

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO <i>Robert/Liggett/FOIA</i>	DATE <i>5/15/13</i>
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DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>000353</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>cc: Cox, Mary</i> <i>Cleared 5/31/13, letter attached</i>	<input type="checkbox"/> Prepare reply for appropriate signature DATE DUE _____ <input checked="" type="checkbox"/> FOIA DATE DUE <i>5/30/13</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.			



PROTECTION & ADVOCACY
FOR PEOPLE WITH DISABILITIES, INC.

The Protection & Advocacy System for South Carolina

RECEIVED

MAY 15 2013

SCDHHS
Office of General Counsel

May 13, 2013

VIA EMAIL (reibold@scdhhs.gov) and US Mail

Shealy B. Reibold, Esquire
Assistant General Counsel
S.C. Department of Health and Human Services
1801 Main Street
P.O. Box 8206
Columbia, SC 29202-8206

RECEIVED

MAY 15 2013

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Re: Freedom of Information Act Request

Dear Shealy:

Pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 et seq., I hereby request the following documents, policies, and information. (If the documents have been created or changed since June 1, 2012, please provide the documents and policies in effect on June 1, 2012; January 1, 2013; and May 1, 2013. Include draft dates and revision dates).

1. Respondent's regulations, rules, policies, formal and informal procedures, forms, and instructions relating to the following:
 - a. The provision of Private Duty Nursing (PDN) services for Medicaid recipients who are children or under age 21. Include the reimbursement rates for the service and levels of service.
 - b. Who has authority to access the need for PDN.
 - c. The provision of out of home placement for respirator dependent Medicaid recipients who are children or under age 21: Identify the level of care for each type of out of home placement which will accept a respirator dependent Medicaid recipient under age 21. Provide the Medicaid reimbursement rate for each type of out of home placement, and the names and location of placements taking such clients.
 - d. The provision of non-hourly or institutional respite services for respirator dependent Medicaid recipients who are children or under age 21. Identify the level of care (i.e. nursing facility), the Medicaid reimbursement rate for each type of respite placement, and the names and location of respite providers taking such clients.
 - e. Third party liability with regard to Medicaid recipients who are privately insured.

CENTRAL OFFICE
SUITE 208
3710 LANDMARK DRIVE
COLUMBIA, SC 29204
(803) 782-0639
(Voice and TTY)
FAX (803) 790-1946

PIEDMONT OFFICE
SUITE 106
545 N. Pleasantburg Drive
GREENVILLE, SC 29607
(864) 235-0273
1-800-758-5212
(Voice and TTY)
FAX (864) 233-7962

INFORMATION AND REFERRAL
Toll Free:
1-866-275-7273
(Voice)
1-866-232-4525
(TTY)
Email:
info@pandasc.org

PEE DEE OFFICE
1801 D WEST EVANS STREET
SUITE 101
FLORENCE, SC 29501
1-843-656-0019
(Voice and TTY)
FAX (843) 662-0786

LOW COUNTRY OFFICE
1569 SAM RITTENBERG BLVD.
CHARLESTON, SC 29407
(843) 763-8571
1-800-743-2553
(Voice and TTY)
FAX (843) 571-0880

- f. The authority of agency personnel to alter agency program determinations during the pendency of an appeal to the Division of Appeals and Hearings of the initial or original program determination.
 - g. The authority of hearing officers to make any determination other than affirming or denying the agency program determination.
 - h. Who has the burden of proof in a South Carolina Medicaid fair hearing.
- 2. Relevant to the calendar years 2012 and 2013, the contract(s) or agreement(s) by which DHHS contracts with DDSN to operate the ID/RD waiver and assess the need for State Plan services, like PDN.
- 3. The CMS 372 Reports submitted by Respondents with regard to the ID/RD Waiver for the most recent year available (if this report is prepared based upon a fiscal rather than a calendar year, then provide reports for the same fiscal years as requested).

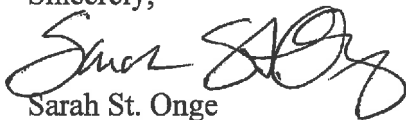
Please provide this information within fifteen business days of receipt of this letter, as required by § 30-4-30. Please consider each of the above requests for information separate and severable. Therefore, if SCDHHS considers itself not under an obligation to provide any of this information within 15 days for any reason, then please provide the remaining information and documents requested without delay. If any information is not provided, include an explanation of what information or documents are not provided and why SCDHHS is unable or unobligated to provide that information.

P&A is the state and federally mandated rights protection organization for individuals with disabilities in South Carolina. We request that any fees be waived. If it is not possible to waive the fees, please either provide an opportunity for me to inspect the documents or provide them in electronic form, like on a CD. Also, you may email me the information requested in this letter, if that is possible.

Please contact me at stonge@pandasc.org or 803-217-6706, if you have any questions about this request.

Thank you for your assistance in this matter.

Sincerely,



Sarah St. Onge
Attorney/Central Office

3. Whenever reference is made to a person, it includes any and all of such person's principals, employees, agents, attorneys, consultants and other representatives.

4. When production of any document in Respondent's possession is requested, such request includes documents subject to the Respondent's possession, custody or control. In the event that Respondent is able to provide only part of the document(s) called for in any particular Request for Production, provide all document(s) that Respondent is able to provide and state the reason, if any, for the inability to provide the remainder.

5. If any document is withheld from production under a claim of privilege or other exemption from discovery, state the title and nature of the document in a list signed by the attorney of record.

6. These discovery requests are not intended to be duplicative. All requests should be responded to fully and to the extent not covered by other requests. If there are documents that are responsive to more than one request, please note and produce each such document first in response to the request that is more specifically directed to the subject matter of the particular document.

7. Any word written in the singular herein shall be construed as plural or vice versa when necessary to facilitate the response to any request.

8. Any and all descriptions or examples of documents provided hereinafter are illustrative only and do not limit the request to those particular documents or types of documents, as if it were explicitly noted that such request was "not limited to" the stated examples.

9. In producing the documents identified herein, the following definitions and instructions shall apply:

- a. "Document" means all materials within the full scope of Rule 34, SCRCF and includes, without limiting the generality of its meaning, all original (or copies where originals are unavailable) and non-identical copies (where different from original) of all written, printed, typewritten or otherwise recorded or graphic matter, however produced or reproduced, whether or not now in existence, of the following: files, contracts, correspondence, e-mails (whether printed or not), policies, procedures, assessments, tools, regulations, directives, standards, manuals, training modules, analysis, spreadsheets, plans, evaluations, guidance, telegrams, agreements, letters, administrative complaints, notes or sound recordings of any type of conversation, meeting or conference, minutes of directors' or committee meetings, memoranda, inter-office communications, manuals, employee handbooks, forms, catalogues, brochures, graphs, charts, studies, analysis, reports, summaries and results of investigations and tests, statements, jottings, announcements, depositions, affidavits, photographs, tape recordings, video recordings, motion pictures, reviews, statistical records, ledgers, books of account, vouchers, bank checks, bank statements, audit reports and other statements, purchase orders, invoices, receipts, confirmations, computer-developed, stored or produced data, notebooks, desk and/or other calendars, appointment books, newspaper and/or other articles, blueprints, accounting work sheets, diaries or papers similar to any of the foregoing, however entitled, denominated or described.
- b. "Relate(s) to," "related to," or "relating to" means to refer to, reflect, concern, pertain to, regarding, or in any manner be connected with the matter discussed.

- c. "PDN" or "Private Duty Nursing services" refer to those services funded through the Medicaid State Plan for children or individuals under age 21, regardless of whether they are on a Medicaid waiver, and provided pursuant to 42 U.S.C. § 1396d (a)(8) and other relevant Medicaid provisions.
- d. "Respondent" or "DHHS" means the South Carolina Department of Health and Human Services and anyone under its control including of its agents, employees, subcontractors, and those with whom it contracts for the operation of the ID/RD waiver or the provision of services through the ID/RD waiver.
- e. "BJ" means the Petitioner.
- f. "ID/RD Waiver" means the "intellectual disability and related disabilities waiver" also known as the "mental retardation and related disabilities waiver" or the MR/RD waiver, with the waiver number of SC.0237.R04.00, originally approved on October 1, 1991.
- g. "Respite services" refers to out of home respite provided through the ID/RD waiver or through Medicaid and includes institutional respite.
- h. "ICF/ID" means an "intermediate care facility for intellectually disabled," also known as ICF/MR or "intermediate care facility for the mentally retarded."
- i. "Year" means the calendar year unless noted otherwise in the request.
- j. "DDSN" means the South Carolina Department of Disabilities and Special Needs as well as its network of local county boards and providers.

REQUESTS FOR PRODUCTION

Petitioner requests that Respondent please produce the following documents, which are specific to Petitioner:

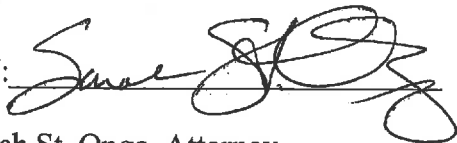
1. Detailed Claims Report for BJ from June 1, 2012 to May 1, 2013.
2. Any and all documents used by Respondent to assess Petitioner's need for PDN services since January 1, 2011, and which are not listed in Dr. Burton's February 2013 affidavit.

The following requests (numbers 3 through 5) are limited to documents available for public inspection pursuant to S.C. Code § 1-23-140. If the documents have been created or changed since June 1, 2012, please provide the documents and policies in effect on June 1, 2012; January 1, 2013; and May 1, 2013. Include draft dates and revision dates:

3. Respondent's regulations, rules, policies, formal and informal procedures, forms, and instructions relating to the following:
 - a. The provision of Private Duty Nursing services. Include the reimbursement rates for the service and levels of service.
 - b. Who has authority to access the need for PDN.
 - c. The provision of out of home placement for respirator dependent Medicaid recipients who are children or under age 21. Identify the level of care for each type of out of home placement which will accept a respirator dependent Medicaid recipient under age 21. Include the Medicaid reimbursement rate for each type of out of home placement, and the names and location of placements taking such clients.
 - d. The provision of respite services for respirator dependent Medicaid recipients who are children or under age 21. Identify the level of care (ie. Nursing facility), the Medicaid reimbursement rate for each type of respite placement, and the names and location of respite providers taking such clients.
 - e. Third party liability with regard to Medicaid recipients who are privately insured.

- f. The authority of agency personnel to alter agency program determinations during the pendency of an appeal to the Division of Appeals and Hearings of the initial or original program determination.
 - g. The authority of hearing officers to make any determination other than affirming or denying the agency program determination.
 - h. Who has the burden of proof in a South Carolina Medicaid fair hearing.
- 4. Relevant to the years 2012 and 2013, the contract or agreement by which DHHS contracts with DDSN to operate the ID/RD waiver and assess the need for State Plan services, like PDN.
 - 5. The CMS 372 Reports submitted by Respondents with regard to the ID/RD Waiver for the most recent year available (if this report is prepared based upon a fiscal rather than a calendar year, then provide reports for the same fiscal years as requested).

Respectfully submitted, this the 14th day of May, 2013.

BY: 

Sarah St. Onge, Attorney
Protection and Advocacy for People with Disabilities, Inc.
3710 Landmark Drive, Suite 208
Columbia, South Carolina 29204
stonge@pandasc.org
(803) 217-6706

Attorneys for the Petitioner



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 # 000353

Anthony E. Keck, Director
Nikki R. Haley, Governor

May 31, 2013

Sarah St. Onge, Esquire
Protection and Advocacy for People with Disabilities, Inc.
3710 Landmark Drive Suite 208
Columbia, South Carolina 29204

Alexander G. Shissias, Esquire
The Shissias Law Firm, LLC
1422 Laurel Street
Columbia, S.C. 29201

Re: 12-MISC-148

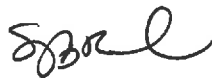
Dear Ms. St. Onge and Mr. Shissias:

The South Carolina Department of Health and Human Services (DHHS) is in receipt of your FOIA request sent via email on May 14, 2013, and received via U.S. mail on May 15, 2013.

Per our discussion last week and based upon guidance in case law and otherwise, DHHS continues to consider a FOIA request filed in conjunction with a pending case and during the course of litigation as improper. I have enclosed our previous correspondence which further explains DHHS' position. However, DHHS is also in receipt of your Request for Production under Rule 34, SCRCP, which is substantially similar to and was received in the same timeframe as the FOIA request. DHHS is in the process of preparing its response to the Request for Production, which is due June 13, 2013.

If you have any questions, please do not hesitate to contact me. My direct line is (803) 898-2792.

Sincerely,



Shealy B. Reibold
Assistant General Counsel

SBR/lb

Enclosures