

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO <i>Singleton</i>	DATE <i>10-15-07</i>
------------------------	-------------------------

DIRECTOR'S USE ONLY		ACTION REQUESTED	
1. LOG NUMBER <i>000204</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____	<input type="checkbox"/> Prepare reply for appropriate signature DATE DUE _____	<input type="checkbox"/> FOIA DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>cc: Myers</i>	<input checked="" type="checkbox"/> Necessary Action		
<i>Enclosed: Newspaper Articles Kerington City Chronicle; dated July 27 '06</i>			

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1. <i>Letter from Dr. Stan Butkus attached dated 10/16/07</i>			
2. <i>Change to NPN per Singleton on 10/22/07.</i>			
3.			
4.			

TELEPHONE (803) 256-2017

PATRICIA L. HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA, SOUTH CAROLINA 29205

*Log: Singleton
c: Myers
App. Wynn*

October 11, 2007

VIA FAX AND MAIL

RECEIVED

OCT 15 2007

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Dr. Stan Butkus
South Carolina Department of Disabilities and Special Needs
Harden Street
Columbia, South Carolina

RE: James Jordan

Dear Dr. Butkus:

We are appealing the threatened termination of MR/RD Medicaid Waiver services for James Jordan. Attached is the notice of disenrollment. The reason that James has been in the hospital for 30 days is that DDSN has refused to provide outlier funding in a timely fashion. Terminating James from the waiver due to DDSN's violation of federal Medicaid laws is a violation of his due process and property rights. This threatened termination of benefits violates 42 U.S.C. § 1396a(a)(8), which requires you to provide services with reasonable promptness. It also violates the federal Medicaid Act's requirement that services be provided in the amount, duration and scope necessary to achieve the purposes of that Act. 42 U.S.C. § 1396a(a)(10). We also claim that the denial is, in part, based on the State's attempt to restrict participants' choice of providers. Chosen providers who request outlier funding have received timely and positive responses - even where it has been shown that these providers are not, in fact, using the outlier funds to provide enhanced services to the person for whom the funding has been approved.

This threatened termination of services also violates the requirements established by the Supreme Court in *Olmstead*.

DDSN has failed to comply with federal regulations requiring a pre-admission screening prior to discharge of persons who have mental retardation to a nursing home. I am requesting a copy of all agency policies and regulations related to PASARR requirements. This request is being made pursuant to FOIA.

If there was ever a consumer in need of and deserving of outlier funding, it is James Jordan. James is one of four brothers who formerly were residents of the Babcock Center. James was severely beaten at the Babcock Center by a 16 year old house mate in 2002. This young man had beaten another of my clients, Ed Mims, to a pulp a few months earlier. DDSN was notified of both of these beatings. The response when Ed was beaten was to move this violent teenager into the same house with fragile, 78 year old James Jordan and move Ed into James' house (where he lived with our relative, Billy Cothran). Several weeks after James was beaten, the 16 year old raped James. DDSN received notice of this "critical incident" and did nothing. When I learned of the rape of James Jordan, as the chairman of the Babcock Center Board, I directed Dr. Johnson to make a report to the Ombudsman. She did not. Two months later, when James was found to have an "unexplained" broken finger, I learned that Dr. Johnson had not reported the rape and that James was forced to remain in the facility with the 16 year old who had beaten and raped him.¹

James began having trouble walking and an orthopedic consult was requested. The consult was denied by Babcock Center's medical consultant and James was found to have an "unexplained" broken arm. His arm was broken during the morning at the Babcock Center workshop he attended, but the DDSN funded nurse who examined him just gave him pain medication (tylenol or the like) and sent him home. James' arm was splintered. DDSN was informed of this "unexplained" injury and failed to take proper action.

During this time, James' brother, Keith Jordan, was being subjected to abuse at Kensington ICF/MR, another facility funded by DDSN. Keith, Ed Mims and our relative, Billy Cothran, were house mates. Billy and Keith were both beaten by another resident. Keith was taken to the hospital with rug burns on his

¹ Dr. Johnson filed a lawsuit against me, claiming that she was defamed by my report that she failed to report the rape of James Jordan. Strangely enough, at Dr. Johnson's trial, top DDSN officials (Bill Barfield and Jim Christian) testified on Dr. Johnson's behalf, claiming that it was not necessary for her to report the rape of James Jordan and that her reputation had been injured so that her plan to be employed by DDSN was thwarted! The judge dismissed her lawsuit on a directed verdict after their testimony. (For those of you who are not lawyers, a directed verdict is issued in those rare cases where the judge decides that even if the jury believed the plaintiff's witness, she had no case.) Articles about this lawsuit are attached.

back. At the hospital, his guardian was asked if Keith had ingested chemicals. Keith died a few months later.

James' other brother, Archie, was a victim of Babcock Center's travelscam - in which an employee stole money from Arthur and several dozen other Babcock Center residents.

When James' sister learned of the beatings and the rape, she took her surviving three brothers out of Babcock Center.² Because of delays in responding to her request for funding, their sister was forced to keep them at her home with inadequate services for about six months.

As a result of this prolonged history of abuse and a recent broken hip, James' condition has declined. He now needs outlier funding. UCP made a request for this funding weeks ago. A timely response from DDSN has not been provided. With this funding, James will be able to live in the home with his two surviving brothers and avoid institutionalization.

Given the history of this case, I would hope that you see the importance of expediting a decision on James' request for outlier funding. The costs of DDSN's delay in providing this funding are astronomical. I am requesting approval of this funding by Monday and a retraction of the agency's threat to terminate James' waiver services.

I have enclosed for review by you and the DDSN Commissioners the chronology of Jame's history under the supervision of DDSN. A copy of this request for a fair hearing is also being sent to Emma Forkner and the HHS Office of Hearings and Appeals. We retain the right to pursue other legal remedies during this administrative appeal.

Sincerely,



Patricia L. Harrison

² The story of the Jordan brothers is told in the attached front page article which appeared in the Wall Street Journal.

cc: Belvia Jackson
Governor Mark Sanford
Jane Thesing
Rep. James Harrison
Diane Wilush
Heather Bard and Brad Beasley
Gloria Prevost
DASN Commissioners (home addresses)
Curtis Loftis
Dale Watson
Emma Forkner
HHS Office of Hearings and Appeals
Carol King

South Carolina Department of Disabilities and Special Needs MR/RD Waiver
Notice of Disenrollment

Date Form Completed: October 8, 2007

Recipient's Name: James Jordan

Medicaid #: 0161919171211011

SSN#: 2151111512191918

The person named above is no longer eligible to receive services funded through the MR/RD Waiver for the reason noted below:

- Death Admitted to an ICF/MR No longer meets ICF/MR LOC
 - No longer eligible for Medicaid Admitted to Nursing Facility Recipient moved out of state
 - No service since enrollment Voluntary withdrawal Other
 - No service(s) received in 30 days Res. Halt Sept 2, 2007 (the service(s) and last date received)
- Medicaid eligibility has been interrupted, but should be reinstated within 90 days [The individual will be disenrolled, but will remain pending for 90 days; therefore, retaining the waiver slot. If a Medicaid is not reinstated within 90 days, the individual will be removed from pending status and the slot will be revoked. If Medicaid is reinstated, the recipient may be re-enrolled; [Freedom of Choice must be completed and a new initial Level of Care requested].

- Individual has not received a service for 30 consecutive calendar days due to provider non-availability or recipient's injury/illness [The individual will be disenrolled, but will remain pending for 90 days; therefore, retaining the waiver slot. If a provider has not been located or the recipient is not ready to resume services within 90 days, the individual will be removed from pending status and the slot will be revoked. If a provider is secured or the recipient is ready to resume services within 90 days, the recipient may be re-enrolled; [Freedom of Choice must be completed and a new initial Level of Care requested]. List the service(s) needed, but not received: _____

- Individual has entered the hospital/nursing facility/jail that has exceeded 30 consecutive calendar days; however, the individual will require MR/RD Waiver Services when released from the hospital/nursing facility/jail [The individual will be disenrolled, but will remain pending for 90 days; therefore, retaining the waiver slot. If the recipient has not been released from the hospital/nursing facility/jail within 90 days, the individual will be removed from pending status and the slot will be revoked. If the recipient is released from the hospital/nursing facility/jail within 90 days, the recipient may be re-enrolled; [Freedom of Choice must be completed and a new initial Level of Care requested]. (Please circle appropriate facility).

EFFECTIVE DATE OF DISENROLLMENT: 10/8/2007

The effective date is 10 calendar days from the date the form is completed with the exception of death, loss of Medicaid, hospital/nursing facility/jail stay exceeded 30 calendar days, and admission to an ICF/MR or Nursing Facility. This allows the recipient/legal guardian notice prior to disenrollment/loss of services and the right to appeal without services being terminated.

As a result of this disenrollment, service(s) currently being provided will be terminated with this effective date. Contact your Service Coordinator/Early Interventionist about these services or any questions that you may have.

If form completed more than 2 days after the disenrollment date, provide reason for delay: N/A

Service Coordinator/Early Interventionist: Carol King E-Mail Address C.King@DSSA.state.sc.us

DSN Board/Provider: WLDSSRB Phone: 803-252-5179

Address: 420 Riverside Dr, Columbia, SC 29210

Signature: Carol King Date: 10/8/07

Service Coordination/Early Intervention Supervisor's Signature: Michael Shumlin

**SCDDSN RECONSIDERATION PROCESS AND SCDHHS MEDICAID APPEALS
PROCESS**

The SC Department of Disabilities and Special Needs (SCDDSN) is responsible for the day-to-day operations of the Mental Retardation/Related Disabilities (MR/RD) Waiver and the Head and Spinal Cord Injury (HASC) Waiver. A request for reconsideration of an adverse decision must be sent in writing to the State Director at SCDDSN, P. O. Box 4706, Columbia, SC 29240. The SCDDSN reconsideration process must be completed in its entirety before seeking an appeal from the South Carolina Department of Health and Human Services (SCDHHS).

A formal request for a reconsideration must be made in writing within thirty (30) calendar days of receipt of written notification of the adverse decision. The request must state the basis of the complaint, previous efforts to resolve the complaint and the relief sought. The reconsideration request must be dated and signed by the recipient, representative, or person assisting the recipient in filing the request. If necessary, staff will assist the recipient in filing a written reconsideration.

Note: In order for waiver benefits/services to continue during the reconsideration/appeal process, the recipient/representative's request for reconsideration must be submitted within ten (10) calendar days of the written notification of the adverse decision. If the adverse action is upheld, the recipient/representative may be required to repay waiver benefits received during the reconsideration/appeal process.

The State Director or his designee shall issue a written decision within ten (10) working days of receipt of the written reconsideration request and shall communicate this decision to the recipient/representative. If the State Director upholds the original adverse action/decision, the reason(s) shall be specifically identified in the written decision.

If the recipient/representative fully completes the above reconsideration process and is dissatisfied with the results, the recipient/representative has the right to request an appeal with the SCDHHS. The purpose of an administrative appeal is to prove error in fact or law. The recipient/representative must submit a written request to the following address no later than thirty (30) calendar days from the receipt of the SCDDSN written reconsideration decision.

Division of Appeals and Hearings
SC Department of Health and Human Services

P.O. Box 8206
Columbia, SC 29202-8206

The recipient/representative must attach copy of the written reconsideration notifications received from the SCDDSN regarding the specific matter on appeal. In the appeal request the recipient/representative must clearly state with specificity, which issue(s) the recipient/representative wishes to appeal.

Unless the request is made to the above address within thirty (30) calendar days of the receipt of the SCDDSN written reconsideration decision, the SCDDSN decision will be final and binding. An appeal request is considered filed at the above address if postmarked by the thirtieth (30th) calendar day following receipt of the SCDDSN written reconsideration decision. The recipient/representative shall be advised by the SCDHHS Division of Appeals and Hearings as to the status of the appeal request.

Vicki Coleman- 864-938-3435
Tevia Miller- 939-6170

Chronology
2001-2004

October 2001 James was a guest at our mountain house with Billy to celebrate Billy's birthday. Both James and his brother, Keith were living in same ICF/MR where our relative, Billy Cothran, lived - Kensington.

November 2001 James was found in bed early on a Sunday morning with a broken knee. No medical treatment was provided until Dr. Platt, Medicaid Director of Babcock Center, saw him until Monday afternoon. Soon thereafter, James was moved from Kensington ICF/MR to Ida Lane ICF/MR. Keith remained at Kensington.

March 23, 2002 Neglect of Keith was witnessed by PLH at Kensington on March 22, 2002 and reported to CMS.

June 2002 James was beaten with a belt by 16 year old house mate at Wire Road ICF/MR. Incident was not reported to family nor Ombudsman. Perpetrator also beat Billy's roommate, Ed Milms with a belt (27 lashes) and another resident named Paul.

June 13, 2002 James was raped by same 16 year old house mate at Wire Road ICF/MR. Teenager had a history of inappropriate sexual behaviors. (Another client of mine was raped at a Babcock day program by another resident of Wire Road.) Rape of James was not reported to family nor Ombudsman. James was taken to hospital with a bleeding rectum after he reported at workshop "that damn boy got me last night." Gene Marlow, Deputy Director called my office while I was at lunch and left message that a resident was raped at Wire Road and that he was at the hospital. I instructed Dr. Johnson, Executive Director of Babcock and Gene Marlow via e mail to report the allegation of rape. At the time, I did not know the victim was James, who had been a guest at our house in October 2001. I later learned that the rape was not reported to law enforcement nor the Ombudsman and that no rape protocol was followed.

August 2002 James was found to have "unexplained" broken finger at Wire Road. Broken finger was not reported to family nor Ombudsman. James' records stated that he was heard screaming "Send me to heaven or send me to hell. Get me out of this hell hole." Later in August, I learned that the rape of James had not been reported to law enforcement or to the Ombudsman because the Babcock internal investigator determined that abuse did not occur. Babcock's solution to the allegation that James was raped was to put an alarm on the rapist's door so that it would alert everyone when he

went into or out of his room. I again instructed management to report the rape. The Executive Director called the Ombudsman a few days later. Instead of reporting the rape, she asked if resident on resident abuse had to be reported. The Ombudsman told Dr. Johnson no and she thanked him without telling him that James claimed to have been raped or about his torn rectum or the blood and feces on James' sheets. The Ombudsman discussed this conversation with Deborah McPherson (who resigned from the Board the night I resigned) and she asked if Dr. Johnson had told him that the incident involved an alleged rape. The Ombudsman told Deborah that no rape was mentioned. After several board members complained about James being forced to remain in the home with the rapist, he was moved to Ida Lane ICF/MR.

Summer 2002

On two visits to Kensington, Keith was ignored by staff when I spent 45 minutes at house reviewing Billy's records - Keith was very mobile at that time. Kept jumping up. On the second visit, Keith kept standing up asking for food. Staff told him to sit down, ignoring his request for food.

September 12, 2002

John and I hosted a dinner at Billy's residence for Kensington family members. I asked Mrs. Jackson at the dinner how James was doing. She had no knowledge of the rape, beating or broken bones.

September 13, 2002

I found Keith to be "zombiesque" at Kensington - in a wheelchair and practically nonresponsive. Keith was slumped in wheelchair and had vomit or processed food on his shirt. Records stated that "Human Rights Committee" has expressed concern re weight loss.

September 16, 2002

I made report to Ombudsman and CMS re neglect of Keith.

September 19, 2002

Keith was able to walk with assistance but had gash on head reported to have happened at workshop. This incident was not reported to his family.

April 3, 2003

Mrs. Jackson received an anonymous telephone report from staff that Keith was being abused. Consumer advocate called her to say that there was no validity in report, says this was only one employee trying to "get at another employee." Later in afternoon, Mrs. Jackson received a call from an employee saying that Keith fell out of his wheelchair and had a bruise.

April 4, 2003

I file report with Ombudsman, CMS, DHEC and Attorney General re neglect/abuse of Keith.

April 27, 2003

James complained of pain in knee.

- April 28, 2003 James was diagnosed with osteoarthritis by Dr. Platt's office.
- August 4, 2003 James was taken to hospital by ambulance from workshop. He was jerking and nonresponsive. He was diagnosed as having aspiration pneumonia and a urological infection.
- August 19, 2003 James fell getting out of brother's truck.
- August 20, 2003 At James' plan meeting, his guardian requested an orthopedic and urological consults. This consult was contained in his plan of care. Dr. Platt, Babcock Center's medical director refused the request for consult by urologist and ortho specialist, but he did not tell James' Guardian that he had denied the request for consults.
- Summer 2003 James' brother, Archie was discovered to have been victim of "Travelscam" where Babcock supervisor stole money from 20 residents promising to take them on trips.
- October 2003 SC Department of Health and Human Services released Limited Scope Audit of Babcock Center.
- October 20, 2003 A court order was issued to provide records for four brothers. It took more than a year to obtain these records after the order was issued.
- October 22, 2003 Babcock Board member was notified that brothers would be leaving Babcock.
- October 23, 2003 James' guardian wrote a letter to Dr. Johnson informing her that Jordan brothers would be moving to UCP.
- November 5, 2003 Babcock's attorney was informed that brothers will be moving from Babcock. Written complaint sent to Babcock's attorney re failure to follow plan of care and failure to obtain requested orthopedic consult and psychological services for James. Request records from Babcock's attorney per October 20, 2003 request. Guardian was not informed that Dr. Platt has refused to make referral to ortho doc.
- November 20, 2003 James arm was "splintered" from a fall at the workshop. James' broken arm was discovered by CMS federal surveyors when they came into his residence, Ida Lane to investigate allegation that James was beaten and raped in June 2002.
- December 2003 In December, CMS substantiated that James was raped and beaten.

- November 21, 2003 PLH requested meeting from HHS attorney to discuss moving brothers from Babcock, referring to case as "bomb waiting to explode." Reported that sister "is fearful for their lives at this point and has no confidence that their needs are being met or that they are in a safe environment. She was planning to remove them from Babcock on Wednesday ..." Requested respite funding and service coordination was requested. Requested emergency meeting.
- November 22, 2003. Keith and Billy Coltran were assaulted by another resident at Kensington. Guardian for Keith was not notified of the injury.
- November 24, 2003 Follow up to PLH request of Nov. 21 - no psychological services were being provided to James, request that "money follows the person."
- November 24, 2003 Keith was taken to emergency room. (He was also taken to emergency room a week or so earlier with rug burns- not sure of date.)
- November 25, 2003 Keith admitted to ICU - chemical imbalances and injury to head. Dr. Kathi Lacy of DDSN stated that Jordan matter "is not a life threatening situation." PLH reported to HHS, CMS and others that increase in death rate with capitated funding and patterns of abuse are cause for concern. Request was made to HHS to "expedite the process of providing a plan where the Jordan brother's funding will follow them so that they can be cared for in a safe environment..." and to set a date for an emergency meeting.
- November 26, 2003 The request for records and funding was renewed.
- November 2003. CMS issued findings of Immediate Jeopardy at Babcock's Clusters ICF/MR and Wire Road.
- December 1, 2003 Reported to HHS and CMS that Mrs. Jackson removed 3 brothers from Babcock and that she was receiving no assistance in caring for them in the home. Mrs. Jackson is a retired hairdresser who lives in a very small house in West Columbia. Keith's doctor asks Mrs. Jackson if he might have consumed chemicals. Keith diagnosed with pneumonia. Request for immediate assistance made to DDSN and HHS. Renew request for records and emergency meeting.
- December 2, 2003 Mary Leitner Director of Richlex Disabilities Board called PLH - they will not provide service coordination for James, Keith or Arthur. Request to HHS for resolution this week. James had surgery to repair splintered shoulder. PLH and guardian requested immediate assistance. Keith reported to be left in a hospital room alone without a caregiver.

- December 16, 2003 Request to HHS, CMS and SC AG's office for immediate assistance in assisting sister in caring for brothers. Richlex offered only 10 hours per day attendant care for three brothers. Guardian requested that brothers' funding be made available for them to move to the community.
- December 29, 2003 Report to HHS and CMS problems in obtaining services in community - problems in transfer of pharmacy, refusal to provide nursing services for James (after surgery to repair splintered arm) - failure of outlier funding to follow James, continued refusal to provide records covered by HIPAA request.
- December, 2003 CMS report issued which substantiated rape and beating of James by same 16 year old who beat Ed Mims with a belt in early 2002.
- January 2004 Keith was transferred to a nursing home and died a week later.
- Spring 2004 3 remaining brothers move to home operated by United Cerebral Palsy funded by MRR/RD waiver.
- September, 2004 Billy Cottran choked to death at Kensington. CMS substantiated neglect and issues Immediate Jeopardy finding..
- December 2004 Babcock supervisor, Tyrone Suber, was convicted of stealing money from 20 Babcock residents, including Archie.
- April 2005 After a second Immediate Jeopardy finding, Kensington is decertified.
- May, 2005 Ed Mims was found at Kensington with a 4 cm "unexplained" laceration on his penis. DDSN attempted to prevent court from appointing his mother as guardian and refused to allow him to leave Kensington after probate court issued an order authorizing his removal from Babcock.



September 13, 2005

PAGE ONE

Safe Place Disabled People Find Group Homes Can Be Broken, Too

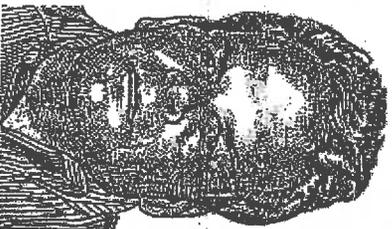
Patients Gain Independence,
But Oversight Is Spotty;
Challenges of Monitoring

'That Damn Boy Got Me'

By CLARE ANSBERRY
Staff Reporter of THE WALL STREET JOURNAL
September 13, 2005; Page A1

COLUMBIA, S.C. -- Billy Cothran spent most of his 63 years in a sprawling, state-owned treatment center for the developmentally disabled. His parents were told it was the best option for their only child, whose mind would never progress beyond that of a 3-year-old.

In the late 1990s, after his parents died, Mr. Cothran was moved by his guardian out of the institution and into a smaller group home, which offered recreational therapy such as horseback riding and took residents to church on Sunday. Staffers helped Mr. Cothran, who was blind and arthritic, don a rented tuxedo for an annual dance.



Billy Cothran

His new home, the Babcock Center, was one of the thousands of private, nonprofit facilities created during the past 30 years to provide alternatives to big institutions. Babcock was founded in 1970 by a woman who discovered a mentally retarded couple living in a chicken coop. It eventually became South Carolina's largest provider of Medicaid-funded housing, caring for more than 500 people at close to 100 homes and apartments.

In recent years, though, Babcock has been the focus of state and federal investigations after reports of abuse and neglect at some of its homes. Mr. Cothran died last September. An autopsy determined that Mr. Cothran, who was on a pureed-food diet, had portions of what appeared to be a sandwich in his trachea and died of asphyxiation.

After his death and complaints by his family -- which included a former chairman of Babcock's board -- a federal investigation looked into the incident. It found that the home where Mr. Cothran lived "failed to take appropriate actions to ensure client protections" and that conditions there "pose immediate jeopardy to the health and safety of clients." It gave Babcock 23 days to submit a plan and correct the problems.

A spokeswoman for the Centers for Medicare and Medicaid Services, which provides most of Babcock's funding,

FORMAT FOR
PRINTING
sponsored by

TOSHIBA
Don't copy. Lead.



DOW JONES REPRINTS

Ⓜ This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers, use the Order Reprints tool at the bottom of any article or visit:
www.djreprints.com.

- See a sample reprint in PDF format.
- Order a reprint of this article now.

says the federal agency is satisfied that the problems it found after Mr. Cothran's death have been corrected.

Mr. Cothran's cousin and guardian John Harrison has filed a wrongful death suit against Babcock Center in South Carolina's Richland County Court of Common Pleas. The case alleges Babcock didn't properly care for Mr. Cothran and failed to properly supervise and train the staff assigned to care for him. Babcock officials are fighting the suit and say it has no merit.

Over the past three decades, there has been a concerted effort to move people with developmental disabilities out of large institutions, which had been long criticized for being overcrowded and isolated. A widely lauded effort to move people into smaller group homes has succeeded in bringing the developmentally disabled into communities where they can learn new skills, get jobs or attend special schools.

But this progress has come at a price. It has strained the systems that support people living in the smaller settings and created big gaps in oversight. Twenty-five years ago, people with developmental disabilities lived in about 16,000 publicly funded homes. Today, they are scattered in about 140,000.

"The systems of quality monitoring have really been taxed beyond what they can manage," says Charlie Lakin, who heads a University of Minnesota program that tracks services to the developmentally disabled. "By and large, a lot of it is pretty loosely organized and pretty loosely monitored."

Only a half-dozen states require that residential programs serving the developmentally disabled be accredited by an independent third-party organization. Developmental disabilities, which affect about 4.6 million people in the U.S., include a range of mental and physical impairments, such as cerebral palsy, autism and mental retardation.

Babcock offers a stark look at the flawed monitoring of group homes, which sometimes leaves family members and other advocates feeling they need to police the care themselves.

Last December, the state ordered the entire Babcock chain to reduce the number of people it houses by half within 18 months. "The growth of Babcock Center happened over a relatively short period of time," says Judy Johnson, Babcock's executive director, who was hired in 2002. "They didn't have the right system of support to manage the larger, different sites."

She says Babcock has made significant progress since she arrived, including improved staff training and procedures to provide additional oversight.

In spite of such efforts, the rate of substantiated cases of abuse, neglect or exploitation at Babcock has averaged 6.7 per 100 residents in each of the past three years, according to the South Carolina Department of Disabilities and Special Needs. The statewide average is three cases per 100 residents, the agency says. Ms. Johnson attributes that, in part, to the kind of people Babcock houses. Babcock takes individuals with complex physical and emotional problems, she says, who are aggressive and sometimes self-abusive. "Babcock Center supports people with severe disabilities that other providers would not," she says.

As for Mr. Cothran, she says, "Billy was loved by many people. I also believe there was nothing the staff could have done to prevent his death." She says Babcock hired a pulmonologist, who, based on a review of the autopsy and staff statements, concluded Mr. Cothran didn't have trouble swallowing his meal, but later regurgitated, causing asphyxiation. He concluded Mr. Cothran's death wasn't the result of any failure on the part of Babcock or its staff.

Oversight of homes for the developmentally disabled is fragmented between the federal government, states and thousands of community-based agencies. The U.S. Department of Health and Human Services -- which pays

about half of the \$27 billion spent annually on community services for the developmentally disabled -- is ultimately responsible for their protection. But the federal agency assigns the creation and enforcing of rules over such homes to each state. As a result, laws and monitoring vary by state.

States aren't required to report all incidents of abuse or neglect to the federal agency. The federal government typically only gets involved if families, advocates or employees of homes provide credible concern about the thoroughness of a state investigation. HHS, which oversees the Centers for Medicare and Medicaid Services, is drafting new procedures following a 2003 report from the General Accounting Office, saying states should be required to report more information about how they protect people with developmental disabilities.

Thousands of nonprofit group homes offer well-supervised programs for the developmentally disabled. But problems exist to some degree in nearly every community, says Curtis Decker, executive director of the National Disability Rights Network, a nonprofit group. Investigators may overlook flaws, he says, because of a lack of other housing options. "They don't know what to do with these folks if they closed a place down."

The number of abuse and neglect cases among the developmentally disabled isn't collected nationwide. Many states don't keep central databases on employees involved in such cases, allowing workers to move from one agency to another. "You put people in tough jobs, who are underpaid, not well-trained or supervised, and the potential for abuse is big," says Mr. Decker. "It's endemic to the country."

A 62-year-old woman in an Illinois group home died in April 2004 after receiving burns from scalding water. Another nonprofit agency in that state, which operated several homes, was decertified after an advocacy group learned the executive director asked a dentist to remove all the teeth of a man who was biting himself.

A 53-year-old New Jersey group-home employee was found guilty earlier last month in Middlesex County Superior Court of aggravated criminal sexual contact with a 19-year-old developmentally disabled woman, with the mental capacity of a child.

Ms. Johnson, Babcock's executive director, says she has a zero-tolerance policy for abuse. Any employee involved in cases of abuse or neglect is terminated, including those who see, but fail to report incidents, she says. "I don't know that we are ever going to eliminate abuse in our society," she says. "Our job is to do the best we can to support and protect individuals with disabilities."

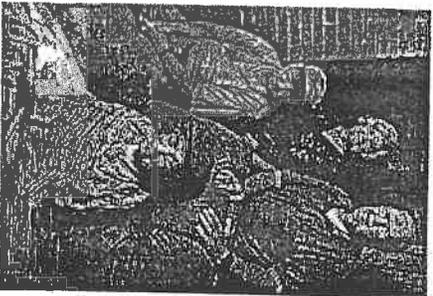
Family members inspect Babcock facilities and report back to her monthly.

One of those is James Carlson, whose son lives in a Babcock home. He and other parents meet with Ms. Johnson to present any findings and concerns. "Next time we meet, she gives a list of all the corrections made," he says.

Babcock has had several serious problems. In late 2002, one mentally retarded man was left overnight in the parking lot of a Wendy's restaurant where he had been taken to apply for a job. A Babcock employee forgot to pick him up. That employee has been fired, Babcock says.

In April 2003, a man received first- and second-degree burns after a 23-year-old employee at a Babcock home said she accidentally poured scalding water on him, according to police reports. That employee has been fired, Babcock says. A supervisor at another Babcock home was arrested last fall and charged with sexually assaulting a 55-year-old female resident and giving her sodas to keep her quiet. The man was fired and the case is pending.

It's often up to relatives to keep tabs on how their family members are treated. Betty Jackson was initially happy when her four developmentally disabled brothers moved into homes run by the Babcock Center more than a decade ago. The brothers, ranging in



Fred Rollison/FilmMagic

Betty Jackson with her three brothers, from left to right, Archie (standing), Arthur and James Jordan (seated).

age from 58 to 81, were born with mental retardation. They were raised at home, with their six siblings, on a South Carolina tobacco farm, until their parents died.

The Babcock Center housed the brothers in different homes, according to their level of disability. "I was very thankful," says Mrs. Jackson, a 63-year-old widow. "They didn't have to be in an institution and they could be in a home setting."

Her brother Archie Jordan got a job carrying groceries at the local supermarket. A TV crew filmed him years ago proudly sweeping the driveway in front of his house to show how Babcock residents keep their homes tidy.

To Mrs. Jackson, everything seemed fine until about three years ago. Her brother James, then 78, a thin, slightly stooped man who likes to wear a baseball hat, was struck with a belt and attacked by a 16-year-old housemate. After he was found bleeding from his rectum, James told Babcock's internal investigator "that damn boy got me last night." Stephanie Marshall, of the federal Centers for Medicare and Medicaid Services, said the allegation of rape was substantiated by an investigator it sent to the home. Babcock's Ms. Johnson says other agencies, including the state ombudsman, didn't substantiate a rape.

James remained in the same home with the 16-year-old for two months because no other housing was available, Babcock said. For safety, an alarm was put over the youth's door, sounding whenever he left his room. Weeks later, James suffered a broken finger. A Babcock internal report concluded he broke it himself, while throwing his bed rails around the room and beating on the walls. Records show he was screaming, "I want out of this hell hole."

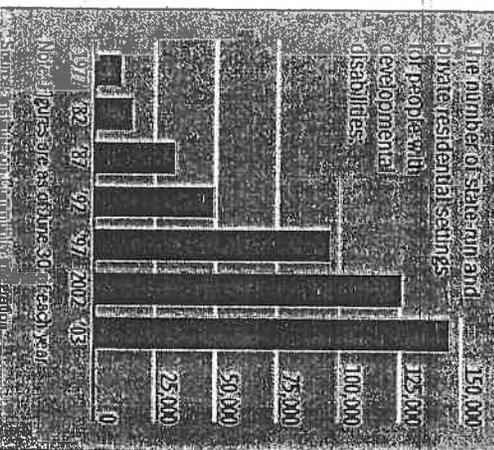
Babcock reached an out-of-court settlement with Mrs. Jackson, who is James's guardian. Babcock's Ms. Johnson said she couldn't comment on the settlement.

Mrs. Jackson grew increasingly concerned. Her brother Archie was one of several Babcock residents who collectively gave more than \$4,500 to a supervisor who promised to use the money to take them on vacations in 2003 and never did. The man later pleaded guilty to defrauding residents.

Babcock says it has since hired a full-time accountant to make monthly unannounced audits of residents' funds.

More to Monitor

The number of state-run and private residential settings for people with developmental disabilities.



In 2003, Keith, 75, Mrs. Jackson's second-eldest brother, had been losing weight and was, at times, listless, she says. In the fall, Mrs. Jackson received a call that Keith was in the hospital. When she arrived, she says he was unconscious. Doctors said he was dehydrated, had a potassium imbalance and asked if he could have gotten hold of any chemicals, according to Mrs. Jackson and Leigh Flynn who was a court-appointed guardian of the brothers. Staffers said cleaning chemicals at the home were locked up, according to Mrs. Jackson. Keith was put in intensive care.

Babcock's Ms. Johnson said she couldn't comment on an individual's medical information because of federal laws protecting the privacy of clients' medical records.

Mrs. Jackson notified Babcock that she planned to take all of her brothers out of the organization's homes. "I felt like I had to move them while I still had them," she says.

At that point, there were no other residential options in her area. So in November 2003, while Keith remained in the hospital, Mrs. Jackson took her other three brothers to live in her brick ranch house.

Mrs. Jackson, who worked driving a delivery truck for a sheet-metal company, modified her home to accommodate her brothers. In a back room, she installed a special shower and a toilet. She cooked for them and took them to doctors' appointments. She changed diapers regularly for James, then incontinent, fed him and held on to his arm when he walked. Her daughters helped. Keith was eventually transferred from the hospital to a nursing home, where he died of heart failure in January 2004.

In April 2004, the three remaining brothers moved into a home operated by United Cerebral Palsy of South Carolina. They celebrated Archie's 70th birthday with a chocolate cake. Each brother has a private room. Arthur's smells of Old Spice. Archie has an African-print bedspread. A fisherman's hat hangs on James's bedpost and family photos are on his dresser.

Mrs. Jackson has spoken out about the treatment her brothers received, including discussions last summer with members of Congress. Joining her were relatives of other residents, a former Babcock worker, and Babcock's former chairman, Patricia Harrison, who has been a frequent critic of the organization.

Ms. Harrison had been on Babcock's board, an unpaid position, since 1995. She resigned in 2002. Her husband was the cousin of Billy Cothran, the Babcock resident who died last year. The Harrisons were the legal guardians of Mr. Cothran.

Babcock's Ms. Johnson has a suit pending in the Fifth Judicial Circuit Court in Richland County, S.C., charging that Ms. Harrison made statements that were defamatory and intended to "impeach the honesty, integrity and reputation" of Ms. Johnson. Ms. Harrison is fighting the case. "I look forward to telling my story on the witness stand," she says.

Early last year, the Harrisons decided they wanted to move Mr. Cothran out of Babcock. "We were worried that something would happen to Billy," says Mr. Harrison. They bought a house for him and filled it with family photos and his mother's dining-room table. They asked that Medicaid funding for Mr. Cothran, and two of his Babcock housemates, be transferred to another agency that would staff the house.

Mr. Cothran died four days before he was supposed to move. A worker who prepared lunches that day was arrested on a charge of involuntary manslaughter but hasn't been indicted or issued a formal plea.

Mark Plowden, a spokesman for the South Carolina Attorney General's office, said the case is still under investigation to determine what, if any, prosecutorial action is warranted. No other state or federal investigation is pending.

Babcock had been previously warned about choking hazards. Its assistant vice president of food services sent out an internal email in 2002, saying food wasn't being properly mechanically altered, which means pureed, ground or softened, for residents whose diets required that. The memo described the situation as "Red Alert." In 2003, federal Medicaid investigators found a staff member feeding a sandwich, cut in eighths, and cookies to a man whose food was to be ground into rice-size pieces. Babcock said staffers were retrained on dietary matters, satisfying the agency.

After Mr. Cothran's death, there was a federal investigation in October 2004 by the Centers for Medicare and Medicaid Services. It found there was "evidence that mechanically altered diets were not consistently prepared as ordered to meet the developmental needs of all the men" at the home where Mr. Cothran lived. The report also concluded that "direct support staff were not assigned in sufficient numbers to supervise mealtimes at the facility

on weekend days."

Babcock says it has retrained its staff and Ms. Johnson says the staffing exceeded minimum requirements.

After finding conditions at the home posed "immediate jeopardy to the health and safety of clients," the agency ordered Babcock to submit a plan to correct problems found in its survey or lose Medicaid funding. Babcock did submit a plan that was approved. A subsequent visit by investigators satisfied the agency, and no penalties were levied against Babcock, says Sharon Fisher, a spokeswoman for the Centers for Medicare and Medicaid Services.

In November, the South Carolina Department of Health and Human Services commissioned a special audit of Babcock, in light of the federal findings. It found "management and staffing issues, lack of evidence of ongoing active treatment, and lack of evidence of assessments for appropriate level of care."

Ms. Johnson, of Babcock, disagrees with those findings. She says the audit was performed by an organization that isn't familiar with specific program requirements for the developmentally disabled and investigators didn't spend enough time at Babcock homes to gauge active treatment. "I don't think they did a fair appraisal," she says.

Stan Butkus, head of the state's Department of Disabilities and Special Needs, ordered Babcock to reduce its number of residents by 50%, saying "system improvements can best be achieved ... by reducing Babcock's size and scope of responsibility."

Babcock has proposed turning over facilities to the state so residents won't have to move. Other agencies will be asked to operate the homes.

Write to Clare Ansberry at clare.ansberry@wsj.com

URL for this article:

<http://online.wsj.com/article/0,SB112657331548438847,00.html>

Hyperlinks in this Article:

(1) <mailto:clare.ansberry@wsj.com>

Copyright 2005 Dow Jones & Company, Inc. All Rights Reserved

This copy is for your personal, non-commercial use only. Distribution and use of this material are governed by our

Subscriber Agreement and by copyright law. For non-personal use or to order multiple copies, please contact Dow Jones Reprints at 1-800-843-0008 or visit www.djreprints.com.

How court ruled in favor of Chronicle

For three days last week, Circuit Judge Edward Cottingham and a 12-member jury listened to arguments by attorney John Carrigg, a Lexington County Councilman, and testimony of witnesses he called at the Richmond County courthouse. In the end, the judge ruled that neither the Chronicle nor attorney Patricia Harrison, a former Babcock Carter board chairman, did anything for which Babcock Executive Director Judy Johnson could recover damages. Editor Jerry Bellum sat through the civil trial and analyzes the issues it raised.

I admire the endurance of lawyers who can sit through hours of intense testimony and legal courtroom maneuvering. At the beginning of this trial, I told attorney George Reeves, a former newspaper reporter, that it was not too late to reconsider his career in journalism. Reeves laughed and said he had too much invested in his legal career to give up now.

The complaint against our co-defendant, Patricia Harrison, was that she had defamed Babcock Executive Director Judy Johnson by saying she refused to report an incident in which one Babcock client assaulted another.

Dr. Johnson sued the Chronicle for publishing Mrs. Harrison's comments and for other abuse, neglect and exploitation of mentally retarded or otherwise handicapped people that the public pays Babcock more than \$10 million a year to care for.

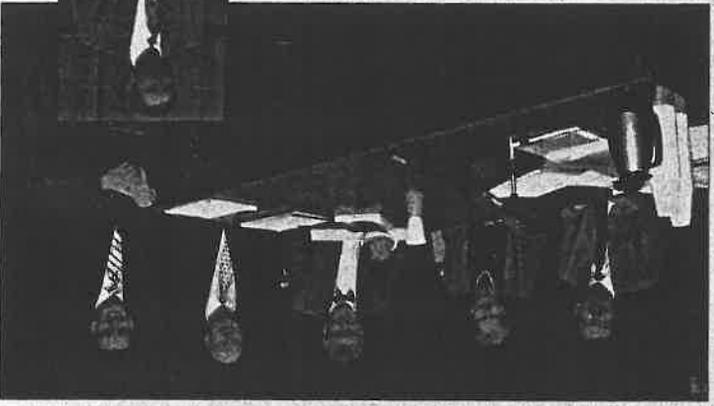
Before the jury was selected, our defense team — Jay Bender representing the Chronicle and William Tol representing Mrs. Harrison — won an important distinction in the judge's chambers — that Dr. Johnson, as Babcock's chief executive, is a public figure.

This increased her legal burden of proof. Dr. Johnson and her attorney, Lexington County Councilman John Carrigg, would need to prove that what we published was false, that we knew it was false or published it with reckless disregard of its falsity. They would need to oppose attorneys had explored the back grounds of each potential juror and rated them

Jury selection is critical in any trial. The opposing attorneys had explored the back grounds of each potential juror and rated them

opposing attorneys had explored the back grounds of each potential juror and rated them

The defense team — attorney Bill Tol and his client, former Babcock Center Board Chairwoman Patricia Harrison, Chronicle attorney Jay Bender, Chronicle Editor etc. Jerry Bellum and Bender's associate, George Reeves — await the start of the third and final day of the trial. At right, Lexington County Councilman John Carrigg, attorney for plaintiff Judy Johnson, prepares to make his case against Harrison and the Chronicle.



as ones they wanted on the jury and those they did not want. Our attorneys told me later that Carrigg had struck several they wanted on the jury but they had been able to strike most of those they felt might favor the plaintiff's case.

In opening remarks, Carrigg charged that the Chronicle defamed his client, destroyed her reputation and drove her to need therapy.

"Just because you buy ink by the barrel doesn't mean you can publish anything you want," he said. "I guess it sells newspapers."

In opening, Bender reminded the jury that the framers of the Bill of Rights ensured that the public would have access to important information about matters of public concern. He said the public and Babcock families might not have known about abuse, neglect and exploitation had the Chronicle failed to publish.

He questioned what damages Dr. Johnson had suffered and suggested the only reason she was suing was that her feelings were hurt. Tol painted a picture of Mrs. Harrison as an attorney who had devoted her life to caring for people with special needs — often without pay. After she was elected board chairman, she discovered incidents of abuse had not been reported. These included the rape of a 79-year-old resident by a 16-year-old resident. When Tol testified that Carrigg, would need to prove that what we published was false, that we knew it was false or published it with reckless disregard of its falsity. They would need to

In testimony, Dr. Johnson said examining physicians had been unable to determine rape had occurred although there was blood and faces on the elderly man's bedsheet.

Dr. Johnson said examining physicians had been unable to determine rape had occurred although there was blood and faces on the elderly man's bedsheet.

"Just because you buy ink by the barrel doesn't mean you can publish anything you want." — Attorney John Carrigg

when a letter from the state Comptdusman said it "should" have been reported. Dr. Johnson argued that reporting was not "required" Bender asked how the man could be assaulted with two employees on duty and if this would not constitute at least "neglect"?

Bender introduced the critical audit by DDSN auditor Steve Jeffcoat citing incidents of abuse, neglect and financial exploitation of vulnerable adults. Johnson's attorney, John Carrigg, said he had not seen the state audit.

During Wednesday and Thursday Carrigg made false statements about Dr. Johnson or with reckless disregard of their falsity.

Carrigg made an emotional appeal to the judge to let the jury decide the case.

Judge Cottingham praised the plaintiff as someone who had dedicated her career to helping people with disabilities but said he agreed that Dr. Johnson had failed to prove either defendant acted with malice. He ruled the plaintiff was entitled to damages.

He also praised Mrs. Harrison for her devotion to vulnerable adults and the Chronicle which did "the community a public service."

"What was going on at Babcock was a serious matter," he said. "Some may say the newspaper was overly aggressive. Others would say that it did a great public service to report these abuses."

During the trial, a new Judge, Michelle Childs of Columbia, received a primer in how to try a case by sitting at Judge Cottingham's side.

What she saw was a Judge who appreciated the value of the constitutional protection for speech and the press even though he had borne the brunt of harsh editorials in the past.

A lesser judge might have seen an opportunity to get even with newspapers but Judge Cottingham saw an opportunity to apply the vision of Thomas Jefferson and James Madison in the First Amendment.

Need help budgeting

Defense attorney Tol asked if Dr. Johnson had been stressed when a Florida newspaper published in 1988 that regulators threatened to shut down a facility where she was an executor due to sexual abuses or when the Texas Attorney General filed a lawsuit in 2003 in the sexual assault of a mentally-challenged woman at a facility where she was an executive?

Defense attorney Tol asked if Dr. Johnson had been stressed when a Florida newspaper published in 1988 that regulators threatened to shut down a facility where she was an executor due to sexual abuses or when the Texas Attorney General filed a lawsuit in 2003 in the sexual assault of a mentally-challenged woman at a facility where she was an executive?

Dr. Johnson said the Chronicle's "blatantly false" articles and editorials "devastated" her and "made me feel like a laughing stock."

Dr. Johnson said the Chronicle's "blatantly false" articles and editorials "devastated" her and "made me feel like a laughing stock."

Dr. Johnson said the Chronicle's "blatantly false" articles and editorials "devastated" her and "made me feel like a laughing stock."

Dr. Johnson said the Chronicle's "blatantly false" articles and editorials "devastated" her and "made me feel like a laughing stock."

Dr. Johnson said the Chronicle's "blatantly false" articles and editorials "devastated" her and "made me feel like a laughing stock."

OPINION

Our mission is to make the Lexington County Chronicle & The Dispatch-News essential to our community. Our goal is to publish accurate and timely news and advertising. We are passionate about Lexington County.

Chronicle
Lexington County

A **Other Dispatch-News** - since 1878
PO Box 9, Lexington, S.C. 29071-0009
Phone: 803 368-7833 • Fax: 803 368-2936
A **member of the South Carolina Press Association**
and the **National Newspaper Association**
Copyright 2008, Lexington Publishing Co. Inc.
Visit us at www.lexingtonchronicle.com

VOICES OF LEXINGTON COUNTY
Our readers write

They may be Republicans but they will listen to you

I respect Sue Gleazer's right to express her opinion but I don't believe she knows Sen. Jake Knotts or Jerry Belline very well. It is no secret that he and Sen. Knotts extol the virtues of the GOP. In some circles this stands for Creedy Old Politicians. But in all fairness, I know they are willing to hear both sides of the story and act accordingly. For the record Jerry Belline and Sen. Jake Knotts have always been straight with me because they know if I find out otherwise I will be back to confront them with facts. And they will do this for anyone.
Carl Kaney, Cayce

What can be done about our rising property taxes

An article in Clemson Impact could hold the key to Lexington County's property taxes. A Clemson economic development team reviewed costs and benefits of proposals for new residential developments in Lancaster County. They found that the county could actually lose money on the projects.
A proposal to add 13,500 new homes would have cost the county more to build the infrastructure and provide additional services than it could collect in property taxes. The deficit would have exceeded \$5 million over 10 years.
The team leader, Bill Mohar, gave the result of the analysis, the county made significant policy changes. New fees and developer requirements will pay for libraries, recreation, fire and EMS facilities. New fees will pay for fire and EMS personnel. The county is no longer looking at a deficit when the homes are built. Sounds familiar, doesn't it?
I challenge our politicians to contact Mohar and get an analysis for our county. Do something positive about taxes and our deficit.
I arranged an appointment with contact Bill

*Legal reform needed in abuse cases

Our state legislature needs to review the existing legal requirements for reporting abuse of vulnerable adults to the state Ombudsman for independent investigation. As was argued in a trial involving Babcock Center and the Lexington County Chronicle last week, such reporting "should" be "not required" if one vulnerable adult assaults another.

Why such a distinction has been made is not clear to those of us outside the state bureaucracy charged with the care of mentally retarded and other disabled persons. It is our understanding that only if an employee commits an assault is it required to be reported to the state Ombudsman's office, to local law enforcement or to the Department of Disabilities and Special Needs.
Why such reports are necessary seems apparent to us. In one significant case at the Babcock Center, a frail 78-year-old resident was

raped and brutalized by a 16-year-old resident of the same house. A medical exam failed to confirm that a rape had occurred although blood was found on the sheets and the victim reported what occurred.
A reasonable person might think the least that should have been done is for the critical incident to be reported and investigated, for the victim to be moved to another home and an employee to be assigned to make sure the 16-year-old does not victimize anyone else. This is not the first time a younger and stronger perpetrator has taken advantage of

Why aren't all assaults on vulnerable adults required to be reported?

those who cannot defend themselves. What's puzzling is that it could have taken place in a group home with two staffers on duty.
Many dedicated people work long hours at Babcock and at homes operated by other care providers. Yet reform is needed in reporting sexual abuse and other crimes against vulnerable adults to the Long Term Care Ombudsman. In the Governor's office. Unfortunately, the Ombudsman said in his letter to Babcock chief executive Judy Johnson that he didn't have the resources to investigate client on client abuse. We urge the legislature to increase the Ombudsman's budget. Does it make sense to spend more than \$40 million a year for the care of vulnerable people at Babcock and scamp on agencies providing oversight?
jerrybelline@yahoo.com



Protecting yourself

The Castle Doctrine is alive and well in South Carolina. A bill was passed into law by the state legislature last month that further guarantees our Second Amendment rights. It is known as Castle Doctrine or Protection of Persons and Property Act.
I learned from the National Rifle Association that this important bill had become law. This law, Chapter 11, Title 16, of the 1976 Code of Laws, was amended by adding Article 1 as follows: "It is the intent of the General Assembly to codify the common law 'castle doctrine' which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business."
The statute expressly adds that it is the person's "home, place of business, or vehicle" that is protected for an individual citizen to protect themselves, their families, and immediate family members with a handgun.

THE EDITOR TALKS WITH YOU

Setvants
Tom Johnson opens his business early — as early as 5 a.m. Sometimes he does not close until 9 p.m.
Some people talk about being slaves to their work. Tom's a slave to his but he would probably deny it. To Tom, the hours go with the business. It's regular office hours. Tom doesn't do that. Tom is open when his customers need him. I have no more regular doctors and dentists wanting to work regular hours and the dentist lives but Tom does exactly the opposite.
The words "customer service" and "setvants" leadership get a lot of lip service these days. Many CEOs talk about them but fall short of practicing them. Instead of serving their



Jerry Belline - jpb@cc.com - 339-2446

RECEIVED
Ref log #204

OCT 18 2007



Department of Health & Human Services
OFFICE OF THE DIRECTOR

COMMISSION
W. Robert Harrell
Chairman

John C. Vaughn, D.D.
Vice Chairman

Mary Katherine Bagnal, MSW, CMC
Secretary

Ronald Forrest

Edythe C. Dove
Audrey Ingle Horne
Otis D. Speight, MD, MBA, CPE

Stanley J. Butkus, Ph.D.

State Director

Robert W. Barfield

Deputy State Director

Administration

David A. Goodell

Associate State Director

Operations

Kathi K. Lacy, Ph.D.

Associate State Director

Policy

3440 Harden Street Ext (292203)

PO Box 4706, Columbia, South Carolina 29240

V/TTY: 803/898-9600

Toll Free: 888/DSN-INFO

Home Page: www.state.sc.us/ddsn/

October 16, 2007

Ms. Patricia Harrison
611 Holly Street
Columbia, SC 29205

Re: James Jordan

Dear Ms. Harrison,

I received your letter of October 11, 2007 concerning James Jordan. Many of the items in your letter have been previously addressed by DDSN or other parties, therefore I will focus on the specific request to re-consider disenrolling Mr. Jordan from the MR/RD waiver.

Our findings indicate that Mr. Jordan's service coordinator followed the appropriate rules when completing the Notice of Disenrollment on Mr. Jordan. The decision to disenroll is solely based on state Medicaid policy which requires the disenrollment of any recipient who has not received a waiver service for thirty (30) days. Because this decision is based on DHHS policy, DDSN must uphold it.

In your letter, you mention "outlier funding". "Outlier funding" is not an MR/RD Waiver service. Any discussions regarding funding for Residential Habilitation are held between DDSN and UCP-SC, the provider with whom we contract for those services. At this time, Mr. Jordan's chosen provider of Residential Habilitation has not provided us with recent written information regarding his current condition, recent hospitalization, the need for inpatient rehabilitation or provided us with a post-discharge plan of care for our consideration. We requested these documents from UCP-SC on October 5, 2007. We have heard that there was a meeting scheduled for October 2 to determine next steps for Mr. Jordan but we do not know if it actually happened. Anything you can do to help UCP-SC or DDSN obtain the required medical records is appreciated.

DISTRICT I

P.O. Box 239
Clinton, SC 29325-5328
Phone: (864) 938-3497

Midlands Center - Phone: 803/935-7500
Whittem Center - Phone: 864/833-2733

9995 Miles Jamison Road
Summerville, SC 29485
Phone: 843/832-5576

DISTRICT II

Coastal Center - Phone: 843/873-5750
Pee Dee Center - Phone: 843/664-2600
Saleeby Center - Phone: 843/332-4104

The last point regarding admitting Mr. Jordan to a Nursing Facility is not something DDSN has pursued, therefore, a Pre-Admission Screening and Resident Review (PASRR) has not been conducted. DHHS oversees the PASRR process and to date we have not received a referral from DHHS to conduct a PASRR on Mr. Jordan.

Mr. Jordan has the right to appeal this decision to DHHS. The appeals process is attached.

Sincerely,



Stanley J. Butkus, Ph.D.
State Director

Cc: Belvia Jackson
Governor Mark Sanford
Jane Theising, LAC
Rep. James Harrison
Diane Wilush, UCP
Heather Bard and Brad Beasley, UCP-SC
Gloria Prevost, P&A
DDSN Commission Members
Curtis Loftis
Dale Watson, State Ombudsman
Emma Forkner, DHHS ✓
HHS Office of Hearings and Appeals
Carol King, Richland/Lexington DSN Board

attachment

SCDDSN RECONSIDERATION PROCESS AND SCDHHS MEDICAID APPEALS PROCESS

The SC Department of Disabilities and Special Needs (SCDDSN) is responsible for the day-to-day operations of the Mental Retardation/Related Disabilities (MR/RD) Waiver and the Head and Spinal Cord Injury (HASCI) Waiver. A request for reconsideration of an adverse decision must be sent in writing to the State Director at SCDDSN, P. O. Box 4706, Columbia, SC 29240. The SCDDSN reconsideration process must be completed in its entirety before seeking an appeal from the South Carolina Department of Health and Human Services (SCDHHS).

A formal request for a reconsideration must be made in writing within thirty (30) calendar days of receipt of written notification of the adverse decision. The request must state the basis of the complaint, previous efforts to resolve the complaint and the relief sought. The reconsideration request must be dated and signed by the consumer, representative, or person assisting the consumer in filing the request. If necessary, staff will assist the consumer in filing a written reconsideration.

Note: In order for waiver benefits/services to continue during the reconsideration/appeal process, the consumer/representative's request for reconsideration must be submitted within ten (10) calendar days of the written notification of the adverse decision. If the adverse action is upheld, the consumer/representative may be required to repay waiver benefits received during the reconsideration/appeal process.

The State Director or his designee shall issue a written decision within ten (10) working days of receipt of the written reconsideration request and shall communicate this decision to the consumer/representative. If the State Director upholds the original adverse action/decision, the reason(s) shall be specifically identified in the written decision.

If the consumer/representative fully completes the above reconsideration process and is dissatisfied with the results, the consumer/representative has the right to request an appeal with the SCDHHS. The purpose of an administrative appeal is to prove error in fact or law. The consumer/representative must submit a written request to the following address no later than thirty (30) calendar days from the receipt of the SCDDSN written reconsideration decision.

Division of Appeals and Hearings

SC Department of Health and Human Services

PO Box 8206

Columbia, SC 29202-8206

The consumer/representative must attach copy of the written reconsideration notifications received from the SCDDSN regarding the specific matter on appeal. In the appeal request the consumer/representative must clearly state with specificity, which issue(s) the consumer/representative wishes to appeal.

Unless the request is made to the above address within thirty (30) calendar days of the receipt of the SCDDSN written reconsideration decision, the SCDDSN decision will be final and binding. An appeal request is considered filed at the above address if postmarked by the thirtieth (30th) calendar day following receipt of the SCDDSN written reconsideration decision. The consumer/representative shall be advised by the SCDHHS Division of Appeals and Hearings as to the status of the appeal request.



3440 Harden Street Ext.
PO Box 4706
Columbia, SC 29240

Ms. Emma Forkner
Executive Director
Dept. of Health and Human Services
Post Office Box 8206
Columbia, SC 29202-8206

Department of Health & Human Services
OFFICE OF THE DIRECTOR

OCT 18 2007

RECEIVED



U.S. POSTAGE
0041
H METER 605007

29202+8206



10-25

Ret Log 11/2007

PATRICIA L. HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA, SOUTH CAROLINA 29205

TELEPHONE (803) 256-2017

FAX (803) 256-2213

November 21, 2007

Dr. Stan Butkus
South Carolina Department of Disabilities and Special Needs
PO Box 4706
Columbia, South Carolina

RECEIVED

NOV 26 2007

Department of Health & Human Services
OFFICE OF THE DIRECTOR

RE: James Jordan

Dear Dr. Butkus:

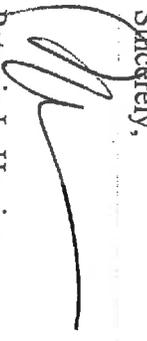
Subsequent to your last correspondence, we have been assured by DDSN and RichLex that DDSN is working on UCP's request for outlier funding for James Jordan. At the time I wrote to you, UCP had, in fact provided the requested information. Subsequently, as DDSN has requested additional information, it has been provided by UCP.

Mr. Fagin indicated to me today that he needs one more piece of information from the Baptist Hospital social worker, Gloria Beard to finalize this request. I have called Ms. Beard and asked that this information be provided to Mr. Fagin by Monday. Mr. Fagin indicated that he would have the request to Central Office for processing next week.

Assuming that the needed information is provided to Mr. Fagin by Monday, please advise as to when we can expect DDSN to issue its response to UCP. The cost to state taxpayers for Mr. Jordan remaining in the hospital greatly exceeds the cost of the additional services in the community.

If my understanding is incorrect as to the process for obtaining the funding James needs to remain at UCP is incorrect or if I can provide additional information to expedite this process, please advise. Thank you very much for your assistance.

Sincerely,


Patricia L. Harrison

cc: Emma Forkner
Heather Bard
Mary Leitner
Betty Jackson

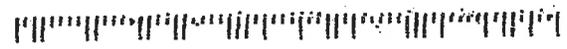
PATRICIA L. HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA, SOUTH CAROLINA 29205

RECEIVED

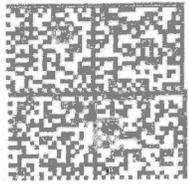
NOV 26 2007

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Ms. Emma Forkner, Director
SC Department of Health and Human Services
PO Box 8206
Columbia, SC 29202-8206



29202+8206



015H14129479
HASLER
\$0.41
11/21/07
Mailed From 29205
US POSTAGE