

Title of Proposed Rule: Foster Youth in Transition Program Clean Up Rules

CDHS Tracking #: 22-05-10-02

Office, Division, & Program:  
OCYF, DCW, Youth Services

Rule Author: Brittany Gardner

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Brittany.gardner@state.co.us

**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

4 Amended Rules

\_\_\_\_\_ New Rules

\_\_\_\_\_ Repealed Rules

\_\_\_\_\_ Reviewed Rules

What month is being requested for this rule to first go before the State Board? March 2023

What date is being requested for this rule to be effective? May 31, 2023

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 \_\_\_\_\_      2nd Board \_\_\_\_\_      Effective Date \_\_\_\_\_

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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 changes are necessary to align rule with reimbursement requirements in statute while establishing a minimum standard of practice for counties who place a 16- or 17-year-old in a supervised independent living arrangement (SILP).

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:

n/a

#### State Board Authority for Rule:

| Code                    | Description  |
|-------------------------|--|
| 26-1-107, C.R.S. (2022) | State Board to promulgate rules  |
| 26-1-109, C.R.S. (2022) | State department rules to coordinate with federal programs                         |
| 26-1-111, C.R.S. (2022) | 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  |
|-------------------------|--|
| 19-7-315, C.R.S. (2022) | The state department shall promulgate rules for implementation, including but not limited to rules concerning eligibility determinations, administrative appeals of eligibility determinations, enrollment into the transition program, emancipation transition plans and roadmaps to success, and expedited procedures for securing temporary shelter for youth who are currently homeless or at imminent risk of homelessness. |

Does the rule incorporate material by reference?

  

Yes

Yes

  

No

No

Does this rule repeat language found in statute?

If yes, please explain.

NA

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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?*

County departments of human/social services will be impacted by these rules because they administer Chafee programs and hold cases in which youth are residing in SILP's. Community agencies will be impacted because they provide services to eligible youth through local Chafee 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?*

As a result of these rules, county departments of human/social services may be reimbursed for youth who are 16 or 17 years old and are placed in a SILP. It is expected that less than 1% of placements per year might be eligible for reimbursement as a result of this rule. County departments of human/social services and community agencies who administer Chafee programs will be impacted by the change in that it is made but will not be impacted fiscally or in program practice. The imprest fund does not exist in fiscal code anymore.

### 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)

There is no anticipated state fiscal impact because these rules do not apply to other state agencies. There is no anticipated fiscal impact to the Division of Child Welfare because the state has not changed its reimbursement practices related for youth ages 16 and 17 who are in SILPs (less than 1% of the out of home placement population).

County Fiscal Impact

There is no anticipated county fiscal impact because these changes are aligned with current state reimbursement and with county practices. The rules ensure counties can be reimbursed for their use of SILP's for 16- and 17-year-olds and is required by Section 26-5-104(a), C.R.S. The change may result in a positive fiscal impact for the counties but given the small number of 16- and 17-year-old youth who qualify to be placed in a SILP, the impact will be very small.

Federal Fiscal Impact

There is no anticipated federal fiscal impact because the placement of 16 and 17 year old is not reimbursable by Title IV-E of the Social Security Act.

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

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There is no anticipated impact for other agencies.

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

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

A ROM report showing the breakdown of out-of-home placements by type data was relied upon to identify the percentage of SILPs that make up the total out-of-home placement types in Colorado.

#### **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..."*

Rulemaking is the only available option to make these changes so that rule aligns with statute.

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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>   |   |  |
| 7.406.1 (Q)         | Incorrect statutory reference        | Q. The state reimburses for supervised independent living placements for youth eighteen (18) through the end of the month of the twenty first (21st) birthday, when the county has placement and care responsibility. The state does not reimburse for youth in a supervised independent living placement under the age of eighteen (18). | Q. The state reimburses for supervised independent living placements AS DESCRIBED IN 12 CCR 2509-04; 7.305.2(D) for youth <del>eighteen</del> SIXTEEN (186) through the end of the month of the twenty-first (21st) birthday, when the county has placement and care responsibility. <del>The state does not reimburse for youth in a supervised independent living placement under the age of eighteen (18).</del> | This corrects that the state can reimburse for these youth            | Foster Youth in Transition Program Rules Group |
| 7.406.1 CC          | Grammar fix                          | CC. A child with development disabilities has been placed in a locked residential setting for treatment and the county has obtained a court order of legal imposition of disability pursuant to Section 27-10.5-110, C.R.S.   | CC. A child with developmentAL disabilities has been placed in a locked residential setting for treatment and the county has obtained a court order of legal imposition of disability pursuant to Section 27-10.5-110, C.R.S.   |   | Foster Youth in Transition Program Rules Group |
| 7.416.1 (E)(2)      | No longer applicable                 | 2. The county department of social services shall develop a written procedure for use of an Imprest Fund. See the Finance Manual, Section 5.910.3 (11 CCR 2508-1), to provide a flexible means of providing youth direct services.  | <del>2. The county department of social services shall develop a written procedure for use of an Imprest Fund. See the Finance Manual, Section 5.910.3 (11 CCR 2508-1), to provide a flexible means of providing youth direct services.</del>   | This removes language that references a section that no longer exists | Foster Youth in Transition Program Rules Group |
| 7.416.1 (E)(3)      | Renumbering                          | 3. Youth Direct Services shall be used according to federal guidelines (Public Law No. 106- 169) as incentives for completing goals in the plan for transition to independent living and other expenditures that will assist youth to emancipate and for which no other funding sources exist.  | 32. Youth Direct Services shall be used according to federal guidelines (Public Law No. 106- 169) as incentives for completing goals in the plan for transition to independent living and other expenditures that will assist youth to emancipate and for which no other funding sources exist.   | Technical fix correcting the numbering                                | Foster Youth in Transition Program Rules Group |

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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 rules were developed through a Child Welfare SubPAC approved task group and included representation from counties across the state, the Office of the Child's Representative, The Administrative Review Division, and a youth advocacy group.

#### **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 departments of human/social services, Office of the Child's Representative, Children's Law Center, Rural Collaborative for Homeless Youth, and Project Foster Power were informed.

#### **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                | Child Welfare    |                |                |
| Date presented                 | February 2, 2023 |                |                |
| What issues were raised?       | No               |                |                |
| Vote Count                     | <i>For</i>       | <i>Against</i> | <i>Abstain</i> |
|                                | x                |                |                |
| If not presented, explain why. |                  |                |                |

#### **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. |            |                |                |

#### **Other Comments**

Comments were received from stakeholders on the proposed rules:

Yes  No

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*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.*

Among the task group members there was agreement with the recommended changes to align the reimbursement for SILPs with state statute. There was also consensus regarding the recommendation to remove the language in rule about the imprest fund since it is not in the fiscal code. There was no disagreement regarding the subsequent renumbering if the proposed recommendation to remove this rule is accepted.



(12 CCR 2509-5)

**7.406 GENERAL REIMBURSEMENT FOR CHILD WELFARE SERVICES**

**7.406.1 THE STATE REIMBURSES WHEN**

- A. The county's case record contains required program documentation. For out-of-home placement, documentation shall include the requirements listed under Section 7.304.51 (12 CCR 2509-4), Authority for Placement.
- B. Care is provided after the case is open and before the case is closed.
- C. The child is with a provider in possession of a valid certificate or license, when one is required.
- D. Placement is with an in-state Residential Child Care Facility or Child Placement Agency on the state approved vendor list or with out of state placement providers as approved through the Interstate Compact on the Placement of Children.
- E. A youth over eighteen (18) years of age is in placement only when the court had jurisdiction before the 18th birthday and the court orders out- of-home placement or the youth meets eligibility criteria for the Foster Youth in Transition Program and has an active voluntary services agreement.
- F. A child is absent from an out-of-home placement and the county department elects to reimburse the provider during the absence period for the placement for one of the following reasons:
  - 1. The absence does not exceed seven days per absence, with only one (1) seven-day total reimbursement within thirty (30) calendar days for the following reasons:
    - a. The child has run away,
    - b. Trial home visit,
    - c. Trial provider visit,
    - d. Child in detention; or,
    - e. The child has been kidnapped.
  - 2. Thirty (30) calendar day absences are allowed for the following reasons:
    - a. Respite (unless care is being provided and it violates Section 7.708.31, D (12 CCR 2509-8) and causes a foster care home to be over capacity); or,
    - b. The absence occurs during the first thirty (30) days of a hospitalization.
  - 3. For children enrolled in the Children's Habilitation Residential Program Waiver (CHRP), the county may continue payment of the equivalent of the maximum federal Supplemental Security Income benefit during all absences.
- G. The out-of-home placement duration for a voluntary Title IV-E child/youth does not exceed 180 calendar days when the county department has filed for a petition to review the need for placement, or petition to open a foster youth in transition case by the 90th calendar day and the

county has a correctly worded court order issued, based on the request of the petition to review the need for placement; see Court-Related Procedures, Section 7.304.53 (12 CCR 2509-4).

- H. The county department reports an out-of-home or Core Services Program care placement in the Department's automated reporting system within ninety (90) calendar days of its beginning. The State reimburses for retroactive payments not greater than the current and two (2) preceding months.
- I. The county department places children in out-of-home care within the provider's licensed or certified capacity or if the licensed/certified capacity is exceeded with the placement of a sibling group. The county shall document that there are no other appropriate placements available.
- J. A child is in a Child Placement Agency or Residential Child Care Facility within Colorado for longer than ten (10) working days and an agreement to purchase Child Placement Agency or Residential Child Care Facility services is completed for the child.
- K. A child is in a Child Placement Agency or Residential Child Care Facility within Colorado for less than ten (10) working days and the facility has an emergency shelter contract with a county department.
- L. Out-of-home placement occurs in facilities holding current certificates or licenses, including kinship foster care placement.
- M. Children are placed in Child Placement Agencies and Residential Child Care Facilities outside of Colorado according to the rules for out of state placement and Interstate Compact on the Placement of Children.
- N. Respite care is paid to providers of foster care homes. This includes county department or child placement agency foster care homes, or adoptive homes receiving a foster care payment and kinship family foster care providers. It does not include foster homes that provide receiving home care.
- O. The child enters care (first day) but not for the last day in care.
- P. The child is placed and removed on the same day.
- Q. The state reimburses for supervised independent living placements AS DESCRIBED IN 12 CCR 2509-04; 7.305.2(D) for youth ~~eighteen~~SIXTEEN (186) through the end of the month of the twenty- first (21st) birthday, when the county has placement and care responsibility. ~~The state does not reimburse for youth in a supervised independent living placement under the age of eighteen (18).~~
- R. Child Welfare Child Care program criteria are met.
- S. The Core Services Program is operated within applicable state rules and within the provisions of the county or multi-county state approved Core Services Plan and in accordance with the requirements governing the specific funding streams used.
- T. Client travel costs for out-of-state placement and supervision activities are related to out-of-home placements approved through the Interstate Compact county liaison and the receiving state Interstate Compact on the Placement of Children office. Staff travel costs are reimbursed through county administration.
- U. Payments for out-of-home care and rate adjustments are pro-rated using the foster care daily rate in the State Department's automated reporting system.
- V. The developmental disability rate for children placed in foster care homes, kinship foster care homes, receiving home care, specialized group facilities, specialized foster care in county

- certified foster care homes, and homes in which a subsidized adoption maintenance payment is made.
- W. The county department for expenditure for clothing purchased for a child in out-of-home care. The state reimburses retroactive clothing payments not greater than the current and two preceding months.
- X. The child is in out-of-home care and the county department lists a child free for adoption with the Colorado Adoption Resource Registry within ninety (90) calendar days following:
1. The date of relinquishment or termination of the parent-child relationship, or
  2. The date of placement into out-of-home care following an adoption dissolution.
- Y. The child is in out-of-home care, the county department requests and the State approves an exclusion from Colorado Adoption Resource Registry listing for a child free for adoption within ninety (90) calendar days following:
1. The date of relinquishment or termination of the parent-child relationship; or,
  2. The date of placement into foster care following an adoption dissolution.
- Z. If the state approves a Colorado Adoption Resource Registry exclusion because the county finds an adoptive home, reimbursement for out-of-home care is limited to six months from the date the state department receives the request for exclusion.
- AA. Costs are billed for the current and two (2) preceding months.
- BB. The Early intervention and Prevention Program is operated within applicable state rules and within the provision of the county or multi- county state approved services plan.
- CC. A child with developmental disabilities has been placed in a locked residential setting for treatment and the county has obtained a court order of legal imposition of disability pursuant to Section 27-10.5-110, C.R.S.
- DD. A county department pays incentives to a consortium for meeting or exceeding agreed to outcomes.
- EE. A county department may pay a consortium, if the consortium's outcome measures meet or exceed the agreed to standard.
- FF. A county department purchases Transition Program services provided by an RCCF that is on the approved State RCCF vendor list. In no case shall the rate for transition services exceed the RCCF rate approved by the county department.
- GG. Placement of a child in a provisionally certified foster care home that is fully certified within ninety (90) calendar days from the date of the application.
- HH. If required by section 24-76.5-101, 102, OR 103 a county department shall document the lawful presence of children age eighteen (18) and over receiving services other than those excluded from the definition of a federal public benefit, state and local public benefits as those terms are defined at Section 24-76.5-102, C.R.S., or services excluded from this requirement as defined at section 24-76.5-103, C.R.S.
- II. A county department pays a provider at or above the state-established base anchor rates. A county that negotiates provider rates shall use a request for proposal process, a draft of which shall be submitted to the, no later than March 1. of each calendar year. The Department shall

approve or deny the draft proposal no later than April 1 of each calendar year. The request for proposal shall include the following:

1. The county department of human/social services' policy for:
    - a. Determining the time frames for negotiation or re-negotiation of rates, services and outcomes; and,
    - b. Actions to be taken if services are not delivered or outcomes are not met.
  2. The Department shall evaluate request for proposals submitted by county departments of human/social services using the following criteria:
    - a. Consideration of whether the county used an approved request for proposal process including, but not limited to, competitive bidding and negotiations;
    - b. Consideration of performance outcomes and whether they are tied to financial incentives.
- JJ. Reasonable travel is provided to the school where the child is enrolled prior to out-of-home placement.
- KK. Reasonable costs are provided for liability insurance for a child.
- LL. Adoption Assistance and Relative Guardianship Assistance Program payments are made in compliance with requirements.
- MM. Case services in adoption assistance agreements and relative guardianship assistance agreements.
- NN. Non-recurring expenses for adoption assistance and relative guardianship assistance agreements.
- OO. A child/youth is placed at the IDD facility, as defined in 7.424.13, with the approval of the State Department. The approved placement period is the duration of treatment, as stated in the most recent approval letter from the State Department, and thirty (30) days after the completion of treatment/ discharge date.
- PP. A county department makes foster care maintenance payments for children/youth placed with parents in a licensed residential family-based treatment facility for substance abuse in accordance with federal and state program and fiscal requirements. Reimbursement shall be eighty percent (80%) of the approved allowable cost, within the available allocation.

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#### **7.416.1 REIMBURSEMENT FOR THE CHAFEE PROGRAM**

- A. The Chafee Program provides supplemental services that assist youth to successfully transition to adulthood for youth who are eligible through section 7.305.42. The state shall reimburse counties or programs for expenditures in approved Chafee plans to include the following:
1. Salaries, fringe, and operating costs directly related to the county or Program funded positions;
  2. Contracted services authorized by an approved Program plan and contained in a written contract between the individual contractor and the county department. Contractors must perform as an independent business entity;

3. Program services purchased from an agency as outlined in an approved Chafee Foster Care Independence Program plan when a written contractual agreement exists between the provider agency and the county department;
  4. Consultation, training, and staff development for Chafee Program service staff when necessary for the delivery of the Chafee Program;
  5. Travel and per-diem expenses directly related to program delivery; and,
  6. Room and board costs for young adults, ages 18 to 23, who were in out-of-home care on or after their 18th birthday.
- B. Chafee Program expenditures not reimbursable by the state include:
1. Expenditures used to supplant, duplicate, or replace existing child welfare funds; and,
  2. Other expenditures not permitted by the fiscal rules or procedures.
- C. Any expenditure other than those defined in this section as reimbursable shall be nonreimbursable unless specifically identified in a state approved Chafee Program plan.
- D. The county departments shall meet all state fiscal reporting requirements for expenditures in its plan. The state may withhold or reduce reimbursement to counties for expenditures not in compliance with the Chafee Program plan.
- E. Youth Direct Services - County departments of social services may be reimbursed at 100% for directly funded services up to a maximum amount in each state fiscal year.
1. The amount shall be determined by the county departments of social services with approval by the state.
  - ~~2. The county department of social services shall develop a written procedure for use of an Imprest Fund. See the Finance Manual, Section 5.910.3 (11 CCR 2508-1), to provide a flexible means of providing youth direct services.~~
32. Youth Direct Services shall be used according to federal guidelines (Public Law No. 106-169) as incentives for completing goals in the plan for transition to independent living and other expenditures that will assist youth to emancipate and for which no other funding sources exist.
    - a. Amounts up to \$100 shall be documented in the case notes.
    - b. Amounts of \$100 or greater shall be documented in the Chafee plan that is created with the youth.