

§ 558.289 Independent Contractors and Arranged Services

(a) Independent contractors. If an agency uses independent contractors, there must be a contract between each independent contractor that performs services and the agency. The contract must be enforced by the agency and clearly designate:

- (1) that clients are accepted for care only by the agency;
- (2) the services to be provided by the contractor and how they will be provided (i.e. per visit, per hours, etc.);
- (3) the necessity of the contractor to conform to all applicable agency policies, including personnel qualifications;
- (4) the contractor's responsibility for participating in developing the plan of care, care plan, or individualized service plan;
- (5) the way services will be coordinated and evaluated by the agency in accordance with §558.288 of this division (relating to Coordination of Services);
- (6) the procedures for:
 - (A) submitting information and documentation by the contractor, in accordance with the agency's client record policies;
 - (B) scheduling of visits by the contractor or the agency;
 - (C) periodic client evaluation by the contractor; and
 - (D) determining charges and reimbursement payable by the agency for the contractor's services under the contract.

(b) Arranged services. Home health services, hospice services, or personal assistance services provided by an agency under arrangement with another agency or organization must be provided under a written contract conforming to the requirements specified in subsection (a) of this section.

(c) If an agency contracts with another agency or organization for an unlicensed person to provide home health services, hospice services, or personal assistance services under arrangement, the agency must ensure that either it or the contracting agency or organization:

- (1) searches the nurse aide registry (NAR) and the employee misconduct registry (EMR) before the unlicensed person's first face-to-face contact with a client of the agency, using the HHSC Internet website to confirm that the unlicensed person is not listed in either registry as unemployable;
- (2) provides written information to the unlicensed person about the EMR that complies with the requirements of 40 TAC § 93.3(c) (relating to Employment and Registry Information); and
- (3) searches the NAR and the EMR at least every 12 months using the HHSC Internet website to confirm that the person is not listed in either registry as unemployable.

(d) If an agency contracts with another agency or organization for an unlicensed person to provide home health services, hospice services, or personal assistance services under

arrangement, the agency must ensure that the contracting agency or organization:

(1) conducts a criminal history check before the unlicensed person's first face-to-face contact with a client of the agency; and

(2) verifies that the unlicensed person's criminal history information does not include a conviction that bars employment under Texas Health and Safety Code § 250.006.

(e) Documentation for contract staff. An agency is not required to maintain a personnel record for independent contractors or staff who provide services under arrangement with another agency or organization. Upon request by HHSC, an agency must provide documentation at the site of a survey within eight working hours of the request to demonstrate that:

(1) independent contractors or staff under arrangement meet the agency's written job qualifications for the position and duties performed;

(2) the agency ensures compliance with subsection (c) of this section for unlicensed staff providing services to the agency's clients under arrangement; and

(3) the agency complies with subsection (d) of this section for unlicensed staff providing services to the agency's clients under arrangement by providing a written statement, signed by a person authorized to make decisions on personnel matters for the contracting agency or organization, attesting that a criminal history check was conducted before an unlicensed person's first face-to-face contact with a client, and did not include a conviction barring employment under Texas Health and Safety Code § 250.006.

Notes

26 Tex. Admin. Code § 558.289

The provisions of this §558.289 adopted to be effective February 1, 2002, 26 TexReg 9159; amended to be effective September 1, 2010, 35 TexReg 7879; Transferred from Title 40, Chapter 97 by Texas Register, Volume 44, Number 15, April 12, 2019, TexReg 1893, eff. 5/1/2019; Amended by Texas Register, Volume 46, Number 15, April 9, 2021, TexReg 2431, eff. 4/25/2021