

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO <i>Singleton</i>	DATE <i>8-27-10</i>
------------------------	------------------------

DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>.1011093</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>cc: Stensland, Ms. Farner</i> <i>Cleaned 9/20/10, letter attached.</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE _____ <input checked="" type="checkbox"/> FOIA DATE DUE <i>9-13-10</i> <input type="checkbox"/> Necessary Action

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

RECEIVED

AUG 27 2010

Department of Health & Human Services
OFFICE OF THE DIRECTOR

From: Deirdra Singleton
To: Emma Forkner, Rick Hepfer
Date: 8/27/2010 1:36 PM
Subject: Re: Fwd: Re: response

CC: Rod Davis, Marie Brown
Rick/Marie,

I see PH is asking for info under FOIA. Let's make sure we log so we can respond appropriately---which could be that we have no info that meets this request. But we will **see**. Thanks

-----Original Message-----

From: Emma Forkner
To: Rick Hepfer <Hepfer@scdhhs.gov>
To: Deirdra Singleton <Singled@scdhhs.gov>
Cc: Rod Davis <Davisr@scdhhs.gov>

Sent: 8/25/2010 8:19:08 AM
Subject: Fwd: Re: response

I received this email from Patricia Harrison. Rod, can you check and **see** if the auto routing of emails from Ms. Harrison to Rick and Deirdra needs to be reset? Thanks.

Emma

Emma Forkner
Director
Department of Health and Human Services
1801 Main Street
Columbia, South Carolina 29201
(803) 898-2504
(803) 255-8338 fax

>>> "Patricia L Harrison" <plh.cola@att.net> 8/25/2010 5:35 AM >>>

Dr. Buscemi and Ms. Boudouin (or Ms. Justis), please advise when I might expect a response to my July 6, 2010 inquiry. I am also requesting to review all documents, including e mails, related to the changes in the delivery of respite services. I would like to see all correspondence from the IRS and/or state tax authorities, including any documentation of negotiations on the treatment of respite services. This request includes, but is not limited to any correspondence with CMS about respite services in South Carolina since October, 2008. Please contact my office to set up a convenient date for me to come in to review these documents.

How many of the local boards are treating respite providers as employees (and providing them with benefits other employees receive) and how many are attempting to place the burden of employer liability on consumers and family members?

By copy of this e mail, I am also requesting copies of all records from CMS related to respite services provided under the MR/RD or HASCI Medicaid waivers in South Carolina.

I believe that requiring family members to sign statements that they are the "responsible" parties and to provide workman's comp insurance and liability insurance violates 42 U.S.C. 1396a(a)(17)(15), as well as 42 U.S.C. 1396a(a)(30 and the requirement that South Carolina assure the health and welfare of waiver participants. Most families are already struggling since DDSN slashed home-based services and they cannot afford to pay for insurance to cover the risks associated with respite providers, which was previously covered when DDSN was providing personal care, nursing and adult companion service hours. This requirement is further limiting the access to this service and, as you know, local DSN boards benefit

financially when families are unable to utilize respite hours.

This request is being made pursuant to FOIA. If you have any questions about this request, please give me a call at 803 256 2017.

Thanks for your prompt response.

Trisha Harrison

----- Original Message -----

From: Patricia L Harrison (mailto:plh.cola@worldnet.att.net)
To: Walter S Ochinko (mailto:OchinkoW@gao.gov); Suzanne Bossstick@cms.hhs.gov; Buscemi, Beverly (mailto:BBuscemi@ddsn.sc.gov); Emma Forkner (mailto:Forkner@scdhs.gov)
Cc: Deborah McPherson (mailto:dcmpherson@bellsouth.net); plh.cola@att.net; Scott English (mailto:senglish@gov.sc.gov); jim@jharriersonlaw.com; James Smith (mailto:jessmithjr@hotmail.com); David L. Thomas (mailto:DavidThomas@scsenate.gov); rhunt36@aol.com; Gloria Prevost (mailto:prevost@protectionandadvocacy-sc.org); Nancy Banov (mailto:nancybanov@comcast.net)
Sent: Tuesday, July 06, 2010 1:18 AM
Subject: Re: response

Dr. Buscemi and Ms. Forkner, thank you for your prompt response. I am having trouble understanding why respite workers, having been determined to be employees of the local DSN Boards, are not paid the mandatory \$9.31 that is paid to other direct caregivers. Several years ago, the South Carolina General Assembly provided increased funding so that all direct caregivers would receive a minimum hourly rate of \$9.31 per hour. This is especially important, since DDSN recently reduced the number of personal care attendant and adult companion hours, substituting respite hours for these services. Is DDSN requiring local boards to pay respite caregivers for the training they are required to receive, like they pay for other direct caregivers to receive mandatory training?

What is being done to inform respite caregivers across the state that the local boards, their employers, have not paid their share of Medicare/SSA contributions so that they will receive credits toward retirement and disability benefits? Have any local DSN Boards denied workman's comp and/or unemployment benefits to respite workers who made claims? Do the SC Worker's Compensation Commission and the Employment Security Commission (or whatever its new name is) agree that respite workers are not entitled to be treated as employees of the local DSN Boards?

Could you please provide me a copy of the study DDSN conducted to determine that changing waiver participant's personal care hours to respite hours would not affect the requirements of 42 USC 1396a(a)(30)? As you know, that section of the Medicaid Act requires HHS to:

provide methods and procedures relating to utilization of, and the payment for, care and services available under the plan ... to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area.

The purpose of this subsection is to ensure adequate access and quality of care in the context of noninstitutional Medicaid providers and it is not one of the sections of the Medicaid Act that can be waived. As such, adequate enforcement and oversight of this provision is critical to the ensuring high quality home care services. Has CMS reviewed the payment rates paid to respite caregivers and the fact that they do not receive annual and sick leave benefits and that they are excluded from the minimum \$9.31 hourly rate paid to other direct caregivers? It's hard to see how local boards can enlist enough respite providers so assure that these services are available to waiver participants to the same extent that they are available to the general population.

What about the failure to provide sick leave and annual leave to these respite caregivers? I'm having trouble understanding how an agreement between State DDSN and the IRS would eliminate the respite caregivers' rights to be treated like other employees for purposes of leave and other benefits.

Are you aware that the Babcock Center has reduced the hourly rate paid to respite workers to \$7.25 an hour? Are other agencies which are considered local DSN Boards by DDSN paying this low hourly rate to respite caregivers? It's hard to understand how DDSN/HHS can bill Medicaid \$10.50 an hour for these services, then pay the direct caregiver only \$7.25 an hour.

Has DDSN known about this since last fall? If so, why were respite workers not informed until the very end of July? How do you intend to inform the families about these changes and DDSN's expectation that THEY will have to pay worker's compensation and unemployment insurance? Are you going to require parents of adult children to assume this cost? How in the world can incompetent waiver participants be responsible for this cost? This all just seems to me to be forcing waiver participants into congregate services where they will be segregated from non-disabled persons in a more restrictive setting.

Trisha Harrison

This is the first I have heard of a company in Chelsea, Mass. being involved in this service. It's hard to understand how the money going from HHS to DDSN to the local board to a company in Mass, then to the respite caregiver is consistent with efficiency and economy of care.

The IRS rule, as I understand it, has limitations that allows exemptions only for services provided in the home. Is DDSN now prohibiting respite caregivers from providing services outside of the home of the waiver participant?

----- Original Message -----

From: Buscemi, Beverly (mailto:BBuscemi@ddsn.sc.gov)
To: Patricia L Harrison (mailto:plh.cola@worldnet.att.net)
Cc: Nancy Banov (mailto:nancybanov@comcast.net); Gloria Prevost (mailto:prevost@protectionandadvocacy-sc.org); rhuntr36@aol.com; David L. Thomas (mailto:DavidThomas@scsenate.gov); James Smith (mailto:jesmithjr@hotmail.com); jim@jharriersonlaw.com; Scott English (mailto:senglish@gov.sc.gov); plh.cola@att.net; Deborah McPherson (mailto:dcmpherson@bellsouth.net)
Sent: Friday, July 02, 2010 1:36 PM
Subject: response

Ms. Harrison,

Please find attached three documents in response to your two June 30 e-mails. The first is the IRS examination findings of the Oconee DSN Board. The second is Tom Waring's memo to providers explaining the IRS ruling and changes necessary to be in compliance. The third is information from DHHS' legal counsel regarding respite provided by CLTC.

This is a black and white issue. The IRS has told us the previous practice misapplied IRS rules. Oconee DSN Board paid the delinquent tax of \$67,407.96 from their funds. The IRS did not assess penalties and agreed not to review all other providers if DDSN's system made changes assuring compliance effective July 1, 2010. We realize this is additional work for our providers who are already stretched thin and has ramifications for people we serve and their caregivers.

We will continue to do the best we can with what we have while following the IRS rules. Additional information will be sent to you at a later date.

Dr. Beverly Buscemi
SC DDSN State Director



South Carolina Department of
Health & Human Services

Emma Forlner • Director
Mark Sanford • Governor

TO:

FROM:

SUBJECT: Cost of Processing FOIA Request #

The South Carolina Department of Health and Human Services has received and processed your FOIA request. The cost for processing this information is as follows:

Staff processing time at \$10.00 per hour	_____ Hours	\$_____
Pages copied at \$.10 per page	_____ Pages	\$_____
Pages faxed at \$.20 per page	_____ Pages	\$_____
Shipping and Handling Costs		\$_____
Other costs associated with the FOIA request:	_____	\$_____
Total Amount Due SCDHHS:		\$_____

Please remit the above amount to the following address:

Bureau of Fiscal Affairs
South Carolina Department of Health and Human Services
Post Office Box 8297
Columbia, South Carolina 29202-8297

Please contact _____ should you have any questions.

Signature _____ Date: _____

log #93 ✓

South Carolina
Department of Health and Human Services
Post Office Box 8206
Columbia, South Carolina 29202-8206

September 20, 2010

Memorandum

To: Jeff Stensland
Public Information

From: Rick Hepfer
Legal



Subject: Log 000093

I reviewed this series of e-mails, and I could not tell that a response was due from this agency. I have not seen all of the information referenced in the material, but I believe if the request seeks any information from this agency, it is not apparent from the documents attached.

Therefore, I am sending this copy back to you for clearing since I believe no action is required. If you have received a copy of the responses from the other agencies or other information related to this request, I would be happy to review them together with this request, in order to re-evaluate the entire inquiry.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

AUG 30 2010

ACTION REFERRAL

SCDHHS
Office of General Counsel

RECEIVED

TO <i>Single bus</i>	DATE <i>8-27-10</i>
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1. LOG NUMBER <i>1011093</i>	<input type="checkbox"/> I Prepare reply for the Director's signature DATE DUE _____		
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Emma Forkner
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To: Walter S Ochinko (mailto:OchinkoW@gao.gov) ; Suzanne.Bosstick@cms.hhs.gov ; Buscemi, Beverly (mailto:BBuscemi@ddsn.sc.gov) ; Emma Forkner (mailto:Forkner@scdhs.gov)
Cc: Deborah McPherson (mailto:dcmcpherson@bellsouth.net) ; plh.cola@att.net ; Scott English (mailto:senglish@gov.sc.gov) ; jim@jharriersonlaw.com ; James Smith (mailto:jessmithjr@hotmail.com) ; David L. Thomas (mailto:DavidThomas@scsenate.gov) ; rhunt36@aol.com ; Gloria Prevost (mailto:prevost@protectionandadvocacy-sc.org) ; Nancy Banov (mailto:nancybanov@comcast.net)
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Dr. Beverly Buscemi
SC DDSN State Director



TO:

FROM:

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Please remit the above amount to the following address:

Bureau of Fiscal Affairs
South Carolina Department of Health and Human Services
Post Office Box 8297
Columbia, South Carolina 29202-8297

Please contact _____ should you have any questions.

Signature _____

Date: _____