

**Title of Proposed Rule:** Colorado Child Care Assistance Program Increased Absence Payments

**CDHS Tracking #:** 21-04-23-02

Office, Division, & Program: Rule Author: Tamara Schmidt

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### RULEMAKING PACKET

**Type of Rule:** (complete a and b, below)

- a.  Board  Executive Director  
b.  Regular  Emergency

**This package is submitted to State Board Administration as:** (check all that apply)

- AG Initial Review  Initial Board Reading  AG 2<sup>nd</sup> Review  Second Board Reading / Adoption

This package contains the following types of rules: (check all that apply)

- Number  
 Amended Rules  
 New Rules  
 Repealed Rules  
 Reviewed Rules

What month is being requested for this rule to first go before the State Board?	July 2021
What date is being requested for this rule to be effective?	August 1, 2021
Is this date legislatively required?	No

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

**Office Director Approval:** \_\_\_\_\_ Date: \_\_\_\_\_

#### REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION

Comments:

Estimated Dates: 1st Board 7/9/2021 2nd Board 8/6/2021 Effective Date 8/1/2021

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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. **1500 Char max***

The purpose of the Colorado Child Care Assistance Program (CCCAP) is to provide eligible households with access to high-quality, affordable child care that supports healthy child development and school readiness while also promoting household self-sufficiency and informed child care choices.

The Office of Early Childhood (OEC) in the Colorado Department of Human Services (CDHS) has received a significant increase in the Child Care Development Fund (CCDF) through the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA). The Department engaged a number of early childhood stakeholders by issuing a stakeholder survey to gather input on how CRRSA funds should be utilized. The results of the survey indicated that increasing the number of absence payments for licensed child care providers that accept CCCAP children was one of the most impactful provider-focused implementation strategies. Taking the feedback from stakeholders into consideration, the Department submitted a formal CRRSA spending plan, which was later accepted, to the Administration of Children & Families indicating that funds would be used to increase economic support to providers that accept CCCAP children through an increased number of monthly absences as one of our identified strategies.

Increasing the number of monthly absences as outlined below not only supports the recovery of CCCAP child care providers and families but it also brings the Department into compliance with federal regulations that require lead agencies to support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences and providing full payment if a child attends at least 85% of authorized care.

The Department would like to amend the current rule to temporarily increase licensed child care provider absence payments to at least six (6) absences per month for Colorado Shines Levels 1-2 providers and at least seven (7) absences per month for Levels 3-5 providers from August 1, 2021 until June 30, 2022. Effective July 1, 2022, absence payments would be increased to at least three (3) absences per month for Colorado Shines Levels 1-2 providers and at least four (4) absences per month for Levels 3-5 providers. Currently, licensed child care providers at a Colorado Shines Level 1 or 2 receive a minimum of two (2) absence payments per month and providers at a Colorado Shines Level 3-5 receive a minimum of three (3) absence payments per month.

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

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

to comply with state/federal law and/or

to preserve public health, safety and welfare

Justification for emergency:

Child care providers and families receiving CCCAP have been greatly impacted by the COVID-19 pandemic. Increasing the minimum number of monthly absence payments that child care providers are able to receive will preserve the health, safety and welfare of CCCAP providers and families by ensuring more consistent funding for child care providers as they recover from impacts of the pandemic and

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continued access to CCCAP benefits regardless of a child's absence for reasons including but not limited to continued impacts of the pandemic.

**State Board Authority for Rule:**

Code	Description
26-1-107(5)(a)(I-II), (6)(b-c), (7)C.R.S. (2020)	State Board to promulgate rules for public assistance and welfare activities.
26-1-109(3),(5), C.R.S. (2020)	State department rules to coordinate with federal programs
26-1-122(6)(c), C.R.S. (2020)	State department shall establish rules and treasurer shall advance funds to counties for Colorado works and Colorado child care assistance program.

**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
26-2-805(4)(c), (13), C.R.S. (2020)	The State Board shall promulgate rules using statutory guidelines to implement a child care assistance program.
42 U.S.C.A. § 9857 <i>et seq.</i>	Child Care and Development Block Grant Act, among many other tasks, provides states flexibility in developing child care programs and policies that best suit the needs of children and parents within the state and authorizes the lead state agency to administer financial assistance received through the grant.
45 C.F.R. § 98.15 (a)(8) 45 C.F.R. § 98.45 (l)(2)	Ensuring that the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences is a necessary provision of a child care assistance program plan.

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?*

Licensed child care providers will benefit from this rule change as it provides increased economic support, delinks provider payments from a child's occasional absence, ensures more consistent funding, and more closely aligns payment practices with those of child care providers that serve children who do not receive CCCAP.

This change would also benefit families receiving CCCAP by preserving a family's ability to access their CCCAP benefits at their child care provider regardless of a child's occasional absences and will help prevent families from incurring charges for absences not covered by CCCAP.

Although state statute and CCCAP rule establish a tiered absence reimbursement structure, this change will continue to support county flexibility to pay absences above the minimums defined in rule based on local priorities that will support their communities, including if a county determines the need to reimburse all licensed child care providers for the same number of absences.

### **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?*

As of April 2021, there were 2,260 licensed providers eligible to receive CCCAP reimbursement. While 2,260 licensed providers were eligible to receive CCCAP reimbursement, during the month of April of 2021, 1,550 received reimbursement. Of the 1,550 providers, 502 were rated at a Colorado Shines Quality Rating level 1 or 2, and 425 were rated at a Colorado Shines Quality Rating level 3, 4, or 5. Additionally, there were 623 School Age Child Care (SACC) providers that were eligible to receive CCCAP reimbursement.

In the month of April 2021, 15,780 children were eligible to receive CCCAP. Of those, 13,540 children were authorized at programs that were quality rated or have the opportunity to become quality rated.

In total, including other licensed child care providers who did not receive CCCAP reimbursement in April 2021, this change in absence payments has the potential to positively impact 2,260 licensed child care providers and the thousands of children that they serve.

### **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)

The estimated fiscal impact to the State for FY 2021-2022 is \$8,733,941 and \$2,453,065 in FY 2022-23 and thereafter. For FY 2021/2022 and 2022/2023, the increased cost will be covered by the Child Care Development Fund stimulus funds authorized by the Coronavirus Response and Relief Supplemental

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Appropriations (CRRSA) Act. The ongoing cost will be supported by CCDF stimulus funds authorized by the American Rescue Plan Act (ARP) in FY 2023-24 and then built into the Department's annual CCCAP budget request and supported by the ongoing increase to the CCDF annual base award. The initial CRRSA funding of \$8,733,941 in FY 2021-22 and \$2,453,065 in FY 2022-23 to support the implementation of this rule change has been appropriated to the Department through Senate Bill 21-236.

County Fiscal Impact

The fiscal impact to counties will vary based on the number of CCCAP children they serve and the Colorado Shines Quality Rating Level of the providers the children are receiving care from. Senate Bill 21-236 has appropriated \$8,733,941 in FY 2021-22 and \$2,453,065 in FY 2022-23 to the Department to allocate to counties in order to support the implementation of this change. The ongoing cost will be supported by CCDF stimulus funds authorized by the American Rescue Plan Act (ARP) in FY 2023-24 and then built into the Department's annual CCCAP budget request and supported by the ongoing increase to the CCDF annual base award.

Federal Fiscal Impact

There is no federal fiscal impact. The Department has received a \$119 million increase in the Child Care Development Fund (CCDF) through the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA), a \$175 million increase in the CCDF through the American Rescue Plan Act (ARP), and approximately \$10 million per year increase to the CCDF base award.

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

CCCAP families and providers will benefit financially from this rule change.

**4. Data Description**

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

The Department utilized results of a stakeholder survey to help inform what strategies the CRRSA funds would support. Responses were received from various groups including Early Childhood Education professionals, county and state staff, and parents/family of children aged 0-5. In total 2,223 individuals took the survey and 926 respondents identified increasing monthly absence payments to CCCAP providers as one of the top three provider-focused strategies the Department should implement. Overall, this was identified as the 2nd highest priority for provider-focused strategies.

**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 is no alternative to this rule change due to the fact that the minimum number of absence payments required in the CCCAP rule must be updated in order to utilize the funds allocated through SB21-236 to support increased monthly absences for providers in the most timely manner possible.

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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
7.000	<i>Incorrect Statutory Reference</i>	<i>Section 26.5.103 C.R.S.</i>	<i>Section 26.5-101(3) C.R.S.</i>		
3.915.1	Absence payment amounts to be revised	<p>E. Absences and Holidays</p> <p>1. Counties shall reimburse licensed child care providers for absences based on the following schedule:</p> <ul style="list-style-type: none"> <li>a. No fewer than two (2) absences per month if they are in levels one (1) or two (2) of the department's quality rating and improvement system.</li> <li>b. No fewer than three (3) absences per month if they are in levels three (3), four (4), or five (5) of the department's quality rating and improvement system.</li> <li>c. No fewer than two (2) absences per month if they are a school age child care program that does not have a quality rating through the department's quality rating and improvement system.</li> </ul>	<p>E. Absences and Holidays</p> <p>1. <u>EFFECTIVE AUGUST 1, 2021 UNTIL JUNE 30, 2022, C</u>counties shall reimburse licensed child care providers for absences based on the following schedule:</p> <ul style="list-style-type: none"> <li>a. No fewer than <u>SIX (6) two (2)</u> absences per month if they are in levels one (1) or two (2) of the department's quality rating and improvement system.</li> <li>b. No fewer than <u>SEVEN (7) three (3)</u> absences per month if they are in levels three (3), four (4), or five (5) of the department's quality rating and improvement system.</li> <li>c. No fewer than <u>SIX (6) two (2)</u> absences per month if they are a school age child care program that does not have a quality rating through the department's quality rating and improvement system.</li> </ul> <p><u>2. EFFECTIVE JULY 1, 2022, COUNTIES SHALL REIMBURSE LICENSED CHILD CARE PROVIDERS FOR ABSENCES BASED ON THE FOLLOWING SCHEDULE:</u></p> <ul style="list-style-type: none"> <li>a. <u>NO FEWER THAN THREE (3) ABSENCES PER MONTH IF THEY ARE IN LEVELS ONE (1) OR TWO (2) OF THE DEPARTMENT'S QUALITY RATING AND IMPROVEMENT SYSTEM.</u></li> <li>b. <u>NO FEWER THAN FOUR (4) ABSENCES</u></li> </ul>	To support child care providers and the child care services they provide while avoid interrupting support while the pandemic continues.	No public comment

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			<p><u>PER MONTH IF THEY ARE IN LEVELS THREE (3), FOUR (4), OR FIVE (5) OF THE DEPARTMENT'S QUALITY RATING AND IMPROVEMENT SYSTEM.</u></p> <p><u>a.c. NO FEWER THAN THREE (3) ABSENCES PER MONTH IF THEY ARE A SCHOOL AGE CHILD CARE PROGRAM THAT DOES NOT HAVE A QUALITY RATING THROUGH THE DEPARTMENT'S QUALITY RATING AND IMPROVEMENT SYSTEM.</u></p>		

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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):*

The Department issued a stakeholder survey to gather input on CRRSA fund strategies. The following stakeholder groups were included:

- Early Childhood Education Professionals
- Early Childhood Education Support Professionals
- Local and State Agencies
- Child and Family Support Professionals
- Early Childhood Care and Education Advocates
- Parents and Family of Children Aged 0-5
- Community-based Early Childhood and Family Support Organizations

The results of the survey indicated that increasing the number of absence payments for licensed child care providers was identified as the 2nd highest priority for provider-focused strategies.

In addition, this rule change was also discussed with the OEC Sub-PAC and PAC.

**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:*

The Office of Early Childhood (OEC) Sub-PAC was informed of the Department's intent to pursue an emergency rule to increase monthly absences at the May 6, 2021 meeting. The emergency rule packet was presented to Sub-PAC at the June 3, 2021 meeting and a formal vote will be held by email on June 17, 2021. The emergency rule packet will be presented to PAC at the July 1, 2021 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	Office of Early Childhood		
Date presented	Presented June 3, 2021 and received votes electronically June 17, 2021		
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	Unanimous		
If not presented, explain why.			

**PAC**



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Have these rules been approved by PAC?

Yes  No

Date presented Rule packet will be presented July 8, 2021

What issues were raised?

Vote Count

*For*

*Against*

*Abstain*

Unanimous

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 2503-9)**

**3.915.1 CHILD CARE PROVIDER REIMBURSEMENT RATES**

The counties shall implement the state-established licensed child care provider base payment rates for each county on July first every year. In addition to establishing licensed child care provider base payment rates, the state department will establish tiered reimbursement rates based on quality levels for licensed child care providers that enroll children participating in CCCAP.

- A. Payment rates shall be defined utilizing the state established, system supported age bands.
- B. Rate types are selected by child care provider type (licensed home, licensed center, and qualified exempt child care providers). The state department has established rate type definitions to be used by all counties and deviation from the rate definitions shall not be permitted.
- C. Payments shall be made in part time/full time daily rates.
  - 1. Part-time is defined as zero (0) hours, zero (0) minutes, and one (1) second through five (5) hours, zero (0) minutes, and zero (0) seconds per day. Part time is paid at fifty-five percent (55%) of the full time rate.
  - 2. Full time is defined as five (5) hours, zero (0) minutes, and one (1) second through twelve (12) hours, zero (0) minutes, and zero (0) seconds.
  - 3. Full-time/part time is defined as twelve (12) hours, zero (0) minutes, one (1) second through seventeen (17) hours, zero (0) minutes, zero (0) seconds of care.
  - 4. Full time/full time is defined as seventeen (17) hours, zero (0) minutes, one (1) second through twenty-four (24) hours, zero (0) minutes, zero (0) seconds of care.
  - 5. Counties may set rates for alternative care as defined by the county and reported in the county plan.
- D. Counties must not set qualified exempt child care provider rates such that they inhibit or deter providers from becoming licensed.

E. Absences and Holidays .

- 1. EFFECTIVE AUGUST 1, 2021 UNTIL JUNE 30, 2022, Ccounties shall reimburse licensed child care providers for absences based on the following schedule:
  - a. No fewer than ~~two SIX (26)~~ absences per month if they are in levels one (1) or two (2) of the department's quality rating and improvement system.
  - b. No fewer than ~~three SEVEN (37)~~ absences per month if they are in levels three (3), four (4), or five (5) of the department's quality rating and improvement system.
  - c. No fewer than ~~two SIX (26)~~ absences per month if they are a school age child care program that does not have a quality rating through the department's quality rating and improvement system.
- 2. EFFECTIVE JULY 1, 2022, COUNTIES SHALL REIMBURSE LICENSED CHILD CARE PROVIDERS FOR ABSENCES BASED ON THE FOLLOWING SCHEDULE:
  - a. NO FEWER THAN THREE (3) ABSENCES PER MONTH IF THEY ARE IN LEVELS ONE (1) OR TWO (2) OF THE DEPARTMENT'S QUALITY RATING AND IMPROVEMENT SYSTEM.

b. NO FEWER THAN FOUR (4) ABSENCES PER MONTH IF THEY ARE IN LEVELS THREE (3), FOUR (4), OR FIVE (5) OF THE DEPARTMENT'S QUALITY RATING AND IMPROVEMENT SYSTEM.

c. NO FEWER THAN THREE (3) ABSENCES PER MONTH IF THEY ARE A SCHOOL AGE CHILD CARE PROGRAM THAT DOES NOT HAVE A QUALITY RATING THROUGH THE DEPARTMENT'S QUALITY RATING AND IMPROVEMENT SYSTEM.

~~23~~. Counties may pay licensed child care providers for holidays in accordance with the policy set by the county and approved by the State Department.

~~34~~. Counties may adopt a policy allowing the use of hold slots in order to address payments for unattended authorized care that is in addition to absences, holidays, and school breaks to hold a child's space with a provider when the child is not in care.

F. Counties may adopt a policy to pay for drop in days in addition to regularly authorized care.

G. Bonus Payments

Counties shall not at any time use federal Child Care Development Block Grant Funds (CCDBG), or state General Funds, for the payment of bonuses to child care providers serving children in the CCCAP program. A county shall not use CCDBG or state General Funds to retroactively increase the daily rate paid to child care providers and issue a payment to child care providers based on that retroactive calculation.

H. Child care providers who contend that the county has not made payment for care provided under CCCAP in compliance with these rules may request an informal conference with staff, the appropriate supervisor, the county director or the director's designee, and, if requested by the child care provider(s), state program staff. Any request for a conference shall be submitted in writing within fifteen (15) calendar-days of the date of the action. The county shall hold that conference within two (2) weeks of the date of the request. The county shall provide written notice of its final decision within fifteen (15) business days of the conference. The purpose of the conference shall be limited to discussion of the payments in dispute and the relevant rules regarding payment.