


# BACKGROUND BRIEF

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## HOUSE BILL 06-1023

### VERIFICATION OF LAWFUL PRESENCE



OCTOBER 2017

## INTRODUCTION

Advocates across Colorado are interested in improving access to health coverage and care for Colorado's immigrant populations. One barrier to improving access is state legislation referred to as House Bill 06-1023 (HB 1023).<sup>1</sup> HB 1023 requires state and local government agencies, with some exceptions, to verify the lawful presence of applicants for public benefits.

**The barriers resulting from the law are the result of commonly held misunderstandings more so than the law's actual requirements.** Federal law prohibits states, with some exceptions, from providing federal, state, and local public benefits to immigrants that do not have legal status. Colorado must adhere to the federal requirements and verify the lawful presence of applicants for public benefits regardless of whether HB 1023 is repealed.

This brief clarifies the elements of HB 1023, so that advocates have a clearer understanding of the opportunities and key barriers that exist for making government-sponsored health benefits available and more easily accessible to Colorado's immigrant populations.

# BACKGROUND

HB 1023 generally requires state and local government entities to verify the lawful presence in the United States of each person over the age of 18 who applies for federal, state, or local public benefits.

The distinction between federal, state, and local public benefits is based on funding source. Federal public benefits, such as federal food assistance (a.k.a. SNAP) and Medicare, are funded with federal dollars. State public benefits, such as Colorado's Old Age Pension program and Aid to the Needy Disabled program, are funded with state dollars. Medicaid, which is funded with state and federal dollars, is both a state and federal public benefit.

HB 1023 originally required that applicants produce a state driver's license or ID card, a US military ID card, a US Coast Guard merchant mariner card, or a Native American tribal document, and sign an affidavit affirming citizenship or legal status. That list

of acceptable documents was permanently expanded under HB 07-1314. Department of Revenue rules allows public benefit agencies to use any type of document allowed under federal law to verify lawful presence. **This essentially makes HB 1023 duplicative of federal verification requirements.**

## DEFINITION OF PUBLIC BENEFITS<sup>2</sup>

### Includes:

- Grants, contracts, or loans by a federal, state, or local agency
- Government-funded health, welfare, food assistance, and other benefits provided through rule- or statute-defined eligibility

### Does not include:

- General state services such as police, fire, public transportation, or paramedics
- Low-cost health care and charity care made available to the community by non-profit clinics and hospitals (even if state or federal funds support those institutions)

## EXCEPTIONS TO VERIFICATION REQUIREMENT

- Applicants under 18 years of age
- Health benefits necessary for the treatment of an emergency medical condition
- Short-term, non-cash, government-sponsored emergency disaster relief
- Immunization programs
- Programs that test for and treat the symptoms of communicable diseases
- In-kind community services that protect life or safety (such as soup kitchens, crisis counseling, or short-term shelter) and are not conditional on income or resources
- Pregnant women
- Any purpose for which lawful presence isn't required by law ordinance or rule

### Additional exceptions were added in subsequent years:

- Individuals over 18 and under 19 years of age that remain eligible for medical assistance after their 18th birthday
- Renewing an educator license
- Recipients of certain educational services and benefits

**These exceptions do not make immigrants without legal status eligible for public benefits and they do not negate the verification requirements that exist independently of HB 1023.** Thus, even though HB 1023 does not require pregnant women or those under 18 to verify lawful presence, pregnant women and children without legal status are still generally barred from accessing federal, state, or local public benefits, including Medicaid and CHP+.<sup>3</sup>

# ELIGIBILITY REQUIREMENTS

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For the most part, HB 1023 tracks existing federal eligibility requirements, requiring state and local agencies to verify lawful presence **only where some form of lawful presence is a condition of eligibility under federal law.**

For example, federal law requires certain forms of lawful presence as a condition of eligibility for federal, state, and local public benefits with specific exceptions for emergency Medicaid, certain in-kind government services, and certain public health assistance. Tracking those requirements, HB 1023 requires agencies to verify the lawful presence of applicants for federal, state, and local public benefits, as defined under federal law, with the same exceptions.

The federal immigrant eligibility restrictions on state and local public benefits have an additional exception that allows for state or local public benefits programs for immigrants that do not have legal status. The exception provides that lawful presence is not required for state or local public benefit programs created pursuant to state legislation that affirmatively provides that lawful presence is not required for eligibility. This exception has allowed states like California to offer state-funded medical assistance benefits to children that do not have legal status.

While this has resulted in some confusion, HB 1023 also allows for state and local programs for immigrants that do not have legal status. HB 1023 explicitly provides that verification of lawful presence is not required “for any purpose for which lawful presence shall not be required by law, ordinance, or rule.” **State legislation that creates a public benefits program and affirmatively provides that lawful presence is not required for eligibility would meet both the federal exception described above and the HB 1023 exception addressed in this paragraph.**

HB 1023 also does not require verification of lawful presence for pregnant women, individuals under 18 years of age, Medicaid- or CHP+-eligible individuals over 18 and under 19, applicants for certain educator license renewals, and applicants for certain higher education benefits. There are not blanket exemptions from the federal immigrant eligibility restrictions on public benefits for these groups, however, and applicable federal verification requirements will still apply.

# ADVOCACY CONSIDERATIONS

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1. **Creation of a state- or local-funded medical assistance program in Colorado could proceed under the current federal and state statutory framework.** Federal law allows state and local governments to provide state or local public benefits to immigrants without legal status if state legislation affirmatively provides that lawful presence is not required for eligibility. HB 1023 would not require verification of lawful presence in that situation because of the exception that provides verification shall not be required “for any purpose for which lawful presence shall not be required by law.”
2. **Repealing HB 1023 will not eliminate the requirement that agencies verify the lawful presence of applicants for public benefits.** Since verification of lawful presence is required independently of HB 1023, repeal of HB 1023’s requirements would not lessen the legal verification requirements public benefits applicants must meet.
3. **However, common misperceptions about what HB 1023 requires create access barriers for Colorado’s immigrant populations.** As it stands, the legal requirements of HB 1023 are no more restrictive than federal law. Advocates can either choose to repeal the state law in order to provide clarity or spend the time educating on the limitations of HB 1023 for further clarity. In the latter case, though, advocates should anticipate questions continuing to arise as public policy solutions are considered for immigrants.



## FREQUENTLY ASKED QUESTIONS

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### WHO IS MOST IMPACTED BY THE TERMS OF HB 1023?

**HB 1023, by its terms, should not make it more difficult for any group to access public benefits because it is duplicative of federal requirements.** HB 1023 has basically resulted in a state level codification of federal verification requirements that would apply whether or not HB 1023 existed. The requirement that agencies verify lawful presence certainly impacts some groups more than others. It impacts individuals that are not lawfully present and it also impacts U.S. citizens and lawfully present immigrants that do not have access to the necessary documents – homeless individuals and victims of domestic violence are common examples. The point here is that the terms of HB 1023 are not any more stringent than the public benefits restrictions that exist under federal law. However, HB 1023 is commonly misinterpreted in a way that restricts access to programs that receive government funding but that do not qualify as public benefits. .

### IS LAWFUL PRESENCE A REQUIREMENT FOR CICP?

**Yes.** As a matter of state law, participants in CICP must establish lawful presence. The Colorado Department of Health Care Policy and Financing recently redesigned CICP so that it is more like a grant program for participating clinics and hospitals. In this formulation, it is unclear whether CICP qualifies as a public benefit. This means that, while state law requires lawful presence, federal law as a separate matter may not.

### IF 1023 WERE REPEALED, WHAT WOULD CHANGE ABOUT VERIFICATION REQUIREMENTS IN COLORADO?

**The legal verification requirements would not change.** HB 1023 is duplicative of federal law so verification requirements would not change in its absence. However, this law is commonly misinterpreted and has created confusion around which programs immigrants can access and which they cannot. Repealing the law could, therefore, provide some clarity and would also end the practice using HB 1023 as an excuse for barring access to programs that should be available to anyone regardless of immigration status.

## CAN HOSPITALS AND CLINICS PROVIDE LOW-COST AND CHARITY CARE SERVICES TO IMMIGRANTS WITHOUT LEGAL STATUS?

**Yes.** As long as payments or services are not being provided to an individual based on legally defined eligibility criteria, the assistance does not qualify as a public benefit. Clinics and hospitals that make free or low-cost services available to the communities they serve are free to provide those services to anyone, regardless of their immigration status, even if government funds support the general operations of those institutions. The discerning factor is whether the assistance is provided pursuant to legally defined eligibility criteria. If legally-defined eligibility criteria apply, then the assistance constitutes a public benefit and cannot be provided to immigrants that are not lawfully present.

## IF HB 1023 WERE AMENDED TO MAKE IT LESS STRINGENT, WOULD IT HAVE A POSITIVE EFFECT?

**No.** HB 1023 is already as lenient as federal law will allow in terms of requiring verification of lawful presence for public benefits. If the requirements of the law were lessened for any particular groups or benefit, that group or benefit would still be subject to verification requirements under federal law. For example, exempting individuals over 65 from verifying their lawful presence under HB 1023 will not have a meaningful impact for that population because federal law will still require them to verify their lawful presence.

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## NOTES AND REFERENCES

This brief was developed using content from a Health Management Associates paper completed for Center for Health Progress in May 2016 with additional research and analysis from staff at the Colorado Center on Law and Policy.

- <sup>1</sup> HB06-1023 is codified, as amended, at § 24-76.5-103, C.R.S. This brief uses “HB 1023” to refer to the state code section.
- <sup>2</sup> See 8 U.S.C. § 1611(c) (federal definition of “federal public benefit”) and 8 U.S.C. § 1621(c) (federal definition of “state or local public benefit”); see also § 24-76.5-102, C.R.S. (state adoption of federal definitions of federal, state and local public benefit).
- <sup>3</sup> Under federal law, states do have the option of covering the unborn child of a pregnant woman that does not have legal status under Medicaid or CHIP. This is one way states can provide federally-supported medical assistance benefits to pregnant women that do not have legal status. Colorado has not selected this option.

