

THE PROVIDER

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

New EOHS Contract

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

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

By Robert E. Cowden of
Chaplin, Barzun & Casner,
MCHSP Counsel

Under authority granted by recently promulgated regulations governing purchase of human services by agencies within the Executive Office of Human Services ("EOHS"), that Office has approved new standard form contract documents. With limited exception, these documents are now to be used for all contracts for human services concluded by agencies within the EOHS Secretariat.

The development of standard form documents, which was coordinated by EOHS, involved EOHS agencies and provider representatives. The premise of this effort was that matters of policy and law which are common to all contracts for human services within EOHS should have a single resolution and a single form of expression. A related premise was that, where contract conditions vary from one contract to another (e.g., period of performance, compensation) or from one group of contracts to another (e.g., timely payments vs. regular payments), contract documents should at least be standard in format.

The documents developed on this basis have three basic parts. The first part is EOHS Forms, of which there are presently four (EOHS Forms 1-4). These Forms vary according to whether payment is on the timely payments or the regular payment basis, and whether payment is made at a certain rate per unit of service or on the basis of reimbursement for costs incurred under a prescribed budget. Aside from these variations, the Forms are all the same, and all call for information particular to the contract in question. That information is: name of purchasing agency and provider, period of performance and amount of compensation. Each Form also calls for signatures of appropriate officers. In effect, the Form serves as an extended "face sheet" setting forth certain information critical, and particular, to each contract. It also incorporates by reference the contract Conditions and Attachments discussed below.

(continued on page 4)

DSS Beginnings

Starting with this article, each issue of THE PROVIDER will feature a report on the development of the newly formed Department of Social Services.

By Deborah Slater
MCHSP Student Intern

Chapter 552, the law which mandated the Massachusetts Department of Social Services (DSS), was passed on the last day of the legislature's 1978 session. Although there had been several delaying votes in the session, the reasons were the lateness and subsequent lack of information concerning the bill, rather than extensive debate. The final tally of 172 to 9 votes further reflected the mass support involved. Yet the manner in which DSS came into existence was not nearly as forthright, and it is the purpose of this article to explain the events preceding its passage into law on July 24, 1978.

After the 1975 election, it became apparent to John Finnegan, the new chair of the House Ways and Means that the state of Massachusetts was in massive debt. The prevailing option of an increase in taxes and/or a cut in state spending were the prime motivators in the resulting tense atmosphere. As most of the state's budget is allocated to Human Services, Finnegan chose to concentrate his examination efforts in that department. He found that although there had been sufficient legislation, a complete lack of coordination between social services existed.

The Children's Puzzle

At the chair's request, a research project began in the area of children's services, which as Representative Johnston's many reorganization proposals indicated, needed major reorganization. Finnegan's further efforts resulted in the agreement of the University of Massachusetts, an institute independent of the legislature's in-house, self-serving structure, to undertake the project. With private funding from the Lilly Foundation, the Children's Puzzle study emerged under the leadership of David M. Sheehan. Yet, the project was still under the auspices of the House Ways and Means.

In March 1977, the results of the Children's Puzzle report were finally announced. In content, it detailed problems by way of looking at the state agencies involved in children's services. There were some criticisms of the report, yet the ma-

(continued on page 6)

Negotiating Committee Update

Topping this month's agenda was the work on payment systems outlined in our last issue. The Committee was also able to discuss the progress of the other standing subcommittees.

LATE PAYMENTS: A series of weekly meetings to deal with payments delays has taken place. Chuck Atkins, Executive Office of Human Services (EOHS) Undersecretary, noted that largely due to the continued efforts of James Samels, Acting Deputy Comptroller, there has been progress in the regular payment system. From the original period of 25-30 working days needed to process payments, all concerned are now committed to an 18 day turnaround. EOHS is maintaining a goal of reducing this to a 15 day period. Half of the time is voucher processing within Human Services agencies. The other half is needed for Comptroller's Division, Executive Council and Treasurer. Tom Salstonstall of EOHS has developed a tracking system to monitor the time of processing at each step. If the above schedule is not met, information should be more readily available on the location of bottlenecks. It was emphasized that Providers need to submit correct invoices and that the tracking system will also identify problems in this area.

Doug Baird reported that brief surveys by MCHSP indicate a significant decrease in overdue payments. There are some Department of Mental Health (DMH) providers who have not received August payment and problems caused by the transfer of Lowell to a new DMH region are apparently unresolved. Jim Samels has analyzed the reasons for the recent crisis and has submitted a summary of the causes to Chuck Atkins. He noted that further speeding of payment by the Comptroller may be difficult since funds for temporary employees and overtime are short even if transferred from other subsidiaries. Other priorities may prevent the loan of keypunch employees he has requested from the Department of Revenue and the computer service center. Jim reported progress on agreements for DMH and the Massachusetts Rehabilitation Commission to assume data entry work for their payments, freeing the Comptroller's Division staff for validation and editing of data.

TIMELY PAYMENTS: The expansion of timely payments will be recommended beginning January 1. This includes 121 contracts above the present number. Chuck Atkins noted the satisfactory addition of audit capacity in DMH, the monitoring process of the Department of Youth Services (DYS), and the completion of guidelines for the systems and its audit as leading to the agreement on expansion. The State Auditor will be reviewing these procedures and the sufficiency of audit trails.

(continued on page 5)

Calendar

"TRY ANOTHER WAY." A training conference designed for people working with the handicapped. Dr. Marc Gold will teach participants his philosophy and methods for training people who find it difficult to learn and discuss current and future training activities across the country. Nov. 29 - Dec. 1 at the Park Plaza Hotel, Boston. Contact Ilona Sewell, Central Middlesex ARC, (617) 935-6275.

UNDERSTANDING FAMILY DISTRESS: ALTERNATIVE APPROACHES AND INTERVENTION, by Eli Newberger, M.D., Director of Family Development Study, Children's Hospital Medical Center and Carolyn Moore Newberger, Ed.D., Staff Psychologist, Judge Baker Clinic. This 1-day workshop explores parent-child conflict with special emphasis on child abuse and neglect. Sat., Dec. 9, 9:30 a.m. - 5:00 p.m. at the Children's Hospital Medical Center, 300 Longwood Ave., Boston. Pre-registration. Call Mass. Psychological Center (617) 261-8585 for more information.

WOMEN'S ISSUES: LEARNING THROUGH GROUP PROCESS. The Marion Center for Human Services has started a ten-week counseling group, meeting on Wednesdays from 7:00 p.m. - 8:30 p.m. Its emphasis is on personal awareness and self-growth. \$5.00 per session. A second group will begin in the spring of 1979.

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.

Filling a vacant position?

Back in the spring of this year, the Council conducted a survey to assess providers' need for a formal job bank. Although it was determined not to be a priority, in the interest of assisting agencies fill their vacant positions and individuals seeking employment in the Massachusetts human services field, the Council has developed a passive job bank.

Resumes are accepted from job seekers and held on file for six months. Any agency, trying to fill a vacant position, is welcome to review our resume file. Also a letter, developed by the Council, is distributed to those job seekers, explaining the procedures for seeking employment with public and private human service agencies.

We are also interested in receiving notices of vacant positions from you so that they would be available to the job seeker.

Section 424.0 Revised

In May of this year, the Negotiating Committee created the State Building Code Compliance and Review Subcommittee, chaired by Richard Budson, M.D. of the Berkeley House and Waverly House, McLean Hospital. The Subcommittee's task was to offer an amendment to the State Building Code, Section 424.0 Group Residences that would be more clear and would eliminate some of the obstacles to community-based residences.

Section 424.0 Group Residences has been approved by the State Building Code Commission and Dr. Budson reports that it is substantially the code as amended by his Subcommittee. "The Code is a functional test for individuals who are capable of self-preservation, in that they are able to egress from a building within two and one-half minutes," Dr. Budson states. He highlights the revised Section for us by adding that it orders one means of egress and one escape route, and provides a yearly fire drill test in the presence of the residence manager and an authorized inspector. A code for those not capable of self-preservation is being drafted by the Subcommittee and will address such issues as staffing patterns and the use of the first floor only. The Subcommittee's draft would not require new construction and is targeted for January 1979 passage.

The Building Code Commission is also revising other sections of the State Building Code. As soon as all the work is complete, all the Sections of the Code will be in effect, probably some time next year.

Copies of Section 424.0 Group Residences are available at the Council office.

Resources

The Psychiatric Halfway House: A Handbook of Theory and Practice by Richard D. Budson, M.D., Director of Berkeley and Waverly House, McLean Hospital and Assistant Professor of Psychiatry, Harvard Medical School. Dr. Budson presents a theoretical basis for the psychiatric halfway house as a social system modeled on the family and provides a detailed plan for setting up and running a community residence effectively and efficiently. The book may be purchased by writing to: University of Pittsburgh Press, 127 North Bellefield Ave., Pittsburgh, PA 15260 and enclosing a check or money order for \$10.95. Add 60¢ to cover postage and handling.

The resources of the MCHSP office are available at any time. Reference materials include such publications as: a complete set of the Massachusetts Register; Department of Public Welfare, "Social Service Policy Manual"; Office for Children, Licensing regulations; Rate Setting Commission regulations and proposed amendments; Departmental budget narratives and recommendations of EOHS, the legislature and governor; copies of all rate filings; several guides to funding sources and fiscal management.

Dev. Dis. RFP's

The Massachusetts Developmental Disabilities Council has identified eight objectives in its FY'79 State Plan which will be implemented through a competitive RFP and grant and/or contract process. Below are the objectives and the approximate level of funding:

- I-1 To establish a community-based model or demonstration project to serve the needs of the severely disabled adult (\$90,000)
- I-3 To develop model projects which demonstrate how to adapt existing community-based generic resources in order to broaden their application to address the needs of disabled persons (\$50,000)
- I-4 To provide technical assistance to private non-profit providers who currently operate or are developing community-based service programs for the developmentally disabled (\$20,000)
- I-6 To conduct a comprehensive assessment of the needs of developmentally disabled persons residing in the community (\$25,000)
- I-8 To establish a model respite care program in the Commonwealth
- I-11 To conduct a model project which demonstrates a cost effective approach to renovating sheltered workshop facilities in order to make them barrier free (\$10,000 to possible maximum \$30,000)
- IV-1 To train parents to become primary advocates/case managers for their developmentally delayed children (\$20,000)
- V-2 To develop and provide the necessary resources to assist private agencies and consumer organizations in the implementation of Section 504 of the Rehabilitation Act of 1973 (40,000)

Because more specific guidelines for each objective are being developed, the RFP's will be made available during the next few months. Your request for a copy of one or more of the above RFP's should be directed to: Karen Mastro, Bureau of Systems Development, Developmental Disabilities Unit, Room 272, State House, Boston, MA 02133. It should be noted that the President has not yet signed a bill governing the developmental disabilities program. Depending on the final version of the new law and the level of Congressional appropriation, the above objectives and level of funding could change.

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(continued from page 1)

The second part of the new documents is the EOHS General Conditions. These constitute a part of all contracts within EOHS for human services and come in only one version. They govern such items common to all types of human services contracts as: non-discrimination in hiring and service delivery; confidentiality; maintenance and inspection of records; site visits; disallowance of payment; reports; and termination.

The third part of the new documents is the Attachments, of which there are three. Attachment A, entitled "Statement of Work and Objectives," will vary in content from one contract to another, but in each case is to contain the basic specifications for work to be performed: nature and quantity of services to be provided; location of facilities; area to be served; and, where applicable, guidelines for eligibility determination under Title XX. Attachment B, entitled "Statement of Fiscal Conditions" is to contain all fiscal data and specifications. For example, in the case of a contract providing reimbursement of costs incurred under a line-item budget, the budget and guidelines as to cost allowability are to appear in this Attachment. Attachment C is entitled "Statement of Reports and Applicable Statutes, Regulations and Manuals." This Attachment is to contain a specific listing of each report required of the provider and reference to each statute governing the contract.

To explain the use of these new documents, EOHS has prepared a "Guide to Human Services Contracting" which is designed as an aid for both public agencies and providers. It sets forth the purpose, function and procedures for using each part of the documents.

The objectives

Virtually every provision in these new documents has appeared in some form in contracts for human services used by EOHS agencies in recent years. However, the substance of many provisions has been changed. These changes have been designed to make contract provisions:

1. Consistent among themselves;
2. Consistent with statutes and regulations which impinge directly on contracts for human services (e.g. rate setting regulations, Title XX regulations and A & F regulations governing purchase of services); and
3. As full and as clear an explanation as possible of each party's obligations (e.g., a specific listing of each report required and each statute applicable, rather than general reference to "such reports as are required" by the agency or general incorporation of "all applicable statutes and regulations."

The last objective was considered especially important. At the expense of length, these documents are designed to explain for non-lawyer managers, at both the agency and the provider level, each party's respective rights and obligations.

As the only purchasers of consequence of many types of human services, EOHS agencies have historically been able to dictate contract terms to providers. Predictably, many of those terms have favored the Commonwealth. The new contract documents, by contrast, bring the agency-provider relationship into more even balance. In effect, they recognize the need for a certain degree of independence on the part of providers. In Part II, this Article will consider some of the more important provisions--such as site visits, confidentiality, and appeal of disallowance of costs--which contribute to this fundamental change.

A 1979 Convention

At its November 8 meeting, the MCHSP Board of Directors agreed that the possibility of the Massachusetts Council of Human Service Providers sponsoring a 1979 Spring Convention should be reviewed.

Although representatives of state agencies and providers have worked effectively toward the implementation of the Council's Platform Reforms, (creation of a uniform contract and a demonstration timely payment system) the directors noted there were other areas to strengthen as well as new issues to work on. Since the days of its incorporation, the Council has sought improvements in the Massachusetts system for purchasing community-based care by way of a collaborative effort with state agencies, and will continue that effort with governor-elect Edward J. King and his staff.

Save the date - November 29 at 9:00a.m. to discuss a possible convention and call Gerry Wright at the Council office now for more details.

Regulatory Changes

Executive Order No. 145: Consultation with Cities and Towns on Administrative Mandates. Before adopting any rule or regulation or taking administrative actions which require added expenditures or procedural changes by municipalities, all state agencies must give notice to the Local Government Advisory Committee and the Department of Community Affairs. If these bodies believe there may be significant impact on local governments, a meeting will be held to review the proposed action. It is possible that this process will affect the development of group homes.

Executive Order No. 147: Governor's Code: Suspension and Debarment of Public Contractors. Establishes sanctions to be imposed in cases of criminal, fraudulent, or seriously improper conduct. Contractors may be excluded from all state contracting for up to three years. Suspensions will be temporary, pending legal proceedings. Procedures for notification and hearing are included in the order.

(continued from page 2)

Continued expansion after January is under consideration. The Rate Setting Commission (RSC) is involved in planning for a coordinated system of further increasing agencies' audit capacity. Models other than those proposed by DMH & DYS are possible. Doug Baird stressed providers' concern that separate sets of requirements will be developed by each agency, and that each contract will require a different audit at the same provider. The RSC role and the standardized forms being developed in the Monitoring and Evaluation subcommittee are intended to avert these problems.

CONTRACT PROCEDURES: John Pratt, Assistant Secretary of Human Services and Chairman of this subcommittee noted that the 07 regulations which the subcommittee developed became Administrative Bulletin 78-12 with the agreement that sections covering selection processes would be revised and improved by this December. The Bureau of Systems Development, in the Executive Office of Administration and Finance (EOA&F) has proposed a broad revision of the whole regulation. John reported that this draft would establish a procurement system that EOHS agencies consider unwieldy. Its multiple procedures and selection committees would create a new bureaucracy for the negotiation of contracts. An alternative draft which would replace only sections of the present regulation while still requiring open competitive selection and defined criteria will be submitted by the Commissioners of EOHS departments. Further communication with those involved from EOA&F will be made outlining specific problems that would result if a new approval system were imposed on agencies purchasing human services. It is hoped that the draft which goes to public hearing on November 21 will retain the general format of the original regulation.

MONITORING AND EVALUATION: Mary Adams of EOHS reported that the subcommittee continues to concentrate on fiscal monitoring. Standardized budget forms should be ready for review in December. The forms would be intended for use on an interagency basis including rate setting and should include all items needed for program operation. Their use in quarterly monitoring and other auditing is yet to be determined.

COMMUNITY RESIDENCES AND ZONING: There are two working groups of this subcommittee chaired by David Parachini of the Department of Education. Both will be issuing draft proposals by the end of the months. The first set of standards for the siting of residences based on geographical distribution and the need for a full range of service in each area. Second is a set of flexible guidelines for programs to develop community acceptance and to work with local governments and neighborhood groups. It is considered likely that both proposals will come under the review process set up by Executive Order No. 145.

Proposed licensing regulations for community residences for the mentally ill were also discussed. Dr. Richard Budson who has

represented a group of mental health providers on the DMH Task Force described the draft version as untenable. Main concerns are the inconsistency and destructively investigative approach of the regulations. Doug Baird added that virtually all mental health residences would be in non-compliance, while many are not state supported. The possibilities for Keys amendment violations with loss of SSI money and for return of clients to institutions were also noted.

BUILDING CODE: A report on the Building Code Subcommittee was given. See page 3, "Section 424.0 Revised."

RATES FOR SERVICES: John Isaacson, Assistant Commissioner of DYS, noted that the report of the subcommittee has been in circulation and that its outlines have been generally accepted. He then suggested that procedures for implementing its recommendations should begin. A meeting with the Rate Setting Commissioners, EOHS, and members of the subcommittee will be set up to develop a rough schedule for this work.

The inability of the Department of Public Welfare to pay group care rates effective July 1, 1978, without a deficiency budget was discussed. MCHSP correspondence with the Ways and Means Committees indicates that funds were budgeted for rate increases. Doug Baird proposed that when the Department resubmits its request to pay the rates to the Budget Bureau, it detail whether overspending is a result of increased units of service in foster care and not actually dependent on the group care rate.

No Comment—

"NEW HAVEN-Yale University will increase wages of its assistant professors and its clerical and technical employees by 10.5 percent, president A. Bartlett Giamatti said yesterday. The wage hikes are 3.5 percent above the voluntary limit on such increases proposed by President Jimmy Carter.

'The young faculty at Yale must be nourished, and part of that commitment and priority is to pay members of that group more, where salaries are not competitive. Our clerical and technical group is also clearly underpaid,' he said....

'...Any wage guidelines cannot involve keeping the poor poor forever,' said Jerald Stevens, university vice president for finance and administration...."

Boston Globe 11/8/78

Voucher Deadline

Whether you receive a special notice from contracting state agencies or not, the deadline for all billings for services rendered before June 30 is rapidly approaching. The last date for transactions in these expiring accounts payable is approximately December 21, 1978. This applies to all Departments. Be sure to submit all invoices and vouchers for fiscal '78 services by December 11.

(continued from page 1)

major controversy lay in the recommendations for wide-sweeping changes. Finnegan himself implied that the idea of abolishing the Department of Public Welfare (DPW) to form two entirely new departments of social services and payment assistance was radical. The job would be immensely cumbersome and not easily accomplished.

The chair appointed a seven member panel headed by Florence Rubin to review the puzzle. It became clear that it was not possible to write legislation for major reorganization. In late February 1978, the panel decided to remove all social services from the DPW since this area was not only where the major disorganization was located, as the concentration was on AFDC federal relief money, but that the bulk of responsibility of social services lay in the 10,000 children currently served. The suggestion of combining social services with the Department of Youth Services, as Representative Johnston's bill suggested, was dropped as this was felt to be simply combining two major problems into one larger one.

Chapter 552

Proceeding quickly so as to pass the separation bill before the end of the legislative session, the hearing was held on June 1. The bill was substituted for Representative Johnston's proposed bill slated for that time. The final version had minor changes reflecting the desire to get as much response as possible. Strong support from providing groups, agencies, the Executive Office of Human Services, both branches of the legislature, and the Office for Children contributed to the passage of Chapter 552.

Implementation Committee

Mandated by the bill was an Implementation Committee with the purpose of preparing the plan. The dates of January 1 for the commissioner to be chosen, February 24 for the implementation plan, and July 1 for

full functioning of the DSS were keynoted. The Committee consists of Delores Mitchell, Chairperson, Secretary of the Executive Office of Human Services, and five committee members, chosen by former Secretary Jerald Stevens. They are Douglas S. Baird, Executive Director of the Massachusetts Council of Human Service Providers; Cristina Crowe, Deputy Director of Social Services, DPW; Ralph Muller, Deputy Commissioner, DPW; Kathleen Ward, a Governor's appointee to the statewide Advisory Council of the Office for Children; and Constance Williams, President, Massachusetts Chapter, National Association of Social Workers.

There is no argument that the committee got off to a slow start under the leadership of four different secretaries in their first four meetings. Yet with the addition of Frank Schneiger, the new staff director, and several staff members and with much of the preliminary discussion behind them, the Implementation Committee of the Department of Social Services is definitely making up for lost time. In the months to come, many decisions concerning services to be provided, budgeting, and staff are to be made. THE PROVIDER will keep you posted as to their outcome.

Notice of Public Hearing

There will be a public hearing, regarding the amendment of the 07 subsidiary regulation, on Tuesday, November 21, at 10:00a.m. in Conference Room 3, 21st floor, McCormick Building, One Ashburton Place, Boston, MA. The Executive Office of Administration and Finance has rewritten these regulations that had been worked on for a long time by state agency and provider representatives. The regulations, relating to the Procurement Policies and Procedures for the Purchase of Social and Rehabilitation Services, are very important in that they effect the way providers do business with the Commonwealth. If you would like a copy of these regulations, call the Council office.

MASSACHUSETTS COUNCIL
OF HUMAN SERVICE PROVIDERS, INC.
15 Court Square - 6th Floor
Boston, MA 02108

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