

Title of Proposed Rule: Aid to the Needy Disabled State Only and Home Care Allowance Grant Increase

CDHS Tracking #: 17-11-28-01

Office, Division, & Program:
OES, EBD, Adult Financial
Program

Rule Author:
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STATEMENT OF BASIS AND PURPOSE

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

Summary: The proposed rules increase the Aid to the Needy Disabled-State Only (AND-SO) grant standard from \$189 to \$217; and the Home Care Allowance (HCA) and Home Care Allowance-Special Populations (SP-HCA) grant standards from \$255 to \$330 for Tier I, from \$397 to \$472 for Tier II and from \$530 to \$605 for Tier III in order to comply with Colorado Statute and the State's MOE agreement with SSA and to adjust the amount to reflect increases in the cost of living.

Aid to the Needy Disabled: The Aid to the Needy Disabled State Only (AND-SO) program provides interim assistance to Coloradans who are disabled or blind but have not been approved for federal Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). The AND-SO grant has remained the same since January 2015 when it was increased 8% from \$175 to \$189. Colorado State Statute (26-2-119,1,b,I, C.R.S.) encourages the State Department to increase the amount of the AND-SO grant for State fiscal years 2015-2016 through 2018-19, subject to available appropriations, to restore the payment to the State fiscal year 2006-07 amount of \$230 and to adjust the amount to reflect increases in the cost of living. Since fiscal year 2014-15, the AND program's expenditures have been below the program's appropriations, but there have been no grant increases. The State Department is proposing a \$28 increase to the AND-SO grant.

Home Care Allowance: HCA pays for home care services for older and disabled Coloradans to help with daily living activities so they may stay in their own homes. This package includes a \$75 increase per tier to the monthly HCA and SP-HCA payments.

Maintenance of Effort: Colorado has a Maintenance of Effort (MOE) agreement with the Social Security Administration (SSA). This agreement requires compliance with the Social Security pass-along per 20 CFR 416.2099, which sets a minimum expenditure level on Supplemental Security Income (SSI) recipients as a condition of receiving Colorado's full amount of Federal Financial Participation for Medicaid. Failure to comply with terms of the MOE could jeopardize Medicaid Federal Financial Participation (FFP) funds as the SSA could impose a sanction of no less than one full quarter FFP match (approximately \$300-350 million) for every month Colorado does not meet the MOE requirement. These increases would be claimable and would support meeting the MOE obligation in 2018 and beyond.

DOCUMENT 3

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State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2017)	State Board to promulgate rules
26-1-109, C.R.S. (2017)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2017)	State department to promulgate rules for public assistance and welfare activities
26-2-111, C.R.S. (2017)	Collectively the Colorado Constitution, Article XXIV, Section 6; and 26-2111 C.R.S. (2016); and 26-2-114, C.R.S. (2016) create the OAP program and grant the authority for adjustments to the OAP grant standard to the State Board

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
26-2-119, C.R.S. (2017)	State department rules for the amount of assistance payments for the Aid to the Needy Disabled program
26-2-122.3, C.R.S. (2017)	The rules adopted by the State department shall specify the services available under the program
20 CFR 416 et seq.	Requires a maintenance of effort with SSA

Does the rule incorporate material by reference?

Yes

No

Does this rule repeat language found in statute?

Yes

No

If yes, please explain.

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

a. Board Executive Director

b. Regular Emergency

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REGULATORY ANALYSIS

1. List of groups impacted by this rule.

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

This proposed rule change will affect Adult Financial customers who receive Aid to the Needy Disabled-State Only or Home Care Allowance because it will increase the amount of monthly financial assistance they receive (\$28 increase for AND-SO and \$75 increase for each HCA/SP-HCA Tier).

There are no anticipated adverse effects to implementing this rule change.

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 monthly average of total AND-SO recipients is 6,372 – all of whom will receive a \$28 monthly increase to their financial assistance.

The monthly average of total HCA recipients is 1,640 – all of whom will receive a \$75 monthly increase to their financial assistance.

The monthly average of total SP-HCA recipients is 94 – all of whom will receive a \$75 monthly increase to their financial assistance.

These increases will support the most vulnerable Coloradans' ability to meet their daily needs, including purchasing services that prevent them from needing more expensive care by allowing them to stay in their own homes.

There is no negative impact to counties such as increased caseload or workload as a result of the rule change as the monthly grant increases will be automated by the statewide Benefits Management System.

Long-term, increasing the grant standard will assist the State in meeting the SSA MOE. If the State fails to meet the provisions of the MOE, Medicaid Federal Financial Participation (FFP) funds will be placed in jeopardy.

3. Fiscal Impact

State Fiscal Impact

The increase for AND-SO recipients will be \$28/recipient/month. There were 6,372 average monthly recipients in FY 2016-2017. This cost will be paid using the existing AND appropriation amount, made up of cash and general funds. The total annual expenditure increase is estimated at \$2,141,552. The state's portion of the increase is 80% of the total, or \$1,713,242. The cost for this will be absorbed within the existing appropriation even allowing for modest caseload growth. The department uses the existing appropriation to pay regular benefits as well as maintenance of effort payments. The department anticipates expending the entire appropriation.

The increase for HCA recipients will be \$75/recipient/month. There were 1,640 average monthly recipients in FY 2016-2017. This cost will be paid using the existing HCA appropriation amount, made up

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of cash and general funds. The total annual expenditure increase is estimated at \$1,475,625. The state's portion of the increase is 95% of the total, or \$1,401,844. The cost for this will be absorbed within the existing appropriation even allowing for modest caseload growth. The department uses the existing appropriation to pay regular benefits as well as maintenance of effort payments. The department anticipates expending the entire appropriation.

The increase for SP-HCA recipients will be \$75/recipient/month. There were 94 average monthly recipients in July through September 2017. This cost will be paid using the existing HCA appropriation amount, made up of general funds. The total annual expenditure increase is estimated at \$84,600. The cost for this will be absorbed within the existing appropriation. The department uses the existing appropriation to pay regular benefits as well as maintenance of effort payments. The department anticipates expending the entire appropriation.

Maintenance hours will be utilized to make the required changes to CBMS.

County Fiscal Impact

No additional appropriation is required as the increases will be absorbed within existing appropriations. Increased expenditures will not exceed the current legal appropriation.

The counties' portion of the AND benefit is 20%. The total annual expenditure increase is estimated at \$2,141,552. The counties' collective portion of the increase is 20% of the total, or \$428,310.

The counties' portion of the HCA increase is 5%. The total annual expenditure increase is estimated at \$1,475,625. The counties' collective portion of the increase is 5% of the total, or \$73,781.

See attached tables for county-specific projected increases. For AND, they range from \$116,474 (Denver's projected increase) to less than \$100 and for HCA, \$15,056 (Denver's projected increase) to less than \$100.

There is no county contribution in the SP-HCA appropriation.

Federal Fiscal Impact

No impact as there are no federal funds utilized.

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

No impact as there are no other providers or local governments involved.

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4. Data Description

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

AND caseload has dropped about 10% over the last four years, from 12,302 in FY 2013-14 distinct cases to 11,149 in FY 2016-17. In the same time period, the AND allocation has been underspent by \$1.5 million to \$4 million. There is room within the existing appropriation to increase spending by the proposed amount for ongoing benefits as well as absorb a modest caseload increase. The fiscal projection includes the benefits increase for only the AND-SO population. The average monthly AND-SO caseload for FY 2016-17 was 6,372.

HCA caseload has dropped about 10% over the last four years, from 2,273 in FY 2013-14 average monthly cases to 1,640 in FY 2016-17. In the same time period, the HCA allocation has been underspent by \$2.4 million. There is room within the existing appropriation to increase spending by \$1.5 million for ongoing benefits as well as absorb up to a 10% caseload increase.

5. Alternatives to this Rule-making

Taking no action could adversely impact the health, safety, and welfare of AND-SO and HCA recipients; and could cause the State to be unable to meet the MOE requirements as well with the Social Security Administration. Failure to comply with terms of the MOE could jeopardize Medicaid Federal Financial Participation (FFP) funds as the SSA could impose a sanction of no less than one full quarter FFP match (approximately \$300-350 million) for every month Colorado does not meet the MOE requirement. Lastly, no increase would put additional burdens on the state such as failing to follow the direction of Colorado Revised Statute to increase the AND-SO grants during the current fiscal year would make the Department out of compliance statutorily. Since the increase is well within available appropriations the funds can be made available to customers to positively impact the health, safety, and welfare of recipients

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OVERVIEW OF PROPOSED RULE

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

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
3.540.A	Update amount of components to reflect the increased grant standard effective September 1, 2018	3.540 AID TO THE NEEDY DISABLED (AND) PROGRAM A. The total AND-SO grant standard is \$189.00, effective August 6, 2014.	3.540 AID TO THE NEEDY DISABLED (AND) PROGRAM A. The total AND-SO grant standard is \$217.00, effective September 1, 2018 .	To implement the \$28 grant increase for AND-SO.	NO
3.570.11.B.1, 2, 3	Update amount of components to reflect the increased grant standard effective September 1, 2018	3.570.11 Purpose of Program B. Effective October 1, 2016, the HCA grant standard maximums are as follows: 1. Tier 1 - \$255.00 2. Tier 2 - \$397.00 3. Tier 3 - \$530.00	3.570.11 Purpose of Program B. Effective September 1, 2018 , the HCA grant standard maximums are as follows: 1. Tier 1 - \$330.00 2. Tier 2 - \$472.00 3. Tier 3 - \$605.00	To implement the \$75 grant increase for each Tier of HCA.	NO
3.570.21.B.1, 2, 3	Update amount of components to reflect the increased grant standard effective September 1, 2018	3.570.21 Purpose of Program B. Effective October 1, 2016, the SP-HCA grant standard maximums are as follows: 1. Tier 1 - \$255.00 2. Tier 2 - \$397.00 3. Tier 3 - \$530.00	3.570.2 Purpose of Program B. Effective September 1, 2018 , the SP-HCA grant standard maximums are as follows: 1. Tier 1 - \$330.00 2. Tier 2 - \$472.00 3. Tier 3 - \$605.00	To implement the \$75 grant increase for each Tier of SP-HCA.	NO

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STAKEHOLDER COMMENT SUMMARY

Development

CCLP was consulted in the development of these rules. Please see their feedback below.

This Rule-Making Package

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

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

Other State Agencies

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

Yes No

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

Sub-PAC

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

Yes No

Name of Sub-PAC	Economic Security		
Date presented	02/08/2018		
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	13	1	1 (also 1 absent)
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

Yes No

Date presented	03/08/2018		
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	Everyone other than the 3 opposed	3	0
If not presented, explain why.			

Other Comments

Comments were received from stakeholders on the proposed rules:

Yes No

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

The Colorado Center on Law and Policy is in strong support of this proposed rule package. Increasing the monthly grant amounts for the Aid to Needy Disabled and Home Care Allowance programs will provide much needed assistance to low income Coloradans who have disabilities and serious medical conditions. This grant adjustment will help clients who struggle to meet their most basic needs and are often homeless. By expanding the financial support that recipients use to pay for food, transportation, and other essential resources, this change will reduce their risk of housing insecurity and improve their health.

We appreciate the Department's proactive diligence in addressing the potential noncompliance with federal SSI Maintenance of Effort requirements, as well as the Department's appropriate consideration of the legislative mandate to increase the AND benefit amount.

This rule package will significantly improve the quality of life for many of Colorado's most economically vulnerable residents. We are grateful for the Colorado Department of Human Services for bringing this proposal forward, and we urge the members of the Colorado State Board of Human Services to lend support to this important rule package.

Sincerely,

Jack Regenbogen and Allison Neswood, Colorado Center on Law and Policy

9 CCR 2503-5

3.540 AID TO THE NEEDY DISABLED (AND) PROGRAM

The Aid to the Needy Disabled State Only (AND-SO) program provides interim assistance to clients age eighteen (18) through fifty-nine (59) years of age (unless diagnosed with blindness, then age zero (0) through 59 years of age); who are disabled or blind but have not been approved for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). The AND-Colorado Supplement (AND-CS) program provides a supplemental payment for client's age zero (0) to 59 who are receiving SSI due to a disability or blindness, but are not receiving the full SSI grant standard.

- A. The total AND-SO grant standard is ~~\$189.00~~217.00, effective ~~August 6, 2014~~ **SEPTEMBER 1, 2018**.

3.570.1 HOME CARE ALLOWANCE [Eff. 3/2/14]

3.570.11 Purpose of Program

A. Home Care Allowance (HCA) is a special cash payment made to a client for the purpose of securing in-home, personal care services.

1. HCA is a non-entitlement program; and,
2. Cannot be received while receiving Home and Community Based Services or Adult Foster Care; and,
3. HCA is designed to serve clients with the lowest functional abilities and the greatest need for paid care.

B. Effective ~~October 1, 2016~~ **SEPTEMBER 1, 2018**, the HCA grant standard maximums are as follows:

1. Tier 1 - ~~\$255.00~~330.00
2. Tier 2 - ~~\$397.00~~472.00
3. Tier 3 - ~~\$530.00~~605.00

3.570.2 SPECIAL POPULATIONS HOME CARE ALLOWANCE [Eff. 3/2/14]

3.570.21 Purpose of Program

A. Special Populations Home Care Allowance (SP-HCA) is a special cash payment made to a client for the purpose of securing in-home, personal care services.

1. SP-HCA is a non-entitlement program; and,

2. Cannot be received while receiving benefits from a Home and Community Based Services waiver other than Supportive Living Services (HCBS-SLS) or Children's Extensive Supports (HCBS-CES); and,
3. Is for clients that received Home Care Allowance (HCA) and HCBS-SLS or HCBS-CES services for at least one month between September 2011 and December 2011.

B. Effective ~~October 1, 2016~~ **SEPTEMBER** 1, 2018, the SP-HCA grant standard maximums are as follows:

1. Tier 1 - ~~\$255.00~~330.00
2. Tier 2 - ~~\$397.00~~472.00
3. Tier 3 - ~~\$530.00~~605.00

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