



OPERATIONAL MEMO

TITLE:	TREATMENT OF INCOME OF LIVE-IN CARE PROVIDERS WHO ARE BEING PAID DIFFICULTY OF CARE PAYMENTS
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DIVISION AND OFFICE:	MEDICAID OPERATIONS OFFICE
PROGRAM AREA:	ELIGIBILITY POLICY
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Purpose and Audience:

The purpose for this operational memo is to communicate to eligibility sites on how Difficulty of Care payments are calculated for the individual's income eligibility for MAGI and Non-MAGI based eligibility categories of Health First Colorado (Colorado's Medicaid Program) and Child Health Plan *Plus* (CHP+).

Information:

Internal Revenue Service issued [Notice 2014-7](#), which provides clarification that certain payments made to qualified care providers under a Medicaid Home and Community-Based Services (HCBS) waiver are treated as "Difficulty of Care payments" instead of regular wages. The notice identifies these Difficulty of Care payments excludable from gross federal income under 26 U.S.C. § 131 of the Internal Revenue Code. The exclusion does not apply to payments made for respite care, skills acquisition training, travel time, required training, or paid time off. Such payments are considered earned income for the eligibility determination.

Difficulty of Care payments- Are payments made to a qualified care provider under a state Medicaid Home and Community-Based Services Waiver program.

Care provider- Is the person who provides and receives a Difficulty of Care payment for personal care and supportive services to a care recipient.

Agency- Is a certified Medicaid provider, who employs care providers to provide personal care and supportive services to disabled individual(s).

Difficulty of Care Payments made under a Home and Community -Based Services Waiver program

To be eligible for a Home and Community-Based Services (HCBS) Waiver an individual will be enrolled in Long-term Support Services or the Working Adults with Disabilities program that offers certain waivers. Payments made to a qualified care provider for a program other than an HCBS waiver program are not considered a Difficulty of Care payment.

The following Home and Community Based Services (HCBS) Waiver programs are identified as having Difficulty of Care payments:

- Persons with Brain Injury Waiver
- Community Mental Health Supports Waiver
- Persons who are Elderly, Blind and Disabled Waiver
- Persons with Spinal Cord Injury Waiver
- Support Living Services Waiver
- Persons with Developmental Disabilities Waiver
- Children's Habilitation Residential program waiver
- Children with Life-Limiting Illness Waiver
- Children's Extensive Support Waiver
- Children's Home and Community Based Services waiver

These Home and Community Based Services (HCBS) Waiver payments should be made to an agency who then pays the care provider. The payments must be made:

1. Through employment by home care or personal care agencies, including those that provide In-Home Supportive Services;
2. Through Program Approved Services Agencies (PASA); and
3. When an HCBS eligible individual hires and trains the care provider of their choice through the Consumer Directed Attendant Support Services (CDASS) program.

Treatment of Difficulty of Care Payments for income exclusion for eligibility

MAGI based categories

The MAGI categories of Health First Colorado (Colorado's Medicaid Program) and the CHP+ programs use the Modified Adjusted Gross Income (MAGI) methodology from the US Tax Code (26 U.S.C. § 61) in determining countable income for eligibility.

The Department is providing guidance for the purposes of determinations of eligibility. If the applicant has any tax related questions have them consult their tax adviser. For a care provider whose eligibility is being determined under the MAGI based categories the following must be met in order to exclude their difficulty of care payment from their gross income:

- The care provider providing and receiving payments for personal care and supportive services to a disabled individual (care recipient) **must live full-time** in the same home with the disabled individual (care recipient).
- The disabled individual (care recipient) receiving personal care and supportive services must be enrolled in Long Term Service Supports (LTSS), **and receive additional services** through a Home-Based Services (HCBS) waiver program or;
- The disabled individual (care recipient) must be enrolled in the Working Adults with Disabilities, **and receive additional services** through the Home and Community Based Services (HCBS) waiver program.

Note: Home and Community Based Services (HCBS) Waiver Payments made to a **Non Live-in care provider** is taxable income and **does count** as income in the eligibility determination.

Non-MAGI based categories of Health First Colorado

Non-MAGI based categories of Health First Colorado use the Supplemental Security Income (SSI) eligibility methodology. The MAGI tax methodology **does not apply** to these categories. The countable income for the Non-MAGI based categories is determined by using the gross income and reducing it by the allowable disregards for the Non-MAGI based categories.

For a care provider whose eligibility is being determined under the Non-MAGI categories:

All Qualified Medicaid Waiver Payments paid to the care provider are countable income for applicants whose eligibility is being determined for Non-MAGI categories regardless of the live-in status.

Information/Procedure:Guidance

In order to qualify for the Difficulty of Care exclusion the following must apply:

1. The applicant must live in the same home as the HCBS Waiver eligible individual for whom they provide services. (It doesn't matter who owns or rents the home.)
2. The applicant does not have a separate home where they reside. (It is ok if the applicant owns a different home so long as they don't reside there. They must reside with the individual for whom they are providing care.)

If both criteria apply, any Qualified Medicaid Waiver payment income received by a Health First Colorado applicant as the result of providing care to an HCBS care recipient with whom they reside is a non-taxable Difficulty of Care payment and does not count in the MAGI income calculation. This applies to the MAGI program at intake, on-going and redetermination.

Attestation of Live-in Status

If the living arrangement is unclear, an applicant being determined under the MAGI based eligibility rules may sign a "Self-Attestation of Being a Live-in Care Provider" form to establish their Live-In provider status. A signed attestation will be the only verification needed from the member or applicant in order for the Difficulty of Care Payments not count for MAGI based eligibility for the Live-in Care provider. The "Self-Attestation of Being a Live-in Care Provider" form is attached to this Memo and can be given to an applicant or member. In most cases this form will be sent to the care provider automatically by CBMS.

Attachment(s):

None

Department Contact:

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