

**Title of Proposed Rule:** 8 CCR 1404-1 – Universal Preschool Program Eligibility

**CDEC Tracking #:** 2022-09-002

Office, Division, & Program:  
Division of Universal  
Preschool

Rule Author: Dawn Odean

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### RULEMAKING PACKET

**Type of Rule:**

Regular

Emergency

Regular following Emergency

SoS# 2022-00621

**This package is submitted for:** *(check all that apply)*

County  
Subcommittee  
Review (if  
needed)

Rules Advisory  
Council Review

Review by  
Attorney  
General's Office

Final Public  
Rulemaking Hearing by  
the Executive Director

**Estimated Dates – What dates are you hoping to have this reviewed by the following groups?**

County Subcommittee (if required)	N/A
Rules Advisory Council	11/10/2022
Public Rulemaking Hearing	11/21/2022
Effective Date	9/29/2022
If emergency rule – effective date of permanent rule?	1/14/2023
Is this date legislatively required?	No, however the universal preschool program must be in effect for the 2023-2024 school year.

What other state departments, offices, and/or divisions have been consulted in the creation or revision of this rule package? (examples could include: Colorado Department of Human Services; Colorado Department of Education; Office of Information Technology; CDEC Legislative and Policy Division; etc.):

This rule package only impacts the Universal Preschool Program administered by the Colorado Department of Early Childhood (CDEC) and the Office of Information Technology personnel assigned to CDEC support the implementation of the Universal Preschool technology systems. The Colorado Department of Education was provided weekly, written updates.

Comments / Notes from Review by Rules Advisory Council Manager:

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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 Character max***

HB22-1295 created the Universal Preschool Program which the Colorado Department of Early Childhood (Department) is charged with administering starting in the 2023-2024 school year. Because this is a brand-new program, the Department must promulgate all of the rules to implement the program. This set of proposed rules establishes the eligibility criteria for preschool services and additional preschool services.

In accordance with HB 22-1295, a child who is in a low-income family or who meets at least one qualifying factor may receive additional preschool services in the school year preceding the school year in which the child is eligible to enroll in kindergarten in accordance with Department rule. The Department must establish by rule the following:

- 1) The level of income that identifies a family as low-income, and therefore eligible for preschool services for children three years of age or, in waiver communities, younger, and for children in the school year preceding the school year in which the child is eligible to enroll in kindergarten.
- 2) The qualifying factors that a child must meet to be eligible for additional preschool services.
- 3) The number of hours of preschool services that a child who is three years of age, or under three years of age in a district with a waiver to serve children under three years of age, and is low income or meets at least one qualifying factor.
- 4) The number of additional hours of preschool services that a child who is low-income and meets at least one qualifying factor and is in the school year preceding the school year in which the child is eligible to enroll in kindergarten.

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:

Statute requires that the Universal Preschool Program be operational by the 2023-24 school year. These proposed rules are necessary to deliver universal preschool services to eligible Colorado families by July 2023 and must be effective as soon as possible so that children and providers may begin enrollment in the program.

#### **Executive Director Authority for Rule:**

Code	Description
26.5-1-105(1) C.R.S. (2022)	The executive director is authorized to promulgate all rules for the administration of the department and for the execution and administration of the functions specified in <a href="#">section 26.5-1-109</a> and for the programs and services specified in this title 26.5.

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**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
26.5-4-204(4), C.R.S. (2022)	<p>The Executive Director shall adopt rules to implement the preschool program. The Department must establish by rule the following:</p> <ol style="list-style-type: none"><li>1) The level of income that identifies a family as low-income, and therefore eligible for preschool services for children three years of age or, in waiver communities, younger, and for children in the school year preceding the school year in which the child is eligible to enroll in kindergarten.</li><li>2) The qualifying factors that a child must meet to be eligible for additional preschool services.</li><li>3) The number of hours of preschool services that a child who is three years of age, or under three years of age in a district with a waiver to serve children under three years of age, and is low income or meets at least one qualifying factor.</li><li>4) The number of additional hours of preschool services that a child who is low-income and meets at least one qualifying factor and is in the school year preceding the school year in which the child is eligible to enroll in kindergarten.</li></ol>

Does the rule incorporate material by reference?

Yes

No

Does this rule repeat language found in statute?

Yes

No

If yes, please explain.

The rule includes definitions and other language found in statute.

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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? How will the rule impact particular populations, such as populations experiencing poverty, immigrant/refugee communities, non-English speakers, and rural communities?*

Families of three and four-year-old children will benefit from this rule which implements requirements for eligibility to receive 10 hours or more of preschool program services.

#### 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 Department anticipates that there will be approximately 64,000 children eligible for preschool services in the 2023-2024 fiscal year under this rule.

#### 3. Alignment and Coordination.

*Do the proposed rules or rule revisions (indicate all that apply):*

	Reduce the administrative burden on families and providers of accessing programs and services, implementing programs, and providing services
	Decrease duplication and conflicts in implementing programs and providing services
X	Increase equity in access to programs and services and in child and family outcomes
	Increase administrative efficiencies among the programs and services provided by the department
X	Ensure that the rules are coordinated across programs and services so that programs are implemented and services are provided with improved ease of access, quality of family and provider experience, and ease of implementation by state, local, and tribal agencies

#### 4. 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)

No impact as these changes will not impact existing systems within the Department or other agencies.

County Fiscal Impact

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No impact as the program for which these changes are being made is not administered by counties.

Federal Fiscal Impact

No impact as these changes affect state operations only.

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

No negative impact to families, providers, or local governments as these changes are meant to implement a new program.

**5. Data Description**

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

LIHEAP-IM-2022-03: Memo on Federal Poverty Guidelines

**6. Describe the monitoring and evaluation.**

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

26.5-4-201 C.R.S. requires the Department to contract with an independent evaluator to measure the success of the Colorado Universal Preschool Program.

**7. 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 are no alternatives as these rules are required by 26.5-4-201 C.R.S.

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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 RAC Subcommittee):*

Discussion on the development of this rule package included the Division of Early Learning Access & Quality and the Head Start Collaboration Office in the Colorado Department of Early Childhood. Additionally, Rules Advisory Council reviewed this rule packet and provided recommendations as required by section 26.5-1-105(2)(j), C.R.S.

#### **This Rule-Making Package**

*The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the Rule Advisory Council / CDEC:*

Discussion on this rule package included but was not limited to: Local Coordinating Organizations; the Early Childhood Community Coalition; the Program Quality & Alignment Subcommittee, the Early Childhood Sub-Pac, & the Rules Advisory Council.

#### **Other State Agencies**

Are other State Agencies (such as CDHS, CDE, 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?

--

#### **RAC County Subcommittee Review (if applicable)**

Do the proposed rules have an impact on the functions, programs or services delivered by counties?

Yes  No

If yes, have these rules been reviewed by the County Subcommittee?

Yes  No

Date presented

What issues were raised?

If not presented, explain why.


#### **Rules Advisory Council Review**

Date presented

What issues were raised?

Recommendation from RAC to Approve, Approve with

9/15/2022
Change the title of section 4.102; clarify waiver county eligibility for 3 year olds; add homelessness as an eligibility factor; add noncertified kinship care in addition to foster care as an eligibility factor.
Recommendation to approve with changes

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Changes, or Not Approve  
Vote Count

	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	11	0	0
Any additional notes.	Considerations around the number of additional hours that children can access was removed from this rule package and will be considered at a later date.		

**Other Comments**

Comments were received from stakeholders on the proposed rules:

Yes     No

If “yes,” summarize and/or attach the feedback received, 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.

## **8 CCR 1404-1**

### **4.100 UNIVERSAL PRESCHOOL PROGRAM**

THE COLORADO UNIVERSAL PRESCHOOL PROGRAM WAS ESTABLISHED TO PROVIDE HIGH-QUALITY, VOLUNTARY, PRESCHOOL PROGRAMMING THROUGH A MIXED DELIVERY SYSTEM FOR CHILDREN THROUGHOUT THE STATE IN THE YEAR PRECEDING ELIGIBILITY FOR KINDERGARTEN ENROLLMENT AND TO PROVIDE FOR ADDITIONAL PRESCHOOL SERVICES FOR CHILDREN WHO ARE IN LOW-INCOME FAMILIES OR WHO MEET IDENTIFIED QUALIFYING FACTORS. THE DEPARTMENT INTENDS TO WORK WITH PRESCHOOL PROGRAM SERVICES PROVIDERS TO MEET FAMILIES' NEEDS, INCLUDING FOR A HALF OR FULL DAY PROGRAM.

#### **4.101 DEFINITIONS**

"ADDITIONAL PRESCHOOL SERVICES" MEANS HOURS OF PRESCHOOL SERVICES PROVIDED TO A CHILD IN THE YEAR PRECEDING ENROLLMENT IN KINDERGARTEN THAT ARE IN ADDITION TO THE UNIVERSAL PRESCHOOL SERVICES THE CHILD RECEIVES.

"CHILDREN WITH DISABILITIES" HAS THE SAME MEANING AS PROVIDED IN SECTION 22-20-103, C.R.S.

"COLORADO UNIVERSAL PRESCHOOL PROGRAM" OR "PRESCHOOL PROGRAM" MEANS THE PROGRAM ESTABLISHED WITHIN THE DEPARTMENT PURSUANT TO SECTION 26.5-4-204, C.R.S., AND INCLUDES ALL PARTICIPATING PRESCHOOL PROVIDERS.

"DEPARTMENT" MEANS COLORADO DEPARTMENT OF EARLY CHILDHOOD.

"ECEA" MEANS THE "EXCEPTIONAL CHILDREN'S EDUCATIONAL ACT", ARTICLE 20 OF TITLE 22, AND ITS IMPLEMENTING RULES.

"ELIGIBLE CHILD" MEANS A CHILD WHO IS ELIGIBLE TO RECEIVE PRESCHOOL SERVICES AS PROVIDED IN SECTION 26.5-4-204 (3), C.R.S.

"FEDERAL POVERTY LEVEL" (FPL) OR "FEDERAL POVERTY GUIDELINES" (FPG) REFERS TO FIGURES SET BY THE FEDERAL GOVERNMENT ANNUALLY. THESE FIGURES, BASED ON GROSS MONTHLY INCOME LEVELS FOR THE CORRESPONDING HOUSEHOLD SIZE, ARE INCLUDED IN THE TABLE IN SECTION 4.102.A.

"FOSTER CARE HOME" HAS THE SAME MEANING AS PROVIDED IN SECTION 26-6-903(10), C.R.S.

"IDEA" MEANS THE FEDERAL "INDIVIDUALS WITH DISABILITIES EDUCATION ACT", 20 U.S.C. SEC. 1400 ET SEQ., AS AMENDED, AND ITS IMPLEMENTING REGULATIONS.

"INDIVIDUALIZED EDUCATION PROGRAM" OR "IEP" HAS THE SAME MEANING AS PROVIDED IN SECTION 22-20-103(15), C.R.S.

"NONCERTIFIED KINSHIP CARE" MEANS A CHILD IS BEING CARED FOR BY A RELATIVE OR KIN PURSUANT TO 19-1-103(102), C.R.S., WHO HAS A SIGNIFICANT RELATIONSHIP



WITH THE CHILD IN CIRCUMSTANCES WHEN THERE IS A SAFETY CONCERN BY A COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES AND WHERE THE RELATIVE OR KIN HAS NOT MET THE FOSTER CARE CERTIFICATION REQUIREMENTS FOR A KINSHIP FOSTER CARE HOME OR HAS CHOSEN NOT TO PURSUE THAT CERTIFICATION PROCESS.

"PARENT" HAS THE SAME MEANING AS PROVIDED IN SECTION 22-20-103. C.R.S.

"QUALIFYING FACTOR" MEANS A CHILD OR FAMILY CIRCUMSTANCE, AS IDENTIFIED BY DEPARTMENT RULE PURSUANT TO SECTION 26.5-4-204, (4)(a)(II), C.R.S. THAT MAY NEGATIVELY IMPACT A CHILD'S COGNITIVE, ACADEMIC, SOCIAL, PHYSICAL, OR BEHAVIORAL HEALTH OR DEVELOPMENT.

"SCHOOL DISTRICT" MEANS A SCHOOL DISTRICT ORGANIZED PURSUANT TO ARTICLE 30 OF TITLE 22, C.R.S. THAT PROVIDES PRESCHOOL SERVICES AND IS LICENSED PURSUANT TO PART 3 OF ARTICLE 5 OF TITLE 26.5, C.R.S. AS A PRESCHOOL PROVIDER; OR A BOARD OF COOPERATIVE SERVICES ORGANIZED PURSUANT TO ARTICLE 5 OF TITLE 22, C.R.S. THAT PROVIDES PRESCHOOL SERVICES AND IS LICENSED PURSUANT TO PART 3 OF ARTICLE 5 OF TITLE 26.5, C.R.S. AS A PRESCHOOL PROVIDER.

"UNIVERSAL PRESCHOOL SERVICES" MEANS TEN HOURS OF PRESCHOOL SERVICES PER WEEK MADE AVAILABLE, AT NO CHARGE, TO CHILDREN IN THE STATE DURING THE SCHOOL YEAR PRECEDING THE SCHOOL YEAR IN WHICH A CHILD IS ELIGIBLE TO ENROLL IN KINDERGARTEN.

#### **4.102 PROGRAM PURPOSE**

**A. FOR THE 2023-24 SCHOOL YEAR AND SCHOOL YEARS THEREAFTER, FAMILIES MAY ENROLL THEIR CHILDREN IN PRESCHOOL PROVIDERS THAT RECEIVE FUNDING THROUGH THE PRESCHOOL PROGRAM. THE PURPOSES OF THE PRESCHOOL PROGRAM ARE:**

1. TO PROVIDE CHILDREN IN COLORADO ACCESS TO VOLUNTARY, HIGH-QUALITY, UNIVERSAL PRESCHOOL SERVICES FREE OF CHARGE IN THE SCHOOL YEAR BEFORE A CHILD IS ELIGIBLE TO ENROLL IN KINDERGARTEN;
2. TO PROVIDE ACCESS TO ADDITIONAL PRESCHOOL SERVICES IN THE SCHOOL YEAR BEFORE KINDERGARTEN ELIGIBILITY FOR CHILDREN IN LOW-INCOME FAMILIES AND CHILDREN WHO LACK OVERALL LEARNING READINESS DUE TO QUALIFYING FACTORS;
3. TO PROVIDE ACCESS TO PRESCHOOL SERVICES FOR CHILDREN WHO ARE THREE YEARS OF AGE, OR IN LIMITED CIRCUMSTANCES YOUNGER THAN THREE YEARS OF AGE, AND ARE CHILDREN WITH DISABILITIES, ARE IN LOW-INCOME FAMILIES, OR LACK OVERALL LEARNING READINESS DUE TO QUALIFYING FACTORS; AND
4. TO ESTABLISH QUALITY STANDARDS FOR PUBLICLY FUNDED PRESCHOOL PROVIDERS THAT PROMOTE CHILDREN'S EARLY LEARNING AND DEVELOPMENT, SCHOOL READINESS, AND HEALTHY BEGINNINGS.

**4.103 ELIGIBILITY**

- A. CHILDREN WHO ARE THREE YEARS OF AGE, OR WHO RESIDE IN A COMMUNITY IN WHICH A SCHOOL DISTRICT OPERATES A DISTRICT PRESCHOOL PROGRAM WITH A WAIVER TO SERVE CHILDREN UNDER THREE YEARS OF AGE, AND CHILDREN WHO ARE IN THE SCHOOL YEAR PRECEDING THE SCHOOL YEAR IN WHICH THE CHILD IS ELIGIBLE TO ENROLL IN KINDERGARTEN ARE ELIGIBLE FOR PRESCHOOL SERVICES IF THE CHILD’S FAMILY IS LOW INCOME SUCH THAT THE CHILD’S PARENT OR GUARDIAN’S GROSS INCOME IS BELOW 270% OF THE FEDERAL POVERTY GUIDELINE (FPG):

<b>FAMILY SIZE</b>	<b>100% FEDERAL POVERTY GUIDELINE (FPG)</b>	<b>270% FEDERAL POVERTY GUIDELINE (FPG)</b>
<b>1</b>	<b>\$1,132.50</b>	<b>\$3,057.75</b>
<b>2</b>	<b>\$1,525.83</b>	<b>\$4,119.75</b>
<b>3</b>	<b>\$1,919.17</b>	<b>\$5,181.75</b>
<b>4</b>	<b>\$2,312.50</b>	<b>\$6,243.75</b>
<b>5</b>	<b>\$2,705.83</b>	<b>\$7,305.75</b>
<b>6</b>	<b>\$3,099.17</b>	<b>\$8,367.75</b>
<b>7</b>	<b>\$3,492.50</b>	<b>\$9,429.75</b>
<b>8</b>	<b>\$3,885.83</b>	<b>\$10,491.75</b>
<b>EACH ADDITIONAL PERSON</b>	<b>\$393.33</b>	

- B. TO BE ELIGIBLE FOR ADDITIONAL PRESCHOOL SERVICES A CHILD MUST MEET ONE OR MORE OF THE FOLLOWING QUALIFYING FACTORS:
1. CHILD IS IDENTIFIED AS LOW-INCOME IN ACCORDANCE WITH SECTION A ABOVE.
  2. CHILD IS A DUAL-LANGUAGE LEARNER AND THE NATIVE LANGUAGE SPOKEN IN THE CHILD’S HOME IS A LANGUAGE OTHER THAN ENGLISH, OR THE CHILD’S NATIVE LANGUAGE IS NOT ENGLISH.
  3. CHILD HAS AN IEP.
  4. CHILD IS CURRENTLY IN THE CUSTODY OF A STATE SUPERVISED AND COUNTY ADMINISTERED FOSTER CARE HOME OR IN NON-CERTIFIED KINSHIP CARE.
  5. CHILD IDENTIFIED AS HOMELESS AND LACKS A FIXED, REGULAR, AND ADEQUATE NIGHTTIME RESIDENCE AND AT LEAST ONE OF THE FOLLOWING:
    - A. SHARING THE HOUSING OF OTHER PERSONS DUE TO LOSS OF HOUSING, ECONOMIC HARDSHIP, OR A SIMILAR REASON; LIVING IN MOTELS, HOTELS, OR CAMPING GROUNDS DUE TO THE LACK OF ALTERNATIVE ACCOMMODATIONS; LIVING IN EMERGENCY OR TRANSITIONAL SHELTERS;
    - B. HAS A PRIMARY NIGHTTIME RESIDENCE THAT IS A PUBLIC OR PRIVATE PLACE NOT DESIGNED FOR OR ORDINARILY USED AS A REGULAR SLEEPING ACCOMMODATION FOR HUMAN BEINGS;
    - C. LIVING IN CARS, PARKS, PUBLIC SPACES, ABANDONED BUILDINGS, SUBSTANDARD HOUSING, BUS OR TRAIN STATIONS, OR SIMILAR SETTINGS; OR,

D. IS A CHILD WHO IS MIGRATORY WHO QUALIFIES AS HOMELESS FOR THE PURPOSES OF THIS SUBTITLE BECAUSE THE CHILD IS LIVING IN CIRCUMSTANCES DESCRIBED IN THIS DEFINITION A THROUGH C.