

# 600.715 Corrective action, restitution, and disallowance of questioned BHP transactions.

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(a) Corrective action. When a question has been raised concerning the authority for BHP trust fund expenditures in an OIG report, other HHS compliance review, State audit or otherwise, the BHP trustees and the State shall review the issues and develop a written response no later than 60 days upon receipt of such a report, unless otherwise specified in the report, review or audit. To the extent determined necessary in that review, the BHP trustees and State shall implement changes to fiscal procedures to ensure proper use of trust fund resources.

(b) Restitution. To the extent that the State and BHP trustees determine that BHP trust funds may not have been properly spent, they must ensure restitution to the BHP trust fund of the funds in question. Restitution may be made directly by the BHP trustees, by the State, or by a liable third party. The State or the BHP trustees may enter into indemnification agreements assigning liability for restitution of funds to the BHP trust fund.

(c) Timing of restitution. Restitution to the BHP trust fund for any unallowable expenditure may occur in a lump sum amount, or in equal installment amounts. Restitution to the BHP trust fund cannot exceed a 2-year period from the date of the written response in accordance with paragraph (a) of this section.

(d) HHS disallowance of improper BHP trust fund expenditures. The State shall return to HHS the amount of federal BHP funding that HHS has determined was expended for unauthorized purposes, when no provision has been made to restore the funding to the BHP trust fund in accordance with paragraph (b) of this section (unless the restitution does not comply with the timing conditions described in paragraphs (c) of this section). When HHS determines that federal BHP funding is not allowable, HHS will provide written notice to the state and BHP Trustees containing:

- (1) The date or dates of the improper expenditures from the BHP trust fund;
- (2) A brief written explanation of the basis for the determination that the expenditures were improper; and
- (3) Procedures for administrative reconsideration of the disallowance based on a final determination.

(e) Administrative reconsideration of BHP trust fund disallowances. (1) BHP Trustees or the State may request reconsideration of a disallowance within 60 days after receipt of the disallowance notice described in paragraph (d)(1) of this section by submitting a written

request for review, along with any relevant evidence, documentation, or explanation, to HHS.

(2) After receipt of a reconsideration request, if the Secretary (or a designated hearing officer) determines that further proceedings would be warranted, the Secretary may issue a request for further information by a specific date, or may schedule a hearing to obtain further evidence or argument.

(3) The Secretary, or designee, shall issue a final decision within 90 days after the later of the date of receipt of the reconsideration request or date of the last scheduled proceeding or submission.

(f) Return of disallowed BHP funding. Disallowed federal BHP funding must be returned to HHS within 60 days after the later of the date of the disallowance notice or the final administrative reconsideration upholding the disallowance. Such repayment cannot be made from BHP trust funds, but must be made with other, non-Federal funds.