



COLORADO
Department of Health Care
Policy & Financing

Department of Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203

January 15, 2019

The Honorable Chris Kennedy, Chair
State, Veterans, and Military Affairs Committee
200 E. Colfax Avenue
Denver, CO 80203

Dear Representative Kennedy:

Enclosed please find a legislative report to the House State Veterans and Military Affairs Committee from the Department of Health Care Policy and Financing (the Department) on compliance with requirements for verifying lawful presence in the U.S. for applicants applying for the Colorado Indigent Care Program (CICP). This report also includes information regarding lawful presence compliance for the Colorado Dental Health Care Program for Low-Income Seniors (Senior Dental Program) which commenced on July 1, 2015.

Section 24-76.5-103, C.R.S., requires the Department to 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 on or before January 15 each year.

The Department administers the CICP and the Senior Dental Program, which are state only programs. Under both programs, participating providers determine eligibility, including establishing that applicants are lawfully present in the U.S. Lawful presence requirements are included in provider training, and audits are routinely performed with corrective actions plans required as necessary.

If you require further information or have additional questions, please contact the Department's Legislative Liaison, David DeNovellis, at david.denovellis@state.co.us or 303-866-6912.

Sincerely,

A handwritten signature in black ink that reads 'KB' followed by a stylized surname.

Kim Bimestefer
Executive Director

KB/nad



Enclosure(s): Annual Report on Lawful Presence Compliance for the CACP and the Senior Dental Program

Cc: Representative Sonya Jaquez Lewis, Vice-Chair, State, Veterans, and Military Affairs Committee
Representative Monica Duran, State, Veterans, and Military Affairs Committee
Representative Steve Humphrey, State, Veterans, and Military Affairs Committee
Representative Susan Lontine, State, Veterans, and Military Affairs Committee
Representative Jovan Melton, State, Veterans, and Military Affairs Committee
Representative Janice Rich, State, Veterans, and Military Affairs Committee
Representative Emily Sirota, State, Veterans, and Military Affairs Committee
Representative Dave Williams, State, Veterans, and Military Affairs Committee
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John Bartholomew, Finance Office Director, HCPF
Laurel Karabatsos, Interim Health Programs Office Director & Medicaid Director, HCPF
Tom Massey, Policy, Communications, and Administration Office Director, HCPF
Bonnie Silva, Interim Community Living Office Director, HCPF
Chris Underwood, Health Information Office Director, HCPF
Stephanie Ziegler, Cost Control and Quality Improvement Office Director, HCPF
Rachel Reiter, External Relations Division Director, HCPF
David DeNovellis, Legislative Liaison, HCPF





COLORADO
Department of Health Care
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Department of Health Care Policy and Financing
1570 Grant Street
Denver, CO 80203

January 15, 2019

The Honorable Mike Foote, Chair
State, Veterans, and Military Affairs Committee
200 E. Colfax Avenue
Denver, CO 80203

Dear Senator Foote:

Enclosed please find a legislative report to the Senate State, Veterans, and Military Affairs Committee from the Department of Health Care Policy and Financing (the Department) on compliance with requirements for verifying lawful presence in the U.S. for applicants applying for the Colorado Indigent Care Program (CICP). This report also includes information regarding lawful presence compliance for the Colorado Dental Health Care Program for Low-Income Seniors (Senior Dental Program) which commenced on July 1, 2015.

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Kim Bimestefer
Executive Director

KB/nad



Enclosure(s): Annual Report on Lawful Presence Compliance for the CICP and the Senior Dental Program

Cc: Senator Lois Court, Vice-Chair, State, Veterans, and Military Affairs Committee
Senator Rhonda Fields, State, Veterans, and Military Affairs Committee
Senator Vicki Marble, State, Veterans, and Military Affairs Committee
Senator Jerry Sonnenberg, State, Veterans, and Military Affairs Committee
Legislative Council Library
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Lawful Presence Compliance

Colorado Indigent Care Program

Colorado Dental Health Care Program for Low-Income Seniors

January 15, 2019

Submitted to: State, Veterans, and Military Affairs House and Senate Committees



COLORADO

Department of Health Care
Policy & Financing

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Executive Summary

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

The Department of Health Care Policy and Financing (Department) administers the Colorado Indigent Care Program (CICP) and the Colorado Dental Health Care Program for Low-Income Seniors (Senior Dental Program), which are state only programs.

Under both programs, participating providers determine eligibility, including establishing that applicants are lawfully present in the U.S in compliance with Section 24-76.5-103, C.R.S. Lawful presence requirements are included in provider training, and audits are routinely performed with corrective actions plans required as necessary

This report provides an overview of the CICP, how the program's application process addresses lawful presence requirements, and the program provider's audit reporting on lawful presence compliance for Fiscal Year (FY) 2016-17 and partial reporting for audits received in the FY 2017-18. This report also provides an overview of the Senior Dental Program and its application of audit reporting practices that ensure lawful presence requirements are met, including reporting of audit findings in FY 2017-18.



Introduction

This report is presented to the Colorado State, Veterans, and Military Affairs Committees 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.”

Colorado Indigent Care Program

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 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+). Services provided 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. Urgent care, and
3. Any other additional medical care.

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

The Department administers the CICP 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.

CICP Lawful Presence Requirements

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 compliance with lawful presence for the CICP. Effective January 1, 2008, the Department updated its program manual and conducted training for CICP Lawful Presence rules. Additionally, lawful presence requirements and updates are included in the topics presented during the annual training for CICP providers.

CICP Applicant Eligibility and Lawful Presence

During the 2006 and 2007 legislative sessions House Bill (HB) 06S-1023 and HB 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 United States. The Department of Revenue promulgated “Rules for Evidence of Lawful Presence” at 1 CCR 204-30, effective August 30, 2016. The CICP made corresponding rule changes effective September 9, 2016.

The FY 2016-17 provider manual, which is distributed to all CICP providers, stipulates the following in Article IX, Section 9.03. Client Eligibility for CICP, Section 9.03 Lawful Presence:

“All applicants 18 years and older, must sign the ‘Affidavit for Lawful Presence, Colorado Indigent Care Program’ (Affidavit) and provide a document that demonstrates they are lawfully present in the United States.”

The Department redesigned the CICP Affidavit for Lawful Presence to comply with the rules guiding evidence of lawful presence. A copy of the Affidavit is included in the CICP provider manual, located in Section IV, Article III. Affidavit for Lawful Presence, Section 3.01 in English and Section 3.02 in Spanish. A list of the various types of documents that can be accepted to prove lawful presence is located on the back of the Affidavit.



CICP Provider Compliance Audit

To meet its fiduciary responsibility, the Department requires that CICP 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 CICP provider agreement, regulations and manual. Providers must have an annual audit performed to determine compliance with the following three components of the CICP:

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

Verification of the CICP client's Affidavit for Lawful Presence is one of the nine (9) 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 CICP'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 may result in withholding CICP payment until such a plan is received or the CICP 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 reported regarding the following:

- (E9a) 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.
- (E9b) Verification that the provider filled out the shaded box on the Affidavit marked "For Eligibility Technician Use," noting the document was verified. Verification of lawful presence must be confirmed in Systematic Alien Verification for Entitlements (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.



- (E9c) 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 CAP.

Table 1 lists the number of participating CICIP providers per fiscal year 2016-17, partial reporting of fiscal year 2017-18, and results of their audit reporting related to the lawful presence requirements.

Table 1: CICIP Provider Audit and Lawful Presence Requirements

| Fiscal Year | Participating Providers | Compliance Audits Received | Non-compliant with Lawful Presence Requirements |
|-------------------------|-------------------------|----------------------------|---|
| FY 2016-17 | 68 | 68 | 8 |
| FY 2017-18 ¹ | 69 | 2 | 0 |

Colorado Dental Health Care Program for Low-Income Seniors

Program Overview

The Colorado Dental Health Care Program for Low-Income Seniors (Senior Dental Program) was created with the passage of Senate Bill 14-180 (25.5-3-401, C.R.S.), and commenced on July 1, 2015. The Senior Dental Program grants funds to Area Agencies on Aging, community-based organizations and foundations, community health centers,

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.



safety-net clinics, health districts, and private dental practices to promote the health and welfare of Colorado's low-income seniors. This program provides access to dental care to individuals age 60 and over who are not eligible for oral health services under any other dental health care program, such as Health First Colorado (Medicaid), the Old Age Pension Health and Medical Care Program, or private dental insurance. The Senior Dental Advisory Committee advises the Department of Health Care Policy and Financing (the Department) on policies of the Senior Dental Program and makes recommendations to the Medical Services Board regarding rules.

The Department administers the Senior Dental Program by distributing grant funds to eligible entities and also ensures the funding is used to serve the low-income senior population. The eligible entities must:

- Provide outreach to eligible seniors and dental care providers;
- Identify eligible seniors;
- Demonstrate collaboration with community organizations;
- Ensure the eligible seniors receive covered dental services without duplication of services;
- Maintain records of seniors served, services provided, and moneys spent; and
- Distribute funds to qualified dental providers or directly provide dental services to eligible seniors in their area.

Senior Dental Program Lawful Presence Requirements

During the 2006 and 2007 legislative sessions House Bill (HB) 06S-1023 and HB 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 United States. The Department of Revenue promulgated "Rules for Evidence of Lawful Presence" at 1 CCR 204-30, effective August 30, 2016. The Senior Dental Program made corresponding rule changes effective September 9, 2016. Under the Senior Dental Program, qualified grantees determine eligibility, including establishing that applicants are lawfully present in the U.S. The Department designed the Senior Dental Program Affidavit for Lawful Presence to comply with the rules guiding evidence of lawful presence. A copy of the Affidavit is provided to grantees and is also available on the Department's website.



Senior Dental Program Provider Compliance Audit

To meet its fiduciary responsibility, the Department randomly selects 10% of each qualified grantee's files for auditing purposes during the year. The audit ensures that the qualified grantees are in compliance with specified provisions of the Senior Dental Program contract. Qualified grantees must have this audit performed to determine compliance with the following factors of the Senior Dental Program:

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

Qualified grantees that are found to be out of compliance with any of the Senior Dental Program guidelines must implement a CAP. Failure to submit a CAP will result in loss of grant funds and/or termination from the Senior Dental Program.

A review of compliance with verification of lawful presence is one of the client eligibility procedures reviewed during the audit. Exceptions to lawful presence requirements are reported regarding the following:

- Verification that the Affidavit for Lawful Presence was signed and dated by the client. The client must either check the line indicating that they are a U.S. citizen or check the line indicating that they are a Legal Permanent Resident or otherwise lawfully present in the U.S.
- Verification that the provider filled out the shaded box on the Affidavit called "For Eligibility Technician Use," noting the type of document that was verified. 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.
- 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 or have an individual sign the third-party declaration at the



bottom of the Affidavit do not need to submit documentation as proof of lawful presence in the United States.

Table 2 and Table 3 list the number of participating Senior Dental Program grantees for FY 2017-18 and results of the audits related to the lawful presence requirements.

Table 2: Senior Dental Program Audit and Lawful Presence Requirements

| Fiscal Year | Participating Grantees | Files Reviewed | Non-compliant with Lawful Presence Requirements |
|-------------|------------------------|----------------|---|
| FY 2017-18 | 23 | 336 | 48 |

Out of the 336 client files reviewed during the audit, 48, or 14%, showed lawful presence non-compliance. The findings were as follows:

Table 3: Senior Dental Program Lawful Presence Findings

| Reason for Non-compliance | Number |
|---|-----------|
| Top portion of affidavit not completed | 6 |
| Client did not check if they were a U.S. citizen, legal permanent resident, or lawfully present in the U.S. | 19 |
| No photocopy of documents in file | 5 |
| No affidavit in file | 5 |
| Lack of indication that grantee checked the client's documents | 12 |
| Client signed in wrong area of affidavit | 1 |
| Total | 48 |