

REQUEST FOR CLARIFICATION/INTERPRETATION

TO:	Name and Title: Janis Conselyea, Bureau Chief	FROM:	Name and Title: Great Falls Quality Assurance Staff
	Organizational Unit: Central Office, DDP		Organizational Unit: Region II, DDP
	Address: Helena, MT		Address: Great Falls, MT

1. TYPE OF REQUEST: Follow-up to Verbal Request - Date of Verbal Request: _____ Written Request

2. STATEMENT OF QUESTION OR ISSUE: Many providers have business attorneys with whom they consult on contract, personnel or related business functions. Recently it has come to our attention that some providers (without releases and in some cases without the consumer's knowledge) are involving their attorneys at a more intimate level including PSP team correspondence on consumer activities, financial, medical, behavioral or other day to day concerns. ARM 37.34.108 clearly states: The department and the provider shall not disclose confidential information concerning any applicant or client except to department staff and providers who assist in eligibility determination, referral or the provision of services to the applicant or client.

This raises some questions about confidentiality and right to know:

- 1) In the absence of agency-related legal action (lawsuits, workman's comp claims, subpoenas, etc...), does an agency business attorney have inherent right to an individual's confidential information or to be a considered a consumer's Team member?
- 2) Would a release be required in order to provide an agency attorney with any consumer information?
- 3) Under what circumstances, if any, would it be appropriate for an agency and its attorney to take legal action on behalf of a consumer without Team approval or input (for example, file for guardianship)?
- 4) At what point, if any, does the attorney/agency relationship become a conflict of interest for the consumer? In this last example, the provider determined outside of a PSP meeting that the consumer needed a conservator. The provider talked to non-guardian family, but it is not clear that the consumer was consulted or understood what was being discussed (his behavior has not changed from the past). The agency took it upon itself to pay a stipend to the attorney to discuss possible legal action, and the agency attorney allegedly agreed to become the person's conservator.

While we appreciate the role of attorneys, guardianships and similar relationships for our providers and our consumers, it seems there should be some safeguards in place to ensure that consumer needs are adequately met without the appearance of conflict of interest, agency convenience or a perception of legally obtained compliance for the individual.

3. ANSWER:(1) A provider or a provider's attorney cannot make legally binding decisions for a service recipient without their involvement and consent. A provider's attorney cannot actively participate in the planning process without the service recipient or their guardians consent. (2) A business associate agreement would be necessary to disclose information that is subject to HIPAA regulations. (4)Ethical rules of professional conduct and fear of malpractice should deter a provider's attorney from representing a service recipient while taking direction from the provider.

References:

Approved and Issued by:

 _____ (Program Director)
 Date: 5-21-10

4: DISTRIBUTION: One Copy: _____ Requestor One Copy: _____ Manual Coordinator	5: FOLLOW-UP: <input type="checkbox"/> To be issued as Bulletin to: _____ (Division) Administrator: _____
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