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August 28, 2018

Chairwoman Phyllis J. Henderson
Healthcare and Regulatory Subcommittee, House Legislative Oversight Committee
522B Blatt Bldg.
Columbia, South Carolina 29201

Re: Department of Disabilities and Special Needs' (DDSN) Recommendations;
House Legislative Oversight Committee Performance Evaluation of DDSN

Dear Chairwoman Henderson,

DDSN is effective in accomplishing its mission of serving persons with intellectual disabilities, autism, head & spinal cord injuries, and conditions related to each of these disabilities. DDSN's service delivery system supports 40,339 eligible consumers with 24,622 consumers currently receiving services. However, DDSN is under stress to keep up with service needs, adequacy of provider reimbursement rates, and improve infrastructure efficiencies to support its efforts.

The below recommendations are structured into eight major issues and corresponding recommendations; a ninth issue/recommendation area encompasses 22 individual improvement initiatives; and a tenth area reports on the results of DDSN's five "internal initiatives" set forth in its May 2017 initial interrogatory to the House Legislative Oversight Committee. The ordering of the recommendations below does not infer a priority order inasmuch as all recommendations need to be addressed.

The below recommendations may appear voluminous, but the agency is recovering from a period of management tentativeness from many years of friction with a variety of stakeholders. Friction can be viewed as negative, but it can also stimulate needed positive change. Getting all the issues "on the table" in detail for complete transparency tends to unite; focuses energy on problem solving; and breaks the cycle of ruminating on past friction points and moving forward. Clear targets creates the transparency for high expectations and accountability to support and motivate the agency towards progress/results. DDSN has opportunities to improve effectiveness primarily through management improving its systems and processes to better support those operating within the service delivery system.

A concern in preparing these DDSN recommendations is the risk of hamstringing incoming State Director Poole's latitude in assessing DDSN's challenges differently, as well as approach to address. In state government, if an agency agrees to do something, it is somehow perceived to be etched in stone forever and must be carried out regardless of the actual changing operational conditions on the ground. I disagree, and I suggest the House Legislative Oversight Committee would as well. Agencies need a plan, but plans are expected to be periodically revisited and nimbly changed as conditions dictate, to include a new leaders' differing views on issues and solution approaches. Agencies just need to be accountable to justify the "why" for the change and move out in the adjusted direction.

As an aside, one of DDSN's issues has been developing high altitude static strategic plans, but management has been reluctant or lethargic to convert substantial portions of these strategic plans into actionable tactical plans from which to be held accountable. There is no reluctance to commit in this memo. A commitment to a specific, transparent, and measurable plan is needed at this time to regain some of the lost confidence and trust from stakeholders.

ISSUE #1: DDSN's most significant organizational issue is a deficient capitated payment system supporting community service providers known as the "band system." This payment system causes a multitude of problems to include:

- Lack of transparency in non-actuarially based band payments causes systemic distrust and dissatisfaction by providers, advocates, and consumers.
- Lack of residential service standards for staffing (direct care; nurses; 1st line supervisors) prevents establishing appropriate funding levels. Additionally, a lack of a formal/auditable process to establish transparent and accountable staffing levels (mandatory or provider developed) creates a risk of understaffing—proper staffing is the primary factor impacting the health, safety, and welfare of consumers.
- Time consuming and lengthy cost settlement process undermines having recent and reliable data for consideration to adjust the system and justify possible rate increases.
- Does not maximize opportunity for more state funds to obtain Medicaid match.
- Does not incorporate a consumer needs assessment tool to adjust funding to match a consumer's acuity; this is increasingly reducing access for higher needs consumers.
- Undermines DDSN's quality assurance mission by consuming too much time and relationship goodwill with providers on payment issues.
- The band benefits (i.e., vacancy rates, Medicaid ineligible risk, Medicaid billing, capital needs) can be duplicated, if so desired, in a simpler fee-for-service model except for the prospective payment.

RECOMMENDATION #1: DDSN will address its current payment system weaknesses through an evidence based process incorporating stakeholder input and industry best practices. In June 2018, Mercer Healthcare Consultants (Mercer) initiated a review of the DDSN payment system, which includes stakeholder input and incorporating national best practices. Mercer will produce a report due in the Fall 2018 recommending future payment system options to meet the needs of the DDSN service delivery system. Equally important, nearly all stakeholders have arrived at the conclusion the DDSN payment system has to be substantially changed, which is critical to support such a system-wide endeavor. Further, Mercer will update all SC DHHS service rates with DDSN via a second formal report in early 2019.

ISSUE #2: DDSN's most significant operational issue is recruiting/retaining direct care workers at regional centers and in residential community settings. Regional centers bobble between barely manageable to a near crisis as illustrated by currently experiencing a 44% turnover rate. Residential providers' problem has more variability across the state, but turnover still ranges from 20% to 40+%. Adequate staffing levels generally require over-reliance on overtime. This stress on the direct care staff has escalated since 2015. Historically, direct care staffing is challenged during economic upswings and tends to resolve when the economy slows. However, given the hiring pool demographics and the need for direct care workers throughout the healthcare field as baby boomers age, DDSN cannot rely on an economic downturn as a solution. Short-term plans and long-term plans are needed to ensure direct care staffing meets quality staffing level thresholds with sufficient capacity to lower overtime causing burnout and turnover. We have to continue to work the issue as a crisis.

RECOMMENDATION #2a: DDSN will continue to pursue direct care wage improvements through the legislative appropriation process sufficient to create a full and stable workforce to meet the needs of consumers.

RECOMMENDATION #2b: DDSN will pursue a career track for direct care, to include a tiered wage system to promote professional advancement and retention.

RECOMMENDATION #2c: DDSN will pursue the use of technology and corresponding policies to support consumers and mitigate the gap in hiring/retaining direct care workers for the foreseeable future.

RECOMMENDATION #2d: DDSN will solidify formalized targeted staffing levels in Regional Centers and the future community residential payment system rates should incorporate staffing level requirements based on consumer acuity.

RECOMMENDATION #2e: In conjunction with the development of a new/modified payment system, DDSN will re-examine its portfolio of services and policies with an emphasis on making adjustments consistent with the future likelihood of challenges in hiring/retaining direct care workers.

RECOMMENDATION #2f: DDSN will continue to support, mature, and potentially expand a grass roots direct care professional training program provided through a local technical college.

RECOMMENDATION #2g: DDSN will examine its policies and practices to proactively identify community setting opportunities to serve Regional Center consumers.

RECOMMENDATION #2h: DDSN will start contingency planning beyond obtaining additional wage increases for direct care workers to safely staff Regional Centers to meet the needs of consumers if the direct care hiring/retention crisis is not reversed.

ISSUE #3: DDSN management needs to mature its capabilities to be more proactive with emphasis on a system/process improvement approach to problem solving. General business acumen training needs include factoring financial implications into operation and policy decisions; greater use of information to manage; and enhanced involvement in developing internal operating budgets and contributions to the agency's annual legislative budget requests. In short, DDSN tends to have a reactive posture rather than leaning forward towards continuous improvement.

RECOMMENDATION #3a: DDSN will establish a formal management training program to develop its management in a structured manner in both management/business acumen skills and a continuous improvement management philosophy. Much of DDSN's real and perceived reactive crisis management style can be traced to a lack of management investment in planning and system/process improvement to prevent problems from occurring.

RECOMMENDATION #3b: DDSN will redirect audit resources from community contract audits to conduct internal operational audits to provide assurance of effective operations through adequate objectives, process mapping, management information systems, and controls/performance measures.

ISSUE #4: There have been legislative hearings, proposed legislation, and public debate as to the proper organizational structure to support DDSN's mission, to include as a cabinet agency, a component of SC DHHS, or remain as a Commission.

RECOMMENDATION #4: DDSN recommends continuing its mission in its current structure as an independent Commission. A Commission form of governance permits heightened involvement by the families, stakeholders, and consumers through seven volunteer citizen leaders to ensure DDSN executes its mission with excellence to meet the complex needs of a highly vulnerable population. A single mission agency also creates the needed focus to support our highly vulnerable population.

The Commission recognizes stress in the DDSN delivery system over the past several years has caused some to question the proper organizational structure to support its mission. The Commission believes the stress was natural and needed as a precursor to stimulate deep change in DDSN due to complacency as well as resistance to change and transparency. The Commission's interventions has led to a new State Director being selected along with healthy executive staff turnover, a noticeably calmer operating environment with stakeholders, and management's proactive posture to engage issues backed up in the system as evident by the recommendations in this memo. The Commission believes its form of governance with greater stakeholder and citizen access and responsiveness can more reliably stimulate positive change than a more bureaucratic form of governance.

ISSUE #5: DDSN does not have a systematic approach to performance management across the agency; some work units lack relevant performance measures or inadequate information to support operational/performance management. DDSN has lost a level of trust and confidence from a variety of stakeholders in the manner it executes its mission, both financially and operationally, as illustrated with legislative oversight questioning the agency's information accuracy.

RECOMMENDATION #5: DDSN will operate in a more evidenced based manner through the continued use and maturing of its Enterprise Performance Management process and ensure public performance reporting to demonstrate transparency and accountability with accurate and reliable information to its many stakeholders.

ISSUE #6: DDSN does not have a formalized project management process, which has contributed to a pattern of both real and perceived under-performance in implementing major initiatives.

RECOMMENDATION #6: DDSN will establish a formal project management process for longer term agency-wide initiatives to ensure proper operational planning, proactive communication plans, and timely execution.

ISSUE #7: DDSN has experienced an inching up of Abuse, Neglect, & Exploitation (ANE) indicators over the past four years, particularly with providers serving high needs consumers. The uptick of these ANE indicators is not a function of inadequate ANE policies or management deficiencies to keep "predator" employees out of the system. Rather, it is a function of "real world" economic factors eroding direct care professionals' (DSP) capacity & capabilities, while the consumer population's increasing behavioral needs require DSPs with higher skill levels. DDSN's lack of required acuity based direct care staffing standards also contributed to this situation. This is not a crisis, however this capability "gap" is building pressure/stress in the delivery system driving the uptick. This is a national challenge not unique to South Carolina.

RECOMMENDATION #7a: DDSN will continue to deploy and refine its Residential Observation Audit technique to make unannounced residential setting visits to 25% of all settings (approximately 350/annually) and provide monthly reporting to the Commission. Of the first 147 residential settings audited, over 200 consumer and 170 staff (370 total) were interviewed; not one interview reported an ANE climate risk or a report of a previously unreported ANE allegation—most importantly, the consumers felt safe.

RECOMMENDATION #7b: DDSN will continue a robust participation in the National Core Indicators Program (NCI). The NCI has produced annual reports for 20 years and is considered the highest quality measurement tool in the Intellectual Disability service arena. The NCI survey obtains DDSN consumer input through interviews conducted by independent interviewers on wide variety of service areas. In Fiscal Years 15-17, South Carolina providers distinguished themselves in the area of consumer safety by being consistently rated at or near the top on four key safety questions compared to 32 other states.

RECOMMENDATION #7c: DDSN will continue to pursue wage enhancements for direct care workers and establish residential staffing standards based on acuity in its anticipated new payment system to address the current direct care capability gap.

RECOMMENDATION #7d: DDSN will develop a formal process to collect "lessons learned" from ANE arrests.

RECOMMENDATION #7e: DDSN will develop statewide policy and awareness training to address direct care workers' reaction to non-compliant/volatile consumer behaviors which precedes nearly 2/3rd of all ANE incidents leading to an arrest.

RECOMMENDATION #7f: DDSN will examine the direct care worker duties and compliance requirements, which have aggregated overtime. These increased duties may be undermining direct care workers' habilitative responsibilities, which, in turn, lessens the direct care workers' ability to positively impact consumers' behaviors and prevent situations escalating into ANE incidents.

RECOMMENDATION #7g: DDSN will develop recurring safety bulletins based on lessons learned from ANE incidents, particularly vignettes (without attribution) from actual incidents to stimulate learning and continual awareness.

RECOMMENDATION #7h: DDSN will continue to mature its ANE Program data collection through similar enhancements as refining Critical Incident classifications clarifying issues of concern and the provider rating system.

ISSUE #8: DDSN has determined 22 existing South Carolina statutes impacting the agency would benefit from revisions or elimination to assist the agency in accomplishing its mission.

RECOMMENDATION #8: DDSN requests these 22 SC statutes modifications or eliminations as set forth in Attachment A be adopted by the House Legislative Oversight Committee for legislative action.

ISSUE #9: DDSN established a defensive posture for many years based on a variety of factors, which has led to a tentativeness to proactively address issues. Improvement initiatives to address backlogged operational issues include:

RECOMMENDATION #9a: DDSN will develop a residential setting building capacity and funding strategy for high needs consumers, as well as timely execution of appropriations to restore legislative confidence. Strategy will include establishing triage beds to address critical cases; enhanced tracking/measuring system capacity, needs, and placement times; and develop a legislative appropriation strategy to better communicate this critical need to justify a consistent future funding stream to keep pace with residential setting needs.

RECOMMENDATION #9b: DDSN will conduct a risk based review of licensing, contract review, residential observations, ANE Program (ANE; CI; Deaths), and other provider contract controls to identify opportunities to lesson or eliminate existing controls and corresponding administrative burden. A critical analysis will yield substantial risk mitigation and administrative cost/burden savings by combining higher quality controls to support the elimination of redundant controls or controls with a low cost/benefit.

RECOMMENDATION #9c: DDSN will implement a Waiver enrollment improvement plan to speed enrollment processing times, reduce the waiting list, and restore confidence to legislative appropriators of DDSN's ability to effectively execute budget enhancements.

RECOMMENDATION #9d: DDSN will compare Regional Center requirements and current budgets to assess adequate funding, equity between centers, and basis for legislative budget request for maintenance of effort resources.

RECOMMENDATION #9e: DDSN will develop an “at-risk” inspection protocol by subject matter experts for suspected “failed” residential settings based on Alliant residential observations triggering an “at-risk” inspection. The DDSN Quality Management process understands providers’ service levels may fluctuate due to a variety of short-term factors which DDSN can address through traditional audit findings, provider corrective action plans, and technical assistance. However, DDSN does not have a process to address major “failed” residential settings in a manner that both addresses operational deficiencies and addresses provider management’s failure to deter similar situations in the future. Additional emphasis needs to be placed on a strategy to improve residential providers systemically on the low end of performance scores.

RECOMMENDATION #9f: DDSN will establish at least a \$2 million annual cost settlement escrow account, which has not been done in the past six years creating a contingent liability likely in excess of \$20 million.

RECOMMENDATION #9g: DDSN will re-engineer its Comprehensive Permanent Improvement Plan (CPIP) capital account funded with ICF consumer fees to minimize excessive capitalization of routine maintenance needs in CPIP preventative maintenance accounts. This prevents unhealthy stockpiling of unused resources; streamlines project prioritization/execution; and improves capacity to execute through delegation of smaller maintenance projects to Regional Centers.

RECOMMENDATION #9h: As an interim step to whatever future payment system is approved by the Commission, DDSN will conduct a feasibility study to relieve DSN Boards’ as fiscal agents for in-home waiver bands (Band B – ID/RD; Band I – CS) with this function being absorbed by the Central Office Accounting Division. If feasible, this will achieve three outcomes: 1) relieve DSN Boards of this increasingly complex administrative function; 2) simplify QPL billing; and 3) convert \$17 million in residual state funds in B & I Bands not generating a Medicaid reimbursable match to be available to provide initial funding of Mercer community rate increases due in early 2019. This \$17 million in state dollars to fund new rates would create a Medicaid match to generate \$40 million additional service dollars in the community residential delivery system.

RECOMMENDATION #9i: DDSN will develop a specific program to lower the current average census of 25 consumers at Correct Care (state funded locked facility) through building additional dedicated community residual high needs capacity (Medicaid match). A reasonable goal would be to remove 15 current Correct Care consumers at a total net service savings of \$1.8 million per year, as well as improve the quality of services for these 15 consumers.

RECOMMENDATION #9j: DDSN will review all non-service expenses, assess value, and prioritize; appears historical approach has been to renew prior FY’s commitment without assessing value and compare to other needs, particularly given limited funds in this area.

RECOMMENDATION #9k: DDSN will pursue pre-file legislation prior to the next legislative session to address ambiguity in the Adult Health Care Consent Act.

RECOMMENDATION #9j: DDSN will decentralize budget execution from currently residing almost exclusively with the Associate State Director for Administration to other Associate State Directors. Decentralized decision making will make better tradeoffs and more timely decisions when operating within clear resource constraints. This will be particularly beneficial for Central Office and Regional Centers to improve clarity in fixing roles, responsibilities, and accountability to both establish initial FY budget allocations and execution throughout the FY.

RECOMMENDATION #9m: DDSN will develop a mechanism to improve communications with community providers focusing on standardized format, authority level to send, targeted distribution email lists, and a one webpage repository.

RECOMMENDATION #9n: DDSN will identify all residential consumers Medicaid ineligible for over 12 months to identify issue(s), which will lead to developing policy to minimize this situation and future occurrences; currently 91 non-Medicaid residential consumers create the opportunity cost loss of \$4.5 million in Medicaid match reimbursements annually.

RECOMMENDATION #9o: DDSN will review Respite Program delivery; respite is key to serving families, yet access and service availability is still an issue.

RECOMMENDATION #9p: DDSN will conduct a staffing and capabilities assessment of its financial operations, which have incrementally eroded since the 2010 recession creating a significant organizational risk, particularly with the unique knowledge base required to operate or modify the capitated band system.

RECOMMENDATION #9q: DDSN will review the individual employment program for opportunities to address current areas of ineffectiveness through training, policies, active monitoring, and authorization controls.

RECOMMENDATION #9r: DDSN will ensure Autism Program's eligibility process benchmarks are solidified and training/consulting resources targeted towards DDSN's core mission. Increase cost effectiveness of Autism residential settings operated by DDSN through filling vacancies or contract with a provider to serve these consumers; if DDSN retains operations, consider moving this function from the Policy Division to the Operations Division.

RECOMMENDATION #9s: DDSN will revitalize the environmental modification process to reduce backlog from high of 200 in early 2018. Additional system refinements needed to coordinate or simplify operational execution between two divisions.

RECOMMENDATION #9t: DDSN will build infrastructure to support new Commission initiative to review new policy and recurring three-year policy updates on a quarterly basis in an efficient. Policies will be stratified by priorities to ease processing by stakeholders.

RECOMMENDATION #9u: DDSN will shift all employees to a universal performance review cycle (July 1 to June 30) to improve accountability, training, quality, and integrate into an annual equitable assessment to consider personnel merit increases.

RECOMMENDATION #9v: DDSN will examine Early Intervention Program to ensure consumers eligible for Medicaid become enrolled to maximize Medicaid reimbursement; in the recent past, Medicaid enrollment has dropped from 80% to currently at 65%.

In DDSN's May 2017 submission to the House Legislative Oversight Committee, it set forth five "internal initiatives" to improve. These five initiatives are set forth below with an update on progress/results located on Attachment B:

- Evaluation of Abuse, Neglect, and Exploitation reporting and follow up system.
- Changes to the tracking and reporting of critical incidents.
- Direct service operations.
- Plan review and service authorization.
- DDSN outcome-based provider evaluation.

The recommendations contained in this letter have been approved by the DDSN Commission.

Thank you in advance for your consideration of DDSN's recommendations. I am available 24/7 to discuss further and provide any clarifications needed.

Sincerely,



Patrick J. Maley
Interim State Director

Attachment A

LAWS DDSN RECOMMENDS FOR POTENTIAL REVISION OR ELIMINATION
As approved by the Commission on September 21, 2017

Law Recommendation #1

- Law: SC Code 44-20-370 (A)
- Summary of current statutory requirement: Notification applicant qualifying for services.
- Recommendation and Rationale for Recommendation: Should be amended to reflect that services are offered through private qualified providers as well as the county DSN boards.
(2) Establish standards of operation and service for private qualified providers and county disabilities and special needs programs funded in part or in whole by state appropriations to the department or through other fiscal resources under its control;
(3) Review service plans submitted by private qualified providers and county boards of disabilities and special needs and determine priorities for funding plans or portions of the plans subject to available funds;
(4) Review private qualified providers and county programs covered in this chapter;
(5) Offer consultation and direction to private qualified providers and county boards;
(B) The department shall seek to develop and utilize the most current and promising methods for the training of persons with intellectual disability, related disabilities, head injuries, and spinal cord injuries. It shall utilize the assistance, services, and findings of other state and federal agencies. The department shall disseminate these methods to private qualified providers and the county boards and programs providing related services.
- Other agencies impacted: Private qualified providers.

Law Recommendation #2

- Law: SC Code 44-28-10 thru 44-28-80
- Summary of current statutory requirement: Establishes the Self-Sufficiency Trust Fund.
- Recommendation and Rationale for Recommendation: Should be repealed because it was never established and the ABLE act is now in effect.
- Other Agencies Impacted: Department of Mental Health, Vocational Rehabilitation and State Treasurer's Office.
- Note: Service recipients of the Department of Mental Health and Vocational Rehabilitation use ABLE accounts. The ABLE accounts are administered by the State Treasurer's Office.

Law Recommendation #3

- Law: SC Code 44-28-10 through 44-28-80
- Summary of current statutory requirement: Establishes the Disability Trust Fund.
- Recommendation and Rationale for Recommendation: Should be repealed because it was never established and the ABLE act is now in effect.
- Other Agencies Impacted: Department of Mental Health, Vocational Rehabilitation and State Treasurer's Office.
- Note: Service recipients of the Department of Mental Health and Vocational Rehabilitation use ABLE accounts. The ABLE accounts are administered by the State Treasurer's Office.

Law Recommendation #4

- Law: SC Code 44-23-10 (22)
- Summary of current statutory requirement: Defines person with intellectual disability
- Recommendation and Rationale for Recommendation: Should be amended to have the same definition as the statute for DDSN
- Law Wording: To be consistent, this code section should be amended to have the same definition as the statute of the DDSN 44-20-30 (12)
~~(22) "Person with intellectual disability" means a person, other than a person with a mental illness primarily in need of mental health services, whose inadequately developed or impaired intelligence and adaptive level of behavior require for the person's benefit, or that of the public, special training, education, supervision, treatment, care, or control in the person's home or community or in a service facility or program under the control and management of the Department of Disabilities and Special Needs.~~
"Intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.
- Other Agencies Impacted: None.

Law Recommendation #5

- Law: SC Code 44-25-20g
- Summary of current statutory requirement: Defines Person with Mental Deficiency.
- Recommendation and Rationale for Recommendation: Should be amended to have the same definition as the statute for DDSN.
- Law Wording: To be consistent, this code section should be amended to have the same definition as the statute of the DDSN 44-20-30 (12).
~~(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.~~
"Intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.
- Other Agencies Impacted: None.

Law Recommendation #6

- Law: SC Code 6-29-770
- Summary of current statutory requirement: Governmental entities subject to zoning ordinances
- Recommendation and Rationale for Recommendation: The notice provision Subsection (E) needs to be amended to remove requirement that notice must be given for a home for persons with disabilities as it violates the Federal Fair Housing Law.
- Law Wording: (E) The provisions of this section do not apply to a home serving nine or fewer mentally or physically handicapped persons provided the home provides care on a twenty-four hour basis and is approved or licensed by a state agency or department or under contract with the agency or department for that purpose. A home is construed to be a natural family or such similar term as may be utilized by any county or municipal zoning ordinance to refer to persons related by blood or marriage. ~~Prior to locating the home for~~

~~the handicapped persons, the appropriate state agency or department or the private entity operating the home under contract must first give prior notice to the local governing body administering the pertinent zoning laws, advising of the exact site of any proposed home. The notice must also identify the individual representing the agency, department, or private entity for site selection purposes. If the local governing body objects to the selected site, the governing body must notify the site selection representative of the entity seeking to establish the home within fifteen days of receiving notice and must appoint a representative to assist the entity in selection of a comparable alternate site or structure, or both. The site selection representative of the entity seeking to establish the home and the representative of the local governing body shall select a third mutually agreeable person. The three persons have forty five days to make a final selection of the site by majority vote. This final selection is binding on the entity and the governing body. In the event no selection has been made by the end of the forty five day period, the entity establishing the home shall select the site without further proceedings. An application for variance or special exception is not required. No person may intervene to prevent the establishment of a community residence without reasonable justification.~~

- Other Agencies Impacted: Local County Governments.
- Note: As County Zoning Ordinances should already be compliant with federal statutes, there should be no negative impact to county government operations.

Law Recommendation # 7

- Law: SC Code 44-66-30
- Summary of current statutory requirement: Priority list of persons who can make healthcare decisions
- Recommendation and Rationale for Recommendation: Amend to replace previous number eight (8) as new number eight (8) which was removed with an amendment.
- Law Wording: Persons who may make health care decisions for patient who is unable to consent; order of priority; exceptions.

(A) Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in the following order of priority:

- (1) a guardian appointed by the court pursuant to Article 5, Part 3 of the South Carolina Probate Code, if the decision is within the scope of the guardianship;
- (2) an attorney-in-fact appointed by the patient in a durable power of attorney executed pursuant to Section 62-5-501, if the decision is within the scope of his authority;
- (3) a person given priority to make health care decisions for the patient when the agency has taken custody of the patient by another statutory provision;
- (4) a spouse of the patient unless the spouse and the patient are separated pursuant to one of the following:
 - (a) entry of a pendente lite order in a divorce or separate maintenance action;
 - (b) formal signing of a written property or marital settlement agreement; or
 - (c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;
- (5) an adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;
- (6) a parent of the patient;

- (7) an adult sibling of the patient, or if the patient has more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation;
- (8) a grandparent of the patient, or if the patient has more than one grandparent, a majority of the grandparents who are reasonably available for consultation;
- (9) any other adult relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient, or if the patient has more than one other adult relative, a majority of those other adult relatives who are reasonably available for consultation.
- (10) a person given authority to make health care decisions for the patient by another statutory provision

- Other agencies impacted: All persons with a statutory authority to consent, and all agencies who are responsible for care without custodial rights.

Law Recommendation # 8

- Law 43-35-10 (4): Omnibus Adult Protection Act (OAPA)
- Summary of current statutory requirement: Definition of Facility
- Recommendation and Rationale for Recommendation: To add day programs to the definition of facility type.
- Law Wording: 4) "Facility" means a nursing care facility, community residential care facility, a psychiatric hospital, day program or any residential program operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.
- Other Agencies Impacted: Department of Mental Health.

Law Recommendation # 9

- Law: SC Code 43-35-60
- Summary of current statutory requirement: Permits sharing of information related to investigations under the Adult Protection Act (OAPA).
- Recommendation and Rationale for Recommendation: Require agencies to share the case disposition with the relevant facility.
- Law Wording: Unless otherwise prohibited by law, a state agency, an investigative entity, and law enforcement may share information related to an investigation conducted as a result of a report made under this chapter. An investigative entity and law enforcement shall share specific case dispositions with the relevant facility. Information in these investigative records must not be disclosed publicly.
- Other Agencies Impacted: SLED, Long term Care Ombudsman, DSS, DMH, local law enforcement agencies and Office of the Attorney General.

Law Recommendation #10

- Law: Agency Regulations 88-105 thru 88-920 et seq.
- Summary of current statutory requirement: License Requirement for Facilities and Programs.
- Recommendation and Rationale for Recommendation: Should be amended to change the name of the agency from the ~~South Carolina Department of Mental Retardation~~ to the Department of Disabilities and Special Needs throughout the regulations.
- Law Wording: See above.

- Other Agencies Impacted: None.

Law Recommendation #11

- Law: Regulation 88-105A.
- Summary of current statutory requirement: Scope.
- Recommendation and Rationale for Recommendation: Should be amended to denote programs receiving funds through DDSN and to rename the Department.
- Law Wording: A. No program receiving funds through DDSN shall be operated in part or in full for the care, maintenance, education, training or treatment of ~~more than two~~ persons with intellectual disability unless a license is first obtained from the South Carolina ~~Department of Mental Retardation~~ Department of Disabilities and Special Needs. “In part” shall mean a program operating for at least ten (10) hours a week.
- Other Agencies Impacted: None.

Law Recommendation #12

- Law: Regulation 88-110 D(1) and
- Summary of current statutory requirement: Recreational Camp.
- Recommendation and Rationale for Recommendation: Should be repealed as DDSN no longer licenses recreational camps or Sheltered Workshops.
- Law Wording: D. The license will specify the name of the licensee, the maximum number of participants to be present at the facility at one time and the type of program it is determined to be. The program type is designated as follows:
 - (1) ~~Recreation Camp~~;
 - (a) ~~Residential~~;
 - (b) ~~Day~~.
 - (5) ~~Sheltered Workshop~~;
- Other Agencies Impacted: None.

Law Recommendation #13

- Law: Regulation 88-120A and B
- Summary of current statutory requirement: Applications for License.
- Recommendation and Rationale for Recommendation: Should be amended to have applications going to the Department of Disabilities and Special Needs.
- Law Wording: A. Applications for license shall be made to Department. ~~the appropriate regional office of the South Carolina Department of Mental Retardation, Community Program Division:~~
 - 1) ~~Coastal Region~~
Suite 907 ~~Summerall Center~~
19 Hagoood Street
Charleston, South Carolina 29403
 - (2) ~~Midlands Center~~
8301 Farrow Road.
Columbia, South Carolina 29203
 - (3) ~~Pee Dee Center~~
Post Office Box 3209
Florence, South Carolina 29502

(4) Whitten Center
Post Office Drawer 239
Clinton, South Carolina 29325

B. Applicants will be provided the appropriate forms for licensing upon request from ~~one~~ of the above locations-the Department.

- Other Agencies Impacted: None.

Law Recommendation #14

- Law: Regulation 88-130 A and B
- Summary of current statutory requirement: Waivers.
- Recommendation and Rationale for Recommendation: Should be amended to change Commissioner to Department throughout.
- Law Wording: A. The ~~Commissioner~~ Department may waive compliance with one or more of the requirements of these regulations if, in ~~his~~ the Department's judgment, the waiver would not endanger the safety of the participants, staff, or the public, and would not reduce significantly the quality or quantity of the services to be provided.
B. To request a waiver, the applicant or licensee must make a written application to the ~~Commissioner~~ Department which includes the justification for the request for a waiver and must first be reviewed by the appropriate ~~regional superintendent~~ Department staff with approval by the state director.
- Other Agencies Impacted: None.

Law Recommendation #15

- Law: Regulation 88-210
- Summary of current statutory requirement: Definitions.
- Recommendation and Rationale for Recommendation: Should be amended to reflect current definitions.
- Law Wording: C. Client - A person ~~with intellectual disability~~ who has been deemed eligible for services by the Department and who is participating in a program in the State or is on the waiting list for services from the Department.
The Department is required to provide community and residential service programs ~~similar to those provided~~ to persons with intellectual disability/related disability, ~~substantially handicapped epileptic, cerebral palsied,~~ autism and head and spinal cord injury. ~~whose treatment and training needs approximate those of the persons with intellectual disability.~~
D. ~~Commissioner~~ Director - The chief administrator of the ~~Department of Mental Retardation~~ Department of Disabilities and Special Needs-or his/her designee.
J. Licensor - The ~~Department of Mental Retardation~~ Department of Disabilities and Special Needs.
K. ~~Mental Retardation~~ - Refers to ~~significantly sub-average general intellectual functioning resulting in or associated with concurrent impairments in adaptive behavior and manifested during the developmental period.~~ "Intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.
L. Participant - Any person with intellectual/related disability, autism or head and spinal cord injury who is participating in a program licensed by the Department.

~~M. Regional Office—The SCDMR office which performs the license survey and issues the license.~~

- Other agencies Impacted: None.

Law Recommendation #16

- Law: Regulation 88-310 thru 88-325
- Summary of current statutory requirement: Recreational Camps for Persons with Intellectual Disability.
- Recommendation and Rationale for Recommendation: Repeal the regulations as DDSN does not license Recreational Camps for Persons with Intellectual Disabilities.
- Other Agencies Impacted: None.

Law Recommendation #17

- Law: Regulation 88-410(2)
- Summary of current statutory requirement: Personnel.
- Recommendation and Rationale for Recommendation: Amend to reflect current staff qualifications, ratios and supervision.
- Law Wording: 2) Direct Care Staff - The direct care staff will meet the following qualifications:
 - (a) Be at least eighteen years old.
 - (b) Have a valid high school diploma or its certified equivalent.
- B. Participant/Staff Ratios
 - (1) ~~There will be at least the following minimum participant/staff ratio for each program:~~
 - (a) ~~Child Development Center—5:1;~~
 - (b) ~~Adult Activity Center—7:1;~~
 - (c) ~~Work Activity Center—7:1;~~
 - (d) ~~Sheltered Workshop—10:1.~~
 - Ratios for each program should be determined based on each participant's supervision needs as outlined in DDSN Directives with a minimum participant/staff ratio of 7:1.
 - (2) ~~Upon consideration of the ages, the severity of handicapping conditions, and the services needed by the participants, the support needs and the of the participant,~~ the Department may approve a different participant/staff ratio.
- D. Supervision of Clients
 - (1) ~~A designated responsible staff member must be present and in charge at all times a participant is present. The staff member left in charge must know how to contact the Director at all times.~~
 - (1) At no time shall any participant be without supervision unless a specified activity which allows for an adult participant's independent functioning is planned and documented. Each participant will be supervised as needed based on DDSN Directives to allow for maximum independence.
- Other Agencies Impacted: None

Law Recommendation #18

- Law: Regulation 88-430
- Summary of current statutory requirement: Evaluations.
- Recommendation and Rationale for Recommendation: Amend to reflect current practice.

- Law Wording:
 - A. Psychological evaluations will be required according to the following schedule:
 - (1) Children shall be evaluated by using a restrictive test of intelligence administered by a licensed or certified psychologist once upon entry into a day program and once more between ages three and five or prior to matriculation to Headstart or public school unless entry into the program occurs after the age of two years.
 - (2) Adults shall be tested using a restrictive test of intelligence administered by a licensed or certified psychologist on program entry, re-entry or at age twenty-two (22) whichever occurs first, unless there is a valid psychological evaluation completed within three years of admission on record.
 - B. Social History A social history which includes basic information on participant's personal history, family situation and specific problem areas will be completed on admission to the day program and updated annually thereafter. Information from the parents/guardian will be included in the history. The update shall indicate any change in the family situation or living environment that may affect participant's progress and need for continued enrollment.
 - C. Assessment of Skills Each participant in both adult and child programs will be assessed using an approved assessment tool(s) within thirty (30) calendar days of enrollment and annually thereafter. The assessment of needs will contain evaluations in the following areas:
 - (1) Children:
 - (a) Sensorimotor skills;
 - 1. Gross motor;
 - 2. Fine motor;
 - (b) Communication and language;
 - (c) Social interaction/play;
 - (d) Self help skills;
 - (e) Cognitive skills;
 - (f) Behavior needs.
 - (2) Adults:
 - (a) Self care (e.g., hygiene, appearance, nutrition, eating habits, dressing, toileting, physical fitness, sex education etc.)
 - (b) Community Living Skills (e.g., budgeting, shopping, cooking, laundry, telephone usage, transportation, appropriate use of leisure etc.)
 - (c) Communication (e.g., speech, language, sign language, or other communication skills etc.)
 - (d) Socialization (e.g., appropriate behaviors for successful interaction with others, recreation and leisure)
 - (e) Vocational (e.g., physical capabilities, psychomotor skills, work habits, job seeking skills, knowledge of work practices, work related skills etc.)
 - (f) Education (e.g., academic and cognitive skills etc.)
 - (g) Behavioral needs (behavioral management plans)
 - (h) Motor Development (e.g. gross motor, fine motor and perceptual motor needs)

The participant must be evaluated and determined eligible for DDSN services pursuant to Department Directives. The participant must be determined to require or likely benefit from day services.

- Other Agencies Impacted: None

Law Recommendation #19

- Law: Regulation 88-435
 - Summary of current statutory requirement: Programs
 - Recommendation and Rationale for Recommendation: Amend to reflect current practice and consistent with new federal regulations.
 - Law Wording: A. Plan-Each participant will have a written plan developed and approved by the Individual Support program team within thirty days of admission ~~for adults and for children~~ and annually thereafter. ~~The plan will be based on the professional evaluations, regional recommendations, the assessment of skills, parent/guardian and/or community residence staff conferences, staff and client recommendations and discussed in a team meeting. The date and signature of all team members will be documented on the plan. The plan will be based on an assessment of the participant's abilities, interests, preferences and needs. The date and signature of those in attendance will be documented.~~
 - (1) ~~The plan will contain written, individualized, long range and short range goals which are time limited and measurable~~
 - 2) The plan will contain written objectives which may include a training schedule and /or ongoing supports and the method of evaluation of progress.
 - (3) ~~The plan will contain documented evidence of parent/guardian involvement in the meeting.~~
The plan will document the participant's, Individual Support team, and the legal guardian's (if applicable) involvement in the meeting.
 - (4) Summary notations of progress made toward goals are made monthly by staff involved in the training and/or ongoing supports. The notes will be signed and dated.
 - (6) When the participant is observed to be making no progress in reaching a goal after three months of working on the same goal, the methodology and objective will be reviewed and evaluated ~~by the team with the participant~~ and a new goal will be set, the methodology or objective changed or the recommendation may be made to continue the goal. If no progress has been made after ~~one year the goal or methodology will be changed.~~ six (6) months, the methodology or objective is to be re-evaluated or recommendation to the Individual Support Team for a new goal to be written.
 - (7) The plan will be reviewed and updated by the ~~program~~ Individual Support team at least annually with input from the participant and their legal guardian (if applicable).
 - (9) The plan will address the participant's movement ~~toward a less restrictive program and include goals and objectives which will help him progress to a higher level program toward their personal goals in the least restrictive environment.~~
- B. Services
- (1) The services offered at the program will be ~~directed toward the identified needs of the participant.~~ based on the participant's abilities, interests, preferences and needs.
~~He/He/She~~ will be involved in activities which will help ~~him~~ him/her progress toward goals identified in the plan. Activities should be age appropriate and allow for choices by the participant.
 - (2) ~~The services for children will include the following:~~
 - (a) ~~Gross motor development;~~
 - (b) ~~Fine motor development;~~

~~(c) Communication and language;~~

~~(d) Socialization;~~

~~(e) Self help skills;~~

~~(f) Cognitive development;~~

~~(g) Behavior management;~~

(3) The services for adults will include but not be limited to the following:

(a) Activities of daily living, AAC, WAC;

(b) Independent living skills, AAC, WAC;

(c) Socialization, AAC, WAC;

(d) Recreation/Leisure Skills, AAC, WAC;

(e) Habilitation/Vocational/Work Related, AAC, WAC, ~~and SW;~~

(f) Behavior management, AAC, WAC, ~~SW;~~

(g) Physical development, AAC, WAC;

(h) Communication/Language, AAC, WAC;

(4) The program may offer the services at the home of the participant, in the community, in the center, or any other appropriate site which can be arranged by the program and which is deemed appropriate by the Individual Support team.

C. Hours of the Program

~~(1) Each program will have a current activity schedule posted~~

~~(2) The schedule will reflect the hours the facility is open and the hours the program offers supervised services.~~

~~(3) The schedule must reflect the scheduled activities of the day.~~

- Other Agencies Impacted: None.

Law Recommendation #20

- Law: Regulation 88-440
- Summary of current statutory requirement: Records.
- Recommendation and Rationale for Recommendation: Amend to reflect current practice.
- Law Wording: 3) Report of Social History ~~which is updated annually; as available.~~
C. Confidentiality ~~All information in a participant's record shall be considered privileged and confidential. Staff shall not disclose or knowingly permit the disclosure of any information concerning the client or his family directly to any unauthorized person.~~
Compliance with HIPAA
- Other Agencies Impacted: None.

Law Recommendation #21

- Law: Regulation 88-915
- Summary of current statutory requirement: Application for License of an Unclassified Program.
- Recommendation and Rationale for Recommendation: Amend to reflect current practice.
- Law Wording: B. Name and address of the ~~Administrator~~ Executive Director.
- Other Agencies Impacted: None.

Law Recommendation #22

- Law: Regulation 88-920
- Summary of current statutory requirement: Determination by the Department.

- Recommendation and Rationale for Recommendation: Amend to reflect current language.
- Law Wording: (1) Provides a beneficial service to its ~~developmentally disabled clients~~ participants.
(4) Does not exploit the ~~developmentally disabled, participants~~, their families or the public.

Attachment B

Attachment B

Internal Change 1

Evaluation of Abuse, Neglect, and Exploitation (ANE) Reporting and Follow-up System

In order to improve transparency related to ANE allegations, DDSN has changed the way disposition data is shared with the public. Previously, DDSN shared “substantiated” cases, but this terminology is not consistent across all of the investigating agencies as identified by Legislative Audit Council (LAC) and State Inspector General (SIG) reports. To better clarify the outcome of different cases, DDSN now reports two types of substantiated cases from ANE allegations: 1) “arrests;” and 2) “administrative findings.”

This change was only administrative to better communicate to the public the activity within the ANE program. This change was not designed to address outcomes, which are contained in Issue & Recommendation #7 of the memo.

Internal Change 2

Changes to the Tracking and Reporting of Critical Incidents

DDSN implemented a change to the Critical Incident (CI) reporting process on November 1, 2017. Based on both current and historical data, the agency realized the number of medically-oriented events would continue to grow. Because these incidents did not involve any particular action on behalf of staff, DDSN chose to re-categorize them in the agency’s electronic medical record. A General Event Report (GER) is now available to record a variety of events that are not determined “critical” in nature.

Based on the changes in the reporting criteria, overall CI Reports went down by 52% for Community Residential Settings in the eight-month period and down by 34% in Regional Centers. This has allowed both DDSN and providers to focus on more on meaningful risk management effort. To permit meaningful comparisons with prior FYs, these FYs were adjusted to meet the new CI definition standards.

Internal Change 3

Direct Service Operations

DDSN planned to develop and operate six community based homes for consumers with significant behavioral challenges to be completed by August 2018. DDSN developed only three homes. Two were developed in Sumter of which the Sumter DSN Board graciously agreed to operate. One is fully occupied with 3 consumers and the second has consumers identified to begin occupancy by the end of August 2018. The third home developed in Laurens is complete, but currently vacant due to staffing shortages. DDSN is currently working with Laurens DSN Board to assume operations of the four bed home with consumers selected from the Critical Needs List or Regional Centers by the end of calendar year 2018.

Internal Change 4

Plan Review and Service Authorization

On October 30, 2017 the approval of the Case Management Annual Support Plan and Medicaid Waiver Service Requests were moved from local DSN Boards and contracted Case Management Providers to DDSN Central Office. Since that time, as the Case Management Annual Support Plan was completed, the Case Manager submitted the Plan to the DDSN Waiver Administration Division for final review and approval.

Over the first 9 months of this process, 8,454 plans and 12,363 changes to the plans were reviewed. Of the 20,817 reviews, 31% required some amount of changes or additional information from the Case Manager in order to bring them into compliance with Medicaid Policies. While the short time frame since implementation does not allow for specifics regarding the prevention of Medicaid recoupment, it is a reasonable assumption based on the percentage of corrections that there will be a noticeable impact in this area of risk for providers.

In early August 2019, the Waiver Administration Division placed a "pause" on using the Respite and PCA assessments. The core issue concerns the validity of the Respite and PCA assessments to accurately measure consumers' needs. DDSN will review these assessments with stakeholder input with revisions expected in 60-90 days. An analysis of the issue depicted 7707 Waiver Plans reviewed to date, of which 540 Plans (7%) were reduced. Of these 540 Plans, only 124 (1.6%) experienced a reduction to service levels lower than utilized in the previous fiscal year. Of the 7707 Plans, 48 (0.6%) requested the first level appeal known as a reconsideration request. Of these 48, 20 were overturned primarily due to new information provided by families not reflected in the plan or individual's case file. Of the residual 28 sustained, four appealed to the next level of appeal at SC DHHS.

Internal Change 5

DDSN Outcome-Based Provider Evaluation

DDSN worked with State Procurement Office of State Fiscal Accountability Authority to develop an RFP for the Federally-recognized Quality Improvement Organization (QIO) Contract. Alliant ASO was awarded a 5-year contract, which was effective December 1, 2017. A key element of this new contract is the addition of an outcome-based tool known as Residential and Day Services Observation. It includes the on-site observation of service delivery in 25% of DDSN's Home and Community-Based Waiver Residential Settings (350/year) and 100% of Day Service Settings each year. The unannounced Observation represents a "snapshot in time" regarding the operation of the location and the responses provided by staff and program participants.

DDSN providers have improved overall performance among Contract Compliance Key Indicators over the past two years. In FY18, the review process changed to an unannounced review of information available in the electronic record and a 48-hour notice for Administrative Records. The providers have adjusted to these changes and compliance is expected to continue to improve as providers focus on outcome-based performance measures.

| FY | Administrative Key Indicator Compliance for Residential Providers | Residential Habilitation Key Indicator Compliance | # providers with one or more area scoring below 70% |
|------|---|---|---|
| FY14 | 79.4 | 78.9 | 2 |
| FY15 | 76.7 | 87.6 | 9 |
| FY16 | 68.6 | 83.9 | 17 |
| FY17 | 87.6 | 90.1 | 6 |
| FY18 | 90.1 | 90.4 | 2 |

DDSN has also initiated efforts to consider using provider accreditation/certification in lieu of annual contract reviews as a process to ensure quality and reduce annual administrative footprint on those providers who typically perform at the highest level. To support this effort over the next three years, each provider will undergo a Basic Assurances® review as developed by The Council on Quality and Leadership (CQL). This will prepare the provider population for compliance with the Final Rule and develop data to assess viability to use this technique in lieu of annual contract reviews.