



INFORMATIONAL MEMO

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| 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, and Live-in Caregivers that provide activities of daily living (ADL) and instrumental activities of daily living (IADL) supports. This overview is not intended to serve as state or federal tax guidance.

Definitions:

Live-in Caregiver means the person who may have certain income qualify as Difficulty of Care payments for specific Community First Choice (CFC) services to a Care Recipient.

Care Recipient means the person who receives certain CFC services from a Care Provider.

Direct Care CFC Services means services that provide assistance with activities of daily living and instrumental activities of daily living such as eating, bathing, dressing, toileting, transferring, grocery shopping, medication management, money management, and acquiring and retaining the adaptive skills necessary to reside successfully in home and community-based settings. These services can be accessed through traditional agency-based care, In-Home Support Services (IHSS), or Consumer-Directed Attendant Support Services (CDASS).

Provider Agency refers to any Agency that provides Direct Care CFC Services including a Home Care Agency, Program Approved Service Agency, Home Health Agency, or In-Home Support Services Agency.

Financial Management Services (FMS) Contractor refers to means an entity contracted with the Department and chosen by the Member or Authorized Representative to complete employment-related functions such as paying Attendants and calculating and withholding taxes on behalf of their CDASS employers. FMS also track and report on individual Member CDASS Allocations. For the purposes of this memo, FMS contractors include Public Partnerships, LLC (PPL) and Palco Inc.

Private Letter Ruling (PLR) means 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.

Information:

Colorado implemented the Community First Choice (CFC) program on July 1, 2025. With this new program, select services were moved from 1915(c) Home and Community Based Services (HCBS) waivers to 1915(k) Community First Choice. Under 1915(c) HCBS Waivers, select services qualified as Difficulty of Care (DOC) payments. Per section 131 of the Internal Revenue Code and Notice 2014-7, certain foster care payments or payments made to a qualified care provider under HCBS waivers qualify as DOC. In February, the Department of Health Care Policy and Financing (HCPF) requested a Private Letter Ruling (PLR) from the Internal Revenue Service (IRS) asking for a decision on whether DOC payments are allowed under Colorado's CFC program.

On December 12, 2025, HCPF received a favorable decision from the IRS on this request. The IRS indicated that payments for select Direct Care CFC Services to Live-in Caregivers can be considered DOC payments excludable from federal income tax under § 131 of the Internal Revenue Code. The Private Letter Ruling grants the following:

- (1) Medicaid payments made under CFC to a Live-in Caregiver for extraordinary care (i.e. care that is related to an individual's disabilities) that are provided by an individual, whether related or unrelated, who resides in the same home as the Care Recipient will be treated as Difficulty of Care payments excludable from the gross income of the provider under § 131 of the Internal Revenue Code.
- (2) Live-in Caregiver is not required under section 6041 or 6051 to report these payments as wages subject to income tax.
- (3) Live-in Caregiver may treat payments to providers as excludable payments described in Notice 2014-7, such provider agencies or Financial Management Services contractors may look to the [Q&A on the Notice available at irs.gov](#) for guidance.

What to do now that the Private Letter Ruling is issued:

Provider Agencies and Financial Management Services contractors

While it is the Provider Agency and FMS contractor's obligation to follow state and federal tax laws on tax withholdings for all employees and/or contractors, HCPF strongly encourages provider agencies and FMS contractors to revisit tax withholding policies in light of Colorado's Private Letter Ruling.

HCPF recommends that Provider Agencies and FMS contractors review all available information on DOC, including the [Notice 2014-7 FAQ](#), and consult a tax advisor for guidance. Visit the [Colorado Department of Revenue's website](#) for low cost and free tax resources.

Live-in Caregivers

The Private Letter Ruling applies to eligible payments for certain CFC services provided in the 2025 tax year and future tax years. If a Live-in Caregiver provided Direct Care CFC Services during the 2025 state fiscal year (beginning July 1, 2025) to a care recipient receiving services through CFC, those payments would now be qualified as DOC. Live-in Caregivers can ask their Provider Agency or FMS contractor about how they can recoup the money that was withheld for taxes.

For payments moving forward, HCPF recommends that Live-in Caregivers contact their Provider Agency or FMS contractor for information on how they intend to treat DOC

Payments in light of Colorado's Private Letter Ruling 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 who are on a Modified Adjusted Gross Income (MAGI) Medicaid Program

This section is only applicable for MAGI Medicaid eligibility; it does not provide any tax-related information. Colorado's Private Letter Ruling states that the payments made for certain Direct Care CFC Services qualify as DOC and are therefore exempt for MAGI Medicaid eligibility determinations.

HCPF is actively working on a system change to ensure that this income is accurately excluded for Live-in Caregivers that have MAGI Medicaid and provide care to CFC-only care recipients. Until the system is fully updated, the care recipient should maintain enrollment in an HCBS Waiver if they have a Live-in Caregiver applying for MAGI Medical Assistance. Remaining on a waiver will ensure their caregiver's income is considered for a DOC payment exemption when Medicaid eligibility is assessed. HCPF will issue additional guidance for members and county eligibility workers as soon as it becomes available.

Attachment(s):

None

Links:

[IRS 2014-07](#)

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

[Colorado Private Letter Ruling](#)

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