



Missouri Department of Health and Senior Services

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**Julia M. Eckstein**  
Director

PM-06-10

January 18, 2006

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

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

SUBJECT: Non-Compete Agreements and Clients' Free Choice of Providers

The Division of Senior and Disability Services (DSDS) has received notification of in-home services providers implementing non-compete agreements for their employees to sign. Although DSDS does not regulate provider-employee relations, there are federal and state anti-kickback laws that could impact an in-home services provider's recruitment of employees and solicitation of clients. (Reference: PM-06-06) Disputes with an employee regarding the terms of a non-compete agreement are private employment matters between the parties and will not be investigated or regulated by DSDS.

Code of Federal Regulations in Title 42, Part 431.51 (a)(1) and (b)(1)(i & ii), states that recipients may obtain Medicaid services from any qualified provider willing to deliver the services to them. As part of the case management function, DSDS ensures all clients are familiar with, and exercise their right and responsibility to select providers of their choice.

As indicated in the Participation Agreement with the Department of Health and Senior Services, specifically Paragraph 4.25 of the Program Requirements, "The Provider agrees and understands that clients authorized by the Department [of Health and Senior Services] have the right to utilize the provider of their choice...."

Pursuant to these requirements, all in-home services providers must not impede a client's ability to choose another provider anytime the client requests a change. This guarantee applies even when an employee is alleged to have violated a non-compete agreement.

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

BFC/SG

CC: Distribution List 3

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