



STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF THE COMMISSIONER

MICHAEL P. STARKOWSKI
Commissioner

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December 4, 2007

Dear Health Care Provider:

The Connecticut Department of Social Services (DSS) is restructuring its HUSKY program due to the reluctance of two managed care organizations to sign freedom of information language as required by Governor M. Jodi Rell. The issue of transparency is an important tool in the Governor's approach to doing business in the State of Connecticut. DSS is in the process of transitioning the members of the two managed care organizations who have not accepted the freedom of information language to ensure that there will be no disruption of services to those children and adults enrolled in the HUSKY plans.

You have demonstrated interest in the future evolution of HUSKY and the new Charter Oak Health Plan by your request for the "Prospectus: Health Care Contracting Opportunities/Charter Oak-HUSKY A-HUSKY B." This upcoming opportunity to win a contract under DSS's competitive procurement to provide health care services to an estimated 350,000 Connecticut citizens **will require freedom of information language**. DSS plans to enter into contracts with carriers and managed care organizations that will be effective July 1, 2008. Since our contractual language regarding FOIA has led to the discontinuance of HUSKY services by two MCOs, the department is interested in knowing if its proposed language (*attached*) would affect your interest in taking advantage of this opportunity. Please respond in writing to the department before December 17, 2007 as to your policy on this matter. The letters should be addressed to:

Michael P. Starkowski, Commissioner
Department of Social Services
25 Sigourney Street
Hartford, CT 06106

Thank you for your previous interest. I look forward to hearing from you on the freedom of information issue.

Sincerely,

Michael P. Starkowski
Commissioner

MPS
Attachment

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Proposed Freedom of Information Act language for the managed care contracts.

1. In performing any acts required or described by this Contract, the Contractor shall be considered to be performing a governmental function for the Department, as that term is defined in section 1-200(11) of the Connecticut General Statutes. Pursuant to section 1-218 of the Connecticut General Statutes, therefore, the Department is entitled to receive a copy of records and files related to the performance of the governmental function, as set forth in this Contract. Such records and files are subject to the Freedom of Information Act and may be disclosed by the Department pursuant to the Freedom of Information Act. Requests to inspect or copy such records or files shall be made to DSS in accordance with the Freedom of Information Act. Accordingly, if the Contractor is in receipt of a request made pursuant to the Freedom of Information Act to inspect or copy such records or files, the Contractor shall forward that request to DSS.
2. Upon receipt of a Freedom of Information Act request by the Department that seeks records or files related to the performance of the governmental function performed by the Contractor for the Department, the Department shall send such request to the Contractor. The Contractor shall review the request and, with reasonable promptness, search its records and files for documents that are responsive to the request. The Contractor shall promptly notify the Department if any clarification of the request is needed in order to proceed with the search for responsive records or files. The Contractor shall send to the Department a copy of those documents that are responsive to the request or otherwise notify the Department that it has no documents responsive to the request. Upon the completion of the Contractor's search for responsive documents, the Contractor shall notify the Department in writing that the search and production of documents is complete. If, upon review of the request, the Contractor determines that it will require more than fourteen (14) days to search for and provide copies of responsive documents to the Department, the Contractor shall contact the Department within seven (7) days of the receipt of the request from the Department.
3. If the Contractor concludes that any of the responsive documents fits within any of the subdivisions of subsection (b) of section 1-210 of the Connecticut General Statutes, and that the Department should not disclose such documents, the Contractor shall mark said documents accordingly prior to sending them to the Department and shall explain the basis for its conclusion. The Department shall review the Contractor's conclusion and explanation and, as necessary, discuss said conclusion with the Contractor. If the Department agrees that any of the marked documents should not be disclosed, the Department shall not release those documents in its response to the Freedom of Information request. If, however, the Department disagrees in good faith, with the conclusion by the Contractor that said documents should not be disclosed, the Department shall notify the Contractor, in writing, that it intends to release the documents fourteen (14) days from the date of the notice. The Contractor shall notify the Department of its intention to file any legal action in response to the Department's notification that it will release said documents, at least 24 hours in advance of filing such action.

4. If the Contractor concludes that a document is protected by attorney-client or work product privilege, the Contractor may decline to produce the documents and must specifically assert the privilege by identifying the nature of the document and claiming the privilege, the date of the document, the author of the document and to whom it was written.
5. If the Contractor asserts an exemption under paragraph 3 or a privilege under paragraph 4 of this Contract, and the Department honors said claim, the Contractor shall seek to intervene in order to defend the claim for an exemption or privilege in any subsequent Freedom of Information Commission proceeding challenging the Department's refusal to disclose said documents.
6. This Amendment is entered into as a result of orders of the Freedom of Information Commission. If, at any time, such orders are reversed or otherwise declared not legal and binding, the terms of this Amendment as they pertain to the Contractor's requirements under the Freedom of Information Act shall be modified.
7. To the extent that this amendment conflicts with any other provisions of the Contract, this amendment supersedes those provisions. Otherwise, the other provisions of the Contract remain intact.