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DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO Singleton	DATE 8-16-11
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DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER 100086	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR C: Director Leck Waldrep <i>Close per e-mail from Byron Roberts, No further action necessary. 8/23/11</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE 8-25-11 <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.			

From: "Peters, Hal" <HalPeters@gov.sc.gov>
To: "constituent_services@scdhhs.gov" <constituent_services@scdhhs.gov>
Date: 8/16/2011 8:49 AM
Subject: Correspondence
Attachments: Munn.PDF; McClain.PDF; Lait.PDF; French.PDF; Fisher.PDF

Jenny,

These are the correspondences that we are referring to you. I apologize for the delay and thank you for your help!

Sincerely,

Hal Peters
Policy Analyst| Office of Governor Nikki Haley
O: 803.734.4062 | halpeters@gov.sc.gov<mailto:halpeters@gov.sc.gov>

RECEIVED

AUG 16 2011

Department of Health & Human Services
OFFICE OF THE DIRECTOR

* No Response to Gov off
necessary - Jenny Lynch
notified Hal of
ongoing "Lai" case -
Thx - Jan

Date: July 1, 2011

To: Governor Nikki Haley

From: Susan Lait
308 Turkey Run
Pickens, SC 29671
(864)878-4567

**REF: 1) Public Input/Notice as checks and balances for citizens and the Legislature;
2) SCDHHS and SCDDSN at odds over controlling Medicaid dollars intended for People
with Disabilities**

Quite by accident, I became aware that on two occasions SCDHHS submitted amendments to the Medicaid MR/RD Waiver Program without public input or approval from the DDSN Commission. As a result on 5/5/2011 the Center for Medicaid Services (CMS) announced a new waiver document retroactive to 3/1/2011. Attached is page 7 from the 3/1/2011 waiver document. There is a public input section which is used to tell CMS how the state secured public input. The problem is that the CS (Community Supports) Waiver is mentioned but not the MR/RD Waiver. I checked all the public opportunities mentioned in this section. They all make reference to the CS Waiver not the MR/RD Waiver. If you will provide me an e-mail address, I can send you direct links to this information on the SCDHHS web site.

In the past week, there has been an online exchange between DHHS and DDSN in which DHHS is attempting to redirect SCDDSN funds to SCDHHS. Both agencies are raising the question as to who has authority over state and federal Medicaid dollars. My concern is that both agencies should be held accountable to citizens and the legislature through public input.

I want to ask for your assistance in two ways.

First, can you assist me in obtaining a copy of the December 2009 MR/RD Waiver Document that was in use prior to the implementation of the 3/1/2011 document? I would like the opportunity to compare the former waiver document to the new waiver document.

Second, can you help by supporting state legislation to require "mandatory" public input, notice, public forum, etc. when DHHS and/or DDSN develop and implement changes to the SC Medicaid Programs? Is it possible to pre-file this legislation to expedite the process?

It is the position of DHHS that public notice is optional for citizens and the legislature because public notice is merely recommended by CMS. According to SCDHHS public input is not mandatory. I believe that when public input is eliminated citizens and the legislature are unable establish appropriate checks and balances.

Your assistance would be appreciated.

Susan Lait

development of the service plan or for services that are not included in the service plan.

- B. **Inpatients.** In accordance with 42 CFR §441.301(b)(1) (ii), waiver services are not furnished to individuals who are in-patients of a hospital, nursing facility or ICF/MR.
- C. **Room and Board.** In accordance with 42 CFR §441.310(a)(2), FFP is not claimed for the cost of room and board except when: (a) provided as part of respite services in a facility approved by the State that is not a private residence or (b) claimed as a portion of the rent and food that may be reasonably attributed to an unrelated caregiver who resides in the same household as the participant, as provided in **Appendix I**.
- D. **Access to Services.** The State does not limit or restrict participant access to waiver services except as provided in **Appendix C**.
- E. **Free Choice of Provider.** In accordance with 42 CFR §431.151, a participant may select any willing and qualified provider to furnish waiver services included in the service plan unless the State has received approval to limit the number of providers under the provisions of §1915(b) or another provision of the Act.
- F. **FFP Limitation.** In accordance with 42 CFR §433 Subpart D, FFP is not claimed for services when another third-party (e.g., another third party health insurer or other federal or state program) is legally liable and responsible for the provision and payment of the service. FFP also may not be claimed for services that are available without charge, or as free care to the community. Services will not be considered to be without charge, or free care, when (1) the provider establishes a fee schedule for each service available and (2) collects insurance information from all those served (Medicaid, and non-Medicaid), and bills other legally liable third party insurers. Alternatively, if a provider certifies that a particular legally liable third party insurer does not pay for the service(s), the provider may not generate further bills for that insurer for that annual period.
- G. **Fair Hearing:** The State provides the opportunity to request a Fair Hearing under 42 CFR §431 Subpart E, to individuals: (a) who are not given the choice of home and community- based waiver services as an alternative to institutional level of care specified for this waiver; (b) who are denied the service(s) of their choice or the provider(s) of their choice; or (c) whose services are denied, suspended, reduced or terminated. **Appendix F** specifies the State's procedures to provide individuals the opportunity to request a Fair Hearing, including providing notice of action as required in 42 CFR §431.210.
- H. **Quality Improvement.** The State operates a formal, comprehensive system to ensure that the waiver meets the assurances and other requirements contained in this application. Through an ongoing process of discovery, remediation and improvement, the State assures the health and welfare of participants by monitoring: (a) level of care determinations; (b) individual plans and services delivery; (c) provider qualifications; (d) participant health and welfare; (e) financial oversight and (f) administrative oversight of the waiver. The State further assures that all problems identified through its discovery processes are addressed in an appropriate and timely manner, consistent with the severity and nature of the problem. During the period that the waiver is in effect, the State will implement the Quality Improvement Strategy specified in **Appendix H**.
- I. **Public Input.** Describe how the State secures public input into the development of the waiver:
The intent for these quality amendments was presented at a public meeting for the CS waiver on July 8, 2010, and at the DHHS Medical Care Advisory Committee on August 17, 2010. DDSN presented the waiver amendments to their Commission at the August 12, 2010 meeting. In addition, DDSN held a special called meeting on September 2, 2010, to review the amendments. The amendments were approved as presented.
- J. **Notice to Tribal Governments.** The State assures that it has notified in writing all federally-recognized Tribal Governments that maintain a primary office and/or majority population within the State of the State's intent to submit a Medicaid waiver request or renewal request to CMS at least 60 days before the anticipated submission date is provided by Presidential Executive Order 13175 of November 6, 2000. Evidence of the applicable notice is available through the Medicaid Agency.
- K. **Limited English Proficient Persons.** The State assures that it provides meaningful access to waiver services by Limited English Proficient persons in accordance with: (a) Presidential Executive Order 13166 of August 11, 2000 (65 FR 50121) and (b) Department of Health and Human Services "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (68 FR 47311 - August 8, 2003). **Appendix B** describes how the State assures meaningful access to waiver services by Limited English Proficient persons.

7. Contact Person(s)

Marie Brown - Log 086

From: Byron Roberts
To: Marie Brown
Date: 8/23/2011 4:59 PM
Subject: Log 086

Marie,

This relates to an email from Ms. Susan Lait that was forwarded to our agency from the Governor's office. I spoke with Sam Waldrep and he has provided Ms. Lait with the relevant sections of the Waiver. **No further action is necessary.**

Thanks.

Byron