

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

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| TO <i>Singleton</i> | DATE <i>3-1-11</i> |
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| 2. DATE SIGNED BY DIRECTOR <i>Ref log # 38,62,88,330</i> | <input type="checkbox"/> Prepare reply for appropriate signature DATE DUE _____ |
|  | <input type="checkbox"/> FOIA DATE DUE _____ |
| | <input checked="" type="checkbox"/> Necessary Action |

| APPROVALS (Only when prepared for director's signature) | APPROVE | * DISAPPROVE (Note reason for disapproval and return to preparer.) | COMMENT |
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FEB 28 2011

Department of Health & Human Services
OFFICE OF THE DIRECTOR

February 23, 2011

Ref log # 38,52,88,330

Tony Keck
Director of South Carolina Medicaid
SC Department of Health & Human Services
P.O. Box 8206
Columbia, SC 29202-8206

Susan Lait
308 Turkey Run
Pickens, SC 2967 (864)878-4567

REF: 1) Former Medicaid Director and Governor's Staff Mislead Legislature; 2) Request for Full Financial Audit of DHHS and DDSN; 2) Request to Avoid Conflict of Interest during Audit Process

Dear Mr. Keck:

Approximately one month after leaving her position as Director of DHHS, former Medicaid Director, Emma Forkner, testified to a panel of South Carolina Senators that the former governor's staff was not honest with the legislature, and she (Ms. Forkner) was directed to mislead the legislature concerning costs to run the Medicaid program (see attached 2/16/2011 Post and Courier article). On 2/17/2011, Senator Glenn McConnell sent a letter to the Legislative Audit Council requesting a "management performance audit" (refer attached).

Two agencies, the Department of Health & Human Services (DHHS) and Department of Disabilities & Special Needs (DDSN), administer services for people with disabilities. DHHS and DDSN collaborate to administer millions of state Medicaid dollars, 3 to 1 federal matching Medicaid dollars, and Recovery Fund Dollars intended to provide medical, institutional, home and community based services for people with disabilities. Both agencies have requested to run deficits for the current budget year ending June 30, 2011. DHHS has requested to run a \$228 million dollar deficit. DDSN has requested to run a \$40 million dollar deficit. Although Senator McConnell has requested a "management performance audit", it seems appropriate in the face of what appears to be ineffective administration and dishonest representation by agency heads and senior staff to request an appropriate, independent audit trail. There is a need to track Medicaid funds through DHHS and DDSN with an audit free of conflicts of interest, completed by individuals and/or firms not previously affiliated with state agencies. In December 2008, the Legislative Audit Council (LAC) released a management performance audit of DDSN. At this time, a financial audit of DDSN was not completed. It's my understanding that there has not been a full financial audit of DDSN for ten (10) years.

Our state has both a financial responsibility and responsibility under the American with Disabilities Act (ADA) to provide “less expensive” options of living at home in the community. Prior to your appointment, DHHS and DDSN have collaborated to reduce and eliminate medical, home and community based services. Institutional settings are a more expensive option for our state. While such a shift may have the potential of generating more federal Medicaid income for “the agencies”, it violates citizens’ rights to live in the community.

As citizens, we should not be held financially hostage as a result of mismanagement, deficits, and dishonesty. Ineffective agency management should not place our state, our legislature, our governor or you in the position of choosing between balanced budgets and violating the rights of people with disabilities. State agencies have been authoritarian and controlling asking that families trust agencies to make decisions. Refer to the attached 2/18/2011 Advocacy Groups’ Letter to Department of Disabilities and Special Needs. Blind trust should not be expected or offered to any agency. Citizens and our legislative representatives must hold our state agencies accountable.

Can you assist by expressing the need for a full financial audit of DHHS and DDSN?



Susan Lait

Encl:

- 1) 2/16/2011 Post and Courier Article by Yvonne Wenger, “Former Medicaid Director Testifies that Sanford’s Staff Wasn’t Honest”.
- 2) 2/17/2011 Letter by Senator Glenn McConnell requesting management performance audit.
- 3) 2/18/2011 Advocacy Groups’ Letter to Department of Disabilities and Special Needs.
- 4) 2/21/11 Greenville News Article by Ben Szobody – Cuts in Services Bring Civil Rights Suits in States - An educational/investigative piece that explains the relationship between home & community based services, ADA, Olmstead vs. LC.

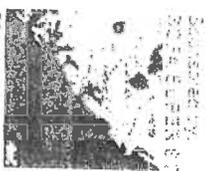
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Thursday, February 17, 2011 Good Morning!

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FORMER MEDICAID DIRECTOR TESTIFIES SANFORD'S STAFF WASN'T HONEST

By YVONNE WENGER
ywenger@postandcourier.com

Originally published 05:02 a.m. Tuesday, Feb. 15, 2011
Updated 05:02 a.m. Tuesday, Feb. 15, 2011

4 Comment(s) 0



Sanford's former Medicaid director, Emma Forkner, and Sen. Vincent Shehean, D-Camden.

to Sen. Vincent Shehean, D-Camden.

The Department of Health and Human Services is now running a \$228 million deficit. Forkner was replaced by Tony Keck, at the appointment of Gov. Nikki Haley.

Medicaid enrollment is up more than 114,000 people since December 2007 to 976,000 people, meaning one in five South Carolinians is now on Medicaid.

Shaneen, who lost to Haley in his bid to become the state's next chief executive, said Forkner testified she knew the agency was not going to be able to balance its budget the day after Sanford's votes were upped last June. Forkner told the senators that she did not speak to Sanford directly and had only dealt with his chief of staff Scott English.

COLUMBIA — Former Gov. Mark Sanford's staff allegedly instructed the state's then-Medicaid director to mislead the Legislature about the costs it would take to run the program.

Emma Forkner, the former director of the state Department of Health and Human Services, testified Wednesday to a panel of senators that Sanford's staff told her to tell lawmakers the agency needed funding to cover a 4 percent enrollment rate growth in Medicaid, when the enrollment rate was really much higher, according

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Former Medicaid director testifies that Sanford's staff wasn't honest

deal with it," Sheheen said.

When's more, Sheheen said the Medicaid agency did not formally ask to run a deficit until the day after the election, Nov. 3.

English, who is now chief of staff at the Department of Education, said neither he nor any of Sanford's staff, told Forkner to mislead the Legislature on how much money the agency needed to operate.

To draft an agency budget request to the Legislature, Sanford's staff would take the agency's budget report and build in cost savings and spending limits, English said. The staff would then give Sanford the details, and his door was open to agency officials, English said. Sanford also held a monthly Cabinet meeting.

English said he did not recall Forkner sounding alarm bells about the budget request although he noted that Forkner said in April 2010 she needed \$67 million more and Sanford's staff told her go ahead and make the request to the Senate Finance Committee.

"We gave her the green light," English said.

As for waiting until after the election to raise the issue of a deficit, English noted that Forkner had notified lawmakers in August by letter that the agency had budget problems. English said Sanford also facilitated meetings in September among various agency officials.

"If it was a secret we were doing a horrible job of keeping it," English said.

Gov. Nikki Haley said late Wednesday that she had not been briefed on Forkner's testimony, nor had she spoken to Forkner. Haley said she is working with her new

Medicaid director, Tony Keck, to get to the bottom of the budget mess at the agency. She said that she recruited lawmakers to sign off on an audit of the agency.

Senate President Pro Tem Glenn McConnell, R-Charleston, said he wants to hold more hearings to find out who is telling the truth.

"I am determined to find out who knew what and when," he said. "This deficit is intolerable and it stinks. I intend to get to the bottom of it."

Reach Yvonne Wenger at 803-926-7855, follow her at twitter.com/yvonnnewenger and read her Political Briefings blog at postandcourier.com/blogs.

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Patricia L. Harrison
11:50 PM on 2/17/2011

Look at the report Comptroller Eokstrom issued on Aug. 20, 2010. It showed that HHS allowed 1/4 of its budget, \$225 million, to lapse! If that money had been spent providing Medicaid services, it would have produced more than \$1 billion into the SC economy. Who is telling the truth?

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<http://www.youtube.com/watch?v=lymTZmgDFd8> 2/17/2011 11:50 AM 0

Oops we did it again!>

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<http://www.postandcourier.com/news/2011/feb/16/former-medicaid-director-testifies-sanfo...> 2/17/2011 11:50 AM 0

GreenvilleOnline.com

Disabled seek relief in court

Cuts in services bring civil rights suits in states

By Ben Szobody - Staff Writer - GreenvilleOnline.com
February 21, 2004 2:00 PM

The more states slash care for the disabled, the more they get sued.

That's partly because the loss of some types of care, such as an in-home attendant, can amount to a civil rights violation if it forces someone into an institution.

At least one South Carolina federal judge has already sided with three mentally disabled Upstate plaintiffs who faced a loss of care under a previous round of cuts.

The U.S. Department of Justice is aggressively suing or joining similar lawsuits across the country in what its top civil rights lawyer calls a "paradigm shift" for the agency, while a Justice official told GreenvilleOnline.com that the department is keeping an eye on states as they cut their budgets.

Lawmakers, meanwhile, are struggling to close huge gaps. The state Department of Health and Human Services is running a \$225 million deficit, and has said it would need more than \$660 million more to maintain services next year, though the agency's new director has said he's working to reduce the number.

"States are desperate and they're going to try what they can," said Elizabeth Phtaux, the senior disability legal specialist at the National Disability Rights Network.

But disability advocates say it's not just a dollars-and-cents issue under federal law, but a matter of civil rights.

And although striking those parts of the state budget may close a paper gap it won't necessarily save taxpayers money in the long run because numerous studies show that in-home care can cost as little as one-fourth the amount to care for people in institutions.

There's also the cost of a legal defense.

A federal magistrate last fall recommended a temporary injunction that would force the state to restore cuts in service to three severely disabled Upstate residents that could have sent them to institutions.

Magistrate Bruce Hendricks wrote that although she understood the economic forces that caused the state to cut care, it violated the Americans with Disabilities Act. She also noted the case's broad ramifications to the public and said that evidence presented in court shows that keeping the disabled plaintiffs out of institutions would save taxpayer money.

A district judge has yet to issue a decision in the case.

State Rep. Dan Cooper, chairman of the House Ways and Means Committee, which writes the budget, told GreenvilleOnline.com that he agrees that in-home care is often cheaper than paying for the same person to live in an institution, though it may not always be the case.

Cooper said the subcommittee studying medical funding hasn't yet nailed down any hard numbers that would forecast funding and care for the coming fiscal year, but that he wants to mostly avoid cutting services to the disabled.

Cooper said his personal budget outline shows minimal cuts to the state Department of Disabilities and Special Needs, but that nothing is official.

Last year, the agency cut services such as speech

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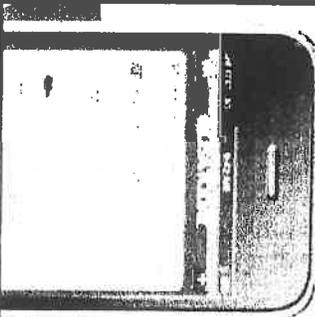
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therapy and physical therapy and capped services such as adult companion, in-home respite and nursing care.

Agency officials said they had no choice, given state budget cuts. But the reductions became the basis of the Upstate suit currently in federal court.

Cooper said lawmakers can't make decisions based on the threat of lawsuits, but that in cases where people win that can have a bearing on their decisions.

Anna Maria Darwin, an attorney with Protection & Advocacy for People With Disabilities, said the cutbacks can sometimes sound innocuous, but when you add up the effect of fewer hours with a personal care aid over a period of time, for example, there's a very real prospect that the change will force a mentally disabled person into an institution.

"The amount of those services sometimes makes a huge difference," Darwin said.

She said DHHS figures show it costs South Carolina an average of \$32 a day to serve someone in the community and \$127 a day to serve the same person in an institution.

Priaux said there's no question that lawsuits under a Supreme Court ruling known as "Olmstead" are on the rise, and that states are trying increasingly subtle ways to get around the requirement to provide care for the disabled in the most integrated setting possible.

Some states have tried tweaking their screening tool that determines how many hours of service someone is eligible to receive. Consumers are suddenly eligible for less care under the new screening tools, but it looks less like a cut and more like an administrative change, she said.

Priaux described another method in which states reduce the salaries for home and community service providers, which can effectively cut care and force people into institutions.

Missouri tried to cut its coverage for durable medical equipment to the blind, Oregon was slapped with an injunction for failing to provide a sufficient supply of trained caregivers and three separate lawsuits in California deal with attempts to cut Medicaid services by reducing reimbursement rates, Priaux said.

In South Carolina, DHHS is not allowed to change provider rates, though former Gov. Nikki Haley is pushing for it.

Last year, the agency reduced the amount of personal care attendant hours some people get under Medicaid, while saying they could replace that care with respite workers.

It was one of those shifts that sounded slight, but Darwin said the job of finding respite workers fell to consumers, and that it's harder to locate a good one because respite workers don't have as much certification and are paid less.

This year, DHHS has eliminated adult services including some durable medical equipment and insulin pumps while cutting back on services including home health visits and private rehabilitation, according to agency documents.

Four other planned cuts were proposed and then taken off the table for the current year, including hospice care, respite care, home delivered meals and the elimination of nutritional supplements, agency documents show.

With next year's budget looming, families of the disabled remain riven with worry. A rally today in Greenville will attempt to head off service cuts by confronting lawmakers with personal stories.

Priaux said, "It's a matter of life and death for folks, and they'll bring the Olmstead suits, especially with a more aggressive Department of Justice."

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A justice public affairs specialist, Xochitl Hinojosa, declined to discuss the department's strategy when it comes to state budget cuts, except to say officials are watching the cuts.

The department has filed Olmstead complaints in Arkansas and Georgia, moved to intervene in New York, filed briefs in seven other cases and six additional statements of interest, according to a 2010 department report.

Last fall, the department reached a settlement with Georgia that it said would transform its developmental disability system after alleging in a lawsuit that the state was unlawfully segregating people with mental illness and developmental disabilities in psychiatric hospitals.

Assistant Attorney General Thomas E. Perez has called Olmstead enforcement a "top priority" and a "paradigm shift" for the department, telling a U.S. Senate committee last year that instead of first asking whether an institution is safe federal officials are now asking if the people there could receive care in a more integrated setting.

Meanwhile, Darwin said the way South Carolina spends its money is weighted towards institutions, and that although DHHS has tried for years to move toward community care, the budget cuts have eroded that progress.

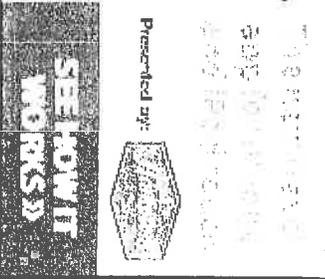
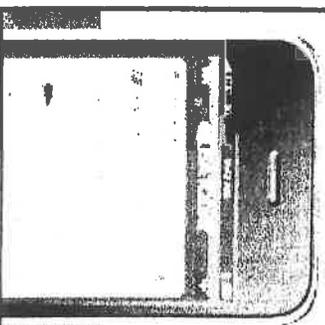
Short of a comprehensive analysis of the state system that balances the needs with the money, Darwin said the problem will get worse.

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FOR THE
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Julia B. Martinelli
102 Flicker Lane
Summerville, SC 29485

February 18, 2011

Re: South Carolina Department of Disabilities and Special Needs

To Whom It May Concern:

On behalf of the three undersigned disability advocacy groups; which consist of South Carolina families working to improve disability services in our state, I hereby convey our joint decision regarding the Advocacy Advisory Council convened by Dr. Beverly Buscemi, Director of the South Carolina Department of Disabilities and Special Needs (DDSN), which we have attended over the past six months. For the reasons outlined below, we have decided to discontinue both our attendance at and support for these meetings.

At the outset, we were informed that our participation would improve cooperation among advocates for the disability community, and enhance our effectiveness in responding constructively to the State's budget deficit. We do not believe either of these outcomes has been achieved, and see little prospect of improvement going forward.

With respect to the structure of the Council, we have found the following. A typical meeting will consist of Dr. Buscemi, six to eight of her direct reports from DDSN together with approximately six representatives of agencies which receive direct funding from DDSN; and only five representatives of fully independent disability advisory groups. The meetings are run in a "top down" manner; initially without any minutes being recorded. Even after this was pointed out, the contributions of participants are still only regularly identified if they are made by Dr. Buscemi.

The tone of the meetings has generally been authoritarian and controlling, without an open exchange of ideas. Frequently, the atmosphere has become dismissive and hostile toward those participants not directly affiliated with DDSN. In summary, this has neither been a cooperative or productive process. Our principal findings are:

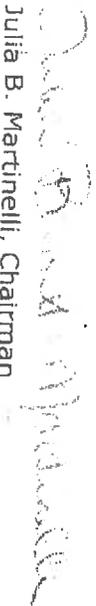
1. The composition of the Council has been stacked in order to attempt to preserve the status quo for the employees and direct financial beneficiaries of DDSN.
2. There is little consideration given to new approaches to solve existing problems, or of restructuring opportunities for DDSN that could reduce costs and improve services. The only consistently acceptable answer to the Director appears to be a single minded focus on continuing benefit cuts to the disabled client base.

3. In spite of the most severe state and national budget crisis in recent history, there is distinct lack of urgency in addressing new and innovative solutions that are certain to become necessary going forward.

4. Without a thorough examination of the disorganized and inefficient state of DDSN's operations; combined with a strict legislative oversight and performance auditing process being applied to both their budget and operations, the wasteful and inadequate performance of DDSN will continue unchecked.

In summary we have found the Advisory Council to be politically motivated, obstructionist and ineffective. Its dysfunctional performance has resulted in our growing loss of confidence in DDSN and its leadership, and has raised real concerns about the serious imbalance between the benefits accorded to its highly compensated senior employees, and the effective delivery of services to its clients.

Sincerely,



Julia B. Martinelli, Chairman
Lowcountry Voices for Special Needs

Brooke Hartig,
Chairperson,
A Place for Me

Ruth Ann Forrester
Chairperson,

Voices for the Vulnerable of South Carolina/Upstate (VWSC)



STATE OF SOUTH CAROLINA
THE SENATE
COLUMBIA

GLENN F. M. CONNELL
PRESIDENT PRO TEMPORE

February 17, 2011

P O. BOX 142
COLUMBIA, SC 29202
TELEPHONE : (803) 212-6610

Mr. Thomas J. Bardin, Director
Legislative Audit Council
1331 Elmwood Avenue, Suite 315
Columbia, South Carolina 29201

Dear Mr. Bardin:

For many months I have been looking into the question of a projected deficit at the Department of Health and Human Services. As you know, the Budget and Control Board deferred action on part of the request for a deficit of \$238 million when it recognized only \$100 million of that red ink and requested that the department come back to them with a follow-up.

I am appalled that a State agency could rack up this sort of deficit. This is overspending in its purest form and makes a mockery out of the budget process and the requirement that agencies live within the amount appropriated to them. Despite the complexities of Medicaid, I do not believe there is any excuse for this agency or any other agency to run a deficit, particularly one of this magnitude.

I am enclosing a copy of a letter addressed to me on August 11, 2010 which began this entire debate. It was at that point that I realized an executive agency was spending more at a rate than had been appropriated which would result in a year-end deficit unless course corrections were made or a deficit was recognized. In the enclosed correspondence which I have provide I warned the agency that it could not run a deficit unless it got authorization from the Budget and Control Board under applicable law. It is my further opinion that the applicable law allows the Budget and Control Board to recognize a deficit only if the deficit was unavoidable.

I am aware that Senator Bryant has sent a request with some other legislators and that Mr. Anthony Keck has also sent a request for a legislative audit. I join both of those requesting that for the reasons stated there. However, I am of the opinion that an audit .needs to focus on some other things.

Mr. Thomas J. Bardin
Page 2
February 17, 2011

In addition to the requests in the other audit requests, I am also interested in the following questions:

1. In 2009, what did the fiscal reports of the DHHS to the Medical Care Advisory Committee indicate was their rate of growth, and what would that translate into terms of a deficit as of each quarter of that year?
2. Did DHHS receive a savings on Claw back Medicare Part D cost, and what effect did these savings have on reducing any deficit created by the growth rate during that time period?
3. Did DHHS make a budget presentation to the Senate Finance Subcommittee on March 24, 2010, and what growth rate did it represent to the committee that it needed?
4. Were any statements made at that time by or to the agency that it was growing its expense at a greater rate than four percent?
5. Did further quarterly reports since October, 2009 reflect growth rates that exceeded four percent, and what did that growth rate translate? Did that difference in growth rates translate into a deficit for the fiscal year?
6. Who would and should have had the information regarding these growth rates at DHHS, the Governor's Office, the Budget Office, Budget and Control Board?;
7. Did the March 2010 financial information from DHHS show a growth rate of 12 percent, and did it also include a revised Medicaid projected growth rate of ten percent and an estimated match funding of "other estimated cash" of \$100.6 million with no funding source identified?
8. Did the "other estimated cash" of \$100.6 million include funding from sub funds and in particular sub fund 4176 nursing home sanctions?
9. Did Proviso 21.8 of the Appropriations Bill direct DHHS to use these funds consistent with the provision of Section 44-6-470 of the South Carolina Code of Laws, and did the agency use it for that or some other purpose in 2010?
10. What would have been the deficit for DHHS for fiscal year 2010 if its growth rate exceeded four percent for the fiscal year?
11. Did the agency's financial obligations as of June 2010 and through June 30, 2010 exceed its cash to pay and were liabilities for fiscal year 2010 moved over into fiscal year 2011? If so, in what amounts, and is there a floating debt in the books of DHHS? Who knew about this? Who



STATE OF SOUTH CAROLINA

THE SENATE

COLUMBIA

GLENN F. MCCONNELL
PRESIDENT PRO TEMPORE

September 29, 2010

P. O. BOX 142
COLUMBIA, SC 29202
TELEPHONE: (803) 252-6800

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

Dear Director Forkner:

Thank you for your most recent letter detailing the predicament you feel you are in. Your explanations are one thing, but the consequences of your actions are another. For those reasons, I write again in light of your correspondence to me of August 11, 2010, and my response to you on August 18, 2010, followed by your above-referenced response. I will put my thoughts to you in blunt terms.

The most important thing to realize is that you were appropriated a set amount of dollars to perform the functions and responsibilities for your agency. After hearing from you and representatives of your agency about your needs for the next fiscal year, an amount was appropriated to operate your agency for the next fiscal year. That appropriation is absolute as it relates to how much money you have available to spend. This is Columbia, South Carolina and not Washington, D.C., and if that budget does not allow you to do all you wish to do then we cannot do it. We cannot print more money or create a deficit for our children and grandchildren to deal with when times get better. The Constitution of our State requires a balanced budget process, and we are sworn to uphold the Constitution.

There is only one method that I am aware of to run a deficit in South Carolina, and that is to gain approval of the Budget and Control Board to authorize a deficit. Without that approval by the Budget and Control Board, you do not have the authority to spend any money more than you were authorized in the Appropriations Act, and you cannot run a deficit to move the problem to taxpayers down the road. Despite the clear rules of the road on this matter, I opine from your comments that you expect and have expected a deficit in the near future. If you believe that now, why have you waited to ask the Budget and Control Board for authority to run a deficit?

Frankly, I am tired of State agencies spending too much and then asking for forgiveness and permission to run a deficit they knew was coming. Creating a crisis and having those who rely on your services to bombard legislators and members of the Budget and Control Board with correspondence to justify deficit spending is no way to operate an agency. I prefer you balance your books and make the hard

choices on the front end, and I believe that is what our Constitution simply requires. Furthermore, I believe that is what the taxpayers expect of you.

I am tired of excuses. You are the Director and have a constitutional duty to be in balance until such time as the Budget and Control Board acts differently. You were appropriated a set number of dollars to spend, and you must act today as if those dollars will be gone. You do not have the constitutional authority, I believe, to go beyond that. Only the General Assembly can appropriate this revenue, and you are bound by what is set. I reject your idea that you are powerless and must spend because of federal requirements. If the federal money is not enough to cover the expense of the program, and enough and, therefore, it must stop. You cannot fix that by your agency simply continuing to spend or by sending a deficit to the taxpayers to pay the next year. Your obligation, as I see it under the Constitution, is first and foremost to the taxpayers of this State and not to bureaucrats in Washington, D.C.

I understand that making hard choices or cutting services is not easy to do. The easy thing to do is to continue to provide services to everyone and pass the pain to another day. However, we are not an administration of comfort. We are a government of laws created by a constitution that our founders said shall only spend what it can afford. It may be hard to say no, but that is what your oath of office requires. The federal government may have provided additional dollars for services, but their dollars and their requirements do not supersede the Constitution of South Carolina. We agreed to accept their money and to expand eligibility, but only in context of our balanced budget requirement so that when those dollars are gone so are the services basic and additional together. It may be a good lesson for our leaders and bureaucrats in Washington to know that when more people are added to the roles with only slightly more money that it will be those who are in dire need of governmental assistance that will be hurt. It is time that state officials stand up for balanced budgets and against deficits. It is time to stand up for constitutional government rather than administration by comfort. It is time for our federal government to initiate the fiscal responsibility of the states rather than the states imitate the reckless spending of the federal government.

In conclusion, without approval by the Budget and Control Board, you and your agency cannot run a deficit. We must adhere to the requirement for a balanced budget. Simply, let's tell Washington we can do no more than what is appropriated by elected representatives. Lastly, let's stand up for our Constitution and tell these federal bureaucrats that it is a usurpation of State sovereignty to require us to spend beyond what was appropriated and matched.

It is time for principle and the rule of law -- not excuses or blame.
Sincerely,



Glenn F. McConnell



State of South Carolina
Department of Health and Human Services

Mark Sanford
Governor

August 30, 2010

Emma Fortner
Director

The Honorable Glenn F. McConnell
President and Pro Tempore
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator McConnell:

Thank you for your response to my August 11 letter concerning the South Carolina Department of Health and Human Services' finances. I'm grateful that members of the state's legislative leadership recognize the importance of maintaining a strong Medicaid program for the needy residents of our state.

Frankly, I share your central concern regarding the precarious financial position of SCDHHS at the close of SFY10. We were forced to apply less than ideal temporary solutions in order to close out the year with a positive balance, yet long-term challenges remain. In the last two fiscal years, the agency's budget has been reduced by a total of \$228 million in state dollars. Over the past three budget cycles, reserve funds the agency had maintained as a backstop against unanticipated enrollment increases have been used both by the agency to offset these general fund reductions and reallocated by the General Assembly to other government functions. Funds transferred from the agency to other entities total more than \$500 million (see attached chart). Unfortunately, now that we are faced with steep enrollment increases as a result of the recession, we lack both the reserve funds and the necessary flexibility to significantly reduce expenditures.

Generally, there are three major areas in which Medicaid expenditure growth can be affected, positively or negatively, to any significant degree: eligibility, provider rates, and management of services. The following describes the constraints on each of these important cost levers:

Eligibility: As I noted in my previous letter, the state's Medicaid rolls have grown by more than 90,000 beneficiaries since the recession began (see attached enrollment chart). Medicaid now covers approximately 43% of all children in South Carolina, and pays for approximately 53% of all births. Between 2,500 and 5,000 beneficiaries are being added each month, and many of these new enrollees incur greater health care expenditures than

existing beneficiaries. The newly enacted federal Patient Protection and Affordable Care Act makes it virtually impossible for states to reduce Medicaid eligibility. Specifically, states cannot enact any "eligibility standards, methodologies or procedures" that make eligibility more restrictive. This restriction was previously a condition of accepting additional federal dollars through the American Recovery and Reinvestment Act.

Provider Rates: While reducing any provider payment rate must be approached with care and deference to maintaining access to necessary services, modest adjustments are frequently made by other states to help ameliorate budget shortfalls. Approximately 40 states have reduced Medicaid provider rates over the past two years as a way to curb expenditures, including our neighbors in Georgia and North Carolina. South Carolina is the only state with a legislative prohibition against rate reductions, which was enacted in October 2008. As you may recall, Proviso 89.87 states, among other things, "the Department of Health and Human Services shall not decrease provider reimbursement rates from their current levels." It is worth noting that South Carolina's Medicaid physician rates are benchmarked at 86% of Medicare rates, with some specialties receiving as much as 120% of Medicare. This is significantly higher than many other states reimburse for services.

Service Management: The majority of service expenditures paid under Medicaid are for federally mandated services, such as physician visits, hospitalization, nursing home care and non-emergency transportation. States also can provide an array of optional services, such as prescription drugs, hospice care, chiropractic services and family planning services. In SFY09, SCDHHS sought to lower certain provider rates and family planning eliminate a number of optional services in an effort to reduce expenditures. These included a program designed to curb teen pregnancy (MAPPSS), Medicaid-only hospice care and others. Several of these reductions were later restored through state legislation. The agency has been successful in implementing a number of other service reductions, including increasing prior authorizations. Many of these are detailed in the attached Growth Management document.

Although administrative costs make up less than 3% of the agency's overall budget, with personnel costs accounting for about 1%, I agree that we must be austere and seize opportunities to operate more efficiently. We have taken many steps over the past several years to live up to this standard. The agency's job vacancy rate is currently at 15%, the highest level in SCDHHS' history. We also have implemented numerous furloughs, and earlier this month executed a lay-off of our 44 employees. Additionally, we have streamlined operations and enhanced program integrity efforts. These efforts also are outlined in the Growth Management document.

The Honorable Glenn F. McConnell
August 30, 2010
Page Three

The agency is currently engaged in a dialogue with Medicaid providers and other stakeholders concerning additional ways in which we can significantly reduce expenditures. We have scheduled individual meetings with groups to explore specific options that can be shared with members of the General Assembly later this year. It is my belief that we can arrive at politically palatable solutions only by working cooperatively with our Medicaid partners and ensuring they recognize the gravity of the program's budget situation. I would invite you to visit www.scdhhs.gov/budgetproject to learn more.

Thank you again for your inquiry on these important issues. I would be happy to meet with you or your staff to further explain any aspect of the Medicaid program.

Sincerely,



Emma Forkner
Director

Attachments:

Agency Fund Transfers
Population Trends
Current Restrictions
Growth Management Efforts

SENT 8/18



STATE OF SOUTH CAROLINA

THE SENATE

COLUMBIA

GLENN F. McCONNELL
PRESIDENT PRO TEMPORE

P O BOX 142
COLUMBIA, SC 29202
TELEPHONE: (803) 256-6590

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

Dear Director Forkner:

I am in receipt of your letter dated August 11, 2010, and based upon my reading of that letter I feel compelled to respond. Your letter outlines the budget difficulties experienced and faced by the Department of Health and Human Services. You further state that your agency faces a potential budget shortfall this year. You also note that the potential budget shortfall includes liabilities from SFY 2010 that were shifted into SFY 2011.

I appreciate the hardships that your Department is facing. However, those hardships are not isolated at Health and Human Services and are being felt across state government and in the lives of the citizens that our government serves. These are difficult times, and we as state must do only what we can afford to do. Living within our means is something that each family has to do in tough times and it can be different for state agencies. If we cannot afford to do something, it cannot be done. It is a simple as that. We cannot pass the buck into the future and hope that things will get better.

I am concerned with your statement that liabilities were passed from one year to the next especially knowing how dire this year's budget situation will be. It seems to me that this type of accounting practice does nothing to remedy the underlying issues that the agency is facing and is simply a method to live beyond your means. If there was a shortfall last year, steps should have been taken then to ensure that the department's budget ended the year balanced. I would like to know under what authority the department was able to transfer liabilities in one year's budget to the next budget and why no steps were taken to address obvious shortfalls between your funding and your expenses.

I am also concerned with your statement that there is a potentiality for a budget shortfall this year. While I understand that the department may request authorization to run a deficit, I do not believe this is a good practice for any person much less a state agency. Therefore, I would ask for your plans to address any shortfalls that may occur in your department's budget this year. Specifically I would ask that you provide me with a list of programs that may need to be cut or reduced in order to remedy any potential budget shortfall.

Thank you for your update as to the department's budgetary status and I look forward to your response.
Sincerely,

A handwritten signature in cursive script, appearing to read "Glenn F. McConnell".

Glenn F. McConnell



State of South Carolina
Department of Health and Human Services

Mark Sanford
 Governor

August 11, 2010

Emma Forkner
 Director

The Honourable Glenn E. McConnell
 South Carolina Senate
 27 Bainbridge Drive
 Charleston, SC 29407

Dear Senator McConnell:

As summer comes to a close, I wanted to send you an update to a letter you received last month regarding the South Carolina Department of Health and Human Services' (SCDHHS) budget outlook.

Enrollment continues to grow, and our latest monthly eligibility numbers show a 2,500 increase during the month April, bringing the total monthly eligibility figure in April to 820,279. We anticipate the subsequent round of final eligibility figures will show a continuation of the growth trend. Overall, we have experienced a net increase of 90,504 since the recession officially began in December 2007.

One of the most significant developments is the recent extension of the enhanced Federal Medical Assistance Percentage (FMAP) rate. While we are grateful for the extension, it must be noted that the potential budget shortfall facing the agency surpasses the benefit the state may derive from the extension. According to early estimates, the program is poised to receive approximately \$127 million additional dollars in the second half of SFY 2011 based on the new FMAP funding formula applied by Congress. Taking all of these additional funds into account, SCDHHS still faces a potential budget shortfall this fiscal year. Part of that figure includes liabilities from SFY10 that were shifted into SFY11.

We have met with your finance staff and will continue to keep them informed of any developments. I also am convening a Medicaid Budget Forum this month to solicit direct input from the provider community on how to best to approach these budget challenges. The agency also plans follow-up meetings with individual provider groups to discuss specific cost-saving strategies. I hope these meetings will generate a series of mutually agreeable recommendations to reduce expenditures that can be presented to you this fall. You are welcome to attend any of these meetings if your schedule allows. The first meeting will be on August 24, 2010 beginning at 10:00 am and will be held at the South Carolina Department of Mental Health - William S. Hall Auditorium, 1800 Colonial Drive, Columbia, SC. Directions are enclosed.

Please do not hesitate to contact me about this or any other Medicaid matter.

Sincerely,

Emma Forkner
 Director

EF:jp
 Enclosure

**Don't just give money to agencies that serve people with disabilities.
Hold agencies accountable to community living options that save state dollars.
Require Full Programmatic and Fiscal Audits**

Agencies that serve people with disabilities have asked families to visit and write their legislative representatives telling you our heartbreaking stories. We are not asked to give you facts in an effort to educate you. We are not asked to share with you the experiences that make us like your own families. We are told that you are not interested in details. We are told that the details confuse you. It is presented to us that the solution is to allow the Department of Health & Human Services (DHHS), and the Department of Disabilities and Special Needs (DDSN) to run deficits; to provide state agencies more money in the state budget. Of course services begin with funding, yet I ask you to go beyond funding requiring accountability through Legislative Audit Council (LAC) full programmatic and Fiscal Audits of both DDSN and DHHS. People with disabilities and their families also want responsible state funding and a balanced budget...especially when an ineffective system contributes to a running deficit.

Instead of telling you a heartbreaking story, I want to tell you that families with disabilities are interested in commitments to less expense options of living in the community rather than in institutions. The U.S. Justice Department is putting states on notice that a state's' *"reliance on unnecessary and expensive institutional care both violates the civil rights of people with disabilities and incurs unnecessary expense"*. The Justice Department recommends that a state must expand community living instead of prioritizing spending on institutions. A primary tool is **Home and Community Based Waivers**. Waivers are a way to "waive" institutional requirements and provide less expensive services in the community. The Justice Department advises states to establish more waivers to allow people to live in the community.

I thank you for your heart felt concern in providing funding to the agencies who administer services for people with disabilities. Legislative Representatives serve the people of South Carolina because they care about all citizens of South Carolina. Myself, other citizens and families affected by disability would take great pride in standing with our legislature in requiring agencies to expand community living.



Susan Lait

308 Turkey Run

Pickens, SC 29671

(864)878-4567

asiscusa@directv.net

February 26, 2011

Enc: "Feds Put Virginia on Notice Over Disability Violations", Shaun Heasley 2-15-2011

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MAR 01 2011

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Feds Put Virginia On Notice Over Disability Violations

By Shaun Heasley | February 15, 2011

A Justice Department investigation has found that Virginia is violating the rights of residents with disabilities by keeping them in institutions and the state could face legal action if the situation doesn't change.

In a letter to Virginia officials earlier this month, Assistant Attorney General Thomas E. Perez accuses the state of violating the Americans with Disabilities Act and the Supreme Court's decision in *Olmstead v. L.C.*, which favored the option of living in the community whenever possible.

Specifically, Perez cites the state for failing to provide sufficient community living options for people with disabilities who are currently in institutions. The state is also not doing enough to remove barriers to allow residents to move into the community, he said.

Moreover, the Justice Department investigation found that Virginia is not tapping available resources to expand community living and is instead prioritizing spending on institutions, Perez said. As a result, thousands of residents who currently live in the community are at risk of institutionalization.

"Reliance on unnecessary and expensive institutional care both violates the civil rights of people with disabilities and incurs unnecessary expense," Perez wrote.

The Justice Department is advising the state to establish more Medicaid waivers to allow people with disabilities the option to live in the community. The state should also create plans to move residents out of institutions and "overcome what has become an institutional bias in its system," the letter indicates.

If changes are not made, Virginia could face legal action, Perez said.

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