



POLICY MEMO

TITLE:	DISABILITY TRUST POLICY GUIDANCE ON DISTRIBUTION NOTICE REQUIREMENTS
SUPERSEDES NUMBER:	HCPF PM 20-005
EFFECTIVE DATE:	JUNE 30, 2020
DIVISION AND OFFICE:	LEGAL DIVISION, POLICY, COMMUNICATIONS, AND ADMINISTRATION
PROGRAM AREA:	DISABILITY TRUSTS
KEY WORDS:	DISABILITY TRUSTS, TRUST, DISTRIBUTION, NOTICE
POLICY MEMO NUMBER: HCPF PM 21-004	
ISSUE DATE: JULY 26, 2021	
APPROVED BY: TOM MASSEY	

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Purpose and Audience:

The main purpose of this Memo is to inform stakeholders of changes to the disability trust regulations that add a requirement for trustees to provide notice of certain trust distributions. Additionally, this Memo sets policy and provides guidance with regard to this change and revises the earlier guidance furnished in HCPF PM 20-005 issued on July 16, 2020.

Information:

The medical services board approved the Revision to Medical Assistance Rule Concerning Disability Trusts, Section 8.100.7.E.6.b., Rule Number MSB 19-09-04-A. This rule change only impacts "disability trusts," as defined under § 15-14-412.8, C.R.S. Disability trusts qualify as exempt from being considered a countable resource for purposes of medical assistance eligibility, as long as the Department of Health Care Policy and Financing (the Department) has reviewed the trust and determined that it

conforms to the requirements of § 15-14-412.8, C.R.S., and any rules adopted by the medical services board.

The approved revision to the rules includes an added notice requirement for trustees of disability trusts. Effective June 30, 2020, trustees of disability trusts are required to notify the Department of any trust distribution in excess of \$5,000 no later than thirty (30) days after such distribution. The Department will then acknowledge receipt of the notice within thirty (30) days of receipt.

This notification requirement applies to any distribution from the trust that exceeds \$5,000 and is made on or after June 30, 2020. In order to be approved and valid under Colorado law, disability trusts submitted to the Department after the effective date of the regulation must include this noticing requirement within the trust terms.

The Department is not requiring trustees to amend disability trusts that were approved by the Department prior to June 30, 2020. Trustees of previously approved disability trusts are only required to provide notice of any trust distribution exceeding \$5,000 if the trust is amended, restated, or otherwise modified after the effective date. Any trust modifications dated on or after June 30, 2020, must include this distribution notice requirement in the trust terms.

Installment Payments

If the trustee distributes funds in installments for an item or service and the total purchase price exceeds \$5,000, the trustee must notify the Department no later than thirty (30) days after the first installment payment.

Recurring Items or Services

If the trustee distributes funds for recurring items or services, the trustee must notify the Department if the total amount for the items or services exceeds \$5,000 within a calendar month. Distributions for recurring items or services are defined as multiple distributions for the same or substantially similar items or services. For example, if the trustee distributes \$1,250 to caregivers each week during a calendar month, the trustee must notify the Department. However, if the recurring distributions do not exceed \$5,000 in a calendar month such as in the case of a trustee distributing \$500 monthly

for respite care, the trustee would not be required to notify the Department even though the total distributions for respite care over time may exceed \$5,000.

Timing of Notice

As written, the regulation requires that notice must be provided no later than thirty (30) days after the distribution. Notwithstanding the foregoing, notice will be considered timely as long as it is received by the end of the calendar month following the month in which the distribution occurred. For example, if a distribution requiring notice is made on October 15th, then notice must be given to the Department no later than November 30th. Although not required, trustees may provide notice prior to the distribution instead of after the distribution.

Annual Accountings

Providing notice of distributions that exceed \$5,000 does not eliminate the requirement that trustees must also provide annual accountings to the Department and the eligibility site.

Submission of Notice

To notify the Department of a distribution, the attached Notification of Trust Distribution Form must be completed and submitted to the Department's Trust Unit. The submission should include rationale for the disbursement but only to the extent it is necessary to show that the distribution was made solely for the benefit of the disabled individual. Otherwise, it is not necessary for the trustee to provide general rationale in support of their discretionary authority under the trust terms.

The submission must also include copies of any supporting documentation. *See, e.g.* § 15-5-813, C.R.S. (requiring trustees to provide qualified beneficiaries¹, such as the Department, with details regarding administration of the trust including records of disbursements). Supporting documentation includes, but is not limited to, receipts, invoices, agreements or contracts pertaining to the distribution. If the distribution is for the purchase of a residence or vehicle, a copy of the deed or title must be included or other document showing the ownership of the property such as a purchase agreement. If the distribution is for caregiver services, a copy of the

¹§ 15-5-103(16)(c), C.R.S. (defining "Qualified beneficiary" as including a beneficiary who would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date).

caregiver agreement must be included unless it has already been provided to the Department.

Notwithstanding the foregoing, in the event notice is provided prior to the distribution, copies of supporting documentation must be provided within thirty (30) days after the distribution.

This Notification of Trust Distribution Form and copies of supporting documents may be transmitted via mail, fax, or email to:

Colorado Department of Health Care Policy and Financing
Attn: Trust Unit
1570 Grant Street
Denver, Colorado 80203-1818
Fax: (303) 866-3552
Email: Medicaid.Trusts@state.co.us

Attachment(s):

Notification of Trust Distribution Form

Department Contact:

Medicaid.Trusts@state.co.us