

Title of Proposed Rule: Old Age Pension and Aid to the Needy Disabled Colorado Supplement Cost of Living Adjustment (COLA) Increase for 2023

CDHS Tracking #: 22-10-12-01

CCR #: 9 CCR 2503-5

Office, Division, & Program: Office of Economic Support, Phone: 303-905-7601
Division of Economic and Workforce Support, Adult Financial

Rule Author: Sara Peters **E-Mail:** sara.peters@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 checked="" type="checkbox"/>	<input type="checkbox"/> Initial Board Reading	<input type="checkbox"/>	<input type="checkbox"/> AG 2 nd Review	<input type="checkbox"/>	<input type="checkbox"/> Second Board Reading / Adoption
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This package contains the following types of rules: (check all that apply)

Number	
3	Amended Rules
	New Rules
	Repealed Rules
	Reviewed Rules

What month is being requested for this rule to first go before the State Board? December 2022

What date is being requested for this rule to be effective? January 1, 2023

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	December 9, 2022	2nd Board	January 6, 2023	Effective Date	January 1, 2023 (Emer)
		_____		_____		March 2, 2023 (Perm)
		_____		_____		_____

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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.

On October 13, 2022, the Social Security Administration (SSA) announced a 8.7% Cost of Living Adjustment (COLA) for all Social Security and Supplemental Security Income (SSI) recipients effective January 1, 2023. Colorado has a Maintenance of Effort (MOE) requirement with the SSA that requires the State to “pass through” the COLA increase to recipients in order to spend at least the same amount on these Adult Financial benefits in the current year as in the year prior. This means an increase is required in the Adult Financial grant payments for those receiving Old Age Pension (OAP) and Aid to the Needy Disabled - Colorado Supplement (AND-CS) assistance.

These rules react to the increase to the SSI maximum payment by seventy three dollars (\$73) ($\$841 \times 8.7\% = \73.16 ; (SSA round down to the whole dollar $\$73.00$). This rule will increase the AND-CS grant standard to ($\$841 + \$73 = \$914$) \$914 per month, and the OAP grant standard to ($\$879 + 73 = \952) \$952 per month.

The SSA COLA also changes the maximum In-Kind Support and Maintenance (ISM) applied to some Adult Financial clients to align with the federal increase to that maximum unearned income type.

The Federal Poverty Guidelines also known as the Federal Poverty Level (FPL) changes yearly. The FPL is mentioned in the Adult Financial rule and must be updated when these changes are made; the most current version will be added with this rule package.

1500 Char max

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:

20 CFR 416 et seq. requires a Maintenance of Effort (MOE) between the State of Colorado and the Social Security Administration (SSA). This MOE requires that Colorado spend at least the same amount in the current year as they did in the previous year for specific categories of assistance, which includes OAP and AND-CS recipients who receive SSI. Failure to pass along the COLA could impact the MOE agreement with the SSA. Failure to comply with the 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.

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State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2022)	State Board to promulgate rules
26-1-109, C.R.S. (2022)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2022)	State department to promulgate rules for public assistance and welfare activities.

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
24-4-103, C.R.S. (2022)	Provides for emergency adoption of rules
26-2-111, C.R.S. (2022)	Describes eligibility for Old Age Pension and Aid to the Needy Disabled
26-2-114, C.R.S. (2022)	Provides state board authority to adjust the minimum award of Old Age Pension if living costs have changed sufficiently to justify such adjustment
Colorado Constitution, Article XXIV, Section 6	Provides the state board of public welfare, or such other agency as may be authorized by law power to adjust the basic minimum award for Old Age Pensions if living costs have changed sufficiently to justify that action

Does the rule incorporate material by reference?	Yes	<input checked="" type="checkbox"/>	No
Does this rule repeat language found in statute?	Yes	<input checked="" type="checkbox"/>	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 will impact all OAP and AND-CS recipients. OAP and AND-CS recipients will receive a maximum of seventy three dollar (\$73) increase to their monthly grant payment. OAP recipients maximum monthly grant payment will increase to \$952 ($\$879 + \$73 = \952). AND-CS recipients maximum monthly grant amount will increase to \$914 ($\$841 + \$73 = \914).

This rule change will also impact OAP and AND-CS recipients that have an In-kind Support Maintenance (ISM) calculation because they are not paying their fair share of shelter and utility costs. The ISM is applied as in-kind income in the calculation of benefits. The new maximum ISM amount is \$325 ($\$914 \times 33.33\% = \$304.63 + \$20 = \324.63).

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 rule will result in an increase of \$73 to the OAP Grant Standard \$952 ($\$879 + \$73 = \952) and will impact all OAP recipients, approximately 15,462 individuals. The rule will result in an increase of \$73 to the AND-CS Grant Standard to \$914 ($\$841 + \$73 = \914) and will impact all AND-CS recipients, approximately 354 individuals.

This increase will provide these clients with increased means to meet their basic living needs. This change may impact the food assistance benefits received by these clients. As an approximation, for every three dollars (\$3) additional cash assistance received, clients may experience a decrease of their Supplemental Nutrition Assistance Program (SNAP) benefits by one dollar (\$1). If an individual receives the full increase of seventy four dollars (\$74), their SNAP benefits may decrease by twenty five dollars (\$25).

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.

The ISM adjustment only impacts those individuals who are not currently paying their fair share of shelter costs. Approximately 2% of the combined OAP and AND-CS caseload has any type of in-kind income, and not all of those will have the ISM deduction. In simplified terms, we will assume that the client has no income or resources and, up to this point, would qualify for the full OAP or AND-CS grant. However, the county then looks to see if the client is paying their fair share for shelter, which includes utilities. The total shelter cost is then divided by the number of people living in the home to determine each person's fair share for shelter costs. If the client is not paying a fair share, the ISM deduction may apply. The amount the client is charged as income for unpaid shelter costs is never more than the ISM amount set in rule.

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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 cost to the State for the increase for non-SSI OAP recipients (approximately 5,950) will be a maximum of \$73 per client per month. This cost will be paid using 100% OAP cash funds. The increase results in total expenditures by the State to non-SSI OAP clients of an estimated \$5,212,200 for 2023.

The cost to the State for the increase to OAP clients that are also receiving SSI (approximately 9,513) is estimated to increase the expenditures to \$8,333,388 for 2023.

The total estimated increased expenditures to the State through the OAP cash fund for SSI and non-SSI OAP recipients is estimated at \$13,545,588 for 2023.

The cost to the State for the increase for AND-CS recipients (approximately 354) will be a maximum of \$73 per client per month. The increase results in total expenditures by the State to AND-CS clients of an estimated \$310,104 for 2023.

The cost to the State will not increase as a result of changing the ISM calculation. The maximum ISM amount is tied directly to the SSI grant.

County Fiscal Impact

OAP will require no additional appropriation as it is included within existing appropriations for this grant increase. The Aid to the Needy Disabled program has a county contribution of 20%. The \$73 grant increase means that counties will contribute a maximum additional \$14.80 per month per client. The anticipated county contribution is much lower since all clients on AND-CS receive at least a portion of their income in SSI. The AND-CS grant is reduced based on the SSI amount.

Federal Fiscal Impact

No impact because there are no federal funds utilized.

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

No impact because 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?

The SSA issued a press release on October 13th, 2022, announcing the 8.7% cost of living adjustment (COLA). This information can be found at <https://www.ssa.gov/news/press/releases/2022/#10-2022-2>

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...”

Taking no action could adversely impact the health, safety, and welfare of OAP and AND-CS recipients. This could also potentially cause the State to be unable to meet the MOE requirements with the Social Security Administration. Because of the penalties associated with not meeting the MOE, there are no other viable options.

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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
7.000	<i>Incorrect Statutory Reference</i>	<i>Section 26.5.103 C.R.S.</i>	<i>Section 26.5-101(3) C.R.S.</i>		
3.530 OLD AGE PENSION (OAP) PROGRAM	Update amounts of components to reflect the increased grant standard and ISM amount effective January 1, 2023	The Old Age Pension (OAP) program provides financial assistance and may provide health care benefits for low-income Colorado residents who are sixty (60) years of age or older who meet all financial and non-financial eligibility requirements. A. The total monthly OAP grant standard, as set by the State Board of Human Services, is \$879.00 effective January 1, 2022. B. Effective January 1, 2022, the maximum monthly In-Kind Support and Maintenance (ISM) deduction amount for shelter costs is \$300.00	The Old Age Pension (OAP) program provides financial assistance and may provide health care benefits for low-income Colorado residents who are sixty (60) years of age or older who meet all financial and non-financial eligibility requirements. A. The total monthly OAP grant standard, as set by the State Board of Human Services, is \$879.00 \$952.00, effective January 1, 2023. B. Effective January 1, 2023, the maximum monthly In-Kind Support and Maintenance (ISM) deduction amount for shelter costs is \$300.00 \$325.00	To implement the \$73 COLA increase and adjust the ISM amount.	
3.546 AID TO THE NEEDY DISABLED - COLORADO SUPPLEMENT	Update amounts of components to reflect the increased grant standard and ISM amount effective January 1, 2023	The Aid to the Needy Disabled-Colorado Supplement (AND-CS) program provides a supplemental payment for	The Aid to the Needy Disabled-Colorado Supplement (AND-CS) program provides a supplemental payment for client's age zero (0) to fifty-nine (59) who are receiving SSI due to a	To implement the \$73 COLA increase and adjust the ISM amount.	

Title of Proposed Rule: Old Age Pension and Aid to the Needy Disabled Colorado Supplement Cost of Living Adjustment (COLA) Increase for 2023

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<p>ENT (AND-CS) PROGRAM</p>		<p>client's age zero (0) to fifty-nine (59) who are receiving SSI due to a disability or blindness, but are not receiving the full SSI benefit standard, as defined in Section 3.510. A. The total AND-CS grant standard is \$841 effective January 1, 2022. B. The grant standard for AND-CS shall be adjusted as needed to remain within available appropriations. Appeals shall not be allowed for grant standard adjustments necessary to stay within available appropriations. C. In addition to the regular monthly AND-CS grant payments, supplemental payments necessary to comply with the Federal MOE requirements, as incorporated by reference in Section 3.531.D, may be provided. These payments are supplements to regular grant payments, are not entitlements, and do not affect grant standards. Appeals shall not</p>	<p>disability or blindness, but are not receiving the full SSI benefit standard, as defined in Section 3.510. A. The total AND-CS grant standard is \$841.00914.00, effective January 1, 20223. B. The grant standard for AND-CS shall be adjusted as needed to remain within available appropriations. Appeals shall not be allowed for grant standard adjustments necessary to stay within available appropriations. C. In addition to the regular monthly AND-CS grant payments, supplemental payments necessary to comply with the Federal MOE requirements, as incorporated by reference in Section 3.531.D, may be provided. These payments are supplements to regular grant payments, are not entitlements, and do not affect grant standards. Appeals shall not be allowed for MOE payment adjustments. D. Effective January 1, 20223, the maximum ISM amount for shelter costs is \$300.00325.00.</p>		
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		be allowed for MOE payment adjustments. D. Effective January 1, 2022, the maximum ISM amount for shelter costs is \$300.00.			
3.510 DEFINITIONS	To update the date of the most current FPL adjustment.	“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, as of January 13, 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, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.	“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 , 87 FR 3315 as of January 13, 2021 January 12, 2022. 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, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.	To update the date of the most current FPL adjustment.	

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):

None

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; PAC & Economic Security 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	November 2022		
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

Yes No

Date presented	December 2022		
What issues were raised?			
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.

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3.510 DEFINITIONS

“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~~, 87 FR 3315 as of ~~January 13, 2021~~ January 12, 2022. 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, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.

3.530 OLD AGE PENSION (OAP) PROGRAM

The Old Age Pension (OAP) program provides financial assistance and may provide health care benefits for low-income Colorado residents who are sixty (60) years of age or older who meet all financial and non-financial eligibility requirements.

A. The total monthly OAP grant standard, as set by the State Board of Human Services, is ~~\$879.00~~ \$952.00, effective January 1, 20223.

B. Effective January 1, 20223, the maximum monthly In-Kind Support and Maintenance (ISM) deduction amount for shelter costs is ~~\$300.00~~ \$325.00.

3.546 AID TO THE NEEDY DISABLED-COLORADO SUPPLEMENT (AND-CS) PROGRAM

The Aid to the Needy Disabled-Colorado Supplement (AND-CS) program provides a supplemental payment for clients age zero (0) to fifty-nine (59) who are receiving SSI due to a disability or blindness, but are not receiving the full SSI benefit standard, as defined in Section 3.510.

A. The total AND-CS grant standard is ~~\$844.00~~ \$914.00, effective January 1, 20223.

B. The grant standard for AND-CS shall be adjusted as needed to remain within available appropriations. Appeals shall not be allowed for grant standard adjustments necessary to stay within available appropriations.

C. In addition to the regular monthly AND-CS grant payments, supplemental payments necessary to comply with the Federal MOE requirements, as incorporated by reference in Section 3.531.D, may be provided. These payments are supplements to regular grant payments, are not entitlements, and do not affect grant standards. Appeals shall not be allowed for MOE payment adjustments.

D. Effective January 1, 20223, the maximum ISM amount for shelter costs is ~~\$300.00~~ \$325.00

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