Colorado Register

45 CR 20

Volume 45 , No. 20

October 25, 2022

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@coloradosos.gov.

Notice of Proposed Rulemaking

Tracking number

2022-00654

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 Accident and Health (General)

Rulemaking Hearing

Date

11/15/2022

Time

11:00 AM

Location

Webinar or 1560 Broadway, STE 850, Denver CO 80202

Subjects and issues involved

The purpose of this regulation is to establish the procedures for noticing and conducting public hearings on proposed Colorado Option Standardized Plans that fail to meet the premium reduction or network adequacy requirements, beginning with the 2024 plan year, as required by § 10-16-1306, C.R.S.

Statutory authority

§§ 10-1-109, 10-16-107, 10-16-109, 10-16-1304, 10-16-1305, 10-16-1306, 10-16-1312, C.R.S.

Contact information

Name

Jill Mullen

Title

Policy Advisor

Telephone

720-5564952

Email

jill.mullen@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

DRAFT Proposed New Regulation 4-2-92

CONCERNING COLORADO OPTION PUBLIC HEARINGS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109, 10-16-107, 10-16-109, 10-16-1304, 10-16-1305, 10-16-1306, 10-16-1312, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish the procedures for noticing and conducting public hearings on proposed Colorado Option Standardized Plans that fail to meet the premium reduction or network adequacy requirements, beginning with the 2024 plan year, as required by § 10-16-1306, C.R.S.

Section 3 Applicability

DRAFT

This regulation applies to carriers offering individual and small group Colorado Option Standardized Plans on or after January 1, 2024. This regulation further applies to hospitals or health-care providers subject to the requirements in § 10-16-1306, C.R.S.

Section 4 Definitions

A. "Aggrieved" shall have the same meaning as found at § 24-4-102(3.5), C.R.S.

B. "Carrier" shall have the same meaning as found at § 10-16-102(8), C.R.S.

C. "Commissioner" shall have the same meaning as found at § 10-16-102(13), C.R.S.

D. "Colorado Open Records Act" means the Colorado Open Records Act, §§ 24-72-201, et seq., C.R.S.

E. "Covered person" shall have the same meaning as found at § 10-16-102(15), C.R.S.

F. "Day" shall mean calendar day.

G. "Division" shall have the same meaning as found at § 10-1-102(7), C.R.S.

H. "Insurance Ombudsperson" means the Office of the Insurance Ombudsman established in Section 25.5-1-131, C.R.S

I. "Network" shall have the same meaning as found at § 10-16-102(45), C.R.S.

J. "Person" shall have the same meaning as found at § 10-16-102(48), C.R.S.

K. "Premium Rate Reduction Requirements" shall mean the rates set forth in § 10-16-1305 C.R.S and calculated pursuant to Colorado Division of Insurance Regulation 4-2-85.

L. "Provider" shall have the same meaning as found at § 10-16-102(56), C.R.S.

M. "Service area" shall have the same meaning as found at § 10-16-102(24), C.R.S.

N. "SERFF" means the System for Electronic Rates and Forms Filing.

O. "Standardized Plan" or "Colorado Option Standardized Plan" shall have the same meaning as found at § 10-16-1303(14), C.R.S.

Section 5 Setting of Public Hearings and Notification of Parties

A. The Commissioner shall provide notice no later than January 15 of the year in which the hearings will be held on the proposed dates for public hearings pursuant to Section 10-16-1306, C.R.S. The notice shall be posted on the Division's website, emailed to all individuals on the Division's email list, and sent directly to the carrier, Insurance Ombudsperson, the Division, and hospitals within each service area. The notice shall include:

1. Relevant contact information;

2. A brief description of the purpose and scope of the proceeding, including the legal authority for jurisdiction and potential outcome; and

3. The date, time, location, and estimated duration for the public hearing.

DRAFT

B. If additional Parties are identified in the carrier's submittal to the Commissioner as set forth in Section 9, or additional Parties are identified pursuant to a Party's Complaint, Cross-Complaint, or Answer, the Commissioner shall provide a copy of the setting of public hearing as timely as possible to those Parties, but no later than thirty (30) days prior to the hearing.

Section 6 Applicable Federal and State Regulations

Federal and state laws and regulations in effect on March 1st of the year of the proceeding year will be used to determine whether a carrier has met the required premium rate reductions and network adequacy requirements required by Sections 10-16-1304 and 10-16-1305, C.R.S. Any changes in federal or state law between March 1 and the issuance of a final agency order pursuant to Section 21 will not be considered in determining how the carrier must meet the premium reduction requirements when issuing the final agency order.

Section 7 Public Hearing Participants

A. The Parties to the public hearing before the Commissioner shall include the following entities:

1. A carrier that fails to meet the premium rate reduction requirement or network adequacy requirements or is alleged to have failed to meet the premium rate reduction requirements or network adequacy requirements.

2. Any hospital or health care provider identified by the carrier, the Division, or another provider, as a potential cause for the carrier's failure to meet the premium rate reduction requirement except that any hospital or health care provider that has less than 0.15% impact on a carrier's premium rate in a particular county shall not be required to participate in the public hearing and the Commissioner shall not set rates for such hospital or provider as part of the public hearing.

3. The Insurance Ombudsperson to represent the interests of consumers.

4. A person who demonstrates to the Commissioner that the person will be affected or aggrieved by agency action and the person's interests are not adequately represented.

    a. Such person must request admission as a Party within seven (7) days from the Division posting any Complaint on its website.

    b. An application for Party status must identify the person making the request, including an address, email address, and telephone number. The application must also contain a statement of the reasons for seeking party status, the manner in which the matter affects the person's interests, an explanation as to why the existing parties do not adequately represent the person's interests, a description of the legal and/or factual issues which the prospective party intends to raise, any responsive pleadings the person intends to file, and potential witnesses the prospective party intends to call at the hearing. In addition, the application must describe the evidence the applicant intends to present.

B. The Division may be a Party to the public hearing if the Division issues a Complaint or files an Answer or Cross-Complaint. Alternatively, the Division may otherwise participate as a Party by entering an appearance during the public hearing process.

C. Consistent with Section 19, interested persons, including consumer advocacy organizations, may be given the opportunity to testify during the public hearing.

Section 8 Service of Documents

DRAFT

A. A Party filing any pleading or other document shall serve a copy, including all supporting attachments or exhibits, on the individual or the registered agent for every other Party in the proceeding. Such service shall include service upon the Commissioner and their assigned staff and attorneys.

B. Service of the Complaint and Answer shall be by hand or through first class mailing. After the initial filing of the Complaint and Answer, all Parties shall consent to service by email and shall provide email address for each subsequent service.

C. Proof of service of a filing shall be demonstrated through a certificate of service identifying the document served, the method of service, and the time of service.

Section 9 Carrier Notification Requirements

A. Pursuant to Section 10-16-1306(2), C.R.S. a carrier shall notify the Commissioner of the reasons why the carrier is unable to meet the premium rate reduction or network adequacy requirements, as provided in Section 10-16-1304 and 10-16-1305, C.R.S., and submit the notification and related documents identified in Section 9.C, via SERFF to the Commissioner, and to the other Parties as required by Section 8, no later than March 1 of the year preceding the year in which the premium rates go into effect.

B. When the Division has alleged that a carrier has failed to meet the premium rate reduction or network adequacy requirements through a Complaint filed by the Division pursuant to Section 10.C, the carrier shall submit to the Commissioner the notification and related documents identified in Section 9.C within seven (7) days of receipt of the Complaint from the Division.

C. Notification and Related Documents

1. The Notice shall include the following information:

a. The reasons the carrier failed to meet the premium rate reduction requirements, and the proposed steps required by the carrier to come into compliance with the requirements. If the carrier claims that a hospital and/or provider is a cause for the carrier's failure to meet the premium rate reduction requirements, the carrier must also include:

i. The names and contact information of the hospital(s) and/or health-care provider(s) who are at or above the threshold set forth in Section 7.A.2. and that the carrier claims were the cause of the carrier's failure to meet the premium rate reduction requirements. Contact information shall include email address, physical and mailing address, and the registered agent;

ii. A statement outlining the analysis and conclusions to support why the hospital or provider caused the carrier to fail to meet the premium rate reduction requirements and the percentage amount by which the identified hospital or provider impacted the carrier's premium rates and thereby caused the carrier to fail meet the premium rate reduction requirements;

iii. The current negotiated rate with the hospital and/or provider, the attempted negotiated rate, and the reimbursement rate that would allow the carrier to meet the premium rate reduction requirement if different than the attempted negotiated rate; and

iv. Information as to whether the carrier and the hospital or health-care provider engaged in nonbinding arbitration as allowed under Section 10-16-1306(1)(b) or consent to participate in the opportunity for negotiations and settlement afforded by Section 12.

b. A completed template, developed by the Division, summarizing the carrier's premium rate, trend and enrollment assumptions, claims experience, and cost of providing care.

c. An attestation regarding the carrier's ability to meet network adequacy requirements for the upcoming plan year.

2. The carrier shall include with its notice:

a. An actuarial analysis to support the reasons a carrier failed to meet the premium rate reduction requirements. If a carrier claims that a hospital and/or provider caused the carrier to fail to meet the premium rate reduction requirements, the analysis should include information on the percentage amount by which the identified hospital or provider caused the carrier to fail to meet the premium rate reduction requirements, the carrier's health care costs, trends and assumptions; and the reimbursement rate pursuant to Section 10-16-1306(4), (5) and (7), C.R.S., applicable to such hospital(s) or health-care provider(s) that would allow the carrier to meet the premium rate reduction requirements, and an analysis that the resulting premium is actuarially sound.

b. A statement outlining the good faith efforts the carrier made with the hospital and/or provider to negotiate a reimbursement rate that would support the carrier in meeting the premium rate reduction requirements.

c. A completed Premium Rate Reduction Notification template as required in Regulation 4-2-85.

3. Documents provided as part of the filing must be bates numbered and clearly identify the Party submitting the documentary evidence.

4. In addition to the documents listed above, the carrier shall provide to the Commissioner copies of all reimbursement contracts between the carrier and every hospital or provider of the same facility or provider type in the county in which the carrier failed to meet the premium rate reduction requirement. Contract documents will be kept confidential in accordance with Section 14, with the exception of negotiated rates.

D. The Commissioner shall post on the Division's website the information provided by the carrier pursuant to the Section 9, including the contract reimbursement rates except as provided in Section 14 relating to Confidential Information. If the carrier's submission is incomplete, the Commissioner shall notify the carrier and allow the carrier up to seven (7) days to submit complete information.

Section 10 Complaint

A. Simultaneous with the filing of the carrier's notification detailed in Section 9, the carrier shall file a Complaint identifying the hospital(s) or health-care provider(s) that they claim were the cause of the carrier's failure to meet the premium rate reduction requirements alleging:

1. The inability of the carrier to meet the premium rate reduction or network adequacy requirements;

DRAFT

2. The reasons the carrier failed to meet the premium rate reduction requirements including any reasons not tied to the identified hospital(s) or healthcare provider(s); and

3. The hospital(s) or health-care provider(s) that were a cause of the carrier's failure to meet the premium rate reduction requirements.

B. The Complaint shall also:

1. Include references to the actuarial analysis previously provided to the Division pursuant to Section 9 to support the carrier's identification of a particular hospital or provider as the reason the carrier claims it failed to meet the premium rate reduction requirements;

2. Request a reimbursement rate pursuant to Sections 10-16-1306(4), (5) and (7) C.R.S., applicable to such hospital(s) or health-care provider(s) that would allow the carrier to meet the premium rate reduction requirements; and

3. Include any legal authority supporting the complaint.

C. If the Division contends that a carrier has failed to meet the premium rate reduction requirements or network adequacy requirements, but a Complaint has not been filed by the carrier, the Division may file a Complaint alleging the failure of the carrier to meet the premium rate reduction requirements or the network adequacy requirements.

D. The Complaint shall be served on all Parties consistent with the requirements set forth in Section 8.

Section 11 Answer to Complaint of Failure to Meet the Premium or Network Adequacy Requirements

A. A carrier alleged by the Division to have failed to meet the premium rate reduction requirement or network adequacy requirements pursuant to Section 10.C shall file an Answer within thirty (30) days from the date of service of the Complaint. Simultaneously with the Answer, the carrier shall also file a Cross-Complaint alternately or hypothetically that identifies the hospital(s) or health-care provider(s) that were the cause of the carrier's failure to meet the requirements. The Cross-Complaint shall contain all of the information required of a Complaint in Sections 10.A and 10.B.

B. Any hospital or health-care provider identified by the carrier, the Division, or another provider as the reason a carrier was unable to meet the premium requirements shall file an Answer within thirty (30) days from the date of service of the Complaint or Cross-Complaint, as applicable.

1. A response to all allegations in the Complaint or Cross-Complaint;

2 Identify whether the carrier could have met the premium rate reduction requirements, and if so, attach any analysis supporting this allegation;

3. Provide a substantive response as to why the to the provider contends the reimbursement rates offered by the carrier are insufficient, including any potential effects of the requested reimbursement rates on the provider's operations;

4. Identify any additional providers or factors that contributed to the carrier's inability to meet the premium rate reduction requirements; and

5. Information as to whether the carrier and the hospital or health-care provider engaged in nonbinding arbitration as allowed under Section 10-16-1306(1)(b), C.R.S. or consent to participate in the opportunity for negotiations and settlement afforded by Section 12.

C. Documents provided as exhibits to the Answer must be bates numbered and clearly identify the Party submitting the documentary evidence.

D. The Insurance Ombudsman and the Division may, but are not required to, file a response to the carrier's Complaint or Cross-Complaint within thirty (30) days of receipt of the notice from the carrier or the Division.

Section 12 Opportunity for Negotiation and Settlement

A. If either the carrier or the Division claim that the premium rate reduction requirements are not met for a Standardized Plan in a particular county, the Commissioner shall provide an opportunity for the carrier, the identified provider(s), and the Division to negotiate a settlement that will result in compliance with the premium rate reduction requirements. The Commissioner shall enter a final agency order approving or disapproving the settlement or recommend a modification as a condition for approval.

If the Commissioner does not approve the negotiated settlement or a settlement is not reached, the Commissioner will issue a Final Notice of Hearing to the Parties and post it on the Division's website. All negotiations during the settlement period are considered confidential and shall not be introduced into the hearing.

B. If the carrier and identified providers refuse the opportunity to negotiate, the Commissioner shall issue a Final Notice of Hearing to the Parties and shall post the notice on the Division's website.

Section 13 Public Availability of Documents

A. In accordance with the Colorado Open Records Act, part 2 and Section 10-16-1306(3)(b), C.R.S., information submitted to the Commissioner as part of the public hearing is presumed to be a public record and open for inspection, subject to restrictions specifically provided by law.

B. The Commissioner shall post all pleadings, documents submitted by the Parties, and orders of the Commissioner on the Division's website except as provided in Section 14 relating to Confidential Information.

Section 14 Confidential Information

A. Procedures for requesting confidentiality.

1. Any Party may make a claim of confidentiality as to information or documents submitted to the Commissioner.

2. A claim of confidentiality constitutes a representation to the Commissioner that the Party has a reasonable and good faith belief that the subject document or information is, in fact, confidential under applicable state and federal law, including the Colorado Open Records Act. If a claim of confidentiality is made in violation of this subparagraph, the Commissioner may impose an appropriate sanction upon the claiming party, including an order to pay the amount of reasonable expenses incurred because of the claim of confidentiality, including reasonable attorney's fees.

3. Any party submitting documents or information under a claim of confidentiality shall file, as part of the public record (i.e., not confidential) a notice of confidentiality specifying each document, the nature of the document on which confidential information is found, and the basis(es) for the claim of confidentiality as to the information. The notice of confidentiality shall be served upon the Parties. Failure to file a notice of confidentiality will result in administrative rejection of the filing of the confidential information.

4. Each page on which confidential information is contained shall clearly be marked as "CONFIDENTIAL." Confidential documents will be maintained in the record by the Commissioner separately from other public documents.

5. The Commissioner's acceptance of information or documents under a claim of confidentiality is not, and shall not be construed to be, an agreement or determination by the Commissioner that the subject information or document is, in fact, confidential.

6. The Commissioner may, at any time, issue a decision as to whether the subject information or documents submitted under a claim of confidentiality is confidential.

   In the event the Commissioner rules that information submitted under a claim of confidentiality is not confidential, any person with access to the information shall not disclose the information or use it in the public record for seven (7) days. During this time period, the Party making a claim of confidentiality may seek a stay or other relief permitted by law.

B. Protection of Confidential Information

1. Information or documents ruled by the Commissioner as confidential, or information or documents submitted under a claim of confidentiality for which no ruling has been made by the Commissioner shall be treated as confidential ("Confidential Information"). For purposes of this Section, hospital and provider reimbursement contracts shall be deemed confidential except for the negotiated rates.

2. Confidential Information will only be made available to the Commissioner, the Commissioner's staff, and Parties. Confidential Information will not be made available to limited non-party participants, nor to the public.

3. The Office of the Insurance Ombudsman as a party to the public hearing will be provided access to Confidential Information, but may not provide Confidential Information to consumers, advocacy organizations, or the public.

   The Office of the Insurance Ombudsman shall immediately notify the Commissioner and the Parties of any requests under the Colorado Open Records Act for Confidential Information.

4. Confidential information may only be used for purposes of the public hearing and may not be shared with other persons or entities.

5. Confidential information may be disclosed to experts or advisors for the Parties only for the purposes of the public hearing.

6. Confidential Information shall not be used or disclosed for purposes of business or competition.

7. The Parties shall take all reasonable precautions to keep Confidential Information secure.

8. When reference is made to Confidential Information in exhibits, testimony, or pleadings, it shall be by citation to the title or nature of the document, or by some other description that will not disclose the Confidential Information.

9. Failure by any Party to comply with the requirements of this Section regarding Confidential Information, or disclosure of confidential to any person or entity who is not a Party to the public hearing, may result in sanctions as set forth in C.R.C.P. 37(b)(2) and

DRAFT

may result in monetary penalties up to $750,000 pursuant to Sections 10-3-1107 and 10-3-1108(1)(a), C.R.S., for violating a rule or order of the Commissioner.

10. Within thirty (30) days of the conclusion of the proceedings, including any appeal of the final agency order, the confidential information retained by the Parties shall be destroyed.

C. Public Hearing

1. Upon a showing that it is necessary for a Party to refer to Confidential Information during testimony at the public hearing, the Commissioner may convene the public hearing with only the Parties present to hear such testimony. A recording of this portion of the public hearing will be maintained by the Commissioner and will be treated as Confidential Information. Other Parties may cross-examine the witness as to the Confidential Information during this confidential portion of the public hearing.

2. Time devoted to the closed portion of the public hearing shall count against the time allotted to the Party requesting the closed hearing. Where multiple Parties request a closed hearing, the time allotted to the closed portion of the hearing shall be equally divided amongst the parties that made such request.

D. Appeal

In the event the Commissioner's final agency order from the public hearing is appealed or otherwise subject to judicial review, the Commissioner will file all Confidential Information under seal with the court of competent jurisdiction in accordance with applicable rules and regulations.

Section 15 Conflicts of Interest Screen

A. Where the carrier and identified providers elect to participate in the Opportunity for Negotiation and Settlement afforded under Section 12, any Division representative that participates in the negotiations shall be screened from the Division and the Commissioner for the entirety of the applicable public hearing process. Additionally, the Division representative that participates in the negotiations shall not disclose any information from the negotiations to the Commissioner.

B. Where the Division elects to enter an appearance as a Party, the Division's representatives and staff supporting those representatives, shall be screened from the Commissioner, and their representatives and staff, for the remainder of the applicable public hearing.

C. "Screened" as used in this Section includes, specific to the matter that is the subject of the screen, remaining as separate entities for the public hearing, being restricted from ex parte communications, and prohibiting access to non-public filings and documents in the possession of agency staff and representatives on the opposite side of the screen. It does include restrictions on communications when all parties and the Commissioner are included in the communication or communications.

Section 16 Discovery

A. Within ten (10) days of issuance of the Final Notice of Hearing, each Party shall serve upon the Commissioner and all Parties:

1. A proposed witness list including the name, address, and telephone number of any witness or Party whom the Party may call to provide testimony at the public hearing, together with a detailed statement of the content of that person's testimony.

2. The Commissioner shall limit evidence presented at the hearing to information that is related to the reason the carrier failed to meet the network adequacy requirements or the

premium rate reduction requirements for the Standardized Plan in any single county. Any of the following additional documentary evidence a Party may wish to include in the record at the public hearing related to a carrier's failure to meet the premium requirements in the county at issue may be submitted for the Commissioner's review:

a. An actuarial analysis demonstrating why the premium rate reduction requirements were not met.

b. Negotiated rates with other providers in the same county.

c. Enrollee and utilization data for the county.

d. Provider financial data, including but not limited to, profit and loss statements and balance sheets. Providers may also submit other data to demonstrate unique circumstances that may not be represented in the rate setting process.

e. Provider rates with other carriers.

f. Carrier initiatives and assumptions to improve on health care costs for the county.

g. Demographics and acuity of covered populations within the county.

3. All documents submitted to the Commissioner and the Parties pursuant to this Section will be included in the record for the public hearing.

4. Additional discovery shall be at the discretion of the Commissioner.

B. The Colorado Rules of Civil Procedure (C.R.C.P.) 26 through 37, do not apply to the public hearing proceedings.

Section 17 Consolidation of Proceedings

The Commissioner has the discretion to consolidate proceedings involving the same carrier and providers in counties in the same service area.

Section 18 Burden of Proof

A. The burden of proof shall be on the Party that is the proponent of a decision.

1. If a carrier has notified the Commissioner pursuant to the carrier's Notice and Complaint that it is unable to meet the premium rate reductions requirements, and a Party alleges that the carrier is able to meet the premium rate reduction requirements, the burden of proof is on the Party seeking to prove the carrier is able to meet the premium rate reduction requirements.

2. When the Division alleges that a carrier has not met the premium rate reductions requirements, the burden of proof is on the Division to prove the carrier is unable to meet the requirements.

3. If a Party alleges a particular hospital or provider is the reason a carrier failed to meet the premium rate requirements for the Standardized Plan at issue, the burden of proof shall be on that Party to demonstrate that the hospital or provider prevented the carrier from meeting the premium rate requirements and to demonstrate the reimbursement rate sought by the Party through the public hearing.

DRAFT

B. Nothing in this Section 18 shall preclude a hospital or health care provider from presenting evidence that the reimbursement rate is insufficient.

Section 19 Public Hearing Proceedings

A. No later than ten (10) days before the hearing, the Commissioner shall issue an order setting forth the allotted time for the Parties to present evidence or testimony at the hearing.

B. Public Testimony by Interested Persons

In addition to the Parties identified in Section 7, consumer advocacy organizations and individuals shall be given the opportunity to present evidence regarding the carrier's failure to meet the premium rate or network adequacy requirements during the public hearing. Members of the public, consumer advocacy organizations, and other interested persons who seek to testify at the hearing shall sign up at least three (3) days in advance of the hearing on the Division's website. The Commissioner shall have the authority to set time limits on public testimony.

C. Presentation of Evidence

1. Evidence shall be limited to information that is relevant to the Commissioner's determination pursuant to Section 10-16-1306(3) to (11), C.R.S.

2. The Colorado Rules of Evidence and requirements of proof shall conform, to the extent practicable, with those in civil nonjury cases in the district courts. However, when necessary to ascertain facts affecting substantial rights of the Parties to the proceeding, the Commissioner may receive and consider evidence not admissible under the Colorado Rules of Evidence, if the evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. Informality in any proceeding or in the manner of taking testimony shall not invalidate any order, decision, rule, or regulation. The Commissioner may exclude incompetent and unduly repetitious evidence.

3. Exhibits

a. Documentary evidence to be included in the record at the public hearing shall be admitted into the record, except as follows:

i. Any Party may object under the Colorado Rules of Evidence to inclusion of documentary evidence in the record at the public hearing, provided the objection is made in writing to the Commissioner at least three (3) days prior to the public hearing. The Commissioner may rule on these objections in writing or on the record during the public hearing.

ii. At the Commissioner's discretion, the Commissioner may require the Party presenting a document in the record to present testimony or evidence as to the authenticity of that document.

b. The Commissioner encourages Parties to offer written stipulations resolving any evidentiary dispute, fact or matter of substance or procedure at issue. Oral stipulations may be made on the record at the public hearing, but the Commissioner may require that the stipulation be reduced to writing, signed by the Parties or their counsel, and filed with the Commissioner. Any stipulation must be approved by the Commissioner, and the Commissioner may modify a stipulation as a condition of approval.

4. Witness Testimony

a. A Party may present the testimony of its witnesses through written testimony provided the Party has identified that the witness' testimony will be presented in writing in their witness list submitted pursuant to Section 16. Written testimony must be submitted to the Commissioner and the Parties no later than seven (7) days before the hearing.

b. All Parties may make objections to witness testimony, and all witnesses are subject to cross-examination by or on behalf of Parties to the hearing. Any witness whose oral and/or written testimony a Party wishes to have as part of the record shall be available for cross-examination at the hearing.

5. Where lengthy cross-examination would use undue time, the Commissioner may require each Party to estimate the amount of time necessary for cross-examination. To promote an efficient hearing, the Commissioner may limit each Party's time for cross-examination. Time devoted to cross examination shall count against the time allotted to the Party conducting the cross examination.

Section 20 Recording of Hearing

The public hearing shall be recorded and posted on the Division's website.

Section 21 Issuance of Final Agency Order

The Commissioner shall issue a final agency order which shall include the Commissioner's determination of the reimbursement rate, by hospital and/or provider, that must be accepted by the identified hospital and/or provider and must be used by the carrier in its rate filings to achieve the premium rate reduction requirements. The reimbursement rate shall be set in accordance with the methodology in Regulation 4-2-91.

The decision of the Commissioner is a final agency order subject to judicial review pursuant to § 24-4-106(6) C.R.S.

Section 22 Modifications to Public Hearing Process

The Commissioner may issue orders to control the course of the public hearing.

Section 23 Computation and Modification of Time

A. In computing any time period pursuant to this regulation, the day of the event from which the time period begins shall not be included. If the due date falls on a weekend or state holiday, the due date will be the next business day.

B. At the Commissioner's discretion, a due date may be extended for good cause.

Section 24 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 25 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 26 Effective Date

This new regulation shall be effective on January 14, 2023.

Section 27 History

New regulation effective January 14, 2023.

DRAFT

Notice of Proposed Rulemaking

Tracking number

2022-00653

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 Accident and Health (General)

Rulemaking Hearing

Date

11/15/2022

Time

11:00 AM

Location

Webinar or 1560 Broadway, STE 850, Denver CO 80202

Subjects and issues involved

The purpose of this regulation is to establish a hospital and health-care provider reimbursement rate setting methodology that may be applied by the Commissioner of Insurance as part of a public hearing for the Colorado Option premium rate reduction requirements on standardized health benefits plans.

Statutory authority

§§ 10-1-108(7), 10-1-109(1), 10-16-109, 10-16-1306, 10-16-1312, C.R.S.

Contact information

Name

Jill Mullen

Title

Policy Advisor

Telephone

720-5564952

Email

jill.mullen@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

DRAFT Proposed New Regulation 4-2-91

CONCERNING THE METHODOLOGY FOR CALCULATING REIMBURSEMENT RATES TO SUPPORT PREMIUM RATE REDUCTIONS FOR COLORADO OPTION STANDARDIZED HEALTH BENEFIT PLANS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109(1), 10-16-109, 10-16-1306, 10-16-1312, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish a hospital and health-care provider reimbursement rate setting methodology that may be applied by the Commissioner of Insurance as part of a public hearing for the Colorado Option premium rate reduction requirements on standardized health benefits plans.

Section 3 Applicability

This regulation applies to contracted reimbursement rates for standardized plans between carriers and hospitals or health-care providers in Colorado.

Section 4 Definitions

A. “Adjusted Discharges” shall mean, for the purposes of this regulation, a measure of the overall volume of services provided by a hospital inpatient and outpatient departments. Adjusted discharges are calculated as

(Total Revenue/Total Inpatient Revenue) * Inpatient Discharges

Where Total Revenue is found in Worksheet G-2, Column 3, Line 28 of 2552-10 Medicare Cost Reports Total Inpatient Revenue is found in Worksheet G-2, Column 1, Line 28 of 2552-10 Medicare Cost Reports; Inpatient Discharges are found in Worksheet S-3 Part 1, Column 15, Lines 14 and 16 through 18 in 2552-10 Medicare Cost Reports.

B. “All-Payer Health Claims Database” or “APCD” shall have the same meaning as found at § 25.5-1-204.7(1)(b), C.R.S.

C. “Carrier” shall have the same meaning as found at § 10-16-102(8), C.R.S.

D “Colorado Option Standardized Plan” or “Standardized Plan” shall have the same meaning as found at § 10-16-1303(14), C.R.S.

E. “Commercial Utilization Weighted Average” shall mean, for the purposes of this regulation, the mix of the services used weighted by utilization of the commercially insured population available in the APCD.

F. “Critical Access Hospital” shall have the same meaning found at § 10-16-1303(2), C.R.S.

G. “Equivalent Rate” shall have the same meaning found at § 10-16-1303(3), C.R.S.

H. “Essential Access Hospital” shall have the same meaning found at § 10-16-1303(4), C.R.S.

I. “General Hospital” or “Hospital” shall have the same meaning found at § 10-16-1303(6), C.R.S.

J. “Health-care Provider” shall have the same meaning found at § 10-16-1303(8), C.R.S.

K. “Health-care Provider Reimbursement Floor” shall mean the lowest Medicare Benchmark reimbursement rate the Commissioner may set for a specific health-care provider.

L. “Health System” shall have the same meaning found at § 10-16-1303(9), C.R.S.

M. “Hospital Operating Expenses” shall mean, for the purposes of this regulation, the total cost associated with hospital-related services and patient care, which is Operating Expenses for Reimbursable Departments plus Reasonable Compensation Equivalent disallowance. Operating Expenses for Reimbursable Departments are found in Worksheet B Part I, Column 26, Line 118 of 2552-10 Medicare Cost Reports. An average of the hospital’s three most recent Medicare Cost Reports will be used as of each October prior to the year in which a public hearing may be held.

N. “Hospital Net Income” shall mean, for the purposes of this regulation, the excess or net patient revenue and other income over total operating and other expenses. Net Income is found in Worksheet G-3, Column 1, Line 29 in 2552-20 Medicare Cost Reports. The hospital’s three most recent Medicare Cost Reports will be used as of each October prior to the year in which a public hearing may be held.

O. “Hospital Net Patient Revenue” shall mean, for the purposes of this regulation, the revenue from providing services to patients and is found in Worksheet G-3, Column 1, Line 3 from Medicare Cost Reports 2552-10. An average of the hospital’s three most recent Medicare Cost Reports will be used as of each October prior to the year in which a public hearing may be held.

P. “Hospital Payer Mix” shall mean, for the purposes of this regulation, the proportion of total charges represented in the Medicare Cost Report in the previous three years that were for Medicaid or Medicare patients. An average of the hospital’s three most recent Medicare Cost Reports will be used as of each October prior to the year in which a public hearing may be held. If an included hospital does not have this information reported, inpatient bed days or a payer mix from the APCD will be used.

Q. “Hospital reimbursement floor” shall mean the lowest Medicare Benchmark reimbursement rate the Commissioner may set for a specific hospital. This floor will be calculated as outlined in § 10-16-1306 and detailed in Section 5 of this regulation below.

DRAFT

R. “Independent Hospital” shall mean, for the purposes of this regulation, any hospital that is not a part of a larger health system with more than two hospitals as of January 1 of the year under review.

S. “Low Volume Medicare services” shall mean any service that is low volume statewide relative to other Medicare services. The Division will publish a list of low volume services and their equivalent rates by January 1 of each year preceding the applicable plan year.

T. “Medicare Benchmark Reimbursement Rate” shall mean, for the purposes of this regulation, the carrier’s payment rates as an aggregate percent of Medicare payment rates, weighted based on historical, projected, and reasonable utilization of the members enrolled in the plan.

U. “Medicare Reimbursement Rate” shall have the same meaning found at § 10-16-1303(11) and § 10-16-1303(3), C.R.S. Specifically:

1. For hospitals that Medicare reimburses under its Hospital Inpatient Prospective Payment System (IPPS) and the Hospital Outpatient Prospective Payment System (OPPS), the Medicare Reimbursement Rate will be the commercial utilization weighted average of the hospital specific rates for services effective as of each October prior to the year in which a public hearing may be held.

2. Long-term Care, Psychiatric, and rehabilitation hospitals Medicare Reimbursement Rates will be determined using the commercial utilization weighted average of payment rates for services from the appropriate Medicare Prospective Payment System rates for each hospital.

3. For Critical Access Hospitals, the Medicare Reimbursement Rate will be 101 percent of allowable costs, as determined using the cost-to-charge ratio, for hospital based services as reported in an average of the hospital’s three most recent Medicare Cost Reports as of each October prior to the year in which a public hearing may be held. The Commissioner may also consider additional information provided by a Critical Access Hospital to determine if further adjustments are required, such as, but not limited to, unreimbursed cost items.

4. For Pediatric Hospitals, as detailed in § 10-16-1303(3), the Medicare Reimbursement Rate shall be calculated using the commercial utilization weighted average of the Medicaid fee schedule from 2019 multiplied by 1.52, adjusted annually for cumulative inflation by a factor equal to the average percentage increase of the inpatient and outpatient prospective payment systems over the previous three years.

5. For Health-care providers, the Medicare Reimbursement Rate shall equal the commercial utilization weighted average of the payment rates for appropriate Medicare fee schedule.

6. For any health-care service without an existing Medicare Reimbursement Rate and for any low volume Medicare services an equivalent rate will be determined utilizing the ratio of Medicaid Payment Rates to existing Medicare Payment Rates, whenever possible.

V. “Medicare Inpatient and Outpatient Prospective Payment Systems” shall mean, for the purposes of this regulation, a method of reimbursement in which Medicare payment is made based on a predetermined, fixed amount for a particular inpatient or outpatient service based on a classification system of that service.

W. “Pediatric Hospital” shall mean, for the purposes of this regulation, a pediatric specialty hospital with a Level One Trauma Center.

X. “Premium” shall have the same meaning as found at § 10-16-102(51), C.R.S.

DRAFT

Y. “State Average Net Income” shall mean, for the purposes of this regulation, the average Net Income per Adjusted Discharge across all hospitals in the state that filed a Medicare Cost Report in the previous three years, as of each October prior to the year in which a public hearing may be held, excluding psychiatric, long-term care, and rehabilitation hospitals.

Z. “State Average Net Patient Revenue” shall mean, for the purposes of this regulation, the average Net Patient Revenue per Adjusted Discharge across all hospitals in the state that filed a Medicare Cost Report in the previous three years, as of each October prior to the year in which a public hearing may be held, excluding psychiatric, long-term care, and rehabilitation hospitals.

AA. “State Average Operating Expenses” shall mean, for the purposes of this regulation, the average Operating Expenses per Adjusted Discharge across all hospitals in the state that filed a Medicare Cost Report in the previous three years, as of each October prior to the year in which a public hearing may be held, excluding psychiatric, long-term care, and rehabilitation hospitals.

BB. “Statewide Average Payer Mix” shall mean, for the purposes of this regulation, the proportion of all adjusted discharges across all hospitals in the state that filed a Medicare Cost Report in the previous three years, as of each October prior to the year in which a public hearing may be held, that were for Medicaid or Medicare patients, excluding psychiatric, long-term care, and rehabilitation hospitals.

Section 5 Hospital Reimbursement Floor Methodology

A. The Commissioner will calculate a hospital reimbursement floor using the following methodology.

1. The hospital reimbursement floor will be equal to 155% of the Medicare Benchmark Reimbursement rate for that specific hospital with additional percentage points added as detailed below.

2. Percentage-points will be added to the hospital reimbursement floor based on the following hospital-specific characteristics:

a. Independent Hospitals will receive a twenty-percentage-point increase.

b. Essential Access Hospitals will receive a twenty-percentage-point increase.

c. Hospitals with a combined percentage of patients who receive services through programs established through the “Colorado Medical Assistance Act,” Articles 4 to 6 of Title 25.5, or Medicare, Title XVIII of the Federal “Social Security Act,” as amended, that exceeds the statewide average will receive up to a thirty-percentage-point increase. The actual percentage point increase, not to be less than zero, is determined based on the hospital’s percentage share of such patients using the following formula:

$$Hospital\ Payer\ Mix\ = \frac{(Hospital\ \ Payer\ Mix) - (Statewide\ Average\ Payer\ Mix)}{0.99 - (Statewide\ Average\ Payer\ Mix)}\ X\ 30$$

d. Hospitals efficient in managing the underlying cost of care as determined by the hospital’s net patient revenue, operating expenses, and total margins will receive up to a forty-percentage point increase. The actual percentage point increase, not to be less than zero, is determined based on the following:

i. A ten-percentage-point increase may be received to account for a hospital’s net patient revenue (NPR) using this formula:

$$NPR = \frac{(State\ Average\ NPR\ Per\ Adj.Discharge) - (Hospital\ NPR\ per\ Adj.Discharge)}{(State\ Average\ NPR\ Per\ Adj.Discharge)}\ X\ 10$$

ii. A ten-percentage-point increase may be received to account for a hospital's operating expenses (OE) using this formula:

$$OE = \frac{(State\ Average\ OE\ Per\ Adj.Discharge) - (Hospital\ OE\ per\ Adj.Discharge)}{(State\ Average\ OE\ Per\ Adj.Discharge)}\ X\ 10$$

iii. A twenty-percentage-point increase may be received to account for a hospital's net income using this formula:

$$Net\ Income = \frac{(State\ Average\ Net\ Income\ Per\ Adj.Discharge) - (Hospital\ Net\ Income\ per\ Adj.Discharge)}{(State\ AverageNet\ Income\ Per\ Adj.Discharge)}\ X\ 20$$

B. If using the formula detailed in A above would yield a hospital reimbursement floor less than 165% of the Medicare Benchmark Reimbursement Rate for a specific hospital, the hospital reimbursement floor shall be equal to 165% of the Medicare Benchmark Reimbursement Rate.

C. The pediatric hospital reimbursement floor may not be less than 210% of the Medicare Benchmark Reimbursement Rate.

Section 6 Health-care Provider Reimbursement Floor

The health-care provider reimbursement floor may not be less than 135% of the Medicare Benchmark Reimbursement Rate.

Section 7 Commissioner Established Reimbursement Rate

A. Based on evidence presented at a hearing held pursuant to § 10-16-1306, C.R.S., the Commissioner may establish reimbursement rates between a carrier and a hospital or health-care provider.

1. The Commissioner will only set reimbursement rates for hospitals or health-care providers that:

   a. In whole or in part, prevented a carrier from meeting the premium rate reduction requirement for a Standardized Plan being offered in a specific county and who have met the threshold set forth in Section 7(A)(2) of Colorado Insurance Regulation 4-2-92; or

   b. Caused the carrier to fail to meet network adequacy requirements.

2. In determining the hospital's reimbursement rate, the Commissioner may:

   a. Consult with employee membership organizations representing health-care providers' employees in Colorado and with hospital-based health-care providers in Colorado.

   b. Take into account the cost of adequate wages, benefits, staffing, and training for health-care employees to provide continuous quality care.

   c. Utilize any publicly available hospital and provider data and cost tools.

DRAFT

B. The Commissioner may not set a reimbursement rate for a hospital or health-care provider that is lower than the hospital or health-care provider reimbursement floor specific to that hospital or health care provider.

C. The Commissioner cannot set the reimbursement rate for any hospital for any plan year at an amount that is more than twenty percent lower than the rate negotiated between the carrier and the hospital for the previous plan year.

D. For a hospital with a commercial utilization weighted average commercial reimbursement rate that is lower than ten percent of the statewide hospital median reimbursement rate measured as percentage of Medicare Benchmark Reimbursement Rate for the 2021 plan year using data from the All-Payer Health Claims Database, the Commissioner will set the Medicare Benchmark Reimbursement Rate for that hospital no less than the greater of:

1. The hospital's commercial utilization weighted average commercial reimbursement rate as a percentage of Medicare Benchmark Reimbursement rate minus one-third of the difference between the hospital's commercial reimbursement rate as a percentage of Medicare Benchmark Reimbursement rate and the floor established by Section 5.

2. One hundred sixty-five percent of the hospital's Medicare Benchmark Reimbursement rate.

3. The rate established by Sections 5.

Section 8 Severability

If any provision of this regulation or the application of it to any person or circumstances 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.

Section 10 Effective Date

This regulation shall be effective January 14, 2023.

Section 11 History

New regulation effective January 14, 2023.

DRAFT

Notice of Proposed Rulemaking

Tracking number

2022-00657

Department

700 - Department of Regulatory Agencies

Agency

713 - Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-22

Rule title

RULE 120 - DEMONSTRATION OF CONTINUED COMPETENCY BY PHYSICIAN APPLICANTS FOR LICENSURE PURSUANT TO THE OCCUPATIONAL CREDENTIAL PORTABILITY PROGRAM, REINSTATEMENT OF AN EXPIRED LICENSE, OR REACTIVATION

Rulemaking Hearing

Date

11/17/2022

Time

01:00 PM

Location

Webinar Only: https://us06web.zoom.us/webinar/register/WN_osUCyJRfSlqkjeeIFYx7yg

Subjects and issues involved

The purpose of this Permanent Rulemaking Hearing is for the Colorado Medical Board to consider adopting revisions to Rule 120 (3 CCR 713-22), to implement Colorado Senate Bill 22-116 (Concerning the ability of an individual to obtain an occupational credential through the occupational credential portability program).

Statutory authority

Sections 12-20-202(3), 12-20-204(1), 12-240-106(1)(a), and 24-4-103, C.R.S.

Contact information

Name

Elena M. Kemp

Title

Regulatory Coordinator

Telephone

303-894-7426

Email

Dora_dpo_rulemaking@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

Colorado Medical Board

RULE 120 - DEMONSTRATION OF CONTINUED COMPETENCY BY PHYSICIAN APPLICANTS FOR LICENSURE PURSUANT TO THE OCCUPATIONAL CREDENTIAL PORTABILITY PROGRAM, REINSTATEMENT OF AN EXPIRED LICENSE, OR REACTIVATION OF A LICENSE

3 CCR 713-22

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

22.1 INTRODUCTION

A. Basis: The authority for promulgation of these rules and regulations by the Colorado Medical Board ("Board") is set forth in sections 12-20-202, 12-20-204(1), 12-240-106(1)(a), 12-240-110, 12-240-119, 12-240-120(1)(d), and 12-240-141(5), C.R.S.

B. Purpose: The purpose of these rules and regulations is to set forth the process by which a physician may demonstrate qualifications substantially equivalent for licensure by endorsement in this state pursuant to the Occupational Credential Portability Program as set forth in section 12-20-202, C.R.S., reinstatement of an expired license, or reactivation of an existing license. These rules apply ~~only~~ to ~~those~~ ~~physicians who have not established that they have actively practiced medicine for the two year period immediately preceding the filing of the application and~~ physicians who are applying for licensure by endorsement through the Occupational Credential Portability Program, physicians seeking reactivation of an inactive Colorado license, physicians seeking a reentry license, or physicians seeking the reinstatement of an expired Colorado license who have not established that they have actively practiced medicine for the two year period immediately preceding the filing of the application (hereinafter: "applicant(s)").

C. This Rule does not apply to physicians applying for licensure in Colorado via the Interstate Medical Licensure Compact.

22.2 RULES AND REGULATIONS

A. LICENSURE BY ENDORSEMENT PURSUANT TO THE OCCUPATIONAL CREDENTIAL PORTABILITY PROGRAM PURSUANT TO SECTION 12-20-202(3), C.R.S.

1. Definitions:

a. For the purpose of licensure by endorsement through the occupational credential portability program, "substantially equivalent experience or credentials" means the applicant holds a current, valid, and unrestricted license in another U.S. jurisdiction that requires qualifications substantially equivalent to the qualifications for licensure in this state; the applicant submits written verification they have actively practiced medicine in another jurisdiction for the last ~~two years~~year or has otherwise maintained continued competency as determined by the Board; and submits proof satisfactory to the board and attests that they have not been and are not subject to final or pending disciplinary or other action by any state or jurisdiction in which the applicant is or has been previously licensed except that, if the applicant is or has been subject to action, the board may review the action to determine whether the underlying conduct warrants refusal of a license pursuant to section 12-240-120, C.R.S.

b. For the purpose of licensure by endorsement through the occupational credential portability program, an applicant may demonstrate "continued competency" by establishing that they have maintained an active, continuous, and unrestricted license in another state, have actively practiced medicine for the ~~last two years~~last year in a jurisdiction with a scope of practice that is substantially similar to the scope of practice for physicians in Colorado, and have not been subject to any disciplinary action during that time period. The active practice of medicine includes the practice of administrative medicine, so long as such practice is not the result of a limitation or restriction by another state licensing board or credentialing entity.

Alternatively, an applicant may demonstrate "continued competency" through participation in numerous professional activities, including but not limited to: maintenance of certification (MOC) activities; successful completion and maintenance of board certification exams for ABME or AOA member boards; category 1 approved CME educational courses with relevance to practice; teaching/lecturing/mentoring activities; non-patient care hospital or organization committee participation, including quality, safety, pharmacy and therapeutics, peer review, tumor board or other clinically relevant activities; clinically applicable research; surveying on behalf of accreditation organizations; reentry to practice programs, or volunteer medical care provided overseas or in other jurisdictions. The Board's Licensing Panel shall have discretion to consider an applicant's activities on a case-by-case basis and may determine an applicant has met continued competency through a combination of any of the above activities or other relevant professional activities.

c. For the purpose of licensure by endorsement through the occupational credential portability program, "substantially similar scope of practice" means the scope of practice for physicians in another state that is substantially similar to the practice of medicine as defined in 12-240-107, C.R.S.

2. If the Board determines that the applicant has not established continued competency for purposes of complying with section 12-20-202(3), 12-240-110, 12-240-120(1)(d), 12-240-119, or 12-240-141(5), C.R.S., the Board may require an applicant to submit to any competency assessment(s) or evaluation(s) conducted by a program approved by the Board. Although the Board retains the discretion as to the method of determining continued competency based on the applicant's specific circumstances, a competency assessment or evaluation conducted by a Board-approved program is the Board's standard operating procedure. The Board also retains discretion as to whether the Applicant has demonstrated his/her/their qualifications are substantially equivalent to the active practice of medicine.

Nothing in this Rule is intended to limit the Board's Licensing Panel from discretion to deny a license or to otherwise offer a restricted license consistent with the authority in the Medical Practice Act, including those circumstances in which an Applicant holds a restricted license in another jurisdiction or has been subject to disciplinary action.

3. If the Board determines that the applicant requires a period of supervised practice and/or the completion of an educational program (hereinafter "training requirements"), the Board at its discretion may either issue the applicant a license subject to probationary terms or a reentry license.

B. REENTRY LICENSE

The Board will consider an applicant to be ineligible for a reentry license if their period of inactive practice resulted from disciplinary action or unprofessional conduct. If a reentry license is issued,

such a license is valid only for three years from the date of issue and is not renewable. Failure to complete the training requirements before the end of the ~~three year~~three-year period will result in the reentry license being administratively inactivated.

In the discretion of the Board, the physician may be issued a re-entry license for the specific purpose of completing the education and/or training requirements. The re-entry license is valid for a single period of time not greater than three (3) years from the date of issue. Failure to complete the education and/or training requirements before the end of the ~~three year~~three-year (3) period for the re-entry license will result in the re-entry license being administratively inactivated.

C. CONVERSION OF REENTRY LICENSE

When an applicant has timely and successfully completed the training requirements, the applicant shall apply to the Licensing Panel of the Board to convert the reentry license to full licensure by submitting a letter to the Licensing Panel with documents that clearly establish timely and successful completion of the training requirements. If the Board determines that the applicant is competent and qualified to practice medicine without supervision, the Board will convert the reentry license to a full license to practice medicine. If the Board determines that the applicant is not competent nor qualified to practice medicine without supervision, the Board may require further assessment, training, or period of supervised practice in its discretion.

D. EXPENSES

All expenses resulting from the assessment and/or any training requirements are the responsibility of the applicant and not of the Board.

E. ADMINISTRATIVE PRACTICE OF MEDICINE

“Administrative medicine” carries the definition set forth in Board Policy 20-06. Administrative medicine shall constitute the active practice of medicine.

When an applicant who practices administrative medicine seeks licensure, the Board shall evaluate the applicant’s application to determine whether they meet the criteria for active and unrestricted licensure in Colorado. . If the applicant is not subject to a restricted license because of disciplinary action in another jurisdiction, and otherwise meets the criteria for a full, active, and unrestricted license in Colorado, the Licensing Panel may grant the application for a full, active, and unrestricted license.

If the applicant is subject to a restricted license or credentialing because of disciplinary action in another jurisdiction, the Licensing Panel may consider whether to enter into an agreement with the applicant to limit their practice to administrative medicine in the form of a stipulation and final agency order.

F. REINSTATEMENT OR REACTIVATION OF A LICENSE

In support of any application for reinstatement or reactivation of a license to practice medicine, for the purpose of complying with sections 12-20-202(2)(c)(II), 12-240-120(1)(d), or 12-240-141(5), C.R.S., a physician may demonstrate continued competency in accordance with the methods identified in Rule 22.2(A), identified above.

Effective 12/1/95, Revised 8/15/02, Effective 10/30/02, Revised 2/13/03, Effective 4/30/03, Revised 4/14/05, Effective 6/30/05; Revised 2/9/06; Effective 3/31/06; Revised 8/19/10; Effective 10/15/10; Revised 11/17/2011; Effective 1/14/2012

Editor's Notes

History

Entire rule eff. 10/15/2010.

Entire rule eff. 01/14/2012.

Notice of Proposed Rulemaking

Tracking number

2022-00658

Department

700 - Department of Regulatory Agencies

Agency

713 - Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-29

Rule title

RULE 410 - DEMONSTRATION OF CONTINUED COMPETENCY BY PHYSICIAN ASSISTANT APPLICANTS FOR LICENSURE, LICENSURE PURSUANT TO THE OCCUPATIONAL CREDENTIAL PORTABILITY PROGRAM, REINSTATEMENT OF AN EXPIRED LIC

Rulemaking Hearing

Date

11/17/2022

Time

01:00 PM

Location

Webinar Only: https://us06web.zoom.us/webinar/register/WN_osUCyJRfSlqkjeeIFYx7yg

Subjects and issues involved

The purpose of this Permanent Rulemaking Hearing is for the Colorado Medical Board to consider adopting revisions to Rule 410 (3 CCR 713-29), to implement Colorado Senate Bill 22-116 (Concerning the ability of an individual to obtain an occupational credential through the occupational credential portability program).

Statutory authority

Sections 12-20-202(3), 12-20-204(1), 12-240-106(1)(a), and 24-4-103, C.R.S.

Contact information

Name

Elena M. Kemp

Title

Regulatory Coordinator

Telephone

303-894-7426

Email

Dora_dpo_rulemaking@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

Colorado Medical Board

RULE 410 - DEMONSTRATION OF CONTINUED COMPETENCY BY PHYSICIAN ASSISTANT APPLICANTS FOR LICENSURE, LICENSURE PURSUANT TO THE OCCUPATIONAL CREDENTIAL PORTABILITY PROGRAM, REINSTATEMENT OF AN EXPIRED LICENSE, OR REACTIVATION OF A LICENSE

3 CCR 713-29

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

29.1 INTRODUCTION

A. Basis: The authority for promulgation of these rules and regulations by the Colorado Medical Board ("Board") is set forth in sections 24-4-103, 12-20-204(1), 12-240-119, 12-240-106(1)(a), 12-240-120(1)(d), 12-20-202(2)(c)(II), and 12-240-141(5), C.R.S.

B. Purpose: The purpose of these rules and regulations is to set forth the process by which a physician assistant may demonstrate continued competency for the purpose of complying with the statutory sections referenced above to obtain a Colorado physician assistant license; demonstrate qualifications substantially equivalent for licensure by endorsement in this state pursuant to the Occupational Credential Portability Program as set forth in section 12-20-202, C.R.S.; demonstrate at least one year of having practiced as a physician assistant in another jurisdiction with a scope of practice substantially similar to the scope of practice in this state for licensure by endorsement pursuant to the Occupational Credential Portability Program as set forth in 12-20-202, C.R.S.; reinstate an expired license; or reactivate an existing Colorado physician assistant license. The Board finds that due to the significant differences between the nature of physician assistant practice and the nature of physician practice, it is necessary and appropriate to delineate different methods by which physician assistants and physicians shall demonstrate continued competency as required by the Medical Practice Act. The significant differences between the two types of practice include the requirements that all physician assistants must be supervised by a licensed physician in accordance with existing Board rules and regulations. The Board finds, however, that if a physician assistant has ceased clinical practice for two or more years, the nature of the physician assistant/physician supervisory relationship in and of itself cannot compensate for potential knowledge and clinical deficiencies, which may exist due to the lack of practice experience for such an extended period of time.

29.2 RULES AND REGULATIONS

A. LICENSURE BY ENDORSEMENT PURSUANT TO THE OCCUPATIONAL CREDENTIAL PORTABILITY PROGRAM PURSUANT TO SECTION 12-20-202(3), C.R.S.

1. For the purpose of licensure by endorsement through the occupational credential portability program, "substantially equivalent experience or credentials" means the applicant holds a current, valid, and unrestricted license in another U.S. jurisdiction that requires qualifications substantially equivalent to the qualifications for licensure in this state; the applicant submits written verification they have actively practiced as a physician assistant in another jurisdiction for the last two years or has otherwise maintained continued competency as determined by the Board; and submits proof satisfactory to the Board and attests that they have not been and are not subject to final or pending disciplinary or other action

by any state or jurisdiction in which the applicant is or has been previously licensed except that, if the applicant is or has been subject to action, the Board may review the action to determine whether the underlying conduct warrants refusal of a license pursuant to section 12-240-120, C.R.S.

2. To demonstrate continued competency for purposes of complying with section 12-20-202(3), C.R.S., a physician assistant may:

a. Submit proof satisfactory to the Board of active practice as a physician assistant in another jurisdiction for the one-~~two~~ year period immediately preceding the filing of the application. If the physician assistant has practiced as a physician assistant only for a portion of the one-~~two~~ year period immediately preceding the filing of the application, the Board may determine on a case by case basis in its discretion whether the physician assistant has adequately demonstrated continued competency to practice as a physician assistant;

a. Submit proof satisfactory to the Board of having held for at least one year a current and valid physician~~anesthesiologist~~ assistant license in another jurisdiction with a scope of practice that is substantially similar to the scope of practice for physician~~anesthesiologist~~ assistants as specified in 12-240-107, C.R.S.

~~b~~c. Submit to the Board the following: (a) proof satisfactory to the Board that the physician assistant has been out of practice as a physician assistant for less than two years; (b) proof of current certification by the National Commission on Certification of Physician Assistants, Inc. (“NCCPA”); (c) proof of 100 hours of continuing medical education within the past two years, including twenty-five hours of category I continuing medical education in the past twelve months; and (d) a written plan satisfactory to the Board, documenting the nature, extent, and duration of supervision that will be provided by the supervising physician to the physician assistant as the physician assistant makes the transition back into clinical practice; or

~~c~~d. Submit to the Board proof of participation in numerous professional activities, including but not limited to: maintenance of certification (MOC) activities; successful completion of the National Commission on Certification of Physician Assistants (NCCPA); category 1 approved CME educational courses with relevance to practice; teaching/lecturing/mentoring activities; non-patient care hospital or organization committee participation, including quality, safety, pharmacy and therapeutics, peer review, tumor board or other clinically relevant activities; clinically applicable research; surveying on behalf of accreditation organizations; or volunteer medical care provided overseas or in other jurisdictions. The Board’s Licensing Panel shall have discretion to consider an applicant’s activities on a case-by-case basis and may determine an applicant has met continued competency through a combination of any of the above activities or other relevant professional activities.

B. REENTRY LICENSE

For those physician assistants who have been out of practice as a physician assistant for two or more years, (a) submit to the Board a personalized competency evaluation report prepared by a program approved by the Board, and (b) complete any education and/or training recommended

by the program as a result of the evaluation prior to obtaining a license. In the discretion of the Board, the physician assistant may be able to receive a re-entry license prior to completing the education and/or training recommended by the program for the purpose of facilitating the completion of such education and/or training. All expenses resulting from the evaluation and/or any recommended education and/or training are the responsibility of the physician assistant and not of the Board.

The Board will consider an applicant to be ineligible for a reentry license if their period of inactive practice resulted from disciplinary action or unprofessional conduct. If a reentry license is issued, such a license is valid only for three years from the date of issue and is not renewable. Failure to complete the training requirements before the end of the ~~three year~~three-year period will result in the reentry license being administratively inactivated.

In the discretion of the Board, the physician assistant may be issued a re-entry license for the specific purpose of completing the education and/or training requirements. The re-entry license is valid for a single period of time not greater than three (3) years from the date of issue. Failure to complete the education and/or training requirements before the end of the three (3) year period for the re-entry license will result in the re-entry license being administratively inactivated.

C. CONVERSION OF REENTRY LICENSE

When an applicant has timely and successfully completed the training requirements, the applicant shall apply to the Licensing Panel of the Board to convert the reentry license to full licensure by submitting a letter to the Licensing Panel with documents that clearly establish timely and successful completion of the training requirements. If the Board determines that the applicant is competent and qualified to practice as a physician assistant, the Board will convert the reentry license to a full license to practice as a physician assistant. If the Board determines that the applicant is not competent nor qualified to practice as a physician assistant, the Board may require further assessment, training, or period of supervised practice in its discretion.

D. EXPENSES

All expenses resulting from the assessment and/or any training requirements are the responsibility of the applicant and not of the Board.

E. REINSTATEMENT OR REACTIVATION OF A LICENSE

In support of any application for reinstatement or reactivation of a license to practice as a physician assistant, for the purpose of complying with sections 12-20-202(2)(c)(II), 12-240-120(1)(d), or 12-240-141(5), C.R.S., a physician assistant may demonstrate continued competency in accordance with the methods identified in Rule 29.2(A)(2), identified above.

F. Where appropriate, the Board may determine that demonstration of continued competency requires an additional or different approach. For example, due to the length of time the physician assistant has been out of practice, the Board may require a written plan documenting the nature, extent, and duration of supervision that will be provided by the supervising physician to the physician assistant as the physician assistant makes the transition back into clinical practice. This written plan may be in addition to the personalized competency evaluation and/or recommended education and/or training. The decision as to the method of determining continued competency shall be at the discretion of the Board.

Adopted 8/15/02, Effective 10/30/02, Revised 2/13/03, Effective 4/30/03, Revised 4/14/05, Effective 6/30/05, Revised 5/17/07, Effective July 30, 2007; Revised 08/19/10; Effective 10/15/10.

Editor's Notes

History

Entire rule eff. 07/30/2007.

Entire rule eff. 10/15/2010.

Notice of Proposed Rulemaking

Tracking number

2022-00659

Department

700 - Department of Regulatory Agencies

Agency

713 - Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-42

Rule title

RULE 520 - DEMONSTRATION OF CONTINUED COMPETENCY BY ANESTHESIOLOGIST ASSISTANT APPLICANTS FOR LICENSURE, LICENSURE PURSUANT TO THE OCCUPATIONAL CREDENTIAL PORTABILITY PROGRAM, REINSTATEMENT

Rulemaking Hearing

Date

11/17/2022

Time

01:00 PM

Location

Webinar Only: https://us06web.zoom.us/webinar/register/WN_osUCyJRfSlqkjeeIFYx7yg

Subjects and issues involved

The purpose of this Permanent Rulemaking Hearing is for the Colorado Medical Board to consider adopting revisions to Rule 520 (3 CCR 713-42), to implement Colorado Senate Bill 22-116 (Concerning the ability of an individual to obtain an occupational credential through the occupational credential portability program).

Statutory authority

Sections 12-20-202(3), 12-20-204(1), 12-240-106(1)(a), and 24-4-103, C.R.S.

Contact information

Name

Elena M. Kemp

Title

Regulatory Coordinator

Telephone

303-894-7426

Email

Dora_dpo_rulemaking@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

Colorado Medical Board

RULE 520 - DEMONSTRATION OF CONTINUED COMPETENCY BY ANESTHESIOLOGIST ASSISTANT APPLICANTS FOR LICENSURE, LICENSURE PURSUANT TO THE OCCUPATIONAL CREDENTIAL PORTABILITY PROGRAM, REINSTATEMENT OF AN EXPIRED LICENSE, OR REACTIVATION OF A LICENSE

3 CCR 713-42

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

42.1 INTRODUCTION

A. Basis: The authority for promulgation of these rules and regulations by the Colorado Medical Board ("Board") is set forth in sections 24-4-103, 12-240-119, 12-20-204(1), 12-240-106(1)(a), 12-240-120(1)(d), 12-20-202(2)(c)(II), and 12-240-141(5), C.R.S.

B. Purpose: The purpose of these rules and regulations is to set forth the process by which an anesthesiologist assistant may demonstrate continued competency for the purpose of complying with the statutory sections referenced above to obtain a Colorado anesthesiologist assistant license; demonstrate qualifications substantially equivalent for licensure by endorsement in this state pursuant to the Occupational Credential Portability Program as set forth in section 12-20-202, C.R.S.; demonstrate at least one year of having practiced as an anesthesiology assistant in another jurisdiction with a scope of practice substantially similar to the scope of practice in this state for licensure by endorsement pursuant to the Occupational Credential Portability Program as set forth in 12-20-202, C.R.S.; reinstate an expired license; or reactivate an existing Colorado anesthesiologist assistant license. The Board finds that due to the significant differences between the nature of anesthesiologist assistant practice and the nature of physician practice, it is necessary and appropriate to delineate different methods by which anesthesiologist assistants and physicians shall demonstrate continued competency as required by the Medical Practice Act. The significant differences between the two types of practice include the requirements that anesthesiologist assistants must be supervised by a licensed physician in accordance with existing Board rules and regulations. The Board finds, however, that if an anesthesiologist assistant has ceased clinical practice for two or more years, the nature of the anesthesiologist assistant/physician supervisory relationship in and of itself cannot compensate for potential knowledge and clinical deficiencies, which may exist due to the lack of practice experience for such an extended period of time.

42.2 RULES AND REGULATIONS

A. LICENSURE BY ENDORSEMENT PURSUANT TO THE OCCUPATIONAL CREDENTIAL PORTABILITY PROGRAM PURSUANT TO SECTION 12-20-202(3), C.R.S.

1. For the purpose of licensure by endorsement through the occupational credential portability program, "substantially equivalent experience or credentials" means the applicant holds a current, valid, and unrestricted license in another U.S. jurisdiction that requires qualifications substantially equivalent to the qualifications for licensure in this state; the applicant submits written verification they have actively practiced as an anesthesiologist assistant in another jurisdiction for the last two years or has otherwise maintained continued competency as determined by the Board; and submits proof satisfactory to the

Board and attests that they have not been and are not subject to final or pending disciplinary or other action by any state or jurisdiction in which the applicant is or has been previously licensed except that, if the applicant is or has been subject to action, the Board may review the action to determine whether the underlying conduct warrants refusal of a license pursuant to section 12-240-120, C.R.S.

2. To demonstrate continued competency for purposes of complying with section 12-20-202(3), C.R.S., an anesthesiologist assistant may:

a. Submit proof satisfactory to the Board of active practice as an anesthesiologist assistant in another jurisdiction for the ~~two year~~one-year period immediately preceding the filing of the application. If the anesthesiologist assistant has practiced as an anesthesiologist assistant for only a portion of the ~~two year~~one-year period immediately preceding the filing of the application, the Board may determine on a ~~case by case~~case-by-case basis in its discretion whether the anesthesiologist assistant has adequately demonstrated continued competency to practice as an anesthesiologist assistant;

b. Submit proof satisfactory to the Board of having held for at least one year a current and valid anesthesiologist assistant license in another jurisdiction with a scope of practice that is substantially similar to the scope of practice for anesthesiologist assistants as specified in 12-240-107, C.R.S.

c. Submit to the Board the following: (a) proof satisfactory to the Board that the anesthesiologist assistant has been out of practice as an anesthesiologist assistant for less than two years; (b) proof of current certification by the National Commission on Certification of Anesthesiologist Assistants (“NCCAA”); (c) CME hours as required by the certifying body; and (d) a written plan satisfactory to the Board, documenting the nature, extent, and duration of supervision that will be provided by the supervising physician to the anesthesiologist assistant as the anesthesiologist assistant makes the transition back into clinical practice; or

~~c~~.d. Submit to the Board proof of participation in numerous professional activities, including but not limited to: maintenance of certification (MOC) activities; successful completion of National Commission on Certification of Anesthesiologist Assistants (NCCAA); category 1 approved CME educational courses with relevance to practice; teaching/lecturing/mentoring activities; non-patient care hospital or organization committee participation, including quality, safety, pharmacy and therapeutics, peer review, tumor board or other clinically relevant activities; clinically applicable research; surveying on behalf of accreditation organizations; or volunteer medical care provided overseas or in other jurisdictions. The Board’s Licensing Panel shall have discretion to consider an applicant’s activities on a case-by-case basis and may determine an applicant has met continued competency through a combination of any of the above activities or other relevant professional activities.

B. REENTRY LICENSE

For those anesthesiologist assistants who have been out of practice as an anesthesiologist assistant for two or more years, (a) submit to the Board a personalized competency evaluation

report prepared by a program approved by the Board, and (b) complete any education and/or training recommended by the program as a result of the evaluation prior to obtaining a license. In the discretion of the Board, the anesthesiologist assistant may be able to receive a re-entry license prior to completing the education and/or training recommended by the program for the purpose of facilitating the completion of such education and/or training. All expenses resulting from the evaluation and/or any recommended education and/or training are the responsibility of the anesthesiologist assistant and not of the Board.

The Board will consider an applicant to be ineligible for a reentry license if their period of inactive practice resulted from disciplinary action or unprofessional conduct. If a reentry license is issued, such a license is valid only for three years from the date of issue and is not renewable. Failure to complete the training requirements before the end of the ~~three year~~three-year period will result in the reentry license being administratively inactivated.

In the discretion of the Board, the anesthesiologist assistant may be issued a re-entry license for the specific purpose of completing the education and/or training requirements. The re-entry license is valid for a single period of time not greater than three (3) years from the date of issue. Failure to complete the education and/or training requirements before the end of the three (3) year period for the re-entry license will result in the re-entry license being administratively inactivated.

C. CONVERSION OF REENTRY LICENSE

When an applicant has timely and successfully completed the training requirements, the applicant shall apply to the Licensing Panel of the Board to convert the reentry license to full licensure by submitting a letter to the Licensing Panel with documents that clearly establish timely and successful completion of the training requirements. If the Board determines that the applicant is competent and qualified to practice as an anesthesiologist assistant, the Board will convert the reentry license to a full license to practice as an anesthesiologist assistant. If the Board determines that the applicant is not competent nor qualified to practice as an anesthesiologist assistant, the Board may require further assessment, training, or period of supervised practice in its discretion.

D. EXPENSES

All expenses resulting from the assessment and/or any training requirements are the responsibility of the applicant and not of the Board.

E. REINSTATEMENT OR REACTIVATION OF A LICENSE

In support of any application for reinstatement or reactivation of a license to practice as an anesthesiologist assistant, for the purpose of complying with sections 12-20-202(2)(c)(II), 12-240-120(1)(d), or 12-240-141(5), C.R.S., an anesthesiologist assistant may demonstrate continued competency in accordance with the methods identified in Rule 29.2(A)(2), identified above.

F. Where appropriate, the Board may determine that demonstration of continued competency requires an additional or different approach. For example, due to the length of time the anesthesiologist assistant has been out of practice, the Board may require a written plan documenting the nature, extent, and duration of supervision that will be provided by the supervising physician to the anesthesiologist assistant as the anesthesiologist assistant makes the transition back into clinical practice. This written plan may be in addition to the personalized competency evaluation and/or recommended education and/or training. The decision as to the method of determining continued competency shall be at the discretion of the Board.

Adopted 5/22/14: Effective 7/15/14.

Editor's Notes

History
Entire rule eff. 07/15/2014.

Notice of Proposed Rulemaking

Tracking number

2022-00660

Department

700 - Department of Regulatory Agencies

Agency

713 - Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-49

Rule title

RULE 180 - RULES REGARDING THE USE OF BENZODIAZEPINES

Rulemaking Hearing

Date

11/17/2022

Time

01:00 PM

Location

Webinar Only: https://us06web.zoom.us/webinar/register/WN_osUCyJRfSlqkjeeIFYx7yg

Subjects and issues involved

The purpose of this Permanent Rulemaking Hearing is for the Colorado Medical Board to consider adopting revisions to Rule 180 (3 CCR 713-49), to address concerns from the Office of Legislative Legal Services and implement Colorado House Bill 22-1115 (Concerning the Prescription Drug Monitoring Program).

Statutory authority

Sections 12-20-204(1), 12-30-109(6), 12-240-106(1)(a), and 24-4-103, C.R.S.

Contact information

Name

Elena M. Kemp

Title

Regulatory Coordinator

Telephone

303-894-7426

Email

Dora_dpo_rulemaking@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

Colorado Medical Board

RULE 180 – RULES REGARDING THE USE OF BENZODIAZEPINES

3 CCR 713-49

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

49.1 INTRODUCTION

The basis for the Board's promulgation of these rules and regulations is sections 12-20-204(1), 12-240-106(1)(a), and 12-240-123, C.R.S. The specific statutory authority for the promulgation of this Rule is section 12-30-109(6), C.R.S.

The purpose of these rules and regulations is to implement rules required by section 12-30-109(6), C.R.S., related to requirements for prescribing benzodiazepines to patients ~~for whom licenseeswho~~ have not previously prescribed benzodiazepines within the last twelve months.

49.2 RULES AND REGULATIONS

A. Licensees must limit any prescription for a continuous benzodiazepine to a 30-day supply, for any patient ~~to whom the licenseewho~~ has not been prescribed a benzodiazepine in the last 12 months.

~~B.~~ Prior to prescribing the second fill of a benzodiazepine for a condition that is not exempt under section 12-280-404(4)(a.5), C.R.S., a licensee must comply with the requirements of section 12-280-404(4), C.R.S. ~~Failure to comply with section 12-280-404(4), C.R.S., constitutes unprofessional conduct or grounds for discipline under section 12-240-121, C.R.S.~~

B~~C~~. The limitation stated in section (A) of this Rule does not apply to patients for whom licensees prescribe benzodiazepines for the following conditions:

1. Epilepsy;

2. A seizure, a seizure disorder, or a suspected seizure disorder;

3. Spasticity;

4. Alcohol withdrawal; or

5. A neurological condition, including a post-traumatic brain injury or catatonia.

C~~D~~. These rules do not require or encourage abrupt discontinuation, limitation, or withdrawal of benzodiazepines. Licensees are expected to follow generally accepted standards of medical practice, based on an individual patient's needs, in tapering benzodiazepine prescriptions.

Editor's Notes

History

New rule emer. rule eff. 11/18/2021.

Entire rule eff. 01/14/2022.

Notice of Proposed Rulemaking

Tracking number

2022-00661

Department

700 - Department of Regulatory Agencies

Agency

713 - Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-50

Rule title

RULE 190 CONCERNING HEALTH CARE PROVIDER DISCLOSURES TO CONSUMERS ABOU THE POTENTIAL EFFECTS OF RECEIVING EMERGENCY OR NONEMERGENCY SERVICES FROM AN OUT-OF-NETWORK PROVIDER

Rulemaking Hearing

Date

11/17/2022

Time

01:00 PM

Location

Webinar Only: https://us06web.zoom.us/webinar/register/WN_osUCyJRfSlqkjeeIFYx7yg

Subjects and issues involved

The purpose of this Permanent Rulemaking Hearing is for the Colorado Medical Board to consider adopting new Rule 190 (3 CCR 713-50) and Appendix A, to implement Colorado House Bill 22-1284 (Concerning updates to state surprise billing laws to facilitate the implementation of surprise billing protections, and, in connection therewith, aligning state law with the federal "No Surprises Act").

Statutory authority

Sections 12-20-204(1), 12-30-112(3), 12-240-106(1)(a), and 24-4-103, C.R.S.

Contact information

Name

Elena M. Kemp

Title

Regulatory Coordinator

Telephone

303-894-7426

Email

Dora_dpo_rulemaking@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

Colorado Medical Board

RULE 190 – CONCERNING HEALTH CARE PROVIDER DISCLOSURES TO CONSUMERS ABOU THE POTENTIAL EFFECTS OF RECEIVING EMERGENCY OR NONEMERGENCY SERVICES FROM AN OUT-OF-NETWORK PROVIDER

3 CCR 713-50

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

50.1 INTRODUCTION

The basis for the Board's promulgation of these rules and regulations is sections 12-20-204, 12-30-112, and 12-240-106(1)(a)~~, and 24-34-113(3)~~, C.R.S., in consultation with the Commissioner of Insurance and the State Board of Health ~~under the authority in section 24-34-113(2), C.R.S~~.

The purpose of these rules and regulations is to establish requirements for health care providers to provide disclosures to consumers about the potential effects of receiving emergency or non-emergency services from an out-of-network provider ~~as required by section 24-34-113(2), C.R.S~~.

50.2 RULES AND REGULATIONS

A. Definitions, for purposes of this Rule, are as follows:

1. "Publicly available" means, for the purposes of this regulation, searchable on the health care provider's public website, displayed in a manner that is easily accessible, without barriers, and that ensures that the information is accessible to the general public, including that it is findable through public search engines. The health care provider's public website must be accessible free of charge, without having to establish a user account, password, or other credentials, accept any terms or conditions, and without having to submit any personal identifying information.

B. Disclosure requirements.

1. An out of network provider may balance bill a covered person for post-stabilization services in accordance with section 10-16-704, C.R.S., and covered nonemergency services in an in-network facility that are not ancillary services if the provider meets the requirements set forth in section 12-30-112(3.5), C.R.S. If a consumer has incurred a claim for emergency or nonemergency health care services from an out-of-network provider, the health care provider shall provide the disclosures contained in Appendix A in compliance with section 12-30-112(3.5), C.R.S.

2. The health care provider shall provide the disclosure contained in Appendix A as set forth in section 12-30-112(3.5), C.R.S.:

C. Noncompliance with this Rule may result in the imposition of any of discipline made available by section 12-240-125~~12-250-113(1)(a)~~, C.R.S.

APPENDIX A

Your Rights and Protections Against Surprise Medical Bills

When you get emergency care or get treated by an out-of-network provider at an in-network hospital or ambulatory surgical center, you are protected from surprise billing or balance billing.

What is "balance billing" (sometimes called "surprise billing")?

When you see a doctor or other health care provider, you may owe certain out-of-pocket costs, like a copayment, coinsurance, or deductible. You may have additional costs or have to pay the entire bill if you see a provider or visit a health care facility that isn't in your health plan's network.

"Out-of-network" means providers and facilities that haven't signed a contract with your health plan to provide services. Out-of-network providers may be allowed to bill you for the difference between what your plan pays and the full amount charged for a service. This is called "balance billing." This amount is likely more than in-network costs for the same service and might not count toward your plan's deductible or annual out-of-pocket limit.

"Surprise billing" is an unexpected balance bill. This can happen when you can't control who is involved in your care—like when you have an emergency or when you schedule a visit at an in-network facility but are unexpectedly treated by an out-of-network provider. Surprise medical bills could cost thousands of dollars depending on the procedure or service.

You're protected from balance billing for:

Emergency services

If you have an emergency medical condition and get emergency services from an out-of-network provider or facility, the most they can bill you is your plan's in-network cost-sharing amount (such as copayments, coinsurance, and deductibles). You can't be balance billed for these emergency services. This includes services you may get after you're in stable condition, unless you give written consent and give up your protections not to be balanced billed for these post-stabilization services.

If you believe you've been wrongly billed by a healthcare provider, please contact the Colorado Medical Board at dora_medicalboard@state.co.us or at 303-894-7800.

Visit the CMS No Surprises Act website (https://www.cms.gov/nosurprises/consumers) for more information about your rights under federal law.

Visit section 12-30-112, C.R.S., for more information about your rights under state law. ~~[Insert plain language summary of any applicable state balance billing laws or requirements OR state-developed language as appropriate]~~

Certain services at an in-network hospital or ambulatory surgical center

When you get services from an in-network hospital or ambulatory surgical center, certain providers there may be out-of-network. In these cases, the most those providers can bill you is your plan's in-network cost-sharing amount. This applies to emergency medicine, anesthesia, pathology, radiology, laboratory, neonatology, assistant surgeon, hospitalist, or intensivist services. These providers **can't** balance bill you and may **not** ask you to give up your protections not to be balance billed.

If you get other types of services at these in-network facilities, out-of-network providers can't balance bill you, unless you give written consent and give up your protections.

You're never required to give up your protections from balance billing. You also aren't required to get out-of-network care. You can choose a provider or facility in your plan's network.

When balance billing isn't allowed, you also have these protections:

- You're only responsible for paying your share of the cost (like the copayments, coinsurance, and deductible that you would pay if the provider or facility was in-network). Your health plan will pay any additional costs to out-of-network providers and facilities directly.
- Generally, your health plan must:
    - Cover emergency services without requiring you to get approval for services in advance (also known as "prior authorization").
    - Cover emergency services by out-of-network providers.
    - Base what you owe the provider or facility (cost-sharing) on what it would pay an in-network provider or facility and show that amount in your explanation of benefits.
    - Count any amount you pay for emergency services or out-of-network services toward your in-network deductible and out-of-pocket limit.

If you believe you've been wrongly billed by a healthcare provider, please contact the Colorado Medical Board at dora_medicalboard@state.co.us or at 303-894-7800.

Visit the CMS No Surprises Act website (https://www.cms.gov/nosurprises/consumers) for more information about your rights under federal law. Visit section 12-30-112, C.R.S., for more information about your rights under state law. The federal phone number for information and complaints is: 1-800-985-3059.

Visit the CMS No Surprises Act website (https://www.cms.gov/nosurprises/consumers) for more information about your rights under federal law.

Visit the Colorado Medical Board (https://dpo.colorado.gov/Medical) website for more information about your rights under section 12-30-112, C.R.S.

Editor's Notes

History

Notice of Proposed Rulemaking

Tracking number

2022-00662

Department

700 - Department of Regulatory Agencies

Agency

713 - Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-51

Rule title

RULE 161 PROTECTIONS FOR PROVISION OF REPRODUCTIVE HEALTH CARE IN COLORADO

Rulemaking Hearing

Date

11/17/2022

Time

01:00 PM

Location

Webinar Only: https://us06web.zoom.us/webinar/register/WN_osUCyJRfSlqkjeeIFYx7yg

Subjects and issues involved

The purpose of this Permanent Rulemaking Hearing is for the Colorado Medical Board to consider permanently adopting new Rule 161 (3 CCR 713-51), to implement the directives of Executive Order D-2022-032 (Directing State Agencies to Protect Access to Reproductive HealthCare in Colorado).

Statutory authority

Sections 12-20-204(1), 12-240-106(1)(a), and 24-4-103, C.R.S.; and Executive Order D 2022-032.

Contact information

Name

Elena M. Kemp

Title

Regulatory Coordinator

Telephone

303-894-7426

Email

Dora_dpo_rulemaking@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

Colorado Medical Board

RULE 161 – PROTECTIONS FOR PROVISION OF REPRODUCTIVE HEALTH CARE IN COLORADO

3 CCR 713-51

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

51.1 INTRODUCTION

The basis for the Board's promulgation of these rules and regulations is Executive Order D 2022 032, and sections 25-6-401 *et seq.*, 12-240-105(1)(a), and 12-20-204, C.R.S.

The purpose of these rules and regulations is to implement Executive Order D 2022 032.

51.2 RULES AND REGULATIONS

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Assisting in the provision reproductive health care" means aiding, abetting or complicity in the provision of reproductive health care.

3. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

4. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, or a deferred judgment or sentence.~~criminal conviction as defined in Rule 1.1~~.

5. "Licensee" means as defined in section 12-20-102(10), C.R.S.

6. "Provision of reproductive health care," includes but is not limited to, transportation for reproductive health care, referrals for reproductive health care and related services, funding or assisting with payment of reproductive health care, prescribing, shipping or dispensing medications for reproductive health care in accordance with state and federal law, all options and mental health counseling and treatment related to reproductive health care. The "provision of reproductive health care" also includes all treatment contemplated in the definition of section 25-6-402(4), C.R.S.

7. "Regulator" means as defined in section 12-20-102(14), C.R.S.

8. "Reproductive health care" means as defined in section 25-6-402(4), C.R.S.

B. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on the applicant's provision of or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice as defined in Colorado law and did not otherwise violate Colorado law.

C. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a civil or criminal judgment against the applicant arising from

the provision of, or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

D. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a professional disciplinary action or any other sanction against the applicant's professional licensure in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant's provision of, or assistance in the provision of, reproductive health care and the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

E. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on the applicant's own personal effort to seek or obtain reproductive health care for themselves. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a civil or criminal judgment against the applicant arising from the individual's own personal receipt of reproductive health care in this state or any other state or U.S. territory.

Editor's Notes

History

Notice of Proposed Rulemaking

Tracking number

2022-00663

Department

700 - Department of Regulatory Agencies

Agency

713 - Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-52

Rule title

RULE 162 PROTECTING COLORADOS WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES

Rulemaking Hearing

Date

11/17/2022

Time

01:00 PM

Location

Webinar Only: https://us06web.zoom.us/webinar/register/WN_osUCyJRfSlqkjeeIFYx7yg

Subjects and issues involved

The purpose of this Permanent Rulemaking Hearing is for the Colorado Medical Board to consider permanently adopting new Rule 162 (3 CCR 713-52), to implement the directives of Executive Order D-2022-034 (Protecting Colorados Workforce and Expanding Licensing Opportunities).

Statutory authority

Sections 12-20-204(1), 12-240-106(1)(a), and 24-4-103, C.R.S.; and Executive Order D 2022-034.

Contact information

Name

Elena M. Kemp

Title

Regulatory Coordinator

Telephone

303-894-7426

Email

Dora_dpo_rulemaking@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

Colorado Medical Board

RULE 162 – PROTECTING COLORADO'S WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES

3 CCR 713-52

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

52.1 INTRODUCTION

The basis for the Board's promulgation of these rules and regulations is Executive Order D 2022 034, and sections ~~25-6-401 *et seq.*,~~ 12-240-106~~5~~(1)(a)~~,~~ and 12-20-204, C.R.S.

The purpose of these rules and regulations is to implement Executive Order D 2022 034.

52.2 RULES AND REGULATIONS

This Rule is promulgated pursuant to Executive Order D 2022 034, and sections 12-240-106 ~~12-250-105~~(1)(a) and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

3. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, or a deferred judgment or sentence.~~criminal conviction as defined in Rule 1.1~~.

4. "Licensee" means as defined in section 12-20-102(10), C.R.S.

5. "Regulator" means as defined in section 12-20-102(14), C.R.S.

B. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a civil or criminal judgment against the applicant regarding the consumption, possession, cultivation, or processing of marijuana so long as the actions are lawful and consistent with professional conduct and standards of care within Colorado and did not otherwise violate Colorado law.

C. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a professional disciplinary action against the applicant's professional licensure in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant's consumption, possession, cultivation, or processing of marijuana and did not otherwise violate Colorado law.

Editor's Notes

History

Notice of Proposed Rulemaking

Tracking number

2022-00656

Department

700 - Department of Regulatory Agencies

Agency

728 - Division of Professions and Occupations - State Board of Optometry

CCR number

4 CCR 728-1

Rule title

STATE BOARD OF OPTOMETRY RULES AND REGULATIONS

Rulemaking Hearing

Date

11/17/2022

Time

09:00 AM

Location

Webinar Only: https://us06web.zoom.us/webinar/register/WN_ib7ZJet0R2GWPiJkjMUutg

Subjects and issues involved

The purpose of this Permanent Rulemaking Hearing is for the State Board of Optometry to consider adopting multiple proposed new and revised rules to make updates regarding malpractice insurance, address concerns from the Office of Legislative Legal Services, and implement Colorado Senate Bill 22-116 (Concerning the ability of an individual to obtain an occupational credential through the occupational credential portability program); Colorado House Bill 22-1233 (Concerning the continuation of the regulation of optometry by the State Board of Optometry, and, in connection therewith, implementing the recommendations in the 2021 sunset report by the Department of Regulatory Agencies); Colorado House Bill 22-1115 (Concerning the Prescription Drug Monitoring Program); Colorado House Bill 22-1284 (Concerning updates to state surprise billing laws to facilitate the implementation of surprise billing protections, and aligning state law with the federal "No Surprises Act"); Executive Order D-2022-032 (Directing State Agencies to Protect Access to Reproductive HealthCare in Colorado); and Executive Order D-2022-034 (Protecting Colorados Workforce and Expanding Licensing Opportunities).

Statutory authority

Sections 12-20-204(1), 12-30-112(3), 12-275-108(1)(b), and 24-4-103, C.R.S.; and Executive Orders D 2022-032 and D 2022-034.

Contact information

Name

Elena M. Kemp

Title

Regulatory Coordinator

Telephone

303-894-7426

Email

Dora_dpo_rulemaking@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

State Board of Optometry

STATE BOARD OF OPTOMETRY RULES AND REGULATIONS

4 CCR 728-1

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

1.1 AUTHORITY

This regulation is adopted pursuant to the authority in sections 12-20-204 and 12-275-108(1)(b), C.R.S., and is intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101 *et seq.* (the "APA"), C.R.S., and the Optometry Practice Act, sections 12-275-101 *et seq.*, C.R.S.

1.2 SCOPE AND PURPOSE

This regulation shall govern the process to become an optometrist and the practice of optometry in Colorado.

1.3 APPLICABILITY

The provisions of this section shall be applicable to the practice of optometry in Colorado.

1.4 RENTAL OF SPACE

This Rule is promulgated pursuant to sections 12-20-204, 12-275-104, and 12-275-108(1)(b), C.R.S.

If an optometrist rents space in which to practice optometry, the following requirements must be met:

A. The practice must be owned by the optometrist and all clinical decisions must be under his/her exclusive control.

B. The prescription files and all patient records must be the sole property of the optometrist and free from any involvement with any unlicensed person.

C. The leased space must be clearly defined and separate from space occupied by other occupants of the premises, and devoted exclusively to the practice of optometry while the optometrists is on the premises and also during the posted working hours of the optometrist. This provision does not apply to the sharing of space with another licensed healthcare professional so long as all optometric clinical decisions are made solely by the optometrist.

D. No phase of the optometrist's practice shall be conducted as a department, branch or concession of any commercial or mercantile establishment, and there shall be no legend or signs such as "Optical Department," "Optometry Department," or others of similar import, displayed on any part of the premises or in any advertisement.

E. The optometrist shall not permit his/her name or his/her practice to be directly or indirectly used by the commercial or mercantile establishment in any advertising, displays, signs, or in any other manner.

F. All credit accounts for patients shall be established initially with the optometrist and not the credit department of the commercial or mercantile establishment, but this shall not preclude the assigning or discounting of accounts receivable.

G. Listings in telephone directories and telephone service and number shall be in the name of the licensed optometrist or in the name under which he/she practices and not under the name of any lessor, or any commercial or mercantile establishment.

1.5 DISPLAY OF LICENSE

This Rule is promulgated pursuant to sections 12-20-204, 12-275-117, and 12-275-108(1)(b), C.R.S.

For the purpose of section 12-275-117, C.R.S., "office" shall be any area where the license is conspicuously displayed and where the license can be readily observed by the patient.

The reason for this regulation is to provide that the certificate be displayed in a portion of the office where optometry is actually practiced.

1.6 DISPLAY OF TITLE

This Rule is promulgated pursuant to sections 12-20-204, 12-275-106, and 12-275-108(1)(b), C.R.S.

Only optometrists licensed and practicing optometry in Colorado may display their name and title on the entrance to the office where they practice.

1.7 USE OF TITLE

This Rule is promulgated pursuant to sections 12-20-204, 12-275-106, and 12-275-108(1)(b), C.R.S.

An optometrist may use the title "Doctor," or "Dr.," before his/her name, but only if his/her name is followed by the word, "Optometrist," or the letters, "OD".

1.8 ADVERTISING

This Rule is promulgated pursuant to sections 12-20-204, 12-275-120(1)(w)(I), and 12-275-108(1)(b), C.R.S.

An optometrist shall not use, participate in, or permit the use of any form of public communications having reference, directly or indirectly, to his or her professional services which contains a false, fraudulent, misleading, deceptive, or unfair statement or claim. A false, fraudulent, misleading, deceptive, or unfair statement or claim includes, but is not limited to:

A. Contains a misrepresentation of fact; or

B. Is likely to mislead or deceive because it fails to make full disclosure of relevant facts; or

C. Represents that professional services can or will be completely performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will, in fact, be charged; or

D. Contains other representations or implications that in reasonable probability will cause an ordinary prudent person to misunderstand or be deceived.

1.9 ASSUMPTION OF PRACTICE OF A RETIRED OR DECEASED OPTOMETRIST (REPEALED)

1.10 RENEWALS, REINSTATEMENTS AND REACTIVATIONS

This Rule is promulgated pursuant to sections 12-20-202, 12-20-203, 12-20-204, and 12-275-108(1)(b), C.R.S.

A. RENEWALS.

1. The Board may prescribe renewal requirements, including compliance with the required continuing education.

2. Pursuant to section 12-20-202(1)(e), C.R.S., a licensee shall have a sixty-day grace period after the expiration of his or her license to renew such license without the imposition of a disciplinary sanction for practicing on an expired license.

3. Pursuant to section 24-79.5-102(3), C.R.S., a delinquency fee shall be charged for late renewals.

4. A licensee who does not renew his or her license within the sixty-day grace period shall be treated as having an expired license and shall be ineligible to practice until such license is reinstated. If the licensee practiced with an expired license the Board may impose disciplinary sanctions for such unlicensed practice.

5. Each optometrist applying for renewal, unless he or she qualifies for an exemption, is required to fulfill the substance use prevention training requirements set forth in Rule 1.254.

B. REINSTATEMENT/REACTIVATION REQUIREMENTS FOR EXPIRED OR INACTIVE LICENSES.

1. In order to reinstate or reactivate a license back into active status, each applicant shall submit a completed Board approved application along with the required fee in order to be considered for licensure approval and must also verify that he or she:

   a. Accurately and completely listed any acts that would be grounds for disciplinary action under the Optometry Practice Law and/or Board Rule and provided a written explanation of the circumstances of such act, including supporting documentation, if required, since last renewing his or her license to an active or inactive status in this state.

   b. Accurately and completely provided any and all information pertaining to any final or pending disciplinary action by any state or jurisdiction in which the applicant is or has been previously licensed since last renewing his or her license to an active or inactive status in this state.

2. If the license has been expired or inactive for less than two years, then the applicant is required to submit proof of fulfilling the requirements of Rule 1.243 for the two-year period in which his or her license was last active.

3. If the license has been expired or inactive for two years or longer:

   a. The applicant is required to submit proof of fulfilling the requirements of Rule 1.243 for the two-year period in which the license was expired or inactive immediately preceding the date of application; and

b. The applicant shall demonstrate to the Board that he or she is competent to practice as an optometrist. The Board shall require the following as a demonstration of competency to practice:

(1) Documentation of active practice in another state for the two years immediately preceding the filing of the reinstatement application; or

(2) Successful completions of courses approved by the Board; or

(3) Any other professional standard or measure of continued competency as determined by the Board, which may include successful completion of the national exam.

4. An applicant may petition the Board for reinstatement/reactivation with a waiver of the competency requirements in this Rule, upon demonstration of hardship. The Board, at its discretion, may grant such waiver and reinstatement so long as the public is protected.

5. Each optometrist applying for reinstatement or reactivation, unless he or she qualifies for an exemption, is required to fulfill the substance use prevention training requirements set forth in Rule 1.254.

1.11PROFESSIONAL LIABILITY INSURANCE

This Rule is promulgated pursuant to sections 12-20-204, 12-275-108(1)(b), and 12-275-128 (2)(a), C.R.S.

An optometrist who qualifies for one of the following categories is exempt from the professional liability requirements.

A. -An optometrist who is a public employee of the State of Colorado under the Colorado Governmental Immunity Act, section 24-10-101, *et. seq.*, C.R.S.;

B. An optometrist who performs optometric services exclusively as a civilian or military employee of the United States government;

C. An optometrist who holds an inactive license;

D. An optometrist who does not engage in any patient care within Colorado; or

E. An optometrist who is covered by individual professional liability insurance maintained by an employer/contracting agency in the amounts set forth in section 12-275-128 (1), C.R.S.

1.121 RECORDS: RETENTION, MAINTENANCE, DISPOSITION, AND RELEASE

This Rule is promulgated pursuant to sections 12-20-204, 12-275-108(1)(b), and 12-275-119, C.R.S.

A. General.

1. Except as provided in subsection (F) of this Rule, every licensed optometrist shall create and shall maintain records on their patient(s).

2. Every optometrist shall retain and maintain a patient record as defined in subsection (C). of this Rule, on the patient(s) for a period of seven years, commencing on the termination of optometric services or on the date of last contact with the patient(s), whichever is later.

Records for minor patient(s) shall be kept for a minimum of seven years after the patient reaches the age of majority (age eighteen).

3. Every licensed optometrist shall retain and maintain a prescription drug log as defined in subsection (D) of this Rule.

B. Upon Conclusion of an Eye Exam Where A Valid Prescription Has Been Determined and/or Finalized. Regardless of whether the patient requests it or not, it is required that the optometrist immediately provide a(n):

1. Eyeglass prescription.

2. Contact lens prescription, as defined in subsection (C)(11) of this Rule, at the conclusion of a lens fitting.

C. Patient Record. Every licensed optometrist shall create and shall maintain, as applicable to the optometric services rendered, a record for the patient(s) containing the following information:

1. Name of treating optometrist;

2. Patient's identifying data to include name, address, telephone number, gender, date of birth, and, if applicable, the name of their legal guardian (guardian) or designated legal representative (representative).

3. Dates of service including, but not limited to the date of each contact with patient, the date on which services began, and the date of last contact with patient;

4. When the licensed optometrist prescribes, dispenses, and/or administers any prescription drug, the following shall be recorded on the patient's record:

a. Patient name;

b. Name of authorized practitioner-dispensing, prescribing, and /or administering drug(s);

c. Diagnosis being treated or services performed;

d. Date dispensed, prescribed, and/or administered;

e. Name and strength of drug dispensed, prescribed, and/or administered;

f. Quantity dispensed, prescribed, and/or administered;

g. Directions for use;

h. Number of refills authorized;

5. When the licensed optometrist prescribes any prescription drug, the following shall be recorded on the prescription.

a. All prescriptions shall bear:

(1) The full name, date of birth, and address of the patient;

(2) The drug name, strength, dosage form, and quantity prescribed,

(3) Directions for use;

(4) Number of refills authorized, if any;

(5) The date and signature on the day it was issued; and

(6) Any additional requirements mandated by the Drug Enforcement Agency.

b. All prescriptions for controlled substances shall additionally:

(1) Bear the name, address, Drug Enforcement Administration registration number, and signature of the licensed optometrist. A practitioner may sign a prescription in the same manner as she/he would sign a check or legal document (e.g., J.H. Smith or John H. Smith). When an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewritten and shall be manually signed by the practitioner. The prescriptions may be prepared by the office staff or agent for the signature of the licensed optometrist, but the prescribing optometrist is responsible in case the prescription does not conform in all essential respects to the law and regulations. The use of a rubber-stamped, pre-printed, or pre-signed signature on prescription pads is not acceptable.

6. Fees;

7. Any release of information;

8. The records must be prepared in a manner that allows any subsequent provider or any authorized regulatory body to yield a comprehensive conclusion as to what occurred;

9. Name of any test administered, each date on which the test was administered, and, if applicable, the name(s) of the person(s) administering the test;

10. Eyeglass prescription (if applicable);

a. An electronic signature on an eyeglass prescription shall be considered to have the same force and effect as an original signature.

11. Contact lens prescription (if applicable);

a. A valid, written contact lens prescription is an order by an optometrist to supply contact lens medical devices to a patient. It shall contain all of the following information;

(1) The patient’s full name;

(2) The date of the examination/lens fitting;

(3) All usual and customary specifications, and manufacturer’s name and manufacturer’s trade or brand name necessary for an exact replacement contact lens;

(4) The optometrist’s signature, name, license number, address and phone number;

(5) A reasonable limit on refills; and

(6) An expiration date of one year from the issue date of the prescription, unless a shorter expiration date is warranted based on the medical judgment of the prescribing optometrist with respect to the ocular health of the patient.

b. An electronic signature on a contact lens prescription shall be considered to have the same force and effect as an original signature.

12. Items such as photographs, digital images, corneal topographies, etc.

13. Information on each referral made to and each consultation with another optometrist or other health care provider. This information shall include the date of referral or consultation, the name of the person to whom the patient was referred, the name of the person with whom consultation was sought; the outcome (if known) of the referral, and the outcome (if known) of the consultation;

14. Records of exams, notes, correspondence, audio or visual recordings, electronic data storage, and other documents considered professional information for use in optometry;

15. If applicable, any original patient records from a previous optometrist(s); and

16. A final closing statement (if services have been discontinued), if applicable.

If changes, corrections, deletions, or other modifications are made to any portion of a patient record, the person must note in the record date, nature, reason, correction, deletion, or other modification, and her/his name.

D. Prescription Drug Log. Every licensed optometrist shall keep a complete and accurate inventory of all stocks of controlled substances on hand in her/his office as may be required by these Rules or any other state or federal law or rule pertaining to such drugs. Such records shall be maintained on a current basis and shall be complete and accurate for all drugs which the licensed optometrist receives, dispenses, distributes, prescribes or otherwise disposes of in any other manner.

1. Records and inventories of controlled substances shall be deemed to be “complete” only if each individual record and inventory contains all required information regarding each specific transaction, and if the set of records and inventories contains all information and documents required to be kept by state and federal laws and rules.

2. A record or inventory shall be deemed to be “accurate” only if it is a complete, true and factual statement regarding or reflecting each specific transaction. A set of records or inventories shall be deemed to be “accurate” only if they are complete, and, when considered as a whole, they demonstrate that the controlled substances and/or the records and inventories pertaining there to have been handled in compliance with all applicable laws or rules and that all such controlled substances are properly accounted for.

3. For the purposes of these Rules, records and inventories shall be “readily retrievable” if they meet the following requirements:

a. The following records shall be maintained on the premises at all times and shall be made available for inspection by the Board immediately upon request.

(1) All DEA-222 forms executed during the two years preceding the request;

(2) All inventories of controlled substances required to be taken during the two years preceding the request;

(3) All records of dispensing, receipt (invoices for drugs received and drugs credited), distribution, loss, surrender, or disposal in any other manner of prescription drugs and controlled substances during the two years preceding the request;

b. The following records shall be made available within forty-eight hours or two business days, whichever is longer, on request by the Board:

(1) All unexecuted DEA-222 forms.

c. In the case of a request by the Board for specific records:

(1) Records shall be maintained in such a manner as to permit the Board to retrieve specific records immediately.

(2) If the Board determines the records are not maintained in the manner specified in (1) above, the Board may give the licensed optometrist or their staff a list of the items to be retrieved. The requested records shall be made available to the Board within forty-eight hours of the request.

4. Inventories of controlled substances. Any inventory of controlled substances shall comply with the following:

a. Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken. The inventory shall be maintained in written, typewritten or printed form on the premises. The inventory for schedule II drugs shall be separated from the inventory of schedule III, IV, and V drugs. Controlled substances shall be deemed to be “on hand” if they are in the possession of or under the control of the optometrist. However, the inventory shall exclude any drug that has been dispensed pursuant to a lawful order but which has not yet been delivered or picked up.

b. The licensed optometrist shall maintain a record of any controlled substance(s) lost, destroyed, or stolen, and the record shall include the schedule, name, strength and quantity of such controlled substance(s) and the date of such loss, destruction or theft. In addition, the licensed optometrist must report such loss or theft to the Drug Enforcement Administration District Office within one business day of discovery of such loss or theft.

c. The inventory shall be taken either as of opening of business or as of the close of business on the inventory date and this shall be recorded on the inventory.

d. After the initial inventory is taken, the licensed optometrist shall take a new inventory of all stocks of controlled substances on hand at least quarterly (every three months).

e. On the effective date of a law or rule on which a previously non-scheduled drug is added to any schedule of controlled substances, every optometry office or optometrist that possesses that drug shall take an inventory of all stocks of the drug on hand. Thereafter, that drug shall be included in each inventory made by the optometry office or optometrist.

f. The following information shall be recorded on the inventory:

(1) The name of the drug;

(2) Each finished form of the drug (strength and dosage form);

(3) The number of units or volume of each finished form; and

(4) All outdated controlled substances.

g. In determining the number of units of each finished form of a controlled substance in a commercial container which has been opened, the licensed optometrist shall do as follows:

(1) If the drug is a schedule II drug, an exact count of the contents shall be made.

(2) If the substance is listed in schedule III, IV, or V, an estimated count of the measure of the contents may be made, unless the container holds more than 1000 tablets or capsules, in which case an exact count of the contents must be made.

(3) All controlled substance inventories shall be retained at the office, by the licensed optometrist, for at least two years from the date of such inventory.

h. At minimum, dispensing records, maintained separate of the individual patient record, must include the following information for every transaction:

(1) Patient name;

(2) Prescriber;

(3) Date dispensed/administered;

(4) Name and strength of drug dispensed/administered;

(5) Quantity dispensed/administered;

(6) Whether the transaction is a new or refill transaction;

(7) If refill transaction, the date of the initial order;

(8) Number of refills authorized;

(9) Number of refills dispensed to date;

(10) Identification of individual responsible for dispensing/administering;

(11) If a controlled substance, the Drug Enforcement Administration registration number of the prescriber/dispenser;

E. Record Storage. Every optometrist shall keep and store patient records in a secure place and in a manner that both assures that only authorized persons have access to the records and protects the confidentiality of the records and of the information contained in the records.

F. Transfer of Records. Whenever a Licensee deems it necessary to transfer her/his records to another licensee or other health care provider, the Licensee making the transfer shall obtain the client's consent to transfer (when possible).

G. Release of Records.

1. Every patient's record in the custody of a licensed optometrist shall be available to a patient, their guardian, or representative at reasonable times and upon reasonable notice.

2. Duplication of the record may not be withheld for past due fees relating to treatment; for patient's failure to follow treatment instructions, or the patient's failure to return for subsequent care, etc.

3. Duplication of Record Request

a. The optometrist may charge a reasonable fee for copying of records and may require payment in advance, prior to beginning the duplication process. Actual postage costs may also be charged.

b. It is customary when a patient is transferring care for optometrists to provide copies of records to another optometrist's or physician's office free of charge.

c. The optometrist shall make the duplicated record available within a reasonable time from the date of the signed request, and, if required, pre-payment of duplication cost, whichever is later, normally not to exceed fifteen days, excluding weekends and holidays.

d. If the patient, guardian or representative so approves, the custodian may supply a written interpretation by the attending provider or representative of patient records, such as photographs, digital images, corneal topographies, or non-written records which cannot be reproduced without special equipment. If the requestor prefers to obtain a copy of such patient records, the patient must pay the actual cost of such reproduction.

e. The optometrist may request the patient, guardian or representative identify which parts of the record they would like to have duplicated.

f. Nothing prevents the patient, guardian or representative from requesting certain parts of their record.

4. Eyeglass or Contact Lens Prescription Requests.

a. A patient, guardian or representative may obtain a copy of her/his prescription after submitting a signed and dated request to the custodian of the patient record.

5. Nothing in this Rule shall be construed to waive the responsibility of a custodian of records to maintain confidentiality of those records under the care of the custodian.

H. Disposition of Records. At the time a licensed optometrist discontinues her/his practice, or if the licensed optometrist is not available to handle her/his own records, the licensed optometrist and/or his/her estate shall designate an appropriate person to handle the disposition of records. A plan for the disposition of records shall be in place for all licensed optometrists who are in the following circumstances:

1. Disability, illness, retirement, or death of the licensed optometrist;

2. Termination of the licensed optometrist's practice;

3. Sale or transfer of practice.

In any event the optometrist or designee shall make a reasonable effort to notify the patient(s) of the transfer and provide instructions to submit a written authorization/release if they wish their records to be transferred to another optometrist or physician. Records should be retained after discontinuation of practice using the guidelines as defined in subsection (A) of this Rule.

I. Record Destruction. Every licensed optometrist shall dispose of a patient(s) records in a manner or by a process that destroys or obliterates all patient identifying data. However, records cannot be destroyed until after a period of seven years commencing on the termination of optometric services or on the date of last contact with the patient(s), whichever is later and records for minor patient(s) shall be kept for a minimum of seven years after the patient reaches the age of majority (age eighteen) or as otherwise provided in these Rules or any other applicable statutes.

1. In the case of litigation, Board investigation or other investigation, all relevant records must be retained until resolution of the matter.

2. Records may not be withheld for past due fees relating to treatment.

J. Record Keeping in Agency/Institutional Settings. A licensed optometrist need not create and maintain separate patient records if the licensed optometrist practices in an agency or institutional setting and:

1. The licensed optometrist sees the patient in the usual course of that practice; and

2. The licensed optometrist keeps client records as required by the agency or institution; and

3 The agency or institution maintains the client records.

1.132 LICENSURE BY EXAMINATION

This Rule is promulgated pursuant to sections 12-20-204, 12-275-108(1)(b), 12-275-110, and 12-275-112, C.R.S.

A. Colorado requires the national exam and any other area of contemporary optometry the Board believes appropriate to ensure public protection.

B. Colorado requires expanded scope of practice certification by all optometrists seeking licensure. This includes all of the following:

1. Diagnostic certification;

2. Therapeutic certification; and

3. Advanced ocular training for the treatment of glaucoma and anterior uveitis.

These certifications must be gained either through completing a course of study in a graduate degree program in optometry, or by additional educational training to meet advanced therapeutic certification standards.

C. Applicants with optometry degrees granted in 1993, or more recently, are considered to have satisfied the education requirements for expanded scope of practice certification in the course of their optometric degree programs.

D. The education for such certification shall be completed through or by an institution which is accredited by a regional or professional accreditation organization recognized or approved by the Council on Postsecondary Education or by the United States Department of Education for the Diagnostic Certification Requirements and are as follows:

1. Fifty-five classroom hours of study in general ocular and clinical pharmacology.

2. 120 hours:

a. Sixty classroom hours of study in ocular pharmacology, clinical pharmacology, therapeutics and anterior segment disease; and

b. Sixty hours of approved supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and its appendages.

3. Sixty hours of Board approved glaucoma and anterior uveitis education, which shall include forty-four didactic and sixteen clinical hours consisting of the treatment of glaucoma and anterior uveitis, including pharmacological, systemic and laser management of these conditions.*

4. If requirement (C)(2) is completed within the twenty-four months immediately preceding application for licensure, only an additional sixteen hours of Board-approved glaucoma and anterior uveitis education is required.

5. In addition, the applicant for licensure must have successfully completed a course in cardiopulmonary resuscitation preceding the date of submitting their application for licensure.

6. The applicant must meet all other requirements of section 12-275-110, C.R.S.

E. Therapeutic Certification

1. Colorado optometrists who currently hold therapeutic certification must provide the Board with proof of the coursework as set forth in subsection (C)(3) in order to receive the advanced therapeutic certification. Successful completion of the advanced ocular treatment course offered in April of 1994 by the Colorado Optometric Association satisfies forty-four hours of the requirement; an additional sixteen hours of glaucoma and anterior uveitis course curriculum is still required to meet the requirements.

2. Colorado optometrists who do not hold therapeutic certification must meet the requirements in subsections (C)(1) and (2) above, and must provide evidence of successful completion of sixteen additional hours of glaucoma and anterior uveitis course curriculum to the Board prior to certification.

1.1~~3~~4 LICENSURE BY ENDORSEMENT

This Rule is promulgated pursuant to sections 12-20-204, 12-275-108(1)(b), and 12-275-110, C.R.S.

A licensed optometrist may endorse ~~his/her license~~ into Colorado when the applicant meets~~meeting~~ the following requirements:

A. Holds~~She/he has an~~ active license to practice optometry in another state or jurisdiction or through the federal government, that is in good standing, or holds a military occupational specialty, as defined in section 24-4-201, C.R.S.; and~~; and~~

B. Pays~~She/he has paid~~ an application fee as prescribed by the Board; and

C. Demonstrates both of the following:

1. Submits proof satisfactory to the Board that she/he has held for at least one year a current and valid license to practice optometry in another jurisdiction with a scope of practice that is substantially similar to the scope of practice for optometry as specified in Article 275 of Title 12, C.R.S., and these Rules; and~~She/he possesses credentials and qualifications that are substantially equivalent to requirements for licensure by examination including requirements for advanced therapeutic treatment as set forth in Board Rule 1.132, either through an educational degree program or other course of study considered by the Board as substantially equivalent; and~~

2. Has been actively engaged in the practice of optometry within twenty-four months immediately preceding the application for licensure by endorsement.

~~D. She/he has been actively engaged in the practice of optometry for twenty-four months immediately preceding the application for licensure by endorsement; or~~

D~~E~~. D~~She/he has d~~emonstrate~~sd~~ competency as an optometrist in a manner approved by the Board.

F. Colorado requires competency to perform laser procedures or treat ocular adnexa. This includes one of the following requirements:

1. Graduation from an accredited college or university of optometry in 2019 or later where the laser procedures and ocular adnexa treatments were taught and passage of the standardized national examination approved by the board or completion of 32 hours as determined by the board with six hours of hands-on proctored clinical sessions by an optometrist or ophthalmologist licensed to perform the procedures in any jurisdiction.~~; or~~

2. Documentation of completed education and training is required and must be provided to the Board upon request.

3. Any adverse outcomes of procedures with patients must be reported to the Board within ten days with corresponding records.

4. Applicants who have not performed a laser procedure in the past two years are required to complete a proctored clinical session prior to performing any laser procedures.

1.1~~5~~4 NATIONAL BOARD SCORES AND RETENTION (REPEALED)

1.1~~6~~5 EXPANDED SCOPE OF PRACTICE CERTIFICATION (REPEALED)

1.1~~7~~6 REPORTING MALPRACTICE JUDGMENTS, CONVICTIONS, DISCIPLINARY ACTIONS, SETTLEMENTS OR ARBITRATION AWARDS

This Rule is promulgated pursuant to sections 12-20-204, 12-275-108(1)(b), 12-275-120(1)(p), (r) and (bb), and 12-275-129, C.R.S. The purpose of this Rule is to clarify the procedures for reporting, in writing, any malpractice judgments, convictions, disciplinary actions, settlements or arbitration awards.

A. A licensee shall report to the Board within thirty days, any final judgment or settlement against him/her for malpractice, pursuant to section 12-275-120(1)(p), C.R.S.

B. A licensee shall report to the Board, in writing, within thirty days:

1. A conviction of a felony or the acceptance of a plea of guilty or nolo contendere, or a plea resulting in a deferred sentence to a felony, pursuant to section 12-275-120(1)(r), C.R.S.

a. For purposes of this Rule, a felony conviction includes: a guilty verdict; an entry of a plea of guilty or a plea of nolo contendere (no contest) accepted by the court; or a plea resulting in a deferred sentence to a felony.

2. Any disciplinary action imposed upon the licensee by another licensing agency in another state, territory, or country, any governmental agency, any law enforcement agency, or any court for acts of conduct that would constitute grounds for discipline under the provisions of the Optometry Practice Law and/or Board Rule, pursuant to section 12-275-120(1)(bb), C.R.S.

C. The written report to the Board, as set forth in subsection (B), shall include, but not be limited to, the following information:

1. If the event is an action by a governmental agency:

a. The name of the agency,

b. The jurisdiction or state where the incident(s) occurred,

c. The case name(s),

d. The docket, proceeding, or case number by which the event is designated,

e. A copy of the consent decree, order, or decision,

f. The patient(s) name(s) and date(s) of birth,

d. Complete patient records associated with the action, and

e. Any other information relevant to the reported action.

2. If the event is a felony conviction as described above in (B)(1)(a):

a. The name of the court,

b. The jurisdiction where the incident(s) occurred,

c. The case name,

d. The case number,

e. A description of the matter or a copy of the indictment or charges,

f. Any plea or verdict accepted or entered by the court,

g. A copy of the imposition of sentence related to the conviction and the completion of all terms of the sentence,

h. Confirmation of the status or confirmation of the completion of the terms of the sentence, and

i. Any other information relevant to the reported action.

3. If the event concerns a civil action or arbitration proceeding:

a. The name of the court or arbitrator,

b. The jurisdiction where the incident(s) occurred,

c. The case name,

d. The case number,

e. A description of the matter or a copy of the complaint or demand for arbitration,

f. A copy of the verdict, the court decision or arbitration award, or, if settled, the settlement agreement and court's order of dismissal, and

g. Any other information relevant to the reported action.

1.1~~8~~7 BOARD REVIEW OF INITIAL DECISIONS. (REPEALED)

1.1~~9~~8 VOLUNTEER LICENSES

This Rule is promulgated pursuant to sections 12-20-204, 12-275-108(1)(b), and 12-275-109, C.R.S.

An optometrist may apply for a volunteer license by filing a volunteer optometrist application.

A. An optometrist with a volunteer license shall provide optometry services only on a limited basis for no fee or other compensation. An applicant for a volunteer license shall:

1. Either hold an active and unrestricted license to practice optometry in the state of Colorado and be in active practice in Colorado or have been on inactive status for no more than two years;

2. Attest that, after a specified date, he or she will no longer earn income as an optometrist;

3. Comply with the same requirements for continuing education and liability insurance as optometrists with active licenses, and any other requirement set forth in statute; and,

4. Be subject to the same disciplinary standards as an optometrist with full licensure status.

An optometrist with a volunteer license may apply for a return to active licensure by filing an application in the form and manner designated by the Board.

1.2~~0~~19 NOTIFICATION TO BOARD OF PHYSICAL OR MENTAL ILLNESS

This Rule is promulgated pursuant to sections 12-20-204, 12-275-108(1)(b), 12-275-120(1)(k), and 12-275-121, C.R.S.

A. An optometrist with a physical or mental illness or condition that renders him or her unable to treat with reasonable skill and safety or that may endanger the health and safety of persons under their care as an optometrist shall report the illness or condition to the Board, in writing, within thirty calendar days of diagnosis or change of diagnosis. The notification shall include:

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

2. A letter and any other relevant documentation from the current treating health care provider confirming the diagnosis, date of onset, treatment plan, and any modifications, limitations or restrictions to the optometrist's practice that have been made or should be made as a result of the illness or condition.

B. The optometrist shall notify the Board of any significant change in the illness or condition that impacts his or her ability to perform optometry with reasonable skill or safety or that may endanger the health and safety of persons under his or her care. Notification shall occur within thirty days of the change of condition. The notification shall include:

1. The date of the change of condition; and,

2. Documentation from the current treatment provider confirming the change of condition, the date that the condition changed, the nature of the change of condition, and the current treatment plan; and,

3. A description of the licensee's practice and any modifications, limitations or restrictions to that practice that have been made or should be made as a result of the change of condition.

C. Failure to comply with this Rule may constitute unprofessional conduct and could result in disciplinary action by the Board.

1.2~~10~~ FINING SCHEDULE FOR VIOLATIONS OF THE OPTOMETRIC PRACTICE ACT AND BOARD RULES

This Rule is promulgated pursuant to sections 12-20-204, 12-275-108(1)(b), and 12-275-122(1)(a)(III), C.R.S.

A. Fines: Non-Exclusive Sanction. The Board, in its discretion, may impose a fine or fines in lieu of, or in addition to, any other disciplinary sanction. The term optometrist as contemplated under section 12-275-122(1)(a)(III), C.R.S., and this Rule shall include any person who has been licensed at any time under the Optometric Practice Act to practice optometry.

B. Fine for Each Violation. Section 12-275-122(1)(a)(III), C.R.S., provides authority for the Board to impose an administrative fine against an optometrist for a violation of an administrative requirement. The Board, in its discretion, may impose a separate fine for each violation and shall consider the nature and seriousness of the violation prior to imposing any fine.

C. Fines: Schedule of Fines. The Board may so impose a fine or fines consistent with the following Schedule; however, nothing in this Schedule precludes the Board from considering the nature and seriousness of the violation prior to determining a fine amount:

1. For a Licensee's first violation, a fine of no more than one thousand dollars ($1,000.00).

2. For a Licensee's second violation, a fine of no more than two thousand five hundred dollars ($2,500.00).

3. For a Licensee's third and any additional or subsequent violations, a fine of no more than five thousand dollars ($5,000.00).

In a Disciplinary Proceeding, in which fines are sought to be imposed, the Board in determining the number of violations for purposes of application of the above schedule may count as a violation, each prior violation adjudicated against the Licensee in a prior Disciplinary Proceeding.

D. Payment of Fines.

1. Fine Amount; When Due. A total fine amount of five hundred dollars ($500.00) or less imposed by the Board must be paid in full, including the applicable surcharge, at the time the Final Agency Order is entered or a Stipulation is reached between the parties. A total fine amount greater than five hundred dollars ($500.00) imposed by the Board must be paid in full, including the applicable surcharge, in accordance with the time frame set forth in the Final Agency Order or Stipulation.

2. Delinquent Payment Consequences. An optometrist who fails to pay a fine imposed under this Rule as defined above pursuant to a Final Agency Order or Stipulation may be subject to further discipline, including suspension or revocation of his or her license to practice. Section 12-275-120(1)(f), C.R.S., provides that violation of an Order of the Board is Unprofessional Conduct.

E. Compliance with Law. Payment of a fine does not exempt the optometrist from continuing compliance with the Optometric Practice Act or any orders of the Board.

1.221 ARMED SERVICES EXPERIENCE

This Rule is promulgated pursuant to sections 12-20-202 and 12-275-108(1)(b), C.R.S.

Education, training, or service gained in military services outlined in section 12-20-202(4), C.R.S., to be accepted and applied towards receiving a license, must be substantially equivalent, as determined by the Board, to the qualifications otherwise applicable at the time of receipt of application. It is the applicant's responsibility to provide timely and complete evidence for review and consideration. Satisfactory evidence of such education, training, or service will be assessed on a case by case basis.

1.232 DECLARATORY ORDERS

This Rule is promulgated pursuant to sections 12-20-204, 12-275-108(1)(b), and 24-4-105(11), C.R.S.

A. Any person may petition the Board for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Board.

B. The Board will determine, in its discretion and without notice to petitioner, whether to rule upon any such petition. If the Board determines that it will not rule upon such a petition, the Board shall promptly notify the petitioner of its action and state the reasons for such action.

C. In determining whether to rule upon a petition filed pursuant to this Rule, the Board 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 the petitioner of any statutory provision or rule or order of the Board.

2. Whether the petition involves any subject, question or issue which is the focus of a formal or informal matter or investigation currently pending before the Board or a court but not involving any petitioner.

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

4. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, Colo. R. Civ. P., 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 licensed pursuant to the provisions of section 12-275-101, C.R.S. *et seq.*, as amended.

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

3. A concise statement of all 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 Board determines that it will rule on the petition, the following procedures apply:

1. The Board may rule upon the petition solely upon the facts presented in the petition. In such a case, any ruling of the Board will apply only to the extent of the facts presented in the petition and any amendment to the petition.

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

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

4. The Board may dispose of the petition on the sole basis of the matters set forth in the petition.

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

6. If the Board rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.

7. The Board may, in its discretion, set the petition for hearing, upon due notice to the 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.

8. The notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Board intends to inquire.

9. 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 Board to consider.

F. The parties to any proceeding pursuant to this Rule shall be the Board and the petitioner. Any other person may seek leave of the Board to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Board. A petition to intervene shall set forth the same matters as 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 Board.

1.2~~4~~3 CONTINUING EDUCATION REQUIREMENTS

This Rule is promulgated pursuant to sections 12-20-204, 12-275-108(1)(b), and 12-275-115, C.R.S.

A. Each licensed optometrist having an active license in Colorado is required to attend twenty-four hours of educational study per renewal period as set forth in section 12-275-115(3), C.R.S. Continuing Education ("CE") hours may only be applied to one renewal period.

B. If a renewal date occurs during the year of original Colorado licensure, continuing education will not be required for the first renewal. If the renewal date occurs the year after original licensure, the licensee shall obtain twelve hours of continuing education prior to the biennial renewal. CE completed to fulfill requirements to satisfy discipline, as required by the Board, will not count toward CE for the renewal period.

C. For CE to count toward renewal requirements all CE must be clinically-based.

D. CE may be obtained the following ways:

1. Conferences and Lectures

2. Internet Based CE or CE Offered by Professional/Association Journals (a maximum of eight (8) hours may be applied per renewal period)

3. Clinical Observations/Clinical Examinations (a maximum of four (4) hours may be applied per renewal period)

E. Subject to the final approval of the Board, a designated Board member may rule in regard to the approval of other meetings, programs, and/or courses.

F. The Board in its discretion may grant exceptions to the continuing education requirements for reasons of individual hardship or other good cause. Documentation of individual hardship may be requested by the Board.

1.2~~5~~4 SUBSTANCE USE PREVENTION TRAINING FOR LICENSE RENEWAL, REACTIVATION, OR REINSTATEMENT

This Rule is promulgated pursuant to sections 12-20-204, 12-30-114, and 12-275-108(1)(b), C.R.S.

A. Pursuant to section 12-30-114, C.R.S., every optometrist, except those exempted under section (C), is required to complete at least one hour of training per renewal period in order to demonstrate competency regarding the topics/areas specified in section 12-30-114(1)(a), C.R.S.

B. Training, for the purposes of this section includes, but is not limited to, relevant continuing education courses; peer review proceedings that involve opioid prescribing; relevant volunteer service; or teaching a relevant class/course. All such training must cover or be related to the topics specified in section 12-30-114(1)(a), C.R.S.

C. The Board shall exempt an optometrist from the requirements of this section who qualifies for either exemption set forth in section 12-30-114(1)(b), C.R.S.

D. This Rule 1.25~~4~~ shall apply to any applicant for reinstatement or reactivation of an expired or inactive license pursuant to Rule 1.10(B).

E. Applicants for license renewal, reactivation, or reinstatement shall attest during the application process to either their compliance with this substance use training requirement or their qualifying for an exemption, as specified in section (C) of this Rule.

F. The Board may audit compliance with this section. Optometrists should be prepared to submit documentation of their compliance with this substance use training requirement or their qualification for an exemption, upon request by the Board.

G. Subject to the approval of the Board, completed substance use prevention training hours that also meet the requirements for continuing education, as specified in Rule 1.24~~3~~, may be applied towards the minimum continuing education hours required in Rule 1.24~~3~~.

1.26~~5~~ ELECTRONIC PRESCRIBING OF CONTROLLED SUBSTANCES

A. Effective on or after July 1, 2021, and pursuant to section 12-30-111(1)(a), C.R.S., and effective on and after July 1, 2023, a prescriber shall prescribe a controlled substance as set forth in section 12-30-111(1)(a), C.R.S., only by electronic prescription transmitted to a pharmacy unless an exception in section 12-30-111(1)(a), C.R.S., applies.

B. A “temporary technological failure,” for purposes of section 12-30-111(1)(a)(I), C.R.S., is when:

1. A necessary prescribing software program is inaccessible or otherwise not operational;

2. Required technology fails to start; or

3. During a period when a virus or cyber security breach is actively putting patient data and transmission at risk.

C. A “temporary electrical failure,” for purposes of section 12-30-111(1)(a)(I), C.R.S., is a short-term loss of electrical power at the place of business.

D. An “economic hardship,” for purposes of section 12-30-111(1)(a)(XI), C.R.S., is a measurement of relative need taking into consideration the individual gross receipts and net profits, cost of compliance, and type of software upgrade required. In order for a prescriber to demonstrate economic hardship, the prescriber must submit to the Board for a final determination:

1. A written statement explaining the economic hardship, including supporting documentation to demonstrate economic hardship. The Board reserves the right to request additional documentation to support the request, if necessary. The request must also include the requested duration of the economic hardship.

2. If the Board determines there should be an economic hardship exception for the prescriber, then the Board will determine the duration of the economic hardship exception, which shall not exceed one year from the date the exception was granted.

3. In order to renew a request for an economic hardship exception, the prescriber must submit a request to renew the exception in writing to the Board no less than two months prior to the expiration of the economic hardship exception. The prescriber must provide a written statement explaining the need to renew the economic hardship, including supporting documentation.

1.2~~7~~6 REQUIRED DISCLOSURE TO PATIENTS – CONVICTION OF OR DISCIPLINE BASED ON SEXUAL MISCONDUCT

A. On or after March 1, 2021, a provider, shall disclose to a patient, as defined in section 12-30-115(1)(a), C.R.S., instances of sexual misconduct , including a conviction or guilty plea as set forth in section 12-30-115 (2)(a) C.R.S., or final agency action resulting in probation or limitation of the provider's ability to practice as set forth is section 12-30-115(2)(b), C.R.S.

B. Form of Disclosure: The written disclosure shall include all information specified in section 12-30-115(3), C.R.S., and consistent with the sample model disclosure form as set forth in Appendix A to these rules. The patient must, through his or her signature on the disclosure form, acknowledge the receipt of the disclosure and agree to treatment with the provider.

C. Timing of Disclosure: This disclosure shall be provided to a patient the same day the patient schedules a professional services appointment with the provider. If an appointment is scheduled the same day that services will be provided or if an appointment is not necessary, the disclosure must be provided in advance of the treatment.

1. The written disclosure and agreement to treatment must be completed prior to each treatment appointment with a patient unless the treatment will occur in a series over multiple appointments or a patient schedules follow-up treatment appointments.

2. For treatment series or follow-up treatment appointments, one disclosure prior to the first appointment is sufficient, unless the information the provider is required to disclose pursuant to section 12-30-115, C.R.S., has changed since the most recent disclosure, in which case an updated disclosure must be provided to a patient and signed before treatment may continue.

D. As set forth in section 12-30-115(3)(e), C.R.S., the requirement to disclose the conviction, guilty plea, or agency action ends when the provider has satisfied the requirements of the probation or other limitation and is no longer on probation or otherwise subject to a limitation on the ability to practice the provider's profession.

E. A provider need not make the disclosure required by this Rule before providing professional services to the patient if any of the following applies as set forth in section 12-30-115(4), C.R.S.:

1. The patient is unconscious or otherwise unable to comprehend the disclosure and sign an acknowledgment of receipt of the disclosure pursuant to section 12-30-115(3)(d), C.R.S., and a guardian of the patient is unavailable to comprehend the disclosure and sign the acknowledgement;

2. The visit occurs in an emergency room or freestanding emergency department or the visit is unscheduled, including consultations in inpatient facilities; or

3. The provider who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

F. A provider who does not have a direct treatment relationship or have direct contact with the patient is not required to make the disclosure required by this Rule.

1.2~~8~~7 CONCERNING HEALTH CARE PROVIDER DISCLOSURES TO CONSUMERS ABOUT THE POTENTIAL EFFECTS OF RECEIVING EMERGENCY OR NONEMERGENCY SERVICES FROM AN OUT-OF-NETWORK PROVIDER

This Rule is promulgated pursuant to sections 12-20-204, 12-30-112, and 12-275-108(1)(b), ~~and 24-34-113(3),~~ C.R.S., in consultation with the Commissioner of Insurance and the State Board of Health ~~under the authority of section 24-34-113(2), C.R.S~~.

The purpose of this Rule is to establish requirements for health care providers to provide disclosures to consumers about the potential effects of receiving emergency or non-emergency services from an out-of-network provider ~~as required by section 24-34-113(2), C.R.S~~.

This Rule applies to health care providers as defined in section~~s 24-34-113(1)(f) and~~ 10-16-102(56), C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Publicly available" means, for the purposes of this regulation, searchable on the health care provider's public website, displayed in a manner that is easily accessible, without barriers, and that ensures that the information is accessible to the general public, including that it is findable through public search engines. The health care provider's public website must be accessible free of charge, without having to establish a user account, password, or other credentials, accept any terms or conditions, and without having to submit any personal identifying information.

B. Disclosure requirements.

1. An out of network provider may balance bill a covered person for post-stabilization services in accordance with section 10-16-704, C.R.S., and covered nonemergency services in an in-network facility that are not ancillary services if the provider meets the requirements set forth in section 12-30-112(3.5), C.R.S. If a consumer has incurred a claim for emergency or nonemergency health care services from an out-of-network provider, the health care provider shall provide the disclosures contained in Appendix B in compliance with section 12-30-112(3.5), C.R.S.

2. The health care provider shall provide the disclosure contained in Appendix B as set forth in section 12-30-112(3.5), C.R.S.

C. Noncompliance with this Rule may result in the imposition of any of discipline made available by section 12-250-113(1)(a), C.R.S.

1.2~~0~~9 PROTECTIONS FOR PROVISION OF REPRODUCTIVE HEALTH CARE IN COLORADO

This Rule is promulgated pursuant to Executive Order D 2022 032, and sections 25-6-401 *et seq.*, 12-250-105(1)(a), and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Assisting in the provision reproductive health care" means aiding and abetting, complicity, and conspiracy in the provision of reproductive health care.

2. "Certificate holder" or "certificant" means as defined in section 12-20-102(3), C.R.S.

3. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

4. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, or a deferred judgment or sentence~~criminal conviction as defined in Rule 1.1~~.

5. "Licensee" means as defined in section 12-20-102(10), C.R.S.

6. "Provision of reproductive health care," includes but is not limited to, transportation for reproductive health care, referrals for reproductive health care and related services, funding or assisting with payment of reproductive health care, prescribing, shipping or dispensing medications for reproductive health care in accordance with state and federal law, all options counseling, and mental health counseling and treatment related to reproductive health care. The "provision of reproductive health care" also includes all treatment contemplated in the definition of section 25-6-402(4), C.R.S.

7. "Registrant" means as defined in section 12-20-102(12), C.R.S.

8. "Regulator" means as defined in section 12-20-102(14), C.R.S.

9. "Reproductive health care" means as defined in section 25-6-402(4), C.R.S.

B. The regulator shall not deny registration, certification, or licensure to an applicant or impose disciplinary action against an individual's registration, certificate or license based solely on the applicant or registrant's provision of or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice as defined in Colorado law and did not otherwise violate Colorado law.

C. The regulator shall not deny registration, certification, or licensure to an applicant or impose disciplinary action against an individual's registration, certificate or license based solely on a civil or criminal judgment against the applicant or registrant arising from the provision of, or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

D. The regulator shall not deny registration, certification, or licensure to an applicant or impose disciplinary action against an individual's registration, certificate or license based solely on a professional disciplinary action or any other sanction against the applicant's or registrant's professional registration, certification or licensure in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant's or registrant's provision of, or assistance in the provision of, reproductive health care and the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

E. The regulator shall not deny registration, certification, or licensure to an applicant or impose disciplinary action against an individual's registration, certificate or license based solely on the applicant/licensee/registrant's own personal effort to seek or obtain reproductive health care for themselves. The regulator shall not deny registration, certification, or licensure to an applicant or impose disciplinary action against an individual's registration, certificate, or license based solely on a civil or criminal judgment against the applicant or registrant arising from the individual's own personal receipt of reproductive health care in this state or any other state or U.S. territory.

F. Information sharing regarding interstate compacts

G. Information sharing to sister licensing boards (outside of interstate compacts) regarding provision of repro health care – add a provision that prevents sharing

H. Language that should be included

1.~~21~~30 PROTECTING COLORADO'S WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES

This Rule is promulgated pursuant to Executive Order D 2022 034, and sections 12-250-105(1)(a)~~,~~ and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Certificate holder" or "certificant" means as defined in section 12-20-102(3), C.R.S.

3. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

4. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, or a deferred judgment or sentence~~criminal conviction as defined in Rule 1.1~~.

5. "Licensee" means as defined in section 12-20-102(10), C.R.S.

7. "Registrant" means as defined in section 12-20-102(12), C.R.S.

8. "Regulator" means as defined in section 12-20-102(14), C.R.S.

B. The regulator shall not deny registration, certification, or licensure to an applicant or impose disciplinary action against an individual's registration, certificate or license based solely on a civil or criminal judgment against the applicant or registrant regarding the consumption, possession, cultivation, or processing of marijuana so long as the actions are lawful and consistent with professional conduct and standards of care within Colorado and did not otherwise violate Colorado law.

C. The regulator shall not deny registration, certification, or licensure to an applicant or impose disciplinary action against an individual's registration, certificate or license based solely on a professional disciplinary action against the applicant's or registrant's professional registration, certification or licensure in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant's or registrant's consumption, possession, cultivation, or processing of marijuana and did not otherwise violate Colorado law.

1.~~31~~27 EXPANDED SCOPE OF PRACTICE FOR OPTOMETRISTS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2022 028

A. Basis. Through Executive Order D 2022 028, extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, and D 2022 020, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the State Board of Optometry ("Board") set forth in section 24-1-122(3)(p), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2022 028 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of the Department of Regulatory Agencies, through the Division Director, to effectuate Executive Order D 2022 028, extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, and D 2022 020, and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice. Optometrists may perform services while working in a hospital or inpatient facility as delegated by physicians, physician assistants, advanced practice registered nurses. certified registered nurse anesthetists, professional nurses and respiratory therapists.

1. Optometrists are authorized to perform delegated services upon adequate cross-training as determined necessary by the hospital or inpatient facility.

2. Optometrists shall not accept delegation of a service for which the licensee does not possess the knowledge, skill or training to perform.

3. Optometrists shall not perform a delegated service for which the licensee does not possess the knowledge, skill or training to perform.

4. Delegated services shall not be re-delegated to another person or licensee by the delegatee.

5. Optometrists shall not prescribe or select medications, perform surgical or other invasive procedures or perform anesthesia services outside of statutory scope of practice regardless of delegation.

1.3228 EXPANDED SCOPE OF PRACTICE FOR OPTOMESTRISTS IN ORDER TO ADMINISTER VACCINATIONS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2022 028

A. Basis. Through Executive Order D 2022 028, extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, and D 2022 020, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the State Board of Optometry ("Board") set forth in section 24-1-122(3)(p), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2022 028 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of DORA, through the Division Director, to effectuate Executive Order D 2022 028, extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, and D 2022 020, and directing the immediate expansion of the workforce of trained medical personnel available to administer the coronavirus disease 2019 (COVID-19) vaccinations within inpatient facilities and outpatient settings due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice In Order to Administer the COVID-19 Vaccination.

1. Optometrists may administer the COVID-19 vaccination while working in a hospital, inpatient facility or outpatient setting as delegated by physicians, physician assistants,

advanced practice registered nurses, certified registered nurse anesthetists, or professional nurses.

a. Optometrists are authorized to perform this delegated service upon adequate cross-training as determined necessary by the hospital, inpatient facility, or outpatient setting.

b. Optometrists shall not accept delegation of this service if the licensee does not possess the knowledge, skill or training to perform.

c. Optometrists shall not perform this delegated service if the licensee does not possess the knowledge, skill or training to perform.

d. This delegated service shall not be re-delegated to another person or licensee by the delegatee.

e. Optometrists shall not prescribe, order, or select the COVID-19 vaccination regardless of delegation.

1.3329 RULES REGARDING THE USE OF BENZODIAZEPINES

The basis for the Board's promulgation of these rules and regulations is sections 12-20-204(1), 12-275-108(1)(b), and 12-275-113(5), C.R.S. The specific statutory authority for the promulgation of this Rule is section 12-30-109(6), C.R.S.

The purpose of these rules and regulations is to implement rules required by section 12-30-109(6), C.R.S., related to requirements for prescribing benzodiazepines to patients whofor whom licensees have not previously been prescribed benzodiazepines within the last twelve months.

A. Licensees must limit any prescription for a continuous benzodiazepine to a 30-day supply, for any patient whoto whom the licensee has not been prescribed a benzodiazepine in the last 12 months.

B. Prior to prescribing the second fill of a benzodiazepine for a condition that is not exempt under section 12-280-404(4)(a.5), C.R.S., a licensee must comply with the requirements of section 12-280-404(4), C.R.S. Failure to comply with section 12-280-404(4), C.R.S., constitutes unprofessional conduct or grounds for discipline under section 12-275-120, C.R.S.

BC. The limitation stated in section (A) of this Rule does not apply to patients for whom licensees prescribe benzodiazepines for the following conditions:

1. Epilepsy;

2. A seizure, a seizure disorder, or a suspected seizure disorder;

3. Spasticity;

4. Alcohol withdrawal; or

5. A neurological condition, including a post-traumatic brain injury or catatonia.

CD. These rules do not require or encourage abrupt discontinuation, limitation, or withdrawal of benzodiazepines. Licensees are expected to follow generally accepted standards of optometry practice, based on an individual patient's needs, in tapering benzodiazepine prescriptions.

APPENDIX A

MODEL SEXUAL MISCONDUCT DISCLOSURE STATEMENT

DISCLAIMER: This Model Sexual Misconduct Disclosure Statement is to be used as a guide only and is aimed only to assist the practitioner in complying with section 12-30-115, C.R.S., and the rules promulgated pursuant to this statute by the Director. As a licensed, registered, and/or certified health care licensee in the State of Colorado, you are responsible for ensuring that you are in compliance with state statutes and rules. While the information below must be included in your Sexual Misconduct Disclosure Statement pursuant to section 12-30-115, C.R.S., you are welcome to include additional information that specifically applies to your situation and practice.

A. Provider information, including, at a minimum: name, business address, and business telephone number.

B. A listing of any final convictions of or a guilty plea to a sex offense, as defined in section 16-11.7-102(3), C.R.S.

C. For each such conviction or guilty plea, the licensee shall provide, at a minimum:

1. The date that the final judgment of conviction or guilty plea was entered;

2. The nature of the offense or conduct that led to the final conviction or guilty plea;

3. The type, scope, and duration of the sentence or other penalty imposed, including whether:

a. The provider entered a guilty plea or was convicted pursuant to a criminal adjudication;

b. The provider was placed on probation and, if so, the duration and terms of the probation and the date the probation ends; and

c. The jurisdiction that imposed the final conviction or issued an order approving the guilty plea.

D. A listing of any final agency action by a professional regulatory board or agency that results in probationary status or other limitation on the provider's ability to practice if the final agency action is based in whole or in part on:

1. a conviction for or a guilty plea to a sex offense, as defined in section 16-11.7-102(3), C.R.S., or a finding by the professional regulatory board or Director that the provider committed a sex offense, as defined in as defined in section 16-11.7-102(3), C.R.S.; OR

2. a finding by a professional regulatory board or agency that the provider engaged in unprofessional conduct or other conduct that is grounds for discipline under the part or article of Title 12 of the Colorado Revised Statutes that regulates the provider's profession, where the failure or conduct is related to, includes, or involves sexual misconduct that results in harm to a patient or presents a significant risk of public harm to patients.

E. For each such final agency action by a professional regulatory board or agency the provider shall provide, at a minimum:

1. The type, scope, and duration of the agency action imposed, including whether:

a. the regulator and licensee entered into a stipulation;

b. the agency action resulted from an adjudicated decision;

c. the provider was placed on probation and, if so, the duration and terms of probation; and

d. the professional regulatory board or agency imposed any limitations on the provider's practice and, if so, a description of the specific limitations and the duration of the limitations.

2. The nature of the offense or conduct, including the grounds for probation or practice limitations specified in the final agency action;

3. The date the final agency action was issued;

4. The date the probation status or practice limitation ends; and

5. The contact information for the professional regulatory board or agency that imposed the final agency action on the provider, including information on how to file a complaint.

Sample Signature Block

I have received and read the sexual misconduct disclosure by [Provider Name] and I agree to treatment by [Provider Name].

_____

Print Patient Name

_____

Patient or Responsible Party's Signature **Date**

If signed by Responsible Party (parent, legal guardian, or custodian), print Responsible Party's name and relationship to patient:

_____

Print Responsible Party Name **Print Relationship to Patient**

_____

Provider Signature **Date**

APPENDIX B

Your Rights and Protections Against Surprise Medical Bills

When you get emergency care or get treated by an out-of-network provider at an in-network hospital or ambulatory surgical center, you are protected from surprise billing or balance billing.

What is "balance billing" (sometimes called "surprise billing")?

When you see a doctor or other health care provider, you may owe certain out-of-pocket costs, like a copayment, coinsurance, or deductible. You may have additional costs or have to pay the entire bill if you see a provider or visit a health care facility that isn't in your health plan's network.

"Out-of-network" means providers and facilities that haven't signed a contract with your health plan to provide services. Out-of-network providers may be allowed to bill you for the difference between what your plan pays and the full amount charged for a service. This is called "balance billing." This amount is likely more than in-network costs for the same service and might not count toward your plan's deductible or annual out-of-pocket limit.

"Surprise billing" is an unexpected balance bill. This can happen when you can't control who is involved in your care—like when you have an emergency or when you schedule a visit at an in-network facility but are unexpectedly treated by an out-of-network provider. Surprise medical bills could cost thousands of dollars depending on the procedure or service.

You're protected from balance billing for:

Emergency services

If you have an emergency medical condition and get emergency services from an out-of-network provider or facility, the most they can bill you is your plan's in-network cost-sharing amount (such as copayments, coinsurance, and deductibles). You can't be balance billed for these emergency services. This includes services you may get after you're in stable condition, unless you give written consent and give up your protections not to be balanced billed for these post-stabilization services.

If you believe you've been wrongly billed by a healthcare provider, please contact the State Board of Optometry at 303-894-7800 or dora_optometryboard@state.co.us.

Visit the CMS No Surprises Act website (https://www.cms.gov/nosurprises/consumers) for more information about your rights under federal law.

Review section 12-30-112, C.R.S., for more information about your rights under Colorado state law. ~~[Insert plain language summary of any applicable state balance billing laws or requirements OR state-developed language as appropriate]~~

Certain services at an in-network hospital or ambulatory surgical center

When you get services from an in-network hospital or ambulatory surgical center, certain providers there may be out-of-network. In these cases, the most those providers can bill you is your plan's in-network cost-sharing amount. This applies to emergency medicine, anesthesia, pathology, radiology, laboratory, neonatology, assistant surgeon, hospitalist, or intensivist services. These providers **can't** balance bill you and may **not** ask you to give up your protections not to be balance billed.

If you get other types of services at these in-network facilities, out-of-network providers can't balance bill you, unless you give written consent and give up your protections.

You're never required to give up your protections from balance billing. You also aren't required to get out-of-network care. You can choose a provider or facility in your plan's network.

~~[Insert plain language summary of any applicable state balance billing laws or requirements OR state-developed language regarding applicable state law requirements as appropriate]~~

When balance billing isn't allowed, you also have these protections:

- You're only responsible for paying your share of the cost (like the copayments, coinsurance, and deductible that you would pay if the provider or facility was in-network). Your health plan will pay any additional costs to out-of-network providers and facilities directly.
- Generally, your health plan must:
    - Cover emergency services without requiring you to get approval for services in advance (also known as "prior authorization").
    - Cover emergency services by out-of-network providers.
    - Base what you owe the provider or facility (cost-sharing) on what it would pay an in-network provider or facility and show that amount in your explanation of benefits.
    - Count any amount you pay for emergency services or out-of-network services toward your in-network deductible and out-of-pocket limit.

If you believe you've been wrongly billed by a healthcare provider, please contact the State Board of Optometry at 303-894-7800 or dora_optometryboard@state.co.us. The federal phone number for information and complaints is: 1-800-985-3059.

Visit www.cms.gov/nosurprises/consumers for more information about your rights under federal law.

Visit https://dpo.colorado.gov/Optometry for more information about your rights under Colorado state law, pursuant to section 12-30-112, C.R.S.

~~**If you think you've been wrongly billed**, contact [Insert contact information for entity responsible for enforcing the federal and/or state balance or surprise billing protection laws. The federal phone number for information and complaints is: 1-800-985-3059].~~

~~Visit [Insert website describing federal protections, such as~~

~~www.cms.gov/nosurprises/consumers] for more information about your rights under federal law.~~

~~[If applicable, insert: Visit [website] for more information about your rights under [state laws].]~~

Editor's Notes

History

Rules 14, 15 eff. 08/01/2009.
Rules 9, 14, 15 eff. 01/01/2010.
Rule 15 repealed eff. 09/30/2010.
Rules 9, 14 eff. 01/01/2011.
Rule 11 eff. 07/01/2011.
Rules 9.01, 17-19 eff. 12/30/2011.

Rule 16 eff. 03/01/2012.
Entire rule eff. 07/15/2014.
Rules 1.8 A.5, 1.8 B.5, 1.22 eff. 12/15/2019.
Rule 1.27 emer. rule eff. 05/01/2020; expired 08/29/2020.
Rule 1.28 emer. rule eff. 05/11/2020; expired 09/08/2020.
Entire rule eff. 07/15/2020. Rules 1.9, 1.14, 1.17 repealed eff. 07/15/2020.
Rule 1.27 emer. rule eff. 08/30/2020.
Rule 1.28 emer. rule eff. 09/09/2020.
Rules 1.27, 1.28 emer. rules eff. 12/28/2020.
Rule 1.26, Appendix A eff. 12/30/2020.
Rule 1.29 emer. rule eff. 01/11/2021.
Rules 1.27, 1.28 emer. rules eff. 04/27/2021.
Rule 1.29 emer. rule eff. 05/11/2021.
Rules 1.27, 1.28 emer. rules eff. 07/12/2021.
Rules 1.26, Appendix A eff. 07/15/2021.
Rules 1.27, 1.28 emer. rules eff. 11/02/2021.
Rule 1.29 emer. rule eff 11/18/2021.
Rule 1.29 eff. 01/14/2022.
Rules 1.27, 1.28 emer. rules eff. 03/02/2022.
Rules 1.27, 1.28 emer. rules eff. 06/28/2022.

Notice of Proposed Rulemaking

Tracking number

2022-00655

Department

700 - Department of Regulatory Agencies

Agency

729 - Division of Professions and Occupations - Landscape Architects Board

CCR number

4 CCR 729-1

Rule title

BYLAWS AND RULES OF THE STATE BOARD OF LANDSCAPE ARCHITECTS

Rulemaking Hearing

Date

11/18/2022

Time

10:00 AM

Location

Webinar Only: https://us06web.zoom.us/webinar/register/WN_OHY7HXzDRIC-ZkaUla09oA

Subjects and issues involved

The purpose of this Emergency and Permanent Rulemaking Hearing is for the Board to consider adopting the proposed new Rule 1.9, to implement Executive Order D-2022-034 (Protecting Colorados Workforce and Expanding Licensing Opportunities).

Statutory authority

Sections 12-20-204(1) and 12-130-107(1)(a), C.R.S., and Executive Order D 2022 034.

Contact information

Name

Elena M. Kemp

Title

Regulatory Coordinator

Telephone

303-894-7426

Email

Dora_dpo_rulemaking@state.co.us

DEPARTMENT OF REGULATORY AGENCIES

Landscape Architects Board

BYLAWS AND RULES OF THE STATE BOARD OF LANDSCAPE ARCHITECTS

4 CCR 729-1

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

…

1.9 PROTECTING COLORADO'S WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES

This Rule is promulgated pursuant to Executive Order D 2022 034, and sections 12-20-204 and 12-130-107(1)(a), C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

3. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.

4. "Licensee" means as defined in section 12-20-102(10), C.R.S.

5. "Regulator" means as defined in section 12-20-102(14), C.R.S.

B. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a civil or criminal judgment against the licensee regarding the consumption, possession, cultivation, or processing of marijuana so long as the actions are lawful and consistent with professional conduct and standards of care within Colorado and did not otherwise violate Colorado law.

C. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a professional disciplinary action against the applicant's or licensee's professional license in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the licensee's consumption, possession, cultivation, or processing of marijuana and did not otherwise violate Colorado law.

Editor's Notes

History

Entire rule eff. 01/01/2008.

Entire rule eff. 05/01/2008.

Rules 3.1.9; 4.1.1.7; 4.1.1.7.2; 4.1.1.9; 4.3; 4.3.2; 4.5.1; 4.7 eff. 04/01/2009.

Entire rule eff. 01/01/2012.

Rules 2.2, 4.5.2(j) eff. 10/01/2012.
Rules 2.2, 5.1.5, 5.2.1(c), 5.4.2 eff. 03/17/2013.
Entire rule eff. 09/14/2022.

Notice of Proposed Rulemaking

Tracking number

2022-00651

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-2 Part 1

Rule title

SOLID WASTE SITES AND FACILITIES

Rulemaking Hearing

Date

11/15/2022

Time

09:00 AM

Location

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

Subjects and issues involved

The purpose of the amendments is to make changes to the solid waste regulations for conformance with 6 CCR 1007-1, Part 20 (the Part 20 TENORM Regulation) promulgated by the Board of Health in December 2020. The Part 20 TENORM Regulation affects any solid waste facility that manages, or potentially receives, non-exempt TENORM. In addition, the Part 20 Rule has sector-specific requirements for several types of solid waste facilities.

For the purpose of aligning with the Part 20 TENORM Regulation, several changes to the Solid Waste Regulations (6 CCR 1007-2, Part 1) are proposed. First, TENORM related definitions are added to Section 1.2. Second, Section 2.1.2 is amended such that all solid waste disposal sites and facilities required to have waste characterization plans will include waste screening provisions for TENORM constituents in those plans. Furthermore, for each type of solid waste facility addressed specifically in the Part 20 TENORM Regulation, the pertinent requirements from Part 20 are proposed for direct adoption in the Solid Waste Regulations.

Statutory authority

These modifications are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in Section 30-20-109, C.R.S.

Contact information

Name

Brandy Valdez Murphy

Title

Administrator, Solid and Hazardous Waste Commission

Telephone

303-692-3467

Email

brandy.valdezmurphy@state.co.us

COLORADO
Solid & Hazardous
Waste Commission
Department of Public Health & Environment

NOTICE OF PROPOSED RULEMAKING HEARING
BEFORE THE
COLORADO SOLID AND HAZARDOUS WASTE COMMISSION

SUBJECT:

For consideration of the amendments to 6 CCR 1007-2, Part 1, Multiple Sections, along with the accompanying Statement of Basis and Purpose, the following will be considered:

Amendment of 6 CCR 1007-2, Part 1, Sections 1, 2, 3, 8, 9, 14 and 17, and Repeal of Section 12 – Regulations Pertaining to Solid Waste Sites and Facilities – Amendments regarding TENORM for consistency with 6 CCR 1007-1, Part 20

These modifications are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in Section 30-20-109, C.R.S.

The purpose of the amendments is to make changes to the solid waste regulations for conformance with 6 CCR 1007-1, Part 20 (the Part 20 TENORM Regulation) promulgated by the Board of Health in December 2020. The Part 20 TENORM Regulation affects any solid waste facility that manages, or potentially receives, non-exempt TENORM. In addition, the Part 20 Rule has sector-specific requirements for several types of solid waste facilities.

For the purpose of aligning with the Part 20 TENORM Regulation, several changes to the Solid Waste Regulations (6 CCR 1007-2, Part 1) are proposed. First, TENORM related definitions are added to Section 1.2. Second, Section 2.1.2 is amended such that all solid waste disposal sites and facilities required to have waste characterization plans will include waste screening provisions for TENORM constituents in those plans. Furthermore, for each type of solid waste facility addressed specifically in the Part 20 TENORM Regulation, the pertinent requirements from Part 20 are proposed for direct adoption in the Solid Waste Regulations. Section 12 on the management and disposal of drinking water treatment residuals is proposed for deletion because its provisions for TENORM characterization have now been superseded by the Part 20 TENORM Regulation, and because its provisions for landfilling of sludge have been superseded by Section 3 of the Solid Waste Regulations. Only one site permitted under Section 12 is still operating and it will not be required to be re-permitted under Section 3. Finally, for the subset of Section 9 waste impoundments that manage potential TENORM waste, those facilities would need to modify their closure plans to account for TENORM constituents.

Any information that is incorporated by reference in these proposed rules is available for review at the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division and any state publications depository library.

Pursuant to C.R.S. §24-4-103(3), a notice of proposed rulemaking was submitted to the Secretary of State on October 14, 2022. Copies of the proposed rulemaking will be mailed to all persons on the Solid and Hazardous Waste Commission's mailing list on or before the date of publication of the notice of proposed rulemaking in the Colorado Register on October 25, 2022.

The proposed rulemaking materials may also be accessed at:
https://cdphe.colorado.gov/shwc-rulemaking-hearings

WRITTEN TESTIMONY

Any alternative proposals for rules or written comments relating to the proposed amendment of the regulation will be considered. The Solid and Hazardous Waste Commission will accept written testimony and materials regarding the proposed alternatives. **The commission strongly encourages interested parties to submit written testimony or materials to the Solid and Hazardous Waste Commission Office, via email to cdphe.hwcrequests@state.co.us by Friday, November 4, 2022, at 11:59 p.m. Written materials submitted in advance will be distributed to the commission members prior to the day of the hearing.** Submittal of written testimony and materials on the day of the hearing will be accepted, but is strongly discouraged.

HEARING SCHEDULE:

DATE:	Tuesday, November 15, 2022
TIME:	9:00 a.m.
PLACE:	Colorado Department of Public Health and Environment 4300 Cherry Creek Drive South Building A, Sabin Conference Room Denver, CO 80246 (At this time, only Commissioners and staff are able to meet in person. All other attendance is welcomed virtually via Zoom.) **-OR-** **Due to COVID-19 or inclement weather, the meeting will be held online only at:**

https://us02web.zoom.us/meeting/register/tZYvcOytqzMqGdMFvHAearTlU1ErVZtdCubU

Please check for the official location of the meeting on the commission's website:
https://cdphe.colorado.gov/shwc-meeting-information

Oral testimony at the hearing regarding the proposed amendments may be limited.

Brandy Valdez Murphy, Administrator

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission/Hazardous Materials and Waste Management Division

6 CCR 1007-2

PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES

TENORM Amendments

1) Section 12 of the Table of Contents of the Solid Waste Regulations is being amended by deleting and reserving Section 12 to read as follows:

PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES

TABLE OF CONTENTS

PART B
REQUIREMENTS AND INFORMATION CONCERNING
ALL SOLID WASTE DISPOSAL SITES AND FACILITIES
IN THE STATE OF COLORADO

****

SECTION 12 RESERVED ~~WATER TREATMENT PLANT SLUDGE~~

~~**Applicable to all water treatment plant sludge disposal sites and facilities**~~

~~**12.1 General provisions**~~

~~**12.2 Application information alternatives**~~

~~**12.3 Sludge acceptance criteria**~~

****

2) Section 1.2 is being amended by adding the following definitions:

1.2 DEFINITIONS

****

"Technologically enhanced naturally occurring radioactive material" (TENORM) means naturally occurring radioactive material whose radionuclide concentrations are increased by or as a result of past or present human practices. "TENORM" does not include:

A. Background radiation or the natural radioactivity of rocks or soils;
B. "Byproduct material" or "source material", as defined by Colorado statute or rule; or
C. Enriched or depleted uranium as defined by Colorado or federal statute or rule.

****

"TENORM Radionuclides" means Radium-226, Radium-228, Lead-210, and Polonium-210.

****

3) Section 2.1.2 is amended by adding paragraph (C)(5) to read as follows:

SECTION 2

MINIMUM STANDARDS

2.1 SITE AND FACILITY STANDARDS. All solid waste disposal sites and facilities shall comply with the following standards:

****

2.1.2

****

(C) All sites and facilities, requiring a certificate of designation, shall have a waste characterization and disposal plan approved by the Department and in use for such site and facility. The plan shall outline waste screening methodologies, appropriate waste handling procedures, and waste exclusion procedures which shall be implemented at each facility. The plan shall:

(1) Describe the responsibility of the waste generator in determining if the generator's waste is a hazardous waste pursuant to the Colorado Hazardous Waste Regulations, 6 CCR 1007-3, Part 261. Such determination may be made by:

(i) Testing the waste according to the methods set forth in Subpart C of Part 261 or according to an equivalent method approved by the Department under Section 260.21; or

(ii) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

(2) Include the site and facility's owner or operator's evaluations, screening methods, and documentation procedures regarding the generator's waste characterization determination.

(3) Include an identification of the waste streams requiring specific waste handling and/or disposal methods; and

(4) Include a contingency plan developed for handling any hazardous waste that is inadvertently discovered.

(5) Include: i) provisions for excluding waste that is TENORM above the exempt limits established in 6 CCR 1007-1, Part 20.4; or ii) for solid waste disposal sites and facilities that are registered under 6 CCR 1007-1, Part 20, provisions for ensuring TENORM disposed at the facility does not exceed the licensing levels in 6 CCR 1007-1, Part 20; and iii) a contingency plan for handling of TENORM waste inadvertently accepted that are above the levels set forth in (i) or (ii) as appropriate per the levels specified in the facility's approved plans.

****

4) Section 3.3 is amended by adding subsection 3.3.9 (TENORM Requirements for Landfills) to read as follows:

PART B

SECTION 3

STANDARDS FOR SOLID WASTE DISPOSAL LANDFILL SITES AND FACILITIES

3.3 OPERATING CRITERIA

****

3.3.9 TENORM Requirements for Landfills

Prior to disposing of TENORM above the exempt limits in 6 CCR 1007-1, Part 20, landfills shall be registered and are subject to the following requirements and limitations, unless they are in compliance with alternative non-exempt TENORM management and disposal requirements approved by the Department under 6 CCR 1007-1, Part 20.9 and incorporated into the facility EDOP:

A. Must comply with 6 CCR 1007-1, Part 20.

B. Must have an approved Waste Characterization Plan (either stand alone or as an appendix to the facility's Engineering Design and Operation Plan) that allows acceptance of TENORM waste at concentrations, excluding natural background, up to 50 pCi/g each in dry weight of Radium-226, Radium-228, Lead-210 and Polonium-210. The Waste Characterization Plan must have waste acceptance procedures specific to TENORM wastes.

C. Must have an engineered liner or barrier layer with hydraulic conductivity less than or equal to 1x10-7 cm/sec in accordance with Section 3.2.5 (C)(2) or (3) of this Section, or in accordance with Section 3.2.5(C)(4) of this Section subject to site-specific Division approval.

D. Must have a leachate collection system that meets the requirements Section 3.2.5(d) of this Section.

E. Must have a groundwater monitoring system in compliance with Sections 2.1.15 and 2.2 of these regulations.

F. Must have a minimum of 4 meters of materials not subject to 6 CCR 1007-1, Part 20, in addition to the engineered liner or barrier layer, between the lowest placement of Non-Exempt TENORM and groundwater.

G. Must place 6 inches of cover materials not subject to 6 CCR 1007-1, Part 20 on all TENORM at the end of each operating day.

H. Must have a minimum of 3 meters of not subject to 6 CCR 1007-1, Part 20 requirements above the non-exempt TENORM prior to closure of any area. This may include the final cover system.

I. Must sample and characterize leachate for each TENORM isotope received by the facility.

1. If concentrations of TENORM isotopes are detected in the leachate in excess of the groundwater standards these isotopes must be included in the groundwater monitoring plan.

2. Leachate containing concentrations of TENORM isotopes less than 100 pCi/L may be applied to the working face of the landfill.

3. TENORM registrants per 6 CCR 1007-1, Part 20 shall not perform any other method of recirculation or application of leachate containing concentrations of TENORM isotopes in excess of groundwater standards within the facility without prior written approval from the Department.

J. Must place any drill cuttings from methane gas collection system installation within the facility on the working face and treated as TENORM waste.

K. For sites where solidification activities are approved within the Engineering Design and Operations Plan, must place the Non-exempt TENORM materials received by the facility for solidification within the solidification basins and must commence the solidification process within 24 hours of receipt.

L. Following closure of the landfill, must place an environmental covenant or restrictive notice on the facility property in accordance with C.R.S § 25-15-320 and shall include a specific provision which requires that any future buildings, residential or commercial, constructed on the permitted site post closure, require radon resistant construction, post construction assessment and testing, and radon mitigation sufficient to meet any federal, local, or Colorado standards on indoor radon concentrations. Alternatively, the environmental covenant may prohibit construction of any buildings on the site. **Note**: Irrespective of TENORM considerations, solid waste landfills will trigger an institutional control requirement at closure.

5) Section 8.6 (Beneficial Use) is amended by adding subsection 8.6.7(C) (Land application of water treatment residuals) to read as follows:

SECTION 8
RECYCLING & BENEFICIAL USE

****

8.6 BENEFICIAL USE

****

8.6.7(C) Land application of water treatment residuals.

Non-Exempt TENORM in the form of water treatment residuals to be used for land application shall be registered and are subject to the requirements and limitations as follows, unless the Department has approved alternative non-exempt TENORM management requirements under 6 CCR 1007-1, Part 20.9;

(1). Registrants may possess materials that contain or are contaminated at concentrations, excluding natural background, greater than 5 pCi/g but not in excess of 50 pCi/g each in dry weight of Radium-226, Radium-228, Lead-210, and Polonium-210.

(2). Activities shall be in accordance with a Beneficial Use Certification or Beneficial Use Determination issued by the Hazardous Materials and Waste Management Division of the Department.

(3). Application to land for beneficial use.

(a). Concentrations of radionuclides in water treatment residuals applied to land shall not exceed 25 pCi/g each of Radium-226, Radium-228, Lead-210, and Polonium-210.

(b). Water treatment residuals containing Non-Exempt TENORM shall not be applied to an authorized application site for more than 20 years or 20 cropping cycles without written Department approval.

(4). Characterization. Characterization of TENORM materials including sampling and analysis shall be performed using appropriate and standard methods such as EPA SW-846 or equivalent alternative methods recognized by the Department.

(a). Water treatment residuals shall be characterized for concentrations of TENORM radionuclides prior to application.

(b). Characterization shall be done initially on residuals to be applied to land and thereafter at the following frequencies based on dry short tons per year (dst/y) produced:

i. Once per year for less than 319 dst/y.

ii. Once per quarter for greater than 319 but less than 1,650 dst/y.

iii. Once per two months for greater than 1,650 but less than 16,500 dst/y.

iv. Once per month for greater than 16,500 dst/y.

(c). Records of characterization shall be maintained for inspection by the Department until such time as the application activities cease at the site.

(d). Registrants shall provide notice to the Department sixty days prior to ceasing application activities at the site.

(5). Records of land application shall be provided to the Department annually. Records shall include:

(a). Each application site location; and

(b). Number of applications at each site.

6) Section 9.2.1 is amended by revising the title of the section and adding paragraph (C) to read as follows:

9.2.1 DESIGN, ~~AND~~ CONSTRUCTION AND OPERATIONS

The following design criteria apply to a Type A waste impoundment.

(A) **Access control**: The owner or operator shall control public access, prevent unauthorized access, provide for site security both during and after business hours, and prevent illegal dumping of wastes. Effective artificial or natural barriers may be used in lieu of fencing.

(B) **Stormwater control**: Each waste impoundment shall be designed, constructed and maintained to provide: (1) run-on control and diversion structures to prevent flow into the unit from a 25-year, 24-hour storm, and
(2) a run-off control system to collect runoff from a 25-year, 24-hour storm and control run-off from a 100-year, 24-hour storm. Precipitation that cannot be diverted from the impoundment, and therefore comes in contact with impounded waste, shall be managed as solid waste. Each impoundment shall be designed, constructed and maintained to prevent damage to the containment structure from erosion.

(C) **Characterization**: The owner or operator of a solid waste facility managing potential TENORM waste in a Type A waste impoundment shall ensure that such wastes are representatively characterized according to their TENORM characteristics. Any wastes characterized as non-exempt TENORM wastes must be disposed of at a facility approved to accept such wastes.

7) Section 9.2.5 (Closure) is amended by revising the introductory paragraph to read as follows:

9.2.5 CLOSURE: The owner or operator of each Type A waste impoundment shall develop a closure plan and submit it for Department approval. The closure plan must present sufficient detail to support the closure cost estimates required in Sections 4 and 9.2.2 above and to enable the Department to evaluate the adequacy of financial assurance. For some Type A impoundments, the scope of the closure plan will be limited to sludge and impacted soil removal, disposal and verification sampling to ensure residual contamination is below acceptable levels in soil and ground water. Type A waste impoundments in which potential TENORM wastes have been managed must address TENORM radionuclides in the closure plan.

8) Section 9.3.3 (Facility Operation Requirements) is amended by revising paragraph (F) and adding paragraph (G)(6) to read as follows:

9.3.3 FACILITY OPERATION REQUIREMENTS

(F) **Waste Characterization For Impoundments Accepting Only Wastes Generated On-site**: Waste impoundments accepting only wastes generated on-site shall initially profile each waste stream entering the impoundments and then update the profile as necessary to account for significant changes to the waste generation process. For those Type B waste impoundments accepting potential TENORM waste, the waste profile must include characterization for TENORM radionuclides. Existing facilities may use the Demonstration Report to establish the initial waste profile.

(G) **Waste Characterization For Impoundments Accepting Wastes From Third Parties**:

****

(6) Type B waste impoundment facilities accepting waste from third parties must also comply with Section 2.1.2 (C)(5) provisions related to TENORM waste.

****

9) Section 9.3.4 (Engineering Design and Operations Plan) is amended by revising paragraphs (F)(1)(c) and (F)(1)(d) to read as follows:

9.3.4 ENGINEERING DESIGN AND OPERATIONS PLAN

****

(F) **Closure Plan**: The EDOP shall include a closure plan that describes the steps necessary to close each impoundment at any point during its active life and at the end of the facility's active life. The facility may either: 1) close the waste in place as a solid waste landfill in accordance with these Solid Waste Regulations, or 2) remove all solid waste and residual contamination to meet unrestricted use concentrations. Option 2, also known as "clean closure," eliminates the need for post-closure care. Both Option 1 and Option 2 require the owner or operator of a waste impoundment to develop a closure plan.

(1) The closure plan shall include the following information consistent with Section 9.3.6:

****

(c) Proposed plans and procedures for sampling and testing soil and ground water at the site, to include TENORM radionuclides if the site accepted TENORM waste or potential TENORM waste during site operations;

(d) Provisions for sampling and testing of residual materials, such as sludge and soil, and provisions for final disposal, to include TENORM radionuclides if the site accepted TENORM waste or potential TENORM waste during site operations.

****

10) Section 12 is deleted in its entirety and reserved to read as follows:

SECTION 12

RESERVED~~WATER TREATMENT PLANT SLUDGE~~

~~12.1 **GENERAL PROVISIONS** The following general provisions apply to all water treatment plant sludge disposal facilities except as provided in 12.1.4 for facilities in operation prior to adoption of these regulations.~~

~~12.1.1 (A) Any person who disposes of water treatment plant sludge, receives water treatment plant sludge for disposal or permits water treatment plant sludge to be disposed of on any facility or property which he operates or possesses shall do so in compliance with the requirements of Sections 1 through 3, and 12 of these regulations.~~

~~(B) If a conflict exists between the requirements of Sections 1 through 3 and the requirements of this Section 12, the requirements of Section 12 shall control.~~

~~(C) Notwithstanding the provisions of (A) and (B) Above, a person who disposes of water treatment plant sludge, receives water treatment plant sludge for disposal or permits water treatment plant sludge to be disposed of on any facility or property which he operates or possesses is not required to comply with subsections 1.4.4, 2.1.8, 2.1.9, 2.3, 3.1.1 of these regulations.~~

~~12.1.2 Each water treatment plant sludge disposal facility shall comply with Colorado health laws and with the standards, rules and regulations of the Department and the water quality control commission and with all applicable local zoning laws and ordinances.~~

~~12.1.3 These regulations do not apply to water treatment plant sludges which are beneficially used under the authority of the Colorado Domestic Sewage Sludge Regulations.~~

~~12.1.4 (A) Surface and ground water monitoring may be required by the Department at existing facilities where impairment of existing or future use of surface or ground water is determined to be probable.~~

~~(B) Those facilities in operation prior to adoption of these regulations may be required to come into compliance with these regulations upon a determination by the Department after consultation with the local governing body having jurisdiction that such facilities are causing impairment of existing or future use of surface water or ground water.~~

~~**12.2 APPLICATION INFORMATION ALTERNATIVES** For the purposes of this Section 12 only as applied to the disposal of water treatment plant sludge, a person who disposes of water treatment plant sludge, receives water treatment plant sludge for disposal or permits water treatment plant sludge to be disposed of on any facility or property which he operates or possesses shall also comply with the following modifications to Sections 2 and 3 of these regulations:~~

~~12.2.1 If the total alpha activity of the sludge exceeds 40 picocuries per gram of dry sludge, the sludge generator shall contact the Department's Radiation Control Division for further disposal guidance.~~

~~12.2.2 A facility that operated as a water treatment sludge landfill shall: provide compacted fill material; provide adequate cover with suitable material; provide surface drainage designed to prevent~~

~~ponding of water, wind erosion; prevent water and air pollution; and upon being filled, shall be left in a condition of orderliness and aesthetic appearance capable of blending with the surrounding area. In the operation of such a site and facility, the sludges shall be distributed in the smallest area consistent with handling traffic to be unloaded and shall be placed in the most dense volume practicable.~~

~~12.2.3 Adequate fencing, natural barriers or other security measures to preclude public entry shall extend around the entire perimeter of the facility and shall include a lockable gate or gates.~~

~~12.2.4 All ground water monitoring points shall be installed in accordance with applicable rules and regulations of the "Water Well and Pump Installation Contractor's Act," Title 37, Article 91, Part 1, CRS 1973 as amended. The facility operator shall be responsible for conducting a program of ground water sampling to document and monitor the water quality in such wells.~~

~~12.2.5 Ground water quality concentrations shall be monitored regularly, as deemed necessary by the Department on a site specific basis.~~

~~12.2.6 The type and quantity of material to be used as intermediate cover shall be identified in the engineering design and operations report of each water treatment plant sludge facility.~~

~~12.2.7 The following information shall be provided in the engineering design and operations report of each water treatment plant sludge facility: the type and quantity of material that will be required for use as a liner, if a liner is required; and the type and quantity of material that will be required for use as final cover, including its compaction density, moisture content specifications and the design permeability.~~

~~12.2.8 Maps and plans, drawn to a convenient common scale, showing the location and depth of cut for liners (if required), shall be submitted as part of the engineering design and operations report.~~

~~12.2.9 Maps and plans, drawn to a convenient common scale, showing the intermediate and final cover, shall be submitted as part of the engineering design and operations report.~~

~~12.2.10 Maps and plans, drawn to a convenient common scale, showing the location of all proposed monitoring points for surface water and ground water, shall be submitted as part of the engineering design and operations report.~~

~~12.2.11 Construction details for all proposed monitoring points for surface water stations and ground water monitoring wells shall be submitted as part of the engineering design and operations report.~~

~~12.2.12 The daily operating hours of the facility, the frequency of operation including the number of days per month and the number of months per year, the daily volume in cubic yards to be received on operating days, and the expected life of the site shall be included in the engineering design and operations report.~~

~~12.2.13 The engineering design and operations report shall specify the systems of records to be maintained documenting incoming waste volumes, water quality monitoring results, as built construction details and variations from approved operating procedures.~~

~~12.2.14 The amounts and sources of water to be used on site for the control of nuisance conditions, construction purposes, and personnel use shall be identified in the engineering design and operations report.~~

~~12.2.15 Provisions for the monitoring of ground water and surface water after closure shall be identified in the engineering design and operations report.~~

~~**12.3 SLUDGE ACCEPTANCE CRITERIA** In addition to compliance with Sections 1 through 3 of these regulations, a person who disposes of water treatment plant sludge, receives water treatment plant sludge for disposal or permits water treatment plant sludge to be disposed of on any facility or property which he operates or possesses shall also comply with the following:~~

~~12.3.1 Facilities shall not accept water treatment plant sludges containing any free liquids. U.S. Environmental Protection Agency laboratory method 9095, the "Paint Filter Liquids Test", shall be used to determine compliance with the requirements of this subsection.~~

~~12.3.2 Facilities shall not accept water treatment sludges having a pH less than 6.0 standard units.~~

~~12.3.3 No water treatment plant sludge disposal facility shall accept waste of any other kind without approval from the County Board of Commissioners or City governing body and the Department.~~

11) Section 14 is amended by adding subsection 14.4.9 (TENORM Requirements for Compost Facilities) to read as follows:

SECTION 14

COMPOSTING

****

14.4 – CLASS III COMPOSTING FACILITIES

****

14.4.9 TENORM Requirements for Compost Facilities

Facilities shall comply with Section 2.1.2(C)(5) of these regulations. Facilities that compost Non-Exempt TENORM shall be registered and are subject to the following requirements and limitations, unless they are in compliance with alternative non-exempt TENORM management and disposal requirements approved by the Department under 6 CCR 1007-1, Part 20.9 and incorporated into the site EDOP:

A. TENORM registrants per 6 CCR 1007-1, Part 20 may accept and/or process feedstock materials that contain or are contaminated at concentrations, excluding natural background, greater than 5 pCi/g but not in excess of 50 pCi/g each in dry weight of Radium-226, Radium-228, Lead-210, and Polonium-210.

B. Commercial composting facility activities shall be in accordance with 6 CCR 1007-2 Part 1 Section 14.

1. Prior to accepting any non-exempt TENORM feedstock materials for composting, registrants shall obtain Department approval of a new or revised Engineering Design and Operations Plan that addresses TENORM constituents in:

a. the description of feedstocks;

b. the waste characterization plan;
c. the evaluation of potential impacts to existing surface water and groundwater quality;
d. the groundwater monitoring plan; and
e. the compost sampling and testing description.

C. **Sale or Distribution**.

1. Finished compost shall be characterized for concentrations of TENORM radionuclides prior to sale or distribution.

2. Characterization, including sampling and analysis, shall be performed using appropriate and standard methods such as EPA SW-846 or equivalent alternative methods recognized by the Department.

3. Characterization shall be done initially on finished compost and thereafter at the following frequencies based on dry short tons per year (dst/y) produced:

a. Once per year for less than 319 dst/y.
b. Once per quarter for greater than 319 but less than 1,650 dst/y.
c. Once per two months for greater than 1,650 but less than 16,500 dst/y.
d. Once per month for greater than 16,500 dst/y.
e. If feedstocks change, the initial characterization shall be repeated.

4. Registrants must ensure that concentrations of TENORM radionuclides in finished compost to be sold or distributed for off-site use shall not exceed 5 pCi/g for any TENORM constituent (Radium-226, Radium-228, Lead-210, and Polonium-210).

5. Records of characterization data demonstrating compliance with the 5 pCi/g standard shall be maintained for inspection by the Department for no less than 5 years after the materials have been distributed.

6. Compost that meets the 5 pCi/g standard is acceptable for unrestricted use, provided that other finished compost criteria specified in Section 14.6 are met.

D. **Finished Compost containing Non-Exempt TENORM**.

Finished compost that exceeds the 5 pCi/g standard of 14.4.9.C.4. is considered to contain non-exempt TENORM. Finished Compost containing Non-Exempt TENORM shall be:

1. Transferred only to a recipient registered with the Department in accordance with 6 CCR 1007-1, Part 20 for use or disposal;

2. Reintroduced into the compost process; or

3. Transferred to an individual authorized to receive such material under terms of a specific radioactive materials license or equivalent licensing document, issued by the Department, NRC or any Agreement State, or to any person otherwise authorized to receive such material by the Federal Government or any agency thereof, the Department, or an Agreement State.

E. **Final closure**.

The compost facility shall not be closed and released for unrestricted use until:

1. All registered TENORM materials must be disposed or transferred in accordance with paragraph D of this section 14.4.9; and

2. The owner or operator shall conduct radiological characterization of the facility to ensure that:

a. Any radionuclide concentration in soil, adjacent to or within the facility boundary, does not exceed the limitation specified in Table 20-1 of 6 CCR 1007-1, Part 20. If any exceedance is found, the facility shall be remediated until the limits in Table 20-1 are met.

b. Radionuclide concentrations in groundwater do not exceed 5 pCi/L for Radium-226 plus Radium-228 and 5 pCi/L for Lead-210 plus Polonium-210; or the statewide standards for radioactive materials established by the Water Quality Control Commission in accordance with the Water Quality Control Act, whichever is more restrictive. If any exceedance is found, the facility shall conduct groundwater remediation until the above limits are met.

12) Section 17 is amended by adding subparagraph (C)(6) to section 17.3.3 to read as follows:

SECTION 17

COMMERICAL EXPLORATION & PRODUCTION WASTE IMPOUNDMENTS

17.3 DESIGN, CONSTRUCTION AND OPERATION REQUIREMENTS

17.3.3 Operating Requirements

17.3.3(C) Waste Characterization:

17.3.3(C)(1) The owner or operator of commercial EP waste disposal facilities shall develop and implement waste analysis procedures to ensure that only EP waste is disposed of at the facility. The disposal of waste streams different from those originally approved shall constitute a significant change in operation and require an approval by the Department and the local governing authority prior to acceptance at the facility. An amendment to the facility's certificate of designation may be required.

17.3.3(C)(2) The owner or operator of each commercial EP waste impoundment facility shall initially profile and then conduct annual testing on each waste stream entering the facility, including, at a minimum, waste from each well and/or each tank battery and each drilling location, to demonstrate conformance with the original analyses. Each facility must also ensure that EP waste generators using the facility notify the facility when there has been a change in their processes or waste composition.

17.3.3(C)(3) The owner or operator of each EP waste disposal facility shall analyze at least one sample of the contents of each impoundment annually for the suite of analytes included in Appendix II of the Solid Waste Regulations. Such analysis shall be performed using appropriate methods as specified in the site-wide monitoring plan to provide an accurate representation of

constituents and concentration levels found in the waste. If the impounded wastes are subject to stratification, a separate sample shall be taken from each representative level, including settled sludge and oil or other surface accumulation.

17.3.3(C)(4) Annual testing of unannounced grab samples shall be taken from random vehicles entering the facility and analyses conducted for the original or approved amended list of parameters. If any waste is found to differ from the original analysis, the Department and local governing body having jurisdiction shall be notified in writing within seven (7) calendar days, and a request to modify the design and operation plan submitted to the Department and local governing authority for review and approval prior to continuing acceptance the identified waste stream.

17.3.3(C)(5) EP waste disposal facilities shall not receive hazardous waste and will conduct waste profiling in accordance with Section 2 and their approved waste characterization plan (as amended to conform to this Section 17).

17.3.3(C)(6) EP waste disposal facilities must also comply with Section 2.1.2 (C)(5) provisions related to TENORM waste.

****

13) Section 17 is amended by adding subsection 17.5.8 (Closure Provisions Related to TENORM) to read as follows:

SECTION 17

COMMERICAL EXPLORATION & PRODUCTION WASTE IMPOUNDMENTS

17.5 CLOSURE

****

17.5.8 Closure Provisions Related to TENORM

The facility closure plan shall include a detailed site investigation and remediation if necessary, for TENORM radionuclides. The closure plan shall be submitted to the Department for review and approval at least sixty (60) days prior to closure. The closure plan shall address, but not be limited to:

A. Sampling and analysis to determine the extent of contamination in or compliance with standards for soil, surface water, and groundwater;

B. Activities required to decommission and remove all equipment contaminated with TENORM materials subject to Part 20 (may be inapplicable to disposal facilities, for registrants only); and

C. Disposal of residual TENORM subject to Part 20.

Owners and operators of facilities where non-exempt TENORM was accepted during the life of the facility or is identified as a result of the closure plan investigation shall be required to amend their closure plan for the following provisions:

A. Facility access control;

B. Potential exposures to TENORM during remedial activities including either a radiological dose estimate demonstrating that no individual will exceed an annual dose of 100 millirem (1 millisievert) or information on the individuals authorized to perform such operations under terms of a specific radioactive materials license or equivalent licensing document, issued by the Department, NRC or any Agreement State;

C. Schedule for remedial and closure activities to be conducted and completed;

D. Post-closure monitoring for TENORM radionuclides if determined necessary by the Department; and

E. Following closure of the waste management units covered at the facility, an environmental covenant or restrictive notice must be placed on the facility property and shall include a specific provision which requires that any future buildings, residential or commercial, constructed on the permitted site post closure, require radon resistant construction, post construction assessment and testing, and radon mitigation sufficient to meet any federal, local, or Colorado standards on indoor radon concentrations. Alternatively, the environmental covenant may prohibit construction of any buildings on the site. This paragraph does not apply in cases where no environmental covenant would be required under 25-15-320(1), C.R.S. **Note:** Closure of solid waste in place, irrespective of TENORM considerations, would trigger the institutional control requirement.

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission Hazardous Materials and Waste Management Division

6 CCR 1007-2

STATEMENT OF BASIS AND PURPOSE AND SPECIFIC STATUTORY AUTHORITY FOR

Amendments to the Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2, Part 1) – For Consistency with 6 CCR 1007-1, Part 20

Basis and Purpose

I. Statutory Authority

Section 30-20-109, C.R.S. gives the Solid and Hazardous Waste Commission (the commission) the authority to promulgate regulations for the design and operation of solid waste disposal sites and facilities. This authority includes provisions related to the management of solid waste that contains or potentially contains technologically enhanced naturally occurring radioactive material (TENORM).

II. Purpose of revised regulations:

The purpose of the revised regulations is to make changes to the solid waste regulations for conformance with 6 CCR 1007-1, Part 20 (the Part 20 TENORM Regulation) promulgated by the Board of Health in December 2020. The Part 20 TENORM Regulation affects any solid waste facility that manages, or potentially receives, non-exempt TENORM. In addition, the Part 20 Rule has sector-specific requirements for several types of solid waste facilities.

Discussion of Regulatory Proposal

For the purpose of aligning with the Part 20 TENORM Regulation, several changes to the Solid Waste Regulations (6 CCR 1007-2, Part 1) are proposed. These are referred to by their section numbers. First, TENORM related definitions are added to Section 1.2. Second, Section 2.1.2 is amended such that all solid waste disposal sites and facilities required to have waste characterization plans will include waste screening provisions for TENORM constituents in those plans. Furthermore, for each type of solid waste facility addressed specifically in the Part 20 TENORM Regulation, the pertinent requirements from Part 20 are proposed for direct adoption

in the Solid Waste Regulations. Section 12 on the management and disposal of drinking water treatment residuals is proposed for deletion because its provisions for TENORM characterization have now been superseded by the Part 20 TENORM Regulation, and because its provisions for landfilling of sludge have been superseded by Section 3 of the Solid Waste Regulations. Only one site permitted under Section 12 is still operating and it will not be required to be re-permitted under Section 3. Finally, for the subset of Section 9 waste impoundments that manage potential TENORM waste, those facilities would need to modify their closure plans to account for TENORM constituents.

Description of Local Government Involvement in the Stakeholder Process

Executive Order D 2011-005 (EO-5), "Establishing a Policy to Enhance the Relationship between State and Local Government" requires state rulemaking agencies to consult with and engage local governments prior to the promulgation of any rules containing mandates. The Department completed an EO-5 Internal Communication Form – Conception Phase that was transmitted to local governments. These regulations would impact any county or municipality that operates a commercial landfill. Additionally, local governments that operate commercial compost facilities or section 9 impoundments would be affected to the extent that these waste management units manage potential TENORM. The Department maintains contact lists for solid waste facility owners and operators, and these were used to invite entities who operate these types of facilities (including local governments) to stakeholder meetings held for these different sectors.

Issues Encountered During Stakeholder Process:

The National Waste and Recycling Association (NWRA) was the sole commenter during both written comment periods of the proposed rulemaking stakeholder process. The first set of comments resulted in changes to the proposal. The second set of comments showed that the NWRA's issues were mostly resolved, with two exceptions being as follows.

First, NWRA recommended, for simplicity's sake that the Part 20 TENORM Regulation requirements be referenced, not repeated, in the Solid Waste Regulations. The Division considered this option but decided against it, reasoning that it is arguably more user-friendly to have the pertinent requirements repeated in the Solid Waste Regulations, rather than forcing solid waste sites to read two different sets of rules simultaneously to obtain the full scope of requirements. Additionally, including the TENORM provisions in the Solid Waste Regulations is necessary for the Solid Waste and Materials Management Program (Program), as the primary regulator of solid waste facilities and the entity that approves the Engineering Design and Operations Plans that will incorporate requirements related to TENORM, to have the ability to enforce these requirements.

Second, the NWRA highlighted what they perceive as a disconnect with groundwater monitoring and remediation requirements in the Part 20 Regulation itself. Since this rulemaking is solely for the purpose of consistency with the existing Part 20 Regulation,

making changes to the underlying Part 20 Regulation is outside the scope of this rulemaking.

Regulatory Alternatives

No other regulatory alternatives were evaluated.

Cost/Benefit Analysis

A cost / benefit analysis will be performed if requested by the Colorado Department of Regulatory Agencies.

Notice of Proposed Rulemaking

Tracking number

2022-00650

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-2 Part 1

Rule title

SOLID WASTE SITES AND FACILITIES

Rulemaking Hearing

Date

11/15/2022

Time

09:00 AM

Location

CDPHE, 4300 Cherry Creek Drive South, Bldg. A, Sabin Conference Room, Denver, CO 80246

Subjects and issues involved

The purpose of revising Section 10 is to change the waste tire hauler and mobile waste tire processor registration renewal date, clarify when the Department may cancel a waste tire hauler or mobile waste tire processor Certificate of Registration, and set the End User Fund per ton rebate.

Statutory authority

These modifications are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in Section 30-20-1401(2), C.R.S.

Contact information

Name

Brandy Valdez Murphy

Title

Administrator, Solid and Hazardous Waste Commission

Telephone

303-692-3467

Email

brandy.valdezmurphy@state.co.us

COLORADO
Solid & Hazardous
Waste Commission
Department of Public Health & Environment

NOTICE OF PROPOSED RULEMAKING HEARING
BEFORE THE
COLORADO SOLID AND HAZARDOUS WASTE COMMISSION

SUBJECT:

For consideration of the amendments to 6 CCR 1007-2, Part 1, Section 10, along with the accompanying Statement of Basis and Purpose, the following will be considered:

Amendment of 6 CCR 1007-2, Part 1, Section 10 – Regulations Pertaining to Solid Waste Sites and Facilities – Waste Tires

These modifications are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in Section 30-20-1401(2), C.R.S.

The purpose of revising Section 10 is to change the waste tire hauler and mobile waste tire processor registration renewal date, clarify when the Department may cancel a waste tire hauler or mobile waste tire processor Certificate of Registration, and set the End User Fund per ton rebate.

Any information that is incorporated by reference in these proposed rules is available for review at the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division and any state publications depository library.

Pursuant to C.R.S. §24-4-103(3), a notice of proposed rulemaking was submitted to the Secretary of State on October 14, 2022. Copies of the proposed rulemaking will be mailed to all persons on the Solid and Hazardous Waste Commission's mailing list on or before the date of publication of the notice of proposed rulemaking in the Colorado Register on October 25, 2022.

The proposed rulemaking materials may also be accessed at:
https://cdphe.colorado.gov/shwc-rulemaking-hearings

WRITTEN TESTIMONY

Any alternative proposals for rules or written comments relating to the proposed amendment of the regulation will be considered. The Solid and Hazardous Waste Commission will accept written testimony and materials regarding the proposed alternatives. **The commission strongly encourages interested parties to submit written testimony or materials to the Solid and Hazardous Waste Commission Office, via email to cdphe.hwcrequests@state.co.us by Friday, November 4, 2022, at 11:59 p.m. Written**

materials submitted in advance will be distributed to the commission members prior to the day of the hearing. Submittal of written testimony and materials on the day of the hearing will be accepted, but is strongly discouraged.

HEARING SCHEDULE:

DATE: Tuesday, November 15, 2022
TIME: 9:00 a.m.
PLACE: Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Building A, Sabin Conference Room
Denver, CO 80246
(At this time, only Commissioners and staff are able to meet in person. All other attendance is welcomed virtually via Zoom.)
-OR-
Due to COVID-19 or inclement weather, the meeting will be held online only at:

https://us02web.zoom.us/meeting/register/tZYvcOytqzMqGdMFvHAearTlU1ErVZtdCubU

Please check for the official location of the meeting on the commission's website: https://cdphe.colorado.gov/shwc-meeting-information

Oral testimony at the hearing regarding the proposed amendments may be limited.

Brandy Valdez Murphy, Administrator

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission/Hazardous Materials and Waste Management Division

6 CCR 1007-2

PART 1 REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES

Section 10 Waste Tire Amendments

1) Section 10.3.2 (Registration for Waste Tire Haulers) is being amended by revising paragraphs (G) and (K) to read as follows:

SECTION 10.3 - STANDARDS FOR WASTE TIRE HAULERS

****

10.3.2 REGISTRATION FOR WASTE TIRE HAULERS

****

(G) All Waste Tire Haulers who wish to continue hauling waste tires must submit an application for renewal (Form WT-1H) no later than March 1 of every odd numbered year.

****

(K) The Department may cancel a Waste Tire Hauler Certificate of Registration of a person who: 1) no longer hauls waste tires, 2) fails to submit the waste tire hauler renewal (Form WT-1H) as required by Section 10.3.2(G), or 3) fails to submit an Annual Report as required by Section 10.3.5.

2) Section 10.3.3 (Waste Tire Hauler Decals) is being amended by revising paragraph (C) to read as follows:

SECTION 10.3 - STANDARDS FOR WASTE TIRE HAULERS

****

10.3.3 WASTE TIRE HAULER DECALS

****

(C) Each Waste Tire Hauler vehicle decal and temporary decal will be valid until April 15 of the year indicated on the vehicle decal and will have a unique number. Prior to the expiration date, a Waste Tire Hauler must submit a ~~new~~ renewal application (Form WT-1H) for a Certificate of Registration pursuant to section 10.3.2(G) above.

****

3) Section 10.7.3 (Mobile Waste Tire Processors Registration Requirements) is being amended by revising paragraphs (H) and (J) to read as follows:

10.7 - STANDARDS FOR MOBILE WASTE TIRE PROCESSORS

****

10.7.3 MOBILE WASTE TIRE PROCESSORS REGISTRATION REQUIREMENTS

****

(H) All Mobile Waste Tire Processors who wish to continue mobile processing waste tires must submit an application for renewal (Form WT-1M) no later than March 1 of every odd numbered year.

****

(J) The Department may cancel a Certificate of Registration of a person who: 1) no longer mobile processes waste tires, 2) fails to submit a mobile waste tire processing renewal (Form WT-1M), 3) fails to submit an Annual Report as required by Section 10.7.7, or 4) fails to maintain financial assurance as required by Section 10.7.6.

4) Section 10.7.4 (Mobile Waste Tire Processor Decal) is being amended by revising paragraph (C) to read as follows:

10.7 - STANDARDS FOR MOBILE WASTE TIRE PROCESSORS

****

10.7.4 MOBILE WASTE TIRE PROCESSOR DECAL

****

(C) Each Mobile Waste Tire Processor decal will be valid until April 15 of the year indicated on the vehicle decal and will have a unique number. Prior to the expiration date, a Mobile Waste Tire Processor must submit a ~~new~~ renewal application for a Certificate of Registration (Form WT-1M) pursuant to section 10.7.3 above.

****

5) Section 10.11 (Waste Tire Fee Administration) is being amended by revising paragraph 10.11.7 to read as follows:

10.11 WASTE TIRE FEE ADMINISTRATION

****

10.11.7 Any person who sells new motor vehicle or new trailer tires must retain and make available to the Department for review any documentation or records (such as receipts or invoices provided to customers or transaction records) related to new tire sales to ensure compliance with Section 30-20-~~1043~~1403(1)(a), C.R.S., and the Regulations on the sales of these tires. Documentation and/or records must be retained for three (3) years from the date of sale.

****

6) Section 10.12 (Waste Tire End User Fund) is being amended by revising paragraph (C)(2) of Section 10.12.1 (General Rules) to read as follows:

10.12 WASTE TIRE END USERS FUND

10.12.1 GENERAL RULES

****

C. General Rules for End Users applying for a Waste Tire Hauler rebate

1. To be eligible to apply for a rebate, a person must be registered with the Department as a Waste Tire Hauler and an End User. Any hauling of waste tires prior to registration with the Department is not eligible for a rebate.

2. Only waste tires originated and hauled from rural counties (population of fewer than 60,000 residents according to the Colorado Department of Local Affairs State Demography Office) are eligible for a rebate for the Waste Tire Hauler and End User. Counties that meet this standard will be listed on the Waste Tire Hauler application and posted on the Department's website.~~at the Colorado Department of Local Affairs "Population Totals for Colorado Counties" website: https://demography.dola.colorado.gov/population/population-totals-counties/.~~ The most current

population statistics will be used to determine if a county is considered rural for the purpose of waste tires being eligible for a rebate.

****

7) Section 10.12 (Waste Tire End User Fund) is being amended by revising paragraph (B) of Section 10.12.5 (Rebate Amount) to read as follows:

10.12.5 REBATE AMOUNT

****

B. Beginning January 1, ~~2022~~2023, the amount of the rebate is as follows:

(1) Tier 1: $80 per ton;

(2) Tier 2: $40 per ton;

(3) Tier 3: $20 per ton; and

(4) Waste Tire Hauler: $20 per ton.

****

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission

Hazardous Materials and Waste Management Division

6 CCR 1007-2

STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY FOR

Amendment to the Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2, Part 1) – Section 10.3.2 (Registration for Waste Tire Haulers), Section 10.3.3 (Waste Tire Hauler Decals), 10.7.3 (Mobile Waste Tire Processors Registration Requirements), 10.7.4 (Mobile Waste Tire Processor Decal), 10.12.2 (General Rules for End Users Applying for a Waste Tire Hauler Rebate), 10.12.5 (Rebate Amount).

Basis and Purpose

I. Statutory Authority

Section 30-20-1401(2), C.R.S. gives the Solid and Hazardous Waste Commission (the Commission) the authority to promulgate waste tire regulations in order to implement and enforce Section 30, Article 20, Part 14, C.R.S.

II. Purpose of revised regulations:

The purpose of revising 6 CCR 1007-2 Part 1 (the Regulations) is to change the waste tire hauler and mobile waste tire processor registration renewal date, clarify when the Department may cancel a waste tire hauler or mobile waste tire processor Certificate of Registration and set the End User fund per ton rebate.

Discussion of Regulatory Proposal

` In Section 10.3.2 (F) (Registration for Waste Tire Haulers), the submittal date for the Certificate of Registration renewal application for a Waste Tire Hauler (Form WT-1H) was changed from an annual renewal to every odd numbered year renewal. Waste Tire Haulers will only have to renew their Waste Tire Hauler registration every two years

instead of every consecutive year. This will provide Waste Tire Haulers with a reduction of having to submit a waste tire hauler renewal every consecutive year. It will also reduce the Department's administrative burden of processing waste tire hauler registration renewals every consecutive year. With an effective date in 2022, currently registered waste tire haulers will submit a hauler renewal registration Form WT-1H by March 1, 2023. The next submittal of Form WT-1H will be due by March 1, 2025, and so forth each odd numbered year.

Section 10.3.2(K) (Registration for Waste Tire Haulers) was modified to include when the Department will cancel a Certificate of Registration of a Waste Tire Hauler. This update will codify procedures that the Department already implements, including canceling the Waste Tire Hauler Certificate of Registration of a person who fails to submit the waste tire hauler renewal form (Form WT-1H), or canceling the Waste Tire Hauler Certificate of Registration of a person who fails to submit the Commercial Waste Tire Hauler Report Form (Form WT-4).

Section 10.3.3 (C) (Waste Tire Hauler Processor Decals) was modified to include temporary decals and to refer to the renewal application (Form WT-1H). Starting in 2023, the Waste Tire Hauler decal will be valid until April 15, 2025, and so forth every odd numbered year.

In Section 10.7.3 (F) (Mobile Waste Tire Processors Registration Requirements), the submittal date for the Certificate of Registration renewal application for a Mobile Waste Tire Processor (Form WT-1M) was changed to every odd numbered year. Mobile Waste Tire Processors will only have to renew their Mobile Waste Tire Processor registration every two years instead of every consecutive year. This will provide Mobile Waste Tire Processors with a reduction of having to submit a mobile waste tire processor renewal every consecutive year. It will also reduce the Department's administrative burden of processing mobile waste tire processor registration renewals every consecutive year. With an effective date in 2022 the rule will require the submittal of Form WT-1M by March 1, 2023 for existing mobile waste tire processors. Mobile waste tire processors will be required to submit renewal registrations by March 1, 2025, and so forth each odd numbered year.

Section 10.7.3 (K) (Mobile Waste Tire Processors Registration Requirements) was modified to include when the Department will cancel a Certificate of Registration of a Mobile Waste Tire Processor. This update will codify procedures that the Department already implements, including canceling the Mobile Waste Tire Processor Certificate of Registration of a person who fails to submit the mobile waste tire processor renewal form (Form WT-1M), canceling the Waste Tire Hauler Certificate of Registration of a person who fails to submit the Commercial Waste Tire Hauler Report Form (Form WT-4), and canceling the Waste Tire Hauler Certificate of Registration of a person who fails to maintain $10,000 of financial assurance.

Section 10.7.4 (C) (Mobile Waste Tire Processor Decal) was modified to refer to the renewal application (Form WT-1M). The Mobile Waste Tire Processor decal will be valid until April 15, 2025, and so forth each odd numbered year.

Section 10.12.1 (C) (General Rules for End Users Applying for a Waste Tire Hauler Rebate) was modified due to the change of the Department of Local Affairs ("DOLA") web address. DOLA publishes county population figures each year that the department uses to determine what counties are considered rural (under 60,000 residents). Only waste tires hauled from rural counties are eligible for a rebate from the fund.

Section 10.12.5 (B) (Rebate Amount) was modified to change the year to 2023. Based on current End Users account funds and participation, the per ton rates for the three tiers will remain the same. The proposed regulations set the 2023 per ton waste tire end user rebate rates as follows:

A. Tier 1: $80 per ton;

B. Tier 2: $40 per ton;

C. Tier 3: $20 per ton; and

D. Waste Tire Hauler: $20 per ton.

Issues Encountered During Stakeholder Process:

Stakeholders were notified by e-mail of the revision of these regulations. Stakeholders were given an opportunity to provide any comments.

No questions were asked during the stakeholder meeting.

Regulatory Alternatives

No other regulatory alternatives were evaluated.

Cost/Benefit Analysis

A cost-benefit analysis will be performed if requested by the Colorado Department of Regulatory Agencies.

Notice of Proposed Rulemaking

Tracking number

2022-00652

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-3

Rule title

HAZARDOUS WASTE

Rulemaking Hearing

Date

11/15/2022

Time

09:00 AM

Location

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

Subjects and issues involved

Appendix IX of Part 261 is being amended to conditionally delist F019 hazardous waste generated at Golden Aluminum in Fort Lupton, Colorado. This delisting will allow Golden Aluminum to dispose of this waste at a solid waste landfill meeting the requirements of the Colorado Solid Waste Regulations (6 CCR 1007-2).

If adopted by the commission at the November 15, 2022 hearing, a notice of the commissions tentative decision will be published with a 30-day comment period. If no adverse comments are received during the tentative decision comment period, the commissions tentative decision will become the final decision without further notice. If the commission receives adverse comments, the commission will publish a timely withdrawal in the Colorado Register

Statutory authority

This modification is made pursuant to the authority granted to the Solid and Hazardous Waste Commission in Section 25-15-302(2), C.R.S.

Contact information

Name

Brandy Valdez Murphy

Title

Administrator, Solid and Hazardous Waste Commission

Telephone

303-692-3467

Email

brandy.valdezmurphy@state.co.us

COLORADO
Solid & Hazardous
Waste Commission
Department of Public Health & Environment

NOTICE OF PROPOSED RULEMAKING HEARING
BEFORE THE
COLORADO SOLID AND HAZARDOUS WASTE COMMISSION

SUBJECT:

For consideration of the amendment to 6 CCR 1007-3, Part 261, Appendix IX, along with the accompanying Statement of Basis and Purpose, the following will be considered:

Amendment of 6 CCR 1007-3, Part 261, Appendix IX to Conditionally Delist F019 Hazardous Waste Generated By Golden Aluminum, Inc. located at 1405 East 14th Street, Fort Lupton, CO 80621

This modification is made pursuant to the authority granted to the Solid and Hazardous Waste Commission in Section 25-15-302(2), C.R.S.

Appendix IX of Part 261 is being amended to conditionally delist F019 hazardous waste generated at Golden Aluminum in Fort Lupton, Colorado. This delisting will allow Golden Aluminum to dispose of this waste at a solid waste landfill meeting the requirements of the Colorado Solid Waste Regulations (6 CCR 1007-2).

If adopted by the commission at the November 15, 2022 hearing, a notice of the commission's tentative decision will be published with a 30-day comment period. If no adverse comments are received during the tentative decision comment period, the commission's tentative decision will become the final decision without further notice. If the commission receives adverse comments, the commission will publish a timely withdrawal in the Colorado Register informing the public that the delisting rule will not take effect.

Any information that is incorporated by reference in these proposed rules is available for review at the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division and any state publications depository library.

Pursuant to C.R.S. §24-4-103(3), a notice of proposed rulemaking was submitted to the Secretary of State on October 14, 2022. Copies of the proposed rulemaking will be mailed to all persons on the Solid and Hazardous Waste Commission's mailing list on or before the date of publication of the notice of proposed rulemaking in the Colorado Register on October 25, 2022.

The proposed rulemaking materials may also be accessed at:
https://cdphe.colorado.gov/shwc-rulemaking-hearings

WRITTEN TESTIMONY

Any alternative proposals for rules or written comments relating to the proposed amendment of the regulation will be considered. The Solid and Hazardous Waste Commission will accept written testimony and materials regarding the proposed alternatives. **The commission strongly encourages interested parties to submit written testimony or materials to the Solid and Hazardous Waste Commission Office, via email to cdphe.hwcrequests@state.co.us by Friday, November 4, 2022, at 11:59 p.m. Written materials submitted in advance will be distributed to the commission members prior to the day of the hearing.** Submittal of written testimony and materials on the day of the hearing will be accepted, but is strongly discouraged.

HEARING SCHEDULE:

DATE: Tuesday, November 15, 2022
TIME: 9:00 a.m.
PLACE: Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Building A, Sabin Conference Room
Denver, CO 80246
(At this time, only Commissioners and staff are able to meet in person. All other attendance is welcomed virtually via Zoom.)
-OR-
Due to COVID-19 or inclement weather, the meeting will be held online only at:

https://us02web.zoom.us/meeting/register/tZYvcOytqzMqGdMFvHAearTlU1ErVZtdCubU

Please check for the official location of the meeting on the commission's website:
https://cdphe.colorado.gov/shwc-meeting-information

Oral testimony at the hearing regarding the proposed amendments may be limited.

Brandy Valdez Murphy, Administrator

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission/Hazardous Materials and Waste Management Division

6 CCR 1007-3

HAZARDOUS WASTE

Proposed Golden Aluminum, Inc. F019 Delisting

1) Appendix IX of Part 261 is amended by deleting and reserving Delisting #7 as follows:

DELISTING #: 007 RESERVED

~~**FACILITY:** Golden Aluminum, Inc.~~

~~**ADDRESS:** 1405 East 14th Street, Fort Lupton, CO 80621~~

~~**WASTE:** Wastewater Treatment Sludge from Aluminum Cleaning and Conversion Coating Operations. EPA Hazardous Waste Code F019 generated after the effective date of this delisting.~~

~~The Solid and Hazardous Waste Commission is hereby removing the conditional delisting granted to the Golden Aluminum, Inc. ("Golden Aluminum") facility in Fort Lupton, Colorado (the "Facility").~~

~~Golden Aluminum was granted a conditional delisting by the Commission on October 18, 2005 for wastewater treatment sludge (F019 hazardous waste) generated from aluminum cleaning and conversion coating operations at the Facility.~~

~~The delisting was granted under conditions that specified disposal, recordkeeping, and storage requirements for the delisted sludge. The conditional delisting of the F019 waste also prohibited any major changes to the chemical conversion coating process or wastewater treatment process without prior notification, evaluation, and approval by the Division.~~

~~On February 12, 2008, the Division received notification from Golden Aluminum indicating that the Facility would be converting its titanium conversion coating process to a chrome conversion coating process effective February 18, 2008.~~

~~Delisting determinations are made on a case-by-case basis with respect to a specific waste generation process. Golden Aluminum's change to a new chromate conversion coating process using hexavalent chromium is a significant change from the titanium conversion coating process described in the Facility's April 8, 2005 delisting petition.~~

~~Golden Aluminum's 2005 delisting no longer covers the wastewater treatment sludge generated at the Facility, and the Facility was notified by the Division on March 24, 2008 that wastewater treatment sludge generated from the new chromate conversion coating process at the Facility must be collected and~~

~~managed as a hazardous waste with the waste code of F019.~~

2) Appendix IX of Part 261 is amended by adding Delisting #11 to read as follows:

PART 261, APPENDIX IX – WASTES EXCLUDED UNDER §§ 260.20 AND 260.22

****

DELISTING #: 11

FACILITY: Golden Aluminum, Inc.

ADDRESS: 1405 East 14th Street, Fort Lupton, CO 80621

WASTE: Wastewater Treatment Sludge from Aluminum Cleaning and Conversion Coating Operations. EPA Hazardous Waste Code F019 generated after the effective date of this delisting.

CONDITIONS: This delisting is valid only for the waste stream specified above and referenced in the delisting petition submitted on May 12, 2022 and October, 2022 under the following conditions:

a. Changes to Current Operations

1. Golden Aluminum, Inc. must notify the Division at least 30-days prior to implementing any major change to the chemical conversion coating process. A major change is any change including alteration of the current wastewater treatment process or incorporating different chemicals or reagents such that the composition of the wastewater treatment sludge is altered.

2. Golden Aluminum, Inc. must notify the Division within 15-days after implementing any change to the wastewater treatment or chemical conversion coating processes that causes a significant change in the type or concentration of any hazardous constituent in the waste or causes the waste to exhibit a hazardous waste characteristic. A significant change is defined as an increase in the total waste concentration for any constituent identified below:

Constituent	Average Concentration (ppm)	2xs the Standard Deviation	Concentration Requiring Notification to the Division (Two Standard Deviations above the Average Concentration)
Arsenic	2.3	1.7	4.0
Barium	7.1	16.0	23.1
Cadmium	Non-detect	Non-detect	Detection
Chromium (Total)	8,335	14,462	22,797
Chromium VI	158	306	464
Copper	4.2	6.0	10.2
Cyanide (amendable)	Non-detect	Non-detect	Detection
Cyanide (free/reactive)	Non-detect	Non-detect	Detection
Lead	4.9	NA	4.9
Mercury	Non-detect	Non-detect	Detection

Nickel	5.3	4.0	9.3
Selenium	Non-detect	Non-detect	Detection
Silver	Non-detect	Non-detect	Detection
Zinc	10.6	20.0	30.6

A significant change also includes the detection of any additional Part 264, Appendix IX hazardous constituents that are not identified in the above table.

3. The Division reserves the right to re-evaluate and, if necessary, remove this approval or modify these conditions in the event that a significant change, as defined above, is reported by Golden Aluminum, Inc. In such case, the Division may suspend this delisting or impose temporary requirements on the delisted waste until such time as an appropriate amendment to this delisting can be considered by the Solid and Hazardous Waste Commission.

b. Sampling Requirements

Golden Aluminum, Inc. shall conduct annual verification sampling of the delisted waste in January of each year to monitor for any significant change in the type or concentration of any hazardous constituents in the delisted waste. Annual verification sampling shall be submitted to the Division within sixty (60) days of the sampling event for review against initial criteria and sampling methodology for both total waste concentration and Toxicity Characteristic Leaching Procedure (TCLP).

c. Storage Requirements

1. The delisted waste generated by Golden Aluminum, Inc. may not be accumulated on-site for a period in excess of one year.

2. The volume of delisted waste accumulated on-site may not exceed 20 cubic yards at any given time.

3. The delisted waste must be stored in a container that is capable of being closed. The container must be marked or labeled to identify the contents as “delisted waste” and with an accumulation start date. The container must be kept closed except for when waste is being added to or removed from the container.

d. Recordkeeping Requirements

1. Golden Aluminum, Inc. shall maintain records of the disposal or recycling of all delisted waste that documents that such activities are in accordance with the delisting petition.

2. Golden Aluminum, Inc. shall maintain all records required by paragraph d.1 above for a period of at least three years.

e. Disposal Requirements

The delisted waste shall be disposed in a landfill meeting the requirements of the Colorado Solid Waste Regulations (6 CCR 1007-2).

3) Section 8.101 {Statement of Basis and Purpose for the Rulemaking Hearing of November 15, 2022} is added to Part 8 of the Regulations to read as follows:

Statement of Basis and Purpose
Rulemaking Hearing of November 15, 2022

8.101 **Basis and Purpose**

This amendment to 6 CCR 1007-3, Part 261, Appendix IX is made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

Amendment of Part 261, Appendix IX to Conditionally Delist F019 Hazardous Waste Generated by Golden Aluminum, Inc. at 1405 East 14th Street in Fort Lupton, Colorado 80621.

Appendix IX of Part 261 is being amended to conditionally delist F019 hazardous waste generated at Golden Aluminum in Fort Lupton, Colorado. This delisting will allow Golden Aluminum to dispose of this waste at a solid waste landfill meeting the requirements of the Colorado Solid Waste Regulations (6 CCR 1007-2) or a metals recycling facility provided it complies with the conditions of the delisting. The Solid and Hazardous Waste Commission (the "Commission") is requiring an annual verification sampling of the delisted waste and the results of that verification sampling must be submitted to the Division within sixty (60) days of the sampling event for review against initial delisting criteria and sampling methodology for both total waste concentration and Toxicity Characteristic Leaching Procedure (TCLP).

Golden Aluminum operates a manufacturing facility in Fort Lupton, Colorado for the production of aluminum sheets for the caning industry. The waste is generated from chromate process on rolled aluminum sheets and has a North American Industry Classification System (NAICS) number of 331315 and 331314 for Secondary Smelting and Alloying of Aluminum and Aluminum Sheet, Plate and Foil manufacturing. Manufacturing processes related to this delisting process include: cleaning, chromating preparation of aluminum for coatings, packaging, and distribution.

As part of the facility's manufacturing processes, aluminum sheets are cold rolled and then cleaned and chromated to allow for a coating process on the aluminum sheets. These aluminum sheets are then used in the canning industry. The rinse waters from these finish processes are pretreated in the facility's permitted industrial wastewater treatment system. Pursuant to the listing description at § 261.31, wastewater treatment sludge generated from the chemical conversion coating of aluminum is classified as F019 hazardous waste. The facility currently generates in excess of one ton per month of F019 hazardous waste.

The basis for the F019 hazardous waste listing is described in Appendix VII of Part 261 of the hazardous waste regulations. Each listing is based on hazardous constituents that are typically contained in the waste described by the listing. The hazardous constituents that formed the basis for the F019 listing include hexavalent chromium (Chromium VI) and complexed cyanide. Complexed cyanide was not detected in the waste stream

The wastewater treatment process at Golden Aluminum's facility specifically treats the wastewater to reduce the hexavalent chromium to a trivalent chromium. This is achieved by reducing the hexavalent chromium to trivalent chromium for removal by the industrial wastewater treatment system. However, a small percentage of the hexavalent chromium remains in the wastewater treatment sludge. To address this issue, TCLP analysis for hexavalent chromium was performed. Hexavalent chromium was detected above the method detection limit (<0.020 mg/l).

The F019 wastewater sludge filter cakes generated at the Golden Aluminum facility were periodically sampled according to the facility's sampling and analysis plan. This sampling analysis was developed to

demonstrate that the wastewater treatment sludge does not exhibit the toxicity characteristic for the constituents listed in Table 1 of 6 CCR 1007-3 Section 261.24 using the Toxicity Characteristic Leachate Procedure (TCLP).

The results of the TCLP analysis indicated that the waste does not leach any of the 8 RCRA heavy metal constituents analyzed (arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver) at concentrations above regulatory standards; and therefore, the waste does not meet the definition of the toxicity characteristic. Analytical testing also indicated the presence of copper, nickel and zinc in the wastewater treatment sludge. However, the concentrations of these constituents were below risk-based levels. The waste also does not exhibit the hazardous waste characteristic of corrosivity, ignitability or reactivity.

Initial laboratory analysis from the May 12, 2022 delisting petition indicated interferences of the analysis with hexavalent chromium. In addition, the Division requested testing for perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA). While these constituents are not currently regulated compounds, the Division wanted to confirm that they are not present in the waste stream. Three additional samples were collected in August and September of 2022 for this analysis and Eurofins – Test America provided testing for all of the parameters. There was not any PFOS or PFOA found in the waste sludge. In addition, the hexavalent chromium did not experience the interferences and was also found to be non-detect for TCLP. This confirms that the sludge meets the delisting criteria.

A risk evaluation of the wastewater treatment sludge waste was also performed utilizing the EPA program Delisting Risk Assessment Software (DRAS) version 4.0 (EP-S7-05-05 – July 31, 2020). The results of this risk assessment indicated that this waste is suitable for disposal in a Subtitle D landfill.

This delisting is being granted under conditions specifying disposal, record keeping, storage and sampling requirements for the delisted sludge. Conditional delisting of the waste also prohibits any major changes to the chromating operations or wastewater treatment process without prior notification, evaluation, and approval by the Division.

This delisting does not apply to waste that demonstrates a “significant change” as defined in Delisting #011 in Part 261, Appendix IX—Wastes Excluded Under § 260.20 and 260.22(d), or if any of the conditions specified in Part 261, Appendix IX for this delisting are not met. Should either of these occur, the waste is and must be managed as a hazardous waste. While the Commission is approving this conditional delisting for this specific waste at this specific site, the findings and criteria associated with the approval are unique. Other petitions for delisting, even if similar in material or use, will be reviewed by the Division on a case-by-case basis.

Notice of Proposed Rulemaking

Tracking number

2022-00644

Department

1400 - Department of Early Childhood

Agency

1403 - Colorado Child Care Assistance Program

CCR number

8 CCR 1403-1

Rule title

Colorado Child Care Assistance Program

Rulemaking Hearing

Date

11/21/2022

Time

09:00 AM

Location

Virtual meeting link: meet.google.com/zri-vrby-gix

Subjects and issues involved

Annually, the Department updates the Federal Poverty Levels and the State Median Income levels in Rule and in CHATS, the automated system used by counties to administer Colorado Child Care Assistance Program (CCCAP), to align with each federal fiscal year updates. These guidelines are used to determine eligibility for families applying to the CCCAP program.

These updated figures must be in rule in accordance with the Administrative Procedure Act, § 24-4-103, which requires the state to address in rule any general standard that is applied to the public (such as income eligibility for child care assistance).

Lastly, technical changes have been made to this proposed rule to change the CCR code from 9 CCR 2503-9 to 8 CCR 1403-1 and revise statutory references. This allows us to provide correct citations and promulgate the rules under the new Department of Early Childhood.

Statutory authority

26.5-4-111(1), C.R.S. (2022)Counties shall provide child care assistance to a participant or any person or family whose income is not more than one hundred eighty-five percent of the federal poverty level pursuant to Department rules. The Executive Director by rule may adjust the percentage of the federal poverty level used to determine child care assistance eligibility by promulgating a rule and shall revise income and verification requirements that promote alignment and simplification.

Contact information

Name

Kristina Heyl

Title

Interim Rulemaking Administrator

Telephone

303-817-4706

Email

kristina.heyl@state.co.us

Title of Proposed Rule: **Colorado Child Care Assistance Program FPG & SMI Updates**

CDEC Tracking #: **2022-009-01**

Office, Division, & Program: Office of Program Delivery, Division of Early Care Learning Access & Quality, Colorado Child Care Assistance Program

Rule Author: Danielle Greer

Phone: 303-710-9064

E-Mail: Danielle.greer@state.co.us

RULEMAKING PACKET

Type of Rule:

[ ] Regular [ ] Emergency [X] Regular following Emergency SoS# 2022-00618

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

[X] County Subcommittee Review (if needed)

[X] Rules Advisory Council Review

[X] Review by Attorney General's Office

[X] Final Public Rulemaking Hearing by the Executive Director

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

County Subcommittee (if required)	9/8/2022
Rules Advisory Council	9/15/2022
Public Rulemaking Hearing	9/30/2022
Effective Date	10/1/2022
If emergency rule – effective date of permanent rule?	1/14/2023
Is this date legislatively required?	Yes

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

None. The Federal Poverty Guideline (FPG) and State Median Income (SMI) revisions only impact Colorado Child Care Assistance Program eligibility and the program's eligibility system, the Child Care Automated Tracking System (CHATS) which is managed by the Colorado Department of Early Childhood. The technical changes to renumber the CCCAP rules do have an impact on Child Welfare rules due to references that are made in 7.302.2 (12 CCR 2509-4). The CDHS Child Welfare team has been informed of this change.

Comments / Notes from Review by Rules Advisory Council Manager:

Title of Proposed Rule: **Colorado Child Care Assistance Program FPG & SMI Updates**

CDEC Tracking #: **2022-009-01**

Office, Division, & Program: Office of Program Delivery, Division of Early Care Learning Access & Quality, Colorado Child Care Assistance Program

Rule Author: Danielle Greer

Phone: 303-710-9064

E-Mail: Danielle.greer@state.co.us

STATEMENT OF BASIS AND PURPOSE

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

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

Annually, the Department updates the Federal Poverty Levels and the State Median Income levels in Rule and in CHATS, the automated system used by counties to administer Colorado Child Care Assistance Program (CCCAP), to align with each federal fiscal year updates. These guidelines are used to determine eligibility for families applying to the CCCAP program.

These updated figures must be in rule in accordance with the Administrative Procedure Act, § 24-4-103, which requires the state to address in rule any general standard that is applied to the public (such as income eligibility for child care assistance).

Lastly, technical changes have been made to this proposed rule to change the CCR code from 9 CCR 2503-9 to 8 CCR 1403-1 and revise statutory references. This allows us to provide correct citations and promulgate the rules under the new Department of Early Childhood.

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

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

Justification for emergency:

The updated Federal Poverty Levels and State Median Income levels must be in effect at the beginning of the federal fiscal year, October 1st, in order to comply with federal regulations.

Executive Director Authority for Rule:

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

Title of Proposed Rule: **Colorado Child Care Assistance Program FPG & SMI Updates**

CDEC Tracking #: **2022-009-01**

Office, Division, & Program: Office of Program Delivery, Division of Early Care Learning Access & Quality, Colorado Child Care Assistance Program

Rule Author: Danielle Greer

Phone: 303-710-9064

E-Mail: Danielle.greer@state.co.us

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

Code	Description
45 CFR 98.16 (h), (k)	Lead Agencies must establish income eligibility thresholds that do not exceed 85% of the State Median Income but that allow for gradual increases in income, and describe the sliding fee scale for cost-sharing by families.
26.5-4-111(1), C.R.S. (2022)	Counties shall provide child care assistance to a participant or any person or family whose income is not more than one hundred eighty-five percent of the federal poverty level pursuant to Department rules. The Executive Director by rule may adjust the percentage of the federal poverty level used to determine child care assistance eligibility by promulgating a rule and shall revise income and verification requirements that promote alignment and simplification.

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.

Title of Proposed Rule: **Colorado Child Care Assistance Program FPG & SMI Updates**

CDEC Tracking #: **2022-009-01**

Office, Division, & Program: Office of Program Delivery, Division of Early Care Learning Access & Quality, Colorado Child Care Assistance Program

Rule Author: Danielle Greer

Phone: 303-710-9064

E-Mail: Danielle.greer@state.co.us

REGULATORY ANALYSIS

1. List of groups impacted by this rule.

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule? How will the rule impact particular populations, such as populations experiencing poverty, immigrant/refugee communities, non-English speakers, and rural communities?

Counties that administer Colorado Child Care Assistance Program (CCCAP) will benefit from the rule, ensuring that eligibility is correctly determined.

Households receiving CCCAP will have their eligibility correctly determined under the new income amounts.

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?

If income levels are not updated, the Department will not be in compliance with federal requirements. Additionally, families applying for services will not be determined eligible under the correct income guidelines if the income levels are not put into effect by October 1, 2022.

3. Alignment and Coordination.

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

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

4. Fiscal Impact

Title of Proposed Rule: **Colorado Child Care Assistance Program FPG & SMI Updates**

CDEC Tracking #: **2022-009-01**

Office, Division, & Program: Office of Program Delivery, Division of Early Care Learning Access & Quality, Colorado Child Care Assistance Program

Rule Author: Danielle Greer

Phone: 303-710-9064

E-Mail: Danielle.greer@state.co.us

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)*

No fiscal impact to the state as the changes in CHATS are covered under standard operations.

County Fiscal Impact

Counties may see a fiscal impact if we do not promulgate this rule package immediately as families that have lost benefits may be able to appeal under the new federal guidelines.

Federal Fiscal Impact

There is no federal fiscal impact as these changes are required and any changes are covered under standard operations.

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

There is a risk that some families will go over income under the current Departmental guidelines but would not go over income under the "new" federal guidelines.

5. Data Description

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

LIHEAP-IM-2022-03: Memo on FFY22 Federal Poverty Guidelines
LIHEAP-IM-2022-04: Memo on FFY22 State Median Income Estimates

6. Describe the monitoring and evaluation.

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

Title of Proposed Rule: **Colorado Child Care Assistance Program FPG & SMI Updates**

CDEC Tracking #: **2022-009-01**

Office, Division, & Program: Rule Author: Danielle Greer Phone: 303-710-9064

Office of Program Delivery, Division of Early Care Learning Access & Quality, Colorado Child Care Assistance Program

E-Mail: Danielle.greer@state.co.us

Counties utilize the Child Care Automated Tracking System (CHATS) to determine eligibility for the Colorado Child Care Assistance Program (CCCAP). The revised figures are updated in CHATS and the new Federal Poverty Guidelines (FPG) and State Median Income (SMI) figures are automatically applied upon eligibility determination in the system. Compliance with the use of CHATS is monitored through the CCCAP County Monitoring Process, Quality Assurance Process, and other audits including those conducted by the Office of the State Auditor and the federal office.

7. Alternatives to this Rule-making

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. **Answer should NEVER be just "no alternative" answer should include "no alternative because…"**

There are no alternatives to this rulemaking because the APA requires that these standards are promulgated in rule and the numbers in regulation must be consistent with the federal guidelines.

Title of Proposed Rule: **Colorado Child Care Assistance Program FPG & SMI Updates**

CDEC Tracking #: **2022-009-01**

Office, Division, & Program: Rule Author: Danielle Greer Phone: 303-710-9064

Office of Program Delivery, Division of Early Care Learning Access & Quality, Colorado Child Care Assistance Program E-Mail: Danielle.greer@state.co.us

OVERVIEW OF PROPOSED RULE

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

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
Entire Rule	New CCR and C.R.S references	A technical change to update references to the 9 CCR 2503-9 under CDHS have been made so they reflect the 8 CCR 1403-1 code under CDEC. Related statutory references have also been made.	This change was made to allow CDEC the ability to promulgate rules under the new CDEC since CDEC can no longer promulgate rules under CDHS.	CDEC was formed as of 7/1/2022.	No
3.905.1 (H)(2)	The FPG and SMI values have changed	CCCAP rule currently reflects Federal Poverty Guidelines (FPG) and State Median Income (SMI) figures from 2021.	The CCCAP rules have been revised to include the Federal Poverty Guidelines (FPG) and State Median Income (SMI) figures from 2022.	The Federal Poverty Guidelines and State Median Income amounts are being revised as required by LIHEAP-IM-2022-03 and LIHEAP-IM-2022-04	No

Title of Proposed Rule: **Colorado Child Care Assistance Program FPG & SMI Updates**

CDEC Tracking #: **2022-009-01**

Office, Division, & Program: Rule Author: Danielle Greer Phone: 303-710-9064

Office of Program Delivery, Division of Early Care Learning Access & Quality, Colorado Child Care Assistance Program

E-Mail: Danielle.greer@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 RAC Subcommittee):

This emergency rule package is based on FFY 2022 Federal Poverty Guidelines and State Median Income Estimates.

This Rule-Making Package

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

The Early Childhood Sub-PAC was notified of this rule on September 8, 2022. The RAC reviewed the rule on September 15, 2022.

Other State Agencies

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

[X] Yes [ ] No

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

The technical changes to revise the CCR number has an impact on Child Welfare under CDHS because CCCAP rules are cited in section 7.302.2 of 12 CCR 2509-4. CDHS have been notified of this so they can revise their rules accordingly.

RAC County Subcommittee

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

[X] Yes [ ] No

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

[X] Yes [ ] No

Date presented	September 8, 2022
What issues were raised?	None
If not presented, explain why.	The rule was submitted to Sub-PAC in lieu of the RAC County Subcommittee

Rules Advisory Council Review

Date presented	September 15, 2022

Title of Proposed Rule: **Colorado Child Care Assistance Program FPG & SMI Updates**

CDEC Tracking #: **2022-009-01**

Office, Division, & Program: Rule Author: Danielle Greer Phone: 303-710-9064

Office of Program Delivery, Division of Early Care Learning Access & Quality, Colorado Child Care Assistance Program

E-Mail: Danielle.greer@state.co.us

What issues were raised?	None		
Recommendation from RAC to Approve, Approve with Changes, or Not Approve	RAC recommended to approve as written. No concerns were raised.		
Vote Count	*For*	*Against*	*Abstain*
	Unanimous		
Any additional notes.			

Other Comments

Comments were received from stakeholders on the proposed rules:

☐ Yes ☒ No

If "yes," summarize and/or attach the feedback received, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

~~DEPARTMENT OF HUMAN SERVICES~~ DEPARTMENT OF EARLY CHILDHOOD

~~Income Maintenance (Volume 3)~~

COLORADO CHILD CARE ASSISTANCE PROGRAM

~~9 CCR 2503-9~~ **8 CCR 1403-1**

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

~~3.900~~ 3.100 COLORADO CHILD CARE ASSISTANCE PROGRAM (CCCAP)

~~3.901~~ 3.101 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~~ 3.105.1.H.

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~~ COLORADO Department OF EARLY CHILDHOOD (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.

~~3.902~~3.102 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.

C. The CCCAP allocation formula shall be applied uniformly across all counties and must be based on the relative cost of the program. The allocation formula must take into consideration:

1. The eligible population for each county using the federal poverty level (FPL) as outlined in section ~~3.905.1~~3.105.1.H; and,

2. Reimbursement rates set by the state as informed by the market rates study.

3. If not already taken into consideration in the initial allocation formula as stated in section ~~3.902~~3.102.C.1 and 2, the following factors must also be included:

   a. A measure of cost of living, which may include market rates; and,

   b. The cost of high quality child care programs.

4. If not already taken into consideration in the initial allocation formula, the formula may include the following factors:

   a. A statewide adjustment to the allocation formula for geographic differences within counties or regional differences among counties in order to improve access.

   b. A statewide adjustment to the allocation formula for drastic economic changes that may impact the ability of CCCAP to serve low-income families.

   c. A statewide adjustment to mitigate significant decreases in county allocation amounts due to changes in the factors considered in the initial allocation formula.

~~3.903~~3.103 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 services, or the Child Care Provider’s right to payment for services provided and 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 and/or the redetermination form.

“Application” is a State-approved form that may include, but is not limited to:

A. An original state-prescribed low-income 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. At the option of the county, any application for another public assistance program.

“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” means all of the following:

A. The state-prescribed, signed low-income child care application form completed by the adult caretaker or teen parent or his/her authorized representative, which includes appeal rights; or, any application from another public assistance program. 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 required verification supporting the information declared on the application form; and,

C. As a county option, an orientation or interview for new applicants may be required. Counties shall ensure that, if the county chooses to incorporate an orientation or interview into their application process, the orientation or interview process is not burdensome to families by allowing a family to complete the process via phone or electronic tools or by offering extended office hours to hold the orientation or interview.

“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). Primary home and automobile of the primary caretakers are excluded.

“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.

“Attendance tracking system (ATS)” means the system 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.

“Authorized care” means the amount and length of time a child is eligible to receive care 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 are eligible to 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 do not include absences, holidays, registration fees, activity fees, and/or transportation fees.

“Basic education” is a Low-Income Child Care eligible activity where an adult caretaker or teen parent is in high school education programs working towards a high school diploma or high school equivalency; Adult Basic Education (ABE); and/or, English as a Second Language (ESL).

“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.

“Child care authorization notice” means a state prescribed form which authorizes the purchase of child care and includes the children authorized for care. The authorization notice will be given to the adult caretaker or teen parent and applicable child care provider(s) in order to 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 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” or “child care technician” 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 a child care component within CCCAP where 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 61344-61416 and 63 FR 41658. (No later amendments or editions are incorporated after 1998. Copies of this material may be inspected by contacting the Colorado Department of ~~Human Services~~EARLY CHILDHOOD (~~CDHS~~CDEC), 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~~ THE DEPARTMENT which provides child care subsidies to households in the following programs: Low-Income, Colorado Works, Protective Services, and Child Welfare. ~~CDHS~~ CDEC is responsible for the oversight and coordination of all child care funds and services.

“Colorado Works Program” 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 Child Care” means a child care component within CCCAP for Colorado Works households with an adult caretaker or teen parent who are determined work eligible per Colorado Works Program Rules (9 CCR 2503-6) and have been referred for child care by the county Colorado Works worker.

“Colorado Works households” means members of the same Colorado Works 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 court, law enforcement agency, or entity authorized to investigate abuse or neglect to be supported by a preponderance of the evidence.

“Consumer Education” means information provided to adult caretaker(s) or teen parent(s), child care providers, and the general public that will promote informed child care choices; information on access to other programs in which families may be eligible; and, information on developmental screenings.

“Cooperation with Child Support Services (county option)” means applying for Child Support Services for all children who are in need of care and have an absent parent, within thirty (30) calendar-days of the completion and approval of the CCCAP application and maintaining compliance with Child Support Services case 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.

“DEPARTMENT” MEANS THE COLORADO DEPARTMENT OF EARLY CHILDHOOD.

“Disaster” means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural cause or cause of human origin, including but not limited to fire, flood, earthquake, wind, storm, wave action, hazardous substance incident, oil spill, or other water contamination requiring emergency action to avert danger or damage, volcanic activity, epidemic, air pollution, blight, drought, infestation, explosion, civil disturbance, hostile military or paramilitary action, or a condition of riot, insurrection, or invasion existing in the state or in any county, city, town, or district in the state.

“Discovery” means that a pertinent fact related to CCCAP eligibility was found to exist.

“Drastic economic change” means an economic impact on the county or state that has a strong or far-reaching effect on the Child Care Assistance Program.

“Drop in day” means a county-determined number of days that will generate an approval and payment for care utilized outside of the standard authorization.

“Early care and education provider” means a school district or child care provider PURSUANT TO 26.5-4-103(4), C.R.S ~~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; self-employment; training; basic education; or, post-secondary education. For Teen parents, training and teen parent education are approved activities for all counties.

“Eligible child” means a child, from birth to 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.

“Emergency” means an unexpected event that places life or property in danger and requires an immediate response through the use of state and community resources and procedures.

“Employment” is a Low-Income Child Care eligible activity where the adult caretaker or teen parent is holding a part-time or full-time job for which wages, salary, in-kind income or commissions are received.

“Enrollment freeze” or “freeze” means when a county ceases enrollment of individuals due to being overspent or being projected to overspend.

“Entry income eligibility level” means the level set by the state department for each county above which an adult caretaker(s) or teen parent(s) is not eligible at original application.

“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 eighty-five percent (85%) of the Colorado state median income AS OUTLINED IN SECTION 3.105.1(H).

“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.

“Federal poverty level” (FPL) or “federal poverty guidelines” (FPG) refers to figures set by the Department annually. These figures, based on gross monthly income levels for the corresponding household size, are included in the table in section ~~3.905.1~~3.105.1.H.2.

“Fingerprint-based criminal background check” means a complete set of fingerprints for the qualified exempt provider and anyone eighteen (18) years of age and older residing in the qualified exempt provider’s home; or, for the qualified exempt provider if care is provided in the child’s home, taken by a qualified law enforcement agency, and submitted to the Colorado Department of ~~Human Services~~EARLY CHILDHOOD, Division of Early LEARNING ACCESS AND QUALITY~~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 unless noted otherwise in the county’s plan, per section ~~3.915.1~~3.115.1.

“Fiscal Agreement” means a state-approved agreement between counties or their designees and child care provider(s), which defines the maximum rate possible based on county ceiling rates and quality rating tiers, defines provider rights and responsibilities, and defines responsibilities of the counties or their designees to the child care provider(s). The fully executed fiscal agreement includes noticing of county ceiling rates as well as a copy of the provider’s CCCAP reimbursement rates. Fiscal agreements must be:

A. One (1) year in length for qualified exempt child care providers

B. Three (3) years in length for licensed child care providers

“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 the state department or 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.

“Hold slots” means a county determined number of days when payment is allowed for unused care that is in addition to absences, holidays, and school breaks. Hold slots are intended to hold a child's slot with a provider due to extended absence from care.

“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) and participating in a Low-Income Child Care eligible activity. 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

“Inconsistent” means the information provided is unclear or conflicting or the county has reason to believe the facts presented are contrary to the information provided by the adult caretaker(s) or teen parent(s).

“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” is a Low-Income Child Care eligible activity where an adult caretaker or a teen parent is actively seeking employment.

“Low-Income Program” or “Low-Income Child Care” means a child care component within CCCAP for households with an adult caretaker(s) or teen parent(s) who is/are in a low-income eligible activity, income eligible, and not receiving Colorado Works, Child Welfare, or Protective Services child care.

“Manual Claim” means the child care provider’s process of invoicing the county using the state-prescribed manual claim form for reimbursements that were not processed automatically through CHATS including but not limited to:

A. Care that was authorized and provided;

B. Reimbursable registration fees;

C. Reimbursable activity fees;

D. Reimbursable transportation fees;

E. Reimbursable hold slots;

F. Reimbursable drop in days; and,

G. Reimbursable absence payments

“Maternity and/or paternity leave” is a temporary period of absence from the adult caretaker or teen parent’s Low-Income Child Care eligible activity that is granted to expectant or new mothers and/or fathers for up to twelve (12) weeks for the birth and care of a newborn child.

“Medical leave” means a temporary period of absence from the adult caretaker or teen parent’s Low-Income Child Care eligible activity that is granted due to a personal illness or injury, or to care for a family member for up to twelve (12) weeks per instance.

“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.

“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 nontraditional care hours are requested at application or re-determination), and verifiable employer contact information.

“Non-traditional care hours” means weekend, evening, or overnight care.

“Originating county” means the county where child care assistance eligibility was initiated in instances where a family receiving low-income child care moves from one county to another during their eligibility period.

“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.

“Post eligibility stabilization period” means the time frame in which an adult caretaker or teen parent has to complete their job search activity if, at Low-Income Child Care re-determination, they have not utilized their entire minimum thirteen (13) week time limited activity.

“Preponderance of evidence” means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

“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 Child Care” means a child care component within CCCAP for children that have been placed by the county in foster home care, kinship foster home care or non-certified kinship care; have an open child welfare case; and, the county has chosen to provide child care services utilizing the Child Care Development Fund (CCDF) rather than the Child Welfare Block Grant.

“Prudent person principle” means allowing the child care technician 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 7.701.11, A, 1, b. (12 CCR 2509-8).

“Rate notification” means a notification of provider reimbursement rates and applicable registration, activity, or transportation fees that reflect the child care provider’s CCCAP reimbursement rate based on the comparison of the county’s ceiling rates that are reflected in the current Fiscal Agreement and the provider’s private pay rates, quality level or rate types.

“Receiving county” means the county where child care assistance eligibility is re-determined after a family receiving low-income child care moves from one county to another during their eligibility period.

“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) form” is a state-prescribed form, which includes appeal rights, that is used to determine a household’s continued eligibility for Low-Income Child Care at the end of their twelve (12) month minimum eligibility period.

“Re-determination (Redet) process” is the process to update eligibility for Low-Income Child Care. This process is completed no earlier than every twelve (12) months and includes:

A. The state-prescribed re-determination form, which must be completed and signed by the adult caretaker or teen parent or their authorized representative; and,

B. The required verification that supports the information declared on the re-determination form that is 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; review of the technician's accuracy; and/or reviews for separation of duty.

“Self-employment” is a Low-Income Child Care eligible activity where an adult caretaker or teen parent is responsible for all taxes and/or other required deductions from earned income.

“Self-sufficiency standard” means the level of income adequate in each county for a given year to meet the cost of basic needs, exclusive of child care costs, based on a verifiable and statistically based third party source.

“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. A slot contract is tied to a licensed child care provider and may be filled by any child who is eligible for and receiving CCCAP.

“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.

“STATE MEDIAN INCOME” (SMI) REFERS TO FIGURES SET BY THE DEPARTMENT ANNUALLY. THESE FIGURES, BASED ON GROSS MONTHLY INCOME LEVELS FOR THE CORRESPONDING HOUSEHOLD SIZE, ARE INCLUDED IN THE TABLE IN SECTION 3.105.1.H.2.

“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 wait lists or freezes 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, self-employment, or job search.

“Tiered reimbursement” means a pay structure that reflects increasing rates for high-quality early childhood programs that receive CCCAP reimbursement. These increases are made in addition to the base reimbursement rate.

“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 post-secondary education” is a Low-Income Child Care eligible activity where an adult caretaker or teen parent attends educational programs including regionally accredited post-secondary education for a Bachelor's degree or less or a workforce training program such as vocational, technical, or job skills training. Workforce training programs include educational activities after completing basic education.

“Transition families” means households ending their participation in the Colorado Works Program and who are eligible to transition to Low-Income Child Care Assistance.

“Units” or “unit of care” means the period of time authorized 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.)

“Up-to-date immunizations” means documentation of immunization status or exemption as required by Colorado Department of Public Health and Environment (CDPHE). Immunizations required for school entry are set by the board of health and based on recommendations of the Advisory Committee on Immunization Practices (ACIP).

“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.

“Wait list” means a list maintained by a county that reflects individuals who have submitted a complete application for the CCCAP program for whom the county is not able to immediately enroll.

“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~~3.104 APPLICANT RIGHTS

~~3.904.1~~3.104.1 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~~3.104.2 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 Low-Income Child Care 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 Low-Income Child Care application.

~~3.904.3~~3.104.3 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 taken with the following exceptions, which require no prior notice:

A. Facts indicate an overpayment because of probable fraudulent behavior or an intentional program violation and such facts have been verified to the extent possible.

B. The proposed adverse action is based on a written or verbal statement from the adult caretaker(s) or teen parent(s) who state(s) that he/she no longer wishes to receive assistance or services.

C. The proposed adverse action is requested by another county or state department.

D. The counties or their designee(s) have confirmed the death of a recipient or of Adult Care Taker or Teen parent.

E. The county has exercised its right to terminate a fiscal agreement with any child care provider because a child's health or safety is endangered or the child care provider is under a negative licensing action.

~~3.904.4~~3.104.4 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 given written notice of their right to an informal county conference when they are given their copy of the fiscal agreement.

~~3.905~~3.105 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 a low-income eligible activity, and need child care assistance.

~~3.905.1~~3.105.1 LOW-INCOME CHILD CARE ELIGIBILITY

In order to be eligible for Low-Income 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 at the time of application and re-determination. Adult caretaker(s) or teen parent(s) shall remain eligible for the duration of the eligibility period if they report that they are no longer residents of the county in which they are actively receiving assistance per section ~~3.912~~3.112 (CC).

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 state department; 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 may accept applications from another public assistance program in lieu of the Low-Income Child Care application.

b. 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.

c. 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 required verification supporting the information declared on the application form; including:

a. Proof of current residence;

b. Citizenship, age, and identity of the child(ren) for whom care is requested;

1) A child's citizenship status, age, and identity are considered to be verified if the complete application includes the child's age and citizenship status and is signed attesting to the child's identity unless the county determines that the declaration of citizenship, age, and/or identity is inconsistent.

2) The county must request additional verification if the adult caretaker or teen parent's declaration is determined to be inconsistent based on the following guidelines:

a) If the claim of citizenship, age, and/or identity is inconsistent with statements made by the adult caretaker or teen parent, or with other information on the application, or on previous applications;

b) If the claim of citizenship, age, and/or identity is inconsistent with the documentation provided by the adult caretaker or teen parent; and/or,

c) If the claim of citizenship, age, and/or identity was previously received from another source such as another public assistance program including Colorado Works, the Supplemental Nutrition Assistance Program (SNAP), or Medicaid, and the claim is inconsistent with the information previously received from that source.

c. Up-to-date immunizations if applicable;

d. Low-Income eligible activity;

e. Schedule (if non-traditional care hours are requested at application or redetermination);

f. Income;

g. Incapacitation if applicable;

h. Custody arrangement and/or parenting schedule if applicable;

i. Child care provider if one has been chosen at the time of application; and,

j. Other verifications as determined by approved county plan.

3. An orientation or interview for new applicants as a county option. Counties shall ensure that the orientation or interview process is not burdensome to families by allowing a family to complete the process via phone or electronic tools or by offering extended office hours to hold the orientation or interview.

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 a low-income 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 a low-income 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 a low-income eligible activity; or,

3) One adult caretaker or teen parent is engaged in a low-income 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).

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 a low-income eligible activity, must 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. Adult caretakers or teen parents that are not determined work eligible per Colorado Works Program rule (9 CCR 2503-6) who are caring for children receiving Basic Cash Assistance through the Colorado Works Program are not eligible for Colorado Works Child Care but may be eligible for Low-Income Child Care if the adult caretaker or teen parent 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 Low-Income Child Care case who are participating in a low-income eligible activity and go on verified maternity/paternity leave. Not to exceed twelve (12) weeks.

9. Adult caretaker(s) or teen parent(s) with an open and active Low-Income Child Care case who are participating in a low-income eligible activity and go on verified medical leave and are unable to care for his/her children. Not to exceed twelve (12) weeks per instance.

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 a low-income eligible activity are not eligible for the low-income program.

F. Eligible Child

An "eligible child" is a child birth to the age 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 verified 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 or are receiving child care assistance shall verify that they are a U.S. citizen or qualified alien and provide proof of identity if inconsistent, in accordance with ~~3.905.1~~3.105.1 (C)(2)(b).

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 low-income eligible 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) or teen parent(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) or teen parent(s) shall submit an expected weekly employment schedule that includes approximate employment hours. This is required upon beginning self-employment, at application, and at redetermination.

c. The adult caretaker(s) or teen parent(s) shall show that he/she has maintained an average income that exceeds their business expenses from self-employment.

d. The adult caretaker(s) or teen parent(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 or teen parent(s) 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 that met the eligibility criteria on the most recent eligibility determination for no fewer than thirteen (13) weeks of child care for each instance of non-temporary cessation of activity (per section ~~3.905.2~~3.105.2(C).

b. If the job search activity is reported within the four (4) week reporting period, the activity shall begin the day that the change in activity was reported. If the job search activity is reported outside of the four (4) week reporting period, the activity shall begin the date that activity cessation occurred.

c. Job search shall continue until the adult caretaker or teen parent gains employment, enters into another low-income eligible activity, or when all of the allotted job search time has been utilized. Any day utilized in a week is considered one (1) week used toward the time limited activity.

d. Regular consistent child care must be provided during the job search period.

e. The amount of care authorized each day shall, at a minimum, be commensurate with the amount needed to complete the job search tasks.

f. Job search child care shall be approved in each instance of non-temporary job loss or when adult caretakers or teen parents end their low-income eligible activity while enrolled in the Low-Income program.

g. An adult caretaker or teen parent shall be determined ineligible once they have utilized their allotted job search time and have not reentered into a low-income eligible activity.

h. If at the time of re-determination, the adult caretaker or teen parent remains in a job search activity, has not utilized the remainder of their allotted job search time, and has provided the required re-determination documentation, the county shall place the case into a post-eligibility stabilization period for the duration of the remaining job search time.

1) If during the post-eligibility stabilization period the adult caretaker or teen parent reports that they have gained employment or reentered into another low-income eligible activity, the county shall process this change, continue care, and assess a parent fee.

2) The adult caretaker or teen parent shall be determined ineligible if they have not reentered into a low-income eligible activity and the post eligibility stabilization period has expired.

4. Training Criteria and Post-Secondary Education

Subject to available appropriations, an adult caretaker(s) who is enrolled in a training or post-secondary education program is eligible for CCCAP for at least one-hundred-four (104) weeks and up to two-hundred-eight (208) weeks per lifetime, provided all other eligibility requirements are met during the adult caretaker's enrollment. These weeks do not have to be used consecutively. A county may give priority for services to a working adult caretaker(s) over an adult caretaker(s) enrolled in post-secondary education or workforce training. When a teen parent becomes enrolled in post-secondary education, they are considered an adult caretaker and the time limited activity timelines apply.

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 one-hundred-four (104) weeks and up to two-hundred-eight (208) weeks per lifetime. This is limited to coursework for the degree or certificate.

b. In addition to the weeks of assistance available for post-secondary and vocational or technical training, up to fifty-two (52) weeks of assistance is allowable for 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 must not exceed eighty-five percent (85%) of the state median income.

a. Entry eligibility shall be set by the state department at a level based on the self sufficiency standard, not to be set below one hundred eighty-five percent (185%) of federal poverty level.

b. Exit income eligibility must be eighty-five percent (85%) of the state median income.

2. Effective October 1, ~~2021~~2022, monthly gross income levels, for one-hundred percent (100%) of the Federal Poverty Guideline (FPG), as well as eighty-five percent (85%) of State Median Income (SMI) for the corresponding household size are as follows:

Family Size	100% Federal Poverty Guideline (FPG)	85% State Median Income (SMI) (State and Federal Maximum Income Limit)
1	$~~1,073.33~~1,132.50	$~~3,908.75~~4,080.62
2	$~~1,451.67~~1,525.83	$~~5,111.45~~5,336.19
3	$~~1,830.00~~1,919.17	$~~6,314.14~~6,591.77
4	$~~2,208.33~~2,312.50	$~~7,516.83~~7,847.34
5	$~~2,586.67~~2,705.83	$~~8,719.53~~9,102.92
6	$~~2,965.00~~3,099.17	$~~9,922.22~~10,358.49
7	$~~3,343.33~~3,492.50	$~~10,147.73~~10,593.91
8	$~~3,721.67~~3,885.83	$~~10,373.23~~10,829.33
Each Additional person	$~~378.33~~393.33	$~~225.51~~235.42

3. 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~~3.103 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~~3.105.1 (I)(3) 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 ~~3.905.1~~3.105.1, I & J)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.

4. 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 adult caretaker or teen parent 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) or teen parent(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 Veteran's 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. 101201

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 adult caretakers in households receiving Low-Income Child Care Assistance to apply for and cooperate with Child Support Services pursuant to Section ~~26-2-805~~26.5-4-111, C.R.S.

2. At the option of the county, teen parents may be required to cooperate with the child support services unit upon re-determination if during the twelve (12) month eligibility period, they have graduated from high school or have completed the high school equivalency exam.

3. 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 or teen parents (per section ~~3.905.1~~3.105.1, L, 2) of their right to apply for a good cause exemption utilizing the state prescribed good cause waiver 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.

4. The adult caretaker(s) or teen parent(s) (per section ~~3.905.1~~3.105.1, L, 2) 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 at redetermination.

5. For Low-Income Child Care Assistance “Child Support Services 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.

6. 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 at application or re-determination only:

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 or teen parent (per section ~~3.905.1~~3.105.1, L, 2) fails 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.

7. 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.

8. At the time of transition from Colorado Works to Low-Income Child Care, the child care technician shall notify the adult caretaker or teen parent in writing via the Client Responsibilities Agreement of his/her continued requirement to cooperate with the Child Support Services Unit.

9. At the time of transition from Colorado Works to Low-Income Child Care, the child care technician shall notify Child Support Services of the household's continued requirement to cooperate with the Child Support Services Unit.

10. 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.

3.105.23~~.905.2~~ ADULT CARETAKER OR TEEN PARENT RESPONSIBILITIES

A. Primary adult caretaker(s) or teen parent(s) shall sign the application/re-determination form along with providing verification of income to determine eligibility.

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 low-income 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 low-income 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 twelve (12) weeks per instance when returning to same employer;

    2. Absence from low-income eligible activities including employment, self-employment, education, and/or training activity due to extended verified medical leave, not to exceed twelve (12) weeks per instance when returning to same employer;

    3. Absence from low-income eligible activities including employment, self-employment, education, and/or training activity due to verified maternity/paternity leave, not to exceed twelve (12) when returning to same employer; or,

    4. Absence from an education or training activity due to holidays or scheduled breaks, not to exceed twelve (12) weeks per instance.

D. Adult caretaker(s) or teen parent(s) shall provide the County Department with up-to-date 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 who are in need of care and have an absent parent, within thirty (30) days of requesting child care, as required by the county and per section ~~3.905.1~~3.105.1, L.

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 low-income eligible activity only at application and/or re-determination when non-traditional care hours are requested.

H. The primary adult caretaker(s) or teen parent(s) must verify citizenship status, age, and identity of the child(ren) for whom care is requested, in accordance with ~~3.905.1~~3.105.1(C)(2)(b). If the county determines that the adult caretaker or teen parent's declaration on the application or redetermination form is inconsistent, the adult caretaker or teen parent will be required to provide verification of what has been determined to be inconsistent.

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 share his/her individual attendance credentials with the child care provider at any time or he/she may be subject to disqualification per section ~~3.915.4~~3.115.4 (B).

K. Adult caretaker(s) or teen parent(s) are required to use the Attendance Tracking System (ATS) to check children in and out for the days of care authorized and attended unless the child care provider has been granted an exemption by the state. Non-cooperation with the use of the Attendance Tracking System (ATS) may result in case closure and/or non-payment of the child care subsidy as defined by county policy.

3.105.3~~3.905.3~~ LOW-INCOME CHILD CARE RE-DETERMINATION

A. The re-determination process shall be conducted no earlier than every twelve (12) months. The State-prescribed 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 adult caretaker or teen parent 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 or teen parent 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 low-income eligible activity only at application and/or redetermination and only when non-traditional care hours are requested.

d. At application and re-determination, 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 reported at application or redetermination and non-traditional care hours are requested), and verifies current student status.

3. Adult caretaker(s) or teen parent(s) shall provide the county department with up-to-date 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.

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.

3.105.4~~3.905.4~~ TERMINATION OF LOW-INCOME CHILD CARE SERVICES

A. Child care authorizations and cases shall be terminated during the eligibility period for the following eligibility related reasons:

1. Household income exceeds eighty-five percent (85%) of state median income AS OUTLINED IN SECTION 3.105.1.H.2 during eligibility period

2. Adult caretaker(s) or teen parent(s) is/are no longer a resident of the state

3. Adult caretaker(s) or teen parent(s) is not involved in a low-income eligible activity and their job search period has expired

4. Adult caretaker(s) or teen parent(s) who are employed or self-employed and do not meet federal minimum wage requirements outlined ~~3.905.1~~3.105.1.G are not considered to be in a low-income eligible activity

5. If the child has had twenty-two (22) or more unexplained absences from authorized care within a thirty (30) day period and two (2) failed documented attempts to contact the adult caretaker or teen parent have been made. The thirty (30) day period must account for temporary breaks or reported breaks in care.

6. The adult caretaker(s) or teen parent(s) has been disqualified due to a founded Intentional Program Violation

B. Child care authorizations and/or cases must be terminated for the following eligibility related reasons at re-determination only:

1. Eligible child exceeds age limits

2. 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.

3. Adult caretaker(s) or teen parent(s) exceeds time limited low-income eligible activity time limits

4. Adult caretaker(s) or teen parent(s) fails to comply with re-determination requirements

5. Adult caretaker(s) or teen parent(s) is not participating in a low-income eligible activity

6. Adult caretaker(s) or teen parent(s) has become a participant in Colorado Works

7. Adult caretaker(s) or teen parent(s) did not submit required immunization records

8. Adult caretaker(s) or teen parent(s) is/are no longer a resident of the county or state

9. Adult caretaker(s) or teen parent(s) (per section ~~3.905.1~~3.105.1 (L)(2)) is/are no longer cooperating with child support establishment during the twelve (12) month eligibility period, 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

10. Adult caretaker(s) or teen parent(s) do not meet federal minimum wage requirement for employment or self-employment are not considered to be in a low-income eligible activity

11. Household income exceeds eighty-five percent (85%) of State median income AS OUTLINED IN SECTION 3.105.1.H.1.

12. If the child has had twenty-two (22) or more unexplained absences from authorized care within thirty (30) days of the re-determination date and two (2) failed documented attempts to contact the adult caretaker or teen parent have been made. The thirty (30) day period must account for temporary breaks or reported breaks in care.

C. 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.

D. 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.

E. Nothing in this section shall preclude an adult caretaker(s) or teen parent(s) from voluntarily withdrawing from the Low-Income program.

3.106~~3.906~~ COLORADO WORKS CHILD CARE

A. Adult caretakers or teen parents who are approved for Colorado Works and are determined work eligible per Colorado Works rule (9 CCR 2503-6) are eligible to receive Colorado Works Child

Care for at least twelve (12) months unless the adult caretaker or teen parent has been determined eligible for transition to Low-Income Child Care prior to the end of the twelve (12) month period.

B. The state-prescribed Colorado Works Child Care Referral Form shall be completed by the county Colorado Works worker and provided to the county child care technician to process in CHATS within five (5) business days of receipt and maintained in the child care case file as follows:

1. When a household is determined eligible for Colorado Works Child Care;

2. When there are changes in household composition;

3. To continue care beyond the end of each twelve (12) month period;

4. When a household is no longer eligible for Colorado Works, at which time the household shall be transitioned to Low-Income Child Care per rule ~~3.906.2~~3.106.2; and/or,

5. When a household's Colorado Works case is transitioned to another county.

C. Adult caretakers or teen parents that are not determined work eligible per Colorado Works rule (9 CCR 2503-6) who are 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 part of the Colorado Works assistance unit; and, she/he meets all other low-income program criteria.

3.106.1~~3.906.1~~ ELIGIBILITY FOR COLORADO WORKS CHILD CARE

A. Adult caretakers or teen parents that have been determined eligible for Colorado Works, have entered into a current individualized plan, are participating in allowable work activities as defined in Colorado Works rule (9 CCR 2503-6) and have been referred for child care by the county Colorado Works worker shall be considered to be participating in an eligible activity and shall receive Colorado Works Child Care for at least twelve (12) months unless the adult caretaker or teen parent transitions to Low-Income Child Care prior to the end of the twelve (12) month period.

B. Colorado Works Child Care cases must be authorized for a minimum of twelve (12) months based on the child's need for care.

C. Only earned income that is reported and verified by the county Colorado Works worker will be considered countable income for Colorado Works Child Care cases upon receipt of a referral at the following times:

1. When a household is initially determined eligible for Colorado Works Child Care; and/or,

2. When care is continued beyond the end of each twelve (12) month period.

D. Child care schedule shall be determined and shared by the county Colorado Works worker on the state-prescribed Colorado Works Child Care Referral Form.

E. County residency shall be verified by the county Colorado Works Program.

F. Citizenship, age, and identity of the child(ren) for whom care is requested are verified by the county Colorado Works Program. The Colorado Works Child Care Referral serves as verification of citizenship, age, and identity, and the referral must be maintained in the child care case file.

G. Immunization verification 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 must be provided to the child care technician and shall be maintained in the child care case file.

H. Counties that provide Colorado Works Child Care for households approved for state diversions require the same eligibility as outlined above.

I. The county Colorado Works worker shall notify the child care technician in writing of changes to the level of child care services. Decreases in child care services shall only be acted upon if it is at the request of the adult caretaker or teen parent. If the county Colorado Works worker processes the child care case, written verification is not required but changes must be clearly documented in CHATS.

J. A change in child care provider shall be reported to the child care technician by the adult caretaker or teen parent or the county Colorado Works worker prior to the change.

K. The county child care technician shall advise adult caretaker(s) or teen parent(s) who are receiving Colorado Works Child Care of their responsibilities in writing via the Client Responsibilities Agreement at the time of the initial referral.

L. If the adult caretaker or teen parent moves out of the county in which they are actively receiving Colorado Works Child Care during the twelve (12) month period:

1. The originating county child care staff shall notify the receiving county within ten (10) business days of being notified that the adult caretaker or teen parent has moved.

2. Upon receipt of notification from the originating county, the receiving county shall initiate or maintain the Colorado Works Child Care case for the remainder of the twelve (12) month period at a minimum.

3.106.2~~3.906.2~~ TRANSITION OFF COLORADO WORKS CHILD CARE

Counties shall transition households that are no longer eligible for the Colorado Works Program and are participating in a low-income eligible activity as defined in ~~3.903~~3.103 to Low-Income Child Care without requiring the household to complete the low-income child care application. The household's eligibility shall be re-determined no earlier than twelve (12) months after the transition as outlined in ~~3.905.3~~3.105.3.

A. A household that is no longer eligible for the Colorado Works Program shall not be automatically transitioned to Low-Income Child Care if any of the following conditions apply:

1. The household is ineligible for the Colorado Works Program due to an Intentional Program Violation (IPV) as determined in Colorado Works rule (9 CCR 2503-6) or,

2. The household is ineligible for the Colorado Works Program and will be at an income level that exceeds eighty-five percent (85%) of the State Median Income (SMI) AS OUTLINED IN SECTION 3.105.1.H.1; or,

3. If the child has had twenty-two (22) or more unexplained absences from authorized care within the last thirty (30) days prior to the household being determined ineligible for Colorado Works and two (2) failed documented attempts to contact the adult caretaker or teen parent have been made within the thirty (30) day period.

4. If a household is not transitioned to Low-Income Child Care for the reasons outlined above, the county shall provide timely written notice.

B. Households shall be determined eligible to transition to Low-Income Child Care based on the information and verification that is provided to the child care technician by the county Colorado Works worker upon receipt of the state-prescribed Colorado Works Child Care Referral Form. No additional verification shall be required until the household's twelve (12) month re-determination for Low-Income Child Care. Child citizenship status, age, and identity must not be re-verified at the time of the Low-Income Child Care re-determination if it was previously verified using the Colorado Works Child Care Referral Form.

C. If a household becomes ineligible for Colorado Works while in a low-income eligible activity other than job search as defined in ~~3.903~~3.103, the adult caretaker or teen parent shall be transitioned to Low-Income Child Care. The household's eligibility shall be re-determined no earlier than twelve (12) months after the transition as outlined in ~~3.905.3~~3.105.3.

D. If a household becomes ineligible for Colorado Works while participating in a job search activity or is not in a low-income eligible activity as defined in ~~3.903~~3.103, the adult caretaker or teen parent shall be transitioned to Low-Income Child Care and provided a minimum of thirteen (13) weeks of job search.

E. If an increase in household income is reported by the county Colorado Works worker at the time of transition to Low-Income Child Care, the county child care technician shall document the income increase in case comments but shall not act upon the change until the household's twelve (12) month re-determination for Low-Income Child Care.

F. Parent fees for households that transition from Colorado Works to Low-Income Child Care must not be assessed higher than what was determined at the most recent Colorado Works Child Care referral. Parent fee revisions for child care during the twelve (12) month period may occur as outlined in ~~3.911~~3.111 (B).

G. Households that transition from Colorado Works to Low-Income Child Care must be authorized for a minimum of twelve (12) months based on the child's need for care as long as the family remains eligible for the Low-Income Child Care program.

H. Households that transition from Colorado Works to Low-Income Child Care are subject to the Low-Income Child Care rule outlined in ~~3.905~~3.105.

I. County child care staff shall advise adult caretaker(s) or teen parent(s) that are transitioned from Colorado Works to Low-Income Child Care of their responsibilities in writing via the Client Responsibilities Agreement at the time of transition.

J. If a household is not transitioned from Colorado Works to Low-Income Child Care, the county shall provide a fifteen (15) day notice.

K. If at any time after being transitioned onto Low-Income Child Care the household is determined eligible for Colorado Works, re-enters into a current individualized plan, and is participating in an allowable work activity as defined in Colorado Works rule (9 CCR 2503-6), the household shall be transitioned back onto Colorado Works Child Care upon receipt of the Colorado Works Child Care Referral Form.

3.1073.907 PROTECTIVE SERVICES CHILD CARE

A. Protective services households refers to households in which child(ren) 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. At the option of the county, the county may provide protective services child care utilizing Child Care Development Funds (CCDF) rather than Child Welfare.

B. Protective services cases must be authorized for a minimum of twelve (12) months by the county worker based on the child's need for care due to the funding source.

C. 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 Educational Act.

D. The state-approved Protective Services Child Care Referral Form shall be completed by the county Child Welfare worker and provided to the county child care technician to process in CHATS within five (5) business days of receipt and maintained in the child care case file when any of the following occur:

1. A household is determined eligible for Protective Services Child Care;

2. There are changes in household composition that affect eligibility or the need for Protective Services Child Care;

3. There are changes in the child care schedule;

4. To continue care; or,

5. A household is no longer eligible for or in need of Protective Services Child Care.

3.107.13.907.1 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. As determined by the Child Welfare worker, the income requirement for protective services households may be waived on a case by case basis. If the income requirement is waived, it must be documented in the case file.

D. Protective services households are not subject to low-income eligible activity requirements.

E. 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.

F. Citizenship, age, and identity shall be verified by the Child Welfare worker. The signed Protective Services Child Care Referral serves as verification of citizenship, age, and identity and must be

maintained in the child care case file. If the Child Welfare worker is unable to attest to having verified the child's citizenship status, age, and/or identity at the time of referral:

1. Protective services households must be allowed up to six (6) months to provide verification of the child(ren)'s U.S. citizenship status and age;

2. Protective services households must be allowed up to six (6) months to provide verification of the child(ren)'s identity; and,

3. If the Child Welfare worker cannot verify and attest to the child's citizenship status, age, or identity within six (6) months of the referral, the county must not provide child care services for the child(ren) through the use of Protective Services Child Care.

G. Protective services households must 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.

H. If the child(ren) on the Protective Services Child Care case receives care from a licensed child care provider, the county may reimburse the child care provider for additional absences and/or holidays beyond what would be paid for a Low-Income, Colorado Works, or Child Welfare Child Care case. The number of additional absences shall be paid in accordance with the Protective Services Child Care policy set by the county and approved by the State Department.

3.1083.908 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 Educational 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 12 CCR 2509-4 §7.302.

D. Child Welfare Child Care 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.

3.1093.909 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. 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.

2. Subsidized care provided during the stabilization period is considered non-recoverable by the county unless fraud has been established.

3. Eligible activity

    a. The adult caretaker(s) or teen parent(s) is not required to participate in a low-income eligible activity during the stabilization period.

    b. If the adult caretaker(s) or teen parent(s) is participating in a low-income eligible activity, they will have at least sixty (60) days to provide necessary verification.

4. 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.

5. The adult caretaker(s) or teen parent(s) may self-declare citizenship, age, and identity of the child(ren) during the stabilization period.

    a. A child's citizenship status, age, and identity are considered to be verified at the end of the stabilization period if the complete application includes the child's age and citizenship status and is signed attesting to the child's identity unless the county determines that the declaration of citizenship, age, and/or identity is inconsistent.

    b. The county must request additional verification at the end of the stabilization period if the adult caretaker or teen parent's declaration is determined to be inconsistent based on the following guidelines:

        1) if the claim of citizenship, age, and/or identity is inconsistent with statements made by the adult caretaker or teen parent, or with other information on the application, or on previous applications;

        2) if the claim of citizenship, age, and/or identity is inconsistent with the documentation provided by the adult caretaker or teen parent; and/or,

        3) if the claim of citizenship, age, and/or identity was previously received from another source such as another public assistance program including Colorado Works, the Supplemental Nutrition Assistance Program (SNAP), or Medicaid, and the claim is inconsistent with the information previously received from that source.

6. 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 the county with verification of immunization status shall not be required during the stabilization period.

3.1103.910 CHILD CARE ASSISTANCE PROGRAM WAIT LISTS AND ENROLLMENT FREEZES

3.110.13.910.1 WAIT LISTS

A. A county may apply to the state to implement a wait list when:

1. State-generated projections indicate that a county's allocation will be at least eighty-five percent (85%) expended by the end of the fiscal year; or,

2. A county is able to demonstrate a fiscal need that includes factors that are not accounted for in the state-generated projections for county CCAP expenditures, such as, but not limited to, drastic economic changes.

B. Once approved, counties shall maintain a current and accurate wait list in the state identified human services case management systemCHATS of adult caretakers and teen parents who have applied for the CCCAP program.

1. Counties shall require families to complete a Low-Income Child Care application in its entirety and enroll eligible adult caretakers and teen parents from wait lists according to the following state defined target populations:

a. Households whose income is at or below 130% of the current federal poverty guidelines;

b. Children with additional care needs; and,

c. Families experiencing homelessness.

2. Counties may prioritize enrollment for teen parents or other segments of populations that are defined by the county based on local needs.

3.110.23.910.2 ENROLLMENT FREEZES

A. A county may apply to the state to implement a freeze when:

1. State-generated projections indicate that a county's allocation will be at least ninety-five percent (95%) expended by the end of the fiscal year; or,

2. A county is able to demonstrate a fiscal need that includes factors that are not accounted for in the state-generated projections for county CCAP expenditures, such as, but not limited to, drastic economic changes.

B. Counties that have been approved to implement a freeze shall add adult caretakers and teen parents into ~~the state identified human services case management system~~CHATS if they are likely to be found eligible based on self-reported income and job, education, job search, or workforce training activity. Counties shall require an applicant to restate his or her intention to be kept on the freeze every six (6) months in order to maintain his or her place on the list.

1. Counties shall enroll eligible adult caretakers and teen parents once a freeze is lifted according to the following state defined target populations:

a. Households whose income is at or below 130% of the current federal poverty guidelines;

b. Children with additional care needs; and,

c. Families experiencing homelessness.

2. Once a freeze is lifted, counties may prioritize enrollment for teen parents or other segments of populations that are defined by the county based on local needs.

3.1113.911 PARENT FEES [Effective 7/1/2021]

A. 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 calculated in whole dollars by dropping the cents. Families shall be noticed of their parent fee at the time of Colorado Works Child Care referral; low-income application or re-determination; or, when a reduction/increase of household parent fee occurs.

B. Parent fee revisions for Low-Income and Colorado Works Child Care during the twelve (12) month eligibility period may occur when:

1. The adult caretaker or teen parent, who was initially determined eligible with countable income, regains income after a temporary loss of income; or,

2. A change has been reported that results in a decrease in household parent fee.

3. There is an increase or decrease in the amount of care that is authorized and the increase in authorization is not due to the addition of a household member; or,

4. The household begins or ceases utilization of care at a high-quality child care provider.

5. Increases in parent fees beyond what is outlined in numbers 1-4 of this section shall only go into effect at Low-Income Child Care re-determination or at the end of the twelve (12) month Colorado Works Child Care period.

C. During the twelve (12) month eligibility period the household parent fee may not be assessed higher than what was determined at the most recent Colorado Works Child Care referral or low-income application or re-determination.

D. Parent fees for Low-Income Child Care cases 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. Income may be divided by a weekly amount then multiplied by 4.33 to arrive at a monthly average for parent fee calculations.

E. 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.

F. Parent fees for Colorado Works Child Care cases shall be reviewed at the end of the household's twelve (12) month eligibility period. An adjusted parent fee shall be based on gross countable income as verified and shared by the local Colorado Works Program.

G. As defined by county policy, a county may waive the parent fee for a Low-Income or Colorado Works Child Care household that has a child that is dually enrolled in a Head Start or Early Head Start Program.

H. For a Low-Income or Colorado Works Child Care 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.

I. All adult caretaker(s) and teen parents are required to pay the fee as determined by the formula listed in ~~3.911~~3.111 (P), 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 Low-Income or Colorado Works Child Care household is eligible for a reduced parent fee based on the quality level of the child care provider

3. Colorado Works households where the adult caretaker or teen parent has entered into a current individualized plan and is participating in an allowable work activity as defined in Colorado Works rule (9 CCR 2503-6) other than paid employment shall not have a parent fee.

4. Child Welfare Child Care households as defined in the Social Services rule manual, Section 7.000.5 (12 CCR 2509-1) shall not have a parent fee.

5. Families Experiencing Homelessness as defined in section ~~3.909~~3.109 shall not have a parent fee during the stabilization period.

6. Protective service households as defined in section ~~3.907~~3.107 shall not have a parent fee unless the child(ren) has countable income.

7. Families that have no income shall have no parent fee.

8. Effective April 1, 2020, parent fees, as assessed by the parent fee formula, may be waived in the event of a declared state or local disaster or emergency for up to twelve (12) months for households impacted by such disaster or emergency. The county shall document the decision to waive the parent fee and the amount of time the parent fee will be waived in the case record in the Child Care Automated Tracking System (CHATS).

J. The initial or revised parent fee shall be effective the first full calendar month after the end of the timely written notice period unless the revision results in a decrease to the parent fee. A parent fee shall not be assessed or changed retroactively unless in the event of an emergency or disaster as outlined in rule ~~3.911~~3.111 (H)(8), and, under those circumstances a county may only retroactively waive the parent fee to the beginning of the current month.

K. 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.

L. 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.

M. Adult caretakers or teen parents will be informed of their responsibilities related to fee payment on their signed application form or via the Client Responsibilities Agreement that is provided to them at the initial Colorado Works referral or at the time of transition from Colorado Works to Low-Income Child Care.

N. Loss of eligibility for child care subsidies may occur at re-determination or at the end of the twelve (12) month Colorado Works Child Care Period 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 during the twelve (12) month eligibility period. Notice of termination for such loss of eligibility shall be given in accordance with Section ~~3.905.4~~3.105.4. Child care providers shall report nonpayment 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 at re-determination 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).

O. 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 fifteen (15) calendar-days prior to the first of the month the parent fee is effective.

P. Beginning July 1, 2021 through September 30, 2023, the county must assess parent fees based upon a marginal rate increase of fourteen percent (14%) for every dollar of gross countable household income above one hundred percent (100%) of the federal poverty guidelines (FPG) outlined in section ~~3.905.1~~3.105.1 (H)(2).

1. The county must assess a parent fee of one percent (1%) of gross income to eligible households with gross income that is at or below one hundred percent (100%) of the FPG.

2. For eligible households with gross income that is above one hundred percent (100%) of the FPG, the county must assess a parent fee at one percent (1%) of their income plus a marginal rate increase of fourteen percent (14%) for every dollar of gross countable household income above one hundred percent (100%) of the FPG.

3. An additional fifteen dollar ($15) fee shall be added to the parent fee for each additional child when households are requesting care for more than one (1) child and have income above one hundred percent (100%) of the FPG. If care is only requested for one (1) child, the additional fifteen dollar ($15) fee does not apply.

Q. Counties shall use the federal poverty guidelines and state median income limit as defined in section ~~3.905.1~~3.105.1.H.2. Counties shall update parent fees at the next scheduled re-determination according to the parent fee formula table outlined in ~~3.911~~3.111 (P), in effect on the date of redetermination.

R. Parent fees, as assessed by the parent fee formula, may be reduced to 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.

S. The ~~state~~ Department shall notify counties at the beginning of each federal fiscal year of the current Federal Poverty Guidelines and State Median Income limit AS OUTLINED IN SECTION 3.105.1.H.2. Counties shall update parent fees at the next scheduled re-determination or at the end of the twelve (12) month Colorado Works Child Care Period.

T. 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.

U. 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.

V. Children enrolled in grades one (1) through twelve (12) that are authorized for part-time care during the school year must have a part-time parent fee.

W. 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.

3.112~~3.912~~ COUNTY RESPONSIBILITIES

A. Counties shall administer CCCAP~~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 Low-Income Child Care application or re-determination. All changes to forms shall be submitted to and approved by the state department prior to use.

D. Counties shall respond to requests from the ~~State~~ Department within two (2) business days.

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. Counties shall document in CHATS 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. Counties 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 a 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 Low-Income Child Care.

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 Child Care 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 consumer education to adult caretakers, teen parents, child care providers and the general public 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.

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 ~~3.912~~3.112, N, 3-4 via the Low-Income Child Care application and shall enter the information into CHATS for reporting purposes.

O. Once determined eligible for Low-Income Child Care, households should remain eligible for a minimum of twelve (12) months. Counties 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 low-income eligible activity for the reasons that do not constitute a temporary break as defined in section ~~3.905.2~~3.105.2.C; or,

3. The adult caretaker(s) or teen parent(s) no longer reside(s) in the state.

4. The adult caretaker(s) or teen parent(s) who are employed or self-employed and do not meet federal minimum wage requirements outlined in ~~3.905.1~~3.105.1.G are not considered to be in a low-income eligible activity.

5. If the child has had twenty-two (22) or more unexplained absences from authorized care within a thirty (30) day period and two (2) failed documented attempts to contact the adult caretaker or teen parent have been made. The thirty (30) day period must account for temporary breaks or reported breaks in care.

6. The adult caretaker(s) or teen parent(s) has been disqualified due to a founded Intentional Program Violation.

P. Counties shall provide written wait list and freeze policies to the state for review and approval at the time of county plan submission.

Q. Counties shall maintain a current and accurate wait list in ~~the state identified human services case management system~~CHATS of adult caretakers and teen parents who have applied for the CCCAP program.

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 CHATS regarding 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, age, and identity.

W. Counties must use preponderance of evidence when verifying a child's citizenship status, age, and identity at application and/or re-determination, only requiring additional verification if the adult caretaker or teen parent's declaration is inconsistent according to the following guidelines:

1. If the claim of citizenship, age, and/or identity is inconsistent with statements made by the adult caretaker or teen parent, or with other information on the application/redetermination, or on previous applications/re-determinations;

2. If the claim of citizenship, age, and/or identity is inconsistent with the documentation provided by the adult caretaker or teen parent; and/or,

3. If the claim of citizenship, age, and/or identity was previously received from another source such as another public assistance program including Colorado Works, the Supplemental Nutrition Assistance Program (SNAP), or Medicaid, and the claim is inconsistent with the information previously received from that source.

X. Counties shall not require Social Security Numbers or cards for household members who apply for child care assistance.

Y. Counties shall use the prudent person principle when determining eligibility or authorizing care and shall document reasoning in the appropriate notes section of CHATS.

Z. Counties or their designee shall verify the residence of any adult caretaker(s) or teen parent(s) receiving or applying for Low-Income Child Care assistance to ensure that they live in the county where they are applying for assistance at the time of application or re-determination. For families experiencing homelessness, refer to section ~~3.909~~3.109.

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.

AA. County child care staff shall advise low-income adult caretaker(s) or teen parent(s) of their responsibilities in writing 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 low-income eligible activity, which does not qualify as a temporary break as defined in section ~~3.905.2~~3.105.2.C, must be reported within four (4) calendar weeks.

BB. 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 low-income 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 low-income eligibility activity, which does not qualify as a temporary break as defined in section ~~3.905.2~~3.105.2.C;

c. Changes in parent fee per section ~~3.911~~3.111

d. Changes in state residency; and,

e. Changes that are beneficial to the household such as, but not limited to:

1) An increase in authorized care;

2) A change of child care provider;

3) Change in household composition due to an additional child requesting care; and,

4) 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.

CC. If the adult caretaker(s) or teen parent(s) moves out of the county in which they are actively receiving Low-Income Child Care assistance benefits during the twelve (12) month eligibility period; remains below eighty-five percent (85%) of the state median income; and, remains in a low-income eligible activity as defined in the originating county's county plan, the originating county shall maintain the case, authorization(s), and fiscal responsibility until the re-determination date that was previously determined;

1. The originating county shall be responsible for initiating and/or maintaining the fiscal agreement for the child care provider that the family utilizes for care in accordance with

~~3.915.5~~3.115.5 for the remainder of the twelve (12) month eligibility period. If the originating county does not have an active fiscal agreement with the chosen child care provider at the time of exit, the child care provider's fiscal agreement shall be entered using the county ceiling rates of the county in which the provider is located.

2. At the time of re-determination, the receiving county shall re-determine the household's eligibility per section ~~3.905.3~~3.105.3 without requiring the household to re-apply.at the time of redetermination the originating county shall issue the eligibility re-determination form to the household per section ~~3.905.3~~3.105.3 and direct the family to return the completed form to the receiving county. In order to mitigate service interruptions, the originating county shall notify the receiving county of the re-determination and their responsibilities of redetermining eligibility.

3. The child care case may be closed if at the time of re-determination the family does not meet the eligible activity requirements of the receiving county.

4. If the receiving county has a wait list at the time of re-determination, a family may be placed onto that county's wait list provided they are not a part of the county defined target populations.

DD. Counties shall respond to requests for information or assistance from other agencies within five (5) business days.

EE. Counties must review and take action on current re-determinations for completeness, approve or deny the re-determination, 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 re-determination was received by the county. The county must notify the adult caretaker(s) or teen parent(s) in writing that they have fifteen (15) calendar days from the date the notice is mailed to provide the required missing verifications. If verifications are not received within the fifteen (15) day noticing period, the re-determination will be denied.

FF. Whenever possible in processing re-determinations of eligibility for adult caretaker(s) or teen parent(s) currently receiving Low-Income Child Care, counties shall use information that is already available in other sources to document any verification including citizenship, age, and identity if the adult caretaker or teen parent's declaration is inconsistent in accordance with ~~3.912~~3.112(W).

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. Reports of unpaid parent fees shall be documented on the case and the county shall not take action on report of unpaid parent fees until re-determination. If the unpaid parent fee is reported outside of the required reporting period outlined in ~~3.914.2~~3.114.2 (Q), the county shall not take any action. If at the time of re-determination, the parent fee remains unpaid and acceptable payment arrangements have not been made with the child care provider, the household shall remain ineligible until:

1. Delinquent parent fees are paid in full;

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).

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 Low-Income Child Care 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 application date.

LL. With regard to services to students enrolled in grades one (1) through twelve (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 Child Care case is determined eligible, except in the case of a pre-eligibility application. If the child will receive care from a qualified exempt child care provider, the authorization start date shall not be prior to the date the criminal background check has been completed and cleared.

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.

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 generate Attendance Tracking System registration for the household upon case approval or initial authorization.

RR. The county shall generate Attendance Tracking System registration for child care providers when a fiscal agreement with a provider is opened.

SS. 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 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.

TT. The counties or their designee will complete an annual review of the state-administered system for child abuse and neglect on the qualified exempt child care provider(s) and any individual(s) 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) if care is provided in the qualified exempt provider's home.

UU. Counties shall maintain a copy of the non-relative qualified exempt provider's health and safety report of inspection in the provider file. The report of inspection shall be made available to the client upon request to the county or the ~~State~~ Department.

VV. Upon notification to counties by the ~~state~~ Department that the relevant ~~human services~~ systems are capable of accommodating this review, 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.

WW. The county shall reimburse licensed child care providers based on the state established base payment and tiered reimbursement rates.

XX. The state-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.

YY. 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.

ZZ. Counties shall make fiscal agreements effective the date that the county receives the completed and signed fiscal agreement from the provider. Fiscal agreements shall be:

1. One (1) year in length for qualified exempt child care providers

2. Three (3) years in length for licensed child care providers

AAA. Counties shall reimburse providers at the rate set by the state department.

BBB. 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 reimbursement rates set by the state. The CCCAP reimbursement rate paid to the provider by the county must be the lesser of the two.

CCC. Counties shall:

1. Have fiscal agreements signed by the child care provider and county staff prior to opening them in CHATS;

2. Enter a completed fiscal agreement into CHATS within five (5) business days of receipt; and,

3. Provide a copy of the fully executed fiscal agreement to the child care provider within seven (7) calendar days of the CHATS entry.

DDD. Counties shall not make changes to their county ceiling rates more than every twelve (12) months unless instructed to do so by the state department.

EEE. Counties shall update CHATS and notify a provider via rate notification within fifteen (15) business days after a child care technician has received a system generated quality rating change notification indicating that a provider has had a change in their quality rating.

FFF. 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.

GGG. Counties shall process complete manual claim forms in CHATS within twenty-one (21) calendar days of receipt for payments that were not automatically processed through CHATS. If processing of the complete manual claim form is delayed for any reason, the county shall notify the child care provider(s) in a timely manner and document the circumstances in CHATS.

HHH. In any cases where payments to licensed child care providers or qualified exempt child care providers 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.

III. Counties shall ensure that child care providers are not charging the county more than the child care provider's established private pay rates.

JJJ. County offices shall complete a random monthly review of attendance data for at least one percent (1%) or one provider, whichever is greater. 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.

KKK. Counties 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.

LLL. Counties shall establish recoveries within twelve (12) months of discovery of the facts resulting in recovery.

MMM. 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.

NNN. Counties shall report established recoveries that are the result of legally designated or determined fraud or recoveries of five-thousand dollars ($5000) or more to the state department.

~~3.113~~3.913 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 Low-Income Child Care services and there is no need to place the household on the wait list. The start date of eligibility is defined in Section ~~3.912~~3.112 (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-prescribed Low-Income Child Care 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 wait 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 low-income 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.

3.1143.914 CHILD CARE PROVIDERS

3.114.13.914.1 ELIGIBLE FACILITIES

A. Licensed Facilities

The following facilities are required to be licensed and comply with licensing rules as defined in the Social Services rule manual, sections 7.701 through 7.712 (12 CCR 2509-8):

1. Family child care homes AS DEFINED IN SECTION 26.5-5-303(7), C.R.S.

2. Child care centers which are less than 24-hour programs of care, as defined in section 26-6-102(1.5)26.5-5-303(3), C.R.S.

B. 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:

   a. Any number of children directly related to the provider;

   b. Any number of siblings from one family unrelated to the provider; or,

   c. Up to four (4) children, who are unrelated to the provider.

   d. No more than two (2) children under the age of two (2) years may be cared for at any time if the provider's own children are in the provider's care as they are counted toward the maximum capacity of four (4).

   e. The relationships for care outlined in a-b of this section include:

      1) "Relative in-home care" means care provided by a relative in the child's own home by a person who is eighteen (18) years of age or older and is related to the child through marriage, blood, court decree, or adoption and is a grandparent; great-grandparent; sibling (if living in a separate residence than the eligible child); aunt; and/or uncle, and does not meet the definition of "adult caretaker" or "teen parent".

      2) "Relative out-of-home care" means care provided by a relative in another location by a person who is eighteen (18) years of age or older and is related to the child through marriage, blood, court decree, or adoption and is a grandparent; great-grandparent; sibling (if living in a separate residence than the eligible child); aunt; and/or uncle, and does not meet the definition of "adult caretaker" or "teen parent".

      3) "Non-relative in-home care" means care provided by a person, who is not related to the child, in the child's own home.

4) “Non-relative out-of-home care” means care provided by a person, who is not related to the child, outside of the child’s home.

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, date of birth, and social security number or individual taxpayer identification number (ITIN). 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) must be at least eighteen (18) years of age.

b. A qualified exempt child care provider shall not be the adult caretaker or teen parent of the child that is receiving care.

c. A qualified exempt child care provider shall not be a sibling of the child that is receiving care if living in the same residence.

d. 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.

e. A qualified exempt child care provider shall complete and sign the provider information form and the self-attestation form agreeing to participate in additional training as identified. As a part of this agreement, the provider shall not have had any of their own children removed from the home or placed in a residential treatment facility. The self-attestation form must include the signature of the adult caretaker(s) or teen parent(s) acknowledging monitoring responsibilities. A provider information form must be provided to the county and state department any time there is a new member of the provider’s household.

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), must be subject to a county level background check. The background check will be used to preclude individuals with founded or substantiated child abuse or neglect from providing child care.

b. 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), must also be subject to and pass a criminal background review as follows:

1) A review of the Federal Bureau of Investigations (FBI) fingerprint-based criminal history records every five (5) years;

2) A review of the Colorado Bureau of Investigations (CBI) fingerprint-based criminal history records at application;

3) An annual review of the state administered database for child abuse and neglect;

4) An annual review of the CBI sex offender registry; and,

5) The national sex offender registry public website (upon notification to counties by the state department that the relevant state and federal ~~human services~~ systems are capable of accommodating this review).

c. 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.

d. At the time of 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).

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 unless the county chooses to cover the cost associated with the criminal record check. Counties that choose to exercise this option shall document the policy within their county plan.

2) Counties will be notified of the date the background check has cleared and shall use that date as the effective date of reimbursement for the fiscal agreement. Child care authorizations must not begin until the background check has cleared.

e. 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)~~26.5-5-317, 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.

5. 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.

6. If required documents are not returned within thirty (30) days, the qualified exempt child care provider shall be denied a fiscal agreement.

7. Additional requirements for non-relative qualified exempt child care providers:

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. Non-relative qualified exempt providers shall correct any health and safety inspection standards within thirty (30) days after the inspection unless the results identify standards that must be corrected immediately.

c. Qualified exempt non-relative child care providers shall meet the mandatory child abuse and neglect reporting requirements annually.

d. 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.

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~~ THE EXECUTIVE DIRECTOR'S 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. If a qualified exempt child care provider has not had an open authorization for ninety (90) calendar days, the provider's fiscal agreement shall be closed in CHATS.

C. 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.

D. Payment Methods

1. 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.

2. When a manual claim is needed to reimburse providers for payments that were not automatically processed through CHATS, the state-prescribed child care manual claim form must be prepared and signed by the child care provider for increments of one month or less. The county shall utilize the state prescribed manual claim form to verify that the billing is for:

a. Care that was authorized and provided;

b. Reimbursable registration fees;

c. Reimbursable activity fees;

d. Reimbursable transportation fees;

e. Reimbursable hold slots;

f. Reimbursable drop in days; and/or,

g. Reimbursable absence payments.

E. Child care providers shall be provided with a written notice of the process of termination of the fiscal agreement on the fiscal agreement form.

3.114.2~~3.914.2~~ 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, or denied 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 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 Attendance Tracking System (ATS) requirements as defined in section ~~3.915.4~~3.115.4.

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 up-to-date 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 date, names of the children and, 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 daily reimbursement rates agreed upon in the Fiscal Agreement (this includes the agreed upon registration, mandatory activity and transportation fees if the county pays these fees).

U. If a licensed child care provider chooses to charge families for absences for which the county does not provide reimbursement, they shall use the CCCAP daily reimbursement rate agreed upon in the Fiscal Agreement.

V. Child care providers shall offer free, age appropriate alternatives to voluntary activities. Child care providers shall only bill for:

1. Care that was authorized and provided;

2. Reimbursable registration fees;

3. Reimbursable activity fees;

4. Reimbursable transportation fees;

5. Reimbursable hold slots; 6. Reimbursable drop in days; and/or,

7. Reimbursable absence payments.

W. Child care providers shall bill counties monthly for payments that were not automatically processed through CHATS including but not limited to:

1. Care that was authorized and provided;

2. Reimbursable registration fees;

3. Reimbursable activity fees;

4. Reimbursable transportation fees;

5. Reimbursable hold slots;

6. Reimbursable drop in days; and/or,

7. Reimbursable absence payments

X. Payment for services shall be forfeited if the original state-prescribed manual claim form is not submitted within sixty (60) calendar-days following the month of service.

Y. Reimbursable activity, and/or transportation fees shall be billed for in accordance to the timeframe in which is outlined in the current fiscal agreement.

Z. Child care providers shall not hold, transfer, or use an adult caretaker or teen parent's individual attendance credentials. If intentional misuse is founded by any county or state agency, the child care provider will be subject to fiscal agreement termination as outlined in section ~~3.915~~3.115.

~~3.114.3~~~~3.914.3~~ 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 LICENSING & ADMINISTRATION, or on the ~~CDHS~~ DEPARTMENT'S website at https://cdec.colorado.gov/find-child-care ~~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 & ADMINISTRATION 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 & ADMINISTRATION 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 noncompliance licensing issues.

3.115~~3.915~~ PURPOSE OF SERVICES

3.115.13~~.915.1~~ CHILD CARE PROVIDER REIMBURSEMENT RATES

The counties shall implement the state-established licensed child care provider base payment rates for each county on July first every 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. Payment rates shall be defined utilizing the state established, system supported age bands.

B. 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.

C. 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.

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 alternative care as defined by the county and reported in the county plan.

D. Counties must not set qualified exempt child care provider rates such that they inhibit or deter providers from becoming licensed.

E. Absences and Holidays.

1. Effective August 1, 2021 until June 30, 2022, counties shall reimburse licensed child care providers for absences based on the following schedule:

a. No fewer than Six (6) absences per month if they are in levels one (1) or two (2) of the department's quality rating and improvement system.

b. No fewer than Seven (7) absences per month if they are in levels three (3), four (4), or five (5) of the department's quality rating and improvement system.

c. No fewer than Six (6) absences per month if they are a school age child care program that does not have a quality rating through the department's quality rating and improvement system.

2. Effective July 1, 2022, counties shall reimburse licensed child care providers for absences based on the following schedule:

a. No fewer than three (3) absences per month if they are in levels one (1) or two (2) of the department's quality rating and improvement system.

b. No fewer than four (4) absences per month if they are in levels three (3), four (4), or five (5) of the department's quality rating and improvement system.

c. No fewer than three (3) absences per month if they are a school age child care program that does not have a quality rating through the department's quality rating and improvement system.

3. Counties may pay licensed child care providers for holidays in accordance with the policy set by the county and approved by the ~~State~~ Department.

4. Counties may adopt a policy allowing the use of hold slots in order to address payments for unattended authorized care that is in addition to absences, holidays, and school breaks to hold a child's space with a provider when the child is not in care.

F. Counties may adopt a policy to pay for drop in days in addition to regularly authorized care.

G. 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.

H. 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.

3.115.2~~3.915.2~~ 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 licensed child care providers, and expenditure predictability for counties.

A. Counties may choose to enter into a slot contract not to exceed twelve (12) months or the length of the fiscal agreement in place (if it expires in less than twelve (12) months) per contract with a

licensed child care provider to purchase a specified number of slots for children enrolled in CCCAP.

B. When a county chooses the option to use slot contracts with a licensed child care provider, the following steps must be completed a minimum of sixty (60) days prior to the commencement of the slot contract:

1. The county must submit a new county plan in CHATS and include selection of the slot contract option.

2. At the time the county plan is submitted, a slot contract policy based on the state developed policy template must be submitted to the state department for approval. The policy must include but not limited to the following:

a. The county identified target populations and areas

b. How the county will determine the length of the slot contract

c. How the county will identify the need for the slot contract at a specific licensed child care provider

d. 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. This must include an overview of the evaluation process used to identify licensed child care providers that are aligned with the county-determined criteria

e. How the county will determine the number of slots they contract for with a licensed child care provider

f. How the county will collaborate with the licensed child care provider to identify children to fill the vacant slots

g. How the county will continuously monitor the success of a slot contract during the contract period to include but not limited to:

1) What the measure of success is for the slot contract and how it is determined.

2) Frequency of monitoring the success of the slot contract, which must be at least twice per year but no more often than quarterly.

3) Cumulative attendance expectations and the time period over which attendance expectations must be defined. Cumulative attendance expectations must not be set higher than the following:

a) Seventy five percent (75%) for infants;

b) Eighty percent (80%) for toddlers; and,

c) Eighty five percent (85%) for preschoolers.

d) The period of time over which cumulative attendance must be met must be no less than quarterly and no more than six (6) months.

e) A plan for how the county will coordinate with the licensed child care provider to take intermediate steps or interventions if progress monitoring shows that attendance or other expectations are not being met.

f) 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.

h. How the county will determine the need for a slot contract renewal.

C. Licensed child care providers that are fiscally managed by a county may not enter into a slot contract with the county that fiscally manages them.

D. Counties must submit the state developed monitoring tool in accordance with the county's monitoring schedule as specified in the county policy, within thirty-one (31) days of the end of the monitoring period.

E. 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 due to inadequate child care services and/or resources;

5. Areas where quality rated programs are in short supply for children enrolled in CCCAP; or,

6. Any other county identified target population or areas.

F. Criteria for assessing the need for slot contracts may include but is not limited to:

1. Counties must demonstrate the rationale for identifying specific CCCAP populations or underserved areas in their county;

2. The demographic data source(s) must 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.

G. Licensed child care programs who enter into slot contract agreements with counties must agree to be engaged in quality building at a minimum of a level two (2) quality rating through the Colorado Shines QRIS program.

H. The state department will maintain a slot contract template that meets the requirements of this rule and all state and federal contracting requirements.

1. Counties must utilize the state-developed slot contract template in CHATS which must include any county-specific target populations and areas.

2. The state department will assess and approve within thirty (30) days of receipt:

a. The updated county plan; and,

b. The county submitted slot contract policy.

3. The state department will review the monitoring conducted by the county based on the county monitoring schedule.

3.115.3~~3.915.3~~ 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 state prescribed fiscal agreement form(s) with the county.

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 birth to 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 fiscal agreement contains the child care provider's policy on activity fee costs. Counties shall set their own limit on activity fees in accordance with the County Rate Plan in CHATS and policy that is set by the county and approved by the State Department.

G. Counties may pay for transportation costs if the child care provider charges such costs, and if the 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 in accordance with the County Rate Plan in CHATS and policy that is set by the county and approved by the State Department.

H. Counties may pay for registration fees if the child care provider is licensed, and if the fiscal agreement contains the child care provider's policy on registration costs. Counties shall set their own limit on registration fees in accordance with the County Rate Plan in CHATS and policy that is set by the county and approved by 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.

3.115.43.915.4 ATTENDANCE TRACKING SYSTEM (ATS)

A. The adult caretaker(s) or teen parent(s) shall utilize the Attendance Tracking System 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 child care provider has recorded a missed check-in or check-out the adult caretaker or teen parent shall confirm the record in the Attendance Tracking System for the prior nine (9) day period.

3. Adult caretakers or teen parents shall not leave his/her individual attendance credentials in the child care provider's possession at any time or he/she may be subject to disqualification.

4. Non-cooperation with the use of the Attendance Tracking System may result in case closure and/or non-payment of the child care subsidy as defined by a state approved county policy.

B. The child care provider will receive registration information for the Attendance Tracking System upon entering into a fiscal agreement with the county and shall utilize the Attendance Tracking System 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 check-ins/outs to record daily attendance, the child care provider may record the missed check-in/out in the Attendance Tracking System and the adult caretaker or teen parent shall confirm the record in the attendance tracking system for the prior nine (9) day period for automatic payment.

3. The child care provider shall not hold, transfer, or use any adult caretaker or teen parents' Individual attendance credentials at any time or the child care provider may be subject to disqualification.

4. Non-cooperation with the use of the Attendance Tracking System may result in nonpayment of the child care subsidy as defined by a state approved county policy, unless non-use of the Attendance Tracking System is approved by the state department.

3.115.53.915.5 COUNTY FISCAL AGREEMENT AUTHORITY

A. Counties have the authority to enter into a fiscal agreement with Qualified Exempt Child Care Providers and licensed child care providers including those in a probationary status.

B. Counties have the authority to refuse to enter into a fiscal agreement with a child care provider.

C. 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.

D. 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 7.701.2, J 11 and section 7.701.22, K (12 CCR 2509-8). Counties may not

enter into or continue a fiscal agreement with any child care provider who has a denied, suspended or revoked child care license.

E. Counties may notify a child care provider of an immediate termination verbally, but written notice of that action must also be forwarded to the child care provider within one business day. Any notice regarding denial or termination of a Fiscal Agreement shall include information regarding the child care provider's right to an informal conference.

3.1163.916 PROGRAM INTEGRITY

3.116.13.916.1 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.

3.116.23.916.2 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.

3.116.33.916.3 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.

3.116.43.916.4 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.

3.116.5~~3.916.5~~ 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 CCCAP~~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.

3.116.6~~3.916.6~~ 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.

3.116.73.916.7 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.

3.116.83.916.8 CRIMINAL VERDICT DISQUALIFICATION

Upon determination of fraudulent acts, adult caretaker(s) or teen parent(s) who have signed the application or re-determination will be disqualified from participation in CCCAP ~~the Colorado Child Care Assistance Program~~ for the following periods, pursuant to Section ~~26-1-127~~26.5-4-116, 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.

3.116.93.916.9 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.

3.116.913.916.91 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.

Child care providers shall be subject to the fiscal agreement termination process outlined in section ~~3.915.5~~3.115.3.

3.116.92~~3.916.92~~ 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”.

3.116.93~~3.916.93~~ 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.

3.116.94~~3.916.94~~ 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.

3.116.95~~3.916.95~~ 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 intercepts 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.

Notice of Proposed Rulemaking

Tracking number

2022-00649

Department

1400 - Department of Early Childhood

Agency

1404 - Preschool

CCR number

8 CCR 1404-1

Rule title

Universal Preschool

Rulemaking Hearing

Date

11/21/2022

Time

09:00 AM

Location

Virtual meeting link: meet.google.com/zri-vrby-gix

Subjects and issues involved

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

In accordance with HB 22-1295, a child who is in a low-income family or who meets at least one qualifying factor may receive additional preschool services in the school year preceding the school year in which the child is eligible to enroll in kindergarten in accordance with Department rule.

Statutory authority

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

26.5-4-204(4), C.R.S. (2022) The Executive Director shall adopt rules to implement the preschool program.

Contact information

Name

Kristina Heyl

Title

Interim Rulemaking Administrator

Telephone

303-817-4706

Email

kristina.heyl@state.co.us

Title of Proposed Rule:	**8 CCR 1404-1 – Universal Preschool Program Eligibility**	
CDEC Tracking #:	**2022-09-002**	
Office, Division, & Program: Division of Universal Preschool	Rule Author: Dawn Odean	Phone: 720-483-5505 E-Mail: dawn.odean@state.co.us

RULEMAKING PACKET

Type of Rule:

[ ] Regular [ ] Emergency [X] Regular following Emergency SoS# 2022-00621

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

[ ] County Subcommittee Review (if needed)

[X] Rules Advisory Council Review

[X] Review by Attorney General's Office

[X] Final Public Rulemaking Hearing by the Executive Director

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

County Subcommittee (if required)	N/A
Rules Advisory Council	11/10/2022
Public Rulemaking Hearing	11/21/2022
Effective Date	9/29/2022
If emergency rule – effective date of permanent rule?	1/14/2022
Is this date legislatively required?	No, however the universal preschool program must be in effect for the 2023-2024 school year.

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

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

Comments / Notes from Review by Rules Advisory Council Manager:

Title of Proposed Rule:	**8 CCR 1404-1 – Universal Preschool Program Eligibility**	
CDEC Tracking #:	**2022-09-002**	
Office, Division, & Program: Division of Universal Preschool	Rule Author: Dawn Odean	Phone: 720-483-5505 E-Mail: dawn.odean@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.
Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. ***1500 Character max***

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

In accordance with HB 22-1295, a child who is in a low-income family or who meets at least one qualifying factor may receive additional preschool services in the school year preceding the school year in which the child is eligible to enroll in kindergarten in accordance with Department rule. The Department must establish by rule the following:

1) The level of income that identifies a family as low-income, and therefore eligible for preschool services for children three years of age or, in waiver communities, younger, and for children in the school year preceding the school year in which the child is eligible to enroll in kindergarten.
2) The qualifying factors that a child must meet to be eligible for additional preschool services.
3) The number of hours of preschool services that a child who is three years of age, or under three years of age in a district with a waiver to serve children under three years of age, and is low income or meets at least one qualifying factor.
4) The number of additional hours of preschool services that a child who is low-income and meets at least one qualifying factor and is in the school year preceding the school year in which the child is eligible to enroll in kindergarten.

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

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

Justification for emergency:

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

Executive Director Authority for Rule:

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

Title of Proposed Rule:	**8 CCR 1404-1 – Universal Preschool Program Eligibility**	
CDEC Tracking #:	**2022-09-002**	
Office, Division, & Program: Division of Universal Preschool	Rule Author: Dawn Odean	Phone: 720-483-5505 E-Mail: dawn.odean@state.co.us

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

Code	Description
26.5-4-204(4), C.R.S. (2022)	The Executive Director shall adopt rules to implement the preschool program. The Department must establish by rule the following: 1) The level of income that identifies a family as low-income, and therefore eligible for preschool services for children three years of age or, in waiver communities, younger, and for children in the school year preceding the school year in which the child is eligible to enroll in kindergarten. 2) The qualifying factors that a child must meet to be eligible for additional preschool services. 3) The number of hours of preschool services that a child who is three years of age, or under three years of age in a district with a waiver to serve children under three years of age, and is low income or meets at least one qualifying factor. 4) The number of additional hours of preschool services that a child who is low-income and meets at least one qualifying factor and is in the school year preceding the school year in which the child is eligible to enroll in kindergarten.

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. The rule includes definitions and other language found in statute.

Title of Proposed Rule:	**8 CCR 1404-1 – Universal Preschool Program Eligibility**	
CDEC Tracking #:	**2022-09-002**	
Office, Division, & Program: Division of Universal Preschool	Rule Author: Dawn Odean	Phone: 720-483-5505 E-Mail: dawn.odean@state.co.us

REGULATORY ANALYSIS

1. List of groups impacted by this rule.

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule? How will the rule impact particular populations, such as populations experiencing poverty, immigrant/refugee communities, non-English speakers, and rural communities?

Families of three and four-year-old children will benefit from this rule which implements requirements for eligibility to receive 10 hours or more of preschool program services.

2. Describe the qualitative and quantitative impact.

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

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

3. Alignment and Coordination.

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

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

4. Fiscal Impact

For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. ***Answer should NEVER be just "no impact" answer should include "no impact because…."***

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

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

County Fiscal Impact

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

Federal Fiscal Impact

No impact as these changes affect state operations only.

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

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

5. Data Description

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

LIHEAP-IM-2022-03: Memo on Federal Poverty Guidelines

6. Describe the monitoring and evaluation.

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

26.5-4-201 *C.R.S*. requires the Department to contract with an independent evaluator to measure the success of the Colorado Universal Preschool Program.

7. Alternatives to this Rule-making

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. **Answer should NEVER be just "no alternative" answer should include "no alternative because…"**

There are no alternatives as these rules are required by 26.5-4-201 *C.R.S.*

Title of Proposed Rule:	**8 CCR 1404-1 – Universal Preschool Program Eligibility**	
CDEC Tracking #:	**2022-09-002**	
Office, Division, & Program: Division of Universal Preschool	Rule Author: Dawn Odean	Phone: 720-483-5505 E-Mail: dawn.odean@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 RAC Subcommittee):

Discussion on the development of this rule package included the Division of Early Learning Access & Quality and the Head Start Collaboration Office in the Colorado Department of Early Childhood. Additionally, Rules Advisory Council reviewed this rule packet and provided recommendations as required by section 26.5-1-105(2)(j), C.R.S.
.

This Rule-Making Package

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

Discussion on this rule package included but was not limited to: Local Coordinating Organizations; the Early Childhood Community Coalition; the Program Quality & Alignment Subcommittee, the Early Childhood Sub-Pac, & the Rules Advisory Council.

Other State Agencies

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

[ ] Yes [X] No

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

RAC County Subcommittee Review (if applicable)

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

[ ] Yes [X] No

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

[ ] Yes [ ] No

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

Rules Advisory Council Review

Date presented	9/15/2022
What issues were raised?	Change the title of section 4.102; clarify waiver county eligibility for 3 year olds; add homelessness as an eligibility factor; add noncertified kinship care in addition to foster care as an eligibility factor.
Recommendation from RAC to Approve, Approve with	Recommendation to approve with changes

Title of Proposed Rule:	**8 CCR 1404-1 – Universal Preschool Program Eligibility**	
CDEC Tracking #:	**2022-09-002**	
Office, Division, & Program: Division of Universal Preschool	Rule Author: Dawn Odean	Phone: 720-483-5505 E-Mail: dawn.odean@state.co.us

Changes, or Not Approve			
Vote Count	*For*	*Against*	*Abstain*
	11	0	0
Any additional notes.	Considerations around the number of additional hours that children can access was removed from this rule package and will be considered at a later date.		

Other Comments
Comments were received from stakeholders on the proposed rules:

☐ Yes ☒ No

If "yes," summarize and/or attach the feedback received, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

8 CCR 1404-1

4.100 UNIVERSAL PRESCHOOL PROGRAM

THE COLORADO UNIVERSAL PRESCHOOL PROGRAM WAS ESTABLISHED TO PROVIDE HIGH-QUALITY, VOLUNTARY, PRESCHOOL PROGRAMMING THROUGH A MIXED DELIVERY SYSTEM FOR CHILDREN THROUGHOUT THE STATE IN THE YEAR PRECEDING ELIGIBILITY FOR KINDERGARTEN ENROLLMENT AND TO PROVIDE FOR ADDITIONAL PRESCHOOL SERVICES FOR CHILDREN WHO ARE IN LOW-INCOME FAMILIES OR WHO MEET IDENTIFIED QUALIFYING FACTORS. THE DEPARTMENT INTENDS TO WORK WITH PRESCHOOL PROGRAM SERVICES PROVIDERS TO MEET FAMILIES' NEEDS, INCLUDING FOR A HALF OR FULL DAY PROGRAM.

4.101 DEFINITIONS

"ADDITIONAL PRESCHOOL SERVICES" MEANS HOURS OF PRESCHOOL SERVICES PROVIDED TO A CHILD IN THE YEAR PRECEDING ENROLLMENT IN KINDERGARTEN THAT ARE IN ADDITION TO THE UNIVERSAL PRESCHOOL SERVICES THE CHILD RECEIVES.

"CHILDREN WITH DISABILITIES" HAS THE SAME MEANING AS PROVIDED IN SECTION 22-20-103, C.R.S.

"COLORADO UNIVERSAL PRESCHOOL PROGRAM" OR "PRESCHOOL PROGRAM" MEANS THE PROGRAM ESTABLISHED WITHIN THE DEPARTMENT PURSUANT TO SECTION 26.5-4-204, C.R.S., AND INCLUDES ALL PARTICIPATING PRESCHOOL PROVIDERS.

"DEPARTMENT" MEANS COLORADO DEPARTMENT OF EARLY CHILDHOOD.

"ECEA" MEANS THE "EXCEPTIONAL CHILDREN'S EDUCATIONAL ACT", ARTICLE 20 OF TITLE 22, AND ITS IMPLEMENTING RULES.

"ELIGIBLE CHILD" MEANS A CHILD WHO IS ELIGIBLE TO RECEIVE PRESCHOOL SERVICES AS PROVIDED IN SECTION 26.5-4-204 (3), C.R.S.

"FEDERAL POVERTY LEVEL" (FPL) OR "FEDERAL POVERTY GUIDELINES" (FPG) REFERS TO FIGURES SET BY THE FEDERAL GOVERNMENT ANNUALLY. THESE FIGURES, BASED ON GROSS MONTHLY INCOME LEVELS FOR THE CORRESPONDING HOUSEHOLD SIZE, ARE INCLUDED IN THE TABLE IN SECTION 4.102.A.

"FOSTER CARE HOME" HAS THE SAME MEANING AS PROVIDED IN SECTION 26-6-903(10), C.R.S.

"IDEA" MEANS THE FEDERAL "INDIVIDUALS WITH DISABILITIES EDUCATION ACT", 20 U.S.C. SEC. 1400 ET SEQ., AS AMENDED, AND ITS IMPLEMENTING REGULATIONS.

"INDIVIDUALIZED EDUCATION PROGRAM" OR "IEP" HAS THE SAME MEANING AS PROVIDED IN SECTION 22-20-103(15), C.R.S.

"NONCERTIFIED KINSHIP CARE" MEANS A CHILD IS BEING CARED FOR BY A RELATIVE OR KIN PURSUANT TO 19-1-103(102), C.R.S., WHO HAS A SIGNIFICANT RELATIONSHIP

WITH THE CHILD IN CIRCUMSTANCES WHEN THERE IS A SAFETY CONCERN BY A COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES AND WHERE THE RELATIVE OR KIN HAS NOT MET THE FOSTER CARE CERTIFICATION REQUIREMENTS FOR A KINSHIP FOSTER CARE HOME OR HAS CHOSEN NOT TO PURSUE THAT CERTIFICATION PROCESS.

"PARENT" HAS THE SAME MEANING AS PROVIDED IN SECTION 22-20-103. C.R.S.

“QUALIFYING FACTOR" MEANS A CHILD OR FAMILY CIRCUMSTANCE, AS IDENTIFIED BY DEPARTMENT RULE PURSUANT TO SECTION 26.5-4-204, (4)(a)(II), C.R.S. THAT MAY NEGATIVELY IMPACT A CHILD'S COGNITIVE, ACADEMIC, SOCIAL, PHYSICAL, OR BEHAVIORAL HEALTH OR DEVELOPMENT.

"SCHOOL DISTRICT" MEANS A SCHOOL DISTRICT ORGANIZED PURSUANT TO ARTICLE 30 OF TITLE 22, C.R.S. THAT PROVIDES PRESCHOOL SERVICES AND IS LICENSED PURSUANT TO PART 3 OF ARTICLE 5 OF TITLE 26.5, C.R.S. AS A PRESCHOOL PROVIDER; OR A BOARD OF COOPERATIVE SERVICES ORGANIZED PURSUANT TO ARTICLE 5 OF TITLE 22, C.R.S. THAT PROVIDES PRESCHOOL SERVICES AND IS LICENSED PURSUANT TO PART 3 OF ARTICLE 5 OF TITLE 26.5, C.R.S. AS A PRESCHOOL PROVIDER.

"UNIVERSAL PRESCHOOL SERVICES" MEANS TEN HOURS OF PRESCHOOL SERVICES PER WEEK MADE AVAILABLE, AT NO CHARGE, TO CHILDREN IN THE STATE DURING THE SCHOOL YEAR PRECEDING THE SCHOOL YEAR IN WHICH A CHILD IS ELIGIBLE TO ENROLL IN KINDERGARTEN.

4.102 PROGRAM PURPOSE

A. FOR THE 2023-24 SCHOOL YEAR AND SCHOOL YEARS THEREAFTER, FAMILIES MAY ENROLL THEIR CHILDREN IN PRESCHOOL PROVIDERS THAT RECEIVE FUNDING THROUGH THE PRESCHOOL PROGRAM. THE PURPOSES OF THE PRESCHOOL PROGRAM ARE:

1. TO PROVIDE CHILDREN IN COLORADO ACCESS TO VOLUNTARY, HIGH-QUALITY, UNIVERSAL PRESCHOOL SERVICES FREE OF CHARGE IN THE SCHOOL YEAR BEFORE A CHILD IS ELIGIBLE TO ENROLL IN KINDERGARTEN;
2. TO PROVIDE ACCESS TO ADDITIONAL PRESCHOOL SERVICES IN THE SCHOOL YEAR BEFORE KINDERGARTEN ELIGIBILITY FOR CHILDREN IN LOW-INCOME FAMILIES AND CHILDREN WHO LACK OVERALL LEARNING READINESS DUE TO QUALIFYING FACTORS;
3. TO PROVIDE ACCESS TO PRESCHOOL SERVICES FOR CHILDREN WHO ARE THREE YEARS OF AGE, OR IN LIMITED CIRCUMSTANCES YOUNGER THAN THREE YEARS OF AGE, AND ARE CHILDREN WITH DISABILITIES, ARE IN LOW-INCOME FAMILIES, OR LACK OVERALL LEARNING READINESS DUE TO QUALIFYING FACTORS; AND
4. TO ESTABLISH QUALITY STANDARDS FOR PUBLICLY FUNDED PRESCHOOL PROVIDERS THAT PROMOTE CHILDREN'S EARLY LEARNING AND DEVELOPMENT, SCHOOL READINESS, AND HEALTHY BEGINNINGS.

4.103 ELIGIBILITY

A. CHILDREN WHO ARE THREE YEARS OF AGE, OR WHO RESIDE IN A COMMUNITY IN WHICH A SCHOOL DISTRICT OPERATES A DISTRICT PRESCHOOL PROGRAM WITH A WAIVER TO SERVE CHILDREN UNDER THREE YEARS OF AGE, AND CHILDREN WHO ARE IN THE SCHOOL YEAR PRECEDING THE SCHOOL YEAR IN WHICH THE CHILD IS ELIGIBLE TO ENROLL IN KINDERGARTEN ARE ELIGIBLE FOR PRESCHOOL SERVICES IF THE CHILD'S FAMILY IS LOW INCOME SUCH THAT THE CHILD'S PARENT OR GUARDIAN'S GROSS INCOME IS BELOW 270% OF THE FEDERAL POVERTY GUIDELINE (FPG):

FAMILY SIZE	100% FEDERAL POVERTY GUIDELINE (FPG)	270% FEDERAL POVERTY GUIDELINE (FPG)
1	**$1,132.50**	**$3,057.75**
2	**$1,525.83**	**$4,119.75**
3	**$1,919.17**	**$5,181.75**
4	**$2,312.50**	**$6,243.75**
5	**$2,705.83**	**$7,305.75**
6	**$3,099.17**	**$8,367.75**
7	**$3,492.50**	**$9,429.75**
8	**$3,885.83**	**$10,491.75**
EACH ADDITIONAL PERSON	**$393.33**	

B. TO BE ELIGIBLE FOR ADDITIONAL PRESCHOOL SERVICES A CHILD MUST MEET ONE OR MORE OF THE FOLLOWING QUALIFYING FACTORS:

1. CHILD IS IDENTIFIED AS LOW-INCOME IN ACCORDANCE WITH SECTION A ABOVE.
2. CHILD IS A DUAL-LANGUAGE LEARNER AND THE NATIVE LANGUAGE SPOKEN IN THE CHILD'S HOME IS A LANGUAGE OTHER THAN ENGLISH, OR THE CHILD'S NATIVE LANGUAGE IS NOT ENGLISH.
3. CHILD HAS AN IEP.
4. CHILD IS CURRENTLY IN THE CUSTODY OF A STATE SUPERVISED AND COUNTY ADMINISTERED FOSTER CARE HOME OR IN NON-CERTIFIED KINSHIP CARE.
5. CHILD IDENTIFIED AS HOMELESS AND LACKS A FIXED, REGULAR, AND ADEQUATE NIGHTTIME RESIDENCE AND AT LEAST ONE OF THE FOLLOWING:
   A. SHARING THE HOUSING OF OTHER PERSONS DUE TO LOSS OF HOUSING, ECONOMIC HARDSHIP, OR A SIMILAR REASON; LIVING IN MOTELS, HOTELS, OR CAMPING GROUNDS DUE TO THE LACK OF ALTERNATIVE ACCOMMODATIONS; LIVING IN EMERGENCY OR TRANSITIONAL SHELTERS;
   B. HAS 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. LIVING IN CARS, PARKS, PUBLIC SPACES, ABANDONED BUILDINGS, SUBSTANDARD HOUSING, BUS OR TRAIN STATIONS, OR SIMILAR SETTINGS; OR,

D. IS A CHILD WHO IS MIGRATORY WHO QUALIFIES AS HOMELESS FOR THE PURPOSES OF THIS SUBTITLE BECAUSE THE CHILD IS LIVING IN CIRCUMSTANCES DESCRIBED IN THIS DEFINITION A THROUGH C.

Notice of Proposed Rulemaking

Tracking number

2022-00645

Department

1507 - Department of Public Safety

Agency

1507 - Division of Fire Prevention and Control

CCR number

8 CCR 1507-101

Rule title

BUILDING AND FIRE CODE ADOPTION AND CERTIFICATION OF INSPECTORS FOR FIRE & LIFE SAFETY PROGRAMS ADMINISTERED BY THE STATE OF COLORADO

Rulemaking Hearing

Date

11/15/2022

Time

12:00 PM

Location

Virtual via Zoom

Subjects and issues involved

Permanently adopt an amendment to the rule regarding code provisions that address the use of antifreeze solutions in fire suppression systems for the purposes of freeze protection. Installation design parameters and their associated system modifications, cost of the antifreeze product, and lack of listed antifreeze product availability have created significant hardships in complying with the provision outlined in the currently adopted edition of the code that all antifreeze systems would be required to replace the antifreeze with a listed antifreeze by September 30, 2022. The rule change provides relief of this hardship, while still maintaining an industry-recognized appropriate level of safety.

Add the requirements to certify special inspectors under the third-party building inspector certification program to support the need to document the qualifications of an individual performing such work within the programs administered by the Colorado Division of Fire Prevention and Control.

This rule change also allows for general clean-up of grammatical and formatting inconsistencies or errors.

Statutory authority

CRS. 24-33.5 part 12 directs that fire suppression systems installed in commercial & residential occupancies meet the codes & standards adopted by DFPC. CRS 4-33.5-1206.4 authorizes DFPC to certify a person with fire suppression system inspector and/or plan review responsibilities. CRS 24-33.5-1213.5 authorizes DFPC to certify a person with third-party building inspector responsibilities.

Contact information

Name

Chris Brunette

Title

DFPC Fire & Life Safety Section Chief

Telephone

303-239-4101

Email

chris.brunette@state.co.us

DEPARTMENT OF PUBLIC SAFETY

Division of Fire Prevention and Control

8 CCR 1507-101

BUILDING AND FIRE CODE ADOPTION AND CERTIFICATION OF INSPECTORS FOR FIRE & LIFE SAFETY PROGRAMS ADMINISTERED BY THE STATE OF COLORADO

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Pursuant to Section 24-33.5-1203.5, C.R.S., the Director of the Colorado Division of Fire Prevention and Control shall promulgate rules and adopt codes as necessary to carry out the duties of the Division of Fire Prevention and Control. This rule is proposed pursuant to this authority and is intended to be consistent with the requirements of the State Administrative Procedures Act, Section 24-4-101, et seq., C.R.S.

C.R.S. Title 24 Article 33.5 Part 12 directs that fire suppression systems installed in commercial and residential occupancies are designed, installed, inspected and maintained according to the codes and standards adopted by the Director of the Division of Fire Prevention & Control.

The Division of Fire Prevention and Control is authorized to certify a person with fire suppression system inspector and/or plan review responsibilities by the provisions of section 24-33.5-1206.4, C.R.S.

The Division of Fire Prevention and Control is authorized to certify a person with third-party building inspector responsibilities by the provisions of section 24-33.5-1213.5, C.R.S.

The purpose of this rule change is to address the need to update, through amendment, the code provisions that address the use of antifreeze solutions in fire suppression systems for the purposes of freeze protection. Installation design parameters and their associated system modifications, cost of the antifreeze product, and lack of listed antifreeze product availability have created significant hardships in complying with the provision outlined in the currently adopted edition of the code that all antifreeze systems would be required to replace the antifreeze with a “listed” antifreeze by September 30, 2022. The rule change provides relief of this hardship, while still maintaining an industry-recognized appropriate level of safety.

Additionally, this rule change adds the requirements to certify special inspectors under the third-party building inspector certification program to support the need to document the qualifications of an individual performing such work within the programs administered by the Colorado Division of Fire Prevention and Control.

This rule change also allows for general clean-up of grammatical and formatting inconsistencies or errors.

The implementation of rules to carry out the purpose of amending the code requirements related to the use of antifreeze solutions in fire suppression systems for the purposes of freeze protection is necessary for the immediate preservation of the public peace, health, or safety; delay in the promulgation of these rules would be contrary to the purpose of Section 24-33.5-1203.5, C.R.S.

_____ _____

Mike Morgan, Division Director
Colorado Department of Public Safety
Division of Fire Prevention and Control

Date of Adoption

DEPARTMENT OF PUBLIC SAFETY

Division of Fire Prevention and Control

BUILDING AND FIRE CODE ADOPTION AND CERTIFICATION OF INSPECTORS FOR FIRE & LIFE SAFETY PROGRAMS ADMINISTERED BY THE STATE OF COLORADO

8 CCR 1507-101

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

APPLICABILITY

These rules and regulations apply to all buildings and life safety systems subject to the oversight of the Colorado Department of Public Safety, Division of Fire Prevention and Control and persons conducting Fire and Life Safety and Building Code plan reviews and inspections on behalf of the Division pursuant to the provisions of C.R.S. 44-30-515, C.R.S. 24-4-103, C.R.S. 24-33.5-2003 and 2008, and C.R.S. Title 24 Article 33.5 Part 12.

ARTICLE 1 - AUTHORITY TO ADOPT RULES AND REGULATIONS

1.1 The Director of the Division of Fire Prevention and Control is authorized by the provisions of section 24-33.5-1203.5, C.R.S., to promulgate rules in order to carry out the duties of the Division of Fire Prevention and Control.

1.2 Statutory Authority to Adopt Codes and Standards

1.2.1 Section 44-30-515, C.R.S. establishes the authority and duty of the Division of Fire Prevention & Control to establish minimum safety standards for limited gaming structures.

1.2.2 Section 24-33.5-1203.5(2), C.R.S. establishes the authority and duty of the Director of the Division of Fire Prevention & Control to establish minimum codes and standards for waste tire facilities.

1.2.3 Section 24-33.5-1212.5, C.R.S. establishes the authority and duty of the Director of the Division of Fire Prevention & Control to establish minimum codes and standards for health facility buildings or structures.

1.2.4 Sections 24-33.5-1213.3, 22-32-124, and 23-71-122, C.R.S. establish the authority and duty of the Director of the Division of Fire Prevention & Control to establish minimum codes and standards for public school buildings or structures.

1.2.5 Section 24-33.5-1206.3, C.R.S. establishes the authority and duty of the Director of the Division of Fire Prevention & Control to establish minimum codes and standards for the design, installation, inspection, and testing of fire suppression systems in commercial and residential structures.

1.2.6 Section 24-33.5-2004(7), C.R.S. establishes the authority and duty of the Director of the Department of Public Safety to promulgate rules to implement the provision of part 20, including the adoption of minimum standards for the discharge of fireworks, as required by Section 24-33.5-2003, C.R.S.

1.2.7 Section 24-33.5-2008, C.R.S. establishes the authority and duty of the Director of the Division of Fire Prevention & Control to establish minimum codes and standards for the storage of fireworks in an area where the governing body has not adopted a fire code.

1.3 Statutory Authority to Certify Inspectors

1.3.1 Section 24-33.5-1211 C.R.S. establishes the authority and duty of the Division to certify persons to conduct Fire and Life Safety Code plan reviews and inspections on behalf of the Division.

1.3.2 Section 24-33.5-1213.5 C.R.S. establishes the authority and duty of the Division to certify persons to conduct Third-party Building Code inspections on behalf of the Division.

1.3.3 Section 24-33.5-1206.4 C.R.S. establishes the authority and duty of the Division to certify a person to conduct fire suppression system inspections and plan reviews on behalf of the Division.

ARTICLE 2 - DEFINITIONS

2.1 The definitions provided in 24-33.5-1202, C.R.S., apply to these rules. The following additional definitions also apply:

"Authority Having Jurisdiction" or **"AHJ"** means the Division, Building Department, Fire Chief, Fire Marshal, or other designated official of a county, municipality, special authority, or special district that has code enforcement responsibilities and employs a building inspector or certified fire inspector.

"Building Department" means the Building Department (or a contracted third party acting on their behalf) of the Division, authority, county, town, city, or city and county.

"Business Entity" means any organization or enterprise and includes, but is not limited to, a sole proprietor, an association, corporation, business trust, joint venture, limited liability company, limited liability partnership, partnership or syndicate. For the purposes of these rules the Business Entity may elect to be represented by a designated representative through a written delegation of authority.

"Certificate of Compliance" means an official document issued by applicable local building and/or fire code Authority Having Jurisdiction and approved by the Division, stating that materials and products meet specified standards, or that work was performed in compliance with approved construction documents.

"Certificate of Occupancy" means an official document issued by the Authority Having Jurisdiction which authorizes a building or structure to be used or occupied for a specified purpose.

"Construction" means work that is not considered as maintenance or service and that requires a permit as prescribed in the adopted codes and standards of the local Authority Having Jurisdiction or the Division.

"C.R.S." means Colorado Revised Statutes.

"Department" means the Department of Public Safety.

"Designated Representative" means a person designated by the Business Entity to act on their behalf through a written delegation of authority and is allowed to act in such manner as outlined in these rules.

"Director" means the Director of the Division of Fire Prevention and Control.

"Division" means the Division of Fire Prevention and Control in the Department of Public Safety.

"Executive Director" means the Executive Director of the Colorado Department of Public Safety.

“Fire Code Official” means the designated authority charged with the administration and enforcement of the Fire Code.

“ICC” means the International Code Council.

“Individual” or **“Person”** means a person, including an owner, manager, officer, employee, or individual.

“Inspection, Testing, and Maintenance Program” means a program conducted by the building owner to satisfy the periodic inspection, testing, and maintenance requirements of fire protection and life safety systems as required by applicable codes and standards.

“Installation” means the initial placement of equipment or the extension, modification, or alteration of equipment after the initial placement.

“Maintenance” means to sustain in a condition of repair that will allow performance as originally designed or intended. Maintenance does not include replacement of elements of a system which alter the performance criteria of the system as approved by the Authority Having Jurisdiction.

“Maintenance and Complaint Inspections” means periodic inspections or inspections conducted based on an allegation of nonconformance conducted by the local fire department or the Division to verify conformance with the adopted codes, rules, and standards. Such inspections are not to be considered to relieve the building owner of the responsibility to conduct an inspection, testing, and maintenance program for fire protection and life safety systems as required by the adopted codes, rules, and standards.

“NICET” means the National Institute for Certification in Engineering Technologies.

“NFPA” means the National Fire Protection Association.

“Qualified Fire Department” means a fire department that has Certified Fire Inspectors at the appropriate level for the fire prevention-related task being performed and provides fire protection service for the Business Entity’s buildings and structures.

“Service (Or Repair)” means to repair in order to return the system to operation as originally designed or intended.

“Special Inspector” means individuals that have been certified by the Division to perform special inspections services in accordance with Article 4.1 of this rule.

“Temporary Certificate of Occupancy” means an official document issued by the Authority Having Jurisdiction which authorizes a building or structure to be temporarily used or occupied for a period not to exceed 90 days, unless an extension has been granted by the Authority Having Jurisdiction.

“Third-Party Inspector” means building inspectors that have been certified by the Division to perform third party inspection services in accordance with Article 4.1 of this rule.

ARTICLE 3 - CODES, DOCUMENTS, AND STANDARDS INCORPORATED BY REFERENCE

3.1 The technical requirements of these rules are supported primarily by codes developed by the International Code Council and the National Fire Protection Association. These two organizations are membership associations dedicated to building safety and fire prevention. These rules establish minimum requirements where the Division is the Authority Having Jurisdiction for building systems using prescriptive and performance related provisions, which are widely used to construct residential and commercial buildings. The appropriate portions of the adopted codes (particularly in relation to classification of occupancy) will be applied as prescribed by the

adopted codes themselves. Where there are differing provisions for new and existing construction, all new work taking place after July 1, 2021 must meet the requirements for new construction, as amended by the provisions of IEBC and NFPA 101, and subject to the restrictions of Section
3.4.2 of this rule.

3.2 The following codes and their referenced standards are adopted and promulgated as minimum standards for the construction and maintenance of all property, buildings, and structures subject to the oversight of the Colorado Department of Public Safety, Division of Fire Prevention and Control pursuant to the provisions of C.R.S. 44-30-515 and C.R.S. Title 24 Article 33.5 Part 12.:

3.2.1 The following Building Codes are adopted by these regulations. Wherever Division or Department regulations refer to a Building Code, the following codes and standards will be enforced by the Division where applicable:

International Building Code - 2021 Edition, First Printing: October 2020 (Copyright 2020 by International Code Council, Inc. Washington D.C.).

International Mechanical Code - 2021 Edition, First Printing: March 2020 (Copyright 2020 by International Code Council, Inc. Washington D.C.).

International Energy Conservation Code - 2021 Edition, First Printing: January 2021 (Copyright 2021 by International Code Council, Inc.).

International Existing Building Code- 2021 Edition, First Printing: December 2020 (Copyright 2020 by International Code Council, Inc.).

International Residential Code, 2021 Edition, First Printing: December 2020 (Copyright 2020 by the International Code Council, Inc. Washington, D.C.).

NFPA 170 Standard for Fire Safety and Emergency Symbols – 2021 Edition, First Printing: October 2020 (Copyright 2020 by National Fire Protection Association). This supersedes all references to NFPA 170 within the International Building Code.

3.2.2 The following Fire Codes are adopted by these regulations. Wherever Division or Department regulations refer to a Fire Code, the following codes and standards will be enforced where applicable:

International Fire Code, 2021 Edition, First Printing: October 2020 (Copyright 2020 by the International Code Council, Inc. Washington, D.C.).

International Wildland-Urban Interface Code, 2021 Edition, First Printing: August 2020 (Copyright 2020 by International Code Council, Inc.).

NFPA 3 Standard for Commissioning of Fire Protection and Life Safety Systems, 2021 Edition (Copyright 2020 by National Fire Protection Association Inc.).

NFPA 4 Standard for Integrated Fire Protection and Life Safety System Testing 2021 Edition (Copyright 2020 by National Fire Protection Association Inc.).

NFPA 99 Health Care Facilities Code – 2012 Edition, Fourth Printing: April 2013 (Copyright 2011 by National Fire Protection Association). This supersedes all references to NFPA 99 within the International Fire Code.

NFPA 170 Standard for Fire Safety and Emergency Symbols – 2021 Edition, First Printing: October 2020 (Copyright 2020 by National Fire Protection Association). This supersedes all references to NFPA 170 within the International Fire Code.

3.2.3 The following Life Safety and Health Facility Construction Codes and Standards are adopted by these regulations. Wherever Division regulations refer to a Life Safety Code, the following codes, standards, and guidelines will be enforced where applicable:

NFPA 101 Life Safety Code – 2012 Edition, First Printing: September 2011 (Copyright 2011 by National Fire Protection Association).

NFPA 101A Guide on Alternative Approaches to Life Safety – 2013 Edition, First Printing: June 2013 (Copyright 2013 by National Fire Protection Association).

NFPA 99 Health Care Facilities Code – 2012 Edition, Fourth Printing: April 2013 (Copyright 2011 by National Fire Protection Association).

NFPA 3 Standard for Commissioning of Fire Protection and Life Safety Systems, 2015 Edition (Copyright 2015 by National Fire Protection Association Inc.).

NFPA 4 Standard for Integrated Fire Protection and Life Safety System Testing 2015 Edition (Copyright 2015 by National Fire Protection Association Inc.).

NFPA 170 Standard for Fire Safety and Emergency Symbols – 2021 Edition, First Printing: October 2020 (Copyright 2020 by National Fire Protection Association). This supersedes all references to NFPA 170 within the Life Safety Code.

3.2.4 The following standards are adopted by the Division for the design, installation, and maintenance of Fire Suppression Systems within the State of Colorado:

NFPA 3 Standard for Commissioning of Fire Protection and Life Safety Systems, 2021 Edition (Copyright 2020 by National Fire Protection Association Inc.).

NFPA 4 Standard for Integrated Fire Protection and Life Safety System Testing 2021 Edition (Copyright 2020 by National Fire Protection Association Inc.).

NFPA 11 Standard for Low, Medium, and High Expansion Foam 2016 Edition (Copyright 2015 by National Fire Protection Association Inc.).

NFPA 12 Standard for the Installation of Carbon Dioxide Extinguishing Systems 2018 Edition (Copyright 2017 by National Fire Protection Association Inc.).

NFPA 12A Standard for the Installation of Halon 1301 Fire Extinguishing Systems, 2018 Edition (Copyright 2017 by National Fire Protection Association Inc.).

NFPA 13 Standard for the Installation of Sprinkler Systems, 2019 Edition, (Copyright 2018 by National Fire Protection Association Inc.).

NFPA 13D Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, 2019 Edition (Copyright 2018 by National Fire Protection Association Inc.).

NFPA 13R Standard for the Installation of Sprinkler Systems in Low-Rise Residential Occupancies, 2019 Edition (Copyright 2018 by National Fire Protection Association Inc.).

NFPA 14 Standard for the Installation of Standpipe and Hose Systems, 2019 Edition (Copyright 2018 by National Fire Protection Association Inc.).

NFPA 15 Standard for Water Spray Fixed Systems for Fire Protection, 2017 Edition (Copyright 2016 by National Fire Protection Association Inc.).

NFPA 16 Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems, 2019 Edition (Copyright 2018 by National Fire Protection Association Inc.).

NFPA 17 Standard for Dry Chemical Extinguishing Systems, 2021 Edition (Copyright 2020 by National Fire Protection Association Inc.).

NFPA 17A Standard for Wet Chemical Extinguishing Systems, 2021 Edition (Copyright 2020 by National Fire Protection Association Inc.).

NFPA 18 Standard for Wetting Agents, 2021 Edition (Copyright 2020 by National Fire Protection Association Inc.).

NFPA 18A Standard for Water Additives for Fire Control and Vapor Mitigation, 2017 Edition (Copyright 2016 by National Fire Protection Association Inc.).

NFPA 20 Standard for the Installation of Stationary Pumps for Fire Protection, 2019 Edition (Copyright 2018 by National Fire Protection Association Inc.).

NFPA 22 Standard for Water Tanks for Private Fire Protection, 2018 Edition (Copyright 2017 by National Fire Protection Association Inc.).

NFPA 24 Standard for the Installation of Private Fire Service Mains and Their Appurtenances, 2019 Edition (Copyright 2018 by National Fire Protection Association Inc.).

NFPA 25 Standard for the Inspection, Testing, and Maintenance of Water Based Fire Protection Systems, 2020 Edition (Copyright 2019 by National Fire Protection Association Inc.).

1. In the Division's adoption of NFPA 25 (2020 edition) section 5.3.4.4 is deleted in its entirety and replaced with the following:

   5.3.4.4
   Except as permitted by 5.3.4.4.1 and 5.3.4.4.3, all antifreeze systems shall utilize listed antifreeze solutions.

   5.3.4.4.1 *
   For systems installed prior to September 30, 2012, listed antifreeze solutions shall not be required where one of the following conditions is met:

   (1)* The concentration of the antifreeze solution shall be limited to 30 percent factory premixed propylene glycol by volume or 38 percent factory premixed glycerine by volume.

   (2)* Antifreeze systems with concentrations in excess of 30 percent but not more than 40 percent factory premixed propylene glycol by volume and 38 percent but not more than 50 percent factory premixed glycerine by volume shall be permitted based upon an approved deterministic risk assessment prepared by a qualified person approved by the authority having jurisdiction.

   5.3.4.4.2
   Newly introduced solutions shall be factory premixed antifreeze solutions (chemically pure or United States Pharmacopeia 96.5 percent).

   5.3.4.4.3
   Premixed antifreeze solutions of propylene glycol exceeding 30 percent concentration by volume shall be permitted for use with ESFR sprinklers where the ESFR sprinklers are listed for such use in a specific application.

NFPA 72 National Fire Alarm and Signaling Code, 2019 Edition (Copyright 2018 by National Fire Protection Association Inc.). (The documentation requirements of Sections 7.3, 7.4, 7.5, and 7.8 are hereby also adopted as part of these rules.)

NFPA 170 Standard for Fire Safety and Emergency Symbols – 2021 Edition, First Printing: October 2020 (Copyright 2020 by National Fire Protection Association).

NFPA 291: Recommended Practice for Fire Flow Testing and Marking of Hydrants, 2019 Edition (Copyright 2018 by National Fire Protection Association Inc.).

NFPA 409 Standard on Aircraft Hangars, 2016 Edition (Copyright 2015 by National Fire Protection Association Inc.).

NFPA 418 Standard for Heliports, 2021 Edition (Copyright 2020 by National Fire Protection Association Inc.).

NFPA 423 Standard for Construction and Protection of Aircraft Engine Test Facilities, 2016 Edition (Copyright 2014 by National Fire Protection Association Inc.).

NFPA 750 Standard on Water Mist Fire Protection Systems, 2019 Edition (Copyright 2018 by National Fire Protection Association Inc.).

NFPA 770 Standard on Hybrid (Water and Inert Gas) Fire-Extinguishing Systems, 2021 Edition (Copyright 2020 by National Fire Protection Association Inc.).

NFPA 1142 Standard on Water Supplies for Suburban and Rural Firefighting, 2017 Edition (Copyright 2016 by National Fire Protection Association Inc.).

NFPA 2001 Standard on Clean Agent Fire Extinguishing Systems, 2018 Edition (Copyright 2017 by National Fire Protection Association Inc.).

NFPA 2010 Standard for Fixed Aerosol Fire-Extinguishing Systems, 2020 Edition (Copyright 2019 by National Fire Protection Association Inc.).

3.2.5 The following Codes and Standards are adopted by these regulations. Wherever Division or Department regulations refer to a Code or Standard for persons dealing with fireworks, the following codes and standards will be enforced where applicable:

49 C.F.R. Part 173 as of July 1st, 2021; U.S. Department of Transportation.

NFPA 160 Standard for the Use of Flame Effects Before an Audience, 2021 Edition, First Printing: October 2020 (Copyright 2020 by National Fire Protection Association).

NFPA 170 Standard for Fire Safety and Emergency Symbols – 2021 Edition, First Printing: October 2020 (Copyright 2020 by National Fire Protection Association).

NFPA 1123, Code for Fireworks Display- 2018 Edition (Copyright 2017 by National Fire Protection Association Inc.).

NFPA 1124, Code for the Manufacture, Transportation, and Storage, and Retail Sales of Fireworks and Pyrotechnic Articles - 2013 Edition, Printing: August 2012 (Copyright 2012 by National Fire Protection Association – Quincy, MA).

NFPA 1126, Code for the Use of Pyrotechnics Before a Proximate Audience- 2021 Edition (Copyright 2019 by National Fire Protection Association Inc.).

3.2.6 The following Codes and Standards are adopted by these regulations. Wherever Division or Department regulations refer to Standards for Persons Performing Fire Inspections or Fire Plan Examinations, the following codes and standards will be enforced where applicable:

NFPA 1031, Standard for Professional Qualifications for Fire Inspector and Plan Examiner, 2014 Edition (Copyright 2013 by National Fire Protection Association Inc.

3.3 The Division will maintain electronic copies of the complete texts of the adopted codes and standards, which are available for public inspection during regular business hours. Interested parties may inspect the referenced incorporated materials and/or be obtain certified copies of the adopted codes for a reasonable fee by contacting the Fire and Life Safety Section Chief at the Division, 690 Kipling St, Lakewood, CO, and/or The State Depository Libraries. Copies of the adopted codes and standards are available directly from the organization originally issuing the codes and standards: the International Code Council, Inc., through the International Code Council Regional Office Bookstores, reached by calling 888-ICC-SAFE or on the web at www.iccsafe.org; the National Fire Protection Association, reached by calling 800-344-3555 or on the web at www.nfpa.org; and U.S. Department of Transportation rules, available via the Electronic Code of Federal Regulations on the web at www.ecfr.gov.

3.4 In the event that a new edition of a code or standard is adopted, the code or standard current at the time of permit application will remain in effect through the work authorized by the permit.

3.4.1 This rule does not include later amendments or editions of the incorporated material.

3.4.2 In conjunction with C.R.S. 44-30-515(1)(a) no retroactive provisions of the adopted codes shall apply to any structure licensed for limited gaming and operating prior to July 1, 2011. In these cases, the construction provisions of the adopted building codes shall only apply to new construction or remodeling work taking place after July 1, 2011.

3.5 All electrical work shall be conducted, inspected, and approved in accordance with the provisions of the State of Colorado's Electrical Board's rules and regulations.

3.6 All plumbing work shall be conducted, inspected, and approved in accordance with the provisions of the State of Colorado's Examining Board of Plumber's rules and regulations.

ARTICLE 4 - BUILDING CODE AND FIRE CODE & SUPPRESSION SYSTEMS INSPECTOR QUALIFICATION

4.1 Division, Special, and Third-Party Building Code Inspectors

4.1.1 Wherever Division regulations refer to Division, Special, and Third-Party Building Inspectors, they must be qualified as Third-Party ~~Building~~ or Special Inspectors in accordance with this Article 4.1.

4.1.2 Applicants seeking initial or renewal of ~~Third-Party~~ Building Code Inspector certification must have the following minimum qualifications:

A. Third-Party Inspector:

1. Hold current appropriate building inspector qualifications from ICC or other similar national organization (acceptable to the Division) and have demonstrated education, training, and experience; or

2. Have at least five years of demonstrated education, training, and experience in commercial building inspections and receive national certification within one year after the date of qualification. Qualified applicants that have at least five years of demonstrated education, training, and experience in appropriate building inspections will be issued certifications for one year. Certification renewal will be contingent on the applicant obtaining commercial building inspector certification from ICC or other similar national organization (acceptable to the Division) prior to the expiration date of the applicant's inspector certification.

B. Special Inspector:

1. Provide documentation of qualifications in conformance with the requirements of the code adopted by the Division.

4.1.3 Duties of Third-Party Inspectors

A. Third-Party Inspectors contracted by the Business Entity shall conduct the required inspections and require corrections or modifications as necessary to ensure that a building or structure is constructed in conformity with the Building Code adopted by the Division.

B. Third-Party Inspectors contracted by the Business Entity shall enforce only the codes adopted by the Division.

C. The Business Entity shall only use inspectors that are qualified by the Division to work on Health Facility or School projects. The Division shall be notified electronically in writing by the Business Entity of their selection of Third-Party Inspectors and which inspections they will be conducting on behalf of the Division.

D. Third-Party Inspectors contracted by the Business Entity shall cause copies of their inspection reports to be sent to the Division.

E. If all inspections are not completed but a building requires immediate occupancy, and if the Business Entity has passed the appropriate inspections that indicate there are no life safety issues, the qualified Third-Party Inspectors contracted by the Business Entity shall notify the Division of the same. Upon receipt of this notice and review of the circumstances to ensure the safety of the temporary occupancy, the Division may issue a Temporary Certificate of Occupancy to allow the Business Entity to occupy the buildings and structures.

F. Limitations /Permissible Activities.

1. A Certified Third-Party Inspector may not also be a registered contractor.

2. A Certified Third-Party Inspector may not work directly for or contract with a registered contractor or contractor for the provision of inspection services.

3. A Certified Third-Party Inspector may not work directly for or contract with a registered Design Professional whose company has been involved in the design or layout of the project.

4. A Certified Third-Party Inspector shall contract directly, or through his employer, with the affected School Board for the provision of inspection services.

4.1.4 Duties of Special Inspectors

A. Special Inspectors contracted by the Business Entity shall conduct the required special inspections as outlined in the currently adopted building code and as required by the Statement of Special Inspections received from the Registered Design Professional in responsible charge or the Registered Engineer of Record.

B. Special Inspectors contracted by the Business Entity shall enforce only the codes adopted by the Division.

C. The Business Entity shall only use Special Inspectors that are qualified by the Division for the specific special inspections as required by the Statement of Special

Inspections received from the Registered Design Professional in responsible charge or the Registered Engineer of Record to work on School projects.

D. Special Inspectors contracted by the Business Entity shall cause copies of their inspection reports to be sent to the Division

E. Limitations/Permissible Activities.

1. A Special Inspector must be qualified in accordance with the codes adopted by the Division.

2. A Special Inspector may not work directly for, or contract with, a registered contractor or contractor for the provision of inspection services.

3. A Special Inspector may work directly for the registered design professional in responsible charge and/or the engineer of record provided they are qualified as a special inspector in accordance with the codes adopted by the Division.

4. A Special Inspector shall contract directly, or through his/her employer, with the affected School Board for the provision of inspection services.

4.1.5 General Requirements for all Third-Party and Special Inspector Certifications

A. An inspector must apply for certification in a format provided by the Division. Application instructions are available on the Division's website (www.colorado.gov/dfpc); from the Division's offices at 700 Kipling St, Suite 4100, Denver, CO 80215; or by telephone at 303-239-4100.

B. The applicant must submit the completed application along with the registration fee and all required supporting documentation prior to action by the Division. No cash payments will be accepted.

4.1.6 Duration of Certification

A. Third-Party and Special Inspector Certifications are valid for a period of three-years from the date of issuance, unless earlier suspended or revoked.

4.1.7 Certification Renewal

A. Renewal of certification is the responsibility of the certified individual.

B. Third-Party Inspector Certification renewal requires the renewal of the national certification outlined in 4.1.2. Submit proof of national certification renewal with the renewal application.

C. Special Inspector Certification renewal requires documentation verifying continued experience and/or training in the special inspection disciplines applied for.

D. Applications for renewal shall be submitted no more than 30 days prior to expiration, A grace period for renewal may be extended for up to 30 days after expiration, after which a late application fee will be assessed.

E. All applicants shall have no longer than 30 days from the original submittal to correct deficiencies in their application including missing materials or fees. Applications older than 30 days with deficiencies will be considered vacated applications and the fees surrendered.

F. Applicants submitting more than 60 days after expiration shall submit all documentation required of a new applicant.

4.1.8 Denial, revocation, suspension, annulment, limitation or modification of certification.

A. Denial of Certification

1. The Division, in accordance with the Administrative Procedures Act, Section 24- 4-101, et seq., C.R.S., may deny any certificate or refuse to renew a certificate to any applicant for, but not limited to, the following reasons:

a. Failure to meet requirements specified in these rules pertaining to the issuance of certificates and/or the renewal of certification.

b. Any conduct as described in Article 4.1.7.B.2 pertaining to good cause for disciplinary action.

c. Fraud, misrepresentation, or deception in applying for or securing certification, or in taking any written certification examination.

d. Aiding and abetting another person in procuring or attempting to procure certification for any person who is not eligible for certification.

B. Revocation, suspension, or limitation of certification.

1. Any certification issued by the Division may be suspended, summarily suspended, revoked, or limited for good cause in accordance with the Administrative Procedures Act, Section 24-4-101, et seq., C.R.S.

2. Good cause for disciplinary sanctions listed in this Article (denial, revocation, suspension, annulment, limitation, or modification of certification) shall include, but not be limited to:

a. Evidence that the minimum standards for certification set forth in these rules have not been met.

b. Material misstatement or misrepresentation on the application for certification.

c. Proof of unfitness.

d. Proof of individual's failure to meet, and continue to meet, performance standards at the level certified.

e. Obtaining or attempting to obtain certification or recertification by fraud, misrepresentation, deception, or subterfuge.

f. Materially altering any Division certificate, or using and/or possessing any such altered certificate.

g. Unlawfully discriminating in the provisions of services based upon national origin, race, color, creed, religion, sex, age, physical or mental disability, sexual preference, or economic status.

h. Representing qualifications at any level above the person's current certification level.

i. Failure to pay required fees for certification.

C. If the Division finds that grounds exist for the denial, revocation, suspension, annulment, limitation, or modification of certification of any applicant, action shall be taken according to the provisions of the Colorado Administrative Procedure Act, Section 24-4-101, et seq., C.R.S.

D. Upon the denial, revocation, suspension, annulment, limitation, or modification of any applicant, all certificates, cards, patches or other identification issued by the Division for said certification and accreditation levels shall be returned to the Division.

4.2 Fire & Suppression Systems Inspector Qualification

4.2.1 Wherever Division regulations state that Fire Inspectors performing construction plan review and inspections must be “Certified Fire Inspectors” or “Certified Fire Suppression Systems Inspector” as defined in section 24-33.5-1202 (2.5) and (3), C.R.S., the following shall apply.

4.2.2 General Requirements for all Fire Inspector Certifications

A. An inspector must apply for certification in a format provided by the Division. Application instructions are available on the Division’s website (www.colorado.gov/dfpc); from the Division’s offices at 700 Kipling St, Suite 4100, Denver, CO 80215; or by telephone at 303-239-4100.

B. The applicant must submit the completed application along with the registration fee and all required supporting documentation prior to action by the Division. No cash payments will be accepted.

C. The application must be accompanied by a letter from the agency's chief executive or code official responsible for inspection and plan review attesting for every jurisdiction for which they are providing inspection or plan review services:

1. That the individual is currently employed by, volunteers with or is contracted by a county, municipality, special district, or state agency that has fire inspection, plan review, and enforcement responsibility;

2. That the agency is responsible for such enforcement in their jurisdiction;

3. That the individual has the responsibility to conduct fire plan reviews and/or inspections on behalf of the jurisdiction; and

4. That the individual meets the qualifications (knowledge, skills and ability) to conduct fire plan reviews and/or inspections.

D. The applicant must provide evidence of certification, education and/or training directly related to plan review and/or inspections appropriate for the certification being sought, to include topics relevant to Fire Suppression Systems. Courses must be taught by recognized organizations or institutions including (acceptable to the Division), but not limited to:

1. Regionally accredited post-secondary institutions

2. National Fire Protection Association

3. International Code Council

4. National Fire Academy

5. American Fire Sprinkler Association

6. National Fire Sprinkler Association

7. Sprinkler Fitters Local 669, Joint Apprenticeship and Training Committee

8. IFMA Fire Protection Institution

9. State chapters of organizations or institutions listed above

E. For applicants seeking reciprocity, submit evidence of current and valid certification from another state or jurisdiction which is determined by the Division to be at least equivalent to the requirements stated herein.

F. Limitations /Permissible Activities.

1. A Certified Fire Inspector may not also be a registered contractor.

2. A Certified Fire Inspector may not work directly for or contract with a registered contractor, contractor, or building owner for the provision of inspection services.

3. A Certified Fire Inspector may contract directly, or through his employer, with one or more municipalities, counties, fire protection districts or other local AHJs for the provision of inspection services. In such cases where the inspector is performing inspection or plan review services for multiple jurisdictions the agency letter defined in Section 4.2.2.C shall be provided to the Division for all jurisdictions where services are to be provided within 14 days of the assumption of said duties.

4.2.3 There are three levels of qualification for Fire Inspectors. Inspectors must be qualified to the appropriate level defined in Sections A through C of this Article for the task performed.

A. FIRE INSPECTOR I - In order to become qualified as Fire Inspector I, a person must meet at least one of the following criteria:

1. Possess current and valid inspector qualification(s) issued by a nationally recognized organization (acceptable to the Division), which includes demonstrated knowledge in fire protection and life safety systems, plan review and inspection. The following qualifications are approved:

a. ICC Fire Inspector I

b. NFPA Fire Inspector I; or

2. Submit documentation to the Division to demonstrate that they have the requisite skills and knowledge specified in NFPA 1031 – Standard for Professional Qualifications for Fire Inspector and Plans Examiner for Fire Inspector I, including education, training and experience. The following list identifies examples of education, training, and experience that may be considered as equivalent to the requisite skills and knowledge for Fire Inspector I. This list should not be considered all-inclusive.

a. Current Colorado license as a registered professional engineer specializing in fire protection.

b. Submit evidence of current and valid qualification in another state, which is determined by the Division to be at least equivalent to the requirements listed herein.

B. FIRE INSPECTOR II - In order to become qualified as Fire Inspector II, which also qualifies the individual to conduct inspections of fire suppression systems, a person must meet at least one of the following criteria:

1. Possess current and valid inspector qualification(s) issued by a nationally recognized organization (acceptable to the Division), which includes demonstrated knowledge in fire protection and life safety systems, plan review and inspection. The following qualifications are approved:

a. ICC Fire Inspector II

b. NFPA Fire Inspector II; or

2. Submit documentation to the Division to demonstrate that they have the requisite skills and knowledge specified in NFPA 1031 – Standard for Professional Qualifications for Fire Inspector and Plans Examiner for Fire Inspector II including education, training, and experience. The following list identifies examples of education, training, and experience that may be considered as equivalent to the requisite skills and knowledge for Fire Inspector II. This list should not be considered all-inclusive.

a. Current Colorado license as a registered professional engineer specializing in fire protection.

b. Submit evidence of current and valid qualification in another state, which is determined by the Division to be at least equivalent to the requirements listed herein.

C. FIRE INSPECTOR III – PLANS EXAMINER - In order to become qualified as Fire Inspector III – Plans Examiner, which also qualifies the individual to conduct plan review for fire suppression systems, a person must meet at least one of the following criteria:

1. Possess current and valid inspector qualification(s) issued by a nationally recognized organization, which includes demonstrated knowledge in fire protection and life safety systems, plan review and inspection. The following qualifications are approved:

a. ICC Fire Inspector II and ICC Fire Plans Examiner

b. ICC Fire Inspector II and ICC Building Plans Examiner

c. NFPA Fire Inspector II and NFPA Plans Examiner; or

2. Submit documentation to the Division to demonstrate that they have the requisite skills and knowledge specified in NFPA 1031 – Standard for Professional Qualifications for Fire Inspector and Plans Examiner for Fire Inspector II and for Fire Plans Examiner II, including education, training, and experience. The following list identifies examples of education, training, and experience that may be considered as equivalent to the requisite skills and knowledge for Fire Inspector III. This list should not be considered all-inclusive.

a. A combination of five (5) years of education and work experience in fire protection and/or code enforcement is

required. Education must be an Associate Degree or above in Fire Science, Fire Prevention, Fire Protection Engineering or other Division approved related major. Work experience must be specifically in fire prevention, fire protection, code enforcement, or inspection.

b. Current Colorado license as a registered professional engineer specializing in fire protection.

c. Submit evidence of current and valid qualification in another state, which is determined by the Division to be at least equivalent to the requirements listed herein.

4.2.4 Duration of Certification

A. Fire Inspector Certifications are valid for a period of three-years from the date of issuance, unless earlier suspended or revoked.

B. Certified Fire Inspectors who are separated from employment may not perform plan review or inspection services unless they become employed with a new agency and provide a letter pursuant to Section 4.2.2.C.

4.2.5 Certification Renewal

A. Renewal of certification is the responsibility of the certified individual. An individual who was certified as a Fire Suppression Systems Inspector or a Fire Suppression Systems Inspector-Plan Reviewer prior to April 1, 2019 may perform all of the responsibilities of a Fire Suppression Systems Inspector or a Fire Suppression Systems Inspector-Plan Reviewer until the certification is expired. Upon application for renewal he or she will need to apply to be certified as a Fire Inspector II or Fire Inspector III-Plans Examiner, whichever is applicable.

B. Certification renewal requires an application accompanied by the following:

1. A letter in accordance with section 4.2.2.C.

2. Certification renewal is contingent on meeting one of the following educational requirements during the three-year certification period:

a. Fifteen hours of continuing education relating to the field of building construction or fire protection, as applicable, including, but not limited to, classes, seminars, and training conducted by professional organizations or trade associations; or.

b. Documentation to the Division of 1.5 CEU’s relevant to the field of building construction or fire protection as applicable, by participation in educational and professional activities. CEU’s will be granted for the professional development activities as depicted in the table below: (It is important to obtain documentation and keep records of each activity attended during the certification period).

c. Successful renewal of equivalent ICC or NFPA certifications shall be considered as acceptable criteria for renewal of the State inspector certification. Submit proof of ICC or NFPA renewal with the renewal application.

Participation as a student in a seminar or technical session related to building construction or fire protection and life safety systems (depending upon the certification) conducted by a qualified organization[1].	0.1 CEU per clock hour of attendance
Attendance at NFPA and/or ICC code development hearings related to fire protection, fire prevention or life safety.	0.1 CEU per clock hour of attendance up to 1.0 CEU per renewal period.
Committee or board service for NFPA and/or ICC for one full year.	0.5 CEU per committee, per year.
Participation as a student in a university, community college, junior college, technical or vocational school in a course related to, building construction or fire protection, fire prevention or life safety (depending upon the certification).	1.0 CEU per credit hour.
Instruction of a seminar or technical session delivered for a related professional association, state or local code enforcement agency, standards writing organization or any related program.	0.1 CEU per clock hour of instruction delivered.
Participation as an instructor in a university, community college, junior college, technical or vocational school in a course related to building construction or fire protection, fire prevention or life safety (depending upon the certification)	1.0 CEU per credit hour.
Documented in-house training or continuous employment as a code official, plans examiner, or inspector. Training shall be documented and approved by the chief executive, fire chief or training officer for the applicant's organization.	Up to 0.3 CEU per renewal period.
Publication of a paper, book or technical article for a related textbook or professional trade journal.	1.0 CEU per publication.

[1] Pertinent courses provided by organizations listed in 4.2.2.D, as well as the National Fire Sprinkler Association, National Fire Alarm Association, American Fire Sprinkler Association, and International Fire Marshal's Association are deemed qualified. Courses provided by other entities may be accepted after review by the Division.

3. Payment of the required renewal fee.

C. Applications for renewal shall be submitted no more than 30 days prior to expiration, A grace period for renewal may be extended for up to 30 days after expiration, after which a late application fee will be assessed.

D. All applicants shall have no longer than 30 days from the original submittal to correct deficiencies in their application including missing materials or fees. Applications older than 30 days with deficiencies will be considered vacated applications and the fees surrendered.

E. Applicants submitting more than 60 days after expiration shall submit all documentation required of a new applicant in addition to documentation of continuing education.

4.2.6 Denial, revocation, suspension, annulment, limitation or modification of certification.

A. Denial of Certification

1. The Division, in accordance with the Administrative Procedures Act, Section 24- 4-101, et seq., C.R.S., may deny any certificate or refuse to renew a certificate to any applicant for, but not limited to, the following reasons:

a. Failure to meet requirements specified in these rules pertaining to the issuance of certificates and/or the renewal of certification.

b. Any conduct as described in Article 4.2.6.B.2 pertaining to good cause for disciplinary action.

c. Fraud, misrepresentation, or deception in applying for or securing certification, or in taking any written certification examination.

d. Aiding and abetting another person in procuring or attempting to procure certification for any person who is not eligible for certification.

B. Revocation, suspension, or limitation of certification.

1. Any certification issued by the Division may be suspended, summarily suspended, revoked, or limited for good cause in accordance with the Administrative Procedures Act, Section 24-4-101, et seq., C.R.S.

2. Good cause for disciplinary sanctions listed in this Article (denial, revocation, suspension, annulment, limitation, or modification of certification) shall include, but not be limited to:

a. Evidence that the minimum standards for certification set forth in these rules have not been met.

b. Material misstatement or misrepresentation on the application for certification.

c. Proof of unfitness.

d. Proof of individual's failure to meet, and continue to meet, performance standards at the level certified.

e. Obtaining or attempting to obtain certification or recertification by fraud, misrepresentation, deception, or subterfuge.

f. Materially altering any Division certificate, or using and/or possessing any such altered certificate.

g. Unlawfully discriminating in the provisions of services based upon national origin, race, color, creed, religion, sex, age, physical or mental disability, sexual preference, or economic status.

h. Representing qualifications at any level above the person's current certification level.

i. Failure to pay required fees for certification.

C. In addition to those items listed in Rule 4.2.6.B.2, good cause for disciplinary sanctions listed in this Article (denial, revocation, suspension, annulment, limitation, or modification of certification) against the certification held by an exam proctor shall include, but not be limited to:

1. Failure to adhere to the policies, procedures, and administrative requirements for delivery, documenting, test administration, and certification as adopted, administered and/or recognized by the Division.

2. Failure to maintain security over written exams, including unauthorized access or reproduction of examination materials.

D. If the Division finds that grounds exist for the denial, revocation, suspension, annulment, limitation, or modification of certification of any applicant, action shall be taken according to the provisions of the Colorado Administrative Procedure Act, Section 24-4-101, et seq., C.R.S.

E. Upon the denial, revocation, suspension, annulment, limitation, or modification of any applicant, all certificates, cards, patches or other identification issued by the Division for said certification and accreditation levels shall be returned to the Division.

ARTICLE 5 - ENFORCEMENT

5.1 The Division will enforce the requirements of these rules by following the provisions of this section 5.1.

5.1.1 The Division may issue a notice of violation to a person who is believed to have violated these rules. The notice shall be delivered to the alleged violator by certified mail, return receipt requested, or by any means that verifies receipt as reliably as certified mail, return receipt requested.

5.1.2 The notice of violation shall allege the facts that constitute a violation

5.1.3 The notice of violation may require the alleged violator to correct the alleged violation or to stop work until such time as acceptable conditions exist to continue work.

5.1.4 Within ten working days after delivery of the notice of violation, the alleged violator may request in writing an informal conference with the Director (or his designee) concerning the notice of violation. If the alleged violator fails to request the conference within ten days, the notice of violation is final and not subject to further review, and any requirement to correct the alleged violation pursuant to 5.1.3 becomes a binding enforcement order.

5.1.5 Upon receipt of a request for an informal conference, the Director (or his designee) shall set a reasonable time and place for the conference and shall notify the alleged violator of the time and place of the conference. At the conference, the alleged violator may present evidence and arguments concerning the allegations in the notice of violation.

5.1.6 Within twenty working days after the informal conference, the Director shall uphold, modify, or strike the allegations within the notice of violation and may issue an enforcement order. The decision and, if applicable, enforcement order shall be delivered to the alleged violator by certified mail, return receipt requested, or by any means that verifies receipt as reliably as certified mail, return receipt requested.

5.2 A person who is the subject of, and is adversely affected by, a notice of violation or enforcement order issued pursuant to Article 5 may appeal such action to the Executive Director. The Executive Director shall hold a hearing to review such notice or order and take final action in accordance with Article 11 and may either conduct the hearing personally or appoint an administrative law judge from the department of personnel.

5.2.1 Final agency action shall be subject to judicial review pursuant to C.R.S. Article 4 of Title 24.

5.2.2 An alleged violator who is required to correct an action pursuant to Article 12 shall be afforded the procedures set forth in section 24-4-104(3), C.R.S., to the extent applicable.

5.3 The Director may file suit in district court in the judicial district in which a violation is alleged to have occurred to judicially enforce an enforcement order issued pursuant to this section.

5.4 In addition to the remedies provided in this Article, the Director is authorized to apply to the district court, in the judicial district where the violation has occurred, for a temporary or permanent injunction to restrain any person from violation any provision of section 5.1 regardless of whether there is an adequate remedy at law.

ARTICLE 6 - FEES AND CHARGES

6.1 Inspector Certification Fees: The Division shall charge the following fees for inspector certifications:

Inspector Certification Fees	
Certification or Renewal of Inspectors by document review	$75.00
Certification or Renewal of Inspectors by reciprocity of equivalent ICC or NFPA certifications	$25.00
Late renewal fee	$25.00

6.2. Fees may be waived or modified when appropriate at the discretion of the Director or his designee. Request for waiver or modification shall be in writing.

ARTICLE 7 - INQUIRIES

7.1 Questions, clarification, or interpretation of these Rules should be addressed in writing to: Fire & Life Safety Section Chief, Colorado Division of Fire Prevention and Control, 700 Kipling St, Suite 4100, Lakewood, CO 80215. Telephone number: (303) 239-4100.

Editor’s Notes

History

New rule eff. 03/30/2019.

Rules 2.1, 3.1, 3.2, 4.1.2, 4.1.3-4.1.7, 4.2.2, 4.2.4-4.2.6, 6.1, 6.2, 7.1 eff. 06/30/2021.

DEPARTMENT OF PUBLIC SAFETY

Division of Fire Prevention and Control

8 CCR 1507-101

BUILDING AND FIRE CODE ADOPTION AND CERTIFICATION OF INSPECTORS FOR FIRE & LIFE SAFETY PROGRAMS ADMINISTERED BY THE STATE OF COLORADO

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Pursuant to Section 24-33.5-1203.5, C.R.S., the Director of the Colorado Division of Fire Prevention and Control shall promulgate rules and adopt codes as necessary to carry out the duties of the Division of Fire Prevention and Control. This rule is proposed pursuant to this authority and is intended to be consistent with the requirements of the State Administrative Procedures Act, Section 24-4-101, et seq., C.R.S.

C.R.S. Title 24 Article 33.5 Part 12 directs that fire suppression systems installed in commercial and residential occupancies are designed, installed, inspected and maintained according to the codes and standards adopted by the Director of the Division of Fire Prevention & Control.

The Division of Fire Prevention and Control is authorized to certify a person with fire suppression system inspector and/or plan review responsibilities by the provisions of section 24-33.5-1206.4, C.R.S.

The Division of Fire Prevention and Control is authorized to certify a person with third-party building inspector responsibilities by the provisions of section 24-33.5-1213.5, C.R.S.

The purpose of this rule change is to address the need to update, through amendment, the code provisions that address the use of antifreeze solutions in fire suppression systems for the purposes of freeze protection. Installation design parameters and their associated system modifications, cost of the antifreeze product, and lack of listed antifreeze product availability have created significant hardships in complying with the provision outlined in the currently adopted edition of the code that all antifreeze systems would be required to replace the antifreeze with a “listed” antifreeze by September 30, 2022. The rule change provides relief of this hardship, while still maintaining an industry-recognized appropriate level of safety.

Additionally, this rule change adds the requirements to certify special inspectors under the third-party building inspector certification program to support the need to document the qualifications of an individual performing such work within the programs administered by the Colorado Division of Fire Prevention and Control.

This rule change also allows for general clean-up of grammatical and formatting inconsistencies or errors.

The implementation of rules to carry out the purpose of amending the code requirements related to the use of antifreeze solutions in fire suppression systems for the purposes of freeze protection is necessary for the immediate preservation of the public peace, health, or safety; delay in the promulgation of these rules would be contrary to the purpose of Section 24-33.5-1203.5, C.R.S.

_____ _____

Mike Morgan, Division Director Date of Adoption
Colorado Department of Public Safety
Division of Fire Prevention and Control

Notice of Proposed Rulemaking

Tracking number

2022-00641

Department

2505,1305 - Department of Health Care Policy and Financing

Agency

2505 - Executive Director of Health Care Policy and Financing

CCR number

10 CCR 2505-5

Rule title

EXECUTIVE DIRECTOR OF HEALTH CARE POLICY AND FINANCING RULES

Rulemaking Hearing

Date

11/29/2022

Time

12:00 PM

Location

1570 Grant St, Hibiscus, Denver, CO 80203

Subjects and issues involved

see attachment

Statutory authority

Section 25.5-1-108, C.R.S. (2022)

Contact information

Name

Chris Sykes

Title

Medical Services Board Coordinator

Telephone

3038664416

Email

chris.sykes@state.co.us

COLORADO
Department of Health Care Policy & Financing
1570 Grant Street
Denver, CO 80203

NOTICE OF PROPOSED RULES

The Executive Director of the Colorado Department of Health Care Policy and Financing will hold a public meeting on Tuesday, November 29, 2022, beginning at 12:00 p.m. at 1570 Grant Street, Denver, CO 80203 and virtually. Reasonable accommodations will be provided upon request for persons with disabilities. Please notify the Rules Administrator 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 Rules Administration Office, 1570 Grant Street, Denver, Colorado 80203, tel. (303) 866-4416, fax (303) 866-4411. Written comments may be submitted to the Rules Administration Office on or before close of business the Thursday prior to the meeting. Additionally, the full text of all proposed changes will be available approximately one week prior to the meeting on the internet at the Executive Director Administrative Rules Hearing Schedule page.

ED 22-09-16-A, Revision to the Executive Director of the Department of Health Care Policy and Financing Rule Concerning All-Payers Claims Database, Section 1.200

Executive Director. As the Colorado All Payer Claims Database (CO APCD) administrator, CIVHC began conversations with the submitters regarding the rule change in the Spring of 2022. The goals of the proposed updates to the Data Submissions Guide (DSG) are to:

- Improve the quality and completeness of submitted data in order to effectively affirm the integrity and credibility of the Colorado All Payer Claim Database (CO APCD);
- Allow for the collection of the member eligibility, medical claims (includes dental), pharmacy claims and provider files to be collected through the submission portal feed; and
- Collect additional information to advance the Triple Aim of health care to lower costs, improve outcomes, and improve care across Colorado.

CIVHC sent the proposed Rule language and revised DSG to all data submitters on 7/15/2022. CIVHC hosted a webinar 8/17/2022 and presented the proposed changes to DSG v 14. More than 40 representatives from over 20 data submitters attended the webinar and had opportunity to ask questions and discuss the proposed changes with CIVHC. Submitters raised questions around collecting vision data and alignment of the DSG to the APCD Common Data Layout, asking if either had been reflected in the initial DSG v14 draft distributed on 7/15/2022.

After the webinar, CIVHC proactively coordinated with stakeholders to continue updating the submission guide to incorporate appropriate changes. CIVHC produced 3 more drafts on 8/31/2022, 9/22/2022, and 9/27/2022.

The statutory authority for this rule change is contained in 25.5-1-204(9), C.R.S. (2019) and 25.5-1-108, C.R.S. (2022).

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Insurance

CCR number

3 CCR 702-4 Series 4-2

Rule title

3 CCR 702-4 Series 4-2 LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General) 1 - eff 11/14/2022

Effective date

11/14/2022

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Amended Regulation 4-2-78

CONCERNING COST SHARING REDUCTION ENHANCEMENTS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109(1), 10-16-1207(5), and 10-16-109, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to provide standards for including payments to carriers pursuant to C.R.S. § 10-16-1205(1)(b)(II) in health benefit plans regulated by the Colorado Division of Insurance.

Section 3 Applicability

This regulation applies to all carriers issuing non-grandfathered individual health benefit plans starting in benefit year 2023 and annually thereafter.

Section 4 Definitions

A. "Actuarial value" and "AV" means, for the purpose of this regulation, the percentage of total average costs for covered benefits that a health benefit plan will cover, with calculations based on the provision of essential health benefits to a standard population.

B. "Benefit year" shall have the same meaning as found at § 10-16-1103(2), C.R.S.

C. "Carrier" shall have the same meaning as found at § 10-16-102(8), C.R.S.

D. "Cost Sharing Reduction Enhancement" or "CSR Enhancement" means, for the purpose of this regulation, an increase in silver plans' actuarial value from 87% to 94% for eligible enrollees.

E. "CSR Load" means, for the purpose of this regulation, the load in the silver plan premiums necessary to cover the cost of providing cost-sharing reductions in the on-exchange silver health benefit plans.

F. “CSR variant” means, for purposes of this regulation, a cost-sharing reduction plan variation defined in 45 C.F.R. § 156.420(a).

G. “Eligible enrollee” means, for the purpose of this regulation, an individual enrolled in a CSR variant plan whose household income is from 151% to 200% of the Federal Poverty Level.

H. “Exchange” shall have the same meaning as found at § 10-16-102(26), C.R.S.

I. “Health benefit plan” shall have the same meaning as found at § 10-16-102(32), C.R.S.

J. “Induced Demand Factor” shall mean the anticipated induced demand associated with the plan’s cost sharing (metal) level.

K. “Plans and Benefits Template” or “PBT” means, for the purpose of this regulation, the Plans & Benefits Template created by the Centers for Medicare & Medicaid Services.

L. “Rate” means, for the purpose of this regulation, the value in the carrier’s Rates Table Template corresponding to the enrollee’s age, geographic rating area, and tobacco status.

M. “Rate filing” means, for the purpose of this regulation, a carrier’s electronic submission to the Division in accordance with Colorado Insurance Regulation 4-2-39.

N. “Rates Table Template” means, for the purposes of this regulation, the Rates Tables Template created by the Centers for Medicare and Medicaid Services.

O. “Standard silver plan” shall have the same meaning as found at § 10-16-103.4(2)(b), C.R.S.

P. “Substantially Similar Plan” means, for the purposes of this regulation, the silver metal level health benefit plan that is substantially similar to the on-exchange CSR-loaded silver metal level health benefit plan, but without the CSR load, for those off-exchange consumers who do not quality for advanced premium tax credits or cost-sharing reductions.

Q. “URRT” means, for the purpose of this regulation, the Unified Rate Review Template created by the Centers for Medicare & Medicaid Services.

Section 5 Requirements for CSR Variant Plans

For the 2023 benefit year, and annually thereafter, carriers shall offer a CSR enhancement to all eligible enrollees in silver metal level health benefit plans.

A. On the PBT, carriers shall file silver plans with CSR variants, according to current, standard practice.

B. The on-exchange silver plans included in the URRT, and any other template in the carrier’s rate filing, shall reflect expected changes in enrollment and induced demand based on the increased uptake of the 94% AV plan variant as a result of the CSR Enhancement.

Section 6 Payments to Carriers

A. Pursuant to C.R.S. § 10-16-1205(1)(b)(II), the Colorado Health Insurance Affordability Enterprise created in C.R.S. § 10-16-1204(1)(a), through the Division, will make payments to carriers by June 30, 2024, and by June 30 of subsequent calendar years, to compensate for the difference between the 94% AV plan variant costs the carrier paid during the benefit year because of the CSR enhancement, and the 87% AV plan variant costs the carriers would have paid absent the CSR enhancement for the previous benefit year. Pursuant to Section 5.B., payments to carriers will not reflect expected changes in induced demand based on the 94% AV plan variant as compared with the 87% AV plan variant.

B. The Division will calculate carrier payment amounts by determining the difference between what the carrier expects to pay in standard silver claims costs for plans with a 94% AV and the standard claims costs for plans with an 87% AV, using the following methodology. A numerical example of the application of this method can be found in Appendix A.

1. A Silver Plan Claims Cost for a standard silver plan will be calculated as follows:

Rate X Incurred Claims / CSR Load

as a Percent of Premium

a. The Incurred Claims as a Percent of Premium will be calculated as the URRT Worksheet 2, Total, line 4.15 divided by URRT Worksheet 2, Total, Line 4.17.

b. The CSR Load will be calculated using the on-exchange standard silver plan rate divided by the substantially similar off-exchange rate.

2. An 87% AV Silver Claims Cost will be calculated as follows:

Silver Plan Claims Cost = Silver Plan Claims Cost X AV of 87% CSR Variant / AV of Standard Silver On-Exchange Plan X Induced Demand for 94% CSR Variant / Induced Demand for Standard Silver Plan

a. The Silver Plan Claims Cost will be determined by the calculation in subsection 6(B)(1).

b. If the plan design is unique, the AV of the 87% CSR Variant will be determined by the value entered in the Issuer Actuarial Value in the carrier's PBT. Otherwise, the AV of the 87% CSR Variant will be determined by the value entered in the AV Calculator Output Number in the carrier's PBT.

c. If the plan design is unique, the AV of the Standard Silver On-Exchange Plan will be determined by the value entered in the Issuer Actuarial Value in the carrier's PBT. Otherwise, the AV of the Standard Silver On-Exchange Plan will be determined by the value entered in the AV Calculator Output Number in the carrier's PBT.

d. The Induced Demand for the 94% CSR Variant will be determined using the actuarial value in subsection 6(B)(3)(b) in the induced demand factor formula from the risk adjustment methodology pursuant to 45 C.F.R. § 153.320(a)(1).

e. The Induced Demand for a Standard Silver Plan will be determined using the actuarial value in subsection 6(B)(2)(c) in the induced demand factor formula from the risk adjustment methodology pursuant to 45 C.F.R. § 153.320(a)(1).

3. A 94% AV Silver Claims Cost will be calculated as follows:

Silver Plan Claims Cost = Silver Plan Claims Cost X AV of 94% CSR Variant / AV of Standard Silver On-Exchange Plan X Induced Demand for 94% CSR Variant / Induced Demand for Standard Silver Plan

a. The Silver Plan Claims Cost will be determined by the calculation in subsection 6(B)(1).

b. If the plan design is unique, the AV of the 94% CSR Variant will be determined by the value entered in the Issuer Actuarial Value in the carrier's PBT. Otherwise, the AV of the 94% CSR Variant will be determined by the value entered in the AV Calculator Output Number in the carrier's PBT.

c. If the plan design is unique, the AV of the Standard Silver On-Exchange Plan will be determined by the value entered in the Issuer Actuarial Value in the carrier's PBT. Otherwise, the AV of the Standard Silver On-Exchange Plan will be determined by the value entered in the AV Calculator Output Number in the carrier's PBT.

d. The Induced Demand for the 94% CSR Variant will be determined using the actuarial value in subsection 6(B)(3)(b) in the induced demand factor formula from the risk adjustment methodology pursuant to 45 C.F.R. § 153.320(a)(1).

e. The Induced Demand for a Standard Silver Plan will be determined using the actuarial value in subsection 6(B)(2)(c) in the induced demand factor formula from the risk adjustment methodology pursuant to 45 C.F.R. § 153.320(a)(1).

4. The Payment to Carriers will be calculated as follows:

Payment to Carriers = 94% AV Silver Claims Cost - 87% AV Silver Claims Cost

(PMPM)

a. The 94% AV Silver Claims Cost will be determined by the calculation in subsection 6(B)(3).

b. The 87% AV Silver Claims Cost will be determined by the calculation in subsection 6(B)(2).

c. In cases where an enrollee is not enrolled for the full month, payments will be calculated on a pro rata basis.

5. The Division will apply this method consistently across carriers using values supplied in rate filings, particularly URRTs, PBTs, and Rate Table Templates.

a. This method provides an actuarially sound estimate of the claims cost by carrier, plan, and age for a given person insured in the Colorado individual market.

b. This method will also allow for a determination of total cost after the completion of the previous benefit year given the actual population distribution and total member months during the benefit year.

Section 7 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 the regulation shall not be affected.

Section 8 Incorporated Materials

45 C.F.R. § 156.420 shall mean 45 CFR §156.420 as published by the Government Printing Office on the effective date of this regulation and does not include later amendments to or editions of 45 C.F.R. § 156.420. A copy of 45 C.F.R. § 156.420 may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of 45 C.F.R. § 156.420 may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at www.ecfr.gov.

45 C.F.R. § 153.320 shall mean 45 CFR § 153.320 as published by the Government Printing Office on the effective date of this regulation and does not include later amendments to or editions of 45 CFR § 153.320. A copy of 45 CFR §153.320 may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of 45 CFR § 153.320 may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at www.ecfr.gov.

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 amended regulation shall become effective on November 14, 2022.

Section 11 History

This regulation replaces Emergency Regulation 21-E-08, which became effective on May 9, 2021, in its entirety.
This regulation shall be effective on September 1, 2021.
Amended regulation effective November 14, 2022.

Appendix A: Sample Calculation for a 44 year old for a given carrier, region and plan

Line	Field	Source	Sample
A	HIOS Plan ID, Standard Silver On-Exchange Metal AV	PBT “Issuer Actuarial Value”	0.713
B	HIOS Plan ID, Standard Silver On-Exchange with 87% CSR AV	PBT “Issuer Actuarial Value”	0.875
C	HIOS Plan ID, Standard Silver On-Exchange with 94% CSR AV	PBT “Issuer Actuarial Value”	0.939
D	Induced Demand - Standard Silver	$A^2 - A + 1.24$	1.035
E	Induced Demand– Standard Silver with 94% CSR	$C^2 - C + 1.24$	1.183
F	Rate	Rates Tables Template	$439.65
G	CSR Load	(Standard Silver On-Exchange Calibrated Plan Adjusted Index Rate) / (Off-Exchange Substantially Similar Silver Plan Calibrated Plan Adjusted Index Rate)	1.25
H	Incurred Claims as a Percent of Premium	URRT Worksheet 2, Totals, line 4.15 / line 4.17	81.0%

I	Silver Plan Claims Cost	Calculate: F x H / G	$284.89
J	Claims Cost – Standard Silver with 87% CSR	Calculate: I x (B / A) x (E / D)	$399.61
K	Claims Cost – Standard Silver with 94% CSR	Calculate: I x (C / A) x (E / D)	$428.84
L	**Payment to Carrier**	**Calculate: K - J**	**$29.23**

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00404

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Insurance

on 09/22/2022

3 CCR 702-4 Series 4-2

LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)

The above-referenced rules were submitted to this office on 09/22/2022 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.

October 12, 2022 10:10:29

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Insurance

CCR number

3 CCR 702-4 Series 4-2

Rule title

3 CCR 702-4 Series 4-2 LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General) 1 - eff 11/14/2022

Effective date

11/14/2022

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE ACCIDENT AND HEALTH

Amended Regulation 4-2-83

CONCERNING HEALTH INSURANCE AFFORDABILITY ENTERPRISE SUBSIDIES FOR QUALIFIED INDIVIDUALS THROUGH PREMIUM WRAP AND COST SHARING REDUCTION ENHANCEMENTS ON THE COLORADO OPTION SILVER PLAN

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109(1), 10-16-1207(5), and 10-16-109, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to provide standards for including payments to carriers pursuant to C.R.S. § 10-16-1205(1)(b)(III) in rate filings for health benefit plans regulated by the Colorado Division of Insurance and guidelines for the Colorado Option Silver Enhanced Benefit Plan.

Section 3 Applicability

This regulation applies to all carriers issuing non-grandfathered individual health benefit plans starting in benefit year 2023 and annually thereafter.

Section 4 Definitions

A. "Actuarial value" and "AV" means, for the purpose of this regulation, the percentage of total average costs for covered benefits that a health benefit plan will cover, with calculations based on the provision of essential health benefits to a standard population.

B. "Benefit year" shall have the same meaning as found at § 10-16-1103(2), C.R.S.

C. "Carrier" shall have the same meaning as found at § 10-16-102(8), C.R.S.

D. “Colorado Option Silver Enhanced Plan” or “Silver Enhanced Plan” means, for the purpose of this regulation, the Colorado Option Silver Plan offered by Connect for Health on the Colorado Public Benefit Corporation with an increase in the plan’s actuarial value to 94% and a $0 premium containing the same plan design and cost-sharing as the Colorado Option On-Exchange Silver (94% AV) Standardized Plan.

E. “Colorado Option Silver Plan” or “Silver Plan” means, for the purpose of this regulation, the Colorado Option Silver Off Exchange Standardized Plan, the standardized health benefit plan offered by Connect for Health Colorado off exchange on the Public Benefit Corporation.

F. “Colorado Plans and Benefits Template” or “Colorado PBT” means, for the purpose of this regulation, the Colorado PBT created and supplied by the Division to use when submitting any Standardized Plan on the PBC.

G. “Cost Sharing Reduction Enhancement” or “CSR Enhancement” means, for the purpose of this regulation, an increase in the Colorado Option Silver Plan’s actuarial value to 94% for eligible enrollees.

H. “Eligible enrollee” means, for the purpose of this regulation, a Qualified Individual enrolled in a Colorado Option Silver Plan on the PBC whose household income is from 0-150% of the Federal Poverty Level.

I. “Exchange” shall have the same meaning as found at § 10-16-102(26), C.R.S.

J. “Federal Actuarial Value Calculator” or “Federal AV Calculator” means, for the purpose of this regulation, the AV Calculator required pursuant to 45 C.F.R. § 156.135(a).

K. “Health benefit plan” shall have the same meaning as found at § 10-16-102(32), C.R.S.

L. “Health Insurance Affordability Board” shall have the same meaning as found at § 10-16-1207, C.R.S.

M. “Health Insurance Affordability Enterprise” or “Enterprise” shall have the same meaning as found at § 10-16-1203(3), C.R.S.

N. “Induced Demand Factor” shall mean the anticipated induced demand associated with the plan’s cost sharing (metal) level.

O. “Premium wrap” means, for the purpose of this regulation, financial subsidies to reduce eligible enrollees’ monthly premium.

P. “Public Benefit Corporation” or “PBC” shall have the same meaning as found at § 10-16-1203(11), C.R.S.

Q. “Qualified Individuals” shall have the same meaning as found in § 10-16-1203(12), C.R.S.

R. “Rate” means, for the purpose of this regulation, the value in the carrier’s Rates Table Template corresponding to the enrollee’s age, geographic rating area, and tobacco status.

S. “Rate filing” means, for the purpose of this regulation, a carrier’s electronic submission to the Division in accordance with Colorado Insurance Regulation 4-2-39.

T. “Rates Table Template” means, for the purpose of this regulation, the Rates Table Template created by the Centers for Medicare and Medicaid Services.

U. “Standardized plans” shall have the same meaning as found at § 10-16-1303(14), C.R.S.

V. “URRT” means, for the purpose of this regulation, the Unified Rate Review Template created by the Centers for Medicare & Medicaid Services.

Section 5 HIAE Subsidy for Eligible Enrollees

For the 2023 benefit year, and annually thereafter, carriers shall offer the Colorado Option Silver Enhanced Plan to all eligible enrollees on the Public Benefit Corporation as recommended by the Health Insurance Affordability Board.

Section 6 Naming Conventions and Filing Requirements

A. Carriers shall use the following naming convention for Silver Enhanced Plans: “[Name of Carrier] Colorado Option Silver Enhanced 94%.” The name of the carrier may be shortened to an easily identifiable acronym that is commonly used by the carrier in consumer facing publications.

B. Carriers shall use the same HIOS ID as the off-exchange Colorado Option Silver Plan using a newly established state plan identifier with an “07” suffix.

C. Carriers must file the Colorado Option Silver Enhanced Plan on the Colorado PBT. The Colorado PBT will be in the SERFF binder filing under the supporting documentation tab.

D. The URRT submitted with the carrier's rate filing shall reflect expected changes in enrollment and induced demand factor based on the increased uptake of the Silver Enhanced Plan.

Section 7 Requirements for CSR Enhancements and Premium Wrap

For the 2023 benefit year, and annually thereafter, carriers shall offer a CSR enhancement and a premium wrap to all eligible enrollees in a Silver Enhanced Plan.

A. The CSR enhancement shall increase the Silver Plan’s actuarial value to 94% for eligible enrollees.

B. The premium wrap shall provide eligible enrollees a $0 premium for the Silver Plan.

Section 8 Payments to Carriers

A. Pursuant to C.R.S. § 10-16-1205(1)(b)(III), the Colorado Health Insurance Affordability Enterprise created in C.R.S. § 10-16-1204(1)(a), through the Division, will make payments to carriers annually by June 30, 2024, and by June 30 of subsequent calendar years, to compensate for the cost of the premium wrap, plus the difference between the Colorado Option Silver Enhanced Plan Claims Cost and the Colorado Option Silver Plan Claims Cost.

B. The Division will calculate carrier payment amounts by adding the costs of the premium wrap and the cost sharing reduction enhancement into one payment to applicable carriers.

1. The cost of the annual premium wrap is the full monthly premium of the Silver Enhanced Plan for eligible enrollees times the number of months the enrollee is enrolled in the plan.

a. The monthly premium wrap is the eligible enrollee’s rate.

b. The annual premium wrap is calculated as follows:

Monthly Premium Wrap X Enrollee’s Month of Enrollment

The Enrollee’s Months of Enrollment will be determined by data provided by the Exchange.

2. The cost of the CSR enhancement is calculated by determining the difference between what the carrier expects to pay in Silver Enhanced Plan claims costs and the Silver Plan claims costs using the following methodology.

a. A Silver Plan Claims Cost will be calculated as follows:

Rate X Incurred Claims as a Percent of Premium

The Incurred Claims as a Percent of Premium will be calculated as the URRT Worksheet 2, Total, line 4.15 divided by URRT Worksheet 2, Total, Line 4.17.

b. A Silver Enhanced Plan Claims Cost will be calculated as follows:

Silver Plan Claims Cost X Silver Enhanced Plan AV / Silver Plan AV -

(1) The Silver Plan Claims Cost will be determined by the calculation in subsection 8(B)(2)(a).

(2) The Silver Enhanced Plan AV will be determined using the Actuarial Value of the Silver (94% AV) Standardized Plan, in accordance with Colorado Insurance Regulation 4-2-81.

(3) The Silver Plan AV will be determined using the Actuarial Value of the Silver Off-Exchange Standardized Plan, in accordance with Colorado Insurance Regulation 4-2-81.

c. The Payment to Carriers will be calculated as follows:

Payments to Carriers = Silver Enhanced Plan premium wrap + (Silver Enhanced Plan Claims cost – Silver Plan Claims Cost)

(1) The Silver Enhanced Plan premium wrap will be determined by the calculation in subsection 8(B)(1).

(2) The Silver Enhanced Plan Claims Cost will be determined by the calculation in subsection 8(B)(2)(b).

(3) The Silver Plan Claims Cost will be determined by the calculation in subsection 8(B)(2)(a).

(4) In cases where an enrollee is not enrolled for the full month, payments will be calculated on a pro rata basis.

d. The Division will apply this method consistently across carriers using values supplied in rate filings, particularly URRTs, PBTs, Colorado PBTs, and Rate Table Templates.

(1) This method provides an actuarially sound estimate of the claims cost by carrier, plan, and age for a given person insured in the Colorado individual market.

(2) This method will also allow for a determination of total cost after the completion of the previous benefit year given the actual population distribution and total member months during the benefit year.

Section 9 Severability

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

Section 10 Incorporation by Reference

45 C.F.R. § 153.320 shall mean 45 CFR § 153.320 as published by the Government Printing Office on the effective date of this regulation and does not include later amendments to or editions of 45 CFR § 153.320. A copy of 45 CFR §153.320 may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of 45 CFR § 153.320 may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at www.ecfr.gov.

45 C.F.R. § 156.135 published by the Government Printing Office shall mean 45 C.F.R. § 156.135 as published on the effective date of this regulation and does not include later amendments to or editions of 45 C.F.R. 156.135(a). A copy of 45 C.F.R. § 156.135(a) may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of 45 C.F.R. 156.135(a) may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at www.ecfr.gov

Section 11 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 12 Effective Date

This amended regulation shall be effective November 14, 2022._

Section 13 History

New regulation effective June 14, 2022
Amended regulation effective November 14, 2022.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00405

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Insurance

on 09/22/2022

3 CCR 702-4 Series 4-2

LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)

The above-referenced rules were submitted to this office on 09/22/2022 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.

October 12, 2022 10:12:32

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Board of Accountancy

CCR number

3 CCR 705-1

Rule title

3 CCR 705-1 ACCOUNTANCY RULES AND REGULATIONS 1 - eff 11/14/2022

Effective date

11/14/2022

DEPARTMENT OF REGULATORY AGENCIES

State Board of Accountancy

ACCOUNTANCY RULES AND REGULATIONS

3 CCR 705-1

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

…

1.16 PROTECTING COLORADO'S WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES

This Rule is promulgated pursuant to Executive Order D 2022 034, and sections 12-100-105(1)(b) and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Certificate holder" or "certificant" means as defined in section 12-20-102(3), C.R.S.

3. "Civil judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.

4. "Criminal judgment" means criminal conviction as defined in Rule 1.1.

5. "Licensee" means as defined in section 12-20-102(10), C.R.S.

6. "Regulator" means as defined in section 12-20-102(14), C.R.S.

B. The regulator shall not deny certification to an applicant or impose disciplinary action against an individual's certificate based solely on a civil or criminal judgment against the applicant or certificate holder regarding the consumption, possession, cultivation, or processing of marijuana so long as the actions are lawful and consistent with professional conduct and standards of care within Colorado and did not otherwise violate Colorado law.

C. The regulator shall not deny certification to an applicant or impose disciplinary action against an individual's certificate based solely on a professional disciplinary action against the applicant's or certificate holder's professional certification in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant's or certificate holder's consumption, possession, cultivation, or processing of marijuana and did not otherwise violate Colorado law.

Editor's Notes

History

Rules 1.1, 1.2, 1.5 eff. 05/30/2007. Rule 1.7 repealed eff. 05/30/2007.
Rules 3.7(A)(5), 4.1(E) eff. 07/30/2007.
Chapter 5,rules 7.6, 7.14 eff. 07/31/2008.
Chapters 1, 9 eff. 01/01/2009.
Chapters 5, 6 eff. 01/01/2010.
Chapter 4 emer. rule eff. 07/01/2010.
Entire rule eff. 10/30/2010.
Entire rule eff. 07/01/2013.
Entire rule eff. 11/14/2018.
Rules 3.6 A.3, 6.1 D, 6.11 A, 6.11 D, 6.12, 7.2 eff. 03/17/2019.
Rules 1.2 D.1, 1.2 E.2, 1.5 A.5, 1.11 C.1, 1.11 D.4-5, 1.11 E eff. 03/02/2021.
Rule 1.6 B.1.b eff. 11/14/2021.
Entire rule eff. 06/30/2022.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00490

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Board of Accountancy

on 09/21/2022

3 CCR 705-1

ACCOUNTANCY RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 09/22/2022 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.

October 11, 2022 12:57:56

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Board of Chiropractic Examiners

CCR number

3 CCR 707-1

Rule title

3 CCR 707-1 CHIROPRACTIC EXAMINERS RULES AND REGULATIONS 1 - eff 11/14/2022

Effective date

11/14/2022

DEPARTMENT OF REGULATORY AGENCIES

Board of Chiropractic Examiners

CHIROPRACTIC EXAMINERS RULES AND REGULATIONS

3 CCR 707-1

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

…

1.37 Concerning Health Care Provider Disclosures to Consumers about the Potential Effects of Receiving Emergency or Nonemergency Services from an Out-of-Network Provider

This Rule is promulgated pursuant to sections 12-20-204, 12-30-112, and 12-215-105(1)(a), C.R.S., in consultation with the Commissioner of Insurance and the State Board of Health.

The purpose of this Rule is to establish requirements for health care providers to provide disclosures to consumers about the potential effects of receiving emergency or non-emergency services from an out-of-network provider.

This Rule applies to health care providers as defined in section 10-16-102(56), C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Publicly available" means, for the purposes of this regulation, searchable on the health care provider's public website, displayed in a manner that is easily accessible, without barriers, and that ensures that the information is accessible to the general public, including that it is findable through public search engines. The health care provider's public website must be accessible free of charge, without having to establish a user account, password, or other credentials, accept any terms or conditions, and without having to submit any personal identifying information.

B. Disclosure requirements.

1. An out of network provider may balance bill a covered person for post-stabilization services in accordance with section 10-16-704, C.R.S., and covered nonemergency services in an in-network facility that are not ancillary services if the provider meets the requirements set forth in section 12-30-112(3.5), C.R.S. If a consumer has incurred a claim for emergency or nonemergency health care services from an out-of-network provider, the health care provider shall provide the disclosures contained in Appendix B. The health care provider shall provide the disclosure contained in Appendix B in compliance with section 12-30-112(3.5), C.R.S.

C. Noncompliance with this Rule may result in the imposition of any of discipline made available by section 12-215-115(1)(p), C.R.S.

1.38 Protections for Provision of Reproductive Health Care in Colorado

This Rule is promulgated pursuant to Executive Order D 2022 032, and sections 25-6-401 *et seq.*, 12-215-105(1)(a), and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Assisting in the provision reproductive health care" means aiding, abetting or complicity in the provision of reproductive health care.

3. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

4. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.

5. "Licensee" means as defined in section 12-20-102(10), C.R.S.

6. "Provision of reproductive health care," includes but is not limited to, transportation for reproductive health care, referrals for reproductive health care and related services, funding or assisting with payment of reproductive health care, prescribing, shipping or dispensing medications for reproductive health care in accordance with state and federal law, all options and mental health counseling and treatment related to reproductive health care. The "provision of reproductive health care" also includes all treatment contemplated in the definition of section 25-6-402(4), C.R.S.

7. "Regulator" means as defined in section 12-20-102(14), C.R.S.

8. "Reproductive health care" means as defined in section 25-6-402(4), C.R.S.

B. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on the applicant or licensee's provision of or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice as defined in Colorado law and did not otherwise violate Colorado law.

C. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a civil or criminal judgment against the applicant or licensee arising from the provision of, or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

D. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a professional disciplinary action or any other sanction against the applicant's or licensee's professional licensure in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant or licensee's provision of, or assistance in the provision of, reproductive health care and the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

E. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's registration, certificate or license based solely on the licensee's own personal effort to seek or obtain reproductive health care for themselves. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a civil or criminal judgment against the applicant or licensee arising from the individual's own personal receipt of reproductive health care in this state or any other state or U.S. territory.

1.39 Protecting Colorado's Workforce and Expanding Licensing Opportunities

This Rule is promulgated pursuant to Executive Order D 2022 034, and sections 12-215-105(1)(a) and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

3. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.

4. "Licensee" means as defined in section 12-20-102(10), C.R.S.

5. "Regulator" means as defined in section 12-20-102(14), C.R.S.

B. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a civil or criminal judgment against the applicant or licensee regarding the consumption, possession, cultivation, or processing of marijuana so long as the actions are lawful and consistent with professional conduct and standards of care within Colorado and did not otherwise violate Colorado law.

C. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a professional disciplinary action against the applicant's or licensee's professional licensure in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant's or licensee's consumption, possession, cultivation, or processing of marijuana and did not otherwise violate Colorado law.

…

APPENDIX B

Your Rights and Protections Against Surprise Medical Bills

When you get emergency care or get treated by an out-of-network provider at an in-network hospital or ambulatory surgical center, you are protected from surprise billing or balance billing.

What is "balance billing" (sometimes called "surprise billing")?

When you see a doctor or other health care provider, you may owe certain out-of-pocket costs, like a copayment, coinsurance, or deductible. You may have additional costs or have to pay the entire bill if you see a provider or visit a health care facility that isn't in your health plan's network.

"Out-of-network" means providers and facilities that haven't signed a contract with your health plan to provide services. Out-of-network providers may be allowed to bill you for the difference between what your plan pays and the full amount charged for a service. This is called "balance billing." This amount is likely more than in-network costs for the same service and might not count toward your plan's deductible or annual out-of-pocket limit.

"Surprise billing" is an unexpected balance bill. This can happen when you can't control who is involved in your care—like when you have an emergency or when you schedule a visit at an in-network facility but are unexpectedly treated by an out-of-network provider. Surprise medical bills could cost thousands of dollars depending on the procedure or service.

You're protected from balance billing for:

Emergency services

If you have an emergency medical condition and get emergency services from an out-of-network provider or facility, the most they can bill you is your plan's in-network cost-sharing amount (such as copayments, coinsurance, and deductibles). You can't be balance billed for these emergency services. This includes services you may get after you're in stable condition, unless you give written consent and give up your protections not to be balanced billed for these post-stabilization services.

If you believe you've been wrongly billed by a healthcare provider, please contact the State Board of Chiropractic Examiners at 303-894-7800 or dora_chiropractorsboard@state.co.us.

Visit (www.cms.gov/nosurprises/consumers) for more information about your rights under federal law. For more information about your rights under state law, review section 12-30-112, C.R.S.

Certain services at an in-network hospital or ambulatory surgical center

When you get services from an in-network hospital or ambulatory surgical center, certain providers there may be out-of-network. In these cases, the most those providers can bill you is your plan's in-network cost-sharing amount. This applies to emergency medicine, anesthesia, pathology, radiology, laboratory, neonatology, assistant surgeon, hospitalist, or intensivist services. These providers **can't** balance bill you and may **not** ask you to give up your protections not to be balance billed.

If you get other types of services at these in-network facilities, out-of-network providers can't balance bill you, unless you give written consent and give up your protections.

You're never required to give up your protections from balance billing. You also aren't required to get out-of-network care. You can choose a provider or facility in your plan's network.

When balance billing isn't allowed, you also have these protections:

- You're only responsible for paying your share of the cost (like the copayments, coinsurance, and deductible that you would pay if the provider or facility was in-network). Your health plan will pay any additional costs to out-of-network providers and facilities directly.
- Generally, your health plan must:
    - Cover emergency services without requiring you to get approval for services in advance (also known as "prior authorization").
    - Cover emergency services by out-of-network providers.
    - Base what you owe the provider or facility (cost-sharing) on what it would pay an in-network provider or facility and show that amount in your explanation of benefits.
    - Count any amount you pay for emergency services or out-of-network services toward your in-network deductible and out-of-pocket limit.

If you think you've been wrongly billed by a healthcare provider, please contact the State Board of Chiropractic Examiners at 303-894-7800 or dora_chiropractorsboard@state.co.us. The federal phone number for information and complaints is: 1-800-985-3059.

Visit (www.cms.gov/nosurprises/consumers) for more information about your rights under federal law.

Visit (https://dpo.colorado.gov/Chiropractic) for more information about your rights under state law, pursuant to section 12-30-112, C.R.S.

Editor's Notes

History

Rules 3, 7, 26 eff. 05/30/2007.
Rules 10, 22 eff. 07/30/2007.
Rules 8-15 eff. 01/30/2008.
Rules 6, 7, 10, 11, 13, 17, 27 eff. 07/30/2009.
Rules 1(D); 2; 4; 8(C); 11; 12; 17(A) eff. 12/01/ 2009. Rules 5; 9 repealed eff. 12/01/2009.
Rules 8, 19 eff. 03/17/2010.
Rule 27 repealed eff. 03/17/2011.
Rules 8, 28 eff. 09/30/2012. Rule 26 repealed eff. 09/30/2012.
Rule 30 emer. rule eff. 12/31/2012; expired 04/30/2013.
Rules 6-7, 29 eff. 01/14/2013.
Rule 7 C emer. rule eff. 01/24/2013.
Rule 7 C eff. 05/15/2013.
Rules 1, 3, 4, 6-8, 10, 11, 17, 20, 22, 24, 25, 30 eff. 05/25/2019.
Rules 12, 13, 15, 19 E eff. 07/15/2019.
Rules 1.6 A, 1.7, 1.11 eff. 11/14/2019.
Rule 1.31 emer. rule eff. 05/01/2020; expired 08/29/2020.
Rule 1.32 emer. rule eff. 05/11/2020; expired 09/08/2020.
Rules 1.8 A, 1.8 G, 1.8 K, 1.33, 1.34 emer. rules eff. 08/25/2020.
Rule 1.31 emer. rule eff. 08/30/2020; expired 12/28/2020.
Rule 1.32 emer. rule eff. 09/09/2020.
Rules 1.8 A, 1.8 G, 1.8 K, 1.33, 1.34, 1.35, Appendix B eff. 11/30/2020.
Rule 1.32 emer. rule eff. 12/28/2020.
Rule 1.36 emer. rule eff. 01/11/2021.
Rule 1.31 emer. rule eff. 01/20/2021.
Rules 1.31, 1.32 emer. rules eff. 04/27/2021.
Rule 1.36 emer. rule eff. 05/11/2021.
Rules 1.35 E-F eff. 05/15/2021.
Rules 1.31, 1.36 emer. rules eff. 07/12/2021.
Rules 1.31, 1.36 emer. rules eff. 11/02/2021.
Rules 1.31, 1.36 emer. rules eff. 03/02/2022.
Rules 1.31, 1.36 emer. rules eff. 06/28/2022.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00492

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Board of Chiropractic Examiners

on 09/22/2022

3 CCR 707-1

CHIROPRACTIC EXAMINERS RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 09/22/2022 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.

October 12, 2022 10:08:09

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - State Board of Social Work Examiners

CCR number

4 CCR 726-1

Rule title

4 CCR 726-1 SOCIAL WORK EXAMINERS RULES AND REGULATIONS 1 - eff 11/14/2022

Effective date

11/14/2022

DEPARTMENT OF REGULATORY AGENCIES

State Board of Social Work Examiners

SOCIAL WORK EXAMINERS RULES AND REGULATIONS

4 CCR 726-1

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

...

1.12 OCCUPATIONAL CREDENTIAL PORTABILITY PROGRAM (C.R.S. §§ 12-245-207, 12-20-202(3))

A. General. Effective January 1, 2021, to be considered for licensure by endorsement pursuant to the Occupational Credential Portability Program under sections 12-20-202(3) and 12-245-207, C.R.S., an applicant must submit a completed application form, all supporting documentation, and the appropriate fee.

B. Complaints/inquiries, investigations, disciplinary actions. The Board may decline to issue a license to an applicant for licensure by endorsement pursuant to the Occupational Credential Portability Program if approving the license would violate an existing compact or reciprocity agreement or if the Board demonstrates by a preponderance of the evidence, after notice and opportunity for a hearing, that the applicant:

1. Lacks the requisite substantially equivalent experience or credentials to practice social work; or

2. Has committed an act that would be grounds for disciplinary action under the law governing the practice of social work.

C. Criteria. In accordance with section 12-20-202(3), C.R.S., an applicant who possesses a current and unrestricted license, in good standing, to practice social work in another state or United States' territory or through the federal government, or holds a military occupational specialty, as defined in section 24-4-201, C.R.S., may apply to the Board for licensure by endorsement pursuant to the Occupational Credential Portability Program. To apply for endorsement, the applicant must satisfy the following criteria:

1. Applicant submits to the Board:

a. Satisfactory proof that:

(1) Applicant holds a master's or a doctoral degree in social work from an accredited Council on Social Work Education (CSWE) program or a program earning CSWE accreditation;

(2) At the time of application for a Colorado license by endorsement:

(i) The applicant attests to having passed an examination, which covers the general areas of knowledge in social work, and is administered under contract as approved by the Board. Social work endorsement applicants must have taken and passed the

appropriate examination required for the level of licensure sought; or

(ii) The applicant attests that one (or more) of the jurisdictions in which s/he has been licensed, registered, or certified required a written examination, the content of which tested competence to practice independent social work (including the areas outlined in Rule 1.12(C)(5)(a) and the applicant demonstrates that s/he has engaged in the active practice of social work as defined in Rule 1.12(C)(6)(a) for at least two years. The applicant may rely on an examination given and passed in a jurisdiction other than the jurisdiction from which s/he seeks licensure by endorsement; or

(iii) If a written examination was not required by the jurisdiction at the time the applicant was originally licensed, the Board will accept as substantially equivalent to this qualification proof via attestation that the applicant has a record of actively practicing social work as defined in Rule 1.12(C)(6)(a) at the independent level for at least five out of the last ten years without discipline.

(3) For licensed clinical social worker applicants, the applicant attests that s/he had practiced social work for at least two years under the supervision of a licensed clinical social worker prior to licensure, certification, listing or registration in the jurisdiction through which the applicant seeks licensure in Colorado and that such practice had similar requirements to what is outlined in Board Rule 1.14; or the applicant attests to the Board their active practice of clinical social work for two years as defined below:

(i) “Active practice of social work” means the applicant engaged in the practice of social work at least twenty hours per week, averaged over the entire time s/he has been in practice; or

(ii) Satisfactory proof that the applicant has held for at least one year a current and unrestricted license, in good standing, to practice social work in another jurisdiction with a scope of practice that is substantially similar to the scope of practice for social workers as specified in Part 4 of Article 245 of Title 12, C.R.S., and these rules.

2. Applicant must attest that they:

a. Have reported to the Board any injunction entered against them and any injunctive action pending against them on any license.

b. Have reported any malpractice judgment, settlement, or claim, and any pending action or claim.

c. Have reported any pending complaint, investigation, or disciplinary proceeding before the licensing, grievance, or disciplinary Board of any jurisdiction in which a license, registration or certification to practice social work is held and where the complaint, investigation, or proceeding concerns the practice of social work.

d. Have reported any applicable misdemeanor or felony conviction(s).

e. Have reported to the Board any prior disciplinary action by another jurisdiction.

3. Applicant submits verification of licensure from each jurisdiction(s) in which, and each federal agency and military service branch through which, applicant has ever been licensed, registered, listed or certified. The verification can be retrieved by the applicant from the jurisdiction's website as long as the following information is included and can be verified if necessary:

   a. Date license was originally issued.

   b. Date of license expiration.

   c. Disciplinary history, if applicable.

   If the complete information is not available then the Verification of License Form must be completed by each state, federal agency, or military service branch.

4. Applicant submits proof that he/she is at least twenty-one years of age.

D. Jurisprudence Examination. Each applicant shall pass a Board-developed jurisprudence examination.

…

1.25 CONCERNING HEALTH CARE PROVIDER DISCLOSURES TO CONSUMERS ABOUT THE POTENTIAL EFFECTS OF RECEIVING EMERGENCY OR NONEMERGENCY SERVICES FROM AN OUT-OF-NETWORK PROVIDER

This Rule is promulgated pursuant to sections 12-20-204, 12-30-112, and 12-245-204(4)(a), C.R.S., in consultation with the Commissioner of Insurance and the State Board of Health.

The purpose of this Rule is to establish requirements for health care providers to provide disclosures to consumers about the potential effects of receiving emergency or non-emergency services from an out-of-network provider.

This Rule applies to health care providers as defined in section 10-16-102(56), C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Publicly available" means, for the purposes of this regulation, searchable on the health care provider's public website, displayed in a manner that is easily accessible, without barriers, and that ensures that the information is accessible to the general public, including that it is findable through public search engines. The health care provider's public website must be accessible free of charge, without having to establish a user account, password, or other credentials, accept any terms or conditions, and without having to submit any personal identifying information.

B. Disclosure requirements.

1. An out of network provider may balance bill a covered person for post-stabilization services in accordance with section 10-16-704, C.R.S., and covered nonemergency services in an in-network facility that are not ancillary services if the provider meets the requirements set forth in section 12-30-112(3.5), C.R.S. If a consumer has incurred a claim for emergency or nonemergency health care services from an out-of-network provider, the health care provider shall provide the disclosures contained in Appendix B.

The health care provider shall provide the disclosure contained in Appendix B in compliance with section 12-30-112(3.5), C.R.S.

C. Noncompliance with this Rule may result in the imposition of any of discipline made available by section 12-245-224(1)(b), C.R.S.

1.26 PROVISION OF REPRODUCTIVE HEALTH CARE IN COLORADO

This Rule is promulgated pursuant to Executive Order D 2022 032, and sections 25-6-401 *et seq.*, 12-245-204(4)(a), and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Assisting in the provision reproductive health care" means aiding, abetting or complicity in the provision of reproductive health care.

3. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

4. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.

5. "Licensee" means as defined in section 12-20-102(10), C.R.S.

6. "Provision of reproductive health care," includes but is not limited to, transportation for reproductive health care, referrals for reproductive health care and related services, funding or assisting with payment of reproductive health care, prescribing, shipping or dispensing medications for reproductive health care in accordance with state and federal law, all options and mental health counseling and treatment related to reproductive health care. The "provision of reproductive health care" also includes all treatment contemplated in the definition of section 25-6-402(4), C.R.S.

7. "Regulator" means as defined in section 12-20-102(14), C.R.S.

8. "Reproductive health care" means as defined in section 25-6-402(4), C.R.S.

9. "Registrant" means as defined in section 12-20-102(12), C.R.S.

B. The regulator shall not deny licensure or registration to an applicant or impose disciplinary action against an individual's license or registration based solely on the applicant's, registrant's, or licensee's provision of or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice as defined in Colorado law and did not otherwise violate Colorado law.

C. The regulator shall not deny licensure or registration to an applicant or impose disciplinary action against an individual's license or registration based solely on a civil or criminal judgment against the applicant, registrant, or licensee arising from the provision of, or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

D. The regulator shall not deny licensure or registration to an applicant or impose disciplinary action against an individual's license or registration based solely on a professional disciplinary action or

any other sanction against the applicant's, registrant's, or licensee's professional licensure or registration in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant's, registrant's, or licensee's provision of, or assistance in the provision of, reproductive health care and the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

E. The regulator shall not deny licensure or registration to an applicant or impose disciplinary action against an individual's registration, certificate or license based solely on the licensee's or registrant's own personal effort to seek or obtain reproductive health care for themselves. The regulator shall not deny licensure or registration to an applicant or impose disciplinary action against an individual's license or registration based solely on a civil or criminal judgment against the applicant, registrant, or licensee arising from the individual's own personal receipt of reproductive health care in this state or any other state or U.S. territory.

1.27 PROTECTING COLORADO'S WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES

This Rule is promulgated pursuant to Executive Order D 2022 034, and sections 12-245-204(4)(a) and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

3. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.

4. "Licensee" means as defined in section 12-20-102(10), C.R.S.

5. "Regulator" means as defined in section 12-20-102(14), C.R.S.

6. "Registrant" means as defined in section 12-20-102(12), C.R.S.

B. The regulator shall not deny licensure or registration to an applicant or impose disciplinary action against an individual's license or registration based solely on a civil or criminal judgment against the applicant, registrant, or licensee regarding the consumption, possession, cultivation, or processing of marijuana so long as the actions are lawful and consistent with professional conduct and standards of care within Colorado and did not otherwise violate Colorado law.

C. The regulator shall not deny licensure or registration to an applicant or impose disciplinary action against an individual's license or registration based solely on a professional disciplinary action against the applicant's, registrant's, or licensee's professional licensure or registration in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant's, registrant's, or licensee's consumption, possession, cultivation, or processing of marijuana and did not otherwise violate Colorado law.

…

APPENDIX B

Your Rights and Protections Against Surprise Medical Bills

When you get emergency care or get treated by an out-of-network provider at an in-network hospital or ambulatory surgical center, you are protected from surprise billing or balance billing.

What is "balance billing" (sometimes called "surprise billing")?

When you see a doctor or other health care provider, you may owe certain out-of-pocket costs, like a copayment, coinsurance, or deductible. You may have additional costs or have to pay the entire bill if you see a provider or visit a health care facility that isn't in your health plan's network.

"Out-of-network" means providers and facilities that haven't signed a contract with your health plan to provide services. Out-of-network providers may be allowed to bill you for the difference between what your plan pays and the full amount charged for a service. This is called "balance billing." This amount is likely more than in-network costs for the same service and might not count toward your plan's deductible or annual out-of-pocket limit.

"Surprise billing" is an unexpected balance bill. This can happen when you can't control who is involved in your care—like when you have an emergency or when you schedule a visit at an in-network facility but are unexpectedly treated by an out-of-network provider. Surprise medical bills could cost thousands of dollars depending on the procedure or service.

You're protected from balance billing for:

Emergency services

If you have an emergency medical condition and get emergency services from an out-of-network provider or facility, the most they can bill you is your plan's in-network cost-sharing amount (such as copayments, coinsurance, and deductibles). You can't be balance billed for these emergency services. This includes services you may get after you're in stable condition, unless you give written consent and give up your protections not to be balanced billed for these post-stabilization services.

If you believe you've been wrongly billed by a healthcare provider, please contact the Colorado State Board of Social Work Examiners at 303-894-7800 or dora_mentalhealthboard@state.co.us.

Visit the CMS No Surprises Act website (https://www.cms.gov/nosurprises/consumers) for more information about your rights under federal law.

Review section 12-30-112, C.R.S., for more information about your rights under Colorado state law.

Certain services at an in-network hospital or ambulatory surgical center

When you get services from an in-network hospital or ambulatory surgical center, certain providers there may be out-of-network. In these cases, the most those providers can bill you is your plan's in-network cost-sharing amount. This applies to emergency medicine, anesthesia, pathology, radiology, laboratory,

neonatology, assistant surgeon, hospitalist, or intensivist services. These providers **can't** balance bill you and may **not** ask you to give up your protections not to be balance billed.

If you get other types of services at these in-network facilities, out-of-network providers can't balance bill you, unless you give written consent and give up your protections.

You're never required to give up your protections from balance billing. You also aren't required to get out-of-network care. You can choose a provider or facility in your plan's network.

When balance billing isn't allowed, you also have these protections:

- You're only responsible for paying your share of the cost (like the copayments, coinsurance, and deductible that you would pay if the provider or facility was in-network). Your health plan will pay any additional costs to out-of-network providers and facilities directly.
- Generally, your health plan must:
    - Cover emergency services without requiring you to get approval for services in advance (also known as "prior authorization").
    - Cover emergency services by out-of-network providers.
    - Base what you owe the provider or facility (cost-sharing) on what it would pay an in-network provider or facility and show that amount in your explanation of benefits.
    - Count any amount you pay for emergency services or out-of-network services toward your in-network deductible and out-of-pocket limit.

If you believe you've been wrongly billed by a healthcare provider, please contact the Colorado State Board of Social Work Examiners at 303-894-7800 or dora_mentalhealthboard@state.co.us. The federal phone number for information and complaints is: 1-800-985-3059.

Visit www.cms.gov/nosurprises/consumers for more information about your rights under federal law.

Visit https://dpo.colorado.gov/SocialWork for more information about your rights under Colorado state law, pursuant to section 12-30-112, C.R.S.

Editor's Notes

History

Rule 17(c) eff. 12/01/2009.

Rule 17(d)(4) eff. 02/03/2010.

Purpose and Scope, Rules 12, 15, 19, 20 emer. rules eff. 01/01/2011.

Purpose and Scope, Rules 12, 15, 19, 20 eff. 02/01/2011.

Entire rule emer. rule eff. 12/06/2011.

Entire rule eff. 02/01/2012.

Rule 12 eff. 03/16/2016.

Rule 12 eff. 01/14/2017.

Entire rule eff. 11/14/2020.

Rules 1.6 A, 1.12 C-D, 1.23, Appendix A eff. 05/15/2021.

Rule 1.8 B eff. 11/14/2021.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00453

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - State Board of Social Work Examiners

on 09/16/2022

4 CCR 726-1

SOCIAL WORK EXAMINERS RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 09/19/2022 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.

October 06, 2022 11:51:40

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Board of Addiction Counselor Examiners

CCR number

4 CCR 744-1

Rule title

4 CCR 744-1 BOARD OF ADDICTION COUNSELOR EXAMINERS RULES 1 - eff 11/14/2022

Effective date

11/14/2022

DEPARTMENT OF REGULATORY AGENCIES

Board of Addiction Counselor Examiners

BOARD OF ADDICTION COUNSELOR EXAMINERS RULES

4 CCR 744-1

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

…

1.12 OCCUPATIONAL CREDENTIAL PORTABILITY PROGRAM (C.R.S. §§ 12-245-207, 12-20-202(3))

A. General.

To be considered for licensure by endorsement pursuant to the Occupational Credential Portability Program, under sections 12-20-202(3) and 12-245-207, C.R.S., an applicant must submit a completed application form, all supporting documentation, and the appropriate fee.

B. Complaints/inquiries, investigations, and disciplinary actions.

The Board may decline to issue a license to an applicant for licensure by endorsement pursuant to the Occupational Credential Portability Program if the Board demonstrates by a preponderance of evidence, after notice and opportunity for a hearing, that the applicant:

1. Lacks the requisite substantially equivalent education, experience or credentials to practice addiction counseling; or

2. Has committed an act that would be grounds for disciplinary action under the law governing the practice of addiction counseling.

C. Criteria.

1. In accordance with section 12-20-202(3), C.R.S., an applicant duly licensed and in good standing in another state or United States territory or through the federal government, or who holds a military occupational specialty, as defined in section 24-4-201, C.R.S., may apply to the Board for licensure by endorsement pursuant to the Occupational Credential Portability Program. To apply for endorsement pursuant to this Rule 1.12, the following criteria must be met.

a. Applicant submits to the Board:

(1) Satisfactory proof of the applicant's substantially equivalent education, experience, and credentials to section 12-245-804, C.R.S. An applicant must submit sufficient information to establish that her/his education, experience, and credentials are substantially equivalent to section 12-245-804, C.R.S. The Board may require additional information from the applicant; or

(2) Satisfactory proof that the applicant has held for at least one year a current and unrestricted license in good standing to practice addiction

counseling in another jurisdiction with a scope of practice that is substantially similar to the scope of practice for the applicable credential pursuant to the Part 8 of the Mental Health Practice Act.

b. Applicant certifies that:

(1) Applicant has reported to the Board any injunction action entered against her/him and knows of no injunctive action pending against her/him or her/his license, certificate, listing or registration to practice professional counseling where the injunction or injunctive action relates to her/his practice of professional counseling or psychotherapy;

(2) Applicant has reported to the Board any malpractice judgment against her/him, and knows of no settlement of a malpractice action or claim against her/him, and knows of no malpractice action or claim pending against her/him where the malpractice alleged relates to her/his practice of professional counseling or psychotherapy;

(3) Applicant has reported to the Board any complaint pending before, investigation being conducted by, or disciplinary proceeding pending before the licensing, grievance, or disciplinary board of any jurisdiction in which s/he is licensed, registered, or certified to practice professional counseling where the complaint, investigation, or proceeding concerns practice as a certified or licensed addiction counselor or psychotherapy.

(4) Applicant has reported to the Board any misdemeanor or felony conviction(s); and

(5) Applicant has reported to the Board any prior disciplinary action against applicant by another jurisdiction;

c. Applicant submits verification of a military occupational specialty, as defined in section 24-4-201, C.R.S., verification of each license, registration, or certification obtained through the federal government, and verification of licensure from each jurisdiction(s) in which applicant has ever been licensed, registered, listed or certified.

d. Applicant submits proof that he/she meets the statutory age requirement.

D. Jurisprudence Examination.

Each applicant shall pass a Board developed jurisprudence examination.

…

1.24 PROVISION OF REPRODUCTIVE HEALTH CARE IN COLORADO

This Rule is promulgated pursuant to Executive Order D 2022 032, and sections 25-6-401 *et seq.*, 12-245-204(4)(a), and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. “Applicant” means as defined in section 12-20-102(2), C.R.S.

2. "Assisting in the provision reproductive health care" means aiding, abetting or complicity in the provision of reproductive health care.

3. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

4. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.

5. "Licensee" means as defined in section 12-20-102(10), C.R.S.

6. "Provision of reproductive health care," includes but is not limited to, transportation for reproductive health care, referrals for reproductive health care and related services, funding or assisting with payment of reproductive health care, prescribing, shipping or dispensing medications for reproductive health care in accordance with state and federal law, all options and mental health counseling and treatment related to reproductive health care. The "provision of reproductive health care" also includes all treatment contemplated in the definition of section 25-6-402(4), C.R.S.

7. "Regulator" means as defined in section 12-20-102(14), C.R.S.

8. "Reproductive health care" means as defined in section 25-6-402(4), C.R.S.

9. "Registrant" means as defined in section 12-20-102(12), C.R.S.

10. "Certificate holder" or "certificant" means as defined in section 12-20-102(3), C.R.S.

B. The regulator shall not deny licensure, certification, or registration to an applicant or impose disciplinary action against an individual's license, certification, or registration based solely on the applicant's, certificant's, registrant's, or licensee's provision of or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice as defined in Colorado law and did not otherwise violate Colorado law.

C. The regulator shall not deny licensure, certification, or registration to an applicant or impose disciplinary action against an individual's license, certification, or registration based solely on a civil or criminal judgment against the applicant, certificant, registrant, or licensee arising from the provision of, or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

D. The regulator shall not deny licensure, certification, or registration to an applicant or impose disciplinary action against an individual's license, certification, or registration based solely on a professional disciplinary action or any other sanction against the applicant's, certificant's, registrant's, or licensee's professional licensure, certification, or registration in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant's, certificant's, registrant's, or licensee's provision of, or assistance in the provision of, reproductive health care and the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

E. The regulator shall not deny licensure, certification, or registration to an applicant or impose disciplinary action against an individual's registration, certificate, or license based solely on the licensee's, certificant's, or registrant's own personal effort to seek or obtain reproductive health care for themselves. The regulator shall not deny licensure, certification, or registration to an applicant or impose disciplinary action against an individual's license, certification, or registration based solely on a civil or criminal judgment against the applicant, certificant, registrant, or

licensee arising from the individual's own personal receipt of reproductive health care in this state or any other state or U.S. territory.

1.25 PROTECTING COLORADO'S WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES

This Rule is promulgated pursuant to Executive Order D 2022 034, and sections 12-245-204(4)(a) and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

3. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.

4. "Licensee" means as defined in section 12-20-102(10), C.R.S.

5. "Regulator" means as defined in section 12-20-102(14), C.R.S.

6. "Registrant" means as defined in section 12-20-102(12), C.R.S.

7. "Certificate holder" or "certificant" means as defined in section 12-20-102(3), C.R.S.

B. The regulator shall not deny licensure, certification, or registration to an applicant or impose disciplinary action against an individual's license, certification, or registration based solely on a civil or criminal judgment against the applicant, certificant, registrant, or licensee regarding the consumption, possession, cultivation, or processing of marijuana so long as the actions are lawful and consistent with professional conduct and standards of care within Colorado and did not otherwise violate Colorado law.

C. The regulator shall not deny licensure, certification, or registration to an applicant or impose disciplinary action against an individual's license, certification, or registration based solely on a professional disciplinary action against the applicant's, certificant's, registrant's, or licensee's professional licensure, certification, or registration in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant's, certificant's, registrant's, or licensee's consumption, possession, cultivation, or processing of marijuana and did not otherwise violate Colorado law.

1.26 CONCERNING HEALTH CARE PROVIDER DISCLOSURES TO CONSUMERS ABOUT THE POTENTIAL EFFECTS OF RECEIVING EMERGENCY OR NONEMERGENCY SERVICES FROM AN OUT-OF-NETWORK PROVIDER

This Rule is promulgated pursuant to sections 12-20-204, 12-30-112, and 12-245-204(4)(a), C.R.S., in consultation with the Commissioner of Insurance and the State Board of Health.

The purpose of this Rule is to establish requirements for health care providers to provide disclosures to consumers about the potential effects of receiving emergency or non-emergency services from an out-of-network provider.

This Rule applies to health care providers as defined in section 10-16-102(56), C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Publicly available" means, for the purposes of this regulation, searchable on the health care provider's public website, displayed in a manner that is easily accessible, without barriers, and that ensures that the information is accessible to the general public, including that it is findable through public search engines. The health care provider's public website must be accessible free of charge, without having to establish a user account, password, or other credentials, accept any terms or conditions, and without having to submit any personal identifying information.

B. Disclosure requirements.

1. An out of network provider may balance bill a covered person for post-stabilization services in accordance with section 10-16-704, C.R.S., and covered nonemergency services in an in-network facility that are not ancillary services if the provider meets the requirements set forth in section 12-30-112(3.5), C.R.S. If a consumer has incurred a claim for emergency or nonemergency health care services from an out-of-network provider, the health care provider shall provide the disclosures contained in Appendix B. The health care provider shall provide the disclosure contained in Appendix B in compliance with section 12-30-112(3.5), C.R.S.

C. Noncompliance with this Rule may result in the imposition of any of discipline made available by section 12-245-224(1)(b), C.R.S.

...

APPENDIX B

Your Rights and Protections Against Surprise Medical Bills

When you get emergency care or get treated by an out-of-network provider at an in-network hospital or ambulatory surgical center, you are protected from surprise billing or balance billing.

What is "balance billing" (sometimes called "surprise billing")?

When you see a doctor or other health care provider, you may owe certain out-of-pocket costs, like a copayment, coinsurance, or deductible. You may have additional costs or have to pay the entire bill if you see a provider or visit a health care facility that isn't in your health plan's network.

"Out-of-network" means providers and facilities that haven't signed a contract with your health plan to provide services. Out-of-network providers may be allowed to bill you for the difference between what your plan pays and the full amount charged for a service. This is called "balance billing." This amount is likely more than in-network costs for the same service and might not count toward your plan's deductible or annual out-of-pocket limit.

"Surprise billing" is an unexpected balance bill. This can happen when you can't control who is involved in your care—like when you have an emergency or when you schedule a visit at an in-network facility but are unexpectedly treated by an out-of-network provider. Surprise medical bills could cost thousands of dollars depending on the procedure or service.

You're protected from balance billing for:

Emergency services

If you have an emergency medical condition and get emergency services from an out-of-network provider or facility, the most they can bill you is your plan's in-network cost-sharing amount (such as copayments, coinsurance, and deductibles). You can't be balance billed for these emergency services. This includes services you may get after you're in stable condition, unless you give written consent and give up your protections not to be balanced billed for these post-stabilization services.

If you believe you've been wrongly billed by a healthcare provider, please contact the State Board of Addiction Counselor Examiners at 303-894-7800 or dora_mentalhealthboard@state.co.us.

Visit the CMS No Surprises Act website (https://www.cms.gov/nosurprises/consumers) for more information about your rights under federal law.

Review section 12-30-112, C.R.S., for more information about your rights under Colorado state law.
Certain services at an in-network hospital or ambulatory surgical center

When you get services from an in-network hospital or ambulatory surgical center, certain providers there may be out-of-network. In these cases, the most those providers can bill you is your plan's in-network cost-sharing amount. This applies to emergency medicine, anesthesia, pathology, radiology, laboratory, neonatology, assistant surgeon, hospitalist, or intensivist services. These providers **can't** balance bill you and may **not** ask you to give up your protections not to be balance billed.

If you get other types of services at these in-network facilities, out-of-network providers can't balance bill you, unless you give written consent and give up your protections.

You're <u>never</u> required to give up your protections from balance billing. You also aren't required to get out-of-network care. You can choose a provider or facility in your plan's network.

<u>When balance billing isn't allowed, you also have these protections:</u>

- You're only responsible for paying your share of the cost (like the copayments, coinsurance, and deductible that you would pay if the provider or facility was in-network). Your health plan will pay any additional costs to out-of-network providers and facilities directly.
- Generally, your health plan must:
    - Cover emergency services without requiring you to get approval for services in advance (also known as "prior authorization").
    - Cover emergency services by out-of-network providers.
    - Base what you owe the provider or facility (cost-sharing) on what it would pay an in-network provider or facility and show that amount in your explanation of benefits.
    - Count any amount you pay for emergency services or out-of-network services toward your in-network deductible and out-of-pocket limit.

If you believe you've been wrongly billed by a healthcare provider, please contact the State Board of Addiction Counselor Examiners at 303-894-7800 or dora_mentalhealthboard@state.co.us. The federal phone number for information and complaints is: 1-800-985-3059.

Visit www.cms.gov/nosurprises/consumers for more information about your rights under federal law.

Visit https://dpo.colorado.gov/AddictionCounselor for more information about your rights under Colorado state law, pursuant to section 12-30-112, C.R.S.

Editor's Notes

History

Entire rule emer. rule eff. 01/01/2011.

Entire rule eff. 02/01/2011.

Rules 1-20 (board rules) emer. rules eff. 12/13/2011.

Rules 1-4 (director's rules) emer. rules repealed eff. 12/20/2011.

Rules 1-4 (director's rules) repealed eff. 02/15/2012.

Entire rule eff. 03/16/2012.

Rules 1.1 D, 1.6 A, 1.6 B.2, 1.9 C, 1.13 E, 1.14, 1.15, 1.17, 1.19, 1.20 emer. rules eff. 10/06/2020.

Entire rule eff. 11/30/2020.

Rules 1.6 A, 1.12 D, 1.23, Appendix A eff. 05/30/2021.

Rule 1.8 B eff. 11/14/2021.

Rules 1.9 C, 1.13 E, 1.19, 1.20 D emer. rules eff. 03/01/2022.

Rules 1.9 C, 1.13 E, 1.19, 1.20 D eff. 03/30/2022.

Annotations

Rules 1.12 D, 1.23 E.4 (adopted 10/06/2020) were not extended by Senate Bill 21-152 and therefore expired 05/15/2021.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00529

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Board of Addiction Counselor Examiners

on 10/04/2022

4 CCR 744-1

BOARD OF ADDICTION COUNSELOR EXAMINERS RULES

The above-referenced rules were submitted to this office on 10/04/2022 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.

October 13, 2022 13:42:48

Philip J. Weiser
Attorney General
by Eric R. Olson
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 11/14/2022

Effective date

11/14/2022

COLORADO DEPARTMENT OF STATE

[8 CCR 1505-6]

CAMPAIGN AND POLITICAL FINANCE RULES

Rules as Adopted - Clean

September 23, 2022

(Publication instructions/notes):

Amendments to 8 CCR 1505-6 are as follows:

Amendments to Rule 2:

[Not shown: no changes to Rules 2.1-2.2.3.]

Amendments to Rule 2.2.4 concerning financial reporting deadlines:

2.2.4 Managing unexpended campaign contributions

(a) A candidate committee must report its unexpended balance as the ending balance at the end of the election cycle. A candidate committee must report its unexpended balance from the report filed 35 days after the major election as the beginning balance in the next election cycle. The candidate committee's beginning balance must reflect what amount is retained for use in a subsequent election cycle and what amount is retained for use as unexpended funds.

New Rule 2.4.5 concerning incumbents filing personal financial disclosure statements:

2.4.5 Incumbents seeking reelection need not file a new personal financial disclosure statement if they have already filed their annual personal financial disclosure statement. [Section 24-6-202(4)(b), C.R.S.]

[Not shown: current Rule 2.4.5 renumbered to Rule 2.4.6.]

Amendments to Rule 8:

Amendments to Rule 8.1 concerning registering a committee:

8.1 The committee registration must include the purpose or nature of interest of the committee or party.

8.1.1 A candidate committee must identify the name of the candidate.

8.1.2 A political committee, independent expenditure committee, small donor committee, or political organization must identify the types of candidates it supports or opposes, and the offices they seek and, as applicable, public policy position(s).

[Not shown: no changes to Rule 8.1.3.]

Amendments to Rule 10:

[Not shown: no changes to Rules 10.1-10.16.]

Amendments to Rule 10.17.1 concerning contribution limits for candidates for school district director:

10.17.1 Adjusted limits made in the first quarter of 2019 and effective until the next adjustment is made in 2023:

[No changes to subsections (a)-(g).]

(h) The aggregate limits on contributions to candidates for school district director are as follows:

(1) $2,500 per election cycle from any person other than a small donor committee; and

(2) $25,000 per election cycle from any small donor committee.

(i) This table contains the contribution limits listed in subsections (a)-(h).

Recipient:	Contributor:				
	Natural Person	Person, other than a natural person	Political committee	Small donor committee	Political party
Political committee	$625 per election cycle	$625 per election cycle	$625 per election cycle	$625 per election cycle	$625 per election cycle
Small donor committee	$50 per year	Prohibited	Prohibited	Prohibited	Prohibited
Governor (governor & lt. governor)	$625 per election cycle*	$625 per election cycle*	$625 per election cycle*	$6,750 per election cycle*	$679,025 per election cycle
Secretary of state, state treasurer, attorney general	$625 per election cycle*	$625 per election cycle*	$625 per election cycle*	$6,750 per election cycle*	$135,775 per election cycle
State senate	$200 per election cycle*	$200 per election cycle*	$200 per election cycle*	$2,675 per election cycle*	$24,425 per election cycle
State house of representatives, state board of education, regent of the University of Colorado, district attorney	$200 per election cycle*	$200 per election cycle*	$200 per election cycle*	$2,675 per election cycle*	$17,625 per election cycle
Political party	$4,025 ($3,350 at the state level) per year	$4,025 ($3,350 at the state level) per year	$4,025 ($3,350 at the state level) per year	$20,325 ($16,925 at the state level) per year	Transfers within a party may be made without limitation.
County candidate	$1,250 per election cycle*	$1,250 per election cycle*	$1,250 per election cycle*	$12,500 per election cycle*	$22,125 per election cycle
School district director	$2,500 per election cycle	$2,500 per election cycle	$2,500 per election cycle	$25,000 per election cycle	$2,500 per election cycle

* A candidate may accept the contribution limit for both the primary election and the general election.

(j) The voluntary spending limits for a candidate described in Colo. Const. Article XXVIII, Section 4(1), are adjusted as follows:

[Not shown: no changes to sub-subsections (1)-(4).]

[Not shown: no changes to Rule 10.18.]

Amendments to Rule 17:

[Not shown: no changes to Rules 17.1-17.3.3.]

Current Rule 17.3.4 is repealed.

Current Rule 17.4 is repealed.

[Not shown: current Rules 17.5 and 17.6 renumbered to Rules 17.4 and 17.5.]

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00451

Opinion of the Attorney General rendered in connection with the rules adopted by the

Secretary of State

on 09/23/2022

8 CCR 1505-6

RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE

The above-referenced rules were submitted to this office on 09/23/2022 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.

October 12, 2022 16:57:03

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Board of Accountancy

CCR number

3 CCR 705-1

Rule title

3 CCR 705-1 ACCOUNTANCY RULES AND REGULATIONS 1 - eff 09/21/2022

Effective date

09/21/2022

Expiration date

01/19/2023

DEPARTMENT OF REGULATORY AGENCIES

State Board of Accountancy

ACCOUNTANCY RULES AND REGULATIONS

3 CCR 705-1

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

…

1.16 PROTECTING COLORADO'S WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES

This Rule is promulgated pursuant to Executive Order D 2022 034, and sections 12-100-105(1)(b) and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Certificate holder" or "certificant" means as defined in section 12-20-102(3), C.R.S.

3. "Civil judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.

4. "Criminal judgment" means criminal conviction as defined in Rule 1.1.

5. "Licensee" means as defined in section 12-20-102(10), C.R.S.

6. "Regulator" means as defined in section 12-20-102(14), C.R.S.

B. The regulator shall not deny certification to an applicant or impose disciplinary action against an individual's certificate based solely on a civil or criminal judgment against the applicant or certificate holder regarding the consumption, possession, cultivation, or processing of marijuana so long as the actions are lawful and consistent with professional conduct and standards of care within Colorado and did not otherwise violate Colorado law.

C. The regulator shall not deny certification to an applicant or impose disciplinary action against an individual's certificate based solely on a professional disciplinary action against the applicant's or certificate holder's professional certification in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant's or certificate holder's consumption, possession, cultivation, or processing of marijuana and did not otherwise violate Colorado law.

Editor's Notes

History

Rules 1.1, 1.2, 1.5 eff. 05/30/2007. Rule 1.7 repealed eff. 05/30/2007.
Rules 3.7(A)(5), 4.1(E) eff. 07/30/2007.
Chapter 5,rules 7.6, 7.14 eff. 07/31/2008.
Chapters 1, 9 eff. 01/01/2009.
Chapters 5, 6 eff. 01/01/2010.
Chapter 4 emer. rule eff. 07/01/2010.
Entire rule eff. 10/30/2010.
Entire rule eff. 07/01/2013.
Entire rule eff. 11/14/2018.
Rules 3.6 A.3, 6.1 D, 6.11 A, 6.11 D, 6.12, 7.2 eff. 03/17/2019.
Rules 1.2 D.1, 1.2 E.2, 1.5 A.5, 1.11 C.1, 1.11 D.4-5, 1.11 E eff. 03/02/2021.
Rule 1.6 B.1.b eff. 11/14/2021.
Entire rule eff. 06/30/2022.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULE

On July 14, 2022, Colorado Governor Jared Polis ("Governor") signed Executive Order D 2022 034, "Protecting Colorado's Workforce and Expanding Licensing Opportunities."

Basis

The basis for this rule is Executive Order D 2022 034.

Through Executive Order D 2022 034, Governor Jared Polis directed the Department of Regulatory Agencies to work with all programs and boards of professional licensure operating under its purview to promulgate and issue rules as necessary to ensure that no person shall be subject to disciplinary action against a professional license or disqualified from professional licensure for any civil or criminal judgment, discipline, or other sanction threatened r imposed under the laws of another state as long as the actions are lawful and consistent with professional conduct and standards of care within the State of Colorado.

Purpose

The purpose of this emergency rule is to effectuate Executive Order D 2022 034.

As stated in Executive Order D 2022 034, employers are having difficulty recruiting and retaining qualified employees, many of whom need professional licenses. The exclusion of people from the workforce because of marijuana-related activities that are lawful in Colorado, but illegal in other states, hinders our economy and our State.

Justification

As set forth in Executive Order D 2022 034, the Order ensures that all Coloradans are afforded protections and rights under Colorado law.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Regulator, as defined in section 12-20-102(14), C.R.S., hereby finds the immediate adoption of this emergency rule is imperatively necessary to comply with Executive Order D

2022 034, to protect Colorado's Workforce and Expanding Licensing Opportunities. The adoption of this emergency rule is imperatively necessary for the preservation of the public welfare, and cannot wait the several months required for permanent rulemaking and therefore an emergency rule is appropriate pursuant to the Administrative Procedure Act.

The Regulator finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rule; to the extent practicable, the rule is clearly and simply stated so that their meaning will be understood by any required to comply with the rule; the rule does not conflict with other provisions of the law; and any duplication or overlapping of the rule, if any, has been explained.

This temporary/emergency rule take effect September 21, 2022, and remain in effect for up to a maximum of 120 days after adoption of these temporary/emergency rules.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00577

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Board of Accountancy

on 09/21/2022

3 CCR 705-1

ACCOUNTANCY RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 09/22/2022 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.

October 11, 2022 13:04:18

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Board of Chiropractic Examiners

CCR number

3 CCR 707-1

Rule title

3 CCR 707-1 CHIROPRACTIC EXAMINERS RULES AND REGULATIONS 1 - eff 09/22/2022

Effective date

09/22/2022

Expiration date

01/20/2023

DEPARTMENT OF REGULATORY AGENCIES

Board of Chiropractic Examiners

CHIROPRACTIC EXAMINERS RULES AND REGULATIONS

3 CCR 707-1

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

…

1.38 Protections for Provision of Reproductive Health Care in Colorado

This Rule is promulgated pursuant to Executive Order D 2022 032, and sections 25-6-401 *et seq.*, 12-215-105(1)(a), and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Assisting in the provision reproductive health care" means aiding, abetting or complicity in the provision of reproductive health care.

3. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

4. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.

5. "Licensee" means as defined in section 12-20-102(10), C.R.S.

6. "Provision of reproductive health care," includes but is not limited to, transportation for reproductive health care, referrals for reproductive health care and related services, funding or assisting with payment of reproductive health care, prescribing, shipping or dispensing medications for reproductive health care in accordance with state and federal law, all options and mental health counseling and treatment related to reproductive health care. The "provision of reproductive health care" also includes all treatment contemplated in the definition of section 25-6-402(4), C.R.S.

7. "Regulator" means as defined in section 12-20-102(14), C.R.S.

8. "Reproductive health care" means as defined in section 25-6-402(4), C.R.S.

B. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on the applicant or licensee's provision of or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice as defined in Colorado law and did not otherwise violate Colorado law.

C. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a civil or criminal judgment against the applicant or licensee arising from the provision of, or assistance in the provision of reproductive health care in this state

or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

D. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a professional disciplinary action or any other sanction against the applicant's or licensee's professional licensure in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant or licensee's provision of, or assistance in the provision of, reproductive health care and the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

E. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's registration, certificate or license based solely on the licensee's own personal effort to seek or obtain reproductive health care for themselves. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a civil or criminal judgment against the applicant or licensee arising from the individual's own personal receipt of reproductive health care in this state or any other state or U.S. territory.

1.39 Protecting Colorado's Workforce and Expanding Licensing Opportunities

This Rule is promulgated pursuant to Executive Order D 2022 034, and sections 12-215-105(1)(a) and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

3. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.

4. "Licensee" means as defined in section 12-20-102(10), C.R.S.

5. "Regulator" means as defined in section 12-20-102(14), C.R.S.

B. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a civil or criminal judgment against the applicant or licensee regarding the consumption, possession, cultivation, or processing of marijuana so long as the actions are lawful and consistent with professional conduct and standards of care within Colorado and did not otherwise violate Colorado law.

C. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a professional disciplinary action against the applicant's or licensee's professional licensure in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant's or licensee's consumption, possession, cultivation, or processing of marijuana and did not otherwise violate Colorado law.

…

Editor's Notes

History

Rules 3, 7, 26 eff. 05/30/2007.
Rules 10, 22 eff. 07/30/2007.
Rules 8-15 eff. 01/30/2008.
Rules 6, 7, 10, 11, 13, 17, 27 eff. 07/30/2009.
Rules 1(D); 2; 4; 8(C); 11; 12; 17(A) eff. 12/01/ 2009. Rules 5; 9 repealed eff. 12/01/2009.
Rules 8, 19 eff. 03/17/2010.
Rule 27 repealed eff. 03/17/2011.
Rules 8, 28 eff. 09/30/2012. Rule 26 repealed eff. 09/30/2012.
Rule 30 emer. rule eff. 12/31/2012; expired 04/30/2013.
Rules 6-7, 29 eff. 01/14/2013.
Rule 7 C emer. rule eff. 01/24/2013.
Rule 7 C eff. 05/15/2013.
Rules 1, 3, 4, 6-8, 10, 11, 17, 20, 22, 24, 25, 30 eff. 05/25/2019.
Rules 12, 13, 15, 19 E eff. 07/15/2019.
Rules 1.6 A, 1.7, 1.11 eff. 11/14/2019.
Rule 1.31 emer. rule eff. 05/01/2020; expired 08/29/2020.
Rule 1.32 emer. rule eff. 05/11/2020; expired 09/08/2020.
Rules 1.8 A, 1.8 G, 1.8 K, 1.33, 1.34 emer. rules eff. 08/25/2020.
Rule 1.31 emer. rule eff. 08/30/2020; expired 12/28/2020.
Rule 1.32 emer. rule eff. 09/09/2020.
Rules 1.8 A, 1.8 G, 1.8 K, 1.33, 1.34, 1.35, Appendix B eff. 11/30/2020.
Rule 1.32 emer. rule eff. 12/28/2020.
Rule 1.36 emer. rule eff. 01/11/2021.
Rule 1.31 emer. rule eff. 01/20/2021.
Rules 1.31, 1.32 emer. rules eff. 04/27/2021.
Rule 1.36 emer. rule eff. 05/11/2021.
Rules 1.35 E-F eff. 05/15/2021.
Rules 1.31, 1.36 emer. rules eff. 07/12/2021.
Rules 1.31, 1.36 emer. rules eff. 11/02/2021.
Rules 1.31, 1.36 emer. rules eff. 03/02/2022.
Rules 1.31, 1.36 emer. rules eff. 06/28/2022.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

On July 6, 2022, Colorado Governor Jared Polis ("Governor") signed Executive Order D 2022 032, "Directing State Agencies to Protecting Access to Reproductive Health Care in Colorado."

On July 14, 2022, Colorado Governor Jared Polis ("Governor") signed Executive Order D 2022 034, "Protecting Colorado's Workforce and Expanding Licensing Opportunities."

Basis

The basis for these rules is Executive Order D 2022 032 and Executive Order D 2022 034.

Through Executive Order D 2022 032, Governor Jared Polis directed all state agencies not to share any information or data, including patient medical records, patient-level data or related billing information, or expend time, money, facilities property, equipment, personnel, or other resources to assist or further any investigation or proceeding initiated in or by another state that seeks to impose criminal or civil liability or professional sanction upon a person for conduct that would be legal in Colorado related to providing, assisting, seeking, or obtaining reproductive health care, unless pursuant to a court order.

Governor Jared Polis also directed the Department of Regulatory Agencies (DORA) to work with all programs and boards of professional licensure operating under its purview to promulgate and issue necessary rules that will ensure that no person shall be subject to a disciplinary action against a professional license or disqualified from professional licensure for providing or assisting in the provision of reproductive health care or as a consequence of any civil or criminal judgment, discipline, or other sanction threatened or imposed under the laws of another state so long as the care as provided is consistent with professional conduct and standards of care within the State of Colorado.

Through Executive Order D 2022 034, Governor Jared Polis directed the Department of Regulatory Agencies to work with all programs and boards of professional licensure operating under its purview to promulgate and issue rules as necessary to ensure that no person shall be subject to disciplinary action against a professional license or disqualified from professional licensure for any civil or criminal judgment, discipline, or other sanction threatened r imposed under the laws of another state as long as the actions are lawful and consistent with professional conduct and standards of care within the State of Colorado.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2022 032 and Executive Order D 2022 034.

As stated in Executive Order D 2022 032, Colorado is experiencing workforce shortage in many professions, and disqualifying people because they were prosecuted for taking actions in other states that are fully legal under Colorado law would hurt our economy and our State.

Colorado is committed to protecting access to reproductive health care. No one who is lawfully providing, assisting, seeking, or obtaining reproductive health care in Colorado should be subject to legal liability or professional sanctions in Colorado or any other state, nor will Colorado cooperate with criminal or civil investigations for actions that are fully legal in Colorado.

As stated in Executive Order D 2022 034, employers are having difficulty recruiting and retaining qualified employees, many of whom need professional licenses. The exclusion of people from the workforce because of marijuana-related activities that are lawful in Colorado, but illegal in other states, hinders our economy and our State.

Justification

As set forth in Executive Order D 2022 032, the need exists to immediately protect access to reproductive health care in Colorado by promulgating rules ensuring no licensee, certificant, or registrant shall be subject to disciplinary action against a professional license or disqualified from professional licensure for providing or assisting in the provision of reproductive health care or as a consequence of any civil or criminal judgment, discipline, or other sanction threatened or imposed under the laws of another state so long as the care provided is lawful and consistent with professional conduct and standards of care within the State of Colorado.

As set forth in Executive Order D 2022 034, the Order ensures that all Coloradans are afforded protections and rights under Colorado law.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Regulator, as defined in section 12-20-102(14), C.R.S., hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2022 032, to protect access to reproductive health care in Colorado. The adoption of emergency rules is imperatively necessary for the preservation of the public health, safety, and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Regulator finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect September 22, 2022, and remain in effect for up to a maximum of 120 days after adoption of these temporary/emergency rules.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00578

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Board of Chiropractic Examiners

on 09/22/2022

3 CCR 707-1

CHIROPRACTIC EXAMINERS RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 09/22/2022 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.

October 12, 2022 09:54:35

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-45

Rule title

3 CCR 713-45 RULE 145 - EMERGENCY RULES AND REGULATIONS REGARDING TEMPORARY LICENSURE 1 - eff 09/22/2022

Effective date

09/22/2022

Expiration date

01/20/2023

DEPARTMENT OF REGULATORY AGENCIES

Colorado Medical Board

RULE 145 – EMERGENCY RULES AND REGULATIONS REGARDING TEMPORARY LICENSURE

3 CCR 713-45

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

45.1 INTRODUCTION

A. Basis: Through Executive Order D 2022 038, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, and D 2022 037. Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the Colorado Medical Board ("Board") set forth in section 24-1-122(3)(m)(I), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2022 038 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. These Emergency Rules are adopted by the Executive Director of the Department of Regulatory Agencies, through the Division Director, to effectuate Executive Order D 2022 038, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, and D 2022 037, and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

45.2 TEMPORARY LICENSURE

A. The Board may issue a temporary license to practice medicine to a foreign medical graduate applicant who has completed a minimum of 1-year of postgraduate training or practice in a foreign country and who meets all qualifications for licensure as set forth in section 12-240-110, C.R.S., with the exception of successful completion of the required approved internship or at least one year of postgraduate training approved by the board, as set forth in section 12-240-110(2)(c), C.R.S.

1. Foreign medical graduates must submit an application for temporary licensure.

2. A temporary license issued on or after November 2, 2021 is effective from date of issuance through December 31, 2022.

    a. On January 1, 2023, if a full license to practice medicine in Colorado has not been issued, the temporary licensee shall cease practice immediately and until such time as full licensure to practice medicine in Colorado has been granted

3. Foreign medical graduates who are granted this temporary licensure may perform delegated medical services, other than prescribing medications, under the personal and direct supervision of a Colorado licensed physician whose license is in good standing. This supervision is required during the entire term of the temporary licensure.

4. For the purpose of this emergency rule, “direct supervision” means the Colorado licensed physician must be on the premises with the temporary foreign medical graduate licensee and immediately available to respond to an emergency or provide assistance.

5. For the purpose of this emergency rule “premises” means within the same building, office or facility and within the physical proximity to establish direct contact with the patient should the need arise.

6. This temporary license is not renewable and does not create a property interest for the holder of the temporary license.

7. The temporary licensee may be subject to discipline by the Board as defined in 12-240-101, C.R.S., *et seq*., and shall be subject to the professional liability insurance requirement as defined in section 13-64-301, C.R.S.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis ("Governor") declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State's efforts on recovery from the COVID-19 pandemic. Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, and D 2022 038, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from COVID-19 pandemic.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, and D 2022 038, the Governor temporarily suspended the rulemaking authorities set forth in C.R.S. § 24-1-122(3)(m)(I) (Colorado Medical Board), C.R.S. § 24-1-122(3)(gg) (State Board of Nursing), C.R.S. § 24-1-122(3)(h) (Colorado State Board of Chiropractic Examiners, C.R.S. § 24-1-122(3)(k) (Colorado Dental Board), C.R.S. § 24-1- 122(3)(m)(II) (Colorado Podiatry Board), C.R.S. § 24-1-122(3)(p) (Colorado State Board of Optometry), C.R.S. § 24-1-122(3)(y) (State Board of Veterinary Medicine), and C.R.S. § 12-285-105(1)(b) (State Physical Therapy Board), and directed the Executive Director of DORA, through the Director of DPO, to promulgate and issue temporary emergency rules consistent with the Executive Order.

The basis for these emergency rules is Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, and D 2022 038, issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, and D 2022 038, and directing the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division Director), is promulgating these emergency rules expanding delegation in order to provide

hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded temporary licensure.

Justification

As set forth in Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, and D 2022 038, the need exists to immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division Director, is promulgating these emergency rules expanding scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded temporary licensure.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, and D 2022 038, and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect September 22, 2022, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Adopted this 22nd day of September, 2022.

_____

Karen McGovern, Deputy Division Director of Legal Affairs,
for Ronne Hines, Director Division of Professions and Occupations

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00575

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Colorado Medical Board

on 09/22/2022

3 CCR 713-45

RULE 145 - EMERGENCY RULES AND REGULATIONS REGARDING TEMPORARY LICENSURE

The above-referenced rules were submitted to this office on 09/22/2022 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.

October 12, 2022 09:59:30

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Colorado Medical Board

CCR number

3 CCR 713-46

Rule title

3 CCR 713-46 RULE 160 - EMERGENCY RULES AND REGULATIONS REGARDING EXPANDED DELEGATION FOR PHYSICIANS AND PHYSICIAN ASSISTANTS AND EXPANDED SCOPE OF PRACTICE FOR PHYSICIANS, PHYSICIAN ASSISTANTS AND ANESTHESIOLOGIST ASSISTANT 1 - eff 09/22/2022

Effective date

09/22/2022

Expiration date

01/20/2023

DEPARTMENT OF REGULATORY AGENCIES

Colorado Medical Board

RULE 160 – EMERGENCY RULES AND REGULATIONS REGARDING EXPANDED DELEGATION FOR PHYSICIANS AND PHYSICIAN ASSISTANTS AND EXPANDED SCOPE OF PRACTICE FOR PHYSICIANS, PHYSICIAN ASSISTANTS AND ANESTHESIOLOGIST ASSISTANT

3 CCR 713-46

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

46.1 INTRODUCTION

A. Basis: Through Executive Order D 2022 038, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, and D 2022 037, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the Colorado Medical Board ("Board") set forth in section 24-1-122(3)(m)(I), C.R.S,, and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2022 038 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. These Emergency Rules are adopted by the Executive Director of the Department of Regulatory Agencies, through the Division Director, to effectuate Executive Order D 2022 038, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, and D 2022 037, and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

46.2 EXPANDED DELEGATION

A. In addition to any delegation authorized by the Medical Practice Act including, but not limited to, section 12-240-107(3)(l), C.R.S., or Colorado Medical Board Rule 800 3 CCR 713-30, physicians are authorized to delegate services in hospitals and inpatient settings as follows:

1. Physicians may delegate medical services within their scope of practice to the following Colorado Licensed Professionals working in a hospital or inpatient facility:

    a. Podiatrists

    b. Optometrists

    c. Chiropractors

    d. Veterinarians

    e. Dentists

f. Physical Therapists

g. Physical Therapy Assistants

h. Occupational Therapists

i. Occupational Therapy Assistants

j. Speech-Language Pathologists

k. Surgical Assistants

l. Surgical Technologists

m. Volunteer Retired Nurses

n. Nurse Aides

o. Temporary IMG Licensees

2. Physicians may delegate services within their scope of practice to the following unlicensed persons working in a hospital or inpatient facility:

a. Volunteer Nursing Students

b. Medical Assistants

3. Physicians are authorized to provide training to the Colorado licensed professionals and unlicensed persons set forth in this Rule, section 46.2(A)(1) and (2).

4. In order to delegate services pursuant to this Rule, section 46.2(A)(1) and (2).the physician shall ensure, prior to the delegation, that the delegated service is within the knowledge, skill and training of the delegatee.

5. The physician shall ensure on-premises availability to provide direction and supervision of the delegatee.

6. The delegated services shall be routine, technical services, the performance of which do not require the special skill or decision making ability of a physician.

7. The prescription or selection of medications, performance of surgical or other invasive procedures and anesthesia services may not be delegated pursuant to this Rule 160.

B. In addition to any delegation authorized by the Medical Practice Act and section 25-3.5-207, C.R.S., and notwithstanding any limitations set forth in Colorado Medical Board Rules 400 3 CCR 713-7 or 800 3 CCR 713-30, physician assistants are authorized to delegate services in hospitals and inpatient settings as follows:

1. Physician assistants may delegate services within their scope of practice to the following Colorado Licensed Professionals working in a hospital or inpatient facility:

a. Podiatrists

b. Optometrists

c. Chiropractors

d. Veterinarians

e. Dentists

f. Physical Therapists

g. Physical Therapy Assistants

h. Occupational Therapists

i. Occupational Therapy Assistants

j. Speech-Language Pathologists

k. Surgical Assistants

l. Surgical Technologists

m. Volunteer Retired Nurses

n. Nurse Aides

2. Physician assistants may delegate services within their scope of practice to the following unlicensed persons working in a hospital or inpatient facility:

a. Volunteer Nursing Students

b. Medical Assistants

3. Physician assistants are authorized to provide training to the Colorado licensed professionals and unlicensed persons set forth in Rule 1.27(C)(1) and (2).

4. In order to delegate services pursuant to this Rule, section 46.2(B)(1) and (2), the physician assistant shall ensure, prior to the delegation, that the delegated service is within the knowledge, skill and training of the delegatee.

5. The physician assistant shall ensure on-premises availability to provide direction and supervision of the delegatee.

6. The delegated services shall be routine, technical services, the performance of which do not require the special skill or decision making ability of a physician assistant..

7. The prescription or selection of medications, performance of surgical or other invasive procedures and anesthesia services may not be delegated pursuant to this Rule 160.

46.3 EXPANDED SCOPE OF PRACTICE

A. Physicians are authorized to engage in inpatient care to evaluate and treat COVID-19 patients regardless of American Board of Medical Specialties (ABMS) Board certifications, national certifications, national specialty certificates of added qualifications, or current scope of specialty or subspecialty practice, if appropriate based on the physicians' education, training, and experience.

B. Physician assistants are authorized to engage in inpatient care to evaluate and treat COVID-19 patients regardless of National Commission on Certification for Physician Assistants (NCCPA), national certifications, national specialty certificates of added qualifications, or current scope of specialty or subspecialty practice, if appropriate based on the physician assistants' education, training, and experience.

C. Anesthesiologist Assistants may expand their scope of practice while working in a hospital or inpatient facility as needed to perform airway management outside of the operative setting.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis ("Governor") declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State's efforts on recovery from the COVID-19 pandemic. Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, and D 2022 038, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from COVID-19 pandemic.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, and D 2022 038, the Governor temporarily suspended the rulemaking authorities set forth in C.R.S. § 24-1-122(3)(m)(I) (Colorado Medical Board), C.R.S. § 24-1-122(3)(gg) (State Board of Nursing), C.R.S. § 24-1-122(3)(h) (Colorado State Board of Chiropractic Examiners, C.R.S. § 24-1-122(3)(k) (Colorado Dental Board), C.R.S. § 24-1- 122(3)(m)(II) (Colorado Podiatry Board), C.R.S. § 24-1-122(3)(p) (Colorado State Board of Optometry), C.R.S. § 24-1-122(3)(y) (State Board of Veterinary Medicine), and C.R.S. § 12-285-105(1)(b) (State Physical Therapy Board), and directed the Executive Director of DORA, through the Director of DPO, to promulgate and issue temporary emergency rules consistent with the Executive Order.

The basis for these emergency rules is Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, and D 2022 038, issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, and D 2022 038, and directing the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division Director), is promulgating these emergency rules expanding delegation in order to provide

hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded temporary licensure.

Justification

As set forth in Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, and D 2022 038, the need exists to immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division Director, is promulgating these emergency rules expanding scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded temporary licensure.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, and D 2022 038, and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect September 22, 2022, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Adopted this 22nd day of September, 2022.

_____

Karen McGovern, Deputy Division Director of Legal Affairs,
for Ronne Hines, Director Division of Professions and Occupations

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00576

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Colorado Medical Board

on 09/22/2022

3 CCR 713-46

RULE 160 - EMERGENCY RULES AND REGULATIONS REGARDING EXPANDED DELEGATION FOR PHYSICIANS AND PHYSICIAN ASSISTANTS AND EXPANDED SCOPE OF PRACTICE FOR PHYSICIANS, PHYSICIAN ASSISTANTS AND ANESTHESIOLOGIST ASSISTANT

The above-referenced rules were submitted to this office on 09/22/2022 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.

October 12, 2022 10:01:34

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Board of Nursing

CCR number

3 CCR 716-1

Rule title

3 CCR 716-1 NURSING RULES AND REGULATIONS 1 - eff 09/22/2022

Effective date

09/22/2022

Expiration date

01/20/2023

DEPARTMENT OF REGULATORY AGENCIES

Division of Professions and Occupations - Board of Nursing

NURSING RULES AND REGULATIONS

3 CCR 716-1

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

...

1.26 TEMPORARY LICENSURE OF PRACTICAL NURSES, PROFESSIONAL NURSES, ADVANCED PRACTICE NURSES, AND CERTIFIED NURSE ASSISTANTS AND TEMPORARY SUSPENSION OF CERTAIN NURSE AND NURSE AIDE EDUCATION REQUIREMENTS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2022 038

A. Basis. Through Executive Order D 2022 038, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, and D 2022 037. Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the State Board of Nursing ("Board") set forth in section 24-1- 122(3)(gg), C.R.S, and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2022 038 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of the Department of Regulatory Agencies, through the Division Director, to effectuate Executive Order D 2022 038, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, and D 2022 037, directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. TEMPORARY LICENSURE

1. The Board may issue a temporary licenses to a professional nurse or a practical nurse that holds an active, unrestricted professional or practical nurse license in good standing in a non-compact state.

    a. Professional or practical nurses holding an active, unrestricted license in good standing in a non-compact state must submit an application for temporary licensure.

        (1) The applicant must submit evidence of an active, unrestricted license, in good standing, to practice professional or practical nursing in a non-compact state.

b. A temporary license issued, pursuant to this Section (C)(1) of this Rule on or after November 2, 2021, is effective from the date of issuance through December 31, 2022.

(1) On January 1, 2023, if a full license to practice nursing in Colorado has not been issued, the temporary licensee shall cease practice immediately and until such time as full licensure to practice nursing in Colorado has been granted.

c. This temporary license is not renewable and does not create a property interest for the holder of the temporary license.

d. The temporary licensee may be subject to discipline by the Board as defined in section 12-255-101, *et seq.*, C.R.S.

D. TEMPORARY EMERGENCY NURSE AIDE CERTIFICATION

1. Due to a backlog in the administration of required skills examinations, the Board may issue a temporary emergency certification to an applicant that is a new graduate of an approved nurse aide training program who meets all qualifications for certification with the exception of successful completion of the required examinations as set forth in section 12-255-205, C.R.S.

a. Nurse aide new graduates must submit an application for temporary certification.

b. A temporary certificate issued to a new graduate on or after November 2, 2021, is effective from the date of issuance through December 31, 2022.

(1) On January 1, 2023, if a full certificate to practice as a certified nurse aide in Colorado has not been issued the temporary certificate holder shall cease practice immediately and until such time as full certification to practice as a nurse aide in Colorado has been granted.

c. Nurse aide applicants granted this temporary emergency certification shall practice under the direct supervision of a Colorado licensed professional nurse in good standing during the entire term of the temporary emergency certification.

(1) For the purpose of this emergency Rule, “premises” means within the same building, office or facility and within the physical proximity to establish direct contact with the patient should the need arise.

(2) For the purpose of this emergency Rule, “direct supervision” means the Colorado licensed professional nurse must be on the premises, in-person, with the temporary emergency certified nurse aide and immediately available to respond to an emergency or provide assistance with the following exception:

(a) For home-health or home-hospice settings, “direct supervision” of the temporary emergency certified nurse may include video telesupervision by a professional nurse, provided the nurse supervises the entire visit via video telesupervision and the professional nurse is within proximity of the home site to promptly respond to provide non-emergent assistance and immediately available to respond to an emergency by activating emergency medical services to respond to the home site.

d. Once the temporary emergency certificate holder successfully completes the statutorily required examinations, the temporary emergency certificate must immediately submit an application and the required fee for full certification.

e. This temporary emergency certificate is not renewable and does not create a property interest for the holder of the temporary emergency certificate.

f. The temporary emergency certificate holder may be subject to discipline by the Board as defined in section 12-255-101, *et seq.,* C.R.S.

2. The Board may issue a temporary emergency certification to a reinstatement applicant who meets all qualifications for certification with the exception of successful completion of the required skills examinations as set forth in Rule 1.10(F).

a. A temporary emergency certificate issued to a reinstatement applicant on or after November 2, 2021, is effective from the date of issuance through December 31, 2022.

(1) On January 1, 2023, if a full certificate to practice as a certified nurse aide in Colorado has not been issued the temporary certificate holder shall cease practice immediately and until such time as full certification to practice as a nurse aide in Colorado has been granted.

b. Nurse aide applicants granted this temporary emergency certification shall practice under the direct supervision of a Colorado licensed professional nurse in good standing during the entire term of the temporary emergency certification.

(1) For the purpose of this emergency Rule, “premises” means within the same building, office or facility and within the physical proximity to establish direct contact with the patient should the need arise.

(2) For the purpose of this emergency Rule, “direct supervision” means the Colorado licensed professional nurse must be on the premises, in-person, with the temporary emergency certified nurse aide and immediately available to respond to an emergency or provide assistance with the following exception:

(a) For home-health or home-hospice settings, “direct supervision” of the temporary emergency certified nurse may include video telesupervision by a professional nurse, provided the nurse supervises the entire visit via video telesupervision and the professional nurse is within proximity of the home site to promptly respond to provide non-emergent assistance and immediately available to respond to an emergency by activating emergency medical services to respond to the home site.

c. Once the temporary emergency certificate holder successfully completes the statutorily required examinations, the temporary emergency certificate must immediately submit an application and the required fee for full certification.

d. This temporary emergency certificate is not renewable and does not create a property interest for the holder of the temporary emergency certificate.

e. The temporary emergency certificate holder may be subject to discipline by the Board as defined in section 12-255-101, *et seq.,* C.R.S.

E. TEMPORARY SUSPENSION OF CERTAIN NURSE AND NURSE AIDE EDUCATION REQUIREMENTS RELATED TO COVID-19

1. Pursuant to this emergency Rule, promulgated in compliance with Executive Order D 2022 038, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, and D 2022 037, the following State Board of Nursing Rules are temporarily suspended effective, May 24, 2022, for a period of no longer than 120 days:

   a. Rule 1.2(C)(11) (requiring concurrent clinical and theory experiences to allow clinical hours to be completed beyond six (6) months of relevant theory content);

   b. Rule 1.2(E)(15)(c)(4)(a) (requiring a minimum of four hundred (400) clinical hours graduation from a practical nursing education program);

   c. Rule 1.2(E)(15)(c)(4)(b) (requiring a minimum of seven hundred fifty (750) clinical hours for graduation from a professional nursing education program);

   d. Rule 1.2(E)(15)(c)(4)(c) (requiring fifty percent of clinical hours in the Medical Surgical Nursing II, Community Health and Capstone (practicum) courses, pediatrics, obstetrics, psychiatric and medical surgical nursing, including those clinical hours required for nurse refresher courses, be completed in a clinical setting);

   e. Rule 1.2(E)(15)(c)(13)(d) (requiring faculty supervision for healthcare related volunteer experiences);

   f. Rule 1.10 (D)(12)(a) (requiring successful completion of a written and skills-based examination prior to certification); and,

   g. Rule 1.11 (E)(2)(a) (requiring a minimum of sixteen (16) hours of clinical instruction be performed in a clinical setting).

1.27 EXPANDED DELEGATION FOR ADVANCED PRACTICE REGISTERED NURSES, CERTIFIED REGISTERED NURSE ANESTHETISTS, AND PROFESSIONAL NURSES AND EXPANDED SCOPE OF PRACTICE FOR CERTIFIED REGISTERED NURSE ANESTHETISTS, VOLUNTEER RETIRED NURSES, VOLUNTEER NURSING STUDENTS AND NURSE AIDES PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2022 038

A. Basis. Through Executive Order D 2022 038, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, and D 2022 037. Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the State Board of Nursing ("Board") set forth in section 24-1-122(3)(gg), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2022 038 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of the Department of Regulatory Agencies, through the Division Director, to effectuate Executive Order D 2022 038, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, and D

2022 017, D 2022 020, D 2022 028, D 2022 035, and D 2022 037, and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. EXPANDED DELEGATION OF SERVICES

1. In addition to any delegation authorized by the Nurse Practice Act, advanced practice registered nurses, including certified registered nurse anesthetists, and professional nurses are authorized to delegate services within their scope of practice to the following Colorado licensed professionals working in a hospital or inpatient facility:

    a. Podiatrists

    b. Optometrists

    c. Chiropractors

    d. Veterinarians

    e. Dentists

    f. Physical Therapists

    g. Physical Therapy Assistants

    h. Occupational Therapists

    i. Occupational Therapy Assistants

    j. Speech-Language Pathologists

    k. Surgical Assistants

    l. Surgical Technologists

    m. Volunteer Retired Nurses

    n. Nurse Aides

2. Advanced practice registered nurses, including certified registered nurse anesthetists, and professional nurses may delegate services within their scope of practice to the following unlicensed persons working in a hospital or inpatient facility:

    a. Volunteer Nursing Students

    b. Medical Assistants

3. Advanced practice registered nurses, including certified registered nurse anesthetists, and professional nurses are authorized to provide training to the Colorado licensed professionals and unlicensed persons set forth in Rule 1.27(C)(1) and (2).

4. In order to delegate services pursuant to Rule 1.27(c)(1) and (2), the advanced practice registered nurse, including certified registered nurse anesthetists, and professional nurse shall ensure, prior to the delegation, that the delegated service is within the knowledge, skill and training of the delegatee.

5. The advanced practice registered nurse, including certified registered nurse anesthetists, and professional nurse shall ensure on-premises availability to provide direction and supervision of the delegatee.

6. The delegated services shall be routine, technical services, the performance of which do not require the special skill or decision making ability of an advanced practice nurse, certified registered nurse anesthetist or professional nurse.

7. The prescription or selection of medications, performance of surgical or other invasive procedures and anesthesia services may not be delegated.

D. EXPANDED SCOPE OF PRACTICE

1. Certified registered nurse anesthetists may expand their scope of practice while working in a hospital or inpatient facility as needed to perform airway management outside of the operative setting.

2. Notwithstanding section 12-255-111(2), C.R.S., and 3 CCR 716-1 Rules 1.14(C) and (D), which were suspended pursuant to Executive Order D 2021 080, advanced practice registered nurses are authorized to evaluate and treat COVID-19 patients regardless of national certification or designated population focus.

3. Volunteer retired nurses, volunteer nursing students in the last semester of an educational program and nurse aides may perform services while working in a hospital or inpatient facility as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, professional nurses and respiratory therapists.

a. Volunteer retired nurses, volunteer nursing students in the last semester of an educational program and nurse aides are authorized to perform delegated services upon adequate cross-training as determined necessary by the hospital or inpatient facility.

b. Volunteer retired nurses, volunteer nursing students in the last semester of an educational program and nurse aides shall not accept delegation of a service for which the licensee or student does not possess the knowledge, skill or training to perform.

3. Volunteer retired nurses, volunteer nursing students in the last semester of an educational program and nurse aides shall not perform a delegated service for which the licensee or student does not possess the knowledge, skill or training to perform.

4. Delegated services shall not be re-delegated to another person or licensee by the delegatee

5. Volunteer retired nurses, volunteer nursing students in the last semester of an educational program and nurse aides shall not prescribe or select medications, perform surgical or other invasive procedures or perform anesthesia services regardless of delegation.

1.28 EXPANDED SCOPE OF PRACTICE FOR CERTIFIED NURSE ASSISTANTS AND PRACTICAL NURSES IN ORDER TO ADMINISTER VACCINATIONS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2022 038

A. Basis. Through Executive Order D 2022 038, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, and D

2022 037. Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the Board of Nursing ("Board") set forth in section 24-1-122(3)(k), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2022 038 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of DORA, through the Division Director, to effectuate Executive Order D 2022 038, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, and D 2022 037, and directing the immediate expansion of the workforce of trained medical personnel available to administer the coronavirus disease 2019 (COVID-19) vaccinations within inpatient facilities and outpatient settings due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice In Order to Administer the COVID-19 Vaccination.

1. Practical nurses and certified nurse assistants may administer the COVID-19 vaccination while working in a hospital, inpatient facility or outpatient setting as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, or professional nurses.

    a. Practical nurses and certified nurse assistants are authorized to perform this delegated service upon adequate cross-training as determined necessary by the hospital, inpatient facility, or outpatient setting.

    b. Practical nurses and certified nurse assistants shall not accept delegation of this service if the licensee does not possess the knowledge, skill or training to perform.

    c. Practical nurses and certified nurse assistants shall not perform this delegated service if the licensee does not possess the knowledge, skill or training to perform.

    d. This delegated service shall not be re-delegated to another person or licensee by the delegatee.

    e. Practical nurses and certified nurse assistants shall not prescribe, order, or select the COVID-19 vaccination regardless of delegation.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis ("Governor") declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State's efforts on recovery from the COVID-19 pandemic. Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, and D 2022 038, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from COVID-19 pandemic.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 020, D 2022 028, D 2022 035, D 2022 037, and D 2022 038, the Governor temporarily suspended the rulemaking authorities set forth in C.R.S. § 24-1-122(3)(m)(I) (Colorado Medical Board), C.R.S. § 24-1-122(3)(gg) (State Board of Nursing), C.R.S. § 24-1-122(3)(h) (Colorado State Board of Chiropractic Examiners, C.R.S. § 24-1-122(3)(k) (Colorado Dental Board), C.R.S. § 24-1- 122(3)(m)(II) (Colorado Podiatry Board), C.R.S. § 24-1-122(3)(p) (Colorado State Board of Optometry), C.R.S. § 24-1-122(3)(y) (State Board of Veterinary Medicine), and C.R.S. § 12-285-105(1)(b) (State Physical Therapy Board), and directed the Executive Director of DORA, through the Director of DPO, to promulgate and issue temporary emergency rules consistent with the Executive Order.

The basis for these emergency rules is Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 020, D 2022 028, D 2022 035, D 2022 037, and D 2022 038, issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 020, D 2022 028, D 2022 035, D 2022 037, and D 2022 038, and directing the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division

Director), is promulgating these emergency rules expanding delegation in order to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded temporary licensure.

Justification

As set forth in Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 020, D 2022 028, D 2022 035, D 2022 037, and D 2022 038, the need exists to immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division Director, is promulgating these emergency rules expanding scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded temporary licensure.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 020, D 2022 028, D 2022 035, D 2022 037, and D 2022 038, and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect September 22, 2022, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Adopted this 22nd day of September, 2022.

_____

Karen McGovern, Deputy Division Director of Legal Affairs,
for Ronne Hines, Director Division of Professions and Occupations

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00574

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Board of Nursing

on 09/22/2022

3 CCR 716-1

NURSING RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 09/22/2022 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.

October 12, 2022 10:05:05

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - State Board of Pharmacy

CCR number

3 CCR 719-1

Rule title

3 CCR 719-1 STATE BOARD OF PHARMACY RULES AND REGULATIONS 1 - eff 09/29/2022

Effective date

09/29/2022

Expiration date

01/27/2023

DEPARTMENT OF REGULATORY AGENCIES

State Board of Pharmacy

STATE BOARD OF PHARMACY RULES AND REGULATIONS

3 CCR 719-1

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

…

32.00.00 PROTECTIONS FOR PROVISION OF REPRODUCTIVE HEALTH CARE IN COLORADO

A. Basis. The basis for this rule is to implement the requirements of Executive Order D 2022 032, issued by Governor Jared Polis, and sections 25-6-401, *et seq*., 12-20-204, and 12-280-107(1), C.R.S.

B. Purpose. This rule is adopted to effectuate Executive Order D 2022 032, directing state agencies to protect access to reproductive health care in Colorado.

C. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Assisting in the provision reproductive health care" means aiding, abetting or complicity in the provision of reproductive health care.

3. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

4. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, or a deferred judgment or sentence.

5. "Licensee" means as defined in section 12-20-102(10), C.R.S.

6. "Provision of reproductive health care," includes but is not limited to, transportation for reproductive health care, referrals for reproductive health care and related services, funding or assisting with payment of reproductive health care, prescribing, shipping or dispensing medications for reproductive health care in accordance with state and federal law, all options and mental health counseling and treatment related to reproductive healthcare. The "provision of reproductive health care" also includes all treatment contemplated in the definition of section 25-6-402(4), C.R.S.

7. "Regulator" means as defined in section 12-20-102(14), C.R.S.

8. "Reproductive health care" means as defined in section 25-6-402(4), C.R.S.

D. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on the applicant or licensee's provision of or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice as defined in Colorado law and did not otherwise violate Colorado law.

E. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a civil or criminal judgment against the applicant or licensee arising from the provision of, or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

F. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a professional disciplinary action or any other sanction against the applicant's or licensee's professional licensure in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant or licensee's provision of, or assistance in the provision of, reproductive health care and the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

G. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's registration, certificate or license based solely on the licensee's own personal effort to seek or obtain reproductive health care for themselves. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a civil or criminal judgment against the applicant or licensee arising from the individual's own personal receipt of reproductive health care in this state or any other state or U.S. territory.

33.00.00 PROTECTING COLORADO'S WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES

A. Basis. The basis for this rule is to implement the requirements of Executive Order D 2022 034, issued by Governor Jared Polis, and sections 25-6-401, *et seq*., 12-20-204, and 12-280-107(1), C.R.S.

B. Purpose. This rule is adopted to effectuate Executive Order D 2022 034, directing the Board to promulgate and issue rules to ensure that no person shall be subject to disciplinary action against a professional license or disqualified from professional licensure for any civil or criminal judgment, discipline, or other sanction threatened or imposed under the laws of another state regarding consumption, possession, cultivation or processing of marijuana so long as the actions are lawful and consistent with professional conduct and standards of care within the State of Colorado.

C. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

3. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, or a deferred judgment or sentence.

4. "Licensee" means as defined in section 12-20-102(10), C.R.S.

5. "Regulator" means as defined in section 12-20-102(14), C.R.S.

D. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a civil or criminal judgment against the applicant or licensee regarding the consumption, possession, cultivation, or processing of marijuana so long as the actions are lawful and consistent with professional conduct and standards of care within Colorado and did not otherwise violate Colorado law.

E. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a professional disciplinary action against the applicant's or licensee's professional licensure in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant's or licensee's consumption, possession, cultivation, or processing of marijuana and did not otherwise violate Colorado law.

…

Editor's Notes

History

Rules 2.01.10; 2.01.30; 3.00.50; 3.00.70, 6.00.20; 6.00.30; 6.00.40; 8.00.10; 11.04.20; 14.03.10 eff. 07/30/2007.

Rules 8.00.10; 11.04.10; 20.00.00 eff. 09/30/2007.

Rule 4.00.00 eff. 11/30/2007.

Rules 3.01.20, 10.00.00 eff. 03/01/2008.

Rules 5.01.31; 15.01.11; 15.01.12; 15.09.11; 15.09.14; 22.00.00 eff. 05/30/2008.

Rules 4.02.00 (c), 21.00.00, 23.00.00 eff. 06/30/2008.

Rules 1.00.00, 2.00.00, 3.00.00, 5.00.00, 7.00.00, 11.00.00, 12.00.00, 14.00.00 eff. 11/30/2008.

Rule 15.09.11 eff. 01/31/2009.

Rules 6.00.30, 11.06.00, 22.00.00 eff. 03/02/2009.

Rule 9.00.00 eff. 04/30/2009.

Rules 5.00.55, 5.01.31(a), 6.00.20(f), 14.00.40, 15.01.17, 15.01.18, 15.08.19(f), 15.09.11(d), 15. 09.15, 15.09.19, 15.09.20(g-h), 15.09.23, 15.09.24, 15.10.10, 16.00.20(d), 19.01.10(b), 19.01.30(a) eff. 12/30/2009.

Rules 4.00, 18.00 eff. 03/17/2010.

Rules 3.00.80 – 3.00.90; 5.00.55; 15.01.12; 19.00.00 – 19.01.50. Rule 22.00.00 repealed eff. 07/15/2010.

Rules 1.00.21, 5.01.31(e), 5.01.50 eff. 08/30/2010.

Rules 5.00.55, 21.11.10 (a), 21.21.70 (a) eff. 11/14/2010.

Rules 1.00.18, 2.01.50 – 2.01.53, 3.00.50 – 3.00.51, 5.00.50, 5.00.60, 5.01.31.a, 11.04.10, 15.01.11, 15.09.11.e eff. 06/14/2011.

Rules 3.01.24, 4.00.00, 11.04.20, 11.04.30, 21.00.00 - 21.11.20, 23.00.00 eff. 04/14/2012.

Rule 14.00.10 eff. 05/15/2012.

Entire rule eff. 01/01/2013. Rule 17.00.00 repealed eff. 01/01/2013.

Rules 3.00.21 – 3.00.22, 3.00.55, 3.00.90.e.(4), 3.01.20.c, 3.01.30, 3.01.32, 3.01.34, 4.00.10.f, 4.00.20, 5.01.31.a.(1)(C), 15.10.14.a, 23.00.90 eff. 09/14/2013.

Rules 2.01.10, 3.00.25, 3.00.91, 5.00.15, 6.00.30, 10.00.00, 11.03.00, 11.07.10, 14.00.05.k-l, 14.00.80.e.(2), 14.00.80.j, 16.00.00, 18.00.00, 20.00.00, 21.00.20, 21.10.80, 21.11.00.a.(12), 21.11.10.c, 21.20.20, 21.20.30.b(14), 21.21.40.c, 21.21.70.c, 21.22.00.b(1), 23.00.30, 23.00.50, 23.00.65, 23.00.70, eff. 10/15/2014.

Rules 3.00.22, 3.00.81.l-o, 3.00.82-3.00.84, 3.00.85.a(3), 3.00.86, 3.00.88.a(2), 3.00.88.b(10), 4.06.00, 6.00.10-6.00.20, 6.00.40.a, 6.00.50, 6.00.60.a, 6.00.60.b.10, 6.00.70.a, 6.00.90.b, 6.01.10.a, 19.01.40.c, 21.00.10, 21.00.20.b, 21.10.60.b, 21.10.80.b(4), 21.11.10.a(5), 21.11.10.c(9), 21.20.10.d, 21.20.20.b(2)(a), 21.20.25.b, 21.20.70.f, 21.20.90.b-c, 21.21.10.b, 21.21.70.a(6), 21.21.70.c(10), 23.00.40.y-z, 23.00.70.h-j eff. 09/14/2015.

Rules 3.00.21, 3.00.27, 19.01.10(1), 21.00.20, 21.11.20.d, 21.20.16, 21.20.20.b.(2), 21.20.60.b, 21.20.60.e, 21.21.90.d eff. 03/16/2016.

Rules 3.00.20, 3.00.22 e, 3.00.81 g, 3.00.84, 3.01.10 d, 4.00.10, 4.00.25, 4.05.00, 5.00.15 d, 5.01.31, 6.00.20 e, 7.00.10, 8.00.10, 14.00.80 i-k, 19.01.10 b.(2), 20.00.80 a.1, 21.00.20, 21.00.30, 21.20.20 b, 27.00.00, 28.00.00 eff. 11/14/2016. Rule 10.00.51 repealed eff. 11/14/2016.

Rule 17 eff. 03/17/2017. Rule 18 repealed eff. 03/17/2017.

Rules 3.01.10 d, 7.00.30 b.4, 21.00.20, 21.00.30, 23.00.10, 23.00.70 eff. 11/14/2017. Rules 1.00.15, 5.00.55 a.(6) repealed eff. 11/14/2017.

Rules 3.05.00, 5.01.31 m, 5.01.31 r, 5.01.40 a, 5.01.50 a-f, 11.03.05, 11.04.10, 11.06.10 j, 14.02.30 d, 20.00.90 c, 20.01.00 a.2.iv, 21.00.20 d.ii, 21.20.70 g, 25.00.12 d-e, 25.00.14 c-d, 25.00.16 e eff. 09/17/2018.

Rules 1.00.24, 2.01.50, 2.01.52, 2.01.53, 2.01.56, 2.01.80, 3.00.23, 3.00.30, 3.05.10-3.05.30, 3.05.80, 7.00.30 c, 11.03.00 a, 11.07.10 a, 14.00.05 m, 14.00.40 f.1, 14.00.80 e, 15.01.11 a.(8)(i), 15.01.11 a.(9), 15.09.14 a, 19.01.10 b.-c, 23.00.10, 23.00.70, 29.00.00 eff. 11/30/2019.

Rule 30.00.00 emer. rule eff. 05/01/2020; expired 08/28/2020.

Rules 17.00.10, 17.00.30 a.7, 17.00.50 b.2, 17.00.70, 17.00.80, 17.01.00, 17.02.00 a, 17.03.00 b, 17.04.00 eff. 05/15/2020. Rule 6.00.00 repealed eff. 05/15/2020.

Rule 30.00.00 eff. 08/30/2020. Rule 3.04.00 repealed eff. 08/30/2020.

Rules 2.01.20, 3.00.81 a, 3.01.22 b, 5.00.40, 5.00.50 a, 7.00.30 b, 10.00.60, 11.08.00, 11.08.50, 14.00.05 b, 14.00.40 b-c, 14.05.11, 15.05.20, 15.01.11 b-d, 15.01.14 a-b, 15.01.17, 17.00.50 c, 24.00.50, Appendix C eff. 11/14/2020.

Rule 19.00.00 emer rule eff. 11/19/2020.

Rule 1.00.25, Appendix D eff. 12/30/2020.

Rules 5.01.31 j-k, 17.00.10 d, 19.01.10, 19.01.20, 19.01.30 a, 19.01.40 a.(5)-(9), 19.01.50 a.(3) eff. 03/17/2021.

Rule 1.00.25 E-F eff. 05/15/2021.

Rules 1.00.18, 1.00.24, 2.01.10 d-f, 2.01.20, 3.00.21, 3.00.22, 3.03.10 a(2), 3.03.10 a(7), 3.03.10 b(2), 5.00.01, 5.00.10, 5.00.17, 5.00.19, 5.00.40, 5.00.50, 5.00.55 b, 5.00.60, 7.00.30, 9.00.10 e, 14.00.05, 14.00.80 e(1), 15.01.00 a, 15.02.10, 15.09.11, 15.09.12 c, 15.09.14 a, 15.10.10 l, 17.00.10, 21.00.10, 21.00.20, 21.11.10 c, 21.21.70 a, 23.00.10 n, 23.00.30, 23.00.40, 23.00.50, 23.00.90 a.2, 23.00.90 c, 29.00.50, Appendix C eff. 11/30/2021.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

On July 6, 2022, Colorado Governor Jared Polis ("Governor") signed Executive Order D 2022 032, "Directing State Agencies to Protecting Access to Reproductive Health Care in Colorado."

On July 14, 2022, Colorado Governor Jared Polis ("Governor") signed Executive Order D 2022 034, "Protecting Colorado's Workforce and Expanding Licensing Opportunities."

Basis

The basis for these rules is Executive Order D 2022 032 and Executive Order D 2022 034.

Through Executive Order D 2022 032, Governor Jared Polis directed all state agencies not to share any information or data, including patient medical records, patient-level data or related billing information, or expend time, money, facilities property, equipment, personnel, or other resources to assist or further any investigation or proceeding initiated in or by another state that seeks to impose criminal or civil liability or professional sanction upon a person for conduct that would be legal in Colorado related to providing, assisting, seeking, or obtaining reproductive health care, unless pursuant to a court order.

Governor Jared Polis also directed the Department of Regulatory Agencies (DORA) to work with all programs and boards of professional licensure operating under its purview to promulgate and issue necessary rules that will ensure that no person shall be subject to a disciplinary action against a professional license or disqualified from professional licensure for providing or assisting in the provision of reproductive health care or as a consequence of any civil or criminal judgment, discipline, or other sanction threatened or imposed under the laws of another state so long as the care as provided is consistent with professional conduct and standards of care within the State of Colorado.

Through Executive Order D 2022 034, Governor Jared Polis directed the Department of Regulatory Agencies to work with all programs and boards of professional licensure operating under its purview to promulgate and issue rules as necessary to ensure that no person shall be subject to disciplinary action against a professional license or disqualified from professional licensure for any civil or criminal judgment, discipline, or other sanction or threat imposed under the laws of another state as long as the actions are lawful and consistent with professional conduct and standards of care within the State of Colorado.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2022 032 and Executive Order D 2022 034.

As stated in Executive Order D 2022 032, Colorado is experiencing workforce shortage in many professions, and disqualifying people because they were prosecuted for taking actions in other states that are fully legal under Colorado law would hurt our economy and our State.

Colorado is committed to protecting access to reproductive health care. No one who is lawfully providing, assisting, seeking, or obtaining reproductive health care in Colorado should be subject to legal liability or professional sanctions in Colorado or any other state, nor will Colorado cooperate with criminal or civil investigations for actions that are fully legal in Colorado.

As stated in Executive Order D 2022 034, employers are having difficulty recruiting and retaining qualified employees, many of whom need professional licenses. The exclusion of people from the workforce because of marijuana-related activities that are lawful in Colorado, but illegal in other states, hinders our economy and our State.

Justification

As set forth in Executive Order D 2022 032, the need exists to immediately protect access to reproductive health care in Colorado by promulgating rules ensuring no licensee, certificant, or registrant shall be subject to disciplinary action against a professional license or disqualified from professional licensure for providing or assisting in the provision of reproductive health care or as a consequence of any civil or criminal judgment, discipline, or other sanction threatened or imposed under the laws of another state so long as the care provided is lawful and consistent with professional conduct and standards of care within the State of Colorado.

As set forth in Executive Order D 2022 034, the Order ensures that all Coloradans are afforded protections and rights under Colorado law.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Regulator, as defined in section 12-20-102(14), C.R.S., hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2022 032, to protect access to reproductive health care in Colorado. The adoption of emergency rules is imperatively necessary for the preservation of the public health, safety, and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Regulator finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect September 29, 2022, and remain in effect for up to a maximum of 120 days after adoption of these temporary/emergency rules.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00616

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - State Board of Pharmacy

on 09/29/2022

3 CCR 719-1

STATE BOARD OF PHARMACY RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 09/30/2022 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.

October 13, 2022 12:25:19

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Public Utilities Commission

CCR number

4 CCR 723-6

Rule title

4 CCR 723-6 RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE 1 - eff 09/19/2022

Effective date

09/19/2022

Expiration date

01/17/2023

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-6

PART 6

RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE

TRANSPORTATION NETWORK COMPANY RULES

6700. Applicability of Transportation Network Company Rules.

Rules 6700 through 6724 apply to all transportation network companies (TNCs) as defined by § 40-10.1-602(3), C.R.S. and to all Commission proceedings and operations concerning TNCs including applicants, TNC employees, and TNC drivers.

6701. Definitions.

The following definitions apply throughout rules 6700 through 6724, except where a specific rule or statute provides otherwise.

(a) "Enforcement official" means:

(I) any person appointed or hired by the director, or the director's designee, to perform any function associated with the regulation of transportation network companies; or

(II) as defined by § 42-20-103(2), C.R.S.

(b) "Logged in" means that a driver's credentials have been accepted to connect to a transportation company digital network such that the driver is capable of being matched to a rider [OR a driver has gained access to a transportation company digital network].

(c) "Logged out" means that a driver is disconnected or not connected to a transportation company's digital network.

(d) "Matched" means the point in time when a driver accepts a requested ride through a transportation network company's digital network.

(e) "Permit" means the permit required for the operation of a transportation network company pursuant to Part 6 of Article 10.1 of Title 40, C.R.S.

(f) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or other legal entity and any person acting as or in the capacity of officer, director, manager, employee, member, partner, lessee, trustee, or receiver thereof, whether appointed by a court or otherwise.

(g) “Personal vehicle” means a vehicle that is used by a transportation network company driver in connection with providing services for a transportation network company that meets the vehicle criteria set forth in § 40-10.1-605(1)(h), C.R.S.

(h) “Prearranged ride” means a period of time that begins when a driver accepts a requested ride through a digital network, continues while the driver transports the rider in a personal vehicle, and ends when the rider departs from the personal vehicle.

(i) "School” means a public school that enrolls students in any of the grades of kindergarten through twelfth grade.

(j) “Student” means an individual enrolled in a school.

(k) “Transportation network company” (TNC) means a corporation, partnership, sole proprietorship, or other entity, operating in Colorado, that uses a digital network to connect riders to drivers for the purpose of providing transportation. A transportation network company does not provide taxi service, transportation service arranged through a transportation broker, ridesharing arrangements, as defined in § 39-22-509 (1) (a) (II), C.R.S. or any transportation service over fixed routes at regular intervals. A transportation network company is not deemed to own, control, operate, or manage the personal vehicles used by transportation network company drivers. A transportation network company does not include a political subdivision or other entity exempted from federal income tax under § 115 of the federal "Internal Revenue Code of 1986", as amended.

(l) “Transportation network company driver” or “driver” means an individual who uses his or her personal vehicle to provide transportation network company services for riders matched to the driver through a transportation network company’s digital network. A driver need not be an employee of a transportation network company.

(m) “Transportation network company rider” or “rider” means a passenger in a personal vehicle for whom a driver provides transportation network company services, including:

(I) an individual who uses a transportation network company's online application or digital network to connect with a driver to obtain services in the driver's vehicle for the individual and anyone in the individual's party; or

(II) anyone for whom another individual uses a transportation network company's online application or digital network to connect with a driver to obtain services in the driver's vehicle.

(III) “Rider” includes service animals as defined in § 24-34-803, C.R.S., accompanying any passenger.

(n) “Transportation network company services" or "services" means the provision of transportation by a driver to a rider with whom the driver is matched through a transportation network company. The term does not include services provided using vehicles owned or leased by a political subdivision or other entity exempt from federal income tax under § 115 of the federal "Internal Revenue Code of 1986", as amended. The term includes services provided under a contract between a transportation network company and a political subdivision or other entity exempt from federal income tax under § 115 of the federal “Internal Revenue Code of 1986”, as amended.

* * * *

[indicates omission of unaffected rules]

6724. Transportation for Remuneration from a School or School District

In accordance with § 40-10.1-608(3)(a), C.R.S., the following minimum safety standards are implemented for transportation network companies, personal vehicles, and transportation network company drivers when engaging in services provided under a contract with a school or school district. These minimum safety standards are in addition to all other transportation network company rules present in this section.

(a) Contracts. A transportation network company that, for remuneration from a school or school district, provides services for students to or from a school, school-related activities, or school-sanctioned activities shall enter into a contract with the appropriate school or school district that may include specific provisions for the safety of student passengers, as determined by the school or school district.

(b) End-to-End Visibility. A transportation network company that, for remuneration from a school or school district, provides services for students to or from a school, school-related activities, or school-sanctioned activities shall use a technology-enabled integrated solution that provides end-to-end visibility into the ride for the transportation network company, the student's legal guardian, and the person that scheduled the ride. This solution must allow for Global Positioning System (GPS) monitoring of the ride in real time for safety-related anomalies.

(I) The technology-enabled integrated solution shall be maintained and in good working order, at all times, when performing services provided under contract with a school or school district. Any disruption that occurs during a prearranged ride shall be immediately reported to the school or school district and to the parent or legal guardian of the involved student, as applicable.

(c) Training Requirements. A transportation network company that, for remuneration from a school or school district, provides services for students to or from a school, school-related activities, or school-sanctioned activities shall ensure that each driver providing the service receives training in mandatory reporting requirements, safe driving practices, first aid and Cardiopulmonary Resuscitation (CPR), education on special considerations for transporting students with disabilities, emergency preparedness, and safe pick-up and drop-off procedures.

(I) Any driver training covering the topics outlined in this rule must be approved by the Commission prior to being used to meet this requirement. Commission staff, in consultation with the Colorado Department of Education (CDE) as a subject matter expert, shall be responsible for the review and approval of any related driving training. If a submitted driver training is not approved, a TNC may, within 60 days of Commission staff's notification, file a petition with the Commission for a qualification determination.

(II) Driver training covering the topics outlined in this rule, as offered by schools or school districts, may meet this requirement, if approved by the Commission.

(III) A TNC, or a third party on behalf of a TNC, shall maintain records associated with the training requirements outlined in this rule during the driver's period of service and for six months thereafter.

(IV) The TNC, not the driver, shall pay the cost of providing the training outlined in this rule.

(V) The driver training outlined in this rule shall be completed prior to the driver performing services provided under a contract with a school or school district.

(d) Criminal History Record Checks. If a fingerprint background check for a driver is required, as specified in a contract with a school or school district, the criminal history record check shall be completed pursuant to the procedures set forth in § 40-10.1-110, C.R.S., as supplemented by the Commission's rules, in accordance with § 40-10.1-605(3)(a)(I), C.R.S., or through the State's Volunteer Employee Criminal History Services (VECHS) program.

(I) In addition to the disqualification provisions under § 40-10.1-605(3)(c), C.R.S., a TNC shall not use a driver to provide services for students to or from a school, school-related activities, or school-sanctioned activities for remuneration from a school or school district if the driver has been convicted of or pled guilty or nolo contendere to an offense described in § 22-32-109.8(6.5), C.R.S.

(e) Medical Fitness. A TNC shall not permit a person to act as a driver, when performing services provided under a contract with a school or school district, unless the driver has been medically examined and certified under the provisions of 49 C.F.R. 391.41.

(I) A driver shall keep on their person or in their personal vehicle a copy of their medical certification, as outlined in this rule, in physical or electronic form. This documentation shall be provided to an enforcement official, upon request.

(II) A TNC, or a third party on behalf of a TNC, shall maintain records associated with the driver's medical certification, as outlined in this rule, during the driver's period of service and for six months thereafter. This documentation shall be made available to an enforcement official, upon request.

(III) The medical certification requirements, as outlined in this rule, may substitute the specific provisions of any other rules in this section that reference a driver's self-certification to the TNC that they are physically and mentally fit to drive.

(f) Vehicle Inspections. A TNC shall not permit the use of a personal vehicle, when performing services provided under contract with a school or school district, unless the individual performing the vehicle inspection, as outlined in 6714, is an Automotive Service Excellence (ASE) certified mechanic qualified to perform the inspection and employed by a company authorized to do business in Colorado.

(I) If a personal vehicle is equipped with restraints, ramps, lifts, or other special devices, which are used to facilitate the loading, unloading, or transportation of individuals with disabilities, such equipment shall be in good working order.

(g) Daily Vehicle Inspection Report (DVIR). A TNC shall require a driver, when performing services provided under contract with a school or school district, to prepare a Daily Vehicle Inspection Report (DVIR), in writing, prior to each day's work.

(I) The report shall cover at least the following parts and accessories:

(A) foot brakes and emergency brakes;

(B) steering mechanism;

(C) windshield and wipers;

(D) doors and windows;

(E) head lights, tail lights, stop lights, and turn indicator lights;

(F) front seat adjustment mechanism;

(G) horn;

(H) speedometer;

(I) bumpers;

(J) mufflers and exhaust system;

(K) tires and wheels;

(L) rear view mirrors; and

(M) safety belts.

(II) The driver, on the DVIR, shall:

(A) identify the vehicle and list any defects or deficiencies discovered by or reported to the driver, which would affect the safety of operation of the vehicle or result in its mechanical breakdown;

(B) if no defects or deficiencies are discovered by or reported to the driver, the report shall so indicate; and

(C) in all instances, the driver shall sign, or otherwise certify, the report.

(III) Prior to requiring or permitting a driver to operate a personal vehicle, when performing services provided under contract with a school or school district, any noted defects or deficiencies listed in the DVIR shall be repaired or corrected.

(IV) For every DVIR which identifies any defects or deficiencies, a certification of the repair must be made that indicates the defects or deficiencies have been repaired or that the repair is unnecessary.

(V) The driver shall review and certify the repair has been made, if applicable.

(VI) The TNC shall maintain a DVIR record for three months after the date the DVIR was prepared.

(h) Emergency Procedures. A TNC shall have and enforce emergency procedures, to be followed in the event of a safety or security incident that involves providing services for students to or from a school, school-related activities, or school-sanctioned activities.

(i) Safety Restraints. A TNC shall have and enforce a policy that requires a driver to follow all Colorado laws regarding the proper use of safety belt systems and child restraint systems, when performing services provided under a contract with a school or school district.

(j) Unauthorized Passengers. A TNC shall have and enforce a policy that prohibits drivers from transporting unauthorized passengers, when performing services provided under a contract with a school or school district.

(k) Reporting Requirements. A TNC shall be responsible for the following reporting requirements:

(I) A TNC shall issue a notice of any safety or security incidents that involve providing services for students to or from a school, school-related activities, or school-sanctioned activities. The notice shall be sent to the Commission, to each school or school district with which the TNC has entered into a contract, and to the parent or legal guardian of the involved student, as applicable. The notice shall be issued as soon as possible, but no later than one business day after the safety or security incident occurs.

(II) Prior to February 1 of each calendar year, a TNC shall report to the Commission any safety or security incidents that occurred during the previous calendar year. Such reports shall include, but are not limited to, the TNC's name; the TNC's permit number; the period being reported; the identity of the involved drivers; the dates of the incidents; the names of the applicable schools or school districts; the nature of the safety or security incidents; and any resulting disciplinary actions. The report shall also contain the signature, printed name, and title of the person completing the report; the printed name and title of an officer authorized to file the report; and an oath that the information is accurate. In addition to this report being submitted to the Commission, the report shall also be submitted to each school or school district with which the TNC has entered into a contract. This report is in addition to, not in lieu of, any other reporting requirements outlined in this rule.

(III) Prior to February 1 of each calendar year, a TNC shall report to the Commission information related to any driver background checks that occurred during the previous calendar year. Such reports shall include, but are not limited to, the TNC's name; the TNC's permit number; the period being reported; the identity of the involved drivers; the dates of the administered background checks; what type of background checks are being administered; the results of the administered background checks, including any disqualifications; and the operational status of the involved drivers. The report shall also contain the signature, printed name, and title of the person completing the report; the printed name and title of an officer authorized to file the report; and an oath that the information is accurate.

(l) Authority to Inspect Records. An enforcement official has the authority to interview personnel of a TNC, inspect TNC facilities, and inspect records, as it pertains to performing services provided under a contract with a school or school district, as follows:

(I) immediately for any records related to insurance or safety;

(II) within two days for any records related to a complaint or investigation; or

(III) within ten days for all other records.

(m) Higher Standards. Nothing in these rules prohibits a school or school district from setting higher standards for transporting a student to or from a school, school-related activity, or school-sanctioned activity.

6725. Violations, Civil Enforcement, and Enhancement of Civil Penalties.

Civil penalty assessments are in addition to any other penalties provided by law.

TNCs are subject to §§ 40-7-112, C.R.S. and 40-7-113 through 40-7-116, for violations of Part 6 of Title 40, C.R.S., or these rules, and may be assessed civil penalties for any such violation.

(a) $11,000 per violation.

(I) Failure to obtain and keep in force liability insurance that conforms with the requirements of § 40-10.1-604.

(b) $10,000 per violation.

(I) Violation of paragraph 6723(a).

(II) Violation of paragraph 6723(b).

(c) $2,500 per violation.

(I) Violation of paragraph 6723(i) or (j).

(II) Violation of rule 6708.

(III) Violation of paragraph 6722(a), (c), (d), (e), or (f).

(d) $1,100 per violation.

(I) Violation of rule 6713.

(II) Violation of the periodic inspection requirements of rule 6714.

(III) Violation of rule 6702.

(IV) Violation of rule 6721.

(V) Violation of paragraph 6723(c), (d), (e), (g) or (l).

(e) $500 per violation up to $10,000.

(I) Violation of rule 6710.

(II) Failure to return the completed DVCR as required by subparagraph 6718(c)(III).

(III) Violation of paragraph 6722(g).

(f) $275 per violation.

(I) Violation of rule 6712.

(g) $250 per violation.

(I) Violation of any rule not specified above.

(h) Notwithstanding any provision in these rules to the contrary, the Commission may assess a civil penalty of two times the amount or three times the amount, as provided in § 40-7-113, C.R.S.

(I) The amounts in paragraphs (a) through (g) shall be two times the specified amount if:

(A) the person engaged in prior conduct which resulted in the issuance of a prior civil penalty assessment notice;

(B) the conduct is of the same or narrower character as the conduct that was cited in the prior civil penalty assessment notice;

(C) the conduct occurred within one year after the date of violation in the prior civil penalty assessment notice; and

(D) the conduct occurred after the person's receipt of the prior civil penalty assessment notice.

(II) The amounts in paragraphs (a) through (g) shall be three times the specified amount if:

(A) the person engaged in two or more instances of prior conduct which resulted in the issuance of two or more prior civil penalty assessment notices;

(B) the conduct is of the same or narrower character as the conduct that was cited in the prior civil penalty assessment notices;

(C) the conduct occurred within one year after the two most recent prior instances of conduct cited in the prior civil penalty assessment notices; and

(D) the conduct occurred after the person's receipt of two or more prior civil penalty assessment notices.

(i) The civil penalty assessment notice shall contain the maximum penalty amounts prescribed for the violation; the amount of the penalty surcharge pursuant to § 24-34-108(2); and a separate provision for a reduced penalty of 50 percent of the maximum penalty amount if paid within ten days after the civil penalty assessment notice is tendered.

6726. – 6799. [Reserved].

Decision No. C22-0552

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22R-0359TR

IN THE MATTER OF IMPLEMENTING SENATE BILL 22-144 BY ADOPTING TEMPORARY RULES AMENDING THE COMMISSION'S TRANSPORTATION NETWORK COMPANY RULES, 4 CODE OF COLORADO REGULATIONS 723-6, TO ESTABLISH ADDITIONAL OPERATIONAL AND REPORTING REQUIREMENTS FOR TRANSPORTATION NETWORK COMPANIES PROVIDING STUDENT TRANSPORTATION FOR REMUNERATION UNDER CONTRACT WITH A SCHOOL OR SCHOOL DISTRICT.

COMMISSION DECISION: (1) ADDRESSING APPLICATION FOR REHEARING, REARGUMENT, OR RECONSIDERATION OF DECISION NO. C22-0486; AND (2) ADOPTING REVISED TEMPORARY RULES

Mailed Date: September 19, 2022
Adopted Date: September 14, 2022

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission addresses the Application for Rehearing, Reargument, or Reconsideration (RRR), filed by HopSkipDrive, Inc. (HopSkipDrive) on August 26, 2022, pursuant to § 40-6-114, C.R.S. Through the RRR, HopSkipDrive requests the Commission revise or eliminate certain of the temporary rules adopted through Decision No. C22-0486, issued August 17, 2022, that implement Senate Bill (SB) 22-144. After considering the arguments in the Application for RRR, the Commission finds good cause to grant, in part, and deny, in part, the RRR. The Commission upholds, for the most part, the rule language in the current temporary rules, and affirms the legal and policy considerations supporting adoption of these temporary rules as necessary and appropriate minimum standards to ensure the safety of student transportation provided by Transportation Network Companies (TNC). With full consideration of the arguments and concerns raised by HopSkipDrive in its RRR, the Commission finds good cause to adopt certain limited revisions to the current temporary rules, in order to make reasonable adjustments that respond to HopSkipDrive's practical concerns, while still ensuring minimum safety standards are in place as required by statute. The Commission also makes certain clarifications and adjustments through the order language in this Decision.

2. Accordingly, by this Decision, the Commission adopts revised temporary rules that incorporate the limited revisions to the current temporary rules, in response to the RRR. Consistent with the findings in Decision No. C22-0486 adopting the current temporary rules, the Commission continues to find it imperatively necessary to adopt temporary rules, with immediate effect, to implement the provisions of SB 22-144, thereby protecting the public

health, welfare, and safety. These temporary rules are effective for 210 days from the adopted date, or until the Commission's permanent rules implementing SB 22-144 are effective. *See* § 40-2-108(2), C.R.S. The Commission will, by separate order, open a permanent rulemaking.

3. The revised temporary rules in legislative (strikeout and underline) format, Attachment A, and the temporary rules in final version format, Attachment B are available through the Commission's E-Filing system[1] at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22R-0359TR

B. Background

4. By Decision No. C22-0486, the Commission adopted temporary rules to amend certain of the Commission's Transportation Network Company Rules (TNC Rules), comprising rules 6700 through 6724 of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. The temporary rules revise the definitions in TNC Rule 6701, add new TNC Rule 6724, titled "Transportation for Remuneration from a School or School District," and re-number existing TNC Rule 6724 to TNC Rule 6725. The temporary rules implement the amendments to or addition of §§ 40-10.1-105, 40-10.1-602, 40-10.1-605, 40-10.1-608, and 40-10.1-609, C.R.S., enacted in SB 22-144, effective May 27, 2022.

5. As set forth in Decision No. C22-0486, the temporary rules satisfy the immediate Commission rulemaking obligations enacted in SB 22-144, codified at §§ 40-10.1-605(1)(r), C.R.S. (requiring driver training rules); 40-10.1-608(3)(a), C.R.S. (requiring minimum safety standards rules); and 40-10.1-609(2)(a), C.R.S. (requiring reporting rules). The Commission

[1] From the Electronic Filings (E-Filings) system page (https://www.dora.state.co.us/pls/efi/EFI.homepage), the rules can also be accessed by selecting "Search" and entering this proceeding number, 22R-0359TR, in the "Proceeding Number" box and then selecting "Search."

found that in order to comply with these statutory requirements beginning on September 1, 2022, thereby protecting the public health, welfare, and safety by promulgating minimum safety standards and reporting requirements for subject student transportation service, it was imperatively necessary to adopt temporary rules to take effect on September 1, 2022.

6. As addressed in Decision No. C22-0486, through SB 22-144, the legislature enacted the following rulemaking requirements for the Commission: (1) § 40-10.1-605(1)(r), C.R.S., requires the Commission to coordinate with the Colorado Department of Education (CDE) to promulgate, by September 1, 2022, Commission rules providing for approval of the TNC driver training required by SB 22-144; (2) § 40-10.1-608(3)(a), C.R.S., requires the Commission to coordinate with CDE to promulgate, by September 1, 2022, Commission rules implementing minimum safety standards for TNCs, personal vehicles, and TNC drivers when engaging in services provided under a contract with a school or school district; and (3) § 40-10.1-609(2)(a), C.R.S., requires the Commission to coordinate with CDE to promulgate, by September 1, 2022, Commission rules requiring a TNC to report information related to driver background checks, insurance coverage, and data reporting, consistent with the type of service provide, as it relates to service for students.

C. Application for RRR

7. In its Application for RRR, HopSkipDrive challenges that Commission Staff (Staff) did not sufficiently consult with HopSkipDrive regarding the adopted temporary rules and objects that some of the rules exceed the authority granted to the Commission under SB 22-144. HopSkipDrive requests the Commission reconsider the temporary rules to assure continued, safe TNC services and to prevent disruption of currently contracted school-related transportation.

HopSkipDrive states the 2022-23 school year has already started and that they are currently contracted with dozens of school districts and county child welfare agencies to provide transportation for thousands of students, including those who are at-risk or have special needs. HopSkipDrive requests the Commission keep in mind the unique clientele of their services when considering their positions on the temporary rules. They also note that Colorado is facing a severe bus driver shortage and any disruptions to HopSkipDrive's services would only exacerbate this issue. HopSkipDrive includes specific requests to eliminate or modify certain of the current temporary rules, which are discussed rule-by-rule below.

8. While the RRR was pending, the Commission received public comments echoing the concerns raised in HopSkipDrive's RRR, submitted by Senator Zenzinger, a primary sponsor of SB 22-144, and Greg Jackson, Executive Director of Transportation and Fleet Services for Jefferson County Public Schools.

9. The Commission also received public comments from CDE, with whom Staff coordinated, as required by SB 22-144, in developing the standards adopted in the temporary rules. In its comments, CDE affirms that SB 22-144 requires a Commission rulemaking by September 1, 2022, to adopt new substantive standards to extend beyond the terms in statute. CDE explains, as required by SB 22-144, Staff coordinated with CDE through meetings, on May 23, 2022 and July 25, 2022, to develop the minimum safety standards implemented in the temporary rules. CDE states Staff shared with it documents and recommendations provided by HopSkipDrive and that CDE duly considered HopSkipDrive's documentation and recommendations.

10. As to specific standards, CDE states it coordinated with Staff to develop the minimum safety standards in the temporary rules that require a TNC driver providing subject student transportation service to: comply with medical-certification duties in 49 C.F.R. § 391.41, have their personal vehicle inspected by a qualified mechanic, complete and document a daily inspection of vehicle safety, follow their TNC's formal emergency procedures, follow Colorado law on safety belts and child restraints, and not transport unauthorized passengers while transporting students. CDE states it also coordinated with Staff to develop the minimum safety standard in the temporary rules that requires a TNC to allow appropriate officials to inspect its records and facilities.

11. CDE states it advised Staff on each of these standards and fully stands behind the Commission's decision to include them in the temporary rules. CDE notes these same standards are required of any small-vehicle transportation driven by or on behalf of a school or district, under CDE's rules. CDE notes the temporary rules also match the rules imposed by CDE on TNCs' direct competitors. CDE concludes the temporary rules reflect CDE's and Staff's considered policy judgment as to minimum safety standards. CDE affirms it continues to stand by those rules as currently written.

12. As an initial matter, the Commission addresses the concerns raised by HopSkipDrive regarding the temporary rulemaking process and the substance of the standards adopted in the temporary rules. We reiterate that the Commission is directly executing the legislature's mandate in SB 22-144 to promulgate rules by September 1, 2022, that ensure the immediate safety of the Colorado students transported by a TNC, pursuant to a contract with a school or school district. Given the narrow statutory deadline, the only means to promulgate

these rules was through temporary rules. Further, as discussed in Decision No. C22-0486 and this Decision, the Commission was expressly tasked, in coordination with CDE, to promulgate additional substantive standards, by September 1, 2022, implementing minimum safety standards for TNCs, personal vehicles, and TNC drivers engaging in subject student transportation service. The Commission's efforts are to directly implement the statutory directives in SB 22-144, thereby complying with the legislative mandates and protecting the safety of Colorado students. The Commission will open a permanent rulemaking straightaway, through which stakeholders can offer comments as provided in the Colorado Administrative Procedure Act[2] on the standards to be implemented in rule, pursuant to SB 22-144, and by which the Commission can adopt final permanent rules with due consideration of the input received through the public process.

13. Below we address the requested rule revisions in HopSkipDrive's RRR and provide the Commission's findings and conclusions.

1. Compliance Timeline

14. In Decision No. C22-0486, the Commission acknowledged that, given the nature of some of the new minimum safety standards and the expedited nature of the temporary rulemaking process, it was reasonable to allow subject TNCs a grace period in which to review and understand the new adopted standards, implement new procedures, and ensure their drivers and operations are in full compliance with the temporary rules. We initially stated that TNCs were to fully comply with the standards in the temporary rules as soon as possible, but no later than 45 days after the rules became effective.

[2] §§ 24-4-101 *et seq.*, C.R.S.

15. Considering the delay in implementation due to the RRR filing, as well as the revisions to the temporary rules adopted through this Decision and the concerns related to the disruption of existing student transportation, we now find it appropriate to extend the deadline for strict full compliance with all of the standards in the temporary rules to December 31, 2022.[3] To be clear, the temporary rules take effect immediately upon adoption and subject TNCs are expected to immediately begin diligent efforts to comply with these critical minimum safety standards and update their operations and procedures to ensure safe transportation of Colorado students; however, reasonable allowance will be made in enforcement of these rules, recognizing it will take a period of time for subject TNCs to reach full compliance with all of the standards implemented through the temporary rules.

2. Rule 6724(c)(V): Driver Training Requirements

a. Temporary Rule

16. This rule requires a TNC to ensure that each TNC driver providing subject student transportation service receives training in mandatory reporting requirements, safe driving practices, first aid and Cardiopulmonary Resuscitation (CPR), education on special considerations for transporting students with disabilities, emergency preparedness, and safe pick-up and drop-off procedures. This rule implements § 40-10.1-605(1)(r), C.R.S., which requires a TNC to ensure that each driver providing subject student transportation service receives mandatory training in the same specified areas as carried over to the rule. The statute further requires the Commission to, in coordination with CDE, promulgate rules providing for Commission review and approval of a TNC's proposed training.

[3] Commissioner Gavan dissents from this portion of this Decision. Commissioner Gavan would support a 30-day compliance timeline, but opposes a longer period based on the statutory language enacted in SB 22-144 and concerns for public safety.

b. RRR

17. HopSkipDrive requests the Commission accommodate a longer period for a TNC to ensure that each of its TNC drivers has completed the required training than the current 45-day timeline established in Decision No. C22-0486. HopSkipDrive maintains that the 45-day timeline is extremely tight and may lead to unwanted disruptions in student transportation services if it is not able to put each of its drivers through an approved training within the available time window.

c. Findings and Conclusions

18. The Commission grants, in part, and denies, in part, this request in HopSkipDrive's Application for RRR. We also make a correlating revision to the language in current temporary Rule 6724(c)(I) to streamline the process for a TNC to submit and receive Commission approval for a proposed TNC driver training program.

19. First, to expedite the overall process, we find good cause to add new language to temporary Rule 6724(c)(I) that will expressly delegate to Commission transportation staff the task of reviewing and approving a TNC's proposed training, with instruction for transportation staff to consult with CDE, as a subject matter expert, when reviewing a proposed training program. This will provide a streamlined process that can ensure a TNC's proposed training is properly vetted, without the time-consuming procedures of a formal proceeding before the Commission. As in other cases, a party could appeal a staff determination to the Commission, consistent with the Commission's Rules of Practice and Procedure, 4 CCR 723-1. Through this Decision, the Commission adopts a revised temporary Rule 6724(c)(I) containing this additional language.

20. Second, regarding the timing concern raised in HopSkipDrive's RRR, we recognize that expecting immediate, strict, and full compliance with this rule is impractical, as it will necessarily take HopSkipDrive a period of time to complete the training for each of its drivers. Consistent with the compliance timeline discussion at the outset of this Decision, the Commission will not strictly require immediate, full compliance with this driver training requirement and will make a reasonable allowance through December 31, 2022, for HopSkipDrive to fully complete this training process.[4] However, we reiterate, the Commission expects HopSkipDrive to immediately begin diligent efforts to ensure its drivers receive this essential training before providing subject student transportation service.

3. Rule 6724(d): Criminal History Record Checks

a. Temporary Rule

21. This rule specifies, if a TNC's contract for student transportation with a school or school district requires that the TNC's drivers pass a fingerprint background check, the check must be completed pursuant to the Commission's existing procedures for fingerprint background checks set forth in § 40-10.1-110, C.R.S., as supplemented by the Commission's rules, in accordance with § 40-10.1-605(3)(a)(I), C.R.S. The rule specifies a TNC shall not use a driver to provide subject student transportation service if the driver has been convicted of, or pled guilty or *nolo contendere* to, an offense described in § 22-32-109.8(6.5), C.R.S. This rule implements § 40-10.1-605(10), C.R.S., which prohibits a TNC from using a driver for subject student transportation service if the driver has been convicted of, or pled guilty or *nolo contendere* to, an offense enumerated in § 22-32-109.8(6.5), C.R.S.

[4] Commissioner Gavan dissents from this portion of this Decision. Commissioner Gavan would support a 30-day compliance timeline, but opposes a longer period based on the statutory language enacted in SB 22-144 and concerns for public safety.

b. RRR

22. HopSkipDrive requests the Commission modify this rule to allow a TNC to conduct driver fingerprint background checks through the State's Volunteer Employee Criminal History Services (VECHS) program. HopSkipDrive states this is consistent with its current practice, that this process has worked well, and that this practice is recommended by CDE. HopSkipDrive challenges there is no statutory authorization to support the temporary rules, as written, and that this process would create an undue burden on Staff.

c. Findings and Conclusions

23. The Commission grants, in part, and denies, in part, the request in HopSkipDrive's Application for RRR to modify this requirement in the temporary rules.

24. We find good cause to modify the language in current temporary Rule 6724(d) to allow a TNC to elect to use the VECHS program as an additional means of performing any fingerprint-based driver background checks that may be required by a school or school district. We expect to revisit this issue in the permanent rulemaking where we can further consider which process is the best means of implementing the statutory requirement underlying this rule.

4. Rule 6724(e): Medical Fitness

a. Temporary Rule

25. This rule, developed in coordination with CDE, prohibits a TNC from permitting a person to act as a driver providing subject student transportation service, unless the driver has been medically examined and certified under the provisions of 49 C.F.R. 391.41. The rule implements § 40-10.1-608(3)(a), C.R.S., which requires the Commission to coordinate with CDE to promulgate rules implementing minimum safety standards for TNC drivers, when providing

student transportation under contract with a school or school district. The purpose of this rule is to ensure the medical fitness of TNC drivers who will be transporting students.

b. RRR

26. HopSkipDrive requests the Commission eliminate this rule. HopSkipDrive claims the requirement for medical certification exceeds the scope of SB 22-144 and that formalized medical certification for TNC drivers providing subject student transportation service is unnecessary and more appropriately reserved for drivers of larger vehicles, such as school buses. They claim that requiring formal medical certification would increase costs to both drivers and TNCs and could affect the pricing agreements already in place with school districts, which risks service disruption. HopSkipDrive concedes they would be open to discussing medical certification requirements in the context of a permanent rulemaking.

c. Findings and Conclusions

27. The Commission denies the request in HopSkipDrive's Application for RRR to eliminate this requirement in the temporary rules.

28. Given the mandate in SB 22-144 to promulgate rules for minimum safety standards for TNC drivers providing subject student transportation service, we affirm the conclusion by Staff and CDE that this minimal medical certification is an appropriate, and critical, protection to ensure the safe transportation of students. We have concern that, without this heightened requirement, all that would be required is a "self-certification" by a driver through the TNC's app, meaning no formalized medical certification process is required.[5]

[5] *See* § 40-10.1-605(1)(d), C.R.S.

29. We note the temporary rule, to streamline this process, allows for qualification under U.S. Department of Transportation (USDOT) standards.[6] This is a medical certification standard that has been accepted as necessary by the Commission for many years, including in its current iteration under Rule 6109(a), 4 CCR 723-6, which applies to other types of passenger transportation providers. This form of medical certification identifies important driver health issues, which could impact the ability of a driver to safety transport members of the public. We conclude that the minimal burden of TNC drivers having to pass this formal health screening, in order to provide subject student transportation service, is far outweighed by the public interest benefit of ensuring that TNC drivers who will be transporting students are demonstrably capable of doing so safely.

5. Rule 6724(f): Vehicle Inspections

a. Temporary Rule

30. This rule, developed in coordination with CDE, prohibits a TNC from permitting the use of a personal vehicle to provide subject student transportation service, unless the individual performing the vehicle inspection is an Automotive Service Excellence (ASE) certified mechanic, employed by a company authorized to do business in Colorado. This rule implements § 40-10.1-608(3)(a), C.R.S., which requires the Commission to coordinate with CDE to promulgate rules implementing minimum safety standards for personal vehicles, when providing student transportation under contract with a school or school district. The purpose of this rule is to ensure a meaningful vehicle inspection is performed.

[6] *See* 49 C.F.R. 391.41.

b. RRR

31. HopSkipDrive proposes eliminating the ASE certified mechanic criteria in the temporary rules for personal vehicles that will be used to provide subject student transportation service. They claim that current TNC regulations do not require an ASE certified mechanic for the inspection of personal vehicles and allege there is no evidence that this heightened standard is necessary for TNC drivers engaging in school-related transportation. They also object that implementing this standard will be very costly, maintaining that every single HopSkipDrive vehicle providing subject student transportation service would need a new inspection, which would risk service disruption.

c. Findings and Conclusions

32. The Commission denies the request in HopSkipDrive's Application for RRR to eliminate the ASE certified mechanic criteria in the temporary rules.

33. Given the mandate in SB 22-144 to promulgate rules for minimum safety standards for personal vehicles used to provide subject student transportation service, we affirm the determination by Staff and CDE that this minimal inspection standard is an appropriate and warranted protection, to ensure the safe transportation of students in personal vehicles. We affirm this requirement will confirm that a meaningful inspection is performed by a qualified mechanic, verifying the subject vehicle is in good and safe working condition. Without this enhanced standard to ensure the reliability of the inspection, an inspection could be performed by either a certified mechanic or a person capable of performing the inspection by reason of experience, training, or both.[7] We have concern that this fairly broad criteria does not adequately

[7] *See* Rule 6715(a), 4 CCR 723-6.

ensure that a meaningful inspection is performed by a mechanic capable of identifying underlying hazards.

34. Further, we note ASE certification is already required for the inspection of other passenger transportation providers,[8] whose primary business model does not include the transportation of minor students. Finally, HopSkipDrive represents that all of its drivers providing subject student transportation service would need a new inspection,[9] suggesting this requirement will, in fact, improve the current practice by ensuring that these critical vehicle inspections are performed by mechanics meeting at least the minimum base ASE certification.

6. Rule 6724(g): Daily Vehicle Inspection Report

a. Temporary Rule

35. This rule, developed in coordination with CDE, requires a TNC to require a TNC driver, when providing subject student transportation service, to prepare a Daily Vehicle Inspection Report (DVIR), in writing, prior to each day's work. The rule requires the DVIR to capture numerous safety-related items, including vehicle brakes, lights, and tires. This rule implements § 40-10.1-608(3)(a), C.R.S., which requires the Commission to coordinate with CDE to promulgate rules implementing minimum safety standards for personal vehicles used for student transportation under contract with a school or school district. The purpose of this rule is to require a minimum visual inspection of a personal vehicle before it is put to use transporting students each day.

[8] *See* Rule 6103, 4 CCR 723-6.

[9] HopSkipDrive Application for RRR, p. 8 ("The temporary rule will require every single HopSkipDrive CareDriver to get a new inspection.").

b. RRR

36. HopSkipDrive requests the Commission eliminate this rule. They challenge that SB 22-144 did not specify this as a new standard or requirement and conclude there is no reason to impose this new requirement. They also claim that DVIRs being required to be "in writing" could be problematic within their digital environment. HopSkipDrive cautions this temporary rule, as written, will lead to unnecessary paperwork that does not improve the safety of TNC drivers or passengers.

c. Findings and Conclusions

37. The Commission denies the request in HopSkipDrive's Application for RRR to eliminate this requirement in the temporary rules.

38. Given the mandate in SB 22-144 to promulgate rules for minimum safety standards for personal vehicles used to provide subject student transportation service, we affirm the conclusion by Staff and CDE that this minimal inspection standard is an appropriate and warranted protection, to ensure the safe transportation of students in personal vehicles.

39. We affirm that the burden of a TNC driver having to perform this basic walkaround inspection each day is far outweighed by the public interest benefit of ensuring that any potential hazards are identified before the vehicle is put to use transporting students. Through this basic walkaround inspection, a TNC driver who will provide subject student transportation service that day can identify previously unnoticed issues with the vehicle's tires, lights, safety belts, and other basic mechanics of the vehicle—and thereby mitigate the risk of accidents or other safety-related incidents. We find this especially warranted since the vehicles are, by definition, personal vehicles that could have been used for non-TNC service

transportation during off-duty hours, subjecting the vehicle to additional wear-and-tear and unexpected damage.

40. To respond to HopSkipDrive's concern about the requirement that the DVIR be "in writing," we clarify that this does not necessarily mean paper form and that digital records may also satisfy the requirements of this rule. We anticipate that a TNC could incorporate this requirement into its digital network or provide some other digital format through which drivers can comply with this new standard. We also note there is a sample of what an appropriate DVIR can look like available on the Commission's website and, while it is not currently tailored to the new temporary TNC rule, it could likely comply with minor changes.

41. Finally, we adopt a stricter deadline of 30 days from the effective date of this Decision for a TNC to come into full compliance with the requirements in this rule. We find this is a straightforward and simple safety measure that can reasonably be fully implemented within a shorter timeframe. To assist HopSkipDrive in meeting this deadline, we ask Commission transportation staff to collaborate with HopSkipDrive to address any questions they may have, in order to expedite the rollout of this critical safety measure.

7. Rule 6724(k): Reporting Requirements

a. Temporary Rule

42. This rule requires a TNC to provide notice of any safety or security incidents to the Commission, each contracted school or school district, and the parent or legal guardian of the involved student. The rule also requires annual reporting to the Commission for safety or security incidents and driver background checks. This rule implements §§ 40-10.1-609(1) and (2), C.R.S. The statute expressly requires a TNC to "notify the Commission of any safety or

security incidents that involve providing services for students … [to] send the same notice to each school or school district with which the transportation network company has entered into a contract to provide services to students[.]"

b. RRR

43. HopSkipDrive requests that we modify this rule to limit the reporting requirements for safety and security incidents to only involved school districts and to eliminate personally identifiable information. HopSkipDrive states they have concerns regarding the privacy of drivers and (minor) passengers, along with concerns about the reporting of criminal background check data.

c. Findings and Conclusions

44. The Commission denies this request in HopSkipDrive's Application for RRR.

45. We maintain the current language in this rule is consistent with the statutory requirements set forth in §§ 40-10.1-609(1) and (2), C.R.S. Most significantly, HopSkipDrive's request that the rule only require notice of safety or security incidents to the involved school district conflicts with the express requirement in statute that a TNC notify each school or school district with which the TNC has entered into a contract to provide services to students.

46. To the concerns of personally identifiable information and limits on reporting criminal history data, we clarify the rule is deliberately drafted to implement the statute, while allowing flexibility to a TNC to provide the data needed for the transparency required by the rule, without necessarily requiring disclosure of personally identifiable information or specific criminal history data. We recognize the concerns raised by HopSkipDrive and will review any

reports provided under this rule with understanding that certain information may be reasonably redacted or generalized, in order to avoid these concerns.

47. Finally, we note the temporary rule does not provide a definition for what "safety or security incidents" are, as it pertains to the triggering of the underlying notice requirement. This is an issue we expect to further define in the forthcoming permanent rulemaking, where we can solicit input from stakeholders on the specific parameters for such an incident. We can also use any practical experience gained during the pendency of the temporary rules to better inform what type of incidents have occurred and what reasonably warrants notice under the statute.

D. Conclusion

48. Consistent with the discussion above, the Commission finds it warranted to grant, in limited part, HopSkipDrive's Application for RRR. In response, we therefore make clarifications and modifications through the ordering language in this Decision and, where necessary, adopt minor revisions to the language in the current temporary rules. Consistent with the determinations in Decision No. C22-0486, adopting the current temporary rules, we find that immediate adoption of Commission regulations, through temporary rules, allows the Commission to meet the constricted statutory deadline in SB 22-144 to promulgate rules implementing the statutory changes enacted by the legislature. We find that waiting until rules can be adopted through the requirements for permanent rules set forth in § 24-4-103, C.R.S., would be contrary to the public interest, as such delay would prevent timely implementation of these requirements. For these reasons, and as authorized by § 24-4-103(6)(a), C.R.S., the Commission continues to find that immediate adoption of these temporary rules is imperatively necessary to comply with state law and to provide for the health, safety, and welfare of the

public. The statutory authority for adoption of these rules is set forth in §§ 40-2-108 and 40-10.1-601 through 609, C.R.S., and SB 22-144.

E. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C22-0486, filed on August 26, 2022, by HopSkipDrive, Inc., is granted, in part, and denied, in part, consistent with the discussion above.

2. The rules in final version format available in this proceeding, through the Commission's E-Filings system, are hereby adopted as temporary rules, consistent with the discussion above.

3. The temporary rules shall be effective on the mailed date of this Decision. Such rules shall remain in effect until permanent rules become effective or for 210 days, whichever period is less.

4. Consistent with the discussion above, transportation network companies engaging in subject transportation network company services are expected to immediately begin diligent efforts to update their operations and procedures to comply with the standards in the temporary rules; however, a reasonable allowance will be made in strict enforcement of these rules through December 31, 2022, recognizing it will take a period of time for subject transportation network companies to reach full compliance with all of the standards implemented through the temporary rules (with the exception of the daily vehicle inspection report requirements in Rule 6724(g), for which only a 30-day allowance from the effective date of this Decision is made).

5. The 20-day period provided in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

6. This Decision shall be effective upon its Mailed Date.

F. ADOPTED IN COMMISSIONERS' WEEKLY MEETING September 14, 2022.

(S E A L)

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

ERIC BLANK

JOHN GAVAN

MEGAN M. GILMAN

Commissioners

ATTEST: A TRUE COPY

Doug Dean,
Director

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00569

Opinion of the Attorney General rendered in connection with the rules adopted by the

Public Utilities Commission

on 09/19/2022

4 CCR 723-6

RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE

The above-referenced rules were submitted to this office on 09/19/2022 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.

October 10, 2022 11:39:54

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - State Board of Social Work Examiners

CCR number

4 CCR 726-1

Rule title

4 CCR 726-1 SOCIAL WORK EXAMINERS RULES AND REGULATIONS 1 - eff 09/16/2022

Effective date

09/16/2022

Expiration date

01/14/2023

DEPARTMENT OF REGULATORY AGENCIES

State Board of Social Work Examiners

SOCIAL WORK EXAMINERS RULES AND REGULATIONS

4 CCR 726-1

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

...

1.26 PROVISION OF REPRODUCTIVE HEALTH CARE IN COLORADO

This Rule is promulgated pursuant to Executive Order D 2022 032, and sections 25-6-401 *et seq.*, 12-245-204(4)(a), and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Assisting in the provision reproductive health care" means aiding, abetting or complicity in the provision of reproductive health care.

3. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

4. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.

5. "Licensee" means as defined in section 12-20-102(10), C.R.S.

6. "Provision of reproductive health care," includes but is not limited to, transportation for reproductive health care, referrals for reproductive health care and related services, funding or assisting with payment of reproductive health care, prescribing, shipping or dispensing medications for reproductive health care in accordance with state and federal law, all options and mental health counseling and treatment related to reproductive health care. The "provision of reproductive health care" also includes all treatment contemplated in the definition of section 25-6-402(4), C.R.S.

7. "Regulator" means as defined in section 12-20-102(14), C.R.S.

8. "Reproductive health care" means as defined in section 25-6-402(4), C.R.S.

9. "Registrant" means as defined in section 12-20-102(12), C.R.S.

B. The regulator shall not deny licensure or registration to an applicant or impose disciplinary action against an individual's license or registration based solely on the applicant's, registrant's, or licensee's provision of or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice as defined in Colorado law and did not otherwise violate Colorado law.

C. The regulator shall not deny licensure or registration to an applicant or impose disciplinary action against an individual's license or registration based solely on a civil or criminal judgment against the applicant, registrant, or licensee arising from the provision of, or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

D. The regulator shall not deny licensure or registration to an applicant or impose disciplinary action against an individual's license or registration based solely on a professional disciplinary action or any other sanction against the applicant's, registrant's, or licensee's professional licensure or registration in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant's, registrant's, or licensee's provision of, or assistance in the provision of, reproductive health care and the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

E. The regulator shall not deny licensure or registration to an applicant or impose disciplinary action against an individual's registration, certificate or license based solely on the licensee's or registrant's own personal effort to seek or obtain reproductive health care for themselves. The regulator shall not deny licensure or registration to an applicant or impose disciplinary action against an individual's license or registration based solely on a civil or criminal judgment against the applicant, registrant, or licensee arising from the individual's own personal receipt of reproductive health care in this state or any other state or U.S. territory.

1.27 PROTECTING COLORADO'S WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES

This Rule is promulgated pursuant to Executive Order D 2022 034, and sections 12-245-204(4)(a) and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

3. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.

4. "Licensee" means as defined in section 12-20-102(10), C.R.S.

5. "Regulator" means as defined in section 12-20-102(14), C.R.S.

6. "Registrant" means as defined in section 12-20-102(12), C.R.S.

B. The regulator shall not deny licensure or registration to an applicant or impose disciplinary action against an individual's license or registration based solely on a civil or criminal judgment against the applicant, registrant, or licensee regarding the consumption, possession, cultivation, or processing of marijuana so long as the actions are lawful and consistent with professional conduct and standards of care within Colorado and did not otherwise violate Colorado law.

C. The regulator shall not deny licensure or registration to an applicant or impose disciplinary action against an individual's license or registration based solely on a professional disciplinary action against the applicant's, registrant's, or licensee's professional licensure or registration in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on

the applicant's, registrant's, or licensee's consumption, possession, cultivation, or processing of marijuana and did not otherwise violate Colorado law.

…

Editor's Notes

History

Rule 17(c) eff. 12/01/2009.

Rule 17(d)(4) eff. 02/03/2010.

Purpose and Scope, Rules 12, 15, 19, 20 emer. rules eff. 01/01/2011.

Purpose and Scope, Rules 12, 15, 19, 20 eff. 02/01/2011.

Entire rule emer. rule eff. 12/06/2011.

Entire rule eff. 02/01/2012.

Rule 12 eff. 03/16/2016.

Rule 12 eff. 01/14/2017.

Entire rule eff. 11/14/2020.

Rules 1.6 A, 1.12 C-D, 1.23, Appendix A eff. 05/15/2021.

Rule 1.8 B eff. 11/14/2021.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

On July 6, 2022, Colorado Governor Jared Polis ("Governor") signed Executive Order D 2022 032, "Directing State Agencies to Protecting Access to Reproductive Health Care in Colorado."

On July 14, 2022, Colorado Governor Jared Polis ("Governor") signed Executive Order D 2022 034, "Protecting Colorado's Workforce and Expanding Licensing Opportunities."

Basis

The basis for these rules is Executive Order D 2022 032 and Executive Order D 2022 034.

Through Executive Order D 2022 032, Governor Jared Polis directed all state agencies not to share any information or data, including patient medical records, patient-level data or related billing information, or expend time, money, facilities property, equipment, personnel, or other resources to assist or further any investigation or proceeding initiated in or by another state that seeks to impose criminal or civil liability or professional sanction upon a person for conduct that would be legal in Colorado related to providing, assisting, seeking, or obtaining reproductive health care, unless pursuant to a court order.

Governor Jared Polis also directed the Department of Regulatory Agencies (DORA) to work with all programs and boards of professional licensure operating under its purview to promulgate and issue necessary rules that will ensure that no person shall be subject to a disciplinary action against a professional license or disqualified from professional licensure for providing or assisting in the provision of reproductive health care or as a consequence of any civil or criminal judgment, discipline, or other sanction threatened or imposed under the laws of another state so long as the care as provided is consistent with professional conduct and standards of care within the State of Colorado.

Through Executive Order D 2022 034, Governor Jared Polis directed the Department of Regulatory Agencies to work with all programs and boards of professional licensure operating under its purview to promulgate and issue rules as necessary to ensure that no person shall be subject to disciplinary action against a professional license or disqualified from professional licensure for any civil or criminal judgment, discipline, or other sanction threatened r imposed under the laws of another state as long as the actions are lawful and consistent with professional conduct and standards of care within the State of Colorado.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2022 032 and Executive Order D 2022 034.

As stated in Executive Order D 2022 032, Colorado is experiencing workforce shortage in many professions, and disqualifying people because they were prosecuted for taking actions in other states that are fully legal under Colorado law would hurt our economy and our State.

Colorado is committed to protecting access to reproductive health care. No one who is lawfully providing, assisting, seeking, or obtaining reproductive health care in Colorado should be subject to legal liability or professional sanctions in Colorado or any other state, nor will Colorado cooperate with criminal or civil investigations for actions that are fully legal in Colorado.

As stated in Executive Order D 2022 034, employers are having difficulty recruiting and retaining qualified employees, many of whom need professional licenses. The exclusion of people from the workforce because of marijuana-related activities that are lawful in Colorado, but illegal in other states, hinders our economy and our State.

Justification

As set forth in Executive Order D 2022 032, the need exists to immediately protect access to reproductive health care in Colorado by promulgating rules ensuring no licensee, certificant, or registrant shall be subject to disciplinary action against a professional license or disqualified from professional licensure for providing or assisting in the provision of reproductive health care or as a consequence of any civil or criminal judgment, discipline, or other sanction threatened or imposed under the laws of another state so long as the care provided is lawful and consistent with professional conduct and standards of care within the State of Colorado.

As set forth in Executive Order D 2022 034, the Order ensures that all Coloradans are afforded protections and rights under Colorado law.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Regulator, as defined in section 12-20-102(14), C.R.S., hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2022 032, to protect access to reproductive health care in Colorado. The adoption of emergency rules is imperatively necessary for the preservation of the public health, safety, and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Regulator finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect September 16, 2022, and remain in effect for up to a maximum of 120 days after adoption of these temporary/emergency rules.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00570

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - State Board of Social Work Examiners

on 09/16/2022

4 CCR 726-1

SOCIAL WORK EXAMINERS RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 09/19/2022 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.

October 06, 2022 11:54:51

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Professions and Occupations - Board of Addiction Counselor Examiners

CCR number

4 CCR 744-1

Rule title

4 CCR 744-1 BOARD OF ADDICTION COUNSELOR EXAMINERS RULES 1 - eff 10/04/2022

Effective date

10/04/2022

Expiration date

02/01/2023

DEPARTMENT OF REGULATORY AGENCIES

Board of Addiction Counselor Examiners

BOARD OF ADDICTION COUNSELOR EXAMINERS RULES

4 CCR 744-1

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

…

1.24 PROVISION OF REPRODUCTIVE HEALTH CARE IN COLORADO

This Rule is promulgated pursuant to Executive Order D 2022 032, and sections 25-6-401 *et seq.*, 12-245-204(4)(a), and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Assisting in the provision reproductive health care" means aiding, abetting or complicity in the provision of reproductive health care.

3. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

4. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.

5. "Licensee" means as defined in section 12-20-102(10), C.R.S.

6. "Provision of reproductive health care," includes but is not limited to, transportation for reproductive health care, referrals for reproductive health care and related services, funding or assisting with payment of reproductive health care, prescribing, shipping or dispensing medications for reproductive health care in accordance with state and federal law, all options and mental health counseling and treatment related to reproductive health care. The "provision of reproductive health care" also includes all treatment contemplated in the definition of section 25-6-402(4), C.R.S.

7. "Regulator" means as defined in section 12-20-102(14), C.R.S.

8. "Reproductive health care" means as defined in section 25-6-402(4), C.R.S.

9. "Registrant" means as defined in section 12-20-102(12), C.R.S.

10. "Certificate holder" or "certificant" means as defined in section 12-20-102(3), C.R.S.

B. The regulator shall not deny licensure, certification, or registration to an applicant or impose disciplinary action against an individual's license, certification, or registration based solely on the applicant's, certificant's, registrant's, or licensee's provision of or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice as defined in Colorado law and did not otherwise violate Colorado law.

C. The regulator shall not deny licensure, certification, or registration to an applicant or impose disciplinary action against an individual's license, certification, or registration based solely on a civil or criminal judgment against the applicant, certificant, registrant, or licensee arising from the provision of, or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

D. The regulator shall not deny licensure, certification, or registration to an applicant or impose disciplinary action against an individual's license, certification, or registration based solely on a professional disciplinary action or any other sanction against the applicant's, certificant's, registrant's, or licensee's professional licensure, certification, or registration in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant's, certificant's, registrant's, or licensee's provision of, or assistance in the provision of, reproductive health care and the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

E. The regulator shall not deny licensure, certification, or registration to an applicant or impose disciplinary action against an individual's registration, certificate, or license based solely on the licensee's, certificant's, or registrant's own personal effort to seek or obtain reproductive health care for themselves. The regulator shall not deny licensure, certification, or registration to an applicant or impose disciplinary action against an individual's license, certification, or registration based solely on a civil or criminal judgment against the applicant, certificant, registrant, or licensee arising from the individual's own personal receipt of reproductive health care in this state or any other state or U.S. territory.

1.25 PROTECTING COLORADO'S WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES

This Rule is promulgated pursuant to Executive Order D 2022 034, and sections 12-245-204(4)(a) and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

3. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.

4. "Licensee" means as defined in section 12-20-102(10), C.R.S.

5. "Regulator" means as defined in section 12-20-102(14), C.R.S.

6. "Registrant" means as defined in section 12-20-102(12), C.R.S.

7. "Certificate holder" or "certificant" means as defined in section 12-20-102(3), C.R.S.

B. The regulator shall not deny licensure, certification, or registration to an applicant or impose disciplinary action against an individual's license, certification, or registration based solely on a civil or criminal judgment against the applicant, certificant, registrant, or licensee regarding the consumption, possession, cultivation, or processing of marijuana so long as the actions are lawful and consistent with professional conduct and standards of care within Colorado and did not otherwise violate Colorado law.

C. The regulator shall not deny licensure, certification, or registration to an applicant or impose disciplinary action against an individual's license, certification, or registration based solely on a professional disciplinary action against the applicant's, certificant's, registrant's, or licensee's professional licensure, certification, or registration in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant's, certificant's, registrant's, or licensee's consumption, possession, cultivation, or processing of marijuana and did not otherwise violate Colorado law.

…

Editor's Notes

History

Entire rule emer. rule eff. 01/01/2011.

Entire rule eff. 02/01/2011.

Rules 1-20 (board rules) emer. rules eff. 12/13/2011.

Rules 1-4 (director's rules) emer. rules repealed eff. 12/20/2011.

Rules 1-4 (director's rules) repealed eff. 02/15/2012.

Entire rule eff. 03/16/2012.

Rules 1.1 D, 1.6 A, 1.6 B.2, 1.9 C, 1.13 E, 1.14, 1.15, 1.17, 1.19, 1.20 emer. rules eff. 10/06/2020.

Entire rule eff. 11/30/2020.

Rules 1.6 A, 1.12 D, 1.23, Appendix A eff. 05/30/2021.

Rule 1.8 B eff. 11/14/2021.

Rules 1.9 C, 1.13 E, 1.19, 1.20 D emer. rules eff. 03/01/2022.

Rules 1.9 C, 1.13 E, 1.19, 1.20 D eff. 03/30/2022.

Annotations

Rules 1.12 D, 1.23 E.4 (adopted 10/06/2020) were not extended by Senate Bill 21-152 and therefore expired 05/15/2021.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

On July 6, 2022, Colorado Governor Jared Polis ("Governor") signed Executive Order D 2022 032, "Directing State Agencies to Protecting Access to Reproductive Health Care in Colorado."

On July 14, 2022, Colorado Governor Jared Polis ("Governor") signed Executive Order D 2022 034, "Protecting Colorado's Workforce and Expanding Licensing Opportunities."

Basis

The basis for these rules is Executive Order D 2022 032 and Executive Order D 2022 034.

Through Executive Order D 2022 032, Governor Jared Polis directed all state agencies not to share any information or data, including patient medical records, patient-level data or related billing information, or expend time, money, facilities property, equipment, personnel, or other resources to assist or further any investigation or proceeding initiated in or by another state that seeks to impose criminal or civil liability or professional sanction upon a person for conduct that would be legal in Colorado related to providing, assisting, seeking, or obtaining reproductive health care, unless pursuant to a court order.

Governor Jared Polis also directed the Department of Regulatory Agencies (DORA) to work with all programs and boards of professional licensure operating under its purview to promulgate and issue necessary rules that will ensure that no person shall be subject to a disciplinary action against a professional license or disqualified from professional licensure for providing or assisting in the provision of reproductive health care or as a consequence of any civil or criminal judgment, discipline, or other sanction threatened or imposed under the laws of another state so long as the care as provided is consistent with professional conduct and standards of care within the State of Colorado.

Through Executive Order D 2022 034, Governor Jared Polis directed the Department of Regulatory Agencies to work with all programs and boards of professional licensure operating under its purview to promulgate and issue rules as necessary to ensure that no person shall be subject to disciplinary action against a professional license or disqualified from professional licensure for any civil or criminal judgment, discipline, or other sanction or threat imposed under the laws of another state as long as the actions are lawful and consistent with professional conduct and standards of care within the State of Colorado.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2022 032 and Executive Order D 2022 034.

As stated in Executive Order D 2022 032, Colorado is experiencing workforce shortage in many professions, and disqualifying people because they were prosecuted for taking actions in other states that are fully legal under Colorado law would hurt our economy and our State.

Colorado is committed to protecting access to reproductive health care. No one who is lawfully providing, assisting, seeking, or obtaining reproductive health care in Colorado should be subject to legal liability or professional sanctions in Colorado or any other state, nor will Colorado cooperate with criminal or civil investigations for actions that are fully legal in Colorado.

As stated in Executive Order D 2022 034, employers are having difficulty recruiting and retaining qualified employees, many of whom need professional licenses. The exclusion of people from the workforce because of marijuana-related activities that are lawful in Colorado, but illegal in other states, hinders our economy and our State.

Justification

As set forth in Executive Order D 2022 032, the need exists to immediately protect access to reproductive health care in Colorado by promulgating rules ensuring no licensee, certificant, or registrant shall be subject to disciplinary action against a professional license or disqualified from professional licensure for providing or assisting in the provision of reproductive health care or as a consequence of any civil or criminal judgment, discipline, or other sanction threatened or imposed under the laws of another state so long as the care provided is lawful and consistent with professional conduct and standards of care within the State of Colorado.

As set forth in Executive Order D 2022 034, the Order ensures that all Coloradans are afforded protections and rights under Colorado law.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4),C.R.S., which requires the agency to hold a public hearing "at which it shall afford interested persons an opportunity to submit written a data, views, or arguments and to present the same orally"; and with less than the twenty days' notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that "[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest." Such findings must be made on the record.

The Regulator, as defined in section 12-20-102(14), C.R.S., hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2022 032, to protect access to reproductive health care in Colorado. The adoption of emergency rules is imperatively necessary for the preservation of the public health, safety, and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Regulator finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect October 4, 2022, and remain in effect for up to a maximum of 120 days after adoption of these temporary/emergency rules.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00634

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Board of Addiction Counselor Examiners

on 10/04/2022

4 CCR 744-1

BOARD OF ADDICTION COUNSELOR EXAMINERS RULES

The above-referenced rules were submitted to this office on 10/04/2022 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.

October 13, 2022 13:45:55

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Local Affairs

Agency

Division of Housing

CCR number

8 CCR 1302-15

Rule title

8 CCR 1302-15 MOBILE HOME PARK ACT DISPUTE RESOLUTION & ENFORCEMENT PROGRAM 1 - eff 10/01/2022

Effective date

10/01/2022

Expiration date

01/28/2023

DEPARTMENT OF LOCAL AFFAIRS

Division of Housing

8 CCR 1302-15

Mobile Home Park Act Dispute Resolution & Enforcement Program

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

AUTHORITY

Pursuant to section 38-12-1104(2)(j), C.R.S.

SCOPE AND PURPOSE

To implement and clarify the Mobile Home Park Act, Title 38, Article 12, Part 2 of the Colorado Revised Statutes (C.R.S.), and the Mobile Home Park Act Dispute Resolution And Enforcement Program, Title 38, Article 12, Part 11, C.R.S., pursuant to statutory authority and changes made through House Bill 19-1309 Creating the Mobile Home Park Act Dispute Resolution and Enforcement Program (effective May 23, 2019), HB20-1196 Mobile Home Park Act Updates (effective June 30, 2020), HB20-1201 Mobile Home Park Residents Opportunity to Purchase (effective June 30, 2020), and HB21-1121 Residential Tenancy Procedures (effective June 25, 2021), and HB22-1287 Concerning Protections for Mobile Home Park Residents (effective October 1, 2022)..

RULE 1. DEFINITIONS

In addition to the definitions provided in sections 38-12-201.5 and 38-12-1103, C.R.S., the following definitions apply to enforcement of the Act (Part 2 of Article 12 of Title 38) and the Program (Part 11 of Article 12 of Title 38):

1.1 "Consecutive occupancy" for purposes of section 38-12-204(3), C.R.S., means the consecutive period of time that:

A. The tenant(s) have a rental agreement with the management or landlord for occupancy of the mobile home space;

B. The management or landlord is receiving rent payments for the mobile home space from the tenant(s) or a third party; or

C. The tenant(s) is residing in the mobile home or mobile home space after establishing lawful tenancy by signing a rental agreement pursuant or paying rent pursuant to Rule 1.1(A) or (B) of these rules.

1.2 "Mobile home" as defined in section 38-12-201.5(5), C.R.S., includes a factory-built residential structure (modular home) if it is situated in a mobile home park and has all of the characteristics of a "mobile home" described in section 38-12-201.5(5)(a), C.R.S. (including being built on a permanent chassis); any pre-1976 mobile home; and any manufactured home constructed to the federal standards on or after June 15, 1976.

1.3 "Mobile home park" as defined in section 38-12-201.5(6), C.R.S. –

A. Includes a park that is owned by a government entity, federally recognized tax-exempt charitable organization registered with the Colorado Secretary of State, or a Community Land Trust, if it has all of the characteristics of a “mobile home park” described in section 38-12-201.5(6), C.R.S. (including being operated for the pecuniary benefit of the owner of the parcel of land or the owner’s agents, lessees, or assignees).

B. Does not include a park that rents lots to camper coaches, camper trailers, fifth wheel trailers, motor homes, recreational park trailers, recreational vehicles, travel trailers, or truck campers, unless it also rents space to five (5) or more occupied “mobile homes” as defined in section 38-12-201.5(5), C.R.S., and Rule 1.1 of these rules.

1.4 “Mobile home subdivision” or “manufactured home subdivision” as used in section 38-12-201.5(6), C.R.S., means any parcel of land that is divided into two or more parcels, separate interests, or interests in common, where each parcel or interest is owned by separate owners who own both the mobile home and the land underneath the mobile home, except when the same owner owns two or more subdivided parcels or interests that are collectively used for the continuous accommodation of five (5) or more occupied mobile homes and operated for the pecuniary benefit of the owner of the parcel of land, their agents, lessees, or assignees.

1.4.1 Pursuant to section 38-12-201.5(6), C.R.S., “mobile home park” does not include property zoned by a local government for manufactured home subdivisions or mobile home subdivisions.

1.5 “New mobile home park or manufactured housing community development” as used in section 38-12-215(1)-(2), C.R.S., and “new park” as used in section 38-12-1106(9), C.R.S., do not include:

A. The addition of a “mobile home space(s),” as defined in section 38-12-201.5(7), C.R.S., to an existing mobile home park, as defined in section 38-12-201.5(6), C.R.S., and Rule 1.2 of these rules;

B. The sale, transfer, or conveyance of an existing mobile home park to a new owner(s); nor

C. The merger of two or more existing mobile home parks.

1.6 “Occupied mobile homes” as used in sections 38-12-201.5(6) and 38-12-217(4)(c), C.R.S., and Rules 1.2(B), 1.4, and 2.2(G) of these rules means mobile homes for which the management or landlord:

A. Has a rental agreement with a tenant for the home or lot; or

B. Is receiving rent payments for the home or lot from a tenant or a third party.

1.7 “Rent” as defined in section 38-12-201.5(9), C.R.S., does not include attorney fees.

1.8 “Sufficient evidence” as used in section 38-12-212.5(4), C.R.S., and Rule 3.7 of these rules means a preponderance of the evidence.

1.9 “Vacant mobile homes” as used in Rule 2.2(H) of these rules means mobile homes for which the management or landlord:

A. Does not have a rental agreement with a tenant for the home or lot; and

B. Is not receiving rent payments for the home or lot from a tenant or a third party.

RULE 2. REGISTRATION REQUIREMENTS

2.1 Initial Registration – for new mobile home parks must occur within three (3) months of the availability of five (5) or more mobile home lots for rent within a new park.

2.1.1 The “management” or “landlord,” as defined in section 38-12-201.5(3), C.R.S., who is designated as the primary contact for the mobile home park must file a registration form including full payment on behalf of the park with the Division.

2.2 Required Information – as part of the registration process, a mobile home park must provide the following information in addition to the information required under section 38-12-1106(7), C.R.S.:

A. The physical address, phone number, and website address (if any) of the mobile home park;

B. The business name (if any), business contact name or owner name, mailing address, phone number, and email address (if any) of the owner of the mobile home park;

C. The business name (if any), business contact name or manager name, mailing address, phone number, and email address (if any) of the management of the mobile home park, if different from the owner of the mobile home park;

D. Identify which individual or business – the park owner or management – is designated as the primary contact for the mobile home park;

E. The physical address of each mobile home;

F. Identify which homes a tenant home owner independently owns, and which homes the mobile home park landlord owns;

G. The total number of occupied mobile homes;

H. The total number of vacant mobile homes;

I. If the park is owned by a business entity, whether that business is owned by another business entity (i.e. a parent company);

J. If the park is managed by a business entity, whether that business is owned by another business entity (i.e. a parent company);

K. If the business entity that owns the park is owned by another business entity (i.e. a parent company), the business name, first and last name of a contact person, mailing address, phone number, and email address (if any) for the parent company;

L. If the business entity that manages the park is owned by another business entity (i.e. a parent company), the business name, first and last name of a contact person, mailing address, phone number, and email address (if any) for the parent company;

M. If the park does business under any other name(s), the “Doing Business As (DBA)” name(s) and the Secretary of State Identification Number(s) for that DBA(s) (if any); and

N. The signature of a landlord, as defined in section 38-12-201.5(3), C.R.S., filing for registration or registration renewal for the mobile home park pursuant to section 38-12-1106(4), C.R.S.

2.3 Complete, Accurate, and Truthful Information Required – initial registration and registration renewal forms filed pursuant to section 38-12-1106(4), C.R.S., and Rules 2.1, 2.2, and 2.5 of these rules must be complete, accurate, and truthful and include all attachments and supplementation information. The Division may not accept incomplete forms.

2.4 Registration Delinquency Fee – landlords who do not submit complete, accurate, and truthful information on their initial registration or registration renewal forms may be subject to a registration delinquency fee pursuant to section 38-12-1106(9), C.R.S., and Rule 4.2 of these rules.

2.5 Expiration Date – will be one year from the first day of the following month after registration approval by Division staff, i.e. February 1, 2021 if approved in January of 2020, and must be renewed by that date if still operating as a mobile home park.

2.6 If any of the provided information required in Rules 2.2(A)-(D) of these rules changes between the time of initial registration and renewal, or between registration renewals, the management or landlord is required to notify the Division within thirty (30) calendar days of the change to ensure timely delivery of Program communications.

2.7 Fee - Pursuant to section 38-12-1106(8), C.R.S., for the 2021 calendar year and each calendar year thereafter, an annual registration fee of $24.00 must be paid by the mobile home park for each mobile home independently owned by a tenant home owner on rented land within the park, unless and until such registration fee is adjusted by the Division through a public rulemaking process.

2.7.1 Pursuant to section 38-12-1106(8), C.R.S., the management or landlord may charge a home owner not more than half of the registration fee annually. If the management or landlord attempts to recoup up to 50 percent of this fee from the home owner, the management or landlord must:

A. Notify the home owner in writing at least 60 calendar days before the management or landlord expects the home owner to pay the additional fee, or a longer time period if required by the home owner's lease; and

B. Do so in a clear and consistent manner within one (1) year of paying the registration fee to the Division.

RULE 3. DISPUTE RESOLUTION AND ENFORCEMENT

General Rules

3.1 The following deadlines are in calendar days:

A. Respond to a subpoena within fourteen (14) days pursuant to section 38-12-1105(3)(a), C.R.S.

B. Comply with the requirements of a Notice of Violation within seven (7) days of it becoming a Final Agency Order pursuant to section 38-12-1105(5), C.R.S.

C. A landlord must notify the Division within thirty (30) days of a change in the ownership of the mobile home park pursuant to section 38-12-1106(5), C.R.S.

3.2 Pursuant to section 24-72-204(2)(a)(IX), C.R.S., any records of ongoing administrative investigations conducted by the Division of Housing in furtherance of its statutory authority to protect the public health, welfare, or safety are not subject to a request filed under the Colorado

Open Records Act (CORA) during the pendency of the investigation and dispute resolution process.

Filing a Complaint

3.3 Complaints filed with the Division pursuant to section 38-12-1105(1), C.R.S., must be made in writing on a Division-approved form.

3.3.1 The Division will make reasonable accommodations to Rule 3.3 of these rules when such accommodations may be necessary to afford a person with a disability an equal opportunity to file a complaint with the Division.

3.4 A home owner acting in the capacity of a "complainant" as defined in section 38-12-1103(2), C.R.S., may file a complaint on behalf of their tenant if they are leasing their mobile home and the renter has experienced and communicated an alleged violation of the Act or Program to the home owner, provided that the home owner has made it clear in the complaint that it is being filed in a representative capacity.

3.5 Pursuant to section 38-12-1105(1), C.R.S., two or more home owners may file a complaint against the management or landlord of their mobile home park with the Division alleging similar or related violations of the Act or Program. The management or landlord of a mobile home park may also file a complaint against two or more home owners in the same park with the Division alleging similar or related violations of the Act or Program.

3.6 When filing a complaint with the Division under section 38-12-1105(1), C.R.S., aggrieved parties are not required to allege what specific statutory section(s) of the Act or Program have been violated. The Division will apply the appropriate reference(s) to statute or rule upon review of the information provided in the complaint form and any additional information provided to the Division in connection with the complaint.

Complaint Investigation

3.7 Before imposing a penalty under section 38-12-1105(13), C.R.S., and Rule 4.4 of these rules, the Division will give the management or landlord an opportunity to rebut a presumption of retaliation with sufficient evidence of a nonretaliatory purpose pursuant to section 38-12-212.5(4), C.R.S.

3.7.1 The Division will consider as sufficient evidence of a nonretaliatory purpose, when provided by the management or landlord in response to a retaliation complaint, evidence including, but not limited to:

A. In response to an allegation of retaliatory action pursuant to section 38-12-201.5(12)(i), C.R.S., evidence that the management is asking all tenants on a particular rental agreement to update a specific section(s) of their existing rental agreement, to bring that section(s) of the rental agreement into compliance with federal, state, or local law.

B. In response to an allegation of retaliatory action pursuant to section 38-12-201.5(12)(k), C.R.S., evidence that:

i. The management or landlord reported, to an appropriate government agency, home owner conduct on park premises that materially harmed or threatened real or personal property or the health, safety, or welfare of one or more individuals or animals, including pet animals; or

ii. The information reported to a government agency was, to the management or landlord's knowledge, truthful and relevant to an ongoing investigation by that federal, state, or local government agency.

3.8 Pursuant to section 38-12-214(3)(a), C.R.S., when a home owner files a complaint with the Division within sixty (60) days after receiving a written notice of the management's intent to add or amend any written rule or regulation, alleging that a new or amended park rule or regulation will increase a cost to the home owner in an amount that equals or exceeds ten percent of the home owner's monthly rent obligation:

3.8.1 The Division will notify the management of the complaint and the specific rule(s), regulation(s), or amendment(s) being challenged in the complaint.

3.8.2 The management shall not engage in any action to enforce the challenged rule(s), regulation(s), or amendment(s) against any resident in the park that is the subject of the complaint, unless and until the parties to the complaint reach an agreement or the dispute resolution process concludes as described in section 38-12-214(3)(a), C.R.S.

3.8.3 Once the management receives notice from the Division of a complaint described in Rule 3.8 of these rules, the management shall notify all residents in the park that is the subject of the complaint in writing within fourteen (14) calendar days that the management will not enforce the challenged rule(s), regulation(s), or amendment(s) until further notice.

3.8.4 Unless otherwise prohibited by law, the management may enforce the other new or amended rules or regulations against residents that are not the subject of any complaint(s) described in Rule 3.8 of these rules, after the sixty (60) day written notice period expires.

3.9 A landlord acting in the capacity of a "complainant," as defined in section 38-12-1103(2), C.R.S., may file a complaint with the Division alleging that a home owner does not have and will not sign a written rental agreement in violation of section 38-12-213(2), C.R.S.

3.9.1 When investigating a complaint alleging that a home owner has not signed a written rental agreement in violation of section 38-12-213(2), C.R.S., the Division will consider factors including, but not limited to:

A. Whether the current or previous management provided a written rental agreement to the home owner prior to the rental or occupancy of a mobile home space or lot pursuant to section 38-12-213(1), C.R.S. (effective July 1, 1981);

B. Whether the written rental agreement the current management provided the home owner would make material changes to the terms and conditions of the home owner's existing tenancy as described in subsections 38-12-213(1)(a)-(f), C.R.S. In evaluating what the terms and conditions of an existing tenancy are, the Division may consider the following including, but not limited to:

i. Other written agreements between the management and the home owner;

ii. Verbal agreements between the management and the home owner; and

iii. Past charges to and payments made by the home owner as described in subsections 38-12-213(1)(a) and (f), C.R.S.; and

C. Whether changes to the terms and conditions of the home owner's existing tenancy as described in subsections 38-12-213(1)(a)-(f), C.R.S., are necessary for the rental agreement to comply with current state law and local law.

3.10 Pursuant to 38-12-204(3), C.R.S., effective June 25, 2021, when investigating a complaint alleging that a landlord has increased rent more than one time in any twelve-month period of consecutive occupancy by a tenant, the Division will compare the proposed or effective date of the current rent increase to the effective date of the tenant's last rent increase, even if the effective date of the tenant's last rent increase was before June 25, 2021.

Written Determination and Notice of Violation or Nonviolation

3.11 A landlord found to be in violation of the Act or Program cannot pass on the costs of any remedial action(s), including penalties, fines, or fees, required by the Division or an Administrative Law Judge in a Final Agency Order to any home owner.

3.12 A landlord shall not pass on the costs of any attorney fees, witness fees, or other legal fees incurred by a landlord in responding to a complaint filed pursuant to section 38-12-1105(1), C.R.S., or an investigation by the Division of an alleged violation of the Program (Title 38, Article 12, Part 11, C.R.S.) to any home owner, notwithstanding any language to the contrary in a rental agreement.

3.13 Pursuant to section 38-12-1105(4), C.R.S., the Division may make a written determination and issue a notice of violation or notice of nonviolation against a respondent or complainant who is no longer a landlord nor home owner, provided that:

A. The party was a landlord or home owner, or a landlord or home owner's agent, employee, or representative authorized to act of the landlord or home owner's behalf, at both the time the violation or nonviolation occurred, and the time the complaint was filed; or

B. The party was a landlord or home owner, or a landlord or home owner's agent, employee, or representative authorized to act on the landlord or home owner's behalf, at the time the violation or nonviolation occurred, and such violation or nonviolation falls under section 38-12-217, C.R.S. related to Notice of change of use--notice of sale or closure of park--opportunity for home owners to purchase--procedures—exemptions.

3.14 Pursuant to section 38-12-1105(3)(a)-(b), C.R.S., if a complainant or respondent fails to cooperate with the Division in the course of an investigation by responding to a subpoena issued by the Division, the Division may make a written determination that a violation of Title 38, Article 12, Part 11 has occurred and issue a written notice of violation under section 38-12-1105(4)(a)-(b), C.R.S.

RULE 4. PENALTIES

4.1 The Division will apply the following criteria when assessing a registration delinquency fee pursuant to section 38-12-1106(9), C.R.S., and Rule 4.2 of these rules, a penalty for failure to appropriately post, maintain, or provide copies of the required Home Owner Notice pursuant to section 38-12-1104(2)(d), C.R.S., and Rule 4.3 of these rules, or a penalty for taking any "retaliatory action(s)" against a home owner pursuant to section 38-12-1105(13), C.R.S., and Rule 4.4 of these rules:

A. The severity of the violation;

B. The type of violation;

C. The duration of the violation;

D. Whether the person or entity committed repeated violations;

E. Whether the person or entity submitted complete, accurate, and truthful information to the Division; and

F. Any other mitigating or aggravating circumstances, including the impact on others, cooperation with the investigation process, and the sufficiency of the penalty to deter future violations.

4.2 The Division will scale any registration delinquency fees assessed under section 38-12-1106(9), C.R.S., as follows:

A. First offense, may be fined up to $3,000.

B. Second offense, may be fined up to $4,000.

C. Third or subsequent offense, may be fined up to $5,000.

4.3 The Division will scale any penalties assessed under section 38-12-1104(2)(d), C.R.S., for failing to appropriately post, maintain, or provide copies of the required Home Owner Notice described in section 38-12-1104(2)(a), C.R.S., in the time frame, manner, and locations provided in section 38-12-1104(2)(c), C.R.S., and Rule 5 of these rules, as follows:

A. First offense, may be fined up to $3,000.

B. Second offense, may be fined up to $4,000.

C. Third or subsequent offense, may be fined up to $5,000.

4.4 The Division will scale any penalties assessed under section 38-12-1105(13), C.R.S., for taking any “retaliatory action(s)” against a home owner, as defined in section 38-12-201.5(12), C.R.S., and further clarified in section 38-12-212.5, C.R.S., and Rule 3.7 of these rules, as follows:

A. First offense, may be fined up to $5,000.

B. Second offense, may be fined up to $7,500.

C. Third or subsequent offense, may be fined up to $10,000.

4.5 The Division will scale any penalties assessed under section 38-12-1105(5), C.R.S., for failing to comply with the requirements of a Notice of Violation as follows:

A. First offense, may be fined up to $3,000, per violation per day.

B. Second offense, may be fined up to $4,000, per violation per day.

C. Third or subsequent offense, may be fined up to $5,000, per violation per day.

RULE 5. HOME OWNER NOTICE REQUIREMENTS

5.1 Pursuant to section 38-12-1104(2)(c), C.R.S., the management or landlord must post and maintain the Home Owner Notice described in section 38-12-1104(2)(a), C.R.S., in a clearly

visible and accessible location in every common area of the mobile home park, including every common resident mailbox location; every rent payment dropbox or other rent payment location; and every community hall, recreation hall, and clubhouse. The management or landlord must post this Home Owner Notice in a form authorized by the Division within seven (7) calendar days of receiving the Home Owner Notice from the Division.

5.1.1 If there is no common resident mailbox location, rent payment location, community hall, recreation hall, or clubhouse in the mobile home park, the management or landlord must post and maintain the Home Owner Notice, in a clearly visible and accessible location, at every location of another type of physical common area in the park. The types of common areas where the management or landlord may post and maintain the Home Owner Notice include, but are not limited to:

A. Outside every management office;

B. At every park entrance; or

C. On the front of every dumpster provided for use by residents.

5.1.2 If there are no physical common areas in the park the same as or similar to those described in Rule 5.1 and 5.1.1 of these rules, the management or landlord may post and maintain the Home Owner Notice in a clearly visible and accessible location on the mobile home park's online rent payment portal or other website intended for use by residents.

5.1.3 In addition to complying with Rules 5.1, 5.1.1, and 5.1.2 of these rules, the management or landlord must provide the Home Owner Notice in an accessible format for any home owner with disabilities (e.g. Braille or audio recording) upon request. These formats are available to the management or landlord from the Division by request.

5.2 In addition to complying with Rules 5.1 and 5.3 of these rules, the management or landlord must provide a copy of the required Home Owner Notice to each individual home owner within seven (7) calendar days of receiving the Home Owner Notice from the Division and on an annual basis, by posting it on the door of every home owner's mobile home or mailing it to each home owner at either the address provided in the rental agreement or the most recent mailing address of the home owner on file with the management or landlord.

5.2.1 As an alternative to Rule 5.2, the management or landlord may email a copy of the Home Owner Notice to a home owner(s) only if the home owner has an email address on file with the management or landlord, and the management or landlord regularly uses that email address for other communications with the home owner, like rent payment or maintenance notices.

5.3 In addition to complying with Rules 5.1 and 5.2 of these rules, the management or landlord must also provide a copy of the required Home Owner Notice with each new lease executed with a home owner, and to each home owner after a change in park ownership.

5.4 In mobile home parks where the landlord owns all of the mobile homes and there are no independent mobile home owners with rights and responsibilities under the Act (Part 2 of Article 12 of Title 38) or Program (Part 11 of Article 12 of Title 38), the management or landlord is not required to post, maintain, or provide a copy of the Home Owner Notice pursuant to section 38-12-1104(2)(a), C.R.S., and Rules 5.1 to 5.3 of these rules.

5.4.1 However, once a mobile home park has one or more independently-owned mobile homes, the management or landlord is no longer exempt from the Home Owner Notice

requirements under section 38-12-1104(2)(a), C.R.S., and Rules 5.1 to 5.3 of these rules, and must post and provide a copy of the required Home Owner Notice to each individual home owner within seven (7) calendar days of the change in ownership of the mobile home(s) in compliance with Rules 5.1 to 5.3 of these rules.

RULE 6. MANAGEMENT, LANDLORD, AND HOME OWNER RESPONSIBILITIES

6.1 Trees – Notwithstanding the landlord's responsibility to maintain trees on the premises under section 38-12-212.3(2)(b)(IV), C.R.S., a home owner may enter a voluntary, written agreement with their landlord to take on the responsibility for simple trimming that does not affect the safety of park residents or their property of trees located on the lot they are renting from the park, so long as the home owner was not required to assume this responsibility as a condition of tenancy in the mobile home park in violation of section 38-12-212.3(3), C.R.S.

6.2 Fences – Fences located on the "premises" as defined in section 38-12-201.5(8), C.R.S., are presumed to be the responsibility of the landlord pursuant to section 38-12-212.3(2)(b), C.R.S., unless:

A. The home owner built the fence;

B. The current home owner bought the fence from the previous home owner; or

C. The home owner agreed in their rental agreement to take on the responsibility for maintaining and repairing the fence and paying the cost thereof in their rental agreement, so long as the home owner was not required to assume this responsibility as a condition of tenancy in the mobile home park in violation of section 38-12-212.3(3), C.R.S.

6.3 Mobile Home Sales and Transfers – When the owner of a mobile home located in a mobile home park notifies the management or landlord of the park (whether as required by management or as a courtesy) that the owner intends to sell or transfer their mobile home in place, and the management or landlord seeks to require compliance with park rules and regulations at the time of sale or transfer of the mobile home to a new owner pursuant to section 38-12-214(2), C.R.S., the management shall promptly provide the seller and any prospective buyer(s) of the mobile home a written list of the item(s) for which the management is requiring corrections at the time of sale or transfer. The written list shall include:

A. Any and all items the management knows, or reasonably should have known, would require correction at the time of sale or transfer of the mobile home;

B. A detailed description of each item; and

C. A citation to the specific park rule or regulation that applies to each item on the list. Any park rule or regulation cited must be reasonable and enforceable under section 38-12-214(1)-(4), C.R.S.

6.4 Limitations on Charges for Noncompliance – The following rules apply when the management intends to enter a mobile home space to ensure compliance with applicable codes, statutes, ordinances, and administrative rules; the rental agreement; or the rules and regulations of the park pursuant to section 38-12-222(2), C.R.S.

6.4.1 Before entering the mobile home space, the management shall first provide the home owner with a reasonable time to cure the alleged noncompliance and an estimate of the cost if the landlord cures the noncompliance instead (when an estimate is reasonably available and a charge would be permitted by the rental agreement).

6.4.2 If the home owner fails to cure or contest the noncompliance (ex. by communicating with the management or filing a complaint with the Program) within a reasonable amount of time, the management shall make a reasonable effort to notify the home owner of the management's intention to enter the mobile home space and cure the noncompliance at least forty-eight (48) hours before entry.

6.4.3 All of the following conditions must be met for the management to charge a home owner for the cost of ensuring compliance with applicable codes, statutes, ordinances, and administrative rules; the rental agreement; or the rules and regulations of the park:

A. The potential for a charge must be adequately disclosed in writing in the rental agreement pursuant to section 38-12-213(1)(f), C.R.S.;

B. The amount of the charge or the charge itself cannot be a prohibited "entry fee," as defined in section 38-12-201.5(1), C.R.S., and prohibited by section 38-12-209(1), C.R.S.; and

C. If the charge is for the cost of ensuring compliance with a rule or regulation of the park, the rule or regulation must be reasonable and enforceable under section 38-12-214(1)-(4), C.R.S.

6.5 Limitations on Pet Deposits – Pursuant to sections 38-12-201.5(1), 38-12-209(1), 38-12-207(1) and -207(3), 38-12-102(2) (effective until October 1, 2021), 38-12-102(6) (effective October 1, 2021), and 38-12-103(1), C.R.S.:

6.5.1 The management or landlord cannot charge or collect a nonrefundable pet deposit from a home owner or prospective home owner.

6.5.2 The management or landlord may only charge or collect a refundable pet deposit from a home owner or prospective home owner, if the total combined amount of the security deposit and refundable pet deposit is no greater than one month's rent.

6.6 Pet Rent Definition – Pursuant to sections 38-12-201.5(1) and 38-12-209(1), C.R.S., any recurring charges to home owners with pets must either be part of the "rent," as defined in section 38-12-201.5(9), C.R.S., or fall under an exception to the prohibition on "entry fee[s]" under section 38-12-201.5(1)(c) or (e), C.R.S.

6.6.1 If the management or landlord charges or collects pet rent as part of a home owner's rent, instead of as an exception to the prohibition on entry fees:

A. The amount or application of pet rent must not be discriminatory nor retaliatory in nature; and

B. All statutes and rules applicable to rent, including, but not limited to sections 38-12-213(1)(a) (on rental agreements), 38-12-204(2) (on notice of rent increases), and 38-12-204(3) (limiting the frequency of rent increases), C.R.S., apply to pet rent as part of the tenant's total rent.

RULE 7. WATER USAGE, BILLING, AND LEAKS

7.1 The requirements in section 38-12-212.4(1), C.R.S., apply to all types of water usage, including sewer and storm water usage.

7.2 The management or landlord may change the method of utility billing by providing sixty (60) calendar days written notice to the home owners, provided that the new method of billing is

reasonable, equitable, and consistent; does not violate any of the provisions in section 38-12-212.4, C.R.S.; and is not in violation of the home owner's rental agreement established pursuant to section 38-12-213, C.R.S.

7.3 Only in cases where the management purchases water from a provider and charges home owners for water usage in the park, but the management does not get the master meter charge(s) from the provider until after the management calculates each home owner's monthly water bill, the management may provide the following information to each home owner to meet the billing disclosure requirements under section 38-12-212.4(2), C.R.S.:

A. The amount owed by the home owner for the current month;

B. The total amount owed by all the residents in the mobile home park for the current month; and

C. The total amount paid by the management to the provider for the previous month.

7.4 In the event that any water usage, billing, or payment information required under section 38-12-212.4(2), C.R.S., and Rule 7.3 of these rules is not available to the management due solely to circumstances beyond the management's control, the management shall take reasonable steps to comply with section 38-12-212.4(2), C.R.S., and Rule 7.3 of these rules, and to provide accurate disclosures to home owner as soon as reasonably possible and in a manner that meets the intent of section 38-12-212.4, C.R.S.

RULE 8. PARK CHANGE OF USE, SALES, OR CLOSURES AND HOME OWNER OPPORTUNITY TO PURCHASE

8.1 Notice of Intent to Sell –

8.1.1 For purposes of giving notice pursuant to section 38-12-217(1)(a), C.R.S., a mobile home park owner demonstrates intent to sell the park when the park owner takes actions including, but not limited to:

A. Signing a contract with a real estate broker or brokerage firm to list the park for sale, sell, or transfer the park;

B. Signing a letter of intent, option to sell or buy, or other conditional written agreement with a potential buyer for the sale or transfer of the park, which includes the estimated price, terms, and conditions of the proposed sale or transfer, even if such price, terms, or conditions are subject to change;

C. Signing a contract with a potential buyer's real estate broker or brokerage firm related to the potential sale or transfer of the park;

D. Accepting an earnest money promissory note or deposit from a potential buyer;

E. Responding to a potential buyer's due diligence request list; or

F. Providing a signed property disclosure form to a potential buyer.

8.1.2 The landlord must mail the notice required under section 38-12-217(1)(a), C.R.S., by certified mail within fourteen (14) calendar days of the park owner's earliest demonstration of intent to sell the park, which includes, but is not limited to, the actions listed in Rule 8.1.1 of these rules.

8.1.3 A landlord is not required to send a second or subsequent notice of intent to sell under section 38-12-217(1)(a), C.R.S., for each demonstration of intent to sell listed in, or similar to, the actions in Rule 8.1.1 of these rule if:

A. The new demonstration of intent is within sixty (60) calendar days of the certified mailing date of the most recent notice provided under section 38-12-217(1)(a), C.R.S.; and

B. There have not been any material changes to the price, terms, and conditions of an acceptable offer the landlord has received to sell the mobile home park or for which the landlord intends to sell the park, which were included in the most recent notice provided under section 38-12-217(1)(a), C.R.S.

8.2 New Triggering Events – Pursuant to section 38-12-217(9), C.R.S., any material change(s) to the price, terms, and conditions of an acceptable offer the landlord has received to sell the mobile home park or for which the landlord intends to sell the park is considered a new triggering event, requiring notice under sections 38-12-217(1) or (2), C.R.S., and creating a new ninety-day opportunity to purchase.

8.3 Listing – For purposes of section 38-12-217(2)(a)(I), C.R.S., the landlord lists the park for sale when the owner of the mobile home park or their agent, employee, broker, or representative authorized to act on the owner's behalf offers the property for sale.

8.4 Contents of Park Sale Notice – Pursuant to section 38-12-217(3), C.R.S., the "price, terms, and conditions" to sell the park include, but are not limited to:

A. Any money or compensation the seller or seller's agent has paid or intends to pay to the potential buyer or buyer's agent, including due diligence costs or brokerage fees;

B. Whether or not the seller has signed a conditional contract for the sale of the park with a potential buyer, or intends to do so within the next ninety (90) calendar days;

C. Whether or not the proposed sale includes more than one mobile home park or piece of real estate (for example, is part of a portfolio or bundled sale);

D. Any other terms or conditions which, if not met, would be sufficient grounds, in the seller's discretion, for rejecting an offer from residents, their agents, or their assignees; and

E. For sales that include more than one mobile home park or piece of real estate, like portfolio or bundled sales:

i. The name and property description of any and all other mobile home parks or real estate included in the proposed sale;

ii. The total price, terms, and conditions of an acceptable offer to sell all of the properties located in the state of Colorado; and

iii. The price, terms, and conditions of an acceptable offer to sell each of the mobile home parks located in the state of Colorado that are included in the proposed sale.

8.5 Evidence of Majority Approval – When providing reasonable evidence of majority home owner approval pursuant to section 38-12-217(4)(c), C.R.S., a group or association of home owners or their assignees may submit a written statement to the landlord that the group, association, or their assignees has written evidence that at least fifty-one percent (51%) of the owners of occupied

homes have approved the group, association, or their assignee's offer to purchase. To be considered reasonable evidence, this written statement must be signed by an attorney, government official, or another mutually acceptable third party, who attests to the truthfulness of the group, association, or their assignees' claim.

8.6 Landlord's Duty to Consider Offer – Pursuant to section 38-12-217(5)(b), C.R.S.:

8.6.1 A landlord that receives an offer(s) to purchase a mobile home park from a group or association of home owners or their assignees must provide a written response to each offer within seven (7) calendar days. The landlord's response to the group or association of home owners or their assignees shall include:

A. Whether the landlord will accept, will consider, or will not accept the most recent offer submitted by the group or association of home owners or their assignees; and

B. The current price, terms, or conditions of an acceptable offer the landlord has received to sell the mobile home park, or for which the landlord intends to sell the park, if such price, terms, or conditions have changed since the landlord gave notice to the home owners pursuant to sections 38-12-217(1) or (2), C.R.S.

8.6.2 A landlord shall not require a group or association of home owners or their assignees to meet demands related to the price, terms, nor conditions of the sale of the park that are not universal, but instead specific to and prohibitive of a group or association of home owners or their assignees making a successful offer to purchase the park.

8.7 Affidavit of Compliance – Pursuant to section 38-12-217(11), C.R.S., the landlord:

A. Shall not file the affidavit of compliance before the home owners' opportunity to purchase terminates or expires pursuant to sections 38-12-217(1)(c) or (6)(a), C.R.S.; and

B. Shall file the affidavit of compliance on a Division-approved form within thirty (30) calendar days after the sale or transfer of the park is final.

8.8 Exemption Form – If a park sale or transfer qualifies for an exemption from the notice and opportunity to purchase requirements pursuant to sections 38-12-217(12) and (13), C.R.S., the landlord shall provide evidence of compliance by filing a Division-approved exemption form within thirty (30) calendar days after the closing date of the exempt sale or transfer with:

A. The municipality or, if the park is in an unincorporated area, the county, within which the park is located; and

B. The Division of Housing in the Department of Local Affairs.

8.9 Sale and Transfer Records – Pursuant to sections 38-12-1105(1) and (3), C.R.S., a landlord who is selling or transferring a mobile home park that is located in Colorado shall maintain any and all records related to compliance with section 38-12-217, C.R.S., for a minimum of thirty-six (36) months after any sale or transfer of a mobile home park is complete, including but not limited to:

A. Records related to Rules 8.1, 8.6, 8.7 and 8.8 of these rules;

B. Notices mailed or given to home owners pursuant to sections 28-12-217(1) and (2), C.R.S.;

C. Postings pursuant to section 38-12-217(1)(c), C.R.S., including any forms for home owners to provide notice that they do not wish to participate in efforts to purchase the community;

D. Signed writings provided by home owners to the park owner expressing no interest in purchasing the park pursuant to section 38-12-217(1)(c), C.R.S.;

E. Offers to purchase and proposed purchase and sale agreements submitted to the landlord by a group or association of home owners or their assignees pursuant to section 38-12-217(4), C.R.S.;

F. Requests for information from a group or association of home owners or their assignees participating in the opportunity to purchase and the landlord's response(s) to these requests for information pursuant to section 38-12-217(5)(a), C.R.S.; and

G. Offers to purchase and any conditional and unconditional purchase and sale agreements submitted by the successful purchaser of the mobile home park.

8.10 Enforcement – The Division may impose a fine on the seller of a mobile home park pursuant section 38-12-217(15)(b)(I), C.R.S., or file a civil action for injunctive or other relief pursuant to section 38-12-217(15)(b)(II), C.R.S., where an action accrued or a complaint was filed prior to October 1, 2022.

8.11 Tolling and Assignment – A home owner(s) may exercise their rights under the following subsections of section 38-12-217, C.R.S., regardless of when the landlord provided notice of the landlord's intent to sell the mobile home park pursuant to section 38-12-217(1)(a), C.R.S. If a triggering event occurred requiring notice under section 38-12-217(1)(a)(II), C.R.S., but the landlord failed to provide notice as required by section 38-12-217(2)(a), C.R.S., a home owner(s) may also exercise their rights under the following subsections:

A. Tolling of the time periods described in subsections 38-12-217(4)(a) and (6)(b), C.R.S., pursuant to section 38-12-217(7)(b)(I), C.R.S.; and

B. Assignment of their rights to a public entity pursuant to section 38-12-217(8)(b)-(f), C.R.S.

RESOLUTION CONCERNING ADOPTION OF EMERGENCY AMENDMENTS TO DIVISION OF HOUSING RULES 8.10 and 8.11(A)-(B), 8 C.C.R. 1302-15

WHEREAS, on May 16, 2022, the Colorado General Assembly passed House Bill (HB) 22-1287, Protections for Mobile Home Park Residents, concerning protections for mobile home park residents, and, in connection therewith, making an appropriation;

WHEREAS, on May 26, 2022, Governor Jared S. Polis signed HB 22-1287;

WHEREAS, HB 22-1287 takes effect at 12:01 a.m. on October 1, 2022;

WHEREAS, section 16 of HB 22-1287 in part amended and clarified the remedies for the Division where a violation of section 38-12-217, C.R.S., occurs or allegedly occurs; amended the procedure where a group or association of home owners file a complaint alleging a violation of section 38-12-217, C.R.S., or assign their rights to a public entity; and extended the opportunity to purchase time period from ninety days to one hundred and twenty days;

WHEREAS, a temporary or emergency rule may be adopted under section 24-4-103(6)(a), C.R.S., if an agency finds that immediate adoption of a rule is imperatively necessary and that compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest;

WHEREAS, the immediate adoption of the emergency amendments to Rules 8.10 *Enforcement* and 8.11(A)-(B) *Tolling and Assignment* under Rule 8 are imperatively necessary to comply with newly enacted law in order to clarify that, in the event a mobile home park owner has sent notice of a triggering event, including but not limited to the owner's intent to sell and/or sign a contract, the procedures and requirements must conform to the provisions of HB 12-1287, so compliance with the procedural requirements of section 24-4-103, C.R.S., would be contrary to public interest because the new law is effective October 1, 2022;

WHEREAS, the proposed emergency rule amendment is necessary for the Division of Housing and Mobile Home Park Oversight Program to carry out the purposes of HB 22-1287 and the modifications therein by the effective date for section 16 of HB 22-1287, and immediate adoption of the emergency amendments to Rules 8.10 and 8.11(A)-(B) will allow home owners and park owners to understand and comply with law under section 38-12-217, C.R.S.; and,

WHEREAS, a permanent change could be achieved no sooner than November 2022, given the process for notice and promulgation of the rules pursuant to the

provisions of section 24-4-103, C.R.S., and the inclusion of stakeholder feedback in the previous months.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Director of the Division of Housing, based on the facts recited above, as follows:

The immediate adoption of the emergency rule amendments for Division of Housing Rules 8.10 and 8.11(A)-(B), effective October 1, 2022, is imperatively necessary to implement the Mobile Home Park Act and the Dispute Resolution and Enforcement Program, and to ensure the regulated community has clear guidance regarding the changes in HB 22-1287, and the delay resulting from strict compliance with the requirements of section 24-4-103, C.R.S., would be contrary to the public interest.

These emergency rule amendments for Division of Housing Rules 8.10 and 8.11(A)-(B) will remain in effect up to one hundred and twenty days from the date of the adoption of these emergency rules, per section 24-4-103(6)(a), C.R.S., unless superseded and repealed through permanent rulemaking prior to the expiration of that period of time.

RESOLVED AND ENTERED this 7th day of September, 2022.

DIVISION OF HOUSING

By: _____
Alison George, Director

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00629

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Housing

on 09/30/2022

8 CCR 1302-15

MOBILE HOME PARK ACT DISPUTE RESOLUTION & ENFORCEMENT PROGRAM

The above-referenced rules were submitted to this office on 09/30/2022 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.

October 13, 2022 11:53:13

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Early Childhood

Agency

Colorado Child Care Assistance Program

CCR number

8 CCR 1403-1

Rule title

8 CCR 1403-1 Colorado Child Care Assistance Program 1 - eff 10/01/2022

Effective date

10/01/2022

Expiration date

01/27/2023

DEPARTMENT OF EARLY CHILDHOOD

COLORADO CHILD CARE ASSISTANCE PROGRAM

8 CCR 1403-1

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

3.100 COLORADO CHILD CARE ASSISTANCE PROGRAM (CCCAP)

3.101 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 3.105.1.H.

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 Colorado Department of Early Childhood (Department) determines the county CCCAP plan is not in compliance with these rules and/or provisions of statute, the Department will first work with the county to address the concerns. If a resolution cannot be agreed upon, the Department reserves the right to deny the county CCCAP plan. If the 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.

3.102 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.

C. The CCCAP allocation formula shall be applied uniformly across all counties and must be based on the relative cost of the program. The allocation formula must take into consideration:

1. The eligible population for each county using the federal poverty level (FPL) as outlined in section 3.105.1.H; and,

2. Reimbursement rates set by the state as informed by the market rates study.

3. If not already taken into consideration in the initial allocation formula as stated in section 3.102.C.1 and 2, the following factors must also be included:

   a. A measure of cost of living, which may include market rates; and,

   b. The cost of high quality child care programs.

4. If not already taken into consideration in the initial allocation formula, the formula may include the following factors:

   a. A statewide adjustment to the allocation formula for geographic differences within counties or regional differences among counties in order to improve access.

   b. A statewide adjustment to the allocation formula for drastic economic changes that may impact the ability of CCCAP to serve low-income families.

   c. A statewide adjustment to mitigate significant decreases in county allocation amounts due to changes in the factors considered in the initial allocation formula.

3.103 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 services, or the Child Care Provider’s right to payment for services provided and 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 and/or the redetermination form.

“Application” is a State-approved form that may include, but is not limited to:

A. An original state-prescribed low-income 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. At the option of the county, any application for another public assistance program.

“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” means all of the following:

A. The state-prescribed, signed low-income child care application form completed by the adult caretaker or teen parent or his/her authorized representative, which includes appeal rights; or, any application from another public assistance program. 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 required verification supporting the information declared on the application form; and,

C. As a county option, an orientation or interview for new applicants may be required. Counties shall ensure that, if the county chooses to incorporate an orientation or interview into their application process, the orientation or interview process is not burdensome to families by allowing a family to complete the process via phone or electronic tools or by offering extended office hours to hold the orientation or interview.

“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). Primary home and automobile of the primary caretakers are excluded.

“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.

“Attendance tracking system (ATS)” means the system 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.

“Authorized care” means the amount and length of time a child is eligible to receive care 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 are eligible to 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 do not include absences, holidays, registration fees, activity fees, and/or transportation fees.

“Basic education” is a Low-Income Child Care eligible activity where an adult caretaker or teen parent is in high school education programs working towards a high school diploma or high school equivalency; Adult Basic Education (ABE); and/or, English as a Second Language (ESL).

“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.

“Child care authorization notice” means a state prescribed form which authorizes the purchase of child care and includes the children authorized for care. The authorization notice will be given to the adult caretaker or teen parent and applicable child care provider(s) in order to 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 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” or “child care technician” 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 a child care component within CCCAP where 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 61344-61416 and 63 FR 41658. (No later amendments or editions are incorporated after 1998. Copies of this material may be inspected by contacting the Colorado Department of Early Childhood (CDEC), 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 the Department which provides child care subsidies to households in the following programs: Low-Income, Colorado Works, Protective Services, and Child Welfare. CDEC is responsible for the oversight and coordination of all child care funds and services.

“Colorado Works Program” 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 Child Care” means a child care component within CCCAP for Colorado Works households with an adult caretaker or teen parent who are determined work eligible per Colorado Works Program Rules (9 CCR 2503-6) and have been referred for child care by the county Colorado Works worker.

“Colorado Works households” means members of the same Colorado Works 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 court, law enforcement agency, or entity authorized to investigate abuse or neglect to be supported by a preponderance of the evidence.

“Consumer Education” means information provided to adult caretaker(s) or teen parent(s), child care providers, and the general public that will promote informed child care choices; information on access to other programs in which families may be eligible; and, information on developmental screenings.

“Cooperation with Child Support Services (county option)” means applying for Child Support Services for all children who are in need of care and have an absent parent, within thirty (30) calendar-days of the completion and approval of the CCCAP application and maintaining compliance with Child Support Services case 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.

“Department” means the Colorado Department of Early Childhood.

“Disaster” means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural cause or cause of human origin, including but not limited to fire, flood, earthquake, wind, storm, wave action, hazardous substance incident, oil spill, or other water contamination requiring emergency action to avert danger or damage, volcanic activity, epidemic, air pollution, blight, drought, infestation, explosion, civil disturbance, hostile military or paramilitary action, or a condition of riot, insurrection, or invasion existing in the state or in any county, city, town, or district in the state.

“Discovery” means that a pertinent fact related to CCCAP eligibility was found to exist.

“Drastic economic change” means an economic impact on the county or state that has a strong or far-reaching effect on the Child Care Assistance Program.

“Drop in day” means a county-determined number of days that will generate an approval and payment for care utilized outside of the standard authorization.

“Early care and education provider” means a school district or child care provider pursuant to 26.5-4-103(4), 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; self-employment; training; basic education; or, post-secondary education. For Teen parents, training and teen parent education are approved activities for all counties.

“Eligible child” means a child, from birth to 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.

“Emergency” means an unexpected event that places life or property in danger and requires an immediate response through the use of state and community resources and procedures.

“Employment” is a Low-Income Child Care eligible activity where the adult caretaker or teen parent is holding a part-time or full-time job for which wages, salary, in-kind income or commissions are received.

“Enrollment freeze” or “freeze” means when a county ceases enrollment of individuals due to being overspent or being projected to overspend.

“Entry income eligibility level” means the level set by the state department for each county above which an adult caretaker(s) or teen parent(s) is not eligible at original application.

“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 eighty-five percent (85%) of the Colorado state median income as outlined in section 3.105.1(H).

“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.

“Federal poverty level” (FPL) or “federal poverty guidelines” (FPG) refers to figures set by the Department annually. These figures, based on gross monthly income levels for the corresponding household size, are included in the table in section 3.105.1.H.2.

“Fingerprint-based criminal background check” means a complete set of fingerprints for the qualified exempt provider and anyone eighteen (18) years of age and older residing in the qualified exempt provider’s home; or, for the qualified exempt provider if care is provided in the child’s home, taken by a qualified law enforcement agency, and submitted to the Colorado Department of Early Childhood, Division of Early Learning Access and Quality, 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 unless noted otherwise in the county’s plan, per section 3.115.1.

“Fiscal Agreement” means a state-approved agreement between counties or their designees and child care provider(s), which defines the maximum rate possible based on county ceiling rates and quality rating tiers, defines provider rights and responsibilities, and defines responsibilities of the counties or their designees to the child care provider(s). The fully executed fiscal agreement includes noticing of county ceiling rates as well as a copy of the provider’s CCCAP reimbursement rates. Fiscal agreements must be:

A. One (1) year in length for qualified exempt child care providers

B. Three (3) years in length for licensed child care providers

“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 the state department or 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 Department's quality rating and improvement system, is accredited by a Department-approved accrediting body, or is an Early Head Start or Head Start program that meets federal standards.

“Hold slots” means a county determined number of days when payment is allowed for unused care that is in addition to absences, holidays, and school breaks. Hold slots are intended to hold a child's slot with a provider due to extended absence from care.

“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) and participating in a Low-Income Child Care eligible activity. 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

“Inconsistent” means the information provided is unclear or conflicting or the county has reason to believe the facts presented are contrary to the information provided by the adult caretaker(s) or teen parent(s).

“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” is a Low-Income Child Care eligible activity where an adult caretaker or a teen parent is actively seeking employment.

“Low-Income Program” or “Low-Income Child Care” means a child care component within CCCAP for households with an adult caretaker(s) or teen parent(s) who is/are in a low-income eligible activity, income eligible, and not receiving Colorado Works, Child Welfare, or Protective Services child care.

“Manual Claim” means the child care provider’s process of invoicing the county using the state-prescribed manual claim form for reimbursements that were not processed automatically through CHATS including but not limited to:

A. Care that was authorized and provided;

B. Reimbursable registration fees;

C. Reimbursable activity fees;

D. Reimbursable transportation fees;

E. Reimbursable hold slots;

F. Reimbursable drop in days; and,

G. Reimbursable absence payments

“Maternity and/or paternity leave” is a temporary period of absence from the adult caretaker or teen parent’s Low-Income Child Care eligible activity that is granted to expectant or new mothers and/or fathers for up to twelve (12) weeks for the birth and care of a newborn child.

“Medical leave” means a temporary period of absence from the adult caretaker or teen parent’s Low-Income Child Care eligible activity that is granted due to a personal illness or injury, or to care for a family member for up to twelve (12) weeks per instance.

“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.

“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 nontraditional care hours are requested at application or re-determination), and verifiable employer contact information.

“Non-traditional care hours” means weekend, evening, or overnight care.

“Originating county” means the county where child care assistance eligibility was initiated in instances where a family receiving low-income child care moves from one county to another during their eligibility period.

“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.

“Post eligibility stabilization period” means the time frame in which an adult caretaker or teen parent has to complete their job search activity if, at Low-Income Child Care re-determination, they have not utilized their entire minimum thirteen (13) week time limited activity.

“Preponderance of evidence” means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

“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 Child Care” means a child care component within CCCAP for children that have been placed by the county in foster home care, kinship foster home care or non-certified kinship care; have an open child welfare case; and, the county has chosen to provide child care services utilizing the Child Care Development Fund (CCDF) rather than the Child Welfare Block Grant.

“Prudent person principle” means allowing the child care technician 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 7.701.11, A, 1, b. (12 CCR 2509-8).

“Rate notification” means a notification of provider reimbursement rates and applicable registration, activity, or transportation fees that reflect the child care provider’s CCCAP reimbursement rate based on the comparison of the county’s ceiling rates that are reflected in the current Fiscal Agreement and the provider’s private pay rates, quality level or rate types.

“Receiving county” means the county where child care assistance eligibility is re-determined after a family receiving low-income child care moves from one county to another during their eligibility period.

“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) form” is a state-prescribed form, which includes appeal rights, that is used to determine a household’s continued eligibility for Low-Income Child Care at the end of their twelve (12) month minimum eligibility period.

“Re-determination (Redet) process” is the process to update eligibility for Low-Income Child Care. This process is completed no earlier than every twelve (12) months and includes:

A. The state-prescribed re-determination form, which must be completed and signed by the adult caretaker or teen parent or their authorized representative; and,

B. The required verification that supports the information declared on the re-determination form that is 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; review of the technician's accuracy; and/or reviews for separation of duty.

“Self-employment” is a Low-Income Child Care eligible activity where an adult caretaker or teen parent is responsible for all taxes and/or other required deductions from earned income.

“Self-sufficiency standard” means the level of income adequate in each county for a given year to meet the cost of basic needs, exclusive of child care costs, based on a verifiable and statistically based third party source.

“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. A slot contract is tied to a licensed child care provider and may be filled by any child who is eligible for and receiving CCCAP.

“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.

“State Median Income” (SMI) refers to figures set by the department annually. These figures, based on gross monthly income levels for the corresponding household size, are included in the table in section 3.105.1.H.2.

“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 wait lists or freezes 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, self-employment, or job search.

“Tiered reimbursement” means a pay structure that reflects increasing rates for high-quality early childhood programs that receive CCCAP reimbursement. These increases are made in addition to the base reimbursement rate.

“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 post-secondary education” is a Low-Income Child Care eligible activity where an adult caretaker or teen parent attends educational programs including regionally accredited post-secondary education for a Bachelor's degree or less or a workforce training program such as vocational, technical, or job skills training. Workforce training programs include educational activities after completing basic education.

“Transition families” means households ending their participation in the Colorado Works Program and who are eligible to transition to Low-Income Child Care Assistance.

“Units” or “unit of care” means the period of time authorized 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.)

“Up-to-date immunizations” means documentation of immunization status or exemption as required by Colorado Department of Public Health and Environment (CDPHE). Immunizations required for school entry are set by the board of health and based on recommendations of the Advisory Committee on Immunization Practices (ACIP).

“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.

“Wait list” means a list maintained by a county that reflects individuals who have submitted a complete application for the CCCAP program for whom the county is not able to immediately enroll.

“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.

3.104 APPLICANT RIGHTS

3.104.1 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.

3.104.2 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 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 Low-Income Child Care 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 Low-Income Child Care application.

3.104.3 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 taken with the following exceptions, which require no prior notice:

A. Facts indicate an overpayment because of probable fraudulent behavior or an intentional program violation and such facts have been verified to the extent possible.

B. The proposed adverse action is based on a written or verbal statement from the adult caretaker(s) or teen parent(s) who state(s) that he/she no longer wishes to receive assistance or services.

C. The proposed adverse action is requested by another county or state department.

D. The counties or their designee(s) have confirmed the death of a recipient or of Adult Care Taker or Teen parent.

E. The county has exercised its right to terminate a fiscal agreement with any child care provider because a child's health or safety is endangered or the child care provider is under a negative licensing action.

3.104.4 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 given written notice of their right to an informal county conference when they are given their copy of the fiscal agreement.

3.105 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 a low-income eligible activity, and need child care assistance.

3.105.1 LOW-INCOME CHILD CARE ELIGIBILITY

In order to be eligible for Low-Income 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 at the time of application and re-determination. Adult caretaker(s) or teen parent(s) shall remain eligible for the duration of the eligibility period if they report that they are no longer residents of the county in which they are actively receiving assistance per section 3.112 (CC).

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 state department; 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 may accept applications from another public assistance program in lieu of the Low-Income Child Care application.

b. 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.

c. 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 required verification supporting the information declared on the application form; including:

a. Proof of current residence;

b. Citizenship, age, and identity of the child(ren) for whom care is requested;

1) A child’s citizenship status, age, and identity are considered to be verified if the complete application includes the child’s age and citizenship status and is signed attesting to the child’s identity unless the county determines that the declaration of citizenship, age, and/or identity is inconsistent.

2) The county must request additional verification if the adult caretaker or teen parent’s declaration is determined to be inconsistent based on the following guidelines:

a) If the claim of citizenship, age, and/or identity is inconsistent with statements made by the adult caretaker or teen parent, or with other information on the application, or on previous applications;

b) If the claim of citizenship, age, and/or identity is inconsistent with the documentation provided by the adult caretaker or teen parent; and/or,

c) If the claim of citizenship, age, and/or identity was previously received from another source such as another public assistance program including Colorado Works, the Supplemental Nutrition Assistance Program (SNAP), or Medicaid, and the claim is inconsistent with the information previously received from that source.

c. Up-to-date immunizations if applicable;

d. Low-Income eligible activity;

e. Schedule (if non-traditional care hours are requested at application or redetermination);

f. Income;

g. Incapacitation if applicable;

h. Custody arrangement and/or parenting schedule if applicable;

i. Child care provider if one has been chosen at the time of application; and,

j. Other verifications as determined by approved county plan.

3. An orientation or interview for new applicants as a county option. Counties shall ensure that the orientation or interview process is not burdensome to families by allowing a family to complete the process via phone or electronic tools or by offering extended office hours to hold the orientation or interview.

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 a low-income 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 a low-income 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 a low-income eligible activity; or,

3) One adult caretaker or teen parent is engaged in a low-income 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).

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 a low-income eligible activity, must 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. Adult caretakers or teen parents that are not determined work eligible per Colorado Works Program rule (9 CCR 2503-6) who are caring for children receiving Basic Cash Assistance through the Colorado Works Program are not eligible for Colorado Works Child Care but may be eligible for Low-Income Child Care if the adult caretaker or teen parent 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 Low-Income Child Care case who are participating in a low-income eligible activity and go on verified maternity/paternity leave. Not to exceed twelve (12) weeks.

9. Adult caretaker(s) or teen parent(s) with an open and active Low-Income Child Care case who are participating in a low-income eligible activity and go on verified medical leave and are unable to care for his/her children. Not to exceed twelve (12) weeks per instance.

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 a low-income eligible activity are not eligible for the low-income program.

F. Eligible Child

An “eligible child” is a child birth to the age 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 verified 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 or are receiving child care assistance shall verify that they are a U.S. citizen or qualified alien and provide proof of identity if inconsistent, in accordance with 3.105.1 (C)(2)(b).

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 low-income eligible 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) or teen parent(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) or teen parent(s) shall submit an expected weekly employment schedule that includes approximate employment hours. This is required upon beginning self-employment, at application, and at redetermination.

   c. The adult caretaker(s) or teen parent(s) shall show that he/she has maintained an average income that exceeds their business expenses from self-employment.

   d. The adult caretaker(s) or teen parent(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 or teen parent(s) 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 that met the eligibility criteria on the most recent eligibility determination for no fewer than thirteen (13) weeks of child care for each instance of non-temporary cessation of activity (per section 3.105.2,C.

b. If the job search activity is reported within the four (4) week reporting period, the activity shall begin the day that the change in activity was reported. If the job search activity is reported outside of the four (4) week reporting period, the activity shall begin the date that activity cessation occurred.

c. Job search shall continue until the adult caretaker or teen parent gains employment, enters into another low-income eligible activity, or when all of the allotted job search time has been utilized. Any day utilized in a week is considered one (1) week used toward the time limited activity.

d. Regular consistent child care must be provided during the job search period.

e. The amount of care authorized each day shall, at a minimum, be commensurate with the amount needed to complete the job search tasks.

f. Job search child care shall be approved in each instance of non-temporary job loss or when adult caretakers or teen parents end their low-income eligible activity while enrolled in the Low-Income program.

g. An adult caretaker or teen parent shall be determined ineligible once they have utilized their allotted job search time and have not reentered into a low-income eligible activity.

h. If at the time of re-determination, the adult caretaker or teen parent remains in a job search activity, has not utilized the remainder of their allotted job search time, and has provided the required re-determination documentation, the county shall place the case into a post-eligibility stabilization period for the duration of the remaining job search time.

1) If during the post-eligibility stabilization period the adult caretaker or teen parent reports that they have gained employment or reentered into another low-income eligible activity, the county shall process this change, continue care, and assess a parent fee.

2) The adult caretaker or teen parent shall be determined ineligible if they have not reentered into a low-income eligible activity and the post eligibility stabilization period has expired.

4. Training Criteria and Post-Secondary Education

Subject to available appropriations, an adult caretaker(s) who is enrolled in a training or post-secondary education program is eligible for CCCAP for at least one-hundred-four (104) weeks and up to two-hundred-eight (208) weeks per lifetime, provided all other eligibility requirements are met during the adult caretaker's enrollment. These weeks do not have to be used consecutively. A county may give priority for services to a working adult caretaker(s) over an adult caretaker(s) enrolled in post-secondary education or workforce training. When a teen parent becomes enrolled in post-secondary education, they are considered an adult caretaker and the time limited activity timelines apply.

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 one-hundred-four (104) weeks and up to two-hundred-eight (208) weeks per lifetime. This is limited to coursework for the degree or certificate.

b. In addition to the weeks of assistance available for post-secondary and vocational or technical training, up to fifty-two (52) weeks of assistance is allowable for 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 must not exceed eighty-five percent (85%) of the state median income.

a. Entry eligibility shall be set by the state department at a level based on the self sufficiency standard, not to be set below one hundred eighty-five percent (185%) of federal poverty level.

b. Exit income eligibility must be eighty-five percent (85%) of the state median income.

2. Effective October 1, 2022, monthly gross income levels, for one-hundred percent (100%) of the Federal Poverty Guideline (FPG), as well as eighty-five percent (85%) of State Median Income (SMI) for the corresponding household size are as follows:

Family Size	100% Federal Poverty Guideline (FPG)	85% State Median Income (SMI) (State and Federal Maximum Income Limit)
1	$1,132.50	$4,080.62
2	$1,525.83	$5,336.19
3	$1,919.17	$6,591.77
4	$2,312.50	$7,848.34
5	$2,705.83	$9,102.92
6	$3,099.17	$10,358.49
7	$3,492.50	$10,593.91
8	$3,885.83	$10,829.33
Each Additional person	$393.33	$235.42

3. 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 3.103 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 3.105.1 (I)(3) 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 3.105.1, I & J) 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.

4. 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 adult caretaker or teen parent 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) or teen parent(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 Veteran’s 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. 101201

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 adult caretakers in households receiving Low-Income Child Care Assistance to apply for and cooperate with Child Support Services pursuant to Section 26.5-4-111, C.R.S.

2. At the option of the county, teen parents may be required to cooperate with the child support services unit upon re-determination if during the twelve (12) month eligibility period, they have graduated from high school or have completed the high school equivalency exam.

3. 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 or teen parents (per section 3.105.1, L, 2) of their right to apply for a good cause exemption utilizing the state prescribed good cause waiver 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.

4. The adult caretaker(s) or teen parent(s) (per section 3.105.1, L, 2) 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 at redetermination.

5. For Low-Income Child Care Assistance “Child Support Services 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.

6. 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 at application or re-determination only:

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 or teen parent (per section 3.105.1, L, 2) fails 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.

7. 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.

8. At the time of transition from Colorado Works to Low-Income Child Care, the child care technician shall notify the adult caretaker or teen parent in writing via the Client Responsibilities Agreement of his/her continued requirement to cooperate with the Child Support Services Unit.

9. At the time of transition from Colorado Works to Low-Income Child Care, the child care technician shall notify Child Support Services of the household's continued requirement to cooperate with the Child Support Services Unit.

10. 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.

3.105.2ADULT CARETAKER OR TEEN PARENT RESPONSIBILITIES

A. Primary adult caretaker(s) or teen parent(s) shall sign the application/re-determination form along with providing verification of income to determine eligibility.

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 low-income eligible activity, this shall be reported in writing within four (4) calendar weeks. This does not include a temporary break in low-income 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 twelve (12) weeks per instance when returning to same employer;

    2. Absence from low-income eligible activities including employment, self-employment, education, and/or training activity due to extended verified medical leave, not to exceed twelve (12) weeks per instance when returning to same employer;

    3. Absence from low-income eligible activities including employment, self-employment, education, and/or training activity due to verified maternity/paternity leave, not to exceed twelve (12) when returning to same employer; or,

    4. Absence from an education or training activity due to holidays or scheduled breaks, not to exceed twelve (12) weeks per instance.

D. Adult caretaker(s) or teen parent(s) shall provide the County Department with up-to-date 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 who are in need of care and have an absent parent, within thirty (30) days of requesting child care, as required by the county and per section 3.105.1, L.

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 low-income eligible activity only at application and/or re-determination when non-traditional care hours are requested.

H. The primary adult caretaker(s) or teen parent(s) must verify citizenship status, age, and identity of the child(ren) for whom care is requested, in accordance with 3.105.1(C)(2)(b). If the county determines that the adult caretaker or teen parent's declaration on the application or redetermination form is inconsistent, the adult caretaker or teen parent will be required to provide verification of what has been determined to be inconsistent.

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 share his/her individual attendance credentials with the child care provider at any time or he/she may be subject to disqualification per section 3.115.4 (B).

K. Adult caretaker(s) or teen parent(s) are required to use the Attendance Tracking System (ATS) to check children in and out for the days of care authorized and attended unless the child care provider has been granted an exemption by the state. Non-cooperation with the use of the Attendance Tracking System (ATS) may result in case closure and/or non-payment of the child care subsidy as defined by county policy.

3.105.3 LOW-INCOME CHILD CARE RE-DETERMINATION

A. The re-determination process shall be conducted no earlier than every twelve (12) months. The State-prescribed 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 adult caretaker or teen parent 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 or teen parent 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 low-income eligible activity only at application and/or redetermination and only when non-traditional care hours are requested.

d. At application and re-determination, 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 reported at application or redetermination and non-traditional care hours are requested), and verifies current student status.

3. Adult caretaker(s) or teen parent(s) shall provide the county department with up-to-date 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.

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.

3.105.4 TERMINATION OF LOW-INCOME CHILD CARE SERVICES

A. Child care authorizations and cases shall be terminated during the eligibility period for the following eligibility related reasons:

1. Household income exceeds eighty-five percent (85%) of state median income as outlined in section 3.105.1.H.2 during eligibility period

2. Adult caretaker(s) or teen parent(s) is/are no longer a resident of the state

3. Adult caretaker(s) or teen parent(s) is not involved in a low-income eligible activity and their job search period has expired

4. Adult caretaker(s) or teen parent(s) who are employed or self-employed and do not meet federal minimum wage requirements outlined 3.105.1.G are not considered to be in a low-income eligible activity

5. If the child has had twenty-two (22) or more unexplained absences from authorized care within a thirty (30) day period and two (2) failed documented attempts to contact the adult caretaker or teen parent have been made. The thirty (30) day period must account for temporary breaks or reported breaks in care.

6. The adult caretaker(s) or teen parent(s) has been disqualified due to a founded Intentional Program Violation

B. Child care authorizations and/or cases must be terminated for the following eligibility related reasons at re-determination only:

1. Eligible child exceeds age limits

2. 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.

3. Adult caretaker(s) or teen parent(s) exceeds time limited low-income eligible activity time limits

4. Adult caretaker(s) or teen parent(s) fails to comply with re-determination requirements

5. Adult caretaker(s) or teen parent(s) is not participating in a low-income eligible activity

6. Adult caretaker(s) or teen parent(s) has become a participant in Colorado Works

7. Adult caretaker(s) or teen parent(s) did not submit required immunization records

8. Adult caretaker(s) or teen parent(s) is/are no longer a resident of the county or state

9. Adult caretaker(s) or teen parent(s) (per section 3.105.1 (L)(2)) is/are no longer cooperating with child support establishment during the twelve (12) month eligibility period, 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

10. Adult caretaker(s) or teen parent(s) do not meet federal minimum wage requirement for employment or self-employment are not considered to be in a low-income eligible activity

11. Household income exceeds eighty-five percent (85%) of State median income as outlined in section 3.105.1.H.1.

12. If the child has had twenty-two (22) or more unexplained absences from authorized care within thirty (30) days of the re-determination date and two (2) failed documented attempts to contact the adult caretaker or teen parent have been made. The thirty (30) day period must account for temporary breaks or reported breaks in care.

C. 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.

D. 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.

E. Nothing in this section shall preclude an adult caretaker(s) or teen parent(s) from voluntarily withdrawing from the Low-Income program.

3.106 COLORADO WORKS CHILD CARE

A. Adult caretakers or teen parents who are approved for Colorado Works and are determined work eligible per Colorado Works rule (9 CCR 2503-6) are eligible to receive Colorado Works Child Care for at least twelve (12) months unless the adult caretaker or teen parent has been determined eligible for transition to Low-Income Child Care prior to the end of the twelve (12) month period.

B. The state-prescribed Colorado Works Child Care Referral Form shall be completed by the county Colorado Works worker and provided to the county child care technician to process in CHATS within five (5) business days of receipt and maintained in the child care case file as follows:

1. When a household is determined eligible for Colorado Works Child Care;

2. When there are changes in household composition;

3. To continue care beyond the end of each twelve (12) month period;

4. When a household is no longer eligible for Colorado Works, at which time the household shall be transitioned to Low-Income Child Care per rule 3.106.2; and/or,

5. When a household's Colorado Works case is transitioned to another county.

C. Adult caretakers or teen parents that are not determined work eligible per Colorado Works rule (9 CCR 2503-6) who are 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 part of the Colorado Works assistance unit; and, she/he meets all other low-income program criteria.

3.106.1 ELIGIBILITY FOR COLORADO WORKS CHILD CARE

A. Adult caretakers or teen parents that have been determined eligible for Colorado Works, have entered into a current individualized plan, are participating in allowable work activities as defined in Colorado Works rule (9 CCR 2503-6) and have been referred for child care by the county Colorado Works worker shall be considered to be participating in an eligible activity and shall receive Colorado Works Child Care for at least twelve (12) months unless the adult caretaker or teen parent transitions to Low-Income Child Care prior to the end of the twelve (12) month period.

B. Colorado Works Child Care cases must be authorized for a minimum of twelve (12) months based on the child's need for care.

C. Only earned income that is reported and verified by the county Colorado Works worker will be considered countable income for Colorado Works Child Care cases upon receipt of a referral at the following times:

1. When a household is initially determined eligible for Colorado Works Child Care; and/or,

2. When care is continued beyond the end of each twelve (12) month period.

D. Child care schedule shall be determined and shared by the county Colorado Works worker on the state-prescribed Colorado Works Child Care Referral Form.

E. County residency shall be verified by the county Colorado Works Program.

F. Citizenship, age, and identity of the child(ren) for whom care is requested are verified by the county Colorado Works Program. The Colorado Works Child Care Referral serves as verification of citizenship, age, and identity, and the referral must be maintained in the child care case file.

G. Immunization verification 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 must be provided to the child care technician and shall be maintained in the child care case file.

H. Counties that provide Colorado Works Child Care for households approved for state diversions require the same eligibility as outlined above.

I. The county Colorado Works worker shall notify the child care technician in writing of changes to the level of child care services. Decreases in child care services shall only be acted upon if it is at the request of the adult caretaker or teen parent. If the county Colorado Works worker processes the child care case, written verification is not required but changes must be clearly documented in CHATS.

J. A change in child care provider shall be reported to the child care technician by the adult caretaker or teen parent or the county Colorado Works worker prior to the change.

K. The county child care technician shall advise adult caretaker(s) or teen parent(s) who are receiving Colorado Works Child Care of their responsibilities in writing via the Client Responsibilities Agreement at the time of the initial referral.

L. If the adult caretaker or teen parent moves out of the county in which they are actively receiving Colorado Works Child Care during the twelve (12) month period:

1. The originating county child care staff shall notify the receiving county within ten (10) business days of being notified that the adult caretaker or teen parent has moved.

2. Upon receipt of notification from the originating county, the receiving county shall initiate or maintain the Colorado Works Child Care case for the remainder of the twelve (12) month period at a minimum.

3.106.2 TRANSITION OFF COLORADO WORKS CHILD CARE

Counties shall transition households that are no longer eligible for the Colorado Works Program and are participating in a low-income eligible activity as defined in 3.103 to Low-Income Child Care without requiring the household to complete the low-income child care application. The household’s eligibility shall be re-determined no earlier than twelve (12) months after the transition as outlined in 3.105.3.

A. A household that is no longer eligible for the Colorado Works Program shall not be automatically transitioned to Low-Income Child Care if any of the following conditions apply:

1. The household is ineligible for the Colorado Works Program due to an Intentional Program Violation (IPV) as determined in Colorado Works rule (9 CCR 2503-6) or,

2. The household is ineligible for the Colorado Works Program and will be at an income level that exceeds eighty-five percent (85%) of the State Median Income (SMI) as outlined in section 3.105.1.H.1; or,

3. If the child has had twenty-two (22) or more unexplained absences from authorized care within the last thirty (30) days prior to the household being determined ineligible for Colorado Works and two (2) failed documented attempts to contact the adult caretaker or teen parent have been made within the thirty (30) day period.

4. If a household is not transitioned to Low-Income Child Care for the reasons outlined above, the county shall provide timely written notice.

B. Households shall be determined eligible to transition to Low-Income Child Care based on the information and verification that is provided to the child care technician by the county Colorado Works worker upon receipt of the state-prescribed Colorado Works Child Care Referral Form. No additional verification shall be required until the household's twelve (12) month re-determination for Low-Income Child Care. Child citizenship status, age, and identity must not be re-verified at

the time of the Low-Income Child Care re-determination if it was previously verified using the Colorado Works Child Care Referral Form.

C. If a household becomes ineligible for Colorado Works while in a low-income eligible activity other than job search as defined in 3.103, the adult caretaker or teen parent shall be transitioned to Low-Income Child Care. The household's eligibility shall be re-determined no earlier than twelve (12) months after the transition as outlined in 3.105.3.

D. If a household becomes ineligible for Colorado Works while participating in a job search activity or is not in a low-income eligible activity as defined in 3.103, the adult caretaker or teen parent shall be transitioned to Low-Income Child Care and provided a minimum of thirteen (13) weeks of job search.

E. If an increase in household income is reported by the county Colorado Works worker at the time of transition to Low-Income Child Care, the county child care technician shall document the income increase in case comments but shall not act upon the change until the household's twelve (12) month re-determination for Low-Income Child Care.

F. Parent fees for households that transition from Colorado Works to Low-Income Child Care must not be assessed higher than what was determined at the most recent Colorado Works Child Care referral. Parent fee revisions for child care during the twelve (12) month period may occur as outlined in 3.111(B).

G. Households that transition from Colorado Works to Low-Income Child Care must be authorized for a minimum of twelve (12) months based on the child's need for care as long as the family remains eligible for the Low-Income Child Care program.

H. Households that transition from Colorado Works to Low-Income Child Care are subject to the Low-Income Child Care rule outlined in 3.105.

I. County child care staff shall advise adult caretaker(s) or teen parent(s) that are transitioned from Colorado Works to Low-Income Child Care of their responsibilities in writing via the Client Responsibilities Agreement at the time of transition.

J. If a household is not transitioned from Colorado Works to Low-Income Child Care, the county shall provide a fifteen (15) day notice.

K. If at any time after being transitioned onto Low-Income Child Care the household is determined eligible for Colorado Works, re-enters into a current individualized plan, and is participating in an allowable work activity as defined in Colorado Works rule (9 CCR 2503-6), the household shall be transitioned back onto Colorado Works Child Care upon receipt of the Colorado Works Child Care Referral Form.

3.107 PROTECTIVE SERVICES CHILD CARE

A. Protective services households refers to households in which child(ren) 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. At the option of the county, the county may provide protective services child care utilizing Child Care Development Funds (CCDF) rather than Child Welfare.

B. Protective services cases must be authorized for a minimum of twelve (12) months by the county worker based on the child’s need for care due to the funding source.

C. 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 Educational Act.

D. The state-approved Protective Services Child Care Referral Form shall be completed by the county Child Welfare worker and provided to the county child care technician to process in CHATS within five (5) business days of receipt and maintained in the child care case file when any of the following occur:

1. A household is determined eligible for Protective Services Child Care;

2. There are changes in household composition that affect eligibility or the need for Protective Services Child Care;

3. There are changes in the child care schedule;

4. To continue care; or,

5. A household is no longer eligible for or in need of Protective Services Child Care.

3.107.1 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. As determined by the Child Welfare worker, the income requirement for protective services households may be waived on a case by case basis. If the income requirement is waived, it must be documented in the case file.

D. Protective services households are not subject to low-income eligible activity requirements.

E. 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.

F. Citizenship, age, and identity shall be verified by the Child Welfare worker. The signed Protective Services Child Care Referral serves as verification of citizenship, age, and identity and must be maintained in the child care case file. If the Child Welfare worker is unable to attest to having verified the child's citizenship status, age, and/or identity at the time of referral:

1. Protective services households must be allowed up to six (6) months to provide verification of the child(ren)'s U.S. citizenship status and age;

2. Protective services households must be allowed up to six (6) months to provide verification of the child(ren)'s identity; and,

3. If the Child Welfare worker cannot verify and attest to the child's citizenship status, age, or identity within six (6) months of the referral, the county must not provide child care services for the child(ren) through the use of Protective Services Child Care.

G. Protective services households must 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.

H. If the child(ren) on the Protective Services Child Care case receives care from a licensed child care provider, the county may reimburse the child care provider for additional absences and/or holidays beyond what would be paid for a Low-Income, Colorado Works, or Child Welfare Child Care case. The number of additional absences shall be paid in accordance with the Protective Services Child Care policy set by the county and approved by the State Department.

3.108 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 Educational 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 12 CCR 2509-4 §7.302.

D. Child Welfare Child Care 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.

3.109 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. 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.

2. Subsidized care provided during the stabilization period is considered non-recoverable by the county unless fraud has been established.

3. Eligible activity

a. The adult caretaker(s) or teen parent(s) is not required to participate in a low-income eligible activity during the stabilization period.

b. If the adult caretaker(s) or teen parent(s) is participating in a low-income eligible activity, they will have at least sixty (60) days to provide necessary verification.

4. 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.

5. The adult caretaker(s) or teen parent(s) may self-declare citizenship, age, and identity of the child(ren) during the stabilization period.

   a. A child's citizenship status, age, and identity are considered to be verified at the end of the stabilization period if the complete application includes the child's age and citizenship status and is signed attesting to the child's identity unless the county determines that the declaration of citizenship, age, and/or identity is inconsistent.

   b. The county must request additional verification at the end of the stabilization period if the adult caretaker or teen parent's declaration is determined to be inconsistent based on the following guidelines:

      1) if the claim of citizenship, age, and/or identity is inconsistent with statements made by the adult caretaker or teen parent, or with other information on the application, or on previous applications;

      2) if the claim of citizenship, age, and/or identity is inconsistent with the documentation provided by the adult caretaker or teen parent; and/or,

      3) if the claim of citizenship, age, and/or identity was previously received from another source such as another public assistance program including Colorado Works, the Supplemental Nutrition Assistance Program (SNAP), or Medicaid, and the claim is inconsistent with the information previously received from that source.

6. 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 the county with verification of immunization status shall not be required during the stabilization period.

3.110 CHILD CARE ASSISTANCE PROGRAM WAIT LISTS AND ENROLLMENT FREEZES

3.110.1 WAIT LISTS

A. A county may apply to the state to implement a wait list when:

   1. State-generated projections indicate that a county's allocation will be at least eighty-five percent (85%) expended by the end of the fiscal year; or,

   2. A county is able to demonstrate a fiscal need that includes factors that are not accounted for in the state-generated projections for county CCAP expenditures, such as, but not limited to, drastic economic changes.

B. Once approved, counties shall maintain a current and accurate wait list in CHATS of adult caretakers and teen parents who have applied for the CCCAP program.

1. Counties shall require families to complete a Low-Income Child Care application in its entirety and enroll eligible adult caretakers and teen parents from wait lists according to the following state defined target populations:

    a. Households whose income is at or below 130% of the current federal poverty guidelines;

    b. Children with additional care needs; and,

    c. Families experiencing homelessness.

2. Counties may prioritize enrollment for teen parents or other segments of populations that are defined by the county based on local needs.

3.110.2 ENROLLMENT FREEZES

A. A county may apply to the state to implement a freeze when:

1. State-generated projections indicate that a county's allocation will be at least ninety-five percent (95%) expended by the end of the fiscal year; or,

2. A county is able to demonstrate a fiscal need that includes factors that are not accounted for in the state-generated projections for county CCAP expenditures, such as, but not limited to, drastic economic changes.

B. Counties that have been approved to implement a freeze shall add adult caretakers and teen parents into CHATS if they are likely to be found eligible based on self-reported income and job, education, job search, or workforce training activity. Counties shall require an applicant to restate his or her intention to be kept on the freeze every six (6) months in order to maintain his or her place on the list.

1. Counties shall enroll eligible adult caretakers and teen parents once a freeze is lifted according to the following state defined target populations:

    a. Households whose income is at or below 130% of the current federal poverty guidelines;

    b. Children with additional care needs; and,

    c. Families experiencing homelessness.

2. Once a freeze is lifted, counties may prioritize enrollment for teen parents or other segments of populations that are defined by the county based on local needs.

3.111 PARENT FEES [Effective 7/1/2021]

A. 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 calculated in whole dollars by dropping the cents. Families shall be noticed of their parent fee at the time of Colorado Works Child Care referral; low-income application or re-determination; or, when a reduction/increase of household parent fee occurs.

B. Parent fee revisions for Low-Income and Colorado Works Child Care during the twelve (12) month eligibility period may occur when:

1. The adult caretaker or teen parent, who was initially determined eligible with countable income, regains income after a temporary loss of income; or,

2. A change has been reported that results in a decrease in household parent fee.

3. There is an increase or decrease in the amount of care that is authorized and the increase in authorization is not due to the addition of a household member; or,

4. The household begins or ceases utilization of care at a high-quality child care provider.

5. Increases in parent fees beyond what is outlined in numbers 1-4 of this section shall only go into effect at Low-Income Child Care re-determination or at the end of the twelve (12) month Colorado Works Child Care period.

C. During the twelve (12) month eligibility period the household parent fee may not be assessed higher than what was determined at the most recent Colorado Works Child Care referral or low-income application or re-determination.

D. Parent fees for Low-Income Child Care cases 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. Income may be divided by a weekly amount then multiplied by 4.33 to arrive at a monthly average for parent fee calculations.

E. 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.

F. Parent fees for Colorado Works Child Care cases shall be reviewed at the end of the household's twelve (12) month eligibility period. An adjusted parent fee shall be based on gross countable income as verified and shared by the local Colorado Works Program.

G. As defined by county policy, a county may waive the parent fee for a Low-Income or Colorado Works Child Care household that has a child that is dually enrolled in a Head Start or Early Head Start Program.

H. For a Low-Income or Colorado Works Child Care 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.

I. All adult caretaker(s) and teen parents are required to pay the fee as determined by the formula listed in 3.111 (P), 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 Low-Income or Colorado Works Child Care household is eligible for a reduced parent fee based on the quality level of the child care provider

3. Colorado Works households where the adult caretaker or teen parent has entered into a current individualized plan and is participating in an allowable work activity as defined in Colorado Works rule (9 CCR 2503-6) other than paid employment shall not have a parent fee.

4. Child Welfare Child Care households as defined in the Social Services rule manual, Section 7.000.5 (12 CCR 2509-1) shall not have a parent fee.

5. Families Experiencing Homelessness as defined in section 3.109 shall not have a parent fee during the stabilization period.

6. Protective service households as defined in section 3.107 shall not have a parent fee unless the child(ren) has countable income.

7. Families that have no income shall have no parent fee.

8. Effective April 1, 2020, parent fees, as assessed by the parent fee formula, may be waived in the event of a declared state or local disaster or emergency for up to twelve (12) months for households impacted by such disaster or emergency. The county shall document the decision to waive the parent fee and the amount of time the parent fee will be waived in the case record in the Child Care Automated Tracking System (CHATS).

J. The initial or revised parent fee shall be effective the first full calendar month after the end of the timely written notice period unless the revision results in a decrease to the parent fee. A parent fee shall not be assessed or changed retroactively unless in the event of an emergency or disaster as outlined in rule 3.111 (H)(8), and, under those circumstances a county may only retroactively waive the parent fee to the beginning of the current month.

K. 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.

L. 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.

M. Adult caretakers or teen parents will be informed of their responsibilities related to fee payment on their signed application form or via the Client Responsibilities Agreement that is provided to them at the initial Colorado Works referral or at the time of transition from Colorado Works to Low-Income Child Care.

N. Loss of eligibility for child care subsidies may occur at re-determination or at the end of the twelve (12) month Colorado Works Child Care Period 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 during the twelve (12) month eligibility period. Notice of termination for such loss of eligibility shall be given in accordance with Section 3.105.4. Child care providers shall report nonpayment 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 at re-determination 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).

O. 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 fifteen (15) calendar-days prior to the first of the month the parent fee is effective.

P. Beginning July 1, 2021 through September 30, 2023, the county must assess parent fees based upon a marginal rate increase of fourteen percent (14%) for every dollar of gross countable household income above one hundred percent (100%) of the federal poverty guidelines (FPG) outlined in section 3.105.1 (H)(2).

1. The county must assess a parent fee of one percent (1%) of gross income to eligible households with gross income that is at or below one hundred percent (100%) of the FPG.

2. For eligible households with gross income that is above one hundred percent (100%) of the FPG, the county must assess a parent fee at one percent (1%) of their income plus a marginal rate increase of fourteen percent (14%) for every dollar of gross countable household income above one hundred percent (100%) of the FPG.

3. An additional fifteen dollar ($15) fee shall be added to the parent fee for each additional child when households are requesting care for more than one (1) child and have income above one hundred percent (100%) of the FPG. If care is only requested for one (1) child, the additional fifteen dollar ($15) fee does not apply.

Q. Counties shall use the federal poverty guidelines and state median income limit as defined in section 3.105.1.H.2. Counties shall update parent fees at the next scheduled re-determination according to the parent fee formula table outlined in 3.111 (P), in effect on the date of redetermination.

R. Parent fees, as assessed by the parent fee formula, may be reduced to 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.

S. The Department shall notify counties at the beginning of each federal fiscal year of the current Federal Poverty Guidelines and State Median Income limit as outlined in section 3.105.1.H.2. Counties shall update parent fees at the next scheduled re-determination or at the end of the twelve (12) month Colorado Works Child Care Period.

T. 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.

U. 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.

V. Children enrolled in grades one (1) through twelve (12) that are authorized for part-time care during the school year must have a part-time parent fee.

W. 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.

3.112 COUNTY RESPONSIBILITIES

A. Counties shall administer CCCAP in compliance with 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 Department. Counties may add additional language to state forms but shall not remove language. This does not include the Low-Income Child Care application or re-determination. All changes to forms shall be submitted to and approved by the state department prior to use.

D. Counties shall respond to requests from the Department within two (2) business days.

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. Counties shall document in CHATS 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. Counties 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 a 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 Low-Income Child Care.

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 Child Care 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 consumer education to adult caretakers, teen parents, child care providers and the general public 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.

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 3.112, N, 3-4 via the Low-Income Child Care application and shall enter the information into CHATS for reporting purposes.

O. Once determined eligible for Low-Income Child Care, households should remain eligible for a minimum of twelve (12) months. Counties 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 low-income eligible activity for the reasons that do not constitute a temporary break as defined in section 3.105.2.C; or,

3. The adult caretaker(s) or teen parent(s) no longer reside(s) in the state.

4. The adult caretaker(s) or teen parent(s) who are employed or self-employed and do not meet federal minimum wage requirements outlined in 3.105.1.G are not considered to be in a low-income eligible activity.

5. If the child has had twenty-two (22) or more unexplained absences from authorized care within a thirty (30) day period and two (2) failed documented attempts to contact the adult caretaker or teen parent have been made. The thirty (30) day period must account for temporary breaks or reported breaks in care.

6. The adult caretaker(s) or teen parent(s) has been disqualified due to a founded Intentional Program Violation.

P. Counties shall provide written wait list and freeze policies to the state for review and approval at the time of county plan submission.

Q. Counties shall maintain a current and accurate wait list in CHATS of adult caretakers and teen parents who have applied for the CCCAP program.

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 CHATS regarding 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, age, and identity.

W. Counties must use preponderance of evidence when verifying a child's citizenship status, age, and identity at application and/or re-determination, only requiring additional verification if the adult caretaker or teen parent's declaration is inconsistent according to the following guidelines:

1. If the claim of citizenship, age, and/or identity is inconsistent with statements made by the adult caretaker or teen parent, or with other information on the application/redetermination, or on previous applications/re-determinations;

2. If the claim of citizenship, age, and/or identity is inconsistent with the documentation provided by the adult caretaker or teen parent; and/or,

3. If the claim of citizenship, age, and/or identity was previously received from another source such as another public assistance program including Colorado Works, the Supplemental Nutrition Assistance Program (SNAP), or Medicaid, and the claim is inconsistent with the information previously received from that source.

X. Counties shall not require Social Security Numbers or cards for household members who apply for child care assistance.

Y. Counties shall use the prudent person principle when determining eligibility or authorizing care and shall document reasoning in the appropriate notes section of CHATS.

Z. Counties or their designee shall verify the residence of any adult caretaker(s) or teen parent(s) receiving or applying for Low-Income Child Care assistance to ensure that they live in the county where they are applying for assistance at the time of application or re-determination. For families experiencing homelessness, refer to section 3.109.

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.

AA. County child care staff shall advise low-income adult caretaker(s) or teen parent(s) of their responsibilities in writing 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 low-income eligible activity, which does not qualify as a temporary break as defined in section 3.105.2.C, must be reported within four (4) calendar weeks.

BB. 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 low-income 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 low-income eligibility activity, which does not qualify as a temporary break as defined in section 3.105.2. C;

c. Changes in parent fee per section 3.111

d. Changes in state residency; and,

e. Changes that are beneficial to the household such as, but not limited to:

1) An increase in authorized care;

2) A change of child care provider;

3) Change in household composition due to an additional child requesting care; and,

4) 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.

CC. If the adult caretaker(s) or teen parent(s) moves out of the county in which they are actively receiving Low-Income Child Care assistance benefits during the twelve (12) month eligibility period; remains below eighty-five percent (85%) of the state median income; and, remains in a low-income eligible activity as defined in the originating county's county plan, the originating county shall maintain the case, authorization(s), and fiscal responsibility until the re-determination date that was previously determined;

1. The originating county shall be responsible for initiating and/or maintaining the fiscal agreement for the child care provider that the family utilizes for care in accordance with 3.115.5 for the remainder of the twelve (12) month eligibility period. If the originating county does not have an active fiscal agreement with the chosen child care provider at the time of exit, the child care provider's fiscal agreement shall be entered using the county ceiling rates of the county in which the provider is located.

2. At the time of re-determination, the receiving county shall re-determine the household's eligibility per section 3.105.3 without requiring the household to re-apply.at the time of redetermination the originating county shall issue the eligibility re-determination form to the household per section 3.105.3 and direct the family to return the completed form to the receiving county. In order to mitigate service interruptions, the originating county shall notify the receiving county of the re-determination and their responsibilities of redetermining eligibility.

3. The child care case may be closed if at the time of re-determination the family does not meet the eligible activity requirements of the receiving county.

4. If the receiving county has a wait list at the time of re-determination, a family may be placed onto that county's wait list provided they are not a part of the county defined target populations.

DD. Counties shall respond to requests for information or assistance from other agencies within five (5) business days.

EE. Counties must review and take action on current re-determinations for completeness, approve or deny the re-determination, 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 re-determination was received by the county. The county must notify the adult caretaker(s) or teen parent(s) in writing that they have fifteen (15) calendar days from the date the notice is mailed to provide the required missing verifications. If verifications are not received within the fifteen (15) day noticing period, the re-determination will be denied.

FF. Whenever possible in processing re-determinations of eligibility for adult caretaker(s) or teen parent(s) currently receiving Low-Income Child Care, counties shall use information that is already available in other sources to document any verification including citizenship, age, and identity if the adult caretaker or teen parent's declaration is inconsistent in accordance with 3.112(W).

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. Reports of unpaid parent fees shall be documented on the case and the county shall not take action on report of unpaid parent fees until re-determination. If the unpaid parent fee is reported outside of the required reporting period outlined in 3.114.2 (Q), the county shall not take any action. If at the time of re-determination, the parent fee remains unpaid and acceptable payment arrangements have not been made with the child care provider, the household shall remain ineligible until:

1. Delinquent parent fees are paid in full;

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).

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 Low-Income Child Care 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 application date.

LL. With regard to services to students enrolled in grades one (1) through twelve (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 Child Care case is determined eligible, except in the case of a pre-eligibility application. If the child will receive care from a qualified exempt child care provider, the authorization start date shall not be prior to the date the criminal background check has been completed and cleared.

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.

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 generate Attendance Tracking System registration for the household upon case approval or initial authorization.

RR. The county shall generate Attendance Tracking System registration for child care providers when a fiscal agreement with a provider is opened.

SS. 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 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.

TT. The counties or their designee will complete an annual review of the state-administered system for child abuse and neglect on the qualified exempt child care provider(s) and any individual(s) 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) if care is provided in the qualified exempt provider's home.

UU. Counties shall maintain a copy of the non-relative qualified exempt provider's health and safety report of inspection in the provider file. The report of inspection shall be made available to the client upon request to the county or the Department.

VV. Upon notification to counties by the Department that the relevant systems are capable of accommodating this review, 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.

WW. The county shall reimburse licensed child care providers based on the state established base payment and tiered reimbursement rates.

XX. The state-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.

YY. 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.

ZZ. Counties shall make fiscal agreements effective the date that the county receives the completed and signed fiscal agreement from the provider. Fiscal agreements shall be:

1. One (1) year in length for qualified exempt child care providers

2. Three (3) years in length for licensed child care providers

AAA. Counties shall reimburse providers at the rate set by the state department.

BBB. 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 reimbursement rates set by the state. The CCCAP reimbursement rate paid to the provider by the county must be the lesser of the two.

CCC. Counties shall:

1. Have fiscal agreements signed by the child care provider and county staff prior to opening them in CHATS;

2. Enter a completed fiscal agreement into CHATS within five (5) business days of receipt; and,

3. Provide a copy of the fully executed fiscal agreement to the child care provider within seven (7) calendar days of the CHATS entry.

DDD. Counties shall not make changes to their county ceiling rates more than every twelve (12) months unless instructed to do so by the state department.

EEE. Counties shall update CHATS and notify a provider via rate notification within fifteen (15) business days after a child care technician has received a system generated quality rating change notification indicating that a provider has had a change in their quality rating.

FFF. 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.

GGG. Counties shall process complete manual claim forms in CHATS within twenty-one (21) calendar days of receipt for payments that were not automatically processed through CHATS. If processing of the complete manual claim form is delayed for any reason, the county shall notify the child care provider(s) in a timely manner and document the circumstances in CHATS.

HHH. In any cases where payments to licensed child care providers or qualified exempt child care providers 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.

III. Counties shall ensure that child care providers are not charging the county more than the child care provider's established private pay rates.

JJJ. County offices shall complete a random monthly review of attendance data for at least one percent (1%) or one provider, whichever is greater. 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.

KKK. Counties 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.

LLL. Counties shall establish recoveries within twelve (12) months of discovery of the facts resulting in recovery.

MMM. 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.

NNN. Counties shall report established recoveries that are the result of legally designated or determined fraud or recoveries of five-thousand dollars ($5000) or more to the state department.

3.113 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 Low-Income Child Care services and there is no need to place the household on the wait list. The start date of eligibility is defined in Section 3.112 (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-prescribed Low-Income Child Care 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 wait 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 low-income 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.

3.114 CHILD CARE PROVIDERS

3.114.1 ELIGIBLE FACILITIES

A. Licensed Facilities

The following facilities are required to be licensed and comply with licensing rules as defined in the Social Services rule manual, sections 7.701 through 7.712 (12 CCR 2509-8):

1. Family child care homes as defined in section 26.5-5-303(7), C.R.S.

2. Child care centers which are less than 24-hour programs of care, as defined in section 26.5-5-303(3), C.R.S.

B. 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:

   a. Any number of children directly related to the provider;

   b. Any number of siblings from one family unrelated to the provider; or,

   c. Up to four (4) children, who are unrelated to the provider.

   d. No more than two (2) children under the age of two (2) years may be cared for at any time if the provider's own children are in the provider's care as they are counted toward the maximum capacity of four (4).

   e. The relationships for care outlined in a-b of this section include:

      1) "Relative in-home care" means care provided by a relative in the child's own home by a person who is eighteen (18) years of age or older and is related to the child through marriage, blood, court decree, or adoption and is a grandparent; great-grandparent; sibling (if living in a separate residence than the eligible child); aunt; and/or uncle, and does not meet the definition of "adult caretaker" or "teen parent".

2) “Relative out-of-home care” means care provided by a relative in another location by a person who is eighteen (18) years of age or older and is related to the child through marriage, blood, court decree, or adoption and is a grandparent; great-grandparent; sibling (if living in a separate residence than the eligible child); aunt; and/or uncle, and does not meet the definition of “adult caretaker” or “teen parent”.

3) “Non-relative in-home care” means care provided by a person, who is not related to the child, in the child’s own home.

4) “Non-relative out-of-home care” means care provided by a person, who is not related to the child, outside of the child’s home.

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, date of birth, and social security number or individual taxpayer identification number (ITIN). 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) must be at least eighteen (18) years of age.

b. A qualified exempt child care provider shall not be the adult caretaker or teen parent of the child that is receiving care.

c. A qualified exempt child care provider shall not be a sibling of the child that is receiving care if living in the same residence.

d. 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.

e. A qualified exempt child care provider shall complete and sign the provider information form and the self-attestation form agreeing to participate in additional training as identified. As a part of this agreement, the provider shall not have had any of their own children removed from the home or placed in a residential treatment facility. The self-attestation form must include the signature of the adult caretaker(s) or teen parent(s) acknowledging monitoring responsibilities. A provider information form must be provided to the county and state department any time there is a new member of the provider’s household.

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), must be subject to a county level background check. The background check will be used to preclude individuals with founded or substantiated child abuse or neglect from providing child care.

b. 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), must also be subject to and pass a criminal background review as follows:

1) A review of the Federal Bureau of Investigations (FBI) fingerprint-based criminal history records every five (5) years;

2) A review of the Colorado Bureau of Investigations (CBI) fingerprint-based criminal history records at application;

3) An annual review of the state administered database for child abuse and neglect;

4) An annual review of the CBI sex offender registry; and,

5) The national sex offender registry public website (upon notification to counties by the state department that the relevant state and federal systems are capable of accommodating this review).

c. 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.

d. At the time of 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).

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 unless the county chooses to cover the cost associated with the criminal record check. Counties that choose to exercise this option shall document the policy within their county plan.

2) Counties will be notified of the date the background check has cleared and shall use that date as the effective date of reimbursement for the fiscal agreement. Child care authorizations must not begin until the background check has cleared.

e. 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 26.5-5-317, 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.

5. 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.

6. If required documents are not returned within thirty (30) days, the qualified exempt child care provider shall be denied a fiscal agreement.

7. Additional requirements for non-relative qualified exempt child care providers:

   a. Completion of all pre-service health and safety trainings approved by the Department, 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 Department or its designee. Non-relative qualified exempt providers shall correct any health and safety inspection standards within thirty (30) days after the inspection unless the results identify standards that must be corrected immediately.

c. Qualified exempt non-relative child care providers shall meet the mandatory child abuse and neglect reporting requirements annually.

d. 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.

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 Department or the executive director's 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. If a qualified exempt child care provider has not had an open authorization for ninety (90) calendar days, the provider's fiscal agreement shall be closed in CHATS.

C. 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.

D. Payment Methods

1. 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.

2. When a manual claim is needed to reimburse providers for payments that were not automatically processed through CHATS, the state-prescribed child care manual claim form must be prepared and signed by the child care provider for increments of one month or less. The county shall utilize the state prescribed manual claim form to verify that the billing is for:

a. Care that was authorized and provided;

b. Reimbursable registration fees;

c. Reimbursable activity fees;

d. Reimbursable transportation fees;

e. Reimbursable hold slots;

f. Reimbursable drop in days; and/or,

g. Reimbursable absence payments.

E. Child care providers shall be provided with a written notice of the process of termination of the fiscal agreement on the fiscal agreement form.

3.114.2 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, or denied 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 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 Attendance Tracking System (ATS) requirements as defined in section 3.115.4.

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 up-to-date 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 date, names of the children and, 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 daily reimbursement rates agreed upon in the Fiscal Agreement (this includes the agreed upon registration, mandatory activity and transportation fees if the county pays these fees).

U. If a licensed child care provider chooses to charge families for absences for which the county does not provide reimbursement, they shall use the CCCAP daily reimbursement rate agreed upon in the Fiscal Agreement.

V. Child care providers shall offer free, age appropriate alternatives to voluntary activities. Child care providers shall only bill for:

1. Care that was authorized and provided;

2. Reimbursable registration fees;

3. Reimbursable activity fees;

4. Reimbursable transportation fees;

5. Reimbursable hold slots; 6. Reimbursable drop in days; and/or,

7. Reimbursable absence payments.

W. Child care providers shall bill counties monthly for payments that were not automatically processed through CHATS including but not limited to:

1. Care that was authorized and provided;

2. Reimbursable registration fees;

3. Reimbursable activity fees;

4. Reimbursable transportation fees;

5. Reimbursable hold slots;

6. Reimbursable drop in days; and/or,

7. Reimbursable absence payments

X. Payment for services shall be forfeited if the original state-prescribed manual claim form is not submitted within sixty (60) calendar-days following the month of service.

Y. Reimbursable activity, and/or transportation fees shall be billed for in accordance to the timeframe in which is outlined in the current fiscal agreement.

Z. Child care providers shall not hold, transfer, or use an adult caretaker or teen parent's individual attendance credentials. If intentional misuse is founded by any county or state agency, the child care provider will be subject to fiscal agreement termination as outlined in section 3.115.

3.114.3 COMPLAINTS ABOUT CHILD CARE PROVIDERS

Counties and the public may access substantiated complaint files regarding complaints about procedures other than child abuse at the Department, Division of Early Learning Licensing & Administration, or on the Department's website at https://cdec.colorado.gov/find-child-care.

A. Complaints about qualified exempt child care providers

Complaints shall be referred to the Department, Division of Early Learning Licensing & Administration 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 Department, Division of Early Learning Licensing & Administration 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 noncompliance licensing issues.

3.115 PURCHASE OF SERVICES

3.115.1 CHILD CARE PROVIDER REIMBURSEMENT RATES

The counties shall implement the state-established licensed child care provider base payment rates for each county on July first every 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. Payment rates shall be defined utilizing the state established, system supported age bands.

B. Rate types are selected by child care provider type (licensed home, licensed center, and qualified exempt child care providers). The Department has established rate type definitions to be used by all counties and deviation from the rate definitions shall not be permitted.

C. 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.

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 alternative care as defined by the county and reported in the county plan.

D. Counties must not set qualified exempt child care provider rates such that they inhibit or deter providers from becoming licensed.

E. Absences and Holidays.

1. Effective August 1, 2021 until June 30, 2022, counties shall reimburse licensed child care providers for absences based on the following schedule:

a. No fewer than Six (6) absences per month if they are in levels one (1) or two (2) of the department’s quality rating and improvement system.

b. No fewer than Seven (7) absences per month if they are in levels three (3), four (4), or five (5) of the department’s quality rating and improvement system.

c. No fewer than Six (6) absences per month if they are a school age child care program that does not have a quality rating through the department’s quality rating and improvement system.

2. Effective July 1, 2022, counties shall reimburse licensed child care providers for absences based on the following schedule:

a. No fewer than three (3) absences per month if they are in levels one (1) or two (2) of the department’s quality rating and improvement system.

b. No fewer than four (4) absences per month if they are in levels three (3), four (4), or five (5) of the department's quality rating and improvement system.

c. No fewer than three (3) absences per month if they are a school age child care program that does not have a quality rating through the department's quality rating and improvement system.

3. Counties may pay licensed child care providers for holidays in accordance with the policy set by the county and approved by the Department.

4. Counties may adopt a policy allowing the use of hold slots in order to address payments for unattended authorized care that is in addition to absences, holidays, and school breaks to hold a child's space with a provider when the child is not in care.

F. Counties may adopt a policy to pay for drop in days in addition to regularly authorized care.

G. 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.

H. 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.

3.115.2 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 licensed child care providers, and expenditure predictability for counties.

A. Counties may choose to enter into a slot contract not to exceed twelve (12) months or the length of the fiscal agreement in place (if it expires in less than twelve (12) months) per contract with a licensed child care provider to purchase a specified number of slots for children enrolled in CCCAP.

B. When a county chooses the option to use slot contracts with a licensed child care provider, the following steps must be completed a minimum of sixty (60) days prior to the commencement of the slot contract:

1. The county must submit a new county plan in CHATS and include selection of the slot contract option.

2. At the time the county plan is submitted, a slot contract policy based on the state developed policy template must be submitted to the state department for approval. The policy must include but not limited to the following:

a. The county identified target populations and areas

b. How the county will determine the length of the slot contract

c. How the county will identify the need for the slot contract at a specific licensed child care provider

d. 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. This must include an overview of the evaluation process used to identify licensed child care providers that are aligned with the county-determined criteria

e. How the county will determine the number of slots they contract for with a licensed child care provider

f. How the county will collaborate with the licensed child care provider to identify children to fill the vacant slots

g. How the county will continuously monitor the success of a slot contract during the contract period to include but not limited to:

1) What the measure of success is for the slot contract and how it is determined.

2) Frequency of monitoring the success of the slot contract, which must be at least twice per year but no more often than quarterly.

3) Cumulative attendance expectations and the time period over which attendance expectations must be defined. Cumulative attendance expectations must not be set higher than the following:

a) Seventy five percent (75%) for infants;

b) Eighty percent (80%) for toddlers; and,

c) Eighty five percent (85%) for preschoolers.

d) The period of time over which cumulative attendance must be met must be no less than quarterly and no more than six (6) months.

e) A plan for how the county will coordinate with the licensed child care provider to take intermediate steps or interventions if progress monitoring shows that attendance or other expectations are not being met.

f) 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.

h. How the county will determine the need for a slot contract renewal.

C. Licensed child care providers that are fiscally managed by a county may not enter into a slot contract with the county that fiscally manages them.

D. Counties must submit the state developed monitoring tool in accordance with the county's monitoring schedule as specified in the county policy, within thirty-one (31) days of the end of the monitoring period.

E. 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 due to inadequate child care services and/or resources;

5. Areas where quality rated programs are in short supply for children enrolled in CCCAP; or,

6. Any other county identified target population or areas.

F. Criteria for assessing the need for slot contracts may include but is not limited to:

1. Counties must demonstrate the rationale for identifying specific CCCAP populations or underserved areas in their county;

2. The demographic data source(s) must 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.

G. Licensed child care programs who enter into slot contract agreements with counties must agree to be engaged in quality building at a minimum of a level two (2) quality rating through the Colorado Shines QRIS program.

H. The state department will maintain a slot contract template that meets the requirements of this rule and all state and federal contracting requirements.

1. Counties must utilize the state-developed slot contract template in CHATS which must include any county-specific target populations and areas.

2. The state department will assess and approve within thirty (30) days of receipt:

a. The updated county plan; and,

b. The county submitted slot contract policy.

3. The state department will review the monitoring conducted by the county based on the county monitoring schedule.

3.115.3 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 state prescribed fiscal agreement form(s) with the county.

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 birth to 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 fiscal agreement contains the child care provider's policy on activity fee costs. Counties shall set their own limit on activity fees in accordance with the County Rate Plan in CHATS and policy that is set by the county and approved by the State Department.

G. Counties may pay for transportation costs if the child care provider charges such costs, and if the 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 in accordance with the County Rate Plan in CHATS and policy that is set by the county and approved by the State Department.

H. Counties may pay for registration fees if the child care provider is licensed, and if the fiscal agreement contains the child care provider's policy on registration costs. Counties shall set their own limit on registration fees in accordance with the County Rate Plan in CHATS and policy that is set by the county and approved by 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.

3.115.4 ATTENDANCE TRACKING SYSTEM (ATS)

A. The adult caretaker(s) or teen parent(s) shall utilize the Attendance Tracking System 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 child care provider has recorded a missed check-in or check-out the adult caretaker or teen parent shall confirm the record in the Attendance Tracking System for the prior nine (9) day period.

3. Adult caretakers or teen parents shall not leave his/her individual attendance credentials in the child care provider's possession at any time or he/she may be subject to disqualification.

4. Non-cooperation with the use of the Attendance Tracking System may result in case closure and/or non-payment of the child care subsidy as defined by a state approved county policy.

B. The child care provider will receive registration information for the Attendance Tracking System upon entering into a fiscal agreement with the county and shall utilize the Attendance Tracking System 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 check-ins/outs to record daily attendance, the child care provider may record the missed check-in/out in the Attendance Tracking System and the adult caretaker or teen parent shall confirm the record in the attendance tracking system for the prior nine (9) day period for automatic payment.

3. The child care provider shall not hold, transfer, or use any adult caretaker or teen parents’ Individual attendance credentials at any time or the child care provider may be subject to disqualification.

4. Non-cooperation with the use of the Attendance Tracking System may result in nonpayment of the child care subsidy as defined by a state approved county policy, unless non-use of the Attendance Tracking System is approved by the state department.

3.115.5 COUNTY FISCAL AGREEMENT AUTHORITY

A. Counties have the authority to enter into a fiscal agreement with Qualified Exempt Child Care Providers and licensed child care providers including those in a probationary status.

B. Counties have the authority to refuse to enter into a fiscal agreement with a child care provider.

C. 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.

D. 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 7.701.2, J 11 and section 7.701.22, K (12 CCR 2509-8). Counties may not enter into or continue a fiscal agreement with any child care provider who has a denied, suspended or revoked child care license.

E. Counties may notify a child care provider of an immediate termination verbally, but written notice of that action must also be forwarded to the child care provider within one business day. Any notice regarding denial or termination of a Fiscal Agreement shall include information regarding the child care provider's right to an informal conference.

3.116 PROGRAM INTEGRITY

3.116.1 INTENTIONAL PROGRAM VIOLATION (IPV)

All adult caretakers or teen parents that apply for 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 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.

3.116.2 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.

3.116.3 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 Department 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.

3.116.4 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.

3.116.5 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 CCCAP.

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.

3.116.6 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.

3.116.7 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.

3.116.8 CRIMINAL VERDICT DISQUALIFICATION

Upon determination of fraudulent acts, adult caretaker(s) or teen parent(s) who have signed the application or re-determination will be disqualified from participation in CCCAP for the following periods, pursuant to Section 26.5-4-116, 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.

3.116.9 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.

3.116.91 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.

Child care providers shall be subject to the fiscal agreement termination process outlined in section 3.115.3.

3.116.92 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”.

3.116.93 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.

3.116.94 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.

3.116.95 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 intercepts 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 Department 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.

COLORADO
Department of Early Childhood

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Basis and Purpose

Annually, the Department updates the Federal Poverty Levels and the State Median Income levels in Rule and in CHATS, the automated system used by counties to administer Colorado Child Care Assistance Program (CCCAP), to align with each federal fiscal year updates. These guidelines are used to determine eligibility for families applying to the CCCAP program.

These updated figures must be in rule in accordance with the Administrative Procedure Act, § 24-4-103, which requires the state to address in rule any general standard that is applied to the public (such as income eligibility for child care assistance).

Lastly, technical changes have been made to this proposed rule to change the CCR code from 9 CCR 2503-9 to 8 CCR 1403-1 and revise statutory references. This allows us to provide correct citations and promulgate the rules under the new Department of Early Childhood.

Justification

The updated Federal Poverty Levels and State Median Income levels must be in effect at the beginning of the federal fiscal year, October 1st, in order to comply with federal regulations.

Executive Director and Programmatic Authority for Rule

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

45 CFR 98.16 (h), (k) Lead Agencies must establish income eligibility thresholds that do not exceed 85% of the State Median Income but that allow for gradual increases in income, and describe the sliding fee scale for cost-sharing by families.

26.5-4-111(1), C.R.S. (2022) Counties shall provide child care assistance to a participant or any person or family whose income is not more than one hundred eighty-five percent of the federal poverty level pursuant to Department rules. The Executive Director by rule may adjust the percentage of the federal poverty level used to determine child care assistance eligibility by promulgating a rule and shall revise income and verification requirements that promote alignment and simplification.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00618

Opinion of the Attorney General rendered in connection with the rules adopted by the

Colorado Child Care Assistance Program

on 09/29/2022

8 CCR 1403-1

COLORADO CHILD CARE ASSISTANCE PROGRAM

The above-referenced rules were submitted to this office on 09/30/2022 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.

October 13, 2022 13:27:09

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Early Childhood

Agency

Preschool

CCR number

8 CCR 1404-1

Rule title

8 CCR 1404-1 Universal Preschool 1 - eff 09/29/2022

Effective date

09/29/2022

Expiration date

01/27/2023

8 CCR 1404-1

4.100 UNIVERSAL PRESCHOOL PROGRAM

The Colorado Universal Preschool Program was established to provide high-quality, voluntary, preschool programming through a mixed delivery system for children throughout the state in the year preceding eligibility for kindergarten enrollment and to provide for additional preschool services for children who are in low-income families or who meet identified qualifying factors. The department intends to work with preschool program services providers to meet families' needs, including for a half or full day program.

4.101 DEFINITIONS

"Additional preschool services" means hours of preschool services provided to a child in the year preceding enrollment in kindergarten that are in addition to the universal preschool services the child receives.

"Children with disabilities" has the same meaning as provided in section 22-20-103, C.R.S.

"Colorado universal preschool program" or "preschool program" means the program established within the department pursuant to section 26.5-4-204, C.R.S., and includes all participating preschool providers.

"Department" means Colorado Department of Early Childhood.

"ECEA" means the "Exceptional Children's Educational Act", Article 20 of Title 22, and its implementing rules.

"Eligible child" means a child who is eligible to receive preschool services as provided in section 26.5-4-204 (3), C.R.S.

Federal Poverty Level" (FPL) or "Federal Poverty Guidelines" (FPG) refers to figures set by the federal government annually. These figures, based on gross monthly income levels for the corresponding household size, are included in the table in section 4.102.A.

"Foster care home" has the same meaning as provided in section 26-6-903(10), C.R.S.

"IDEA" means the federal "Individuals with Disabilities Education Act", 20 U.S.C. SEC. 1400 ET SEQ., as amended, and its implementing regulations.

"Individualized Education Program" or "IEP" has the same meaning as provided in section 22-20-103(15), C.R.S.

"Noncertified kinship care" means a child is being cared for by a relative or kin pursuant to 19-1-103(102), C.R.S., who has a significant relationship with the child in circumstances when there is a safety concern by a county department of human or social services and where the relative or kin has not met the foster care certification requirements for a kinship foster care home or has chosen not to pursue that certification process.

"Parent" has the same meaning as provided in section 22-20-103. C.R.S.

“Qualifying factor” means a child or family circumstance, as identified by department rule pursuant to section 26.5-4-204, (4)(a)(II), C.R.S. that may negatively impact a child’s cognitive, academic, social, physical, or behavioral health or development.

"School District” means a school district organized pursuant to article 30 of title 22, C.R.S. that provides preschool services and is licensed pursuant to part 3 of article 5 of title 26.5, C.R.S. as a preschool provider; or a board of cooperative services organized pursuant to article 5 of title 22, C.R.S. that provides preschool services and is licensed pursuant to part 3 of article 5 of title 26.5, C.R.S. as a preschool provider.

"Universal preschool services” means ten hours of preschool services per week made available, at no charge, to children in the state during the school year preceding the school year in which a child is eligible to enroll in kindergarten.

4.102 PROGRAM PURPOSE

A. For the 2023-24 school year and school years thereafter, families may enroll their children in preschool providers that receive funding through the preschool program. The purposes of the preschool program are:

1. To provide children in Colorado access to voluntary, high-quality, universal preschool services free of charge in the school year before a child is eligible to enroll in kindergarten;
2. To provide access to additional preschool services in the school year before kindergarten eligibility for children in low-income families and children who lack overall learning readiness due to qualifying factors;
3. To provide access to preschool services for children who are three years of age, or in limited circumstances younger than three years of age, and are children with disabilities, are in low-income families, or lack overall learning readiness due to qualifying factors; and
4. To establish quality standards for publicly funded preschool providers that promote children’s early learning and development, school readiness, and healthy beginnings.

4.103 ELIGIBILITY

A. Children who are three years of age, or who reside in a community in which a school district operates a district preschool program with a waiver to serve children under three years of age, and children who are in the school year preceding the school year in which the child is eligible to enroll in kindergarten are eligible for preschool services if the child’s family is low income such that the child’s parent or guardian’s gross income is below 270% of the Federal Poverty Guideline (FPG):

FAMILY SIZE	100% FEDERAL POVERTY GUIDELINE (FPG)	270% FEDERAL POVERTY GUIDELINE (FPG)
1	**$1,132.50**	**$3,057.75**
2	**$1,525.83**	**$4,119.75**
3	**$1,919.17**	**$5,181.75**
4	**$2,312.50**	**$6,243.75**

5	**$2,705.83**	**$7,305.75**
6	**$3,099.17**	**$8,367.75**
7	**$3,492.50**	**$9,429.75**
8	**$3,885.83**	**$10,491.75**
EACH ADDITIONAL PERSON	**$393.33**	

B. To be eligible for additional preschool services a child must meet one or more of the following qualifying factors:

1. Child is identified as low-income in accordance with section A above.
2. Child is a dual-language learner and the native language spoken in the child's home is a language other than English, or the child's native language is not English.
3. Child has an IEP.
4. Child is currently in the custody of a state supervised and county administered foster care home or in non-certified kinship care.
5. Child identified as homeless and lacks a fixed, regular, and adequate nighttime residence and at least one of the following:
   a. Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; living in motels, hotels, or camping grounds due to the lack of alternative accommodations; living in emergency or transitional shelters;
   b. Has 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. Living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or,
   d. Is a child who is migratory who qualifies as homeless for the purposes of this subtitle because the child is living in circumstances described in this definition A through C.

COLORADO
Department of Early Childhood

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Basis and Purpose

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

In accordance with HB 22-1295, a child who is in a low-income family or who meets at least one qualifying factor may receive additional preschool services in the school year preceding the school year in which the child is eligible to enroll in kindergarten in accordance with Department rule. The Department must establish by rule the following:

1. The level of income that identifies a family as low-income, and therefore eligible for preschool services for children three years of age or, in waiver communities, younger, and for children in the school year preceding the school year in which the child is eligible to enroll in kindergarten.
2. The qualifying factors that a child must meet to be eligible for additional preschool services.
3. The number of hours of preschool services that a child who is three years of age, or under three years of age in a district with a waiver to serve children under three years of age, and is low income or meets at least one qualifying factor.
4. The number of additional hours of preschool services that a child who is low-income and meets at least one qualifying factor and is in the school year preceding the school year in which the child is eligible to enroll in kindergarten.

Justification

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

Executive Director and Programmatic Authority for Rule

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

26.5-4-204(4), C.R.S. (2022) The Executive Director shall adopt rules to implement the preschool program. The Department must establish by rule the following:

1. The level of income that identifies a family as low-income, and therefore eligible for preschool services for children three years of age or, in waiver communities, younger, and for children in the school year preceding the school year in which the child is eligible to enroll in kindergarten.
2. The qualifying factors that a child must meet to be eligible for additional preschool services.
3. The number of hours of preschool services that a child who is three years of age, or under three years of age in a district with a waiver to serve children under three years of age, and is low income or meets at least one qualifying factor.
4. The number of additional hours of preschool services that a child who is low-income and meets at least one qualifying factor and is in the school year preceding the school year in which the child is eligible to enroll in kindergarten.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00621

Opinion of the Attorney General rendered in connection with the rules adopted by the

Preschool

on 09/29/2022

8 CCR 1404-1

UNIVERSAL PRESCHOOL

The above-referenced rules were submitted to this office on 10/05/2022 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.

October 13, 2022 13:29:06

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Public Safety

Agency

Division of Fire Prevention and Control

CCR number

8 CCR 1507-101

Rule title

8 CCR 1507-101 BUILDING AND FIRE CODE ADOPTION AND CERTIFICATION OF INSPECTORS FOR FIRE & LIFE SAFETY PROGRAMS ADMINISTERED BY THE STATE OF COLORADO 1 - eff 10/25/2022

Effective date

10/25/2022

Expiration date

01/25/2023

DEPARTMENT OF PUBLIC SAFETY

Division of Fire Prevention and Control

8 CCR 1507-101

BUILDING AND FIRE CODE ADOPTION AND CERTIFICATION OF INSPECTORS FOR FIRE & LIFE SAFETY PROGRAMS ADMINISTERED BY THE STATE OF COLORADO

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Pursuant to Section 24-33.5-1203.5, C.R.S., the Director of the Colorado Division of Fire Prevention and Control shall promulgate rules and adopt codes as necessary to carry out the duties of the Division of Fire Prevention and Control. This rule is proposed pursuant to this authority and is intended to be consistent with the requirements of the State Administrative Procedures Act, Section 24-4-101, et seq., C.R.S.

C.R.S. Title 24 Article 33.5 Part 12 directs that fire suppression systems installed in commercial and residential occupancies are designed, installed, inspected and maintained according to the codes and standards adopted by the Director of the Division of Fire Prevention & Control.

The Division of Fire Prevention and Control is authorized to certify a person with fire suppression system inspector and/or plan review responsibilities by the provisions of section 24-33.5-1206.4, C.R.S.

The purpose of this rule change is to address the need to update, through amendment, the code provisions that address the use of antifreeze solutions in fire suppression systems for the purposes of freeze protection. Installation design parameters and their associated system modifications, cost of the antifreeze product, and lack of listed antifreeze product availability have created significant hardships in complying with the provision outlined in the currently adopted edition of the code that all antifreeze systems would be required to replace the antifreeze with a “listed” antifreeze by September 30, 2022. The rule change provides relief of this hardship, while still maintaining an industry-recognized appropriate level of safety.

The implementation of rules to carry out the purpose of amending the code requirements related to the use of antifreeze solutions in fire suppression systems for the purposes of freeze protection is necessary for the immediate preservation of the public peace, health, or safety; delay in the promulgation of these rules would be contrary to the purpose of Section 24-33.5-1203.5, C.R.S.

Mike Morgan, Division Director
Colorado Department of Public Safety
Division of Fire Prevention and Control

9/27/2022
Date of Adoption

DEPARTMENT OF PUBLIC SAFETY

Division of Fire Prevention and Control

BUILDING AND FIRE CODE ADOPTION AND CERTIFICATION OF INSPECTORS FOR FIRE & LIFE SAFETY PROGRAMS ADMINISTERED BY THE STATE OF COLORADO

8 CCR 1507-101

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

APPLICABILITY

These rules and regulations apply to all buildings and life safety systems subject to the oversight of the Colorado Department of Public Safety, Division of Fire Prevention and Control and persons conducting Fire and Life Safety and Building Code plan reviews and inspections on behalf of the Division pursuant to the provisions of C.R.S. 44-30-515, C.R.S. 24-4-103, C.R.S. 24-33.5-2003 and 2008, and C.R.S. Title 24 Article 33.5 Part 12.

ARTICLE 1 - AUTHORITY TO ADOPT RULES AND REGULATIONS

1.1 The Director of the Division of Fire Prevention and Control is authorized by the provisions of section 24-33.5-1203.5, C.R.S., to promulgate rules in order to carry out the duties of the Division of Fire Prevention and Control.

1.2 Statutory Authority to Adopt Codes and Standards

1.2.1 Section 44-30-515, C.R.S. establishes the authority and duty of the Division of Fire Prevention & Control to establish minimum safety standards for limited gaming structures.

1.2.2 Section 24-33.5-1203.5(2), C.R.S. establishes the authority and duty of the Director of the Division of Fire Prevention & Control to establish minimum codes and standards for waste tire facilities.

1.2.3 Section 24-33.5-1212.5, C.R.S. establishes the authority and duty of the Director of the Division of Fire Prevention & Control to establish minimum codes and standards for health facility buildings or structures.

1.2.4 Sections 24-33.5-1213.3, 22-32-124, and 23-71-122, C.R.S. establish the authority and duty of the Director of the Division of Fire Prevention & Control to establish minimum codes and standards for public school buildings or structures.

1.2.5 Section 24-33.5-1206.3, C.R.S. establishes the authority and duty of the Director of the Division of Fire Prevention & Control to establish minimum codes and standards for the design, installation, inspection, and testing of fire suppression systems in commercial and residential structures.

1.2.6 Section 24-33.5-2004(7), C.R.S. establishes the authority and duty of the Director of the Department of Public Safety to promulgate rules to implement the provision of part 20, including the adoption of minimum standards for the discharge of fireworks, as required by Section 24-33.5-2003, C.R.S.

1.2.7 Section 24-33.5-2008, C.R.S. establishes the authority and duty of the Director of the Division of Fire Prevention & Control to establish minimum codes and standards for the storage of fireworks in an area where the governing body has not adopted a fire code.

1.3 Statutory Authority to Certify Inspectors

1.3.1 Section 24-33.5-1211 C.R.S. establishes the authority and duty of the Division to certify persons to conduct Fire and Life Safety Code plan reviews and inspections on behalf of the Division.

1.3.2 Section 24-33.5-1213.5 C.R.S. establishes the authority and duty of the Division to certify persons to conduct Third-party Building Code inspections on behalf of the Division.

1.3.3 Section 24-33.5-1206.4 C.R.S. establishes the authority and duty of the Division to certify a person to conduct fire suppression system inspections and plan reviews on behalf of the Division.

ARTICLE 2 - DEFINITIONS

2.1 The definitions provided in 24-33.5-1202, C.R.S., apply to these rules. The following additional definitions also apply:

"Authority Having Jurisdiction" or **"AHJ"** means the Division, Building Department, Fire Chief, Fire Marshal, or other designated official of a county, municipality, special authority, or special district that has code enforcement responsibilities and employs a building inspector or certified fire inspector.

"Building Department" means the Building Department (or a contracted third party acting on their behalf) of the Division, authority, county, town, city, or city and county.

"Business Entity" means any organization or enterprise and includes, but is not limited to, a sole proprietor, an association, corporation, business trust, joint venture, limited liability company, limited liability partnership, partnership or syndicate. For the purposes of these rules the Business Entity may elect to be represented by a designated representative through a written delegation of authority.

"Certificate of Compliance" means an official document issued by applicable local building and/or fire code Authority Having Jurisdiction and approved by the Division, stating that materials and products meet specified standards, or that work was performed in compliance with approved construction documents.

"Certificate of Occupancy" means an official document issued by the Authority Having Jurisdiction which authorizes a building or structure to be used or occupied for a specified purpose.

"Construction" means work that is not considered as maintenance or service and that requires a permit as prescribed in the adopted codes and standards of the local Authority Having Jurisdiction or the Division.

"C.R.S." means Colorado Revised Statutes.

"Department" means the Department of Public Safety.

"Designated Representative" means a person designated by the Business Entity to act on their behalf through a written delegation of authority and is allowed to act in such manner as outlined in these rules.

"Director" means the Director of the Division of Fire Prevention and Control.

"Division" means the Division of Fire Prevention and Control in the Department of Public Safety.

"Executive Director" means the Executive Director of the Colorado Department of Public Safety.

"Fire Code Official" means the designated authority charged with the administration and enforcement of the Fire Code.

“ICC” means the International Code Council.

“Individual” or **“Person”** means a person, including an owner, manager, officer, employee, or individual.

“Inspection, Testing, and Maintenance Program” means a program conducted by the building owner to satisfy the periodic inspection, testing, and maintenance requirements of fire protection and life safety systems as required by applicable codes and standards.

“Installation” means the initial placement of equipment or the extension, modification, or alteration of equipment after the initial placement.

“Maintenance” means to sustain in a condition of repair that will allow performance as originally designed or intended. Maintenance does not include replacement of elements of a system which alter the performance criteria of the system as approved by the Authority Having Jurisdiction.

“Maintenance and Complaint Inspections” means periodic inspections or inspections conducted based on an allegation of nonconformance conducted by the local fire department or the Division to verify conformance with the adopted codes, rules, and standards. Such inspections are not to be considered to relieve the building owner of the responsibility to conduct an inspection, testing, and maintenance program for fire protection and life safety systems as required by the adopted codes, rules, and standards.

“NICET” means the National Institute for Certification in Engineering Technologies.

“NFPA” means the National Fire Protection Association.

“Qualified Fire Department” means a fire department that has Certified Fire Inspectors at the appropriate level for the fire prevention-related task being performed and provides fire protection service for the Business Entity’s buildings and structures.

“Service (Or Repair)” means to repair in order to return the system to operation as originally designed or intended.

“Temporary Certificate of Occupancy” means an official document issued by the Authority Having Jurisdiction which authorizes a building or structure to be temporarily used or occupied for a period not to exceed 90 days, unless an extension has been granted by the Authority Having Jurisdiction.

“Third-Party Inspector” means building inspectors that have been certified by the Division to perform third party inspection services in accordance with Article 4.1 of this rule.

ARTICLE 3 - CODES, DOCUMENTS, AND STANDARDS INCORPORATED BY REFERENCE

3.1 The technical requirements of these rules are supported primarily by codes developed by the International Code Council and the National Fire Protection Association. These two organizations are membership associations dedicated to building safety and fire prevention. These rules establish minimum requirements where the Division is the Authority Having Jurisdiction for building systems using prescriptive and performance related provisions, which are widely used to construct residential and commercial buildings. The appropriate portions of the adopted codes (particularly in relation to classification of occupancy) will be applied as prescribed by the adopted codes themselves. Where there are differing provisions for new and existing construction, all new work taking place after July 1, 2021 must meet the requirements for new construction, as amended by the provisions of IEBC and NFPA 101, and subject to the restrictions of Section
3.4.2 of this rule.

3.2 The following codes and their referenced standards are adopted and promulgated as minimum standards for the construction and maintenance of all property, buildings, and structures

subject to the oversight of the Colorado Department of Public Safety, Division of Fire Prevention and

Control pursuant to the provisions of C.R.S. 44-30-515 and C.R.S. Title 24 Article 33.5 Part 12.:

3.2.1 The following Building Codes are adopted by these regulations. Wherever Division or Department regulations refer to a Building Code, the following codes and standards will be enforced by the Division where applicable:

International Building Code - 2021 Edition, First Printing: October 2020 (Copyright 2020 by International Code Council, Inc. Washington D.C.).

International Mechanical Code - 2021 Edition, First Printing: March 2020 (Copyright 2020 by International Code Council, Inc. Washington D.C.).

International Energy Conservation Code - 2021 Edition, First Printing: January 2021 (Copyright 2021 by International Code Council, Inc.).

International Existing Building Code- 2021 Edition, First Printing: December 2020 (Copyright 2020 by International Code Council, Inc.).

International Residential Code, 2021 Edition, First Printing: December 2020 (Copyright 2020 by the International Code Council, Inc. Washington, D.C.).

NFPA 170 Standard for Fire Safety and Emergency Symbols – 2021 Edition, First Printing: October 2020 (Copyright 2020 by National Fire Protection Association). This supersedes all references to NFPA 170 within the International Building Code.

3.2.2 The following Fire Codes are adopted by these regulations. Wherever Division or Department regulations refer to a Fire Code, the following codes and standards will be enforced where applicable:

International Fire Code, 2021 Edition, First Printing: October 2020 (Copyright 2020 by the International Code Council, Inc. Washington, D.C.).

International Wildland-Urban Interface Code, 2021 Edition, First Printing: August 2020 (Copyright 2020 by International Code Council, Inc.).

NFPA 3 Standard for Commissioning of Fire Protection and Life Safety Systems, 2021 Edition (Copyright 2020 by National Fire Protection Association Inc.).

NFPA 4 Standard for Integrated Fire Protection and Life Safety System Testing 2021 Edition (Copyright 2020 by National Fire Protection Association Inc.).

NFPA 99 Health Care Facilities Code – 2012 Edition, Fourth Printing: April 2013 (Copyright 2011 by National Fire Protection Association). This supersedes all references to NFPA 99 within the International Fire Code.

NFPA 170 Standard for Fire Safety and Emergency Symbols – 2021 Edition, First Printing: October 2020 (Copyright 2020 by National Fire Protection Association). This supersedes all references to NFPA 170 within the International Fire Code.

3.2.3 The following Life Safety and Health Facility Construction Codes and Standards are adopted by these regulations. Wherever Division regulations refer to a Life Safety Code, the following codes, standards, and guidelines will be enforced where applicable:

NFPA 101 Life Safety Code – 2012 Edition, First Printing: September 2011 (Copyright 2011 by National Fire Protection Association).

NFPA 101A Guide on Alternative Approaches to Life Safety – 2013 Edition, First Printing: June 2013 (Copyright 2013 by National Fire Protection Association).

NFPA 99 Health Care Facilities Code – 2012 Edition, Fourth Printing: April 2013 (Copyright 2011 by National Fire Protection Association).

NFPA 3 Standard for Commissioning of Fire Protection and Life Safety Systems, 2015 Edition (Copyright 2015 by National Fire Protection Association Inc.).

NFPA 4 Standard for Integrated Fire Protection and Life Safety System Testing 2015 Edition (Copyright 2015 by National Fire Protection Association Inc.).

NFPA 170 Standard for Fire Safety and Emergency Symbols – 2021 Edition, First Printing: October 2020 (Copyright 2020 by National Fire Protection Association). This supersedes all references to NFPA 170 within the Life Safety Code.

3.2.4 The following standards are adopted by the Division for the design, installation, and maintenance of Fire Suppression Systems within the State of Colorado:

NFPA 3 Standard for Commissioning of Fire Protection and Life Safety Systems, 2021 Edition (Copyright 2020 by National Fire Protection Association Inc.).

NFPA 4 Standard for Integrated Fire Protection and Life Safety System Testing 2021 Edition (Copyright 2020 by National Fire Protection Association Inc.).

NFPA 11 Standard for Low, Medium, and High Expansion Foam 2016 Edition (Copyright 2015 by National Fire Protection Association Inc.).

NFPA 12 Standard for the Installation of Carbon Dioxide Extinguishing Systems 2018 Edition (Copyright 2017 by National Fire Protection Association Inc.).

NFPA 12A Standard for the Installation of Halon 1301 Fire Extinguishing Systems, 2018 Edition (Copyright 2017 by National Fire Protection Association Inc.).

NFPA 13 Standard for the Installation of Sprinkler Systems, 2019 Edition, (Copyright 2018 by National Fire Protection Association Inc.).

NFPA 13D Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, 2019 Edition (Copyright 2018 by National Fire Protection Association Inc.).

NFPA 13R Standard for the Installation of Sprinkler Systems in Low-Rise Residential Occupancies, 2019 Edition (Copyright 2018 by National Fire Protection Association Inc.).

NFPA 14 Standard for the Installation of Standpipe and Hose Systems, 2019 Edition (Copyright 2018 by National Fire Protection Association Inc.).

NFPA 15 Standard for Water Spray Fixed Systems for Fire Protection, 2017 Edition (Copyright 2016 by National Fire Protection Association Inc.).

NFPA 16 Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems, 2019 Edition (Copyright 2018 by National Fire Protection Association Inc.).

NFPA 17 Standard for Dry Chemical Extinguishing Systems, 2021 Edition (Copyright 2020 by National Fire Protection Association Inc.).

NFPA 17A Standard for Wet Chemical Extinguishing Systems, 2021 Edition (Copyright 2020 by National Fire Protection Association Inc.).

NFPA 18 Standard for Wetting Agents, 2021 Edition (Copyright 2020 by National Fire Protection Association Inc.).

NFPA 18A Standard for Water Additives for Fire Control and Vapor Mitigation, 2017 Edition (Copyright 2016 by National Fire Protection Association Inc.).

NFPA 20 Standard for the Installation of Stationary Pumps for Fire Protection, 2019 Edition (Copyright 2018 by National Fire Protection Association Inc.).

NFPA 22 Standard for Water Tanks for Private Fire Protection, 2018 Edition (Copyright 2017 by National Fire Protection Association Inc.).

NFPA 24 Standard for the Installation of Private Fire Service Mains and Their Appurtenances, 2019 Edition (Copyright 2018 by National Fire Protection Association Inc.).

NFPA 25 Standard for the Inspection, Testing, and Maintenance of Water Based Fire Protection Systems, 2020 Edition (Copyright 2019 by National Fire Protection Association Inc.).

1. In the Division's adoption of NFPA 25 (2020 edition) section 5.3.4.4 is deleted in its entirety and replaced with the following:

   5.3.4.4
   Except as permitted by 5.3.4.4.1 and 5.3.4.4.3, all antifreeze systems shall utilize listed antifreeze solutions.

   5.3.4.4.1 *
   For systems installed prior to September 30, 2012, listed antifreeze solutions shall not be required where one of the following conditions is met:

   (1) * The concentration of the antifreeze solution shall be limited to 30 percent factory premixed propylene glycol by volume or 38 percent factory premixed glycerine by volume.

   (2) * Antifreeze systems with concentrations in excess of 30 percent but not more than 40 percent factory premixed propylene glycol by volume and 38 percent but not more than 50 percent factory premixed glycerine by volume shall be permitted based upon an approved deterministic risk assessment prepared by a qualified person approved by the authority having jurisdiction.

   5.3.4.4.2
   Newly introduced solutions shall be factory premixed antifreeze solutions (chemically pure or United States Pharmacopeia 96.5 percent).

   5.3.4.4.3
   Premixed antifreeze solutions of propylene glycol exceeding 30 percent concentration by volume shall be permitted for use with ESFR sprinklers where the ESFR sprinklers are listed for such use in a specific application.

NFPA 72 National Fire Alarm and Signaling Code, 2019 Edition (Copyright 2018 by National Fire Protection Association Inc.). (The documentation requirements of Sections 7.3, 7.4, 7.5, and 7.8 are hereby also adopted as part of these rules.)

NFPA 170 Standard for Fire Safety and Emergency Symbols – 2021 Edition, First Printing: October 2020 (Copyright 2020 by National Fire Protection Association).

NFPA 291: Recommended Practice for Fire Flow Testing and Marking of Hydrants, 2019 Edition (Copyright 2018 by National Fire Protection Association Inc.).

NFPA 409 Standard on Aircraft Hangars, 2016 Edition (Copyright 2015 by National Fire Protection Association Inc.).

NFPA 418 Standard for Heliports, 2021 Edition (Copyright 2020 by National Fire Protection Association Inc.).

NFPA 423 Standard for Construction and Protection of Aircraft Engine Test Facilities, 2016 Edition (Copyright 2014 by National Fire Protection Association Inc.).

NFPA 750 Standard on Water Mist Fire Protection Systems, 2019 Edition (Copyright 2018 by National Fire Protection Association Inc.).

NFPA 770 Standard on Hybrid (Water and Inert Gas) Fire-Extinguishing Systems, 2021 Edition (Copyright 2020 by National Fire Protection Association Inc.).

NFPA 1142 Standard on Water Supplies for Suburban and Rural Firefighting, 2017 Edition (Copyright 2016 by National Fire Protection Association Inc.).

NFPA 2001 Standard on Clean Agent Fire Extinguishing Systems, 2018 Edition (Copyright 2017 by National Fire Protection Association Inc.).

NFPA 2010 Standard for Fixed Aerosol Fire-Extinguishing Systems, 2020 Edition (Copyright 2019 by National Fire Protection Association Inc.).

3.2.5 The following Codes and Standards are adopted by these regulations. Wherever Division or Department regulations refer to a Code or Standard for persons dealing with fireworks, the following codes and standards will be enforced where applicable:

49 C.F.R. Part 173 as of July 1st, 2021; U.S. Department of Transportation.

NFPA 160 Standard for the Use of Flame Effects Before an Audience, 2021 Edition, First Printing: October 2020 (Copyright 2020 by National Fire Protection Association).

NFPA 170 Standard for Fire Safety and Emergency Symbols – 2021 Edition, First Printing: October 2020 (Copyright 2020 by National Fire Protection Association).

NFPA 1123, Code for Fireworks Display- 2018 Edition (Copyright 2017 by National Fire Protection Association Inc.).

NFPA 1124, Code for the Manufacture, Transportation, and Storage, and Retail Sales of Fireworks and Pyrotechnic Articles - 2013 Edition, Printing: August 2012 (Copyright 2012 by National Fire Protection Association – Quincy, MA).

NFPA 1126, Code for the Use of Pyrotechnics Before a Proximate Audience- 2021 Edition (Copyright 2019 by National Fire Protection Association Inc.).

3.2.6 The following Codes and Standards are adopted by these regulations. Wherever Division or Department regulations refer to Standards for Persons Performing Fire Inspections or Fire Plan Examinations, the following codes and standards will be enforced where applicable:

NFPA 1031, Standard for Professional Qualifications for Fire Inspector and Plan Examiner, 2014 Edition (Copyright 2013 by National Fire Protection Association Inc.

3.3 The Division will maintain electronic copies of the complete texts of the adopted codes and standards, which are available for public inspection during regular business hours. Interested parties may inspect the referenced incorporated materials and/or be obtain certified copies of the adopted codes for a reasonable fee by contacting the Fire and Life Safety Section Chief at the Division, 690 Kipling St, Lakewood, CO, and/or The State Depository Libraries. Copies of the adopted codes and standards are available directly from the organization originally issuing the codes and standards: the International Code Council, Inc., through the International Code Council Regional Office Bookstores, reached by calling 888-ICC-SAFE or on the web at www.iccsafe.org; the National Fire Protection Association, reached by calling 800-344-3555 or on the web at

www.nfpa.org; and U.S. Department of Transportation rules, available via the Electronic Code of Federal Regulations on the web at www.ecfr.gov.

3.4 In the event that a new edition of a code or standard is adopted, the code or standard current at the time of permit application will remain in effect through the work authorized by the permit.

3.4.1 This rule does not include later amendments or editions of the incorporated material.

3.4.2 In conjunction with C.R.S. 44-30-515(1)(a) no retroactive provisions of the adopted codes shall apply to any structure licensed for limited gaming and operating prior to July 1, 2011. In these cases, the construction provisions of the adopted building codes shall only apply to new construction or remodeling work taking place after July 1, 2011.

3.5 All electrical work shall be conducted, inspected, and approved in accordance with the provisions of the State of Colorado's Electrical Board's rules and regulations.

3.6 All plumbing work shall be conducted, inspected, and approved in accordance with the provisions of the State of Colorado's Examining Board of Plumber's rules and regulations.

ARTICLE 4 - BUILDING CODE AND FIRE CODE & SUPPRESSION SYSTEMS INSPECTOR QUALIFICATION

4.1 Division and Third-Party Building Code Inspectors

4.1.1 Wherever Division regulations refer to Division and Third-Party Building Inspectors, they must be qualified as Third-Party Building Inspectors in accordance with this Article 4.1.

4.1.2 Applicants seeking initial or renewal of Third-Party Building Inspector certification must have the following minimum qualifications:

A. Hold current appropriate building inspector qualifications from ICC or other similar national organization (acceptable to the Division) and have demonstrated education, training, and experience; or

B. Have at least five years of demonstrated education, training, and experience in commercial building inspections and receive national certification within one year after the date of qualification. Qualified applicants that have at least five years of demonstrated education, training, and experience in appropriate building inspections will be issued certifications for one year. Certification renewal will be contingent on the applicant obtaining commercial building inspector certification from ICC or other similar national organization (acceptable to the Division) prior to the expiration date of the applicant's inspector certification.

4.1.3 Duties of Third-Party Inspectors

A. Third-Party Inspectors contracted by the Business Entity shall conduct the required inspections and require corrections or modifications as necessary to ensure that a building or structure is constructed in conformity with the Building Code adopted by the Division.

B. Third-Party Inspectors contracted by the Business Entity shall enforce only the codes adopted by the Division.

C. The Business Entity shall only use inspectors that are qualified by the Division to work on Health Facility or School projects. The Division shall be notified electronically in writing by the Business Entity of their selection of Third-Party Inspectors and which inspections they will be conducting on behalf of the Division.

D. Third-Party Inspectors contracted by the Business Entity shall cause copies of

their inspection reports to be sent to the Division.

E. If all inspections are not completed but a building requires immediate occupancy, and if the Business Entity has passed the appropriate inspections that indicate there are no life safety issues, the qualified Third-Party Inspectors contracted by the Business Entity shall notify the Division of the same. Upon receipt of this notice and review of the circumstances to ensure the safety of the temporary occupancy, the Division may issue a Temporary Certificate of Occupancy to allow the Business Entity to occupy the buildings and structures.

F. Limitations /Permissible Activities.

1. A Certified Third-Party Inspector may not also be a registered contractor.

2. A Certified Third-Party Inspector may not work directly for or contract with a registered contractor or contractor for the provision of inspection services.

3. A Certified Third-Party Inspector may not work directly for or contract with a registered Design Professional whose company has been involved in the design or layout of the project.

4. A Certified Third-Party Inspector shall contract directly, or through his employer, with the affected School Board for the provision of inspection services.

4.1.4 General Requirements for all Third-Party Inspector Certifications

A. An inspector must apply for certification in a format provided by the Division. Application instructions are available on the Division's website (www.colorado.gov/dfpc); from the Division's offices at 700 Kipling St, Suite 4100, Denver, CO 80215; or by telephone at 303-239-4100.

B. The applicant must submit the completed application along with the registration fee and all required supporting documentation prior to action by the Division. No cash payments will be accepted.

4.1.5 Duration of Certification

A. Third-Party Inspector Certifications are valid for a period of three-years from the date of issuance, unless earlier suspended or revoked.

4.1.6 Certification Renewal

A. Renewal of certification is the responsibility of the certified individual.

B. Certification renewal requires the renewal of the national certification outlined in 4.1.2. Submit proof of national certification renewal with the renewal application.

C. Applications for renewal shall be submitted no more than 30 days prior to expiration, A grace period for renewal may be extended for up to 30 days after expiration, after which a late application fee will be assessed.

D. All applicants shall have no longer than 30 days from the original submittal to correct deficiencies in their application including missing materials or fees. Applications older than 30 days with deficiencies will be considered vacated applications and the fees surrendered.

E. Applicants submitting more than 60 days after expiration shall submit all documentation required of a new applicant.

4.1.7 Denial, revocation, suspension, annulment, limitation or modification of certification.

A. Denial of Certification

1. The Division, in accordance with the Administrative Procedures Act, Section 24- 4-101, et seq., C.R.S., may deny any certificate or refuse to renew a certificate to any applicant for, but not limited to, the following reasons:

a. Failure to meet requirements specified in these rules pertaining to the issuance of certificates and/or the renewal of certification.

b. Any conduct as described in Article 4.1.7.B.2 pertaining to good cause for disciplinary action.

c. Fraud, misrepresentation, or deception in applying for or securing certification, or in taking any written certification examination.

d. Aiding and abetting another person in procuring or attempting to procure certification for any person who is not eligible for certification.

B. Revocation, suspension, or limitation of certification.

1. Any certification issued by the Division may be suspended, summarily suspended, revoked, or limited for good cause in accordance with the Administrative Procedures Act, Section 24-4-101, et seq., C.R.S.

2. Good cause for disciplinary sanctions listed in this Article (denial, revocation, suspension, annulment, limitation, or modification of certification) shall include, but not be limited to:

a. Evidence that the minimum standards for certification set forth in these rules have not been met.

b. Material misstatement or misrepresentation on the application for certification.

c. Proof of unfitness.

d. Proof of individual's failure to meet, and continue to meet, performance standards at the level certified.

e. Obtaining or attempting to obtain certification or recertification by fraud, misrepresentation, deception, or subterfuge.

f. Materially altering any Division certificate, or using and/or possessing any such altered certificate.

g. Unlawfully discriminating in the provisions of services based upon national origin, race, color, creed, religion, sex, age, physical or mental disability, sexual preference, or economic status.

h. Representing qualifications at any level above the person's current certification level.

i. Failure to pay required fees for certification.

C. If the Division finds that grounds exist for the denial, revocation, suspension, annulment, limitation, or modification of certification of any applicant, action shall be taken according to the provisions of the Colorado Administrative Procedure Act, Section 24-4-101, et seq., C.R.S.

D. Upon the denial, revocation, suspension, annulment, limitation, or modification of any applicant, all certificates, cards, patches or other identification issued by the Division for said certification and accreditation levels shall be returned to the Division.

4.2 Fire & Suppression Systems Inspector Qualification

4.2.1 Wherever Division regulations state that Fire Inspectors performing construction plan review and inspections must be “Certified Fire Inspectors” or “Certified Fire Suppression Systems Inspector” as defined in section 24-33.5-1202 (2.5) and (3), C.R.S., the following shall apply.

4.2.2 General Requirements for all Fire Inspector Certifications

A. An inspector must apply for certification in a format provided by the Division. Application instructions are available on the Division’s website (www.colorado.gov/dfpc); from the Division’s offices at 700 Kipling St, Suite 4100, Denver, CO 80215; or by telephone at 303-239-4100.

B. The applicant must submit the completed application along with the registration fee and all required supporting documentation prior to action by the Division. No cash payments will be accepted.

C. The application must be accompanied by a letter from the agency's chief executive or code official responsible for inspection and plan review attesting for every jurisdiction for which they are providing inspection or plan review services:

1. That the individual is currently employed by, volunteers with or is contracted by a county, municipality, special district, or state agency that has fire inspection, plan review, and enforcement responsibility;

2. That the agency is responsible for such enforcement in their jurisdiction;

3. That the individual has the responsibility to conduct fire plan reviews and/or inspections on behalf of the jurisdiction; and

4. That the individual meets the qualifications (knowledge, skills and ability) to conduct fire plan reviews and/or inspections.

D. The applicant must provide evidence of certification, education and/or training directly related to plan review and/or inspections appropriate for the certification being sought, to include topics relevant to Fire Suppression Systems. Courses must be taught by recognized organizations or institutions including (acceptable to the Division), but not limited to:

1. Regionally accredited post-secondary institutions

2. National Fire Protection Association

3. International Code Council

4. National Fire Academy

5. American Fire Sprinkler Association

6. National Fire Sprinkler Association

7. Sprinkler Fitters Local 669, Joint Apprenticeship and Training Committee

8. IFMA Fire Protection Institution

9. State chapters of organizations or institutions listed above

E. For applicants seeking reciprocity, submit evidence of current and valid certification from another state or jurisdiction which is determined by the Division to be at least equivalent to the requirements stated herein.

F. Limitations /Permissible Activities.

1. A Certified Fire Inspector may not also be a registered contractor.

2. A Certified Fire Inspector may not work directly for or contract with a registered contractor, contractor, or building owner for the provision of inspection services.

3. A Certified Fire Inspector may contract directly, or through his employer, with one or more municipalities, counties, fire protection districts or other local AHJs for the provision of inspection services. In such cases where the inspector is performing inspection or plan review services for multiple jurisdictions the agency letter defined in Section 4.2.2.C shall be provided to the Division for all jurisdictions where services are to be provided within 14 days of the assumption of said duties.

4.2.3 There are three levels of qualification for Fire Inspectors. Inspectors must be qualified to the appropriate level defined in Sections A through C of this Article for the task performed.

A. FIRE INSPECTOR I - In order to become qualified as Fire Inspector I, a person must meet at least one of the following criteria:

1. Possess current and valid inspector qualification(s) issued by a nationally recognized organization (acceptable to the Division), which includes demonstrated knowledge in fire protection and life safety systems, plan review and inspection. The following qualifications are approved:

a. ICC Fire Inspector I

b. NFPA Fire Inspector I; or

2. Submit documentation to the Division to demonstrate that they have the requisite skills and knowledge specified in NFPA 1031 – Standard for Professional Qualifications for Fire Inspector and Plans Examiner for Fire Inspector I, including education, training and experience. The following list identifies examples of education, training, and experience that may be considered as equivalent to the requisite skills and knowledge for Fire Inspector I. This list should not be considered all-inclusive.

a. Current Colorado license as a registered professional engineer specializing in fire protection.

b. Submit evidence of current and valid qualification in another state, which is determined by the Division to be at least

equivalent to the requirements listed herein.

B. FIRE INSPECTOR II - In order to become qualified as Fire Inspector II, which also qualifies the individual to conduct inspections of fire suppression systems, a person must meet at least one of the following criteria:

1. Possess current and valid inspector qualification(s) issued by a nationally recognized organization (acceptable to the Division), which includes demonstrated knowledge in fire protection and life safety systems, plan review and inspection. The following qualifications are approved:

   a. ICC Fire Inspector II

   b. NFPA Fire Inspector II; or

2. Submit documentation to the Division to demonstrate that they have the requisite skills and knowledge specified in NFPA 1031 – Standard for Professional Qualifications for Fire Inspector and Plans Examiner for Fire Inspector II including education, training, and experience. The following list identifies examples of education, training, and experience that may be considered as equivalent to the requisite skills and knowledge for Fire Inspector II. This list should not be considered all-inclusive.

   a. Current Colorado license as a registered professional engineer specializing in fire protection.

   b. Submit evidence of current and valid qualification in another state, which is determined by the Division to be at least equivalent to the requirements listed herein.

C. FIRE INSPECTOR III – PLANS EXAMINER - In order to become qualified as Fire Inspector III – Plans Examiner, which also qualifies the individual to conduct plan review for fire suppression systems, a person must meet at least one of the following criteria:

1. Possess current and valid inspector qualification(s) issued by a nationally recognized organization, which includes demonstrated knowledge in fire protection and life safety systems, plan review and inspection. The following qualifications are approved:

   a. ICC Fire Inspector II and ICC Fire Plans Examiner

   b. ICC Fire Inspector II and ICC Building Plans Examiner

   c. NFPA Fire Inspector II and NFPA Plans Examiner; or

2. Submit documentation to the Division to demonstrate that they have the requisite skills and knowledge specified in NFPA 1031 – Standard for Professional Qualifications for Fire Inspector and Plans Examiner for Fire Inspector II and for Fire Plans Examiner II, including education, training, and experience. The following list identifies examples of education, training, and experience that may be considered as equivalent to the requisite skills and knowledge for Fire Inspector III. This list should not be considered all-inclusive.

   a. A combination of five (5) years of education and work experience in fire protection and/or code enforcement is required. Education must be an Associate Degree or above in Fire Science, Fire Prevention, Fire Protection Engineering or

other Division approved related major. Work experience must be specifically in

fire prevention, fire protection, code enforcement, or inspection.

b. Current Colorado license as a registered professional engineer specializing in fire protection.

c. Submit evidence of current and valid qualification in another state, which is determined by the Division to be at least equivalent to the requirements listed herein.

4.2.4 Duration of Certification

A. Fire Inspector Certifications are valid for a period of three-years from the date of issuance, unless earlier suspended or revoked.

B. Certified Fire Inspectors who are separated from employment may not perform plan review or inspection services unless they become employed with a new agency and provide a letter pursuant to Section 4.2.2.C.

4.2.5 Certification Renewal

A. Renewal of certification is the responsibility of the certified individual. An individual who was certified as a Fire Suppression Systems Inspector or a Fire Suppression Systems Inspector-Plan Reviewer prior to April 1, 2019 may perform all of the responsibilities of a Fire Suppression Systems Inspector or a Fire Suppression Systems Inspector-Plan Reviewer until the certification is expired. Upon application for renewal he or she will need to apply to be certified as a Fire Inspector II or Fire Inspector III-Plans Examiner, whichever is applicable.

B. Certification renewal requires an application accompanied by the following:

1. A letter in accordance with section 4.2.2.C.

2. Certification renewal is contingent on meeting one of the following educational requirements during the three-year certification period:

a. Fifteen hours of continuing education relating to the field of building construction or fire protection, as applicable, including, but not limited to, classes, seminars, and training conducted by professional organizations or trade associations; or.

b. Documentation to the Division of 1.5 CEU’s relevant to the field of building construction or fire protection as applicable, by participation in educational and professional activities. CEU’s will be granted for the professional development activities as depicted in the table below: (It is important to obtain documentation and keep records of each activity attended during the certification period).

c. Successful renewal of equivalent ICC or NFPA certifications shall be considered as acceptable criteria for renewal of the State inspector certification. Submit proof of ICC or NFPA renewal with the renewal application.

Participation as a student in a seminar or technical session related to building construction or fire protection and life safety systems (depending upon the certification) conducted by a qualified organization[1].	0.1 CEU per clock hour of attendance
Attendance at NFPA and/or ICC code development hearings related to fire protection, fire prevention or life safety.	0.1 CEU per clock hour of attendance up to 1.0 CEU per renewal period.
Committee or board service for NFPA and/or ICC for one full year.	0.5 CEU per committee, per year.
Participation as a student in a university, community college, junior college, technical or vocational school in a course related to, building construction or fire protection, fire prevention or life safety (depending upon the certification).	1.0 CEU per credit hour.
Instruction of a seminar or technical session delivered for a related professional association, state or local code enforcement agency, standards writing organization or any related program.	0.1 CEU per clock hour of instruction delivered.
Participation as an instructor in a university, community college, junior college, technical or vocational school in a course related to building construction or fire protection, fire prevention or life safety (depending upon the certification)	1.0 CEU per credit hour.
Documented in-house training or continuous employment as a code official, plans examiner, or inspector. Training shall be documented and approved by the chief executive, fire chief or training officer for the applicant's organization.	Up to 0.3 CEU per renewal period.
Publication of a paper, book or technical article for a related textbook or professional trade journal.	1.0 CEU per publication.

[1] Pertinent courses provided by organizations listed in 4.2.2.D, as well as the National Fire Sprinkler Association, National Fire Alarm Association, American Fire Sprinkler Association, and International Fire Marshal's Association are deemed qualified. Courses provided by other entities may be accepted after review by the Division.

3. Payment of the required renewal fee.

C. Applications for renewal shall be submitted no more than 30 days prior to expiration, A grace period for renewal may be extended for up to 30 days after expiration, after which a late application fee will be assessed.

D. All applicants shall have no longer than 30 days from the original submittal to correct deficiencies in their application including missing materials or fees. Applications older than 30 days with deficiencies will be considered vacated applications and the fees surrendered.

E. Applicants submitting more than 60 days after expiration shall submit all documentation required of a new applicant in addition to documentation of continuing education.

4.2.6 Denial, revocation, suspension, annulment, limitation or modification of certification.

A. Denial of Certification

1. The Division, in accordance with the Administrative Procedures Act, Section 24- 4-101, et seq., C.R.S., may deny any certificate or refuse to renew a certificate to any applicant for, but not limited to, the following reasons:

a. Failure to meet requirements specified in these rules pertaining to the issuance of certificates and/or the renewal of certification.

b. Any conduct as described in Article 4.2.6.B.2 pertaining to good cause for disciplinary action.

c. Fraud, misrepresentation, or deception in applying for or securing certification, or in taking any written certification examination.

d. Aiding and abetting another person in procuring or attempting to procure certification for any person who is not eligible for certification.

B. Revocation, suspension, or limitation of certification.

1. Any certification issued by the Division may be suspended, summarily suspended, revoked, or limited for good cause in accordance with the Administrative Procedures Act, Section 24-4-101, et seq., C.R.S.

2. Good cause for disciplinary sanctions listed in this Article (denial, revocation, suspension, annulment, limitation, or modification of certification) shall include, but not be limited to:

a. Evidence that the minimum standards for certification set forth in these rules have not been met.

b. Material misstatement or misrepresentation on the application for certification.

c. Proof of unfitness.

d. Proof of individual's failure to meet, and continue to meet, performance standards at the level certified.

e. Obtaining or attempting to obtain certification or recertification by fraud, misrepresentation, deception, or subterfuge.

f. Materially altering any Division certificate, or using and/or possessing any such altered certificate.

g. Unlawfully discriminating in the provisions of services based upon national origin, race, color, creed, religion, sex, age, physical or mental disability, sexual preference, or economic status.

h. Representing qualifications at any level above the person's current certification level.

i. Failure to pay required fees for certification.

C. In addition to those items listed in Rule 4.2.6.B.2, good cause for disciplinary sanctions listed in this Article (denial, revocation, suspension, annulment, limitation, or modification of certification) against the certification held by an exam proctor shall include, but not be limited to:

1. Failure to adhere to the policies, procedures, and administrative requirements for delivery, documenting, test administration, and certification as adopted, administered and/or recognized by the Division.

2. Failure to maintain security over written exams, including unauthorized access or reproduction of examination materials.

D. If the Division finds that grounds exist for the denial, revocation, suspension, annulment, limitation, or modification of certification of any applicant, action shall be taken according to the provisions of the Colorado Administrative Procedure Act, Section 24-4-101, et seq., C.R.S.

E. Upon the denial, revocation, suspension, annulment, limitation, or modification of any applicant, all certificates, cards, patches or other identification issued by the Division for said certification and accreditation levels shall be returned to the Division.

ARTICLE 5 - ENFORCEMENT

5.1 The Division will enforce the requirements of these rules by following the provisions of this section 5.1.

5.1.1 The Division may issue a notice of violation to a person who is believed to have violated these rules. The notice shall be delivered to the alleged violator by certified mail, return receipt requested, or by any means that verifies receipt as reliably as certified mail, return receipt requested.

5.1.2 The notice of violation shall allege the facts that constitute a violation

5.1.3 The notice of violation may require the alleged violator to correct the alleged violation or to stop work until such time as acceptable conditions exist to continue work.

5.1.4 Within ten working days after delivery of the notice of violation, the alleged violator may request in writing an informal conference with the Director (or his designee) concerning the notice of violation. If the alleged violator fails to request the conference within ten days, the notice of violation is final and not subject to further review, and any requirement to correct the alleged violation pursuant to 5.1.3 becomes a binding enforcement order.

5.1.5 Upon receipt of a request for an informal conference, the Director (or his designee) shall set a reasonable time and place for the conference and shall notify the alleged violator of the time and place of the conference. At the conference, the alleged violator may present evidence and arguments concerning the allegations in the notice of violation.

5.1.6 Within twenty working days after the informal conference, the Director shall uphold, modify, or strike the allegations within the notice of violation and may issue an enforcement order. The decision and, if applicable, enforcement order shall be delivered to the alleged violator by certified mail, return receipt requested, or by any means that verifies receipt as reliably as certified mail, return receipt requested.

5.2 A person who is the subject of, and is adversely affected by, a notice of violation or enforcement order issued pursuant to Article 5 may appeal such action to the Executive Director. The Executive Director shall hold a hearing to review such notice or order and take final action in accordance with Article 11 and may either conduct the hearing personally or appoint an administrative law judge from the department of personnel.

5.2.1 Final agency action shall be subject to judicial review pursuant to C.R.S. Article 4 of Title 24.

5.2.2 An alleged violator who is required to correct an action pursuant to Article 12 shall be afforded the procedures set forth in section 24-4-104(3), C.R.S., to the extent applicable.

5.3 The Director may file suit in district court in the judicial district in which a violation is alleged to have occurred to judicially enforce an enforcement order issued pursuant to this section.

5.4 In addition to the remedies provided in this Article, the Director is authorized to apply to the district court, in the judicial district where the violation has occurred, for a temporary or permanent injunction to restrain any person from violation any provision of section 5.1 regardless of whether there is an adequate remedy at law.

ARTICLE 6 - FEES AND CHARGES

6.1 Inspector Certification Fees: The Division shall charge the following fees for inspector certifications:

Inspector Certification Fees	
Certification or Renewal of Inspectors by document review	$75.00
Certification or Renewal of Inspectors by reciprocity of equivalent ICC or NFPA certifications	$25.00
Late renewal fee	$25.00

6.2. Fees may be waived or modified when appropriate at the discretion of the Director or his designee. Request for waiver or modification shall be in writing.

ARTICLE 7 - INQUIRIES

7.1 Questions, clarification, or interpretation of these Rules should be addressed in writing to: Fire & Life Safety Section Chief, Colorado Division of Fire Prevention and Control, 700 Kipling St, Suite 4100, Lakewood, CO 80215. Telephone number: (303) 239-4100.

Editor's Notes History

New rule eff. 03/30/2019.

Rules 2.1, 3.1, 3.2, 4.1.2, 4.1.3-4.1.7, 4.2.2, 4.2.4-4.2.6, 6.1, 6.2, 7.1 eff. 06/30/2021.

DEPARTMENT OF PUBLIC SAFETY

Division of Fire Prevention and

Control 8 CCR 1507-101

BUILDING AND FIRE CODE ADOPTION AND CERTIFICATION OF INSPECTORS FOR FIRE & LIFE SAFETY PROGRAMS ADMINISTERED BY THE STATE OF COLORADO

Justification for Emergency Rule

Pursuant to Section 24-33.5-1203.5, C.R.S., the Director of the Colorado Division of Fire Prevention and Control shall promulgate rules and adopt codes as necessary to carry out the duties of the Division of Fire Prevention and Control.

C.R.S. Title 24 Article 33.5 Part 12 directs that fire suppression systems installed in commercial and residential occupancies are designed, installed, inspected and maintained according to the codes and standards adopted by the Director of the Division of Fire Prevention & Control.

The Division of Fire Prevention and Control is authorized to certify a person with fire suppression system inspector and/or plan review responsibilities by the provisions of section 24-33.5-1206.4, C.R.S.

The purpose of this rule change is to address the need to update, through amendment, the code provisions that address the use of antifreeze solutions in fire suppression systems for the purposes of freeze protection. Installation design parameters and their associated system modifications, cost of the antifreeze product, and lack of listed antifreeze product availability have created significant hardships in complying with the provision outlined in the currently adopted edition of the code that all antifreeze systems would be required to replace the antifreeze with a “listed” antifreeze by September 30, 2022.
The rule change provides relief of this hardship, while still maintaining an industry-recognized appropriate level of safety.

The implementation of rules to carry out the purpose of amending the code requirements related to the use of antifreeze solutions in fire suppression systems for the purposes of freeze protection is necessary for the immediate preservation of the public peace, health, or safety; delay in the promulgation of these rules would be contrary to the purpose of Section 24-33.5-1203.5, C.R.S.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00584

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Fire Prevention and Control

on 09/27/2022

8 CCR 1507-101

BUILDING AND FIRE CODE ADOPTION AND CERTIFICATION OF INSPECTORS FOR FIRE & LIFE SAFETY PROGRAMS ADMINISTERED BY THE STATE OF COLORADO

The above-referenced rules were submitted to this office on 09/28/2022 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.

October 13, 2022 13:07:45

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 10/14/2022

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission (1002 Series)

COLORADO
Water Quality
Control Commission
Department of Public Health & Environment

NOTICE OF PUBLIC ADMINISTRATIVE ACTION HEARING
BEFORE THE
COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

At the date, time and location listed below, the Water Quality Control Commission will hold a public Administrative Action Hearing to consider approval of an extension to the expiration date of the Temperature Criteria Methodology, Policy 06-1.

SCHEDULE OF IMPORTANT DATES:

Written Comments due	11/30/2022	Additional submittal information below
Public Administrative Action Hearing	**12/12/2022 9:00 a.m.**	**Remote Via Zoom** **Or** **Sabin Cleere Conference Room** **Department of Public Health and Environment** **4300 Cherry Creek Drive South** **Denver, CO 80246**

PROCEDURAL MATTERS:

The commission encourages input from interested persons, either in writing prior to the hearing or orally at the hearing. Interested persons should provide their opinions or recommendations regarding the proposed extension.

The commission will receive all written submittals electronically. Submittals must be provided as PDF documents and may be emailed to cdphe.wqcc@state.co.us, provided via an FTP site, or otherwise conveyed to the commission office to be received no later than the due date. Written comments will be available to the public on the commission's website.

AUTHORITY FOR PUBLIC HEARING:

The provisions of 25-8-202(1)(g), (h), (i), (o) and (2) C.R.S. and Section 21.5 B of the "Procedural Rules", Regulation #21 (5 CCR 1002-21) provide the authority for this hearing.

PARTY STATUS:

This is not a rulemaking hearing; therefore, party status provisions of 25-8-101 et. seq., and 24-4-101 et. seq., C.R.S. do not apply. Party status requests shall not be considered by the commission.

Dated this 11th day of October, 2022 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

_____

Jeremy Neustifter, Administrator

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 10/14/2022

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission (1002 Series)

COLORADO
Water Quality
Control Commission
Department of Public Health & Environment

NOTICE OF PUBLIC ADMINISTRATIVE ACTION HEARING AND INFORMATIONAL HEARING
BEFORE THE
COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

At the date, time and location listed below, the Water Quality Control Commission will hold a public Administrative Action hearing to consider an extension of the expiration date of Policy 17-1, Voluntary Incentive Program for Early Nutrient Reductions.

SCHEDULE OF IMPORTANT DATES:

Initial Comments from Division Due	11/9/2022	Available on the commission's website: https://www.colorado.gov/pacific/cdphe/wqcc-administrative-action-hearings
Written Responsive Comments Due	11/30/2022	Additional submittal information below
Final Comments from Division Due	12/7/2022	Available on the commission's website: https://www.colorado.gov/pacific/cdphe/wqcc-administrative-action-hearings
Administrative Action Hearing	**12/12/2022 9:00 a.m.**	**Florence Sabin Conference Room Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246 or Remote via Zoom**

PROCEDURAL MATTERS:

The commission encourages input from interested persons, either in writing prior to the hearing or orally at the hearing. Interested persons should provide their opinions or recommendations regarding the proposed extension.

The commission will receive all written submittals electronically. Submittals must be provided as PDF documents and may be emailed to cdphe.wqcc@state.co.us, provided via an FTP site, or otherwise conveyed to the commission office to be received no later than the due date. Written comments will be available to the public on the commission's website.

AUTHORITY FOR PUBLIC HEARING:

The provisions of 25-8-202(1)(g), (h), (i), (o) and (2) C.R.S. and Section 21.5 B of the "Procedural Rules", Regulation #21 (5 CCR 1002-21) provide the authority for this hearing.

PARTY STATUS:

This is not a rulemaking hearing; therefore, party status provisions of 25-8-101 et. seq., and 24-4-101 et. seq., C.R.S. do not apply. Party status requests shall not be considered by the commission.

Dated this 11th day of October, 2022 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

_____

Jeremy Neustifter, Administrator

Calendar of Hearings

Hearing Date/Time	Agency	Location
11/15/2022 11:00 AM	Division of Insurance	Webinar or 1560 Broadway, STE 850, Denver CO 80202
11/15/2022 11:00 AM	Division of Insurance	Webinar or 1560 Broadway, STE 850, Denver CO 80202
11/17/2022 01:00 PM	Division of Professions and Occupations - Colorado Medical Board	Webinar Only: https://us06web.zoom.us/webinar/register/WN_osUCyJRfSlqkjeeIFYx7yg
11/17/2022 01:00 PM	Division of Professions and Occupations - Colorado Medical Board	Webinar Only: https://us06web.zoom.us/webinar/register/WN_osUCyJRfSlqkjeeIFYx7yg
11/17/2022 01:00 PM	Division of Professions and Occupations - Colorado Medical Board	Webinar Only: https://us06web.zoom.us/webinar/register/WN_osUCyJRfSlqkjeeIFYx7yg
11/17/2022 01:00 PM	Division of Professions and Occupations - Colorado Medical Board	Webinar Only: https://us06web.zoom.us/webinar/register/WN_osUCyJRfSlqkjeeIFYx7yg
11/17/2022 01:00 PM	Division of Professions and Occupations - Colorado Medical Board	Webinar Only: https://us06web.zoom.us/webinar/register/WN_osUCyJRfSlqkjeeIFYx7yg
11/17/2022 01:00 PM	Division of Professions and Occupations - Colorado Medical Board	Webinar Only: https://us06web.zoom.us/webinar/register/WN_osUCyJRfSlqkjeeIFYx7yg
11/17/2022 01:00 PM	Division of Professions and Occupations - Colorado Medical Board	Webinar Only: https://us06web.zoom.us/webinar/register/WN_osUCyJRfSlqkjeeIFYx7yg
11/17/2022 09:00 AM	Division of Professions and Occupations - State Board of Optometry	Webinar Only: https://us06web.zoom.us/webinar/register/WN_ib7ZJet0R2GWPiJkjMUutg
11/18/2022 10:00 AM	Division of Professions and Occupations - Landscape Architects Board	Webinar Only: https://us06web.zoom.us/webinar/register/WN_OHY7HXzDRIC-ZkaUla09oA
11/15/2022 09:00 AM	Hazardous Materials and Waste Management Division	Colorado Department of Public Health and Environment Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246
11/15/2022 09:00 AM	Hazardous Materials and Waste Management Division	CDPHE, 4300 Cherry Creek Drive South, Bldg. A, Sabin Conference Room, Denver, CO 80246
11/15/2022 09:00 AM	Hazardous Materials and Waste Management Division	Colorado Department of Public Health and Environment Bldg. A, Sabin Conference Room, 4300 Cherry Creek Drive South, Denver, CO 80246
11/21/2022 09:00 AM	Colorado Child Care Assistance Program	Virtual meeting link: meet.google.com/zri-vrby-gix
11/21/2022 09:00 AM	Preschool	Virtual meeting link: meet.google.com/zri-vrby-gix
11/15/2022 12:00 PM	Division of Fire Prevention and Control	Virtual via Zoom
11/29/2022 12:00 PM	Executive Director of Health Care Policy and Financing	1570 Grant St, Hibiscus, Denver, CO 80203