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|---|---|---|
| <b>Title of Proposed Rule:</b>              | Colorado Works Removal of Lawful Presence Affidavit and Clean Up 2024 |   |
| <b>CDHS Tracking #:</b>                     | 24-04-01-02   |   |
| Office, Division, & Program:<br>OES/DEWS/CW | Rule Author: Jordan Stopak-Behr                                       | Phone: 720-925-8765                       |
|   |   | E-Mail:<br>jordan.stopak-behr@state.co.us |

## RULEMAKING PACKET

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

- a. ☒ Board ☐ Executive Director
- b. ☒ Regular ☐ Emergency

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

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

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

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 | Repealed Rules |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

|   |           |
|---|-----------|
| What month is being requested for this rule to first go before the State Board? | July 2024 |
| What date is being requested for this rule to be effective?                     | 11/1/2024 |
| Is this date legislatively required?  | No        |

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

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

### REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION

Comments:

Estimated Dates:      1st Board 7/12/24      2nd Board 8/9/24      Effective Date 11/1/24

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### **STATEMENT OF BASIS AND PURPOSE**

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

*Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. **1500 Char max***

This rule change seeks to reduce administrative burden for both county departments and Colorado Works applicants by eliminating the requirement for an affidavit of lawful presence. Additionally, the rule adjusts the language describing claims and payment recovery to allow county departments to recoup supportive payments that were issued erroneously or to clients who were ineligible.

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

- ☐
to comply with state/federal law and/or

☐
to preserve public health, safety and welfare

Justification for emergency:

**State Board Authority for Rule:**

| Code                          | Description  |
|-------------------------------|--|
| 26-1-107(5)(b), C.R.S. (2023) | State Board to promulgate rules for programs and services administered in Title 26 |

**Program Authority for Rule:** *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

| Code                          | Description   |
|-------------------------------|---|
| 26-1-109, C.R.S. (2023)       | State department rules to coordinate with federal programs  |
| 26-1-111(1)(a), C.R.S. (2023) | State department to promulgate rules for public assistance and welfare activities.  |
| 26-2-709(1), C.R.S. (2023)    | State department shall promulgate rules determining eligibility for a basic cash assistance grant under the Colorado Works Program. |

|  |  |     |  |   |    |
|--|--|-----|--|---|----|
| 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.                          |  |     |  |   |    |

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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 rule change impacts all applicants for, and recipients of, Colorado Works. Additionally, it impacts all the county departments that process applications for Colorado Works and administer Colorado Works Workforce Development programs.

### 2. Describe the qualitative and quantitative impact.

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

This rule will eliminate the requirement that applicants for Colorado Works submit a signed affidavit of lawful presence in order to be eligible for assistance. This change will not alter the eligible populations for the program but will reduce the administrative burden of completing the affidavit, collecting signatures, and data entering this information into the statewide automated system. The rule will additionally allow the county to recover supportive payments issued to clients who were ineligible to receive them or received the payment in error.

### 3. Fiscal Impact

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just "no impact" answer should include "no impact because...."***

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

The primary impact to the State is the cost of the change to the Colorado Benefits Management System (CBMS) to remove the system logic that requires a valid Lawful Presence Affidavit record prior to approving a Colorado Works case. The cost estimate of the CBMS project is \$149,616.72, which will be absorbed by the current CBMS budget and no additional funding will be necessary.

County Fiscal Impact

There is no additional county fiscal impact anticipated, as eliminating the need for the Lawful Presence Affidavit will reduce administrative burden for county departments. Additionally, after this rule change, counties will be authorized to recover Colorado Works payments (including supportive service payments, diversion payments) that have been authorized in error.

At this time, there is no comprehensive methodology to determine potential cost increases from client inquiries and additional eligibility staff training. Program staff acknowledge minimal additional work may be created for counties but expect these costs to be offset by the savings created by these changes.

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There is a positive fiscal impact anticipated if this rule proposal is implemented, because the county departments will be able to recover supportive service payments that were issued in error, or issued to clients that are ineligible.

#### Federal Fiscal Impact

There is no federal fiscal impact as the State Family Assistance Grant is consistent every year and not impacted by state level rule changes. This change exclusively affects county level eligibility determination and payment recovery.

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

There are no other anticipated fiscal impacts identified.

#### **4. Data Description**

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

There was no data used in the writing of this rule.

#### **5. Alternatives to this Rule-making**

*Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. Answer should NEVER be just “no alternative” answer should include “no alternative because...”*

The alternative to moving this rule change forward is to continue to require counties to obtain and data enter Lawful Presence Affidavits for all adults on Colorado Works cases.

The alternative to clarifying the language around claims, overpayments, and recovery is to allow clients to retain funds that had been issued when they were not eligible to receive those funds.

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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 |
|---------------------------|---|---|--|---|----------------------------|
| 3.601 Program Definitions | Defines claims as exclusively for grant payments    | "Administrative error claim" means a grant payment was overpaid and a claim validated based on an error on the part of the county department of human services.   | "Administrative error claim" means a <del>grant payment</del> CLIENT was overpaid and a claim validated based on an error on the part of the county department of human services.                                | Redefine claims to be more inclusive of multiple types of payments. |                            |
| 3.601 Program Definitions | Speaks to requirement for Lawful Presence Affidavit | "Affidavit" means a State prescribed form wherein a client attests, subject to the penalties of perjury, that he or she is lawfully present in the United States. An affidavit need not be notarized.     | <del>"Affidavit" means a State prescribed form wherein a client attests, subject to the penalties of perjury, that he or she is lawfully present in the United States. An affidavit need not be notarized.</del> | Remove requirement for lawful presence affidavit                    |                            |
| 3.601 Program Definitions | Defines claims as exclusively for grant payments    | "Claim" means an overpayment of a grant payment that needs to be researched and validated by the county department.   | "Claim" means an overpayment of a grant payment, DIVERSION, OR SUPPORTIVE PAYMENT that needs to be researched and validated by the county department.  | Redefine claims to be more inclusive of multiple types of payments. |                            |
| 3.601 Program Definitions | Defines claims as exclusively for grant payments    | "Client error claim" means a grant payment was overpaid and a claim was validated based on unintentional or willful withholding of information on the part of the client.                                 | "Client error claim" means a <del>grant payment</del> CLIENT was overpaid and a claim was validated based on unintentional or willful withholding of information on the part of the client.                      | Redefine claims to be more inclusive of multiple types of payments  |                            |
| 3.601 Program Definitions | Refers to the old name of the State division.       | "Federal Poverty Guidelines" also called Federal Poverty Level (FPL) means the income level for a household as set forth in the Federal Register 86 FR 7732, 7732-7734, as of February 1, 2021. This rule | "Federal Poverty Guidelines" also called Federal Poverty Level (FPL) means the income level for a household as set forth in the Federal Register 86 FR 7732, 7732-7734, as of February 1, 2021. This rule        | Update name of State division to current name.                      |                            |

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|  |  | does not contain any later amendments or editions. These guidelines are available for no cost at <a href="https://www.federalregister.gov/">https://www.federalregister.gov/</a> . These guidelines are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library during regular business hours. | does not contain any later amendments or editions. These guidelines are available for no cost at <a href="https://www.federalregister.gov/">https://www.federalregister.gov/</a> . These guidelines are also available for public inspection and copying at the Colorado Department of Human Services, Director of the <del>Employment and Benefits Division</del> DIVISION OF ECONOMIC AND WORKFORCE SUPPORT, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library during regular business hours. |  |  |
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| 3.601 Program Definitions | Defines overpayments as exclusively affecting grant payments | "Overpayment" means a grant payment was made in excess of the amount a client was eligible for. | "Overpayment" means a <del>grant</del> payment was made in excess of the amount a client was eligible for. | Redefine overpayments to be more inclusive of multiple types of payments. |  |
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| 3.601 Program Definitions     | Refers to the old name of the State division.      | <p>“Sponsor” means any person(s) who executed an affidavit of support (USCIS form I-864 or I-864a (March 6, 2018)) or another form deemed legally binding by the Department of Homeland Security on behalf of a non-citizen as a condition of the non-citizen's date of entry or admission into the United States as a permanent resident. These forms are herein incorporated by reference. This rule does not contain any later amendments or editions. These forms are available at no cost from <a href="https://www.uscis.gov/forms">https://www.uscis.gov/forms</a>. These forms are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library during regular business hours.</p> | <p>“Sponsor” means any person(s) who executed an affidavit of support (USCIS form I-864 or I-864a (March 6, 2018)) or another form deemed legally binding by the Department of Homeland Security on behalf of a non-citizen as a condition of the non-citizen's date of entry or admission into the United States as a permanent resident. These forms are herein incorporated by reference. This rule does not contain any later amendments or editions. These forms are available at no cost from <a href="https://www.uscis.gov/forms">https://www.uscis.gov/forms</a>. These forms are also available for public inspection and copying at the Colorado Department of Human Services, Director of the <del>Employment and Benefits Division</del> DIVISION OF ECONOMIC AND WORKFORCE SUPPORT, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library during regular business hours.</p> | Update name of State division to current name.    |  |
| 3.604.3 Program Verifications | Includes requirement for Lawful Presence Affidavit | <p>I. Verification of Citizenship and Lawful Presence<br/>4. All persons eighteen years of age or older must establish lawful presence in the United States prior to receiving Colorado Works with the exception of those exempt in the list provided in this section, as outlined in section 24-76.5-103, C.R.S. The requirements of this section do not apply to clients under the age of eighteen (18).</p>  | <p>I. Verification of Citizenship and Lawful Presence<br/>4. All persons eighteen years of age or older must establish lawful presence in the United States prior to receiving Colorado Works with the exception of those exempt in the list provided in this section, <del>as outlined in section 24-76.5-103, C.R.S.</del> The requirements of this section do not apply to clients under the age of eighteen (18).</p>   | Removes requirement for Lawful Presence Affidavit |  |



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|  | <p>a. In order to verify his or her lawful presence in the United States, a client must:</p> <p>1) Produce and provide to the county department:</p> <p>a) A valid Colorado driver's license or a Colorado identification card issued pursuant to article 2 of title 42, C.R.S.; or,</p> <p>b) A United States military card or military dependent's identification card; or,</p> <p>c) A United States coast guard merchant mariner card; or,</p> <p>d) A Native American tribal document; or,</p> <p>e) Any other document authorized by rules adopted by the Department of Revenue (1 CCR 2204-30, Rule 5, Appendix A, as incorporated by reference in section 3.604.3.1.1 of these rules); or,</p> <p>f) Those clients who cannot produce one of the required documents may demonstrate lawful presence by both executing the affidavit described in section 3.604.3.1.4.a.2, and executing a request for waiver as described in 1 CCR 204-30, Rule 5, as incorporated by reference in section 3.604.3.1.1, above. The request for waiver must be provided to the Colorado</p> | <p>a. In order to verify his or her lawful presence in the United States, a client must:</p> <p>1) Produce and provide to the county department:</p> <p>a) A valid Colorado driver's license or a Colorado identification card issued pursuant to article 2 of title 42, C.R.S.; or,</p> <p>b) A United States military card or military dependent's identification card; or,</p> <p>c) A United States coast guard merchant mariner card; or,</p> <p>d) A Native American tribal document; or,</p> <p>e) Any other document authorized by rules adopted by the Department of Revenue (1 CCR 2204-30, Rule 5, Appendix A, as incorporated by reference in section 3.604.3.1.1 of these rules); or,</p> <p><del>f) Those clients who cannot produce one of the required documents may demonstrate lawful presence by both executing the affidavit described in section 3.604.3.1.4.a.2, and executing a request for waiver as described in 1 CCR 204-30, Rule 5, as incorporated by reference in section 3.604.3.1.1, above. The request for waiver must be provided to the Colorado</del></p> |  |  |
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|  | <p>Department of Revenue in person, by mail, or online, and must be accompanied by all documents the client can produce to prove lawful presence. A request for a waiver can be provided to the Department of Revenue by a client representative. Once approved by the Department of Revenue, the waiver is assumed to be permanent, but may be rescinded and cancelled if, at any time, the Department of Revenue becomes aware of the client's violation of immigration laws. if the waiver is rescinded and cancelled, the client has the opportunity to appeal. The county department is responsible for verifying that the client is the same individual indicated as being lawfully present through the waiver; and,</p> <p>2) Execute an affidavit saying that:</p> <p>a) He or she is a United States citizen or legal permanent resident;</p> <p>or,</p> <p>b) He or she is otherwise lawfully present in the United States pursuant to federal law.</p> | <p><del>Department of Revenue in person, by mail, or online, and must be accompanied by all documents the client can produce to prove lawful presence. A request for a waiver can be provided to the Department of Revenue by a client representative. Once approved by the Department of Revenue, the waiver is assumed to be permanent, but may be rescinded and cancelled if, at any time, the Department of Revenue becomes aware of the client's violation of immigration laws. if the waiver is rescinded and cancelled, the client has the opportunity to appeal. The county department is responsible for verifying that the client is the same individual indicated as being lawfully present through the waiver.; and,</del></p> <p><del>2) Execute an affidavit saying that:</del></p> <p><del>a) He or she is a United States citizen or legal permanent resident;</del></p> <p><del>or,</del></p> <p><del>b) He or she is otherwise lawfully present in the United States pursuant to federal law.</del></p> |  |  |
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| 3.609.2<br>Payments | Defines overpayments as exclusively affecting grant payments | 3.609.2.Payments<br>B. When the county department determines that a client was ineligible for all or a part of a grant payment that the client has already received, the county department shall, subject to notice as described in 3.609.1 and these recovery rules, establish a claim, and if valid, initiate recovery. | 3.609.2.Payments<br>B. When the county department determines that a client was ineligible for all or a part of a <del>grant</del> payment that the client has already received, the county department shall, subject to notice as described in 3.609.1 and these recovery rules, establish a claim, and if valid, initiate recovery. | Redefine overpayments to be more inclusive of multiple types of payments. |  |
| <b>DOCUMENT 1</b>   |  | <b>Analysis Page 11</b>   |  |   |  |

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| 3.609.4<br>Recovery | Defines overpayments as exclusively affecting grant payments | C. The client may issue the state a refund of any overpaid grant payments from his or her existing balance of Colorado Works grant payments on his or her electronic benefits transfer (EBT) card by contacting the county department. This requires a written statement from the client   | C. The client may issue the state a refund of any <del>overpaid grant payments</del> OVERPAYMENTS from his or her existing balance of Colorado Works grant payments on his or her electronic benefits transfer (EBT) card by contacting the county department. This requires a written statement from the client  | Redefine overpayments to be more inclusive of multiple types of payments. |  |
| 3.609.4<br>Recovery | Defines overpayments as exclusively affecting grant payments | D. Clients are not entitled to grant payments that were paid in error or mistakenly provided to the client based on a data entry error into the statewide automated system or an error resulting from the statewide automated system. The county shall create a claim and may retrieve the grant payments from the client's EBT card within twenty-four (24) hours of the issuance without prior written authorization by the client. The client shall have no appeal rights in relation to this grant payment because he or she was not eligible for the initial receipt of the grant payment(s) in the first instance. When grant payments issued in error are not retrieved from the client's EBT card within twenty-four (24) hours, funds shall not be taken from the card using this method unless permission is granted from the client in writing using the state prescribed form. If permission is not granted, the county department shall pursue other methods of recovery. | D. Clients are not entitled to <del>grant</del> payments that were paid in error or mistakenly provided to the client based on a data entry error into the statewide automated system or an error resulting from the statewide automated system. The county shall create a claim and may retrieve the <del>grant</del> payments from the client's EBT card within twenty-four (24) hours of the issuance without prior written authorization by the client. The client shall have no appeal rights in relation to this <del>grant</del> payment because he or she was not eligible for the initial receipt of the <del>grant</del> payment(s) in the first instance. When <del>grant</del> payments issued in error are not retrieved from the client's EBT card within twenty-four (24) hours, funds shall not be taken from the card using this method unless permission is granted from the client in writing using the state prescribed form. If permission is not granted, the county department shall pursue other methods of recovery. | Redefine overpayments to be more inclusive of multiple types of payments. |  |

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| 3.609.4<br>Recovery | Defines overpayments as exclusively affecting grant payments | <p>K. The county department is required to pursue collection of the overpayment from the client/responsible payee who managed and administered the Colorado Works funds. The county department shall pursue all available overpayment recovery options to collect the overpayment from the client/responsible payee first and then any other liable individuals legally responsible for overpayments, unless otherwise specified.</p> <p>1. In instances where a trustee has used a client's trust income or property in a manner contrary to the terms of the trust, the county department shall:</p> <p>a. Determine whether an overpayment of Colorado Works grant payments has occurred as a result of the client's loss of income based on the trustee's improper actions;</p> <p>b. Consult with the county attorney or other legal resource to determine how to pursue action against a trust/trustee;</p> <p>c. Advise the trustee of the overpayment circumstances; and</p> <p>d. If the trustee disagrees with such circumstances and overpayment, pursue the recovery establishment and collection through appropriate legal means; or</p> <p>e. Take appropriate steps to secure repayment with the cooperation of the trustee; or,</p> <p>f. Report such behavior or action by the trustee to the county protective services to ensure the protection of the client's rights in the trust</p> | <p>K. The county department is required to pursue collection of the overpayment from the client/responsible payee who managed and administered the Colorado Works funds. The county department shall pursue all available overpayment recovery options to collect the overpayment from the client/responsible payee first and then any other liable individuals legally responsible for overpayments, unless otherwise specified.</p> <p>1. In instances where a trustee has used a client's trust income or property in a manner contrary to the terms of the trust, the county department shall:</p> <p>a. Determine whether an overpayment <del>of Colorado Works grant payments</del> has occurred as a result of the client's loss of income based on the trustee's improper actions;</p> <p>b. Consult with the county attorney or other legal resource to determine how to pursue action against a trust/trustee;</p> <p>c. Advise the trustee of the overpayment circumstances; and</p> <p>d. If the trustee disagrees with such circumstances and overpayment, pursue the recovery establishment and collection through appropriate legal means; or</p> <p>e. Take appropriate steps to secure repayment with the cooperation of the trustee; or,</p> <p>f. Report such behavior or action by the trustee to the county protective services to ensure the protection of the client's rights in the trust</p> | Redefine overpayments to be more inclusive of multiple types of payments. |  |
|---------------------|--|--|---|---|--|

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|---|---------------------------------|---|
| <b>Title of Proposed Rule:</b>              |                                 | Colorado Works Removal of Lawful Presence Affidavit and Clean Up 2024 |
| <b>CDHS Tracking #:</b>                     |                                 | 24-04-01-02   |
| Office, Division, & Program:<br>OES/DEWS/CW | Rule Author: Jordan Stopak-Behr | Phone: 720-925-8765   |
|   |                                 | E-Mail:<br>jordan.stopak-behr@state.co.us                             |

|                     |  |   |  |   |  |
|---------------------|--|---|--|---|--|
| 3.609.4<br>Recovery | Defines overpayments as exclusively affecting grant payments | <p>2. In instances where a power of attorney has used his or her legal authority for purposes other than for the benefit of the client, the county department shall:</p> <p>a. Determine whether an overpayment of Colorado Works grant payments has occurred as a result of the power of attorney's improper actions;</p> <p>b. Consult with the county attorney or other legal resource to determine how to pursue action against a power of attorney;</p> <p>c. Advise the holder of the power of attorney of the overpayment circumstances; and,</p> <p>d. If the holder of the power of attorney disagrees with such circumstances and overpayment, pursue the recovery establishment and collection through appropriate legal means; or</p> <p>e. Take appropriate steps to secure repayment with the cooperation of the holder of the power of attorney; or</p> <p>f. Report such behavior or action by the trustee to the county protective services to ensure the protection of the client's rights and benefits</p> | <p>2. In instances where a power of attorney has used his or her legal authority for purposes other than for the benefit of the client, the county department shall:</p> <p>a. Determine whether an overpayment <del>of Colorado Works grant payments</del> has occurred as a result of the power of attorney's improper actions;</p> <p>b. Consult with the county attorney or other legal resource to determine how to pursue action against a power of attorney;</p> <p>c. Advise the holder of the power of attorney of the overpayment circumstances; and,</p> <p>d. If the holder of the power of attorney disagrees with such circumstances and overpayment, pursue the recovery establishment and collection through appropriate legal means; or</p> <p>e. Take appropriate steps to secure repayment with the cooperation of the holder of the power of attorney; or</p> <p>f. Report such behavior or action by the trustee to the county protective services to ensure the protection of the client's rights and benefits</p> | Redefine overpayments to be more inclusive of multiple types of payments. |  |
| <b>DOCUMENT 1</b>   |  | <b>Analysis Page 14</b>   |  |   |  |

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|---|---|---|
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### **STAKEHOLDER COMMENT SUMMARY**

#### **Development**

*The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):*

|  |
|--|
|  |
|--|

#### **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:*

|  |
|--|
|  |
|--|

#### **Other State Agencies**

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

☐ Yes    ☒ No

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

|  |
|--|
|  |
|--|

#### **Sub-PAC**

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

☒ Yes    ☐ No

|                                |                           |                |                |
|--------------------------------|---------------------------|----------------|----------------|
| Name of Sub-PAC                | Economic Security Sub-PAC |                |                |
| Date presented                 | 4/4/2024                  |                |                |
| What issues were raised?       | None                      |                |                |
| Vote Count                     | <i>For</i>                | <i>Against</i> | <i>Abstain</i> |
|                                | 15                        | 0              | (2 absent)     |
| If not presented, explain why. |                           |                |                |

|                                |                              |                |                |
|--------------------------------|------------------------------|----------------|----------------|
| Name of Sub-PAC                | Financial Management Sub-PAC |                |                |
| Date presented                 | 5/2/2024                     |                |                |
| What issues were raised?       | None                         |                |                |
| Vote Count                     | <i>For</i>                   | <i>Against</i> | <i>Abstain</i> |
|                                | 18                           | 0              | 3 (2 absent)   |
| If not presented, explain why. |                              |                |                |

#### **PAC**

Have these rules been approved by PAC?

☒ Yes    ☐ No

|                          |          |
|--------------------------|----------|
| Date presented           | 6/6/2024 |
| What issues were raised? | None     |

|   |   |   |
|---|---|---|
| <b>Title of Proposed Rule:</b>              | Colorado Works Removal of Lawful Presence Affidavit and Clean Up 2024 |   |
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| Office, Division, & Program:<br>OES/DEWS/CW | Rule Author: Jordan Stopak-Behr                                       | Phone: 720-925-8765                       |
|   |   | E-Mail:<br>jordan.stopak-behr@state.co.us |

| Vote Count                     | <i>For</i> | <i>Against</i> | <i>Abstain</i> |
|--------------------------------|------------|----------------|----------------|
|                                |            |                |                |
| If not presented, explain why. |            |                |                |

### Other Comments

Comments were received from stakeholders on the proposed rules:

☐ Yes      ☐ No

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

## 9 CCR 2503-6

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### 3.601 Program Definitions

"Administrative error claim" means a ~~grant payment~~ CLIENT was overpaid and a claim validated based on an error on the part of the county department of human services.

~~"Affidavit" means a State prescribed form wherein a client attests, subject to the penalties of perjury, that he or she is lawfully present in the United States. An affidavit need not be notarized.~~

"Claim" means an overpayment of a grant payment, DIVERSION, OR SUPPORTIVE PAYMENT that needs to be researched and validated by the county department.

"Client error claim" means a ~~grant payment~~ CLIENT was overpaid and a claim was validated based on unintentional or willful withholding of information on the part of the client.

"Federal Poverty Guidelines" also called Federal Poverty Level (FPL) means the income level for a household as set forth in the Federal Register 86 FR 7732, 7732-7734, as of February 1, 2021. This rule does not contain any later amendments or editions. These guidelines are available for no cost at <https://www.federalregister.gov/>. These guidelines are also available for public inspection and copying at the Colorado Department of Human Services, Director of the ~~Employment and Benefits Division~~ DIVISION OF ECONOMIC AND WORKFORCE SUPPORT, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library during regular business hours.

"Overpayment" means a ~~grant~~ payment was made in excess of the amount a client was eligible for.

"Sponsor" means any person(s) who executed an affidavit of support (USCIS form I-864 or I-864a (March 6, 2018)) or another form deemed legally binding by the Department of Homeland Security on behalf of a non-citizen as a condition of the non-citizen's date of entry or admission into the United States as a permanent resident. These forms are herein incorporated by reference. This rule does not contain any later amendments or editions. These forms are available at no cost from <https://www.uscis.gov/forms>. These forms are also available for public inspection and copying at the Colorado Department of Human Services, Director of the ~~Employment and Benefits Division~~ DIVISION OF ECONOMIC AND WORKFORCE SUPPORT, 1575 Sherman Street, Denver, Colorado, 80203, or at any state publications library during regular business hours.

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### 3.604 Eligibility Criteria for Colorado Works Payments and Services

#### 3.604.3 Program Verifications

##### I. Verification of Citizenship and Lawful Presence

4. All persons eighteen years of age or older must establish lawful presence in the United States prior to receiving Colorado Works with the exception of those exempt in the list provided in this section, ~~as outlined in section~~

~~24-76.5-103,~~  
under the age of

C.R.S. The requirements of this section do not apply to clients  
eighteen (18).

a. In order to verify his or her lawful presence in the United States, a  
client must:

1) Produce and provide to the county department:

a) A valid Colorado driver's license or a Colorado  
identification card issued pursuant to article 2 of  
C.R.S.; or,

title 42,

b) A United States military card or military  
identification card; or,

dependent's

c) A United States coast guard merchant mariner

card; or,

d) A Native American tribal document; or,

e) Any other document authorized by rules adopted by

the

Department of Revenue (1 CCR 2204-30, Rule 5,  
Appendix A, as incorporated by reference in section  
3.604.3.1.1 of these rules); or,

required  
presence by both  
section 3.604.3.1.4.a.2,  
waiver as described in 1 CCR  
incorporated by reference in section  
The request for waiver must be  
the Colorado Department of Revenue in  
mail, or online, and must be accompanied by all  
the client can produce to prove lawful  
presence. A request for a waiver can be provided to the  
Department of Revenue by a client representative. Once  
approved by the Department of Revenue, the waiver is  
assumed to be permanent, but may be rescinded and  
cancelled if, at any time, the Department of Revenue  
becomes aware of the client's violation of immigration  
laws. If the waiver is rescinded and cancelled, the client  
has the opportunity to appeal. The county department is  
responsible for verifying that the client is the same  
individual indicated as being lawfully present through the  
waiver; and,

~~f) — Those clients who cannot produce one of the  
documents may demonstrate lawful  
executing the affidavit described in  
and executing a request for  
204-30, Rule 5, as  
3.604.3.1.1, above.  
provided to  
person, by  
documents~~

2) — Execute an affidavit saying that:

permanent-

a) — He or she is a United States citizen or legal  
resident; or,

~~United States~~ b) ~~He or she is otherwise lawfully present in the~~  
~~pursuant to federal law.~~

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### 3.609 Colorado Works Notice, Payments, Overpayment, Intentional Program Violations and Fraud, Dispute Resolution, Appeal and State Level Fair Hearing

#### 3.609.2 Payments

- B. When the county department determines that a client was ineligible for all or a part of a ~~grant~~ payment that the client has already received, the county department shall, subject to notice as described in 3.609.1 and these recovery rules, establish a claim, and if valid, initiate recovery.

#### 3.609.4 Recovery

- C. The client may issue the state a refund of any ~~overpaid grant payments~~ OVERPAYMENTS from his or her existing balance of Colorado Works grant payments on his or her electronic benefits transfer (EBT) card by contacting the county department. This requires a written statement from the client
- D. Clients are not entitled to ~~grant~~ payments that were paid in error or mistakenly provided to the client based on a data entry error into the statewide automated system or an error resulting from the statewide automated system. The county shall create a claim and may retrieve the ~~grant~~ payments from the client's EBT card within twenty-four (24) hours of the issuance without prior written authorization by the client. The client shall have no appeal rights in relation to this ~~grant~~ payment because he or she was not eligible for the initial receipt of the ~~grant~~ payment(s) in the first instance. When ~~grant~~ payments issued in error are not retrieved from the client's EBT card within twentyfour (24) hours, funds shall not be taken from the card using this method unless permission is granted from the client in writing using the state prescribed form. If permission is not granted, the county department shall pursue other methods of recovery.
- K. The county department is required to pursue collection of the overpayment from the client/responsible payee who managed and administered the Colorado Works funds. The county department shall pursue all available overpayment recovery options to collect the overpayment from the client/responsible payee first and then any other liable individuals legally responsible for overpayments, unless otherwise specified.

1. In instances where a trustee has used a client's trust income or property in a manner contrary to the terms of the trust, the county department shall:
  - a. Determine whether an overpayment of ~~Colorado Works grant payments~~ ~~\_\_\_\_\_~~ has occurred as a result of the client's loss of income based on the trustee's improper actions;
  - b. Consult with the county attorney or other legal resource to determine how to pursue action against a trust/trustee;

- c. Advise the trustee of the overpayment circumstances; and
  - d. If the trustee disagrees with such circumstances and overpayment, pursue the recovery establishment and collection through appropriate legal means; or
  - e. Take appropriate steps to secure repayment with the cooperation of the trustee; or,
  - f. Report such behavior or action by the trustee to the county protective services to ensure the protection of the client's rights in the trust.
- 2. In instances where a power of attorney has used his or her legal authority purposes other than for the benefit of the client, the county department for shall:
  - a. Determine whether an overpayment of Colorado Works grant payments ——— has occurred as a result of the power of attorney's improper actions;
  - b. Consult with the county attorney or other legal resource to determine how to pursue action against a power of attorney;
  - c. Advise the holder of the power of attorney of the overpayment circumstances; and,
  - c. If the holder of the power of attorney disagrees with such circumstances and overpayment, pursue the recovery establishment and collection through appropriate legal means; or
  - e. Take appropriate steps to secure repayment with the cooperation of the holder of the power of attorney; or
  - f. Report such behavior or action by the trustee to the county protective services to ensure the protection of the client's rights and benefits

[Note: Changes to rule text are identified as follows: deletions are shown as "strikethrough", additions are in "All Caps", and changes made between initial review and final adoption are in [brackets] or highlighted yellow]