



# Provider Accountability: Provider Marketing, Conflict of Interest, and Outreach

*Proposed Rule Draft for Stakeholder Review - January 2026*

\* Please note that this is a draft of proposed provider rules for stakeholder feedback. No date for Medical Service Board Review has been set. Language in the draft may change.

{Added:} = Added language

## **{ADDED: 8.7420 Provider Marketing, Conflict of Interest, and Member Outreach}**

### **8.7420.A Purpose**

This section establishes requirements for marketing, outreach, and communication practices by Home and Community-Based Services (HCBS) and Community First Choice (CFC) Provider Agencies. The purpose is to ensure that Medicaid Members and their representatives receive accurate, accessible, and non-coercive information regarding services, and to prevent improper inducements or misrepresentation.

### **8.7420.B Provider Marketing, Conflict of Interest, and Member Outreach Definitions**

1. Conflict of Interest means a situation where a Provider Agency or its staff have a financial or other interest that could improperly influence their actions or decisions, including any instance where a Provider Agency or its staff benefits from influencing a Member's assessment, eligibility determination, or service plan.
2. Inducement means any offer or transfer of a thing of value that is intended to influence a Medicaid member or their representative to select, maintain, or change a provider or service arrangement. Inducements may include, but are not limited to, cash, gift cards, prizes, discounts, or other incentives.



3. Marketing means any activity, communication, or material intended to influence a Member's or their representative's choice of Provider Agency or services.
4. Remuneration or "Thing of Value" or means anything of value, directly or indirectly offered or provided, including but not limited to cash, gifts, services, goods, discounts, or the waiver of any fees or cost-sharing amounts offered to a Member, representative, or caregiver.
5. Solicitation means any attempt by a Provider Agency, or anyone acting on their behalf, to directly encourage a Member, individual, or their caregiver to enroll with, transfer to, or remain with a specific provider. Solicitation includes direct outreach by phone, in person, online, or in writing that is intended to influence provider selection.

#### **8.7420.C Prohibited Marketing and Communication Activities**

1. Provider Agencies shall not offer or provide any thing of value or money to influence a Member, legal guardian, caregiver or representative, except as permitted under Section 8.7419.D.
2. Provider Agencies shall not engage in unsolicited direct contact for marketing purposes, including but not limited to:
  - a. Door-to-door solicitation;
  - b. Unsolicited phone calls, text messages, or emails;
  - c. Direct messages through social media platforms;
  - d. Visiting a Member's home without prior request or consent.
3. Provider Agencies shall immediately cease marketing upon request by the Member, an individual, or their representative.
4. Provider Agencies shall not:
  - a. Misrepresent the scope, nature, or eligibility criteria for services.
  - b. Use or display Colorado state agency logos, seals, or suggest affiliation or endorsement by the Department;



- c. Engage in activities that may mislead or confuse Members, representatives, or caregivers about what services they may qualify for, or about whether or how a caregiver may be paid;
- d. Suggest or state that Medicaid benefits will be lost or jeopardized if the individual does not select or retain the provider;
- e. Imply guaranteed enrollment or payment before eligibility is met or services are prior approved;
- f. Any advertisement or communication referencing caregiver pay, employment, or Medicaid financial benefits must include the following disclaimer:
  - i. "Payment is available only after Medicaid Colorado Health First eligibility and service authorization. Not all individuals qualify. Timing may vary."

5. Provider Agencies shall not offer or suggest gifts, rewards, or other benefits in exchange for switching from another Provider Agency.

#### **8.7420.D Prohibited Conflict of Interest and Coaching Practices**

1. Provider Agencies and their staff shall not:
  - a. Coach, counsel, influence, or train Members, caregivers, or representatives on how to describe limitations, ADLs, IADLs, or health conditions in a way intended to secure additional services;
  - b. Provide scripts or documentation that encourages exaggeration or misrepresentation of needs;
  - c. Contact case managers or assessment personnel to influence eligibility outcomes, scores, or service levels on behalf of the Member other than to provide a person-centered Provider Care Plan to the Case Management Agency when required or requested;
  - d. Conduct or participate in the Person-Centered Support Planning process or Level of Care determinations for any Member to whom they provide or intend to provide services;
2. Provider Agencies shall not take part in any activity, communication, or behavior that creates, seems to create, or could reasonably be seen as creating a Conflict of



Interest when it comes to a Member's Assessment, eligibility decision, the determination of services, or Prior Authorization Requests (PARs).

## 8.7420.E Permissible Member Communication and Outreach Activities

1. Provider Agencies may:
  - a. Distribute educational and factual information about the Medicaid benefits, their Provider Agency, and services they provide;
  - b. Respond to Member and Case Management Agency initiated inquiries with accurate, non-promotional information;
  - c. Communicate with Members and representative to coordinate care, provide appointment reminders, or support existing services;
  - d. Participate in public or community health events to distribute informational materials, provided they do not:
    - i. Individually target attendees;
    - ii. Offer items exceeding the nominal value threshold; or
    - iii. Collect personal health or identification data for marketing purposes.
2. Provider Agencies may distribute small promotional items of nominal value (not to exceed \$15 per item or \$75 per calendar year per individual), consistent with federal Office of Inspector General (OIG) guidance.
3. Provider Agencies shall ensure that all Member communication is accessible to persons with disabilities and is non-discriminatory based on race, color, ethnicity, age, sex, gender identity, disability, national origin, or health status.

## 8.7420.F Provider Responsibilities and Enforcement

1. Provider Agencies shall maintain documentation of all marketing and Member communication activities, including advertisements, call logs, consent forms, disclaimers, and outreach materials, for a period of six years and shall make such records available to the Department upon request.
2. Provider Agencies found to be in violation of this section may be subject to:
  - a. Written education or warning letters;



- b. Corrective action plans as outlined in Section 8.076;
- c. Sanctions including payment suspension, referral holds, or termination for cause;
- d. Referral to appropriate enforcement agencies, including but not limited to the Colorado Office of the Attorney General or the U.S. Office of Inspector General.

3. These penalties are in addition to any enforcement actions permissible under federal law including 42 U.S.C. § 1320a-7a and 42 C.F.R. § 1003.101.

4. Provider Agencies are responsible for ensuring compliance with these rules by all employees, contractors, representatives, or affiliated marketers acting on the Provider Agency's behalf.}

**For more information contact**

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