



Missouri Department of Health and Senior Services

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**Julia M. Eckstein**  
Director

PM-06-06

November 3, 2005

**MEMORANDUM FOR ALL IN-HOME SERVICES PROVIDERS**

From: Brenda F. Campbell, Interim Director *BFC*  
Division of Senior and Disability Services

Subject: Client Choice and Anti-Kickback Laws

The division has recently been contacted by several providers under contract with the Department of Health and Senior Services (DHSS) to deliver in-home services who wish to expand their client base by acquiring the business of another in-home services provider. Any time there is a question about who delivers care, federal requirements protect the client's right to choose their provider.

In-home services providers under contract with DHSS have specifically acknowledged they must adhere to the concept of client choice by signing a participation agreement, one provision of which states, "The Provider agrees and understands that clients authorized by the Department have the right to utilize the provider of their choice and the Department makes no representations concerning the number of clients who will choose the services of the Provider." These terms are necessary to ensure that DHSS is compliant with the Missouri State Medicaid Plan, Section 4.10, which states, in part, "that any individual eligible under the plan may obtain Medicaid services from any institution, agency, pharmacy, person or organization that is qualified to perform the services." This requirement is also set forth in 42 U.S.C. Section 1396a(a)(23).

Pursuant to these requirements, the division is reminding providers to review PM 04-01 so that they utilize the appropriate procedures in order to ensure clients are properly informed and offered choice of providers any time an in-home provider seeks to acquire the business of a provider that is selling its assets or closing down. These procedures would typically apply when there is a sale of assets rather than a sale of stock, although other business-acquisition arrangements that may result in the transfer of clients may require that this procedure be followed as well. PM 04-01 can be found at

<http://www.dhss.mo.gov/InHomeServProviders/ProviderMemos.html>.

Providers should also take note that both federal and state anti-kickback laws may apply to them and their employees. Providers should review Sections 191.905.2 and .3, RSMo. Section 191.905, RSMo prohibits paying, offering or accepting kickbacks and provides for civil liabilities for violation of the anti-kickback provisions. 42 U.S.C. Section 1320a-7b, "Criminal

[www.dhss.mo.gov](http://www.dhss.mo.gov)

The Missouri Department of Health and Senior Services protects and promotes quality of life and health for all Missourians by developing and implementing programs and systems that provide: information and education, effective regulation and oversight, quality services, and surveillance of diseases and conditions.

Penalties for Acts Involving Federal Health Care Programs,” prohibits similar activities and provides for criminal penalties for violating the law.

If the division substantiates allegations that a provider has not adhered to the requirements for client choice or has violated the anti-kickback laws, the division will take action to sanction the provider and will make a referral to state or federal authorities responsible for enforcing the anti-kickback laws.

Questions may be submitted to the in-home services contracts e-mail address at [ihcontracts@dhss.mo.gov](mailto:ihcontracts@dhss.mo.gov).

BFC/NH

Distribution List 3