

Title of Rule: Revision to the Special Financing Division Colorado Indigent Care Program Rule Concerning Establishing Lawful Presence, Section 8.904C
Rule Number: MSB 16-01-20-A
Division / Contact / Phone: Special Financing / Taryn Jorgensen / 303-866-5634

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

Department of Revenue is in the process of updating their rules for evidence of lawful presence. The Colorado Indigent Care Program must update its rules as well to coincide with the changes to Department of Revenue's rule.

2. An emergency rule-making is imperatively necessary

to comply with state or federal law or federal regulation and/or
 for the preservation of public health, safety and welfare.

Explain:

Emergency rule-making is imperatively necessary in order for the Colorado Indigent Care Program to implement the Department of Revenue update of the evidence of lawful presence requirements, as required under state law. There are also a number of people who are turned away from services under the Colorado Indigent Care Program because the lawful presence documentation they have is not accepted under the current rule. This rule update broadens the scope of acceptable documentation for establishing lawful presence and will allow applicants who are lawfully present to qualify for the program, assuming they meet all other eligibility criteria.

3. Federal authority for the Rule, if any:

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2015);
24-76.5-101 et. al., C.R.S. (2015)
25.5-3-101 through 25.5-3-111, C.R.S. (2015)

Initial Review
Proposed Effective Date

09/09/16

Final Adoption
Emergency Adoption

09/09/16

DOCUMENT #02

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REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

This rule currently requires Colorado Indigent Care Program (CICP) applicants 18 years of age or older to execute an affidavit concerning lawful presence status and present documentation that verifies their lawful presence in the United States in order to receive discounted health care services. This rule update will not change this process, nor will it place any new requirements on the Department, CICP providers, CICP clients, or CICP applicants.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

This rule will make it easier for some individuals to qualify for the Colorado Indigent Care Program due to the expansion of the documents allowable to verify lawful presence. It is not possible to quantify the impact of this because the Department of Health Care Policy and Financing does not currently know who these individuals are. Colorado Indigent Care Program providers determine eligibility for the program in accordance with state rules and guidance.

This rule should not impact providers who participate in the Colorado Indigent Care Program, as the processes of verifying lawful presence documents is already in place.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The Department of Health Care Policy and Financing sees no fiscal impact of this rule change for the Department. The funds for the Colorado Indigent Care Program are appropriated, and this rule update will have no effect on the appropriation.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The Department is required to comply with C.R.S. § 24-76.5-103, which it does through the implementation of, and necessary amendments to, this rule.

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5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The Department is required to comply with C.R.S. § 24-76.5-103, which it does through the implementation of, and necessary amendments to, this rule.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

No other methods were considered.

8.904 PROVISIONS APPLICABLE TO CLIENTS

A. Overview of Requirements

In order to qualify to receive discounted health care services under available CICIP funds, an applicant shall satisfy the following requirements:

1. Execute an affidavit regarding citizenship status;
2. Be lawfully present in the United States;
3. Be a resident of Colorado;
4. Meet all CICIP eligibility requirements as defined by state law and procedures; and
5. Furnish a social security number (SSN) or evidence that an application for a SSN has been submitted, where required by 10 C.C.R. 2505-10, Section 8.904.E (2007.)

B. Affidavit

1. Each first-time applicant, or applicant seeking to reapply, eighteen (18) years of age or older shall execute an affidavit stating:

- a. That he or she is a United States citizen, or
- b. That he or she is a legal permanent resident, or is otherwise lawfully present in the United States pursuant to federal law.

2. For an applicant who has executed an affidavit stating that he or she is lawfully present in the United States but is not a United States citizen, the provider shall, within 30 days of the application date, verify lawful presence through the Federal Systematic Alien Verification of Entitlement Program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security. Until verification of lawful presence is made, the affidavit may be presumed to be proof of lawful presence.

C. Establishing Lawful Presence

1. Each first-time applicant, or applicant seeking to reapply, eighteen (18) years of age or older shall be considered lawfully present in the country if they produce a document or waiver in accordance with 1 CCR 204-30 Rule 5 (effective August 30, 2016), which is hereby incorporated by reference. This incorporation of 1 CCR 204-30 Rule 5 excludes later amendments to, or editions of, the referenced material. Pursuant to § 24-4-103 (12.5), C.R.S., the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203. Certified copies of incorporated materials are provided at cost upon request. one of the following. Any document submitted pursuant to 8.904.C.1 shall be presumed to be genuine unless there is a reasonable basis for questioning the authenticity of the document.

- 1 a. ~~A valid Colorado Driver's License or a Colorado Identification Card, issued~~
2 ~~pursuant to Article 2 of Title 42, C.R.S. A valid Colorado Driver's License or~~
3 ~~Identification Card includes only a current Driver's License, Minor Driver's~~
4 ~~License, Probationary Driver's License, Commercial Driver's License, Restricted~~
5 ~~Driver's License, Instruction Permit or Identification Card.~~
- 6 b. ~~A United States Military Identification Card or a Military Dependents' Identification~~
7 ~~Card;~~
- 8 c. ~~A United States Coast Guard Merchant Mariner Card;~~
- 9 d. ~~A Native American Tribal Document; OR~~
- 10 e. ~~A driver's license or state-issued identification card issued in a state approved by~~
11 ~~the Director, Motor Vehicle Division, Department of Revenue.~~
- 12 2. ~~If an applicant is unable to provide a document listed in 8.904.C.1, then he/she~~
13 ~~must provide a document listed in 8.904.C.2. Any document submitted pursuant~~
14 ~~to 8.904.C.2 shall be presumed to be genuine unless there is a reasonable basis~~
15 ~~for questioning the authenticity of the document.~~
- 16 a. ~~Documents applicable to U.S. citizens and non-citizen nationals~~
- 17 I. ~~Copy of applicant's birth certificate from any state, the District of Columbia and all~~
18 ~~United States territories.~~
- 19 II. ~~United States Passports, except for "limited" passports issued for less than five~~
20 ~~years.~~
- 21 III. ~~Report of Birth Abroad of a United States Citizen, form FS-20.~~
- 22 IV. ~~Certificate of Birth issued by a foreign service post (FS-545) or Certification of~~
23 ~~Report of Birth (DS-1350).~~
- 24 V. ~~Certification of Naturalization (N-550 or N-570).~~
- 25 VI. ~~Certificate of Citizenship (N-560 or N-561).~~
- 26 VII. ~~U. S. Citizen Identification Card (I-97).~~
- 27 VIII. ~~Northern Mariana Identification Card for an applicant born prior to November 3,~~
28 ~~1986.~~
- 29 IX. ~~Statement provided by a U.S. consular officer certifying that the individual is a~~
30 ~~U.S. citizen.~~
- 31 X. ~~American Indian Card with classification code "KIC" and a statement on the back~~
32 ~~identifying U.S. Citizen members of the Texas Band of Kickapoos.~~
- 33 XI. ~~Religious records recorded in one of the fifty states, the District of Columbia or~~
34 ~~U.S. territories issued within three months after birth showing that the birth~~
35 ~~occurred in such jurisdiction and the date of the birth or the individual's age at the~~
36 ~~time the record was made.~~

- 1 ~~XII. Evidence of civil service employment by the U.S. government before June 1,~~
2 ~~1976.~~
- 3 ~~XIII. Early school records showing the date of admission to the school, the child's date~~
4 ~~and place of birth and the names' and places of birth of the parents;~~
- 5 ~~XIV. Census record showing name, U.S. citizenship or a U.S. place of birth or age of~~
6 ~~applicant;~~
- 7 ~~XV. Adoption Finalization Papers showing the child's name and place of birth in one~~
8 ~~of the 50 states, D.C., or U.S. territories or where the adoption is not finalized~~
9 ~~and the State or other jurisdiction listed above in which the child was born will not~~
10 ~~release a birth certificate prior to final adoption, a statement from a state-~~
11 ~~approved adoption agency showing the child's name and place of birth in one of~~
12 ~~such jurisdictions. The source of the information must be an original birth~~
13 ~~certificate and must be indicated in the statement; or~~
- 14 ~~XVI. Any other document that establishes a U.S. place of birth or in some way~~
15 ~~indicates U.S. citizenship.~~
- 16 ~~XVII. A written declaration, which shall be either:~~
- 17 ~~a) A written declaration from one or more third parties made under penalty of~~
18 ~~perjury and possibly subject to later verification of status, indicating a reasonable~~
19 ~~basis for personal knowledge that the applicant is a U.S. citizen or non-citizen~~
20 ~~national; or~~
- 21 ~~b) The applicant's written declaration, made under penalty of perjury and possibly~~
22 ~~subject to later verification of status that he or she is a U.S. citizen or non-citizen~~
23 ~~national.~~
- 24 ~~XVIII. The following documents may be accepted as evidence of U.S. citizenship for~~
25 ~~collectively naturalized individuals:~~
- 26 ~~a) Puerto Rico~~
- 27 ~~1) Evidence of birth in PR on or after April 11, 1899 and the applicants' statement~~
28 ~~that he or she was residing in the U.S., a U.S. possession, or PR on January 13,~~
29 ~~1941; or~~
- 30 ~~2) Evidence that the applicant was a PR citizen and the applicant's statement that~~
31 ~~he or she was residing in PR on March 1, 1917 and that he or she did not take an~~
32 ~~oath of allegiance to Spain.~~
- 33 ~~b) U.S. Virgin Islands~~
- 34 ~~1) Evidence of birth in the U.S. Virgin Islands (VI) and the applicant's statement of~~
35 ~~residence in the U.S., a U.S. possession, or the U.S. VI on February 25, 1927; or~~
- 36 ~~2) The applicant's statement indicating residence in the U.S. VI as a Danish citizen~~
37 ~~on January 17, 1917 and that he or she did not make a declaration to maintain~~
38 ~~Danish citizenship; or~~

- 1 ~~3) Evidence of birth in the U.S. VI and the applicant's statement indicating~~
2 ~~residence in the U.S., U.S. Possession or Territory or the Canal Zone on June~~
3 ~~28, 1932.~~
- 4 ~~c) Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific~~
5 ~~Islands (TTPI)~~
- 6 ~~1) Evidence of birth in NMI, TTPI citizenship and residence in the NMI, the U.S., or~~
7 ~~a U.S. territory or possession on November 3, 1986 (NMI local time) and the~~
8 ~~applicant's statement that he or she did not owe allegiance to a foreign state on~~
9 ~~November 4, 1986 (NMI local time); or~~
- 10 ~~2) Evidence of TTPI citizenship in the NMI since before November 3, 1981 (NMI~~
11 ~~local time), voter registration prior to January 1, 1975 and the applicant's~~
12 ~~statement that he or she did owe allegiance to a foreign state on November 4,~~
13 ~~1986 (NMI local time); or~~
- 14 ~~3) Evidence of continuous domicile in the NMI since before January 1, 1974 and the~~
15 ~~applicant's statement that he or she did not owe allegiance to a foreign state on~~
16 ~~November 4, 1986 (NMI local time).~~
- 17 ~~XIX. Derivative U.S. Citizenship may be determined as follows:~~
- 18 ~~a) Applicant born abroad to two U.S. citizens:~~
- 19 ~~1) The applicant shall present evidence of U.S. citizenship of the parents and the~~
20 ~~relationship of the applicant to the parents, and the evidence that at least one~~
21 ~~parent resided in the U.S. or an outlying possession prior to the applicant's birth.~~
- 22 ~~b) Applicant born abroad to a U.S. citizen parent and a U.S. non-citizen national~~
23 ~~parent:~~
- 24 ~~1) The applicant shall present evidence that one parent is a U.S. citizen and the~~
25 ~~other is a U.S. non-citizen national, evidence of the relationship of the applicant~~
26 ~~to the U.S. citizen parent and the evidence the U.S. citizen parent resided in the~~
27 ~~U.S., a U.S. possession, American Samoa or Swain's Island for a period of at~~
28 ~~least one year prior to the applicant's birth.~~
- 29 ~~c) Applicant born out of wedlock abroad to a U.S. citizen mother:~~
- 30 ~~1) The applicant shall present evidence of U.S. citizenship of the mother, evidence~~
31 ~~of the relationship to the applicant and, for births on or before December 24,~~
32 ~~1952, evidence that the mother resided in the U.S. prior to the applicant's birth~~
33 ~~or, for births after December 24, 1952, evidence that the mother had resided,~~
34 ~~prior to the child's birth, in the U.S. or a U.S. possession for a period of one year.~~
- 35 ~~d) Applicant born in the Canal Zone or the Republic of Panama:~~
- 36 ~~1) The applicant shall present a birth certificate showing birth in the Canal Zone on~~
37 ~~or after February 26, 1904 and before October 1, 1979 and evidence that one~~
38 ~~parent was a U.S. citizen at the time of the applicant's birth; or~~
- 39 ~~2) A birth certificate showing birth in the Republic of Panama on or after February~~
40 ~~26, 1904 and before October 1, 1979 and evidence that at least one parent was~~

1 a U.S. citizen and employed by the U.S. government or the Panama Railroad
2 Company or its successor in title.

3 ~~e) All other situations where an applicant claims to have a U.S. citizen parent and
4 an alien parent, or claims to fall within one of the above categories but is unable
5 to present the listed documentation:~~

6 ~~1) If the applicant is in the U.S., refer him or her to the local Department of
7 Homeland Security (formerly known as the Immigration and Naturalization
8 Service, or INS) office for determination of U.S. citizenship; or~~

9 ~~2) If the applicant is outside the U.S., refer him or her to the State Department
10 consular office for a U.S. citizenship determination.~~

11 ~~XX. Adoption of foreign born child by U.S. citizen:~~

12 ~~a) If the birth certificate shows a foreign place of birth and the applicant cannot be
13 determined to be a naturalized citizen under any of the above criteria, refer the
14 applicant to the local Department of Homeland Security office for a determination
15 of U.S. citizenship.~~

16 ~~XXI. U.S. citizenship by marriage:~~

17 ~~a) The applicant shall present evidence that she was married to a U.S. citizen
18 before September 22, 1922, or~~

19 ~~b) If the husband was an alien at the time of their marriage, that the husband
20 became a U.S. citizen before September 22, 1922.~~

21 ~~c) If the marriage was later terminated, the woman shall demonstrate that she
22 resided in the U.S. at the time it was terminated and that she has continued to
23 reside in the U.S.~~

24 ~~b. Documents applicable to non-U.S. citizens~~

25 ~~I. Alien lawfully admitted for permanent residence~~

26 ~~a) Department of Homeland Security Form I-551, Alien Registration Receipt Card,
27 commonly called or known as a "green card"; or~~

28 ~~b) Unexpired Temporary I-551 Stamp in foreign passport or on Department of
29 Homeland Security Form I-94.~~

30 ~~II. Asylee~~

31 ~~a) Department of Homeland Security Form I-94 annotated with stamp showing grant
32 of asylum under section 208 of the Immigration and Nationality Act (INA); or~~

33 ~~b) Department of Homeland Security Form I-688B (Employment Authorization Card)
34 annotated "274a.12(a)(5)"; or~~

35 ~~c) Department of Homeland Security Form I-776 (Employment Authorization
36 Document) annotated "A5"; or~~

1 ~~d) Grant Letter from the Asylum Office or U.S.C.I.S.~~

2 ~~III. Refugee~~

3 ~~a) Department of Homeland Security Form I-94 annotated with stamp showing~~
4 ~~admission under Section 207 of the INA; or~~

5 ~~b) Department of Homeland Security Form I-688B (Employment Authorization Card)~~
6 ~~annotated "274a.12(a)(3)"; or~~

7 ~~c) Department of Homeland Security Form I-766 (Employment Authorization~~
8 ~~Document) annotated "A3"; or~~

9 ~~d) Department of Homeland Security Form I-571 (Refugee Travel Document); or~~

10 ~~e) I-765 Employment Authorization Document; or~~

11 ~~f) Grant letter from the U.S. Department of Health and Human Services granting~~
12 ~~refugee status to human trafficking victims.~~

13 ~~IV. Alien paroled into the U.S. for a least one year~~

14 ~~a) Department of Homeland Security Form I-94 with stamp showing admission for~~
15 ~~at least one year under Section 212(d)(5) of the INA. (Applicant cannot~~
16 ~~aggregate periods of admission for less than one year to meet the one-year~~
17 ~~requirement).~~

18 ~~V. Alien whose deportation or removal was withheld~~

19 ~~a) Department of Homeland Security Form I-688B (Employment Authorization Card)~~
20 ~~annotated "274a.12(a)(10)"; or~~

21 ~~b) Department of Homeland Security Form I-766 Employment Authorization~~
22 ~~Document annotated "A10"; or~~

23 ~~c) Order from an immigration Judge showing deportation withheld under Section~~
24 ~~243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under~~
25 ~~Section 241(b)(3) of the INA.~~

26 ~~VI. Alien granted conditional entry~~

27 ~~a) Department of Homeland Security Form I-94 with stamp showing admission~~
28 ~~under Section 203(a)(7) of the INA; or~~

29 ~~b) Department of Homeland Security Form I-688B (Employment Authorization Card)~~
30 ~~annotated "A3"; or~~

31 ~~c) Department of Homeland Security Form I-766 (Employment Authorization~~
32 ~~Document) annotated "A3".~~

33 ~~VII. Cuban / Haitian entrant~~

34 ~~a) Department of Homeland Security Form I-551, Alien Registration Receipt Card,~~
35 ~~commonly known as the "Green Card" with the code CU6, CU7, or CH6; or~~

1 ~~b) Unexpired temporary I-551 stamp in foreign passport or on Department of~~
2 ~~Homeland Security Form I-94 with the code CU6, CU7, or CH6; or~~

3 ~~c) Department of Homeland Security Form I-94 with stamp showing parole as~~
4 ~~"Cuba/Haitian Entrant" under Section 212(d) (5) of the INA.~~

5 ~~VIII. Alien who has been battered or subjected to extreme cruelty~~

6 ~~a) See Attachment 5, Exhibit B, at U.S. Attorney General Order No. 2129-97. The~~
7 ~~documentation for Violence Against Women Act self-petitioners is the~~
8 ~~Department of Homeland Security issued "Notice of Prima Facie Determination"~~
9 ~~or "Notice of Approval".~~

10 ~~3. If an individual is unable to present any of the documents listed in 8.904.C.1 and~~
11 ~~8.904.C.2 the provider may accept a waiver. A first time applicant or applicant~~
12 ~~seeking to reapply may demonstrate lawful presence by executing both the~~
13 ~~affidavit required in 8.904.B. and by executing a Request for Waiver. The~~
14 ~~Request for Waiver form, seeking a determination of lawful presence by the~~
15 ~~Department of Revenue, may be completed by the applicant or the applicant's~~
16 ~~representative. The Request for Waiver must be accompanied by all documents~~
17 ~~that the applicant is able to produce to assist in verification of lawful presence.~~

18 42. Submission, Receipt and Retention of Documentation

19 a. Lawful presence documentation may be accepted from the applicant, the
20 applicant's spouse, parent, guardian, or authorized representative in
21 person, by mail, or facsimile.

22 b. Providers shall develop procedures for handling original documents to
23 ensure that the documents are not lost, damaged or destroyed.
24 Providers shall develop and follow procedures for returning or mailing
25 original documents to applicants within five business days of receipt.

26 c. Providers shall accept copies of an applicant's lawful presence
27 documentation that have been verified by other CACP providers, Medical
28 Assistance sites, county departments of social services, or any other
29 entity designated by the Department of Health Care Policy and Financing
30 through an agency letter, provided that the verification identifies that the
31 copy is from an original and that the individual who reviewed the
32 document(s) signifies such by including their name, organization,
33 address, telephone number and signature on the copy.

34 d. The qualified health care provider shall retain photocopies of the affidavit
35 and lawful presence documentation ~~listed in 8.904.C~~ with the application.

36 53. Expired or absent documentation for non-U.S. citizens

37 a. If an applicant presents expired documents or is unable to present any
38 documentation evidencing his or her immigration status, refer the
39 applicant to the local Department of Homeland Security office to obtain
40 documentation of status.

41 b. In unusual circumstances involving applicants who are hospitalized or
42 medically disabled or who can otherwise show good cause for their

1 inability to present documentation and for whom securing such
2 documentation would constitute undue hardship, if the applicant can
3 provide an alien registration number, the provider may file U.S.C.I.S.
4 Form G-845 and Supplement, along with the alien registration and a
5 copy of any expired Department of Homeland Security document, with
6 the local Department of Homeland Security office to verify status.

7 c. If an applicant presents a receipt indicating that he or she has applied to
8 the Department of Homeland Security for a replacement document ~~for~~
9 ~~one of the documents listed in 8.904.2.b~~, file U.S.C.I.S. Form G-845 and
10 Supplement with a copy of the receipt with the local Department of
11 Homeland Security office to verify status.

12 64. The provider shall not discriminate against applicants on the basis of race,
13 national origin, gender, religion, age or disability. If an applicant has a disability
14 that limits the applicant's ability to provide the required evidence of citizenship or
15 lawful presence, the provider shall assist the individual to obtain the required
16 evidence.

17 a. Examples of reasonable assistance that may be expected include, but
18 are not limited to, providing contact information for the appropriate
19 agencies that issue required documents; explaining the documentation
20 requirements and how the applicant may provide the required
21 documentation; or referring the client to other agencies or organizations
22 which may be able to provide assistance.

23 b. Examples of additional assistance that shall be provided to applicants
24 who are unable to comply with the documentation requirements due to
25 physical or mental impairments or homelessness and who do not have a
26 guardian or representative who can provide assistance include, but are
27 not limited to, contacting any known family members who may have the
28 required documentation; contacting any known health care providers
29 who may have the required documentation; or contacting other social
30 services agencies or organizations that are known to have provided
31 assistance to the applicant.

32 c. The provider shall not be required to pay for the cost of obtaining
33 required documentation.

34 d. The provider shall document its efforts of providing additional assistance
35 to the client. Documentation of such shall be retained in the applicant's
36 application file.

37