

**Title of Proposed Rule:** Subsidized Employment Rule Change

**CDHS Tracking #:** 17-06-29-01

Office, Division, & Program: Rule Author: Samantha Hughes  
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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 federal Temporary Assistance for Needy Families (TANF) program, known as “Colorado Works,” provides cash assistance, employment services, and supportive services to economically vulnerable families with the primary goal of stabilizing those families and moving them out of poverty by promoting employment opportunities. In Colorado, these services are delivered through a state-supervised/county-administered framework, providing flexibility to counties to design services to meet their communities’ needs.

Subsidizing wages is a valuable employment strategy designed to transition people with significant labor market barriers (e.g. limited experience, low skills, prior criminal record, and disabilities) into work using wage-paid employment that intends to combine real work, skills development, and supportive services. Subsidized wages act as a “trial period” for an employer to take a risk on an employee who may have been overlooked simply by reviewing applications. At the same time, subsidized employment supports employers’ bottom-lines, encouraging and promoting job creation by testing the viability of a new position or shifting responsibilities.

The proposed rule change is necessary to exempt income from subsidized employment in alignment with SB 17-292: Employment Opportunities with Wages Program. In addition, Colorado Revised Statute 26-2-709 (1)(II) gives the State Board of Human Services authority to promulgate income exemptions through state regulations. To make rule and the way in which Colorado Works participants experience the rule consistent, this proposed rule exempts all subsidized employment income earned by participants in Colorado Works for the purpose of determining eligibility and grant calculations. The exemption of subsidized employment will directly benefit vulnerable families in both the form of immediate income and on-the-job experience to facilitate future employment.

**State Board Authority for Rule:**

| Code                    | Description  |
|-------------------------|--|
| 26-1-107, C.R.S. (2016) | State Board to promulgate rules  |
| 26-1-109, C.R.S. (2016) | State department rules to coordinate with federal programs                         |
| 26-1-111, C.R.S. (2016) | 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   |
|-------------------------------------|---|
| SB 17-292; C.R.S. 26-2-706.6 (9)(d) | Wages earned by participants in the Employment Program do not count as income for the purposes of Colorado Works program eligibility and grant determination, as defined in this section.   |
| C.R.S. 26-2-709 (1)(II)             | Establish criteria for determining whether an applicant or participant meets the standard of need, including but not limited to what constitutes countable and excludable income for the purposes of eligibility for a basic cash assistance grant. |

Does the rule incorporate material by reference?

Yes

No

Does this rule repeat language found in statute?

Yes

No

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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 Colorado Works customers who obtain subsidized employment because it will exempt income that would have been previously considered in determining how eligibility and the grant amount are determined.

This proposed rule will affect counties and county partners that utilize subsidized employment as a work activity. This rule will affect county departments of human or social services, workforce centers, or community-based organizations because it will allow more flexibility in finding work opportunities for TANF recipients who are ready to begin work. It will also allow these entities to explore new funding options through various subsidized work 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?*

There is no negative impact to counties as a result of this rule change. There are four million dollars of federal funds allocated to the Employment Opportunity with Wages Program which is set to repeal June 30, 2020. Counties using subsidized employment as a work activity already have flexibility through the block grant allocation to provide these supports. The short term goal of subsidized employment is to assist individuals receiving public assistance through Colorado Works in attaining permanent jobs paying a living wage.

Long term impacts will be evaluated as a result of the legislatively required evaluation. This evaluation will assess the program's effectiveness in meeting the Colorado Works program objectives. This evaluation will include an analysis of participants who achieved permanent employment and achieved new skills and credentials. It will also analyze participants finding employment with livable wages and employing individuals in industries with worker shortages.

### **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)

There are no State general funds being used for the Program. The program utilizes existing funds in the State Long-term Works Reserve, which includes federal TANF block grant funds.

This rule change will require a CBMS project. Deloitte estimates that this project will take 301 hours. All of these hours will come from the Division's existing CBMS allocation, making this cost-neutral. All other administrative costs will be covered by the appropriation.

Any awarded but unspent Employment Opportunity with Wages Program funds will revert back to the State Long-term Works Reserve at the end of the state fiscal year and shall not remain with the entity which received the award.

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#### County Fiscal Impact

There is no negative County fiscal impact as a result of this rule change. The appropriation is funded with federal funds only and does not require a local maintenance of effort or match. The appropriation does not impact the County TANF Block Grant line.

Exempting all subsidized employment income may result in an average monthly caseload increase of no more than 60 cases statewide. This is a very small impact of less than 0.4% of all cases.

#### Federal Fiscal Impact

The General Assembly has appropriated 4 million dollars per year for FY 2017-2018, FY 2018-2019, and FY 2019-20. This appropriation is from available funds in the State Long-term Works Reserve, which includes federal TANF block grant funds. There is no additional cost to federal TANF funds. There are no additional federal requirements as a result of these rules.

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

No impact to any entity involved with this program. The program is funded with existing and available federal TANF funds. There is no additional fiscal requirement for an entity to participate in this program.

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

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

No other data was used in developing this rule. This is legislatively required to be implemented.

#### **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.*

A rule change is necessary to implement SB 17-292 Part D “wages earned by participants in the employment program do not count as income for the purposes of Colorado Works program eligibility and grant determination, as defined in this section”.

No alternatives were considered because this bill requires a change in how certain income is regarded for grant and eligibility determinations.

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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 |
|---------------------|--|---|---|---|----------------------------|
| 3.605.3, D          | Modifying current exempt rule section to add subsidized employment | No further rule language following (36) | Adding (37) which states: "Wages earned through subsidized employment." | Implement SB 17-292 and C.R.S. 26-2-709 (1)(II) | 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, and Sub-PAC):

No other areas were included in the development of these rules. Rule change necessary to implement legislation.

**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 Legal Services; The Legal Center; All Families Deserve a Chance (AFDC) Coalition; Policy Advisory Committee; Economic Security Sub-PAC; Legal Aid of Metropolitan Denver; Colorado Center on Law and Policy; Colorado Counties, Inc.; and the Food and Energy Assistance Division

**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?

Marivel Klueckman with Health Care Policy and Financing-no input received.

**Sub-PAC**

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

Yes  No

|                                |                   |                |                |
|--------------------------------|-------------------|----------------|----------------|
| Name of Sub-PAC                | Economic Security |                |                |
| Date presented                 | 08/03/17          |                |                |
| What issues were raised?       |                   |                |                |
| Vote Count                     | <i>For</i>        | <i>Against</i> | <i>Abstain</i> |
|                                | 15                | 0              | 1              |
| If not presented, explain why. |                   |                |                |

**PAC**

Have these rules been approved by PAC?

Yes  No

|                                |            |                |                |
|--------------------------------|------------|----------------|----------------|
| Date presented                 | 09/07/17   |                |                |
| What issues were raised?       |            |                |                |
| Vote Count                     | <i>For</i> | <i>Against</i> | <i>Abstain</i> |
|                                | unanimous  | 0              | 0              |
| 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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### 3.605.3 Unearned Income

For the purpose of determining eligibility for Colorado Works, the following shall be exempt from consideration as income:

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#### D. General Income Exemptions – Exemptions from Consideration as Income

For the purpose of determining eligibility for Colorado Works, the following shall be exempt from consideration as income herein incorporated by reference; no later amendments or editions are incorporated. Copies of these federal laws are available from the Colorado Department of Human Services, Director of the Colorado Works Division, 1575 Sherman Street, Denver, Colorado 80203, or at any State Publications Library:

1. A bona fide loan. Bona fide loans are loans, either private or commercial, which have a repayment agreement.
2. Benefits received under the Older Americans Act, Nutrition Program for the Elderly.
3. The value of supplemental food assistance received under the special food services program for children provided for in the National School Lunch Act and under the Child Nutrition Act, including benefits received from the special supplemental food program for Women, Infants and Children (WIC).
4. Home produce utilized for personal consumption.
5. Payments received under Title II of the Uniform Reconciliation Act and Real Property Acquisition Policies Act; relocation payments to a displaced homeowner toward the purchase of a replacement dwelling are considered exempt for up to six (6) months.
6. Experimental Housing Allowance Program (EHAP) payments made by HUD under Section 23 of the U.S. Housing Act.
7. Payments from Indian judgment funds and tribal funds held in trust by the Secretary of the Interior and/or distributed per capita; and the initial purchase made with such funds.
8. Distributions from a native corporation formed pursuant to the Alaska Native Claims Settlement Act (ANCSA) which are in the form of: cash payments up to an amount not to exceed \$2,000 per individual per calendar year; stock; a partnership interest; or an interest in a settlement trust. Cash payments, up to \$2,000, received by a recipient in one calendar year which is retained into subsequent years is excluded as income and resources; however, cash payments up to \$2,000 received in the subsequent year would be excluded from income in the month(s) received, but counted as a resource if retained beyond that month(s).
9. Assistance from other agencies or organizations that are provided for items not included in the need standard or do not duplicate a component of the need standard in total.
10. Major disaster and emergency assistance provided to individuals and families, and comparable disaster assistance provided to states, local governments and disaster assistance organizations.
11. Payments received for providing foster care.

12. Payments to volunteers serving as foster grandparents, senior health aids, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other program under Title I (AmeriCorps VISTA) when the value of all such payments adjusted to reflect the number of hours such volunteers are serving is not equivalent to or greater than the minimum wage, and Title II and Title III of the Domestic Volunteer Services Act.
13. Training allowances or training scholarships granted by Workforce Investment Act (WIA) of 1998 or other programs to enable any individual to participate in a training program is exempt.
14. Payments received from the Youth Incentive Entitlement Pilot Projects (YIEPP), the Youth Community Conservation and Improvement Projects (YCCIP), and the Youth Employment and Training Programs (YETP) under the Youth Employment and Demonstration Project Act (YEDPA).
15. Social Security benefit payments and the accrued amount thereof paid to a person when an individual plan for self-care and/or self-support has been developed under the following conditions:
  - (a) SSI permits such disregard under such developed plan for selfcare-support goal, and
  - (b) assurance exists that the funds involved will not be for purposes other than those intended.
16. Payments made from the Agent Orange Settlement Fund or any fund established pursuant to the settlement in the Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).
17. Money received from the Radiation Exposure Compensation Trust Fund, P.L. No. 101- 426 as amended by P.L. No. 101-510.
18. Reimbursement of out-of-pocket expenses.
19. Payments received by individuals because of their status as victims of Nazi persecution pursuant to P.L. No. 103-286.
20. Individual Development Accounts (IDAs).
21. Retirement savings accounts.
22. Health care savings accounts.
23. Income paid to children of Vietnam veterans who were born with spina bifida pursuant to P. L. No. 104-204.
24. Income of an applicant or participant who is attending school (student in a secondary education or undergraduate degree program) shall be considered as follows: a. Income received from a college work-study program grant shall be exempt. b. All earned income, including earned income from WIA, that is received by a dependent child who is a full-time student or a part-time student who is not a fulltime employee shall be disregarded.
25. Educational savings accounts.
26. Educational grants, loans, stipends, and/or scholarships.
27. The income and resources (including any share in resources or income jointly owned or received) of an individual receiving SSI.
28. Income tax refunds.

29. Earned Income Tax Credit (EITC).
30. Refugee resettlement funds and reception and placement money.
31. Interim Cash Payment received through the Colorado Refugee Services Program.
32. Life or disability insurance policies that may have a cash value taken.
33. The benefits provided from the Low-Income Energy Assistance Program (LEAP).
34. A child receiving subsidized adoption funds shall be excluded from the assistance unit and his or her income shall be exempt from consideration for Colorado Works eligibility and payment, unless such exclusion results in lower benefits to the family.
35. Income that is exempt shall also be exempt if received as a lump sum or excluded if designated or legally obligated for legal fees related to obtaining the lump sum payment, medical bills, funeral and burial expenses or income taxes.
36. Income tax credits when identified as exempt by the state or federal government.
37. WAGES EARNED THROUGH SUBSIDIZED EMPLOYMENT PROGRAMS INCLUDING EMPLOYMENT, APPRENTICESHIPS, ON-THE-JOB TRAINING, AND TRANSITIONAL JOBS.

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