

Title of Proposed Rule:	Change of Capacities in Specialized Group Facilities	
CDHS Tracking #:	21-09-23-01	
Office, Division, & Program:	Rule Author:	Phone: 303.801.8681
OCYF, DCW, Provider Services	Cheryl Estrick	Email: cheryl.estrick@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.

This emergency rule packet is being submitted to allow child placement agencies and the County Departments of Human Services to increase the capacities for children/youth being served by the Children’s Habilitation Residential Program Waiver (CHRP), in both certified foster homes and licensed specialized group facilities. There is an increasing number of children and youth receiving services through the CHRP waiver who are being cared for in higher levels of care, for which they do not meet criteria, as there are not enough spaces in foster homes or specialized group facilities to allow these children/youth to step down into their assessed lower level of care. The Colorado Department of Health Care Policy and Financing has requested a change to the regulations to allow additional care opportunities for the children and youth who are currently not placed into their proper level of care to move into appropriate levels of care. Having a child or youth in a higher level of care than required violates the child’s or youth’s right to be in the lowest level of care necessary. A change in the capacity rules in foster homes and specialized group facilities would allow those children/youth to move into their assessed lower levels of care.

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:

Children and youth are currently placed into higher levels of care for which they do not qualify, which violates their rights to be cared for in the lowest level necessary. These inappropriate placements in the higher levels of care will remain until there are enough spaces for these children and youth to step down into specialized group facilities and foster homes who can meet their needs. Allowing an increase in the CHRP capacities in both foster care home and group facilities will provide additional spaces for these children and youth to be moved into the correct level of care.

State Board Authority for Rule:

Code	Description
26-6-106(1)(a), C.R.S. (2021)	State to promulgate rules for child care facility licensing

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
26-6-106(1)(a), C.R.S. (2021)	State Board to prescribe and publish standards for licensing for child care facilities

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

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If yes, please explain.					

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?

County departments of human/social services – this will allow the counties to place the children and youth into the correct level of care. Child placement agencies - will have additional foster care resources available. Certified family foster care homes and licensed specialized group facilities - will be able to provide services to additional children and youth. Children and youth enrolled in the Children’s Habilitation Residential Program – children and youth can be placed into the correct level of care they require, thereby maintaining their right to be in the lowest level of care needed. Colorado Department of Health Care Policy and Financing – they may see a reduction in the cost of care they pay for services. It is not anticipated that any adverse actions to these rules will occur.

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 proposed rules allow certified foster care home and licensed specialized group facilities to increase the capacities in their programs. Increasing program capacity allows children and youth enrolled in CHRP, who are currently residing in programs at a higher level of care than what they require or for which they meet criteria, to move into appropriate lower levels of care.

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.

The CHRP is a Medicaid waiver program. The care for the children and youth enrolled in the CHRP waiver program is paid for through the Medicaid program and does not use county funding.

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 Colorado Department of Health Care Policy and Financing administers the CHRP program and may see a decrease in the amounts paid for the out of home care for children/youth they serve.

County Fiscal Impact:

None known.

Federal Fiscal Impact

None known.

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

None known.

4. Data Description

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

None known.

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.

No other alternatives are available, as rules determine the capacity maximums for children and youth enrolled in CHRP, who are currently residing in programs at a higher level of care than what they require or for which they meet criteria, to move into appropriate lower levels of care.

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	Public Comment No / Detail																														
7.701.2 Definitions	Change definitions to increase capacities; delete language that differentiates between group homes and group centers.	<p>SPECIALIZED GROUP FACILITY MAXIMUM CAPACITY:</p> <table border="1"> <tr> <td>CHRP</td> <td>NON-CHR</td> <td>TOTAL CHILDREN</td> </tr> <tr> <td>1</td> <td>8</td> <td>9</td> </tr> <tr> <td>2</td> <td>5</td> <td>7</td> </tr> </table> <p>SPECIALIZED GROUP CENTER MAXIMUM CAPACITY:</p> <table border="1"> <tr> <td>CHRP</td> <td>NON-CHR</td> <td>TOTAL CHILDREN</td> </tr> <tr> <td>3</td> <td>3</td> <td>6</td> </tr> </table>	CHRP	NON-CHR	TOTAL CHILDREN	1	8	9	2	5	7	CHRP	NON-CHR	TOTAL CHILDREN	3	3	6	<p>SPECIALIZED GROUP FACILITY MAXIMUM CAPACITY:</p> <table border="1"> <tr> <td>CHRP</td> <td>NON-CHR</td> <td>TOTAL CHILDREN</td> </tr> <tr> <td>16</td> <td>8*</td> <td>98</td> </tr> <tr> <td>20</td> <td>511</td> <td>711</td> </tr> </table> <p>* ANY COMBINATION OF CHRP AND NON-CHR CHILDREN/YOUTH CANNOT EXCEED 6 TOTAL CHRP AND 8 TOTAL CHILDREN/YOUTH</p> <p>SPECIALIZED GROUP CENTER MAXIMUM CAPACITY:</p> <table border="1"> <tr> <td>CHRP</td> <td>NON-CHR</td> <td>TOTAL CHILDREN</td> </tr> <tr> <td>3</td> <td>3</td> <td>6</td> </tr> </table>	CHRP	NON-CHR	TOTAL CHILDREN	1 6	8 *	9 8	2 0	5 11	7 11	CHRP	NON-CHR	TOTAL CHILDREN	3	3	6	None
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7.701.2 Definitions	Language changed to clarify where the rules for the CHRP waiver program may be obtained	Specialized Group Homes Or Group Centers who are serving children enrolled in the Children's Habilitation Residential Program (CHRP) waiver must be in compliance with rules contained within the Department Of Health Care Policy And Financing's Medical Assistance Manual at 10 CCR 2505-10 section 8.508 (2019), which is hereby incorporated by	Specialized Group Homes Or Group Centers who are serving children enrolled in the Children's Habilitation Residential Program (CHRP) waiver must be in compliance with rules contained within the Department Of Health Care Policy And Financing's Medical Assistance Manual at 10 CCR 2505-10 section 8.508 (2019), which is hereby incorporated by	None																														

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7.701.2	Add language to clarify the requirements of increased staffing; and requirements to assess all children's needs in the facilities	Specialized Group Centers that serve three (3) children enrolled in CHRP waiver must be staffed with sufficient staff to deal with the complex needs of the children placed in the home.	Specialized Group Centers FACILITIES that serve three (3) THAT PROVIDE SERVICES FOR ONE OR MORE children enrolled in THE CHRP waiver must be staffed with A sufficient NUMBER OF QUALIFIED staff MEMBERS to deal with the complex needs of the children placed in the home ENSURE THE NEEDS OF ALL CHILDREN/YOUTH RESIDING IN THE FACILITY ARE MET. ONGOING ASSESSMENTS OF THE NEEDS OF ALL CHILDREN/YOUTH SHALL BE CONDUCTED BY THE SPONSORING	None

			AGENCY DURING VISITS TO THE SPECIALIZED GROUP FACILITY.	
7.702.1, A, 2 Foster Care Homes	Changed language to reflect changed practice for placements of CHRP children and youth into foster homes.	A foster care home may serve a maximum of one foster child enrolled in Children’s Habilitation Residential Program (CHRP) and 2 other foster children or 2 foster children enrolled in CHRP and no other foster children, unless there has been prior written approval by the CHRP waiver administrator. Placements of three (3) children approved for CHRP funding may be made if the agency can demonstrate to the CHRP waiver administrator that the provider has sufficient knowledge, experience, and supports to safely meet the needs of all of the children in the home. In any case, no more than three (3) children enrolled on the CHRP waiver and no (0) non-CHRP children will be placed in one foster home. Emergency placements will not exceed maximum established limits. Facilities that exceed established capacity at the time the rule takes effect will be grandfathered in; however, with attrition, capacity must comply with the rule.	A foster care home may serve a maximum of one foster child CHILDREN enrolled in Children’s Habilitation Residential Program (CHRP) and 2 other foster children or 2 foster children enrolled in CHRP and no other foster children, unless there has been prior written approval by the CHRP waiver administrator. Placements of three (3) children approved for CHRP funding may be made if the agency can demonstrate to the CHRP waiver administrator that the provider has sufficient knowledge, experience, and IF THE CERTIFYING AGENCY DETERMINES THE FOSTER HOME PROVIDERS HAVE THE KNOWLEDGE AND supports to safely meet the needs of all of the children in the home. In any case, no more than three (3) children enrolled on the CHRP waiver and no (0) non-CHRP children will be placed in one foster home. Emergency placements will not exceed maximum establishe d limits	None

			CAPACITIES. Facilities that exceed established capacity at the time the rule takes effect will be grandfathered in; however, with attrition, capacity must comply with the rule.	
7;702.1, A, 2	Change language to increase the capacities in foster homes; clarify the homes must be certified	<u>FOSTER HOME (COUNTY OR CPA) MAXIMUM CAPACITY</u> CHRP Non-CHRP Total Children 1 2 3 2 0 2 3 0 3	CERTIFIED FOSTER HOME (COUNTY OR CPA) MAXIMUM CAPACITY CHRP Non-CHRP Total Children 1 2 3 2 0 2 3 0 3	None
7.710.41, C	Change language to clarify the total number of persons requiring care in the home	The capacity of the foster home when adults with developmental disabilities are also in care shall not exceed a total of four persons requiring care through the foster care system and/or the adult intellectual and developmental disabilities (IDD) system.	The capacity of the foster home when adults with developmental disabilities are also in care shall not exceed a total of four FIVE persons requiring care through the foster care system and/or the adult intellectual and developmental disabilities (IDD) system.	None
7.710.41, C, 2	Change language	For foster children/youth enrolled in the Children's Habilitation Residential Program (CHRP), a maximum of one child in CHRP, and a total of two other persons requiring care, either an adult with developmental disabilities or a non-CHRP child is allowed.	For foster children/youth enrolled in the Children's Habilitation Residential Program (CHRP), a maximum of one child in THREE CHILDREN RECEIVING CHRP WAIVER SERVICES , and a total of two other persons requiring care, either an adult with developmental disabilities or a non-CHRP child/ YOUTH is allowed.	None

STAKEHOLDER COMMENT SUMMARY

Development

The following individuals and/or entities were included in the development of these proposed rules:
 Colorado Department of Health Care Policy and Financing

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:

A stakeholders meeting was held on May 4, 2022, and included partners from the county departments of human services, child placement agencies, resource agencies, and the Colorado Department of Health Care Policy and Financing (HCPF).

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?

The Colorado Department of Health Care Policy and Financing (HCPF) representative Kathleen Homan assisted with the change of capacities language and presented the information to the stakeholders at the meeting held May 4, 2022.

Sub-PAC

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

Yes No

Name of Sub-PAC			
Date presented			
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.	Emergency rules; will present to Sub-Pac at a later date		

PAC

Have these rules been approved by PAC?

Yes No

Date presented			
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.	Emergency rules; will present to PAC at a later date.		

Other Comments

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.

7.701.2 DEFINITIONS

“Negative licensing action” is defined at Section 26-6-102(25), C.R.S.

“Neighborhood Youth Organization,” is defined at section 26-6-102(26)(a), C.R.S.

Neighborhood youth organizations are further detailed at section 7.720, “Rules Regulating Neighborhood Youth Organizations”.

“Relative” is defined at SECTION 26-6-102(32), C.R.S.

“Residential Child Care Facility” (RCCF) is defined at section 26-6-102(33), C.R.S.

Residential child care facilities are further detailed at section 7.705, “Rules Regulating Residential Child Care Facilities”.

A “Transition Program” may be a component of an RCCF program in which the child is residing in the RCCF part of the time and in a living situation that the child is expected to move to after treatment in the RCCF is completed. The purpose of transition is to enable the child to transition to the home or a less restrictive setting in a manner that prepares the child for success in the new setting.

“Secure Residential Treatment Center,” is defined at section 26-6-102(35), C.R.S.

Secure residential treatment centers are further detailed at section 7.713, “Minimum Rules and Regulations for Secure Residential Treatment Centers”.

“Serious emotional disturbance” means a diagnosable mental, behavioral, or emotional disorder that is of sufficient duration and has resulted in a functional impairment that substantially interferes with or limits a child’s role or functioning in family, school, or community activities. Serious emotional disturbances do not include developmental disorders, substance-related disorders, or conditions or problems that may be a focus or clinical attention unless they occur with another diagnosable serious emotional disturbance.

“Specialized Group Facility,” is defined at section 26-6-102(36)(a)-(B), C.R.S. and includes “Specialized Group Homes” and “Specialized Group Centers”.

Specialized group facilities are further detailed at section 7.709, “Rules Regulating Specialized Group Facilities”.

SPECIALIZED GROUP FACILITY MAXIMUM CAPACITY

CHRP	NON-CHRP	TOTAL CHILDREN
4 6	8 ANY COMBINATION OF CHRP AND NON-CHRP CHILDREN/YOUTH CANNOT EXCEED 6 TOTAL CHRP AND 8 TOTAL CHILDREN/YOUTH	9 8
2 0	5 11	7 11

SPECIALIZED GROUP CENTER MAXIMUM CAPACITY

CHRP	NON-CHRP	TOTAL CHILDREN
3	3	6

Specialized Group Homes Or Group Centers who are serving children enrolled in the Children's Habilitation Residential Program (CHRP) waiver must be in compliance with rules contained within the Department Of Health Care Policy And Financing's Medical Assistance Manual at 10 CCR 2505-10 section 8.508 (2019), which is hereby incorporated by reference. No later additions or amendments incorporated. ~~These regulations are available for public inspection and copying at The Colorado Department of Human Services, 1575 Sherman St. 8TH Floor, Denver, Colorado 80203, during regular business hours. These regulations are also available at no cost from The Colorado Department of Health Care Policy And Financing, 1570 Grant Street, Denver, Colorado 80203 or at <https://www.sos.state.co.us/CCR>.~~

Specialized Group Centers ~~FACILITIES that serve three (3)~~ **THAT PROVIDE SERVICES FOR ONE OR MORE** children enrolled in **THE** CHRP waiver must be staffed with **A** sufficient **NUMBER OF QUALIFIED** staff **MEMBERS** ~~to deal with the complex needs of the children placed in the home~~ **ENSURE THE NEEDS OF ALL CHILDREN/YOUTH RESIDING IN THE FACILITY ARE MET. ONGOING ASSESSMENTS OF THE NEEDS OF ALL CHILDREN/YOUTH SHALL BE CONDUCTED BY THE SPONSORING AGENCY DURING VISITS TO THE SPECIALIZED GROUP FACILITY.**

A Specialized Group Home is located in a house owned or otherwise controlled by the group home parents who are primarily responsible for the care of the children and reside at the home.

A Specialized Group Center is located in a facility owned or controlled by a governing body that hires the group center parents or personnel who are primarily responsible for the care of the children.

“State Department” is the Colorado Department of Human Services.

“Trails” means the State Department's confidential information system which maintains abuse and neglect referrals, investigations, and the investigation outcomes.

“Trauma-Informed” means that the services or programs to be provided to or on behalf of the child/youth are provided under an organizational framework that involves understanding, recognizing, and responding to the effects of all types of trauma and in accordance with recognized principles of a trauma-informed approach and trauma-specific interventions to address trauma's consequences and facilitate healing.

7.702 RULES REGULATING FAMILY FOSTER CARE HOMES [Rev. eff. 1/1/16]

All foster care homes must comply with the “Rules Regulating Foster Care Homes” and the “General Rules for Child Care Facilities”.

7.702.1 FOSTER CARE HOMES [Rev. eff. 1/1/16]

- A. “Foster care home” (refer to Section 7.000.2 in 12 CCR 2509-1), as defined at Section 26-6-102, C.R.S., means a facility that is certified by the county department or a child placement agency for child care in a place of residence of a family or person for the purpose of providing twenty-four (24) hour family care for a child under the age of eighteen years who is not related to the head of such home, except in the case of relative care. The term includes any foster care home receiving a child for regular twenty-four (24) hour care and any home receiving a child from any state operated institution for child care or from any child placement agency.

The number and age of foster children for which a certificate may be issued is determined by the following factors:

1. No foster child/youth shall be placed in a foster home if that placement will result in more than six foster children/youth in that home, or a total of ten children/youth (foster and non-foster), or more than two children under two years of age, except in those instances in which the placement of a sibling group in a foster care home would exceed the limits. If the placement of a sibling group results in exceeding the above limits, no other foster children/youth can be placed in the home.
 - a. When a foster care home is certified for more than four children/youth in foster care, each foster parent shall demonstrate sufficient skills to meet the individual physical, mental, social, behavioral, and other trauma needs of each child/youth placed in the home, including identification of:
 - 1) Parenting experience, parenting style and the ability to meet the supervision needs of each child/youth;
 - 2) Ongoing assessment of needs shall be conducted by the certifying agency during support visits in the foster care home. The certifying agency shall provide more frequent contact during the month when that is an identified need;
 - 3) Sufficient supports, including those provided by the certifying agency to meet the daily needs of each child/youth placed in the home as identified in the family services plan. Supports could include transportation, child care, respite, and coaching for the child/youth and/or foster parent(s); and,
 - 4) Training needed to provide care to the populations served, including any increased and/or specialized training identified in the training development plan.
 - b. Space requirements in section 7.708.22 shall be maintained.
 - c. The preferences of foster parents identified in section 7.708.61 shall be maintained.
2. A foster care home may serve ~~a maximum of one foster child~~ **CHILDREN** enrolled in Children’s Habilitation Residential Program (CHRP) ~~and 2 other foster children or 2 foster children enrolled in CHRP and no other foster children, unless there has been prior written approval by the CHRP waiver administrator. Placements of three (3) children approved for CHRP funding may be made if the agency can demonstrate to the~~

~~CHRP waiver administrator that the provider has sufficient knowledge, experience, and~~
IF THE CERTIFYING AGENCY DETERMINES THE FOSTER HOME PROVIDERS
HAVE THE KNOWLEDGE AND supports to safely meet the needs of all of the children
in the home. ~~In any case, no more than three~~
~~(3) children enrolled on the CHRP waiver and no (0) non-CHRP children will be placed in~~
~~one foster home. Emergency placements will not exceed maximum established limits~~
CAPACITIES. ~~Facilities that exceed established capacity at the time the rule takes effect~~
~~will be grandfathered in; however, with attrition, capacity must comply with the rule.~~

CERTIFIED FOSTER HOME (COUNTY OR CPA) MAXIMUM CAPACITY

CHRP	Non-CHRP	Total Children
1	2 3	3 4
2	0 2	2 4
3	0 1	3 4

3. Foster care providers who are serving foster children enrolled in the Children’s Habilitation Residential Program (CHRP) waiver shall be in compliance with rules contained within the Department of Health Care Policy and Financing’s Medical Assistance Manual at Section 8.508 (10 CCR 2505-10).
4. Foster care may be provided to children from birth to eighteen (18) years of age and to those persons to 21 years of age who are placed by court order prior to their eighteenth birthday.

7.710.41 Rules Regulating the Care of Children in Foster Homes when Care is also Provided for Adults with Developmental Disabilities

- A. No agency shall accept a child for placement from any source other than the child's parent(s) or guardian(s), a court of competent jurisdiction or a county or tribal department of social/human services and upon a specific written authorization by one of these to place the child. Such written authorization must contain notification that the child is to be placed in a foster home where adults with developmental disabilities are also receiving care.
- B. The foster home shall meet all regulations as listed in 7.710.33.
- C. The capacity of the foster home when adults with developmental disabilities are also in care shall not exceed a total of ~~four~~ **FIVE** persons requiring care through the foster care system and/or the adult intellectual and developmental disabilities (IDD) system.
 - 1. When a foster child turns eighteen and is eligible for the adult residential system through the Division of Intellectual and Developmental Disabilities, the child shall be considered an adult receiving care for the purpose of capacity. If the county/state Department of Social/Human Services has legal responsibility for the care and placement of the foster child turning eighteen, the individual will be considered a child for the purpose of capacity.
 - 2. For foster children/youth enrolled in the Children's Habilitation Residential Program (CHRP), a maximum of ~~one child in~~ **THREE CHILDREN RECEIVING CHRP WAIVER SERVICES**, and a total of two other persons requiring care, either an adult with developmental disabilities or a non-CHRP child/**YOUTH** is allowed.
 - 3. All children under the age of eighteen residing in the home count in the total foster home capacity of eight (8) people needing care. Also refer to 7.708.1A.
- D. When a foster child in the home turns eighteen, if such child is eligible for the adult host system, such person must complete background checks as listed at 7.701.32 and 7.701.33, and a home study addendum as listed at 7.710. 33, I, 7 must be completed.

Proposed Rule 1