



POLICY MEMO

TITLE:	PUBLIC BENEFITS THEFT – AMENDMENTS TO COLORADO REVISED STATUTES SECTION 18-4-401
SUPERSEDES NUMBER:	N/A
EFFECTIVE DATE:	JULY 1, 2022
DIVISION AND OFFICE:	FRAUD, WASTE, AND ABUSE DIVISION, MEDICAID OPERATIONS OFFICE
PROGRAM AREA:	MEMBER/CLIENT FRAUD
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APPROVED BY: RALPH CHOATE	

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Purpose and Audience:

The purpose of this Policy Memo is to advise county departments of human/social services of the recent amendments made to Section 18-4-401 of the Colorado Revised Statutes (C.R.S.), which create specific elements for public benefits theft within the existing theft statute. These amendments dictate how Health First Colorado/Medicaid member/client overpayments can be criminally prosecuted.

Information:

Background

C.R.S. Section 18-4-401, the general theft statute, has been amended by the Colorado Legislature to create specific theft elements for public benefits theft. These amendments, as stated in House Bill 22-1224, were signed into law by the Governor on April 21, 2022, and are effective as of July 1, 2022. The general definition of theft, found in 18-4-401(1) C.R.S., reads as follows:

A person commits theft when he or she knowingly obtains, retains, or exercises control over anything of value of another without authorization

or by threat or deception; receives, loans money by pawn or pledge on, or disposes of anything of value or belonging to another that he or she knows or believes to have been stolen; or procures food or accommodations from a public establishment without making payment therefore, and:

- (a) Intends to deprive the other person permanently of the use or benefit of the thing of value;
- (b) Knowingly uses, conceals, or abandons the thing of value in such manner as to deprive the other person permanently of its use or benefit;
- (c) Uses, conceals, or abandons the thing of value intending that such use, concealment, or abandonment will deprive the other person permanently of its use or benefit;
- (d) Demands any consideration to which he or she is not legally entitled as a condition of restoring the thing of value to the other person; or
- (e) Knowingly retains the thing of value more than seventy-two hours after the agreed-upon time of return in any lease or hire agreement.

The new amendments made to 18-4-401(1) C.R.S. added subparts 1(f) and (12) to this general definition of fraud. These new statutory additions read as follows:

(f) INTENTIONALLY MISREPRESENTS OR WITHHOLDS A MATERIAL FACT FOR DETERMINING ELIGIBILITY FOR A PUBLIC BENEFIT AND DOES SO FOR THE PURPOSE OF OBTAINING OR RETAINING PUBLIC BENEFITS FOR WHICH THE PERSON IS NOT ELIGIBLE.

(12) A PERSON'S CONDUCT THAT IS LIMITED TO THE ELEMENTS OF SUBSECTION (1)(f) OF THIS SECTION IS NOT SUBJECT TO PROSECUTION PURSUANT TO ANY OTHER PROVISION OF THIS SECTION.

Implications for the Criminal Prosecution of Member/Client Overpayments

The amendments to 18-4-401 C.R.S. set forth the particular theft elements that must be proven in all criminal prosecutions for the theft of public benefits, which includes the prosecution of Health First Colorado/Medicaid member/client overpayments, effective July 1, 2022. The criminal prosecution of Health First Colorado/Medicaid member/client overpayments may now only be criminally prosecuted under 18-4-401 C.R.S.(1)(f).

County Expectations

Counties pursuing criminal prosecution against Health First Colorado/Medicaid members/clients for overpayments should contact their district attorney as soon as possible to discuss the newly amended theft statute and the specific elements required to prove public benefits theft. While counties are not required to criminally prosecute members/clients for overpayments, those counties choosing to do so need to work closely with their district attorneys to ensure that the necessary evidence is collected and appropriately documented, as required in Section 18-4-401(1)(f) C.R.S.

Attachment(s):

Signed House Bill 12-1224

Department Contact:

hcpf_report.clientfraud@state.co.us