

Title of Proposed Rule: Revisions to Child Support Rules for SB15-012 Pass Through Project

CDHS Tracking #: 16-7-12-1

Revising CCR #s: 9 CCR 2504-1 Volume 6

Office, Division, & Program:
OES, Child Support Services Program

Rule Author: Amber Athey

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STATEMENT OF BASIS AND PURPOSE

With the passage of Senate Bill 15-012, Colorado will be implementing a Pass-Through for child support collected to those who receive Temporary Aid for Needy Families (TANF) or Colorado Works, as it is known in Colorado, Basic Cash Assistance (BCA). Previously, the state intercepted all child support that was owed to Colorado Works customers. Once the bill is implemented, Colorado will be the only state in the country to have a full Pass-Through of all monthly current child support collected each month to Colorado Works customers who receive Basic Cash Assistance. This change will be implemented in 2017 as it has required extensive preparation and significant changes to the Automated Child Support Enforcement System (ACSES) and the Colorado Benefits Management System (CBMS).

The child support Pass Through is intended to enable Colorado Works customers to receive child support payments made by the non-custodial parent, in addition to the financial support they receive through Colorado Works. The Pass Through will allow Child support customers to receive both the Colorado Works grant and the child support payment, as long as they meet the needs standards requirements and remain eligible under Colorado Works criteria.

Authority for Rule:

State Board Authority: 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: Senate Bill 15-012, 26-2-108, C.R.S. (2015) – Granting of assistance payments and social services; 26-2-111, C.R.S. (2015) – Eligibility for public assistance – rules – repeal. Colorado works program; 26-13-108, C.R.S. (2015)- Recovery of public assistance paid for child support and maintenance-interest collected on support obligations-designation in the Annual General Appropriations act.

Does the rule incorporate material by reference?

Does this rule repeat language found in statute?

If yes, please explain.

The program has sent this proposed rule-making package to which stakeholders?

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

County Human Services Directors Association, The Legal Center, All Families Deserve a Chance (AFDC) Coalition, Office of Economic Security (OES) Sub-PAC, County Child Support Services Administrators, County Colorado Works Administrators, Regional Partners—Federal Office of Child Support Enforcement, Colorado Department of Health Care Policy & Financing, Colorado Department of Human Services Food and Energy Assistance Division, Colorado Center on Law & Policy, Colorado Legal Services, and Fatherhood Program.

[Note: Changes to rule text are identified as follows: deletions are shown as “strikethrough”, additions are in “all caps”, and changes made between initial review and final adoption are in brackets.]

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REGULATORY ANALYSIS

1. List of groups impacted by this rule:

All custodial parents receiving Colorado Works and legally established noncustodial parents (NCPs) paying court ordered child support. The custodial parents will now be able to receive all current child support paid by the NCPs, rather than that support being retained by the State. This will not have an impact on the State's ability to collect arrears payments made toward child support.

2. Describe the qualitative and quantitative impact:

The projected impacts of this policy include the benefits associated with additional household income that accrue to individual families and larger communities, as well as with improved family relationships. Child support payments matter tremendously to poor families but are inconsistent and infrequent. The Congressional Research Service reported that in 2013, among poor families who received child support, those payments represented an average of 49% of their yearly income¹. The Urban Institute estimates that every dollar of child support paid to the family reduces public assistance costs by 13 cents.

Passing funds through appears to increase both the likelihood that any payment is made and the amount of individual payments. Research conducted by the Urban Institute² and the Institute for Research on Poverty³ has found that by passing through the full amount of current support to the child, the percentage of cases with payments increased by 1.8 to 2.7 percentage points in the first year, and by about 3 percentage points at three years for both studies. The same studies found that the amount of child support payments increased by 5.6 to 23 percent in year one and by 11 to 12 percent in year three.

In 2014 and 2015, on average 570 Colorado Works cases per month received a child support payment toward current child support for an average of \$133.45. Annually and at the state level, this rolls up to a total of \$6,295,390 in 2012 for approximately 7,000 families. This policy will pass those funds on to the families on whose behalf they were received.

Additional benefits to families we anticipate resulting from this policy include:

1. Possible reduction in cases referred to child welfare⁴,
2. Increased paternity establishment⁵,
3. Improved child outcomes such as educational attainment and reduction in behavioral problems⁶ & ⁷
4. More parental involvement in children's lives⁸

¹ Child Support: An Overview of Census Bureau Data on Recipients. Congressional Research Service. March 1, 2016. <https://www.fas.org/sgp/crs/misc/RS22499.pdf>

² Lippold, Kyle, et al. (November 2010). Evaluation of the \$150 Child Support Pass-Through and Disregard Policy in the District of Columbia. Urban Institute, DC: Washington

³ Meyer, Daniel R., and Maria Cancian. (2001.)W-2 Child Support Demonstration Evaluation, Phase 1: Final Report, Volume I: Effects of the Experiment. Report to the Wisconsin Department of Workforce Development. University of Wisconsin-Madison, Institute for Research on Poverty

⁴ Cancian, Maria; Slack, Kristen; and Young, Mi. (August 2010). "The Effect of Family Income on Risk of Child Maltreatment," Institute Research on Poverty Discussion Paper 1385-10, University of Wisconsin

⁵ W-2 Child Support Demonstration Evaluation, Phase 1: Final Report, Volume I: Effects of the Experiment.(2001) Ibid

⁶ Involving Non-Resident Fathers In Children's Learning. A Father Matter Report, Chapter 1: Why Fathers Matter.

US Department of Health and Human Services, September 2000.

⁷ Ibid.

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Senate Bill 15-012 states that the General Assembly may annually appropriate moneys to reimburse the counties fifty percent of the child support collections that are paid to families through the Pass-Through to backfill their loss of revenue and the Federal Government for its share of the Pass-Through. In any fiscal year in which the General Assembly does not appropriate the necessary amount of moneys to cover these costs of the Pass-Through, the ACSES and the CBMS must be programmed to not pass through the collections. That is part of the Pass-Through design that is being developed.

3. Fiscal Impact:

State Fiscal Impact:

Funding was received through the legislation fiscal note for Senate Bill 15-012 to include operational expenses of multiple system changes, contract personnel, training, and outreach.

County Fiscal Impact:

None because it is not affecting programmatic funding as it is a set pre-determined amount, so no impact at the County level.

Federal Fiscal Impact:

None because it is not affecting programmatic funding as it is a set pre-determined amount, so no impact at the Federal level.

Other Fiscal Impact:

None because most barriers are addressed with the fiscal note and Waiver commitment.

4. Data Description:

The Department used an outside vendor, The Center for Policy Research, to conduct an analysis and collect research findings on Pass-Through done in other states. Using Colorado data, they applied these findings to forecast cause and effect on possible implications of the Pass Through when applied to the current caseload.

5. Alternatives to this Rule-making:

No alternative because this is based on statutorily required changes to implement the legislative directive given in S.B. 15-012.

⁸ Seltzer, J.A., McLanahan, S., Hanson, T. (March 1997) "Will Child Support Enforcement Increase Father-Child Contact and Parental Conflict after Separation?"

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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>	
			Yes	X No
6.002	<i>Definitions-pass through is not defined.</i>	<i>Addition of pass through terms and definitions.</i>		
6.803	<i>Distribution from IV-A allocation applies first to unfunded disbursement, unreimbursed public assistance, then to family.</i>	<i>Distribution of IV-A current support to unfunded disbursement per custodial parent agreement, 10%, or \$10.00-whichever is more, and then to the family.</i>	X Yes	No
6.804.1	<i>Disbursement from IV-A allocation occurs if an excess payment.</i>	<i>Disbursement of IV-A current support collections to family within 2 business days.</i>	X Yes	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):
Child Support Pass Through Steering Committee, Child Support Pass Through Policy Subcommittee, Colorado Department of Human Services Food and Energy Assistance Division, Colorado Department of Human Services Child Support Services Division

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, The Legal Center, All Families Deserve a Chance (AFDC) Coalition, Office of Economic Security (OES) Sub-PAC, County Child Support Services Administrators, County Colorado Works Administrators, Regional Partners—Federal Office of Child Support Enforcement, Colorado Department of Health Care Policy & Financing, Colorado Department of Human Services Food and Energy Assistance Division, Colorado Center on Law & Policy, Colorado Legal Services, and Fatherhood Program,

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 Colorado Department of Health Care Policy and Financing was contacted. No input received.

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

Yes No

Date presented August 4, 2016.

What issues were raised? None

If not presented, explain why.

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.

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Stakeholder Feedback/Questions:

El Paso County Department of Human Services: Sharon Eddy

Question:

Will tax intercepts be passed through? My understanding is that the six months of child support will be averaged. If a household receives only \$150 for five of those months, but then receives a tax intercept of \$3000 in the 6th month, will the HH be ineligible? Would they just be ineligible the first month of RRR, and then be eligible to reapply the following month? Or would there be POI?

Response:

No, tax intercepts will not be passed through at this time. Your understanding is correct that six months of current monthly child support will be averaged after it has been determined there are consistent payments. To modify your example, if a household receives only \$150 for five of those months, but then receives a lump sum payment of current monthly support (not tax intercept) of \$3000 in the 6th month, the average would be \$625 per month of income ($\$150 \times 5 + \$3000/6$ months) that would be counted at RRR. Keep in mind that the monthly current support due in the example would be at least \$3000 for the entire amount to be included in the average. The household could re-apply and the county department would use the regular intake eligibility requirements, comparing all income to the Need Standard for the family size. There would be no Period of Ineligibility (POI) applicable.

Weld County Department of Human Services: Jamie Ulrich

Weld County has the following feedback regarding the proposed rules/legislation:

Comment:

1. There are general concerns about the legislation itself- it is unclear how this is going to impact the counties fiscally, specifically if there is an increase in BCA being paid out. This could result in fewer resources for counties to spend on employment activities and supportive services.

Response:

Thank you for this input. The State will be closely monitoring the fiscal impacts of the Pass Through. Please review the fiscal note attached that has a broader financial analysis to better illustrate the counties fiscal impact. The Child Support Pass Through Steering Committee, Policy Subcommittee, in conjunction with the State Policy team reviewed data related to this concern. Intake eligibility standards are not changing with the implementation of the Pass Through, so it is anticipated that there would be a minimal increase in Basic Cash Assistance or BCA being paid out. Counties are encouraged to continue to increase the support provided through employment activities and services through the county block grant. With the elimination of the half-sibling rule, the family size may increase which could lead to an increase in the need standard so the Employment and Benefits Division gathered additional information and based on feedback received, has decided to not move forward rule or system modifications impacting the half-sibling rule.

Comment:

2. There are still some unknowns surrounding how the pass through will affect other benefits, such as Housing and Food Assistance.

Response:

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Eligibility and payment for other programs may be impacted. We do not anticipate rules changing for other programs due to implementation of the Pass Through. Therefore, if child support is now countable for the program, it will likely remain countable. Food Assistance would be impacted by a reduction of the amount of benefits the household would receive by 3 to 1, meaning for every \$3 dollar of support received it would affect the grant by \$1 and could impact eligibility about 2 months after receipt of the child support payment.

Comment:

3. The workload impact on the Child Support Services side will be increased, due to the increase in customer inquiries and payment processing; as well as information sharing with Colorado Works staff (who are unable to view ACSES due to security restrictions).

Response:

The Child Support Pass Through Steering Committee, Communication and Training subcommittees are developing messaging to address the impact on staff and prepare them to handle questions efficiently as well as providing education and explanation for customers. Payment processing will be automated through the ACSES and CBMS systems so there are anticipated minimal workload increases.

Weld County specific concerns regarding the Child Support Services rules include:

Question:

1. Proposed rules defer a portion of the payment towards any unfunded disbursement. Statute does not address keeping a portion of the pass through to apply to prior unfunded disbursements. Is there the authority to do so?

Response:

Under DRA, it is considered a payment so for unfunded disbursement collection, recovering an amount agreed upon by custodial parent, 10% of the payment amount, or \$10-whichever is greater.

Question:

2. Statute states that "the county shall report the amount of the child support payments to the state department". How is the county to report this?

Response:

Currently, reporting is done by the State on behalf of Counties for the collection of child support payments received by each. This process will continue.

Jefferson County Department of Human Services: Alvin Tafoya

Question:

Do you have a document which identifies the financial impact to counties regarding these changes or the cost that the state "may" assume as a result of these changes? I know one was created some time ago, but I am unable to locate that information and our director would like an updated version to ensure that the state budget appropriates said funding to support this endeavor.

Response:

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There is not a specific document identifying the county fiscal impact as there is no anticipated impact to the counties related to the Pass Through. The General Assembly may annually appropriate funds to the State to reimburse the counties. If the General Assembly does not appropriate the funds necessary to reimburse counties for their share of retained child support payments, counties are not required to implement the Child Support Pass Through to Colorado Works recipients but may choose to do so using county revenues. See the attached document on the Fiscal Note. If you are referring to the IRS tax intercept document, which the State provided a cost estimate for, that issue has not been decided and may be considered through a separate rule proposal and system change. The current Pass Through proposed rules and system changes do not include the tax interception component.

Mesa County DHS: Michelle Trujillo

Question:

Should there be a second set of rules that would be used in the event that pass through is NOT funded?

Response:

The proposed rule changes are not dependent on the pass through being funded. It is the intent of policy to continue to exempt child support income. Therefore, a second set of rules is not needed. However, if it comes to having to turn this off, we will have enough time to react from one fiscal year to the next.

Question:

Should we say something about period of intent when talking about child support? For example, if child support comes in January, February, and March, then in April it isn't paid until April 30th, so it shows up in CBMS May, then the NCP pays their regular payment in May and June. Will CBMS know that one of the two May payments was for April to count the six consecutive months?

Response:

The date of receipt will be used by CBMS, not the period of intent, when looking at consistency of payments. CBMS will also use the date a RRR is processed to determine the look back period. For example, a RRR due for 8/31 but processed on 7/25, would look at payments received January through June. If that same RRR was processed on 8/5, the look back period would be February through July.

9 CCR 2504-1

Proposed Rule Changes for Implementation of SB15-012

New definitions required

6.002 DEFINITIONS [Rev. eff. 11/1/13]

...

“Pass Through Amount” – means an assigned support collection (applied to current support) that the State elects to pay to the family rather than retain to reimburse assistance. In current-assistance cases, the federal share will be waived for up to \$100 per month for TANF families with one child and up to \$200 per month for families with two or more children, as long as both the federal and state share of the Pass-Through are paid to the family and are disregarded in determining the TANF Basic Cash amount of assistance provided to the family.

“Excess Pass Through Amount” – means an assigned support collection (applied to current support) that the State elects to pay to the family rather than retain to reimburse assistance over the Pass Through Amount.

Revision of Rules for implementation of Pass through

6.803 DISTRIBUTION OF SUPPORT COLLECTIONS

6.803.1 Distribution from a Title IV-A Allocation [Rev. eff. 9/15/12]

THE PASS THROUGH OF CURRENT CHILD SUPPORT COLLECTIONS IS DEPENDENT UPON LEGISLATIVE FUNDING AVAILABILITY. WHEN PASS THROUGH IS FUNDED, THE DEFICIT REDUCTION ACT (DRA) DISTRIBUTION RULES SHALL APPLY. WHEN PASS THROUGH IS NOT FUNDED, STANDARD DISTRIBUTION RULES SHALL APPLY.

DRA DISTRIBUTION OF COLLECTIONS FROM A TITLE IV-A ALLOCATION SHALL BE AS FOLLOWS:

- A. AMOUNTS APPLIED TO THE MONTHLY SUPPORT OBLIGATION (MSO):
 - 1. SHALL FIRST APPLY TOWARDS ANY UNFUNDED DISBURSEMENT BALANCE ACCORDING TO THE AGREEMENT WITH THE OBLIGEE, up to 10% of the payment received or \$10.00, whichever is greater, from current support
 - 2. SHALL BE PAID TO THE FAMILY

- B. AMOUNTS APPLIED TO A IV-A ARREARS BALANCE SHALL FIRST APPLY TOWARDS ANY OBLIGEE UNFUNDED DISBURSEMENT BALANCE AND ARE THEN USED TO REIMBURSE UNREIMBURSED PUBLIC ASSISTANCE AND/OR UNREIMBURSED SPECIFIC MEDICAL DOLLAR ORDER AMOUNTS.
 - 1. UNREIMBURSED PUBLIC ASSISTANCE WILL BE SATISFIED FIRST IN THE ENFORCING COUNTY FOR ALL PERIODS OF PUBLIC ASSISTANCE, THEN LAST IN FIRST OUT (LIFO) FOR ALL OTHER COUNTIES FOR ALL PERIODS OF PUBLIC ASSISTANCE FOR EACH COUNTY UNTIL ALL IV-A ASSIGNED ARREARS ARE COLLECTED. PAYMENTS TO OTHER COUNTIES WILL BE MADE BY MEANS OF AN INTER-COUNTY TRANSFER OF FUNDS AS PRESCRIBED BY THE STATE.
 - 2. IN THE EVENT NO OTHER COUNTY HAS SUCH MONETARY INTEREST IN THE CASE, EXCESS OVER UNREIMBURSED PUBLIC ASSISTANCE WILL BE PAID TO THE OBLIGEE.

STANDARD Distribution of collections from a Title IV-A allocation shall be as follows:

- A. Amounts applied to the monthly support obligation (MSO):

1. Shall apply towards any obligee unfunded disbursement balance.
2. Shall be used to reimburse the total unreimbursed public assistance (UPA) provided to the family.
3. Shall be sent to the family as excess over unreimbursed public assistance if there is no unreimbursed public assistance (UPA) balance.

B. Amounts applied to a IV-A arrears balance shall first apply towards any obligee unfunded disbursement balance, and are then used to reimburse unreimbursed public assistance and/or unreimbursed specific medical dollar order amounts.

1. Unreimbursed public assistance will be satisfied first in the enforcing county for all periods of public assistance, and then Last in First Out (LIFO) for all other counties for all periods of public assistance for each county until all IV-A assigned arrears are collected. Payments to other counties will be made by means of an inter-county transfer of funds as prescribed by the state.

2. In the event no other county has such monetary interest in the case, excess over unreimbursed public assistance will be paid to the obligee.

6.804 DISBURSEMENT OF SUPPORT COLLECTIONS [Rev. eff. 9/15/12]

6.804.1 Disbursement from a Title IV-A Allocation [Rev. eff. 9/15/12]

Disbursement of collections from a title IV-A allocation shall be as follows:

A. DISBURSEMENTS OF PASS THROUGH OR EXCESS PASS THROUGH AMOUNTS SHALL BE PAID TO THE FAMILY WITHIN TWO (2) BUSINESS DAYS FROM THE COLORADO ~~INITIAL~~ DATE OF RECEIPT IF SUFFICIENT INFORMATION IDENTIFYING THE PAYEE IS PROVIDED.

B. Disbursements to excess over UPA shall be paid to the family within two (2) business days of the end of the month in which the collection was received if sufficient information identifying the payee is provided.

C. If the collection was received from a federal income tax return, the excess over unreimbursed public assistance payment must be sent to the family within thirty (30) calendar days of the Colorado ~~initial~~ date of receipt unless based on a joint tax return (see Section 6.804.6).