

Marketing and Outreach in the Accountable Care Collaborative (ACC) Program

1. Definitions:

- 1.1. *Enrollee* - a Medicaid beneficiary who is currently enrolled in an MCO, PIHP, PAHP, or PCCM in a given managed care program.
- 1.2. *Marketing* – Any communication, from a RCCO or a PCMP to a Medicaid recipient who is not enrolled in the ACC, that can reasonably be interpreted as intended to influence the recipient to enroll in the ACC Program, or to not enroll in, or to disenroll from, another Medicaid product.
- 1.3. *Marketing Materials* – materials that:
 - 1.3.1. Are produced in any medium, by or on behalf of a RCCO or PCMP; and
 - 1.3.2. Can reasonably be interpreted as intended to market to potential enrollees.
- 1.4. *Outreach Materials* – materials to be distributed only to ACC enrollees.
- 1.5. *Potential Enrollee* – a Medicaid beneficiary who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet an **enrollee** of a specific MCO, PIHP, PAHP, or PCCM.
- 1.6. *Service Area* –
 - 1.6.1. For RCCOs: the ACC region in which the RCCO is located.
 - 1.6.2. For PCMPs: the geographic area within 30 miles or a 30-minute drive from the PCMP location.

2. Marketing regulations apply when:

- 2.1. The audience for the materials is, or could potentially be, Medicaid recipients not already enrolled in the ACC Program.

3. Materials created by a RCCO or a PCMP that fall under marketing regulations must:

- 3.1. Be approved by the following entities prior to distribution:
 - 3.1.1. the Department;
 - 3.1.2. the Centers for Medicare and Medicaid Services (CMS), Region 8; and
 - 3.1.3. The State Medical Assistance & Services Advisory Council;
- 3.2. Be reasonably distributed to the entire service area;
- 3.3. Identify all options and programs available to Medicaid recipients;
- 3.4. Comply with all requirements in the RCCO or PCMP contract with the State of Colorado.

4. Marketing regulations do not apply when:

- 4.1. Material or information is provided only to individuals already enrolled in the ACC program; and
- 4.2. Information is designed to encourage ACC enrollees to select a PCMP; and/or
- 4.3. Information is designed to promote, encourage, or educate about positive health behaviors or appropriate use of health care resources.

5. Outreach materials created by a RCCO or a PCMP must be approved by the Department prior to distribution.

6. Approval process:

- 6.1. Requests for marketing and outreach material approval must be sent via e-mail to the Department's ACC Contract Manager.

- 6.2. The request must include:
 - 6.2.1. Identification of the entity or entities that the materials represent;
 - 6.2.2. The intent or goal of the materials;
 - 6.2.3. How the materials will be distributed;
 - 6.2.4. The number of materials to be distributed;
 - 6.2.5. An assurance that the materials comply with all contractual and regulatory requirements.
 - 6.2.6. The timeline for intended distribution of the materials.
- 6.3. The Contract Manager will coordinate:
 - 6.3.1. Review and approval by Department staff;
 - 6.3.2. Review and approval by CMS (for marketing materials only)
 - 6.3.3. Review and approval by the State Medical Assistance & Services Advisory Council (for marketing materials only).
- 6.4. The Contract Manager will notify the RCCO or PCMP when the materials have been approved for distribution.

7. Examples of marketing activities:

7.1. RCCOs:

- 7.1.1. Billboards to encourage Medicaid members to enroll in the ACC program: marketing regulations apply; may be approved if billboards are distributed across the entire service area;
- 7.1.2. Community dinners open to all community members to promote healthy behaviors and the importance of choosing a PCMP: marketing regulations apply; may be approved if advertised across the region, all Medicaid options are presented to attendees fairly, and information about how to pursue other options is made available to all attendees;

7.2. PCMPs:

- 7.2.1. Display posters advertising the benefits of enrolling in the ACC at provider locations: falls under marketing regulations; not permitted unless each non-ACC client is provided with the full range of Medicaid options;
- 7.2.2. Staff table in waiting area of PCMP providing information to clients about ACC enrollment: falls under marketing regulations; may be approved if full range of Medicaid options is offered to each client visiting the table, along with how to pursue non-ACC options;

8. Examples of outreach activities:

8.1. RCCOs:

- 8.1.1. Community dinners open to ACC enrollees only to promote healthy behaviors and the importance of choosing a PCMP: marketing regulations do not apply, but event must be approved by the Department.

8.2. PCMPs:

- 8.2.1. Asking unattributed ACC enrollees if they would like to become attributed to the PCMP: marketing regulations do not apply; if interested, clients should be directed to contact HealthColorado to select a PCMP.

9. Use of standardized templates:

- 9.1. A RCCO or a PCMP may choose to create a template for marketing or outreach materials that allows for interchangeable identification of a specific RCCO or PCMP in the ACC Program.
- 9.2. Templates only need to be approved by the Department once, with the exception of when:

9.2.1. Other substantive changes are included that were not initially identified in the review and approval process;

9.2.2. The materials are used in a manner not previously specified in the original request for approval.



42 CFR §438.104 Marketing activities.

- (a) *Terminology.* As used in this section, the following terms have the indicated meanings:
- Cold-call marketing* means any unsolicited personal contact by the MCO, PIHP, PAHP, or PCCM with a potential enrollee for the purpose of marketing as defined in this paragraph.
- Marketing* means any communication, from an MCO, PIHP, PAHP, or PCCM to a Medicaid recipient who is not enrolled in that entity, that can reasonably be interpreted as intended to influence the recipient to enroll in that particular MCO's, PIHP's, PAHP's, or PCCM's Medicaid product, or either to not enroll in, or to disenroll from, another MCO's, PIHP's, PAHP's, or PCCM's Medicaid product.
- Marketing materials* means materials that--
- (1) Are produced in any medium, by or on behalf of an MCO, PIHP, PAHP, or PCCM; and
 - (2) Can reasonably be interpreted as intended to market to potential enrollees.
- MCO, PIHP, PAHP, or PCCM* include any of the entity's employees, affiliated providers, agents, or contractors.
- (b) *Contract requirements.* Each contract with an MCO, PIHP, PAHP, or PCCM must comply with the following requirements:
- (1) Provide that the entity--
 - (i) Does not distribute any marketing materials without first obtaining State approval;
 - (ii) Distributes the materials to its entire service area as indicated in the contract;
 - (iii) Complies with the information requirements of Sec. 438.10 to ensure that, before enrolling, the recipient receives, from the entity or the State, the accurate oral and written information he or she needs to make an informed decision on whether to enroll;
 - (iv) Does not seek to influence enrollment in conjunction with the sale or offering of any private insurance; and
 - (v) Does not, directly or indirectly, engage in door-to-door, telephone, or other cold-call marketing activities.
 - (2) Specify the methods by which the entity assures the State agency that marketing, including plans and materials, is accurate and does not mislead, confuse, or defraud the recipients or the State agency. Statements that will be considered inaccurate, false, or misleading include, but are not limited to, any assertion or statement (whether written or oral) that--
 - (i) The recipient must enroll in the MCO, PIHP, PAHP, or PCCM in order to obtain benefits or in order to not lose benefits; or
 - (ii) The MCO, PIHP, PAHP, or PCCM is endorsed by CMS, the Federal or State government, or similar entity.
- (c) *State agency review.* In reviewing the marketing materials submitted by the entity, the State must consult with the Medical Care Advisory Committee established under Sec. 431.12 of this chapter or an advisory committee with similar membership.