



State of South Carolina  
Department of Health and Human Services

Mark Sanford  
Governor

November 4, 2009

Emma Forkner  
Director

Log # 0186  
Year-2009 ✓

L. A. "Smokey" Brown, Jr., Esquire  
Law Office of Smokey Brown, PC  
Post Office Box 1545  
Irmoo, South Carolina 29063

Re: Cassie Weeks, SSN# 247-82-7305

Dear Mr. Brown:

Thank you for your letter dated October 21, 2009.

Enclosed please find a copy of a letter that was mailed on September 10, 2009 regarding your August 18, 2009 letter. I apologize if the original letter did not reach you.

If you have any further questions regarding this matter, please contact Bruce Carter in our office of General Counsel. He may be reached at (803) 898-2793.

Sincerely,

Emma Forkner  
Director

EF/cjbw

Enclosure

cc: The Honorable James E. Clyburn  
The Honorable John C. Land, III

Log # 186  
Missing  
"MIA"



*State of South Carolina*  
*Department of Health and Human Services*

Mark Sanford  
Governor

Emma Forkner  
Director

September 10, 2009

L.A. "Smokey" Brown, Jr., Esquire  
Law Office of Smokey Brown, PC  
P. O. Box 1545  
Irmo, South Carolina 29063

RE: Your Letter of August 18, 2009 re: Cassie Weeks

Dear Mr. Brown:

Your letter of August 18, 2009, addressed to our Estate Recovery unit was forwarded to me for a response related to the DHHS Form 1296ER and the privacy issues related to information regarding Cassie Weeks.

Under both the Medicaid confidentiality regulations at 42 CFR 431.300 et seq, and the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, 45 CFR Part 164, the South Carolina Department of Health and Human Services a(SCDHHS) can only provide information related to Cassie Weeks or any other possible Medicaid recipient if we have an authorization from the recipient or it has been demonstrated that the requester has the authority to act on behalf of the possible recipient. This requires either an executed power of attorney or appointment as the conservator or guardian of the person in question. Absent such authorization we cannot provide any information to the requester.

I can tell you that our estate recovery process follows the requirements of both state and federal law related to estate recoveries. The state law can be found at Section 43-7-460 of the South Carolina Code and the federal law is found at 42 USC 1396p. Neither law requires that the state or the agency obtain any documents from Medicaid recipients. SCDHHS created the 1296ER form to serve as an acknowledgement that recipients were provided information on the estate recovery program. It is not and was not intended to be anything more than documentation for SCDHHS that the recipient was advised about the estate

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recovery program. It has no legal impact and does not create or abrogate any legal right for either SCDHHS or the recipient. It only documents for SCDHHS that our procedure related to providing information regarding estate recovery was followed.

If you have any questions or I can be of any assistance, please contact me directly at (803) 898-2793 or by e-mail at [carterbd@scdhhs.gov](mailto:carterbd@scdhhs.gov).

Sincerely,



Bruce D. Carter  
Assistant General Counsel

Office of General Counsel  
P. O. Box 8206 Columbia South Carolina 29202-8206  
(803) 898-2795 Fax (803) 255-8210