

THE STATE OF SOUTH CAROLINA
THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Karen W., Edward M., Richard S., Susan E., Rob L.,
Peter B., Ann J., Corrie D. and Robyn P.,

Petitioners,

Marshall C. Sanford, Individually and in his Official Capacity as the Governor of South Carolina and Member of the South Carolina Budget and Control Board; Converse A. Chellis, III and Richard Eckstrom, Individually and in their Official Capacities as Members of the South Carolina Budget and Control Board; Daniel Cooper and Hugh Leatherman, in their Official Capacities as Members of the South Carolina Budget and Control Board, Emma Forkner, Individually and in Her Official Capacity as the Director Of the South Carolina Department of Health and Human Services, Kelly Hansen Floyd, Individually and in her Official Capacity as the Chairman of the South Carolina Department of Disabilities and Special Needs, W. Robert Harrell, Individually and In his Official Capacity as former Chairman and Current Commissioner of the South Carolina Department of Disabilities and Special Needs; Otis Speight, Richard Huntress, Susan Lait, Deborah McPherson and Nancy Banov, In their Official Capacities as Commissioners of the South Carolina Department of Disabilities and Special Needs; and Thomas Waring; Individually and in his Official Capacity as Budget Analyst for the South Carolina Department of Disabilities and Special Needs, and David Goodell, Individually and in his Official Capacity as Associate State Director of the South Carolina Department of Disabilities and Special Needs,

Defendants.

AFFIDAVIT OF JANET PRIEST

Personally appeared before me, Janet Priest, duly sworn, who deposes and says the following:

1. I am the Director of the Mental Retardation Division of the South Carolina Department of Disabilities and Special Needs.

2. As part of my duties, I along with Dr. Kathi Lacy, Associate State Director of Policy, presented educational sessions across the state to explain the proposed changes to the MR/RD waiver.

3. Attendees at the sessions were given the opportunity to ask questions about the proposed changes.

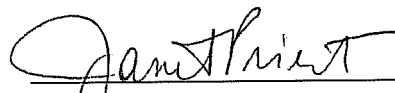
4. Exhibit 1 shows dates and locations in which the sessions were held.

5. Exhibit 2 is a copy of the information given to each attendee.

6. On September 8, 2009 in Bamberg, South Carolina, Patricia Harrison, attorney for plaintiffs, was present and asked questions.

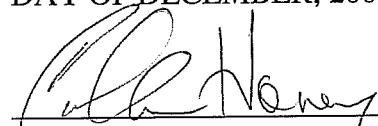
7. In addition the proposed changes have been posted on the website of the South Carolina Department of Disabilities and Special Needs since mid June 2009.

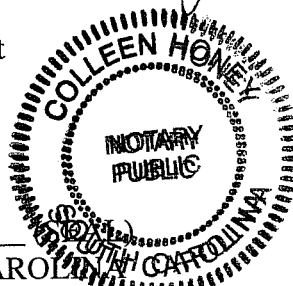
FURTHER AFFIANT SAYETH NOT.


Janet Priest

SWORN TO BEFORE ME THIS 31st

DAY OF DECEMBER, 2009


NOTARY PUBLIC FOR SOUTH CAROLINA



MY COMMISSION EXPIRES: 9-25-17

EXHIBIT ONE

Eugene A. Laurent, Ph.D.
State Director
Robert W. Barfield
Deputy State Director
Administration
David A. Goodell
Associate State Director
Operations
Kathi K. Lacy, Ph.D.
Associate State Director
Policy



COMMISSION
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Edythe C. Dove
John Powell
Kelly Hanson Floyd

3440 Harden Street Ext (29203)
PO Box 4706, Columbia, South Carolina 29240
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Toll Free: 888/DSN-INFO
Home Page: www.state.sc.us/ddsn/

MEMORANDUM

TO: Interested Parties

FROM: Eugene A. Laurent, Ph.D., State Director

DATE: July 30, 2009

RE: Important Meetings About Mental Retardation/Related Disabilities (MR/RD) Waiver Changes and New Day Services

On July 17, the South Carolina Commission on Disabilities and Special Needs approved changes to some services available through the MR/RD Waiver. This is a result of the devastating state budget reductions DDSN had last fiscal year. While some MR/RD Waiver services will remain the same, there will be limits and changes to other waiver services. In addition, to give consumers and families more service choices, DDSN has developed five new day services. Attached are summaries of the waiver service changes and the new day services.

DDSN is offering informational meetings across the state for consumers, families and staff to learn more details about the changes and new services. They will be led by Dr. Kathi Lacy and Ms. Janet Priest.

DISTRICT I

P.O. Box 239
Clinton, SC 29325-5328
Phone: (864) 938-3497

Midlands Center - Phone: 803/935-7500
Whitten Center - Phone: 864/833-2733

DISTRICT II

9995 Miles Jamison Road
Summerville, SC 29485
Phone: 843/832-5576

Coastal Center - Phone: 843/873-5750
Pee Dee Center - Phone: 843/664-2600
Saleeby Center - Phone: 843/332-4104

Meetings are scheduled as follows:

Tuesday, August 4, 6:00-8:00 PM – Conway Library, 801 Main Street, Conway, SC 29526

Tuesday, August 11, 6:00-8:00 PM – Pee Dee Center Multi-Purpose Bldg., 714 National Cemetery Rd., Florence, SC 29506

Tuesday, August 18, 6:00-8:00 PM – Coastal Center Gym, 9995 Jamison Rd., Summerville, SC 29485

Monday, August 24, 6:00-8:00 PM – University Center of Greenville Auditorium, 1st floor, 225 South Pleasantburg Drive, Greenville, SC 29607-2544

Tuesday, August 25, 6:00-8:00 PM – Midlands Center Training Center, 8301 Farrow Road, Columbia, SC 29203

Tuesday, September 8, 6:00-8:00 PM – Bamberg County Disabilities and Special Needs Board, 16553 Heritage Highway, Denmark, SC 29042

Tuesday, September 15, 6:00-8:00 PM – Burton Center, 2605 Hwy. 72/221 East, Greenwood, SC 29649

Your assistance is needed to announce these meetings and to encourage the attendance of consumers, family members and staff who could benefit from the new day services or be affected by the MR/RD Waiver changes. Please distribute this information as widely and quickly as possible. We realize this is a short timeframe. Let's all do the best we can.

Thank you for your help. Please let us know if you have any questions.

Attachments

cc: Commission Members

EXHIBIT TWO

Mental Retardation/Related Disabilities Waiver

- The SC Commission on Disabilities and Special Needs approved amendments to the MR/RD waiver on July 17, 2009.
- DDSN and DHHS plan to submit the final MR/RD waiver document to CMS (the Federal Medicaid agency) by September 1, 2009 for a January 1, 2010 implementation date.
- DDSN will hold 7 educational seminars around the state in August regarding the changes to the MR/RD waiver for consumers and their family members, and DSN Board and private provider staff. These meetings will also offer information about the 5 new day services that will be available by January 2010.

Explanation of the MR/RD Waiver Amendments

There are 5 amendments:

- 1. Maintain the following core services without change:**
 - a. residential habilitation (i.e. CTH, SLP and CRCF)
 - b. adult day health with/without nursing and transportation
 - c. day activity
 - d. community services
 - e. support center
 - f. career preparation
 - g. employment
 - h. adult dental
 - i. psychological counseling
 - j. behavior support
 - k. private vehicle modifications
 - l. prescription medications
 - m. environmental modifications

- n. audiology
- o. vision - vision exams are eliminated in the waiver since one exam per year is allowed under the regular Medicaid state plan program. The waiver will cover the purchase of one pair of eyeglasses per year if needed.
- p. institutional respite
- q. assistive technology for diapers, wipes, and under pads

2. Eliminate the following services since they are covered under the regular Medicaid state plan program:

- a. physical therapy
- b. occupational therapy
- c. speech/language pathology

3. Eliminate daily respite which is replaced by hourly respite.

4. Place service use caps on the following services:

- a. companion – capped at a maximum of 28 hours per week
- b. adult attendant – capped at a maximum of 28 hours per week
- c. personal care II – capped at a maximum of 28 hours per week

The waiver participant may use a single service or combine companion, adult attendant and personal care II services. The single service or the combination of the 3 services cannot exceed 28 hours per week.

- d. in-home hourly respite – capped at a maximum of 68 hours per month

There are exceptions to the 68 hours per month. If any one (1) of the three (3) conditions is met, the participant may receive up to 240 units per month upon DDSN approval:

- i. Caregiver has been hospitalized or is receiving medical treatment causing the caregiver to be away from home for lengthy periods during the day for which respite takes the place of the caregiver to protect the health, safety, and welfare of the waiver participant.

- ii. The waiver participant is medically complex or severely disabled to the extent that the caregiver must provide him/her constant hands on/direct care and supervision for which the caregiver is not paid for 16 hours of a 24-hour day.

A Medically Complex person is a person who has a serious and complex medical condition resulting in substantial physical impairment or disability requiring comprehensive care management defined as extensive hands-on assistance or total care on a routine basis. Such persons need extraordinary supervision and observation or frequent or life saving administration of specialized treatments.

A Severely Disabled person is a person who has substantial physical or behavioral impairment or disability such that the degree of impairment or disability requires extensive hands-on assistance or total care on a routine basis.

In both cases the emphasis is on the characteristics of the management of the condition/impairment/disability versus the condition itself, and the hardship the complexity of managing the condition/impairment/disability places on the caregiver.

- iii. If support center services are unavailable to a participant age 12 to exiting high school and the primary caregiver works fulltime during the summer months of June, July and August.

- e. personal care I – capped at 6 hours per week
- f. nursing – capped at 56 hours per week using a LPN or 42 hours per week using a RN
- g. assistive technology
 - i. liquid nutrition capped at no more than 2 cases per month
 - ii. wheelchair limited to one chair per every 5 years at a maximum of \$8,000 per chair

5. Remove personal emergency response system from specialized medical equipment and create as a separate service.

Note: Please try to attend one of the 7 educational seminars DDSN will host to get more information.

DDSN DAY SERVICES

DDSN and its network of providers have rendered day services to people with disabilities for nearly 30 years. As the field for supporting people with disabilities in day services has changed over time, so too has DDSN's service delivery options in day services changed. DDSN recently received approval from the state Medicaid agency and CMS to begin phasing out the three traditional day service options currently available: day habilitation, prevocation, and supported employment. We are phasing in five brand new day service options: day activity, community service, career preparation, employment and support center. DDSN sought this approval in order to allow participants to have greater flexibility and more choice and control of services while maintaining both work and non-work oriented options for services (see attached charts). Participants and their families will not lose services but gain additional options geared toward achieving their goals. Full implementation will be complete by December 31, 2009. DDSN is encouraging a quick phase-in because the new services provide people with more options without the loss of any support.

The new day services options allow participants to receive services on a half-day versus whole day basis and the opportunity to mix and match day service options that meet their needs while offering more flexibility and choices. The five new services are:

1. Day Activity provides interventions to aid the person to achieve maintain, improve or prevent the loss of his/her personal care, social or adaptive skills. Through this service, participants can improve or maintain their ability complete their own care, improve interpersonal relationships, or learn to control his or her own behavior.

Participants in the Day Activity Service would consist of those individuals who are not interested in acquiring vocational skills or working but need/want to enhance or maintain personal and social skills. Participants will have the opportunity to participate in a variety of activity centers of interest during the course of the day that would facilitate the acquisition of identified skills. Activities available from an endless list might include; exercise, music, cooking, arts and crafts, pet therapy, games, daily living skills, money management role playing, etc. Participation in these activities will enhance the quality of their daily lives as well as improve their personal and social skills.

2. Community Services provides interventions to develop a person's awareness of, interaction with, and participation in his/her community. Skills such as self determination, self advocacy and socialization along with other skills necessary to successfully participate in the life of the community are taught.

Community Service provides participants life skills training in a natural setting within their local community. The participant will be involved in various awareness and participation activities within their community. A sampling of community activities may include, specific to the individual's community, activities such as; recreation, navigation, consumerism, community service, volunteer, financial, etc. Participants will acquire a sense of "belonging" within their community as they become aware of and participate in the local community activities of their interest.

3. Career Preparation provides interventions to prepare participants for jobs or a career by providing exposure to and experience with various jobs and careers. Career interests are determined and the interpersonal skills necessary for successful job placement are taught.

Career Preparation Service would be recommended for all participants that want to work regardless if they have worked before or have never worked but are in need of employment skills. Those participating in Career Preparation Service would be provided pre-employment skills, community based Instruction, career and benefits counseling, self advocacy skills and on-the-job training. Career preparation and planning opens up greater employment opportunities for those seeking employment.

4. Employment services provide interventions to enable the participant to work including locating/developing a job, supervision, and training to sustain the job.

Employment Services provides opportunities to individuals desiring to become as self sufficient and independent as possible. Employment Services provides assistance in acquiring and training in integrated community job placement. Vocational skills acquired through individual or group placement are necessary for anyone aspiring to live independently and attain a conventional lifestyle within their community.

5. Support Center is designed to provide care and supervision in a group setting. In this setting activities are available for self-selection and participants are provided types of assistance or care needed along with the level of supervision determined to be needed.

Support Center Service is available for those individuals that are not interested in acquiring vocational or habilitation skills, but need a safe and comfortable place to be during the day or part of a day. Support Center Service participants will receive individual identified care and supervision and an opportunity to participate in daily activities of their choosing.

More information is available on the DDSN website www.ddsn.sc.gov by clicking on "about DDSN" and selecting "Directives and Standards". The new day service options are listed under current standards. If you do not have access to the internet, you may ask your service coordinator about the options available.

July 13, 2009

OLD DDSN DAY SERVICES OPTIONS

1991 - 2009

DAY HABILITATION

OR

PREVOCATION

OR

SUPPORTED
EMPLOYMENT

NEW DDSN DAY SERVICES OPTIONS

