

Title of Proposed Rule: **Child Support/Child Welfare 7.601.71, 7.601.712, 7.304.21(E)(3)(a)(1), 7.404.4**

CDHS Tracking #: **23-01-31-01**

Office, Division, & Program: \_\_\_\_\_ Rule Author: Korey Elger

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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  
3 Amended Rules  
1 New Rules  
\_\_\_\_ Repealed Rules  
\_\_\_\_ Reviewed Rules

What month is being requested for this rule to first go before the State Board?	March 2023
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What date is being requested for this rule to be effective?	June 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	March 2023	2nd Board	April 2023	Effective Date	June 2023
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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 Division of Child Welfare is composed of a specialized set of services that strengthen the ability of the family to protect and care for their own children, minimize harm to children and youth, and ensure timely permanency planning. Services stabilize the family situation and strengthen the family's capacity to care for their children. When safety is not possible within the family, services focus on the child's need for a stable, permanent home as quickly as possible. The Child Support Services Program oversees child support in Colorado. Under current regulations, most parents of children in foster care are currently required to pay child support to the state to offset costs. Federal guidance was recently issued that encouraged Child Welfare agencies to update their policies to reduce or eliminate referrals to the Child Support program. The Administration for Children and Families (ACF) and the Office of Child Support Enforcement (OCSE) are encouraging child welfare agencies to remove financial barriers detrimental to family reunification ([see attached letter](#)). Specifically, ACF's Children's Bureau updated the Child Welfare Policy Manual to encourage child welfare agencies to change policies which automatically refer parents to child support agencies when a child enters foster care. Pursuing child support from these parents with children in foster care, many of which are already experiencing economic insecurity, can negatively impact their ability to achieve economic stability. Requiring child support can jeopardize the prospect of family reunification and extend the time the child spends in foster care. The Child Welfare Policy Manual now encourages policies that do not require referrals to child support except in very rare instances. The Division of Child Welfare and the Division of Child Support Services have a state/county work group who will be recommending policy changes to comply with this recent guidance. Consistent with the federal guidance, this rule change will no longer require Child Welfare to refer families to Child Support Services.

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:

### **State Board Authority for Rule:**

Code	Description
26-1-107(5)(b), C.R.S. (2022)	State Board to promulgate rules
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
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26-1-111, C.R.S. (2022)	State department to promulgate rules for public assistance and welfare activities.
26-5-102(1)(a), C.R.S. (2022)	State department to promulgate rules for child welfare services

Does the rule incorporate material by reference?

Yes

No

Does this rule repeat language found in statute?

Yes

No

If yes, please explain.

## REGULATORY ANALYSIS

### 1. List of groups impacted by this rule.

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

Child Welfare Sub Pac, Economic Security Sub Pac, Finance Sub Pac, child welfare involved families

### 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?*

Child Welfare will no longer be required to refer families to child support services. They will have the option to do this in cases in which it makes sense financially. Child Support Services will no longer have to spend time working cases that are likely non-successful in outcome. Families will be more likely to reach permanency using the resources they have in order to reunify with their children. County Child Welfare professionals will experience an increase in time spent reviewing cases to determine if a referral is appropriate. County child support professionals will experience a reduction in time spent trying to enforce foster care child support orders. This will allow more time to be invested in providing 2Gen services and enforcing orders in which the obligor has the ability to pay.

### 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)

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There will be a cost for technical changes to Trails and the Automated Child Support Enforcement System (ACSES). In the short term, the automatic referral the Child Support Program can be turned off and a manual referral will need to be made if determined appropriate by this rule change. The long-term changes needed for the system are currently being reviewed and can be completed within existing resources. There will be an increase in state staff workload in the Division of Child Welfare and the Division of Child Support Services to create training materials and support counties and provide technical assistance to counties as needed. State Finance staff will also have an increased workload to track the financial impact trends of this change.

### County Fiscal Impact

This rule change will have several county fiscal impacts as outlined below:

#### **Parental Fee Lump Sum**

Currently, some counties receive a "parental fee" lump sum payment once a year, if their annual collections from placing parents, the parent the child is removed from, exceed the amount collected from placing parents in 1991, pursuant to section 26-5-104(2), C.R.S. The amount is equal to the amount that the current year collections exceed the 1991 base amount. Any moneys distributed to each county pursuant to this subsection (2) may be used for child welfare services directed toward early intervention, placement prevention, and family preservation, or any other program funded pursuant to sections 19-2-211, 19-2-212, and 19-2-310, C.R.S.

The nature of the distribution method, based on historical collections, results in an inequitable distribution and access to these funds across the state. Only 32 of the 64 counties received any funds in SFY21-22 and 2 counties received 34% of the \$819,920.09 distributed.

The funding to fulfill the parent fee lump sum statute comes from a \$3.2 million General Fund hold out from the Child Welfare Block. Currently, the amount left over, after distribution of parental fee lump sum funds, is used to close out overspent counties in the child welfare block.

We will reduce the hold out to \$1.2 million, freeing up \$2 million. This new hold out amount exceeds the amounts distributed in the last 5 years. As the proposed rule will result in decreased collections, less money will be distributed pursuant to section 26-5-104(2), C.R.S. The Department plans to allocate out the \$2 million up front to counties through the block allocation so all counties can benefit from this pot of money to provide child welfare services in their counties.

#### **Retained Collections and the County Child Welfare Block**

The money collected by Child Support Services on foster care cases is distributed monthly to the federal government, the state, and the county proportionally according to each entity's contribution pursuant to section 26-13-113, C.R.S. Non IV-E collections are distributed 80% to the state and 20% to the county. IV-E collections are distributed 50% to the federal government, 30% to the state, and 20% to the county. The retained collections from parents whose children are placed out of home amounted to \$2,917,727 in SFY21-22. With the implementation of this rule, this number will decrease. Instead of the money being used to credit expenses to the Child Welfare Block, it will stay with the parents to support their economic security and assist with permanency goals.

Currently the retained collections are credited against expenses to the Child Welfare Block which is the main source of funding for Child Welfare in Colorado. In SFY21-22, \$365,963,000 total funds were allocated to counties from the block. Retained collections account for 0.8% of funding.

Implementing this rule would result in less collections from families to credit against child welfare expenditures. It is hard to estimate by how much, but we anticipate that it will be significant.

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The data also reflects this policy change has led to less time in out of home placements for children and youth. That would result in less money needed from the block to pay for costly out of home placements. This change would result in a decreased amount to credit child welfare block expenditures. There are many variables and levers in the child welfare block funding that could help mitigate this decrease, but, ultimately if the State is not able to cover this gap, counties would be responsible for their portion of the over expenditures from their Child Welfare Block allocation.

**Staff capacity:**

Child Welfare Staff and Leadership - This change will add an additional step for child welfare workers to work within their county's identified process to assist in determining if a family should be referred to child support.

Child Support Staff - This change will decrease the workload of the child support staff. Colorado data reflects Parental Fee and Child Support Foster Care cases have a significantly less collection rate as compared to other child support cases. By decreasing the amount of these cases child support services works, county child support staff will have more capacity to prioritize other work such as 2Gen work and working with families with a high ability to pay.

Federal Fiscal Impact

As retained collections are distributed to the federal government, the state, and the county proportionally according to each entity's contribution, the federal government will see a decrease.

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

Families will benefit from this Rule change as they will be more able to use their available resources to work toward permanency for their child.

**4. Data Description**

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

Data was obtained from ACSES and Trails to determine the total retained collections and parental fee collections to inform the fiscal impact of this proposal. Research from other states finding that the pursuit of child support from families involved in the child welfare system delays reunification and that the practice is not cost effective was considered throughout the formulation of this proposed rule change.

**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..."*

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No other alternatives to rule-making are available. In order to ensure all counties in Colorado implement standards of service, rule-making is necessary. Rule-making defines the service expectation and allows for the state supervising agency to require a specific process or practice.

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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
7.404.4		<p>7.404.4 CHILD SUPPORT</p> <p>A. When a child with an absent parent is eligible for Medicaid and the child is placed out of the home, the county department shall complete the “Information Concerning Absent Parent Form” (CSE-10), and the CWS-3A as specified by the State Department, and refer the case to the county child support enforcement unit where it shall be processed according to established procedures. See the Child Support Enforcement staff manual (9 CCR 2504-1), for allocation and distribution of support collections. The child shall remain eligible for foster care whether either parent cooperates with the child support unit.</p> <p>B. When a child is not eligible for IV-E Foster Care, the county department may apply for child support services, using the “Application for Child Support Enforcement Services” (CSE-6).</p>	<p>7.404.4 CHILD SUPPORT</p> <p>A. When a child with an absent parent is eligible for Medicaid and the child is placed out of the home, the county department shall MAY complete the “Information Concerning Absent Parent Form” (CSE-10), and the CWS-3A as specified by the State Department, and refer the case to the county child support-enforcement SERVICES unit, IF A REFERRAL IS MADE, THE COUNTY DEPARTMENT MUST REVIEW THE CASE EVERY 6 MONTHS TO REASSESS THE APPROPRIATENESS OF THE REFERRAL. THE COUNTY DEPARTMENT MAY CONSULT WITH THE CHILD SUPPORT SERVICES UNIT DURING THE REASSESSMENT.</p> <p>B. <del>where it shall be processed according to established procedures. See the Child Support Enforcement staff manual (9 CCR 2504-1), for allocation and distribution of support collections.</del> The child shall remain eligible for foster care whether either parent cooperates with the child support unit.</p> <p>C. When a child is not eligible for IV-E Foster Care, the county department may apply for child support services, using the “Application for Child Support Enforcement Services” (CSE-</p>		

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		<p>In referring the case to the county child support enforcement unit, the county department must include the "Information Concerning Absent Parent" (CSE-10). See the Child Support Enforcement staff manual (9 CCR 2504-1), for allocation and distribution of support collections.</p> <p>C. The county department may refer foster care cases to Child Support Enforcement (IV-D) for collection of the foster care fee, if the amount of the foster care fee is based on the child support guidelines and the amount stated in the court order.</p> <p>D. The county department shall notify the custodial parent of the availability of child support services.</p> <p>E. In the event it is not in the best interest of the Title IV-E eligible child to seek child support, the county department shall request a good cause waiver according to the established procedures in the Income Maintenance staff manual (9 CCR 2503-1).</p> <p>F. The Colorado State Department of Human Services has paid a one time IV-D application fee of \$20 on behalf of all children in foster care.</p>	<p>6), IF THE COUNTY DEPARTMENT FINDS THAT A REFERRAL IS APPROPRIATE; SEE SECTION 7.601.712 (12 CCR 2509-7). IF A REFERRAL IS MADE, THE COUNTY DEPARTMENT MUST REVIEW THE CASE EVERY 6 MONTHS TO REASSESS THE APPROPRIATENESS OF THE REFERRAL. THE COUNTY DEPARTMENT MAY CONSULT WITH THE CHILD SUPPORT SERVICES UNIT DURING THE REASSESSMENT.</p> <p>D. . In referring the case to the county child support enforcement SERVICES unit, the county department must include the "Information Concerning Absent Parent" (CSE-10). <del>See the Child Support Enforcement staff manual (9 CCR 2504-1), for allocation and distribution of support collections.</del></p> <p>E. The county department may refer foster care cases to Child Support Enforcement SERVICES (IV-D) for collection of the foster care fee, if the amount of the foster care fee is based on the child support guidelines and the amount stated in the court order AND IF THE COUNTY DEPARTMENT FINDS THAT A REFERRAL IS APPROPRIATE; SEE SECTION 7.601.712 (12 CCR 2509-7). IF A REFERRAL IS MADE, THE COUNTY DEPARTMENT MUST REVIEW THE CASE EVERY 6 MONTHS TO REASSESS THE APPROPRIATENESS OF THE REFERRAL. THE COUNTY DEPARTMENT MAY CONSULT WITH THE CHILD SUPPORT SERVICES UNIT DURING THE REASSESSMENT.</p>	
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			<p>F. The county department shall notify the custodial parent of the availability of child support services.</p> <p><del>G. In the event it is not in the best interest of the Title IV-E eligible child to seek child support, the county department shall request a good cause waiver according to the established procedures in the Income Maintenance staff manual (9 CCR 2503-1).</del></p> <p>H. The Colorado State Department of Human Services has paid a onetime IV-D application fee of \$20 on behalf of all children in foster care.</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):

Child Support Services and Child Welfare work group including members from CDHS Child Support Services, Division of Child Welfare, representation from 26 County DHS child welfare and child support and financial representatives

#### 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:

Child Welfare Sub Pac, Finance Sub Pac, Economic Security Sub Pac

#### 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, Economic Security, Finance		
Date presented	Nov 3, 2022 and Dec 8, 2022, Jan 5, 2023		
What issues were raised?	Multiple concerns regarding parental fees, Federally required automation in Trails, potential discrimination concerns.		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	10	10	
If not presented, explain why.			

#### PAC

Have these rules been approved by PAC?

Yes  No

Date presented	February 2, 2023		
What issues were raised?	Multiple concerns regarding parental fees and counties agree with philosophy but worried about fiscal impact		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	10	10	
If not presented, explain why.			

#### Other Comments

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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.*

After multiple meetings and conversations, the counties support the general philosophy of the practice change. However, the counties still have some serious concerns that have not been addressed. One of the major recurring concerns is the financial impacts to counties. We appreciate the Child Support Services/Child Welfare finance at a glance; however, we need a more in depth look at the financial impacts.

There is no answer to what happens with current child support cases if these rules take effect. The counties were presented with data and research for the first time at the December SubPac Meeting. Many have expressed concerns that the data and research is not accurate. The counties would like a deeper dive into the data to have a more accurate picture of when good cause is used. The counties are concerned that this feels rushed. We appreciate the Child Support Services/Child Welfare work groups' efforts and thoughtful conversations. However, the federal guidance was only issued in late August of this year effectively changing the practice guidance 180 degrees. As many are aware, until that guidance was issued it was mandatory to refer families to child support with child welfare having little to no knowledge or practice using good cause.

The counties have come up with potential solutions in place of quickly passing the rule.

1) CDHS/Division of Child Welfare develop a training for county casework staff on how and when to use good cause. After the training, the counties will pilot using good cause for a 6-month period. While training and the pilot are occurring, the Child Support Services/Child Welfare task group can have more time to hammer out the rule language. Counties are concerned that the current language is very broad and subjective. This may lead to potential equity and discrimination issues if families are referred.

2) Developing a tool to assist when to use good cause. Part of the discussions was using a standard level of income to determine when to refer. The most popular option is 85% of SMI (state median income). This threshold is already used in the Colorado Child Care Assistance Program (CCCAP) to determine eligibility. The level presents as fairly high, thus eliminating a high percentage of referrals. As a note, families that are above the threshold and are referred to child support still have the opportunity to have their case heard by the court for potential reductions. The counties feel the best unit to determine if families have met the threshold are the IV/MOE workers. These workers already have the responsibility of collecting the families' financial information.

There were other concerns and explanations discussed during our calls that also may need more discussion. The counties feel strongly that this topic warrants more discussion.

Please see the link below for the federal guidance.

[https://www.acf.hhs.gov/sites/default/files/documents/cb/letter\\_regarding\\_assignment\\_rights\\_child\\_support\\_for\\_children\\_foster\\_care.pdf](https://www.acf.hhs.gov/sites/default/files/documents/cb/letter_regarding_assignment_rights_child_support_for_children_foster_care.pdf)

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**(12 CCR 2509-5)**  
**7.404.4 Child Support**

A. When a child with an absent parent is eligible for Medicaid and the child is placed out of the home, the county department shall ~~shall~~ MAY complete the “Information Concerning Absent Parent Form” (CSE-10), and the CWS-3A as specified by the State Department, and refer the case to the county child support ~~enforcement~~ SERVICES unit, IF A REFERRAL IS MADE, THE COUNTY DEPARTMENT MUST REVIEW THE CASE EVERY 6 MONTHS TO REASSESS THE APPROPRIATENESS OF THE REFERRAL. THE COUNTY DEPARTMENT MAY CONSULT WITH THE CHILD SUPPORT SERVICES UNIT DURING THE REASSESSMENT.

B. ~~where it shall be processed according to established procedures. See the Child Support Enforcement staff manual (9 CCR 2504-1), for allocation and distribution of support collections.~~ The child shall remain eligible for foster care whether either parent cooperates with the child support unit.

C. When a child is not eligible for IV-E Foster Care, the county department may apply for child support services, using the “Application for Child Support ~~Enforcement~~ Services” (CSE-6), IF THE COUNTY DEPARTMENT FINDS THAT A REFERRAL IS APPROPRIATE; SEE SECTION 7.601.712 (12 CCR 2509-7). IF A REFERRAL IS MADE, THE COUNTY DEPARTMENT MUST REVIEW THE CASE EVERY 6 MONTHS TO REASSESS THE APPROPRIATENESS OF THE REFERRAL. THE COUNTY DEPARTMENT MAY CONSULT WITH THE CHILD SUPPORT SERVICES UNIT DURING THE REASSESSMENT.

D. . In referring the case to the county child support ~~enforcement~~ SERVICES unit, the county department must include the “Information Concerning Absent Parent” (CSE-10). ~~See the Child Support Enforcement staff manual (9 CCR 2504-1), for allocation and distribution of support collections.~~

E. The county department may refer foster care cases to Child Support ~~Enforcement~~ SERVICES (IV-D) for collection of the foster care fee, if the amount of the foster care fee is based on the child support guidelines and the amount stated in the court order AND IF THE COUNTY DEPARTMENT FINDS THAT A REFERRAL IS APPROPRIATE; SEE SECTION 7.601.712 (12 CCR 2509-7). IF A REFERRAL IS MADE, THE COUNTY DEPARTMENT MUST REVIEW THE CASE EVERY 6 MONTHS TO REASSESS THE APPROPRIATENESS OF THE REFERRAL. THE COUNTY DEPARTMENT MAY CONSULT WITH THE CHILD SUPPORT SERVICES UNIT DURING THE REASSESSMENT.

F. The county department shall notify the custodial parent of the availability of child support services.

~~G. In the event it is not in the best interest of the Title IV-E eligible child to seek child support, the county department shall request a good cause waiver according to the established procedures in the Income Maintenance staff manual (9 CCR 2503-1).~~

H. The Colorado State Department of Human Services has paid a one time IV-D application fee of \$20 on behalf of all children in foster care.

\*\*\*\*\* (BREAK BETWEEN SECTIONS)

[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] or **highlighted yellow**]