DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO	DATE
Myers	10-11-07

DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER 000192	[ ] Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR cc: Deps, Ms. Forkner * Note: Response no later than 10/29/07	[X] Prepare reply for appropriate signature DATE DUE 10-26-07 [ ] FOIA DATE DUE _____ [ ] Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1. Cleared 10/29/07 letter attached.			
2.			
3.			
4.			

Department of Health & Human Services
Centers for Medicare & Medicaid Services
61 Forsyth Street, SW, Suite 4T20
Atlanta, Georgia 30303-8909

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

October 5, 2007

Log: Myers
c: Deps
Emma

Ms. Emma Forkner, Director
South Carolina Department of Health & Human Services
PO Box 8206
Columbia, South Carolina 29202

Dear Ms. Forkner;

This is in response to your request to renew South Carolina's Mechanical Ventilator Dependent Home and Community-Based Waiver. This request has been assigned control number 40181.90.R2. This number should be used in all correspondence pertaining to the renewal.

Our initial review of the request found that it did not conform fully to statutory and regulatory requirements. Please provide additional information and make changes necessary to respond to the issues identified below. Please note that this is an informal inquiry and does not stop the 90 day review clock. Therefore, please provide your response no later than October 29, 2007.

1. **Main Module, #4 Waiver(s) Requested, item B, Income and Resourced for the Medically Needy:** The State checked "no." Since the State does not cover the medically needy, the State should remove the check from "no" and check "not applicable."

2. **Appendix B-5-a: Use of Spousal Impoverishment Rules:** The State indicates that it is using spousal impoverishment eligibility and spousal impoverishment post eligibility rules for individuals that have a community spouse. The State is then instructed to complete Appendix B-5-b (post eligibility treatment of income) for individuals who do not have a community spouse and Appendix B-5-d (post eligibility treatment of income using spousal impoverishment rules) for those waiver participants who have a community spouse.

   However, in Appendix B-5-b, Post Eligibility Treatment of Income, item iii, Allowance for the family, the State checked "Other" and provided a formula for the allowance for children who live with the community spouse that specifies, "Determine the gross income for each family member, total the family's gross income, and subtract the total gross income from income from $2416, one third of the remaining amount is each family

member's income allowance" and a different allowance for dependent children who do not live with the community spouse that specifies, "If the dependent children do not live with the community spouse, the allocation is made based on TANF/FI standards."

The family allowance in Appendix B-5-b only applies to dependent children who live with a waiver participant who does not have a community spouse. Additionally, the amount of the family allowance (under the regular post eligibility rules) cannot exceed the need standard for a family of the same size used to determine eligibility under the State's AFDC plan. References to the AFDC need standard relate to the AFDC need standard in effect on July 15, 1996, or such a higher need standard as adopted by the State for Medicaid purposes under the authority of 1931. Therefore, the State should remove the formulas and language for dependent children that live or do not live with the community spouse from Appendix B-5-b. The State should then provide an allowance for dependent children under the regular post eligibility rules. Please remember that the allowance for the family is based on the AFDC need standard not on the TANF standards, since TANF is not Medicaid.

For family members of waiver participant that have a community spouse, the State elected to use the spousal impoverishment post eligibility rules specified in section 1924 of the Act. The family allowance under the spousal impoverishment post eligibility rules only applies if the dependant child is living with the community spouse. This allowance is specified in the State's Medicaid plan and does not need to be specified in the waiver application.

3. **Appendix B-5-b, item iv: Amounts for incurred medical or remedial care expenses**: The State has specified the "reasonable limitations" that it establishes on the amounts of these expenses. However, it appears that the State based these limitations on State plan language that was superseded by State plan amendment SC #06-17 that because effective on 10/1/06. Therefore, the State can update these limitations based on their current State plan, explain why it believes that these limitations are reasonable, or develop reasonable limitations specifically for individuals that are receiving services under the waiver program.

4. **Appendix B-5-d, item i: Allowance for the needs of the waiver participant:** The State checked "A percentage of the poverty level and specified 300%." However, in Appendix B-5-d, item ii, the State indicated that the allowance for the waiver participant with a community spouse was the same allowance as the allowance that it used under the regular post eligibility rules specified in Appendix B-5-b, item i, of the waiver application which is 300% of the SSI/FBR. If the State intends to use the same allowance for the waiver participant under the spousal impoverishment rules that it used under the regular post eligibility rules, it should remove the checkmark from "a percentage of the poverty level", remove the 300% and should check "The special income level of institutionalized person." However, if the State intends to use 300% of the federal poverty level for the waiver participant's allowance under the spousal

Again, this is an informal request for additional information, and the 90 day review clock will not be stopped. Therefore, please respond as quickly as possible, but not later than October 29, 2007. If you should have any questions, please fell free to contact me at (404) 562-7413. If necessary, a conference call can be arranged.

Thank you,

Kenni Howard

Kenni Howard, RN
Waiver Analyst

CC: Mark Reed, Central Office

Log # 192

State of South Carolina
Department of Health and Human Services

Mark Sanford
Governor

Emma Forkner
Director

October 29, 2007

Ms. Kenni Howard
Waiver Specialist
Centers for Medicare and Medicaid Services
Division of Medicaid and Children's Health
61 Forsyth Street, SW, Suite 4T20
Atlanta, Georgia 30303-8909

Dear Ms. Howard:

This letter is in response to your request for additional information regarding the renewal of our Mechanical Ventilation waiver, control number 40181.90.R1.03. We have included your original question and our response to your question in this response. Additionally, the State is has resubmitted the waiver application via the web-based application with its updates.

1. **Main Module, #4 Waiver(s) Requested, item B, Income and Resources for the Medically Needy:** The State checked "no." Since the State does not cover the medically needy, the State should remove the check from "no" and check "not applicable."

   State response: Please see the new waiver page(s) attached to this letter indicating the State has updated its response in this section of the waiver document.

2. **Appendix B-5-a: Use of Spousal Impoverishment Rules:** The State indicates that it is using spousal impoverishment eligibility and spousal impoverishment post eligibility rules for individuals that have a community spouse. The State is then instructed to complete Appendix B-5-b (post eligibility treatment of income) for individuals who do not have a community spouse and Appendix B-5-d (post eligibility treatment of income using spousal impoverishment rules) for those waiver participants who have a community spouse.

   However, in Appendix B-5-b, Post Eligibility Treatment of Income, item iii, Allowance for the family, the State checked "Other" and provided a formula for the allowance for children who live with the community spouse that specifies, "Determine the gross income for each family member, total the family's gross income, and subtract the total gross income from income from $2416, one third of the remaining amount is each family

member's income allowance" and a different allowance for dependent children who do not live with the community spouse that specifies, "If the dependent children do not live with the community spouse, the allocation is made based on TANF/FI standards."

The family allowance in Appendix B-5-b only applies to dependent children who live with a waiver participant who does not have a community spouse. Additionally, the amount of the family allowance (under the regular post eligibility rules) cannot exceed the need standard for a family of the same size used to determine eligibility under the State's AFDC plan. References to the AFDC need standard relate to the AFDC need standard in effect on July 15, 1996, or such a higher need standard as adopted by the State for Medicaid purposes under the authority of 1931. Therefore, the State should remove the formulas and language for dependent children that live or do not live with the community spouse from Appendix B-5-b. The State should then provide an allowance for dependent children under the regular post eligibility rules. Please remember that the allowance for the family is based on the AFDC need standard not on the TANF standards, since TANF is not Medicaid.

For family members of waiver participant that have a community spouse, the State elected to use the spousal impoverishment post eligibility rules specified in section 1924 of the Act. The family allowance under the spousal impoverishment post eligibility rules only applies if the dependant child is living with the community spouse. This allowance is specified in the State's Medicaid plan and does not need to be specified in the waiver application.

State response: Please see the new waiver page(s) attached to this letter indicating the State has updated its response in this section of the waiver document.

3. **Appendix B-5-b, item iv: Amounts for incurred medical or remedial care expenses**: The State has specified the "reasonable limitations" that it establishes on the amounts of these expenses. However, it appears that the State based these limitations on State plan language that was superseded by State plan amendment SC #06-17 that because effective on 10/1/06. Therefore, the State can update these limitations based on their current State plan, explain why it believes that these limitations are reasonable, or develop reasonable limitations specifically for individuals that are receiving services under the waiver program.

   State Response: Please see the new waiver page(s) attached to this letter indicating the State has updated its response in this section of the waiver document.

4. **Appendix B-5-d, item i: Allowance for the needs of the waiver participant:** The State checked "A percentage of the poverty level and specified 300%." However, in Appendix B-5-d, item ii, the State indicated that the allowance for the waiver participant with a community spouse was the same allowance as the allowance that it used under the regular post eligibility rules specified in Appendix B-5-b, item i, of the waiver application which is 300% of the SSI/FBR. If the State intends to use the same allowance for the waiver participant under the spousal impoverishment rules that it used under the regular post eligibility rules, it should remove the checkmark from "a percentage of the poverty level", remove the 300% and should check "The special

income level of institutionalized person." However, if the State intends to use 300% of the federal poverty level for the waiver participant's allowance under the spousal impoverishment rules, it needs to revise item ii to indicate that it is using a different amount and explain why the allowance is different.

State Response: Please see the new waiver page(s) attached to this letter indicating the State has updated its response in this section of the waiver document.

5. **Appendix D-2-a: Service Plan Implementation and Monitoring:** The State indicates that nurses monitor the service plan on a monthly basis through monthly phone calls and quarterly visits. Please explain how the health and safety of the ventilator dependent individual can be assured with only a quarterly face-to-face visit. Also, please explain how the monitoring addresses (a) that the services were furnished in accordance with the service plan; (b) that participant access to waiver services are identified in the service plan; (c) that the participant exercises free choice of providers; (d) that the services meet the participant's needs; (e) the effectiveness of any back-up plans; (f) the participant's health and welfare is assured; (g) that the participant has access to non-waiver services; (h) are there methods for prompt follow-up and remediation of identified problems; and (i) how methods for systematic collection of information about monitoring results are compiled?

   State Response:
   a) In addition to the case manager's dialogue with the participant/responsible party (RP), the case manager is able to monitor if services are rendered as authorized through the State's Care Call system.
   b) Service plans are routinely reviewed by Medicaid state office staff as a quality assurance (QA) function.
   c) Per policy, participants are given a written list of available providers to make a selection. A copy of this form is retained in the case record.
   d) Per policy, case managers are required to address whether services are meeting a participant's needs.
   e) Case managers are required to address the effectiveness of any back-up plans on a monthly basis.
   f) Case managers' monthly contacts include asking if participants' condition/health has changed and if their needs are being met.
   g) Case managers explore non-waiver options to meet the participants' needs prior to authorizing services.
   h) Case management polices require prompt follow-up if notified of a problem by the provider, client or other interested parties.
   i) Both the case management system (CMS) and Care Call are utilized in the collection of necessary data.

6. **Appendix E-1-m: Involuntary Termination of Participant Direction:** The State indicates that "Participants may be involuntarily terminated from the use of participant directed services when they are unable to direct their own care..." Please specify (a) how the State determines that the individual is unable to direct their own care; (b) the circumstances under which participant direction is terminated; and (c) the safeguards

that ensure continuity of services and assure participant health and welfare during the transition period. The State also indicates that, "Participants who are involuntarily terminated from participant directed services are given the option of receiving agency directed services." Please specify (a) what other services options are made available to the recipient; and (b) the safeguards that ensure continuity of services and assure health and welfare during the transition period.

State Response:

a) Participants who would like to participate in self-directed care are first pre-screened to assure their capability using a standardized form. If a participant is not capable, a responsible party may direct care if he/she passes the pre-screen.
b) Participant direction is terminated when it is determined the client/responsible party is no longer capable or desires to direct his/her care.
c) Safeguards are met by the case manager's monitoring and the participant enacting a backup plan to include agency based services.

State Response to part II service options and safeguards:

a) Because attendant services are the only self-directed services in this waiver, a personal care agency would be offered to replace this service.
b) Safeguards are ensured through the case manager's monitoring and the use of the backup plan.

7. **Appendix F-1: Opportunity to Request a Fair Hearing:** Please specify (a) how the participant is informed that services will continue during the period while the participant's appeal is under consideration; and (b) where notices of adverse actions and the opportunity to request a Fair Hearing are kept.

State Response:

a) The participant is informed that services may continue until the outcome of the hearing. This is done via phone call from the case manager and a written notice, form 171.
b) This written notification is filed in the case record.

8. **Appendix G-1-a: State Critical Event of Incident Reporting Requirements:** Please specify the timeframes for conducting an investigation and for completing an investigation.

State Response:

- Upon receiving an adult protective services (APS) report, the South Carolina Department of Social Services (SCDSS) promptly initiates an investigation. Within two working days of receiving any report, SCDSS must review the report for the purpose of reporting it to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division those cases that indicate reasonable suspicion of criminal conduct. A report to the unit must be made within one working day of completing the review.
- An incident reported through the complaint long, incident form or e-mail is acted on

immediately. Investigations are completed, compiled and reported to the QA Task Force on a monthly basis.

9. **Appendix B-1-3: Responsibility for Oversight of Critical Incidents and Events:** Please specify the methods for overseeing the operation of the incident management system, including how data are compiled, and used to prevent re-occurrence.

State Response:

- In addition to the MOA with SCDSS for the exchange of APS information, SCDHHS CLTC collects and compiles data submitted from statewide area offices on monthly complaint logs and incident reports (either hard copy or via e-mail). This information is compiled and reviewed for necessary action. Data is shared with the CLTC QA Task Force. The Task Force utilizes this information when looking at policy and system changes.
- South Carolina also has an Adult Protection Coordinating Council staffed by the SCDHHS Bureau of Long Term Care Services. This council coordinates planning and implementation efforts of the entities involved in the adult protection system. Members facilitate problem resolution and develop action plans to overcome problems identified within the system. The council develops methods of addressing the ongoing needs of vulnerable adults, including increasing public awareness of adult abuse, neglect, and exploitation. The Adult Protection Coordinating Council provides oversight in adult protection and recommends changes in the system; identifies and promotes training on critical issues in adult protection; coordinates data collection and conducts analysis including periodic monitoring and evaluation of the incidence and prevalence of adult abuse, neglect, and exploitation; determines and targets problem areas for training based on the analysis of data; promotes resource development; assists with problem resolution and facilitates interagency coordination of efforts; promotes and enhances public awareness; and promotes prevention and intervention activities to ensure quality of care for vulnerable adults and their families.

If you have further questions, please contact Roy Smith at (803) 898-2590. Thank you for your prompt attention to our request.

Sincerely,

Emma Forkner
Director

EF/wsk

Enclosures (3)