



POLICY MEMO

TITLE:	DISABILITY TRUST POLICY GUIDANCE ON DISTRIBUTION NOTICE REQUIREMENTS
SUPERSEDES NUMBER:	N/A
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 20-005	
ISSUE DATE: JULY 16 2020	
APPROVED BY: TOM MASSEY	

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Purpose and Audience:

The main purpose of this Memo is to inform stakeholders of a change to the disability trust regulations that adds a requirement for trustees to provide notice of certain trust distributions. Additionally, this Memo sets policy and provides guidance with regard to this change.

Information:

The Medical Services Board recently 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 recently approved revision 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 trust distribution 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. However, trustees of previously approved disability trusts are required to provide notice of any trust distribution exceeding \$5,000 made after June 30, 2020.

Installment Payments

If the total amount distributed exceeds \$5,000 but is being paid in installments, the Department must be noticed no later than thirty (30) days after the first installment payment.

Recurring Items or Services

If the trustee distributes trust funds for recurring items or services, the trustee must notify the Department if the total amount distributed for those items or services within a thirty-day period exceeds \$5,000. Distributions for recurring items or services are defined as distributions at planned intervals for the same or substantially similar items or services. For example, if the trustee distributes \$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

Notice is required to be provided no later than thirty (30) days after the distribution. 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. 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. If the distribution is for caregiver services, a copy of the caregiver agreement must be included. 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