

Title of Proposed Rule: Old Age Pension, Aid to the Needy Disabled Colorado Supplement, and Adult Foster Care Cost of Living Adjustment (COLA) Increase for 2017

CDHS Tracking #: 16-10-19-1

Office, Division, & Program: Rule Author: Danielle Dunaway
Office of Economic Security, Employment and Benefits Division, Adult Financial Programs

Phone: 303-866-2788

E-Mail: Danielle.dunaway@state.co.us

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.

On October 18, 2016, the Social Security Administration (SSA) announced a 0.3% Cost of Living Adjustment (COLA) for all Social Security and Supplemental Security Income recipients effective December 31, 2016. This means an increase in Adult Financial assistance. These rules propose an increase to the Supplemental Security Income (SSI) maximum payment by two dollars (\$2) ($\$733 \times 0.3\% = \2) to \$735 per month.

This rule will revise the Colorado Department of Human Services rules to increase the Old Age Pension (OAP) grant standard to \$773, the Aid to the Needy Disabled Colorado Supplement (AND-CS) grant standard to \$735, and the Adult Foster Care (AFC) grant standard to \$1367 in order to pass along the COLA increase. The components of the grant standard will be adjusted accordingly.

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:

20 CFR 416 et. seq. requires a Maintenance of Effort (MOE) between the State of Colorado and the Social Security Administration (SSA). This MOE requires that Colorado spend at least the same amount in the current year as they did in the previous year for specific categories of assistance, which includes OAP, AND-CS, and AFC recipients who receive SSI. Failure to pass along the COLA could impact the MOE agreement with the SSA. Failure to comply with terms of the MOE could jeopardize Medicaid Federal Financial Participation (FFP) funds as the SSA could impose a sanction of no less than one full quarter FFP match (approximately \$300-350 million) for every month Colorado does not meet the MOE requirement.

This COLA increase will be completed in the Colorado Benefits Management System (CBMS). The afore mentioned recipients live at 77% of the Federal poverty level. Adoption of these rules will allow these individuals to improve income levels by granting an increase for their daily living expenses, positively impacting the health, safety, and welfare of recipients.

State Board Authority for Rule:

Code	Description
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 for Rule: Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.

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Code	Description
24-4-103, C.R.S. (2016)	Provides for emergency adoption of rules
26-2-111, C.R.S. (2016)	Collectively the Colorado Constitution, Article XXIV, Section 6; and 26-2-111 C.R.S. (2016); and 26-2-114, C.R.S. (2016) create the OAP program and grant the authority for adjustments to the OAP grant standard to the State Board
20 CFR 416 et seq.	Requires a maintenance of effort with SSA

Does the rule incorporate material by reference?

Yes

No

Does this rule repeat language found in statute?

Yes

No

If yes, please explain.

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REGULATORY ANALYSIS

1. List of groups impacted by this rule.

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

This rule change will impact all OAP, AND-CS, and AFC recipients. All OAP, AND-CS, and AFC recipients will receive a two dollar (\$2) increase to their monthly grant. OAP recipients maximum grant will increase to \$773 ($\$771 + \$2 = \773). AND-CS recipients maximum grant will increase to \$735 ($\$733 + \$2 = \735). AFC recipients maximum grant will increase to \$1367 ($\$1365 + \$2 = \1367).

This rule change will also impact OAP and AND-CS recipients that have an In-kind Support Maintenance (ISM) calculation because they are not paying their fair share of shelter and utility costs. The ISM is applied as in-kind income in the calculation of benefits. The new maximum ISM amount is \$265. ($\$735 \times 33.33\% = \$245 + \$20 = \265)

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 rule will result in an increase of \$2 to the OAP Grant Standard ($\$771 + \$2 = \$773$) and will impact all OAP recipients, approximately 22,654 individuals. The rule will result an increase of \$2 to the AND-CS Grant Standard ($\$733 + \$2 = \$735$) and will impact all AND-CS recipients, approximately 914 individuals. The rule will result an increase of \$2 to the AFC Grant Standard ($\$1365 + \$2 = \$1367$) and will impact all AFC recipients, currently zero individuals (this program has not been appropriated for FY 2017 due to no program participation). This increase will ensure that the recipients do not go below 77% of the federal poverty level and will provide them with increased means to meet their basic living needs. This change should not change the food assistance benefit received by these clients. Approximately every three dollars (\$3) additional cash assistance could decrease the Food Assistance amount by one dollar (\$1). If an individual receives the full increase of two dollars (\$2), his/her Food Assistance amount should not decrease.

Long-term, increasing the grant standard will assist the State in meeting the SSA MOE. If the State fails to meet the provisions of the MOE, Medicaid Federal Financial Participation (FFP) funds will be placed in jeopardy.

The ISM adjustment only impacts those individuals who are not currently paying their fair share of shelter costs. Less than two percent (2%) of the combined OAP and AND-CS caseload has any type of in-kind income, and not all of those will be the ISM deduction. In simplified terms, we will assume that the client has no income or resources and, up to this point, would qualify for the full OAP or AND-CS grant. However, the county then looks to see if the client is paying his/her fair share for shelter, which includes utilities. The total shelter cost is then divided by the number of people living in the home to determine each person's fair share for shelter costs. If the client is not paying a fair share, the ISM deduction may apply. The amount the client is charged as income for unpaid shelter costs is never more than the ISM amount set in rule.

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3. Fiscal Impact

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just “no impact” answer should include “no impact because...”***

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

The cost to the State for the increase for non-SSI recipients (approximately 11,667) will be \$2/recipient/month. This cost will be paid using 100% OAP cash funds. These increased expenditures by the State to non-SSI OAP recipients are estimated at \$280,008 (plus caseload growth) for FY 2017 and beyond.

The cost to the State for the increase to OAP recipients that are also receiving SSI (approximately 10,987) is estimated at \$263,688 (plus caseload growth) for FY 2017 and beyond.

The total estimated cost to the State through the OAP cash fund for SSI and non-SSI OAP recipients is estimated at \$543,696 (plus caseload growth) for FY 2017 and beyond.

The cost to the state will not increase as a result of this correction to the ISM. The maximum ISM amount is tied directly to the SSI grant standard.

Maintenance hours will be utilized to make the required changes to CBMS.

County Fiscal Impact

No additional appropriation is required as it is included within existing appropriations for the programs impacted by this grant increase.

Federal Fiscal Impact

No impact because there are no federal funds utilized.

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

No impact because there are no other providers or local governments involved.

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4. Data Description

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

The Social Security Administration issued a press release on October 18, 2016 announcing the 0.3% cost of living adjustment (COLA). This information can be found at <https://www.ssa.gov/news/press/releases/#/post/10-2016-1>

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...”

Taking no action could adversely impact the health, safety, and welfare of OAP, AND-CS, and AFC recipients; and could cause the State to be unable to meet the MOE requirements as well with the Social Security Administration. Because of the penalties associated with not meeting the MOE, there are no other viable options.

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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
3.530 A. & B.	Update amounts of components to reflect the increased grant standard and ISM amount effective January 1, 2017.	3.530 OLD AGE PENSION (OAP) PROGRAM A. The total monthly OAP grant standard, as set by the State Board of Human Services, is \$771.00, effective January 1, 2015. B. Effective January 1, 2015, the maximum monthly In-Kind Support and Maintenance (ISM) deduction amount for shelter, including utilities, is \$264.00.	3.530 OLD AGE PENSION (OAP) PROGRAM A. The total monthly OAP grant standard, as set by the State Board of Human Services, is \$773.00, effective January 1, 2017. B. Effective January 1, 2017, the maximum monthly In-Kind Support and Maintenance (ISM) deduction amount for shelter, including utilities, is \$265.00.	To implement the \$2 COLA increase and adjust the ISM amount.	NO
3.540 B. & E.	Update and correct the grant standard components effective January 1, 2017.	3.540 AID TO THE NEEDY DISABLED (AND) PROGRAM B. The total AND-CS grant standard is \$733.00, effective January 1, 2015. E. Effective January 1, 2015, the maximum ISM amount for shelter, including utilities, is \$264.00.	3.540 AID TO THE NEEDY DISABLED (AND) PROGRAM B. The total AND-CS grant standard is \$735.00, effective January 1, 2017. E. Effective January 1, 2017, the maximum ISM amount for shelter, including utilities, is \$265.00.	To implement the \$2 COLA increase and adjust the ISM amount.	NO
3.580 B.	Update and correct the grant standard components effective January 1, 2017.	3.580 ADULT FOSTER CARE (AFC) 3.581 PURPOSE OF PROGRAM B. Effective January 1, 2015, the maximum AFC grant standard is \$1,365.00, determined as follows: 1. Deduct the client's income, from the AFC grant standard; and, 2. Deduct the client's OAP or AND-CS grant and any Supplemental Security Income (SSI) benefits; and, 3. The remainder is the AFC benefit.	3.580 ADULT FOSTER CARE (AFC) 3.581 PURPOSE OF PROGRAM B. Effective January 1, 2017, the maximum AFC grant standard is \$1,367.00, determined as follows: 1. Deduct the client's income, from the AFC grant standard; and, 2. Deduct the client's OAP or AND-CS grant and any Supplemental Security Income (SSI) benefits; and, 3. The remainder is the AFC benefit.	To implement the \$2 COLA increase.	NO

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):

No other entities were included in the development of these proposed rules.

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; Colorado Commission on Aging; Colorado Legal Services; The Legal Center; Colorado Senior Lobby; Single Entry Point agencies; Economic Security PAC & Sub-PAC; Colorado Gerontological Society; Area Agencies on Aging; Colorado Center on Law and Policy; Colorado Department of Human Services Food Assistance Division; and, Colorado Department of Health Care Policy and Financing

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

Date presented	November 3, 2016
What issues were raised?	
If not presented, explain why.	Emergency rule package will be presented at the November 3, 2016 meeting.

PAC

Have these rules been approved by PAC?

Yes No

Date presented	Emergency rule package will be presented at the November 3, 2016 meeting.
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Other Comments

Comments were received from stakeholders on the proposed rules:

Yes No

If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

9 CCR 2503-5

3.530 OLD AGE PENSION (OAP) PROGRAM

The Old Age Pension (OAP) program provides financial assistance and may provide health care benefits for low-income Colorado residents who are sixty (60) years of age or older who meet basic eligibility requirements.

A. The total monthly OAP grant standard, as set by the State Board of Human Services, is ~~\$771.00~~\$773.00, effective January 1, ~~2015~~2017.

B. Effective January 1, ~~2015~~2017, the maximum monthly In-Kind Support and Maintenance (ISM) deduction amount for shelter, including utilities, is ~~\$264.00~~\$265.00.

9 CCR 2503-5

3.540 AID TO THE NEEDY DISABLED (AND) PROGRAM

The Aid to the Needy Disabled State Only (AND-SO) program provides interim assistance to clients age eighteen (18) through fifty-nine (59) years of age (unless diagnosed with blindness, then age zero (0) through 59 years of age); who are disabled or blind but have not been approved for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). The AND-Colorado Supplement (AND-CS) program provides a supplemental payment for client's age zero (0) to 59 who are receiving SSI due to a disability or blindness, but are not receiving the full SSI grant standard.

A. The total AND-SO grant standard is \$189.00, effective August 6, 2014.

B. The total AND-CS grant standard is ~~\$733.00~~\$735.00, effective January 1, ~~2015~~2017.

C. The grant standards for AND-SO and AND-CS shall be adjusted as needed to remain within available appropriations. Appeals shall not be allowed for grant standard adjustments necessary to stay within available appropriations.

D. In addition to the regular monthly AND-CS grant payments, supplemental payments necessary to comply with the federal Maintenance of Effort (MOE) requirements may be provided. These payments are supplements to regular grant payments, are not entitlements, and do not affect grant standards. Appeals shall not be allowed for MOE payment adjustments.

E. Effective January 1, ~~2015~~2017, the maximum ISM amount for shelter, including utilities, is ~~\$264.00~~\$265.00.

9 CCR 2503-5

3.580 ADULT FOSTER CARE (AFC)

3.581 PURPOSE OF PROGRAM

A. The AFC program provides twenty-four (24) hour care and supervision for frail elderly or physically or emotionally disabled adults, age eighteen (18) or older, who do not require twenty-four (24) hour medical care but who cannot return to their home and need twenty-four (24) hour non-medical supervision.

B. Effective January 1, 2015~~2017~~, the maximum AFC grant standard is ~~\$1365.00~~\$1365.00, determined as follows:

1. Deduct the client's income, from the AFC grant standard; and,
2. Deduct the client's OAP or AND-CS grant and any Supplemental Security Income (SSI) benefits; and,

3. The remainder is the AFC benefit.

C. The AFC maximum grant standard shall be adjusted to stay within available appropriations. Appeals shall not be granted for these adjustments.

D. The AFC grant is not taxable income to the client.

E. In addition to the regular monthly AFC grant payments, supplemental payments necessary to comply with the federal Maintenance of Effort (MOE) requirements may be provided. These payments are supplements to regular grant payments, are not entitlements, and do not affect grant standards. Appeals shall not be allowed for MOE payment adjustments.
