

**STATE OF NEW JERSEY  
DEPARTMENT OF HUMAN SERVICES**

**SUBJECT:** Contract Default

**EFFECTIVE:** This policy circular shall become effective on August 1, 1996, and shall be implemented for all Contracts.

**PROMULGATED:** June 14, 1996

**SUPERSEDES:** Policy Circular P9.05, promulgated July 1, 1988.

The purpose of this circular is to advise Department personnel and Provider Agencies of the policies and procedures to be followed in case of Provider Agency Contract Default.

I. SCOPE

This policy circular applies to all Contracts.

II. DEFINITIONS

In addition to defined terms included in the Glossary of the Manual, the following terms, when capitalized, shall have meanings as stated:

Action means Notice of an impending remedy, including Termination of the Contract. The action may be implemented during the current Contract or a subsequent Contract as appropriate.

Default means the Provider Agency has materially failed to fulfill or comply with the terms and conditions of the Contract.

Notice means an official written communication between the Department and the Provider Agency. All Notices shall be delivered in person or by certified mail, return receipt requested, and shall be directed to the person(s) and address(es) specified for such purpose in the Annex(es) or to such other persons as either party may designate in writing.

The Notice shall also be sent by regular mail and shall be presumed to have been received by the addressee five days after being properly sent to the last address known by the Department.

III. POLICY

A. The occurrence of, but not limited to, any of the following by the Provider Agency shall be considered areas in which the Provider Agency is in Default of the Contract:

1. failure to provide Contract services as described in the Annex(es) to the Contract;
  2. failure to provide the Contracted Budgeted Units of Service or the level of service agreed to in the Annex(es) to the Contract;
  3. use of Contract funds for purposes other than those approved by the Departmental Component and specified in the Annex(es) to the Contract;
  4. failure to submit timely reports, or submission of reports/documents that are inaccurate or incomplete in any material respect;
  5. failure to comply with the terms and conditions of the Standard Language Document or the policies and procedures outlined in the Contract Policy and Information and Contract Reimbursement Manuals;
  6. conduct or acts, including but not limited to, adjudged criminal activity on the part of the Provider Agency, its officers, board members, or employees, which are detrimental to the Department, Department clients or the Provider Agency; and
  7. sanctions or financial actions taken by third parties against the Provider Agency that jeopardize the intent or fulfillment of the Contract.
- B. When the Provider Agency is in Default of the Contract, the Departmental Component may take one or more of the following Actions:
1. terminate the Contract in whole or in part;
  2. temporarily withhold cash payments pending further attempts for correction of the Default;
  3. disallow all or part of the cost of the activity or action not in compliance;
  4. prohibit the Provider Agency from incurring additional obligations;
  5. discontinue any current or future contract negotiations; and
  6. take other remedies that may be legally available.
- C. The Department shall allow all necessary and proper costs, which the Provider Agency could not reasonably avoid during Termination proceedings. Additional payments or costs are

not reimbursable unless written permission has been granted by the Departmental Component.

- D. Contract closeout procedures for Termination of the Contract under this policy shall be the same as indicated in Policy Circulars P7.01, Contract Closeout, and P7.06, Audit Requirements.
- E. Implementation of the procedures established in this policy does not preclude the Department from implementing debarment procedures as enumerated in Federal Executive Order 12549 and State Executive Order 34 (1976) or any other legal rights available to the Department of Human Services.
- F. The Provider Agency has the right to request an informal review regarding any Action taken according to the specific procedures established by the Departmental Component, which shall be referenced in the Notice of Action.
- G. If the Provider Agency fails to request an informal review of the decision within 21 Days of receipt of the written Notice of the decision to take Action or Terminate, the Provider Agency shall forfeit all rights of review.

#### IV. PROCEDURES

- A. The Departmental Component may provide technical assistance to the Provider Agency to correct all non-compliant items associated with the Default.
- B. The Departmental Component shall establish time frames for compliance. If corrective measures have not been taken within the specified time frames, the Departmental Component may take one or more of the Actions listed in III.B. of this circular, including Termination.
- C. The Departmental Component shall document all communications, formal and informal, with the Provider Agency regarding Default of the Contract, including the date of each Notice to the Provider Agency and certification that each was sent.
- D. The Provider Agency shall be advised of the following in a Notice of Action or Termination:
  - 1. the reason for the Action(s);
  - 2. the Provider Agency's right to request an informal review, time frames and procedures;
  - 3. the effective date of the impending Action or Termination; and

4. that a request for an informal review of the decision for Action does not preclude the determined Action from being implemented.
  
- E. If the Provider Agency requests an informal review of an Action, the Departmental Component must respond to the request for informal review in accordance with the specific Departmental Component's informal review process.

Issued by:

  
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Paul W. Maksimow  
Assistant Commissioner  
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