**TEMPORARY PROHIBITION ON ADMINISTRATIVE OVERPAYMENT RECOVERIES FROM MEDICAID MEMBERS**

**Frequently Asked Questions (FAQs)**

**Issued 5/2023**

**Background**

On October 17, 2022, the Centers for Medicare and Medicaid Services (“CMS”) issued a Frequently Asked Question (“FAQ”) document entitled "[COVID 19-PHE Unwinding FAQs](https://www.medicaid.gov/federal-policy-guidance/downloads/covid-19-unwinding-faqs-oct-2022.pdf).” FAQ number 31 (“FAQ 31”) of this document says 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.”

This temporary prohibition (HCPF OM 23-046) 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 repayment plan, or by any other non-criminal court. While FAQ 31 also prohibits criminal recoveries from Health First Colorado/Medicaid members, based on HCPF’s conversations with CMS, there is no cause at this time for HCPF to prohibit the recovery of payments ordered by a criminal court.

While the prohibition on all administrative overpayment recoveries is effective May 11, 2023, [HCPF Policy Memo 21-002](https://hcpf.colorado.gov/sites/hcpf/files/HCPF%20PM%2021-002%20Fraud%20Investigations%2C%20Overpayments%2C%20and%20Eligibility%20Terminations%20During%20the%20COVID-19%20Public%20Health%20Emergency.pdf), currently remains in effect and will remain in effect even after the PHE is officially over and 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.

**Questions**

**Administrative vs. Criminal Recoveries**

**Q1: What are the permissible options for recovering medical assistance overpayments from Medicaid members now?**

A1: Criminal restitution payments, ordered by a criminal court, are the only permissible means to recover a medical assistance overpayment from a Medicaid member. No administrative recoveries are permissible, meaning no county recoveries from members of any kind is allowable, outside of criminal restitution ordered by a criminal court.

**Q2: Does the prohibition of administrative recoveries also prohibit voluntary repayments made by Medicaid members or payments ordered by non-criminal courts?**

A2: Yes. No administrative (i.e. non-criminal court) overpayments can be collected from members, voluntary or otherwise. Member overpayment recovery is only permissible though criminal restitution ordered by a criminal court.

**Q3: Some cases have been referred to small claims court to get the court to order repayment. Can these collections continue?**

A3: This would constitute an administrative recovery which is prohibited. The only court order relevant is within a criminal proceeding, specifically criminal restitution ordered by a criminal court judge.

**Question 4: If counties wish to pursue criminal recoveries, what actions can they take?**

A4: Criminal actions against Medicaid members are up to the discretion of county district attorneys. Meeting with your county DA can clarify their expectations and requirements for these types of cases. A meeting would also provide a good opportunity to update your DA on this new guidance which removes the administrative remedy for Medicaid overpayment cases.

**Investigations**

**Q1: If administrative recoveries are prohibited, are counties required to continue to investigate allegations of Medicaid member fraud?**

A1: Yes. Counties have an ongoing obligation to investigate allegations of Medicaid fraud. If, upon investigation, it is determined that the member is currently ineligible, the member's eligibility should be terminated. If the member was previously ineligible but is now eligible for benefits, the eligibility determination should be based on current eligibility requirements. Additionally, if a county investigation supports a finding of fraud, the case should be referred to the county district attorney, for a potential criminal proceeding.

**Q2: What if a client has signed an IPV waiver?**

A2: IPV (Intentional Program Violation) waivers are not related to Medical Assistance Programs.

**Payment Plans and Noticing**

**Q1: Does any noticing need to be sent out at this time to members from whom administrative overpayments were previously collected?**

A1: No. Noticing is not required at this time for administrative overpayment recoveries that took place prior to the effective date of this Operational Memo, May 11, 2023. No additional payments should be accepted for these claims.

**Q2: What should be done about current, ongoing payment plans?**

A2: As of the effective date of this Operational Memo, May 11, 2023, no further payments may be collected from members on any previously established payment plans, and no new payment plans should be created. Health Care Policy and Financing (HCPF) will be providing templates for notifying members for whom there are existing open payment plans.

**Refunds and Other Financial Considerations**

**Q1: Does this Operational Memo require counties to refund Medicaid members for administrative recoveries that occurred prior to the effect date of this Memo?**

A1: Refunds are not to be made to members at this time. HCPF has requested from CMS, but has not yet received, guidance regarding any potential refunds. Under this Memo, all administrative recoveries of overpayments must cease, but no refunds should be issued to members at this time. HCPF will provide updated guidance once clarification is received from CMS.

**Q2: Do counties need to repay HCPF for past county-retained overpayment recovery incentives, and will HCPF be sending any funds to counties for potential refunds to Members?**

A2: At this time, there will be no repayments by either counties or HCPF. Until such time as CMS issues further guidance, no action should be taken regarding previously collected overpayments.

**Q3: What about overpayments that were recovered from members for ineligibility periods falling within the Public Health Emergency(PHE) period, do refunds need to be issued there?**

A3: Yes. Any overpayment recoveries from members for ineligibility periods falling within the PHE period must be promptly refunded to the members, as this recovery never should have occurred. HCPF Policy Memo 21-002 prohibits overpayment recoveries from members for any period of ineligibility that falls within the PHE period (March 18, 2022 through May 11, 2023).

**Reporting**

**Q1: Are Counties still required to complete the annual member fraud report?**

A1: Yes. The annual Improving Medicaid Fraud Prosecution Report is required by Colorado statute: C.R.S. § 25.5-1-115.5. This legislative report is compiled with self-reported data from all 64 counties. In addition to the now prohibited administrative recoveries, this report also tracks terminations and criminal court prosecution data. The annual reporting obligation of counties will remain in effect until/if the statute is amended.

**Claims and System Changes**

**Q1: Are there any plans for system changes to CBMS related to this new guidance?**

A1: No CBMS system changes are planned at this time. The prohibition on administrative overpayment recoveries from Medicaid members is temporary. This temporary prohibition may be subsequently revised, removed, or made permanent, pending further CMS guidance.

**Q2: What should be done about existing CBMS claims?**

A2: While existing claims already entered do not need to be canceled at this time, recovery on all of these claims must cease.

**Q3: Will there be a build that will suspend or terminate these claims or does this need to be done manually at the County level?**

Currently there is no plan for updates in CBMS functionality as this is a temporary pause.

**HCPF Contact:**

County Relations and Administration webform ticket <https://hcpfdev.secure.force.com/HCPFCountyRelations>; select ticket type “County Oversight”.