

Title of Proposed Rule: Colorado Brain Injury Program (CBIP) Rule Updates FY 16/17

CDHS Tracking #: 16-10-21-1

Office, Division, & Program:
OCAI, CBIP

Rule Author:
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STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.

Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule.

Within the Colorado Traumatic Brain Injury Program administrative rules, the program seeks to align the eligibility section, CCR 12.530, with Federal and State Statutes. The rule change will bring the Colorado Brain Injury Program's client service eligibility criteria into accordance with the program's statute, C.R.S. § 26-1-3, and will appropriately remove lawful presence as a requirement for program access. The program also seeks to accomplish a minor technical change in CCR 12.551 to clean up miswording.

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2015)	State Board to promulgate rules
26-1-109, C.R.S. (2015)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2015)	State department to promulgate rules for public assistance and welfare activities.

Program Authority for Rule: *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
26-1-303, C.R.S (2012)	Section describes the Colorado Traumatic Brain Injury Trust Fund board's creation, powers and duties including the promulgation of reasonable policies and procedures related to the operation of the trust fund. The board includes the designee of the Executive Director of CDHS. This designee is the current director of the Colorado Brain Injury Program.

Does the rule incorporate material by reference?

Yes

No

Does this rule repeat language found in statute?

Yes

No

If yes, please explain.

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REGULATORY ANALYSIS

1. List of groups impacted by this rule.

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

Individuals with traumatic brain injuries (TBI), including individuals who may be homeless, institutionalized and/or experience marked organizational skill deficits related to TBI executive functioning loss.

2. Describe the qualitative and quantitative impact.

How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

Individuals with traumatic brain injuries (TBI) who reside in the state of Colorado but have not met durational requirements associated with *Colorado Residency* will benefit from the rule change as they will be granted program access for case management as long as all other program eligibility criteria are met. This change is appropriate because the program's statute (C.R.S. § 26-1-3) does not include an eligibility requirement of residency.

Additionally, individuals with brain injuries will benefit from streamlined eligibility documentation requirements since the Colorado Brain Injury Program (CBIP) is exempt from lawful presence requirements set forth in C.R.S. § 24-76.5-103 (Restrictions on Public Benefits) and processes related to the establishment of lawful presence will be discontinued.

There are no anticipated short-term consequences, though there are anticipated benefits from a streamlined set of eligibility processes and documentation requirements – particularly for those individuals who may be homeless, institutionalized, or who are experiencing marked organizational skill deficits due to TBI-related executive functioning loss. From a long-term perspective, there is no evidence of potential for significantly heightened demand for case management services. In the last two years, less than ten individuals have been determined ineligible due to lack of identification documents. If the program were to see an increased demand for case management services as a result of the modified eligibility criteria, the issue may be addressed with additional funding if available through the Colorado Traumatic Brain Injury Trust Fund or through managed wait list procedures currently outlined in the Client Services Program policy manual.

3. Fiscal Impact

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just “no impact” answer should include “no impact because....”***

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

No impact will result from this change because (1) the Traumatic Brain Injury Trust Fund results from surcharges assessed on specific traffic violations and are therefore “cash-funds” and (2) if the demand for client case management services were to exceed available resources, wait-list measures would be put in place to contain costs.

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County Fiscal Impact

No impact will result from this change because the CBIP's client services program is run through a non-profit contractor, the Brain Injury Alliance of Colorado (BIAC) and not through the counties.

Federal Fiscal Impact

No impact will result from this change because the client services program is a cash-funded program in the State of Colorado.

Other Fiscal Impact (such as providers, local governments, etc.)

No impact will result from this change because the client services program contractor, BIAC, is only required to serve eligible clients to the degree that current capacity permits and as defined in the current five-year statement of work.

4. Data Description

List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

The Client Services Program is exempt from C.R.S. § 24-76.5-103 because the TBI Trust Fund Client Program does not provide *public benefits* as federally defined in 8 U.S.C. § 1621(b)(4)(A) – see also 8 U.S.C. § 1611(b)(1)(D)(i). The characteristics of the program that create the exemption of *public benefits* include (1) the Client Services Program provides *in-kind* services at the community level, (2) the Client Services Program does not base its assistance on the income or resources of the recipients, and (3) the Client Services Program provides services that are necessary for the protection of life or safety.

5. Alternatives to this Rule-making

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. **Answer should NEVER be just “no alternative” answer should include “no alternative because...”**

No alternatives were considered because current rules are inconsistent with State [C.R.S. § 26-1-3 and C.R.S. § 26-76.5-103] and Federal statutes [8 U.S.C. § 1621(b)(4)], and 8 U.S.C. §1611(b)(1)(D)(i).

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OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.000	<i>Incorrect Statutory Reference</i>	<i>Section 26.5.103 C.R.S.</i>	<i>Section 26.5-101(3) C.R.S.</i>		
12.530 (B)	Alignment with State and Federal Statutes	The applicant is a resident and, if eighteen years of age or older, lawfully present in Colorado pursuant to Section 24-76.5-103, C.R.S;	The applicant lives within the State of Colorado and considers Colorado to be their place of residency.	Emphasis on being a resident is removed as the requirement is not in program Statute, C.R.S 26-1-3. The revised language mirrors Medical Assistance residency language. Lawful presence is removed as the program is exempt from C.R.S § 24-75.5-103.	Majority (65%) of those providing feedback were in agreement(n=102).
12.551(h)	Clean-Up	The grievance process shall be an informational dispute resolution process.	The grievance process shall be an informal dispute resolution process	TECHNICAL CHANGE - MISWORDING	NO

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STAKEHOLDER COMMENT SUMMARY

Development

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

During the research period, Office of the Attorney General staff was consulted for advice and technical assistance related to lawful presence requirements in Colorado.

This Rule-Making Package

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:

Individuals and families affected by brain injury via CO Brain Injury Support Groups, Brain Injury Provider Networks, CO TBI Trust Fund Board of Directors, CO Department of Education, CO Department of Health Care Policy & Financing, CO Department of Public Health & Environment, Brain Injury Alliance of Colorado (BIAC), BIAC Board of Directors, State and Local-Level Judicial Branches

Other State Agencies

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

Yes No

If yes, who was contacted and what was their input?

Sub-PAC

Have these rules been reviewed by the appropriate Sub-PAC Committee?

Yes No

Name of Sub-PAC			
Date presented			
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

Yes No

Date presented	January 5, 2017		
What issues were raised?	Clarification was sought -- that service providers beyond the Brain Injury Alliance of Colorado (BIAC) are not impacted by this proposed rule.		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	12	0	0
If not presented, explain why.			

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Other Comments

Comments were received from stakeholders on the proposed rules:

Yes No

If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

Stakeholder Input

102 Respondents (Survey Monkey, phone, in-person)

- 50% Service Providers
- 25% Past or Current Case Management Clients
- 25% TBI Trust Fund Board Members, Caregivers, and others

Majority of respondents (approximately 65%) agreed with both changes (CO Residency, Lawful Presence)

Comments:

- *Changes will create greater program accessibility for individuals who struggle with forms/paperwork*
- *Helpful for individuals with brain injuries who move/return to Colorado to live with family or friends*
- *Critical to get assessment, intervention and treatment options as early as possible – these changes reduce delays and create unencumbered access*

CO Residency Reasons/Perceptions (Disagreement)

Comments:

- *Diminished resources for Colorado Residents*
- *Presentation of an ID should be non-negotiable*
- *Misuse (e.g., individuals with brain injuries may move from other states to receive case management assistance)*

Lawful Presence Reasons/Perceptions (Disagreement)

Comments, same as for Colorado residency, and:

- *Taxpayer dollars should not fund those illegally present*
- *Concerns about serving individuals who are homeless or who are ex-offenders*

(12 CCR 2512-2)

12.530 ELIGIBILITY [Rev. eff. 7/1/17]

Applicants who meet all of the following criteria are eligible to receive program services:

1. The applicant has a traumatic brain injury; and,
2. The applicant LIVES WITHIN THE STATE OF COLORADO AND CONSIDERS COLORADO TO BE THEIR PLACE OF RESIDENCY ~~is a resident and, if eighteen years of age or older, lawfully present in Colorado pursuant to Section 24-76.5-103, C.R.S.; and,~~
3. The applicant agrees to subrogation when purchased services supports are available.

12.551 Grievance Process [Rev. eff. 7/1/17]

A “grievance” is an oral or written complaint or expression of dissatisfaction about any matter other than a decision that may be appealed. A grievance may address issues such as the quality of services provided, the person providing services, the timeliness of services, the accessibility of service locations, or the availability of staff.

1. Applicants and program participants shall have ninety (90) calendar days from the date of the incident to file a grievance expressing a complaint or dissatisfaction with any matter other than a decision that may be appealed.
2. The contractor shall accept oral and written grievances, and shall document oral grievances in writing.
3. The contractor shall give applicants and program participants reasonable assistance in filing a grievance and completing procedural steps in the grievance process, upon request.
4. The contractor shall ensure that the individuals who make decisions on grievances are individuals who are not a subject of the grievance and who were not involved in any previous level of review or decision-making regarding the grievance.
5. The contractor shall provide a reasonable opportunity for the individual making the grievance to present information, in person as well as in writing.
6. The contractor shall resolve each grievance and provide written notice within thirty (30) calendar days from the date the contractor receives the grievance. The notice shall include the contractor's proposed resolution to the grievance, the individual's right to further grieve the contractor's proposed resolution to the Colorado Traumatic Brain Injury Program Director or designee, and information on how to contact the Director or designee.
7. Applicants and Program participants shall have ninety (90) calendar days from the date of the contractor's notice to submit their grievance to the Colorado Traumatic Brain Injury Program Director or his/her designee.
8. The grievance process shall be an INFORMAL ~~informational~~ dispute resolution process. The decision of the Colorado Traumatic Brain Injury Program Director or designee shall be final.