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Program/Division: Colorado Child Care Assistance
Program Division

CDEC Tracking No.: 2024-11-011

CCR Number(s): 8 CCR 1403-1

SOS Tracking No.: TBD

RULEMAKING PACKET

Reason for the proposed rule or amendment(s):

Multiple/Other ▾

If there are "Multiple/Other" reasons, please explain:

The primary purpose of this rule package is to comply with state and federal regulations. The rule also includes technical citation updates and changes based on county feedback that improves processes.

Emergency Rule Justification (if applicable)

An Emergency Rule is necessary in order to come into compliance with federal regulations 45 CFR 98.21 (d) and 98.43 (c)(1)(v). The Department must also update the Colorado Child Care Assistance Program (CCCAP) rules to align with sections 26.5-4-111 (7)(d) and 26.5-4-115(1)(a), C.R.S., as these areas of statute were updated effective July 1, 2024.

Provide a description of the proposed rule or amendment(s) that is clearly and simply stated, and what CDEC intends to accomplish:

First, the Department must come into immediate compliance with two federal regulations. Per 45 CFR 98.21 (d), Lead Agencies shall establish policies and processes to incorporate additional eligible children in the family size (e.g., siblings or foster siblings), including ensuring a minimum of 12 months of eligibility between eligibility determination and redetermination without placing undue reporting burden on families. Colorado does not currently provide newly added children with twelve months of eligibility if they are added to a household during the eligibility period. This was identified as a finding during the state's most recent federal monitoring visit and must be corrected to avoid potential loss of federal Child Care Development Fund (CCDF) funding. As of March 2024, federal regulations also require that states preclude an individual from providing child care if they've been convicted of a misdemeanor involving child pornography (45 CFR 98.43 (c)(1)(v)). While the Colorado Child Care Assistance Program (CCCAP) already includes this in the background check process for Qualified Exempt Child Care Providers, and other federal rule changes were eligible for delayed implementation, this change is not waiver eligible and it must be included in our rules to ensure compliance with federal regulations.

	<p>The Department must also make several other changes to implement the March 2024 federal rules; however, a waiver has been submitted to the federal office that will allow the Department to implement the remaining rules by August 1, 2026. Currently, the parent fee formula sunsets on June 30, 2025, and therefore needs to be extended to July 31, 2026, to give the Department time to work with counties, child care providers, and families to develop a new parent fee formula that complies with the new federal requirements by the waiver deadline. Additionally, CCCAP must align rules with the Colorado Revised Statutes. As of July 1, 2024, counties are now required to allow education as an eligible CCCAP activity just as they would employment, self-employment, and job searching per section 26.5-4-111(7)(d), C.R.S. State statute also requires that additional measures related to customer service be included in the annual performance contract that is signed by counties and the Department. CCCAP rules are being updated to include performance contract requirements to support requirements outlined in section 26.5-4-115(1)(a), C.R.S.</p> <p>With the expiration of the American Rescue Plan Act (ARPA) funding, the program is facing a reduction in funding to serve families and children that are receiving CCCAP. Counties have begun implementing waitlists and freezes to slow enrollment and reduce expenditures. Counties on a freeze currently must have families submit an abbreviated freeze redetermination form and restate their intent to remain on the freeze list every six months. Based on the increase in the implementation of freezes and waitlists, counties have experienced workload burdens as a result of the freeze redetermination requirements in rule. The CCCAP rules are being revised to make the freeze redetermination process optional as well as align the freeze redetermination timeline with the standard 12-month redetermination timeline that applies to other CCCAP cases to help reduce county workload and reduce the family burden of reporting information to counties so frequently.</p> <p>Lastly, technical changes were made to update citations that reference the Colorado Department of Early Childhood (CDEC) Appeal rules as they have changed.</p>
Statutory Authority: (Include Federal Authority, if applicable)	<p>Sections 26.5-1-105(1)(a), 26.5-4-111(1), (7)(d), and (14), and 26.5-4-119(4), C.R.S.</p> <p>45 CFR 98.21 (d) and 98.43 (c)(1)(v)</p>
Does the proposed rule or amendment(s) impact other State Agencies or Tribal Communities?	<div> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </div> <p>If Yes, identify the State Agency and/or Tribal Community and describe collaboration efforts:</p>

<p>Does the proposed rule or amendment(s) have impacts or create mandates on counties or other governmental entities? (e.g., budgetary requirements or administrative burdens)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, provide description: The revised rules include requirements from federal law which will require counties to extend CCCAP eligibility periods for families that have children added to the household before the family's redetermination. This may result in counties covering the cost of care for families for a longer period of time, increasing expenditures.</p>
<p>Effective Date(s) of proposed rule or amendment(s): (<u>E</u>mergency/<u>P</u>ermanent)</p>	<p><input checked="" type="checkbox"/> Mandatory <input type="checkbox"/> Discretionary</p> <p>(E) Effective Date: 1/1/2025 (P) Effective Date: 3/17/2025</p> <p>(E) Termination Date: 4/18/2025</p>
<p>Is the proposed rule or amendment(s) included on the Regulatory Agenda?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If no, please explain:</p>
<p>Does the proposed rule or amendment(s) conflict, or are there inconsistencies with other provisions of law?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes, please explain:</p>
<p>Does the proposed rule or amendment(s) create duplication or overlapping of other rules or regulations?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes, explain why:</p>
<p>Does the proposed rule or amendment(s) include material that is incorporated by reference¹?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes, provide source:</p>
<p>Does the proposed rule or amendment(s) align</p>	

¹ Incorporation by Reference is all or any part of a code, standard, guideline, or rule that has been adopted by an agency of the United States, this state, or another state, or adopted or published by a nationally recognized organization or association, pursuant to section 24-4-103(12.5), C.R.S.

with the department's rulemaking objectives? Choose all that apply.	<input checked="" type="checkbox"/>	Reduce the administrative burden on families and providers accessing, implementing, or providing programs and/or services.
	<input type="checkbox"/>	Decrease duplication and conflicts with implementing programs and providing services.
	<input type="checkbox"/>	Increase equity in access and outcomes to programs and services for children and families.
	<input checked="" type="checkbox"/>	Increase administrative efficiencies among programs and services provided by the department.
	<input type="checkbox"/>	Ensure that rules are coordinated across programs and services so that programs are implemented and services are provided with improved ease of access, quality of family/provider experience, and ease of implementation by state, local, and tribal agencies.

RULEMAKING PROCEEDINGS

Type of Rulemaking: Emergency or Permanent ² [Permanent Tier I or Tier II]	Emergency and Permanent ▾ N/A (Emergency and Permanent) ▾
Stakeholder Engagement: Public Folder: Proposed rule, webinar recordings/transcripts, written stakeholder comments, material from small/large focus groups, written petitions/requests, surveys, data, research, reports, published papers, and documents used to develop the proposed rule or amendment(s).	<p>Counties have been engaged multiple times in the following ways:</p> <ul style="list-style-type: none"> - Issuance of Memo communicating changes on March 7, 2024 - Multiple county-facing meetings were held beginning in March 2024. These meetings will continue until all of the federal rule changes are addressed. <p>Families were engaged and informed of the upcoming rule changes at the Family Voice Council on August 17, 2024.</p> <p>Child care providers have been engaged through the issuance of a memo and updates at public-facing meetings including the Family Voice council.</p> <p>Public folder containing all rulemaking material: https://drive.google.com/drive/u/0/folders/1HF3_5ExG0HmuouhBtcjTqjkH0d6h0bL- </p>

² Tier I is used for proposed rule or amendment(s) that have substantive changes, require substantial stakeholder engagement, and will be considered at two Public Rulemaking Hearings (PRH). The first PRH is held for discussion, and the second PRH is held to consider adoption. Tier II is used for proposed rule or amendment(s) that include technical changes, do not require substantial stakeholder engagement, and will be considered at only one Public Rulemaking Hearing (PRH) for adoption.

Assistant Attorney General Review:	11/12/2024 - 11/27/2024
RAC County Subcommittee Review Date (if required):	12/5/2024 (Emergency) 1/2/2025 (Permanent)
Rules Advisory Council (RAC) Review Date:	12/12/2024 (Emergency) 1/9/2025 (Permanent)
Public Rulemaking Hearing Date(s): [Discussion/Adoption]	12/19/2024 (Emergency Adoption) 1/23/2025 (Permanent Adoption)

REGULATORY AND COST BENEFIT ANALYSIS

1. **Community Impact:** Provide a description of the stakeholders that will be affected by the proposed rule or amendment(s), and identify which stakeholders will bear the costs, and those who will benefit. How will the proposed rule or amendment(s) impact particular populations, such as those experiencing poverty, immigrant/refugee communities, non-English speakers, and rural communities?

Families will be positively impacted by these rule changes. The rule changes that extend eligibility periods and require counties to offer education as an eligible activity reduce barriers in accessing the program. Counties may be negatively impacted by these changes if there is an increase in enrollment in the program or if families remain on the program for longer periods of time as both would increase the amount of spending in CCCAP.

2. **Quality and Quantity:** Provide a description of the probable quantitative and qualitative impact on persons affected by the proposed rule or amendment(s), and comparison of the probable costs and benefits of implementation versus inaction. What are the short- and long-term consequences of the proposed rule or amendment(s).

While counties may face cost implications based on these new rules, the Department faces the risk of losing Child Care Development Funds (CCDF) if we do not come into compliance.

3. **Potential Economic Benefits/Disadvantages:** What are the anticipated economic benefits of the proposed rule or amendment(s), such as: economic growth, creation of new jobs, and/or increased economic competitiveness? Are there any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness?

Because of the possible cost implications to counties, more counties may go onto a waitlist or a freeze. Because of this, new family applicants may find that they are unable to receive CCCAP. Families that are currently enrolled in the program will find that they are able to receive services for longer periods of time if children are added to their home. This supports families that are working towards self-sufficiency.

4. **Fiscal Impacts:** What are the anticipated direct and indirect costs for the state/department to implement, administer, and enforce the proposed rule or amendment(s)? What are the direct and indirect costs to each of the following entities to comply with the proposed rule or amendment(s)? For each, describe the impact or indicate “not applicable.”

Department	No fiscal impact to the Department as the changes in CHATS are covered under standard operations.
Local Governments/ Counties	Counties may see an increase in cost if families add children to their household during the eligibility period as it increases the duration in which a family is guaranteed to receive services. There are currently no counties that do not offer education as an activity so there are no anticipated cost implications as a result of this change.
Providers	The rule changes related to the Qualified Exempt Provider process do not impact providers since the rule will align with our current background check processes. The remaining changes do not have an impact on providers as they are related to family eligibility and county requirements.
Community Partners (e.g., School Districts, Early Childhood Councils, etc.)	The rule changes do not have a positive or a negative change on Community Partners as the changes are related to program eligibility, Qualified Exempt Provider processes, or county requirements.
Other State Agencies	The rule changes do not have a positive or a negative change on other state agencies as the changes are related to program eligibility, Qualified Exempt Provider processes, or county requirements.
Tribal Communities	The rule changes do not have a positive or a negative change on other tribal communities as the changes are related to program eligibility, Qualified Exempt Provider processes, or county requirements.

5. **Evaluation**: How will implementation of the proposed rule or amendment(s) be monitored and evaluated? Please include information about measures and indicators that CDEC will utilize, including information on specific populations (identified above).

Counties utilize the Child Care Automated Tracking System (CHATS) to determine eligibility for the Colorado Child Care Assistance Program (CCCAP). The system will be updated to ensure accurate implementation of the rules. Compliance with the use of CHATS is monitored through the CCCAP County Monitoring Process, Quality Assurance Process, and other audits including those conducted by the Office of the State Auditor and the federal Office of Child Care, part of the U.S. Department of Health and Human Services.

6. **Comparative Analysis**: Provide at least two alternatives to the proposed rule or amendment(s) that can be identified, including the costs and benefits of pursuing each of the alternatives.

There are no alternatives to this rule making because the rules are currently in conflict with federal and state requirements.

7. **Comparative Analysis**: Are there less costly or less intrusive methods for achieving the purpose of the proposed rule or amendment(s)? Explain why those options were rejected.

There are no less costly or less intrusive methods for achieving the purpose of the proposed rule; the rules are currently in conflict with federal and state requirements.