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September 5, 2001

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To: All Community Care Contractors

Subject: Long Term Care
Information Letter 01-14
Requirements for Subcontracting

The purpose of this letter is to remind provider agencies of requirements regarding subcontracting.

Providers must obtain written approval from the Texas Department of Human Services (DHS) **before** subcontracting direct services covered by the Contract for Community Care Programs. Failure to do so could result in DHS taking adverse action against the provider agency's contract, up to and including termination of their contract.

Subcontracts must include language committing the subcontractor to comply with the terms of the contract between the provider agency and DHS. Language in the subcontract may not conflict with the provisions of the contract between the provider agency and DHS.

To obtain approval, the provider agency must send a copy of the subcontract with a request for approval to their DHS contract manager. The provider agency must receive written approval from DHS before allowing services to be provided by the subcontractor.

Please note that the provider agency is responsible for the performance of the subcontractor, not DHS. If DHS determines that the provider agency is not in compliance with program requirements, DHS will take action against the provider agency, not the subcontractor.

According to 40 Texas Administrative Code (TAC) §69.203 states "Contractors must obtain the Texas Department of Human Services' (DHS's) approval of subcontracts and require its subcontractor(s) to accept and abide by each of the appropriate provisions of the contract with DHS."

Information Letter No. 01-14
September 5, 2001
Page 2

40 TAC §49.3(c) states "A provider agency must not ... (3) subcontract any direct services to be performed under the contract, unless specifically allowed, or assign or transfer the contract or monies to be paid, without the written prior approval of DHS."

According to the Contract for Community Care Programs, Section II, Item O,

"The Provider Agency agrees...to require any entities with whom it holds personal service agreements or subcontracts which are related to this contract to execute documents committing such entities to comply with the requirements of this contract."

Section II, Item P of the contract states "The Provider Agency agrees...to refrain from entering into any subcontract(s) for Services without prior approval, or waiver of the right of prior approval, in writing by Department of the qualifications of the subcontractor(s) to perform and meet the standards fixed by this contract. All subcontracts entered into by Provider Agency shall be written and shall be subject to the requirements of this contract. Provider Agency agrees that it shall be responsible to the Department for the performance of any subcontractor."

If you have any questions regarding this matter, please contact your contract manager.
Sincerely,

signature on file

Becky Beechinor
Assistant Deputy Commissioner
Long Term Care Services

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