



## OPERATIONAL MEMO

---

<b>Title:</b> Temporary Prohibition on Administrative Overpayment Recoveries	<b>Topic:</b> County Relations
<b>Audience:</b> County Fraud Investigators, Claims staff	<b>Sub-Topic:</b> Administrative Policy
<b>Supersedes Number:</b> HCPF OM 23-046	<b>Division:</b> Partner Relations and Administration
<b>Effective Date:</b> July 18, 2025	<b>Office:</b> Policy, Communication & Administration
<b>Expiration Date:</b> July 18, 2027	<b>Program Area:</b> Member Program Integrity
<b>Key Words:</b> Recoveries, Claims, Overpayments, Fraud, Overpayment Recovery, Criminal Court, Investigations	
<b>Legal Authority:</b> 42 CFR 455.15(b), 42 CFR 455.2, 42 CFR part 431 subpart E	
<b>Memo Author:</b> Miles King and Ashley Pinson	
<b>Operational Memo Number:</b> HCPF OM 25-051 <b>Issue Date:</b> July 22, 2025 <b>Approved By:</b> Josh Montoya	

---

*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 inform county departments of human/social services (“counties”) of updates received from Centers for Medicare & Medicaid Services (“CMS”) related to administrative overpayment recoveries and to provide guidance on recovery methods.

This Operational Memo will be available to all county staff, including fraud investigators and others involved with fraud investigations and overpayment establishment or recoveries of overpayments, to advise of the CMS guidance received by HCPF, and to provide specific instructions regarding administrative and criminal overpayment recoveries from members. This memo will be updated when additional 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 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.” As a result, HCPF instituted a temporary prohibition on administrative overpayment recoveries as of May 11, 2023.

1992(a)(3) of the Social Security Act and 42 CFR part 431, sub part E protect a member and/or applicant’s due process; a member and/or applicant is granted due process when applying or reapplying for benefits, which includes advance notice of action and the right to a fair hearing. CMS’s reasoning for the prohibition on administrative recoveries is based on their position that an administrative overpayment is a retroactive termination of eligibility without proper noticing.

The prohibition on administrative overpayment recoveries was a break from precedent by CMS, leading HCPF and other states to have follow-up discussions to better understand and get confirmation of the change in federal direction.

HCPF also 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.

Subsequently, on December 5, 2024, CMS issued SMD #24-005, entitled “Protecting Medicaid Beneficiaries Against Impermissible Fraud and Abuse Sanctions.” This written guidance was CMS’s follow up to FAQ 31 and confirmed their position that administrative overpayment recoveries from members are prohibited. However, on May 1, 2025, SMD #24-005 was rescinded by CMS. In rescinding SMD #24-005, CMS did not include any clarifying guidance as to where this rescinded guidance leaves states now, especially considering that the original guidance of FAQ 31 has not been rescinded. Further clarification from CMS has been requested by states, but until such time as that additional guidance is received, and an updated Operational Memo is issued by HCPF, all counties must still temporarily cease all administrative overpayment recovery actions against Health First Colorado/Medicaid members.

### Action To Be Taken:

Temporary Prohibition on Administrative Overpayment Recoveries from Members

Based on the current guidance provided by CMS, counties may not establish overpayment recoveries unless through a criminal court. All administrative, non-criminal court established recoveries remain prohibited from May 11, 2023, until such time as HCPF issues updated guidance in the form of an Operational Memo.

This 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. A member cannot have their eligibility terminated prior to:

- 1) conducting a redetermination of eligibility based on a change in circumstances or a renewal that results in a determination that the member is ineligible for Medicaid on all bases, AND
- 2) providing advance notice of action and fair hearing rights. If the member was previously ineligible and now is eligible for benefits, their eligibility must be based on current eligibility requirements following the above-mentioned requirements. If the county determines fraud has occurred, they must refer suspected fraud for criminal court proceedings for recovery.

## **Further Guidance**

All administrative, non-criminal court recoveries are prohibited from May 11, 2023, until such time as HCPF 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.

HCPF PM 21-002 prohibits 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, unless a recovery is established by a criminal court.

This prohibition on administrative overpayment recoveries may be subsequently revised, removed, or made permanent, pending further CMS guidance.

## Ongoing Monitoring and Compliance

HCPF staff responsible for oversight activities may review overpayment recovery practices, activity, and data during Management Evaluation Reviews, Desk Reviews, or other similar reviews or audits of the administration of this program. 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.

### Definition(s):

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.

Fraud - Per 42 CFR § 455.2, an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law.

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.

### Attachment(s):

CMS COVID 19-PHE Unwind FAQ Document

CMS SMD #24-005 (Rescinded)

HCPF PM 21-002

HCPF FAQs for Counties

HCPF Presentation on Temporary Pause on Recoupments

Member correspondence template - Administrative Overpayment Recovery

Member correspondence template - PHE Recovery

Talking points for sites

### HCPF Contact:

Complete a [County Relations Webform Request](#) or email [hcpf\\_countyrelations@state.co.us](mailto:hcpf_countyrelations@state.co.us)

