COLORADO
Department of Health Care Policy & Financing

# OPERATIONAL MEMO

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| **Title:** Trust & Recovery Submission to HCPF | **Topic:** Eligibility Process |
| **Audience:** County Departments of Human/Social Services and Eligibility Partners | **Sub-Topic:** Income & Resource Eligibility |
| **Supersedes Number:** HCPF 15-005 | **Division:** Legal Division |
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| **Legal Authority:** 10 CCR 2505-10, Section 8.100.7.E.7.c. | |
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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 Memorandum is to advise stakeholders, including counties and other eligibility partners, of the newly published webform for the submission of trust documents and inquiries to HCPF's Trust Policy & Recoveries Section. Counties and eligibility partners must begin using this webform on or before the effective date of this Memorandum. Guidance on the information that should be included with a trust submission is also provided in this Memorandum, and this guidance should be followed by anyone submitting trusts for review to ensure the timely processing of their submission.

Additionally, the purpose of this Memorandum is to advise counties and other eligibility partners of a new portal that allows these partners to access information on trusts submitted for review by the Trust Policy & Recoveries Section. The portal can also be used to communicate with this Section about any trust submissions.

Information:

Any trust established by or benefiting an applicant/member must be submitted to the Trust Policy & Recoveries Section of the Colorado Department of Health Care Policy & Financing (the "Department") as part of the financial eligibility determination process for that applicant or member. *See* 10 C.C.R. 2505-10, Sections 8.100.5.E.8, 8.100.7.E.7, and 8.100.7.G.9. The Department will review the trust documents, including information on asset transfers related to the trust, to determine if there is any impact on eligibility. A formal written determination is then provided to the county and/or other eligibility site. If someone other than an eligibility site submitted the trust for review, a copy of the written determination will also be provided to the submitter. This Section also recovers the remaining balance of certain trusts and annuities upon termination or death, so notice of these closures must also be submitted to the Section for processing.

<u>Required for All Submissions</u>

For **all** submissions, please ensure the following:

- Trustee contact information is available and up to date.
- A complete copy of the trust agreement is being submitted, including, but not limited to, any schedules, amendments, or restatements. Any other documents impacting the administration of the trust or its terms should also be submitted, including documents related to a change of trustee or any other document impacting the administration of the trust or the member/applicant's interest in the trust.
- Complete funding/asset information is being submitted, including the source and amount of all funds or other assets transferred into the trust. For newly created trusts, this usually includes a complete and accurate Schedule A. For older trusts, provide an accounting showing all assets contributed to and distributions made from the Trust during the five-year look-back period.

<u>Required for Income Trust Submissions</u>

For an **Income Trust** submission, please ensure the following:

- If the trust was signed on or after September 30, 2024, confirm that it is on the current form titled Irrevocable Income Trust Agreement.
- Confirm that the date and the applicant/member's legal name are on the trust agreement and that the settlor and trustee have *signed* page 7 of the trust agreement. Notarization of these signatures is preferred but not required.

- If the documents were signed by someone other than the applicant/member on their behalf, include a copy of the document(s) evidencing this individual's authority to act on behalf of the member/applicant, which may include:
    - Power of Attorney
    - Letters of Conservatorship
    - Letters of Guardianship
    - Court Order
- If providing one or more of the above documents, confirm that the document(s) expressly grants the person signing the authority to establish the trust on behalf of the applicant/member. Under the laws of Colorado, the power to create an income trust is not included in the general statutory powers given to agents, conservators, guardians, or other fiduciaries. Further, for Letters, the general form language for these court filings expressly excludes the power to create a trust by stating that their authority is "subject to the exclusions in § 15-14-411, C.R.S," so please ensure that there is additional language on the filing expressly granting the power to create a trust.

Required for Disability Trust Submissions

For a **Disability Trust** submission, please ensure the following:

- If the trust assets include a personal injury judgment, award, settlement, or the like, please provide:
    - Proof of satisfaction of any Medicaid lien or confirmation that no lien was made (Note: If medical claims related to the underlying incident were paid by the Department, an automatic statutory lien was created under C.R.S. § 25-5.4-301(5)). Typically, these liens are satisfied during the settlement process. The member or their representative may contact the Department's Tort and Casualty Unit in the Third-Party Liability and Recoveries section for a letter evidencing satisfaction of a lien or confirmation that no lien was made. They can be reached by email at Tort.Casualty@state.co.us.
    - Confirmation that either this is the complete settlement or that additional funds will be paid to the member/applicant or the trust. A copy of the Settlement Order is preferred, or if none, an email from the attorney or the trustee is sufficient.
    - If an annuity or any other means for periodic payments is part of the settlement, the Department requires proof that the trust or the Department is named as the remainder beneficiary of any such payments on death. To avoid inclusion of these payments in income, information on whether the annuity has been irrevocably assigned to the trust should also be provided. A copy of the annuity contract and any corresponding court orders are usually sufficient.

- If a personal injury judgment is not involved but the trust assets include an annuity or other periodic payments (e.g., child support or alimony payments), a copy of the contract or court order and information on whether the payments were irrevocably assigned to the trust must also be provided.

## Action To Be Taken:

On or before the effective date of this Memorandum, Counties and Eligibility Partners must begin using the secure webform located at https://hcpfccc.my.site.com/intake/s/ for all trust submissions and inquiries. This webform should be used for any of the following:

- General inquiries about Trusts or Recoveries
- New trust submissions for review
- Requests for reconsideration of a prior trust decision
- Over $5k distribution notices for a member-funded disability trust
- Notices of closure for income, disability, or pooled trusts
- Accounting reviews for a trust
- Annuity reviews or closures
- Trustee information updates

All submissions will be assigned a "ticket" number. Any additional communications regarding a submission should be through an email response that uses the subject line with that ticket number. Emails sent via this method are secure and should not require additional encryption methods.

In addition to using the webform, eligibility workers and supervisors who regularly communicate with the Department regarding trusts should email the Trust Policy & Recoveries Section to request access to our portal located at https://hcpfccc.my.site.com/trusts/s/. While this portal can also be used to submit trusts instead of the webform, it should primarily be used to:

- View information on all trusts submitted, including the status or outcome of a trust review.
- Track the progress of all trust submissions for the eligibility site.
- Submit additional documentation received for a trust.
- Communicate with the Department regarding trusts.

The portal includes a search bar that allows users to search for tickets and trusts related to an applicant or member. Counties and other eligibility sites should perform a search within the portal to obtain any information needed, including trust review status, in lieu of contacting the Department. As a best practice, you should use the

State ID of the applicant or member to search for a record, names or other unique identifying information should also be used to perform a secondary search in the event the State ID is not present in the record. The result of the search should show any “tickets” related to a submission requiring review or response and the status of that ticket. The status will be “Closed” if the Department’s task(s) related to that ticket have been performed or if there is another open “parent” or “child” ticket for the same task(s). If the status is marked “Pending Response from Submitter” that means the Department is waiting on information to complete any task(s) necessary to close the ticket. Also displayed in the search results, will be any “trusts” related to that applicant or member. The determination column in this record will indicate if an approval, denial, or determination letter has been issued for that trust. If a letter has been issued, it should be visible as an attachment under the related “ticket” for the trust submission.

Further, if you are a county or other eligibility partner who is submitting an income trust to the Department, please confirm that the applicant or member does not have a prior approved income trust in the portal before requesting or submitting a new income trust. When there is a prior approved income trust, you should confirm that the trust has the required accumulated balance, if any, in an account titled in the name of the trust. If there is an underfunding issue or the member was ineligible for a significant period of time after the trust was initially approved, please contact the Department for further guidance via the webform.

## Attachment(s):

None

## HCPF Contact:

[Medicaid.trusts@state.co.us](mailto:Medicaid.trusts@state.co.us)