**DEPARTMENT OF HEALTH AND HUMAN SERVICES**
***OFFICE OF DIRECTOR***

# ACTION REFERRAL

| TO | DATE |
|---|---|
| Bowling | 3/26/07 |

| DIRECTOR'S USE ONLY | ACTION REQUESTED |
|---|---|
| 1. LOG NUMBER 000607 | [ ] Prepare reply for the Director's signature<br>DATE DUE _____ |
| 2. DATE SIGNED BY DIRECTOR<br>_____<br>C: Singleton<br>Kerr | [ ] Prepare reply for appropriate signature<br>DATE DUE _____<br>[ ] FOIA<br>DATE DUE _____<br>[X] Necessary Action |

| APPROVALS (Only when prepared for director's signature) | APPROVE | * DISAPPROVE (Note reason for disapproval and return to preparer.) | COMMENT |
|---|---|---|---|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |

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

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

March 20, 2007



Robert M. Kerr, Director
Department of Health and Human Services
Post Office Box 8206
Columbia, SC 29202-8206

Dear Mr. Kerr:

Enclosed is the final compliance report for South Carolina's Home and Community Based Waiver for individuals diagnosed with Head and Spinal Cord Injuries (HASCI), control number #0284.90.R1. The review of the program was based upon evidentiary-based information provided by your staff. Your letter, dated March 8, 2007, indicates that you concur with the draft report findings.

We wish you continued success in your Home and Community Based Waiver (HCBW) program and look forward to working with you in the future. If you have any questions or need assistance, please contact Kenni Howard at (404) 562-7413.

Sincerely,

Renard L. Murray, D.M.
Associate Regional Administrator
Division of Medicaid & Children's Health

cc: Jonathan Tapley

Enclosure

# U.S. Department of Health and Human Services

# Centers for Medicare & Medicaid Services
# Region IV

# Final Report

## Assessment for South Carolina's Head and Spinal Cord Injury Home and Community-Based Services Waiver
## Control # 0284.90.R1

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

# South Carolina Home and Community Based Waiver for Head and Spinal Cord Injury (Control # 0284.90.R1) Assessment Report

## Introduction:

Pursuant to section 1915(c) of the Social Security Act, the Secretary of the Department of Health and Human Services has the authority to waive certain Medicaid statutory requirements to enable a State to provide a broad array of home and community-based services (HCBS) as an alternative to institutionalization. The Centers for Medicare and Medicaid Services (CMS) has been delegated the responsibility and authority to approve State HCBS waiver programs. CMS must assess each home and community-based waiver program in order to determine that State assurances are met. This assessment also serves to inform CMS in its review of the State's request to renew the waiver.

This review was conducted in accordance with the Interim Procedural Guidance for Assessing HCBS Waivers. Therefore, Regional Office staff did not conduct an on-site visit; review actual case records or conduct interviews with clients, caregivers or providers. Conclusions in this report are based solely on information submitted by the State to the Regional Office.

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| **Operating Agency:** | South Carolina Department of Disabilities and Special Needs (DDSN) |
| **State Waiver Contact:** | Jonathan Tapley, Department of Health and Human Services |
| **Target Population:** | Individuals (age 0 to 65) with a head and / or spinal cord injury or a similar disability not associated with the process of a progressive degenerative illness, disease, dementia or a neurological disorder related to aging, regardless of the age of onset. |
| **Level of Care:** | Nursing Facility and / or Intermediate Care Facility for the Mentally Retarded or persons with related conditions |
| **# of Participants Approved for Year 4 of the Waiver:** | 490 (July 1, 2006 – June 30, 2007) |
| **# of Participants reported on the most recent 372 Report (dated):** | 489 (July 1, 2004 – June 30, 2005) |
| **Effective Dates of Waiver:** | **From:** July 1, 2003 **To:** June 30, 2008 |
| **Approved Waiver Services:** | Residential, Day, and Prevocational Habilitation; Supported Employment; Respite (In-home and Institutional); Special Supplies (Vehicle Modifications, Environmental Modifications and Medical Supplies and Adaptations); Personal Emergency Response Systems (Installation and Monitoring); Pharmaceutical Services |

(additional prescriptions above the state plan limit); Medicaid Waiver Nursing (RN and / or LPN); Therapies (Occupational and / or Physical); Psychological Services (Behavioral Support Services ); Communication Services (Speech Therapy, Audiology); Attendant Care Services; Health Education and Peer Guidance.

**CMS RO Contact:** Kenni L. Howard, RN

**Date Report Issued:** March 20. 2007

**Background and Description of the Waiver:**

South Carolina was granted a waiver of Section 1902(a)(10)(B), "amount, duration, and scope of services," requirements of the Social Security Act in order to provide home and community based services to individuals, ages 0 - 65, who have a head and / or spinal cord injury or a similar disability not associated with the process of a progressive degenerative illness, disease, dementia or a neurological disorder related to aging, regardless of the age of onset. Also, the individual must have urgent circumstances affecting his/her health or functional status; is dependent on others to provide or assist with critical health needs, basic activities of daily living or requires daily monitoring or supervision in order to avoid institutionalization; and needs services not otherwise available within existing community resources, including family, private means and other agencies / programs, or for whom current resources are inadequate to meet the basic needs of the individual which would allow them to remain in the community. In addition, the individual would otherwise require the level of care provided in a nursing facility or an intermediate care facility for the mentally retarded or persons with related conditions; and for whom the cost of waiver services does not exceed the cost of traditional institutional care. The waiver program operates statewide.

## I. State Conducts Level of Care Need Determinations Consistent with the Need for Institutionalization

**The State must demonstrate that it implements the processes and instrument(s) specified in its approved waiver for evaluating / reevaluating an applicant's/waiver participant's level of care (LOC) need consistent with care provided in a hospital, nursing facility or ICF/MR.**

*Authority: 42 CFR 441.301; 42 CFR 441.302; 42 CFR 441.303; SMM 4442.5; SMM 4442.6*

Applicants must meet criteria for either Nursing Facility (NF) level of care or Intermediate Care Facility for the Mentally Retarded (ICF/MR) level of care for participation in the Head and Spinal Cord Injury (HASCI) Waiver. All people referred to the HASCI Waiver go through a formal intake process. Criteria are applied to ensure that potential HASCI Waiver participants meet the minimum requirements. A determination is made as to which type of level of care (LOC) assessment, ICR/MR or NF, is most appropriate. Of the current 490 HASCI Waiver participants, only 12 qualified utilizing the ICF/MR LOC criteria. Most participants (97.5%) qualified with the NF LOC criteria.

The NF LOC initial assessment for this waiver is conducted by the Department of Health and Human Services (DHHS), using a Nurse Consultant in the area of the state where the applicant resides. Justification for the LOC determination is documented on the assessment form and the results of the initial LOC assessment are keyed into the automated DHHS Case Management System (CMS). Information obtained from the initial assessment is provided to the HASCI Waiver Administrator at DHHS and the Department of Disability and Special Needs (DDSN) Service Coordinator (case manager) for the individual seeking HASCI Waiver services. Both the DDSN Service Coordinator and the HASCI Waiver Administrator verify that the person is eligible for Medicaid, meets the NF LOC criteria, needs services, and chooses to participate in the HASCI Waiver. Individuals who meet all eligibility requirements may be enrolled. The State and DDSN both review all completed NF LOC initial and re-evaluations, therefore, the State ensures the approved assessment process and instrument is used for 100% of HASCI participants.

The ICR/MR LOC initial assessment to qualify for the HASCI Waiver is conducted by the operating agency (DDSN). DDSN uses a Consumer Assessment Team to assess individuals utilizing the ICF/MR LOC criteria. The State (DHHS) currently receives all ICF/MR LOC initial assessments and all re-evaluations conducted for HASCI Waiver participants by DDSN. The State has an automated tickler system to organize ICR/MR LOC information. This system indicates both the previous year's LOC assessment and when the next assessment is due.

The operating agency is responsible for all re-evaluations. These re-evaluations are conducted by Service Coordinators employed by contracted providers who are trained by the State and DDSN on the assessment process. DDSN has an automated tracking system to monitor the LOC re-evaluation process and contracted providers are notified of the due date for each HASCI Waiver participant.

## The State substantially meets this assurance

*(The State's system to assure appropriate level of care determinations is adequate and effective, and the State demonstrates ongoing, systemic oversight of the level of care determination process.)*

Our review of information submitted by the South Carolina Department of Health & Human Services (SCDHHS) found the State has appropriately applied evaluative methods consistent with regulatory requirements. Further, the evidence demonstrates the State has effective mechanisms in place to oversee the level of care determination and re-determination process. Based on the data provided, it appears waiver participants selected through the described LOC process are comparable to individuals receiving services through a nursing facility or intermediate care facility for the mentally retarded or persons with related condition.

Contracted providers are required to send each LOC re-evaluation to the operating agency upon completion. The re-evaluation is reviewed for content and accuracy at DDSN and if complete and accurate, forwarded to DHHS for a second review. If the re-evaluation has been completed appropriately, DHHS keeps a copy in the participant's file and updates the automated tracking system to indicate the level of care determination is current, complete and accurate.

DHHS notifies DDSN on a quarterly basis of all outstanding LOC re-evaluations needing review by DHHS. Currently, the State's tracking system indicates there are 19 outstanding LOC re-evaluations which have not been verified by the State for completeness and accuracy. This does not mean that the re-evaluations were not completed within 365 days, but that they have not yet been shared with the State for review.

Over the past two years, the State and operating agency have identified six LOC re-evaluations that were actually past due. The State recouped a total amount of $6,343.10 for the period of time each was out of date. The State and operating agency retrain contracted providers on a routine schedule to minimize error rates and emphasize timely completion of the LOC re-evaluations.

The DDSN quality assurance contractor, First Health, reviewed a total of 70 HASCI Waiver files during the period of July 1, 2005 through June 30, 2006 and found 100% compliance with the current level of care re-evaluation being completed within 365 days.

The State and DDSN both review 100% of the LOC decisions made by contracted providers. There have been no appeals of LOC determinations in the most recent HASCI Waiver renewal period from July 2003 – present.

**Evidence Supporting Conclusions:**
*(Evidence that supports the finding that the State substantially meets this assurance.)*

- Example of DDSN's tracking systems
- Example of the State's tracking systems
- Evidence of debits for late LOC determinations
- Sample of correspondence with the State and contracted DDSN provider regarding an adverse LOC

## II. Plans of Care Responsive to Waiver Participant Needs

**The State must demonstrate that it has designed and implemented a system to assure that plans of care for waiver participants are adequate and services are delivered and are meeting their needs.**
*Authority: 42 CFR 441.301; 42 CFR 441.302; 42 CFR 441.303; SMM 4442.6; SMM 4442.7; Section 1915(c) Waiver Format, Item Number 13*

The plan of care (POC) is the fundamental tool by which the State ensures the health and welfare of individuals participating in the HASCI Waiver. The State's process for developing an individual's plan of care requires the plan to address all of the participant's assessed needs (including health and safety risk factors) and personal goals, either through HCB Waiver services or by other means. The approved waiver specifies that a Service Coordinator with a Master's or Bachelor's degree in Social Work or a related field OR a Bachelor's degree in an unrelated field of study with one year of experience working with individuals with head and spinal cord injury or a related disability, or in a case management program is responsible for development of the plan of care.

The waiver requires that, at a minimum, an annual review of the POC be conducted to determine the appropriateness and adequacy of the services and to ensure that the services provided are consistent with the nature and severity of the individual's disability. POCs are also updated as needs are identified or arise.

### The State substantially meets this assurance

*(The State has an adequate and effective system to assure that all aspects of Plan of Care requirements are addressed; has an adequate and effective system for monitoring Plans of Care; has a system for assuring that participants are afforded choice between/among waiver services and providers; and demonstrates ongoing, systemic oversight of POCs.)*

Our review of information submitted by the South Carolina Division of Long Term Care within South Carolina's Department of Health & Human Services (SCDHHS) found the State has implemented an effective system to assure that all aspects of POC requirements are met.

DDSN contracts with First Health Services of South Carolina, a quality assurance provider, to conduct formal reviews of local DSN Boards and other contracted providers at least annually. First Health issues a Comprehensive Report of Findings to the local DSN Board/provider and to DDSN. DDSN reviews the findings of each report and shares it with the administrative agency (DHHS).

First Health reviews the records and POC of a sample of waiver participants. During the period July 1, 2005 through June 30, 2006, a total of 92 cases were reviewed by First Health, showing 100% compliance. During the same review period, a total of 72 HASCI Waiver cases were reviewed with 100% compliance that the POC correctly documented waiver supports.

First Health is also contracted by DDSN to complete annual consumer/family surveys to supplement the quality review process. The findings form the annual surveys are shared with the local providers as part of the Comprehensive Report of Findings. 70 HASCI Waiver participant or family members were interviewed during the review year of July 2005 through June 2006. Of these 70, 59 reported they were satisfied with the type, amount, and quality of services or supports and 65 reported the Service Coordinator is helping to get the services or supports needed or wanted by the participant.

First Health's review (July 1, 2005 – June 30, 2006) also found that of 66 cases reviewed for POC updates or revisions, 98.5% were compliant. If required, First Health will request a Plan of Correction by the provider. After the Plan of Correction is approved, First Health conducts follow –up review at least annually.

The State also monitors POC development in accordance with its policies and procedures and takes appropriate action when it identifies inadequacies in the development of the POC. DDSN has an internal Single Plan/IFSP review process and reviews samples of the plans that will be due in 90 days. The Single Plan is reviewed according to the Single Plan/IFSP Review Checklist.

The completed Single Plan/IFSP Review Checklist and Plan Review Disposition form is returned to the Service Coordination Supervisor at the local DSN Board or other provider. The Service Coordination Supervisor is responsible for follow up with the Service Coordinator regarding any deficient indicators on the Single Plan/IFSP Review Checklist. The Service Coordinator is responsible to resubmit the Single Plan/IFSP to the Supervisor with seven (7) working days. After the Supervisor approves the POC and verifies all changes were made, the POC may be formulated and implemented following guidelines from the Single Plan Instructions. Documentation indicating supervisory review of the POC and corrections needed is required.

From July 1, 2005 through June 30, 2006 DDSN reviewed the POC of 57 HASCI Waiver participants. Of those, 15 were approved. All plans reviewed were returned to the Service Coordination Supervisor with the Disposition Form and Review Checklist noting the changes that were needed. As a result of the 42 Plans returned for corrections, the Supervisor is required to review the plans prior to implementation to assure each plan is corrected.

POCs are also reviewed to verify that services are specified by type, amount, duration, scope and frequency and that they are delivered in accordance with the POC. During the same time period (July 2005 – June 2006), 72 files were reviewed and 100% were in compliance with correctly documenting waiver supports by service name, provider name, amount, frequency and duration of the service.

Each HASCI Waiver participant is offered a choice between home and community based services or institutional care. DDSN requires completion of a Freedom of Choice Form at the time of enrollment. First Health reviews the Freedom of Choice Form during the annual

review process. During the review period of July 1, 2005 through June 30, 2006, 100% of the files reviewed were in compliance with this indicator.

DHHS also ensures a choice between and among providers through several different reporting mechanisms. DHHS maintains a provider search function on its website which can be used by HASCI Waiver participants and / or the public in general in selecting providers. DHHS also routinely shares provider reports with DDSN that reflect available HASCI Waiver services and approved providers by county.

DDSN requires the review and completion of an Acknowledgement of Choice and Appeal Rights form during enrollment in the HASCI Waiver and at the annual POC meeting. Again, of the files reviewed, 100% were in compliance with documentation present verifying that a choice of providers was offered for each HASCI Waiver service.

**Evidence Supporting Conclusions:**
*(Evidence that supports the finding that the State substantially meets this assurance.)*

- DDSN Quality Assurance and Improvement Indicators and Guidance
- DDSN Plan of Correction
- DDSN Single Plan review process
- DDSN Sample Single Plan Review Log
- DDSN Sample of Supervisory Documentation
- Consumer Interview Results
- DDSN Training Agenda
- Acknowledgement of Choice and Appeal Rights
- Waiver Service and Provider Reports
- Email and Provider Reports
- Web based application for viewing available providers
- Freedom of Choice Form

## III. Qualified Providers Serve Waiver Participants

**The State must demonstrate that it has designed and implemented an adequate system for assuring that all waiver services are provided by qualified providers.**
*Authority: 42 CFR 441.302; SMM 4442.4*

The approved waiver specifies licensure and / or certification requirements for providers of waiver services. These requirements address the organizational / administrative structure, personnel and other provider policies, qualifications of direct care staff, maintenance of clinical and other records, supervision, treatment planning and evaluation of the provision of service. Further, the State verifies that providers meet required licensing and/or certification standards and adhere to other State standards.

### The State substantially meets this assurance

*(The State has an adequate and effective system for qualifying and monitoring providers, and demonstrates ongoing, systemic oversight of providers.)*

Our review of evidence submitted by the South Carolina DHHS found the State has implemented an effective system to assure services are provided through quality providers.

The South Carolina Department of Labor, Licensing and Regulation (LLR) licenses and monitors the licensure of all HASCI Waiver providers that require such (Institutional Respite, Medicaid Waiver Nursing, Prescribed Drugs, Medical Supplies, Equipment and Assistive Technology, Personal Emergency Response Systems, Environmental Modifications, Private Vehicle Modifications, Physical Therapy, Occupational Therapy, Speech, Hearing and Language Services, Psychological Services, and Health Education for Consumer-Directed Care). LLR will inform DHHS of any negative actions taken against a licensed provider. DHHS will then take actions as appropriate to terminate Medicaid enrollment.

The State Code of South Carolina designates licensing authority to DDSN for its contracted habilitation service providers, including Residential Habilitation, Day Habilitation, and Pre-vocational Habilitation. Provider licenses are renewed yearly by DDSN upon their successful service review.

The State employs a licensed Registered Nurse to conduct on-site reviews on at least an annual basis of providers that do not require licensure or certifications, such as attendant care or personal assistance service, and in-home respite care services. These reviews consist of three components: staffing review, administrative review and participant review. The staffing review samples staff members at different levels to ensure they meet all training, certification and licensure requirements, tuberculin skin test requirements, ongoing training requirements and any other requirements as outlined in the contract. The administrative review determines that all agency administrative requirements (liability insurance, list of officers, written by-laws, emergency backup plans, etc.) have been met. The participant review verifies that all requirements relating to the actual conduct of service have been met.

For services monitored for compliance by the DHHS Registered Nurse, a report is generated listing all deficiencies identified. Based upon the severity and number of the deficiencies and results of prior reviews, sanctions may take place. These range from requiring a corrective action plan to recoupment to suspending new referrals to termination of the contract.

Behavior Support Services, Psychological Services and Peer Guidance for Consumer Directed Care are reviewed by the operating agency with administrative review for DHHS.

**Evidence Supporting Conclusions:**
*(Evidence that supports the finding that the State substantially meets this assurance.)*

- Copies of licensure queries
- Copies of corrective action resulting from reviews
- Copies of termination notices based upon reviews
- Summary reports of terminated providers due to license or provider compliance issues

## IV. Health and Welfare of Waiver Participants

**The State must demonstrate that it assures the health and welfare of waiver participants including identification, remediation and prevention of abuse, neglect and exploitation.**
*Authority: 42 CFR 441.302; 42 CFR 441.303; 42 CFR 447.200; SMM 4442.4; SMM 4442.9*

The State has methods in place to safeguard the health and welfare of waiver participants. On an ongoing basis, the State identifies and addresses and seeks to prevent instances of abuse, neglect and exploitation.

**The State substantially meets this assurance**
*(The State's system to assure health and welfare is adequate and effective, and the State demonstrates ongoing, systemic oversight of health and welfare.)*

Evidence submitted by the South Carolina DHHS indicates the State has implemented an effective system to assure participant health and welfare. DDSN has a Memorandum of Agreement with the State Long Term Care Ombudsman and State Law Enforcement Division (SLED).

State law requires DDSN and its contracted providers to report according to the Child Protective Reform Act and the Omnibus Adult Protection Act. DDSN follows its Policy Directive 534-02 DD for reporting all alleged abuse, neglect and exploitation.

DDSN follows it Policy Directives 567-01 DD and 567-03 DD and contracted providers are responsible for conducting training. DDSN requires new employees, both full and part time, and temporary or contractual employees of contracted providers to receive training with the CORE curriculum serving as a model.

During the period of July 1, 2005 through June 30, 2006, DDSN received and investigated one (1) report of abuse pertaining to a HASCI Waiver participant. DDSN Internal Audit conducted an investigation and submitted findings in writing to the DDSN contracted provider. As a result of the investigation the provider took administrative action regarding staff conduct.

**Evidence Supporting Conclusions:**
*(Evidence that supports the finding that the State substantially meets this assurance.)*

- Memorandum of Agreement
- DDSN Core Curriculum
- Orientation Agenda (with most recent attendance sheets)
- DDSN Reporting Form of Alleged Abuse, Neglect or Exploitation
- Actual Reporting Form and Final Investigation Report

## V. State Medicaid Agency Retains Administrative Authority over the Waiver Program

**The State must demonstrate that it retains administrative authority over the waiver program and that its administration of the waiver program is consistent with its approved waiver application.**
*Authority: 42 CFR 441.303; 42 CFR 431; SMM 4442.6; SMM 4442.7*

The Medicaid Agency has a Memorandum of Agreement (MOA) with the operating agency. This memorandum sets forth the guidance used by each agency in conducting both operational and administrative oversight. Both agencies, as a result of this MOA, conduct regular ongoing meetings. These meetings cover both programmatic and administrative issues including ongoing subjects such as waiting lists, policy updates and changes, training of contracted personnel by the operating agency and DHHS directive. Both the operative and administrative agency conduct quality assurance reviews. The operating agency retains a QIO and information obtained from these statewide reviews is shared with DHHS on a routing basis. Additionally, the administrative agency will perform its own quality assurance reviews.

over-billed by providers. If a claim meets the requirements for approval and payment, the operating agency (DDSN) receives and reviews the claim payment information. The files are provided electronically on a monthly basis to DDSN and are organized by county and participant for review by Service Coordinators.

If billing discrepancies are found, DHHS is notified by DDSN and appropriate action is taken to ensure claims are paid based on the requirements of the Waiver program and approved service authorization.

**Evidence Supporting Conclusions:**
*(Evidence that supports the finding that the State substantially meets this assurance.)*

- Copy of a Sample Edit Correction Forms (ECFs) indicating front and editing of claims being performed
- Sample report, CCA3250R01, shared with DDSN reviewing paid claims for HASCI Waiver
- Sample report, CCA3250R02, shared with DDSN reviewing paid claims for Medicaid State Plan services for Waiver recipients
- CMS-372 report