

THE PROVIDER

A NEWSLETTER OF THE MASSACHUSETTS COUNCIL OF HUMAN SERVICE PROVIDERS, INC./ DECEMBER 15, 1978

Important Contract Provisions

This article and future articles on legal issues of interest to providers is designed for general informational purposes.

PART II. THE NEW STANDARD FORM CONTRACT FOR USE BY AGENCIES WITHIN THE EXECUTIVE OFFICE OF HUMAN SERVICES

By Robert E. Cowden of
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Part I of this Article discussed the basic structure of standard form contract documents recently approved by the Executive Office of Human Services ("EOHS"). As that discussion indicated, those new documents are now to be used by all agencies within the EOHS Secretariat. This Part will consider some of the more important contract provisions.

A "Notice" Document

Above all, this contract is designed as a "notice" document--one which advises the agency and the provider of their basic rights and obligations in as much detail as is reasonably possible. Thus, for example, each statute and regulation to which performance is subject must be specifically cited. Likewise, all regularly required reports must be separately identified. Except in certain limited circumstances, if an agency wishes the provider to comply with an additional regulation, or submit a new report, the agency must propose a contract amendment and secure the provider's approval. On that occasion, the provider can consider whether it has the resources to comply or instead must have additional funding. In addition, if the provider becomes subject to a new law--e.g. Title XX or a revised zoning ordinance--which adds to the provider's obligations, the provider may terminate performance.

The contract is a "notice" document in another sense as well. To identify the starting date of performance, the agency must send the provider a written Notice to Proceed. That notice is to contain a representation that all necessary approvals have been obtained; it thus assures the provider that payment will not be disallowed for lack of appropriate prior approvals by state authorities. Also, if an agency adjusts an invoice with provider

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A Joyous Holiday Season

It is a large old house, much like the others on Mechanic St. The people who live there, nine mentally retarded adults, are now down the street at a rehabilitation work center, along with approximately two hundred and fifty other retarded persons from north Worcester County. At the work center, individuals are learning daily living skills while others are being trained so that they may be employed outside the center.

Their front door, covered with a Christmas scene, greets you with festive spirit and Cathy, the house manager, two cats, and a dog welcome you inside. Although the house is very still, a glance around the rooms tells you that there has been much activity. The living and dining areas are beautifully adorned in holiday decorations that are made by the residents. They also prefer to make their gifts.

The residents and staff will be having a party the Sunday before Christmas. Attending the party will be the residents' families, who live right in the Fitchburg area. For those who have no family, there will be someone for them too...perhaps Cathy, another staff person, a volunteer, or their advocate from the ARC (the local Association for Retarded Citizens). The ARC matches up a volunteer with the individual on the basis of similar age, likes and dislikes. Aside from being trained in areas such as legal rights, the advocate has a supportive relationship. In one person's case, having an advocate friend who is blind, like himself, has been very important.

Between now and the party, there is much for the residents to do. After a day's work, they will be decorating the tree; finishing gifts; making Christmas cards; buying a new outfit; and pitching in making the party refreshments--Does that sound familiar?

THE MASS. COUNCIL OF HUMAN SERVICE PROVIDERS WISHES ALL OF YOU A HAPPY HOLIDAY SEASON AND A HOPEFUL NEW YEAR.

The Mechanic St. House in Fitchburg, MA is one of seven community residences operated by the North Central Mass. Friends of the Retarded. The NCMFOR also has an apartment living program and jointly runs a rehabilitation work center with the North Worcester County Association for Retarded

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Negotiating Committee Update

PAYMENTS SUBCOMMITTEE: Agency progress toward January 1 expansion of the timely payment system was reviewed. This includes training of Department staff and Rate Setting Commission (RSC) training sessions for agency auditors. There are also meetings scheduled to brief providers in timely payment procedures, and MCHSP will be present. Eleven Department of Youth Services contracts and 25 Department of Mental Health (DMH) Region I contracts will be added as of January 1. Similar numbers of DMH contracts in other regions will go on timely payments in the following months. The timing has been changed but the total will reach more than 100 DMH contracts as planned. The need for further expansion was discussed in light of DMH deinstitutionalization since timely payments greatly reduces cash flow money needed for programs. Inclusion of the Department of Elder Affairs--Home Care Corporation network will also remain on the agenda.

The proposed guidelines have been forwarded to the State Auditor whose staff will meet with the Executive Office of Human Services agencies and review standards of the system. Jim Samels also reported that processing time for regular payments in the Comptroller's Division has been reduced to one week.

COMMUNITY RESIDENCES AND ZONING: David Parachini indicated that the draft report has been completed and circulated to subcommittee members. The first section of the report is an analysis of the siting of residences based on interagency research that will aid planning and development of siting strategies. The second half deals with community involvement in establishing programs and aims toward guidelines for increasing community acceptance.

BUILDING CODE: Dr. Budson noted that the code for residences of persons capable of self-preservation must still be printed and filed with the Secretary's office. There will then be a six month period during which facilities that have been inspected under the previous code will remain governed by the prior version. An initial draft of the code for persons not capable of self-preservation has been written and review meetings will take place. It was stressed that although a revised code is essential to deinstitutionalization, funding for required changes, such as installation of sprinklers, is also necessary.

CONTRACT PROCEDURES: John Pratt reported that since the public hearing, a set of changes in the '07' regulation has been drafted. Based on discussions with the Bureau of Systems Development, it is anticipated that the revised version will be acceptable. The human services agency work group with Bob Cowden, MCHSP counsel, representing providers will meet to review the draft and prepare comments.

Calendar

SOCIAL CLUB COALITION: Next monthly meeting of the newly-formed Social Club Coalition is Jan. 3, 1979 at 10 a.m. at Friendship Circle, Framingham, 827-1091. Social Clubs are an emerging means of providing social support systems for present and former mental patients living in the community and for others lacking these supports. For further information, call Jeff Hamilton, Milford Social Center (617) 473-8493.

An OPEN HOUSE will be held by THE KEY PROGRAM, INC. on Thurs., Dec. 21, from 2 p.m. - 7 p.m. at their 576 State St., Springfield location. The Key Program is a private, non-profit agency providing a variety of counseling and other residential and non-residential social services to adolescents in western MA. Officially, the Open House represents The Key Program's involvement in and commitment to the Springfield area.

MCHSP BOARD OF DIRECTORS MEETINGS. Open to all MCHSP members. Meeting held the first Wed. of every month at 12:15 p.m. at 14 Beacon St., Room 500.

If you would like to announce any workshops, meetings about community-based programs, hearings, etc. in any issue of THE PROVIDER, please submit them to Susan von Magnus, MCHSP office, by the 25th of each month.

RATES FOR SERVICES: A preliminary meeting with RSC Chairman Peter Hiam, Commission staff, and subcommittee members has taken place. The Commission will be exploring the availability of its resources for implementing goals outlined in "What Value Price." Chuck Atkins noted the importance of linking this work with the timely payments auditing now being developed with RSC training. Agencies expressed concern with duplicating audits by other state departments and private C.P.A. audits. The fiscal monitoring subcommittee's work also has to be coordinated with these plans.

MONITORING AND EVALUATION: A draft of uniform budget forms has been completed and distributed. The format will be reviewed by the full subcommittee and then by the Negotiating Committee. Mary Adams also noted that a draft of a quarterly reporting system for contract compliance will be available shortly. Non-duplication of present reporting has been considered, and there will be further review by the subcommittee.

OTHER BUSINESS: Continued non-payment of the July 1 group care rates was discussed. There was no apparent resolution of the issue of certifying that funds are available or that the deficiency results from other increases in service in the same account. Providers have requested that the Governor recommend payment of the approved rates.

Opening New Doors to Understanding

That was the theme for a convention held by NARC (formerly the National Association for Retarded Citizens) at the Sheraton-Boston Hotel, on November 15 - 18. Approximately 2500 delegates attended representing 1900 state and local associations. The convention featured training tracks, workshops, and an audiovisual presentation on NARC. Did you know that mentally retarded persons constitute one of the largest single handicapped groups in America? They include more than six million persons and slightly more than 100,000 newborn children are likely to be added to this group each year unless far-reaching preventive measures are discovered and employed. However, mental retardation can already be prevented. For example, it was learned at one of the Prevention Training Tracks that childhood diseases such as measles can cause brain damage. What is startling is that 49 states in our country have a law that states that no child can enter school without vaccinations, yet only six states strictly enforce that law! And that there are 10% more cases of measles, for example, in those states that don't enforce that law!

A highlight of the convention was an awards presentation and a concert by Tony Orlando, honorary chairman, who by the way will be starring in a film "300 Miles for Stephanie" to be aired on television, he stated, hopefully this March. The film is based on a true story of a child, Stephanie and her family.

What is NARC?

NARC is a grass roots organization devoted to improving the quality of life of all mentally retarded persons and prevention of this handicapped condition employing services and advocacy at the local level. The state and national components of the organization are the products of the local units, and they function primarily to serve the locals and to conduct activities which are beyond the means and capabilities of the locals. Some of NARC's goals include achieving improved funding of services needed by retarded persons and their families, ensuring the legal rights of all mentally retarded persons employed and improving their level of employment, reducing the incidence of mental retardation.

Yes, They Can

In summary, the convention did open a door to a better understanding that mentally retarded persons CAN be helped, CAN be productive members of society, CAN live in communities, and CAN contribute, each in his own way, to our world.

Chins Rfp's

The City of Worcester, through the Worcester Regional CHINS Consortium, is accepting applications for the following demonstration projects:

1. A Regional Emergency Shelter and Diagnostic Facility serving all of Worcester County and the Department of Public Welfare, Region III.
2. Up to four Foster Care Programs providing service delivery and care and maintenance for the following areas:
 - a) One program with six community based slots serving the CHINS youth from the Gardner and Fitchburg CSA's.
 - b) One program with four community based slots servicing the CHINS youth from Medway and Southbridge CSA's.
3. Up to four Diversion/Prevention Programs with program components of one or more of: innovative family services for CHINS; truancy screening and diversion; pre-application referral to social services and female runaways serving specific areas within Worcester County and the Department of Public Welfare, Region III.

Applications are to be received by the Consortium no later than Jan. 12, 1978. However, if that date is not convenient for those applying, call Michael Meyers at the Consortium (617) 752-8663.

Copies of the RFP's are available through the Consortium or MCHSP office.

Resources

Periodically, the Council receives questions about the process associated with the initial stages of establishing community-based human service organizations. As a result, a summary outlining the major steps involved has been developed and is available at the Council office.

Also, if you'd like a copy of "Your Responsibilities to Disabled Persons as a Health Care or Social Service Administrator," call us. The booklet, put out by the Department of Health, Education, and Welfare (HEW), summarizes Title V, Section 504, of the Rehabilitation Act covering physical access to buildings, employing handicapped persons, as well as a listing of HEW's agencies who have information about specific programs serving disabled persons.

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consent, it must send a copy of the adjusted invoice to the provider promptly. Further, prompt notification is required if payment is to be delayed beyond established payment dates.

Payment

The rates for all social or rehabilitative service purchased by the Commonwealth are, by law, to be set by the Rate Setting Commission. Thus, one of the Commission's regulations or another applies to virtually every social service. Even negotiated rates must be approved by the Commission. The new documents recognize the Commission's critical role by specifying that the agency must pay the rate for a given service "...from time to time established by the... (Commission)..." In most cases, if a new rate for a given service is set during a contract year, that is the rate to be paid.

As to payment procedures, the new documents not only spell out the "timely payments" system but also establish explicit limits for payment under the "regular payments" system. The agency is to use its best efforts to complete its own processing within 15 days, and to bring about payment within 30 days, after receipt of an invoice. Although not a breach, failure by the Commonwealth, for any reason, to make payment within 45 days of the agency's receipt of an invoice entitles the provider to terminate.

Client Records

The contract obliges providers to keep client records confidential in accordance with EOHS regulations promulgated under the Fair Information Practices Act.

The agency and its representatives (not including members of citizen-review boards) may review client files, subject to two conditions. First, an inspection of unique client identifying information is permitted only if a) necessary to secure federal reimbursement or b) part of an established program within the agency for monitoring or evaluating services. Second, client files may not be removed by the agency and may not be copied, with one exception. That exception is with respect to clients who are committed to the agency (e.g. Youth Services clients) or otherwise in the care or custody of the agency.

In any case, as with inspections of fiscal and administrative records, reviews of client files must, in general, be preceded by 10 days advance notice and followed by an exit conference and a copy of any resulting report.

Site Visits

The contract expressly provides that the agency may from time to time make reasonable informal site visits and examine a reasonable number of client files. However, any formal program evaluation must be preceded by advance notice, so that program interruption is minimized.

Disallowance in Payment

One of the most significant provisions in the new documents governs disallowance or delay in payment. If an agency wishes to

Regulatory Changes

Text Amendment No. 51 City of Boston Zoning Commission - Effective November 9, 1978, The Boston Zoning Code is amended to include the definition of "group care residences, general" as premises for the residential (but not custodial) care or supervision of ex-alcoholics, ex-drug addicts, pre- or post-release convicts and juveniles under seventeen who are under the care of correctional agencies of the Commonwealth. Also not included is residential care of the mentally ill, mentally retarded or physically handicapped if licensed, regulated, or operated by the Commonwealth or under contract with the Commonwealth.

Uses fitting this definition are now conditional in all residential, business, and light manufacturing districts and forbidden only in industrial and waterfront districts. Permits for conditional uses are required, and hearings are held by the Board of Appeals in the Building Department. Appeals are granted only if the Board finds that five conditions have been met:

- a) an appropriate location
- b) will not adversely affect the neighborhood
- c) no hazard to vehicles or pedestrians
- d) no nuisance will be created
- e) adequate and appropriate facilities for proper operation

The Board may attach other conditions in approving a conditional use. Residences existing on the date of the amendment are not affected unless there are changes in use or structure.

disallow a given charge or recover an overpayment, or if it wishes to delay payment because a report has not been submitted on time, it must follow a 3-step procedure. First, it must notify the provider in writing. Second, it must allow the provider at least 10 days to respond. Third, if the provider objects, but the agency wishes to proceed nevertheless, the provider may have a hearing before the Commissioner of the agency or his designee. If the provider seeks a hearing, any action by the agency must be stayed until a decision is issued.

If, after following the required steps, the agency proceeds with a disallowance, it must submit an accounting to the provider of any offset made against the provider's invoices. When repayment is required, the provider is entitled to sixty days following request to make payment.

Termination

The contract expressly provides that at the expiration or early termination of a contract, the agency is to provide alternate services for, or otherwise remove, the clients in question from the provider's facilities, if the clients are committed to the agency or are otherwise in its care or

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SSIC Actively Planning

The Social Service Implementation Committee (SSIC) has entered a period of actively planning the new agency. The incoming administration of Governor-elect King has already begun to involve itself in the planning process, the search committee for the new agency's first commissioner is continuing its efforts, and Frank Schneiger, the new staff director, has recruited a core planning team. However, it must be recognized that the process of change is difficult, especially for the staff which bears the brunt of it. It would be dishonest, therefore, to report that all of the changes which will flow from the SSIC's plan will facilitate a smooth and painless transition. It is clear, however, the the committee is doing all in its power to effect a successful plan, and it is the intention of this article to describe the activity generated and the progress attained thus far.

The Staff

The implementation project itself will be carried out by a mix of full-time staff and contractors for specific tasks. The core staff team will be responsible for a variety of planning activities as well as the integration of the overall plan. The planning team consists of Donna Aster, who most recently served on the staff of the Children's Puzzle Review Panel; John Garrett, who is responsible for the work environment issues; Elyse Jacob, on loan from the Senate Ways and Means Committee and responsible for organization structure; Eva Johnson, who serves as office manager; Carol Lukas, on loan from the Department of Public Welfare (DPW) and having overall responsibility for services planning; and Ted Webb, who serves as program coordinator.

Areas of Planning

The planning activity will be conducted by a mixed group of core staff members and contractors. These activities have been divided into three broad task areas: the structure of the new agency, the nature and delivery of services, and the work environment. Key issues in which rapid action is required have also been outlined. Briefly, these include:

1. Budget - The Committee staff is in the process of separating the social services budget from that of the DPW. In addition, the budget will be recast into a format which is suited to the new agency's goals and structure.
2. Decentralization - The nature of the Department of Social Services budget will be largely determined by the decentralization plan which is approved. The broad framework for the plan is provided by two goals: that of maximum autonomy and responsibility at the point of delivery of service, and secondly, effective central management information, evaluation, and accountability system.

3. Staffing - Committee staff are beginning to develop job definitions, as well as the process for recruitment, current staff evaluation, transfer, and appeal.
4. Work Environment - A central aim of the committee is to develop work settings which maximize worker effectiveness, job satisfaction, and ultimately service quality. Toward this end, committee staff will be conducting field surveys during the next three weeks. The purpose of these surveys will be to gather planning data on worker needs ranging from the physical design of offices to career ladders.
5. Legal Issues - A variety of legal questions, legislative, procedural, court related, and regulatory must be resolved at an early date.

In Summary

The success of the new Department of Social Services will be determined not only by the quality of the plan completed, but also by a broad based coalition of support for the agency's purposes and goals. It is, therefore, the hope of the committee to encourage and make possible the active involvement of those who are interested in the planning process, as well as to dispel unfounded fears and concerns of those who will be affected by these changes which will be taking place during the next eight months. In this way it is hoped that the new Department of Social Services will represent the needs of all involved.

Next Month: Long Term Planning

By Deborah Slater
MCHSP Student Intern

Discussions Reopen for '07' Regs.

Although conditions were hardly favorable, as it snowed throughout the morning, nearly 100 representatives of private providers from all parts of the state attended the hearing in Boston. Everyone who testified opposed adoption of the Administration and Finance regulation. They included providers of virtually every type of service which Massachusetts agencies purchase and several represented statewide associations of agencies. The affected state departments of Elder Affairs, Mental Health, Public Health, Welfare, Youth Services, Office for Children, and the Executive Office of Human Services were also unanimous in their opposition. The technical processes which the regulations would have instituted were consistently analysed as leading to severe breakdowns in delivery of service. Also repeatedly stressed was the circumvention, by the proposers of the amendments, of ongoing and agreed upon processes for cooperative development of administrative reforms. Widespread support for the forum developed through the Council's Negotiating Committee was clear, and as of this writing, discussions of '07' revisions have been reopened.

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Citizens. Two local mental health facilities are contracted with to provide services as needed. Besides the staff, the advocates, and volunteers, students from Fitchburg State College and Northeastern University's Co-op Program are available.

The Mechanic St. House has good neighbors who only seem to complain when a staff person's car is parked improperly. "Knowing your community and educating them is very critical in setting up a community residence," says Eunice Matson, NCMFOR's Executive Director. "A speaker bureau, composed of four other people from the North Worcester County ARC and myself, spent a year talking with community groups about the Mechanic St. House before the program opened up." Speaking to the greater awareness of the needs for retarded persons, Ms. Matson felt that "we have gotten a bigger piece of the pie in the last four years, although there remains a lot more to accomplish."

According to Donald Anderson, Deputy Assistant Commissioner for Mental Retardation, the State's MR budget between FY'75 and FY'79 has grown some 600%. Approximately 100 providers, contracting with DMH, are operating roughly 190 residential programs serving 1800 - 1900 clients and 100 day programs serving 2300 clients, reported Mr. Anderson. He pointed out that there is a trend toward smaller apartment living for MR clients and that the state was working on allocating state school resources into the community by way of Title XIX funds. He also pointed out that in the DMH FY'80 budget, the Division of Mental Retardation requested increases for those contracts who had not received a cost of living increase since 1975.

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custody. Clients of the Department of Youth Services or the Group Care Unit of the Welfare Department are cases in point.

Contract Officers

Both the agency and the provider must appoint, and identify to the other party, contract officers. The contract officer is to be a person authorized to represent and bind the appointing party. This provision is designed to encourage accountability and consistency in communication on the part of each party.

Conclusion

In many fundamental respects, the new documents re-structure the agency-provider relationship. They emphasize fair process--e.g. notice when payment is late, a hearing before cost-disallowance, notice before inspection of records. They also limit the agency's authority. New reporting requirements cannot be imposed unilaterally and inspection of client records is circumscribed. But these documents only establish ground rules. A critical challenge, to both providers and agencies, still lies ahead: putting prescription into practice.

New EOHS Secretary

Governor-elect King recently named Charles Francis Mahoney to head the Executive Office of Human Services in the new administration. Mahoney is a Springfield native and a Boston University graduate and has practiced as an attorney in Boston. The new secretary is widely experienced in state government and human services. In the fifties he was a top assistant to Governor Furcolo and has been a special justice of the Boston Municipal Court. A past president of the Massachusetts Association for Mental Health, Mahoney is also known as an advocate on issues of mental health, mental retardation, corrections and children's services. In addition, he was appointed to the State Health Coordinating Council by Governor Dukakis and served as chairman.

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