

CITY OF BOULDER, COLORADO

Office of the City Attorney  
Municipal Building  
1777 Broadway  
Post Office Box 791  
Boulder, Colorado 80306  
Telephone (303) 441-3020  
Facsimile (303) 441-3859



**MEMORANDUM**

**TO:** Alison Rhodes; Parks & Rec Center Supervisor  
Amanda Bevis; Parks & Rec Business Analyst

**FROM:** Sandra M. Llanes; Senior Assistant City Attorney  
Gurney Pearsall; Law Clerk

**SUBJECT:** Reduced rate recreation classes and legal immigration verification requirements.

**DATE:** October 28, 2015

---

**QUESTION PRESENTED**

Does the current law<sup>1</sup>, require the Parks and Recreation Department staff to verify the lawful presence of individuals who apply to receive reduced rates for recreation classes based on income qualification?

**BRIEF ANSWER**

No. Because Parks and Recreation classes do not require a GED or high school diploma, they fall under neither category of “public benefits” referenced in H.B. 06S-1023.

**DISCUSSION**

H.B. 06S-1023 became effective on August 1, 2006 and affects persons who are not lawfully present in the United States. H.B. 06S-1023 relies on the definition of “public benefit” provided in 8 U.S.C. Sec. 1621(c)(1)(A) and (B), namely:

*(A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and*

*(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family*

---

<sup>1</sup> H.B. 06S-1023 codified at C.R.S. Sec. 24-76.5-101 et al.

*eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.*

Thus, “public benefits” only fall within the first part of the definition of 8 U.S.C. Sec. 1621(c)(1)(A) if they are contracts, grants, loans, or licenses. Under the second part of 8 U.S.C. Sec. 1621(c)(1)(B), “public benefits” falls under three categories of public benefits<sup>2</sup>:

- 1) benefits that assist people with economic hardships until they are able to financially manage on their own<sup>3</sup>;
- 2) benefits afforded on the basis of residency<sup>4</sup>; and
- 3) benefits that are earned<sup>5</sup>.

Recreation classes are not equivalent to a contract, grant, loan, or license that would fall under 8 U.S.C. Sec. 1621(c)(1)(A). Furthermore, recreation classes do not fall within the three broad categories of 8 U.S.C. Sec. 1621(c)(1)(B) either. They are most comparable to the reduced rates offered via in-state tuition for postsecondary education. However, postsecondary education is distinguished from other forms of education by the fact that it requires a GED or high school diploma. It would therefore appear that a Parks and Recreation class would not fall within the definition contemplated in H.B. 06S-1023.

A review of current case law and the statutes did not reveal any changes or new developments in the law since the adoption of the bill in 2006 that would affect the outcome of the issues addressed in this memo. The bill’s current language continues to rely on the definition of “public benefits” provided in 8 U.S.C. Sec. 1621. H.B. 06S-1023 has been codified into C.R.S. Sec. 24-76.5-101.

## **CONCLUSION**

Because Parks and Recreation classes do not require a GED or high school diploma, they fall under neither category of “public benefits” provided in the law. Therefore, the Parks and Recreation Department staff need not verify the lawful presence of individuals who apply to receive reduced rates for recreation classes based on income qualification.

## **ATTACHMENT:**

CAO Report dated August 4, 2006 and titled, “Question and Answer Guide to H.B. 06S-1023 Restrictions on Public Benefits for Persons not Lawfully Present in the United States”.

---

<sup>2</sup> According to the CAO Report dated August 4, 2006 and titled, “Question and Answer Guide to H.B. 06S-1023 Restrictions on Public Benefits for Persons not Lawfully Present in the United States” Page 2-3.

<sup>3</sup> Such as welfare, housing, and food assistance.

<sup>4</sup> Such as in-state tuition for postsecondary education.

<sup>5</sup> Such as retirement benefits.

# REPORT



Office of the  
City Attorney

Boulder • Colorado • USA

## QUESTION AND ANSWER GUIDE TO H.B. 06S-1023 RESTRICTIONS ON PUBLIC BENEFITS FOR PERSONS NOT LAWFULLY PRESENT IN THE UNITED STATES

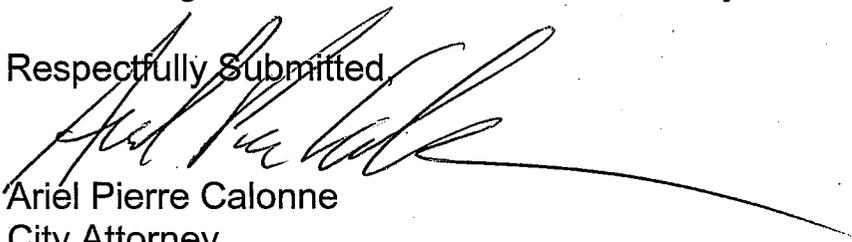
August 4, 2006

On July 31, 2006, Colorado Governor Bill Owens signed ten new laws affecting persons who are not lawfully present in the United States. These laws require the City of Boulder to make a number of business changes that affect and limit applications for certain public benefits, licenses, permits, and programs.

Many of these new laws became effective on August 1, 2006, including H.B. 06S-1023. This question and answer guide is intended to help city staff and the public understand how to comply with H.B. 06S-1023. Because these laws are so new, it is likely that our advice will change as we receive new information from the courts, the legislature, or state agencies.

This guide also includes a form affidavit for City departments to use, along with a copy of the Department of Revenue's Emergency Rules. In addition, our City website ([www.bouldercityattorney.org](http://www.bouldercityattorney.org)) will include information on other immigration-related laws enacted this year.

Respectfully Submitted,



Ariel Pierre Calonne

City Attorney

City of Boulder

(303) 441-3020 [calonnea@bouldercolorado.gov](mailto:calonnea@bouldercolorado.gov)

# QUESTION AND ANSWER GUIDE TO COLORADO'S NEW IMMIGRATION STATUS LAWS

---

## **What are the new requirements of H.B. 1023?**

Before the City may provide certain public benefits it must verify that the applicant is lawfully present in the United States.<sup>1</sup> The verification process has three stages: (1) the applicant shows a form of identification; (2) the applicant executes an affidavit; and (3) for non-citizens, the City verifies that the applicant is lawfully present through the SAVE program.<sup>2</sup>

## **Who does H.B. 1023 apply to?**

Any person aged 18 or older who applies for certain public benefits is affected by H.B. 1023.<sup>3</sup>

## **When does H.B. 1023 become effective?**

Starting on August 1, 2006, the City must verify the lawful presence of any person eighteen years of age or older who applies for certain public benefits.<sup>4</sup> Verification of existing beneficiaries is not required until the existing beneficiary *reapplies* for the continuation of those benefits --which typically occurs on an annual basis.<sup>5</sup>

## **Why has the Colorado legislature adopted H.B. 1023?**

Under federal law, aliens not lawfully present in the U.S. have been ineligible to receive certain federal, state, and local public benefits.<sup>6</sup> The legislature enacted H.B. 1023 to ensure that Colorado complies with federal law already in existence.

## **Is it necessary to verify an applicant's lawful presence for all benefits?**

No. The law is very specific that only certain types of public benefits are included.<sup>7</sup> For example, only "postsecondary" education is covered, rather than all education. We believe that postsecondary education is any education for which, as a prerequisite, the applicant must have earned a high school diploma or GED. A postsecondary education benefit includes in-state tuition or any other financial benefit based on residency to be used for postsecondary education.<sup>8</sup>

## QUESTION AND ANSWER GUIDE TO COLORADO'S NEW IMMIGRATION STATUS LAWS

---

Because the education and recreation programs offered by the City of Boulder do not require a GED or high school diploma as a prerequisite, they are not considered postsecondary education. Thus, the City will not need to verify an applicant's lawful presence before that individual attends, for example, a yoga class offered by Parks and Recreation or a English literacy tutoring class provided by the library.

### **Which benefits are included in the new requirements?**

H.B. 1023 refers to federal law for its definitions of public benefits.<sup>9</sup> There are two groups of benefits affected.

The first group of benefits ("Group A") includes contracts, grants, loans, and licenses. The second group of benefits ("Group B") includes retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit.<sup>10</sup>

There are also a number of exceptions that are exempt from the verification requirements of H.B. 1023, even if they otherwise fall into the categories listed above.<sup>11</sup>

### **How does Group A differ from Group B?**

Under Group A, if the City provides any grant, contract, loan, professional license, or commercial license to an individual, either through a City agency or with City funds, then it provides a benefit for which verification is required.<sup>12</sup> If a benefit does not fall *specifically* on this list, then it is not a Group A benefit.

Group B consists of benefits for which payments are provided to an individual, a household, or a family eligibility unit by the City or with City funds. Specific examples include retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, or unemployment benefit. Even if a benefit is not found on the Group B list of specific examples, if it is a *similar* benefit to any listed benefit, then it is considered a Group B benefit.<sup>13</sup>

## QUESTION AND ANSWER GUIDE TO COLORADO'S NEW IMMIGRATION STATUS LAWS

---

### **Can I get more specific information about the benefits included in Group A?**

H.B. 1023 applies only to natural persons aged eighteen or older, not to corporations, partnerships, or any other entity.<sup>14</sup> Therefore, the new requirements apply to any natural person who contracts with or receives a grant, loan, or professional or commercial license from the City.

The Office of Legislative Legal Services does not believe that a building permit that authorizes work to be performed on private property (and for which no state or local money is transferred to another party) is a contract intended to be covered by H.B. 1023.<sup>15</sup>

It is possible that a person's response to the City's request for proposals *may* be considered applying for the contract, thus triggering the verification requirement.<sup>16</sup>

The verification requirements of H.B. 1023 apply to a new building contractor's license as well as to the *renewal of current* contractor licenses.<sup>17</sup>

Because a liquor license is an authorization to engage in a business, the Office of Legislative Legal Services believes that a liquor license would be considered a "commercial license."<sup>18</sup>

### **Can I get more specific information about the benefits included in Group B?**

If a benefit is not specifically included on the Group B list, then the City must check to see if the benefit is similar to any of the benefits on the list. The listed benefits are primarily a means for the government to assist people with economic hardships until they are able to financially manage on their own (such as welfare, housing, and food assistance) a financial benefit afforded on the basis of residency (such as in-state tuition for postsecondary education), or an earned benefit (such as retirement). Unless an unlisted benefit is similar to one on the list by fitting into one of those categories, then it is not a Group B benefit.

## QUESTION AND ANSWER GUIDE TO COLORADO'S NEW IMMIGRATION STATUS LAWS

---

For example, workers' compensation likely would not be included because it is not an earned benefit; rather it is a legal alternative to the usual court remedies for negligence.<sup>19</sup>

### **Are there any exceptions to the list of benefits affected?**

Yes. The Colorado legislature has decided that certain programs are exempt from the verification requirements of H.B. 1023, even if they otherwise fall into the categories listed above.<sup>20</sup> The City will not need to verify an applicant's lawful presence in the United States when providing:

- items and services for treating an emergency medical condition (excluding organ transplants);
- short-term, in-kind emergency disaster relief;
- immunizations, testing, and treatment of communicable disease;
- prenatal care; or
- "programs and services" that satisfy all three elements of the following test: (1) delivered in-kind at the community level, (2) not conditioned in any respect on a client's income, and (3) necessary for the protection of life or safety.<sup>21</sup>

### **What are some examples of the "programs and services" exemption?**

The following public benefits are clearly exempt from verification, as long as they meet the requirements of the three-part test listed above:

- crisis counseling and intervention programs, services, and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence or other criminal activity, or treatment of mental illness or substance abuse;

## QUESTION AND ANSWER GUIDE TO COLORADO'S NEW IMMIGRATION STATUS LAWS

---

- short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children;
- programs, services, or assistance to help individuals during periods of heat, cold, or other adverse weather conditions;
- soup kitchens, community food banks, senior nutrition programs such as meals on wheels, and other such community nutritional services for persons requiring special assistance;
- medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability, or substance abuse assistance; and
- activities designed to protect the life and safety of workers, children and youths, or community residents.<sup>22</sup>

There may be other exempt "programs and services," so long as they meet the three-part test.

### **What are some examples of programs and services that DO NOT meet the exemption?**

Programs and services must meet all three of the following requirements: (1) delivered in-kind at the community level, (2) not conditioned in any respect on a client's income, and (3) necessary for the protection of life or safety. If a program meets only one or two of the criteria, it does not fall under the "programs and services" exemption.

- Any state or local public benefit that employs a *sliding scale of costs for services* would not qualify for an exemption under the three-part test for programs and services.<sup>23</sup>
- Additionally, a state or local public benefit that *limits access to services or the amount of such services according to a client's income or ability to pay* would not qualify for an exemption under the three-part test for programs and services.<sup>24</sup>

## **QUESTION AND ANSWER GUIDE TO COLORADO'S NEW IMMIGRATION STATUS LAWS**

---

**If the City fails to ask for my identification or an affidavit before I receive a benefit, have I broken the law?**

No. If the City does not ask you for your identification or to fill out an affidavit, you have not broken the law. However, if the City does request these items and an applicant falsely claims to be a United States citizen, legal permanent resident or alien otherwise lawfully present in this country, then that person will be guilty of perjury in the second degree, a Class 1 misdemeanor.<sup>25</sup>

**What if it is unclear whether a benefit requires verification?**

After considering whether the benefit either falls into Group A or Group B or falls into one of the exceptions, if the City is still unsure whether a program provides a state or local public benefit that requires verification, it should determine whether the program fits into the "ordinary and common meaning" of any term in the statute.<sup>26</sup>

If the service offered by a particular program is not ordinarily or commonly considered to be a grant, contract, loan, professional license, or commercial license or a retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit, then the City likely does not have to apply the verification requirements for that particular service.

Where a state or local public benefit is not clearly on the list that requires verification nor clearly on the list of benefits to be excluded by the statute, we believe the City's reasonable determination of whether that particular program is one included by the definitions in the statute will be upheld.<sup>27</sup>

**How must the City verify that an applicant is lawfully present in the U.S.?**

The verification process has three stages: (1) the applicant shows an acceptable identification;<sup>28</sup> (2) the applicant executes the required affidavit;<sup>29</sup> and, if necessary, (3) the City verifies that the applicant is lawfully present through the SAVE program.<sup>30</sup>

## **QUESTION AND ANSWER GUIDE TO COLORADO'S NEW IMMIGRATION STATUS LAWS**

---

**Will verification be required if a parent applies for a public benefit on behalf of his or her minor child?**

No. H.B. 1023 applies to the person receiving the public benefit. Where a parent submits an application on behalf of his or her child for benefits to be received by the child, the City need not verify the lawful presence of the parent. Moreover, because H.B. 1023 applies only to persons over eighteen years of age, the City need not verify the lawful presence of the child.<sup>31</sup>

**Which forms of identification are required?**

The City must require the applicant to produce *one* of the following forms of identification:

- a valid Colorado driver's license or a Colorado identification card issued by the Department of Revenue;
- a United States military card or a military dependent's identification card;
- a United States Coast Guard Merchant Mariner card; or
- a Native American tribal document.<sup>32</sup>

**Does the City now have an obligation to train its staff to detect a false identification?**

H.B. 1023 does not specifically require the City to train its staff to detect false IDs, but the City will be providing sample copies of the acceptable identification for staff reference as soon as they can be obtained.

**Are any other forms of identification acceptable?**

The Executive Director of the Department of Revenue has issued emergency rules effective until March 1, 2007. These rules temporarily allow additional forms of identification and a waiver process to ensure that individuals such as homeless state citizens who seek benefits pursuant to

## **QUESTION AND ANSWER GUIDE TO COLORADO'S NEW IMMIGRATION STATUS LAWS**

---

this section prove lawful presence in the U.S.<sup>33</sup> These rules permit the use of driver's licenses or photographic identification cards from the 34 states that require proof of lawful presence, citizenship, a valid immigration document, birth certificate, Order of Adoption or Certificate of Naturalization. Some of the acceptable state licenses and ID cards include Arizona, California, Kansas, Oklahoma, and Wyoming. The emergency rules are attached at the end of this guide.

### **What happens if a person is here legally, but does not have the necessary documents?**

A person will need to obtain one of the specified forms of identification or follow the waiver process described in the attached emergency rules.<sup>34</sup>

### **How should the City handle state or federal programs with different identification requirements than H.B. 1023?**

H.B.1023 requires applicants to produce one of four types of identification. However, federal laws relating to the state administration of federal benefits often specify certain identification requirements. Where these laws conflict, traditional rules of federal preemption apply. Thus, if the federal law expressly prohibits state intervention in that area, or if the federal law specifically enumerates identification requirements, H.B. 1023 does not apply and the state entity should continue to follow federal law. Where federal law does not specifically speak to identification requirements or expressly states that state entities may add further requirements, H.B. 1023 requirements will likely apply. Ultimately, this will require a case by case analysis, so contact the City Attorney's Office if you have questions.<sup>35</sup>

### **What are the requirements for the affidavit?**

An affidavit is a written statement made under oath. The applicant for certain public benefits must execute an affidavit that states that he or she: (a) is a United States citizen or legal permanent resident; or (b) is otherwise lawfully present in the U.S. pursuant to federal law.<sup>36</sup> We have attached a recommended form as an appendix to this guide.

## **QUESTION AND ANSWER GUIDE TO COLORADO'S NEW IMMIGRATION STATUS LAWS**

---

### **Must the required identification and affidavit be submitted in person?**

Not always. In order to improve efficiency, to reduce delay in the verification process, or to avoid unusual hardship on legal residents, the City may vary the affidavit requirement, as long as the variation is no less stringent than the H.B. 1023 requirements.<sup>37</sup>

If the affidavit is executed through an online or mail-in registration form, then the City must still verify that the person applying for the benefit is the person described in the submitted identification and affidavit.<sup>38</sup> For an online application process, the application form should include a method of collecting the applicant's electronic signature (for example, by checking a box or clicking on an "I agree" button).<sup>39</sup>

It should also be noted that H.B. 1023 does not modify any federal guidelines that require the City to acquire and retain copies of eligibility documentation (Medicaid, Food Stamps, TANF, etc.); for those benefits, the City must continue to follow the federal requirements.<sup>40</sup>

### **Must the required affidavit be notarized?**

The affidavit need not be notarized; however, it must include: (1) a statement that the signatory is a United States citizen, legal permanent resident, or otherwise lawfully present in the United States pursuant to a federal law, and (2) that the person swears or affirms under penalty of perjury that the statement made in the affidavit is true and complete.<sup>41</sup>

### **What is the next step after the applicant has executed the required affidavit?**

If an applicant has executed an affidavit stating that he or she is an alien (non-citizen) lawfully present in this country, the City must verify the applicant's lawful presence in the United States through the Federal Systematic Alien Verification of Entitlement Program ("SAVE Program").<sup>42</sup> Until such verification has been made through the SAVE Program, the City may rely on the affidavit as proof of lawful presence.<sup>43</sup>

## **QUESTION AND ANSWER GUIDE TO COLORADO'S NEW IMMIGRATION STATUS LAWS**

---

### **Is there any cost for using the SAVE Program?**

Yes. State agencies and local government entities will be required to subscribe to the Federal SAVE Program at a cost of \$25 / month (\$300 / year) and will also have to pay for each SAVE Program search (\$0.20 to \$0.26 per search).<sup>44</sup>

### **Can the City pass on the cost of the SAVE Program?**

Yes. The City may pass on the cost of the SAVE Program to applicants for public benefits through an H.B. 1023 surcharge.

### **What if there are any problems with the SAVE Program?**

The City is required by H.B. 1023 to report any errors or significant delays by the SAVE Program to the U.S. Department of Homeland Security and to the Secretary of State.<sup>45</sup>

### **How long and in what manner is a local government required to maintain the ID verification paperwork?**

H.B. 1023 does not specify how long or in what manner documentation must be maintained. Unless the subject of some exemption, the verification paper work would constitute a public record.<sup>46</sup>

### **What must a benefit provider do to show that it has complied with the new verification requirements?**

Each state agency or department that administers a program that provides state or local public benefits shall provide an annual report with respect to its compliance with the requirements of H.B. 1023 to the State, Veterans, and Military Affairs Committees of the Senate and House of Representatives.<sup>47</sup> The City can accomplish this through an aggregate compilation of all affidavits collected from applicants for public benefits. We are advising that the affidavits include a section to help the City compile these data.

## **QUESTION AND ANSWER GUIDE TO COLORADO'S NEW IMMIGRATION STATUS LAWS**

---

### **What happens if an applicant falsely claims to be lawfully present in the United States?**

If an applicant who is required to fill out an affidavit to receive a particular public benefit falsely claims to be a United States citizen, legal permanent resident or alien otherwise lawfully present in this country, then that person will be guilty of perjury in the second degree, a Class 1 misdemeanor.<sup>48</sup> Each time that a person receives a public benefit based upon a false affidavit will constitute a separate violation of C.R.S. § 18-8-503.<sup>49</sup>

### **What happens if the City does not ask for the necessary documents?**

While the bill states that it shall be unlawful for the City to provide a federal, state or local public benefit in violation of this section, H. B. 1023 did not create any specific penalty against a state agency or local government for not requiring the specified forms of identification.<sup>50</sup> Under existing law, a person might be able to sue the City to try and get a court order requiring the City to follow the requirements of the law.<sup>51</sup>

### **How should the City deal with the different effective dates and different ID requirements in H.B. 1023 & H.B. 1009?**

Both H.B.1009 and H.B. 1023 appear to cover commercial licenses as defined as a "state or local public benefit" in federal law. H.B. 1023 will require verification of lawful presence starting August 1, 2006, while H.B. 1009 will not be effective until January 1, 2007.

While H.B. 1023 contains a restricted list of permissible forms of identification, H.B. 1009 authorizes the use of any form of secure and verifiable document. On the other hand, H.B. 1023 contains an exception pursuant to an emergency rule of the Executive Director of the Department of Revenue; H.B. 1009 does not contain such an exception.<sup>52</sup>

If the City complies with H.B.1023 by using the forms of identification listed in that bill or any alternative form of identification that is allowed pursuant to the emergency rule and that is a secure and verifiable document, this will meet the identification requirements for both bills.<sup>53</sup>

\* \* \* \* \*

**CITY OF BOULDER  
IMMIGRATION STATUS AFFIDAVIT**

**SECTION 1: IDENTIFICATION DOCUMENTS**

I, \_\_\_\_\_, currently lawfully possess and am able to produce upon request the following identification document as evidence of my lawful presence in the United States (check one):

- Valid Colorado driver's license or a Colorado identification card issued by the Department of Revenue
- United States military card or a military dependent's identification card
- United States Coast Guard Merchant Mariner card
- Native American tribal document
- Other Document Allowed By Emergency Rules (*Only allowed until March 1, 2007*)

List the identification number from the document you are relying upon to show your lawful presence in the United States (for example, your driver's license number):

\_\_\_\_\_

**SECTION 2: CITIZENSHIP AFFIDAVIT**

I, \_\_\_\_\_, swear or affirm under penalty of perjury under the laws of the State of Colorado that (check one):

- I am a United States citizen, or
- I am a Permanent Resident of the United States, or
- I am lawfully present in the United States pursuant to Federal law.

I understand that this sworn statement is required by law because I have applied for a public benefit. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statute 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**EMERGENCY RULES FOR EVIDENCE OF LAWFUL PRESENCE  
ISSUED BY THE DEPARTMENT OF REVENUE**

## Emergency Rules for Evidence of Lawful Presence

### 1. Definitions

- 1.1. Applicant—Any natural person eighteen years of age or older seeking non-exempt Public Benefits for themselves as set forth in §24-76.5-102 and 103 C.R.S.
- 1.2. Benefit Agency—Agency of the state or of any political subdivision of the state of Colorado providing Public Benefits as defined in §24-76.5-102 C.R.S.
- 1.3. Department—The Colorado Department of Revenue.
- 1.4. Director—The Executive Director of the Colorado Department of Revenue.
- 1.5. Electronic Identification Indicator—An entry, valid until March 1, 2007, located in the Department's Driver's License System database that indicates either Applicant's lawful presence or insufficient evidence of lawful presence.
- 1.6. Immigration Documents—Any of the following:
  - 1.6.1. Unexpired Foreign Passport bearing an unexpired "Processed for I-551" stamp or with an attached unexpired "Temporary I-551" visa.
  - 1.6.2. Unexpired Foreign Passport accompanied by an "I-94" indicating a specific future "until" date.
  - 1.6.3. "I-94" with refugee or asylum status.
  - 1.6.4. Unexpired "Resident Alien" card, "Permanent Resident" card, "Temporary Resident" card, or "Employment Authorization" card.
- 1.7. Request for Waiver—Request form (attached as an exhibit to these rules and incorporated herein) completed by an Applicant seeking a determination of lawful presence by the Department and resulting in an Electronic Identification Indicator. The Request for Waiver must be accompanied by all documents

that Applicant can produce to verify name and proof of lawful presence.

- 1.8. SAVE—The Systematic Alien Verification for Entitlements Program administered by the United States Citizenship and Immigration Services of the Department of Homeland Security.

## 2. Identification Documents

- 2.1. A first time Applicant or Applicant seeking to reapply for public benefits on or after August 1, 2006 may demonstrate lawful presence by both executing the affidavit required in §24-76.5-103(4)(b) C.R.S. and producing:
  - 2.1.1. One of the forms of identification set forth in §24-76.5-103(4)(a) C.R.S., except that for purposes of §24-76.5-103(4)(a)(1), a Valid Colorado Driver's License or Identification Card includes only a current Driver's License, Minor Driver's License, Probationary Driver's License, Commercial Driver's License, Restricted Driver's License, Instruction Permit or Identification Card;
  - 2.1.2. Alternative Identification allowed until March 1, 2007, as follows:
    - 2.1.2.1. Certificate of Applicant's birth issued by any of the United States, any county or parish of any of the United States, one of the five boroughs of New York City, the District of Columbia, or the Departments of State or Justice of the United States;
    - 2.1.2.2. Certificate verifying naturalized status Issued by an authorized agency of the United States bearing Applicant's intact photograph impressed with the raised embossed seal of the issuing agency;
    - 2.1.2.3. Certificate verifying United States citizenship issued by an authorized agency of the United States bearing Applicant's intact photograph impressed with the raised embossed seal of the issuing agency;

- 2.1.2.4. Order of Applicant's Adoption, including Applicant's date of birth, bearing the seal or certification of the court of any political subdivision or territory of the United States;
- 2.1.2.5. Valid Driver's License or Identification Card bearing Applicant's photograph issued by one of the following: Alabama, Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Virginia, West Virginia, and Wyoming;
- 2.1.2.6. Valid Immigration Documents demonstrating Lawful Presence and verified through SAVE.

### **3. Waiver Process**

- 3.1. A first time Applicant or Applicant seeking to reapply for public benefits on or after August 1, 2006 and before March 1, 2007, who
  - a. due to chronic health or medical condition, lacks sufficient mobility to appear in person to apply for a Colorado Driver's License or Identification Card,
  - b. due to lack of a permanent physical address in Colorado, does not qualify for a Colorado Driver's License or Identification Card, or
  - c. may lack sufficient documentation to receive a Colorado Driver's License or Identification Cardmay demonstrate lawful presence by both executing the affidavit required in §24-76.5-103(4)(b) C.R.S. and being verified with an Electronic Identification Indicator.

- 3.1.1. Upon receipt of a Request for Waiver together with all supporting documentation The Department will establish the Electronic Identification Indicator. Until March 1, 2007, any Benefit Agency may rely on electronic verification of lawful presence from the Department evidenced by the Electronic Identification Indicator.
- 3.1.2. The Benefit Agency is responsible for verifying that their Applicant is the same individual indicated as being lawfully present with an Electronic Identification Indicator.
- 3.2. A state agency may apply to the director for a waiver for a specific program under which the applicant's lawful presence will be verified through a related state or federal program contemporaneous to the current application. Likewise, a local agency may request a waiver from the director for a specific program under which the applicant's lawful presence will be verified through a related local, state or federal program contemporaneous to the current application.

#### **4. Required Advisement**

- 4.1. A Benefit Agency awarding benefits based on Alternative Identification set forth in 2.1.2. above or the Electronic Identification Indicator must advise Applicant of the following:
  - 4.1.1. Under current Colorado law, in order to receive benefits beyond March 1, 2007, Applicant must produce one of the forms of identification set forth in §24-76.5-103(4)(a) C.R.S.;
  - 4.1.2. As soon as possible, Applicant should begin working diligently to secure the appropriate identification document; and
  - 4.1.3. A determination of eligibility for benefits based on an Alternative Identification or the Electronic Identification Indicator in no way constitutes a representation that Applicant has provided sufficient information or documentation to support the issuance of one of the forms of identification set forth in §24-76.5-103(4)(a) C.R.S.

## LEGAL AUTHORITY APPENDIX

<sup>1</sup> H.R. 06S-1023, 65th Gen. Assem., 1st Spec. Sess. § 24-76.5-103(1) (Colo. 2006).

<sup>2</sup> *Id.* § 24-76.5-103(4); *Id.* § 24-76.5-103(7).

<sup>3</sup> *Id.* § 24-76.5-103(1).

<sup>4</sup> *Id.*

<sup>5</sup> Memorandum from Cynthia Coffman, Chief Deputy Attorney General & Jason Dunn, Deputy Attorney General; State of Colorado; Office of the Attorney General; to Jon Anderson, Chief Counsel to the Governor (July 19, 2006) [hereinafter Anderson Memo].

<sup>6</sup> 8 U.S.C. § 1611(a) (2006); *Id.* § 1621(a).

<sup>7</sup> *Id.*

<sup>8</sup> 8 U.S.C.A. § 1623(a) (2006). Also, Colorado's Office of the Attorney General stated that an alien unlawfully present may not receive in-state tuition status at institutions of higher education in this State, but did not state that the alien may not have access to the postsecondary education. Op. Colo. Att'y Gen. No. 06-01, 2006 WL 1370998 (Jan. 23, 2006).

<sup>9</sup> The state and local benefits affected by H.B. 1023 are defined in 8 U.S.C. § 1621. H.R. 06S-1023, § 24-76.5-102(3). (The federal benefits affected by H.B. 1023 are defined in 8 U.S.C. § 1611; the definitions and exceptions for federal benefits are the same as for state and local benefits, except that federal public benefits are provided by an agency of the United States or by appropriated funds of the United States. 8 U.S.C.A. § 1611(c).)

<sup>10</sup> Under Article 8 of the United States Code, "state or local public benefit" is defined as "(A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government." 8 U.S.C.A. § 1621(c)(1) (West 2006).

<sup>11</sup> H.R. 06S-1023, § 24-76.5-103(3)

<sup>12</sup> 8 U.S.C.A. § 1621(c)(1) (West 2006).

<sup>13</sup> *Id.*

<sup>14</sup> Anderson Memo, *supra* note 5.

<sup>15</sup> Memorandum from Office of Legislative Legal Services; Colorado General Assembly; to Representative Andrew Romanoff (July 21, 2006) [hereinafter Romanoff Memo].

<sup>16</sup> *Id.*

<sup>17</sup> B.R.C. § 4-4-3; Romanoff Memo, *supra* note 15.

<sup>18</sup> Romanoff Memo, *supra* note 15.

<sup>19</sup> *Rajeh v. Steel City Corp.*, 813 N.E.2d 697, 706-07 (Ohio Ct. App. 2004).

<sup>20</sup> H.R. 06S-1023, § 24-76.5-103(3).

<sup>21</sup> *Id.*

<sup>22</sup> *Verification of Eligibility for Public Benefits*, 63 Fed. Reg. 41,662, 41,665 (proposed Aug. 4, 1998) (to be codified at 8 C.F.R. pt. 104).

## LEGAL AUTHORITY APPENDIX

---

<sup>23</sup> *Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation*, 66 Fed. Reg. 3613, 3615 (Dep't of Justice Jan. 16, 2001) (notice of final order).

<sup>24</sup> *Id.*

<sup>25</sup> H.R. 06S-1023, § 24-76.5-103(6); COLO. REV. STAT. ANN. § 18-8-503 (West 2006).

<sup>26</sup> *Vigil v. Franklin*, 103 P.3d 322, 327 (Colo. 2004).

<sup>27</sup> The federal government has traditionally deferred to benefit granting agencies' interpretations of whether a particular program is intended to be included in 8 U.S.C. §1611 (and the Acts that preceded the statute), the federal counterpart to the definition of state and local benefits located in 8 U.S.C. § 1621. *Verification of Eligibility for Public Benefits*, 63 Fed. Reg. at 41,664; *Final Specification of Community Programs*, 66 Fed. Reg. at 3614. It is likely, therefore, that the State of Colorado will behave similarly. Where a state or local public benefit is not clearly on the list that requires verification nor clearly on the list of benefits to be excluded by the statute, a Colorado court will likely defer to the City's determination of whether that particular program is one included by the definitions in the statute.

<sup>28</sup> H.R. 06S-1023, § 24-76.5-103(4).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* § 24-76.5-103(7).

<sup>31</sup> Anderson Memo, *supra* note 5.

<sup>32</sup> H.R. 06S-1023, § 24-76.5-103(4).

<sup>33</sup> *Id.* § 24-76.5-103(5)(a).

<sup>34</sup> Memorandum from Office of Legislative Legal Services; Colorado General Assembly; to Interested Persons (July 20, 2006) [hereinafter Persons Memo];

<sup>35</sup> Anderson Memo, *supra* note 5.

<sup>36</sup> *Id.*

<sup>37</sup> H.R. 06S-1023, § 24-76.5-103(8).

<sup>38</sup> Anderson Memo, *supra* note 5.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> H.R. 06S-1023, § 24-76.5-103(7).

<sup>43</sup> *Id.*

<sup>44</sup> *State and Local Revised Fiscal Impact: Concerning the Immediate Implementation of Restrictions on Public Benefits as Defined in Article 8 of the United States Code for Persons Eighteen Years of Age or Older Effective August 1, 2006*, Colo. Legis. Council Staff (July 7, 2006) (analysis of Chris Ward).

<sup>45</sup> H.R. 06S-1023, § 24-76.5-103(10).

<sup>46</sup> Romanoff Memo, *supra* note 15.

<sup>47</sup> H.R. 06S-1023, § 24-76.5-103(9).

<sup>48</sup> *Id.* § 24-76.5-103(6); COLO. REV. STAT. ANN. § 18-8-503 (West 2006). The penalty for a Class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. COLO. REV. STAT. § 18-1.3-501 (2006).

<sup>49</sup> H.R. 06S-1023, § 24-76.5-103(6).

<sup>50</sup> *Id.* § 24-76.5-103(9).

## LEGAL AUTHORITY APPENDIX

---

<sup>51</sup> Persons Memo, *supra* note 34.

<sup>52</sup> Romanoff Memo, *supra* note 15.

<sup>53</sup> *Id.*

\*\*\*\*\*