



COLORADO DEPARTMENT OF HEALTH CARE POLICY & FINANCING

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John W. Hickenlooper, Governor • Susan E. Birch MBA, BSN, RN, Executive Director

February 1, 2013

The Honorable Su Ryden, Chair
State, Veterans & Military Affairs Committee
200 East 14th Avenue
Denver, CO 80203

Dear Representative Ryden:

The Department of Health Care Policy and Financing (Department) presents this report with respect to its compliance with requirements for verifying lawful presence in the U.S. of applicants applying for the Colorado Indigent Care Program (CICP), as stipulated in Section 24-76.5-103, C.R.S., which reads:

“(9) It shall be unlawful for an agency or a political subdivision of this state to provide a federal public benefit or a state or local public benefit in violation of this section. On or before January 15, 2009, and on or before January 15 each year thereafter, each state agency or department that administers a program that provides state or local public benefits shall provide a report with respect to its compliance with this section to the state, veterans, and military affairs committees of the senate and house of representatives, or any successor committees.”

The Department administers the CICP, which is a state only program. Participants must prove they are lawfully present in the U.S., in compliance with Section 24-76.5-103, C.R.S. Under the CICP, participating providers determine eligibility, including establishing that applicants are lawfully present in the U.S. The Medical Services Board promulgated rules in December 2007 regarding complying with lawful presence for the CICP, and the Department updated its CICP provider manual and conducted training. Lawful presence requirements are included in the annual CICP provider training, and providers must have an audit performed annually regarding compliance with the CICP eligibility requirements, and implement corrective actions plans as necessary.

The Department apologizes that this report was not presented by the January 15, 2013 deadline. The Safety Net Programs section, which administers the Hospital Provider Fee, the Nursing Facility Provider Fee, School Health Services, and the CICP, is also responsible for preparing the Colorado Health Care Affordability Act Annual Report by January 15 and the CICP Annual Report by February 1, in addition to this request. Both of these reports are comprehensive and require a great deal of resources to complete and finalize. The Safety Net Programs section, with its limited staff, worked diligently to meet all of its deliverables but was unable to complete this request for information by the January 15, 2013 deadline.

If you require further information or have additional questions, please contact the Department's Legislative Liaison, MaryKathryn Hurd, at MK.Hurd@state.co.us or 303-547-8494.

Sincerely,

A handwritten signature in blue ink, appearing to read "Susan E. Birch", with a large, stylized flourish at the end.

Susan E. Birch, MBA, BSN, RN
Executive Director

SEB:clw

Cc: Representative Joe Salazar, Vice–Chair, State, Veterans, and Military Affairs Committee
Representative Tim Dore, State, Veterans, and Military Affairs Committee
Representative Mike Foote, State, Veterans, and Military Affairs Committee
Representative Steve Humphrey, State, Veterans and Military Affairs Committee
Representative Jeanne Labuda, State, Veterans and Military Affairs Committee
Representative Jovan Melton, State, Veterans and Military Affairs Committee
Representative Dominick Moreno, State, Veterans and Military Affairs Committee
Representative Dan Nordberg, State, Veterans and Military Affairs Committee
Representative Ray Scott, State, Veterans and Military Affairs Committee
Representative Angela Williams, State, Veterans and Military Affairs Committee
Katherine Blair, Health Policy Advisor, Governor’s Office
Legislative Council Library
State Library
Susan E. Birch, MBA, BSN, RN, Executive Director
John Bartholomew, Finance Office Director
Suzanne Brennan, Health Programs Office Director
Antoinette Taranto, Acting Client and Community Relations Office Director
Lorez Meinhold, Community Partnerships Office Director
Tom Massey, Policy and Communications Office Director
MaryKathryn Hurd, Legislative Liaison
Rachel Reiter, Communications Director



Lawful Presence Compliance

Annual Report

Colorado Indigent Care Program

February 1, 2013

EXECUTIVE SUMMARY

This report is presented to the Colorado State, Veterans, and Military Affairs Committee as required by Section 24-76.5-103, C.R.S.

During the 2006 and 2007 legislative sessions, House Bill 06S-1023 and House Bill 07-1314 were passed and directed the Department of Revenue to establish rules to ensure that recipients of public benefits demonstrate that they are legally residing in the U.S. The Department of Revenue promulgated “Rules of Evidence of Lawful Presence” at 1 CCR 201-17, effective August 1, 2007.

The Department of Health Care Policy and Financing (Department) administers the Colorado Indigent Care Program (CICP), a state only program whose participants must prove they are lawfully present in the U.S. in compliance with Section 24-76.5-103, C.R.S.

In order to comply with the new Rules of Evidence of Lawful Presence promulgated by the Department of Revenue, the Department amended its rules pertaining to the CICP’s application process, effective January 1, 2008. The legislation requires annual reporting commencing on or before January 15, 2009, and on or before January 15 each year thereafter, by state agencies or departments of their compliance with lawful presence requirements.

This report will provide an overview of the CICP, changes implemented in the program’s application process to address lawful presence requirements, and the program provider’s audit reporting on lawful presence compliance for Fiscal Year (FY) 2010-2011 and partial reporting for audits received in the FY 2011-2012.

INTRODUCTION

This report is presented to the Colorado State, Veterans, and Military Affairs Committee as required by Section 24-76.5-103, C.R.S., which reads:

“(9) It shall be unlawful for an agency or a political subdivision of this state to provide a federal public benefit or a state or local public benefit in violation of this section. On or before January 15, 2009, and on or before January 15 each year thereafter, each state agency or department that administers a program that provides state or local public benefits shall provide a report with respect to its compliance with this section to the state, veterans, and military affairs committees of the senate and house of representatives, or any successor committees.”

PROGRAM OVERVIEW

The Colorado General Assembly enacted the “Reform Act for the Provision of Health Care for the Medically Indigent” in 1983. This law made it possible to use state funds to partially reimburse providers for services provided to the state’s medically indigent residents. This article was amended in 2006 and now stands as the enactment of the “Colorado Indigent Care Program.”

The Colorado Indigent Care Program (CICP) provides a partial solution to the health care needs of the state’s medically indigent citizens and does not provide a comprehensive benefits package. The program is not an insurance program, but rather a financial vehicle for providers to recoup some of the costs for providing medical services to the medically indigent who are not eligible for Medicaid or Child Health Plan *Plus* (CHP+). The benefits offered under this program vary from provider to provider. By statute, providers participating in the CICP are required to prioritize care in the following order:

1. Emergency care for the full year,
2. Additional medical care for those conditions determined to be the most serious threat to the health of indigent persons, and
3. Any other medical care.

The CICIP includes these requirements in its agreements with providers to ensure that indigent clients have access to emergency care throughout the year.

The Department administers the CICIP by distributing funding to qualified health care providers who serve eligible persons. The Department issues procedures to ensure the funding is used to serve the indigent population in a uniform method. Any significant departure from these procedures may result in termination of the agreement with, and the funding to, a health care provider.

CICIP LAWFUL PRESENCE REQUIREMENTS

Under the CICIP, participating providers determine eligibility, including establishing that applicants are lawfully present in the U.S. The Medical Services Board promulgated rules in December 2007 regarding compliance with lawful presence for the CICIP. In anticipation of the January 1, 2008 effective date for the CICIP Lawful Presence rules, the Department updated its program manual and conducted training. Additionally, lawful presence requirements and updates are included in the topics presented during the annual training for CICIP providers.

CICIP APPLICANT ELIGIBILITY AND LAWFUL PRESENCE

The provider manual, which is distributed to all CICIP providers on a yearly basis, stipulates the following in *Section I, Article II. Client Eligibility for CICIP, Section 5.09 Lawful Presence*:

“All first-time applicants and applicants re-applying to receive discounted health care services, aged 18 and older, must sign the “Affidavit for Lawful Presence, Colorado Indigent Care Program” and provide an approved document that demonstrates that the applicant is lawfully present in the United States.”

The Department redesigned the CICIP Affidavit for Lawful Presence to comply with the new rules guiding evidence of lawful presence. Effective January 1, 2008 the revised version of the Affidavit is used for all applicants. A copy of the Affidavit is included in the CICIP provider manual, located in Section VI. A list of the various types of documents that can be accepted to prove lawful presence is located on the back of the Affidavit.

CICIP PROVIDER COMPLIANCE AUDIT

To meet its fiduciary responsibility, the Department requires that CICIP participating providers submit a provider compliance audit statement to the Department along with a Corrective Action Plan (CAP) when required. The purpose of the provider audit is to furnish the Department with a report that attests to the provider’s compliance with specified provisions of the CICIP contract, regulations, and manual. Providers must have an annual audit performed to determine compliance with the following three components of the CICIP:

- Eligibility,
- Billing, and
- Programmatic Internal Controls.

Verification of the CICIP client’s Affidavit for Lawful Presence is one of the nine required items to be included and reported in the provider’s annual audit regarding eligibility. Providers that are found to be out of compliance with any of the CICIP’s guidelines must implement a CAP. A statement from the provider’s administration must be submitted to the Department with the compliance audit report describing the plan of corrective action and implementation date. Failure to submit a CAP will result in withholding CICIP payment until such a plan is received or the CICIP may redirect payments to compliant providers.

Each participating CICP provider submits to the Department an annual Provider Compliance Audit Report. A review of compliance with verification of lawful presence is one of the nine (9) attributes, regarding client eligibility procedures, required in the audit report. Exceptions to lawful presence requirements are reporting regarding the following:

- (9a) Verification that the Affidavit for Lawful Presence was signed and dated by the client. The client must have either checked the line indicating that they are a U.S. citizen or checked the line indicating that they are a Legal Permanent Resident or otherwise lawfully present in the U.S.
- (9b) Effective January 1, 2008, verification that the provider filled out the shaded box on the Affidavit called “For Eligibility Technician Use,” noting the type of document that verified lawful presence. Verification of lawful presence must be confirmed in SAVE for all non-U.S. citizens. The date the provider completed the lawful presence verification must be indicated in the shaded box on the affidavit.
- (9c) Verification that photocopies of legal presence documents submitted by the client are retained in the client’s application file. For clients who are not U.S. citizens, the printout of the Verification Result Screen from the SAVE search must also be retained in the client’s application file. Note that U.S. citizens who sign the optional self-declaration statement at the bottom of the Affidavit do not need to submit documentation as proof of lawful presence in the United States.

Each provider must review a minimum sample size of 25 applications, unless in the event the provider completed fewer than 25 in the audit period, then all applications completed by the provider must be included. An attribute is out of compliance if the error rate exceeds 10% for the specific attribute tested. Each provider found to be out of compliance must implement a Corrective Action Plan (CAP).

The following table lists the number of participating CICP providers per fiscal year 2010-2011, partial reporting of fiscal year 2011-2012, and results of their audit reporting related to the lawful presence requirements implemented January 1, 2008.

Table 1
Provider Audit and Lawful Presence Requirements

Fiscal Year	Participating Providers	Compliance Audits Received	Non-compliant with Lawful Presence Requirements
FY 2010-11	68	68	6
FY 2011-12 ¹	70	20	1

¹ Partial reporting as of date of this report. Providers must submit annual compliance audits within six (6) months after a determined audit period. Audit periods vary by providers and may be based on one of the following: State’s fiscal year, calendar year or provider’s fiscal year.