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IMMIGRATION IN COLORADO: STATE IMPACT AND RECENT LEGISLATION

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In recent months, concern over the United States' immigration policies has prompted interest in immigration policy reform at both the state and federal levels. According to recent reports, there are anywhere from 11.5 to 12.0 million undocumented immigrants currently living in the United States.

A recent study has estimated that there were between 200,000 and 250,000 undocumented immigrants present in Colorado between 2002 and 2004. Under federal law, Colorado is required to provide certain benefits, at state expense, to persons regardless of their citizenship status. Although immigration law is primarily enforced at the federal level, the increasing number of undocumented immigrants entering the country coupled with the cost to the state to provide certain services to undocumented immigrants led to the enactment of several bills in the 2006 legislative session. This Issue Brief discusses the services that the state must provide to undocumented immigrants and the associated costs of these services, and describes legislation regarding immigration that was passed during the 2006 legislative session.

State Benefits for Immigrants

The ability of undocumented immigrants to access federal and state benefits has prompted reform efforts both at the state and federal levels in recent years. Under federal law, there are certain benefits for which undocumented immigrants are not eligible. Such benefits include Temporary Assistance to Needy Families (TANF), Supplemental Security Income (SSI), and non-emergency Medicaid. In order to be eligible for these benefits, immigrants typically must

have been legally present in the country for at least five years.

Like other states, Colorado is required by federal mandates to provide some benefits to immigrants regardless of their legal status in the country, including emergency room care and public education. In addition, as a matter of public safety, the state also incarcerates illegal aliens, even though the state is not required to do so under federal law. The costs of these services provided to undocumented aliens are borne primarily by the state; however, in the case of emergency Medicaid payments, the federal government pays half of the associated costs.

Emergency health care. Pursuant to the federal "Emergency Medical Treatment and Active Labor Act," hospitals are required to treat and stabilize any person who arrives at the facility in an emergency situation, regardless of the person's citizenship status. Medicaid, the state's health care program for low-income persons, reimburses hospitals for emergency services provided to non-U.S. citizens. The total FY 2006-07 appropriation for Medicaid services for non-citizens is estimated to be \$61.9 million, half of which is from the state General Fund (\$30.9 million) and half of which is federal matching funds. The funds serve an estimated caseload of 6,309 individuals.

Public K-12 education. In 1982, the U.S. Supreme Court ruled in *Plyler et al. v. DOE* that children not legally admitted into the United States cannot be denied enrollment in local school districts. Further, the court ruled that states cannot deny funds to local school districts that admit children who are undocumented residents. Therefore, Colorado is

required to offer public education to all children in the state, whether they are citizens or non-citizens.

Based on the *Plyler v. DOE* ruling, the Colorado Department of Education has stated that determining the legality of a student's immigration status is not a duty of a school district. Because school districts do not inquire about a student's immigration status, estimating the number of undocumented alien students is difficult. One study estimated the number of illegal alien students in Colorado at 25,000 in 2000. Based on this estimate adjusted for the growth in Colorado's population between 2000 and 2004, Colorado schools expended approximately \$157.9 million to educate undocumented alien students in FY 2003-04.

Incarceration. According to the federal government, approximately 1,071 verifiable illegal aliens were incarcerated in Colorado Department of Corrections' (DOC) facilities in FY 2003-04. The average cost of housing an inmate in a DOC facility was \$26,248 in FY 2003-04. Therefore, state costs for housing verifiable illegal aliens in DOC facilities was approximately \$28.1 million in FY 2003-04.

2006 Immigration Legislation

Concern over the increasing numbers of immigrants who are entering the country illegally and the costs of providing mandated services to such immigrants prompted the enactment of several bills related to immigration in the 2006 legislative session. These bills concern a variety of topics including law enforcement identification of undocumented aliens and cooperation with federal immigration authorities, fraudulent identification documents, and illegal employment of undocumented aliens. All of these bills, with the exception of SB 06-090, have yet to be approved by the Governor.

Law enforcement. "Sanctuary policies" are official or unofficial policies of local governments that prohibit or discourage peace officers from cooperating with federal immigration officers to enforce federal immigration law. **SB 06-090** prohibits local governments from enacting such policies. In addition, the bill requires local law enforcement personnel to report suspected illegal aliens to the U.S. Immigration and Customs Enforcement Office.

In response to recent media reports drawing attention to persons who assist undocumented aliens

to illegally enter the United States (so-called "coyotes"), the General Assembly enacted legislation creating the crimes of smuggling of humans and trafficking in adults. Under **SB 06-206**, a person commits smuggling of humans if he or she assists a person to enter, remain in, or travel through the United States in violation of immigration laws in exchange for money or another thing of value. Pursuant to **SB 06-207**, a person commits trafficking in adults if he or she sells, exchanges, barters, or leases a person aged 16 years or older and receives any money or other consideration as a result of the transaction or if he or she receives an adult as a result of such a transaction. Another bill, **SB 06-225** requires the Colorado State Patrol to establish a special division to address human smuggling and human trafficking.

Fraudulent documents. As some undocumented immigrants may attempt to obtain work or public benefits through fraudulent identification, the General Assembly enacted new penalties for document fraud. **SB 06-110** prohibits any person from recklessly forging, counterfeiting, altering, or falsely making or providing, for any purpose, any document listed in federal law as a document which may prove a person's eligibility for employment. Persons who violate the provisions of the bill may be subject to a fine of at least \$50,000 per document. Another bill, **HB 06-1306**, requires the State Auditor's Office to conduct an audit of the implementation of the "Secure and Verifiable Identity Document Act." The act specifies that a public entity that provides services cannot accept, rely upon, or utilize an identification document to provide services unless the document is secure and identifiable.

Labor and employment. Much of the recent debate with regard to illegal immigration has focused on employers who illegally hire undocumented immigrants. Although labor laws that prohibit the employment of undocumented aliens are primarily enforced by federal agencies, the General Assembly explored ways to discourage employers from illegally employing undocumented aliens. **HB 06-1343** prohibits the state from entering into or renewing a contract with any contractor who knowingly employs illegal aliens to perform work under the contract or who contracts with any subcontractor who knowingly employs illegal aliens to perform work under the contract. If a contractor violates the provisions of the bill, the contract may be terminated by the state and the contractor may be liable for certain damages.