COLORADO
Department of Health Care Policy & Financing

Legal Limits on Docket Proposals

Medicaid Commission, November 10, 2026

HCPF reviewed each line of docket v4.2 against federal and state law. The lines below are either not allowed or not legally feasible as proposed. We recommend removing them from the November 10 discussion, or marking them accordingly, so members can focus on options the state can act on.

Not legally permitted

- **#15a: Outcome measure for every program, with a wind-down rule.** Medicaid mandatory benefits, including EPSDT for children, must be covered regardless of outcome scores (42 U.S.C. 1396a(a)(10)(A); 1396d(r)(5)), so an automatic or blanket wind-down cannot apply to them.
- **#53: ABLE-account reimbursement of HCBS costs.** Not allowed under current federal law. As the proposal recognizes, Congress would need to amend the ABLE and Medicaid statutes (26 U.S.C. 529A; 42 U.S.C. 1396p). Additionally, any reimbursement of service costs must be proportionally split between the federal and state shares.
- **#64: Waitlist before new arrivals access HCBS waivers.** Federal law bars denying Medicaid eligibility because a person has not lived in the state for a set period (42 CFR 435.403(j)(1)). Waiver enrollment limits are allowed but cannot be based on length of residence.
- **#70: Pilot policy changes before statewide rollout.** Pilots cannot override federal statewideness and comparability requirements without federal waiver authority (42 U.S.C. 1396a(a)(1), (a)(10)(B)).
- **#72a: Hard growth limit on the state Medicaid contribution.** Colorado must furnish covered services promptly and in sufficient amount, duration, and scope to everyone eligible (42 U.S.C. 1396a(a)(8), 1396b(i); 42 C.F.R. 440.230), so a growth cap cannot be enforced by denying or reducing services.

- **#78: One accountable LTSS structure in the Governor's office.** The state Medicaid agency (HCPF) "may not delegate, to other than its own officials, the authority to supervise the plan or to develop or issue policies, rules, and regulations on program matters." (42 U.S.C. 1396a(a)(5); 42 CFR 431.10(e).)
- **#121: An Office of Recovery and a voice for people in recovery outside HCPF.** Federal law bars any entity outside of HCPF, as the single state Medicaid agency, from decision-making authority over Medicaid programs. (42 U.S.C. 1396a(a)(5); 42 CFR 431.10(e).)

For more information contact

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