

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- Recommendation and Rationale for Recommendation: Should be repealed because it was never established and the ABLE act is now in effect.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- Recommendation and Rationale for Recommendation: Should be repealed because it was never established and the ABLE act is now in effect.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.