

<b>Department of Health Developmental Disabilities Supports Division</b>  <p style="text-align: center;"><b>POLICY</b></p>	<b>Policy Number:</b> <b>Supersedes:</b> Improper Solicitation of Business Policy 1-1-03; Guideline, Solicitation of Business, 7-1-99, Ms. Flores-Lopez
<b>Policy Title:</b>  Improper Solicitation of Business	
<b>Effective Date:</b> February 12, 2010	
<b>Approved:</b> <b>Signature on File</b>	<b>Date:</b> February 11, 2010

**I. PURPOSE**

To ensure that an individual’s right to freedom of choice of case management agencies and direct service providers is honored and respected.

**II. POLICY STATEMENT**

**A. Selection of a Case Management Agency**

1. Individuals have the right to choose a case management agency from a list of providers approved by the Developmental Disabilities Supports Division (DDSD). This right pertains to the selection of an agency, not of specific case managers who work within the agency.
2. Agencies conducting intake and other procedures pertaining to application for services have an obligation to share information with individuals about all of the case management agencies, presented in an unbiased manner. Choosing a case management agency (Primary Freedom of Choice) may not be initiated by a direct service provider, as this may unduly influence in the individual’s selection. Individuals should contact the DDSD Regional Office to initiate the Primary Freedom of Choice process. The Regional Office staff will discuss the individual's desire to change case management agency. Once the individual has submitted the completed Primary Freedom of Choice form to DDSD, it will be forwarded to the local ISD office.

**B. Selection of Direct Service Providers**

1. Individuals have the right to choose direct service providers approved by DDSD.

2. Choosing a direct service provider (Secondary Freedom of Choice) is an action carried out by the individual with the case management agency. If an individual indicates a desire to change a direct service provider, the individual is to contact their case manager to complete a Secondary Freedom of Choice form.
3. Case managers have an obligation to share information about all of the choices of service providers, including a responsibility to advise the individual to consider another provider when the current one is not providing services to the satisfaction of the consumer. However, the case management agency should inform a provider of the individual's issues and attempt to resolve those issues prior to the selection of an alternative provider.

### **C. Improper Solicitation by Case Management or Direct Service Providers**

1. Agencies and their staff shall not engage in improper solicitation with the intent of getting a client and/or parent/guardian to select a specific provider.
2. Federal Medicaid regulations prohibit the use of marketing materials and practices that are inaccurate or misleading, confuse, or defraud an individual.
3. For the purpose of this policy, improper solicitation includes, but is not limited to, the following actions:
  - a. Asserting or implying a client will lose benefits if the individual fails to select a certain provider;
  - b. Making inaccurate, misleading, or exaggerated statements designed to influence the individual's choice of a provider;
  - c. Asserting or implying that the provider offers unique services when other providers offer the same or similar services;
  - d. Asserting that a specific provider will gain benefits for the individual; for example, get a service approved when it was previously denied;
  - e. Using gifts or the promise of gifts or other improper incentives to influence or entice an individual to select a provider.
4. Providers may develop and distribute information or educational materials about their agency and services.
5. A current list of approved providers for all DDS services is available by contacting the DDS Community Programs Bureau Chief or a DDS Regional Office.

## **III. DEFINITIONS**

- A. *Case Manager*: the person who performs case management or service coordination duties in accordance with DDS regulations and standards for these services; the term case manager is synonymous with service coordinator for the purpose of this policy.

- B. *Freedom of Choice*: the selection of service providers under the Medicaid Waiver Programs. *Primary freedom of Choice*: refers to selection of a case management agency. *Secondary Freedom of Choice*: refers to selection of other direct service providers.
- C. *Gifts*: any item with a value greater than ten dollars; e.g. cash, coupons, or prizes.
- D. *Individual*: is the person receiving services, through DDS to whom this policy applies; or, the individual who is in the process of eligibility determination for applicable services; or who has been determined eligible. The term also applies to legal guardian or parent of a minor child.
- E. *ISD*: Income Support Division, of the New Mexico Human Services Department.
- H. *Solicitation (Improper)*: is the act of approaching someone with a request or a plea with the intent of influencing a decision; includes verbal or written communication that has the potential to unfairly bias an individual's selection of either a specific case management agency or direct service provider

#### **IV. APPLICABILITY**

This policy applies to all services to any entity with a provider agreement or contract with the Developmental Disabilities Supports Division, Department of Health.

#### **V. REFERENCES**

- A. 8 NMAC 200.430.10
- B. 7 NMAC26.9.9.1
- C. 7 NMAC26.9.8.5
- B. 42 CFR Section 431.54(e)
- C. MAD-604, Medical Management