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To: Family Care / Partnership PACE MCOs
County Long-Term Support Agencies
Aging and Disability Resource Centers
Service Providers

From: Fredi-Ellen Bove, Deputy Administrator
Division of Long Term Care

Re: Influencing the Exercise of Participant Freedom of Choice

Document Summary

This document clarifies that all providers of long-term care services are prohibited from influencing participants' choice of long-term care program, provider or managed care organization (MCO) through communications that are misleading, threatening or coercive. DHS may impose sanctions against a provider that does so.

Under federal law, the Wisconsin Department of Health Services (DHS), as the State Medicaid Agency, is required to assure the federal government that any Medicaid participant has freedom of choice to obtain covered services from any willing provider qualified to perform the service. This requirement applies to services received by participants on a fee-for-service basis, including the IRIS program, or through managed care organizations (MCOs) offering Family Care, Family Care Partnership or PACE. For services received under managed care, the requirement applies to a participant's choice of MCO as well as his or her choice of service provider within the MCO's contracted provider network. The requirement applies to traditional "card" services (both acute and long-term care) as well as to home and community-based services provided under Medicaid waivers.

DHS must adopt reasonable measures to help insure that participants are able to exercise their freedom of choice based on adequate and accurate information and that they are free from duress or undue influence. In addition, DHS must advise participants that they can choose to receive services from any provider participating in the program, and must take steps to assure that participants are not receiving untruthful, misleading, threatening or coercive messages from other sources, including among others providers, provider organizations, or MCOs.

In Wisconsin, it is the role and responsibility of the Aging and Disability Resource Centers (ADRCs) to provide long-term care options/enrollment counseling to Medicaid participants and prospective participants. The ADRCs do not have a vested interest in the program or provider an individual chooses and so are able to offer unbiased and objective information about those choices.

DHS has recently received information that certain providers may be attempting to influence participant freedom of choice of long-term care program, provider or managed care organization through communications with participants that are inaccurate, misleading or coercive. For example, DHS has received reports that some providers that subcontract to provide services with more than one MCO are attempting to influence participants to disenroll from one MCO and enroll in another MCO with which the provider has a more lucrative contract, or to enroll in a different program such as the IRIS waiver to receive their services.

Federal managed care regulations [42 CFR 438] and the Department's managed care contracts require MCOs and their subcontracting providers to ensure that communications that are intended to influence participant choice are accurate and do not mislead, confuse or defraud participants.

If any provider considers it in the best interest of a client to learn about other options, they should refer the individual to the ADRC to learn about alternatives; the provider should not provide options/enrollment counseling directly. In addition, the ADRC has the responsibility to inform the customer about his/her rights as a program participant or facility resident, in order to prevent intimidation or coercion of a consumer by a provider.

Under Wisconsin Administrative Code § DHS 106.08(2)(e), DHS may impose sanctions against providers (including managed care organizations) “[f]or interference with recipient rights specified under ch. DHS 104,” including the right to freedom of choice.

DHS can and will investigate interference with recipient rights when it is reported by a participant, ADRC, provider or managed care organization and impose sanctions as appropriate. If any provider is found to have attempted to influence a participant to enroll or disenroll from a long-term care program or from a managed care organization, DHS may disqualify that provider from receiving future Medicaid funding for the provision of services under any Medicaid program.

cc: MA Provider Update (to all providers of LTC card services)