

Title of Proposed Rule: Emergency: Colorado Child Care Assistance Program Rules

CDHS Tracking #: 18-05-16-01

CCR #: 9 CCR 2503-9

Office, Division, & Program:
OEC, DEC&L, CCCAP

Rule Author:
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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.

The Department must set the income eligibility for the CCCAP program. The state has flexibility to set these limits, as long as they do not exceed 85% of the state median income level, as determined in the LIHEAP federal information memo.

Annually, the Department updates the federal poverty levels and the state median income levels in CHATS (the automated system used by counties to administer CCCAP). Typically, the new federal poverty guidelines are released sometime in January every year, but the CCCAP program must adhere strictly to the LIHEAP State Median Income limits, which are effective every October 1. This update happens to also align with other federal fiscal programs that operate on the federal fiscal year (October 1) and the staggered timeframe also allows time for the OIT team to input the new federal poverty levels into the CHATS system.

The Department removed the reference to actual income levels in the rule package that went into effect in February 2016, in an effort to simplify rule and reduce the need to amend the rule annually with the new income guidelines. These guidelines are now published on the OEC website and established every year through an Operational Memo to the counties.

It has come to our attention that because these income guidelines are not in rule, the state is not in compliance 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).

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, C.R.S. (2015)	State Board to promulgate rules
26-1-109, C.R.S. (2015)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2015)	State department to promulgate rules for public assistance and welfare activities.

DOCUMENT 1

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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
Section 26-1-107, C.R.S.	State Board authority
Section 26-2-805, C.R.S.	CCCAP income eligibility levels
CCDBG 658E(c)(5); 45 CFR 98.42	Child Care Development Block Grant Act (2014)

Does the rule incorporate material by reference?

Yes

No

Does this rule repeat language found in statute?

Yes

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?

Counties who administer Colorado Child Care Assistance Program (CCCAP) benefits will benefit from the rule, CHATS and Departmental policy aligned.

Households receiving CCCAP will have clear guidance in both rule and policy regarding income eligibility levels.

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?

Counties are already operating under these income guidelines, as proposed in this rule package. However, without formal rule in place, families may challenge the income guidelines and appeal their case under the new federal poverty guidelines. (Families that were determined to be slightly over income under the existing Departmental guidelines may be eligible under the new federal guidelines.) This is causing confusion among counties on which income guidelines they should adhere to when determining eligibility.

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)

No fiscal impact to the state.

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

No federal fiscal impact.

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

There is a risk that a few families will go over income under the current Departmental guidelines but would not go over income under the "new" federal guidelines.

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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?

Federal Poverty Guidelines published January 31, 2017. LIHEAP-IM-2017-03 – memo on state median income levels.

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...”

There are no alternatives to this rule making because APA requires that these standards are promulgated in rule.

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OVERVIEW OF PROPOSED RULE

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

Page #	New Rule #	Current Rule #	Status (i.e., new, clarification, technical, repeal)	Changes/Description	Public Comment Y/N
6	Definitions	Definitions	New	Added definition of "federal poverty level" and "federal poverty guideline"	n/a
16-17	3.905.1 (H)(2)		New	Monthly gross income and SMI table added	n/a
37	3.910 (P)	3.910 (P)	Clarification	Clarified that the federal poverty guidelines to be used to determine parent fees must be based on those in rule.	n/a

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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):

Emergency rule package based on 2017 federal poverty guidelines.

This Rule-Making Package

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

Office of Early Childhood (OEC) PAC & Sub-PAC were informed of the emergency rule making strategy at the May meeting.

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	CDHS Early Childhood Sub-PAC		
Date presented			
What issues were raised?	None		
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			
What issues were raised?	None		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.			

Other Comments

Emergency rule package was not released for public comment.

DEPARTMENT OF HUMAN SERVICES

Income Maintenance (Volume 3)

COLORADO CHILD CARE ASSISTANCE PROGRAM

9 CCR 2503-9

3.903 DEFINITIONS

“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 (H)(2).

3.905.1 LOW INCOME CHILD CARE ELIGIBILITY

H. Low-Income Eligibility Guidelines

- 2. EFFECTIVE OCTOBER 1, 2017, MONTHLY GROSS INCOME LEVELS, FOR ONE-HUNDRED PERCENT (100%) AND ONE-HUNDRED SIXTY-FIVE PERCENT (165%) OF THE FEDERAL POVERTY LEVEL, AS WELL AS EIGHTY-FIVE PERCENT (85%) OF STATE MEDIAN INCOME FOR THE CORRESPONDING HOUSEHOLD SIZE ARE AS FOLLOWS:

Family Size	100% Federal Poverty Guideline (FPG)	165% Federal Poverty Guideline (State Minimum Income Limit)	85% State Median Income (SMI) (State and Federal Maximum Income Limit)
2	\$1353.33	\$2233.00	\$4310
3	\$1701.67	\$2807.75	\$5324
4	\$2050.00	\$3382.50	\$6338
5	\$2398.33	\$3957.25	\$7352
6	\$2746.67	\$4532.00	\$8366
7	\$3095.00	\$5106.75	\$8557
8	\$3433.33	\$5681.50	\$8747
9	\$3791.67	\$6256.25	\$8937
Each Additional person	\$348.33	\$574.75	\$190

3.910 PARENT FEES

- P. ~~The state department shall notify e~~Counties SHALL USE THE federal poverty guidelines and state median income limit AS DEFINED IN SECTION 3.905.1 (H)(2). Counties shall update parent fees at the next scheduled re-determination.