



## OPERATIONAL MEMO

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<b>TITLE:</b>	<b>MERIT-BASED STAFFING REQUIREMENTS FOR COUNTY DEPARTMENTS OF HUMAN/SOCIAL SERVICES</b>
<b>SUPERSEDES NUMBER:</b>	N/A
<b>EFFECTIVE DATE:</b>	<b>APRIL 3, 2023</b>
<b>DIVISION AND OFFICE:</b>	<b>COMMUNICATIONS AND GOVERNMENT RELATIONS, POLICY COMMUNICATIONS AND ADMINISTRATION; ELIGIBILITY, MEDICAID OPERATIONS</b>
<b>PROGRAM AREA:</b>	<b>COUNTY RELATIONS AND ADMINISTRATION; ELIGIBILITY</b>
<b>KEY WORDS:</b>	<b>MERIT-BASED, STAFFING, COUNTY ADMINISTRATION, FEDERAL, GOVERNMENT AGENCIES</b>
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<b>APPROVED BY: RACHEL REITER</b>	

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*HCPF Memo Series can be accessed online: <https://www.colorado.gov/hcpf/memo-series>*

### **Purpose and Audience:**

The purpose of this Operational Memo is to reiterate federal and state requirements on merit-based staffing for county departments of human/social services. Positions that perform specific job duties and functions require county staff to be certified in the county's merit-based system and must be an employee of a government agency (the county).

### **Information:**

#### Federal and State requirements for staff administering Medicaid programs

Federal law at 42 C.F.R. § 431.10(C)(2) requires that the staff employing discretion in determining eligibility for state Medicaid programs must be both

1. hired into a merit-based personnel system, AND

2. must also be an employee of a government agency

These staff must meet both requirements under federal law. If only one of the requirements is met, the employee is not allowed to use discretion to determine eligibility.

Employees that do not determine eligibility, but function in support positions such as call center agents and administrative staff, do not need to meet the above hiring criteria and can receive appropriate Medicaid funding as support staff (such as part of a cost pool). However, the duties of these support position employees must be specifically stated to not allow determination of eligibility.

Counties must be in compliance with federal law concerning merit-based staffing requirements for the Colorado Medical Assistance Program to be eligible for federal financial participation (FFP) and State matching funds to be reimbursed for personnel expenditures.

#### Definition of Discretion for Determining Eligibility

Per Federal requirements for the determination of eligibility, only governmental employees (such as county employees) in a merit-based employment system are allowed to access the Colorado Benefits Management System (CBMS) to assess the following:

1. Evaluation/resolution/adjudication of evidence available to the employee provided by the applicant, and;
2. Evaluating and resolving eligibility inconsistencies

County employees that are not merit-based, government employees cannot fulfill the duties relating to the determination of eligibility as described above.

#### Qualities of a Merit-based Personnel System

Federal law at 5 CFR Subpart F - Standards for a Merit System of Personnel Administration, sets the minimum standards for a merit system; as such, county merit systems of personnel must meet the following requirements:

#### **§ 900.603 Standards for a merit system of personnel administration.**

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information (including family medical history), marital status, political affiliation, sexual orientation, status as parent, labor organization affiliation or non-affiliation in accordance with chapter 71 of title V, or any other non-merit-based factor, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available, and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

Allowable Staff based on Job Functions and Duties

If any portion of the individual employed by the county is paid for using Medical Assistance funds, then that individual must comply with federal law.

<b><u>Job Function</u></b>	<b><u>Duties</u></b>	<b><u>Government Employee?</u></b>	<b><u>Merit-Based Requirement?</u></b>	<b><u>Contract Allowable?</u></b>	<b><u>Temp or Term-Limited</u></b>
<b>Eligibility technician (merit-based)</b>	Determination and discretion of eligibility  Full access to CBMS	Yes  Must be a county employee	Yes  Must be hired into a merit-based system	No*  *With the exception of contracts with Department-approved Eligibility Sites or other county merit-based governmental employees	Only term-limited allowed  No temporary staff

				*Contracts with external agencies or entities are <b>not</b> allowed and the county <b>cannot</b> delegate eligibility determination duties to anyone outside the county department	
<b>Administrative or Support Staff</b>	<p>Support for eligibility determination process</p> <p>Ex: Scanning or Application Initiation</p> <p>Limited or Read-Only access to CBMS</p> <p>Can accept telephonic signatures</p>	<p>*Dependent on type of support task</p> <p>If granted CBMS access, Yes</p> <p>If not granted CBMS access, No</p>	<p>*Dependent on type of support task</p> <p>If granted CBMS access, Yes</p> <p>If not granted CBMS access, No</p>	<p>Yes*</p> <p>*Restricted systems access</p>	Can be temporary or term-limited
<b>Customer Service</b>	<p>Direct interaction with applicants and members</p>	<p>If granted CBMS access, Yes</p> <p>If not granted CBMS access, No</p>	<p>*Dependent on type of support task</p> <p>If granted CBMS access, Yes</p> <p>If not granted CBMS access, No</p>	<p>Yes</p>	Can be temporary or term-limited
<b>Program Integrity/Fraud</b>	<p>Conduct investigations of suspected fraud and completes the fraud process</p>	<p>If granted CBMS access, Yes</p>	<p>*Dependent on type of program integrity task</p> <p>If granted CBMS access, Yes</p>	<p>Yes</p>	Can be temporary or term-limited

		If not granted CBMS access, No	If not granted CBMS access, No		
<b>Operations</b>	Staff that support the operations of the county agency  EX: accounting or facilities staff	No	No	Yes	Can be temporary or term-limited

Questions regarding whether existing staff fit into the categorization above, or what the requirements for any other types of county staff not listed in the table above are, should be sent to [HCPF\\_CountyRelations@state.co.us](mailto:HCPF_CountyRelations@state.co.us), which will be reviewed on a case-by-case basis.

Definition of Term Limited and Temporary Employees

Term Limited Employees meet the following criteria:

- Are actual county staff hired through the same process as other county staff. (Job posting and competitive selection process.)
- During the hiring process it is clearly noted (in the posting and interview) that the position is term limited (by funding and/or by time) and is not a permanent position.
- During employment the employee has access to the same benefits as other county employees (vacation, sick, etc).
- The position ends when the specialized funding for the position ends and/or the project is completed.
- The employee can compete for other posted positions with the county as an internal candidate.

Temporary Employees meet the following criteria:

- May be hired through a temp service, external agency or partner or directly by the county.
- Are not hired through a competitive selection process.
- Do not have access to county fringe benefits such as sick leave and holiday pay.
- Temporary position is limited to a certain time period of employment.

### Delegation of Duties and Functions to External Agencies and Contractors

Per 42 CFR 431.10, the Department of Health Care Policy and Financing was granted the sole federal authority over the Colorado Medical Assistance Program, which includes the sole authority of the Department to delegate eligibility determination duties and functions. The Department has, in turn, delegated those eligibility determination duties to each county department of human/social services and specific Eligibility Sites as defined in 10 CCR 2505-5 8.100. State statute defines the county's responsibilities regarding Medical Assistance local administration for the residents within their county boundaries.

As such, county departments are restricted from delegating eligibility determination duties to any outside agency, partner organization or external staff. The only allowable delegation of eligibility determination by county departments include:

1. Delegation to a Department-approved Eligibility Site, based on approval from the Eligibility Site contract manager and county administration fiscal monitoring program.
2. Delegation to the Overflow Processing Center, as directed or required by the Department.
3. Delegation to a contracted county worker from another county that also meets the requirements of employment in a merit-based system in their originating county.

Separately, the Department retains the statutory authority to conduct eligibility determinations itself, if deemed necessary.

Access to CBMS granted by the county for the purposes of delegating eligibility determinations to agencies or partners who are not approved shall result in immediate loss of such access as directed by HCPF.

### Certification by the county for merit-based staff

Per 10 CCR 2505-5 1.010.3.5, the Board of County Commissioners of each county is required to submit a certification of their merit-based employment system to the Department no later than January 1<sup>st</sup> of each year; certifications should be sent to [HCPF\\_countyrelations@state.co.us](mailto:HCPF_countyrelations@state.co.us). Failure to submit the required certification timely can result in a compliance finding and loss of federal and state matching funds for those county staff who are required to be in merit-based employment.

### Disallowance of Federal and State Funds for Non-Compliant Staffing

Any staff not meeting federal and state requirements for merit-based staffing or approval requirements for delegation of eligibility determination are ineligible for federal and state reimbursement for those expenditures.

**Attachment(s):**

None

**Department Contact:**

[HCPF\\_CountyRelations@state.co.us](mailto:HCPF_CountyRelations@state.co.us)