



COLORADO

Department of Health Care
Policy & Financing

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Difficulty of Care Payments Overview

Overview and Fact Sheet September 2024

The purpose of this fact sheet is to provide an overview of how Difficulty of Care (DOC) income payments are exempt for MAGI- Medical Assistance programs for a paid Care Provider providing certain waiver services for a Health First Colorado (Colorado's Medicaid Program) recipient. This overview is not intended for state or federal tax guidance.

Definitions

Home and Community-Based Services - Services available to members who participate in one of the Health First Colorado (Colorado's Medicaid Program) 1915(c) waiver programs. These services are available to support waiver recipients with Activities of Daily Living to support members to remain living in their homes and communities.

Consumer-Directed Attendant Support Services- Attendants provide personal care, homemaker, and health maintenance activities to Home and Community-Based Services (HCBS) Waiver recipients. As the Care Recipient, you are empowered to select, train, and manage attendants of your choice to best fit your unique needs rather than working through an agency.

In-Home Support Services- Attendants provide personal care, homemaker, and health maintenance activities, with the added support of an agency for HCBS Waiver recipients. As the Care Recipient, you are empowered to select, train, and manage attendants of your choice to best fit your unique needs, or you may delegate these responsibilities to an authorized representative.

Difficulty of Care (DOC) payments- Payments made to a qualified Care Provider under a state Medicaid HCBS waiver. Certain payments received by an individual Care Provider under a state Medicaid Home and Community-Based Services Waiver program are considered Difficulty of Care payments excludable from gross income under § 131 of the Internal Revenue Services (IRS) Code. The exclusion may apply whether the Care Provider is related or unrelated to the individual receiving care.

Care Provider- Is the person who may have certain income qualify as Difficulty of Care payments for specific HCBS Waiver services to a Care Recipient.

Care Recipient- Is the person who receives certain HCBS Waiver services from a Care Provider. In this context, the Recipient must be a Medicaid member receiving Medicaid Waiver services.

Home Health Agency- Is a certified Medicaid provider, who employs Care Providers to provide personal care and supportive services to eligible individual(s).

Types of Services

Consumer-Directed Attendant Support Services (CDASS)

CDASS is a service delivery option provided under HCBS waivers and is not a program that can be directly applied for. Case managers at a Case Management Agency determine an allocation amount based on how many hours of support an individual needs. The Care Recipient or an Authorized Representative (AR) is the employer of record. Attendants or Care Providers work directly for the Care Recipient or their AR.

Eligible HCBS waivers for CDASS:

- Brain Injury (BI)
- Community Mental Health Supports (CMHS)
- Elderly, Blind and Disabled (EBD)
- Complementary and Integrative Health (CIH) waiver
- Supported Living Services (SLS)

Payments are made to Attendants via a Financial Management Services (FMS) provider.

In-Home Support Services (IHSS)

Care Recipients and/or their Authorized Representatives work closely with a case manager and an IHSS Agency to determine what services are needed.

Eligible HCBS waivers for IHSS:

- Children's Home and Community-Based Services (CHCBS)
- Complementary and Integrative Health (CIH) waiver
- Elderly, Blind, and Disabled (EBD) waiver

✓ Payments are made directly from the Home Health Agency to the Care Provider.

Other HCBS Waiver Services through which Care Providers may qualify for DOC include personal care, homemaker, respite, etc. The Care Provider must provide services in the Care Recipient's residence and live in the same residence as the Care Recipient; however, it is not required to be related to the Care Recipient.

FAQ

As a Care Provider, is my income automatically exempt from counting towards my MAGI-Medical Assistance eligibility?

A Care Provider applying for a MAGI-Medical Assistance program must meet the criteria for a DOC payment for this income to be exempt.

What criteria needs to be met for the Care provider's income to be exempt as a DOC payment for MAGI- Medical Assistance programs?

The applicant/member who is the Care Provider and applying for Medical Assistance must meet ALL three requirements to receive a DOC payment exemption:

- The Care Provider must provide care for a recipient approved and enrolled in an HCBS waiver program and
- The applicant/member who is the Care Provider must live in the same home as the Care Recipient and
- The applicant/member who is the Care Provider should receive payments through the following Waiver service providers:
 - In-Home Supportive Services (IHSS) paid through an agency, or
 - Consumer Directed Attendant Support Services (CDASS), or
 - Home Care or Home Health Agency, or
 - Program Approved Service Agency (PASA)

If a Care Recipient is pending an LTC eligibility determination, can Certified Nursing Assistant (CNA) income payments be exempt for the care provider?

For CNA income payments to be exempt, the Care Recipient must be approved by LTC HCBS and meet all other DOC payment eligibility criteria.

During the Public Health Emergency, my income was previously exempt, what changed?

For the duration of the Public Health Emergency (PHE), if an individual's income went above the income limit during the member's eligibility period, they were locked into their current Medical Assistance program receiving continuous coverage. During the PHE Unwind, at renewal, the Care Provider's income was reevaluated and started counting correctly if they did not meet all DOC payment eligibility criteria.

My child is approved for the Children's Buy-in, are my CNA payments exempt from MAGI-Medical Assistance programs?

No, one of the eligibility criteria for exempting the DOC payments is that a child must be enrolled in LTC HCBS through a Medicaid Waiver to have a CNA payment excluded from the monthly gross income for household eligibility.

I am a Care Provider who cares for an unrelated elderly person five days a week in their home, and I have a room in the care recipient's home where I sleep four nights a week. On weekends, I reside with my family in our separate home. Would my income received from CDASS Medicaid be exempt from my MAGI Medical Assistance eligibility?

No, in this situation, the Care Provider does not live in the home with the Care Recipient, and one of the eligibility criteria to have a DOC payment exempt is that the Care Provider must reside with the Care Recipient to have their income exempt.

My wife and I both receive income payments through HCBS-IHSS for our child, who lives in the home. Are we both eligible to have our income exempt for our MAGI- Medical Assistance eligibility?

Yes, if all three criteria listed above are met to have a DOC payment exempt, then the HCBS-IHSS payments would not be countable for MAGI-Medical Assistance.

I am a Care Provider who provides 10 hours a week of care for my roommate (care recipient) who is approved for LTC HCBS and CDASS. I also work 40 hours a week at my local grocery store. Would my income received from HCBS-CDASS for providing care for my roommate and earned income from the grocery store be exempt from my MAGI- Medical Assistance eligibility?

The 10 hours a week received as a Care Provider from HCBS-CDASS can be exempt because all criteria are met to have a DOC payment exempt from counting as income towards MAGI Medical Assistance eligibility. However, the earned income from the local grocery store is still countable.

An eligibility worker has received an updated Live-In Home Care Provider Statement form. What must the eligibility worker do next?

The eligibility worker must review the statement to ensure the Care Provider has completed the form and the Care Recipient is active for an HCBS waiver. The statement form information must be entered into the Colorado Benefits Management System (CBMS) under the “Earned Income Screen” to identify a DOC payment and for the Care Provider’s income to be exempt.

An eligibility worker has received an updated Level of Care for a member who was receiving HCBS; however, is transferring to PACE next month and an updated Live-In Home Care Provider Statement has not been received. Can the income continue to be excluded for the Care Provider?

No, since the Care Recipient transferred to an ineligible waiver, the Care Provider’s income would no longer be exempt from MAGI-Medical Assistance programs.

I started caring for someone before their LTC application was approved. Now that their LTC services have been approved,

can my DOC payments be exempted back to when I first started caring for them?

Potentially, most Medical Assistance programs are eligible for up to 90 days of retroactive coverage if all other eligibility criteria is met. The Care Provider's income cannot be exempted prior to the Care Recipient's LTC eligibility.

I'm an IHSS attendant for my child. Do I have to pay taxes on my HCBS-IHSS income?

The Department cannot provide tax guidance. However, some attendants may qualify for DOC payments outlined in IRS notice 2014-7. Please speak with your tax professional for more information.

Resources

[Internal Revenue Service: Notice 2014-7](#)

[Internal Revenue Service: Certain Medicaid waiver payments may be excludable from income](#)

For more information, contact
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