

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

ACTION REFERRAL

TO <i>M. J. Jara</i>	DATE <i>1-5-09</i>
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DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>100364</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>cc: Ms. Fortner, Depo Cleared 3/13/09, letter attached.</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>4-1-09</i>
	<input type="checkbox"/> FOIA DATE DUE _____
	<input type="checkbox"/> Necessary Action

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

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



RECEIVED

December 30, 2008

JAN 05 2009

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Emma Forkner, Director
South Carolina Department of Health and Human Services
P.O. Box 8206
Columbia, South Carolina 29202-8206

Dear Ms. Forkner,

This is in response to your new application request for South Carolina's Community Supports Home and Community Based Waiver. This request has been assigned control number 0676. This number should be used in all correspondence pertaining to this initial waiver. The Centers for Medicare & Medicaid Services (CMS) is in receipt of the December 2008 Legislative Audit Council (LAC) report requested by the South Carolina General Assembly regarding the Department of Disabilities and Special Needs (DDSN). The findings identified in this report have raised issues regarding State processes for waivers operated by DDSN that require additional assurances from the State before CMS can approve the initial waiver.

Please provide clarification on the issues identified below:

- (1) Please affirm that the information identified in the State's application for the "Community Supports Home and Community Based Waiver" related to the State's processes to assure health and welfare is currently operational and reflects improvements undertaken by the state to address the issues identified in the audit report.
- (2) The LAC report identified problems with the provider qualification and recruitment process. Please explain the State's plan to recruit, qualify and support new providers, particularly in the areas of respite care and behavior support.
- (3) The report also identified issues with provider oversight, including assuring that provider-specific problems are adequately resolved in accordance with the state's corrective action plan. Please provide information on the State's improved mechanisms for ensuring that identified issues are fixed.
- (4) DDSN has not formalized a band funding policy and has no formal procedure and policy for systematically updating band amounts to account for cost-of-living increases. Please describe the State's method to address this band funding issue as it relates to cost of living increases.

Emma Forkner, Director
December 30, 2008
Page 2

- (5) According to the HCBS waiver application, when the services needed by a DDSN consumer are significantly more expensive than the funding band allocated to the consumer, DDSN may authorize additional (outlier) funding. Please provide further detail regarding DDSN's formalized outlier funding policy and the procedures to make it accessible to the public.

Under Section 1915(f) of the Social Security Act, a waiver request must be approved, denied or additional information requested within 90 days of receipt or the request will be deemed approved. The 90-day review period on this request ends December 30, 2008. This formal request for additional information will, however, stop the 90-day clock. The State should respond to me with a copy to Ms. Suzanne Bosstick, Director of the Division of Community and Institutional Services in the Central Office of CMS. Once CMS receives the information submitted in response to this request, the 90-day review clock will restart at day one. If there are any questions, please contact D. Mark Reed of the Central Office at (410) 786-0861 or Kimberly Adkins-McCoy in our Regional Office at (404) 562-7159.

Sincerely,



Mary Kaye Justis, RN, M.B.A. Fe1
Acting Associate Regional Administrator
Division of Medicaid and Children's Health Operations

cc: Suzanne Bosstick, Central Office
Mary Sowers, Central Office



State of South Carolina
Department of Health and Human Services

Mark Sanford
Governor

Emma Fortner
Director

March 13, 2009

Mary Kaye Justis
Acting Associate Regional Administrator
Division of Medicaid and Children's Health Operations
Department of Health and Human Services
Centers for Medicare and Medicaid Services
61 Forsyth Street, #4T20
Atlanta, Georgia 30303-8909

Attn: Kimberly Adkins-McCoy

RE: RAI Community Supports (CS) Waiver #0676

Dear Ms. Justis:

The State of South Carolina is pleased to provide the enclosed response related to the December 30, 2008, Centers for Medicare and Medicaid Services (CMS) request for additional information regarding the State's application for a new 1915(c) home and community-based "Community Supports" waiver. We have included the CMS issues with the State's response to each item below.

- (1) **CMS Issue:** Please affirm that the information identified in the State's application for the "Community Supports Home and Community Based Waiver" related to the State's processes to assure health and welfare is currently operational and reflects improvements undertaken by the state to address the issues identified in the audit report.

The State Response: *DDSN and DHHS will continue to make improvements to the system including those related to the recommendations in the audit report.*

All of the provider standards noted in Appendix C of the application remain intact. The State continues to assure that licensing and certification requirements specified in Appendix C will be met prior to services being furnished. Since this waiver will not provide services in facilities subject to §1616(e) of the Act, this is not applicable.

Log #364

As stated in the application, all service providers are required to have background checks for direct care staff. These checks are conducted in accordance with SC Code §44-7-2910. Should the SC General Assembly change the statute, as recommended by the audit report, DDSN will comply with those changes.

DDSN will continue its efforts to ensure that information derived from its quality assurance processes is integrated and used to remediate problems identified. As recommended by the audit report, DDSN will review its licensing function and implement an approach that is independent. In conjunction with DHHS, by June 30, 2009, DDSN will revise its licensing directive, 104-01-DD, to include criteria that defines when follow up visits are warranted and what type of documentation is sufficient to demonstrate implementation of the plan of correction. DDSN will continue to follow-up on reviews requiring a plan of correction.

In a recent development, the South Carolina General Assembly has introduced a bill in the current session to move the responsibility for licensure/certification of facilities operated by DDSN to the South Carolina Department of Health & Environmental Control. It is expected that this transition will take place in July 2009. This action would create an independent licensing function.

DHHS and DDSN will continue to review the flow of quality information and communication between agencies to ensure the requirements of the MOA are met.

- (2) **CMS Issue:** The LAC report identified problems with the provider qualification and recruitment process. Please explain the State's plan to recruit, qualify and support new providers, particularly in the areas of respite care and behavior support.

The State Response: *In 2002, an ongoing, national solicitation process through a Request for Proposal (RFP) was developed to recruit and qualify service providers, including respite. This RFP remained in effect until September 2008. Prior to reissuing the RFP, DDSN rewrote the solicitation to make it clearer and easier for prospective providers to respond. As a result of the revised format, seven new providers have been enrolled. DDSN will clarify the solicitation when needed based on issues noted during future reviews of solicitations submitted by potential providers.*

In February 2008, DDSN's Standards for Respite were amended to allow respite to be provided outside of the recipient's home in a location chosen by the recipient or his/her responsible party that is not licensed. This change resulted in an increase in the availability of caregivers and settings. DDSN will continue to evaluate the standards to identify barriers to potential providers and address those barriers when the solution will not compromise the health and welfare of recipients.

Regarding behavior support, in May 2008 DDSN streamlined the internal process used to pre-qualify providers of this service. This streamlining provided more timely responses to potential providers, which allowed the prospective provider to flow through the process more quickly. This effort has resulted in five (5) new providers being added. Additionally, DDSN plans to request in its renewal of the Mental Retardation/Related Disabilities Waiver renewal application a change to the criteria for pre-qualifying providers. This change will eliminate the requirement for an oral interview for those professionals who hold certain licenses or certifications such as Board Certification in Behavioral Analysis or Licensure as a Professional Counselor.

- (3) **CMS Issue:** The report also identified issues with provider oversight, including assuring that provider-specific problems are adequately resolved in accordance with the state's corrective action plan. Please provide information on the State's improved mechanisms for ensuring that identified issues are fixed.

The State Response: *DDSN has a tracking system to ensure plans of correction by service providers are submitted to address deficiencies identified during licensing reviews. Follow-up, including an assessment of the provider's corrective actions to those deficiencies, is occurring as warranted. DDSN uses timelines for corrective actions of all cited deficiencies based on their severity. Class One violations are the most severe and must be corrected immediately. Class Two and Three violations are not considered to be those that would immediately impact the participant's health and safety. According to 104-01-DD, these violations must be corrected within 60 days.*

- (4) **CMS Issue:** DDSN has not formalized a band funding policy and has no formal procedure and policy for systematically updating band amounts to account for cost-of-living increases. Please describe the State's method to address this band funding issue as it relates to cost of living increases.

The State Response: *DDSN does have a funding band policy that is available for the public and providers. The Legislative Audit Council recommended it be formalized by making it a Department Directive and posting it on DDSN's website. DDSN is currently transforming the funding guidelines into a Department Directive and posting it on its website to be completed by March 31, 2009.*

Specific to updating band amounts for cost of living increase, DDSN updates payments when the South Carolina General Assembly funds the additional costs through state appropriations. Currently, as noted in the LAC report, the General Assembly funds pay and associated fringe cost for DDSN's providers when a pay increase is funded for state employees. This generally funds 80% of cost increases since labor is the principal cost. DDSN monitors all costs annually through DSN Board audited financial statements and cost reports to determine

when a separate request for non-personnel cost increases should be submitted to the Governor and the General Assembly.

DDSN did request and received additional funding to update funding bands for operating increases in 2006 and adjusted the funding bands to be more representative of actual costs. DDSN will continue to request additional funding as needed to adjust the funding bands. DDSN has requested operating increases for FY 2009-10.

- (5) **CMS Issue:** According to the HCBS waiver application, when the services needed by a DDSN consumer are significantly more expensive than the funding band allocated to the consumer, DDSN may authorize additional (outlier) funding. Please provide further detail regarding DDSN's formalized outlier funding policy and the procedures to make it accessible to the public.

The State Response: *DDSN will transform its outlier procedures into a Department Directive and post on its website by March 31, 2009. However, please note the CS waiver application does not reference outlier funding since outlier funding is not a component of the CS capped waiver. The waiver does include \$3000 for those who have a short-term, unanticipated, urgent change in need. As described in the waiver, requests will be reviewed by the operating agency and, if approved, state (non-Medicaid) dollars will be provided up to \$3000 to those who meet the criteria established by the waiver (i.e., a short-term, unanticipated, urgent change in need). At this time requirements more specific than those included in the waiver have not been finalized, and any specific policies regarding the use of funds in excess of the cost limit will be approved by DHHS prior to implementation.*

We believe the clarification provided herein properly addresses the CMS concerns. At this time the State respectfully requests a prospective effective date of April 1, 2009, for the Community Supports waiver. This should allow CMS staff time to carefully review and approve the enclosed information. Additionally, it will grant the State adequate time to prepare necessary start-up waiver activities, which have been delayed pending approval. Please contact Kara Lewis of my staff, at 803-898-2590, with any questions. We look forward to hearing from you.

Sincerely,



Emma Forkner
Director

EF/mwmh
cc: Suzanne Bossick, CMS Central Office
Mark Reed, CMS Central Office
Kathi Lacy, SCDDSN