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PI-11-07

To: Aging Services Access Points
All Providers of Home Care Services

From: Ann L. Hartstein 

Date: May 6, 2011

RE: Prohibition on Non-Compete Agreements

Purpose:

This Program Instruction (PI) transmits new language to be incorporated into Elder Affairs' standard Provider Agreements that will prohibit the use of non-compete agreements in the employment of direct care workers in the Home Care Program.

Background:

A number of providers under contract to ASAPs to provide direct services to Home Care Program consumers have begun to require staff to sign non-compete agreements as a condition of employment. Such agreements stipulate that workers, after serving an individual Home Care Program consumer while employed by the provider, may not then serve that same consumer while employed by any other provider. These non-compete agreements unreasonably impede the consumer's free choice of providers and qualified direct service workers.

Required Actions:

ASAPs are required to execute with all contracted Home Care Program providers the Provider Agreement amendment included with this PI. The language it contains will be incorporated into the standard Provider Agreements (both Homemaker and Non-Homemaker) that will be re-issued

by Elder Affairs later this year. Further, ASAPs are prohibited from adhering to or participating in the enforcement of such non-compete agreements in the Home Care Program.

In cases where a provider refuses to execute the attached amendment, ASAPs must terminate that provider's contract. The provider is required to work with the ASAP to transition consumers to new providers, and ensure there is no interruption in service delivery.

Effective Date:

May 6, 2011

Contact:

Questions concerning this PI may be directed to Joe Quirk, Director of Home and Community Programs, at joe.quirk@state.ma.us.

Provider Agreement # _____

Contract Amendment # _____

WHEREAS _____ hereinafter referred to as the Corporation, and _____ hereinafter referred to as the Provider, entered into a Provider Agreement on _____, 20 ____ and

WHEREAS the Corporation and the Provider do mutually desire to modify and amend said Agreement;

NOW, THEREFORE, it is agreed that said Agreement will be amended in the following respects, but otherwise be maintained in full force and effect.

The Provider may not require any current or prospective direct care worker to agree to a non-compete clause as a condition of employment. As used in this paragraph, a non-compete clause is any contractual provision that attempts to preclude the employment of or impose restrictions on the employment of a direct care worker by another Home Care Program provider.

In all other matters, the above-referenced Agreement between the Corporation and the Provider remains in full force and effect; this signed Amendment to said *Provider Agreement* shall be attached to and made a part of said Agreement.

Corporation's Authorized Signature

Printed Name

Date

Provider's Authorized Signature

Printed Name

Date