



## OPERATIONAL MEMO

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<b>Title:</b> Temporary Prohibition on Administrative Overpayment Recoveries from Medicaid Members	<b>Topic:</b> Fraud
<b>Audience:</b> Eligibility Staff, Including Fraud Investigators	<b>Sub-Topic:</b> Client Fraud
<b>Supersedes Number:</b> N/A	<b>Division:</b> Partner Relations and Administration
<b>Effective Date:</b> May 11, 2023	<b>Office:</b> Policy, Communication & Administration
<b>Expiration Date:</b> May 11, 2025	<b>Program Area:</b> Member/Client Fraud Recoveries/County Relations
<b>Key Words:</b> CLIENT FRAUD, MEMBER FRAUD, OVERPAYMENT, ADMINISTRATIVE RECOVERY, CRIMINAL RECOVERY, CMS, PHE, INVESTIGATIONS, COVID-19, ELIGIBILITY TERMINATION	
<b>Legal Authority:</b> Centers for Medicare and Medicaid Services Guidance FAQ	
<b>Memo Author:</b> Miles King & Ashley Pinson	
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<b>Approved By:</b> Rachel Reiter	

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### Purpose and Audience:

The purpose of this Operational Memo is to inform county departments of human/social services that due to recent guidance issued by the Centers for Medicare and Medicaid Services (“CMS”), effective May 11, 2023, the Department of Health Care Policy and Financing (“the Department”) is issuing a temporary prohibition on the administrative recovery of all Health First Colorado/Medicaid overpayments from current and former Health First Colorado/Medicaid members. This memo was developed after feedback from information sessions held by HCPF with counties partners.

This Operational Memo will be available to all county staff, including fraud investigators and others involved with investigations and recoveries, to advise them of the CMS

guidance received by the Department, and to provide specific instructions regarding administrative and criminal overpayment recoveries from members. This memo will be updated as further guidance is issued by CMS.

Information:

### Background

On October 17, 2022, CMS issued a Frequently Asked Question ("FAQ") document entitled "COVID 19-PHE Unwinding FAQs." FAQ number 31 ("FAQ 31") of this document states in relevant part that: "States cannot recover or recoup the cost of services from a beneficiary, even if they have been found after an administrative or criminal proceeding to have committed Medicaid beneficiary fraud or abuse."

Because this was a break from precedent by CMS, the Department and other states had follow-up discussions to better understand and get confirmation of the change in federal direction. Colorado expects further guidance from CMS on this topic reinforcing the prohibition on recoupments and will share with county partners as more is known.

### Definitions

Administrative recovery - any recovery of medical assistance overpayments that is not court ordered restitution, ordered by a judge in a criminal court proceeding.

Criminal recovery - recovery of medical assistance overpayments through criminal restitution ordered by a criminal court judge.

Overpayments - any medical assistance payments, including capitation payments, paid on behalf of a recipient who was not lawfully entitled to receive the benefits for which the payments were made.

### Temporary Prohibition on Administrative Overpayment Recoveries from Members

The Department has had several conversations with CMS representatives regarding FAQ 31 and was told by CMS it is not limited to those Health First Colorado/Medicaid members who maintained eligibility due to the Public Health Emergency (PHE) period. The Department has requested, and is still awaiting, further clarification and guidance from CMS related to FAQ 31. However, in consideration of what the Department has been told verbally by CMS thus far, effective May 11, 2023, all counties must temporarily cease all administrative overpayment recovery actions against Health First Colorado/Medicaid members.

This temporary prohibition means that no overpayment recovery from a current or past Health First Colorado/Medicaid member may proceed outside of the criminal court system, whether that be by formal administrative process, county demand or request, a new or ongoing payment plan, or by any other non-criminal court means.

Counties are required to continue to investigate fraud referrals. If, upon investigation, it is determined that the member is currently ineligible, the member's eligibility can be terminated. If the member was previously ineligible and now is eligible for benefits, their eligibility must be based on current eligibility requirements.

While FAQ 31 also prohibits criminal recoveries from Health First Colorado/Medicaid members, based on the Department's conversations with CMS, there is no cause at this time for the Department to prohibit the recovery of payments (restitution) ordered by a criminal court.

#### Further Guidance

All administrative, non-criminal court recoveries are prohibited from May 11, 2023, until such time as the Department issues updated guidance in the form of an Operational Memo. This temporary prohibition on administrative recoveries may be subsequently revised, removed, or made permanent, pending further CMS guidance. Court-ordered criminal recoveries from members may proceed as normal at the present time.

While the prohibition on all administrative overpayment recoveries is effective May 11, 2023, the date on which the PHE is scheduled to officially end, Department Policy Memo PM 21-002, issued February 2, 2021, with an effective date of March 18, 2020 ("HCPF PM 21-002"), currently remains in effect and will remain in effect even after the PHE is officially over. HCPF PM 21-002 will continue to prohibit overpayment recoveries from members for any period of ineligibility that falls within the PHE period. Health First Colorado/Medicaid members will not be responsible for medical assistance payments made on their behalf from the beginning of the COVID-19 health crisis through the end, as measured by the PHE period of March 18, 2020, through May 11, 2023. After the PHE has officially ended, counties still may not establish overpayment claims which occurred during the PHE period, no matter the reason they occurred.

#### Ongoing Monitoring and Compliance

The Department staff responsible for county oversight activities may review overpayment recovery data during the county's Management Evaluation or during other necessary Desk Reviews. Findings of non-compliance may result in the issuance of a Management Decision Letter (MDL). The MDL acts as a non-compliance notice and will require the county to address the root cause of non-compliance and correct internal

procedures to prevent future non-compliance. If a county is selected for a Desk Review of overpayment recovery data, the county will be notified prior to the completion of the review.

**Attachment(s):**

CMS COVID 19-PHE Unwinding FAQ Document

HCPF PM 21-002

HCPF FAQs for Counties & Presentation on Temporary Pause on Recoupments

This memo will be revised to include the below attachments as both are currently undergoing a plain language reviews:

- Member notification template – recoupments
- Member notification template – PHE recoupments

**Department Contact:**

County Relations Team

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