the negotiated agreement for Title IV-E or non-Title IV-E relative guardianship assistance, and attach supporting documentation.

10. Complete and sign the relative guardianship assistance agreement form specifying:

    a. The dollar amount of the relative guardianship assistance being provided, if applicable.

    b. The duration dates of the agreement:

        1) Until the youth or child in relative guardianship reaches the age of eighteen (18) years, or,

        2) On a case-by-case basis, the duration of the agreement may be sooner than this time. All parties must be in agreement with the earlier termination date.

    c. The services and dates of services that are covered by the relative guardianship assistance agreement.

    d. The relative guardianship assistance agreement must be signed and dated by all parties prior to the effective date of the agreement, which is the date that the court appoints relative guardianship. If the county department fails to completely execute the relative guardianship assistance agreement prior to the date the relative guardianship is appointed, the assistance payment will become non-reimbursable by the state and Title IV-E funds.

11. Review the agreement every three (3) years from the date of the initial agreement.

    a. Any change in the relative guardianship assistance agreement shall be related to the original needs, identified at the time the decision was made that relative guardianship assistance was needed.

    b. A Title IV-E relative guardianship assistance agreement shall not be changed without the concurrence of all parties. The only exception is if there is a reduction or increase in the foster care maintenance payment rate. In that circumstance the state may adjust the relative guardianship assistance payment without the relative guardian's agreement.

    c. Any change in a non-Title IV-E relative guardianship assistance agreement must be related to the specific needs of the youth or child, the relative guardian's circumstances, and the county department's policy.

       The county department shall negotiate with the relative guardian that when the youth or child is in out-of-home care or committed to the Division of Youth Corrections for more than thirty (30) days, the assistance payment shall be suspended until the youth or child returns to the relative guardian's home.

    d. After the court appoints the relative guardianship, the county department shall not include additional needs for the relative guardianship assistance payment that are not directly related to the original identified needs of the youth or child, or unless the needs are based on a genetic relationship to the original needs.

    e. The county department or a relative guardian may renegotiate an existing relative guardianship assistance agreement if the needs of the youth or child change and the information is related to the original needs that were identified or the family's circumstances.

12. For Title IV-E relative guardianship assistance agreements, there are situations after the relative guardianship appointment by the court where the guardian can request a state level fair hearing before an Administrative Law Judge (ALJ) concerning the eligibility of the youth or child or relative guardianship assistance benefits or the amount of those benefits. The situations include, but are not limited to:

    a. Relevant facts regarding the youth or child that were known and not presented to the relative guardians prior to the court appointment of relative guardianship.

    b. Denial of assistance based upon a means test of the relative guardian.

    c. Guardians' belief that an erroneous determination was made finding a youth or child ineligible for relative guardianship assistance.

    d. Denial of a request for a change in assistance payment rate due to a change in circumstances for the relative guardian.

    e. Decrease in the amount of relative guardianship assistance without the agreement of the relative guardian except as previously noted in Section 7.311.63, A, 11, b.

7.311.64 Successor Guardian [Eff. 11/1/15]

A. A successor guardian may be identified in the original Relative Guardianship Assistance Agreement for continuity of relationship and permanency, and to prevent re-entry into foster care for a youth or child, due to incapacitation or death of the original guardian.

1. Incapacitation means the relative guardian is substantially unable to perform the duties of a legal guardian for the youth or child(ren) named in the Relative Guardianship Assistance Agreement. Substantial inability to provide care may be due to a physically debilitating illness, disease, or injury; or a mental impairment resulting in substantial inability to understand the nature and consequences of decisions concerning the care of the youth or child.

2. The eligibility of a successor guardian at the time of incapacitation or death requires all of the following conditions:

    a. The successor guardian must meet requirements applicable to foster care providers for fingerprint-based criminal background checks through the Colorado Bureau of Investigation (CBI) and Federal Bureau of Investigation (FBI) at the time of incapacitation or death;

    b. All other adults residing in the home must meet requirements applicable to foster care providers for fingerprint-based criminal background checks through CBI and FBI at the time of incapacitation or death;

    c. The successor guardian and all adults (eighteen years and older) residing in the home are not registered sex offenders;

    d. The successor guardian has knowledge about the needs of the youth or child in the relative guardianship assistance agreement; and,

    e. The successor guardian is committed to raise the youth or child.

3. Responsibilities of a successor guardian at the time of incapacitation or death of the original guardian and following appointment of guardianship include the following:

    The successor guardian must:

    a. Notify the county department with financial responsibility for the Relative Guardianship Assistance Agreement about the incapacitation or death of the original guardian;

    b. Submit completed documentation of fingerprint-based CBI and FBI results;

    c. Identify all adults living in the home and their dates of residences for the preceding five (5) years;

    d. Petition the probate court for guardianship of the youth or child as soon as possible;

    e. Collaborate with the county department with financial responsibility to complete a Relative Guardianship Assistance Agreement commensurate with the current agreement and based upon the needs of the youth or child and the circumstances of the successor guardian;

    f. Notify the county department of any significant changes that affect the terms of the assistance agreement;

g. Submit required reports to the court; and,

h. Provide annual verification of school attendance for the child(ren) or youth included in the assistance agreement.

4. Responsibilities of the county department include the following:

a. Upon notification of the incapacitation or death of a relative guardian, the county department shall suspend relative guardianship assistance payments and services identified in the original assistance agreement effective the date of incapacitation or death, until the successor guardian has attained guardianship of the youth or child through the probate court.

b. The county department shall review the current CBI and FBI fingerprint-based history provided by the successor guardian and for all adults (eighteen years and older residing in the home).

c. The county department shall request and review child abuse/neglect records in each state where the successor guardian and all adults (eighteen years and older) living in the home have resided in the five (5) years preceding the date of notification of incapacitation or death of the original guardian.

d. The county department shall complete national and CBI sex offender registry checks using the state prescribed procedures for the successor guardian and all adults (eighteen years and older) living in the home.

e. Upon determination that the prospective successor guardian meets requirements, the county department shall collaborate to provide commensurate assistance and services identified in the original Relative Guardianship Assistance Agreement and based upon the needs of the youth or child and the circumstances of the successor guardian.

f. The assistance agreement shall be signed by all appropriate parties prior to the date the court awards guardianship. The relative guardianship assistance is effective the date of guardianship.

7.311.7 MEDICAL PAYMENTS IN RELATIVE GUARDIANSHIP ASSISTANCE AGREEMENTS [Rev. eff. 12/1/12]

A. Medical payments in relative guardianship assistance agreements may be used to supplement any other available resource such as a relative guardian's private insurance that pays part but not all of the treatment (physical, mental, and emotional) for the youth or child.

1. Payments are made directly to relative guardians for a service already received or to a vendor for the treatment of physical, developmental disabilities, or an emotional disturbance.

2. Shall relate directly to the barrier(s) identified at the time the initial agreement is approved.

B. The payments are not available for treatment of any physical, developmental disability, or emotional disturbance diagnosed after the court appointment of the relative guardianship.

C. The payments may only be used for Medicaid cases if the service requested is a service that is not covered under the state Medicaid plan and relates to a need identified at the time the youth or child is placed in relative guardianship.

D. The payments for medical services shall reflect the reasonable costs of those services in the community where the youth or child resides.

7.311.71 Reimbursable and Non-Reimbursable Relative Guardianship Assistance Case Services [Rev. eff. 12/1/12]

Case services are a type of purchased program services that support a case plan for youth and children in relative guardianship assistance.

Case services are provided to meet the special needs of a youth or child that were identified when the youth or child is placed into a relative guardianship and which are not covered by the relative guardianship assistance or Medicaid assistance agreements.

For eligibility for case services in a relative guardianship assistance agreement, the State Department's prescribed form outlining the agreement must be in place and the case open in the State Department's automated system as relative guardianship assistance case.

A. Medical

1. Orthodontia

a. Cosmetic reasons - not reimbursable.

b. Special needs directly related to the reason for which the youth or child was classified as special needs, e.g. cleft palate or injury related to an abuse will be reimbursable.

2. Eye Glasses

a. Eyeglasses are not reimbursable using case services funds because Medicaid pays for one (1) pair of glasses per year.

b. Payment for additional eye glasses during the year or contacts related to the special needs of the youth or child that were identified at the time of the initial relative guardianship assistance agreement are reimbursable.

3. Medication

a. Routine medication that is not related to the special needs of the youth or child - not reimbursable.

b. If related to the special needs of a youth or child - reimbursable. The medication must be prescribed by a licensed physician and related to the special need identified at the time the youth or child was approved for relative guardianship assistance.

4. Special Therapies - Speech, Occupational, and Physical

a. If not available through other community and family resources - reimbursable. Youth and school-age children should receive these services through the education system.

b. When these services are available in hospitals and clinics – not reimbursable because Medicaid covers these costs.

5. Special Medical Equipment

Special medical needs/equipment prescribed by a physician may be reimbursable. For a youth or child who is severely physically challenged; special exceptions should not exceed two thousand dollars ($2,000) without a supervisor's written authorization.

B. Psychological Services

1. Time-limited out-patient therapy for a youth or child living in a state that does not accept Medicaid for this service - reimbursable if related to the special needs of the youth or child and a written plan is obtained from the service provider which contains:

a. Diagnosis.

b. Prognosis.

c. Length of service.

d. Individuals who will be seen during the therapy.

e. A cap on the amount of money to be spent for the psychological exam or therapy.

f. Frequency of contact (i.e., once a week, twice a month, etc.).

g. Type of therapy being provided (i.e., individual, group, family, etc.).

2. If time-limited out-patient therapy is available using Medicaid – not reimbursable.

3. Day treatment - not reimbursable because Medicaid provides for this service.

4. Residential child care facility - not reimbursable because Medicaid provides for this service.

5. In-patient psychiatric hospitalization - not reimbursable because Medicaid provides this service. (Children who are Medicaid eligible may receive some in-patient psychiatric services under the Medicaid program.)

C. Education Costs

1. Tutoring - not reimbursable. Education systems are required to provide all youth and children with special needs a free appropriate public education.

2. School tuition - not reimbursable. There will be no reimbursement for tuition expenses through the relative guardianship assistance program. If the relative guardian chooses the youth or child to remain in a current private school placement, this is an expense for which the relative guardian is responsible.

D. Respite and Day Care

1. Respite care - reimbursable.

2. Day care - not reimbursable.

E. Other Relative Guardianship Assistance Case Services

Relative guardianship assistance case services for youth and children who are Title IV-E or non-Title IV-E may be provided for a specified time to provide needed services. It is required that these time-limited services/funds are clearly provided on a case-by-case basis. This requirement must be clearly documented in the agreement.

F. To be eligible for case services in a relative guardianship, the State Department's prescribed form outlining the agreement must be in place and the case opened in the State Department's automated system as a relative guardianship assistance case following the court appointment of relative guardianship.

7.311.72 Non-Recurring Relative Guardianship Expenses [Rev. eff. 12/1/12]

A. The relative guardian shall be reimbursed for the total costs of non-recurring expenses associated with obtaining relative guardianship, not to exceed two thousand dollars ($2,000) per youth or child in order to facilitate achievement of the guardianship for:

1. Legal fees,

2. Fees for relative guardianship, or

3. Other expenses related to the relative guardianship of the youth or child, such as the cost of the SAFE home study and a SAFE update related to the prospective relative guardianship completed by the county department.

B. The county department shall determine if the reimbursements requested by the prospective relative guardian are non-recurring expenses.

C. Documentation for non-recurring relative guardianship expenses:

1. The county department shall use the State Department's prescribed form prior to the court appointing the relative guardianship.

2. The prospective relative guardian shall provide evidence of the needs of the youth or child.

3. Provide an itemized statement of the expenses to be reimbursed within one (1) year from the date of the probate court appointment of the relative guardianship.

7.311.8 ACCEPTING AND PROCESSING APPLICATIONS FOR RELATIVE GUARDIANSHIP ASSISTANCE FROM KINSHIP FOSTER CARE PARENTS WHO ARE CERTIFIED BY CHILD PLACEMENT AGENCIES [Rev. eff. 1/1/16]

A. Colorado licensed child placement agencies may certify kinship foster care homes only upon written request from the county department of human or social services with responsibility for the care and custody of the youth or child.

B. The county department will use the same procedures for all prospective relative guardians.

C. The child placement agency that certified the prospective relative guardian retains responsibility for services to the relative guardian prior to the court appointment of the relative guardianship.

7.311.81 Review of Eligibility for All Ongoing Relative Guardianship Assistance Agreements [Rev. eff. 12/1/12]

A. The county department shall initiate the written notice of the review for relative guardianship assistance sixty (60) days prior to the three (3) year anniversary of the agreement.

B. The relative guardian may request a review of the agreement prior to the three-year review if changes in the needs of the child or family circumstances occur.

C. Any changes in the needs of the youth or child shall relate to the original barrier(s), identified at the time the decision was made that relative guardianship assistance was needed. The county department shall not include additional needs for relative guardianship assistance payments after the court appointment of the guardianship unless genetic in nature.

D. The county department shall review school attendance annually.

Relative guardianship assistance files must contain documentation of school attendance or reasons for the inability to attend. Documentation must be updated annually to assure that each youth and child who is eligible for relative guardianship assistance and who has attained the minimum age for compulsory school attendance is:

1. Enrolled (or in the process of enrolling) an elementary or secondary education institution,

2. Instructed in elementary or secondary education at home in accordance with the home school statute,

3. In an independent study elementary or secondary education program in accordance with statute, and which is administered by the local school, school district, or Board of Cooperative Education (BOCES), or

4. Incapable of attending school on a full-time basis due to the medical condition of the youth or child. The reasons shall be supported by regularly updated information in the educational plan maintained by the school, school district, or BOCES.

7.311.82 Procedures for Relative Guardianship Assistance Payment When a Youth or Child is in Out-of-Home Care or Committed to the Division of Youth Corrections [Rev. eff. 12/1/12]

A. Medicaid eligibility shall continue for Title IV-E eligible youth or children who are out of the home for more than thirty (30) calendar days unless it is determined that they are eligible for Medicaid under another program by completing the State Prescribed form (see County Responsibility, Section 7.402.2).

B. When a youth or child with a non-Title IV-E relative guardianship assistance agreement is placed in out-of-home care for more than thirty (30) days, the county department shall discontinue the relative guardianship assistance payment until the youth or child returns to the relative guardian's home. This includes a commitment to the Division of Youth Corrections.

C. When non-Title IV-E eligible youth or child resides outside of Colorado with the relative guardian who has a relative guardianship assistance agreement and the youth or child is in out-of-home placement longer than thirty (30) calendar days, the relative guardianship assistance payment and relative guardianship case services shall be discontinued. A state/county non-Title IV-E

agreement may only be resumed when the youth or child is returned home and the out-of-home placement has been discontinued on the State Department's automated system.

7.311.9 TERMINATION OF RELATIVE GUARDIANSHIP ASSISTANCE AGREEMENTS [Eff. 2/1/10]

The county department shall terminate relative guardianship assistance agreements when the:

a. Relative guardian requests that payments end; or,

B. Youth reaches age eighteen (18); or,

C. The county department determines the relative guardian is no longer legally responsible for the support of the youth or child; or,

D. Youth or child is no longer receiving any support from the relative guardian; or,

E. County of responsibility verifies the death or marriage of a youth or child.

7.311.91 Reinstatement [Rev. eff. 11/1/10]

A. Reinstatement of the original relative guardianship assistance agreement is prohibited when the relative guardian who was appointed by the court no longer has guardianship of the youth or child.

B. Reinstatement of payments related to the needs of a youth or child that were identified at the time of the original Relative Guardianship Assistance Agreement is allowed for a:

1. Youth or child that is non-Title IV-E eligible.

2. Youth or child that is Title IV-E eligible.

7.311.92 Right to Appeal [Rev. eff. 12/1/12]

A. If the county department denies an application for relative guardianship assistance, or reduces or terminates the assistance payment, the applicant or recipient has the right to appeal. Using procedures outlined in Section 3.850 (9 CCR 2503-1).

B. When a family who has been denied Title IV-E relative guardianship assistance requests a state level fair hearing, it is the responsibility of the Administrative Law Judge to determine whether the applicant or recipient was wrongly denied eligibility or whether the amount of the relative guardianship assistance agreement was determined correctly (see Section 7.306.41, E).

C. The relative guardian has the burden of proving extenuating circumstances and relative guardianship assistance eligibility at a state level fair hearing. The state and/or its designee can provide factual information to assist the family in establishing eligibility for Title IV-E relative guardianship assistance.

D. When either state or federal law requires or results in a reduction or deletion of services, a hearing shall not be granted.

7.311.93 State Monitoring/Progressive Discipline Process of Relative Guardianship Assistance Programs in County Departments [Eff. 2/1/10]

A. Monitoring shall be conducted annually with county departments by the State Department using a risk-based approach by reviewing the number and nature of complaints received from consumers, advocates, or the general public.

B. The department will conduct monitoring in the same manner contained in Section 7.306.43.

7.305.4 CHAFEE FOSTER CARE INDEPENDENCE PROGRAM (CFCIP) – TITLE IV-E INDEPENDENT LIVING GRANT INITIATIVE [Rev. eff. 11/1/15]

7.305.41 County Responsibilities [Rev. eff. 11/1/15]

A. The designated host county department shall submit a county plan for State approval.

B. The county department shall comply in format, content, and time lines with the instructions for Chafee Foster Care Independence Program plans as published by the State Department in an agency letter which will also contain required instructions for program and financial reporting.

C. The county department shall administer the State approved plan in accordance with provisions of the plan.

D. Funds shall be used exclusively for the purposes specified in the plan.

E. County departments must submit amendments to approved plans when the county is proposing to add or delete a service to the plan. The county department shall submit amendments of the Chafee Foster Care Independence Program plan for approval to the State Department no less than thirty (30) business days before the amendment is to be effective.

F. The county department shall consider the following factors, in the prioritization of Chafee services on an individual basis:

1. Risk or history of human trafficking;

2. Risk or history of homelessness;

3. Whether the youth has emancipated from Child Welfare or exited the Division of Youth Corrections after attaining age eighteen (18), or is expected to do so;

4. Previous participation in Chafee services or transfer of services from another county or state;

5. Enrollment and progress in educational programs, internships or apprenticeships;

6. Enrollment and progress in workforce innovation and opportunity act programs or workforce development activities; and,

7. Connection to permanent, supportive adults and personal support systems.

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Tracking number: 2016-00268

Opinion of the Attorney General rendered in connection with the rules adopted by the

Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

on 08/05/2016

12 CCR 2509-4

CHILD WELFARE SERVICES

The above-referenced rules were submitted to this office on 08/09/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 24, 2016 12:07:55

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Human Services

Agency

Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-8

Rule title

12 CCR 2509-8 CHILD CARE FACILITY LICENSING 1 - eff 10/01/2016

Effective date

10/01/2016

12 CCR 2509-8

7.712 RULES REGULATING SCHOOL-AGE CHILD CARE CENTERS

All school-age child care centers must comply with the “General Rules for Child Care Facilities” as well as the “Rules Regulating School-Age Child Care Centers” and the “Rules and Regulations Governing the Sanitation of Child Care Centers in the State of Colorado.”

7.712.1 (None) [Rev. eff. 6/1/12]

7.712.2 DEFINITIONS [Rev. eff. 6/1/07]

A. A “school-age child care center” (hereafter referred to as the “center”) is a child care center that provides care for five (5) or more children who are between five (5) and sixteen (16) years of age. The center's purpose is to provide child care and/or an outdoor recreational experience using a natural environment. The center operates for more than one week during the year. The term includes facilities commonly known as “day camps”, “summer camps”, “summer playground programs”, “before and after school programs”, and “extended day programs”. This includes centers operated with or without compensation for such care, and with or without stated educational purposes.

B. A “building-based school-age child care program” is a child care program that provides care for five (5) or more children who are between five (5) and sixteen (16) years of age. The center is located in a building that is regularly used for the care of children.

C. A “day camp” is a school-age child care program which operates at least four (4) hours a day primarily during one season of the year, and during school vacation periods for children between five (5) and eighteen (18) years of age, which accepts registrations for finite, not necessarily contiguous sessions. Programs may operate daily between 6:00 a.m. and 10:00 p.m. Day camp programs may incidentally offer not more than two overnight stays each camp session. The day camp provides a creative recreational and educational opportunity through group oriented programs. The day camp utilizes trained leadership and the resources of the natural surroundings to contribute to each child’s mental, physical, social, and personal growth.

The types of day camps are as follows:

1. A “building based day camp” is a child care program that provides care for five (5) or more children who are between five and eighteen years of age. The day camp is located in a building which, along with the outdoor surroundings, is regularly used by the program.

2. A “mobile day camp” is a child care program that provides programming for five (5) or more children who are at least seven (7) years of age or who have completed the first grade. Children move from one site to another by means of transportation provided by the governing body of the program. The program uses no permanent building on a regular basis. Mobile day camp programs may operate in multiple sites under one license.

3. An “outdoor-based day camp” is a child care program that provides care or five (5) or more children who are at least seven (7) years of age or have completed the first grade. The day camp uses no permanent building on a regular basis and provides programming in a permanent outdoor or park setting.

7.712.3 POLICIES AND PROCEDURES

7.712.31 Statement of Policies and Procedures [Rev. eff. 6/1/07]

A. At the time of enrollment, and upon amendments to policies and procedures, the center must give the parent(s)/guardian(s) the center's policies and procedures, and provide the opportunity to ask questions. Written copies must be available either electronically or in hard copy. The center must obtain a signed document stating that the parent(s)/guardian(s) have received the policies and procedures, and by signing the policies and procedures document, the parent(s)/guardian(s) agree to follow, accept the conditions of, and give authorization and approval for the activities described in the policies and procedures. Policies must include the following:

1. The center's purpose and its philosophy on child care;

2. The ages of children accepted;

3. Services offered for special needs children in compliance with the Americans with Disabilities Act (see Section 7.701.14, General Rules for Child Care Facilities);

4. The hours and dates when the center is in operation, specific hours during which special activities are offered, holidays when the center is closed;

5. The policy regarding severe weather;

6. The procedure concerning admission and registration of children;

7. An itemized fee schedule;

8. The procedure for identifying where children are at all times;

9. The center's procedure on guidance, positive instruction, supporting positive behavior, discipline and consequences, including how the center will:

   a. Cultivate positive child, staff and family relationships;

   b. Create and maintain a socially and emotionally respectful early learning and care environment;

   c. Implement teaching strategies supporting positive behavior, pro-social peer interaction, and overall social and emotional competence in young children;

   d. Provide individualized social and emotional intervention supports for children who need them, including methods for understanding child behavior; and developing, adopting and implementing a team-based positive behavior support plan with the intent to reduce challenging behavior and prevent suspensions and expulsions; and

   e. Access an early childhood mental health consultant or other specialist as needed.

10. The procedure, including notification of parents and guardians, for handling children's illnesses, accidents, and injuries;

11. The procedures for handling lost children and other emergencies at all times, including during field trips. An outline of a plan of action in case of natural disaster is found at Section 7.712.83, G;

12. The procedure for transporting children, if applicable, including transportation arrangements and parental permission for excursions and related activities;

13. The written policy and procedure governing field trips, television and video viewing, and special activities, including the staff's responsibility for the supervision of children;

14. The policy on children's safety related to riding in a vehicle, seating, supervision, and emergency procedures on the road;

15. The procedure for releasing children from the center only to persons for whom the center has written authorization;

16. The procedures followed when a child is picked up from the center after the closing hours of the center or not picked up at all, and the procedure to ensure that all children are picked up before the staff leave for the day;

17. The procedure for caring for children who arrive late to the center and their class/group is away from the center on a field trip or excursion;

18. The procedure for administering children's medicines and delegation of medication administration in compliance with Section 12-38-132, C R S., of the "Nurse Practice Act.";

19. The procedure concerning children's personal belongings and money;

20. The policy concerning meals and snacks;

21. The policy regarding visitors;

22. The procedure for filing a complaint about child care (see Section 7.701.5. General Rules for Child Care Facilities);

23. The policy regarding the reporting of child abuse (see Section 7.701.5 General Rules for Child Care Facilities);

24. The policy regarding the child care facilities' responsibility to notify parents or guardians when the program will no longer be able to serve children;

25. The policy regarding the parent's or guardian's responsibility to notify the child care program when parents or guardians withdraw their child(ren) from the program; and

26. What steps are taken prior to the suspension, expulsion or request to parents or guardians to withdraw a child from care due to concerns about the child's behavioral issues. These procedures must be consistent with the center's policy on guidance, positive instruction, discipline and consequences, and include documentation of the steps taken to understand and respond to challenging behavior.

7.712.32 Communication, Emergency, and Security Procedures [Rev. eff. 4/1/15]

A. The center must notify the parents or guardians in writing of significant changes in its services, policies, or procedures so that they can decide whether the center continues to meet the needs of the child.

B. For security purposes, a sign-in/sign-out sheet or other mechanism for parents and guardians must be maintained daily by the center It must include, for each child in care, the date, the child's name, the time when the child arrived at and left the center, and the parent or guardian's signature or other identifier With parent or guardian's approval, a child may sign in and out instead of the parent or guardian. Staff must verify attendance periodically throughout the day.

C. Each center is required to have a written mission statement. This statement must be kept on file, updated periodically, and made known to staff and to parents and guardians, and must be available during the licensing inspection.

D. During the hours the center is in operation, the center must provide an office and/or monitored telephone number known to the public and available to parents in order to provide immediate access to the center.

E. If the center has a permanent site, there must be a telephone at the site.

F. Centers must have an established means of communication between staff and the program office when children are being transported or are away from the permanent site on a field trip.

G. Emergency telephone numbers must be posted at each permanent site and taken on all field trips and during mobile school-age child care programs. The emergency numbers must include, at a minimum, 911, if available, or rescue unit if 911 isn't available; the clinic or hospital nearest to the activity location; ambulance service; fire, police, and health departments; and Rocky Mountain Poison Control.

H. Mobile school-age child care programs must have a way to be contacted while in transit.

I. The center must be able to provide emergency transportation to a health care facility at all times either via program vehicle or the emergency medical services system.

J. The director of the center or the director's delegated substitute must have a means for determining at all times who is present at the center.

K. A written policy regarding visitors to the center must be posted and a record maintained daily by the center that includes at a minimum the visitor's name and address and the purpose of the visit. At least one piece of identification must be inspected for individuals who are strangers to personnel at the center.

L. With the exception of children who are allowed to sign themselves in and out, the center must release the child only to the adult(s) for whom written authorization has been given and is maintained in the child's record (see Section 7.712.81). In an emergency, the child may also be released to an adult for whom the child's parent or guardian has given verbal authorization. If the staff member who releases the child does not know the adult, identification must be required to assure that the adult is authorized to pick up the child.

M. The center must have a procedure for dealing with individuals not authorized by the parent or guardian of a child who attempts to have the child released to them.

N. The center must have a written emergency procedure that explains how it will report communicable illnesses to the local, health department pursuant to regulations of the State Department of Public Health and Environment.

O. The center must have a written procedure for closing the center at the end of the day to ensure that all children are picked up.

7.712.4 PERSONNEL

7.712.41 General Requirements for All Personnel [Rev. eff. 6/1/12]

A. All personnel of the center must demonstrate an interest in and knowledge of children and concern for their proper care and well-being.

B. All personnel must be free from illness and conduct that would endanger the health, safety, or well-being of children.

C. The center must determine if any staff person who works at the center has ever been convicted of a crime as listed at Section 7.701.33, D, 5 or 6, of the General Rules for Child Care Facilities.

D. A criminal record check request for all in-state staff must be submitted to the Colorado Bureau of Investigation within five (5) days that an individual is employed by the center. The personnel file of in-state member of the center must contain clearance or arrest report from the Colorado Bureau of Investigation resulting from the caregiver's criminal record check. The requirement for a criminal record check is found in Section 7.701.33 of the General Rules for Child Care Facilities. Seasonal staff that indicate that they will not be returning to the program for employment shall be removed from the CBI list for the program.

E. A request for a review of the State Department's automated system must be made within ten (10) working days of each staff member's first day of employment. The method for making the request is found in 7.701.32 (General Rules for Child Care Facilities).

F. Each staff member and volunteer must furnish the center with information concerning chronic health problems, any known drug reactions, allergies, medications being taken, and/or other health problems that could affect the staff member's ability to perform the duties of the job assigned.

G. The duties and responsibilities of each staff position and the lines of authority and responsibility within the center must be in writing. At the time of employment, staff members must be informed of their duties and assigned a supervisor.

H. Prior to working with children, the staff member must read and be instructed on the policies and procedures of the center, including those relating to hygiene, sanitation, food preparation practices, proper supervision of children, and reporting of child abuse. Staff members must sign a statement indicating that they have read and understand the center's policies and procedures.

I. Day camp staff shall receive a minimum of fifteen (15) hours of pre-camp training, not including First Aid and CPR. Pre-camp training must include all training activities that staff participate in as a whole. Training should include, but not be limited to, familiarizing staff with the camp mission, site emergency policy and procedures, how to supervise and facilitate activities with campers, and health care policies and procedures. Policies and procedures must be in writing. Staff will be supervised and additional training may be provided if needed. Day camps must have a system in place to provide staff the essential training information for late hires.

J. The center must have a staff development plan that includes a minimum of fifteen (15) clock hours of training each year for all staff. This requirement does not apply to day camps. This training must relate to one or more of the following general areas: child growth and development, healthy and safe environment, developmentally appropriate practices, guidance, family relationships, cultural and individual diversity, and professionalism. At least three (3) clock hours per year must be in the focus of social emotional development. The fifteen (15) clock hours of training does not include recertification in First Aid and CPR.

K. All staff must complete a department approved standard precautions training that meets current occupational safety and health administration (OSHA) requirements prior to working with children. This training must be renewed annually and may count towards ongoing training requirements.

L. Effective DECEMBER 31, 2016 all staff must complete a building and physical premises safety training prior to working with children. The training must include:

a. Identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and

b. Handling and storage of hazardous materials and the appropriate disposal of bio contaminants.

M. Effective December 31, 2016 each provider or staff member responsible for the collection, review and maintenance of the child immunizations records must complete the Colorado Department of Public Health and Environment (CDPHE) immunization course within thirty (30) calendar days of employment. This training must be renewed annually and may count towards ongoing training requirements.

N. Effective December 31, 2016 each provider, staff member or regular volunteer must complete a department approved training about child abuse prevention, including common symptoms and signs of child abuse within thirty (30) calendar days of employment. This training must be renewed annually and may count towards ongoing training requirements.

7.712.42 Required Personnel and Qualifications [Rev. eff. 6/1/12]

A. Program Director

Each center must have an on-site program director who shall be at least twenty one (21) years of age. The program director must have demonstrated to the hiring authority maturity of judgment, administrative ability, and the skill to appropriately supervise and direct school-age children in an unstructured setting.

1. The program director must have verifiable education or training in work with school-age children in such areas as recreation, education, scouting, or 4-H; and the program director must have completed at least one of the following qualifications:

a. A four (4) year college degree with a major such as recreation, education with a specialty in art, elementary or early childhood education, or a subject in the human service field; or

b. Two years of college training and six (6) months of satisfactory and verifiable full-time or equivalent part-time, paid or volunteer, experience, since attaining the age of eighteen (18), in the care and supervision of four (4) or more children; or

c. Three years of satisfactory and verifiable full-time or equivalent part-time, paid or volunteer, experience, since attaining the age of eighteen (18), in the care and supervision of four (4) or more children. The program director must complete six (6) semester hours, nine (9) quarter hours in course work from a regionally accredited college or university, or forty (40) clock hours of training in course work applicable to school-age children within the first nine (9) months of employment.

2. The program director is responsible for planning and implementing the program and supervising the staff.

B. Program Leaders

Program leaders must be at least eighteen (18) years of age and demonstrate an ability to work with children. Program leaders must have at least three (3) months of full-time or equivalent part-time satisfactory and verifiable experience with school-age children.

C. Program Aides

1. Program aides shall be at least sixteen (16) years of age. Program aides shall work directly under the supervision of the program director or program leaders and shall never be left alone with children.

2. Program aides can be counted as staff in determining child care staff ratios.

D. Employment of maintenance staff, including kitchen service, grounds, and housekeeping employees less than sixteen (16) years of age, must be in compliance with Colorado labor laws.

E. First Aid and CPR Certified Staff

1. For every thirty (30) or fewer children in attendance, there must be at least one (1) staff member who holds a current Department-approved First Aid and safety certificate that includes CPR for all ages of children. Such individuals must be with the children at all times when the center is in operation. If children are at different locations, there must be a First Aid and CPR qualified staff member at each location. In a day camp, all staff that are eighteen (18) years of age and over are required to have a current First Aid and CPR certificate from a nationally recognized provider. Uncertified staff must work with another certified staff member.

2. All employees caring for children, not required by rule to be certified in First Aid and CPR, must complete a basic First Aid and CPR module within 30 calendar days of employment and the module must be renewed every 2 years.

7.712.43 Required Staff Supervision [Rev. eff. 6/1/07]

A. A program director must be present at the center at least 60% of any day the center is in operation. An individual who meets one of the following requirements must be present for the remaining 40% of the day:

1. A program leader who is at least twenty one (21) years of age and has at least three (3) months of full-time or equivalent part time verifiable experience working with children; OR

2. A program leader who is at least eighteen (18) years of age and has at least one (1) year full-time or equivalent part-time verifiable experience working with children; or

3. Two program leaders who are at least nineteen (19) years of age and have at least three (3) months of full-time or equivalent part-time verifiable experience working with children.

B. If the program director cannot be present 60% of any day the center is in operation, an individual who meets program director qualifications must substitute for the director.

C. There must be at least one (1) program leader providing supervision with each group of THIRTY (30) or fewer children cared for by the center. At all times, staff must be actively supervising children.

D. There must be one (1) staff member for each fifteen (15) children in attendance.

E. At any time when nine (9) or more children are present at the center, there must be at least one (1) program leader actively supervising children and another responsible person at least sixteen (16) years of age on the premises. When 8 or fewer children are present, there must be at least 1 program leader on duty and a second staff member on call and immediately available in an emergency.

F. At all times, school-age child care personnel must be actively supervising the children.

G. In a mobile day camp program or an outdoor-based day camp program, the staff ratio given at Section 7.712.43, C and D, must be maintained, but there must be at least two (2) program leaders at all times with the children.

7.712.44 Volunteers [Rev. eff. 11/1/98]

A. If volunteers are used by the center, there must be a clearly established policy in regard to their function, orientation, and supervision.

B. If volunteers are counted in the staff to child ratio, references must be obtained for them consistent with Section 7.712.41, D.

C. Volunteers must have qualifications suitable to the tasks assigned.

D. Volunteers must be:

1. Directly supervised by a program director or program leader; and

2. Given instruction as to the center's policies and procedures.

7.712.5 CHILD CARE SERVICES

7.712.51 Admission Procedure [Rev. eff. 6/1/07]

A. The center can accept children only of the ages for which it has been licensed. At no time can the number of children in attendance exceed the number for which the center has been licensed.

B. Admission procedures must be completed prior to the child's attendance at the center and must include:

1. Completion of the registration information for inclusion in the child's record, as required in Section 7.712.81; and

2. Providing the parent(s) or guardian(s) with a copy of the center's policies and procedures.

7.712.52 Health Care [Rev. eff. 6/1/07]

A. Statements of Health Status

1. At the time of admission, health information must be provided for every child entering the center, including any known drug reactions and allergies, medications being taken, and any special diets required. The name, address, and phone number of the child's physician and dentist must be provided.

2. At the time of admission, information regarding all immunizations a child has had, including month and year each immunization was administered, must be provided to the center, or a plan must be developed with the parent or guardian for submitting the

information within thirty (30) days of enrollment. Immunizations must be recorded on the Certificate of Immunization or alternate approved immunization form supplied and approved by the Colorado Department of Public Health and Environment (CDPHE) and kept on file at the center.

If the center is located at an elementary school and all the children attend that school, the immunization records may be maintained at the school office but must be accessible to licensing specialists.

B. Emergency Procedures

1. Written authorization for emergency medical care must be in the child's file as required in Section 7.712.81.

2. If a child requires medical attention away from the program site, the child's parent(s) or guardian(s) must be notified, and necessary medical care sought from a licensed physician or medical facility.

3. Children too ill to remain in the group must be comfortably cared for and supervised until they can be taken home or suitably cared for elsewhere. For building-based programs, a cot or mat, plus a sheet and blanket must be provided.

4. A responsible staff member must be present or within hearing distance of any ill child.

5. First aid supplies must be available at the program site and in all vehicles operated by the center.

C. Medication

1. Prescription and non-prescription (over-the-counter) medications for eyes or ears, all oral medications, topical medications, inhaled medications, and certain emergency injections can be administered only with the written order of a person with prescriptive authority and with written parental consent. Centers may administer medications for chronic health conditions or emergency situations.

2. The written order by the prescribing practitioner must include:

    a. Child's name;

    b. Licensed prescribing practitioner name, telephone number, and signature;

    c. Date authorized;

    d. Name of medication and dosage;

    e. Time of day medication is to be given;

    f. Route of medication;

    g. Length of time the medication is to be given;

    h. Reason for medication (unless this information needs to remain confidential);

    i. Side effects or reactions to watch for; and

j. Special instructions.

3. Medications must be kept in the original labeled bottle or container. Prescription medications must contain the original pharmacy label that lists:

   a. Child's name;

   b. Prescribing practitioner's name;

   c. Pharmacy name and telephone number;

   d. Date prescription was filled;

   e. Expiration date of the medication;

   f. Name of the medication;

   g. Dosage;

   h. How often to give the medication; and

   i. Length of time the medication is to be given.

   Over-the-counter medication must be kept in the originally labeled container and be labeled with the child's first and last name.

4. In the case medication needs to be given on an ongoing, long-term basis, the authorization and consent forms must be reauthorized on an annual basis. Any changes in the original medication authorization require a new written order by the prescribing practitioner and a change in the prescription label. Verbal orders taken from the licensed prescriber may be accepted only by a licensed registered nurse.

5. All child care staff designated by the center director to give medications must complete the 4-hour Department-approved medication administration training and have current First Aid and universal precautions training.

6. Medications must be kept in an area inaccessible to children. Controlled medications must be counted and safely secured, and specific policies regarding their handling require special attention in the center's policies. Access to these medications must be limited.

7. Children are not allowed to bring medications to child care unless accompanied by a responsible adult. If a medication is out of date or left over, parents are responsible for picking up the medication. If parents do not respond, the center is responsible for the disposal of medications according to center policy and procedures. Disposal of medications must be documented.

8. A written medication log must be kept for each child. This log is part of the child's records. The log must contain the following:

   a. Child's name;

   b. Name of the medication, dosage, and route;

   c. Time medication is to be given;

d. Special instructions;

e. Name and initials of the individuals giving the medication; and

f. Notation if the medication was not given and the reason.

9. Topical preparations such as petroleum jelly, diaper rash ointments, sunscreen, bug sprays, and other ointments may be administered to children with written parental authorization. These preparations may not be applied to open wounds or broken skin unless there is a written order by the prescribing practitioner.

10. The center must have a written policy on the storage and access of inhalers and epinephrine for all children in care. This policy must be reviewed by the child care health consultant.

11. The center may, with written parental consent and authorization of the prescribing health care provider, permit children who have asthma to carry their own inhalers or children who are at risk of anaphylaxis to carry their own epinephrine, and use them as directed. The center must have a specific written policy on the storage and access of inhalers and epinephrine for children who are permitted to carry or self-administer these medications. The policy must include a contract with the parent(s)/guardian(s), and child acknowledgement, assigning levels of responsibility of each individual. Orders for the medication from the health care provider, along with confirmation from the health care provider that the student has been instructed and is capable of self- administration of the prescribed medications, must be maintained in the child's file along with the written contract.

12. All staff must be aware of which children have asthma, and which of those may use their own inhalers as needed. All staff must be aware of which children are at risk of anaphylaxis, and which of those may administer their own epinephrine as needed.

D. Sun Protection

1. The center must supervise that sunscreen is applied to children prior to outside play or outside activities unless parents provide written notice that they have applied the sunscreen themselves. A doctor's permission is not needed to use sunscreen at the center.

2. When supplied for an individual child, the sunscreen must be labeled with the child's first and last name.

3. If sunscreen is provided by the center, parents must be notified in advance, in writing, of the type of sunscreen the center will use.

4. Children may apply sunscreen to themselves under the direct supervision of a staff member.

E. Control of Communicable Illness

1. When children show signs of severe or communicable illness, they must be separated from other children, the parent(s) or guardian(s) notified, and a doctor or medical facility consulted as needed regarding treatment.

2. Staff members with a communicable illness must not be permitted to work or have contact with children or other staff members if the illness could be readily transmitted during normal working activities.

3. When children have been diagnosed with a communicable illness such as hepatitis, measles, mumps, meningitis, diphtheria, rubella, salmonella, tuberculosis, giardia or shigella, the center must immediately notify the local or state department of health, all staff members, and all parents and guardians of children in care. Children's confidentiality must be maintained.

7.712.53 Personal Hygiene

A. Hand Washing/Clothing

Children's hand washing must be supervised and must be taught when necessary.

B. Diapering

The center must have one or more designated diaper change areas for all children in need of diaper changing. The diaper change area must:

1. Be a minimum of thirty six (36) by eighteen (18) inches in size and large enough to accommodate the size of the child;

2. Have a place inaccessible to children for storing all diaper change supplies and disinfecting solutions and products; and

3. Have a sufficient supply of diapers at all times.

7.712.54 Food and Nutrition

A. Drinking water must be freely available to children at all times.

B. Nutritious snacks must be served at suitable intervals.

C. Children who are at the center for more than four (4) hours, day or evening, or come directly to the center from a morning kindergarten class must receive a meal.

1. If the center provides a meal, it must meet one third of the child's daily nutritional needs.

2. The center staff must check lunches brought from children's homes to determine if they meet one third of the child's daily nutritional needs.

3. If the child fails to bring a meal, or if the meal meets less than one-third of the child's daily nutritional needs, the center must supply an adequate meal.

D. All food prepared by the center must be from sources approved by the health authority. All food must be stored, prepared, and served in such a manner as to be clean, wholesome, free from spoilage, and safe for human consumption. Home canned foods cannot be served.

7.712.55 Discipline

A. Discipline must be appropriate and constructive or educational in nature and may include such measures as diversion, separation of the child from problem situations talking with the child about the situation, or praise for appropriate behavior

B. Children must not be subjected to physical or emotional harm or humiliation

C. The director must not use, or permit a staff person or child to use, corporal or other harsh punishment, including but not limited to pinching, shaking, spanning punching, biting, kicking, rough handling, hair pulling, or any humiliating or frightening method of discipline.

D. Discipline must not be associated with food, rest, or toileting No child should be punished for toileting accidents. Food must not be denied to or forced upon a child as a disciplinary measure.

E. Separation, when used as discipline, must be brief and appropriate for the child's age and circumstances. The child must be in a safe, lighted, well-ventilated area and be within hearing and vision of a staff member. The child must not be isolated in a locked room, bathroom, closet, or pantry.

F. Verbal abuse and derogatory remarks about the child are not permitted.

G. Authority to discipline must not be delegated to other children, and the center must not sanction one child punishing another child.

7.712.56 Transportation [Rev. eff. 6/1/07]

A. Transportation Provided by the Center

1. The center is responsible for any children it transports and must abide by applicable State and Federal motor vehicle laws.

2. The center must obtain written permission from parents or guardians for any transportation of their child during child care hours.

3. The number of staff members who accompany children when being transported in the vehicle must meet the child care staff ratio found at Section 7.712.43. The driver of the center vehicle is considered a staff member.

4. Children must not be permitted to ride in the front seat of a vehicle unless they are secured in a seat belt that conforms to all applicable Federal Motor Vehicle Safety Standards. Children must remain seated while the vehicle is in motion.

5. Children must be loaded and unloaded out of the path of moving vehicles.

6. Children must not be permitted to stand or sit on the floor of a moving vehicle, and their arms, legs, and heads must remain inside the vehicle at all times.

7. Transportation arrangements for school-age children must be by agreement between the center and the children's parents, i.e., whether the children can walk, ride a bicycle or travel in a car. The center must monitor the children to be sure they arrive at the center when expected and follow up on their whereabouts if they are late. Written permission from parents or guardians for their children to attend community functions after school hours must include agreements regarding transportation.

8. Prior to a field trip or other excursion, the center must obtain information on liability insurance from parents and staff who transport children in their own cars and verify that all drivers have valid driver's licenses.

B. Requirements for Vehicles

1. Any vehicle used for transporting children to and from the center or during program activities must meet the following requirements:

    a. The vehicle must be enclosed and have door locks;

    b. The seats of the vehicle must be constructed and installed according to the vehicle manufacturer's specifications;

    c. The vehicle must be kept in satisfactory condition to assure the safety of occupants. Vehicle tires, brakes, and lights must meet safety standards set by the Colorado Department of Revenue, Motor Vehicle Division; and

    d. Seating must be comfortable, with a seat of at least ten (10) inches wide for each child.

2. In passenger vehicles, which include automobiles, station wagons and vans with a manufacturer's established capacity of sixteen (16) or fewer passengers and less than 10.000 pounds, the following is required:

    a. Each child must be restrained in an individual seat belt;

    b. Two or more children must never be restrained in one seat belt;

    c. Lap belts must be secured low and tight across the upper thighs and under the belly; and

    d. Children must be instructed and required to keep the seat belt properly fastened and adjusted.

3. In vehicles with a manufacturer's established capacity of sixteen (16) or more passengers, seat belts for passengers are not required, but shall be used if provided.

C. Requirements for Drivers of Vehicles

1. All drivers of vehicles transporting children must comply with applicable laws of the Colorado Department of Revenue, Motor Vehicle Division, and ordinances of the municipality in which the child care program is operated.

2. All drivers of vehicles owned or leased by the center in which children are transported must have a current Department-approved First Aid and safety certificate that includes CPR for all ages of children

3. In each vehicle used to transport children, drivers must have access to a First Aid kit.

4. The driver must ensure that all doors are secured at all times when the vehicle is moving.

5. The driver must make a good faith effort to ensure that each child is properly belted throughout the trip.

7.712.6 PROGRAM ACTIVITIES

7.712.61 Activity Schedules [Rev. eff. 6/1/07]

A. The center must provide parents or guardians with a list of activities it offers.

B. Parents or guardians must be given the opportunity to indicate to the staff of the center if they do not want their child to participate in an activity.

C. Parents or guardians must be notified in advance of all activities that will occur away from the center.

D. Television viewing, including videos, should not be permitted without the approval of a child's parents, who must be advised of the center's policy regarding television and video viewing.

E. A mobile day camp program must establish a daily itinerary and make available a copy to each child's parent or guardian. A copy must also be or file at the program's headquarters. The itinerary should be followed as closely as possible. In case of an emergency or change in the itinerary, the headquarters of the mobile day camp must be notified immediately. Parents must be instructed to contact the main headquarters to determine the exact location of their child.

7.712.62 Equipment and Materials [Rev. eff. 6/1/07]

A. In a building based school-age child care center, a rest time and rest equipment must be provided for school-age children who require a rest time.

B. Children at the center must have access to age-appropriate materials and equipment from at least the following categories:

1. Activity supplies;

2. Manipulatives and games;

3. Recreation equipment;

4. Library items; and

5. Science equipment and materials.

C. Children must wear helmets when riding scooters, bicycling, skateboarding, or rollerblading.

7.712.63 Field Trips [Rev. eff. 11/1/98]

A. The program may include field trips, where children and staff leave the center to visit some site in the community. On a field trip or during a mobile school-age child care program:

1. Staff-child ratios must be maintained at all times;

2. Children must be actively supervised at all times;

3. An accurate itinerary must remain at the headquarters/office of the center; and

4. The staff must have with them on a field trip the following information about each child: name, address, and phone number of the child's physician or other appropriate health care professional and the written authorization from parent(s) or guardian(s) for emergency medical care.

B. A list of all children and staff on a field trip must be kept at the headquarters of the center.

7.712.64 - 7.712.66 None

7.712.7 BUILDING AND FACILITIES

7.712.71 Facility Requirements [Rev. eff. 6/1/07]

A. The mobile day camp program and the outdoor-based day camp program may use as a gathering place a public park or playground if the program primarily includes field trips away from the gathering place. Such programs must have a contingency plan for facilities to use during increment weather. The plan must be available to parents on a daily basis.

B. If a room or rooms inside a building are used for indoor care, the following ratio must be maintained: open indoor play space of at least thirty (30) square feet of floor space per child, including space for readily movable furniture and equipment Indoor space is exclusive of kitchen, toilet rooms, office, staff rooms, hallways and stairways, closets, laundry rooms, furnace rooms, and space occupied by permanent built-in cabinets and permanent storage shelves.

C. When a building is being used during the summer months by a center specifically as a gathering place at the beginning and end of the day, the thirty (30) square feet requirement need not apply. The total amount of time during which the number of children present may exceed the 30 square feet requirement must not exceed 3 hours. This time must be divided evenly between the morning and the evening.

D. The building based school-age child care center must provide access to an outdoor play area. The outdoor play area may be a city park or public school ground. The play area must meet the following requirements:

1. The center must provide a total outside play area of at least seventy five (75) square feet per child for a minimum of one-third of the licensed capacity of the center or a minimum of 1500 square feet, whichever is greater;

2. Access to a shaded area, sheltered area, or inside building area must be provided at all times to guard children against the hazards of excessive sun and heat; and

3. The outdoor play area must be maintained in a safe condition by removing debris, dilapidated structures, and worn and broken play equipment. The center must identify hazardous, high-risk areas. These areas must be monitored to reduce the possibility of injury and accidents.

E. A safe, comfortable place for relaxing and for sick children must be available at all times for children in care.

7.712.72 Toilet Facilities

A. Boys and girls must have separate, clearly identified toilet facilities, with toilets separated by partitions to provide privacy.

B. There must be a minimum of one (1) toilet per thirty (30) or fewer children for which the center is licensed. Hand-washing facilities must be available at the ratio of one (1) sink per thirty (30) or fewer children.

7.712.73 Food Preparation Area

Areas used for food preparation, dish and utensil washing, and storage must be in compliance with the requirements of the Colorado Department of Public Health and Environment or its local unit.

7.712.74 Fire and Other Safety Requirements [Rev. eff. 4/1/15]

A. General Requirements

1. Buildings must be kept in good repair and maintained in a safe condition.

2. Major cleaning is prohibited in rooms occupied by children.

3. Volatile substances such as gasoline, kerosene, fuel oil, and oil-based paints, firearms, explosives, and other hazardous items must be stored away from the area used for child care and be inaccessible to children.

4. Combustibles such as cleaning rags, mops, and cleaning compounds, must be stored in well-ventilated areas separated from flammable materials and stored in areas inaccessible to children.

5. Closets, attic, basement, cellar, furnace room, and exit routes must be kept free from accumulation of extraneous materials.

6. All heating units, gas or electric, must be installed and maintained with safety devices to prevent fire, explosions, and other hazards. No open-flame gas or oil stoves, unscreened fireplaces, hot plates, or unvented heaters can be used for heating purposes. All heating elements, including hot water pipes, must be insulated or installed in such a way that children cannot come in contact with them. Nothing flammable or combustible can be stored within three (3) feet of a hot water heater or furnace.

7. Indoor and outdoor equipment, materials, and furnishings must be sturdy, safe and free of hazards.

8. Equipment, materials, and furnishings, including durable furniture such as tables and chairs, must be stored in a manner that is safe for children.

9. Extension cords cannot be used in place of permanent wiring.

10. Corridors, halls, stairs, and porches must be adequately lighted. Operable battery-powered lights must be provided in locations readily accessible to staff in the event of electric power failure.

B. Fire Safety

1. Every building and structure must be constructed, arranged, equipped, maintained, and operated so as to avoid undue danger to the lives and safety of its occupants from fire, smoke, fumes, or resulting panic during the period of time reasonably necessary for escape from the building or structure in case of fire or other emergency.

2. Every building and structure must have at least two (2) exits that permit the prompt escape of occupants in case of fin; or other emergency.

3. Every exit must be clearly visible, or the route to reach it must be conspicuously indicated. Each path of escape must be clearly marked.

4. In every building or structure, exits must be arranged and maintained so as to provide free and unobstructed egress from all parts of the building or structure at all times when it is occupied. No lock or fastening to prevent free escape from the inside of any building can be installed. Only panic hardware or single-action hardware is permitted on a door or on a pair of doors. All door hardware must be within the reach of children.

5. If the building in which the center operates has a security lock on outside exit doors, the center must obtain written permission from the local fire department; and there must be a written sign attached to the door instructing staff that the security lock is not to be utilized when children are present and the center is in operation.

6. Every building and structure must have an automatic or Department-approved manually operated fire alarm system to warn occupants of the existence of fire or to facilitate the orderly conduct of fire exit drills.

7.712.8 RECORDS AND REPORTS

7.712.81 Children's Records [Rev. eff. 6/1/07]

A. The center must maintain and update annually a record on each child that includes:

1. The child's full name, age, current address, and date of enrollment;

2. Names and home and employment addresses and telephone numbers, which may include cell phone numbers, pagers, fax and e-mail of parents or guardians if available;

3. Any special instructions as to how the parents or guardians can be reached during the hours the child is at the center;

4. Names and telephone numbers of persons other than parents or guardians who are authorized to take the child from the center;

5. Names, addresses, and telephone numbers of persons who can assume responsibility for the child in the event of an emergency if parents or guardians cannot be reached immediately;

6. Name, address, and telephone number of the child's physician, dentist, and hospital of choice;

7. Health information including medical history, chronic medical problems, and immunization history;

8. A dated written authorization for emergency medical care signed and submitted annually by the parent or guardian. The authorization must be notarized if required by the local health care facility;

9. Written authorization from a parent or guardian for the child to participate in field trips and to participate in program activities, listing any possible exclusion;

10. Written authorization from a parent or guardian for the center to transport the child to and from school, whether by walking or driving; and

11. Reports of serious injuries and accidents occurring during care that result in medical attention, admission to the hospital, or death of a child.

7.712.82 Staff Records [Rev. eff. 6/1/07]

A. The center office must maintain a record for each staff member, paid or volunteer, which includes the following:

1. Name, address, and birth date of the individual;

2. The date that the staff member was employed by the center;

3. Name, address, and daytime telephone number, which may include cell phone numbers, pager numbers, fax numbers and e-mail of the person(s) to be notified in the event of an emergency;

4. Verification of the staff member's training, education, and experience;

5. Copies of any first aid and CPR certification or other certification confirming the qualifications for the responsibilities assumed at the center, which may include copies of driver's licenses, college transcripts, and diplomas;

6. Copies of written references or notes of phone references, as required by Section 7.712.41, D;

7. Verification that a criminal record check with the Colorado Bureau of Investigation is in process, or a copy of the results of the staff member's criminal record check; and

8. Verification that a review of the State Department's automated system for reporting child abuse and neglect has occurred or is in process.

B. Each staff member's personnel file must contain all required information within thirty (30) working days of the first day of employment.

7.712.83 Administrative Records and Reports

A. The following records must be on file at the center:

1. Records of enrollment, daily attendance for each child, and daily record of time child arrives at and departs from the center;

2. Current health department inspection report issued within the past twenty four (24) months;

3. Current fire department inspection report issued within the past twenty four (24) months;

4. A list of current staff members, substitutes, and staffing patterns.

B. Each center must immediately report in writing to the Department any accident or illness occurring at the center that resulted in medical treatment by a physician or other health care professional, hospitalization, or death. This report must be made within twenty-four (24) hours after the accident or illness occurred.

C. A report about a fatality must include:

1. The child's name, birth date, address, and telephone number;

2. The names of the child's parents or guardians and their address and telephone number if different from those of the child;

3. Date of the fatality;

4. Brief description of the incident or illness leading to the fatality;

5. Names and addresses of witnesses or persons who were with the child at the time of death; and

6. Name and address of police department or authority to whom the report was made.

D. The center must report to the Colorado Department of Public Health and Environment or its local unit any communicable illness, including but not limited to measles, mumps, diphtheria, rubella, tuberculosis, shigella, hepatitis, meningitis, salmonella, and giardia, contracted by a staff member or a child in care at the center.

E. A medical log must be maintained at the center in which is recorded the name of the child and date of instances of at least the following:

1. Administration of first aid;

2. Illness of the child while attending the center;

3. Accident requiring the child to receive medical attention; and

4. The administration of any medication to a child.

F. The center must submit to the department within twenty-four (24) hours a written report about any child who has been lost from the center and for whom the local authorities have been contacted. Such report must indicate:

1. The name, birth date, address, and telephone number of the child;

2. The names of the parents or guardians and their address and telephone number if different from those of the child;

3. The date when the child was lost;

4. The location, time, and circumstances when the child was last seen;

5. Actions taken to locate the child; and

6. The name of the staff person supervising the child.

G. Each center must have a written plan for action in case of natural disaster, including, but not limited to, floods, tornadoes, aid severe weather; a lost or missing child; and injuries and illnesses. This plan must be on file at the center. The staff must have received training regarding the implementation of the plan prior to assuming supervisory responsibility for children. Written verification of the training must be in the staff member's personnel file.

1. The plan of action must include at least:

a. Prompt notification of parents or guardians;

b. Notification of the headquarters of the center;

c. When local authorities are notified;

d. Emergency transportation; and

e. Specific procedures for responding to the crisis.

2. In the case of a mobile school-age child care program or a field trip, the plan must accompany staff members.

7.712.84 Confidentiality and Retention

A. The center must maintain complete records of children and personnel as required at Sections 7.712.81, 7.712.82, and 7.712.83.

B. The confidentiality of all personnel and children's records must be maintained (see Section 7.701.7, General Rules for Child Care Facilities).

C. Personnel and children's records must be available, upon request, to authorized personnel of the department.

D. If records for organizations having more than one center are kept in a central file, duplicate identifying and emergency information for children must also be kept on file at the center attended by the child.

E. The records of children and personnel must be maintained by the school-age child care center for at least 3 years.

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Tracking number: 2016-00261

Opinion of the Attorney General rendered in connection with the rules adopted by the

Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

on 08/05/2016

12 CCR 2509-8

CHILD CARE FACILITY LICENSING

The above-referenced rules were submitted to this office on 08/09/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 24, 2016 12:06:33

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Human Services

Agency

Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

CCR number

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7.702 RULES REGULATING CHILD CARE CENTERS (LESS THAN 24-HOUR CARE) [Rev. eff. 2/1/16]

All child care centers must comply with the current "General Rules for Child Care Facilities" 7.701; "Rules Regulating Child Care Centers (Less Than 24-Hour Care)" 7.702; "Rules Regulating Special Activities" 7.719; "Rules and Regulations Governing the Sanitation of Child Care Centers in the State of Colorado" 25-1.5-101(1)(h), C.R.S.; and the USDA CACFP Part 266.20(1.5).

7.702.1 DEFINITIONS [Rev. eff. 2/1/16]

A. Child care centers, less than 24-hour care (referred to as "centers"), provide comprehensive care for children when the parents or guardians are employed or otherwise unavailable to care for the children. Child care centers may operate twenty four (24) hours a day, but the children are cared for at the center fewer than twenty four (24) hours a day.

B. Child care centers, less than 24-hour programs of care, include the following types of facilities:

1. A "large child care center" provides care for 16 or more children between the ages of 2 1/2 and 18 years.

2. A "small child care center" provides care for 5 through 15 children between the ages of 2 and 18 years.

3. An "infant program" provides care for children between the ages of 6 weeks and 18 months.

4. A "toddler program" provides care for children between the ages of 12 months (when walking independently or with a health care provider's statement indicating developmental appropriateness of placement in a toddler program) and 36 months.

5. "Preschool" is a part-day child care program for 5 or more children between the ages of 2 1/2 and 7 years.

6. "Kindergarten" provides a program for children the year before they enter the first grade.

7. "Full day program" enrolls children for five (5) or more hours per day.

8. "Part day program" enrolls children for a maximum of up to five (5) hours per day. Individual children shall not attend more than one (1) five (5) hour session per day.

9. A "drop-in child care center" provides occasional care for 40 or fewer children between the ages of 12 months and 13 years of age for short periods of time not to exceed six (6) hours in any 24-hour period of time or fifteen (15) hours in any seven (7) day period of time.

10. "Staff": all references to staff or staff positions include paid staff and equally qualified volunteers under Section 7.702.44, E.

C. Licensed child care centers enrolling children five (5) years of age or younger are required to participate in Colorado Shines, the state quality rating and improvement system.

7.702.2 ADMINISTRATION [Rev. eff. 2/1/16]

(See also “Administration” at 7.701.5, General Rules for Child Care Facilities)

A. The governing body must appoint a director who will be responsible to the governing body and who will be delegated the authority and responsibility for the operation of the center according to its defined purpose and policies.

B. The governing body must formulate the purpose and policies to be followed by the center. It must have a regular planned review of such purpose and policies to determine that the center is in compliance with licensing rules.

C. The governing body is responsible for providing necessary facilities, adequate financing, qualified personnel, services, and program functions for the safety and well-being of children in accordance with these rules.

D. Any center having a director assigned to a classroom shall have qualified and adequate staff, allowing the director or qualified staff the ability to attend to the duties of a director as they arise.

E. The director of the center is responsible for administering the center in accordance with licensing rules. The director must plan and supervise the child development program, plan for or participate in selection of staff, plan for orientation and staff development, supervise and coordinate staff activities, evaluate staff performance, and participate in the program activities.

F. The director of a part-day preschool program operated by an accredited public school system is responsible for administering the center in accordance with licensing rules and supervising the early childhood program. The director or staff designated by the governing body must plan for or participate in orientation and staff development, supervise or coordinate staff activities, participate in the evaluation of staff performance, and participate in program activities.

7.702.3 POLICIES AND PROCEDURES [Rev. eff. 2/1/16]

7.702.31 Statement of Policies and Procedures [Rev. eff. 2/1/16]

At the time of enrollment, and upon amendments to policies and procedures, the center must give the parent(s)/guardian(s) the center’s policies and procedures, and provide the opportunity to ask questions. Written copies must be available either electronically or in hard copy. The center must obtain a signed document stating that the parent(s)/guardian(s) have received the policies and procedures, and by signing the policies and procedures document, the parent(s)/guardian(s) agree to follow, accept the conditions of, and give authorization and approval for the activities described in the policies and procedures. Policies must include the following:

A. The center's purpose and its philosophy on child care;

B. The ages of children accepted;

C. The hours the center is open, specific hours during which special programs are offered, and, holidays when the center is closed;

D. The procedure regarding inclement and excessively hot weather;

E. The procedure concerning admission and registration of children including whether non-immunized or under immunized children are enrolled in the program;

F. An itemized fee schedule;

G. The procedure for identifying where children are at all times;

H. The center’s procedure on guidance, positive instruction, supporting positive behavior, discipline and consequences, including how the center will:

1. Cultivate positive child, staff and family relationships;

2. Create and maintain a socially and emotionally respectful early learning and care environment;

3. Implement teaching strategies supporting positive behavior, pro-social peer interaction, and overall social and emotional competence in young children;

4. Provide individualized social and emotional intervention supports for children who need them, including methods for understanding child behavior; and developing, adopting and implementing a team-based positive behavior support plan with the intent to reduce challenging behavior and prevent suspensions and expulsions; and,

5. Access an early childhood mental health consultant or other specialist as needed.

I. The procedure, including notification of parents or guardians, for handling children's illnesses, accidents, and injuries;

J. The procedures for responding to emergencies such as lost children, tornadoes, and fires;

K. The procedure for transporting children, if applicable, including transportation arrangements and parental permission for excursions and related activities;

L. The procedure governing field trips, television and video viewing, and special activities, including staff responsibility for the supervision of children;

M. The procedure on children's safety related to riding in a vehicle, seating, supervision, and emergency procedures on the road;

N. The procedure for releasing children from the center only to persons for whom the center has written authorization;.

O. The procedures followed when a child is picked up from the center after the center is closed or not picked up at all, and to ensure that all children are picked up before the staff leave for the day;

P. The procedure for caring for children who arrive late to the center and their class/group is away from the center on a field trip or excursion;

Q. The procedure for storing and administering children's medicines and delegation of medication administration in compliance with Section 12-38-132, C.R.S., of the “Nurse Practice Act”;

R. The procedure concerning children's personal belongings and money;

S. Meals and snacks;

T. Diapering and toilet training;

U. Visitors to the center;

V. Parent and staff conferences to inform the parents or guardians of the child's behavior, progress, and social and physical needs;

W. The procedure for filing a complaint about child care (see 7.701.5, General Rules for Child Care Facilities);

X. Reporting of child abuse (see 7.701.5, General Rules for Child Care Facilities);

Y. Notification when child care service is withdrawn and when parents or guardians withdraw their children from the center; and,

Z. How decisions are made and what steps are taken prior to the suspension, expulsion or request to parents or guardians to withdraw a child from care due to concerns about the child's behavioral issues. These procedures must be consistent with the center's policy on guidance, positive instruction, discipline and consequences, and include documentation of the steps taken to understand and respond to challenging behavior.

7.702.32 Communication, Emergency, and Security Procedures [Rev. eff. 2/1/16]

A. The center must notify the parents or guardians in writing of significant changes in its services, policies, or procedures so that they can decide whether the center continues to meet the needs of the child.

B. For security purposes, a sign-in/sign-out sheet or other mechanism for parents and guardians must be maintained daily by the center. It must include, for each child in care, the date, the child's name, the time when the child arrived at and left the center, and the parent or guardian's signature or other identifier.

C. The center must have a working telephone with the number available to the public. Emergency telephone numbers of the following must be posted near the telephone: a 911 notice, where 911 is available, or rescue unit if 911 isn't available; a hospital or emergency medical clinic; the local fire, police, and health departments; and Rocky Mountain Poison Control. The telephone must be available to staff at all times that the center is in operation.

D. The center must be able to provide emergency transportation to a health care facility at all times.

E. The director of the center or the director's delegated substitute must have a means for determining at all times who is present at the center.

F. A written policy regarding visitors to the center must be posted and a record maintained daily by the center that includes at a minimum the visitor's name and address and the purpose of the visit. At least one piece of identification must be inspected for individuals who are strangers to personnel at the center.

G. The center must release the child only to the adult(s) for whom written authorization has been given and is maintained in the child's record (see 7.702.91). In an emergency, the child may also be released to an adult for whom the child's parent or guardian has given verbal authorization. If the staff member who releases the child does not know the adult, identification must be required to assure that the adult is authorized to pick up the child.

H. The center must have a procedure for dealing with individuals not authorized by the parent or guardian of a child who attempts to have the child released to them.

I. The center must have a written emergency procedure to report communicable illnesses to the local health department pursuant to regulations of the Colorado Department of Public Health and Environment.

J. The center must have a written procedure for closing the center at the end of the day to ensure

that all children are picked up.

7.702.33 Personnel Policies, Orientation, and Staff Development [Rev. eff. 2/1/16]

A. The duties and responsibilities of each staff position and the lines of authority and responsibility within the center must be in writing.

B. At the time of employment, staff members must be informed of their duties and assigned a supervisor.

C. Prior to working with children, each staff member must read and be instructed about the policies and procedures of the center, including those related to hygiene, sanitation, food preparation practices, proper supervision of children, and reporting of child abuse. Staff members must sign a statement indicating that they have read and understand the center's policies and procedures.

D. Effective September 30, 2016, all staff must complete a pre-service training prior to working with children. The training must include:

1. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and,

2. Handling and storage of hazardous materials and the appropriate disposal of bio contaminants.

E. Each staff member working with infants less than twelve (12) months old must complete a Department approved safe sleep training prior to working with infants less than twelve (12) months old. This training must be renewed annually and may be counted towards ongoing training requirements.

F. Effective September 30, 2016, each staff member working with children less than three (3) years of age must complete a Department approved prevention of shaken baby/abusive head trauma training prior to working with children less than three (3) years of age. This training must be renewed annually and counts towards ongoing training requirements.

G. All staff must complete a Department approved standard precautions training that meets current Occupational Safety and Health Administration (OSHA) requirements prior to working with children. This training must be renewed annually and counts towards ongoing training requirements.

H. Within thirty (30) calendar days of employment and annually, all employees and regular volunteers must be trained using a Department approved training about child abuse prevention, including common symptoms and signs of child abuse.

I. Within thirty (30) calendar days of employment and annually all employees and regular volunteers must be trained using a Department approved training on how to report, where to report and when to report suspected or known child abuse or neglect.

J. The child care center must ensure that all staff are familiar with the licensing rules governing child care centers within thirty (30) calendar days of employment at the center.

K. All staff who work with children must complete a minimum of fifteen (15) clock hours of training each year beginning with the start date of the employee. At least three (3) clock hours per year must be in the focus of social emotional development.

L. Ongoing training and courses shall demonstrate a direct connection to one or more of the following competency areas:

1. Child growth and development, and learning or courses that align with the competency domains of child growth and development;

2. Child observation and assessment;

3. Family and community partnership;

4. Guidance;

5. Health, safety and nutrition;

6. Professional development and leadership;

7. Program planning and development; or,

8. Teaching practices:

a. Each one (1) semester hour course with a direct connection to the competency area listed in Section 7.702.33, l, 1-8, taken at a regionally accredited college or university shall count as fifteen (15) clock hours of ongoing training.

b. Training hours completed can only be counted during the year taken and cannot be carried over.

M. To be counted for ongoing training, the training certificate must have documentation that includes:

1. The title of the training;

2. The competency domain;

3. The date and clock hours of the training;

4. The name or signature, or other approved method of verifying the identity of trainer or entity;

5. Expiration of training if applicable; and

6. Connection to social emotional focus if applicable.

N. Within thirty (30) calendar days of employment and annually, all staff responsible for collection, review and maintenance of the child immunizations records must complete the Colorado Department of Public Health and Environment (CDPHE) immunization course.

O. If volunteers are used by the center, there must be a clearly established policy in regard to their function, orientation, and supervision. See also Section 7.702.44.

P. Within thirty (30) calendar days of the last day of employment, staff members must be provided a letter verifying their experience at the center. The letter must contain the center's address, phone number and license number, the employee's start and end date and the total number of hours worked with children. Hours worked with infants and toddlers must be documented separately from hours worked with other age groups. The letter must be signed by a director, owner or human resources agent of the center or governing body.

7.702.4 PERSONNEL [Rev. eff. 2/1/16]

7.702.41 General Requirements for All Personnel [Rev. eff. 2/1/16]

A. All personnel at the center must demonstrate knowledgeable decision-making, judgment, and concern for the proper care and well-being of children.

B. Staff, substitutes, or volunteers must not consume or be under the influence of any substance that impairs their ability to care for children.

C. Illegal drugs, drug paraphernalia, marijuana and marijuana infused products, and alcohol must never be present on the premises of the center during operating hours.

D. When caring for children, staff must refrain from personal use of electronics including, but not limited to, cell phones and portable electronic devices.

E. The center must determine if any staff person who works at the center has ever been convicted of a crime as found at Section 7.701, D, 5 or 6, of the General Rules for Child Care Facilities.

F. A criminal record check request must be submitted to the Colorado Bureau of Investigation within five (5) business days that an individual is employed by the center. The personnel file of each staff member of the center must contain clearance or arrest report from the Colorado Bureau of Investigation resulting from the staff member's criminal record check. The requirement for a criminal record check is found in Section 7.701.33 of the General Rules for Child Care Facilities.

G. A request for a review of the State Department's automated system must be made within ten (10) business days of each staff member's first day of employment. The method for making the request is found in Section 7.701.32 of the General Rules for Child Care Facilities.

H. Staff members must be current for all immunizations routinely recommended for adults by their health care provider.

I. All staff members must submit to the center a medical statement, signed and dated by a licensed physician or other health care professional, verifying that they are in good mental, physical, and emotional health appropriate for the position for which they have been hired. This statement must be dated no more than 6 months prior to employment or within thirty (30) calendar days after the date of employment. This statement must indicate when subsequent medical statements are required.

   Subsequent medical statements must be submitted as required in writing by a physician or other health care professional.

J. If, in the opinion of a physician or mental health practitioner, an employee's examination or test results indicate a physical, emotional, or mental condition that could be hazardous to a child, other staff, or self, or that would prevent satisfactory performance of duties must not be assigned or returned to a position until the condition is cleared to the satisfaction of the examining physician.

7.702.42 Director Qualifications - Large Child Care Center [Rev. eff. 2/1/16]

A. The educational requirements for the director or substitute director of a large center must be met by satisfactory completion of one of the following. (All course hours are given in semester hours, but equivalent quarter hours are acceptable.) Official college transcripts must be submitted to the Department for evaluation of qualifications.

1. A Bachelor degree in early childhood education from a regionally accredited Colorado college or university; or,

2. A current early childhood professional Credential Level IV Version 2.0 as determined by the Colorado Department of Education; or,

3. A master's degree with a major emphasis in child development, Early Childhood Education, Early Childhood Special Education; or,

~~3~~4. Completion of all of the following three (3) semester hour courses from a regionally accredited college or university, at either a two year, four year or graduate level, in each of the following subject or content areas:

   a. Introduction to early childhood professions;

   b. Introduction to early childhood lab techniques;

   c. Early childhood guidance strategies for children;

   d. Early childhood health, nutrition, and safety;

   e. Administration of early childhood care and education programs;

   f. Administration: human relations for early childhood professions or introduction to business;

   g. Early childhood curriculum development;

   h. Early childhood growth and development.

   i. The exceptional child; and,

   j. Infant/toddler theory and practice; or the Department approved expanding quality infant/toddler training; or,

~~4~~5. Completion of a course of training approved by the Department that includes course content listed at Section 7.702.42, A, 3, a-j, and experience listed at Section 7.702.42, B.

B. The experience requirements for the director of a large center must be met by completion of the following amount of work experience in a child development program, which includes working with a group of children in such programs as a preschool, child care center, kindergarten, or Head Start program:

1. Persons with Bachelor's or Master's degree with a major emphasis in child development, early childhood education, early childhood special education, or an early childhood professional Credential Level IV Version 2.0 as determined by the Colorado Department of Education; no additional experience is required.

2. Persons with a 2-year college degree in early childhood education must have twelve (12) months (1,820 hours) of verified experience working directly with children in a child development program.

3. Persons with a Bachelor's degree and completion of courses specified in Sections 7.702.42, A, 3, a-j, must have twelve (12) months (1,820 hours) of verified experience working directly with children in a child development program.

4. Persons who have no degree but have completed the thirty (30) semester hours specified in Section 7.702.42, A, 3, a-j, must have twenty-four (24) months (3,640 hours) of verified experience working directly with children in a child development program.

5. Verified experience acquired in a licensed Colorado family child care home or school-age child care center may count for up to half of the required experience for director qualifications. To have Colorado family child care home experience considered, the applicant must be or have been the licensee. The other half of the required experience must be working directly with children in a child development program.

6. Experience with five (5) year olds must be verified as follows:

   a. If experience caring for five year old children occurs in a child care center classroom, the hours worked shall be counted as preschool experience; or,

   b. If experience caring for five year old children occurs in an elementary school program, the hours worked shall be counted as school-age experience.

C. Renewal of Large Center Director Qualifications Letter

1. All individuals holding a valid approval letter for director qualifications from the Department of Human Services, who have not completed the required courses in each of the following subject or content areas, must take one course every two (2) years from a regionally accredited college or university at a two year, four year or graduate level. Official transcripts listing completion of one (1) or more of the five (5) courses shall be submitted to the Colorado Department of Human Services within thirty calendar days of completing each course until all five (5) courses have been completed in:

   a. Early childhood guidance strategies;

   b. Early childhood health, nutrition and safety or child nutrition;

   c. The exceptional child;

   d. Infant/toddler theory and practice; or expanding quality in infant and toddler training; and,

   e. Administration: human relations for early childhood professions.

2. Except individuals holding an early childhood professional Credential Level IV Version 2.0 as determined by the Colorado Department of Education, directors meeting all large center director requirements in Section 7.702.42, A, in centers operating more than six (6) hours a day must complete a three (3) semester credit hour course from a regionally accredited college or university every five (5) years in a subject related to the operation of a center and must be able to demonstrate the relationship of the course taken to the operation of the center.

3. The renewal application and the official transcripts must be submitted to the Department. The renewed director letter shall expire five (5) years from approval of the renewal application.

D. Revocation of Large Center Director Letter

1. Large center directors must have a current director qualifications letter issued by the Department prior to working as the director of a large center.

2. Director letters must be renewed prior to the expiration date or the letter becomes void; thus, this person no longer qualifies as a large center director.

3. At the time of renewal for a director letter, education and experience must be verified to ensure qualifications are met.

4. Persons may be denied an original or renewal of a director letter; a director letter may be revoked if substantial evidence has been found that the director is responsible for one or more of the following at any child care facility, including, but not limited to:

   a. Committing fraud;

   b. Responsible for egregious or repetitive grounds for negative licensing actions;

   c. Providing false information;

   d. Providing false transcripts for self or staff; or,

   e. Providing false letters of experience for self or staff.

5. Persons who have had a director letter revoked or denied for the reasons listed in Section 7.702.42, D, 4, a-e, may submit a new application for consideration after a period of two (2) years from the date of denial or revocation.

6. A person issued a new director letter after a denial or revocation shall receive a provisional letter for no less than nine (9) months. After the provisional period has been completed, a new application may be submitted for consideration of a five (5) year time limited letter.

7. Persons whose director letter has been denied or revoked for the reasons listed in Section 7.702.42, D, 4, a-e, may file an appeal in the same manner as a request for waiver, as specified in Section 7.701.13 “General Rules for Child Care Facilities”.

E. Substitute Director Requirements

1. At all times, every large child care center must have a substitute director that meets all of the requirements for director as listed at Section 7.702.42, A and B. When the director of the large child care center cannot be present sixty percent (60%) of any day the center is in operation, the equally qualified substitute director must substitute for the director. In an emergency situation, when the equally qualified director substitute cannot be present, an individual that does not meet all of the director educational and experience requirements may substitute for the director for a maximum of two (2) weeks per calendar year if they meet one or more of the following requirements:

   a. At least one year of experience as an early childhood teacher at the center;

   b. A Bachelor of Arts or Bachelor of Science in the human services field; OR,

   c. Qualification as an early childhood teacher and completion of at least half of the required coursework for director qualifications including the two (2) administration classes; administration of early childhood care and education programs and administration; human relations for early childhood professions.

2. Whenever the director of a drop-in child care center cannot be present fifty percent (50%) of any day the center is in operation, a substitute that meets one of the following

qualifications must be present:

a. At least one (1) year of experience as a qualified early childhood teacher at the drop-in child care center;

b. Eighteen (18) months of experience as a qualified early childhood teacher with children less than twelve (12) years of age and at least six (6) months experience at the drop-in child care center;

c. A Bachelor of Arts or Bachelor of Science degree from a regionally accredited college or university in the human services field; or,

d. Qualification as an early childhood teacher and completion of at least half of the required coursework for director qualifications, including one of the administration classes.

7.702.43 Director Qualifications - Small Child Care Center [Rev. eff. 2/1/16]

A. The director or substitute director of a small center must have completed one of the following:

1. A current professional teaching license issued by the Colorado Department of Education with an endorsement in the area of early childhood education or early childhood special education. ;

2. A current early childhood professional Credential Level III Version 2.0 as determined by the Colorado Department of Education;

3. Three (3) years' satisfactory experience in the group care of children less than six (6) years of age (5460 hours) and at least two (2) 3-semester hours from a regionally accredited college or university, at either a two year, four year or graduate level, in each of the following subject or content areas in early childhood education; one of the courses must be either introduction to early childhood education or guidance strategies;

4. Two (2) years' college education (sixty semester hours) at a regionally accredited college or university, at either a two year, four year or graduate level, in each of the following subject or content areas with at least two (2) 3-semester-hour courses in early childhood education; one of which must be either introduction to early childhood education or guidance strategies; and one (1) year (1820 hours) of satisfactory experience in the group care of children less than six (6) years of age;

5. Current certification as a Child Development Associate (CDA) or other Department-approved credential; or,

6. A two (2) year college degree in child development or early childhood education from a regionally accredited college or university, at either a two year, four year or graduate level, in each of the following subject or content areas that must include at least one 3-semester hour course in either introduction to early childhood education or guidance strategies and six (6) months (910 hours) satisfactory experience in the group care of children less than six (6) years of age.

B. Satisfactory experience includes all options listed at Section 7.702.42, B.

7.702.44 Qualifications for Other Staff Members [Rev. eff. 2/1/16]

A. Early Childhood Teacher

1. An early childhood teacher, assigned responsibility for a single group of children and working under the supervision of a director, must be at least eighteen (18) years of age and must meet at least one of the following qualifications:

a. A Bachelor's degree from a regionally accredited college or university with a major area of study in one of the following areas:

1) Early childhood education;

2) Elementary education;

3) Special education;

4) Family and child development; or,

5) Child psychology.

b. A Bachelor's degree from a regionally accredited college or university with a major area of study in any area other than those listed at Section 7.702.54, A, 1, A and additional two (2) three-semester hour early childhood education college courses with one course being either introduction to early childhood education or guidance strategies;

c. Current early childhood professional Credential Level III Version 2.0 as determined by the Colorado Department of Education;

d. A 2-year college degree, sixty (60) semester hours, in early childhood education from a regionally accredited college or university, which must include at least two (2) three-semester hour courses, one of which must be either introduction to early childhood education or guidance strategies; and at least six (6) months (910 hours) of satisfactory experience;

e. Completion of twelve (12) semester hours from a regionally accredited college or university, at either a two year, four year or graduate level, in each of the following subject or content areas in early childhood education and one of the three (3) semester hour courses must be either introduction to early childhood education or guidance strategies, plus nine (9) months (1,395 hours) of verified experience in the care and supervision of four (4) or more children less than six (6) years of age who are not related to the individual;

f. Completion of a vocational or occupational education sequence in child growth and development plus twelve (12) months (1,820 hours) of verified experience in the care and supervision of four (4) or more children less than six (6) years of age who are not related to the individual;

g. Current certification as a Child Development Associate (CDA) or other Department-approved credential;

h. Completion of a course of training approved by the Department that includes training and work experience with children in a child growth and development program plus twelve (12) months (1,820 hours) of verified experience in the care and supervision of four (4) or more children less than six (6) years of age who are not related to the individual; or,

i. Twenty-four (24) months (3,640 hours) of verified experience in the care and supervision of four (4) or more children less than six (6) years of age who are not related to the individual. Satisfactory experience includes being a licensee of a Colorado family child care home; a teacher's aide or teacher in a child care center, preschool, or elementary school, plus either:

1) A current Colorado Level I credential; or,

2) Two (2) three-semester hour early childhood education college courses from a regionally accredited college or university, at either a two year, four year or graduate level, in each of the following subject or content areas with one course being either introduction to early childhood education or guidance strategies.

2. All college course grades toward early childhood teacher qualifications must be "C" or better.

B. Kindergarten Teacher

1. Each teacher of a kindergarten class must have the same qualifications as a director for a large center (see Section 7.702.42), be state certified or licensed as an elementary teacher by the Colorado Department of Education, or have a four (4) year degree from a regionally accredited college or university in elementary or early childhood education.

2. A current early childhood professional Credential Level III Version 2.0 as determined by the Colorado Department of Education.

C. Assistant Early Childhood Teacher

An assistant early childhood teacher, assigned responsibility for a single group of children during times specified in 7.702.55, must meet one of the following qualifications:

1. Completion of one of the early childhood education courses in Section 7.702.42, A, with a course grade of "C" or better and twelve (12) months (1820 hours) verified experience in the care and supervision of four (4) or more children less than six (6) years of age, who are not related to the individual. Satisfactory experience includes being a licensee of a family child care home; a teacher's aide in a center, preschool or elementary school. Assistant early childhood teachers must be enrolled in and attending the second (2nd) early childhood education class which will be used as the basis for their qualification for the position of early childhood teacher;

2. Persons having completed two (2) of the early childhood education classes referenced in Section 7.702.42, A, with a course grade of "C" or better and no experience; or,

3. A current early childhood professional Credential Level I Version 1.0 or 2.0 as determined by the Colorado Department of Education.

D. Staff Aide

1. Staff aides must be at least sixteen (16) years of age and must work directly under the supervision of the director or an early childhood teacher.

2. Infant staff aides must be at least eighteen (18) years of age.

3. Staff aides, without supervision from an early childhood teacher or director, may

supervise no more than two (2) preschool age children while assisting the children with diapering or toileting.

E. Volunteers (see also Section 7.702.33, I and J)

1. Volunteers who work more than fourteen (14) calendar days (112 hours) per calendar year who are used to meet staff to child ratio must be equally qualified as an early childhood teacher, assistant early childhood teacher or aide and have complete staff records as required in Section 7.702.92.

2. Volunteers used more than fourteen (14) calendar days (112 hours) per calendar year that are used to meet staff to child ratio must complete fingerprint based background checks and the State Department automated child abuse and neglect background check.

3. Volunteers must be supervised and given instruction as to the center's policies and procedures.

4. The only time a parent/guardian volunteer may be alone with a child other than their own without completing all required background checks, is while driving on a field trip.

5. Volunteers between the ages of twelve (12) and sixteen (16) must have a written purpose developed by the center for volunteering and may not volunteer for more than two (2) hours per day.

7.702.45 Required Staff and Supervision [Rev. eff. 2/1/16]

A. Staff-Child Ratios

1. For the purposes of this subsection A, in determining staff-child ratios, only staff members and/or volunteers qualified under Section 7.702.44, E, who work directly with children are counted.

2. For full day programs, during times of low attendance and/or during the first and last hour of the day, when only eight (8) or fewer children are present in the facility, there must be at least one (1) early childhood teacher or assistant early childhood teacher working with the children and a second staff member immediately available. There must be no more than two (2) children less than the age of two (2) present. When nine (9) or more children are in attendance, at least two (2) staff members must be on duty.

3. The director or director substitute of the center must be present at the center at least sixty percent (60%) of any day that the center is open.

4. The director or substitute director of an extended hour drop-in child care center operating at least six calendar days per week must be present at the center or involved in director activities at least fifty percent (50%) of the hours of operation of any day the center is in operation.

   a. If the director is not on site at the center for a portion of any day the center is in operation, the director must be available by phone.

   b. The director must be present in the center at least 30 hours each week.

5. There must be assigned at least one qualified early childhood teacher supervising each group of children unless otherwise specified in rules. A director may be the assigned teacher for one group of children.

6. Part day programs must have an early childhood teacher supervise each group of children at all times. Full day programs may have assistant early childhood teachers supervise preschool age and older children during the following periods of operation:

   a. Opening hours: an assistant early childhood teacher may be alone with children for the first two (2) hours of a center's daily operating hours;

   b. Nap time: an assistant early childhood teacher may be alone with children for up to one (1) hour during nap-time;

   c. Closing hours: an assistant early childhood teacher may be alone with children for up to the two (2) hours prior to the closing time of a center's daily operations; and,

   d. Taking children to the restroom/diapering.

7. At least one (1) staff member with current Department approved medication administration training and delegation must be on duty at all times.

8. At nap time, the child to staff ratio may be doubled for children two and one half (2 ½) years of age and older in preschool classrooms when the following conditions have been met:

   a. At least half of the children are sleeping;

   B. Another staff member is onsite in the center and immediately available;

   C. Maximum group size and room capacity are not exceeded; and,

   d. Staff member supervising children is qualified as an early childhood teacher or assistant early childhood teacher.

9. Formal kindergarten class sessions must have 1 staff member for each 25 or fewer children in attendance. At other parts of the day when children are in attendance, the ratio must be 1 staff member to each 15 or fewer children.

10. Children of the director or of staff members who attend the center and other children on the premises for supervision and care must be counted against the licensed capacity in the appropriate age groups.

11. In determining staff-child ratios, children who are in attendance for only part of the day are counted only while at the center.

12. Staff-Child Ratios

AGES OF CHILDREN	**NUMBER OF STAFF**
6 weeks to 18 months (infants)	1 staff member to 5 infants
12 months to 36 months	1 staff member to 5 toddlers
24 months to 36 months	1 staff member to 7 toddlers

2-1/2 years to 3 years	1 staff member to 8 children
3 years to 4 years	1 staff member to 10 children
4 years to 5 years	1 staff member to 12 children
5 years and older	1 staff member to 15 children
Mixed age group 2-1/2 years to 6 years	1 staff member to 10 children

a. In other preschool age combinations, the staff ratio for the youngest child must be utilized if more than twenty percent (20%) of the group is composed of younger children. This does not apply to infants and toddlers. The ratio for toddler groups is based on the youngest child in the group.

b. Drop-in child care centers may follow a ratio of one (1) adult for every eight (8) children for children in a mixed age group of 2 years of age to 12 years. 1-2 children 1 year of age to 2 years of age may join the preschool age group of children for short periods of time for structured activities as long as the 1 year old children are safely confined in a toddler seat or high chair.

13. Maximum Group Size for Children

AGES OF CHILDREN	**MAXIMUM GROUP SIZE**
6 weeks to 18 months	10 infants
12 months to 36 months	10 toddlers
24 months to 36 months	14 toddlers
2-1/2 years to 3 years	16 children
3 years to 4 years	20 children
4 years to 5 years	24 children
5 years and older	30 children
Mixed age group 2-1/2 to 6 years of age	20 children

a. In other preschool age combinations, the maximum group size for the youngest child must be utilized if more than twenty percent (20%) of the group is composed of younger children. This does not apply to infants and toddlers. The group size for toddler groups is based on the youngest child in the group.

b. Preschool age and school-age groups of children must be separated into developmentally appropriate activities. Groups are not required to be separated from each other by permanent or portable dividers or walls.

c. Group size for children in preschool and school age classrooms may be exceeded for circle time, meal and snack time, special occasions and activities.

The room capacity must not be exceeded.

d. Toddler-age groups of children must be separated from each other by permanent or portable dividers or other methods as approved by the Department.

e. When combining age groups, not including individual child transitions, children must be cared for in the room licensed for the youngest child in care, including the outdoor play area.

B. Service/Housekeeping Personnel

1. Service personnel must be available for housekeeping and food preparation as needed for adequate operation and maintenance of the center.

2. Assignment of housekeeping and maintenance duties to child care staff must not interfere with their supervisory responsibilities and child care duties.

C. Child Care Health Consultant

1. Staff must consult with a currently Colorado licensed registered nurse with knowledge and experience in maternal and child health, a pediatric nurse practitioner or a family nurse practitioner, or a pediatrician at least once a month at the child care facility. The monthly consultation must be specific to the needs of the facility and include some of the following topics: training, delegation and supervision of medication administration and special health procedures, health care, hygiene, disease prevention, equipment safety, nutrition, interaction between children and adult caregivers, and normal growth and development. In part day preschools that operate less than five (5) hours per day or drop-in child care centers, consultation must occur as often as the nurse delegating medications requires.

2. The date and content of each consultation must be recorded and maintained in the center's files.

3. The center must maintain documentation including the Child Care Health Consultant's (CCHC) Department of Regulatory Agencies (DORA) proof of RN or MD current licensure in good standing, a brief biography highlighting applicable knowledge, experience and approximate dates worked as a school nurse or child care health consultant commenced.

4. Child Care Health Consultants (CCHC) hired after February 1, 2016, must complete the Department approved Child Care Health Consultant (CCHC) training within six (6) months. The center must obtain and maintain proof of course completion.

5. Child Care Health Consultants (CCHC) employed as a health consultant prior to February 1, 2016, must complete the Department approved Child Care Health Consultant (CCHC) training by August 1, 2016. The center must obtain and maintain proof of course completion.

6. All Child Care Health Consultants (CCHC) must complete the Department approved Colorado Department of Public Health and Environment (CDPHE) immunization course annually.

D. Substitutes

1. Qualified staff must be available to substitute for regularly assigned staff who are sick, on

vacation, or otherwise unable to be on duty.

2. In the absence of the director of a small center, an individual who meets director qualifications for a small center must substitute for the director.

3. If the director of a large center cannot be present sixty percent (60%) of any day, a center staff member or other individual who meets director qualifications as listed at Section 7.702.42 for a large center must substitute for the director.

4. When there is a director vacancy, a director-qualified substitute must be present at the center at least sixty percent (60%) of any day the center is open until a new director is appointed.

5. For extended director absences (more than two (2) weeks and up to twelve (12) weeks per calendar year) a staff member with fifty percent (50%) of the director qualification requirements completed in education and experience may substitute for the director. Dates must be documented and on file for review. A fully qualified substitute director meeting qualifications in Section 7.702.42 is required for any absence exceeding twelve (12) weeks.

6. Substitutes for directors of part-day public school preschools may be from the sponsoring school system's list of approved substitutes. Substitutes who do not meet director qualifications must consult with a qualified director on administering the center in accordance with early childhood principles and practices and licensing rules.

7.702.46 Infant Program Staff [Rev. eff. 2/1/16]

A. Staff Requirements

1. If a center operates solely as an infant program, there must be a director who meets the qualifications for a director of either a small center or a large center (Sections 7.702.44 and 7.702.43), depending upon the number of children for which the infant center is licensed.

2. The infant program must have an infant program supervisor who has verified training and experience in one of the following:

a. A registered nurse, licensed to practice in Colorado, with a minimum of 6 months of experience in the care of infants.

b. A licensed practical nurse, licensed to practice in Colorado, with twelve (12) months of experience in the care of infants.

c. An adult who holds a certificate in infant and toddler care from a regionally accredited college or university with completion of a minimum of 30 semester hours in the development and care of infants and toddlers in a group setting.

d. An adult who is currently certified as a Child Development Associate (CDA) and has completed the Department approved expanding quality in infant and toddler development course of training.

e. An adult who:

1) Holds a current early childhood professional Credential Level III Version 2.0, as determined by the Colorado Department of Education;

2) Has completed one three-semester-hour class in infant/toddler development; or,

3) Has completed the Department-approved “Expanding Quality in Infant and Toddler Development” and holds twelve months of verifiable full-day experience working with infants and/or toddlers.

f. An adult who:

1) Is at least nineteen (19) years of age, and,

2) Is qualified as an early childhood teacher (Section 7.702.44, A), and,

3) Has a minimum of twelve (12) months of verifiable full-day experience in the group care of infants or toddlers; and,

4) Has completed at least two (2) three (3)-semester hour college courses from a regionally accredited college or university on the development and care of infants and toddlers in a group setting, one (1) of which must be infant/toddler development or the Department approved expanding quality in infant and toddler development course of training.

g. An adult who:

1) Is at least 19 years of age; and,

2) Is qualified as an early childhood teacher (Section 7.702.44, A); and,

3) Has at least two (2) years of verifiable full-day experience in the group care of infants or toddlers; and,

4) Will complete within the first 6 months of employment two (2) three-semester hour college courses from a regionally accredited college or university with one of the courses being infant/toddler development or the Department approved expanding quality in infant and toddler development.

3. An infant program early childhood teacher must have completed eight (8) hours of orientation in the infant program from the infant program supervisor including, but not limited to, the following topics:

a. Toys and equipment, appropriate activities for infants and toddlers, appropriate sleep positions for infants and toddlers, the safe and appropriate diaper change technique; and,

b. At least six (6) months of experience in the care of infants or toddlers; and,

c. Meet qualifications for an early childhood teacher found at Section 7.702.44, A, or be qualified as an infant program supervisor.

4. The infant program staff aide must be at least eighteen (18) years of age, must have completed eight (8) hours of orientation as listed above, at the infant program and must work under the direct supervision of an infant early childhood teacher.

5. There must be at least one (1) staff member on duty in each infant room at all times who

holds a current Department-approved First Aid and Safety certificate that includes CPR for all ages of children.

B. Required Staff and Supervision

(See chart in Section 7.702.45)

1. In the infant program there must be a qualified infant program supervisor present 60 percent of the hours of operation of the infant program who is responsible for the care of the infants. An individual qualified as an infant early childhood teacher must be responsible during the remaining time.

2. The infant program supervisor or an infant early childhood teacher must be assigned to each group of 10 or fewer infants in attendance. An infant program staff aide may be assigned to assist the infant program supervisor or early childhood teacher when 6 through 10 infants are in care in the group to maintain the staff ratio of 1 adult for each 5 infants.

3. There must be assigned at least one (1) infant program supervisor in the infant program for each 20 or fewer infants in attendance.

7.702.47 Toddler Program Staff [Rev. eff. 2/1/16]

Staff Requirements

A. If a center operates solely as a toddler program, there must be a director who meets the qualifications for a director of either a large center or a small center (7.702.42 and 7.702.43), depending upon the number of children for which the toddler center is licensed.

B. The toddler early childhood teacher, a staff member assigned responsibility for a single group and working under the supervision of the director, must meet at least one of the following qualifications:

1. A registered nurse, licensed to practice in Colorado, with a minimum of 6 months of experience in the care of infants and/or toddlers;

2. An adult who holds a certificate in infant and toddler care from a regionally accredited college or university with completion of at least thirty (30) semester hours or equivalent in such courses as child growth and development, nutrition, and care practices with children birth to three (3) years of age;

3. An adult who is certified as a Child Development Associate (CDA) or Certified Child Care Professional (CCP) or holds another Department-approved certificate;

4. A licensed practical nurse with at least twelve (12) months of verifiable experience in the care of children less than three (3) years of age;

5. An adult who meets the education and experience requirements for early childhood teacher of a large center (Section 7.702.44, A); or,

6. A current early childhood professional Credential Level II Version 1.0 or LEVEL III version 2.0 as determined by the Colorado Department of Education.

C. Staff aides must be at least sixteen (16) years of age, must work directly under the supervision of the director or a toddler early childhood teacher, and must have completed 8 hours of orientation

at the toddler program.

D. For every fifteen (15) or fewer toddlers, there must be at least one staff member in the toddler program at all times who has a current Department-approved First Aid and CPR for all ages of children.

7.702.48 Infant and Toddler Programs Affiliated with Public School Teen Parent Programs [Rev. eff. 2/1/16]

A. Infant programs affiliated with teen parent programs that are operated by accredited public school systems and on school premises may substitute the following age requirements for those at Section 7.702.1, B, 3;

1. The minimum age of infants in care is seven (7) days.

2. Infants between the ages of seven (7) and fourteen (14) days may be accepted for care only with written approval from a health care professional and if there are no medical complications for the infant and/or teen mother.

3. Infants fourteen (14) days of age and over may be accepted for care if there are no medical complications for the infant and/or teen mother.

4. The maximum age of infants in care may be extended only in those situations where no teen parent toddler program exists. In this circumstance, an infant may remain in the infant program until the end of the school semester in which the infant becomes eighteen (18) months old.

B. Infant and toddler programs affiliated with teen parent programs that are operated by accredited public school systems on school premises may substitute the following staff requirements for those at 7.702.46 and 7.702.47:

1. Director qualifications may be met by a certified teacher with a major in home economics education or a vocationally credentialed teacher in consumer and homemaking or early childhood occupations. The director must complete at least three (3) semester hours in administration of a child care center.

2. The director must be present in the infant program classroom or adjacent teen parent classroom at least sixty percent (60%) of any day the center is open.

3. If the director cannot be present sixty percent (60%) of any day, an individual who meets director qualifications must substitute for the director.

4. Infant staff aides must be at least fifteen (15) years of age and may be parents-to-be, parents of enrolled infants, or students enrolled in a child care related course with the sponsoring school system.

5. Substitutes for infant program staff must be from the sponsoring school system's list of approved substitute staff members. Substitutes who do not meet minimum staff qualifications can work no more than ten (10) consecutive business days per assignment.

6. Substitutes for infant program staff must hold a current department-approved first aid and safety certificate that includes CPR for all ages of children.

7.702.5 CHILD CARE SERVICES [Rev. eff. 2/1/16]

7.702.51 Admission Procedure [Rev. eff. 2/1/16]

A. The center must accept and care only for children of the ages for which it has been licensed. At no time shall the number of children in attendance exceed the number for which the center has been licensed.

B. Admission procedures must be completed prior to the child's attendance at the center and must include:

1. A pre-admission interview with the child's parent(s) or guardian(s) to determine whether the services offered by the center will meet the needs of the child and the parent(s) or guardian(s);

2. Explanation of the center's policies and procedures. Parents' signatures must be secured, indicating that they have read and agree to the center's policies and procedures;

3. Completion of the registration information required for inclusion in the child's record as required in Section 7.702.91; and,

4. If applicable, a health care plan authorized by the child's health care provider and parent(s)/guardian(s) defining the interventions needed to care for a child who has an identified health or developmental condition or concern including, but not limited to: seizures, asthma, diabetes, severe allergies, heart or respiratory conditions, and physical disabilities. The staff working with a child with a health care plan must be informed, trained and delegated responsibility for carrying out the health care plan; supervision of the plan and interventions must be documented.

C. Children with Special Needs

1. The admission of children who have special health care needs, disabilities, or developmental delays which includes children with social emotional and behavioral needs must be in alignment with the training and ability of staff and in compliance with the Americans with Disabilities Act. Services offered must show that a reasonable effort is made to accommodate the child's needs and to integrate the child with other children. (See General Rules for Child Care Facilities, Section 7.701.14)

2. The center must inform its Child Care Health Consultant (CCHC) prior to the first day of care of the enrollment of a child with special health care needs, if known, so staff receive training, delegation and supervision as indicated by the child's individualized health care plan.

3. For a child with special health care needs requiring intervention and /or medication, the center must obtain written instructions for providing services from the child's parent or guardian and the health care provider. If an existing individualized health care plan is provided for the child, it must be reviewed and followed by the center staff when caring for the child. If the child does not have an existing individualized health care plan, the individualized health care plan must be obtained by the child's first day of care.

4. The individual health care plan must be updated at least every twelve months from the date of the initial plan and as changes occur. The plan must include all information needed to care for the child, must be signed by the health care provider and must include, but not be limited to, the following:

a. Medication schedule;

b. Nutrition and feeding instructions;

c. Medical equipment or adaptive devices, including instructions;

d. Medical emergency instructions;

e. Toileting and personal hygiene instructions;

f. Behavioral interventions; and,

g. Medical procedure/intervention orders

5. For a child with special health care needs, the center must obtain written instructions for providing services from the child's parents or legal guardian and the health care provider. If the child with special health care needs does not have an existing individualized health care plan, the individualized health care plan must be completed within thirty (30) calendar days of the child's enrollment.

6. The plan must be updated at least every twelve (12) months from the date of the initial plan or as changes occur.

7. The center must inform its child care health consultant as soon as possible of the enrollment of a child with special health care needs so staff can receive training and support as indicated by the child's individualized health care plan.

D. If the parent agrees that the center should care for a child in the infant program who is 18 months or older, the center must have on file a written statement from a licensed physician confirming that care for the child is appropriate in this infant program.

E. If the parent agrees that the center should care for a child in the toddler program who is twelve (12) months old but not walking independently, or is over thirty-six (36) months old, the center must have on file a written statement from a licensed physician confirming that care for the child is appropriate in this toddler program.

7.702.52 Health Care [Rev. eff. 2/1/16]

A. Statements of Health Status

1. The center has the right to refuse to admit a child if a statement from a health care professional is not submitted.

2. At the time of admission, the parent(s)/guardian(s) must provide for each child entering the center:

a. Documentation of immunization status or exemption as required by Colorado Department of Public Health and Environment (CDPHE). Immunizations must be updated and recorded as specified on the certificate of immunization or alternate certificate of immunization as supplied and approved by the Colorado Department of Public Health and Environment (CDPHE). Colorado law requires proof of immunization be provided prior to or on the first day of admission.

b. Within thirty (30) calendar days after admission, and within thirty (30) calendar days following the expiration date of a previous health statement, the parent(s)/guardian(s) of each child must submit a statement of the child’s current health status or written verification of a scheduled appointment with a health care

provider. The statement of the child's current health status must be signed and dated by a health care provider who has seen the child within the last twelve (12) months, or within the last six (6) months for children less than two and one-half (2½) years of age. The statement must include when the next visit is required by the health care provider. All health statements must be kept at the center.

c. Statements of health status of children less than two (2) years of age must be updated in accordance with the American Academy of Pediatrics recommended schedule for routine health supervision or as required in writing by the health care provider.

d. Health statements for children over two (2) years of age to seven (7) years of age must be updated in accordance with the American Academy of Pediatrics recommended schedule for routine well child exams.

e. Whenever the director has reason to suspect a child participating in the program may have a condition potentially communicable to the child or others, or finds the child's general condition indicates the need for examination, the director must require a statement from the child's health care provider approving the child to return to group care.

f. For children seven (7) years of age and older or who have completed the first (1st) grade, subsequent statements of health status must be obtained every three (3) years.

g. For children attending a drop-in center, parent(s)/guardian(s) of each child must submit a statement of the child's current health status or written verification of a scheduled appointment with a health care provider within thirty (30) calendar days or by the second visit, whichever is longer. The statement of the child's current health status must be signed and dated by a health care provider who has seen the child within the last twelve (12) months, or within the last six (6) months for children less than two and one-half (2½) years of age. Subsequent statements are not required if there have been no health changes in the child and the parent(s)/guardian(s) attest in writing to the health status of the child on an annual basis. Children attending drop-in child care with special medical needs must have the statement from a health care professional as indicated in section 7.702.52, A, 2, b-f.

B. Emergency Procedures

1. At the time of admission, the center must obtain telephone numbers of the child's physician or other appropriate health care professional and numbers where the parent or guardian and at least one other responsible adult can typically be reached in the event of accident, illness, or other emergency.

2. The center must obtain written authority to arrange for medical care in the event of an emergency. This information must be on file the first day a child attends the center.

3. When accidents, injuries, or illnesses occur, the director or responsible adult in charge must notify the parent or guardian of the child and if necessary call the physician or medical facility as instructed in writing by the parent or guardian.

4. For every thirty (30) or fewer children in attendance, there must be at least one (1) staff member on duty who holds a current department-approved first aid and safety certificate (including CPR for all ages of children) and is responsible for administering First Aid and CPR to children. Such individuals must be with the children at all times when the center is in operation. If children are at different locations, there must be a First Aid and CPR qualified staff member at each location.

5. All employees caring for children, not required by rule to be certified in First Aid and CPR, must complete a basic first aid and CPR module within 30 calendar days of employment and the module must be renewed every 2 years.

6. Children too ill to remain in the group must be comfortably cared for and supervised until they can be taken home or suitably cared for elsewhere.

7. Portable First Aid kits must be available to staff at all times, including field trips, and must be located out of reach of children and maintained in a sanitary condition. First aid kits must be checked and restocked on at least a monthly basis.

C. Medication

1. Any routine medication, prescription or non-prescription (over-the-counter) must be administered only with a current written order of a health care provider with prescriptive authority and with written parental consent. Home remedies, including homeopathic medications, shall never be given to a child.

2. The written order by the person with prescriptive authority shall include:

   a. Child's name;

   b. Licensed prescribing practitioner name, telephone number, and signature;

   c. Date authorized;

   d. Name of medication and dosage;

   e. Time of day medication is to be given;

   f. Route of medication;

   g. Length of time the medication is to be given;

   h. Reason for medication (unless this information needs to remain confidential) ;

   i. Side effects or reactions to watch for; and,

   j. Special instructions

3. Medications must be kept in the original labeled bottle or container. Prescription medications must contain the original pharmacy label.

4. Over-the-counter medication must be kept in the originally labeled container and be labeled with the child's first and last name.

5. In the case medication needs to be given on an ongoing, long-term basis, the authorization and consent forms must be reauthorized on an at least annual basis. Any

changes in the original medication authorization require a new written order by the prescribing practitioner and a change in the prescription label. Verbal orders taken from the licensed prescriber may be accepted only by a licensed registered nurse.

6. Acetaminophen or ibuprofen is able to be used multiple times with one (1) current, signed multi-use medication order for up to three (3) consecutive calendar days if the order is specific about when the medication is to be given. The child specific multi-use medication order must be renewed with the child's updated health statement.

7. Staff designated by the center director to give medications must complete the four (4) Department-approved medication administration training and have current annual delegation or more often as determined by the Child Care Health Consultant. Delegation must be from the center's current Child Care Health Consultant who must observe and document the competency of each staff member involved in medication administration. All staff administering medication must have current CPR, First Aid and standard precautions training prior to administering medication with the following exceptions:

    a. Staff determined by the director, in consultation with the Child Care Health Consultant, to be responsible for providing routine emergency medications covered in the approved medication administration training for the treatment of severe allergies or inhaled medications for the treatment of asthma must receive training and delegation from their Child Care Health Consultant for those medications only. Staff must then provide those medications to children based on the instructions from the child's individualized health care plan.

    b. Staff determined by the director, in consultation with the Child Care Health Consultant, to be responsible for providing medications not covered in the approved medication administration training shall also be permitted to administer medications and/or medical treatments such as emergency seizure medication, insulin or oxygen with individualized training and delegation from the Child Care Health Consultant based on instructions from the child's individualized health care plan.

    c. Staff may be trained and delegated in the administration of a single rescue medication or rescue medical intervention by the center's Child Care Health Consultant. Such training and delegation shall qualify the staff member to provide a rescue medication or treatment for a specific child based on instructions from the child's individualized health care plan.

8. Staff of drop-in child care centers must complete training from their nurse consultant delegating medication.

9. All medications, except those medications specified in the Department's approved medication administration training as emergency medications, must be kept in an area inaccessible to children, but available to staff trained in administering medication. If refrigeration is required, the medication must be stored in either a separate refrigerator or a leak proof container in a designated area of a food storage refrigerator, separate from food and inaccessible to children. Controlled medications must be counted and safely secured, and specific policies regarding their handling require special attention in the center's policies. Access to these medications must be limited (see Section 12-22-318, C.R.S.).

10. Emergency medications must be stored in accordance with the Child Care Health Consultant's recommendation. Emergency medications are not required to be stored in a locked area. Emergency medications may be stored in an area easily accessible and

identifiable to staff but out of reach of children. When away from the classroom, staff must carry emergency medications in a bag on their person.

11. The center must have a written policy on the storage and access of inhalers and epinephrine carried by school-age children. The policy must include a written contract with the parent(s)/guardian(s) and child acknowledgement assigning levels of responsibility of each individual. This contract will accompany orders for the medication from a health care provider along with confirmation from the health care provider that the student has been instructed and is capable of self-administration of the prescribed medications.

12. The center must have a written policy on the storage and access of inhalers and epinephrine for all children in care. This policy must be reviewed by the Child Care Health Consultant.

13. Children are not allowed to bring medications to child care unless accompanied by a responsible adult. If a medication is out of date or left over, parents are responsible for picking up the medication. If parents do not respond, the center is responsible for the disposal of medications according to center policy and procedures. Disposal of medications must be documented.

14. Topical preparations such as petroleum jelly, diaper rash ointments, sunscreen, bug sprays, and other ointments may be administered to children with written parental authorization. These preparations may not be applied to open wounds or broken skin unless there is a written order by the prescribing practitioner.

15. A written medication log must be kept for each child. This log is part of the child's records. The log must contain the following:

    a. Child's name;

    b. Name of the medication, dosage, and route;

    c. Time medication is to be given;

    d. Special instructions;

    e. Name and initials of the individuals giving the medication; and,

    f. Notation if the medication was not given and the reason.

D. Sun Protection

1. The center must obtain the parent or guardian's written authorization and instructions for applying sunscreen or use of another form of parent or guardian approved sun protection to their children's exposed skin prior to outside play. A doctor's permission is not needed to use sunscreen at the center.

2. The center must apply sunscreen, have the parent or guardian apply sunscreen, or use another form of parent or guardian approved sun protection for children prior to children going outside. Sunscreen must be reapplied as directed by the product label.

3. When supplied for an individual child, the sunscreen must be labeled with the child's first and last name.

4. If sunscreen is provided by the center, parents must be notified in advance, in writing, of the type of sunscreen the center will use.

5. Children over four (4) years of age may apply sunscreen to themselves under the direct supervision of a staff member.

E. Control of Communicable Illnesses

1. When children have been diagnosed with a communicable illness such as hepatitis, measles, mumps, meningitis, diphtheria, rubella, salmonella, tuberculosis, giardia or shigella, the center must immediately notify the local health department or the Colorado Department of Public Health and Environment, all staff members, and all parents and guardians of children in care. Children's confidentiality must be maintained.

2. The director must ask parents to report exposure of a child to communicable illness outside of the center, and, at the discretion of the director, the child should be excluded from the center for the period of time prescribed by the child's physician or by the local health department.

7.702.53 Personal Hygiene [Rev. eff. 2/1/16]

A. Hand Washing

1. Children's hand washing must be supervised and must be taught when necessary.

2. Children’s hand washing must be taught when necessary.

B. Diapering

(See also Section 7.702.73, A, 3)

All diaper change areas must:

1. Be a minimum of 36 by 18 inches in size and large enough to accommodate the size of the child;

2. Be adjacent to or within reach of a hand washing sink;

3. Have a place inaccessible to children for storing all diaper change supplies and disinfecting solutions and products; and,

4. Have a sufficient supply of diapers at all times.

7.702.54 Physical Care and Supervision [Rev. eff. 2/1/16]

A. General

1. All children must be under direct supervision of a responsible adult at all times.

2. The time a child arrives and leaves the center each day must be recorded. Attendance verification must be made periodically throughout the day by staff members at the center.

3. Staff must be awake, alert and supervising all children.

4. Center staff must directly supervise children and maintain staff to child ratio during

special activities that occur with an outside vendor or provider and where the vendor uses their expert staff to facilitate the activity.

5. The center must provide a rest period with rest equipment of at least thirty (30) minutes for all preschool-age children remaining in the center longer than five (5) hours. Quiet activities are permissible during the thirty (30) minute period. Older children requiring a rest time must be given one.

6. Children must not be forced to sleep. Children who do not sleep after thirty (30) minutes must be allowed to move to another area and be provided with quiet toys and equipment to play with such as puzzles or books.

7. Children must be allowed to leave their napping area within ten (10) minutes of waking.

8. The center must provide mats or cots and a designated rest period for all preschool age children. Drop-in child care centers must provide mats or cots for at least fifty percent (50%) of the licensed capacity of the center.

9. The center must ensure that children are dressed appropriately for the weather before going outside.

B. Infant and Toddler Programs

1. The staff must have daily contact with adults who transport the infants and toddlers to and from the center.

2. Children must not be confined for prolonged periods of time to cribs, playpens, swings, high chairs, infant seats, or other equipment that confines movement. They must have an opportunity each day for freedom of movement, such as creeping, crawling, or walking in a safe, clean, open, uncluttered area.

3. Throughout the day, each child must have frequent, individual, personal contact and attention from an adult, such as being held, rocked, taken on walks inside and outside the center, talked to, and sung to.

4. There must be no attempt to toilet train children until they are able to verbalize or otherwise indicate need, help manage their own clothing, and be able to access toileting facilities.

5. For each child who is learning to use a toilet, the child's individual developmental abilities and needs must be accommodated as stated in the written policies and procedures for the center.

6. Staff must investigate whenever children cry.

7. Children must be allowed to form and observe their own pattern of sleep and waking periods. Special provision must be made so that children requiring a morning nap time have a separate area for their nap apart from space used for play.

C. Safe Sleep Environments for Infants

1. Each infant up to eighteen (18) months of age and enrolled in the infant program must be provided with an individual crib or futon approved for infants or other approved sleep/rest equipment meeting Consumer Product Safety Commission (CPSC) standards.

2. In the infant room, soft bedding or materials that could pose a suffocation hazard are not permitted in cribs, futons approved for infants or other approved sleep/rest equipment. Soft bedding means, but is not limited to, any soft sleep surface like bumper pads, pillows, blankets, quilts, comforters, sleep positioning devices, sheepskins, blankets, flat sheets, cloth diaper bibs, plush toys, and stuffed animals.

3. An infant must be placed on his/her back for sleeping.

4. Alternative sleep positions for infants must only be allowed with a health care plan completed and signed by the child's physician.

5. Swaddling of infants must only be allowed with a health care plan completed and signed by the child's physician.

6. Each infant up to twelve (12) months of age who uses a pacifier must have the pacifier offered when being put down to sleep, unless the parent directs otherwise.

7. All sleep/rest equipment must be safe, sturdy, and free from hazards including, but not limited to: broken or loose slats, torn mattress, chipping paint or loose screws.

8. Approved sleeping equipment must be firm and mattresses must fit snugly ensuring no more than two fingers are able to be inserted between the mattress and the side of the approved sleeping equipment.

9. Toys, including mobiles and other types of play equipment that are designed to be attached to any part of sleeping equipment, must be kept away from sleeping infants and out of sleep environments, including hanging toys. Blankets and other items must not be hung from or draped over the sides or any part of sleeping equipment.

10. Drop side and stacking cribs are prohibited.

11. Bassinets and playpens are prohibited in child care centers unless licensed as a teen parent program when the teen parent(s) remain(s) on site.

12. Other sleep equipment not manufactured for commercial use is prohibited.

13. Infant monitors must be used in separate sleeping rooms for infants, unless qualified staff remain in the room with sleeping infants at all times. When monitors are used, the following conditions must be met:

    a. The sound monitoring equipment is able to pick up the sounds of all sleeping infants;

    b. The receiver of the sound monitoring equipment is actively monitored by staff at all times;

    c. All sleeping infants must be physically observed at least every ten (10) minutes by a staff member; and,

    d. Sound monitoring equipment must be regularly checked to ensure it is working correctly.

14. After December 31, 2015, separate sleep rooms are prohibited in new construction, change of governing body and change of capacity in child care centers.

15. Infants who fall asleep in a car safety seat, bean bag chair, bouncy seat, infant seat, swing, jumping chair, play pen or play yard, highchair, chair, sofa, adult futon, adult bed or other piece of equipment not approved for sleep must immediately be moved to their approved sleep area and placed on their back to sleep.

16. Cribs must be used for sleeping, not extended play or confinement.

17. Children who are awake must not be confined for more than fifteen (15) minutes at a time to cribs, playpens, swings, high chairs, infant seats, or other equipment that inhibits freedom of movement. Children who are actively eating may be in a high chair or other approved feeding equipment for longer than fifteen (15) minutes. Children must be moved away from the feeding location once feeding is complete.

18. If music is played in the infant sleep area, the music must not be played at a loud volume that would prevent infants from being heard by staff. Music equipment must not be placed under a crib or within three (3) feet of the sleeping infant.

19. Supervised tummy time must be offered to infants one month of age or older up to twenty to thirty (20-30) minutes per day. If the infant falls asleep during tummy time, immediately place him/her on their back in approved sleeping equipment.

20. When staff place infants in approved sleeping equipment for sleep, they must check to ensure that the temperature in the room is comfortable for a lightly clothed adult, check the infants to ensure that they are comfortably clothed (not overheated or sweaty), and that bibs, necklaces, and garments with ties or hoods are removed. Clothing sacks or other clothing designed for sleep must be used in lieu of blankets if needed for additional warmth.

21. Infants must not be placed to sleep in the same crib or futon as another infant or child, and must never sleep with an adult in a bed, on a couch, or in any other setting or manner.

D. The facility must have a policy on the protection of infants from second hand smoke.

7.702.55 Food and Nutrition [Rev. eff. 2/1/16]

A. Meals and Snacks

1. All meals and snacks provided by the center must meet current USDA child and adult care food program meal pattern requirements and be offered at suitable intervals. Children who are at the center for more than 4 hours, day or evening, must be offered a meal.

2. Centers must not provide sugar sweetened beverages to children. These are liquids that have been sweetened with various forms of sugars that add calories and include, but are not limited to: soda, fruitades, fruit drinks, flavored milks, and sports and energy drinks.

3. If 100% fruit juice, which is not a sugar sweetened beverage, is offered as part of meals and/or snacks, it must be limited to no more than twice per week.

4. The size of servings must be suitable for the child's age and appetite, and sufficient time must be allowed so that meals are unhurried.

5. In centers that do not regularly provide a meal, if a child brings a meal from home that does not appear to meet current USDA child and adult care food program meal pattern

requirements, the center must have foods available to offer as a supplement to that meal.

6. Staff members must sit with the children and encourage them to try a variety of food served. During meals, children should be encouraged to engage in conversation and to express their independence.

7. All food prepared by the center must be from sources approved by the local health department or the State Department of Public Health and Environment. All food must be prepared, served, and stored in such a manner as to be clean, wholesome, free from spoilage, and safe for human consumption. Home-canned vegetables, fruits, and meats cannot be served.

8. Meal menus must be planned at least one week in advance, dated, and posted in a place visible to parents. After use, menus must be filed and retained for three (3) months. Records must be available for periodic review and evaluation.

B. Feeding the Infant

1. An individualized diet and feeding schedule must be provided according to a written plan submitted by the parent or by the child's physician with the knowledge and consent of the parent. A change of diet and schedule must be noted on each child's daily activity schedule and posted in an area clearly visible to the staff.

2. Commercially prepared formula must be mixed according to the manufacturer's direction and each bottle marked with the child’s first and last name.

3. All infants less than six (6) months of age must be held for bottle feeding. Bottles must not be propped. Older infants must not be allowed to hold their own bottles when lying flat. Bottles must not be allowed in a crib with the infant.

4. Older infants must be provided with suitable solid foods that encourage freedom in self-feeding and must be fed in safe chairs such as high chairs or baby-feeding tables.

5. When the infant program provides food other than formula, food must be varied and include food from cereal, vegetable, fruit, and protein sources. When the center does not provide solid food, it must supply any additional foods and/or monitor the infant's total nutritional intake.

6. There must be a sufficient supply of bottles provided for the entire day; or if nursing bottles are to be reused, they must be washed, rinsed, and sanitized after each use.

7. Bottles of formula or breast milk must never be warmed in a microwave oven.

8. A staff member may not mix cereal with formula and feed it to an infant from a bottle or infant feeder unless there are written instructions from the child’s health care provider.

C. Feeding the Toddler

1. Staff members must either feed toddlers or supervise them when they are eating, and children must be encouraged to try a variety of food served.

2. Toddlers must be sitting when drinking from a bottle.

3. Commercially prepared formula must be mixed according to the manufacturer's direction and each bottle marked with the child's first and last name.

4. There must be a sufficient supply of bottles provided for the entire day; or if nursing bottles are to be reused, they must be washed, rinsed, and sanitized after each use.

7.702.56 Guidance [Rev. eff. 2/1/16]

A. Children must not be subjected to physical or emotional harm or humiliation.

B. The director must not use, or permit a staff person or child to use, corporal or other harsh punishment, including but not limited to pinching, shaking, spanking, punching, biting, kicking, rough handling, hair pulling, or any humiliating or frightening method of guidance.

C. Guidance must not be associated with food, rest, or toileting. No child should be punished for toileting accidents. Food must not be denied to or forced upon a child as a disciplinary measure.

D. Separation, when used for guidance, must not exceed five (5) minutes and must be appropriate for the child's age. The child must be in a safe, lighted, well-ventilated area and be within sight and hearing of an adult. The child must not be isolated in a locked, closed room or closet.

E. Verbal abuse and derogatory remarks about the child are not permitted.

7.702.57 Overnight Care [Rev. eff. 2/1/16]

A. All of the provisions required in Section 7.702 of these rules for child care centers apply to centers offering overnight care of children which includes care that extends beyond midnight. In addition, centers must observe the following provisions:

B. A nutritious evening meal must be made available to children.

C. Quiet activities must immediately precede the children's bedtime.

D. Children's faces and hands must be washed, and children must be changed into comfortable clothing for sleeping.

E. Each child must be provided with a comfortable separate bed, crib, or cot suitable for the child's age or a two (2) inch sleeping mat or mattress. Each child must also be provided with sheets and a clean, washable covering. If mats or mattresses are used, the room temperature at floor level must be 68 to 72 degrees. Pads and mattresses must be fitted with a clean, washable, removable covering. Permission of parents or guardians must be obtained for each child who uses a sleeping mat or mattress placed on the floor.

F. All children must be directly supervised at all times.

G. The staff-child ratio for sleeping children is one (1) adult to every six (6) or fewer children in attendance.

7.702.58 Activities [Rev. eff. 2/1/16]

A. Activity Schedules

1. The center must carry out a planned program suitable to the needs of the children. This program must be described in writing and be available for review when requested by the department or by parents or guardians of children in care.

2. Daily physical gross motor activities, with or without equipment or materials, must be provided outdoors, or indoors during inclement weather, to preschool age and older

children for no less than sixty (60) minutes total for full day programs. Activities do not have to occur all at one time.

3. Daily physical gross motor activities, with or without equipment or materials, must be provided outdoors or indoors during inclement weather, to preschool age and older children for no less than thirty (30) minutes total for part day programs operating from three (3) to five (5) hours per day. Activities do not have to occur all at one time.

4. Daily physical gross motor activities, with or without equipment or materials, must be provided outdoors or indoors during inclement weather, to preschool age and older children daily for no less than fifteen (15) minutes total for part day programs operating up to three (3) hours per day. Activities do not have to occur all at one time.

5. Daily physical gross motor activities, with or without equipment or materials, must be provided to toddler age children outdoors for no less than fifteen (15) minutes for part day programs operating up to three (3) hours per day, no less than thirty (30) minutes total for part day programs operating from three (3) to five (5) hours per day, and no less than sixty (60) minutes for full day programs.

6. When inclement weather limits outdoor activities, indoor physical daily gross motor activities, with or without equipment or materials, must be provided to toddler age children outdoors for no less than fifteen (15) minutes for part day programs operating up to three (3) hours per day, no less than thirty (30) minutes total for part day programs operating from three (3) to five (5) hours per day, and no less than sixty (60) minutes for full day programs.

7. Infants must be provided outdoor play at least three (3) times per week, weather permitting.

8. If the center takes children on routine short excursions, such activities and locations must be posted at the center.

9. If a child participates in activities away from the facility, the center must obtain the parent or guardian's written permission for the child to participate in the activity at a specific location and day. Staff ratios found at Section 7.702.55 must be maintained.

B. Screen Time and Media Use

1. Television and video viewing is prohibited for children less than two (2) years of age.

2. All television, recorded media, computer, tablet and media devices are prohibited during snack or meal times.

3. All media that children are exposed to must not contain explicit language or topics.

4. For children two (2) years of age and older, television, recorded media and video time must be limited to thirty (30) minutes per week.

5. For children two (2) years of age and older computer and tablet time must be limited to non-consecutive fifteen (15) minute increments not to exceed thirty (30) minutes per day.

6. For children two (2) years of age and older, television, recorded media, computer, ~~tablet~~ and media device time may only exceed thirty (30) minutes per week for a special occasion. There is no restriction for children using personal adaptive equipment.

C. Field Trips

1. The center must notify the children's parents or guardians in advance of any field trip. The staff-child ratio found at Section 7.702.55 must be maintained at all times.

2. All groups of children must be actively supervised by a qualified early childhood teacher at all times.

3. Children must be actively supervised at all times.

~~3~~4. An accurate itinerary must remain at the center.

~~4~~5. When taking children on a field trip, staff must have the following information about each child: name, address, and phone number of the child's physician or other appropriate health care professional and the written authorization from the parent or guardian for emergency medical care.

~~5~~6. If children attending the field trip require routine medications be administered during the field trip or have special health needs, a staff member with current medication administration training and delegation must attend on the field trip.

~~6~~7. A list of all children and staff on a field trip must be kept at the center.

7.702.59 Transportation [Rev. eff. 2/1/16]

A. Transportation Provided by the Center

1. The center is responsible for any children it transports.

2. The center must obtain written permission from parents or guardians for any transportation of their child during child care hours.

3. The number of staff members who accompany children when being transported in the vehicle must meet the child care staff ratio found at Section 7.702.45. The driver of the vehicle is considered a staff member.

4. Children must not be permitted to ride in the front seat of a vehicle and must remain seated while the vehicle is in motion. All children must be secured in a child restraint system that is appropriate for the age and development of that child. The child restraint must conform to all applicable Federal Motor Vehicle Safety Standards and Colorado child passenger safety laws.

5. Children must be loaded and unloaded out of the path of moving vehicles.

6. Children must not be permitted to stand or sit on the floor of a moving vehicle, and their arms, legs, and heads must remain inside the vehicle at all times.

7. Children must not be left unattended in the vehicle.

8. Transportation arrangements for school-age children must be by agreement between the center and the children's parents, i.e., whether the child can walk, ride a bicycle, or travel in a car. The center must monitor the children to be sure they arrive at the center when expected and follow up on their whereabouts if they are late. Written permission from parents or guardians for their children to attend community functions after school hours must include agreements regarding transportation.

9. Prior to a field trip or other excursion, the center must obtain information on liability insurance from parents and staff who transport children in their own cars and verify that all drivers have valid driver's licenses.

B. Requirements for Vehicles

1. Any vehicle used for the transportation of children to and from the center or during center activities must meet the following requirements:

   a. The vehicle must be enclosed and have door locks;

   b. The seats of the vehicle must be constructed and installed according to the vehicle manufacturer's specifications;

   c. The vehicle must be kept in satisfactory condition to assure the safety of occupants. Vehicle tires, brakes, and lights must meet safety standards set by the Colorado Department of Revenue, Motor Vehicle Division;

   d. Seating must be comfortable with a seat of at least ten (10) inches wide for each child;

   e. The provider must not transport more children than any vehicle is able to safely accommodate when child restraint systems and seat belts are properly installed in the vehicle. Two (2) or more children must never be restrained in one (1) seat belt or child restraint system; and,

   f. Modifications to vehicles including, but not limited to, the addition of seats and seat belts must be completed by the manufacturer or an authorized representative of the manufacturer. Documentation of such modifications must be available for review.

2. In passenger vehicles, which include automobiles, station wagons, and vans with a manufacturer's established capacity of sixteen (16) or fewer passengers and less than 10,000 pounds, the following is required:

   a. Each child must be restrained in an individual seat belt;

   b. Two or more children must never be restrained in one seat belt;

   c. Lap belts must be secured low and tight across the upper thighs and under the belly; and,

   d. Children must be instructed and encouraged to keep the seat belt properly fastened and adjusted.

3. In vehicles with a manufacturer's established capacity of sixteen (16) or more passengers, seat belts for passengers are not required.

C. Requirements for Drivers of Vehicles

1. All drivers of vehicles transporting children must comply with applicable laws of the Colorado Department of Revenue, Motor Vehicle Division, and ordinances of the municipality in which the center operates.

2. All drivers of vehicles owned or leased by the center in which children are transported

must have a current department- approved First Aid and safety certificate that includes CPR for all ages of children.

3. In each vehicle used to transport children, drivers must have access to a First Aid kit.

4. The driver must ensure that all doors are secured at all times when the vehicle is moving.

5. The driver must make a good faith effort to ensure that each child is properly belted throughout the trip.

6. The driver shall not eat, smoke or use a cellular device while driving.

7. The required staff to child ratio shall be maintained at all times.

8. All drivers must be at least twenty (20) years of age.

9. Drivers must complete a minimum of four (4) hours of Department approved driver training. The Department's approval will be based on the review of a training curriculum that includes at a minimum: behind the wheel training; participant transport attendance procedures including taking attendance at the destination; managing behavioral issues; loading and unloading procedures; daily vehicle inspection procedure; proper tire inflation; emergency equipment and how to use it; accident procedures; passenger illness procedures; procedures for backing up; and vehicle evacuation.

D. Transporting Infants and Toddlers

1. Children must be properly fastened into a child restraint system that conforms to all applicable Federal Motor Vehicle Safety Standards pursuant to Colorado law.

2. There must be at least one adult, in addition to the driver, for each five (5) or fewer infants/toddlers being transported. Each adult must have a current department-approved first aid and safety certificate that includes CPR for all ages of children.

3. An adult must accompany each child to and from the vehicle.

4. Infants and toddlers must not be transported in the front seat of a vehicle.

7.702.6 CHILD CARE EQUIPMENT AND MATERIALS [Rev. eff. 2/1/16]

7.702.61 General Requirements [Rev. eff. 2/1/16]

A. Indoor and outdoor play equipment and materials must be appropriate for children's ages, size, and activities.

B. Indoor and outdoor materials and equipment must be sufficiently varied and appropriate for the developmental needs of the children and the number attending.

C. Indoor and outdoor equipment, materials, and furnishings must be sturdy, safe, and free of hazards.

D. Any permanently installed indoor climbing equipment or indoor portable climbing equipment eighteen (18) inches or higher must have protective surfacing meeting current federal safety requirements. Protective surfacing must be installed according to manufacturer's instructions, underneath and in the use zone surrounding the equipment.

E. Mats manufactured for indoor climbing equipment over eighteen (18) inches or higher must meet current federal safety requirements. Written documentation from manufacturer must be available for review at all times.

F. Durable furniture such as tables and chairs must be child-sized or appropriately adapted for children's use.

G. Children must wear helmets when riding scooters, bicycling, skateboarding, or rollerblading.

H. In infant nurseries, an adequate number of high chairs or other suitable pieces of equipment that meet federal Consumer Product Safety Commission standards must be provided for infant feeding.

I. The infant program must have an adult rocking chair.

J. For every five (5) infants for which the center is licensed there must be at least one (1) piece of sturdy mobile equipment that is easily accessible to effectively evacuate infants.

K. Evacuation equipment must not block exit routes. Nothing may be stored in or under any evacuation equipment.

Evacuation equipment must:

1. Be located in the room or immediately outside the interior classroom door;

2. Be labeled for easy identification;

3. Be ready for use; and,

4. Fit through doorways.

L. If a crib is not designed for emergency evacuation, the crib must be reinforced with a kit manufactured for this purpose.

7.702.62 Play-Equipment and Materials [Rev. eff. 2/1/16]

A. Equipment and materials must be provided for both indoor and outdoor play.

B. Outdoor play equipment must meet the following requirements:

1. Swings must have seats made of a flexible material.

2. Moving equipment must be located toward the edge or corner of a play area or be designed in such a way as to discourage children from running into the path of the moving equipment.

3. Metal equipment must be placed in the shade when possible and must be arranged so that children playing on one piece of equipment will not interfere with children playing on or running to another piece of equipment.

4. The maximum height of any piece of playground equipment is six (6) feet if accessible to children 2-1/2 to 6 years of age, and three (3) feet if accessible to children less than 2-1/2 years of age.

5. All pieces of playground equipment must be designed to guard against entrapment and

strangulation.

6. Any permanently installed outdoor climbing equipment or portable climbing equipment eighteen (18) inches or higher must have protective surfacing, meeting current federal safety requirements, underneath and in the use zone surrounding the equipment, and installed according to manufacturer instructions.

7. All pieces of permanently installed playground equipment must be surrounded by a resilient surface of a depth of at least 4 inches. For equipment over three (3) feet in height, resilient material must be a depth of at least six (6) inches. Mats manufactured for resilient material for both equipment heights must meet current federal safety standards. Written documentation from manufacturer must be available for review at all times.

8. Sand used as a resilient surface must be raked regularly to retain its resiliency and to retain a depth of at least six (6) inches.

9. Department approved resilient surfacing includes loose fill materials such as wood chips, wood mulch, engineered wood fiber, pea gravel, synthetic pea gravel, shredded rubber tires, and fine loose sand. Solid unitary materials include poured in place surfacing, approved rubber mats, playground tiles, and astro turf with built in resilient pad.

C. The center must have enough play materials and equipment so that at any one time each child for which the center is licensed can be individually involved. Separate play rooms or separate interest centers must be provided for each category of equipment required for the program. A variety of material and equipment from the following categories must be available.

1. Art Supplies;

2. Blocks and Accessories;

3. Books and Posters;

4. Dramatic Play Area;

5. Large Muscle Equipment;

6. Manipulative Toys;

7. Musical Equipment;

8. Science Materials.

D. If the center serves school-age children, it must have some age-appropriate materials and equipment from each of the following categories:

1. Arts and Crafts;

2. Games;

3. Sports;

4. Science;

5. Library.

E. An appropriate supply of play materials must be readily accessible to children and must be arranged in an orderly manner so that children can select, remove, and replace the play materials either independently or with minimum assistance.

F. Toys, toy parts, furnishings, equipment and materials accessible to children less than three (3) years of age must not be a choke hazard or able to be inhaled. Any area of the facility accessible to children less than three (3) years of age must be free of any choke or inhalation hazards.

G. Toys, toy parts, furnishings, equipment and materials made of brittle, easily breakable plastic or glass are not permitted for children less than five (5) years of age.

H. In the infant program, some play equipment from the following list must be provided: rubber washable toys, rattles, blocks, balls, record player, radio, tape player.

I. In the toddler program, some play materials easily accessible to children must be provided from each of the following categories:

1. Gross Motor Development;

2. Fine Motor Development;

3. Language Development; and,

4. Social Interaction.

J. Drop-in child care centers must provide access to indoor large muscle equipment, including, but not limited to, an indoor climbing structure, an open area for indoor large muscle games, and must provide large muscle activities at least two times during each six (6) hour period of time.

K. Drop-in centers providing an indoor climbing structure must have protective surfacing underneath and in the use zone surrounding the equipment meeting current federal safety requirements.

7.702.63 Rest Time Equipment [Rev. eff. 2/1/16]

A. A firm cot or two (2) inch mat with a sheet and blanket or other suitable covering must be provided for each preschool child remaining in the center more than five (5) hours.

B. Cots or pads must be spaced at least two (2) feet apart on all sides during rest time. Children must have a safe area in which to rest.

C. When the room provided for rest is used for other program activities, the cots, pads, and linens must be stored in an area that is not included in the required square footage assigned for play space.

D. In rooms used for napping, the light must be dim at nap time to promote an atmosphere conducive to sleep.

E. In the toddler room, a crib, sleeping cot, or two (2) inch mat must be provided for each child, and there must be a minimum of two (2) feet between each crib or cot. Aisles between cots or cribs must be kept free of all obstructions while cribs are occupied. No child less than the age of two (2) years should use a cot for sleeping without written permission of the parent or guardian.

1. Individual cribs must provide each toddler with sufficient space for the toddler's length, size, and movement, and must meet federal Consumer Product Safety Commission

standards. Each crib must be fitted with a firm, comfortable mattress and heavy plastic sheeting or other type of waterproof material. If individual cribs are used, they must be separated by a sturdy divider from the area used for activities.

2. Sleeping cots and mats must be of firm construction and in good repair.

F. In the toddler room, a sheet and a blanket or suitable covering must be provided for each child to be used only by that child.

7.702.7 BUILDINGS AND FACILITIES [Rev. eff. 2/1/16]

7.702.71 Building Site [Rev. eff. 2/1/16]

A. General

1. Centers can be located in a private residence only when that portion of the residence to which children have access is used exclusively for the care of children during the hours the center is in operation or is separate from the living quarters of the family.

2. No other business can operate in the rooms used by the center during the hours of child care.

3. Rooms licensed for specific ages of children cannot be used for other ages of children without the prior written approval of the licensing authority.

B. Infant Programs

1. The infant program must be located on the grade level.

2. If the infant program is in the same building as a facility caring for children of other ages, the infant program must be physically separated in different rooms.

C. Toddler Program

1. The toddler program must be located on grade level.

2. If the toddler program is combined with a large child care center or an infant program, toddler facilities, both indoor and outdoor, must be completely separate from facilities for other age groups, except as allowed by Section 7.702.73, B, 8 and 10. If the facility wishes to provide opportunities for a toddler to have occasional contact with siblings, plans must be approved by the Department licensing representative.

3. A toddler program located in a drop-in child care center licensed for five (5) or fewer toddlers may be separated from the rest of the center by a five (5) foot wall.

7.702.72 Building Plans and Construction [Rev. eff. 2/1/16]

A. The center must comply with applicable state and local building code and zoning regulations.

B. Prior to construction, architectural plans for new buildings or for extensive remodeling of existing buildings must be submitted for review and approval by the Department, the local fire department, and the local building department as to appropriateness, adequacy, and suitability for child care functions.

7.702.73 Space Requirements [Rev. eff. 2/1/16]

A. Indoor Area Requirements

1. There must be open, indoor play space of at least thirty (30) square feet of floor space per child, including space for movable furniture and equipment. Indoor space must be exclusive of kitchen, toilet rooms, office, staff rooms, hallways and stairways, closets, laundry, furnace rooms, and space occupied by permanent built-in cabinets and permanent storage shelves inaccessible to children.

   Child care centers in operation prior to January 1, 1966, and which continue operation under the same governing body, must provide open indoor play space of at least twenty-five (25) square feet of floor space per child, including space for readily movable furniture and equipment, and with the exclusions noted in the preceding paragraph.

2. Adequate storage space must be provided for indoor and outdoor equipment and supplies. Space for reserve supplies must be in addition to the designated space allotment for children's play activities.

3. Diaper change areas must be located and arranged so as to provide privacy for older children in need of diaper changing. See also Section 7.702.53, B.

4. Number of Children Allowed in One Room

AGE OF CHILDREN	MAXIMUM NUMBER OF CHILDREN IN A ROOM
6 weeks to 18 months	10 infants
12 months to 18 months	10 infants
12 months to 36 months	20 toddlers
18 months to 24 months	20 toddlers
24 months to 36 months	28 toddlers
30 months to 36 months	28 toddlers

   Toddler centers licensed prior to July 1, 1989 are exempt from the room size requirement.

5. Square Footage Requirement per Child

AGE OF CHILD	SEPARATE FREE PLAY AREA	SEPARATE SLEEP AREA	COMBINED SLEEP AND PLAY AREA
6 weeks to 18 months (infants)	35 square feet	adequate space to accommodate size of cribs and needs of infants and staff	50 square feet

12 months to 36 months (toddlers)	30 square feet	30 square feet	45 square feet
2-1/2 years to 5 years (preschool)	-	-	30 square feet
5 years and over (school-age)	-	-	30 square feet

6. In the infant program, the minimum indoor space per infant for sleep and activities is fifty (50) square feet. This space is exclusive of kitchen, toilet rooms, office, staff rooms, hallways and stairways, closets, laundry, furnace rooms, and space occupied by permanent built-in cabinets and storage shelves.

    a. If a separate sleep room is provided, it must have enough square footage that all babies and cribs are easily accessible to staff members. The activity room must contain at least thirty-five (35) square feet per child.

    b. If a combination sleep/activity room is used, the sleep area must be separated by a sturdy divider from the area used for activities, and cribs must be arranged so that all babies and cribs are easily accessible to staff members.

B. Outdoor Area Requirements

1. The center must provide an outdoor play area that is adjacent to or safely accessible to the indoor facilities. When the area is not adjacent, staff members must accompany children to and from the play area. Drop-in child care centers are not required to provide an outdoor play area.

2. The outdoor play area must provide a minimum of seventy-five (75) square feet of space per child for a group of children using the total play area at any one time. The total play area must accommodate at least thirty-three percent (33%) of the licensed capacity of the center or a minimum of 1500 square feet, whichever is greater.

3. The play area must be fenced or have natural barriers, such as hedges or stationary walls at least four (4) feet high, to restrict children from unsafe areas.

4. The play area must be designed so that all parts are visible and easily supervised.

5. The playground area must have at least two (2) different types of surfaces. Each type of surface must cover at least ten percent (10%) of the playground area.

6. A shaded area in the fenced play area of at least one hundred fifty (150) square feet must be provided by means of trees or other cover to guard children against the hazards of excessive sun and heat.

7. In the infant program, the outdoor play area must be a minimum of four hundred (400) square feet.

8. In the infant program, the outdoor area can be used by other age groups at the center, but it must not be used by any other group of children while infants are using it.

9. The total outdoor play area for toddler age groups must be a minimum of seven hundred fifty (750) square feet if licensed for ten (10) toddlers and one thousand fifty (1,050) square feet if licensed for fourteen (14) or more toddlers, or seventy-five (75) square feet per child for the largest group size for which the program is licensed.

10. In the toddler program, the outdoor play area can be shared by infants, but infants and toddlers must not be allowed to use the play area at the same time.

7.702.74 Food Preparation Area [Rev. eff. 2/1/16]

A. See the "Rules and Regulations Governing the Sanitation of Child Care Centers in the State of Colorado."

B. Infant and Toddler Programs

1. A table, counter, or shelf, separate from the diaper changing area, must be available for preparing infants' and toddlers' food.

2. The program must prepare formula or food in the center's kitchen, or must have a second sink or a covered commercial container with a spigot for preparation of formula and food.

7.702.75 Toilet Facilities [Rev. eff. 2/1/16]

A. Toilet facilities for the staff and other adults must be in separate compartments or separated by a partition from children's facilities, except in centers licensed for thirty (30) or fewer children and in centers with programs of four (4) hours or less.

B. Toilet rooms for children must be separate from rooms used for other purposes and must be located on the same floor as the inside play area.

C. A minimum of one (1) lavatory and one (1) flush toilet must be provided for each 15 or fewer children. Drop-in child care centers must provide a minimum of one 1 lavatory and one 1 flush toilet for each 20 or fewer children.

D. The same toilet facilities must not be used simultaneously by school-age children of both sexes, and toilets for school-age children must be separated by partitions to provide privacy.

E. Toilet facilities are not required for children less than two (2) years of age.

F. Toilet facilities must be provided for children two (2) years of age and older.

G. Toilet rooms for children must be located within the toddler program. Drop-in child care centers need not provide a toilet in the toddler classroom if the facility is licensed for ten (10) or fewer toddlers. A diaper change table and hand washing sink is required in every toddler classroom meeting requirements at Section 7.702.53, B.

H. Each infant classroom must have one diaper changing station and hand washing sink meeting requirements at Section 7.702.53, B.

I. One designated diaper change area is required for every twenty-four (24) preschool age children.

7.702.76 Office Facilities [Rev. eff. 2/1/16]

A. Office space separate from areas used by children, other than for isolation purposes, must be provided for staff to perform administrative duties.

B. The office must have sufficient space for maintenance and safe storage of children's and staff records and the center's business records.

7.702.8 FIRE AND OTHER SAFETY REQUIREMENTS [Rev. eff. 2/1/16]

7.702.81 General Requirements [Rev. eff. 2/1/16]

A. Buildings must be kept in good repair and maintained in a safe condition.

B. Major cleaning is prohibited in rooms occupied by children.

C. Volatile substances such as gasoline, kerosene, fuel oil, and oil- based paints, firearms, explosives, and other hazardous items must not be stored in any area of the building used for child care. Plastic bags and sharp tools and instruments must be stored in areas inaccessible to children.

D. Combustibles such as cleaning rags, mops, and cleaning compounds must be stored in well-ventilated areas, separated from flammable materials, and stored in areas inaccessible to children.

E. All heating units, gas or electric, must be installed and maintained with safety devices to prevent fire, explosions, and other hazards. No open-flame gas or oil stoves, unscreened fireplaces, hot plates, or unvented heaters can be used for heating purposes. All heating elements, including hot water pipes, must be insulated or installed in such a way that children cannot come in contact with them.

F. Nothing flammable or combustible can be stored within three (3) feet of a furnace or hot water heater.

G. In rooms used by children, all electrical outlets that are accessible to children must have protective covers, or safety outlets must be installed.

H. Except in part-day preschools, permanently located battery-powered lights must be provided in locations readily accessible to staff in the event of electric power failure. Batteries must be checked regularly.

I. Closets, attics, basements, cellars, furnace rooms, and exit routes must be kept free from accumulation of extraneous materials such as discarded furniture, furnishings, newspapers, and magazines.

J. Children less than two (2) years of age must be excluded from the kitchen. When children age two (2) and older prepare food at the center, they may use only equipment and appliances that do not present a safety hazard. Staff-child ratios must be maintained.

K. First Aid supplies must be maintained and made accessible to staff throughout the center and stored in areas inaccessible to children.

L. All outdoor areas available to children's activities must be maintained in a safe condition by removal of debris, dilapidated structures, and broken or worn play equipment. The center must identify hazardous, high-risk areas. These areas must be made inaccessible to children.

M. Playground surfaces must be checked on a daily basis for the presence of dangerous or other foreign materials. Playground equipment must be checked for safety on a monthly basis.

N. Window blind cords must be secured out of children's reach to prevent strangulation.

O. Items labeled “keep out of reach of children” must be inaccessible to children.

P. Staples must be inaccessible to children less than three (3) years of age.

Q. Thumb tacks must not be used in areas accessible to children less than three (3) years of age.

7.702.82 Fire Safety [Rev. eff. 2/1/16]

A. Every building and structure must have sufficient exits to permit the prompt escape of occupants in case of fire or other emergency. Additional safeguards must be provided for life safety in case any single safeguard is ineffective due to some human or mechanical failure.

B. Every building or structure must be constructed, arranged, equipped, maintained, and operated as to avoid undue danger to the lives and safety of its occupants from fire, smoke, fumes, or resulting panic during the period of time reasonably necessary for escape from the building or structure in case of fire or other emergency.

C. In every building or structure, exits must be arranged and maintained so as to provide free and unobstructed egress from all parts of the building or structure at all times when it is occupied. No lock or fastening to prevent free escape from the inside of any building can be installed. Only panic hardware or single-action hardware is permitted on a door or on a pair of doors. All door hardware must be within the reach of children.

D. No child of less than first grade school level can be cared for in areas above or below the main floor of exit unless allowed by the Uniform Building Code and approved by the local fire department.

E. One exit from each room must be directly to the exterior of the building or to a common hallway leading to the exterior. The exit path must not go through another classroom to get to the hallway.

F. Each center must have at least two (2) approved, alternate means of egress from each floor of the building or to a common hallway leading to the exterior. They must be at different locations.

G. All stairways, interior and exterior, that are used by children must be provided with handrails within reach of the children.

H. If the center has a security lock on outside exit doors, the center must obtain written permission from the local fire department; and there must be a written sign attached to the door instructing center staff that the security lock is not to be utilized when children are present at the center.

I. Every exit must be clearly visible, or the route to reach it must be conspicuously indicated. Each path of escape must be clearly marked.

J. Every building and structure must have an automatic or department- approved manually operated fire alarm system to warn occupants of the existence of fire or to facilitate the orderly conduct of fire exit drills.

7.702.90 RECORDS AND REPORTS [Rev. eff. 2/1/16]

7.702.91 Children's Records [Rev. eff. 2/1/16]

The center must maintain and update annually a record on each child that includes:

A. The child's full name, birth date, current address, and date of enrollment.

B. Names and home and employment addresses and telephone numbers of parents or guardians.

C. Any special instructions as to how the parents or guardians can be reached during the hours the child is at the center.

D. Names, addresses, and telephone numbers of persons authorized to take the child from the center.

E. Names, addresses, and telephone numbers of persons who can assume responsibility for the child in the event of an emergency if parents or guardians cannot be reached immediately.

F. Name, address, and telephone number of the child's physician, dentist, and hospital of choice.

G. Health information, including medical report, chronic medical problems, and immunization history.

H. A dated written authorization for emergency medical care signed and updated annually by the parent or guardian. The authorization must be notarized if required by the local hospital, clinic, or emergency health care facility.

I. Written authorization from a parent or guardian for the child to participate in field trips or excursions, whether walking or riding.

J. Injury and illness record.

K. Reports of serious injuries and accidents occurring during care that result in the hospitalization or death of a child.

L. Significant observations of the child’s development.

M. A record of parent conferences, including dates of conferences and names of center staff and parents or guardians involved.

7.702.92 Staff Records [Rev. eff. 2/1/16]

A. The center office must maintain a record for each staff member that includes the following:

1. Name, address, telephone number, and birth date of the individual;

2. Verification of education, work experience, employment, training, and completion of first aid and CPR courses;

3. Immunization record and health examination reports;

4. Date of employment;

5. Names, addresses, and telephone numbers of persons to be notified in the event of an emergency; and,

6. Information received from the State Department's automated system and the Colorado Bureau of Investigation (may be retained in a confidential file).

B. Each staff member's personnel file must contain all required information within thirty (30) business days of the first day of employment.

7.702.93 Administrative Records and Reports [Rev. eff. 2/1/16]

A. The following records must be on file at the center:

1. Records of enrollment, daily attendance for each child, and daily record of the time the child arrives at and departs from the center;

2. Current health department inspection report issued within the past twenty-four (24) months;

3. Current fire department inspection report issued within the past twenty-four (24) months;

4. A list of current staff members, substitutes, and staffing patterns;

5. Copies of menus; and

6. A record of visitors to the center.

B. Each center must immediately report in writing to the Colorado Department of Human Services any accident or illness occurring at the center that resulted in medical treatment by a physician or other health care professional, hospitalization, or death. This report must be made within 48 hours after the accident or illness occurred.

C. A report about a fatality must include:

1. The child's name, birth date, address, and telephone number;

2. The names of the child's parents or guardians and their address and telephone number if different from that of the child;

3. Date of the fatality;

4. Brief description of the incident or illness leading to the fatality;

5. Names and addresses of witnesses or persons who were with the child at the time of death; and,

6. Name and address of police department or authority to whom the report was made.

D. Within forty-eight (48) hours of the incident, the center must submit a written report to the State Department about any child who has been lost from the center and for whom the local authorities have been contacted. Such report must indicate:

1. The name, birth date, address, and telephone number of the child;

2. The names of the parents or guardians and their address and telephone number if different from those of the child;

3. The date when the child was lost;

4. The location, time, and circumstances when the child was last seen;

5. Actions taken to locate the child; and,

6. The name of the staff person supervising the child.

E. The center must report to the Colorado Department of Public Health and Environment or its local

unit any communicable illness, including but not limited to measles, mumps, diphtheria, rubella, tuberculosis, shigella, hepatitis, meningitis, salmonella, or giardia, contracted by a staff member or a child at the center.

7.702.94 Confidentiality and Retention [Rev. eff. 2/1/16]

A. The confidentiality of all personnel and children's records must be maintained. See Section 7.701.7 in the General Rules for Child Care Facilities.

B. Personnel and children's records must be available, upon request, to authorized personnel of the State Department.

C. If records for organizations having more than one center are kept in a central file, duplicate identifying and emergency information for both staff and children must also be kept on file at the center attended by the child and where the staff member is assigned.

D. The records of children and personnel must be maintained by the center for at least three (3) years.

E. Posting of any personal information or photos of children on social media or advertisement without written parental consent is prohibited.

F. Records of enrollment, daily attendance for each child and daily records of the time the child arrives at and departs from the center for the past twelve (12) months must be on file at the center. The previous two (2) years must be on file at either the center or a central location or storage.

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Tracking number: 2016-00262

Opinion of the Attorney General rendered in connection with the rules adopted by the

Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

on 08/05/2016

12 CCR 2509-8

CHILD CARE FACILITY LICENSING

The above-referenced rules were submitted to this office on 08/09/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

August 24, 2016 12:06:56

Permanent Rules Adopted

Department

Department of Human Services

Agency

Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-8

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12 CCR 2509-8 CHILD CARE FACILITY LICENSING 1 - eff 10/01/2016

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10/01/2016

12 CCR 2509-8

7.707 RULES REGULATING FAMILY CHILD CARE HOMES [Rev. eff. 1/1/10]

All family child care homes must comply with the “General Rules for Child Care Facilities”, “Rules Regulating Special Activities”, and the “Rules Regulating Family Child Care Homes.”

7.707.1 (None) [Rev. eff. 6/1/12]

7.707.2 DEFINITIONS AND TYPES OF FAMILY CHILD CARE HOMES [Rev. eff. 1/1/10]

7.707.21 Definitions [Rev. eff. 1/1/10]

“AAP” means the American Academy of Pediatrics.

“ASTM” means the American Society for Testing and Materials. ASTM is an organization that coordinates the development of voluntary industry standards that supplement mandatory standards such as information to the public on Standard Consumer Safety Specification on Toy Safety (ASTM F-963) and other voluntary standards that cover specific children’s products.

“Accessible” means children being able to obtain equipment and materials without adult aid, may be age/development specific.

“Adverse or negative licensing action” means a final agency action resulting in the denial of an application, the imposition of fines, or the suspension or revocation of a license or the demotion of such a license to a probationary license.

“Age of child(ren) in child care” means any child(ren) that will count towards provider’s license capacity, is between the age of birth to eighteen years of age, is in care for supervision in the parent(s) absence for a part or the whole of any day, and is not the provider’s own child(ren).

“Age of provider’s own child(ren) that counts towards license capacity” means any birth, adopted, step or foster child(ren) of a provider whose age ranges from birth to twelve years of age.

“Aide or staff aide” means an individual who assists the provider or substitute provider in the care of children at a family child care home. An aide or staff aide must never be allowed to supervise a child(ren) alone. The provider or substitute provider must always be present at all times when the aide or staff aide is providing care for a child(ren).

“Approved sleeping equipment” means equipment that is appropriate for the age of the child, is intended for sleep or rest, and allows the child freedom of movement in a safe and sanitary manner.

“Available” means materials or equipment that is not immediately accessible to children, but which may be introduced with adult aid.

“Blocked telephone” means a telephone that will not accept telephone calls when caller ID says “unavailable”. This does not include telephones that require the caller to enter a ten digit telephone number from the telephone that is being called from or require the provider to have their name listed in a telephone directory.

“Choking hazard” means an item that presents the possibility of restriction or elimination of airflow into the lungs.

“CPR training” means cardiopulmonary resuscitation for adult, infant, and child.

“Clean” means to be free of visible dirt and debris or to remove dirt and debris by vacuuming or scrubbing and washing with soap and water.

“Complaint severity level” means the level of seriousness (zero to five) the State Department assigns to a complaint reported against a family child care home based on the severity of the allegation(s). The severity level assigned determines the timeframe in which the allegation(s) must be investigated by the licensing specialist.

“Compromise” means to expose to possible loss or danger.

“Culturally sensitive” means to encourage, share and explore the differences and similarities of heritage and culture, and its effect on learning, values, and behavior.

“Custodial or control speech” means using speech to direct or influence authority over a child(ren) by the use of directive speech to change a behavior.

“Danger” means exposure to harm or injury.

“Decorative pond” means an artificially confined body of water which is usually smaller than a lake. The pond can be decorated with large and small rocks, water lilies, pond plants, tadpole, fish, and have features such as lights, waterfalls and fast moving water.

“Derogatory” means to belittle, diminish, and express criticism or a low opinion of.

“Developmentally appropriate” means to provide an environment where learning experiences are meaningful, relevant, and are based upon a child’s individually identified strengths and weaknesses, interests, cultural background, family history and structure.

“Director” means an individual that has been evaluated and received a written letter that verifies that he/she meets the Colorado State Director qualification requirements for a large child care center.

“Discipline” means to punish in order to bring a child’s behavior under control.

“Disinfect” means to eliminate germs from inanimate surfaces through the use of chemicals (e.g., products registered with the U.S. Environmental Protection Agency as “disinfectant”) or a solution of household liquid chlorine bleach and water.

“Early Childhood Mental Health Consultant” (ECMHC) means a consultant who provides culturally sensitive and primarily indirect services for children, birth through six years of age in group care and early education settings.

“Early Childhood Mental Health Consultation services” means the provision of services that promote social and emotional development in children and transform children’s challenging behaviors. This includes capacity building for providers and family members; directly observing and interacting with children and the care giving environment; and, designing and modeling interventions that involve changes in the behaviors of family members and caregivers. It also includes collaboration with providers, employees, volunteers, and family members and caregivers who intervene directly with children in group care, early education and/or home settings.

“EQ I/T” means the Department approved Expanding Quality Infant/Toddler training for child care providers.

“Emergency” means a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action.

“Emergency or urgent situation” means a personal or family situation that is critical in nature, which requires the provider to take immediate action; and leave the home to handle the emergency situation.

“Employee” means paid or unpaid individual that cares for or assists with the care of children.

“Equally qualified” means that the employee or substitute provider has the same required training and qualifications as the primary provider as specified in the Rules Regulating Family Child Care Homes.

“Extreme weather” means weather conditions that require unusual or immediate action to reduce exposure to harm or injury.

“Fall zone” means the distance that a child can fall from elevated equipment based upon the child’s age and size.

“First Aid training” means training in which a person reacts to injuries and performs simple emergency medical care procedures before emergency medical professionals are available as necessary.

“Flexibility” means the provider has the ready capability to adapt to new, different, or changing requirements of parent(s) or guardian(s) for child care.

“Frequently” means to occur often; many times and at short intervals.

“Gentle physical holding” means to carefully hold a child with the arms, without force.

“Guidance” means a way of teaching that empowers children to make decisions that are ethical, intelligent, and socially responsible.

“Guidance approach” means the use of guidance, distinct from discipline, to reduce the need for and resolve the occurrence of mistaken behavior in ways that are non-punitive.

“Harsh treatment” means treatment that is ungentle and unpleasant in action or effect; unpleasantly severe; stern; or cruel.

“HealthCare Plan” means the document contains written instructions about a specific health condition including the when and how specific interventions are to be carried out in a school or child care setting. This document should be signed by the child’s health care provider and parent. Health Care Plans can be collaboratively created by the child care health consultant, the child’s parents, health care provider and center staff, and are necessary for the care of children with chronic health care conditions such as asthma, seizure disorder, diabetes, or severe allergy. Health Care Plans may also guide the care of children with acute conditions that may need short-term special management in the group care setting such as child returning to care with a cast, or after a surgical intervention.

“Health care professional” means an organization or person who delivers proper health care in a systematic way professionally to any individual in need of health care services.

“Health care provider’s scope of practice” means the boundaries and rules within which a fully qualified medical practitioner, with substantial and appropriate training, knowledge, and experience, may practice in a field of medicine or other specifically defined field. Such practice is governed by requirements for professional accountability.

“Home remedy” means a non-medical treatment to attempt to cure or treat an ailment with common household items or foods.

“If applicable” means if the rule should be applied depending on the circumstances of the situation.

“Immediately” means without delay or hesitation, without any interval of time.

“Interactive learning” means a method of learning through hands on activities that help a child gain knowledge and skills by connecting with information and experiences provided by the provider.

“Intoxicated” means that a person is under the influence of drugs or alcohol to the point that his/her actions and/or behavior presents an immediate danger to her/himself or others.

“Language development materials” means materials that focus on the development of listening and speaking skills, and contains experiences which familiarize children with pre-reading and pre-writing activities.

“Lead poisoning” means poisoning by a toxic metal that is found in and around homes, in lead-based paint, chipping paint, or lead dust from deteriorated paint. Lead may cause a range of health effects, from behavior problems and learning disabilities, to seizures and death.

“Legal signature” means the parent’s full signature that includes both the first and last name.

“Lockdown drill” means a drill in which the occupants of a building are restricted to the interior of the building and the building is secured.

“Lost child” means the provider is unable to find the child. The child is no longer in the care or supervision of the provider.

“Mental Health Practitioner” means a mental health professional who offers services for the purpose of improving an individual's mental health or to treat mental illness.

“Nationally recognized” means to be known in the majority of businesses or residential areas of the United States and that may meet local or national accreditation standards.

“Offered” means materials, equipment or activities, including meals, which are presented as options to children but are not required or forced, to be utilized or engaged.

“On occasion” means from time to time, a special event or ceremony, or irregularly.

“Organic materials” means materials relating to, or derived from living organisms.

“Pattern” means repeating an activity at regular intervals.

“Pedodontist” means a pediatric dentist, specializing in children from birth to four years of age.

“Periodically” means an ongoing event or activity that occurs without an established pattern.

“Permanent climbing equipment” means climbing equipment installed that is stable, cannot be overturned or displaced, and cannot be moved or relocated to another area without assistance.

“Physical restraint” means the use of bodily, physical force to involuntarily limit an individual’s freedom of movement; except that physical restraint does not include the holding of a child by one adult for the purposes of calming or comforting the child.

“Place of residence” means the place or abode where a person actually lives and provides child care on a regular, ongoing basis.

“Potential threat” means the possible exposure to harm or injury.

“Prescriptive authority” means the legal right of a medical person to prescribe medications under Colorado law.

“Protective equipment” means the use of protective head, knee, elbow and ankle equipment to protect a child riding on a scooter, bicycle, skateboard or rollerblades.

“Protective surfacing” means an approved material that is used beneath climbing equipment and is designed to protect a child who falls from the highest designated play surface on a piece of equipment to the protective surfacing below.

“Provider” means the person that resides in the home and provides direct care, supervision and education to child(ren) in care at least 60% of the daily hours of operation of the family child care home.

“Psittacine birds”, means all birds commonly known as parrots, cockatoos, cockatiels, macaws, parakeets, lovebirds, lories or lorikeets, and other birds of the order psittaciforme, may also be called hookbills because the upper beak is turned downward.

“Punished” means to impose a penalty on a person. The causes for punishment may be for a fault, offense or violation.

“Regionally accredited” means colleges and universities which earn regional accreditation status by meeting acceptable levels of quality and performance. The accrediting bodies for higher education are Middle States Association of Colleges and Schools, Northwest Association of Colleges and Schools, North Central Association of College and Schools, New England Association of Colleges and Schools, Southern Association of Colleges and Schools, and Western Association of Colleges and Schools.

“Regular basis” means occurring with normal frequency or routine schedule.

“Relative” means any of the following direct relationships by blood to the first degree, marriage, or adoption: parent, grandparent, son, daughter, grandson, granddaughter, brother, sister, stepparent, stepbrother, stepsister, stepson, stepdaughter, uncle, aunt, niece, nephew or first cousin.

“Reside” means to be in a residence, to dwell permanently or continuously, to occupy a place as one’s legal domicile.

“Restraint” means any method or device used to involuntarily limit freedom of movement including, but not limited to, bodily physical force, mechanical devices, or chemicals.

“Reverse evacuation drill” means a drill in which persons seek shelter and safety inside a building when said persons are outside the building and are faced with a threat, such as an armed individual or a dangerous animal.

“Routine medications” means any prescribed oral, topical, or inhaled medication, or unit dose epinephrine, that is administered pursuant to Section 26-6-119, C.R.S.

“Safe” means free of hazards posing danger of injury including, but not limited to, “keep out of reach” items, protrusions, broken items, areas of entrapment, strangulation or choking hazards, insufficient cushioning, poisonous chemicals, etc.

“Sanitized or sanitary” means to remove filth or soil and some small bacteria. For an inanimate surface to be considered sanitary the surface must be clean and the number of germs must be reduced to such a level that disease transmission by that surface is unlikely. This procedure is less rigorous than disinfection and is applicable to a wide variety of routine housekeeping procedures.

“Satisfactory experience” means the adequate practical knowledge, skill or practice necessary.

“Serious” means an injury or illness of an urgent nature needing immediate emergency attention.

“Serving” means an amount of food or beverage that is appropriate to meet a child’s nutritional and developmental needs.

“Severe weather drill” means a drill in which occupants of a building seek shelter appropriate to the severe weather threat, such as a blizzard, electrical storm, flood or tornado.

“Shelter-in-place drill” means a drill in which the occupants of a building seek shelter in the building from an external threat.

“Social-emotional development” means the development of self-awareness and self-regulation as reflected in the desire and growing ability to connect with others and the ability to experience, express and regulate a full range of emotions, to pay attention, make transitions from one activity to another, and cooperate in the context of relationships with others.

“Soft bedding” means, but is not limited to, any soft sleep surface like a water bed, sofa, pillows, bumper pads, soft materials like fluffy blankets, thick blankets and/or comforters, sheep skins, plush toys, and stuffed animals.

“Special need” means a child may have mild learning disabilities or profound developmental disabilities of mental functioning and/or bodily movement; food allergies or terminal illness; developmental delays that catch up quickly or remain entrenched; occasional panic attacks or serious psychiatric problems.

“Substitute provider” means a paid, volunteer or contract individual responsible for caring for the children in the capacity of the provider during the provider’s absence.

“Sweet foods” means a sweet bread or grain product that is high in fat and /or sugar.

“Under the influence” means that a person is under the influence of drugs or alcohol to the point that his/her actions and/or behavior present an immediate danger to her/himself or others.

“Universal precautions” means safe work practices to prevent exposure to blood and bodily fluids.

“Urgent” means an unforeseen combination of circumstances that requires immediate attention.

“USDA” means the United States Department of Agriculture.

“Varying” means to be at different times or different days; to give variety to activities; to bear no resemblance to a prior activity.

“Verbal abuse” means abusive behavior involving the use of language that is demeaning and is intended to insult, manipulate, ridicule, or offend. Harmful acts and the use of harsh or coarse language often characterize it.

“Volunteer” means a person who performs a service willingly and without pay.

“Written medication order” means a document for a specific medication for a specific child signed by the child’s health care provider. This must be a person with prescriptive authority. The order shall include the child’s name, medication, dose, time, route, and for how long the medicine is to be given. Orders for children over two years of age can only be valid for a period of up to one year, but may only be for a very brief duration of time as well. Children over two may need written medication orders more frequently since the dosage of the medication will change with the child’s weight. Written orders may also include information on the reason the medication is being given, potential side effects and any special instructions for administration.

7.707.22 Types of Family Child Care Homes [Rev. eff. 6/1/12]

All Family Child Care Home licenses, except infant/toddler, are issued with an age range for children from birth to eighteen (18) years of age. This allows for the care of older children with special needs. Each individual provider will determine the age range of children that he/she will enroll in the provider's child care home. The providers own birth, adopted, step or foster children twelve (12) years of age and older do not count in the provider's license capacity.

The capacity for a Family Child Care Home (generally referred to within these rules as "the home") is determined by the amount of indoor and outdoor space designated for child care, as well as the following factors.

A. A "Family Child Care Home" (FCCH) is a type of family care home that provides less than twenty-four (24) hour care at any time for two (2) or more children that are unrelated to each other or the provider, and are cared for in the provider's place of residence.

1. Licensed family child care homes enrolling children five (5) years of age or younger are required to participate in Colorado Shines, the state quality rating and improvement system.

B. In a regular (FCCH) home, care may be provided for six (6) children from birth to eighteen (18) years of age with no more than two (2) children under two (2) years of age.

1. Care also may be provided for no more than two (2) additional children of school age attending full-day school. School-age children include children six (6) years of age and older who are enrolled in the first grade or above. A child enrolled in a kindergarten program is not considered a school-age child until the child begins attending kindergarten a year before they enter first grade.

2. Residents of the home under twelve (12) years of age who are on the premises and all children on the premises for supervision are counted against the approved capacity, except where specifically indicated otherwise. Residents of the home include, but are not limited to, birth, adopted, step or foster children of the provider.

C. A three (3) under two (2) license is a type of license that allows a provider to care for six (6) children from birth to eighteen (18) years of age with no more than three (3) children under two (2) years of age, with no more than two (2) of the three (3) children under twelve (12) months; the capacity includes the provider's own children under twelve (12) years of age. This license type may be approved with the following conditions:

1. The licensee has held a permanent license to operate a family child care home for at least two (2) years in Colorado immediately prior to the issuance of the license that would authorize the care of three (3) children under two (2) years of age;

2. The licensee has completed the State Department approved Expanding Quality Infant/Toddler course of training;

3. In the past two years, the licensee has had no substantiated complaints with a severity level of one (1) to three (3), consistent or willful substantiated rule violations of ratio, supervision, safety, or injury to a child observed during any licensing visit, or adverse licensing action;

4. Care of additional children of school age is not authorized;

5. Licensees issued a three (3) children under two (2) years of age license are approved for both the three (3) under two (2) and the regular license capacities and may switch between the two (2) capacities without notifying the State Department as long as they are in compliance with all licensing rules.

D. An infant/toddler license is a type of family care home that provides less than twenty-four (24) hour care only for children who are between birth and three (3) years old. This license type may be approved with the following conditions:

1. If there is one (1) provider, there may be a maximum of four (4) children, with no more than two (2) of the four (4) children under twelve (12) months of age, including the provider's own children. The provider's own children, under the age of twelve (12), count in the capacity of four (4).

2. If there are two (2) equally qualified providers, as specified in Section 7.707.31, B, 3, caring for children at all times when children are present, there may be a maximum of eight (8) children between birth and three (3) years old, and no more than four (4) of those children can be between birth and one (1) year old, including both providers' own children.

3. The provider has completed the State Department approved Expanding Quality Infant/Toddler (EQ I/T) course of training; and

4. A provider that has also been licensed as a regular and three (3) under two (2) provider in the past, and is approved for an infant/toddler license, has the flexibility to provide care on any given day for the ages and capacities of a regular or three under two license without written approval of the State Department, as long as the provider is in compliance with all applicable rules at all times.

E. A large child care home is a family child care home that provides care for seven (7) to twelve (12) children.

1. Child care may be provided to children from birth to eighteen (18) years of age. The provider needs an assistant when the ninth child arrives at the facility.

2. Care may be provided to no more than two (2) children under two (2) years of age.

F. The Experienced Child Care Provider

1. An Experienced Child Care Provider (ECCP) home is a licensed child care home where care is approved for no more than nine (9) children of different age combinations depending upon which option the home is operating.

2. The requirements for an Experienced Child Care Provider are:

a. Have been a licensed family child care home provider in Colorado for at least the last six (6) consecutive years; equal experience operating as a licensed military family child care home is acceptable;

b. Have completed ninety (90) clock hours of training within the preceding six (6) years, including the State Department approved infant/toddler course. The ninety (90) hours of training does not include licensing training universal precautions, First Aid and CPR, and medication administration training;

c. Have had no adverse licensing action;

d. Have had no adverse action taken against the provider's license in the preceding two (2) years; and,

e. Comply with local zoning restrictions.

3. Applying for the Experienced Provider License

At least sixty (60) calendar days prior to the proposed date of operation as an experienced provider, the applicant must submit to the State Department a completed and signed experienced provider application form, which:

a. Affirms compliance with all the rules for family child care home providers and experienced providers;

b. Affirms that the 90 clock hours of training have been completed;

c. Includes an agreement to waive the right to appeal rules related to capacity and space requirements; and,

d. Affirms the provider understands that the experienced provider's license will immediately revert to a regular license if capacities are exceeded at any time.

4. ECCP Options Table

The following chart describes the various options available to the experienced family child care home. Providers may change options without notifying the State Department, as long as the home is in compliance with one option at any one time and all licensing rules.

Experienced Child Care Provider License

All options include provider's own children under twelve (12) years of age.

Number of Children	Total Children in Care at a Given Time	Birth Up to School-Age	Additional School-Age	Number of Children Under 2 Allowed	(Of Those Under 2) Number Under 12 Months Allowed
Option 1	9	7	2	2	2
Option 2	9	8	1	2	2
Option 3	9	5	4	2	2
Option 4	9	6	3	3	2
Option 5	4	4	0	4	2

7.707.3 PERSONNEL [Rev. eff. 1/1/10]

All infant/toddler family child care homes and large family child care homes must meet all of the personnel requirements in Section 7.707.31, except where rules specific to infant/toddler homes and large family homes replace other rules.

7.707.31 Requirements for Personnel [Rev. eff. 6/1/12]

A. General Requirements

1. Primary providers must physically reside at the family child care home and must provide the child care.

2. Primary providers and/or substitutes must be at least eighteen (18) years of age. Aides must be at least sixteen (16) years of age. Aides and volunteers shall work under the direct supervision of a primary provider at all times.

3. Providers, employees, substitutes, and volunteers must demonstrate an interest in and knowledge of children and a concern for their proper care and well-being.

4. Children for whom the provider has custody and responsibility must not have been placed in foster care or residential care because the provider or other resident of the home was abusive, neglectful, or a danger to the health, safety, or well-being of those children.

5. Providers must not be under the influence of any substance that impairs their ability to care for children.

6. The primary provider is responsible for ensuring that all employees, substitutes and volunteers are familiar with the children in care, the Rules Regulating Family Child Care Homes rules, the home's policies, and the location of children's files and emergency numbers.

7. The primary provider must plan for the selection, orientation, training and/or staff development of any employee, volunteer, or substitute.

8. The primary provider must plan for and supervise the care and activities of children.

9. All providers and all persons residing in the home must submit to the State Department at time of original application on the form required by the State Department, a health evaluation signed and dated by a licensed physician or other health professional.

10. Subsequent health evaluations for the provider and children residing in the home who are less than twelve (12) years of age must be submitted every two (2) years or as required in a written plan signed by a physician or other health professional. A new family member and/or a new resident of the home must submit to the State Department, within thirty (30) days from the date the individual began living in the home, a State Department approved health evaluation form signed and dated by a licensed physician or other health professional.

11. If, in the opinion of a physician or mental health practitioner, a physical, medical (including side effects of medication), emotional, or psychological condition exists at any time that may jeopardize the health of children or adversely affect the ability of a provider to care for children, an equally qualified substitute provider must be employed, or child care services must cease until the physician or mental health practitioner states in writing that the health risk has been eliminated.

B. Infant/Toddler Home Provider Requirements

1. For an infant/toddler home with one (1) provider, that provider must be at least twenty-one (21) years of age.

2. For an infant/toddler home with two (2) providers, one (1) provider must be at least twenty-one (21) years of age and the second equally qualified provider must be at least eighteen (18) years of age.

3. Each provider must have completed one (1) year of supervised experience caring for children who are younger than three (3) years old. The provider must be able to submit to the State Department official written verification of the required experience. The experience may have been obtained as:

   a. A Colorado licensed family child care home;

   b. A military licensed child care home;

   c. A provider, in a family foster home certified for children younger than three (3) years of age; or,

   d. An employee in a licensed child care center in an infant and/or toddler program.

C. Large Home Provider Requirements

1. The licensee must be at least eighteen (18) years of age, the primary provider, and must reside in the large child care home.

2. The primary provider at a large child care home must meet one of the following:

   a. A minimum of two (2) years of documented satisfactory experience in the group care of children under the age of six (6) years or as a licensed home provider in Colorado. Equal experience operating as an approved military child care home is accepted; or,

   b. A minimum of two (2) years of college education from a regionally accredited college or university, with at least one (1) college course in early childhood education, plus one (1) year of documented satisfactory experience in the group care of children as:

      1) A licensed home provider in Colorado,

      2) A military licensed child care home;

      3) A Colorado certified family foster home; or,

      4) A staff member in a licensed child care center.

   c. Current certification as a Child Development Associate (CDA); or,

   d. Completion prior to licensing of the State Department approved Expanding Quality Infant/Toddler course; and,

      1) A minimum of two (2) years of experience as a licensed child care provider holding a permanent license in Colorado immediately before becoming a licensee of a large child care home; or,

      2) A minimum of two (2) years of full-time experience in a licensed program. The group care shall have been with children who are under the age of six (6) years.

3. If the provider was previously licensed to operate a family child care home, there must have been no:

a. In the past two years, the licensee has had no substantiated complaints with a severity level of one (1) to three (3), consistent or willful substantiated rule violations of ratio, supervision, safety, or injury to a child observed during any licensing visit, or adverse licensing action; and,

b. Adverse action on the license within the last two (2) years; and

c. Substantiated specific rule violations of ratios, supervision, safety, or injury to a child observed during any licensing visit in the past two (2) years.

4. Staff aides must be at least sixteen (16) years of age and must work directly under the supervision of the primary provider in charge and responsible for the care of the children. If left alone with children, the staff aide or assistant provider must meet all same age and training requirements as the provider.

7.707.32 Training [Rev. eff. 6/1/12]

A. Prior to issuance of the license, the licensee and primary provider must complete:

1. A State Department approved fifteen (15) clock hour pre-licensing course of training that includes nine (9) core knowledge standards. The content of one of the standards must specifically address appropriate guidance with children and that corporal discipline is never allowed. The clock hours of pre-licensing training do not include certification in First Aid, CPR, and medication administration training;

2. A monitored written test or approved alternate method to verify knowledge and comprehension of the content of the training materials must be administered by the trainer to the trainee at the end of the pre-licensing training course. The trainee must have a passing score of no less than 80%. Part of approval of pre-licensing is that the provider must be able to access and understand the Rules Regulating Family Child Care Homes. The provider must take pre-licensing training for any original application except for change of address; or,

3. Individuals who are currently director qualified or have a two (2) or four (4) year degree in early childhood education from a regionally accredited college or university are exempt from pre-licensing training, except for the one and one-half (1½) hours of universal precautions training, and the section of the pre-licensing training that covers the business requirements for operation of a home; and,

4. A state department approved training in standard precautions that meets current occupational safety and health administration (OSHA) requirements prior to working with children. This training must be renewed annually and may be counted towards ongoing training requirements. This standard precautions training can be included as part of the pre-licensing training, in which case the total number of hours for pre-licensing training required in 7.707.a1 is increased to sixteen (16) clock hours, and standard precautions training may count as no more than one (1) hour of the sixteen (16) clock hours; and,

5. Documentation of this training must include the number of hours of training, completion date, and expiration date. Renewal of standard precautions training can be taken as a part of the first aid training, but must be in addition to the renewal First Aid training;

6. First Aid and CPR training, for all ages of children from infant to twenty-one (21) years of age; and,

7. The State Department approved course of training for medication administration.

8. Effective December 31, 2016 all providers and staff must complete a building and physical premises training prior to working with children. The training must include:

a. Identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and

b. Handling and storage of hazardous materials and the appropriate disposal of bio contaminants.

9. Effective December 31, 2016 each provider or staff member responsible for the collection, review, and maintenance of the child immunization records must complete the Colorado department of public health and environment (CDPHE) immunization course within thirty (30) calendar days of employment. This training must be renewed annually and may count towards ongoing training requirements.

10. Effective December 31, 2016 each provider, staff member or regular volunteer working with children less than three (3) years of age must complete a department approved prevention of shaken baby/abusive head trauma training prior to working with children less than three (3) years of age. This training must be renewed annually and may count towards ongoing training requirements.

11. Effective 12/31/2016 each provider, staff member or regular volunteer must complete a department approved training about child abuse prevention, including common symptoms and signs of child abuse within thirty (30) calendar days of employment. This training must be renewed annually and may count towards ongoing training requirements.

B. Licensees requesting continuation of a permanent license shall:

1. Complete fifteen (15) clock hours of training each year. At least three (3) of the fifteen (15) clock hours must be in social emotional development; and,

2. Ongoing training and courses shall demonstrate a direct connection to one or more of the following competency areas:

a. Child growth and development and learning courses that align with the competency domains of child growth and development;

b. Child observation and assessment;

c. Family and community partnership;

d. Guidance;

e. Health, safety, and nutrition;

f. Professional development and leadership;

g. Program planning and development; and

h. Teaching practices:

1. Each one (1) semester hour course with a direct connection to the competency area listed in section 7.707.33, b, 2, a-g, taken at a regionally accredited college or university shall count as fifteen (15) clock hours of ongoing training.

2. Training hours completed can only be counted during the year taken and cannot be carried over.

~~4~~3. The fifteen (15) clock hours of training do not include recertification in First Aid and CPR.

~~5~~4. To be counted for ongoing training, a provider must receive for each training, a training certificate that includes:

a. The title of the training; and,

b. The competency area; and,

c. The clock hours of the training; and,

d. The name and signature of the trainer or another approved method of verifying the name and qualifications of the trainer.

~~6~~5. The trainer must have documentation of the qualifications for each topic of training conducted, which must be available for review by representatives of the State Department.

7.707.33 Substitutes [Rev. eff. 1/1/10]

All infant/toddler family child care homes and large family child care homes must meet all of the substitute requirements, except where rules specific to infant/toddler homes and large family homes replace other rules.

7.707.331 General Substitute Information [Rev. eff. 1/1/10]

A. The provider must have a plan for an urgent, emergency, personal or family situation that requires the provider to leave the family child care home immediately.

B. Any substitute must be at least eighteen (18) years old and capable of providing care and supervision of children, and handling emergencies in the absence of the provider.

C. Prior to caring for children, any substitute, except a substitute used in an urgent, emergency, personal or family situation, shall become familiar with:

1. The Rules Regulating Family Child Care Homes;

2. The home and provider's policies and procedures;

3. The names, ages and any special needs or health concerns of the children; and,

4. The location of emergency information.

D. Parents or guardians must be notified each time a substitute is used to provide supervision of all children in care in the absence of the primary provider.

E. Substitutes used in an urgent, emergency, personal or family situation must:

1. Be given the names, ages of the children, and any special needs or health concerns;

2. Immediately call each parent(s) or guardian(s) to notify them that the provider has been called away from the family child care home for a personal or family emergency; and,

3. If the substitute does not meet all the requirements for the position, must notify parent(s) or guardian(s) immediately to pick up their children.

F. In the infant/toddler family child care home, the substitute for the provider(s) must meet the same age requirements as the provider as specified in Section 7.707.31. C.

G. In the large family child care home, the substitute for the:

1. Primary provider must be equally qualified, as specified in Section 7.707.31, C, to provide care and supervision of children in the absence of the primary provider; and,

2. Staff aide must be equally qualified, as specified in Section 7.707.31, A, 2, to substitute for the staff aide when necessary.

7.707.34 Employees [Eff. 1/1/10]

A. Any employee who is eighteen (18) years of age and older must complete:

1. A fingerprint based criminal background record check as required at section 7.701.33 and,

2. The State Department mandated automated system background check for child abuse and neglect as required at Section 7.701.32.

B. Any employee who is sixteen (16) years of age to eighteen (18) years of age must only complete the State Department mandated automated system background check for child abuse and neglect.

C. Additionally, employees and substitutes for the primary provider, who provide care to children for fourteen (14) days (112 hours) or more per calendar year must complete:

1. A fingerprint based criminal background record check as required at Section 7.701.33;

2. The State Department mandated automated system required background check for child abuse and neglect as required at Section 7.701.32;

3. Verification of current certification of First Aid and CPR for all ages of children;

4. A statement of a current health evaluation, signed by an approved health care professional, that was completed within the last twenty-four (24) months;

5. Verification of current State Department approved medication administration training; and

6. Verification of current State Department approved universal precaution training.

7.707.35 Volunteers [Eff. 1/1/10]

A. Volunteers cannot be used to meet staff to child ratio.

B. Volunteers must be directly supervised by the child care provider and have clearly established written duties.

C. Volunteers must be made familiar with the Rules Regulating Family Child Care Homes and the provider’s written policies and procedures prior to assisting with the care of children.

D. Any adult volunteer eighteen (18) years of age or older who works more than fourteen (14) days (112 hours) a calendar year must complete:

1. A fingerprint based criminal background record check as required at Section 7.701.33; and,

2. The State Department required automated system background check for child abuse and neglect, as required at Section 7.701.32.

7.707.36 Employee, Volunteer, and Substitute Records [Eff. 1/1/10]

A. Personnel files for each employee, substitute, and volunteer must contain all required information within thirty (30) calendar days of the first day of employment, volunteering, or functioning as a substitute.

B. The personnel files for each employee, substitute, and volunteer shall be available for review by any representative of the State Department and must include:

1. The name, address, telephone number, and birth date of the individual;

2. Information received from the state automated systems check on child abuse;

3. Information received from the fingerprint based criminal record background check as required at Section 7.701.33 for individuals eighteen (18) years of age and older;

4. A record of the dates and hours of employment, volunteering, or functioning as a substitute, including the first date and the final date;

5. Names, addresses, and telephone numbers of persons to be notified in the event of an emergency; and,

6. A signed statement:

a. Clearly defining child abuse and neglect pursuant to state law and outlining the employee, substitute, or volunteer's personal responsibility to report all incidents of suspected child abuse or neglect according to state law; and,

b. Verifying that the employee, substitute, or volunteer has read and understands the home's policies and procedures.

7. Official written verification of training, completion and expiration dates as required for the position including:

a. Current First Aid and CPR for all ages of children;

b. Universal precautions; and,

c. Medication administration training.

8. Official written verification of education, work experience, and previous employment, as applicable for the position; and,

9. If obtained, a copy of a current Colorado Early Childhood Professional Credential.

7.707.37 Administrative Records and Reports [Rev. eff. 1/1/10]

A. The provider must report in writing to the State Department any critical incident as defined at Section 7.701.52 and any fire that occurs at the home to which a local fire department has responded.

B. The provider must immediately telephone and also submit to the State Department within twenty-four (24) hours, excluding weekends and holidays, a written report about any child who has been lost from the provider's care and whether authorities have been contacted or not. Such report must indicate:

1. The name, birth date, address, and telephone number of the child;

2. The names of the parents or guardians and their address and telephone number if different from those of the child;

3. The date, location, time, and circumstances when the child was last seen;

4. All actions taken to locate the child, including whether local authorities were notified; and,

5. The name of the provider and/or person supervising the child at the time the child was last seen.

C. The home must have a written plan and emergency response procedures that explain, at a minimum, the life saving procedures that will be followed, and how the home will function during a fire, severe weather, lockdown, reverse evacuation, or shelter-in-place emergency situation. The plan must include, but not be limited to:

1. Prompt notification of parents or guardians;

2. When local authorities will be notified; and

3. How emergency transportation will be provided.

D. The following records must be kept and maintained in the files at the home for three (3) years after termination of care or employment:

1. A daily attendance sign in/sign out sheet for each child, including the time the child arrives at and departs from the home;

2. Children's records per Section 7.707.51;

3. A list of current employees, volunteers, and substitutes work schedules;

4. Employee, substitute, and volunteer records per Section 7.707.36; and

5. A record of visitors and volunteers in the home during scheduled business hours.

E. Confidentiality and Retention

1. Information and records concerning all employees, substitutes, volunteers, children and their families must be maintained confidential and all required records must be stored in a secure location.

2. Employee and children's records must be available, upon request, to authorized representatives of the State Department.

7.707.4 POLICIES AND PROCEDURES

7.707.41 Statement of Policies [Rev. eff. 1/1/10]

A. At the time of enrollment, the provider must give the parent(s) or guardian(s) a written statement of the home's policies and procedures, and provide the opportunity to ask questions. Written copies must be available either electronically or in hard copy. The provider must obtain a signed document stating that the parent(s)/guardian(s) have received the policies and procedures and by signing the policies and procedures document, the parent(s)/guardian(s) agree to follow, accept the conditions of, and give authorization and approval for the activities described in the policies and procedures.

B. The written policies and procedures must be developed, implemented and followed, which include all updates, changes, and must include at a minimum the following information:

1. Admission and registration procedures;

2. Authorization of parents or other designees to pick up children, including the policy for how the provider will respond to individuals not authorized by parents/guardians to pick up a child and if a parent arrives under the influence of a controlled substance;

3. An itemized fee schedule or individual fee agreement; fee expectations when fees may be reimbursed, when child does not attend program; when child is requested to leave the program; and, authorization for field trips;

4. Procedure, including fees, when a child arrives or departs other than expected agreed upon care hours;

5. Parent and provider responsibilities for special activities or programs outside of the licensed facility, such as inclusion and/or exclusion of children and the payment of additional fees;

6. Hours of operation or individual hours agreement to include regularly closed days and applicable special program hours; policy on closure due to provider illness or family emergency and unscheduled closures;

7. Procedure for managing a situation where children remain after the scheduled closure of the facility and the parent, guardian or other emergency contacts cannot be reached. This may include notification of the local county department of social services or police, if necessary. In the event that the provider has not been approved for overnight care, the provider cannot keep the children in care beyond midnight;

8. Activities and snacks for children who remain at the home after closing;

9. Services offered for children with special needs in compliance with the Americans with Disabilities Act;

10. Acceptance of non-immunized children and notification if the provider’s own birth, adopted, or step children have not been immunized;

11. Substitute care, and the clarification of responsibility for obtaining back-up care;

12. How and by whom children are supplied with appropriate clothing and equipment necessary to participate in indoor and outdoor activities, including helmets, wrist

protection, and knee and elbow pads when riding a scooter, bicycle, skateboard or rollerblades;

13. Storage, loss, damage or theft of provider's or child's personal belongings;

14. Scheduled and unscheduled trips away from the family child care home; the requirement of notification of the excursion prior to the event and need for signed permission from the parent(s) or guardian(s) for the excursion and a phone number where the provider can be reached during a field trip;

15. Transportation availability, vehicle restraint requirements, and seating capacities;

16. Written authorization or denial for media use including, but not limited to, television shows, video, music, software used at the facility and time limits for all media use;

17. Meals, snacks, and parental notification of menus, and how children with food allergies are accommodated;

18. Policy on transitioning a child from either breast feeding to a bottle and/or cup, or from a bottle to a cup;

19. Behavior guidance and discipline appropriate to the age and development the child, including positive instruction, supporting positive behavior, discipline and consequences. Policies shall include how the provider will:

    A. Cultivate positive child, provider, staff (if applicable) and family relationships;

    b. Create and maintain a socially and emotionally respectful early learning and care environment;

    c. Implement strategies supporting positive behavior, pro-social peer interaction, and overall social and emotional competence in young children;

    d. Provide individualized social emotional intervention supports for children who need them, including methods for understanding child behavior; and developing, adopting and implementing a team-based positive behavior support plan with the intent to reduce challenging behavior and prevent suspensions and expulsions; and,

    e. Access an early childhood mental health consultant or other specialist as needed.

20. Rest time and equipment;

21. Diapering and toilet training, including, but not limited to, process, communication, time frames, supplies, and expectation;

22. Provision of daily outside play time;

23. Use of and how often sunscreen is applied, including authorization for use of sunscreen, and how infants are protected from sun exposure without the use of sunscreen;

24. Protection of children from exposure to second hand smoke;

25. Notification of parents or guardians for handling children's illnesses, accidents, injuries, or other emergencies;

26. Specific circumstances and symptoms for not admitting ill children and conditions for re-admittance;

27. Storing, administering, recording and disposing children's medicines in compliance with the State Department approved medication administration course;

28. Adverse weather precautions to include temperature extremes; inclement weather expectations and procedures, and fee expectations if home is closed during inclement weather and notification of how to find out;

29. Emergency response procedures that explain, at a minimum, the life saving procedure that will be followed and how the home will function during a fire, severe weather, lockdown, reverse evacuation, or shelter-in-place emergency situation;

30. Reporting of child abuse, including the name of the county department of social/human services and phone number of where a child abuse report should be made;

31. Filing a complaint about a family child care home, including the name, address and telephone number of the Colorado Department of Human Services, Division of Child Care, where a complaint may be filed;

32. Where a parent may obtain the official Rules Regulating Family Child Care Homes, including the Secretary of State's website;

33. What steps are taken prior to the suspension, expulsion or request to parents or guardians to withdraw a child from care due to concerns about the child's behavioral issues, these procedures must be consistent with the policy on guidance, positive instruction, discipline and consequences, and include documentation of the steps taken to understand and respond to challenging behavior; and

34. Regularly identifying on a routine basis recalled toys, equipment, and furnishings and developing a plan to remove the recalled items from the home.

7.707.5 ADMISSION PROCEDURE [Rev. eff. 1/1/10]

A. An admission process must be completed prior to the child's attendance at the home and must include:

1. A pre-admission interview, by telephone or in person, with the child's parent(s) or guardian(s) to determine whether the services offered by the home will meet the needs of the child and the parent(s) or guardian(s);

2. An explanation of the provider's written policies and procedures. The child's parent(s) or guardian(s) must sign a statement indicating that they have read, received, and understand the provider's current policies and procedures;

3. A plan for payment of fees;

4. Completion of the registration information and authorizations required for inclusion in the child's record.

B. At the time of admission, the provider must obtain:

1. Contact information for parents or guardians;

2. Contact information for other responsible adults;

3. Where the parent or guardian and can be reached in the event of an accident, illness or other emergency; and,

4. The telephone number of the child's health care provider;

5. Written authority to arrange for medical care in the event of an emergency; and

6. Names of individuals authorized to take the child from the home.

7.707.51 Children's Records [Rev. eff. 1/1/10]

A. An admission record must be completed for each child prior to or at the time of the child's admission and updated annually, unless otherwise specified in these rules. The admission record must include:

1. The child's full name, date of birth, current address, and date of enrollment;

2. Family member names;

3. Parent(s) and guardian(s) home and e-mail addresses; telephone numbers, including home, work, cell and pager numbers, if the parent chooses to provide those numbers; employer name and work address; and, any special instructions as to how the parent(s) or guardian(s) may be reached during the hours that the child is in care at the child care home;

4. Names and telephone numbers of persons other than parent(s) or guardians(s) who are authorized to take the child from the family child care home;

5. Names, addresses, and telephone numbers of persons who can assume responsibility for the child in the event of an emergency if the parent(s) or guardian(s) cannot be reached immediately;

6. Names, addresses, and telephone numbers of the child's health care provider, dentist, pedadontist, and hospital of choice, if applicable;

7. Health admission information, including a health care plan, chronic medical conditions, allergies, and immunization history, shall be provided to the child care provider the first day the child attends the family child care home;

8. A dated, written authorization for emergency medical care signed and updated annually by the parent(s) or guardian(s);

9. A written record of any serious accident, illness, or injury occurring during care must be retained in each child's record, with a copy provided to the parent or guardian;

10. Written authorization, obtained in advance of the event from a parent or guardian, for a child to participate in field trips or excursions, whether walking or riding in an approved vehicle;

11. Written authorization for media use including, but not limited to, television and video viewing, music, video games, and computer use. The authorization must include approved time limits. The authorization form only needs to be on file if media use is not addressed in the home policies and procedures statement; and

12. Written authorization for special activities (see Section 7.714.1).

B. All forms contained in the admission record must be current and accessible to providers, substitutes, and representatives of the State Department.

C. The complete file for each child in care must be retained by the home for at least three years after the child leaves the home. It must be available without restriction to the licensing agency and to the child protective services worker, police, child's parent(s) or guardian(s).

D. Except for the licensing authority, child protective services worker, police, and the child's parent(s) or guardian(s), children's reports and records and facts learned about children and their families must be kept confidential.

7.707.6 COMMUNICATION, EMERGENCY AND SECURITY PROCEDURES [Rev. eff. 4/1/15]

A. The home must have a working unblocked telephone that has the capacity to receive all incoming and Reverse 911 calls, and record messages during child care hours.

1. The telephone must be on the premises in the general area of the primary provider.

2. The telephone number must be made available to each parent and the licensing authority.

3. The following emergency telephone numbers must be posted near the telephone:

a. 911 or the alternate emergency number for local fire or police;

b. Name and phone number of at least one (1) designated emergency substitute for the provider;

c. Name and physical address of the family child care home;

d. Hospital or emergency medical clinic;

e. Local health department;

f. Rocky Mountain Poison Center number at 1-800-222-1222; and,

g. Location of children’s personal emergency numbers.

4. The telephone and alternative emergency telephone numbers for parent(s) or guardian(s) and other authorized emergency contacts of each child in care must be accessible in one designated place.

5. If 911 is not available, the provider must have a plan for accessing emergency transportation at all times.

6. The provider or substitute must notify parent(s) or guardian(s) when accidents, injuries, or illnesses occur.

7. Emergency health care providers’ numbers must be accessible in one designated place.

B. Release of Children

The provider must release the child only to the person(s) to whom the parent or guardian has given written authorization. Written authorization must be maintained in the child's record. In an urgent and/or emergency situation, the child may be released to a person twelve (12) years of age or older for whom the child's parent or guardian has given verbal authorization. If the provider who releases the child does not know the person, picture identification must be required to assure that the person is authorized to pick-up the child.

C. Sign In/Out Procedure

The provider must maintain a daily sign in/out method containing the date, the child's name, the time that the child arrived at and left the home, and the parent, guardian, or authorized person's signature. A full signature is required by the parent or guardian every time the child arrives at or leaves the home. The provider may sign in or out children who arrive directly from school or an activity as needed on a daily basis. The provider must use their full signature. The parent/guardian must provide a signature on a weekly basis to verify the record.

D. Visitors

Visits from all non-family members to the home must be on the sign in/out log, including the name, date, and arrival/departure times.

7.707.7 CHILD CARE SERVICES

7.707.71 Health Care, Medication, Communicable Disease, Sun Protection, Second Hand Smoke, and First Aid Supplies [Rev. eff. 6/1/12]

A. Statements of Health Status and Immunization

1. At the time of admission, the parent or guardian must provide the following information to the provider for each child entering the home:

    a. Health information, including any known allergies, medication being taken and possible side effects, special diets required, and chronic health conditions;

    b. Information and health care plan on the care of each child who has an identified health condition or developmental concerns, including, but not limited to seizures, asthma, diabetes, allergies, heart or respiratory conditions, and physical or emotional disabilities; and,

    c. Documentation of immunization status or exemption, including month and year each immunization was administered. Immunizations must be updated and recorded as specified on the certificate of immunization or alternate certificate of immunization as supplied and approved by the Colorado Department of Public Health and Environment. Colorado law requires that proof of immunization be provided prior to the first day of admission.

2. Within thirty (30) days after admission, and within thirty (30) days following the expiration date, the parent or guardian of each child must submit a statement of the child's current health status or written verification of a scheduled appointment with a health care practitioner. The statement of the child's current health status must be signed and dated by a health care provider who has seen the child within the last twelve (12) months, or within the last six (6) months for children under two and one-half (2-1/2) years of age. The statement must include when the next visit is required by the health care provider. All health statements must be kept at the licensed child care home.

3. If the parent or legal guardian of a child wishes an exemption from the requirement for immunizations due to religious or personal beliefs, the child's parent or legal guardian, must complete and sign the current Colorado Department of Public Health and Environment immunization card which states the reason for such an exemption. The home has the right to refuse to admit any child if a completed current immunization card is not submitted.

4. Parent(s) or guardian(s) must be notified in the written policies if the provider's children are non-immunized, if children attending facility are non-immunized, and if children with personal and religious exemptions to immunization are accepted in care.

5. Statements of health status of children under two (2) years of age must be updated in accordance with the national pediatric recommended schedule for routine health supervision or as required in writing by health care provider.

6. Health statements for children over two (2) years to seven (7) years of age must be updated annually.

7. For children seven (7) years of age and older, health statements must be updated every three (3) years as long as the children are in care.

B. Emergency Medical Care

1. The provider must obtain written authority to arrange for emergency medical care for each child. Written authorization to obtain emergency medical care must be on file prior to or on the first day of admission and must be re-authorized annually.

2. In the event of injury or illness, the affected child must be separated from the other children in the room or area where child care is being provided and made as comfortable as possible. First Aid care must be provided as required. If additional care, medical attention, or removal from the home is indicated, the child's parent or guardian must be contacted by telephone, if possible, and medical assistance obtained without undue delay.

C. Medication

1. Any routine medication, prescription or non-prescription (over-the-counter), homeopathic or vitamin, may be administered by the provider only with a current written order of a health care provider with prescriptive authority and with written parental consent. Home remedies may never be given to a child.

   a. If the routine medication involves the administration of unit dose epinephrine, the administration must be accompanied by a written individual health care plan by the prescribing health care provider that identifies the factors for determining the need for the administration of the medication, and is limited to emergency situations.

   b. If the routine medication involves the administration of a nebulized inhaled medication, the administration must be accompanied by a written health care plan by the prescribing health care provider that identifies the factors for determining the need for the administration of the medication.

   c. Topical preparations used for prevention on unbroken skin including, but not limited to, petroleum jelly, diaper rash ointments, sunscreen, and insect repellant can be administered solely with written parent authorization. Topical preparations

used as treatment on open wounds or broken skin must have a written order from a prescribing health care provider in addition to parent authorization.

2. The provider can accept such medicines only in the original container. Prescription medicine containers must bear the original pharmacy label that shows the prescription number, name of medication, date filled, physician's name, child's name, and directions for dosage. When no longer needed, medications must be returned to the parent or guardian or destroyed.

3. Over-the-counter and homeopathic medication must be labeled with the child's first and last name. The provider can administer medication only to the child whose name appears on the written order from the prescribing health care provider.

4. All providers who administer medication must have daily face-to-face verbal contact with parents of children needing medication and must be currently trained through the State Department-approved medication administration course and must administer meditation in compliance with the concepts taught in the course.

5. Medication must be stored in a locked cabinet, cupboard, or locked box so that it is inaccessible to children. If refrigeration is required, it must be stored in a leak- proof container in a designated area of the refrigerator separated from food.

6. Medication must be administered, documented and disposed of in accordance with the State Department approved training in medication administration.

7. A written medication log must be kept for each child. This log is a part of the child's record. The log must contain the child's name, time medication was given, name of the medication, dosage and route, special instructions, name or initials of the individual giving the medication, notation if the medication was not given, and the reason.

D. Control of Communicable Illness

1. When a child in care, resident of the home or provider has been diagnosed with a reportable communicable illness, including, but not limited to, chicken pox, hepatitis, measles, mumps, meningitis, diphtheria, rubella, salmonella, giardia, tuberculosis, and shigella, the provider must immediately notify the parents or guardians of all children in care and report to the local county department of health or the Colorado Department of Public Health and Environment.

2. Any individual diagnosed with a reportable communicable illness must be excluded from contact with children in care at the home for a period of time determined by the individual’s health care provider or by the local health department.

E. Sun Protection

1. The provider must inform the parent or guardian, through the policies and procedures statement or an authorization form, that sunscreen will be applied to the children’s exposed skin prior to outside play. A doctor’s permission is not needed to use sunscreen at the home. When a parent or guardian supplies sunscreen for an individual child, the container must be labeled with the child’s first and last name. If sunscreen is provided by the provider, parents must be notified in advance, in writing, of the type of sunscreen the provider will use. Parent(s) or guardian(s) must notify the provider if sunscreen has been applied to the child’s skin prior to arriving at the home. Sunscreen must never be applied to an infant’s skin.

2. Children over four years of age may apply sunscreen to themselves under the direct supervision of the provider.

3. Sunscreen used must be full spectrum UVA/UVB with an SPF of thirty or greater and applied according to manufacturer's instructions.

F. First Aid Supplies

Supplies must be maintained and stored in an area inaccessible to children. Supplies shall include band aids, tape, gauze, disposable gloves and compression bandages.

7.707.72 Personal Hygiene, Hand Washing and Bathing, Diapering and Toileting, and Cleaning Toys [Rev. eff. 1/1/10]

A. Hand Washing and Bathing

1. All providers must wash their hands thoroughly with soap under warm running water, when available, and dry with an individual use and/or single use disposable towel before preparing, serving, and eating food; before administering medication; after helping a child with toileting or diapering; after provider's own toileting; after wiping a child's nose; whenever possible on field trips, at a park, or at another location away from the home; after handling animals, their toys, or food and water bowls; after contact with bodily fluids or secretions; and, any other time the hands become soiled or contaminated.

2. All children must wash their hands thoroughly with soap under warm running water, when available, and dry with an individual use and/or single use disposable towel; before preparing and eating food; after toileting or diapering; after wiping his/her nose; whenever possible on field trips, at a park, or at another location away from the home; after handling animals, their toys, or food and water bowls; after contact with bodily fluids or secretions; and, any other time the hands become soiled or contaminated.

3. The hand washing area should promote self-help skills to include, but not be limited to, step stools, soap, and towels accessible to children.

4. If paper towels are not used, each child shall have an assigned towel that is used consistently, doesn't touch other towels, and is laundered weekly or more often if needed.

5. Children's towels and drinking cups must not be shared.

6. Hand washing areas shall be routinely disinfected when visibly dirty or prior to use different from hand washing.

7. Hand sanitizers and wipes are not acceptable alternatives to hand washing, except on outings where running water may be unavailable. Alcohol based hand sanitizers shall not be used for children under three (3) years of age.

8. When a child is bathing, the bath water must be between ninety (90) and one hundred (100) degrees. Children under five (5) years of age must not be left unattended while being bathed.

B. Diapering and Toileting

1. The home must have a designated diaper change area for all children in need of diaper changing. The diaper change area must:

a. Have a smooth, durable, nonabsorbent, and easily cleanable surface; and

b. Be large enough to accommodate the size of the child being changed.

2. The following procedure must be followed each time a diaper is changed:

a. Soiled or wet diapers and clothing must be changed promptly and be replaced with clean diapers and clothing whenever necessary;

b. The child must be placed on a clean, sanitized, dry changing table or mat;

c. Providers must use single use disposable gloves;

d. Use closest hand washing sink to the diaper changing area that is not used for food preparation;

e. Children's hands must be washed with soap and water after diapering;

f. Providers must clean and disinfect the diaper changing area after each diaper change;

g. Providers must vigorously clean all parts of their hands with soap and warm running water and dry their hands with individual paper or cloth towels after diapering each child;

h. During child care hours, clothing soiled by bodily fluids must be placed in a leak proof container. The container must be stored inaccessible to children and sent home on a daily basis;

i. Parent(s) or provider(s) must provide extra clothing;

j. For each child who is learning to use a toilet, the provider must accommodate the child’s individual developmental abilities and needs, in accordance with nationally recommended procedures, and as contained in the provider’s written policies and procedures;

k. Toilets must be flushed between uses; and

l. If potty chairs are used, all parts of the potty chair must be disinfected immediately after each use.

C. Cleaning Toys

1. Toys that are not mouthed or otherwise contaminated by body fluids shall be cleaned and sanitized at least once a week and whenever visibly soiled.

2. Toys that are placed in children’s mouths or are otherwise contaminated by body fluids shall be cleaned and sanitized prior to use by another child.

7.707.73 Food and Nutrition [Rev. eff. 1/1/10]

A. A nutritious snack or meal must be offered during the midmorning and mid-afternoon hours. A mid-day meal must also be provided and must meet at least one-third (1/3) of the child's daily nutritional needs as required by the USDA child and adult care food program meal pattern

requirements. Arrangements must be made for feeding children who are in care before 6 a.m. or after 6 p.m.

B. Food must be offered to children when they are awake at intervals not more than three hours apart.

C. Food must be wholesome and nutritious and stored in a safe and sanitary manner. A wide variety of foods, including fresh fruits and vegetables and whole grain products must be provided to children to ensure adequate intake of dietary fiber, vitamins, minerals, and other important nutrients.

D. If the provider does not regularly provide meals, the provider must supplement children's meals that are inadequate with foods to meet the nationally recognized meal pattern requirements.

E. Provider(s) and parent(s) must have ongoing communication regarding special diet and feeding needs of the child(ren).

F. Foods offered shall be age appropriate and not pose a choking hazard.

G. Children are encouraged, but not forced, to eat food or drink fluids.

H. Children with special needs are included in regular meal areas and routines.

I. All milk and juice offered to children must be pasteurized.

J. Juice must be limited to one (1) serving a day. Sweet type foods must be limited to no more than two (2) servings per week.

K. Water must be offered and available at all times and cannot be a substitute for milk during meals.

L. Food must be offered to the child from the child's individual dish and utensil(s). If uneaten portion(s) from the child's plate are saved, they must be refrigerated and stored safely and must be served, eaten, or discarded within four hours of being prepared.

M. Children must not be given foods that are contrary to the religious beliefs of their families or that are known to cause an allergic reaction or a health hazard.

N. Dishes, cookware, high chair trays and utensils must be washed, sanitized, and stored in a safe and sanitary manner. When used, disposable dishes and utensils must be disposed of after use. Food preparation and service areas including, but not limited to, sinks, faucets, counters, and tables must be sanitary.

O. Bottles and Formula

1. Bottles of milk, formula or breast milk must never be warmed or thawed in a microwave oven. Infant formula and breast milk cannot be reused If a child does not finish the bottle of formula or breast milk within one (1) hour, the contents must be thrown out.

2. If the infant is breast fed, the provider must not offer formula, water, or other liquids without discussing substitutions or supplementation with the infant's parent.

3. The provider must make an area in the home available for a breast feeding mother to breast feed her infant while visiting the home during business hours.

4. All infants unable to hold their own bottles must be held by the provider during bottle feedings and should be held so they can see the face of the provider if it is appropriate for the child.

5. Infants and toddlers must not be allowed to hold their own bottles or sippie cups when lying flat to prevent choking, ear infections, bottle mouth or tooth decay.

6. There must be a sufficient supply of bottles provided for the entire day; or, if bottles are to be reused, they must be washed, rinsed, and sanitized after each use.

7. Commercially prepared formula must be mixed in accordance with the directions of the manufacturer or the child's health care provider.

8. Each bottle must be marked with the child's name when there is more than one (1) child in care that drinks from a bottle.

P. Solid Foods

1. At a minimum, meals and snacks provided for infants under the age of one (1) year must contain the foods listed in the USDA child and adult care food program meal pattern for infants.

2. Foods must be appropriate for infants' developmental stages as determined by instructions obtained from the infant's parent(s), guardian(s), or health care provider.

3. No new foods shall be introduced to children under twelve (12) months of age without parental permission.

4. Infants who are eating solid foods shall be provided with developmentally appropriate solid foods that encourage freedom in self-feeding.

5. Provider(s) must either feed infants and toddlers or directly supervise them while they are eating.

6. Honey and products containing honey must never be served to infants under twelve (12) months of age.

7.707.74 Direct Care of Children

7.707.741 Supervision [Rev. eff. 1/1/10]

A. The primary provider must supervise and know the location and activity of all children at all times while they are in care.

B. The provider's own children who are age twelve (12) years of age and over may each have one (1) friend over during child care hours if the following conditions are met:

1. The visiting children are not present for supervision; and,

2. The visiting children can immediately be sent home if needed; and,

3. The visiting children must be age twelve (12) years or over; and,

4. Visiting children must not compromise or participate in the care and supervision of children.

C. The provider may have other children over on occasion if the following conditions have been met:

1. The visiting children are under the active supervision of their parent or guardian or their own child care provider; and,

2. The square footage requirements for the home accommodates all children present.

7.707.742 Physical Care [Rev. eff. 1/1/10]

A. Children must be provided a developmentally appropriate environment.

B. Provider(s) must provide for children's appropriate care and well-being, taking into consideration the individual needs of each child.

C. Throughout the day, each child must have frequent, individual personal contact and attention from an adult, such as being held, rocked taken on walks inside and outside the home, talked to, and sung to.

D. Infants in care who are unable to hold a bottle must be held during bottle feedings.

E. Infants must be held frequently while in care.

F. Provider(s) must pick-up children appropriately around their upper chest and under their arms, and based on the developmental needs of the child.

G. Children leaving the family child care home for school or other activities must be dressed appropriately to protect the health and safety of children for the weather.

H. Provider(s) must respond to the needs of a child, including, but not limited to: crying, toileting, hunger, and thirst. The timing of the response must not result in physical harm to the child.

I. Providers must investigate whenever children cry.

J. Providers must develop/provide an environment that minimizes the risk to children from hurting themselves or each other.

K. Greetings/Departures

1. Children should be greeted individually and pleasantly upon arrival and departure.

2. Parent(s) or guardian(s) shall be allowed access to their children and all approved and licensed areas at all times.

3. When necessary, upon arrival and departure, the parent or guardian and provider shall share information related to the child's health and safety including, but not limited to, special diets, accident reports, specific fears, and family traumas.

L. Providers must not use any controlled substance or consume any alcoholic beverage during the operating hours of the facility or be under the influence of a controlled substance or alcoholic beverage during the operating hours of the facility, or use any substance that impairs their ability to care for children.

M. Providers, substitutes, visitors, volunteers, and residents of the provider's home who consume or are under the influence of alcohol are not permitted to work with children or be in the area used for child care during business hours.

N. Illegal drugs or paraphernalia must never be present on the premises of the child care home.

7.707.75 Sleep and Waking Time [Rev. eff. 4/1/15]

A. Children must be allowed to form and observe their own pattern of sleep and waking periods. Provision must be made so that children requiring a nap time have a separate area for their nap away from other children currently playing.

B. Children who are awake must not be confined for more than thirty (30) minutes at a time to cribs, high chairs, swings, playpens or other equipment that inhibit freedom of movement, unless they are eating. Confinement must never be used as a form of discipline. They must have an opportunity each day for freedom of movement, such as creeping, crawling, or walking in a safe, clean open, uncluttered area.

C. The provider must provide a rest period for all preschool-age children remaining in the home for longer than four (4) hours. A rest period and rest equipment must also be provided for older children who require a rest time.

D. Rest or sleep periods must be scheduled appropriately for the age and development of the child(ren) and not forced. Children who do not sleep after thirty (30) minutes must be provided with developmentally appropriate alternative activities. Infants and toddlers must be placed in their approved sleeping equipment within ten (10) minutes of falling asleep, unless being held by the provider, while being transported on a field trip, or if children are not at the provider's home.

E. Toddlers, preschoolers, and older children, as necessary, must have a suitable mat not less than two inches thick, cot, bed, or sofa, with a clean washable sheet that has been sanitized between uses by different children. Children must be provided with a clean blanket.

~~F. (repealed)~~

~~G~~F. During rest/nap time the provider must remain alert and supervise all children by sight or sound. The atmosphere should be calm and conducive to rest or sleep.

~~H~~G. Safe Sleep Training for Family Child Care Staff

All staff who work with infants must complete Department-approved safe sleep training prior to working with infants and on an annual basis

~~I~~H. Safe Sleep Environments for Infants

1. Each infant up to twelve (12) months of age must be provided with an individual crib or futon approved for infants or other approved sleep/rest equipment meeting Consumer Product Safety Commission (CPSC) standards.

2. In the infant room, soft bedding or materials that could pose a suffocation hazard are not permitted in cribs, futons approved for infants or other approved sleep/rest equipment.

   Soft bedding means, but is not limited to; any soft sleep surface like bumper pads, pillows, blankets, quilts, comforters, sleep positioning devices, sheepskins, blankets, flat sheets, cloth diapers, bibs, plush toys, and stuffed animals.

3. Infants must be placed on their back for sleeping.

4. Alternative sleep positions for infants must only be allowed with a health care plan completed and signed by the child's physician.

5. Swaddling of infants must only be allowed with a health care plan completed and signed by the child's physician.

6. Each infant up to twelve (12) months of age who uses a pacifier must have the pacifier offered when being put down to sleep, unless the parent directs otherwise.

7. All sleep/rest equipment must be safe, sturdy, and free from hazards including, but not limited to: broken or loose slats, torn mattress, chipping paint or loose screws.

8. Approved sleeping equipment mattresses must be firm and must fit snugly ensuring no more than two adult fingers are able to be inserted between the mattress and the side of the approved sleeping equipment.

9. Toys, including mobiles and other types of play equipment that are designed to be attached to any part of sleeping equipment must be kept away from sleeping infants and out of sleep environments, including hanging toys. Blankets and other items must not be hung from or draped over the sides or any part of sleeping equipment.

10. Drop side and stacking cribs are prohibited.

11. Infant monitors must be used when infants are sleeping in a separate room out of the direct supervision of the primary caregiver. When in use infant monitors must meet the following conditions:

    a. The sound monitoring equipment must be able to pick up the sounds of all sleeping infants;

    b. The receiver of the sound monitoring equipment must be actively monitored by the primary provider or staff member at all times;

    c. All sleeping infants must be physically observed at least every ten (10) minutes by the primary provider or a staff member; and

    d. Sound monitoring equipment must be regularly checked to ensure it is working correctly.

12. Infants who fall asleep in a car safety seat, bean bag chair, bouncy seat, infant seat, swing, jumping chair, play pen or play yard, highchair, chair, sofa, adult futon, adult bed or ANY other piece of equipment not approved for sleep must immediately be moved to their approved sleep area and placed on their back to sleep.

13. Cribs must be used for sleeping, not extended play or confinement.

14. Children who are awake must not be confined for more than fifteen (15) minutes at a time to cribs, playpens, swings, high chairs, infant seats, or other equipment that inhibits freedom of movement. Children who are actively eating may be in a high chair or other approved feeding equipment for longer than fifteen (15) minutes. Children must be moved once feeding is complete.

15. If music is played in the infant sleep area, the music must not be played at a loud volume that would prevent infants from being heard by the caregiver(s). Music equipment must not be placed under a crib or within three (3) feet of the sleeping infant.

16. Supervised tummy time be offered to infants one month of age or older up to twenty to thirty (20-30) minutes per day. If the infant falls asleep during tummy time, immediately place him/her on their back in approved sleeping equipment.

17. When the caregiver places infants in approved sleeping equipment for sleep, they must check to ensure that the temperature in the room is comfortable for a lightly clothed adult, check the infants to ensure that they are comfortably clothed (not overheated or sweaty), and that bibs, necklaces, and garments with ties or hoods are removed. Clothing sacks or other clothing designed for sleep must be used in lieu of blankets if needed for additional warmth.

18. Infants must not be placed to sleep in the same crib or futon as another infant or child, and must never sleep with an adult in a bed, on a couch, or in any other setting or manner.

I. The facility must have policies, and ensure they are followed for safe sleep environments for infants.

J. The facility must have a policy, and ensure it is followed on the protection of infants from second hand smoke.

7.707.76 Overnight Care [Rev. eff. 1/1/10]

A. Regular overnight care (care that past midnight) of children is permitted only when licensed to do so.

B. All children in care must be provided with a comfortable cot, crib, bed, or couch suitable for the child's age, two (2) sheets, and a suitable warm covering. At least forty (40) square feet of floor space must be available for each bed. Beds arranged in parallel must be at least two (2) feet apart.

C. Sheets must be changed weekly, between use by different persons, and more frequently if needed. No provider shall knowingly allow a child to sleep in a wet bed.

D. Children’s faces and hands must be washed, teeth brushed, and children must change into comfortable clothing for sleeping. Extra sleepwear must be available in the event that a change is necessary.

E. When the provider goes to sleep, the provider must sleep on the same level of the home where children under eight (8) years of age are sleeping.

F. Written permission must be obtained from parent(s) or guardian(s) on where the child sleeps, whether the child shares a room with another individual, and the equipment that the child is sleeping on.

7.707.8 GUIDANCE, LEARNING ACTIVITIES, MATERIALS AND MEDIA USE

7.707.81 Guidance [Rev. eff. 1/1/10]

A. At the time of admission, the provider shall discuss with the parent or guardian the home's guidance expectations and consequences of a child’s behavior.

B. Guidance must be appropriate to the developmental age of child, constructive or educational in nature, and may include such measures as diversion, separation, talking with the child about the situation, praise for appropriate behavior, and gentle holding.

C. Children must not be subjected to physical or emotional harm or humiliation. The provider must not use, or permit anyone else to use, corporal or other harsh punishment, including, but not limited to pinching, shaking, spanking, punching, biting, kicking, rough handling, hair pulling, or any humiliating or frightening method of discipline.

D. Physical, mechanical, and chemical restraint shall never be used.

E. Guidance must not be associated with food, rest or toileting. Children must not be punished for not resting or sleeping, toileting accidents, failure to eat all or part of meals or snacks, or failure to complete an activity. Food or drink may not be denied or forced upon children as a disciplinary measure.

F. Meals and snacks can be temporarily postponed or provided individually, but deprivation of meals, snacks and beverages must not be used as punishment.

G. Separation, when used as guidance, must be brief and appropriate for the child's age and circumstances. The child must be in a safe, lighted, well-ventilated room within hearing and vision of the provider or other qualified adult. Children must never be isolated in a locked room, attic or closet area.

H. Verbal or emotional abuse and derogatory remarks about any child and/or any child’s family and home environment is prohibited.

I. The provider or approved substitute is responsible for and shall supervise all guidance used within the home. The provider must not allow one child to punish another child.

J. A child must not be punished for the actions of a parent or guardian. This includes, but is not limited to, failure to pay fees, failure to provide appropriate clothing, failure to provide materials for an activity, or any conflict between the provider and the parent or guardian.

7.707.82 Learning Activities [Rev. eff. 1/1/10]

A. Talking with children is generally social and not limited to only custodial or control speech.

B. Children must be encouraged to relate or to communicate with each other and with adults using developmentally appropriate behavior.

C. Provider(s) shall respond to children’s attempts to communicate, using culturally sensitive eye contact and making an effort to create two-way conversation.

D. Each child in care must be provided with an opportunity for both group and individual play.

E. The provider shall encourage individual expression and adult directed projects shall be kept to a minimum, since children’s work is varied and individual.

F. Children shall not be forced to participate in activities; alternate developmentally appropriate activities shall always be available.

G. Activities must be available to the children that are culturally sensitive and represent diversity in ethnicity, race, gender, and age. Variety shall exist in toys, books, and pictures.

H. Boys and girls should not be restricted to specific roles in play.

I. At least one (1) provider-initiated language activity shall be offered daily, such as reading, storytelling, flannel boards, or puppetry.

J. The provider(s) shall initiate at least one (1) interactive musical activity weekly, such as singing, dancing, playing instruments, marching, listening to tapes or recordings, radios, and musical videos.

7.707.83 Materials [Rev. eff. 1/1/10]

A. A selection of at least four (4) books must be available for the group of infants/toddlers in care.

B. A selection of at least ten (10) books must be available for all children over two (2) years of age in care and must be organized and accessible to children most of the day. If children over five (5) years of age are in care, books relevant to that age of child must be included within the ten (10) books.

C. Materials must be available to the children that are developmentally appropriate, culturally sensitive and represent diversity in ethnicity, race, gender, and age. Variety shall exist in toys, books, and pictures.

D. At least four (4) language development materials appropriate to age of the children shall be available, such as telephones, puppets, story boards, dolls, and chalk boards.

E. At least four (4) types of age-appropriate eye-hand materials shall be available for use daily which should include at least some of the following: crayons, paper, scissors, non-chokable small building toys, developmentally appropriate multi-size stringing beads, pegs, sewing cards and puzzles.

F. Age-appropriate blocks and accessories shall be accessible for free play daily allowing at least two (2) children to play independently, yet simultaneously.

G. A selection of at least four (4) types of developmentally appropriate nature or science related games, materials, or activities shall be available: natural object collections, plants, gardens, pets, magnets, magnifying glasses, or science props.

H. At least four (4) types of developmentally appropriate math or number materials shall be available: counting objects, balance scales, rulers, number puzzles, magnetic numbers, and dominoes.

I. At least four (4) types of art materials shall be available: crayons, pencils, markers, paints, play dough, scissors, and glue. Some art materials must be readily available each day.

J. At least four (4) types of dramatic play materials shall be accessible for free play daily such as: backpacks, purses, hats, dress up clothing, housekeeping toys, dolls and accessories, toy telephones, play houses, toy animals, cars and trucks, costumes, and safe jewelry.

K. Outdoor physical free play materials shall consist of at least four (4) age appropriate toys and equipment including, but not limited to, the following in good repair: push toys, riding toys, tossing toys, climbing equipment, balance boards, stationary swings, slides, balls, toss games, and sports equipment. These must be provided daily except in extreme weather, such as rain, snow, or extreme temperatures when indoor physical play may be substituted.

L. Materials provided in large homes must be double the requirements for the regular home as listed above.

M. Some sand or equivalent dry material or water play should be offered indoors or outdoors at least monthly and year round. If used, food and/or organic material must be discarded each week.

7.707.84 Media Use [Eff. 1/1/10]

A. Media use including, but not limited to, television, video viewing, music, video games, and computer use should be permitted only with:

1. The written approval of a child's parent(s) or guardian(s). The authorization may be included in the parent handbook or contract;

2. Parent-approved time limits; and

3. Activities must not contain violence, profanity, nudity, or sexual content, and must have a rating appropriate for the age of children in care.

B. All children must be provided with a developmentally appropriate alternative activity once the child(ren) loses interest in the media activity.

7.707.9 FACILITY REQUIREMENTS AND TRANSPORTATION

7.707.91 General Requirements [Rev. eff. 1/1/10]

A. The entire premises are subject to inspection for licensing and safety purposes including, but not limited, to the entire residence and where care is to be provided, the grounds surrounding the residence, the basement, the attic (if accessible), the storage shed, garage and/or carport, and any vehicles used for transportation of children in care.

B. A business of a nature and any activity that might be hazardous to the health, safety, or well-being of children, or that interferes with the supervision of children, cannot be operated or conducted on the premises of the home during child care business hours.

C. Mobile homes used as family child care homes must have at least two (2) exits, be secured, attached, skirted, and properly installed and stabilized.

D. The premises of the family child care home must be kept safe and free from hazards to health at all times.

E. All weapons must be locked and inaccessible to children. Ammunition and arrows must be locked and stored separately. This includes, but is not limited to, firearms, air rifles, bb guns, paintball guns, bows, hunting knives, swords, hunting sling shots, and martial arts weapons. Trigger locks are acceptable. Antique and other guns used for decoration must be unloaded, inoperable and have the firing pin removed. An unstrung bow need not be stored in a locked container. Weapons must not be transported in any vehicle in which children are riding unless the weapons are made inoperable and inaccessible. The provider, employees, and substitutes must know the location of any weapons in the home.

F. All garbage and other wastes must be stored in a manner that is inaccessible to children and disposed of in a manner that does not constitute a health hazard or nuisance.

G. Fire hazards, such as defective electrical or gas appliances and electric cords, dangerous or defective heating or cooking equipment, exposed wiring and flammable material stored in such a manner as to create a risk of fire must be corrected or eliminated.

H. All stairways must be free from hazards, and those with more than five (5) steps must be equipped with banisters or handrails within reach of children. The slats on all railings must be no wider than four (4) inches apart or modified to prevent entrapment.

I. Drinking and food preparation water from any source other than a regular municipal water supply or commercially bottled water must be tested annually and the results available for review. The water must be in compliance with water quality requirements of the Colorado Department of Public Health and Environment.

J. Any provider's, employee's, substitute's, volunteer's, and/or visitor's animal(s) and/or fish that are dangerous, and/or pose a potential threat to a child's safety or health must be confined in a place away from the child care area and inaccessible to children. The provider's animals must be vaccinated as required by state law and local ordinance, and proof of vaccination must be available for review by the licensing specialist.

K. Psittacine/hooked beak birds must be in a separate room inaccessible to children in care.

L. Children must not be permitted to mistreat animals.

M. All play equipment must be designed to guard against entrapment and strangulation. Swing sets and other outdoor play equipment must be correctly assembled, well maintained, and securely stabilized or anchored. All swings for children three (3) years of age and older must have seats made of flexible material.

N. All exercise equipment must be inaccessible to children.

7.707.92 Indoor Requirements

7.707.921 General Indoor Requirements [Rev. eff. 1/1/10]

A. There must be open, indoor play space of at least thirty-five (35) square feet of floor space per child, including space for moveable furniture and equipment exclusive of:

1. Hallways;

2. Bathrooms;

3. Stairways;

4. Closets;

5. Laundry rooms;

6. Furnace rooms; and

7. Space occupied by permanent built-in cabinets and permanent storage shelves.

B. The large home must provide sufficient floor space in the specific room(s) designated for use for child care that does not include space used by household furniture.

C. One room or area in the home, within sight or sound of the provider, that contains a bed, cot or sofa must be available for a child in the event of an illness or injury where a child can be separated from other children and comfortably cared for. A crib or playpen with a pad must be provided for children under twelve (12) months of age. A clean, washable sheet and blanket must be provided for each child, and shall be cleaned and changed after each use by a sick or injured child.

D. All floors must have an easily cleanable finish including, but not limited to: carpets, tile, wood or concrete.

E. Interior walls must be free of holes and constructed of solid material with a smooth finish that can be easily cleaned. Painted finishes shall be maintained free from peeling, chipping or otherwise deteriorating paint.

F. The home must be equipped with adequate light, heat, ventilation, and plumbing for safe and comfortable occupancy. The heating facility must be capable of maintaining a draft-free temperature of a minimum of sixty-eight (68) degrees Fahrenheit at floor level in all rooms used for child care.

G. All rooms must be kept in a clean and sanitary condition and be free of any evidence of pest or rodent infestation.

H. Stairways of more than four (4) steps that are accessible to children must have gates that prevent access from the area being used when children under two (2) years old are present. The gate may be taken down as long as the provider is providing direct supervision of the child who is learning climbing skills on the stairs. Because of the risk of serious physical injury to a child, providers, employees, substitutes, volunteers, and visitors must never lift children over the gates while on a stairway.

I. Because of the risk of serious physical injury to a child, providers, employees, substitutes, volunteers, and visitors must never step over a gate while holding a child or lift a child over a gate.

7.707.922 Indoor Equipment, Materials and Furnishings [Rev. eff. 1/1/10]

A. Toys, toy parts and any material accessible to children under three (3) years of age must be large enough that they cannot be swallowed or inhaled, to prevent a choking hazard.

B. An adequate number of high chairs and other child size suitable equipment that meets nationally recognized standards must be provided when feeding each child under two (2) years of age.

C. Children's use of walkers with wheels is prohibited unless specifically provided for a child’s special needs as ordered in the child’s health care plan.

D. Furnishings and equipment in the area approved for child care must be in good repair.

E. Furnishings for relaxation and comfort shall include, but not be limited to:

1. Soft play areas, which may include rugs, carpets, mats, and cushions; and

2. Clean and soft toys.

7.707.923 Indoor Safety [Rev. eff. 6/1/12]

A. All hazardous items and materials must be inaccessible to children including, but not limited to, office supplies, matches, plastic bags, cleaning and laundry materials, medicines, perfumes, curling irons, adult sharp scissors and knives, cosmetics, shaving lotions, hair products, poisonous plants, and all items labeled by manufacturer as “keep out of reach of children.

B. In rooms accessible to children, all electrical outlets and power strips must have protective covers, or safety outlets must be installed; all exposed light bulbs must have protective covers. Electrical cords must be in good condition and shall not pose a hazard, such as strangulation, falling or tripping.

C. Window blind cords and coverings must be secured out of children's reach or otherwise made safe to prevent strangulation.

D. During child care hours, fans that pose a safety hazard to children (such as dangling cords, fans that can be pulled onto the child, and those where the child can stick fingers in the blades) must be inaccessible to children.

E. Although exterior doors can be locked, they must be maintained so as to permit easy exit; interior doors must be designed to prevent children from becoming trapped.

F. No locks or fastening devices can be used that would prevent emergency evacuation.

G. Any level where child care occurs must have two (2) means of escape. A basement exit may include a window large enough for the provider, employees, substitute, volunteers, visitors, and children to individually exit.

H. If the window sill height is over thirty (30) inches, there must be permanent access to the window. This includes a ladder bolted to the wall or sturdy and easily climbed furniture or steps.

I. Upper levels where child care occurs, without a second exit, must have escape ladders designed specifically for the purpose of evacuation of children.

J. All heating units, unvented gas or electric, must be installed and maintained with safety devices to prevent fire, explosions, and other hazards. No open-flame gas or oil stoves, unscreened fireplaces, hot plates, or unvented heaters can be used.

K. Any cooking stoves with controls within reach of a child shall have a safety guard.

L. Flammable or combustible items must be stored in a locked area remote from the kitchen, at least three (3) feet from the furnace, hot water heater or any other heating device. These items include, but are not limited to, paints, fuels, insecticides, and other hazardous chemicals.

M. A smoke detector in working condition must be installed on each level of the home.

N. There must be a carbon monoxide detector installed in the area of the home as recommended by the manufacturer and in the area where children sleep.

O. The home must contain at least one (1) fire extinguisher in working condition with the minimum weight of five (5) pounds, and minimum rating of 2A-10-BC. The fire extinguisher or identifying sign where the fire extinguisher is located must be highly visible and easily accessible.

P. The use of indoor and/or climbing equipment indoors is subject to Section 7.707.932.

7.707.93 Outdoor Requirements

7.707.931 General Outdoor Requirements [Rev. eff. 1/1/10]

A. At least seventy-five (75) square feet of useable outdoor play space must be available for each child.

B. The outdoor play space must be enclosed with at least a forty-two inch (42") fence or natural barrier. If a natural barrier is used, it must begin no higher than three and one-half inches (3-1/2") from the ground. If the home does not have a fenced play space, provisions must be made for outdoor play in an area approved by the State Department.

C. All parts of the play area must be visible and easily supervised.

D. Shade must be available.

E. Decks that are more than twelve (12) inches high must have or be modified to have a protective railing or other barrier with slats no wider than four (4) inches apart. Additionally, for decks installed at ground level with more than a twelve inch (12") gap between flooring and ground, the gap must be inaccessible to children.

F. Tiered yards that have drop offs of more than twelve inches (12") must have a protective railing or other barrier with slats no wider the four inches (4") apart.

G. All outdoor areas where children may pass or play shall be kept free of animal contamination. All animal wastes must be promptly removed and placed in a lidded container or otherwise inaccessible to children.

H. Window wells accessible to children must have covers that are in good condition and will protect children from falling into the window well. Window well covers must not prevent exiting from a basement window designated as the second exit.

I. Swimming pools, permanent wading pools, and above ground pools located on the property of the home must be enclosed with a five foot (5') fence and a locked gate.

J. Water used by children in play areas, including wading pools, must be clean and not left to stand more than one (1) day.

K. All hot tubs must have bolted and securely locked covers.

L. Decorative ponds in the designated play area must use childproofing grates to prevent risk of drowning when there is no fence.

M. The use of a trampoline by children in care is prohibited. If there is a trampoline on the property of the home, it must be stored in a way that makes it totally inaccessible to children.

N. Tree houses must be inaccessible to children in care.

O. Walkways must be cleared of snow and ice to provide safe entry and exit from the home.

7.707.932 Outdoor Equipment, Materials and Surfaces [Rev. eff. 1/1/10]

A. Protective Surfacing Requirements

1. All pieces of permanently installed climbing equipment must be surrounded by and have at least four inches (4") of a nationally recognized protective surface underneath the equipment.

2. By December 31, 2010, all pieces of permanently installed playground equipment must be surrounded by and have at least six inches (6”) of a nationally recognized protective surface underneath the equipment.

B. Sand may be used as a protective surfacing when regularly raked, rototilled or replaced to retain its resiliency.

C. If during any type of licensing visit the sand has become compacted and lost resiliency or depth, the provider must immediately replace the sand with one of the other approved protective surfacing materials.

D. Portable climbing equipment over two feet (2’) in height, whether indoor or outdoor, must be on a protective surfacing. No equipment can be placed on cement or grass.

E. By December 31, 2010, all swing sets or permanent climbing equipment must ensure a minimum fall zone consistent with the nationally recognized standards.

7.707.933 Outdoor Activities [Rev. eff. 1/1/10]

A. The home program must include outdoor play for all ages each day except when the severity of weather, including temperature extremes, makes it a health hazard or when a child must remain indoors as indicated in writing by a health care provider or in a health care plan.

B. Developmentally appropriate supervision must be provided during outdoor play in the approved, adjoining fenced play area.

C. Children playing in an unfenced area or any other outdoor play area, other than the required, approved fenced play area must be under direct supervision at all times.

D. Children must wear helmets, wrist protection, and knee and elbow pads when riding a scooter, bicycle, skateboard, or rollerblades. Motorized riding toys are not permitted.

E. All protective surfacing (excluding sand, wood chips, wood mulch, engineered wood fiber, pea gravel, synthetic pea gravel, and shredded rubber tires) and rubber mats must be manufactured for such use consistent with federal guidelines and be approved by the State Department.

F. With written permission of the parent(s) or guardian(s), children in care shall be permitted to use the permanent pool in the presence of an adult who holds a current Red Cross basic lifeguarding certificate or equivalent, and is actively responsible for lifeguarding protection.

7.707.934 Outdoor Safety [Rev. eff. 1/1/10]

A. Children must be directly and actively supervised near standing water including, but not limited to, fountains, buckets, wading pools, and animal troughs.

B. All outdoor play areas shall frequently be surveyed and must be kept safe and free from hazardous materials or debris that could cause harm to children.

C. Outdoor play space, including areas under decks must be free from safety hazards including, but not limited to, lawn mowers, tools, propane, gasoline, building scraps, and scrap metal. Gas grills with propane tanks must have a safety on/off knob on it.

7.707.94 Transportation [Rev. eff. 1/1/10]

A. The driver of a vehicle used to transport children must follow required state laws, including possession of a current valid Colorado driver's license, automobile insurance, and meet the requirements of Colorado child passenger safety laws.

B. At least one (1) adult in the vehicle transporting children must have a current State Department-approved First Aid and safety certificate that includes CPR for all ages of children. A First Aid kit must be available in the vehicle.

C. Any child transported must be properly restrained in a child restraint system that meets the requirements of the Colorado child passenger safety law that requires:

1. Children must ride in a rear-facing child safety seat until they are at least one (1) year old and weigh at least twenty (20) pounds.

2. Children ages one (1) to four (4) years and who weigh twenty (20) to forty (40) pounds must be restrained in a forward-facing car seat.

3. Children at least four (4) years of age and are less than six (6) years old must continue to ride in a child restraint (unless they are fifty-five inches tall); typically, this is a booster seat; and

4. Children between six (6) and sixteen (16) years old or are fifty-five inches (55") tall must be properly restrained in a seat belt.

D. When any vehicle is used by the home to transport children in care, the following requirements must be met:

1. Each child under four years of age and weighs less than forty pounds must be properly fastened into a child restraint system in a seating position equipped with a safety belt or other means to secure the system according to the manufacturer's instructions;

2. Two or more children must never be restrained in one (1) seat belt or child restraint system;

3. It is the responsibility of the driver transporting children to ensure that such children are provided with and that they properly use a child restraint system or safety belt system;

4. Children between six (6) and sixteen (16) years of age or are fifty inches tall or more must be instructed and monitored to keep the seat belt properly fastened and adjusted;

5. Children, who are appropriately placed in a safety belt system according to state law, must be properly secured by the safety belt system. The shoulder belt must never be placed behind the back or under the arm. The lap belt must be secured low and tight across the upper thighs;

6. Children under thirteen (13) years of age must never be transported in the front seat of a vehicle;

7. Children must never be left alone in a vehicle;

8. Children must be loaded and unloaded safely and out of the path of moving vehicles;

9. The total number of passengers being transported shall never exceed the manufacturer's specifications;

10. The provider cannot transport more children than any vehicle can safely accommodate with child restraint systems and seat belts that are properly installed in the vehicle;

11. The seats of the vehicle must be constructed and installed according to the manufacturer's specifications;

12. Modifications to vehicles including, but not limited to, the addition of seats and seat belts must be completed by the manufacturer or an authorized representative of the manufacturer. Documentation of such modifications must be available for review;

13. The vehicle must be enclosed and have door locks in proper working order;

14. The vehicle must be kept in satisfactory condition to assure the safety of occupants. Vehicle tires, brakes, and lights must meet safety standards set by the Colorado Department of Revenue, Motor Vehicle Division (Section 42-4-236, C.R.S.) and

15. At a large home, there must be at least one (1) adult supervisor, in addition to the driver, for nine (9) to twelve (12) children using the vehicle.

E. The home must obtain written permission from the parent or guardian for transportation of the child.

F. If the child care home provides transportation to and from care, the provider must monitor the child between the vehicle and the child's home or another home authorized by the child's parent or guardian until the child is safely in the care of another adult.

G. Transportation arrangements for school-age children must, be by agreement between the home and the child's parent or guardian (e.g., whether the child can walk, ride a bicycle, or travel in a car). The home must exercise reasonable precaution to see that the children arrive at the home from school when expected and must follow up on their whereabouts if late. Written permission from a parent or guardian for the child to attend community functions after school hours must include agreements regarding transportation.

H. If transportation is provided between the home and school for school-age children, the required adult-to-child ratio and supervision must be maintained for children remaining at the home.

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Opinion of the Attorney General rendered in connection with the rules adopted by the

Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

on 08/05/2016

12 CCR 2509-8

CHILD CARE FACILITY LICENSING

The above-referenced rules were submitted to this office on 08/09/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 24, 2016 12:06:15

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Human Services

Agency

Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

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DEPARTMENT OF HUMAN SERVICES

Social Services Rules

CHILD CARE FACILITY LICENSING

12 CCR 2509-8

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

7.700 CHILD CARE FACILITY LICENSING

7.701 GENERAL RULES FOR CHILD CARE FACILITIES

7.701.1 INTRODUCTION

All rules in Section 7.701, et seq., shall be known and hereinafter referred to as the General Rules for Child Care Facilities and will apply to all child care applicants and licensees subject to the Child Care Licensing Act, Sections 26-6-101 to 26-6-119, C.R.S.

7.701.11 Licensing Exemptions [Rev. eff. 4/1/11]

A. A license must be obtained before care begins unless such care is exempt as set forth below.

B. A license is not required for:

1. A special school or class in which more than seventy five (75) percent of the time that children are present is spent in religious instruction. Religious instruction is defined to include such developmentally appropriate children's activities as worship, singing religious songs, listening to religious stories, learning and practicing religious cultural activities, and participating in religious celebrations;

2. A special school or class operated for a single skill-building purpose;

3. A child care center operated in connection with a church, shopping center, or business where children are cared for during short periods of time, not to exceed three hours in any twenty-four hour period of time, while parents or persons in charge of such children, or employees of the church, shopping center, or business whose children are being cared for at such location are attending church services at such location, shopping, patronizing or working on the premises of the business. This facility must be operated on the premises of the church, business, or shopping center. Only children of parents or guardians who are attending a church activity or patronizing the business or shopping center or working at the church, shopping center or business can be cared for in the center;

4. Occasional care of children with or without compensation, which means the offering of child care infrequently and irregularly that has no apparent pattern;

5. A family care home in which less than 24-hour care is given for only one child or two or more children who are siblings from the same family household at any one time;

6. A child care facility that is approved, certified, or licensed by any other state department or agency, or by a federal government department or agency, which has standards for operation of the facility and inspects or monitors the facility;

7. The medical care of children in nursing homes;

8. Ski area guest child care facilities as defined at Sections 26-6-102(5) and 26-6-103.5, C.R.S;

9. Neighborhood Youth Organizations as defined at Sections 26-6-102(5.8) and 26-6-103.7, C.R.S;

C. Any child care providers wishing to be declared exempt from the Child Care Licensing Act based on the nature of their program must submit a request for exemption to the State Department. That request must include the name and address of the facility, the number of children in care and their approximate ages, the hours of operation, and a basic description of the program and its curriculum.

D. Decisions of the State Department regarding exemptions are the final agency decision of the Department and cannot be reviewed by an Administrative Law Judge.

7.701.12 Civil Penalties and Injunctions

A. Violation of any provision of the Child Care Licensing Act or intentional false statements or reports made to the Department or to any agency lawfully delegated by the Department to make an investigation or inspection may result in fines assessed of not more than $100 a day to a maximum of $10,000.

1. A civil penalty will be assessed by the Department only in conformity with the provisions and procedures specified in Article 4 of Title 24, C.R.S. No civil penalty will be assessed without a hearing conducted pursuant to the Child Care Licensing Act and Article 4 of Title 24, C.R.S., before an Administrative Law Judge acting on behalf of the Department.

2. Prior to receipt of a cease and desist order from the Department or from any agency delegated by the Department to make an investigation or inspection under the provision of the Child Care Licensing Act, any unlicensed child care facility may be fined up to $100 a day to a maximum of $10,000 for providing care for which a license is required.

3. For providing child care for which a license is required after receipt of a cease and desist order, an unlicensed facility will be fined $100 a day to a maximum of $10,000.

4. Assessment of any civil penalty under this section will not preclude the Department from initiating injunctive proceedings pursuant to Section 26-6-111, C.R.S.

5. A licensed child care facility may be fined up to $100 a day to a maximum of $10,000 for each violation of the Child Care Licensing Act or for any statutory grounds as listed at Section 26-6-108(2), C.R.S.

6. Assessment of any civil penalty does not preclude the department from also taking action to deny, suspend, revoke, make probationary, or refuse to renew that license.

7. Any person intentionally making a false statement or report to the Department or to any agency delegated by the Department to make an investigation or inspection under the provisions of the Child Care Licensing Act may be fined up to $100 a day to a maximum of $10,000.

8. Civil penalties assessed by the department must be made payable to the Colorado Department of Human Services.

B. In addition to civil penalties that may be assessed under Section 7.701.12, A, when an individual operates a facility after a license has been denied, suspended, revoked, or not renewed, or before an original license has been issued, injunctive proceedings may be initiated to enjoin the individual from operating a child care facility without a license.

C. Within ten (10) working days after receipt of a notice of final agency action with regard to a negative licensing action or the imposition of a fine, each child care center or family child care home must provide the Department with the names and mailing addresses of the parents or legal guardians of each child cared for at the facility so that the Department can notify the parents or legal guardians of the negative licensing action taken. The facility will be responsible for paying a fine to the Department that is equal to the direct and indirect costs associated with the mailing of the notice.

7.701.13 Waivers [Rev. eff. 2/1/14]

A. A person who has applied for or been issued a certificate or license to operate a child care facility or child placement agency has the right to request a waiver of any rule or regulation which, in his/her opinion, works an undue hardship on the person, facility, or the community, or has been too stringently applied by a representative of the Department.

B. Requests for waivers must be submitted to the Department in writing within sixty (60) calendar days of the date on which the rule allegedly was too stringently applied or created the hardship. Requests must include the name and address of the facility, its assigned license number, the citation of the rule for which a waiver is being sought, and all relevant information regarding the alleged hardship or evidence of the rule being too stringently applied.

C. Pursuant to Section 26-6-105.7, C.R.S., materials waivers are different than general waivers in several ways. Child care centers may apply for a waiver to use certain materials in its program pursuant to Section 26-6-105.7(2)(a), (b), C.R.S.

D. The Department will designate, pursuant to the Child Care Licensing Act, Section 26-6-106(3), C.R.S., an appeal panel, which will meet to review appeal requests and make recommendations to the Executive Director of the Colorado Department of Human Services, and the Director will issue a decision. Decisions of the Executive Director are final and not subject to judicial review. Requests for an appeal shall be submitted to the Office of Early Childhood.

E. The Department shall make a decision on waiver requests and notify the child care center of its decision no later than sixty (60) calendar days of receipt of the request.

F. If a child care facility or agency is aggrieved by the decision of the appeal panel, the facility or agency has the following rights:

1. If the denial of a waiver request relates to a request for a materials waiver/appeal, the facility or agency may petition the Colorado Department of human services (“The Department”) in writing within forty-five (45) calendar days to appeal the denial decision.

2. If the appeal/waiver relates to any other rule than a materials waiver/appeal, the facility has a right to a formal hearing pursuant to Section 24-4-105, C.R.S., if the facility or agency petitions the Department in writing within thirty (30) calendar days of receipt of the written appeal decision.

G. For appeals of materials waiver/appeal denials, the Executive Director or designee shall act upon the appeal within forty-five (45) calendar days and shall provide notice of his/her decision on the appeal within ten (10) calendar days.

H. For appeals of materials waiver/appeal denials, the appealing child care center has the right to request a meeting in person with Department personnel regarding the appeal.

I. For appeals of materials waiver/appeal denials, the entire appeals process shall last no longer than one hundred (100) calendar days after the date of the notice of the denial of the waiver request.

J. Written decisions of the appeal panel shall be posted beside the child care license, but posting of the decision shall not occur until the appeal is final. The Department shall not post the decision to deny a waiver on its web site until the appeal is final.

7.701.14 Civil Rights

All facilities licensed under the Child Care Licensing Act are subject to the non-discrimination provisions of Title VI of the Civil Rights Act of 1964, as amended, and its implementing regulation, Title 45 Code of Federal Regulations (CFR), Part 80; the Age Discrimination Act of 1975, as amended, and its implementing regulation, Title 45 CFR, Part 91; Section 504 of the Rehabilitation Act of 1973, as amended, and its implementing regulation, Title 45 CFR, Part 84.

All facilities licensed under the Child Care Licensing Act are also subject to Titles I through V of the Americans with Disabilities Act, as amended, and its implementing regulation, Title 29 C.F.R., Part 1630. Decisions related to the enrollment, placement, or dismissal of a child with a disability or chronic condition must be in compliance with the Americans with Disabilities Act. The facility must provide reasonable accommodations for the child with a disability who has special needs.

A lack of independent ambulation or the need for assistance in feeding, toileting, or dressing or in other areas of self-care cannot be used as sole criteria for enrollment or placement or denial of enrollment or denial of placement. Efforts must be made to accommodate the child's needs and to integrate the child with his/her peers who do not have disabilities.

7.701.2 DEFINITIONS [Rev. eff. 1/1/16]

A. Types of Homes

1. Family Child Care Home

"Family Child Care Home", defined at Section 26-6-102(4), C.R.S., means a type of family care home that provides less than 24-hour care for two (2) or more children on a regular basis in a place of residence. Children in care are from different family households and are not related to the head of household.

2. Foster Care Home

"Foster Care Home" means a home that is certified by a county department or a child placement agency, pursuant to Section 26-6-106.3, C.R.S., for child care in a place of residence of a family or person for the purpose of providing twenty-four (24) hour foster care for a child and/or youth under the age of twenty-one years. A foster care home may include foster care for a child and/or youth who is unrelated to the head of the home or foster care provided through a kinship foster care home, but does not include non-certified kinship care defined in Section 19-1-103(78.7), C.R.S. The term includes any foster care home receiving a child and/or youth for regular twenty-four (24) hour care and any home receiving a child and/or youth from any state-operated institution for child care or from any child placement agency. Foster care home also includes those homes licensed by the Department of Human Services pursuant to Section 26-6-104, C.R.S., that receive neither moneys from the counties, nor children and/or youth placed by the counties.

B. Specialized Group Facility

A "Specialized Group Facility", defined at Section 26-6-102(10)(a), C.R.S., means sponsored and supervised by a county department or a licensed child placement agency for the purpose of providing twenty-four (24) hour care for three (3) or more children, but fewer than twelve (12) children except as noted below, from at least three (3) but less than eighteen (18) years of age, or for those persons less than twenty-one (21) years old who are placed by court order prior to their eighteenth birthday whose special needs can best be met through the medium of a small group. A specialized group facility may serve a maximum of one (1) child enrolled in Children's Habilitation Residential Program (CHRP) and eight (8) other foster children, or two (2) children enrolled in CHRP and five (5) other foster children, unless there has been prior written approval by the CHRP waiver administrator. If placement of a child in a Specialized Group Center will result in more than three (3) children approved for Children's Habilitation Residential Program (CHRP) funding, then the total number of children paced in that Specialized Group Center will not exceed a maximum of six (6) total children. Placements of more than three (3) children approved for CHRP funding may be made if the agency can demonstrate to the CHRP waiver administrator that the provider has sufficient knowledge, experience, and supports to safely meet the needs of all of the children in the home. Emergency placements will not exceed maximum established limits. Facilities that exceed established capacity at the time the rule takes effect may not accept additional children into the home until capacity complies with the rule.

SPECIALIZED GROUP FACILITY MAXIMUM CAPACITY

CHRP	Non-CHRP	Total Children
1	8	9
2	5	7

SPECIALIZED GROUP CENTER MAXIMUM CAPACITY

CHRP	Non-CHRP	Total Children
3	3	6

1. "Specialized Group Homes or Group Centers" who are serving children enrolled in the Children's Habilitation Residential Program (CHRP) waiver shall be in compliance with rules contained within the Department of Health Care Policy and Financing's Medical Assistance Manual at Section 8.508 (10 CCR 2505-10).

2. "Specialized Group Centers" that serve three (3) children enrolled in CHRP waiver must be staffed with sufficient staff to deal with the complex needs of the children placed in the home.

3. A “Specialized Group Home” is located in a house owned or otherwise controlled by the group home parents who are primary responsible for the care of the children and reside at the home.

4. A “Specialized Group Center” is located in a facility owned or controlled by a governing body that hires the group center parents or personnel who are primarily responsible for the care of the children.

C. Child Care Center

“Childcare centers”, less than 24-hour programs of care defined at Section 26-6-102(1.5), C.R.S., include the following types of facilities:

1. A “large child care center” provides care for sixteen (16) or more children between two and one-half (2-1/2) and sixteen (16) years of age.

2. A “small child care center” provides care for five (5) through fifteen (15) children between two (2) and sixteen (16) years of age.

3. An “infant program” provides care for children between six (6) weeks and eighteen (18) months of age.

4. A “toddler program” provides care for children between the ages of twelve (12) months (when walking independently) and thirty-six (36) months of age.

5. “Preschool” is a part-day child care program for five (5) or more children between the ages of two and one-half (2-1/2) and seven (7) years of age.

6. “Kindergarten” provides a program for children the year before they enter the first grade.

7. A “school-age child care center” means a child care center that provides care for five (5) or more children who are between five (5) and sixteen (16) years of age. The centers purpose is to provide child care and/or an outdoor recreational experience using a natural environment. The center operates for more than one week during the year. The term includes facilities commonly known as “day camps”, “summer camps”, “summer playground programs”, “before and after school programs”, and “extended day programs.” This includes centers operated with or without compensation for such care, and with or without stated educational purposes.

    a. A “building-based school-age child care program” means a child care program that provides care for five (5) or more children who are between five (5) and sixteen (16) years of age. The center is located in a building that is regularly used for the care of children.

    b. A “mobile school-age child care program” provides care for five (5) or more children who are at least seven (7) years of age or have completed the first grade. Children move from one site to another by means of transportation provided by the governing body of the program. The program uses no permanent building on a regular basis for the care of children.

    c. An “outdoor-based school-age child care program” provides care for five (5) or more children who are at least seven (7) years of age or have completed the first grade. This program uses no permanent building on a regular basis for the care of children. Children are cared for in a permanent outdoor or park setting.

D. Children's Resident Camp

A “Children's Residential Camp”, is defined at Section 26-6-102(2.2), C.R.S.

1. A residential camp may have a “primitive camp” which is a portion of the permanent camp premises or another site at which the basic needs for camp operation such as places of abode, water supply systems, and permanent toilet and/or cooking facilities are not usually provided.

2. A “travel-trip camp” shall be known as a camp in which there is no permanent camp site and children move from one site to another. The travel-trip camp either originates in Colorado or moves into and/or through Colorado from another state and operates for three or more consecutive twenty four (24) hour days during one or more seasons of the year for the care of five (5) or more children who are at least ten (10) years old or have completed the fourth grade. The program shall have as its purpose a group learning experience offering educational and recreational activities utilizing an outdoor environment.

E. Day Treatment Center

A “Day Treatment Center”, defined at Section 26-6-102(2.4), C.R.S., means a facility that provides less than twenty-four (24) hour care for groups of five (5) or more children three (3) to twenty-one years of age. Nothing prohibits a day treatment center from allowing a person who reaches twenty-one (21) years of age after the commencement of an academic year from attending an educational program at the day treatment center through the end of the semester in which the twenty-first birthday occurs or until the person completes the educational program, whichever comes first. The center must provide a structured program of various types of psycho-social and/or behavioral treatments to prevent or reduce the need for placement of the child out of the home or community. This definition does not include special education programs operated by a public or private school system or programs that are licensed by other regulations of the Department of Human Services for less than twenty-four (24) hour care of children, such as a child care center or part-day preschool.

F. Child Placement Agency

A “Child Placement Agency”, defined at Section 26-6-102(2), C.R.S., means any corporation, partnership, association, firm, agency, institution, or person unrelated to the child being placed, who places, who facilitates placement for a fee, or arranges for placement any child under the age of eighteen (18) years with any family, person or institution for purposes of foster care, treatment and/or adoption. The natural parents or legal guardian of any child who places that child for care with any facility licensed as a “Family Child Care Home” or “Child Care Center” shall not be deemed to be a Child Placement Agency.

To arrange for placement is to act as an intermediary by assisting a parent or guardian or legal custodian to place or plan to place a child with persons unrelated to the child for twenty-four (24) hour care.

Any agency from out of state placing a child within Colorado must be licensed as a child placement agency by the Colorado Department of Human Services unless the placement services are coordinated with and provided by a county department of social services or a child placement agency licensed by the department.

G. Residential Child Care Facility

1. “Residential Child Care Facility”, defined at Section 26-6-102(8), C.R.S., shall provide twenty-four (24) hour residential group care and treatment for five (5) or more children between the ages of three (3) and eighteen (18) years old and for those persons to twenty-one (21) years old who are placed by court order prior to their eighteenth birthday. A residential child care facility must offer opportunities for a variety of experiences through a group living program and specialized services that can be used selectively in accordance with an individual plan for each child. A residential child care facility includes “Shelter Care Facilities”, “Residential Child Care Facilities”, and “Psychiatric Residential Treatment Facilities”.

2. “Transition Program” may be a component of an RCCF program in which the child is residing in the RCCF part of the time and in a living situation that child is expected to move to after treatment in the RCCF is completed. The purpose of transition is to enable the child to transition to the home or a less restrictive setting in a manner that prepares the child for success in the new setting.

H. Secure Residential Treatment Center

A “Secure Residential Treatment Center”, defined at Section 26-6-102(9), C.R.S., means a facility operated under private ownership that provides twenty-four (24) hour group care and treatment in a secure setting for five (5) or more children or persons from age ten (10) up to the age of twenty-one (21) who are committed by a court pursuant to an adjudication of delinquency or pursuant to a determination of guilt of a delinquent act or having been convicted as an adult and sentenced for an act that would be a crime if committed in Colorado, or in the committing jurisdiction, to be placed in a secure facility.

I. Neighborhood Youth Organization

A “Neighborhood Youth Organization”, defined at Section 26-6-102(5.8), C.R.S., means a nonprofit organization that is designed to serve youth as young as six (6) years of age and as old as eighteen (18) years of age and that operates primarily during times of the day when school is not in session and provides research-based, age-appropriate, and character-building activities designed exclusively for the development of youth from six (6) to eighteen (18) years of age. These activities shall occur primarily in a facility leased or owned by the Neighborhood Youth Organization. The activities shall occur in an environment in which youth have written parental or legal guardian consent to become a youth member of the neighborhood youth organization and to arrive at and depart from the primary location of the activity on their own accord, without supervision by a parent, legal guardian, or organization.

A Neighborhood Youth Organization shall not include faith-based centers, organizations or programs operated by state or city parks or special districts, or departments or facilities that are currently licensed as child care centers as defined in Section 26-6-102(1.5), C.R.S.

J. Other Definitions

1. “Affiliate of a licensee” means any person or entity that owns more than five (5) percent of the ownership interest in the business operated by the licensee or the applicant for a license, or any person who is directly responsible for the care and welfare of children served, any executive, officer, member of the governing board, or employee of a licensee, or a relative of a licensee, which relative provides care to children at the licensee’s facility, or is otherwise involved in the management or operations of the licensee’s facility.

2. For the purposes of all child care licensing rules, the terms “child battering”, “child abuse”, “child molesting”, and “child neglect” are terms to be considered within the definition of abuse set forth in Section 19-1-103, C.R.S., unless otherwise indicated.

3. “Citizen/legal resident” means a citizen of the United States, current legal resident of the United States, or lawfully present in the United States.

4. The “Consumer Product Safety Commission”, as referred to in rules regulating child care facilities, means the National Commission that establishes standards for the safety of children’s equipment and furnishings and for playground safety. Information about these guidelines may be obtained from the Office of Information and Public Affairs, U.S. Consumer Product Safety Commission (CPSC), Washington, D.C. 20207. The CPSC web address is http://www.cpsc.gov. The local U.S. Consumer Product Safety Commission Office is located at 1961 Stout Street, Denver, Colorado 80294. You may contact a Senior Resident Investigator in the Denver office for information. This rule refers to the current edition of the Consumer Product Safety Commission standards, in effect when rules referencing the Commission are referenced, and does not include later amendments to or editions of the standards. The standards may be examined at any State Publications Depository Library.

5. A “critical incident” is a serious life safety or potential life safety incident or concern that poses a danger to the life, health, and/or well-being of a child or children at the facility or of a staff member at the facility.

6. “Department” is the Colorado Department of Human Services.

7. “Facility” is any business or operation established for the purpose of providing child care services that are required to be licensed pursuant to the Child Care Licensing Act, Section 26-6-101 et seq., C.R.S.

8. “Final Agency Action” means the determination made by the State Department, after opportunity for hearing to deny, suspend, revoke, or demote to probationary status a license issued pursuant to the Child Care Licensing Act or an agreement between the Department and the licensee concerning the demotion of such a license to a probationary license.

9. “Governing Body” is the individual, partnership, corporation, or association in whom ultimate authority and legal responsibility are vested for the administration and operation of the child care facility.

10. “Licensing specialist” is the authorized representative of the Colorado Department of Human Services who inspects child care facilities to ensure compliance with licensing requirements and to investigate possible violations of those requirements.

11. “Negative licensing action” means a Final Agency Action resulting in the denial, suspension, or revocation of a license issued pursuant the Child Care Licensing Act or the demotion of such a license to a probationary license.

12. “Serious emotional disturbance” means a diagnosable mental, behavioral, or emotional disorder that is of sufficient duration and has resulted in a functional impairment that substantially interferes with or limits a child’s role or functioning in family, school, or community activities. Serious emotional disturbances do not include developmental disorders, substance-related disorders, or conditions or problems that may be a focus or clinical attention unless they occur with another diagnosable serious emotional disturbance.

7.701.21 Homeless Youth Services - Definitions [Eff. 9/15/12]

“Homeless Youth” is defined at Sections 24-32-723 and 26-5.7-102(2), C.R.S.

“Homeless Youth Shelter” is defined at Sections 26-5.7-102(3) and 26-6-102(5.1), C.R.S.

“Licensed Host Family Home” is a home that is certified by the county department or a child placement agency as meeting the requirements for providing shelter to homeless youth.

7.701.3 APPLICATION PROCESS

7.701.31 Original Application [Rev. eff. 6/1/12]

A. A completed original application accompanied by the appropriate fee and proof of lawful presence in the United States (see Section 3.140.11, 9 CCR 2503-1) must be submitted to the State Department a minimum of sixty (60) days prior to the proposed opening date for the facility.

B. A licensing evaluation will occur only after the 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 applicant for the license. A written plan for the supervision of the Specialized Group Facility shall accompany the application.

7.701.32 Use of Records and Reports of Child Abuse or Neglect for Background and Employment Inquiries [Rev. eff. 1/1/16]

A request to determine whether any owner, applicant, employee, licensee or resident of a licensed facility, or any supervisory employee of a guest care facility, or an exempt family child care home provider and each adult eighteen (18) years of age or older residing in the home (also known as a qualified adult) receiving or applying to receive Colorado Child Care Assistance moneys was found to be responsible in a confirmed report of child abuse or neglect reported to the State Department's automated system shall be directed to and be the responsibility of the State Department.

A. 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 years immediately preceding the date of application.

B. An inquiry 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, if the employee changes employment to a different facility that has the same licensing body;

C. The request must be made within ten (10) calendar days of the first day of employment for each employee or facility on the State prescribed form, accompanied by the required fee paid by check or money order (for fee assessment see section 7.000.73).

D. The request must be accompanied by the individual’s written authorization to obtain such information from the State automated system, if applicable.

E. The State Department will inform the requesting party in writing of whether the individual has been confirmed to be responsible for an incident of child abuse or neglect.

1. If the result of the inquiry is that the individual has been confirmed as responsible for an incident of child abuse or neglect, the State Department shall provide the requesting party with information regarding the date of the reported incident, the type of abuse or neglect with the severity level, and the county department that confirmed the report.

2. If the result of the inquiry is that the individual has not been confirmed to be responsible for an incident of child abuse or neglect, the State Department shall notify the requesting party of this fact.

F. The information provided by the State Department shall serve only as the basis for further investigation. The director or operator may inform an applicant or employee that the report from the State Department's automated system was a factor in the director or operator's decision with regard to the applicant or employee's employment.

G. Any person who willfully permits or who encourages the release of data or information related to child abuse or neglect contained in the State Department's automated database to persons not permitted access to such information commits a Class 1 misdemeanor and shall be punished as provided in Section 18-1.3-501, C.R.S.

7.701.33 Criminal Record Check [Rev. eff. 1/1/16]

A. Criminal records checks are required under the following circumstances:

1. Each applicant listed below shall submit to the Colorado Bureau of Investigation (CBI) and the Federal Bureau of Investigation (FBI) a complete set of fingerprints taken by a qualified law enforcement agency to obtain any criminal record held by the CBI and FBI, except county departments of human or social services that use fingerprint machines pursuant to Section 19-3-406(1)(c), (2), C.R.S. Payment of the fee for the criminal record check is the responsibility of the individual being checked, identified as follows:

a. Each applicant for an original license for a center, facility, or agency and any adult eighteen (18) years of age or older who resides in the licensed center, facility or agency.

b. Each exempt family child care home provider who provides care for a child and each individual who provides care for a child who is related to the individual (referred collectively in this section as a "qualified provider"), if the child's care is funded in whole or in part with money received on the child's behalf from the publicly funded Colorado Child Care Assistance Program; and, any adult eighteen (18) years of age or older who resides with a qualified provider where the care is provided.

c. Applicants for an original certificate for a foster care home, and any adult eighteen (18) years of age or older who resides in the foster care home.

d. Specialized group home parents and any person working in a twenty-four (24) hour child care facility.

2. Each applicant for an original license for a Neighborhood Youth Organization shall comply with the criminal background check requirements found at Section 26-6-103.7(4), C.R.S.

   The applicant shall ascertain whether the person being investigated has been convicted of felony child abuse as specified in Section 18-6-401, C.R.S., or a felony offense involving unlawful sexual behavior as defined in Section 16-22-102(9), C.R.S. The Neighborhood Youth Organization shall not hire a person as an employee or approve a person as a volunteer after confirmation of such a criminal history.

B. Only in the case of a children's resident camp or school-age child care center, out-of-state persons employed in a temporary capacity for less than ninety (90) days are not required to be fingerprinted to obtain a criminal record check. Each person exempted from fingerprinting and being checked with the State Department's automated system must sign a statement which affirmatively states that she/he has not been convicted of any charge of child abuse or neglect, unlawful sexual offense, or any felony.

   Prospective employers of such exempted persons shall conduct reference checks of the prospective employees in order to verify previous work history and shall conduct personal interviews with each such prospective employee.

C. At the time the annual declaration of compliance is submitted to the department, a criminal record check is required only for adults living at the licensed facility who have not previously obtained one. Because the Colorado Bureau of Investigation (CBI) provides the Department with ongoing notification of arrests, owners, applicants, licensees, and persons who live in the licensed facility who have previously obtained a criminal record check are not required to obtain additional criminal record checks.

D. Each owner, employee, who is eighteen (18) years of age or older, and newly hired employee who is eighteen (18) years of age or older, of a facility or agency must submit to CBI a complete set of fingerprints to obtain any criminal record held by the CBI and FBI. Payment of the fee for the criminal record check is the responsibility of the individual being checked or the facility or agency. The results of the criminal record check must be maintained at the home, center, facility, or agency and must be available for review upon request by a licensing specialist.

   1. Employees and volunteers who are transferring from one child care facility to another may have their CBI, but not their FBI, fingerprints transferred if they complete the following process:

      a. New employees must obtain their CBI clearance letter or a photocopy of their processed fingerprint card from their former employer or school district. They must attach it to a new fingerprint card, the top portion of which they have completed with new fingerprints taken. The new fingerprint card must include the new employer's address and the new employer's license I.D. number in the box labeled MNU. “Transfer - Child Care” must be inserted in the “Reason Fingerprinted” block. The CBI clearance letter (or photocopy of the old fingerprint card) and the new fingerprint card must be sent with a $2 money order payable to CBI to: Colorado Bureau of Investigation, 690 Kipling St., Ste. 3000, Denver, CO 80215. Those facilities that have accounts with CBI are not required to send the $2 money order; instead, they shall enter their CBI account number in the OCA block of the new fingerprint card.

      b. New employees who cannot obtain the CBI clearance letter or photocopy of the processed fingerprint card from their former employer must have their fingerprints retaken and follow the process detailed in Section 7.701.33, D, 1, a.

c. When an individual leaves employment, the facility must submit to CBI a completed Notification of Name Removal form to request the removal of the individual's name from their facility license number in the CBI database.

d. School district employees who currently work at a child care facility must have their criminal history report linked to the license number of the child care facility.

2. Licensees must send a copy of an employee's or a resident's criminal record check to his/her new employer upon written request from that employer.

3. Any adult volunteer, working as a staff member to meet the required staff child ratio or staff qualifications, who works fourteen (14) days or more in a calendar year, must submit to CBI a complete set of fingerprints taken by a qualified law enforcement agency to obtain a criminal record check. The results of the criminal record check must be maintained at the facility or agency and must be available for inspection by a licensing specialist.

4. Requests for a criminal record check must be submitted to the CBI within five (5) working days of the day that the individual begins to work at the facility or agency.

5. For the purposes of these rules, “convicted” means a conviction by a jury or by a court and shall also include a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, an adjudication, and a plea of guilty or *nolo contendere*.

6. Facilities and agencies that hire individuals who have been convicted of any felony, except those listed in a-f below, unlawful sexual behavior, or any misdemeanor, the underlying factual basis of which has been found by the court on record to include an act of domestic violence must inform the department of that hiring within fifteen (15) calendar days of receiving knowledge of the conviction.

7. A child care facility shall not employ, or a child placement agency shall not employ or certify, an individual who has been convicted of:

a. Child abuse, as specified in Section 18-6-401, C.R.S.;

b. A crime of violence, as defined in Section 18-1.3-406, C.R.S.;

c. An offense involving unlawful sexual behavior, as defined in Section 16-22-102(9), C.R.S.;

d. A felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in Section 18-6-800.3, C.R.S.;

e. A felony involving physical assault, battery, or a drug-related offense within the five years preceding the date of application for a license or certificate;

f. A pattern of misdemeanor convictions within the ten (10) years immediately preceding submission of the application. “Pattern of misdemeanor” shall include consideration of Section 26-6-108(2), C.R.S., regarding suspension, revocation and denial of a license, and shall be defined as:

1) Three (3) or more convictions of 3rd degree assault as described in Section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in Section 18-6-800.3, C.R.S.; or,

2) Five (5) misdemeanor convictions of any type, with at least two (2) convictions of 3rd degree assault as described in Section 18-3-204, C.R.S., and/or any misdemeanor, the underlying factual basis of which has been found by any court on the record to include an act of domestic violence as defined in Section 18-6-800.3, C.R.S.; or,

3) Seven (7) misdemeanor convictions of any type.

g. Any offense in any other state, the elements of which are substantially similar to the elements listed in a-f.

8. No license or certificate to operate any agency or facility shall be issued by the Department, a county department of human or social services, or a licensed Child Placement Agency if the person applying for such license or certificate or an affiliate of the applicant, a person employed by the applicant, or a person who resides with the applicant of the facility has been determined to be insane or mentally incompetent by a court of competent jurisdiction and, should a court enter, pursuant to Part 3 or Part 4 of Article 14 of Title 15, C.R.S. or Section 27-65-109(4) or 27-65-127, C.R.S., an order specifically finding that the mental incompetency or insanity is of such degree that the applicant is incapable of operating a family child care home, foster care home, child care center, or child placement agency, the record of such determination and entry of such order being conclusive evidence thereof.

E. Payment of the fee for the FBI check is the responsibility of the individual who is obtaining the check or the facility or agency. Certified foster parent(s) or any person eighteen (18) years of age or older who resides with a certified foster parent must obtain a criminal record check from the FBI regardless of the length of residence in Colorado.

F. The Department may deny, revoke, suspend, change to probationary or fine a child care facility or child placement agency if the applicant(s), an affiliate of the applicant, or any person living with or employed by the applicant has:

1. Been convicted in Colorado or in any other state of any felony, or has entered into a deferred judgment agreement or a deferred prosecution agreement in Colorado or in any other state to any felony other than those offenses specified in Section 26-6-104(7), C.R.S., or child abuse, as specified in Section 18-6-401, C.R.S., the record of conviction being conclusive evidence thereof, notwithstanding Section 24-5-101, C.R.S.; or,

2. Been convicted of third degree assault, as described in Section 18-3-204, C.R.S., any misdemeanor, the underlying factual basis of which has been found by the court on any record to include an act of domestic violence, as defined in Section 18-6-800.3, C.R.S., any misdemeanor violation of a restraining order, as described in Section 18-6-803.5, C.R.S., any misdemeanor offense of child abuse as defined in Section 18-6-401, C.R.S., or any misdemeanor offense in any other state, the elements of which are substantially similar to the elements of any one of the offenses described in this paragraph; or,

3. Used any controlled substance as defined in Section 12-22-303(7), C.R.S. or consumed any alcoholic beverage or been under the influence of a controlled substance or alcoholic beverage during the operating hours of the facility; or,

4. Been convicted of unlawful use of a controlled substance as specified in Section 18-18-404, C.R.S., unlawful distribution, manufacturing, dispensing, sale, or possession of a controlled substance as specified in Section 18-18-405, C.R.S., or unlawful offenses relating to marijuana or marijuana concentrate as specified in Section 18-18-406, C.R.S.; or,

5. Consistently failed to maintain standards prescribed and published by the Colorado Department of Human Services; or,

6. Furnished or made any misleading or any false statement or report to the Colorado Department of Human Services; or,

7. Refused to submit to the Colorado Department of Human Services any reports, or refused to make available to the Department any records required by it in making investigation of the facility for licensing purposes; or,

8. Failed or refused to submit to an investigation or inspection by the Colorado Department of Human Services or to admit authorized representatives of the Department at any reasonable time for the purpose of investigation or inspection; or,

9. Failed to provide, maintain, equip, and keep in safe and sanitary condition premises established or used for child care pursuant to standards prescribed by the Colorado Department of Public Health and Environment and the Colorado Department of Human Services or by ordinances of regulations applicable to the location of the foster care home; or,

10. Willfully or deliberately violated any of the provisions of the Child Care Licensing Act; or,

11. Failed to maintain financial resources adequate for the satisfactory care of children served in regard to upkeep of premises and provision for personal care, medical services, clothing, and other essentials in the proper care of children; or,

12. Been charged with the commission of an act of child abuse or an unlawful sexual offense, as specified in Section 18-3-411(1), C.R.S., if:

    a. Such individual has admitted committing the act or offense and the admission is documented or uncontroverted; or,

    b. An Administrative Law Judge finds that such charge is supported by substantial evidence; or,

13. Admitted to an act of child abuse or if substantial evidence is found that the licensee, person employed by the licensee, or person who resides with the licensed in the foster home has committed an act of child abuse, as defined at Section 19-1-103(1), C.R.S.; or,

14. Been the subject of a negative licensing action; or

15. Misuse any public funds that are provided to any foster care home or any child placement agency that places, or arranges for placement of a child in foster care for the purposes of providing foster care services, child placement services related to the provision of foster care, or any administrative costs related to the provision of such foster care services or such foster-care-related child placement services.

G. The Department may deny an application for a child care facility license or a child placement agency license if the applicant is a relative affiliate of a licensee, as described in Section 26-6-102(1)(d), C.R.S., of a child care facility or child placement agency, which licensee is the subject of a previous negative licensing action or is the subject of a pending investigation by the Department that may result in a negative licensing action.

H. For all CBI fingerprint-based criminal history record information checks required in this Section 7.701.33, including those confirming a criminal history as well as those confirming no criminal history, the Department will conduct a comparison search on the State Judicial Department's court case management system and the sex offender registry of the Colorado Department of Public Safety. The court case management search shall be based on name, date of birth, and address, in addition to any other available criminal history data that the Department deems appropriate, is used to determine the type of crime(s) for which a person was arrested or convicted and the disposition thereof. The sex offender registry search is used to determine whether the address of a licensee or prospective licensee is listed as belonging to a registered sex offender, except that:

1. County departments of human or social services shall conduct sex offender searches in the CBI sex offender registry and the national sex offender public website operated by the United States Department of Justice prior to certification and annually, and include a copy in the provider record using the following criteria at a minimum:

    a. Known names and addresses of each adult residing in the foster care home or kinship foster care home; and,

    b. Address only, of the foster care home or the kinship foster care home.

2. Child placement agencies shall conduct sex offender searches in the CBI sex offender registry and the national sex offender public website operated by the United States Department of Justice prior to certification and annually, and include copy in the provider record using the following criteria at a minimum:

    a. Known names and addresses of each adult residing in the foster care home or kinship foster care home; and,

    b. Address only of each adult residing in the foster care home or the kinship foster care home.

I. Portability of Fingerprint-Based Criminal Background Checks

1. Where two or more individually licensed facilities are wholly owned, operated, and controlled by a common ownership group or school district, a fingerprint-based criminal history records check completed for one of the licensed facilities of the common ownership group or school district pursuant to this section for whom a criminal records check is required under Section 26-6-107, C.R.S., may satisfy the records check requirement for any other licensed facility under the same common ownership group or school district. A new fingerprint-based criminal history records check shall not be required of such an individual if the common ownership group or school district maintains a central records management system for employees of all its licensed facilities; takes action as required pursuant to Section 26-6-104, C.R.S., when informed of the results of a fingerprint-based criminal history records check that requires action pursuant to Section 26-6-107 C.R.S.; and informs the Department whenever an additional licensed facility comes under or is no longer under its ownership or control.

2. When a licensee is inspected pursuant to the Child Care Licensing Act and records regarding CBI and FBI fingerprint-based criminal background checks, as well as records and reports of child abuse and neglect maintained by the State Department, and the comparison search on the ICON system at the State Judicial system are held at a central records management system, the licensee shall be afforded fourteen (14) calendar days to provide to the State Department documentation necessary to verify that employees at the licensed facility have the required records related to fingerprint-based criminal background checks.

7.701.34 Fire and Health Inspections, Zoning Codes [Rev. eff. 1/1/16]

A. Prior to the original license being issued, following the renovation of the facility that would affect the licensing of the facility and at least every two (2) years thereafter, all child care facilities except family child care homes must be inspected and obtain an approving inspection report from the local department of health or the Colorado Department of Public Health and Environment and from the local fire department. These reports must be maintained at the facility and be available for review upon request by a licensing specialist.

B. Prior to the original license being issued, all child care facilities, except for foster homes and specialized group facilities that are providing care for three or fewer children who are determined to have a developmental disability by a community centered board or who have a serious emotional disturbance, must submit to the State Department written approval from the local zoning department approving operation of the facility. The approval must include the address of the child care facility and the ages and numbers of children to be served. The facility must also submit written zoning department approval to the State Department any time there is a change to the license, including moving the facility to another location, increasing the capacity, or adding different ages of children.

C. All child care facilities must operate in compliance with local planning and zoning requirements of the municipality, city and county, or county where the facility is located.

7.701.35 Changes Requiring a New Application [Rev eff. 8/1/14]

A license is deemed surrendered and a new application is required in the following circumstances:

A. Change of licensee, owner, or governing body; or

B. Change in classification of facility or service offered; or

C. Change in location of the facility.

7.701.36 Types of Licenses

7.701.361 Permanent License [Emer. Rule eff. 8/7/06; Perm. Rule eff. 10/30/06]

A. A permanent license is granted when the Department is satisfied that the facility or agency is in compliance with the appropriate Department rules and the Child Care Licensing Act. The permanent license remains in effect until surrendered or revoked.

B. Once a permanent license has been issued, the licensee must annually submit to the Department a declaration of compliance with the applicable licensing rules and notice of continuing operation on the form prescribed by the Department, along with the appropriate annual fee as set forth at Section 7.701.4.

C. Failure to submit the annual declaration and fee will constitute a consistent failure to maintain department standards and may result in revocation of the license.

D. At the time the annual declaration of compliance is submitted to the Department, the licensee must also complete a written self- evaluation on the forms prescribed by the Department. The self- evaluation form must be maintained by the facility and be available for review upon request by the licensing specialist.

7.701.362 Time-Limited License [Emer. Rule eff. 8/7/06; Perm. Rule eff. 10/30/06]

A. A time-limited license is granted for specific types of child care facilities or agencies when the Department is satisfied that the facility or agency is in compliance with the appropriate Department rules and the Child Care Licensing Act. The time-limited license will expire on a set date.

B. Once a time-limited license has been issued, the licensee must submit a renewal application prior to the expiration of the time-limited license. This will keep the license in effect until a new time-limited license can be issued.

C. Failure to submit the renewal application prior to the expiration of the time-limited license will result in the expiration of the license and closure of the facility.

7.701.363 Provisional License [Emer. Rule eff. 8/7/06; Perm. Rule eff. 10/30/06]

A. A provisional license or certificate may be issued only for the initial six (6) month licensing period.

B. This license permits the facility to operate while it is temporarily unable to conform to all rules upon proof by the applicant that attempts are being made to comply with the rules.

C. If an applicant holds a valid provisional license at the time of application for a permanent license, the provisional license will remain in effect until the application is acted on by the Department.

7.701.364 Probationary License [Emer. Rule eff. 8/7/06; Perm. Rule eff. 10/30/06]

A. A probationary license or certificate may be granted to a licensed facility or agency as provided in Section 26-6-108(2), C.R.S.

B. If the applicant holds a valid probationary license at the time of application for a permanent license, the current license will remain in effect until the application is acted on by the Department.

7.701.365 Multiple Licenses [Emer. Rule eff. 8/7/06; Perm. Rule eff. 10/30/06]

A. If a licensee wishes to assume child care responsibility in more than one classification of care, separate applications, fees, and licensing evaluations are required for each classification. A Family Child Care Home and a Specialized Group Home may only be licensed as one type of classification at any one location address.

B. If a licensee wishes to operate more than one facility of the same classification but at different locations, a separate application, fee, and evaluation are required for each location.

7.701.4 FEES [Rev. eff. 10/1/15]

A. The appropriate application fee outlined in 7.701.4, C, must be submitted to the department with the application for a child care, agency or Neighborhood Youth Organization license at least sixty (60) calendar days prior to the opening date of the facility or the expiration date of the provisional or probationary license. Neighborhood Youth Organizations shall be exempt from this sixty (60) day requirement for the first twelve (12) months following original promulgation of the Neighborhood Youth Organization rules.

B. The appropriate application fee outlined in 7.701.4, C, must be submitted to the Department annually, at least sixty (60) calendar days prior to the anniversary date of the license, along with a completed continuation declaration.

C. Following is a schedule of original and annual fees for all types of child care facilities and agencies, and Neighborhood Youth Organizations:

Family Child Care Homes (1-8 children)	
Original/Continuation	$27
Large Family Child Care Homes (7-12 children)	
Original/Continuation	$40
Experienced Family Child Care Homes	
Original Application	$43
Continuation	$43

Child Care Centers, Preschools, School Age Child Care and Resident Camps	
Original/Continuation (5-20 children)	$ 85
Original/Continuation (21-50 children)	$134
Original/Continuation (51-100 children)	$195
Original/Continuation (101-150 children)	$299
Original/Continuation (151-250 children)	$414
Original/Continuation (251 or more children)	$585

Day Treatment Center Original/Continuation	$49

Specialized Group Facility Original/Continuation	$121

Child Placement Agencies Licensed for Foster Care	
Original Application	$627
Continuation (0-5 homes)	$319
Continuation (6-15 homes)	$407
Continuation (16-30 homes)	$506
Continuation (31-50 homes)	$594
Continuation (51 or more homes)	$693

Child Placement Agencies Licensed for Adoption	
Original Application	$479
Continuation (0-5 finalized adoptions)	$242
Continuation (6-11 finalized adoptions)	$270
Continuation (12-17 finalized adoptions)	$286
Continuation (18-23 finalized adoptions)	$319
Continuation (24 or more finalized adoptions)	$330

A Child Placement Agency licensed for both foster care and adoptions will pay only one fee - either the foster care fee or the adoption fee, whichever is greater. The annual report required by regulation 7.710.72, B, must be attached.

Homeless Youth Shelter Original/Continuation	$330

Neighborhood Youth Organization Original Application/Continuation	$77

Residential Child Care Facility	
Original Application	$792
Continuation (under 12 children)	$242
Continuation (13-25 children)	$396
Continuation (26-50 children)	$550
Continuation (51 or more children)	$715
RCCF/RTC's pay one continuation fee per year based on the total licensed capacity of the facility.	

Secure Residential Treatment Center Original/Continuation	$924

Changes to Licenses (Capacity and/or Number of Children) Family Child Care Homes, Child Care Centers, School Aged Child Care, Day Treatment Facilities, Children's Resident Camps, Neighborhood Youth Organization	$49
Duplicate Licenses Family Child Care Homes, Child Care Centers, School Aged Child Care, Day Treatment Facilities, Children's Resident Camps, Neighborhood Youth Organization	$37
Changes to Licenses (Capacity and/or Number of Children) Child Placement Agencies, Group Centers, Residential Child Care Facility, Secure Residential Treatment Center, Homeless Youth Center, International Adoption Agencies. Specialized Group Facility	$44
Duplicate Licenses Child Placement Agencies, Group Centers, Residential Child Care Facility, Secure Residential Treatment Center, Homeless Youth Center, International Adoption Agencies, Specialized Group Facility	$33

Changes to Licensees of Family Child Care Homes, Large Family Child Care Homes, and Experienced Family Child Care Homes will never exceed the cost of the original or continuation fee.

D. Following is a schedule of fees for the original application and annual fee required for the temporary and full accreditation of international adoption agencies.

International Adoption Agencies	
Original Application for Full Accreditation for Agencies that Complete 100 or More Intercountry Adoptions in a Calendar Year	$4,000
Original Application for Full Accreditation for Agencies that Complete 50-99 Intercountry Adoptions in a Calendar Year	$3,000
Original Application for Full Accreditation for Agencies that Complete 49 or Fewer Intercountry Adoptions in a Calendar Year	$2,000
Annual Fee for Agencies with Full Accreditation	$2,000
Original Application for Full Accreditation - Agencies with Colorado and Out-of-State Offices Additional Fee	$2,000
Original Application for Temporary Accreditation - Agencies with Colorado and Out-of-State Offices - Additional Fee	$500

E. International adoption agencies with out-of-state offices will be required to reimburse the State for actual and necessary charges involved with travel to out-of-state offices.

F. The appropriate administrative and criminal background check fees (refer to Section 7.701.33) paid with certified funds (i.e., money order or cashier's check) outlined in Section 3.905.1, A (9 CCR 2503-1) must be submitted to the State Department along with the completed background check packet upon renewal or signing a new fiscal agreement with the county to receive Colorado Child Care Assistance funds.

CCCAP – Exempt Family Child Care Homes	
Administration Fee for SFY2007 Initial Fingerprint Packet	$9.00
Administrative Fee for Subsequent Year Initial Fingerprint Packet	$11.00

7.701.5 ADMINISTRATION

7.701.51 Governing Body

A. The governing body must be identified by its legal name on the original application and annual declaration. The names and addresses of individuals who hold primary financial control and officers of the governing body must be fully disclosed to the Department.

B. The governing body must demonstrate to the Department, upon request, that there is sufficient financial support to operate and maintain the facility in accordance with all rules in Section 7.701, the rules regulating the specific type of facility, and the goals and objectives of the facility.

7.701.52 Reports

A. Within twenty four (24) hours, excluding weekends and holidays, of the occurrence of a critical incident at the facility or within twenty four (24) hours of a child's return to the facility if the child was on authorized or unauthorized leave from the facility, the facility or child placement agency must report in writing to the licensing or certifying authority the following critical incidents involving a child in the care of the facility or a staff member on duty:

1. The death of a child or staff member as a result of an accident, suicide, assault, or any natural cause while at the facility, or while on authorized or unauthorized leave from the facility.

2. An injury to a child or staff member that requires emergency medical attention by a health care professional or admission to a hospital.

3. A mandatory reportable illness, as required by the Colorado Department of Public Health and Environment, of a child or staff member that requires emergency medical attention by a health care professional or admission to a hospital.

4. Any allegation of physical, sexual, or emotional abuse or neglect to a child that results in reporting to a law enforcement or social services agency.

5. Any fire that is responded to by a local fire department.

6. Any major threat to the security of a facility including, but not limited to, a threat to kidnap a child, riots, bomb threats, hostage situations, use of a weapon, or drive by shootings.

7. A drug or alcohol related incident involving a staff member or a child that requires outside medical or emergency response.

8. An assault, as defined by Sections 18-3-201 through 18-3-204, C.R.S., by a child upon a child, a child upon a staff member, or a staff member upon a child which results in a report to law enforcement.

9. A suicide attempt by a child at the facility which requires emergency intervention.

10. Felony theft or destruction of property by a child while in placement at the facility for which law enforcement is notified.

11. Any police or sheriff contact with the facility for a crime committed by a resident while in placement at the facility.

A report of a critical incident must be submitted on the Colorado Department of Human Services, Division of Child Care, critical incident form.

B. The following items must be reported in writing to the department within ten (10) working days, unless otherwise noted:

1. Any legal action against a facility, agency, owner, operator, or governing body that relates to or may impact the care or placement of children.

2. Change of director of facility or agency.

3. Proposed change in the number, sex, or age of children for whom the facility is licensed that differs from that authorized by the license.

4. Change of address of child placement agency.

5. Changes in the physical facility or use of rooms for child care at a facility.

6. Closure of the facility or agency.

7. Change of name of the facility or agency.

8. Change of residents in the facility, not to include those residents placed in the facility by a county department or a child placement agency.

7.701.53 Reporting of Child Abuse

A. A child care facility must require each staff member of the facility to read and sign a statement clearly defining child abuse and neglect pursuant to state law and outlining the staff member's personal responsibility to report all incidents of child abuse or neglect according to state law.

B. Any caregiver or staff member in a child care facility who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions that would reasonably result in abuse or neglect must immediately report or cause a report to be made of such fact to the county department of social services or local law enforcement agency.

C. If the suspected child abuse occurred at the child care facility, the report of suspected child abuse must be made to the county department of social services, police department, or other law enforcement agency in the community or county in which the child care facility is located.

D. If the suspected child abuse did not occur at the child care facility, the report of suspected child abuse must be made to the county department of social services in the county in which the child resides or to the local law enforcement agency in the community in which the incident is believed to have occurred.

E. At the time of admission the facility must give the child's parent or guardian information that explains how to report suspected child abuse or child neglect.

7.701.54 Investigation of Child Abuse

A. Staff members of the county department of social services or a law enforcement agency that investigates an allegation of child abuse must be given the right to interview staff and children in care and to obtain names, addresses, and telephone numbers of parents of children enrolled at the child care facility.

B. Any report made to the law enforcement authorities or a county department of social services of an allegation of abuse of any child at the child care facility will result in the temporary suspension or reassignment of duties of the alleged perpetrator to remove the risk of harm to the child/children if there is reasonable cause to believe that the life or health of the victim or other children at the facility is in imminent danger due to continued contact between the alleged perpetrator and the child/children at the facility. Such suspension or reassignment of duties will remain in effect pending the outcome of the investigation by the appropriate authorities.

7.701.55 Reporting of Licensing Complaints

Child care facilities must provide written information to parents at the time of admission and staff members at the time of employment on how to file a complaint concerning suspected licensing violations. The information must include the complete name, mailing address, and telephone number of the Colorado Department of Human Services, Division of Child Care.

7.701.56 Posting Licensing Information [Rev. eff. 1/1/16]

A. At all times during the operating hours of the facility, except for foster care homes, the facility/agency shall post the current child care license in a prominent and conspicuous location easily observable by those entering the child care facility or agency. For foster care homes, the certificate shall be available for review/upon request.

B. At all times during the operating hours of a family child care home, child care center, school-age child care center, or children's resident camp, the facility shall post its most recent licensing inspection report or a notice as to where the report may be reviewed at the facility by the parent or legal guardian of a child or their designee.

C. At all times during the operating hours of a child care facility, except for foster care homes and child placement agencies, the facility shall post in a prominent and conspicuous location information regarding the procedures for filing a complaint with the Colorado Department of Human Services, Division of Child Care, including the telephone number and mailing address. For foster care homes and child placement agencies, information for filing a complaint shall be made available upon request.

D. The facility must post in every room of the child care facility, excluding bedrooms and living areas, the license capacity of the room and the staff-to-child ratio required by regulation to be maintained for the age of children cared for in the room.

7.701.6 CONFIDENTIALITY OF RECORDS

A. The records concerning the licensing of facilities and agencies are open to the public except as provided below.

B. Anyone wishing to review a record must make a written request to the department.

C. The following documents are confidential and not available for review:

1. Information identifying children or their families; and

2. Scholastic records, health reports, social or psychological reports. These are available only to the person in interest; and

3. Personal references requested by the department; and

4. Reports and records received from other agencies, including police and child protection investigation reports.

7.701.7 PARENTAL ACCESSIBILITY

A. During hours of operation, a facility must allow access to parents and guardians having legal custody of a child in care to those areas of the facility that are licensed for child care.

B. During the hours of operation, the facility's most recent licensing, fire department, and health department inspection reports must be accessible to parents and legal guardians of children in care or their designee and to parents and legal guardians considering placing their children in care at the facility.

7.701.8 PERJURY STATEMENT - APPLICATION FORMS FOR EMPLOYMENT WITH A CHILD CARE PROVIDER

Every application used in the State of Colorado for employment with a child care provider or facility, or for the certification of a foster home, shall include the following notice to the applicant:

> “Any applicant who knowingly or willfully makes a false statement of any material fact or thing in the application is guilty of perjury in the second degree as defined in Section 18-8-503, C.R.S., and, upon conviction thereof, shall be punished accordingly.”

7.701.9 GENERAL HEALTH RULES [Eff. 6/1/12]

7.701.91 Smoking and Tobacco Products [Eff. 6/1/12]

Pursuant to 26-6-106(2)(e), C.R.S., 25-14-103.5, C.R.S., and 18-13-121, C.R.S., tobacco and nicotine products are prohibited by law from use in and around licensed child care facilities.

A. Smoking and tobacco product use is prohibited at all times while transporting children on field trips and excursions.

B. Smoking and tobacco product use is not prohibited in Family Child Care Homes during non-business hours.

C. Foster parents are exempt from this rule when no children are in placement.

7.701.100 Emergency and Disaster Preparedness for Child Care Centers, Family Child Care Homes, Day Treatment Centers, School-Age Programs, and Children's Resident Camps [Eff. 4/1/15]

A. Evacuation, Shelter in Place, Lockdown, and Active Shooter on Premises Plans for Children in Care

All child care providers must have a written plan for evacuating and safely moving children to an alternate site, as well as lockdown, shelter in place, and active shooter on premises. The plan must include provisions for multiple types of hazards, such as floods, fires, tornados, and local shootings. All employees of a child care provider must be trained in emergencies and disaster preparedness.

1 "Lockdown drill" means a drill in which the occupants of a building are restricted to the interior of the building and the building is secured.

2. "Shelter-in-place drill" means a drill in which the occupants of a building seek shelter in the building from an external threat.

3. "Active shooter on premises drill" means a drill to address an individual actively engaged in killing or attempting to kill people in a confined space or other populated area.

B. Reuniting Families After an Emergency or Disaster

All child care providers must have a written plan for emergency notification of parents and reunification of families following an emergency or disaster.

C. Children with Disabilities and Those with Access and Functional Needs

All child care providers must have a written plan that accounts for children with disabilities and those with access and functional needs. The plan must include a specific requirement indicating how all children with special needs will be included in the emergency plan.

D. Continuity of operations after a disaster

1. All child care providers must have a written plan for continuity of operations in the aftermath of an emergency or disaster. Components of the plan must include:

A. Responsibility for essential staffing needs and predetermined roles during and after the emergency or disaster; and

B. Procedure for backing up or retrieving staff and children's files; and

C. Procedure for protecting confidential and financial records.

2. During an emergency or other significant, unexpected event, a child care facility may request an emergency waiver to move to a temporary location or exceed capacity, on a temporary basis, to accept children and families from affected areas.

~~D~~E. Fire, Natural Disaster, and Emergency Drills

1. Each staff member of the facility must be trained in fire safety and the use of available fire extinguishers and fire alarms.

2. Drills must be held quarterly so that all occupants are familiar with the drill procedure and their conduct during a drill is a matter of established routine. Fire drills must be consistent with local fire department procedures. A record of fire drills held over the past twelve (12) months must be maintained by the center, including date and time of drill, number of adults and children participating, and the amount of time taken to evacuate.

3. Drills must be held at unexpected times and under varying conditions to simulate the conditions of an actual fire.

4. Drills must emphasize orderly evacuation under proper discipline rather than speed. No running or horseplay should be permitted.

5. Drills must include suitable procedures for ensuring that all persons in the building, or all persons subject to the drill, actually participate.

6. Fire alarm equipment must be used regularly in the conduct of fire exit drills. Hand bells or other alarm emanating devices may be used in lieu of fire alarm equipment if use of fire alarm equipment is not feasible including, but not limited to, facilities operating in buildings where multiple unrelated tenants share a common fire alarm system.

7. If appropriate to the location of the center, forest fire, tornado and/or flood drills must be held often enough that all occupants are familiar with the drill procedure and their conduct during a drill is a matter of established routine. A record of drills held over the past twelve (12) months must be maintained by the center.

8. For children's resident camps, at least one fire drill must be held within twenty-four (24) hours of the commencement of each camp session. The dates of the fire drills must be recorded in the camp office.

7.701.200 THE REASONABLE AND PRUDENT PARENT STANDARD REQUIREMENTS FOR FACILITIES PROVIDING TWENTY-FOUR (24) HOUR OUT-OF-HOME CARE TO APPROVE ACTIVITIES FOR A CHILD OR YOUTH IN FOSTER CARE [Eff. 11/1/15]

Children and youth in foster care are entitled to participate in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities as part of their well-being needs.

Providers shall use a "reasonable and prudent parent standard" when determining whether to allow a child or youth in foster care, under the responsibility of the county or in non-secure residential settings

under the Division of Youth Corrections (DYC), to participate in such activities following the criteria in A and B:

A. For an activity to be approved consistent with the reasonable and prudent parent standard, the activity must:

1. Maintain the health, safety, and best interests of each child or youth;

2. Encourage his/her emotional and developmental growth;

3. Be age or developmentally appropriate; and,

4. Is otherwise appropriate for the provider to approve.

B. When applying the reasonable and prudent parent standard and prior to approval of the activity, the provider shall take reasonable steps to obtain or determine:

1. Adequate information about the child or youth, including the youth's particular religious, cultural, social, or behavioral attributes and preferences;

2. Behavioral and/or mental health stability of the child or youth;

3. The age or developmental appropriateness of the activity; and,

4. Whether the risk of reasonably foreseeable harm involved in the activity is at an acceptable level.

C. The responsible county department of human or social services or DYC shall receive the same state training in applying the reasonable and prudent parent standard, and shall receive ongoing training by their respective certifying or sponsoring agencies or governing body, as needed.

D. At least one trained (1) staff or administrator in a specialized group facility or Residential Child Care Facility (RCCF) shall be designated as authorized to apply the reasonable and prudent parent standard to decisions involving the participation of a child or youth in extracurricular, enrichment, cultural, or social activities.

E. The rationale used to authorize an activity for a child or youth shall be clearly documented in the facility records and provided in a timely manner to the county department of human or social services or DYC using the contracted, written reporting format.

1. The facility shall consult with and obtain a current copy of the policy from the responsible county department of human or social services or DYC regarding activities that are considered appropriate for the facility to approve.

   The responsible county department of human or social services or DYC may restrict certain activities based upon the documented exceptional needs and circumstances of a child or youth in foster care, which impact his/her unique safety needs.

2. The wishes of the parents/legal custodian shall be considered, including cultural implications, whenever practical.

3. The facility may consult with the responsible agency for guidance about individual cases.

F. Providers shall not incur liability to the State Department or to the county department of human or social services because of an extracurricular, enrichment, cultural, or social activity approved by

the provider if the provider demonstrates compliance with the reasonable and prudent parent standard. In a child welfare investigation arising out of such an activity approved by the provider, the facility shall not be founded for institutional neglect if the provider demonstrates compliance with the reasonable and prudent parent standard.

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Tracking number: 2016-00250

Opinion of the Attorney General rendered in connection with the rules adopted by the

Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

on 08/05/2016

12 CCR 2509-8

CHILD CARE FACILITY LICENSING

The above-referenced rules were submitted to this office on 08/09/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 24, 2016 12:06:42

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Permanent Rules Adopted

Department

Department of Human Services

Agency

Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-10

Rule title

12 CCR 2509-10 EARLY INTERVENTION PROGRAM 1 - eff 10/01/2016

Effective date

10/01/2016

(12 CCR 2509-10)

7.901 EARLY INTERVENTION PROGRAM DEFINITIONS [Rev. eff. 7/1/15]

As used in these rules and regulations, unless the context requires otherwise: "Abuse or child abuse and/or neglect" is defined in Section 19-1-103(1), C.R.S.

"Access to records" means the right for a parent to have the opportunity to inspect, review and obtain copies of records related to evaluation, assessment, eligibility determination, development and implementation of an Individualized Family Service Plan, individual complaints pertaining to the child, and any other relevant information regarding his or her child and family, unless restricted under authority of applicable state law governing such matters of guardianship, separation, or divorce.

"Administrative unit", as defined in Colorado Department of Education rules in 1 CCR 301-8, 2220-r-2.02, means a School District, Board of Cooperative Services, or the State Charter School Institute, that is approved by the Colorado Department of Education and provides educational services to exceptional children.

"Assessment" means the ongoing procedures used throughout the period of eligibility of a child for Early Intervention Services to identify:

A. The unique strengths and needs of the child and the Early Intervention Services appropriate to meet those needs; and,

B. The resources, priorities, and concerns of a parent and the Early Intervention Services necessary to enhance the capacity of a parent or other caregiver to meet the developmental needs of the eligible child within everyday routines, activities and places.

“Atypical Development” means development or behaviors that fall outside the expected range of development in one or more of the five (5) domains referenced in 7.920 (i)(7)(c) and emerge in a way that is different from same age peers. They are not attributable to culture or personality and are different in quality, form and function. This can be determined through informed opinion of delay, even when evaluation tools do not establish a 25% delay.

"Certified Early Intervention Service Broker" is defined in Section 27-10.5-702(3), C.R.S.

"Child Abuse Prevention and Treatment Act" (CAPTA) means the CAPTA state grant program provides states with flexible funds to improve their child protective service systems. Reauthorized by the Keeping Children and Families Safe Act of 2003, the program requires states to provide assurances in their five (5) year child and family services plan that the state is operating a statewide child abuse and neglect program. This program includes policies and procedures that address the needs of drug-exposed infants and provisions for referral of children under age three (3) who are involved in a substantiated case of abuse and neglect to Early Intervention Services under IDEA Part C.

"Child Find" means Part C of the Individuals with Disabilities Education Improvement Act of 2004 (P.L. 108-446) (IDEA) as defined in Section 27-10.5-702 and pursuant to Section 22-20-103(4), C.R.S. That ensures that infants and toddlers in the state who are eligible for services under IDEA, Part C, are identified, located and evaluated.

"Child Find program" means the multidisciplinary team within an administrative unit that conducts screening and evaluation activities for young children.

“Children experiencing homelessness” means children who lack a fixed, regular, and adequate nighttime residence, in accordance with the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431, et seq., which is incorporated by reference as defined in Section 7.900, A, 4 and 34 C.F.R. 303.17, which is incorporated by reference as defined in Section 7.900, A, 5.

“Coaching” means a relationship-based strategy used by trained personnel with a family member, other caregiver, or another provider to support what is already working to help a child develop and to increase their knowledge and use of new ideas to achieve child or family outcomes.

"Consent" means that the parent has been fully informed of all information relevant to the activity for which consent is sought in the parent’s native language and the parent understands and agrees in writing to the carrying out of the activity.

"Co-payment" means a specified dollar amount that an insured person must pay for covered health care services. The insured person pays this amount to the provider at the time of service.

"Criteria" means standards on which a judgment or decision may be based. "Days" means calendar days unless otherwise indicated.

"Deductible" means the amount that must be paid out-of-pocket before a health insurance company pays its share.

“Developmental delay”, when referenced in these regulations, means a significant delay, defined as the:

A. Equivalence of twenty-five percent (25%) or greater delay in one (1) or more of the five (5) domains of development as defined in Section 7.920, E, 7, a, when compared with chronological age; or,

B. Presence of atypical development or behavior, as defined in section 7.901; or,

"Developmental disability" is defined pursuant to the Colorado Revised Statutes (C.R.S.) Title 27, Article 10.5, Section 102(11).

"Due process procedures" means formal procedures used to resolve a dispute involving an individual child or parent related to any matter described in 34 C.F.R., Sections 303.435-438, which are incorporated by reference as defined in Section 7.900, A, 5.

"Duration" means the specific and measurable period of time a service is provided, specifying the start and end date.

"Early Head Start" means a program funded under the Head Start Act, pursuant to 42 U.S.C. 9801, incorporated by reference as defined in Section 7.900, A, 4, and carried out by a local agency or grantee that provides ongoing comprehensive child development services for pregnant women, infants, toddlers, and their families.

"Early Intervention Provider Database" means the state database located at www.eicolorado.org that contains information and Community Centered Board affiliation on all Early Intervention providers, including personnel qualifications. It also serves as the database for the collection of child outcomes data.

"Established condition" for an infant or toddler means a diagnosed physical or mental condition that has a high probability of resulting in significant delays in development and is listed in the established conditions database.

"Established conditions database" means the state database located at www.eicolorado.org that includes the state approved list of established conditions.

"Evaluation" for Early Intervention Services means the procedures used to determine initial and continuing eligibility. EVALUATION INCLUDES ADMINISTRATION OF AN EVALUATION TOOL(S), OBSERVATION OF THE CHILD, PARENT REPORT AND A REVIEW OF PERTINENT MEDICAL RECORDS.

"Everyday routines, activities and places" means routines that are customarily a part of families’ typical days including, but not limited to: meal time; bath time; shopping; play time; outdoor play; activities a family does with its infant or toddler on a regular basis; and, places where the family participates on a regular basis, such as, but not limited to, home, place of worship, store, and child care.

"Evidence-based practices" mean practices that integrate research that has demonstrated efficacy and with consideration of the situation, goals, and values of the child, family and professionals.

"Evidence-informed strategies" mean methods that use nationally recognized recommended practices to inform the effective delivery of early intervention services.

"Family assessment" means a process using a Department-approved assessment tool and parent interview prior to the development of an initial **I**ndividualized **F**amily **S**ervice **P**lan.

"Family Educational Rights and Privacy Act" (FERPA) means the federal law that protects the privacy of students' "education records" under 20 U.S.C. Section 1232g; 34 C.F.R. Part 99, which is incorporated by reference as defined in Section 7.900, A, 4. FERPA requirements apply to educational agencies and institutions that receive funds under any program administered by the United States Department of Education.

"Frequency" means how often an early intervention service is provided.

"Guardian means a person appointed by the court or named in a will and charged with limited, temporary, or full guardian's power and duties, pursuant to Section 15-14-312, C.R.S

"Health Insurance Portability and Accountability Act (HIPAA)" means the privacy rule that establishes national standards and requirements for electronic health care transactions and protects the privacy and security of individually identifiable health information, which is incorporated by reference as defined in Section 7.900, A, 4.

"Individualized Family Service Plan" (IFSP) means a written plan for providing Early Intervention Services to eligible children and their families, in accordance with 34 C.F.R. Section 303.340, et seq., which is incorporated by reference as defined in section 7.900, A, 5.

"Informed opinion OF DELAY" means the knowledgeable opinion of the evaluation team who use professional expertise and experience to determine the presence of a significant delay in one or more of the five (5) domains of development referenced in 7.920 (i)(7)(c). Informed opinion of delay may be used as an independent basis to establish a child's eligibility and may be especially useful in situations where a clear developmental level cannot be gained through the typical evaluation process. Informed opinion may not be used to negate the results of evaluation instruments used to establish eligibility.-

"Initial assessment" means the assessment of the child and the family conducted before a child's first Individualized Family Service Plan meeting.

"Intensity" means the length of time that a service is provided each session.

"Mediation" means voluntary procedures used to resolve a dispute involving any matter described in 34 C.F.R. Section 303.430-437, which is incorporated by reference as defined in Section 7.900, A, 5.

"Method" means how an early intervention service is provided. The type of method may be one of the following:

A. Individual service provided to a child and family; or,

B. Co-visit during which services are provided by two professionals during a session; or,

C. Teaming through regularly scheduled meetings as the formal time for provider-to-provider information sharing and support in order to develop strategies designed to build the capacity of parents and other caregivers to meet child and family outcomes; or,

D. Supervision by a qualified provider who oversees the work of a student or paraprofessional through observation and guidance, including direction and evaluation of the activities performed by the supervisee.

“Model” means one of the following constructs in which a child’s and family’s early intervention services shall be provided:

A. Primary service provider; or,

B. Multidisciplinary service providers; or,

C. Single provider; or,

D. Other model approved by the state.

“Multidisciplinary evaluation team” means a group that is made up of two (2) or more qualified personnel who have different training and experience.

“Multidisciplinary Service Providers Model” means a model in which two (2) or more qualified providers who have different training and experience provide ongoing services as identified in an Individualized Family Service Plan. In this model the providers work independently of each other with minimal interaction with other team members, and perform interventions separately from others while working on discipline- specific goals.

"Native language", when used with respect to an individual who has limited English proficiency means:

A. The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided below in "B"; and,

B. For evaluations and assessments conducted pursuant to Section 7.920, E, the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation and assessment.

"Native language", when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual, such as sign language, Braille or oral communication.

"Natural environments" means the day-to-day routines, activities and places that promote learning opportunities for an individual child and family, in settings such as the family’s home and community that are natural or typical for the child’s peer who have no disabilities.

"Neglect" means an act or failure to act by a person who is responsible for another's well being so that inadequate food, clothing, shelter, psychological care, physical care, medical care, or supervision is provided. This may include, but is not limited to, denial of meals, medication, habilitation, or other treatment necessities and which is not otherwise within the scope of Section 27-10.5, C.R.S., or these rules and regulations.

"Parent", within Early Intervention Services means:

A. The biological or adoptive parent; or,

B. A guardian in a parental relation to the child authorized to act as the child’s parent or authorized to make early intervention, educational, health or developmental decisions, but not the State if the child is under the jurisdiction of a court; or,

C. A foster parent; or,

D. An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the child’s welfare; or,

E. A surrogate parent who has been appointed in accordance with 34 CFR Section 303.422, incorporated as identified in Section 7.900, A, 5.

"Part C" means Part C of the Individuals with Disabilities Education Improvement Act of 2004 that addresses infants and toddlers, birth through two (2) years of age, with developmental delays or disabilities, or physical or mental conditions with a high probability of resulting in significant delays in development, in accordance with 34 C.F.R. 303, which is incorporated by reference as defined in Section 7.900, A, 5.

"Participating agency" means, as used in Early Intervention Services, any individual, agency, program or entity that collects, maintains, or uses personally identifiable information to implement the requirements and regulations of Part C of the IDEA with respect to a particular child.

A. This includes:

1. The Colorado Department of Human Services; and,

2. Community Centered Boards (CCB) or a Certified Early Intervention Service Broker; and,

3. Any individual or entity that provides any Part C services, including service coordination, evaluations and assessments, and other Part C services.

B. This does not include:

1. Primary referral sources; or,

2. Public agencies, such as the Medicaid program, private entities, or private health insurance carriers, that act solely as funding sources for Early Intervention Services.

"Personally identifiable information" as used in Early Intervention Services means, but is not limited to:

A. The infant or toddler’s name; or,

B. The name of the infant or toddler’s parent or other family member; or, C. The address of the infant or toddler, or their family; or,

D. A personal identifier, such as a Social Security Number or other biometric record; or,

E. Other indirect identifiers such as the child’s date of birth, place of birth, or mother’s maiden name; or,

F. Other information that, alone or in combination, is linkable to a specific infant or toddler by a person in the early intervention community, who does not have personal knowledge of the relevant circumstances, to identify the infant or toddler with reasonable certainty; or,

G. Information about a child whose identity is believed by the Early Intervention Program to be known by the requester of that information.

"Physician" means a person licensed to practice medicine under Section 12-36-101, C.R.S., et seq., the Colorado Medical Practice Act.

"Post-referral screening" means the early intervention activities that take place after a child is referred to the Early Intervention Program and the administrative unit to identify infants and toddlers who are in need of more intensive evaluation and assessment in order to determine eligibility due to a developmental delay.

“Primary Service Provider Model” means a model of service delivery that utilizes one main qualified provider from any discipline that is the best fit to address the child and family outcomes as identified in an Individualized Family

Service Plan. Other team members support the primary service provider through teaming and may provide co-visits under this model.

"Prior written notice" for Early Intervention Services means written notice that is given to parents a reasonable time before a Community Centered Board or other Certified Early Intervention Service Broker proposes or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler, or the provision of appropriate Early Intervention Services to the child and family.

"Qualified personnel" means personnel who have met the state approved or recognized certification, licensing, registration, or other comparable requirements, to provide evaluations, assessments or Early Intervention Services.

"Referral" for Early Intervention Services means a verbal or written notification from a referral source to the Community Centered Board or administrative unit for the provision of information regarding an infant or toddler, birth through two (2) years of age, in order to identify those who are in need of Early Intervention Services.

"Service coordination" means the activities carried out by a service coordinator to assist and enable a child eligible for Early Intervention Services, and the child's family, to receive the rights, procedural safeguards, and services that are authorized to be provided under Section 7.900, et seq.

"Single Provider Model" means a model of early intervention service provision in which one provider is utilized to meet the child's and family's needs as identified in an Individualized Family Service Plan.

"Surrogate parent" means an individual appointed by the local Early Intervention Services Program to act in the place of a parent in safeguarding an infant's or toddler's rights in the decision-making process regarding screening, evaluation, assessment, development of the Individualized Family Service Plan, delivery of Early Intervention Services and transition planning.

"State complaint procedures" mean actions taken by the Department to resolve a complaint lodged by an individual or organization regarding any agency or local service provider participating in the delivery of Early Intervention Services that is violating a state or federal requirement.

"Targeted case management services" means those case management services which are provided as a Medicaid benefit for a specific target group of Medicaid recipients who have a developmental disability and who meet the program eligibility criteria identified in the Medical Assistance rules (10 CCR 2505-10) of the Colorado Department of Health Care Policy and Financing.

"Telehealth" means a ~~form~~ METHOD of service provision that utilizes secure interactive videoconferencing to deliver early intervention services.

"Waiver Services" means those optional Medicaid services defined in the current federally approved

HCBS waiver document and do not include Medicaid State Plan services.

7.911 FISCAL MANAGEMENT [Eff. 7/1/13]

A. A Community Centered Board or Certified Early Intervention Service Broker, as defined in Section 7.913, shall:

1. Only purchase Early Intervention Services from providers that meet the qualifications as defined by the Department; and,

2. Establish and maintain necessary cost accounting systems according to general accounting principles to properly record, and allocate separately, the revenue and expenses for federal Part C of the Individuals with Disabilities Education funds, state- funded Early Intervention Services, Medicaid funds and private health insurance funds that are billed through the Community Centered Board, local funds, and other funds used for the purchase of Early Intervention Services; and,

3. Ensure that Part C of the Individuals with Disabilities Education Act funds are:

   a. Used only as payor of last resort;

   b. MAY BE USED TO REIMBURSE A PARENT FOR COPAYMENTS AND DEDUCTIBLES FOR EI SERVICES DOCUMENTED ON HIS OR HER CHILD'S IFSP; and,

   ~~b.~~ **c.** For purposes of accounting, not commingled with any other funds received.

4. Track expenditures for each funding source for service coordination, direct services, management fee and any other expense line item as defined by the Department.

5. Notify the Department of any proposed change of reimbursement rates for any early intervention service at least fifteen (15) calendar days prior to the use of such rates. All rates must be computed using the methodology determined by the department.

B. The maximum reimbursement rate for any Early Intervention Service shall be subject to restriction by the Department.

7.912 COORDINATED SYSTEM OF PAYMENT [Eff. 7/1/14]

A. Early Intervention Services are provided to an eligible child and family at no out-of-pocket costs to a parent, such that the parent is not responsible for a sliding fee for services or payment of deductibles and co-payments for any early intervention service on a child's Individualized Family Service Plan, but is responsible for payment of insurance premiums when:

1. Private or public health insurance is used to pay for early intervention services; or,

2. Medicaid or Child Health Plan Plus is used to pay for early intervention services; or,

3. Use of private health insurance is required prior to the use of public insurance or benefits.

B. The Certified Early Intervention Service Broker shall ensure:

1. That the availability of public or private health insurance to pay for services shall not result in the delay or denial of early intervention services to a child or a child's family; and,

2. No early intervention service documented in an Individualized Family Service Plan shall be delayed or denied because of a dispute between agencies regarding financial or other responsibilities

required under 34 C.F.R. Section 303.510, which is incorporated by reference as defined in section 7.900, A, 5; and,

3. All early intervention services on a child's Individualized Family Service Plan shall be made available to the child and family whether or not consent to use insurance or Medicaid is required or provided; and,

4. Each parent of a child receiving early intervention services shall be provided with the written policies that inform the parent of rights to mediation, due process, and the state complaint process under Section 7.990, if the parent is charged for an early intervention service by a provider when the parent should not be.

C. Funding Hierarchy

1. The following order of funding sources shall be used when an Individualized Family Service Plan team determines the appropriate funding source(s) to pay for needed early intervention services and, where required, parental consent is provided to use the available funding source:

   a. Use of private pay at the discretion of the parent; then,

   b. Private health insurance; then,

   c. TRICARE, a military health system; then,

   d. Medicaid/Title XIX or Home and Community Based Services waivers, and Child Health Plan Plus; then,

   e. Child Welfare and Temporary Assistance to Needy Families; then,

   f. Other local, state or federal funds, including mill levy funds, as may be made available; then,

   g. State General Fund early intervention services; then,

   h. Federal Part C of the Individuals with Disabilities Education Act funds.

2. Implementation of the funding hierarchy shall be in accordance with 34 C.F.R. Section 303.520(b)(3), which is incorporated by reference as defined in Section 7.900, A, 5.

3. State and federal funds may be used in combination with other funding sources as necessary and appropriate, and within state and federal defined parameters, to ensure the provision of early intervention services.

4. Private health insurance, with written parental consent, shall be accessed prior to accessing public benefits or insurance.

5. The appropriate Medicaid billing codes for early intervention services shall be used for any service on an Individualized Family Service Plan that has Medicaid as the funding source and the early intervention services provider bills Medicaid.

D. In order to use public health insurance or benefits, the Certified Early Intervention Service Broker shall:

1. Provide written notification of the intent to use public benefits or insurance for payment of early intervention services to a parent or child who has public health insurance or benefits; and,

2. Obtain written parental consent to disclose a child's personally identifiable information to the public insurance agency for billing purposes; and,

3. Not require a parent to enroll him or herself or the parent's infant or toddler in a public health insurance or benefits program as a condition of receiving early intervention services; and,

4. Obtain written parental consent prior to using the public health insurance or benefits of a child or parent if that child or parent is not already enrolled in such a program; and,

5. Obtain written parental consent to use a child's or parent's public benefits or insurance to pay for early intervention services if that use would result in:

    a. A decrease in the available lifetime coverage or any other insured benefit for a child or parent; or,

    b. Payment for services that would otherwise be covered by the public insurance or benefits program; or,

    c. Increases in premiums or discontinuation of public insurance or benefits for that child or parent as a result of such use; or,

    d. A risk of loss of eligibility for the child or the parent for Medicaid Home and Community-Based waivers based on aggregate health expenses.

E. In order to use private health insurance, the Certified Early Intervention Service Broker shall:

1. Provide prior written notice of the intent to use the private health insurance for payment of early intervention services to a parent who has or whose child has private health insurance or benefits.

2. Obtain written parental consent:

    a. To disclose a child's personally identifiable information to the private health insurance company for billing purposes, including the use of private health insurance when such use is a prerequisite for the use of public insurance or benefits; and,

    b. For a child whose private health coverage plan is not covered under Section 10-16-104(1.3), C.R.S., at the initiation of billing for early intervention services and any time there is an increase in frequency, duration or intensity of a service on the child's Individualized Family Service Plan.

3. Provide the written coordinated system of payment and procedural safeguard policies each time consent is required that informs the parent there are no out-of-pocket costs associated with the use of private health insurance, except for:

    a. Premiums which are the responsibility of the parent; and,

    b. For any child who has a private health coverage plan not covered under Section 10-16-104(1.3), C.R.S., when there may be long-term costs such as the loss of benefits for the child or family because of annual or lifetime health coverage caps under the insurance policy.

F. Payment from Early Intervention Services Trust Fund Qualified Private Health Insurance Carriers

1. Subject to Section 10-16-104(1.3), C.R.S., qualified private health insurance carriers who are required to cover Early Intervention Services for an eligible dependent child shall provide early intervention services. Non-emergency medical transportation and assistive technology, as defined in Section 7.950, B, 1, shall be excluded, unless assistive technology is covered under an applicable insurance policy or service or indemnity contract as durable medical equipment benefit provisions.

2. Coverage required by private health insurance carriers shall be available annually to an eligible infant or toddler from birth up to the third (3rd) birthday. As of January 1, 2013, the maximum annual benefit payable for early intervention services and service coordination for each dependent infant or toddler, per benefit plan year, shall be limited as required by Section 10-16-104(1.3), C.R.S., and Section 27-10.5-709(1), C.R.S.

   a. For policies or contracts issued or renewed on or after January 1, 2015, and on or after each January 1 thereafter, the limit shall be adjusted by the Department. This adjustment is based upon the consumer price index for the Denver – Boulder - Greeley metropolitan statistical area for the State Fiscal Year which ends in the preceding calendar year or by such additional amount to be equal to the increase by the General Assembly to the annual appropriated rate. This rate is based on service to one (1) child for one (1) fiscal year in the state-funded Early Intervention Program if that increase is more than the consumer price index increase.

   b. The limit on the annual amount of coverage for early intervention services shall not apply to:

      1) Rehabilitation or therapeutic services that are necessary as the result of an acute medical condition or post surgical rehabilitation; or,

      2) Services provided to a child who is not participating in early intervention services that are not provided pursuant to an Individualized Family Service Plan; however, such services shall be covered at the level specified in Section 10-16-104(1.7), C.R.S., which is incorporated by reference as defined in Section 7.900, A, 2, or,

      3) Assistive technology that is covered by the policy's durable medical equipment benefit provisions.

3. Any benefits paid under the coverage required by Section 10-16-104(1.3), C.R.S., which is incorporated by reference as defined in Section 7.900, A, 2, shall not be applied to an annual or lifetime maximum benefit contained in the policy or contract, except as provided for high deductible plans in Section 10-16-104(1.3)(d), C.R.S.

4. A qualified early intervention services provider that receives reimbursement for services funded by the trust fund shall accept such reimbursement as payment in full for services under Section 10-16-104(1.3), C.R.S., which is incorporated by reference as defined in Section 7.900, A, 2, and shall not seek additional reimbursement from either the eligible infant's or toddler's family or the carrier.

5. If funds deposited into the trust are fully expended prior to the end of the insurance plan year, the Certified Early Intervention Service Broker, as defined in Section 7.901, shall coordinate with the Department to ensure that services continue as designated in the Individualized Family Service Plan. At the beginning of the new plan year, the private health insurance carrier shall be required to deposit additional funds into the trust as established by Section 7.912, B, 3.

6. Private health insurance carriers shall be notified within ninety (90) calendar days if an infant or toddler is no longer eligible for early intervention services.

G. Use of Early Intervention Services Trust Fund

1. A trust fund shall be established in accordance with Section 27-10.5-709, C.R.S., which is incorporated by reference as defined in Section 7.900, A, 1, for the purpose of accepting deposits from a participating public health insurance or benefits program, or from the required private health insurance carriers for early intervention services provided to infants and toddlers under a participating insurance plan.

2. Funds deposited in the trust fund shall be only utilized on behalf of each infant and toddler for whom funds have been placed into the trust fund for the following:

a. Early intervention services, with the exclusion of assistive technology services and transportation, as defined in Section 7.950, B; and,

b. Monthly case management (service coordination) fee as determined by the Department; and,

c. Monthly Certified Early Intervention Service Broker fee as defined by the Department, pursuant to Section 7.913; and,

d. Monthly fee to administer the trust fund to each child covered by a qualifying plan as determined by the Department.

3. Upon exit from early intervention services or discontinuation of coverage by the private health insurance carrier, a private health insurance carrier shall be notified of monies deposited in the trust fund on behalf of an eligible dependent infant or toddler that are not expended and the funds shall be returned within ninety (90) calendar days.

4. No later than April 1 of each year, private health insurance carriers shall be provided with a report specifying the amount of benefits paid to each Certified Early Intervention Service Broker for services provided to eligible infants or toddlers during the prior calendar year.

7.914 DATA COLLECTION [Rev. eff. 7/1/15]

A. A Community Centered Board shall ensure that policies and procedures are developed and maintained, and that information regarding Early Intervention Services is collected and documented as defined by the Department.

B. A Community Centered Board shall have an Early Intervention Data Coordinator who shall:

1. Be knowledgeable of the statewide data system, data entry requirements and timelines, and report information; and,

2. Ensure that each staff who enters data into the statewide data system completes the department-approved data training; and,

3. Ensure that all data is entered into the statewide data system as defined by the Department.

C. A Community Centered Board shall ensure that for each child who is referred for early intervention services:

1. Electronic Case is established and maintained in the statewide data system; and,

2. All required data from a child's record is entered into the statewide data system within fifteen (15) days from the date of the referral and tracked through eligibility or ineligibility and exit from early intervention services.

D. A Community Centered Board shall ensure that accurate child outcomes data are entered into the statewide data system for measuring outcomes:

7.915 GENERAL SUPERVISION AND MONITORING [Eff. 7/1/13]

A. Monitoring activities shall ensure compliance with Part C of the Individuals with Disabilities Education Act as well as with state statutes and rules and shall include the following:

1. Self-assessment procedures; and,

2. Examination of program data; and,

3. Special analysis; and,

4. On-site reviews; and,

5. Any other methods as determined by the Department.

B. The results of monitoring shall be publicly reported on the Early Intervention Colorado website and submitted to state and federal entities, as needed.

C. A Community Centered Board shall have an Early Intervention Coordinator who shall complete required training, as defined by the department and is:

1. Knowledgeable of Early Intervention Services and federal and state requirements; and,

2. The liaison to the Department regarding the Early Intervention Program; and,

3. Responsible for the local implementation of a comprehensive and coordinated system of Early Intervention Services; and,

4. The contact for families regarding procedural safeguards.

D. A Community Centered Board shall maintain:

1. A complete file of all early intervention records, documents, communications, and other written and/or electronic materials which pertain to the operation of an Early Intervention Program or the delivery of Early Intervention Services; and,

2. Such records for a period of six (6) years after the date of closure of the record or for such further periods as may be necessary to resolve any matters that may be pending.

E. The following information shall be maintained for each child's record:

1. Log of access; and,

2. Referral information; and,

3. Parent consent to evaluate; and,

4. Parent consent to use private health insurance or Medicaid; and,

5. Prior notice documentation; and,

6. Parent consent to share information; and,

7. Individualized Family Service Plans; and,

8. Progress and assessment reports, including child outcomes measurement information; and,

9. Case notes; and,

10. All correspondence related to a child and family; and,

11. Fiscal records, including documentation of early intervention service provision by qualified providers; and,

12. Any medical documentation related to the diagnosis or medical condition of the referred child, including history and services.

F. A Community Centered Board shall permit the state, federal government, or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy, and/or transcribe records during the term of a contract for Early Intervention Services and for a period of six (6) years following termination of the contract or final payment hereunder, whichever is later, to assure compliance with federal regulations and/or state statutes and rules or to evaluate an Early Intervention Program's performance.

7.920 CHILD IDENTIFICATION [Rev. eff. 7/1/15]

The Early Intervention Program shall have a comprehensive Child Find system, pursuant to 34 C.F.R. Section 303.302, which is incorporated by reference as defined in Section 7.900, A, 5, that focuses on the early identification of infants and toddlers who have developmental delays or disabilities, including a system for making referrals so that timely and rigorous identification in accordance with Section 7.920, B– F, shall occur.

A. Pre-Referral Public Awareness

1. A Community Centered Board shall work with special education Administrative units, the Local Interagency Coordinating Council, and, other community members, as necessary in order to develop a coordinated program of public awareness that identifies infants and toddlers with disabilities who are eligible for early intervention services.

2. A Community Centered Board shall ensure that it has an Internet link on its website to the Early Intervention Colorado website at www.eicolorado.org and that families are informed of the website and the statewide toll free number 1-888-777-4041.

3. A Community Centered Board shall ensure that information on the Early Intervention Colorado Program is available via an Internet website, and in a written format, upon request of a family.

4. A Community Centered Board shall ensure that printed materials from the Department and other products are made available to families and the general public, as well as through state and local interagency efforts for outreach to primary referral sources, including hospitals, physicians, other health providers, child care providers and other public and non-profit agencies.

B. Referral

1. A Community Centered Board shall work collaboratively with community partners and primary referral sources to develop effective procedures for referral of children, birth through two (2) years of age, to the Early Intervention Program, in order to identify infants and toddlers who are in need of Early Intervention Services.

2. Referral of a child, birth through two (2) years of age, means a verbal or written notification from a referral source to the Community Centered Board or Administrative Unit about a child who:

   a. Is known to have or suspected of having a developmental delay; or,

   b. Has an established condition, as defined in Section 7.920, H; or,

   c. Lives with a parent with a developmental disability; or,

   d. Has been identified as the subject of a substantiated case of child abuse or neglect; or,

   e. Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

C. Post-Referral Process

1. A Community Centered Board shall accept a referral from community sources, including, but not limited to, a family, health provider, child care provider, Administrative Unit, county department of social/human services, county department of health, and others.

2. A Community Centered Board shall use the state referral form and procedures as defined by the Department, and shall facilitate, to the extent possible, the use of the early intervention referral form by other referral sources in its designated service area.

3. A Community Centered Board shall assign a service coordinator within three (3) working days from the date of a referral.

4. The family shall be contacted as soon as possible after being assigned a service coordinator, but no longer than seven (7) calendar days from the date of the referral, to provide the service coordinator's contact information and inform the family of their procedural safeguards.

5. A Community Centered Board shall notify the appropriate Administrative Unit within three (3) working days of a child being referred for early intervention services for whom a Child Find evaluation needs to be conducted.

6. Community Centered Board shall:

   a. Notify the referral source of the receipt of the referral using the state referral form; and,

   b. Provide the contact information for the assigned service coordinator; and,

   c. With written parent consent, notify the referral source and the child's primary health provider of the results of the evaluation and/or assessment using the state referral form.

7. Referral information sent to an Administrative Unit by a Community Centered Board shall contain at least the following:

   a. The first, middle, and last name of the child; and,

   b. Date of birth of the child; and,

   c. Gender of the child; and,

   d. Parent name, address, and telephone number; and, e. Primary language spoken; and,

   f. Name and telephone number of an assigned service coordinator; and,

   g. Date of the referral.

D. Post-Referral Screening

1. A Community Centered Board shall work with the Administrative Unit(s) to identify in the interagency agreement if the Child Find process will include post-referral screening.

2. If post-referral screening is used, the Community Centered Board shall assure the following requirements are met:

   a. A parent shall receive prior written notice of and provide consent to the post- referral screening, and be informed of the right to request evaluation in place of or in addition to post-referral screening; and,

   b. Appropriate instruments shall be used by personnel trained to administer those instruments; and,

c. Written screening results are provided to a parent; and,

d. A parent shall receive prior written notice of the action that is being proposed or refused as a result of the post-referral screening, and the reasons for taking the action.

e. If the results of a post-referral screening reveal that the child is developing at age expected levels in the five (5) domains referenced in 7.920 (I)(7)(c), the parent may request and is entitled to a timely, comprehensive, multidisciplinary evaluation under Part C of the individuals with disabilities education act.

E. Eligibility Criterion

An infant or toddler, birth through two (2) years of age, shall be eligible for early intervention services if he or she has a developmental delay as defined in Section 7.901, an established diagnosed physical or mental condition as defined in Section 7.901, or lives with a parent who has a developmental disability as defined in Section 7.920, I.

F. Eligibility Determination for Developmental Delay

1. Eligibility shall be based on a developmental delay as defined in Section 7.901.

2. Results derived solely from a single procedure shall not be used to determine eligibility or ineligibility.

3. The following shall be documented in an Individualized Family Service Plan:

   a. Name and discipline of each team member who participated in the evaluation and assessment; and,

   b. Evaluation instrument(s), child assessment tool(s), and methods and procedures used to conduct the evaluation and assessment; and,

   c. The measurable results of the multidisciplinary evaluation and/or assessment in each of the developmental domains; and,

   d. Eligibility or ineligibility determination; and,

   e. Name and signature of the Community Centered Board representative who verifies that the evaluation and assessment team gathered and provided diagnostic information to establish eligibility or ineligibility; and,

   f. Signature of a parent acknowledging that he or she has been informed of his or her child's eligibility determination.

4. If a child is determined ineligible for early intervention services, the family shall be provided prior written notice to inform them of:

   a. The right to dispute resolution procedures as defined in Section 7.990; and,

   b. Other community resources that may assist his or her child.

G. Eligibility Determination Based on an Established Condition

1. There shall be supporting documentation from a qualified health professional maintained in the child's record for a diagnosed physical or mental condition.

2. The diagnosis or condition shall be included in the Established Conditions Database.

3. There shall be documentation in the Individualized Family Service Plan regarding the name of the diagnosed condition on which eligibility is based.

4. A child with an established condition does not have to be exhibiting delays in development at the time of diagnosis to be eligible for early intervention services.

H. An infant or toddler who lives with a parent who has been determined by a Community Centered Board to have a developmental disability is eligible to receive early intervention services using any funding source other than the federal Part C funds. Such services may include, but are not limited to, developmental intervention for parent education and monitoring child development.

I. Evaluation to determine eligibility based on a developmental delay:

1. A Community Centered Board shall work with Administrative Units, the Local Interagency Coordinating Council, and other community members, as necessary, to develop a local child identification process to ensure that:

   a. Evaluation **p**rocedures, as identified in Section 7.920, are adhered to; and,

   b. For each child, where parental consent for evaluation has been given, **a**n evaluation is conducted by a multidisciplinary evaluation team and, if the child is eligible, a child and family assessment is completed, and AN initial Individualized Family Service Plan meeting is convened within forty-five (45) calendar days of the date of the referral.

2. Written notice shall be provided to the parent prior to the scheduling of an evaluation and a copy of the notice shall be maintained in the child's record.

3. Written parental consent shall be obtained prior to any evaluation being conducted and a copy of the consent shall be maintained in the child's record.

4. An evaluation shall include a multidisciplinary process by a team comprised of a minimum of two (2) appropriately licensed/qualified professionals, at least one (1) of whom is qualified in the primary area of developmental concern.

5. Child evaluation shall be conducted in the native language of the child, unless clearly not feasible to do so.

6. An evaluation shall be based on an informed opinion of delay and shall be administered so that it is not racially or culturally discriminatory.

7. Procedures for the evaluation to determine if infant or toddler has a developmental delay shall include:

   a. Administering an evaluation instrument; and,

   b. Documenting the child's history, including interviewing the parent; and,

   c. Identifying the child's level of functioning in each of the following developmental domains:

      1) Adaptive development; and,

      2) Cognitive development; and,

      3) Communication development; and,

      4) Physical development, including vision and hearing; and,

5) Social or emotional development.

d. Gathering information from other sources such as family member, other caregivers, medical providers and other professionals working with the child and family.

J. Assessment

If a child is determined to be eligible for early intervention services because of a developmental delay or an established condition, a community centered board shall ensure that the following occurs:

1. Prior to conducting a child assessment, written notice shall be provided to the parent and parental consent for the assessment obtained. A copy of the notice and the consent shall be maintained in the child's record. For a child determined eligible due to a developmental delay, this notice may have been provided at the time of evaluation.

2. A child assessment, conducted by qualified personnel, shall be conducted in the native language of the child, unless clearly not feasible to do so, and may include the following:

   a. A review of the results of the multidisciplinary evaluation, informed opinion of delay, and medical and other records used to establish eligibility, including the results of hearing and vision screening;

   b. Personal observations of the child;

   c. Identification of the child's strengths and needs in each developmental area; and,

   d. Identification of early intervention services that would meet the child's needs;

3. A family assessment is made available to any parent or other family member of an eligible child.

   a. A family assessment is voluntary on the part of each family member participating in the assessment.

   b. A family assessment shall be family-directed and designed to determine the resources, priorities and concerns of a parent or other family member related to the enhancement of his or her child's development.

   c. A family assessment shall be conducted in the native language of the family member(s) participating in the family assessment, unless clearly not feasible to do so.

   d. When completed, the family assessment shall be:

      1) Conducted by qualified personnel trained to utilize a department- approved family assessment tool, that is available on the early intervention Colorado website at www.eicolorado.org; and,

      2) Based on information provided by the parent or other family member through a personal interview and through a family assessment tool; and,

      3) Inclusive of a parent or other family member's description of his or her resources, priorities and concerns related to enhancing his or her child's development; and,

      4) Completed prior to the development of the initial individualized family service plan.

4. If an individualized family service plan is developed at the same meeting as the evaluation and assessment, the service coordinator ensures that prior written notice about the development of the individualized family service plan is provided to the parent.

5. If a second meeting is required, notification of the date, time, and location of that meeting needs to be received by the parent far enough in advance of the meeting date so that the parent will be able to attend the meeting. A copy of the notice shall be maintained in the child's record.

7.940 INDIVIDUALIZED FAMILY SERVICE PLAN [Rev. eff. 7/1/15]

A. An Individualized Family Service Plan shall serve as the Individualized Plan for a child, from birth to less than three (3) years of age, receiving early intervention services.

B. A service coordinator shall ensure that an Individualized Family Service Plan is:

1. With prior written notice given to the parent, developed within a reasonable time after an eligibility determination has been made, but no later than forty-five (45) calendar days from the date of the referral, unless a delay is due to documented exceptional family circumstances; and,

2. Developed with all required participants ad defined ins Section 7.940, E; and,

3. Based on, and contains the results of, the evaluation and assessment, and the family's concerns and priorities; and,

4. Inclusive of early intervention services to be provided in natural environments that are necessary to meet the unique needs of the child and the parent or other caregiver, and implement the strategies to achieve the developmental outcomes of the child; and,

5. Culturally sensitive; and,

6. With prior written notice given to the parent, reviewed every six (6) months, or more frequently if necessary or if requested by the parent, in order to:

   a. Determine progress toward achieving the identified outcomes; and,

   b. Revise or add an outcome, if needed; and,

   c. Determine if a change in early intervention services is necessary to meet the identified outcomes.

7. With prior written notice given to the parent, updated annually through a meeting of the Individualized Family Service Plan team and the parent to:

   a. Discuss and document the child's current developmental levels in all developmental domains gathered through assessment methods as defined by the Department; and,

   b. Determine progress towards achieving the identified outcomes; and,

   c. Determine the child's ongoing need for early intervention services; and, d. Revise or add an outcome, if needed; and,

   e. Determine the early intervention services necessary to meet the identified outcomes.

C. If it is determined during an Individualized Family Service Plan review that a child is functioning at age-expected levels when compared with chronological age, as documented in current assessment results, the following shall occur:

1. The Individualized Family Service Plan team shall determine whether one (1) or more early intervention services are no longer needed for the child to continue to progress; and,

2. If the Individualized Family Service Plan team determines that early intervention services are no longer needed, the following shall occur:

    a. The service coordinator shall explain to the parent the dispute resolution procedures, as defined in Section 7.990-7.994; and,

    b. The service coordinator shall provide prior written notice to the parent that the members of the Individualized Family Service Plan team have determined the child no longer has any identified need for early intervention services, and the child has completed the Individualized Family Service Plan; and,

    c. The child's record shall remain open for ten (10) calendar days from the prior written notice date; and,

    d. Following the ten (10) calendar day period from the prior written notice date, if there is no dispute resolution request from the parent, the early intervention services shall cease and the child's record shall be closed.

D. Completion of an Individualized Family Service Plan

1. The decision to end early intervention services for a child based on the determination by the members of the Individualized Family Service Plan team that the child no longer needs early intervention services is not to be construed with a determination of ineligibility based on a multidisciplinary evaluation. If future concerns arise and the child is still less than three (3) years of age, the family shall contact the Community Centered Board to conduct an assessment and develop a revised Individualized Family Service Plan, if appropriate.

2. An infant or toddler found eligible due to an established condition, as defined in Sections 7.901 and 7.920, H, shall not have his/her early intervention services ended unless the parent chooses to withdraw from services.

E. An initial, annual or periodic review meeting to evaluate an Individualized Family Service Plan shall include the following participants:

1. Parent of a child; and,

2. Service coordinator; and,

3. Persons directly involved in conducting the evaluations and assessments; and,

4. As appropriate, a person or persons who will be providing early intervention services to a child or family; and,

5. Additional participants may include, but are not limited to, the following:

    a. Other family members, as requested by a parent; and,

    b. An advocate or person outside of a family, as requested by a parent.

F. If any person who conducted an evaluation and/or assessment is unable to participate in person, he or she shall participate by:

1. Telephone or Internet web conference;

2. A knowledgeable authorized representative attending the meeting in his or her place; or,

3. The provision of appropriate reports for use at the meeting.

G. If the evaluation and assessment report is provided and there is no authorized representative at the meeting, the Community Centered Board shall ensure that at least one qualified early intervention professional reviews and interprets the developmental information in the report in order to inform the team completing the Individualized Family Service Plan.

H. An Individualized Family Service Plan shall be conducted in accordance with 34 C.F.R. Sections 303.340 - 303.345, which are incorporated by reference as defined in Section 7.900, A, 5:

1. In a setting and at a time that is convenient to the parent; and,

2. In the language or mode of communication normally used by the parent, unless clearly not feasible to do so.

I. The content of an Individualized Family Service Plan shall, at a minimum, meet the requirements of 34 C.F.R. Section 303.344, which is incorporated by reference as defined in Section 7.900, A, 5, and be completed using the department required form available at the Early Intervention Program website at www.eicolorado.org, and shall include the following:

1. The type of model for each service shall be one of the following, as defined in Section 7.901:

a. Primary service provider; or,

b. Multidisciplinary service providers; or,

c. Single provider; or,

d. Other model approved by the state.

2. The type of method for each service shall be one of the following, as defined in Section 7.901:

a. Individual; or,

b. Co-visit; or,

c. Teaming; or,

d. Supervision**;** OR**,**

e. Telehealth, with parental consent.

J. A parent may withhold consent for an early intervention service without jeopardizing the delivery of any other early intervention service for which consent is given.

K. If a parent and an Individualized Family Service Plan team member(s) do not agree on any aspect of an early intervention service, a service coordinator shall implement the sections of the plan that are not in dispute.

L. A parent may exercise his or her rights, as defined in Section 7.990, to resolve a dispute while continuing to receive those services in an Individualized Family Service Plan that are not subject to a dispute.

M. An interim Individualized Family Service Plan shall be developed to provide a temporary early intervention service prior to completion of an evaluation and assessment, only when the service is determined by qualified professionals to be immediately necessary and when the following conditions are met:

1. A child has been determined to be eligible for early intervention services; and,

2. Written parental consent is obtained; and,

3. An evaluation and assessment are completed within forty-five (45) calendar days of the date of the referral.

7.951 EARLY INTERVENTION PROVIDER QUALIFICATIONS [Eff. 7/1/13]

A. Early Intervention Services shall be provided by qualified providers who meet the state personnel standards for each Early Intervention Service.

B. ~~An~~ Early Intervention providers shall maintain current and accurate documentation, including certifications, licensing, endorsements, and registrations and shall register, and update his or her information at least annually, in the statewide data system.

C. Early intervention providers shall complete all required training, as defined by the department.

7.961 CHILD OUTCOMES MEASUREMENTS [Eff. 7/1/13]

A. A Community Centered Board shall participate in the state program to measure child outcomes and shall ensure that each eligible child who receives Early Intervention Services for six (6) months or longer receives a child outcomes rating that is determined utilizing information gathered through:

1. Family interview; and,

2. Professional observation; and,

3. Utilization of an appropriate assessment instrument to measure child outcomes as defined by the Department.

B. Required Timelines

1. An entry rating shall be determined as soon as a baseline can be accurately established, but no later than sixteen (16) weeks from the date of referral for early intervention services for an eligible child, unless a child is younger than six (6) months of age. If the child is less than six (6) months of age at the time of referral, the first measurement shall occur once a child has reached the age of six (6) months; and,

2. An exit rating shall be finalized no more than ninety (90) calendar days prior to the child's exit from early intervention services or the child's third (3rd) birthday, whichever occurs first. An exit rating is not required for a child who has been in early intervention services for less than six (6) months.

C. A Community Centered Board shall ensure that all staff and contractors who are responsible for documenting and reporting child outcomes progress data are trained in the methods required by the Department and participate in required technical assistance activities.

D. Child outcomes shall measure the percent of infants and toddlers with an Individualized Family Service Plan, who:

1. Have positive social emotional skills (including social relationships); and,

2. Acquire and use knowledge and skills (including early language/communication); and,

3. Use appropriate behaviors to meet their needs.

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Office of the Attorney General

Tracking number: 2016-00248

Opinion of the Attorney General rendered in connection with the rules adopted by the

Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)

on 08/05/2016

12 CCR 2509-10

EARLY INTERVENTION PROGRAM

The above-referenced rules were submitted to this office on 08/09/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 24, 2016 12:04:16

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Banking

CCR number

3 CCR 701-1

Rule title

3 CCR 701-1 COMMERCIAL BANKS 1 - eff 08/18/2016

Effective date

08/18/2016

CB101.66 **Frequency of Board Meetings** [Section 11-103-502, C.R.S.]

A. The board of directors (Board) of a state bank shall meet at least once each calendar quarter, unless the Colorado State Banking Board directs the meetings be held on a more frequent basis or less frequent basis in case of a disaster or emergency. If the Board of a state bank plans to change its current meeting schedule, the bylaws should be reviewed with regard to meeting frequency and updated, if necessary. A revised Board of Directors meeting schedule and a copy of the revised bylaws, if necessary, shall be provided to the Division no less than 30 days following receipt of approval of the change.

B. If other than monthly meetings are held, a director who fails to attend two consecutive meetings shall automatically cease to be a director unless the absence is satisfactorily explained to the banking board or commissioner, who shall, in that event, notify the president of such bank the approval of the continuation of the director.

C. If monthly meetings are held, a director who fails to attend three consecutive monthly meetings shall automatically cease to be a director unless the absence is satisfactorily explained to the banking board or commissioner, who shall, in that event, notify the president of such bank the approval of the continuation of the director.

D. Should a state bank's Board decide to again change its meeting schedule, the bank shall follow the process outlined in Section A.

DEPARTMENT OF REGULATORY AGENCIES

DIVISION OF BANKING

RULES OF THE COLORADO STATE BANKING BOARD
PERTAINING TO TITLE 11, ARTICLE 103, SECTION 502
3 CCR 701-1

EMERGENCY RULE

CB101.66 – Frequency of Board Meetings

Section 1. Authority
Section 2. Scope and Purpose
Section 3. Applicability
Section 4. Effective Date

Section 1. Authority

The Division of Banking (Division) issues the following emergency promulgation of Banking Board Rule CB101.66 – Frequency of Board Meetings (CB101.66), according to the authority found in Sections 11-101-102 and 11-102-104, C.R.S.

Section 2. Scope and Purpose

The Colorado State Banking Board finds that immediate adoption of this emergency rule is necessary to convey to state-chartered banks the requirements, as interpreted by the Colorado State Banking Board (Banking Board), of Senate Bill 16-126, Concerning Parity of State-Chartered Banks with Federally Chartered Banks Regarding Frequency of Meetings (SB16-126), which was adopted to maintain parity with federally regulated institutions and becomes effective August 10, 2016.

SB16-126 will become effective prior to the earliest effective date attainable through the regular rulemaking process, which is November 30, 2016; therefore, without the emergency rule in place, a four-month period would exist between SB16-126 going into effect and finalization of the promulgated rule through the regular rulemaking process, during which no official guidance would be available for state-chartered banks.

CB101.66 establishes a procedure for a bank's board to follow that changes the frequency of its board meetings and provides requirements regarding reinstatement of directors who are absent for consecutive meetings. The regular rulemaking hearing for promulgation of CB101.66 is scheduled for presentation before the Banking Board on October 20, 2016.

The Banking Board has a stated need to immediately adopt this rule, pursuant to Section 24-4-103(6), C.R.S., which authorizes the Division of Banking (Division) to issue an emergency rule if the Division finds that the immediate adoption of the rule, without notice, is imperatively required to comply with a state or federal law.

Section 3. Applicability

This rule applies to all Colorado state-chartered commercial banks, pursuant to section 11-102-104, C.R.S.

Section 4. Effective Date

This emergency rule is effective August 18, 2016.

CYNTHIA H. COFFMAN
Attorney General

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STATE OF COLORADO
DEPARTMENT OF LAW

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Office of the Attorney General

Tracking number: 2016-00407

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Banking

on 08/18/2016

3 CCR 701-1

COMMERCIAL BANKS

The above-referenced rules were submitted to this office on 08/19/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 30, 2016 10:43:00

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Emergency Rules Adopted

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

CCR number

10 CCR 2505-10 8.000

Rule title

10 CCR 2505-10 8.000 MEDICAL ASSISTANCE - SECTION 8.000 1 - eff 08/12/2016

Effective date

08/12/2016

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 16-08-09-A, Revision to the Medical Assistance Rule Concerning Recipient Appeals, Section 8.057

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.057, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? Yes

   If yes, state effective date: 08/12/16

   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Insert new text beginning at 8.057.1 paragraph 5 line 8 through the end of line 8. Replace the current text at 8.057.4.B.1 with the proposed text starting at 8.057.4.B.1 through the end of 8.057.4.B.1. Replace the current text starting at 8.057.10.D with the proposed text starting at 8.057.10.D through the end of 8.057.10.E. This is an emergency rule and the effective date is 08/12/16.

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

The Colorado General Assembly passed HB 16-1277, requiring an applicant's or recipients receive 60 days to file an appeal and the right to a county dispute resolution conference.

An emergency rule-making is imperatively necessary

☒ to comply with state or federal law or federal regulation and/or

☐ for the preservation of public health, safety and welfare.

Explain:

The Colorado General Assembly passed HB 16-1277, requiring an applicant's or recipients receive 60 days to file an appeal and the right to a county dispute resolution conference.

Federal authority for the Rule, if any:

42 CFR 431.244(f)(2)

State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2015);

HB 16-1277

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.
   Medicaid applicant's and recipients, there is no cost to the Department

To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.
This rule will have a positive impact to applicant's and recipients. All persons will have 60 days to file an appeal and a right to county dispute resolution conference.

Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.
There is no cost to the Department or any other agency

Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.
The benefit of the proposed rule change is that the Department will be in compliance with HB 16-1277

Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.
There are no less costly or less intrusive methods for achieving the purpose of the proposed rule change.

Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.
There are no alternative methods for achieving the purpose of the proposed rule change, as the Department must comply with HB 16-127

8.057 RECIPIENT APPEALS

8.057.1 DEFINITIONS

Action means a termination, suspension or reduction of Medicaid, Home Care Allowance and Adult Foster Care eligibility or covered services. It also means determinations by skilled nursing facilities and nursing facilities to transfer or discharge residents and adverse determinations with regard to a Level II Screen finding for the preadmission screening and annual resident review requirements.

Adverse determination means a determination with regard to a Level II Screen finding for the preadmission screening and annual review requirements that the individual does not require the level of services provided by a nursing facility or that the individual does or does not require specialized services.

Authorized representative means a person designated by the applicant or recipient to act on his/her behalf. Such authorization shall be in writing in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy regulations located at 45 C.F.R. parts 160 and 164. A written designated power of attorney may substitute for the HIPAA compliant release.

Date of action means the intended date on which a termination, suspension, reduction, transfer or discharge becomes effective. It also means the date of the preadmission screening and annual resident review determination.

Notice, other than that required to be provided by a nursing facility seeking to transfer or discharge a resident, means a written statement which contains:

1. A statement of what action the Department or its designee intends to take;
2. The reasons for the intended action;
3. The specific regulations that support, or the change in federal or state law that requires the action;
4. An explanation of
    a. The individual's right to request an evidentiary hearing if one is available; or
    b. In cases of an action based on a change in law, the circumstances under which a hearing will be granted.
5. The method by which the individual may obtain a hearing;
6. That the individual may represent himself/herself or use legal counsel, a relative, a friend, or other spokesman at the hearing; and
7. An explanation of the circumstances under which Medicaid is continued if a hearing is requested.
8. An explanation of the applicant's or recipient's right to a county or service agency dispute resolution conference.

Notice required to be provided by a nursing facility seeking to transfer or discharge a resident means a written statement which contains, in addition to the requirements above:

1. The reason for transfer or discharge;

2. The effective date of the transfer or discharge;

3. The location to which the resident is transferred or discharged;

4. The name, address and telephone number of the State long term care ombudsman;

5. For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

6. For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

Request for a hearing means a clear expression by the applicant or recipient, or his/her authorized representative that he/she wants an opportunity to present his/her case to a reviewing authority.

8.057.2 ADVANCE NOTICE

8.057.2.A. Notice shall be mailed at least 10 calendar days before the date of the intended action except as permitted in 8.057.2.B and 8.057.2.C. Requirements for the timing of notice before the facility can transfer or discharge a resident shall be governed by 8.057.2.D and 8.057.2.E.

8.057.2.B. Notice for any action other than when a nursing facility seeks to transfer or discharge a resident, may be mailed less than 10 calendar days before the date of the intended action if:

1. The Department or its designee has factual information confirming the death of a recipient;

2. The Department or its designee receives a clear written statement signed by a recipient that

    a. The recipient no longer wishes services; or

    b. The recipient gives information that requires termination or reduction of services and indicates that he/she understands that this must be the result of supplying that information;

    c. The recipient has been admitted to an institution where he/she is ineligible for further services;

    d. The recipient's whereabouts are unknown and the post office return agency mail directed to him/her indicating no forwarding address;

e. The recipient has been accepted for Medicaid services by another State, territory or commonwealth;

f. A change in the level of medical care is prescribed by the recipient's physician; or

g. The notice involves an adverse determination made with regard to the preadmission screening and annual resident review requirements.

8.057.2.C. Notice for any action other than when a nursing facility seeks to transfer or discharge a resident, shall be sent 5 calendar days before the date of the action if:

1. The Department or its designee has facts indicating that action should be taken because of probably fraud by the recipient; and

2. The facts have been verified, if possible, through secondary sources.

8.057.2.D. Except as specified in 8.057.2.E, the required notice when a nursing facility seeks to transfer or discharge a resident shall be at least 30 calendar days before the resident is transferred or discharged.

8.057.2.E. The required notice by a nursing facility before transfer or discharge shall be as soon as practicable when:

1. The safety of individuals in the facility would be endangered;

2. The health of individuals in the facility would be endangered;

3. The resident's health improves sufficiently to allow a more immediate transfer or discharge because the resident no longer needs the services provided by the facility;

4. An immediate transfer or discharge is required by the resident's urgent medical needs; or

5. A resident has not resided in the facility for 30 calendar days.

8.057.3 OPPORTUNITY FOR HEARING

8.057.3.A. An individual shall have an opportunity for a hearing where:

1. An application for services is denied or is not acted upon with reasonable promptness;

2. The recipient requesting the hearing believes the action is erroneous;

3. The resident of a nursing facility believes the facility has erroneously determined that he/she must be discharged; and

4. An individual who believes the determination with regard to the preadmission and annual resident review requirements is erroneous.

8.057.3.B. An individual does not have the right to an opportunity for hearing if the sole issue is a federal or state law requiring an automatic change adversely affecting some or all recipients.

8.057.3.C. An individual does not have the right to an opportunity for hearing for a preadmission screening and annual resident review Level I Screen finding.

8.057.3.D. A provider of medical assistance or any other provider of goods and services to an applicant or recipient, shall not have the right to a hearing concerning an action or an adverse determination to an applicant or recipient.

8.057.4 REQUEST FOR HEARING

8.057.4.A. The request for a hearing shall be in writing and contain:

1. The recipient or applicant's name, address and State Identification Number, if applicable;

2. The action, denial or failure to act promptly on which the requested appeal is based; and

3. The reason for appealing the action, denial or failure to act promptly.

8.057.4.B. The request for a hearing shall be filed with the Office of Administrative Courts:

1. Within 60 calendar days of the date of the notice of action.

8.057.4.C. The recipient or applicant or his/her authorized representative shall be entitled to examine the complete case file and any other documents to be used at hearing at a reasonable time before the hearing or during the hearing. Documents and information that are confidential as a matter of law shall be exempt from this requirement unless they are to be offered as evidence during the hearing.

8.057.4.D. If the recipient or applicant makes an oral request for a hearing to the Department or its designee, the Department or its designee shall prepare a written request for the individual's signature or have the individual prepare such a request.

8.057.5 MAINTAINING SERVICES

8.057.5.A. Where the recipient requests a hearing before the date of action, the recipient's services may not be terminated or reduced until a final agency decision is rendered after the hearing unless:

1. It is determined at the hearing that the sole issue is one of federal or state law or policy; and

2. The recipient is promptly informed that services are to be terminated or reduced pending the hearing decision.

8.057.5.B. Where the action of the Department or its designee is sustained by the final agency decision, the Department or its designee may institute recovery procedures against the applicant or recipient to recoup the cost of any services furnished the recipient, to the extent they were furnished solely by reason of this section regarding maintaining services.

8.057.5.C. Continued Benefits During an SSA Appeal. If an individual receiving Medicaid based upon disability is determined by SSA not to be disabled, and he or she is not eligible for Medicaid on some other basis, Medicaid is continued during the 60-day period within which an SSA appeal may be filed. If the individual does not appeal the SSA decision within the 60-day period, Medicaid shall be terminated.

If an SSA hearing is requested within the 60-day period, Medicaid may not be terminated until a final decision is made after the SSA hearing. A final administrative decision occurs when the Medicaid recipient has no right to further administrative appeal with the SSA. The Department shall provide 10-days notice to the individual that Medicaid shall be terminated after the 60-day period if the individual fails to appeal the SSA decision.

8.057.6 DENIAL OR DISMISSAL OF REQUEST FOR HEARING

8.057.6.A. The request for hearing shall be denied or dismissed if:

1. The applicant or recipient withdraws the request in writing; or

2. The applicant or recipient fails to appear at a scheduled hearing without good cause. Good cause shall mean a sudden severe illness, an accident, or other particular occurrence which, by its emergent nature and drastic effect, prevented appearance at the hearing.

8.057.6.B. The applicant or recipient shall have 10 calendar days from the date of the notice of dismissal scheduled hearing to explain, in a letter to the Administrative Law Judge, the reason for his/her failure to appear. If the Administrative Law Judge finds that there was good cause for the nonappearance, the Administrative Law Judge shall schedule another hearing date.

8.057.7 FAIR HEARINGS

8.057.7.A. A hearing shall cover:

1. Action, denial or failure to act with reasonable promptness regarding eligibility or services;

2. Decisions regarding changes in the type or amount of services;

3. Decision by a nursing facility to transfer or discharge a resident; and

4. Determination with regard to the preadmission screening and annual resident review requirements.

8.057.7.B. Conference telephone hearings may be conducted as an alternative to face-to-face hearings. All applicable provisions of the face-to-face hearing shall apply to telephone hearings.

8.057.7.C. Upon receipt of notice of a Department hearing of 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.

8.057.7.D. Except as otherwise specifically provided in these rules, the provisions of Section 24-4-105, C.R.S., as amended, shall apply to the conduct of fair hearings.

8.057.7.E. Hearings related to an applicant or recipient's disability determination, level of care determination or target group eligibility shall be held within 20 calendar days after the Office of Administrative Courts receives the request for a fair hearing unless the client demonstrates good cause for postponement of the hearing. Under no circumstances shall the hearing be conducted more than 45 calendar days after receipt of the request for a fair hearing.

8.057.7.F. In hearings related to an applicant or recipient's disability determination, where the hearing involves medical issues such as those concerning a diagnosis, an examining physician's report or a medical review team's decision, the Administrative Law Judge may order a medical assessment other than that in the record of the Department or its designee making the disability determination if the Administrative Law Judge considers such medical assessment necessary. The assessment shall be at the expense of the Department or its designee and shall be made part of the record.

8.057.7.G. The hearing shall be private unless the applicant or recipient requests, on the record, that the hearing be open to the public.

8.057.7.H. If the appellant is not fluent in English or has a language difficulty, the Department will arrange with county assistance to have present at the hearing a qualified interpreter who will be sworn to translate correctly.

8.057.8 INITIAL DECISIONS

8.057.8.A. The Administrative Law Judge shall promptly prepare and issue a written Initial Decision and file it with the Office of Appeals of the Department. Initial decisions shall be based exclusively on evidence introduced at the hearing.

8.057.8.B. The Administrative Law Judge shall issue the Initial Decision following a disability determination hearing, a level of care denial hearing or a target group eligibility hearing within 20 calendar days of the hearing date.

8.057.8.C. The Initial Decision shall be in writing and shall:

1. Summarize the facts;

2. Identify the regulations and evidence supporting the decision;

3. Advise the applicant or recipient that failure to file exceptions to the provisions of the Initial Decision shall waive the right to seek judicial review of a final agency decision affirming those provisions.

8.057.8.D. The Administrative Law Judge shall be bound by the Department's interpretation of statutes where the Department has regulations implementing such statutes.

8.057.8.E. The Administrative Law Judge shall have no jurisdiction or authority to determine issues of constitutionality or legality of the Department's regulations.

8.057.8.F. In hearings concerning disability determinations, the only factual issue to be determined by the Administrative Law Judge is whether the applicant or recipient meets the Medicaid definition of disability or blindness set forth in sections 8.110.32 and 8.110.33. The

Administrative Law Judge's determination shall be limited to whether or not the applicant or recipient met the definition of disability or blindness on the date that the disability determination was completed.

8.057.8.G. In hearings concerning level of care determinations, the only factual issue to be determined by the Administrative Law Judge is whether the applicant or recipient meets the level of care screen applicable to the program at issue. The Administrative Law Judge's determination shall be limited to whether or not the applicant or recipient met the level of care on the date that the level of care determination was completed.

8.057.9 REVIEW BY THE OFFICE OF APPEALS

8.057.9.A. The Department's Office of Appeals shall promptly serve the Initial Decision upon each party to the fair hearing by first class mail. Party shall include the Department even if the Department has not previously appeared as a party to the appeal.

8.057.9.B. Any party seeking to reverse, modify or remand the Initial Decision shall file exceptions with the Office of Appeals within 15 calendar days, plus 3 calendar days for mailing, of the date the Initial Decision is mailed to the parties.

8.057.9.C. Exceptions to Initial Decisions shall be in writing and shall state the specific grounds for reversal, modification or remand of the Initial Decision.

8.057.9.D. A written transcript of the hearing is required where the party filing the exceptions asserts that the findings of evidentiary fact in the Initial Decision are not supported by the weight of the evidence.

1. The party requiring a written transcript of the hearing shall request the written transcript from the Office of Administrative Courts prior to the filing of exceptions. If the written transcript is not filed with the exceptions, the exceptions shall state that a written transcript has been requested. The party shall comply with all applicable due dates. Prior to the due date for filing exceptions, the party may request, in writing, an extension of time to file either exceptions or the written transcript.

2. In cases where the applicant or recipient (Appellant) requests a written transcript in order to file exceptions based on findings of evidentiary fact, the Department shall pay the transcribing agency for the cost of one original transcript for the Office of Appeals, and one copy for the requesting applicant or recipient.

3. While review of the initial decision is pending, the submitted written transcript of the hearing shall be available for examination by any party to the appeal, during regular business hours of the Office of Appeal.

8.057.9.E. The Office of Appeals shall promptly serve a copy of the exceptions on each party by first class mail. Each party may file a written response to an exception filed by another party within 10 calendar days from the date the exceptions were mailed to the parties.

8.057.9.F. The parties shall not have the right to oral argument to the Office of Appeals.

8.057.10 FINAL AGENCY DECISIONS

8.057.10.A. The Final Agency Decision shall be based on the record except that the Office of Appeals may remand 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.

8.057.10.B. The record shall consist only of:

1. The written transcript of testimony and exhibits,

2. All papers and requests filed in the proceeding;

3. The initial decision of the administrative law judge; and

4. Any exceptions and requests filed in response to the initial decision of the administrative law judge.

8.057.10.C. The applicant or recipient shall have access to the record at a convenient place and time.

8.057.10.D. The Office of Appeals shall issue a Final Agency Decision within 90 calendar days, except as stipulated in 8.057.10.E, from the date the request for a hearing is received unless an extension has been granted to the applicant or recipient in which case the 90 calendar day period shall be increased accordingly..

8.057.10.E. The Office of Appeals shall issue a Final Agency Decision within 3 calendar days from the date the request for an expedited hearing is received.

8.057.11 NOTIFICATION OF DECISION

8.057.11.A. The applicant or recipient shall be provided, in writing, with:

1. A copy of the Final Agency Decision; and

2. Notification of his/her right to seek judicial review and the effective date of the Final Agency Decision for purposes of requesting judicial review.

8.057.11.B. 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.

8.057.12 CORRECTIVE ACTION

8.057.12.A. If the Final Agency Decision is favorable to the applicant or recipient, corrective action shall be taken, within three working days after the effective date of the Final Agency Decision, retroactive to the date the incorrect action was taken.

8.057.13 RECONSIDERATION OF FINAL AGENCY DECISION

8.057.13.A. A party may file a motion for reconsideration of a Final Agency Decision with the Office of Appeals:

1. Upon a showing of good cause for failure to file exceptions to the Initial Decision within the allowed 15 calendar day period; or

2. Upon a showing that the Final Agency Decision is based upon a clear or plain error of fact or law.

8.057.13.B. The motion for reconsideration shall be filed, in writing, with the Office of Appeals within 15 calendar days of the date that the Final Agency Decision is mailed to the parties. The motion shall state the specific grounds for reconsideration.

8.057.13.C. The Office of Appeals shall promptly serve a copy of the motion for reconsideration on each party by first class mail. Each party may file a written response to a motion for reconsideration filed by another party within 10 calendar days from the date the motion was mailed to the parties.

8.057.13.D. The Office of Appeals shall promptly serve a copy of its decision on the motion for reconsideration on all parties by first class mail.

8.057.14 INFORMAL CLIENT CONFERENCE IN DISABILITY DETERMINATIONS

8.057.14.A. Prior to the issuance of an action regarding an applicant or recipient's disability determination, the Department or the entity designated to conduct the disability determination shall provide the applicant or recipient with the opportunity for an informal conference, in person or by telephone, at which time the applicant or recipient may provide new or additional information relevant to the applicant or recipient's claim of disability or blindness.

8.057.14.B. If an action issues from the Department or the designated entity, the appeal procedures set forth in 8.057, Recipient Appeals, shall apply to disability determinations.

8.057.15 ALTERNATIVES TO INSTITUTIONAL CARE

8.057.15.A Recipients who are determined to be likely to require a level of care available in an institution shall have the right to request a hearing where:

1. The recipient is not given the choice of home and community-based services as an alternative to the institutional care or

2. The recipient is denied the service of their choice or available provider of their choice.

COLORADO
Department of Health Care Policy & Financing
Medical Services Board

AUGUST 2016 EMERGENCY JUSTIFICATION FOR MEDICAL ASSISTANCE RULES ADOPTED AT THE AUGUST 12, 2016 MEDICAL SERVICES BOARD MEETING

MSB 16-08-09-A Revision to the Medical Assistance Rule Concerning Recipient Appeals, 10 CCR 2505-10, Section 8.057

For the preservation of public health, safety and welfare

The proposed rule change is imperatively necessary to be compliant the law. The Colorado General Assembly passed HB 16-1277, requiring an applicant's or recipients receive 60 days to file an appeal and the right to a county dispute resolution conference. Equally, the rule has been out of compliance with the federal regulations regarding State Fair Hearings, 42 CFR 431.244(f)(2).

The emergency rulemaking is necessary to keep in compliance with the law. This rule change, which will allows for 60 days to file an appeal, a county dispute resolution conference and state fair hearings, is crucial for the preservation of public health, safety, and welfare.

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STATE OF COLORADO
DEPARTMENT OF LAW

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Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2016-00389

Opinion of the Attorney General rendered in connection with the rules adopted by the

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

on 08/12/2016

10 CCR 2505-10 8.000

MEDICAL ASSISTANCE - SECTION 8.000

The above-referenced rules were submitted to this office on 08/16/2016 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 30, 2016 10:42:11

Frederick R. Yarger

Cynthia H. Coffman
Attorney General
by Frederick R. Yarger
Solicitor General

Terminated Rulemaking

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

CCR number

5 CCR 1001-9

Tracking number

2016-00365

Termination date

08/30/2016

Reason for termination

This Notice of Rulemaking Hearing is being refiled as the Hearing was continued from October 20 & 21, 2016 to November 17 & 18, 2016. However, the hearing process had already began, parties were confirmed, and not all dates of the hearing process needed to be changed (please see this new Notice with redline date/time changes). The new Tracking Number is: 2016-420

Terminated Rulemaking

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

CCR number

5 CCR 1001-13

Tracking number

2016-00366

Termination date

08/30/2016

Reason for termination

This Notice of Rulemaking Hearing is being refiled as the Hearing was continued from October 20 & 21, 2016 to November 17 & 18, 2016. However, the hearing process had already began, parties were confirmed, and not all dates of the hearing process needed to be changed (please see this new Notice with redline date/time changes). The new Tracking Number is: 2016-421

Terminated Rulemaking

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

CCR number

5 CCR 1001-14

Tracking number

2016-00367

Termination date

08/30/2016

Reason for termination

This Notice of Rulemaking Hearing is being refiled as the Hearing was continued from October 20 & 21, 2016 to November 17 & 18, 2016. However, the hearing process had already began, parties were confirmed, and not all dates of the hearing process needed to be changed (please see this new Notice with redline date/time changes). The new Tracking Number is: 2016-422

Terminated Rulemaking

Department

Department of Human Services

Agency

Adult Protective Services

CCR number

12 CCR 2518-1

Tracking number

2016-00368

Termination date

08/16/2016

Reason for termination

Moving to October board meeting.

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 08/30/2016

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

COLORADO
Department of Health Care Policy & Financing

Public Notice

September 10, 2016

Family Medicine Program

Effective September 11, 2016, the Department proposes to submit a state plan amendment to update the payment amounts for the Family Medicine Residency Payment, the Rural Family Medicine Residency Development Payment, the State University Teaching Hospital Payment, and the Pediatric Major Teaching Payment. Combined with federal matching funds, the sum of the four aforementioned payments is equal to $31,157,988, which remains unchanged from last year.

General Information

A link to this notice will be posted on the Department's web site starting on September 10, 2016. Written comments may be addressed to:

Medicaid Director, Health Programs Office
Colorado Department of Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 08/30/2016

Department

Department of Public Health and Environment

Agency

Air Quality Control Commission

COLORADO
Air Quality Control Commission
Department of Public Health & Environment

REVISED NOTICE OF RULEMAKING HEARING
(revisions to the notice are in redline)

Regarding proposed revisions to:

COLORADO'S STATE IMPLEMENTATION PLAN AND ASSOCIATED REGULATIONS

SUBJECT:
The Air Quality Control Commission will hold a rulemaking hearing to consider a proposed element to Colorado's State Implementation Plan (SIP) and revisions to associated regulations. There are four segments to this rulemaking hearing which will be addressed by the Commission individually:

Moderate Ozone Nonattainment Area SIP Element: proposed SIP Element for the Denver Metro and North Front Range Moderate Ozone Nonattainment Area.

Air Quality Standards, Designations and Emission Budgets: proposed revisions that incorporate new emission budgets for the Denver Metro and North Front Range Ozone Nonattainment Area, and other clarifying revisions.

Regulation Number 7: proposed revisions associated with the moderate ozone nonattainment classification and separate revisions to address EPA concerns with previous SIP rule language submittals. The proposed revisions 1) incorporate State-only requirements for combustion device auto-igniters into the SIP; 2) establish condensate storage tank audio, visual and olfactory inspection requirements; 3) establish Reasonably Available Control Technology (RACT) requirements for both printing operations and general industrial cleaning solvent use; 4) provide for the implementation of RACT for major sources of VOC and NOx; 5) establish RACT for combustion sources; and 6) adjust the applicability of Regulation Number 7 accordingly. The proposed revisions also address EPA's concerns with previous SIP submittals that 1) establish monitoring, recordkeeping and reporting requirements for glycol natural gas dehydrators and natural gas processing plants; 2) remove references to EPA approval of emission factors; and 3) renumber, revise or revert to previously approved SIP language in other provisions. Finally, the proposed revisions make other typographical, grammatical and formatting changes.

Regulation Number 11: proposed revisions associated with the moderate ozone nonattainment classification that remove State-only references in Part A, making the Automobile Inspection and Readjustment (AIR) program currently operating in those portions of Larimer and Weld county that are part of the Denver Metro and North Front Range ozone nonattainment area a federally enforceable requirement of Colorado's SIP.

All required documents for this hearing can be found on the Commission website at: https://www.colorado.gov/pacific/cdphe/aqcc or on the Commission FTP site at: ftp:ft.dphe.state.co.us/apc/aqcc

HEARING SCHEDULE:

DATE: November 17 & 18, 2016
TIME: 9:00 AM
PLACE: Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, Sabin Conference Room
Denver, CO 80246

PUBLIC COMMENT:

The Commission encourages all interested persons to provide their views either orally at the hearing or in writing prior to or at the hearing. The Commission encourages that written comments be submitted by **November 1, 2016** so that Commissioners have the opportunity to review the information prior to the hearing.

Information should be printed and include: your name, address, phone number, email address, and the name of the group that you may be representing (if applicable).

Written submissions should be mailed to:

Colorado Air Quality Control Commission
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, EDO-AQCC-A5
Denver, Colorado 80246

Electronic submissions should be emailed to: cdphe.aqcc-comments@state.co.us

Public testimony will be taken on November 17 & 18, 2016. An approximate time for public comment will be posted in the meeting agenda.

PARTY STATUS:

Any person may obtain party status for the purpose of this hearing by complying with the requirements of the Commission's Procedural Rules. A petition for party status must be filed by electronic mail with the Office of the Air Quality Control Commission no later than close of business on **August 19, 2016.** The petition must: *1) identify the applicant; 2) provide the name, address, telephone and facsimile numbers, and email address of the applicants representative; and 3) briefly summarize what, if any, policy, factual, and legal issues the applicant has with the proposal(s) as of the time of filing the application.* Electronically mailed copies must also be received, by this same date, by the Division staff person and the Assistant Attorneys General representing the Division and the Commission as identified.

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Requests received beyond the stated deadline shall only be considered upon a written motion for good cause shown. The Commission reserves the right to deny party status to anyone that does not comply with the Commission's Procedural Rules.

ALTERNATE PROPOSAL:
The submittal of an alternate proposal must be accompanied by an electronic copy of the alternate proposed rule and all other associated documents as required by the Commission's Procedural Rules, and must be filed by electronic mail with the Office of the Commission by **close of business October 13, 2016**. Alternate proposals must also be filed by electronic mail with the Division staff person and with each of the Assistant Attorneys General.

STATUS CONFERENCE:
A status conference will be held **August 26, 2016 at 1:00 p.m.,** at the Department of Public Health and Environment, Sabin/Cleere Conference Room to ascertain and discuss the issues involved, and to ensure that parties are making all necessary efforts to discuss and resolve such issues prior to the submission of prehearing statements. Attendance at this status conference is mandatory for anyone who has requested party status.

PREHEARING CONFERENCE/PREHEARING STATEMENTS:

Attendance at the prehearing conference is mandatory for all parties to this hearing. A prehearing conference will be held **October 20, 2016 at 9:00 a.m.** at the Department of Public Health and Environment, Sabin/Cleere Conference Room. All parties must submit by electronic mail a prehearing statement to the Commission Office by close of business **October 13, 2016.** In addition, any exhibits to the prehearing statements or alternate proposals must be submitted in a separate electronic transmission to the Commission Office by close of business **October 13, 2016.** Electronically mailed copies of these documents must be delivered by that date to all persons who have been granted party status and to the Division point of contact and each of the Assistant Attorneys General identified above by close of business **October 13, 2016**. Rebuttals to the prehearing statement, and any exhibits thereto, may be submitted to the Commission Office and all other parties by close of business **October 27, 2016**.

EXCEPTIONS TO FILE DOCUMENTS BY ELECTRONIC MAIL:

The Commission's Procedural Rules provide for an exception to file documents by electronic mail. Any person may petition the Commission to file documents in paper copy format if they are unable for any reason to comply with the requirements of the Commission's Procedural Rules. If granted an exception to electronic filing pursuant to the provisions of Subsection III.I.3. of the Commissions Procedural Rules, the applicant for party status shall file an original and fifteen copies in the Office of the Air Quality Control Commission, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246., and shall also deliver copies to each party, the Assistant Attorneys General representing the Commission and Division, and the Division staff person for the proceedings by electronic mail or as otherwise provided by the exception granted under Subsection III.I.3.

STATUTORY AUTHORITY FOR THE COMMISSION'S ACTIONS:

The rulemaking hearing will be conducted in accordance with Sections 24-4-103 and 25-7-110, 110.5 and 110.8 C.R.S., as applicable and amended, the Commission's Procedural Rules, and as otherwise stated in this notice. This list of statutory authority is not intended as an exhaustive list of the Commission's statutory authority to act in this matter.

Moderate Ozone Nonattainment Area SIP Element: C.R.S. § 25-7-105(1)(a) directs the Commission to promulgate such rules and regulations necessary for the proper implementation and administration of a comprehensive SIP that will assure attainment and maintenance of national ambient air quality standards. Section 25-7-301 directs the Commission to develop a program providing for the attainment and maintenance of each national ambient air quality standard in each nonattainment area of the state.

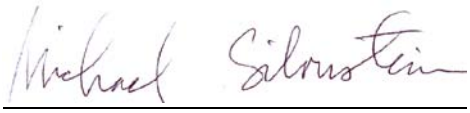
Air Quality Standards, Designations and Emission Budgets: The authority to establish emissions budgets and to establish criteria for transportation conformity determinations is included in the general authority to adopt a SIP set out in Section 25-7-105(1), C.R.S.

Regulation Number 7: The Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., ("Act"), C.R.S. § 25-7-105(1)(a) directs the Commission to promulgate such rules and regulations necessary for the proper implementation and administration of a comprehensive SIP that will assure attainment and maintenance of national ambient air quality standards. Section 25-7-301 directs the Commission to develop a program providing for the attainment and maintenance of each national ambient air quality standard in each nonattainment area of the state. Section 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. Section 25-7-106(1)(c) and (2) also authorize the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution, and monitoring and recordkeeping requirements. Section 109(1)(a) authorizes the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources of air pollutants.

Regulation Number 11: The Commission has the duty and authority to adopt the revisions. 40 C.F.R. § 51.350(4) provides that "Any area classified as moderate ozone nonattainment, and not required to implement enhanced I/M under paragraph (a)(1) of this section, shall implement basic I/M in any 1990 Census-defined urbanized area in the nonattainment area." Further, the Colorado Air Pollution Prevention and Control Act, C.R.S. §§ 25-7-101, et seq., C.R.S. § 25-7-105(1)(a), 25-7-301, and 25-7-302 direct the Commission to promulgate such rules and regulations necessary for the proper implementation and administration of a comprehensive SIP that will assure attainment and maintenance of national ambient air quality standards. Section 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program.

Dated this 29th day of August 2016 at Denver, Colorado

Colorado Air Quality Control Commission



Michael Silverstein, Administrator

Calendar of Hearings

Hearing Date/Time	Agency	Location
10/04/2016 02:00 PM	Division of Motor Vehicles	1881 Pierce Street, Lakewood, CO 80214; Rm 110 (Board/Commission Meeting Room)
10/20/2016 10:00 AM	Division of Banking	Division of Banking, 1560 Broadway, Suite 975, Denver, CO
10/20/2016 10:00 AM	Division of Banking	Division of Banking, 1560 Broadway, Suite 975, Denver, CO
10/04/2016 10:30 AM	Division of Insurance	1560 Broadway, Ste 850, Denver CO 80202
10/04/2016 10:30 AM	Division of Insurance	1560 Broadway, Ste 850, Denver CO 80202
10/04/2016 09:00 AM	Division of Professions and Occupations - Office of Respiratory Therapy Licensure	1560 Broadway, Conference Room 1250A, Denver, CO 80202
11/17/2016 09:00 AM	Air Quality Control Commission	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246
11/17/2016 09:00 AM	Air Quality Control Commission	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246
11/17/2016 09:00 AM	Air Quality Control Commission	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246
11/29/2016 09:00 AM	Water Quality Control Commission (1003 Series)	Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
10/19/2016 10:00 AM	Hazardous Materials and Waste Management Division	Sabin-Cleere Conference Room of the Colorado Department of Public Health and Environment, Bldg. A, First Floor, 4300 Cherry Creek Drive, South, Denver
10/20/2016 02:00 PM	Division of Employment and Training	633 17th Street,12th Floor, Conference Room 12A, Denver, CO 80202
10/07/2016 10:00 AM	Child Support Enforcement (Volume 6)	South Branch Library, Hopeful and Discovery Meeting Rooms, 103 S. Harris Street, Breckenridge, CO 80424
10/14/2016 09:00 AM	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	303 East 17th Avenue, 11th Floor, Denver, CO 80203
10/07/2016 10:00 AM	Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)	South Branch Library, Hopeful and Discovery Meeting Rooms, 103 S. Harris Street, Breckenridge, CO 80424
10/07/2016 10:00 AM	Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities)	South Branch Library, Hopeful and Discovery Meeting Rooms, 103 S. Harris Street, Breckenridge, CO 80424
10/07/2016 10:00 AM	Adult Protective Services	South Branch Library, Hopeful and Discovery Meeting Rooms, 103 S. Harris Street, Breckenridge, CO 80424