

Title of Proposed Rule: Eliminating the Lookback to Aid to Families with Dependent Children (AFDC) Requirements from Title IV-E Foster Care Redeterminations

Rule-making#: 11-5-26-1

Office or Division/Program:
Office of Children, Youth and
Families/ Division of Child
Welfare

Rule Author: Diane Wolfe

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STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for the rule or rule change. *(State what the rule says or does, explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule.)*

This rule change is necessary to repeal a section of rules to comply with changes to the Federal Child Welfare Policy Manual, which eliminates the Federal requirement that the Title IV-E agencies redetermine a child's Aid to Families with Dependent Children (AFDC) eligibility after the child was determined to be eligible for Title IV-E at the child's removal into foster care. It is associated with Social Security Act Sections 472(a), 406(a), and 407 regarding redetermination of a child's continuing eligibility for Title IV-E linked to AFDC. July 16, 1996 is the date that the AFDC program ended and Temporary Assistance for Needy Families (TANF) was established.

Since the establishment of the Title IV-E foster care program in 1980, eligibility has been tied to the AFDC program. An annual lookback or redetermination of AFDC eligibility has also been required for all children determined eligible for the program as long as the children are in the custody of a state's Title IV-E agency (Colorado Department of Human Services). The change at the Federal level eliminates the need for the lookback or redetermination of AFDC eligibility after the initial eligibility determination for the Title IV-E foster care program. Previously, if a child did not meet the AFDC requirements at the annual lookback, any reimbursement of Federal Title IV-E funds would have to stop until the child once again met the AFDC eligibility requirements. The requirements that are being eliminated are the financial eligibility (income and asset maximums for a child in foster care) and the continued deprivation of parental support (through unemployment/underemployment, income, incapacity, or death).

States are reimbursed by the Federal Administration for Children and Families quarterly, based on appropriate and allowable expenditures. Title IV-E operates similarly to Medicaid, in that it is an open-ended entitlement program; it is not a grant that has a maximum amount that is distributed among the states. The Federal government will reimburse states for all expenditures made on behalf of an eligible client, who received an eligible service (foster care) from an eligible provider.

This is a significant change to the program, easing up on historic programmatic requirements. In recent years, the Federal Administration for Children and Families has also eliminated the AFDC requirement for Title IV-E subsidized adoptions.

Eliminating this rule will lessen the workload of county departments and Division of Youth Corrections Title IV-E eligibility staff and potentially increase Federal Title IV-E reimbursement to Colorado. This reimbursement is distributed to the counties as part the their State Allocation, as appropriated by the State Legislature.

Initial Review	<u>08/05/2011</u>	Final Adoption	<u>09/09/2011</u>
Proposed Effective Date	<u>11/01/2011</u>	EMERGENCY Adoption	<u>N/A</u>

DOCUMENT 3

[Note: "Strikethrough" indicates deletion from existing rules and "all caps" indicates addition of new rules.]

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STATEMENT OF BASIS AND PURPOSE (continued)

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

<input type="checkbox"/>
<input type="checkbox"/>

to comply with state/federal law and/or

to preserve public health, safety and welfare

Explain:

Authority for Rule:

State Board Authority: 26-1-107, C.R.S. (2010) - State Board to promulgate rules; 26-1-109, C.R.S. (2010) - State Board rules to coordinate with federal programs; 26-1-111, C.R.S. (2010) - State Board to promulgate rules for public assistance and welfare activities.

Program Authority: (give federal and/or state citations and a summary of the language authorizing the rule-making) Social Security Act Sections 472(a), 406(a) and 407 (in effect on July 16, 1996) - the date the AFDC program was eliminated and TANF began; 45 CFR 233.20

Does the rule incorporate material by reference?

<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

Does this rule repeat language found in statute?

If yes, please explain.

State Board Administration will send this rule-making package to Colorado Counties, Inc., Office of State Planning and Budgeting, and the Joint Budget Committee. The program has sent this proposed rule-making package to which stakeholders?

Office of Information Technology Trails Team, County Trails User Group, Child Welfare Sub-Policy Advisory Committee (Sub-PAC), CDHS Administrative Review Division

Attachments:

- Regulatory Analysis
- Overview of Proposed Rule
- Stakeholder Comment Summary

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REGULATORY ANALYSIS

(complete each question; answers may take more than the space provided)

1. List of groups impacted by this rule:

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

County departments of social/human services IV-E eligibility staff will benefit.
Trails development staff will bear the burden of making changes.

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?

In the short term, county departments of social/human services and Division of Youth Corrections IV-E eligibility staff will see a lessening of workload as they will no longer need to verify or data enter continuing AFDC eligibility factors at annual redeterminations of eligibility for children in out of home care. Additionally, CDHS Child Welfare policy will be in compliance with current federal policy.

In the long term, there is the potential for increased federal Title IV-E revenues.

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.

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)*

None. Child Welfare and State Trails staff will incorporate the minor changes into already existing workload.

County Fiscal Impact

None. County staff will have some time freed up because they will no longer have to complete these requirements.

Federal Fiscal Impact

This rule change may increase federal Title IV-E Foster Care Maintenance revenues in Colorado, based on less regulation. Currently, county and DYC Title IV-E eligibility staff are required to address the AFDC requirements at the time of redetermination, which can result in lost revenue of Title IV-E foster care claiming/reimbursement if the client and removal home do not meet the AFDC requirements. Eliminating the AFDC requirement should result in increased federal reimbursement of state foster care and administrative expenditures.

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REGULATORY ANALYSIS (continued)

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

None

4. Data Description:

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

Children's Bureau Program Instruction ACFY-CB-PI-11-01, issued January 7, 2011.

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.

There are no alternatives to bring the State into compliance with this reduction in Federal requirements.

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OVERVIEW OF PROPOSED RULE

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

<u>Section Numbers</u>	<u>Current Regulation</u>	<u>Proposed Change</u>	<u>Stakeholder Comment</u>		
7.001.41, J, 2	Title IV-E foster care requirement that AFDC program requirements regarding income, resources and deprivation be documented and verified annually for all IV-E eligible children	Removes this requirement	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/> No

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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, Sub-PAC, and the Child Welfare Action Committee):

County Trails User Group, Trails business analysts, Child Welfare Sub-Policy Advisory Committee (Sub-PAC), CDHS Administrative Review Division and Child Welfare staff

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 Trails User Group, Trails business analysts, Child Welfare Sub-Policy Advisory Committee (Sub-PAC), CDHS Administrative Review Division and Child Welfare staff

Are other State Agencies (such as the Department of Health Care Policy and Financing) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

Yes No

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

Yes No

Date presented _____. Were there any issues raised? ____ Yes ____ No

If not, why. To be presented on the August 4 Sub-PAC agenda.

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 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.

7.001.41 Title IV-E Foster Care (continued)

2. The court order contains the findings shown at Section 7.001.41, B.
3. The child meets other eligibility factors.

G. Minor Parent and Child in Mutual Care

A child residing in mutual out-of-home care with his/her adult parent is not considered removed from the parent because the child continues to reside with the parent in the same residence; therefore, the child is not IV-E eligible.

When the parent is a minor and the minor parent has been determined eligible for Title IV-E foster care, the child's placement costs are reimbursable through Title IV-E foster funding as an extension of the minor parent's cost of care.

H. Required Time Frames

1. The county department is responsible for determining the eligibility of every child entering out-of-home foster care within 45 calendar days of the placement date unless good faith efforts have been made and recorded in the child's record.
2. Counties shall redetermine eligibility using the state prescribed form every twelve (12) months from the date the child enters foster care.

I. Referral to Child Support Enforcement

The county department shall refer every child determined eligible for Title IV-E foster care to the county department's Child Support Enforcement Unit for child support services, except when the:

1. Child is in continuous placement for less than 31 days.
2. Child's absent parent is unknown.
3. Best interests of the child would not be served, such as when parental rights have been terminated or the Family Services Plan documents that family contact is inappropriate.
4. Child's deprivation status under Title IV-E eligibility is "Unemployment".

J. Redetermination of Title IV-E Eligibility Requirements

~~1. Court Order~~

1. ~~a-~~ A court order must remain in effect which grants legal custody of the child to the county department or a petition to review the need for placement was filed and the court has ordered legal authority for continued placement within 180 calendar days of the date a child entered out-of-home care by voluntary placement agreement.

THIS REVISION:	VII-01-4	LAST REVISION:	VII-00-5	REVISION NUMBER
Adopted:	12/7/2001	Adopted:	10/6/2000	3
Effective Date:	2/1/2002	Effective Date:	12/1/2000	

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7.001.41 Title IV-E Foster Care (continued)

~~2. b.~~ Effective March 27, 2001, there must be an order of the court finding that the county department has made reasonable efforts to finalize a permanency plan. This finding must be made within 12 months of the date the child enters foster care, and every 12 months thereafter while the child remains in out-of-home care. If 12 months elapse without this judicial determination, eligibility for Title IV-E foster care temporarily ends. Title IV-E eligibility can resume the 1st day of the month in which the finding is made.

~~2. Redetermination of AFDC Eligibility~~

~~Refer to Section 7.001.41, D, and AFDC rules as in effect in July 16, 1996, except for differences states below:~~

~~a. Deprivation of Parental Support - The child must continue to be deprived of parental support or care of one or both parents. Title IV-E funding is not claimable during episodes when no deprivation of parental support exists.~~

~~b. Determination of Need~~

~~1) Income - Only income of the child is to be considered for redetermination of Title IV-E eligibility. The child's income must be within 185% of the foster care maintenance cost. If the child's income exceeds this standard, the staff determining eligibility should refer to the special needs determination Section 7.403.~~

~~2) Resources - Only resources of the child are to be considered for redetermination for Title IV-E eligibility. The child's resource limit is \$10,000 in countable resources.~~

K. Redetermination of Provider Eligibility

An out-of-home care provider must be licensed or certified to be a Title IV-E eligible placement. Placement costs for a Title IV-E eligible child are only Title IV-E claimable when a child is placed with a Title IV-E eligible provider.

Effective September 1, 2000, provisionally licensed or provisionally certified out-of-home care providers will not be claimable placements through Title IV-E foster care as they are not fully licensed or fully certified.

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