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ICDSS Adult Services

October 26, 2009

Eva Lopez, Deputy Director
Adult Programs Division
California Department of Social Services
744 P Street, MS 8-17-12
Sacramento, CA 95814-05512

Dear Ms. Lopez:

At the Long Term Care Operations meeting on October 14, 2009 in Sacramento, you asked for counties that anticipated problems in implementing the provisions of the new provider enrollment process by November 1, 2009 to express their concerns in writing to your office. This letter is to inform you of serious concerns Imperial County has with the scheduled implementation date of November 1, 2009.

The new enrollment process requires the use of the following new forms: SOC 426, Soc 426A, and SOC 846. At present, the SOC 426 is the only form available to us, and it is only available in English. Our population (clients and providers) is approximately 75% Spanish speaking. If we implement the use of these new forms on November 1, 2009, prior to having them translated into Spanish, 75% of our population will be signing statements under penalty of perjury that they may not completely understand. This may be in violation of their civil rights and may undermine any prosecution effort in the future if fraud is committed.

The new provider enrollment process requires new providers to attend an orientation. Counties have been provided a CD and orientation hand out materials, however, they are in English only. CDSS informed counties at the October 14, 2009 Long Term Care Operations meeting that translated materials would not be available until sometime in January of 2010. If we implement the use of these orientation materials on November 1, 2009, prior to the material being translated, we may be violating providers civil rights, and they may not understand all of the materials they are being presented and asked to sign. This may undermine any future prosecution effort if fraud is committed.

The new provider enrollment process requires providers to submit fingerprints and undergo a criminal background check by the DOJ. To date, we have only received a "draft" ACL that outlines the process counties must use to obtain certification from the DOJ to participate in the process of submitting prints and receiving Criminal Offender Record Information (CORI). Even if this ACL is finalized prior to November 1, 2009, there will not be sufficient time for the counties to complete the certification process with the DOJ and be operational on November 1, 2009. Imperial County is in the process of completing the necessary application, but our understanding is that upon acceptance of the application by the DOJ, it will still take several weeks to receive an ORI code so that we may process prints through the DOJ system. Additionally, once we receive an ORI code, our own staff will need to undergo the printing and background check before they can be authorized to process prints through the system, and DOJ will need to provide training to our designated staff. It will be logistically impossible for Imperial County to complete this process prior to November 1, 2009.

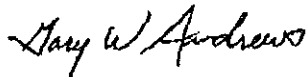
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Additionally, Imperial County has legal concerns regarding the county taking on the role of an employer in this process. The DOJ provides this automated service for criminal history background checks as a service to employers. If the county takes on this role, we may be placing ourselves in legal jeopardy in the future since we don't have the protection afforded to Public Authorities regarding tort liability. If providers were to sue the county in the future, it would be difficult to make the case that we are not the employer when in fact we are utilizing this DOJ background check system as though we were the employer, and making the decision on whether to hire or not based on the results. We would like to get a legal opinion on this matter before proceeding, and will not have time to accomplish that before November 1, 2009.

For all the reasons detailed above, Imperial County urges CDSS to extend the implementation date by at least two months in order to give counties enough time to implement the new procedures properly. Failing to extend the implementation date will place counties in the position of being out of compliance, creating an environment for appeals and potential law suits by providers and clients.

Sincerely,



Gary W Andrews, Deputy Director

Imperial County Department of Social Services