



INFORMATIONAL MEMO

Title: Difficulty of Care and Community First Choice	Topic: HCBS Community First Choice
Audience: Provider Agencies, Live-in Caregivers, In-Home Support Services Attendants (IHSS), IHSS Agencies, Consumer-Directed Attendant Support Services (CDASS) Attendants, Family Caregivers, Financial Management Services Contractors, Home Care Agencies	Sub-Topic: Difficulty of Care
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Purpose and Audience:

The purpose of this Informational Memo is for the Department of Health Care Policy and Financing (HCPF) to provide an overview of the status of Difficulty of Care payments under Community First Choice for Home and Community-Based Services Provider Agencies, In-Home Support Services Agencies, Financial Management Services contractors, live-in Caregivers, live-in Consumer Directed Attendant Support Services Attendants, and live-in In-Home Support Services Attendants. This overview is not intended to serve as state or federal tax guidance.

Information:

Payments for select Home and Community-Based Services (HCBS) Waiver services are considered Difficulty of Care (DOC) payments excludable from federal income tax under § 131 of the Internal Revenue Code.

Per general Internal Revenue Service (IRS) regulation and guidance, DOC payments only apply to the 1915 (c) HCBS waiver authority, not the 1915 (k) Community First Choice (CFC) authority. The State understands individuals whose payments qualify for DOC under the waivers want to know if those payments will still qualify for DOC under CFC.

Colorado implemented a CFC program as of July 1, 2025, moving services that previously qualified for DOC payments under HCBS Waivers to CFC. HCPF has requested a Private Letter Ruling from the IRS asking for a decision on whether DOC payments will be allowed under Colorado's CFC program. Some states that have a CFC program, such as California and Washington, have requested and received Private Letter Rulings from the IRS after implementing their CFC programs. The IRS's response to other state's requests indicated that certain payments made under their CFC program will be treated as DOC payments.

Private Letter Ruling Information

A Private Letter Ruling (PLR) is a written statement issued by the Internal Revenue Service (IRS) to a taxpayer, interpreting and applying tax laws to that taxpayer's specific circumstances. It is a way for taxpayers, typically businesses or large organizations with complex tax matters, to receive guidance and confirmation on how the IRS would treat a particular transaction or issue before they complete it.

HCPF submitted the PLR request in February 2025, after the State Plan Amendment for CFC was approved by the Centers for Medicare and Medicaid Services (CMS). The IRS indicated that they have 6 months to issue a ruling. Unfortunately, there was a delay in the IRS assigning an attorney to the State's PLR request, and the IRS now has until end of November 2025 to issue a ruling. After the PLR is issued, HCPF will make the ruling available to stakeholders, but cannot provide guidance on the application of the ruling to caregivers, Attendants, or provider agencies. All interested parties should consult a tax advisor for guidance.

If the IRS issues a PLR in November indicating that DOC payments apply to CFC services, the ruling should apply to DOC payments that were made between July 1, 2025 through the date of the ruling, as PLRs are generally retroactive.

While other states such as California and Washington have received a PLR from the IRS stating that DOC payments apply to their 1915 (k) CFC authority, there is no guarantee that Colorado will receive that same ruling.

What to do until the Private Letter Ruling is issued:

Provider Agencies, In-Home Support Services Agencies, and Financial Management Services contractors

HCPF cannot provide tax guidance to provider agencies on whether taxes for employees and/or contractors should be withheld. It is up to each individual agency to develop policies on tax withholdings for all employees and/or contractors. For CDASS, the Financial Management Services (FMS) contractors will be following current IRS rules and will provide information to members and attendants who are impacted. HCPF recommends that providers review all available information on Difficulty of Care and consult your tax advisor for guidance. Visit the [Colorado Department of Revenue's website](#) for low cost and free tax resources.

Live-in Caregivers and Attendants

HCPF recommends that you contact your Provider Agency or FMS contractor for information on how they intend to treat DOC Payments while HCPF waits to receive the PLR from the IRS. Please consult a tax professional with any additional questions. Visit the [Colorado Department of Revenue's website](#) for low cost and free tax resources.

Live-in Caregivers and Attendants who are on a MAGI Medicaid Program

This section is only applicable for eligibility purposes and not tax purposes. The applicant/member who is also a live-in caregiver and applying for MAGI Medical Assistance must meet BOTH requirements to receive a DOC payment exemption for eligibility purposes:

1. The applicant/member must provide care for a recipient approved and enrolled in an HCBS waiver program, and
2. The applicant/member who is the caregiver must live in the same home as the care recipient.

If the care recipient is a CFC member, they must also be enrolled in an HCBS Waiver for their caregiver to be considered for a DOC payment exemption for eligibility purposes.

Attachment(s):

None

Links:

[IRS 2014-07](#)

[IRS Q&A - Certain Medicaid waiver payments may be excludable from income](#)

[Washington Private Letter Ruling](#)

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