



**Senior and Disabilities Services Policy Memo
Prohibition of Solicitation of Recipients
June 2, 2015**

Over the past year, Senior and Disabilities Services (SDS) has received numerous complaints regarding the practice of recipient solicitation. Why is recipient solicitation a problem? The majority of solicitation includes deceptive or abusive practices that occur without the recipient's knowledge, and do not recognize or allow for recipient choice. Solicitation often includes accessing "protected health information" (PHI) such as medical information, program participation, name, address, and phone or email contact information, without the client's consent. Recipient solicitation is a serious violation and grounds for provider sanction.

SDS takes recipient solicitation seriously and wants to make certain that all providers and their employees understand what constitutes solicitation and the penalties for solicitation. Therefore, SDS is issuing this Policy Memo to clarify the current rules, regulations and possible consequences of these actions. The following are examples of solicitation or other prohibited actions.

Prohibited direct solicitation of recipients

A provider/employee may not:

- use a mailing list from another PCA or HCB waiver agency to contact Medicaid recipients directly and suggest the recipient transfer to your agency;
- contact a recipient from another PCA agency and offer to pay their consumer-directed PCA employee more wages or better benefits if the recipient transfers to your agency;
- offer gifts or money to recipients who transfer to your agency;
- offer to obtain additional or unallowable services for the recipient if they transfer to your agency;
- target PCA recipients who live near each other or in the same building by contacting them individually with a letter, poster, phone call, or by going door to door and asking them to transfer.

Prohibited indirect solicitation of recipients

A provider/employee may not:

- offer to pay a consumer-directed PCA employee more wages or better benefits if they convince the recipient they serve to transfer to your agency;
- knowingly hire a PCA employee who is offering to bring their recipient with them – the recipient decides which agency to receive services from, not the PCA employee;
- tell anyone that another PCA agency is going out of business in an attempt to get their recipients to transfer to your agency;
- offer to pay a worker from another PCA or HCB agency to give you names and contact information about their recipients;
- accept contact information for individuals receiving services from another agency or employee of another agency regardless of whether you pay for it or not.

Other violations

A provider/employee may not:

- threaten recipients with the loss of services if they leave your agency for another agency;
- attempt to force a recipient to receive all Medicaid services only from your agency.

Selling a PCA or HCB business

A provider who is selling a PCA or HCB business:

- cannot sell the business SDS certification or Xerox-issued billing numbers;
- cannot sell or transfer a recipient listing; those listings do not belong to the agency and they cannot be given or sold to a new agency;
- must notify the recipients you serve at least 30 days prior to selling your agency allowing them time to choose another agency if they desire;
- must recognize and accept recipient choice. This means that your business does not possess any rights to the recipients they serve; recipients can choose to leave an agency being sold.

Buying a PCA or HCB business

An individual who is buying a business from a current provider of PCA or HCB:

- must complete the SDS certification process and be certified by SDS before providing Medicaid reimbursable services;
- cannot use the selling agency's billing number to submit claims to Xerox for reimbursement;
- cannot bill for services provided prior to the SDS approved transfer date;
- cannot bill for services provided to a recipient by another agency;
- cannot bill for services provided by a non-affiliated, non-background cleared employee;
- cannot contact anyone receiving services from the agency you purchased without the written release forms signed by the recipient, or their legal representative.

What are the possible consequences of soliciting recipients?

Medicaid regulations allow for some or all of the following consequences. A provider who solicits a recipient may:

- be required to attend provider education sessions;
- not receive payment for services under question until all issues are resolved;
- have to repay money to Medicaid for services already provided;
- be barred from participating in any Medicaid and Medicare programs; or
- be prosecuted for crimes committed with penalties that include fines and prison time.

How does an agency find new recipients?

If your agency wants to find new recipients, some allowable methods include:

- advertising in the newspaper, on the radio, TV, computer, a bus, taxi or on the side of your own vehicle;
- distributing fliers and brochures, as long as they do not target a specific individual or include deceptive information;
- posting signs in common areas within buildings;
- word of mouth – satisfied recipients will often tell others;
- sponsoring a booth at a health fair where you distribute information about your agency;
- posting information on a senior center information board with brochures to contact you;
- distributing advertising novelties;
- holding informational meetings; if you provide refreshments and gifts you must give them to everyone who attends, not just to those who are on Medicaid, or are transferring their services.

These are just some examples of recipient solicitation, and are not intended to be an exclusive or exhaustive list of prohibited acts under federal and Alaska statute and regulations. SDS recommends that you keep current on amendments to statutes and regulations to ensure continued compliance.

To ensure everyone in your agency is aware of prohibitions on solicitation, please distribute this letter to all of your satellite offices.

If you have questions you may contact Patrick Walker, Quality Assurance Manager, at (907) 269-3673 or Lynne Keilman-Cruz, Chief of Quality, at (907) 269-5606.

Sincerely,

A handwritten signature in black ink, appearing to read "Duane G. Mayes", with a long horizontal flourish extending to the right.

Duane G. Mayes, Director
Division of Senior & Disabilities Services