

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO <i>Myers</i>	DATE <i>10-9-09</i>
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DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>100168</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>cc: Ms. For knew Deps Extend until 11/6/09 per Felicity on 10/20/09</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>10-20-09</i> <input type="checkbox"/> FOIA DATE DUE _____ <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.			

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



October 6, 2009

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

RECEIVED
OCT 09 2009

Department of Health & Human Services
OFFICE OF THE DIRECTOR

RE: Informal Request for Additional Information

Dear Ms. Forkner:

This is in response to your request to renew South Carolina's Home and Community Based Waiver for Persons with Mental Retardation and Related Disabilities. This request has been assigned control number SC 0237.R04. This number should be used in all correspondence pertaining to the renewal. We are requesting that you respond to this **informal** request for additional information. Please provide clarification necessary to respond to the following concerns:

Application for a 1915(c) HCBS Waiver

Major Changes: Describe how the State plans to implement the new limitations and transition participants affected by the deleted services. This renewal includes limitations that were not included in the approved waiver application; therefore, the State should include a transition plan to address the following concerns:

- A.) The basis of the limit, including its basis in historical expenditure/utilization patterns and, as applicable, the processes and methodologies that are used to determine the amount of the limit to which a participant's services are subject.
- B.) How the limit will be adjusted over the course of the waiver period. Describe whether the limit will be adjusted to take into account cost increases and/or whether the methodology will be periodically re-evaluated in light of changes in utilization patterns or other factors.
- C.) Provisions for adjusting or making exceptions to the limit based on participant health and welfare needs or other factors specified by the state.
- D.) The safeguards that are in effect when the amount of the limit is insufficient to meet a participant's needs. Such safeguards may include referring the participant for enrollment in another waiver program where more resources may be available.
- E.) How participants are notified about the service limits.

Transition Plan:

- A.) When persons served in the currently approved waiver will not be eligible to participate in the new or renewed waiver due to the proposed service limitations, please describe the steps that the state will take to facilitate the transition of affected individuals to alternate services and supports that will enable the individual to remain in the community.

B.) Please detail the time table for transitioning individuals to the new waiver (i.e., will participants in the existing waiver transition to the new waiver all at the same time or will the transition be phased in?).

C.) Please detail how the participant is informed of the opportunity to request a Fair Hearing.

Appendices:

1. **Appendix B-7-a, Procedures:** The State indicates that they provide individuals with a Freedom of Choice form prior to enrollment into the waiver program. Please clarify the content of the Freedom of Choice form and procedures:
 - A.) Does the Freedom of Choice form include language about the services that are available under the waiver?
 - B.) Does the Freedom of Choice form offer the individual the choice between institutional services and home and community-based waiver services?
 - C.) Please identify the entity or individual responsible for providing information about feasible alternatives and informing the individual, or their legal representative, about their freedom of choice between institutional services and home and community-based waiver services.
2. **Appendix C-1-b, Alternate Provision of Case Management (CM) Services to Waiver Participants:** Please explain how Case Management (CM) is furnished to waiver participants. Will the Service Coordinator (SC) or the Early Interventionist (EI) serve as the Case Manager? If not, please explain the role of the SC & EI and the differences between the two positions.
3. **Appendix C-1-c, Delivery of Case Management Services:** Please specify the entity or entities that conduct Case Management functions on behalf of waiver participants.
4. **Appendix C-2-b: Abuse Registry Screening**
Please specify:
 - A.) The type of staff for whom abuse registry screenings must be conducted.
 - B.) The entity or entities responsible for conducting the screening against the registry.
 - C.) The State process for ensuring that mandatory screenings have been conducted.
5. **Appendix C-2-c-ii, Larger Facilities:**
When the residential facilities described in Item C-2-c-i serve four or more individuals unrelated to the proprietor, please describe how a home-like character is maintained in the larger settings, i.e. the facility is community-based, provides an environment that is like a home, provides full access to typical facilities in a home such as a kitchen with cooking facilities, small dining areas, provides for privacy and easy access to visitors at times convenient to the individual, resources and activities in the community
6. **Appendix C-4, Additional Limits on Amount of Waiver Services:**
Please specify the processes that are used to determine the amount of the limit to which a participant's services are subjected.
 - A.) Does the waiver contain provisions for adjusting or making exceptions to the limit based on participant health and welfare needs or other factors specified by the State?

- B.) Does the waiver specify safeguards that are in effect when the amount of the limit is insufficient to meet a participant's needs?
- C.) Does the waiver provide for notifying participants of the amount of the limit to which their waiver services are subject?

7. **Appendix D-1-b: Service Plan Development Safeguards**

When an entity that is permitted to provide other waiver services is responsible for service plan development, described the safeguards assure that the service providers' influence on the planning process (exercising free choice of providers, controlling the content of the plan, including assessment of risk, services, frequency and duration, and informing the participant of their rights) is fully disclosed to the participant and procedures are in place to mitigate that influence.

8. **Appendix D-1-d: Service Plan Development Process**

Please describe how the Service Plan process addresses participants' health care needs.

9. **Appendix D-1-e: Risk Assessment and Mitigation**

Please indicate how risks are assessed.

10. **Appendix D-1-g: Process for Making Service Plan Subject to the Approval of the Medicaid Agency**

- A.) The State indicates that "...service plan documents and the description of the planning processes are approved by SCDHHS prior to implementation...". Please describe the State's process to review the individual's plans which indicates that the Medicaid agency exercises oversight of service plans on a routine and periodic basis.
- B.) When an in-depth review of a sample of service plans is conducted (indicated by the State as "a random sample"), please specify the basis for the sample size, the frequency of these retroactive reviews, review methodology, and persons/entities who conduct the review.

11. **Appendix D-2-a, Service Plan Implementation & Monitoring:**

Please specify how monitoring methods address:

- A.) Services furnished in accordance with the service plan.
- B.) Participant access to waiver services identified in service plan.
- C.) Participants exercise free choice of provider.
- D.) Services meet participants' needs.
- E.) Effectiveness of back-up plans.
- F.) Participant health and welfare.
- G.) Participant access to non-waiver services in service plan, including health services.
- H.) Methods for prompt follow-up and remediation of identified problems.
- I.) How methods for systematic collection of information about monitoring results are compiled, including how problems identified during monitoring, are reported to the state.

12. **Appendix E-1-d, Election of Participant Direction:** In the application, the State's criteria for offering participants the opportunity to direct some or all of their waiver services states, "The participant or RP must have no communication or cognitive deficits that would interfere with participant or RP direction." Please note that excluding individuals solely on the basis

that they have specific cognitive or other disabilities is prohibited. In addition, excluding individuals solely on the basis of an assessment that the individual, in isolation, is unable to carry out some of the responsibilities associated with participant direction is also prohibited.

13. **Appendix E-1-i, Provision of Financial Management Services:**

Employer Authority - Has the State furnished the minimum required supports for participant assistance in verifying support worker citizenship status?

Administrative Claiming - Please explain the following:

- A.) The method used for compensating FMS entities;
- B.) The percentage of FMS cost relative to service costs estimated;
- C.) The scope of the supports the FMS entities provide;
- D.) The method and frequency of assessing the performance of the FMS entities;
- E.) Who are the entities responsible for assessing performance?

14. **Appendix E-1-m, Involuntary Termination of Participant Direction:**

Please explain the safeguards that ensure continuity of services and assure participant health and welfare during the transition period.

15. **Appendix F-1, Opportunity to Request Fair Hearing:** Please explain how individuals are informed about the Fair Hearing process during entrance to the waiver, including how, when and by whom this information is provided to individuals to ensure that the participant is knowledgeable about their right to a Fair Hearing. Please identify where the notices of adverse actions and opportunity to request a Fair Hearing are kept.

16. **Appendix F-3-c, State Grievance/Complaint System:**

Is the participant informed by SCDDSN staff that filing a grievance or making a complaint is not a pre-requisite or substitute for a Fair Hearing?

17. **Appendix G-1-c, Participant Training & Education:** Please identify the entities responsible for providing training and/or information to the waiver participant. Please identify the frequency of providing training and/or information to the waiver participant.

18. **Appendix G-1-d, Responsibility for Review of & Response to Critical Events & Incidents:** Please explain the process and timeframes for informing the participant, including the participant (or participant's family, legal representatives, or other relevant parties), of the investigation results.

19. **Appendix G-1-e, Responsibility for Oversight of Critical Incidents & Events:** Please explain the frequency of oversight activities.

20. **Appendix G-2-a-i, Safeguards Concerning the Use of Restraints or Seclusion:**

- A.) What methods are used to detect the unauthorized use of restraints?
- B.) Please explain the State's general practice to ensure the health and safety of individuals subjected to restrictive procedures and/or adverse consequences.
- C.) Please explain the required education and training that personnel who are involved in the administration of restrictive procedures and adverse consequences must meet.

21. Appendix G-2-a-ii, Oversight Responsibility:

- A.) Please explain how SCDDSN communicates information and findings to SCDHHS.
- B.) What are the methods used to detect unauthorized use, over use or inappropriate/ineffective use of restrictive procedures and/or adverse consequences?

Please respond to this request no later than November 6, 2009 so that a second review can be completed timely. If you need assistance, please do not hesitate to contact me at (404) 562-7159.

Sincerely,



Kimberly Adkins-McCoy
Health Insurance Specialist
Medicaid & SCHIP Policy Branch

log # 166 + 168 ✓

From: Felicity Myers
To: Brenda James; Richard Kluender; Sam Waldrep
Date: 10/20/2009 12:09 PM
Subject: Re: Fwd: Log letter extensions

OK as long as this allows us to still meet CMS timeline

>>> Brenda James 10/20/2009 9:42 AM >>>
I will put these extensions in the system after Felicity's OK. Thanks, bj

>>> Richard Kluender 10/20/2009 8:50 AM >>>
Brenda please see below regarding extensions on log letters.

Thanks

Rich

>>> Margie Hickerson 10/20/2009 8:49 AM >>>
Richard

George has asked to get extensions on the following log letters, due to staff being out of the office.

J00166 - HASCII Waiver RAI to CMS - currently due 10/19/09, asking for 10/23/09

J00168 - MR/RD Waiveer RAI to CMS - currently due 10/20/09, asking for 11/06/09

Please let me know if you need further information.

Thanks
Margie Hickerson
8-2577

Brenda James - Re: Fwd: Log letter extensions

Log # 168

From: Sam waldrepp
To: Brenda James; Felicity Myers; Richard Kluender
Date: 10/20/2009 1:55 PM
Subject: Re: Fwd: Log letter extensions

The HASCI renewal (#166) was shared with CMS last week when we were in Atlanta. Kenni tentatively approved our response and agreed to extend the request date from the 19th to 23rd. George is in Orangeburg the rest of the week with the CO & RO PACE review team. Anita is awaiting a response from DDSN and wants to hopefully finalize the response today for George to review this afternoon. So, we hope to get it upstairs by late today or tomorrow.

The MR renewal (#168) RAI came in last on 10/6. It is more lengthy and complicated than HASCI or PDD. We are expecting DDSN's first draft response by today. Our goal is send to CMS on 10/28, well ahead of the CMS deadline of 11/6. The waiver expires 12/29 (and we are have asked for a 2-day extension to make it be a clean 12/31).

>>> Felicity Myers 10/20/2009 12:09 PM >>>
OK as long as this allows us to still meet CMS timeline

>>> Brenda James 10/20/2009 9:42 AM >>>
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Brenda please see below regarding extensions on log letters.

Thanks

Rich

>>> Margie Hickerson 10/20/2009 8:49 AM >>>
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J00168 - MR/RD Waiveer RAI to CMS - currently due 10/20/09, asking for 11/06/09

Please let me know if you need further information.

Thanks
Margie Hickerson
8-2577



From: Felicity Myers
To: Brenda James, Richard Kluender
Date: 10/13/2009 12:11 PM
Subject: Re: Fwd: log 168 MR renewal RAI

Change date to oct 30

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

From: Brenda James
To: Richard Kluender <KLUENDRR@scdhs.gov>
Cc: Felicity Myers <MYERSFC@scdhs.gov>

Sent: 10/13/2009 11:44:28 AM

Subject: Re: Fwd: log 168 MR renewal RAI

Richard, I will forward to Felicity, if OK with her....I will change due date 10/30/09. Thanks, bj

>>> Richard Kluender 10/13/2009 11:16 AM >>>
Brenda please see below regarding log#168.

>>> KARA LEWIS 10/13/2009 11:09 AM >>>

Richard-

Can you get the date changed on the response for this one? I'm working with DDSN and there are multiple people involved. Our goal to submit back to CMS was Oct 30 (a week before the due date). Would that be OK? Thanks!