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Dear Director Birch, Director Bicha, and Mr. Patterson:

The undersigned organizations are writing to ask for your help in responding to a problem affecting the health and well-being of immigrants and their family members. Widespread reports indicate that immigrants are afraid to apply for or are asking to be removed from critical programs for which they or their family members are eligible. Immigrant families are concerned that personal information provided to public benefit agencies could be used to enforce federal immigration laws. This fear deprives immigrants and U.S. citizen children of vital health, nutrition, income support, and childcare benefits.

Federal civil rights and privacy laws, and the laws and regulations governing specific benefit programs limit inquiries about and collection of sensitive personal information, the information that may be verified, and whether information about benefit applicants or recipients can be used or disclosed for purposes other than determining eligibility or administering the program. Programs that protect information about applicants and recipients include Health First Colorado (Colorado's Medicaid program), the Child Health Plan Plus (CHP+), Connect for Health Colorado, the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Program for Women, Infants and Children (WIC), the National School Lunch Program, Colorado Works (Colorado's TANF program), the Child Care and Development Fund (CCDF), Head Start and Early Head Start. Information about the relevant federal laws, regulations and rules governing each program is provided in Appendix A attached to this letter.

With very limited exceptions, information about benefit recipients must be used only to administer the public benefit program and cannot be disclosed to federal agencies or officials for other purposes, such as the enforcement of immigration laws. Federal

agencies have confirmed that these protections apply to benefit recipients even after the passage of the federal welfare and immigration laws.¹ Although 8 U.S.C. § 1373 and 8 U.S.C. § 1644 generally prohibit government agencies from restricting communications with federal immigration officials “regarding an individual’s citizenship or immigration status,” these prohibitions do not apply to any other information about individuals, such as their receipt of public benefits.² State agencies generally cannot disclose information about public benefits’ recipients, if the purpose of the request is unrelated to administering public benefit programs.

The federal laws protecting information about benefit recipients remain intact, and cannot be altered by an Executive Order.³ Absent any change in federal statute, state agencies should decline any request for disclosure of information regarding a benefit recipient unless the request is consistent with these laws, the state plan approved for the program, and other federal regulations or guidance that flows from these federal statutes.

We continue to hear that there is a great deal of confusion about these rules, and that immigrant families are afraid to seek or to continue receiving important benefits. We therefore urge you to ensure that these rules are understood and followed by your agency, by:

- Reviewing your applications and enrollment systems, reporting systems, and guidance for eligibility and enrollment workers, to ensure that they comply with these laws and rules.
- Sharing this information with your staff and any local counterparts, such as county eligibility workers, school administrators, enrollment partners and contractors, direct service providers, and other partners.
- Being flexible about how household members may prove their income, including through a letter from an employer, self-attestation, or another means if needed.
- Providing easy to understand information in multiple languages that can be used to educate immigrant families about existing confidentiality protections. A sample fact sheet for community members is provided in Appendix B. It should be made available in multiple languages, including English and Spanish.

We appreciate your dedication to *all* individuals and families applying for and enrolling in health, nutrition, income support and child care programs. Please feel free to contact Allison Neswood, with the Colorado Center on Law and Policy, at 303-573-5669 x 304 if you would like to discuss.

Signed,

Asian Pacific Development Center
Center for Health Progress
Clinica Colorado

Clinica Tepeyac
Colorado Alliance for Health Equity Practice
Colorado Center on Law and Policy
Colorado Children's Campaign
Colorado's Community Safety Net Clinics
Colorado Consumer Health Initiative
Colorado Cross-Disability Coalition
Colorado Fiscal Institute
Colorado Immigrant Rights Coalition
Colorado School Medicaid Consortium
Healthier Colorado
One Colorado
Oral Health Colorado
Padres & Jóvenes Unidos
Planned Parenthood of the Rocky Mountains
Re:Vision
Stahlman Disability Consulting, LLC
Tri-County Health Network
United for a New Economy

Appendix A

This appendix includes federal civil rights and privacy laws, and the laws, regulations and guidance governing specific benefit programs that 1) limit inquiries about and collection of sensitive personal information; 2) specify the information that may be verified; and 3) limit how information about benefit applicants or recipients can be used or disclosed for purposes other than determining eligibility or administering the program.

Applicants must meet all the program rules—including providing information about the income of household members—to be determined eligible for benefits, but should provide only the information necessary to prove eligibility and should always avoid providing any false information.⁴ Given that many citizens and immigrants work in the informal economy, state agencies should be flexible about accepting various forms of proof of income, including, for example, a letter from an employer or self-attestation.

The Tri-Agency Guidance

In 2000, the U.S. Department of Health and Human Services (HHS) and the U.S. Department of Agriculture (USDA) issued guidance and accompanying Questions and Answers about state inquiries into citizenship, immigration status and social security numbers of individuals applying for public benefit programs.⁵ This “Tri-Agency Guidance” clarifies when a state is required to request information about citizenship, immigration status and social security numbers on joint and single-program applications; when a state is not required to collect this information; and when a state may deny these benefits to individuals who do not provide this information.

The guidance explains that state agencies may not deny benefits to otherwise eligible *applicants* based on a *non-applicant’s*—a person who is not applying for benefits for him or herself—failure to furnish an SSN or immigration status information. Specific laws and policies in the public benefit programs detailed below codify and reinforce these rules.

It relies on the principles underlying Title VI of the Civil Rights Act of 1964 and the Privacy Act. Title VI prohibits discrimination based on race, color and national origin by federal fund recipients. States may violate Title VI if application requirements and processes have the effect of deterring eligible applicants and recipients in immigrant families from enjoying equal participation in and access to programs based on their national origin.⁶ The Privacy Act prohibits states from denying benefits to certain applicants who do not disclose their SSNs if the disclosure is not required by federal statute.⁷ It requires states to provide information about whether disclosure of an SSN is mandatory, the authority for the request, and how it will be used, when seeking disclosure of SSN.⁸

The Systematic Alien Verification for Entitlement (SAVE)

U.S. Citizenship and Immigration Services (USCIS) administers the SAVE program. State benefit agencies use the SAVE program to verify an individual's immigration status for the purpose of determining eligibility for programs, such as Medicaid, CHIP, TANF and SNAP.⁹ SAVE provides key information that a state agency can use to determine if the applicant meets the immigration-related eligibility standards for that program.¹⁰ The benefit eligibility determination itself is performed by the benefit agency.

The SAVE system taps into federal databases to verify an individual's status. When the information first provided by the state agency is incomplete or appears to be inaccurate, the state agency may receive a request for further information.¹¹ If this second step is unsuccessful, the state agency should ask DHS to conduct a manual search of its records.¹²

The SAVE statute includes safeguards that protect applicants for certain programs, such as¹³:

1. Immigrants must be given a "reasonable opportunity" to provide documentation of their immigration status
2. If an immigrant is otherwise eligible, benefits must not be delayed, denied, reduced or terminated during the reasonable opportunity period while documents are being gathered or while USCIS is verifying status
3. DHS may not use information submitted to SAVE for civil immigration enforcement purposes.

Health Coverage Programs

Medicaid

Medicaid law requires states to provide safeguards that restrict the use or disclosure of information about applicants and recipients to purposes directly connected with administration of the Medicaid program.¹⁴ Purposes directly related to Medicaid administration include: establishing eligibility, determining the amount of medical assistance, providing services, or conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to administration *of the state Medicaid plan*.¹⁵ HHS has determined that releasing information to a federal immigration agency regarding receipt of Medicaid benefits is not connected to the administration of the state plan.¹⁶ Information that states must safeguard includes: names and addresses, any information received for verifying income eligibility and the amount of medical assistance payments, agency evaluation of personal information, social and economic conditions or circumstances, and social security number.¹⁷ The Medicaid agency must have specific criteria for releasing information about applicants and beneficiaries, including restricting access to agencies that are subject to standards of confidentiality comparable to Medicaid's standards.¹⁸

Medicaid regulations require states to have safeguards in place to protect any information provided about non-applicants, applicants and beneficiaries.¹⁹ If the Medicaid agency receives a request for information about an applicant or recipient for some reason not directly connected to administration of Medicaid, the agency generally may not release the information without first obtaining permission from the affected individual.²⁰ Information must be stored and proceed in a way that protects it against unauthorized disclosure for other purposes.²¹

The state may require an *applicant* to provide only the information necessary to make an eligibility determination or for a purpose directly connected to administering the state plan.²² SSNs are generally required of Medicaid applicants.²³ However, if an applicant cannot recall his or her SSN or an SSN has not been issued, the agency must assist the applicant in applying for an SSN.²⁴ If an applicant is not eligible for an SSN, is eligible only for a non-work SSN, or has a well-established religious objection to obtaining an SSN, the state may use a Medicaid identification number to determine eligibility.²⁵ And, individuals seeking Medicaid for emergency services only do not need to provide an SSN nor are they required to provide information about their immigration status or have their status verified.²⁶

Medicaid is also required to accept applications filed by *non-applicant* adults: household or family members who are not seeking benefits for themselves.²⁷ A state agency *may*—but is not required to—request a non-applicant’s SSN, but only if: 1) providing an SSN is voluntary; 2) the SSN is used only to determine applicant’s eligibility for Medicaid or another insurance affordability program; and 3) the agency provides clear notice that provision of the non-applicants SSN is voluntary and provides information about how the SSN will be used.²⁸ In addition, states may not require applicants to provide information about the citizenship or immigration status of any non-applicant household member or deny benefits to an applicant because a non-applicant household member has not disclosed his or her citizenship or immigration status.²⁹

The Children’s Health Plan Plus (“CHP +”)

CHP+ is Colorado’s Children’s Health Insurance Program (CHIP) plan. The CHIP statute requires states to reduce administrative barriers to applying for the program.³⁰ States that use the Medicaid application and renewal forms and Medicaid eligibility verification process are deemed to comply with the CHIP statute.³¹ CHIP regulations specifically prohibit states from requiring non-applicants—individuals not seeking an eligibility determination for themselves—to provide a social security number.³² The CHIP regulations also require all CHIP programs to comply with Medicaid’s privacy protections (see above).³³

Connect for Health Colorado (“the marketplace”)

The Affordable Care Act (ACA) includes strong privacy protections for individuals who seek to purchase coverage in the marketplace. People applying for coverage in the

marketplace must provide only the information strictly necessary to authenticate identity and to determine eligibility for the marketplace and the amount of advance premium tax credits and cost sharing reductions for which they may be eligible.³⁴ Any person or agency receiving information from the marketplace must use it only for the purposes of ensuring efficient operation of the health insurance marketplace, including verifying eligibility or claiming premium tax credits or cost sharing reductions.³⁵

The marketplace regulations limit the use and disclosure of applicants' personally identifiable information. Information that is linkable to an applicant or an applicant's family member, such as a social security number, name, address, or other information, may only be used for specific exchange functions, such as determining applicants' eligibility and enrolling them in plans.³⁶ And, data-sharing arrangements must be equal to or more stringent than data sharing requirements of the Medicaid program.³⁷ Any marketplace agreements with non-marketplace entities, like contractors, must require them to comply with the marketplace privacy rules. Individuals who knowingly and willfully use or disclose information in violation of the Affordable Care Act may be liable for civil monetary penalties of up to \$25,000.³⁸

The marketplace can only require applicants to provide an SSN if they have one.³⁹ The marketplace regulations generally prohibit requests for the citizenship or immigration status of individuals who are not seeking coverage for themselves, on either an application or a supplemental form.⁴⁰ However, if a non-applicant is the tax filer for the year that tax data is used to verify household income and family size, and has an SSN, he or she must provide it.⁴¹

In 2013, Immigration and Customs Enforcement (ICE) confirmed that it does not use information obtained from applicants for health coverage under the ACA, Medicaid or CHIP, for purposes of civil immigration enforcement.⁴² The ICE memo cited the ACA, the Social Security Act and implementing regulations, which limit the use of information provided by applicants for health coverage.⁴³

Nutrition Programs

The Supplemental Nutrition Assistance Program (SNAP)

The SNAP laws generally prohibit the use or disclosure of information obtained from applicants.⁴⁴ There are a few exceptions that allow disclosures to: 1) people directly connect to administering and enforcing SNAP; 2) the Comptroller General of the U.S. for audit and examination authorized under law; 3) a state or local law enforcement investigation of violation of SNAP laws or regulations; or 4) the federal government for purposes of collecting the amount of an over-issuance of benefits. SNAP law also allows the disclosure of an address, social security number and photograph (if available) of a household member to a federal state or local law enforcement officer if the household member is fleeing to avoid prosecution or custody or confinement after committing a

felony or is violating a condition of probation or parole under Federal or State law or if a family member has information necessary for an officer to locate this household member.⁴⁵

When applying for SNAP, if a household member indicates an inability or unwillingness to provide documentation of immigration status, the state agency must classify that person as ineligible and the state agency must not continue efforts to obtain documentation.⁴⁶ In addition, while states are generally required to verify the immigration status of any applicants, if a household member does not wish to have her status verified, the state agency must give the household the option to withdraw its application or to participate without that household member.⁴⁷

Similarly, if a SNAP household member does not provide an SSN (and does not wish to apply for one) the state agency generally will determine him or her ineligible for benefits. However, State agencies cannot deny benefits to otherwise eligible household members simply because other household members fail to provide or apply for an SSN.⁴⁸

The SNAP regulations also reference an interagency guidance that requires reporting in very narrow circumstances -- if the agency “knows” that an immigrant is not lawfully present in the U.S.⁴⁹ The “knowing” standard is met only if all three of the following conditions exist: (1) the immigrant is seeking SNAP for the immigrant’s own use; (2) the SNAP agency has made a formal finding of fact or conclusion of law, subject to administrative review, that the immigrant is unlawfully present (a SAVE response showing no record of an individual does not meet this standard of “knowing”); and (3) a DHS determination of unlawful presence (e.g., a final order of deportation) supports the SNAP agency’s finding.⁵⁰

National School Lunch Program

Immigration status is not an eligibility factor for free or reduced priced lunches or school breakfast.⁵¹ However, an adult household member must sign an application for the school lunch program. Adults signing the application must either enter the last four digits of their SSN, or state that they do not have one. Households that provide a SNAP, TANF, or Food Distribution Program on Indian Reservations (FDPIR) case number on the application, do not need to provide the last four digits of their SSN or state that they do not have one.⁵²

Many children can be certified for school meal benefits without the need for a household application. Some children can be directly certified for free school meals through data matching, because their household already participates in other federal programs, a child is homeless or is particularly vulnerable.⁵³ School districts can also opt for “Community Eligibility,” which allows children in high-poverty schools to receive school meals without having a parent sign household applications.⁵⁴ USDA’s website

provides a list of schools and districts in Colorado that may be eligible to elect the Community Eligibility option.⁵⁵ Schools should consider taking up these options to help address families' concerns about providing personal information to government.

The National School Lunch Program law limits disclosure of any information obtained from either 1) an application for free or reduced price meals, or 2) information obtained from SNAP, FDPIR, TANF, Medicaid, school breakfast, or a similar income-based program to purposes related to the administration of school meals (and related programs) or an alleged fraud investigation.⁵⁶ Administration of the program includes verification of eligibility (which may be done by a third-party contractor) for school meals and other nutrition, education, and health programs.⁵⁷ A person who violates the program rules by disclosing information can be subject to a criminal penalty.⁵⁸

The Special Supplemental Program for Women, Infants, and Children (WIC)

Low-income pregnant women, mothers of infants up to six months old and children up to age five who are at nutritional risk are eligible for WIC regardless of their immigration status.⁵⁹ A state must determine that applicants establish identity, residency, income, and nutritional risk and, where applicable, pregnancy.⁶⁰ If an applicant does not have proof of residency or identity, a state or local agency must require applicants to confirm their residency or identity in writing.⁶¹

WIC regulations limit what the state agency can disclose and to whom. The rules restrict access to "confidential applicant and participant information" to people directly connected with administration or enforcement of the WIC program whom the state agency determines have a need to know the information for WIC program purposes.⁶² "Confidential applicant and participant information" is defined as any information about an applicant or participant as a result of a WIC application, certification or participation that individually identifies an applicant or participant and/or family members.⁶³

Cash Assistance

Colorado Works (Colorado's TANF program)

The federal TANF law requires states to include in their state plan that they will take such reasonable steps as the state deems necessary to restrict the use and disclosures of information about individuals and families receiving assistance under a federally-funded TANF program.⁶⁴

Applicants for TANF are required to provide information about their citizenship or immigration status as a condition of eligibility for benefits.⁶⁵ Applicants must also disclose their SSN unless an SSN has not been issued, in which case a state must help the applicant apply for an SSN.⁶⁶

TANF also follows the Tri-Agency Guidance regarding questions about immigration status and social security number for *non-applicants*.⁶⁷ Although TANF eligibility and benefits generally are based on the circumstances of the family unit, states are not required to obtain an SSN or the immigration status of a non-applicant.⁶⁸ States have flexibility in TANF to either treat a family member who is not applying for TANF for himself or herself as a non-applicant and/or to allow the person to be excluded from the TANF family by using TANF “child only” rules.⁶⁹

Federal law also requires TANF programs to report to immigration authorities only in very narrow circumstances - if a state agency “knows” that an immigrant who is *applying to receive TANF for his or own use* is not lawfully present in the US.⁷⁰ The “knowing” standard is met only if all three of the following conditions exist: (1) the immigrant is seeking benefits for the immigrant’s own use; (2) the state agency has made a formal finding of fact or conclusion of law, subject to administrative review, that the immigrant is unlawfully present (A SAVE response showing no record of an individual does not meet this standard of “knowing”); and (3) an immigration agency’s determination of unlawful presence (e.g., a final order of removal) supports the agency’s finding.⁷¹

Child Care Programs

In federally-funded child care programs, the information that families need to provide depends on whether the program is funded by the Child Care and Development Fund (CCDF, also known as the Child Care and Development Block Grant (CCDBG), or TANF.⁷²

CCDF-Funded Child Care

CCDF regulations require lead agencies to certify in the Child Care and Development Fund (CCDF) Plan that they have policies to govern the use and disclosure of confidential and personally-identifiable information about children and families receiving CCDF-funded assistance and child care.⁷³ Regulations also highlight the importance of personal information not being used for purposes outside of the administration or enforcement of CCDF.⁷⁴

For most child care funded by CCDF, *only the child’s* immigration or citizenship status is relevant for eligibility determinations and administering agencies may not request information about a parent’s citizenship or immigration status (Note the exception for child care subject to public educational or Head Start standards below).⁷⁵

In addition, states are prohibited from requiring SSNs as a condition of eligibility for CCDF-funded child care assistance.⁷⁶ States are permitted to request an SSN on an application form, but the form must make clear that providing an SSN is optional.⁷⁷ The application instructions must state that an SSN is not required; that “eligibility will not

be denied due to the failure of the applicant to provide a [SSN];” how SSNs are intended to be used; and how the state will preserve confidentiality.⁷⁸ Agencies can assign a unique identifying number to the family unit receiving assistance instead of an SSN.⁷⁹

CCDF-funded childcare that is provided in a setting subject to public educational standards is *available without regard to a child’s immigration status*.⁸⁰ Child care that is subject to Head Start standards and supported by combined Head Start and CCDF funding is also *exempt from verifying immigration status*.⁸¹

TANF-Funded Child Care

Eligibility for child care funded by TANF is generally based on eligibility of the parent. Eligibility rules for TANF and TANF-related child care vary from state to state. See TANF section above.

Head Start and Early Head Start

Children may be eligible for Head Start and Early Head Start regardless of their immigration status.⁸² Children can enroll in Head Start or Early Head Start without providing information about their own or a parent’s immigration or citizenship status. Head Start Child Care Partnerships also follow these rules.

¹ The U.S. Department of Health and Human Services clarified that existing restrictions on exchanging information about a person’s Medicaid or AFDC status continue in effect without change, despite 8 U.S.C. 1373. See Letter from Sally K. Richardson, Center for Medicaid and State Operations, to State Medicaid Directors (Dec. 17, 1997); Letter from Lavinia Limón, Director of the Office of Family Assistance to State TANF Directors (December 17, 1997) (on file with the National Immigration Law Center).

² Washington state’s Attorney General recently issued guidance that reminded state agencies about the limitations of 8 U.S.C. § 1373. He emphasized that federal law does not require agencies to share information; does not require them to collect information about immigration status; and applies only to information regarding citizenship or immigration status. Similarly, it does not prohibit state and local agencies from adopting privacy policies protecting other information, such as a person’s address, place of birth, household members, or the types of benefits or services received. Washington State Office of the Attorney General, “Guidance Concerning Immigration Enforcement” (April 2017), <http://www.atg.wa.gov/immigrationguidance> (viewed May 31, 2017). The guidance also noted that states and localities may have authority under their police powers to offer broader confidentiality protections, which could cover information about citizenship and immigration status. The application of 8 U.S.C. § 1373 may be further constrained, e.g. if citizenship or immigration status is “essential to the performance” of state or local government functions and the information would “be difficult or impossible” to obtain “if some expectation of confidentiality is not preserved.” *Id.*, citing *City of New York v. United States*, 179 F.3d 29, 36-37 (2d Cir. 1999); *Printz v. United States*, 521 U.S. 898 (1997).

³ There are other strong arguments why these federal statutes remain fully intact, protecting all information about recipients of public benefits, despite 8 U.S.C. § 1373. Implicit repeals of federal statutes are disfavored under federal law. Thus, a U.S. Department of Justice memo concluded that 8 U.S.C. § 1373 did not repeal federal statutory prohibitions on disclosure to immigration officials of information collected for the U.S. Census. Memorandum from Dept. of Justice, Office of Legal Counsel to General Counsel, Dept. of Commerce, “Relationship Between Illegal Immigrant Responsibility Act of 1996 and Statutory

Requirement for Confidentiality of Census Information” (May 18, 1999). Subsequent laws, such as the ACA, which protect specific information, similarly remain in force. And, where possible, laws must be construed to avoid conflicts with constitutional provisions, such as a state’s rights under the 10th Amendment.

⁴ One common exception to privacy protections in most programs is when benefits are fraudulently obtained.

⁵ Letter from U.S. Dept. of Health & Human Services and Dept. of Agriculture to State Health and Welfare Officials, “Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children’s Health Insurance Program, Temporary Assistance for Needy Families, and Food Stamp Benefits” <https://www.medicad.gov/Federal-Policy-Guidance/downloads/sho092100.pdf> (viewed May 18, 2017). *See also* U.S. Dept. of Health & Human Services, “Policy Guidance Regarding Inquiries into Citizenship, Immigration Status, and Social Security Numbers in State Applications for Medicaid, State Children’s Health Insurance Program (CHIP), Temporary Assistance for Needy Families (TANF) and Food Stamp Benefit, Questions and Answers,” <https://www.hhs.gov/sites/default/files/triagencyq%26as.pdf> (viewed July 13, 2017).

⁶ 42 U.S.C. § 2000d.

⁷ 5 U.S.C. § 552a(e)(3).

⁸ *Id.*

⁹ 42 U.S.C. § 1320b-7(d)(3)(A).

¹⁰ *Id.* § 1320b-7(d)(3)(A).

¹¹ U.S. Citizenship and Immigration Services, SAVE Verification Process, <https://www.uscis.gov/save/about-save/verification-process> (viewed July 13, 2017).

¹² *Id.*

¹³ 42 U.S.C. § 1320b-7(d)(4). Protections against the use of this information for civil immigration enforcement purposes were enacted in the Immigration Reform and Control Act of 1986 P.L. 99-603, § 121(c)(1), 100 Stat. 3359, 3391 (1986), codified at 42 U.S.C. § 1320b-7 note.

¹⁴ 42 U.S.C. § 1396a(a)(7) and 42 U.S.C. § 1320b-7(a)(5). It provides an exception for enrollment in other related programs, such as to verify children’s eligibility for school breakfast and lunch.

¹⁵ 42 C.F.R. § 431.302.

¹⁶ Letter from Sally Richardson, Center for Medicaid and State Operations, to State Medicaid Directors, (Dec. 17, 1997) (on file with the National Immigration Law Center).

¹⁷ 42 C.F.R. § 431.305.

¹⁸ *Id.* § 431.306.

¹⁹ *Id.* § 431.300(b) and 42 C.F.R. § 431.300(c).

²⁰ *Id.* § 431.306 (d).

²¹ *Id.* § 431.300(c)(2).

²² *Id.* § 435.907(e)(1).

²³ *Id.* § 435.910.

²⁴ Additionally, Medicaid applicants must be notified why they are asked for an SSN and what they will be used for, and Medicaid agencies must help an individual apply for one if they are eligible for one but don’t have one, or don’t know their SSN. However, their coverage cannot be denied or delayed pending issuance or verification of an SSN by the Social Security Administration (SSA). *Id.* § 435.910(e).

²⁵ *Id.* § 435.910(h).

²⁶ 42 U.S.C. § 3230b-7(f).

²⁷ 42 C.F.R. § 435.907(a).

²⁸ *Id.* § 435.907(e)(2); § 435.907(e)(3); and § 435.910(e)(3).

²⁹ U.S. Dept. of Agriculture, Policy Guidance, Questions and Answers, *supra*.

³⁰ 42 U.S.C. § 1397 bb (b)(4)(A).

³¹ *Id.* § 1397 bb (b)(4)(B).

³² 42 C.F.R. § 457.320(b)(4), 42 C.F.R. § 457.301.

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- ³³ This applies whether a state has a separate CHIP program or has a Medicaid-expansion CHIP program, or a combination of the two. *Id.* § 457.1110.
- ³⁴ Affordable Care Act § 1411(g)(1), codified at 42 U.S.C. § 18081(g)(1).
- ³⁵ *Id.* § 1411(g)(2), codified at 42 U.S.C. § 18081(g)(2).
- ³⁶ 45 C.F.R. § 155.260(a). Definition of personally identifiable information is provided at 45 C.F.R. § 1305.
- ³⁷ *Id.* § 155.260 (e)(3).
- ³⁸ *Id.* § 155.260(g).
- ³⁹ *Id.* § 155.310(a)(3)(i).
- ⁴⁰ *Id.* § 155.310(a)(2).
- ⁴¹ *Id.* § 155.305(f)(6).
- ⁴² Immigration and Customs Enforcement, “Clarification of Existing Practices Related to Certain Health Care Information” (2013), <https://www.ice.gov/doclib/ero-outreach/pdf/ice-aca-memo.pdf> (viewed July 13 2017).
- ⁴³ *Id.*
- ⁴⁴ 7 U.S.C. § 2020(e)(8).
- ⁴⁵ *Id.* § 2020(e)(8). Note: in New Jersey, the exception applies to a household member fleeing to avoid prosecution for a high misdemeanor.
- ⁴⁶ 7 C.F.R. § 273.4(b)(2).
- ⁴⁷ *Id.* § 273.2(f)(1)(ii)(A).
- ⁴⁸ Memorandum from U.S. Dept. of Agriculture, “SNAP - Conforming to the Tri-Agency Guidance through Online Applications” (Feb. 18, 2011), available at https://www.fns.usda.gov/sites/default/files/Tri-Agency_Guidance_Memo-021811.pdf (viewed July 13, 2017); and U.S. Dept. of Agriculture, “Eligibility Manual for School Meals: Determining and Verifying Eligibility, School Year 2016-2017,” (July 29, 2016), <https://www.fns.usda.gov/2016-edition-eligibility-manual-school-meals> (viewed July 13, 2017); U.S. Dept. of Health & Human Service, “Policy Guidance, Questions and Answers” *supra*.
- ⁴⁹ 7 C.F.R. § 273.4(b)(2).
- ⁵⁰ 65 Fed. Reg. 58301 (September 28, 2000).
- ⁵¹ 42 U.S.C. § 1758(b)(9).
- ⁵² *Id.* § 1758(d)(1); 7 C.F.R. 245.6(a)(6); 7 C.F.R. § 245.6(a)(6).
- ⁵³ Data matching is allowed with SNAP, TANF, FDPIR, and in some states, Medicaid, as well as for children who are certified for free meals without an application because they are homeless, migrant, runaway, enrolled in Head Start, or foster care. See Madeleine Levin and Zoe Neuberger, “Improving Direct Certification Will Help More Low-Income Children Receive School Meals,” Center on Budget and Policy Priorities and the Food Research and Action Center, http://frac.org/wp-content/uploads/direct_certification_update.pdf (viewed July 13, 2017).
- ⁵⁴ Under the Healthy Hunger Free Kids Act of 2010, the highest poverty schools and school districts can provide school meals to all enrolled students without actually collecting or having parents sign household applications. Instead, schools are reimbursed using a formula based on the percentage of students certified for free meals without an application. U.S. Dept. of Agriculture. “Community Eligibility Provision,” <https://www.fns.usda.gov/school-meals/community-eligibility-provision> (viewed July 13, 2017).
- ⁵⁵ A map with links to state-specific information on local education agencies and schools that may be eligible to elect the Community Eligibility Provision (CEP) is available at, School Meals, “Community Eligibility Provision Status of School Districts and Schools by State,” <https://www.fns.usda.gov/school-meals/community-eligibility-provision-status-school-districts-and-schools-state> (viewed July 13, 2017).
- ⁵⁶ 42 U.S.C. § 1758(b)(3)(F); 42 U.S.C. § 1758(b)(6); 7 C.F.R. § 245.6(f). The specific rules about disclosures, what information can be shared, and whether consent is needed can be found at U.S. Dept. of Agriculture, “Food and Nutrition Services Eligibility Manual for School Meals: Determining and Verifying Eligibility: School Year 2016-2017,” at p.71.
- ⁵⁷ 7 C.F.R. § 245.6(f).
- ⁵⁸ 42 U.S.C. § 1758(b)(6)(C).

⁵⁹ In 49 states and DC, eligibility for WIC is not based on immigration status. However, as of 2014, Indiana requires immigrant and citizenship status verification to obtain WIC services in the state, National WIC Association, “Making Sure WIC’s Doors Stay Open to All Eligible Moms and Young Children,” (May 12, 2017) <https://www.nwica.org/blog/making-sure-wics-doors-stay-open-to-all-eligible-moms-and-young-children#.WR2nYhMrLFw> (viewed May 18, 2017).

⁶⁰ 7 C.F.R. § 246.7.

⁶¹ *Id.* § 246.7 (c)(2)(i).

⁶² *Id.* § 246.26(d)(1)(ii). The regulations provide exceptions that allow a WIC state or local agency to use confidential participant information in the administration of other programs that serve people eligible for WIC and for child abuse and neglect reporting 7 C.F.R. 246.26(d). If applicants sign a voluntary release form, WIC can share information with health care providers 7 C.F.R. § 246.26(d)(4).

⁶³ *Id.* § 246.26(d)(1)(i). There are also specific rules for responding to a search warrant that limit to the greatest extent possible access to the confidential information.

⁶⁴ 42 U.S.C. § 602(a)(1)(v).

⁶⁵ 45 C.F.R. § 205.52.

⁶⁶ *Id.* § 205.52.

⁶⁷ Tri-Agency Letter: “Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children’s Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF) and Food Stamp Benefits,” <https://www.hhs.gov/civil-rights-for-individuals/special-topics/needly-families/triagency-letter/index.html> (viewed June 10, 2017). U.S. Dept. of Health & Human Service, “Policy Guidance, Questions and Answers” *supra*.

⁶⁸ When applying for TANF, the family unit can state that the non-applicant is ineligible for TANF without providing information about the non-applicant’s immigration status.

⁶⁹ U.S. Dept. of Health & Human Service, “Policy Guidance, Questions and Answers” *supra*. Currently, Wisconsin is the only state that requires adults to have an eligible immigration status for a child to receive TANF. See, Welfare Info, “Wisconsin Works (W-2) Benefits,” <http://www.welfareinfo.org/benefits/wisconsin-works-w-2-1684> (viewed July 10, 2017).

⁷⁰ 42 U.S.C. § 608(g).

⁷¹ 65 Fed. Reg. 58301 (September 28, 2000).

⁷² See Hannah Matthews, “Immigrant Eligibility for Federal Child Care and Early Education Programs,” The Center for Law and Social Policy (April 2017). <http://www.clasp.org/resources-and-publications/publication-1/Immigrant-Eligibility-for-ECE-Programs.pdf> (viewed June 12, 2017).

⁷³ Child Care and Development Fund Program, Final Rule, Federal Register, Vol. 81, No 190 § 98.15(b)(13), September 30, 2016. <https://www.gpo.gov/fdsys/pkg/FR-2016-09-30/pdf/2016-22986.pdf> (viewed June 20, 2017). See also preamble to the final rule at page 67452.

⁷⁴ Child Care and Development Fund Program, Final Rule, Federal Register, Vol. 81, No 190. See also Preamble to the final rule at page 67452, (Sept. 30, 2016) <https://www.gpo.gov/fdsys/pkg/FR-2016-09-30/pdf/2016-22986.pdf> (viewed June 20, 2017).

⁷⁵ *Id.* See also <https://www.acf.hhs.gov/sites/default/files/occ/pi9808.pdf>. See also Matthews, Immigrant Eligibility for Federal Child Care and Early Education Programs, *supra*.

⁷⁶ *Id.*

⁷⁷ The preamble to the final rule on Child Care and Development Fund Programs at page 67532 states that it has amended language at § 98.71(a)(14) by deleting Social Security Numbers (SSNs) and instead requiring a unique identifying number that will allow Lead Agencies and ACF to identify unique families over time in the absence of the Social Security Number (SSN). The preamble states, “Pursuant to the Privacy Act (5 U.S.C. 552a note), Lead Agencies cannot require families to disclose SSNs as a condition of receiving CCDF services.” Child Care and Development Fund Program, Final Rule, Federal Register, Vol. 81, No 190 (September 30, 2016). <https://www.gpo.gov/fdsys/pkg/FR-2016-09-30/pdf/2016-22986.pdf> (viewed June 20, 2017). See also U.S. Dept. of Health and Human Services, Program Instruction” ACYF=PI-CC-00-04, “Clarifying Policy Regarding Limits on Use of Social Security Numbers under the CCDF,” Office of Child Care, Administration for Children and Families (October 27, 2000)

<https://www.acf.hhs.gov/occ/resource/pi-cc-00-04> (viewed June 12, 2017). This guidance was incorporated by reference into final rule at page 67452. Child Care and Development Fund Program, Final Rule, Federal Register, Vol. 81, No 190 (September 30, 2016). <https://www.gpo.gov/fdsys/pkg/FR-2016-09-30/pdf/2016-22986.pdf> (viewed June 20, 2017).

⁷⁸ U.S. Dept. of Health and Human Services, Program Instruction “ACYF=PI-CC-00-04, “Clarifying Policy Regarding Limits on Use of Social Security Numbers under the CCDF,” Office of Child Care, Administration for Children and Families (October 27, 2000) <https://www.acf.hhs.gov/occ/resource/pi-cc-00-04> (viewed June 12, 2017). This guidance was incorporated by reference into final rule at page 67452. Child Care and Development Fund Program, Final Rule, Federal Register, Vol. 81, No 190, September 30, 2016. <https://www.gpo.gov/fdsys/pkg/FR-2016-09-30/pdf/2016-22986.pdf> (viewed June 20, 2017).

⁷⁹ *Id.*

⁸⁰ U.S. Dept. of Health and Human Services, Administration on Children, Youth and Families, “Clarification of Interpretation of “Federal Public Benefit” Regarding CCDF Services,” <https://www.acf.hhs.gov/sites/default/files/occ/pi9808.pdf> (viewed July 13, 2017). This applies when services are subject to the Head Start Performance Standards and are supported by combined Head Start/CCDF funding or are provided by service arrangements with child care agencies or when an agency that operates a Head Start program also provides a separate program for children that is entirely supported by CCDF funds.

⁸¹ *Id.* In addition, child care providers that are non-profit charitable organizations are not required to determine, verify or otherwise require proof of eligibility of any applicant for benefits. The Dept. of Justice Rule on Verification for Public Benefits defines a non-profit charitable organization as: “an organization that is organized and operated (1) for purposes other than making gains or profits for the organization, its members or shareholders, and is precluded from distributing any gains or profits to its members or shareholders; and (2) for charitable purposes, including relief of the poor and distressed or the underprivileged, advancement of religion, or advancement of education.” There is an exception if a Head Start grantee also administers a separate program for children (not subject to Head Start Performance Standards) entirely supported by CCDF funds. In this specific case, the CCDF program would not be exempt from PRWORA’s verification requirements.

⁸² The Head Start and Early Head Start programs have been determined not to provide Federal public benefits because non-post secondary education benefits were omitted from the statutory definition in title IV of PRWORA. Therefore, Head Start providers are not required to implement PRWORA’s verification requirements. U.S. Dept. of Health and Human Services, “Clarification of Interpretation of ‘Federal Public Benefit’ Regarding CCDF Services, Office of Child Care,” *supra*.

Appendix B

How will your information be used when you apply for benefits?

Immigrant families are welcome to apply for public benefits. Sometimes applicants are required to provide information about citizenship or immigration status because it impacts eligibility. Under the law, agencies cannot require you to provide that information unless it is necessary to determine eligibility. Any information you provide for the purpose of applying for benefits is subject to strict protections under the law. Information specific to various programs is provided below.

The Systematic Alien Verification for Entitlement (SAVE) program

The SAVE program is administered by the U.S. Citizenship and Immigration Services (USCIS). Public benefits agencies use SAVE to verify individuals' immigration status for the purpose of determining eligibility for programs, such as Medicaid, CHIP, TANF and SNAP. The Department of Homeland Security may not use information submitted to SAVE for immigration enforcement purposes.

Health First Colorado (Medicaid)

Personal information provided by individuals for the purpose of applying for Medicaid can be used only for administration of the Medicaid program. It cannot be used for immigration enforcement purposes. If an agency receives a request for information about an applicant or recipient for some reason not directly connected to administration of Medicaid, the agency may not release the information without obtaining permission from the affected individual. Non-Applicants – household or family members who are not seeking benefits for themselves – may file a Medicaid application on behalf of a dependent child but cannot be required to provide a Social Security Number (SSN) or information about their immigration status.

The Children's Health Plan Plus ("CHP +")

CHP+ is the Colorado Children's Health Insurance Program (CHIP) plan. The CHIP regulations require all CHIP programs to comply with Medicaid's privacy protections, which strictly prohibit agencies from using personal information for purposes other than administration of the program. As in the case of Medicaid, information provided for the purposes of applying for CHP+ cannot be used for immigration enforcement purposes. In addition, CHIP regulations specifically prohibit agencies from requiring non-applicants to provide a SSN.

Connect for Health Colorado ("the marketplace")

Personal Information provided for the purpose of applying for insurance may only be used for specific marketplace functions, such as determining applicants' eligibility and enrolling them in plans. It cannot be used for immigration enforcement. The marketplace can only require applicants to provide an SSN if they have one. The marketplace cannot request the citizenship or immigration status of individuals who are not seeking coverage for themselves even if others in the household are applying for insurance.

The Supplemental Nutrition Assistance Program (SNAP)

The SNAP laws generally prohibit the use or disclosure of information obtained from applicants. Individuals that do not want to provide information about their citizenship or immigration status or a SSN do not have to. Other members of the household may still qualify for benefits.

School Lunch Program

Immigration status is not an eligibility factor for free or reduced priced lunches or school breakfast. However, adults signing a household application for free or reduced priced lunch or school breakfast

generally must enter the last four digits of their SSN or state that they do not have one. The National School Lunch Program law limits disclosure of any information obtained from these applications.

The Special Supplemental Program for Women, Infants, and Children (WIC)

Immigration status is not an eligibility factor of WIC. Low-income pregnant women, mothers of infants up to six months old and children up to age five who are at nutritional risk are eligible for WIC. Only people directly connected with administration or enforcement of the WIC program may access "confidential applicant and participant information."

Colorado Works (Colorado's TANF program)

Household members that are not applying for Colorado Works for their own use are not required to provide information about citizenship or immigration status. Other members of the household may qualify.

Child Care

For child care funded by the Child Care and Development Fund (CCDF), *only the child's* immigration or citizenship status is relevant for eligibility determinations and agencies may not request information about a parent's citizenship or immigration status. Children may be eligible for Head Start and Early Head Start regardless of their immigration status. Children can enroll in Head Start or Early Head Start without providing information about their own or a parent's immigration or citizenship status. Agencies are prohibited from requiring SSNs as a condition of eligibility for CCDF-funded child care assistance.