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August 1, 1999

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To: Medicaid Hospice Providers

Re: Hospice Provider Letter 99-04 -- Legal Representatives

The Texas Department of Human Services (TDHS) would like to advise all providers regarding what types of representatives can sign Form 3071, Recipient Election/Cancellation Notice or make medical decisions, on behalf of a hospice recipient. The representative must be authorized according to the appropriate statutory requirements, such as:

- a recipient's legal guardian who has the authority to make a decision regarding the recipient's medical treatment;
- a representative designated under an advance directive, Texas Health and Safety Code 166, Subchapter B;
- a representative designated under a medical power of attorney, Texas Health and Safety Code 166, Subchapter D or Texas Probate Code, Chapter XII; or,
- a representative designated under a Surrogate Decision Maker, Texas Health and Safety Code Chapter 313, the Consent to Medical Treatment Act.

If the individual signing for the recipient does not fall under one of these categories, he cannot make medical decisions or sign the Form 3071 on behalf of the recipient. When the recipient does not have a representative and is incompetent or incapable of communication, the potential representative or the provider should consult with their attorney about the possibility of proceeding under the Health and Safety Code §166.039. The department suggests that providers consult with their attorneys to receive more information regarding representation pursuant to state law.

If you have any questions, please contact Maxcine Tomlinson, Medicaid Hospice Program Manager, at (512) 438-3169.

Sincerely,

Signature -on- file

Marc Gold
Director
Long Term Care Policy