

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS  
Honorable G. Thomas Cooper, Jr.  
Circuit Court Case No.: 2007-CP-40-03365

RECEIVED  
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SC Court of Appeals

Appellant Case No. 2014-001373

Estate of Edward James Mims,  
Laura M. Cole, Personal Representative.....Appellant,

v.

The South Carolina Department of Disabilities  
and Special Needs, Kathi Lacy and Stan Butkus, .....Respondents.

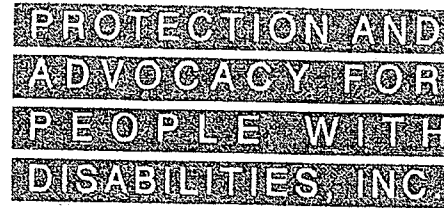
**Volume VIII**

RECORD ON APPEAL

Patricia Logan Harrison  
611 Holly Street  
Columbia, SC 29205  
803-256-2017  
*Attorney for Appellant*

Kenneth P. Woodington  
William H. Davidson, II  
Davidson & Lindemann, PA  
PO Box 8568  
Columbia, SC 29202-8568  
803-806-82222  
*Attorney for Respondents*

**MEDIA CONTACTS:**  
Brian Remsberg, IMRE  
864-232-6380 or [brianr@imre.com](mailto:brianr@imre.com)  
Lindsay Muller, IMRE  
410-821-8220 or [lindsaym@imre.com](mailto:lindsaym@imre.com)



## Protection & Advocacy Issues Report on Community Residential Care Facilities

### *"No Place to Call Home" Documents Deplorable Living Conditions and Inadequate State Oversight*

COLUMBIA, SC (July 21, 2009) – After releasing shocking details of a 14 month-long investigation in a report titled "No Place to Call Home," Protection & Advocacy for People with Disabilities, Inc (P&A) today called for immediate state action to protect the residents of South Carolina Community Residential Care Facilities (CRCF) that are operating under unsafe, unsanitary and disgraceful conditions.

P&A issued the report today to the public, sending copies to the South Carolina Department of Health and Environmental Control (DHEC), the South Carolina Department of Health and Human Services (HHS), the Attorney General, the Department of Labor, Licensing and Regulation (LLR) and the Long Term Care (LTC) Ombudsman. P&A made more than 150 unannounced visits to CRCF facilities over the course of two years. The report outlines immediate action items that P&A feels will lead to better treatment of the 16,700 South Carolinians living in CRCFs, which house between two and more than 100 residents who are elderly or have disabilities.

"The conditions in which residents of many South Carolina CRCFs live are absolutely disgraceful, and our hope is to prevent even more people from living in squalor, suffering abuse and neglect or even dying due to lack of oversight," said Gloria Prevost, Executive Director of P&A. "Through this report, we urge the state to take action to protect residents of CRCFs operating in our state."

As a result of P&A's review of hundreds of facility and agency documents and interviews with CRCF staff, residents and agency personnel, P&A recommends:

1. The statutes and regulations governing CRCFs should be revised to give licensing agencies more enforcement options against frequently cited facilities and administrators, such as:
  - The power to suspend new admissions to CRCFs with repeated, uncorrected violations that significantly jeopardize residents' lives or health while the appellate process to suspend or revoke a license is pending.
  - The power to make suspension of operations automatic when a license has been revoked, followed by an emergency hearing to determine whether the facility should remain closed during the appeal or be allowed to resume operations.
  - The ability to suspend the license of an administrator, prior to a hearing, based upon frequent or egregious violations that significantly jeopardize residents' lives or health.
  - The creation of an expedited appeal process to review license suspensions or suspension of new resident admissions.
  - The consideration of information relating not only to the current licensing period, but of all pertinent information regarding the facility and the applicant when considering applications and renewals of licenses.

-more-

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2. DHEC should inform the public and concerned parties about problem facilities. Facility inspection reports, including corrective actions, should be made available to the public on the agency's website and posted at the facility.
3. The state should create an Adult Abuse Registry of individuals who have substantiated allegations of abuse or neglect of vulnerable adults against them. Facilities should be required to check the Registry before hiring a prospective employee.
4. The General Assembly should fully fund enough DHEC inspection staff to provide for periodic unannounced visits and full, timely investigation of all allegations for regulatory violations.
5. The General Assembly should adequately fund the SC Department of Labor, Licensing and Regulation to enable prompt investigation of complaints against CRCF administrators.

Other key findings in the report include:

- Resident neglect and abuse by untrained, unmotivated staff that fall asleep on the job or, in some instances, have criminal backgrounds including cases of sexual abuse and assault.
- Unsanitary, unsafe and unacceptable living conditions, including cockroach infestations, bloodstained walls and urine-soaked furnishings.
- Inadequate documentation, administration and storage of prescription medications – Several instances in which prescription drugs were either not administered at all or were administered past the expiration dates.
- Failure to ensure that residents' basic personal hygiene needs are met – One resident received one shower over the course of five months.
- Failure to meet food quality and sanitation standards.

The report highlights personal struggles of several residents. To download and view the entire report visit <http://www.protectionandadvocacy-sc.org/>.

To view images of conditions in facilities visited during this investigation, please visit <http://www.imre.com/scpa/gallery.html>.

**About Protection & Advocacy for People with Disabilities, Inc.**

Established in 1977 as the protection and advocacy system for the State of South Carolina, P&A is mandated by state and federal law to protect the rights of people with disabilities in South Carolina. P&A is a private, non-profit corporation governed by a volunteer board of directors. As required by federal law, P&A is independent of all agencies that provide treatment or other services to people with disabilities.

P&A has offices throughout the state of South Carolina including Columbia, Greenville, Charleston and Florence. P&A is a member of the National Disability Rights Network (NDRN).

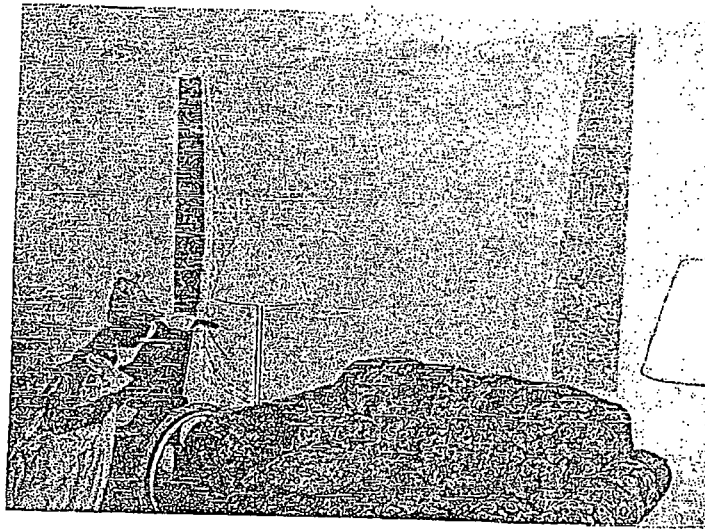
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**PROTECTION AND  
ADVOCACY FOR  
PEOPLE WITH  
DISABILITIES, INC.**

*The Protection and Advocacy System for South Carolina*

## **No Place To Call Home:**



## **How South Carolina Has Failed Residents of Community Residential Care Facilities**

Protection and Advocacy for People with Disabilities, Inc.  
3710 Landmark Drive, Suite 208, Columbia, SC 29204  
[www.protectionandadvocacy-sc.org](http://www.protectionandadvocacy-sc.org)

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## EXECUTIVE SUMMARY<sup>1</sup>

Community Residential Care Facilities (CRCFs) are the homes of last resort for as many as 16,700 South Carolinians.<sup>2</sup> These poorly overseen facilities, which range in size from two to more than one hundred beds, provide housing, food, and care to individuals who are unable to live independently but who do not need institutional or skilled nursing care.<sup>3</sup> Residents of CRCFs have physical, emotional, or intellectual disabilities. Many cannot manage their own funds. These vulnerable individuals often do not have family members or friends who can advocate for them. The SC Department of Health and Environmental Control (DHEC) currently licenses over 480 separate community residential care facilities in South Carolina.<sup>4</sup>

Since 1986, Protection and Advocacy for People with Disabilities, Inc. (P&A) has conducted unannounced visits to more than 1000 CRCFs through the Team Advocacy Program.<sup>5</sup>

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<sup>1</sup> This report was prepared by attorneys and other staff members of Protection and Advocacy for People with Disabilities, Inc. It was funded in part by the US Department of Health and Human Services (Substance Abuse and Mental Health Services Administration and the Administration on Developmental Disabilities) and by the US Department of Education (Rehabilitation Services Administration).

<sup>2</sup> The Department of Health and Environmental Control licenses and regulates CRCFs, DHEC R. 61-84. As of May 2009, there were 16,741 licensed CRCF beds in South Carolina. A licensed CRCF may also refer to itself as an assisted living facility. The facilities discussed in this report are those that serve residents with disabilities and low incomes, usually with government funding, including Supplemental Security Income, Social Security Disability Income or veterans' benefits. For CRCFs willing to accept a monthly cap of \$1100 for all fees, SC Health and Human Services also has an Optional State Supplementation (OSS). It supplements a resident's other earnings or benefits so that a total of \$1100 a month is available to pay CRCF charges. See: <http://www.dhhs.state.sc.us/dhhsnew/insidedhhs/bureaus/EligibilityPolicyAndOversight/oss.asp>. The CRCFs included in this report are predominantly operated by individuals as sole proprietorships or small corporations. Boarding homes, providing only food and shelter without personal care, do not have to be licensed as CRCFs and were not included in this report.

<sup>3</sup> DHEC R. 61-84.101.L defines a CRCF as: A facility which offers room and board and which, unlike a boarding house, provides/coordinates a degree of personal care for a period of time in excess of 24 consecutive hours for two or more persons, 18 years old or older, not related to the licensee within the third degree of consanguinity. It is designed to accommodate residents' changing needs and preferences, maximize residents' dignity, autonomy, privacy, independence, and safety, and encourage family and community involvement. Included in this definition is any facility (other than a hospital), which offers or represents to the public that it offers a beneficial or protected environment specifically for individuals who have mental illness or disabilities. These facilities may be referred to as "assisted living" provided they meet the above definition of community residential care facility.

<sup>4</sup> DHEC listing of Community Residential Care Facilities: <http://www.scdhec.gov/health/licen/hrcrcf.pdf>.

<sup>5</sup> S.C. Code § 43-33-350. The Team Advocate uses a number of factors to develop the list of CRCFs to inspect throughout the year, including balancing the different regions of the state, the number of facilities in each area/region, how many of those have a Memorandum of Agreement with DMH, the date of Team's last inspection

P&A is the state and federally mandated protection and advocacy system for South Carolina. P&A was established as a nonprofit corporation in 1977 by S.C. Code §§ 43-33-310 *et seq.* to protect the rights of people with disabilities. Each year P&A serves thousands of South Carolinians who have been abused, neglected or denied their rights to equal treatment and access to services. P&A has broad authority under state and federal law to advocate for the rights of individuals with disabilities and to investigate allegations of abuse and neglect when such incidents are reported or when probable cause exists to determine that abuse and neglect has occurred.

P&A has found that many CRCFs are filthy, do not provide adequate food and heat, do not safely administer medications or arrange for needed medical care, and do not provide protection from abuse, neglect and exploitation. Inspectors have found infestations of cockroaches in facilities, blood on the walls, and food which is out of date and rotting. Some residents routinely lack prescribed medications or are given the wrong amounts of medications, and some residents have been physically harmed by staff or other residents due to lack of supervision. These CRCFs are no place to call home.

Oversight of CRCFs is fragmented, slow to respond, and ineffective in protecting residents. In fact, as anyone who followed the story of Peachtree Manor in Winnsboro until its closing knows, the current system protects the owners of the facilities more than the residents.

During 2007 and 2008 P&A received many reports about increasing frequency and severity of abuse and neglect at some CRCFs.<sup>6</sup> The reports included deaths, sexual and physical abuse and neglect, including the failure to appropriately administer medication and to provide basic necessities such as food, heat and basic care. P&A has filed a complaint with DHEC about conditions in CRCFs in about 40% of the facilities inspected under the Team Advocacy program. While many CRCF owners are committed to operating facilities that provide a good quality of care, the lack of effective oversight puts all residents of CRCFs at risk of harm.

This report presents six case studies<sup>7</sup> that illustrate common problems found in CRCFs throughout the state, as well as the inability of the current system to prevent or cure these

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of that facility (if any), the availability of volunteers, the size of the facility, travel time, concerns or problems reported with facilities, etc.

<sup>6</sup> See Appendix for a brief description of the methodology used to select the six facilities included in the report.

<sup>7</sup> In order to protect the privacy of residents, these facilities are referred to by pseudonyms, except Peachtree Manor, which received widespread publicity throughout 2008.

problems in a timely fashion. Even though the shocking conditions at these six CRCFs have been widely known among state agencies, five of the six remain open. The single closure discussed here took an overwhelming amount of time and resources from several state agencies and P&A, despite the facility's repeated failure to comply with regulations and a lengthy series of investigations that routinely confirmed the presence of deplorable, unsafe conditions.

As a result of P&A's review of hundreds of facility and agency documents and conversations and interviews with CRCF staff and residents and agency personnel, P&A recommends:

1. The statutes and regulations governing CRCFs should be revised to give licensing agencies more enforcement options against frequently cited facilities and administrators, such as:
  - The power to suspend new admissions to CRCFs with repeated, uncorrected violations that significantly jeopardize residents' life or health while the appellate process to suspend or revoke a license is pending;<sup>8</sup>
  - The power to make suspension of operations automatic when a license has been revoked, followed by an emergency hearing to determine whether the facility should remain closed during the appeal or be allowed to resume operations;
  - The ability to suspend the license of an administrator, prior to a hearing, based upon frequent or egregious violations that significantly jeopardize residents' life or health;
  - The creation of an expedited appeal process to review license suspensions or bars to new resident admissions;
  - The consideration of information relating not only to the current licensing period, but of all pertinent information regarding the facility and the applicant when considering applications and renewals of licenses;
2. DHEC should inform the public and concerned parties about problem facilities. Facility inspection reports, including corrective actions, should be made available to the public on the agency's website (without personal information identifying residents)<sup>9</sup> and posted at the facility.

<sup>8</sup> Nursing homes that accept Medicaid payments are barred from accepting new admissions pending appeal of revocation of their operating license, 42 C.F.R. 488.414. Also, the statute could be expanded to include suspensions for prolonged periods of substandard conditions and repeated, uncorrected violations that present an unhealthy living environment. A third option would be to make suspensions automatic when a license has been revoked, followed by an emergency hearing to determine whether the facility should remain closed during the appeal or be allowed to resume operations. A fourth alternative would be to include an option for the licensing agency to request an expedited appeal process as well as injunctive relief pending appeal, if conditions so warrant. This injunctive relief could include a bar on the admission of new residents.

<sup>9</sup> In its 2005 Annual Report, the Adult Protection Coordinating Council (APCC), a group created by the Omnibus Adult Protection Act, recommended that DHEC post inspection reports on its website.

3. The state should create an Adult Abuse Registry of individuals who have substantiated allegations of abuse or neglect of vulnerable adults against them. Facilities should be required to check the Registry before hiring a prospective employee.
4. The General Assembly should fully fund enough DHEC inspection staff to provide for periodic unannounced visits and full, timely investigation of allegations of regulatory violations.
5. The General Assembly should adequately fund the SC Department of Labor, Licensing and Regulation (LLR) to enable prompt investigation of complaints against CRCF administrators.<sup>10</sup>

Current procedures provide only an illusion of oversight. The General Assembly, the Department of Health and Environmental Control, the Long Term Care Ombudsman and the other responsible agencies must act before more residents continue to live in squalor, suffer abuse and neglect or even die, and before more state and federal funds are wasted on grossly inadequate care. CRCF residents deserve to have a place to call home.

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<sup>10</sup> CRCF administrators are licensed by the Board of Long Term Health Care Administrators, located in LLR; complaints are investigated by LLR's Office of Investigation and Enforcement.

NO PLACE TO CALL HOME:  
HOW SOUTH CAROLINA HAS FAILED RESIDENTS OF  
COMMUNITY RESIDENTIAL CARE FACILITIES

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## Introduction

Community Residential Care Facilities (CRCFs) are the homes of last resort for as many as 16,700 South Carolinians. These poorly overseen facilities, which range in size from two to more than one hundred beds, provide housing, food, and care to individuals who are unable to live independently but who do not need institutional or skilled nursing care.<sup>11</sup> Residents of CRCFs have physical, emotional, or intellectual disabilities. Many cannot manage their own funds. These vulnerable individuals often do not have family members or friends who can advocate for them. The SC Department of Health and Environmental Control (DHEC) currently licenses over 480 separate community residential care facilities in South Carolina.<sup>12</sup>

This report initially provides information regarding the fragmented regulation and oversight of CRCFs in South Carolina. Information is provided about six CRCFs, including one known as Peachtree Manor. After two years of operation, Peachtree Manor was finally closed by Administrative Law Court decision in April 2008, due to its poor and unsafe conditions.

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<sup>11</sup> DHEC R. 61-84.101.L defines a CRCF as: A facility which offers room and board and which, unlike a boarding house, provides/coordinates a degree of personal care for a period of time in excess of 24 consecutive hours for two or more persons, 18 years old or older, not related to the licensee within the third degree of consanguinity. It is designed to accommodate residents' changing needs and preferences, maximize residents' dignity, autonomy, privacy, independence, and safety, and encourage family and community involvement. Included in this definition is any facility (other than a hospital), which offers or represents to the public that it offers a beneficial or protected environment specifically for individuals who have mental illness or disabilities. These facilities may be referred to as "assisted living" provided they meet the above definition of community residential care facility.

<sup>12</sup> DHEC listing of Community Residential Care Facilities: <http://www.scdhec.gov/health/licen/hrcrcf.pdf>

## Fragmented Regulation and Oversight of CRCFs

Oversight of CRCFs is split among many agencies:

The South Carolina Department of Health and Environmental Control (DHEC), Division of Health Licensing licenses and inspects CRCFs through regulation DHEC R. 61-84.<sup>13</sup> The regulation covers most aspects of facility management, including reporting of abuse, neglect, and injuries; physical safety; nutrition; administration of medicine; residents' rights; and enforcement of regulations. DHEC has authority to make unannounced inspections, although they are rare. DHEC has the authority to levy fines up to \$10,000 for repeated serious violations, although in practice fines are usually substantially reduced.<sup>14</sup>

The South Carolina Department of Health and Human Services (HHS) provides financial supplementation to Social Security Disability Insurance/Supplemental Security Income (SSDI/SSI) benefits through Optional State Supplementation (OSS), a state-funded program administered by HHS. OSS payments, which provide additional funds to pay for the cost of the poorest residents in CRCFs, are made directly to the facility.<sup>15</sup> HHS also is responsible for the administration of Medicaid, which most residents receive.

The Attorney General is responsible for prosecuting Medicaid fraud and other issues.

Ms. A is a 65-year-old woman, with diagnoses of traumatic brain injury, dementia, and seizure disorder. She uses leg braces, a walker, and occasionally wears adult incontinency products. Ms. A can communicate very little verbally. Ms. A has lived in the same CRCF for over twenty years. Team Advocacy's inspection found an overwhelming odor of urine in the bedroom; no shower curtain and dangerously loose handrails in the bathroom; and dangerously low lighting in the bedroom. Ms. A's clothing was dirty and had holes. The residents had to ask for toilet paper, which was difficult for Ms. A to communicate. When asked where she stored her toilet paper, she reached through a small hole in her walker and pulled out a few sheets which she was hoarding.

<sup>13</sup> <http://www.scdhec.net/administration/regs/docs/61-84.pdf>

<sup>14</sup> DHEC R. 61.84.302; <http://www.scdhec.net/administration/regs/docs/61-84.pdf>

<sup>15</sup> CRCFs currently receive \$1100 per month for individuals receiving OSS. <http://www.dhhs.state.sc.us/Internet/pdf/ossadvJanuary2009.doc>

The Department of Labor, Licensing, and Regulation (LLR) licenses and disciplines CRCF administrators<sup>16</sup> through the Board of Long Term Health Care Administrators. The Board does not have the power to suspend a license before a hearing, regardless of the seriousness of the misconduct.

The Long Term Care (LTC) Ombudsman in the Office of the Lieutenant Governor is responsible for investigation of reports of abuse and neglect of residents of CRCFs.<sup>17</sup> Local law enforcement or SLED may also receive reports.

Mr. B is a 46-year-old man who has diagnoses of schizophrenia and hypertension. He had been living at a CRCF in the Charleston area for a month. His family could not visit him because they lived over 200 miles away. He did not know why he had been placed so far from his family. Team Advocacy's inspection found: bedrooms were overheated at 81°F and 82.6 °F; several of the residents were wearing dirty and worn clothing; residents were not allowed to sit in the front living room area because a sign written by the administrator stated that they wanted to keep that area clean and smelling good; Mr. B stated that other residents were using illegal drugs; the only snack offered was one Mr. B was allergic to; and the facility did not always have clean bath towels or enough toilet paper.

Some CRCF residents receive services from the Department of Mental Health (DMH), including individuals discharged from DMH facilities who move into CRCFs because they have no family or cannot afford to live anywhere else. Some CRCFs contract with DMH for an enhanced rate to serve residents with mental illness. A staff member of DMH has responsibility for oversight of these contracts. Some DMH community mental health centers directly operate CRCFs in order to provide supplemental mental health services to residents. DMH also contracts with P&A to make 75 unannounced inspections of CRCFs per year through P&A's Team Advocacy program to ensure that DMH clients have access to safe facilities.

The Social Security Administration is responsible for oversight of SSDI/SSI disability or retirement benefits paid to a representative payee for a person who cannot manage funds. Many residents of CRCFs appoint the CRCF as their representative payee.

<sup>16</sup> <http://www.scstatehouse.gov/coderegs/c093.htm>

<sup>17</sup> As part of the Omnibus Adult Protection Act, <http://www.scstatehouse.gov/code/t43c035.htm>.

Their entire income is assigned to the CRCF, leaving them a net income of only \$57.00 (SSI) or \$77.00 (SSDI) per month.<sup>18</sup> From these funds, residents must pay for prescription and over the counter drugs, physician copayments, and personal items such as adult incontinency products, soap, shampoo, clothing, etc.

The Veterans Administration has fiscal oversight responsibility for recipients of veterans' benefits.

The State Fire Marshal is responsible for enforcing fire safety.

The Department of Social Services (DSS) has responsibility for any residents who have been placed in its custody through the Family Court.<sup>19</sup>

The Department of Disabilities and Special Needs (DDSN) has responsibility for any residents who it may have placed in the CRCF or for clients placed there by others.

The U.S. Department of Homeland Security has placed individuals in CRCFs, apparently with little or no oversight.

Ms. C is a 62-year-old woman with schizophrenia and diabetes. The Department of Mental Health placed her in the CRCF where she had lived for five years. While Team Advocacy members were speaking with the facility administrator, Ms. C approached Team Advocacy members and said that she was afraid of another resident who attacked her and other residents. Immediately, the administrator responded by shouting and yelling at Ms. C. The administrator called the resident a "liar" and accused her of being "jealous" because the other resident had more money. At one point in the argument, the administrator was close to Ms. C's face. Ms. C became upset and tearful, screaming that she wanted to move. She packed all of her belongings in one garbage bag within minutes. Team Advocacy contacted her case worker at DMH, and the resident was immediately moved to another CRCF.

This report documents the history of enforcement efforts at six CRCFs throughout the state. As shown in the accounts of individual facilities, several agencies may conduct investigations into the same incident without prompt improvement of the violations and without any meaningful sanctions to the owner, the administrator or the perpetrators of abuse or neglect.

<sup>18</sup> <http://www.dhhs.state.sc.us/Internet/pdf/ossadvJanuary2009.doc>

<sup>19</sup> As part of the Omnibus Adult Protection Act, <http://www.scstatehouse.gov/code/t43c035.htm>

## WHAT DID INSPECTORS FIND AT THE

### SIX CRCF FACILITIES?<sup>20</sup>

#### FACILITY A

Facility A is located in a rural county. Serious problems have been noted at Facility A since at least February, 2006. The facility's deficiencies included errors or carelessness in handling medication; failure to fill prescriptions and provide needed health care for residents; interference with DMH services to residents; incomplete or missing admission papers, medical assessments, TB tests, and level of care evaluations to ensure residents' needs can be met in a CRCF. Other serious and recurring problems were inadequate staff documentation and training; poor sanitation, health care deficiencies (medications out of stock, the need for higher level of care than a CRCF); altercations between residents; safety issues such as food improperly stored/labeled and/or lacking completely; financial mismanagement of residents' funds; and inadequate utility maintenance. Some of the most significant deficiencies were:

- Failure to obtain medical care for a resident who had an open lesion on his arm, which was bleeding through his sweatshirt, and on his forehead;
- Administration of discontinued medications;
- Failure to assess residents within 72 hours of admission, which DHEC cited as a violation; and
- Interference with residents' access to services at the local community mental health center.

Due to continuing problems with this CRCF, P&A made three visits to the facility in January, September and October of 2007 and one visit in 2008. DHEC made at least two inspections between February and December of 2007, and two more in May and June of 2008. DMH made two visits in February and March of 2006, and two joint visits with P&A in January and October of 2007. The local Community Mental Health Center also

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<sup>20</sup> More detailed information about each facility may be found in the Appendices.

made visits. The Long Term Care Ombudsman visited in February, September, and October of 2007.

In 2006, the administrator had been fined \$5,000 by DHEC for operating a separate unlicensed facility, in addition to her operation of Facility A. This amount was later reduced by mutual agreement between the parties upon the condition that the administrator cease operating the unlicensed facility. Despite the terms of the agreement, DMH discovered during a visit on October 30, 2007, that the administrator was operating an unlicensed home. This home contained an unvented heater with no apparent carbon monoxide detector in the house. The wall had become discolored above the heater due to the heat. Bedrooms, bathroom, and kitchen were not heated. A resident stated that the ceiling leaked when it rained. The floor in the bathroom was sinking in.

This case illustrates the need for DHEC and other agencies to be able to consider the entire history of an owner or administrator. The operator of Facility A was allowed to continue its operation in spite of her failure to comply with the previous agreement with DHEC and in spite of the continuing lack of compliance in operation of Facility A.

## **FACILITY B**

Facility B is a 10-bed facility located in an urban county. It has a history of violations, and was briefly shut down in 2001 after the death of a resident. Recent renovations have made significant improvements to the physical condition of the facility, but as recently as July 24, 2008, the LTC Ombudsman's office performed an unannounced inspection and found numerous problems.

A review of the records from DHEC, DMH, the State LTC Ombudsman and P&A reveals a history of physical abuse by staff; the facility's requiring residents to perform work in the facility; errors or carelessness in handling medication; failure to perform medical tests as required upon admission; and a resident who continued to live at the facility after being committed to a state mental hospital, by court order, as a danger to himself or others.<sup>21</sup> Some of the most significant deficiencies were:

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<sup>21</sup> The July 24, 2007, inspection also found that one resident was on probation for committing a crime and had been court ordered into a state mental facility after being determined to be a danger to himself and others. He had been placed at Facility B when the facility had a 24-hour Department of Mental Health presence. This was no longer the case, but the resident had not been relocated to an appropriate facility.

- On July 3, 2007, a resident was removed to a Crisis Stabilization Center after alleging a staff member had severely beaten him, to the point of vomiting blood, with a two-by-four board.<sup>22</sup>
- When the LTC Ombudsman staff inspected the facility later in July 2007, they found that residents were being assigned many duties not consistent with their care plans. Residents were being required to wash their own laundry and cook and serve their own meals; one resident was required to mow the facility's lawn.
- The March 29, 2008, Team Advocacy inspection discovered numerous inconsistencies in residents' medical records and available medications. Thirteen medications prescribed to different residents were not available, including major prescription pain medications. Other residents' medications had not been properly administered or were past their expiration dates.
- Residents did not receive needed clothing, dentures, adult incontinency supplies, and medical care. A complaint was filed with DHEC.
- DHEC inspected and cited Facility B for violations for unavailability of staff, medications out of stock, food preparation violations and unlocked chemicals. DHEC required Facility B to submit a plan of correction.

Team Advocacy inspected this facility in March 2008; the LTC Ombudsman inspected it in July 2007 and April 2008; and DHEC inspected Facility B in April 2008.

The ongoing problems with this facility reveal the inability of existing state agencies to remedy problem conditions in a timely manner.

## FACILITY C

Facility C is a small (licensed for five beds) CRCF in an urban county. Throughout the time period reviewed for this report, significant problems were noted with resident documentation and care; staff documentation and supervision; sanitation,

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<sup>22</sup> Charleston/Dorchester Community Mental Health Center removed resident to a Crisis Stabilization Center and reported the incident to the LTC Ombudsman, DHEC, DMH, the state attorney's office, and several other entities. The LTC Ombudsman performed an unannounced facility inspection on July 20, as per next paragraph. DHEC also did a report, dated August 16, 2007.

health and safety; medication administration; and food. Some of the most significant deficiencies were:

- Exceeding the number of residents for which the facility was licensed;
- Staff sleeping on the job;
- Inadequate background checks of staff;
- Residents had no Medication Administration Records (MARs)<sup>23</sup> or MARs were incorrect or unsigned;
- Medicines were not kept locked;
- Insulin was not refrigerated;
- Residents did not receive medication or appropriate medical treatment: residents did not receive medication for over a week;
- At least one resident had been performing cleaning duties at the facility for \$5 per day.

P&A inspected this facility in July 2007; DMH inspected it in July and twice in August of 2007 and then in January, February, and June 2008; and DHEC inspected it in September, 2007; and January, February, and April 2008.

Again, the ongoing problems with this facility reveal the inability of existing state agencies to remedy problem conditions in a timely manner.

## **FACILITY D**

Facility D is located in a rural area of an urban county. The five-bed facility is a converted house in a local neighborhood. It has had persistent compliance problems for several years going back to 2005. As early as 2006, the administrator had entered into a probation agreement with the Department of Labor, Licensing, and Regulation based on

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<sup>23</sup>DHEC R. 61-84.1203. A. "Each medication dose administered or supervised shall be properly recorded by initialing on the resident's medication administration record (MAR) as the medication is administered. Recording medication administration shall include medication name, dosage, mode of administration, date, time, and the signature of the individual administering or supervising the taking of the medication."

problems from prior inspections. Since that time there were multiple complaints and multiple emergency inspections. P&A inspected Facility D in December 2007; DMH inspected it in February 2007 and January, March, May and August of 2008; the LTC Ombudsman inspected the facility twice in January 2007 and once in March 2007. The LTC Ombudsman's office responded to seven complaints there between March 21, 2007, and January 11, 2008; DHEC has made four inspections; and P&A has inspected and responded to numerous complaints from December, 2007 to February 2008. In May 2008, after the facility repeatedly failed to meet inspection requirements, DHEC held a consultation with the CRCF staff. When problems were still not remedied in a final inspection, DHEC recommended an enforcement action in August 2008.

Among the many deficiencies at this facility, some of the most serious were:

- Inadequate documentation and storage of prescription medications;
- An administrator was consistently absent;
- No way to contact the administrator in an emergency;
- Refusing to allow P&A and DHEC to inspect the facility;
- Blood found on the walls;
- Cockroaches crawling on the walls;
- Pushing a DMH inspector;
- Rotten food;
- Filthy walls, carpets and furnishings;
- Debris and beer cans in the yard;
- Inadequate documentation of staff and training.

The protracted difficulty that state organizations had reforming this facility-- despite almost total abandonment by the licensed administrator, consistently foul conditions, and open defiance of state inspectors by staff-- demonstrates how difficult it is to deal with problem facilities in a timely fashion under our current system.

## FACILITY E

Facility E is a facility in a rural county. On June 4, 2007, the Department of Labor, Licensing, and Regulation brought an action against the administrator before the Board of Long Term Health Care Administrators (the Board) for substandard conditions in his facility. A consent agreement was signed whereby the administrator's license was suspended for one year and a \$1,000 fine was assessed. The suspension was stayed, and the license was put on probationary status for a year. The administrator was also required to report all complaints and inspections to the Board. All of the incidents listed below occurred after this consent order took effect while the license was in probationary status, yet the administrator's license remained in place. Some of the significant deficiencies in Facility E included:

- Failure to dispose of medication properly;
- Exploitation of some residents by others;
- Residents leaving the facility without staff's knowledge;
- No privacy at tubs or toilets in bathrooms;
- Urine-soaked sweatpants worn by a resident and urine on the floor of a bedroom;
- A resident covered in dried blood lying on a bare mattress;
- Roaches in the bedrooms and bathroom;
- Mouse droppings in a dresser drawer;
- A resident who had not had a bath from June until November;
- Inadequate documentation of criminal background checks.

P&A inspected Facility E in October 2007; the LTC Ombudsman inspected it in November 2007; DMH inspected it in November and December 2007 and January 2008; DHEC inspected Facility E in June, September, October and November 2007 and then requested and received a plan of correction for all violations. In January 2008, when

DHEC inspected again, over 30 violations were found (many of which were repeat violations).

The ongoing problems with this facility again reveal the inability of existing state agencies to remedy problem conditions in a timely manner.

## PEACHTREE MANOR<sup>24</sup>

Peachtree Manor, although an extreme case, illustrates the deficiencies of the current system for oversight of CRCFs. It is now closed. At times during its operation:

- A resident was killed in traffic while unsupervised;
- Residents did not receive their medications or medical care;
- Residents did not have heat;
- The facility had no gas for cooking;
- The facility had consistently filthy conditions, including roaches in the kitchen.

Peachtree received its license to operate as a CRCF in Winnsboro, South Carolina, in Fairfield County on January 18, 2006. DHEC inspectors first noted problems at Peachtree before the facility even opened, and multiple inspections over the next two years uncovered a pattern of ongoing and progressive deterioration. Peachtree proved consistently unable to appropriately document the administration of residents' required medications, ensure basic sanitation, or maintain finances stable enough to consistently provide for basic necessities like food, heat, phone service, and garbage removal.

Additionally, at least one resident died due to lack of supervision. On the evening of Saturday, October 29, 2006, two residents were walking on the road in front of the facility. A vehicle struck and killed one of the two residents, who used a wheelchair. The other resident sustained minor injuries as he leapt to safety. A complaint was made

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<sup>24</sup> Because the facts surrounding Peachtree were the subject of widespread media coverage and the facility is no longer operating, the report uses the facility name, rather than a pseudonym.

concerning resident monitoring, staffing and training, resident's records, and facility safety. The individual care plan for the deceased resident had not been reviewed or revised every six months; the initial care plan (ICP) had been performed on March 3, 2006. His admission assessment was incomplete, and did not contain all items required by DHEC R. 61-84.101.I. There was no care plan available for review for the surviving resident. He had been admitted on October 6, 2006; DHEC regulations require an ICP be completed within seven days of admission.<sup>25</sup> His assessment stated that he "wanders" but the DHEC inspector determined the resident was not properly supervised. (According to hearing testimony by the operator of Peachtree, the two residents were on a "buddy system" with each other, and were also supervised by staff.)

DMH, the LTC Ombudsman's Office, P&A and DHEC all conducted inspections throughout Peachtree's period of operations, although primary responsibility fell on DHEC as the licensing agency. DHEC cited Peachtree for regulatory violations on numerous occasions, beginning on January 5, 2006 (before the facility even opened), again on May 31, 2006, and again on June 21 and 22, 2006. By letter dated July 21, 2006, DHEC imposed a total monetary penalty in the amount of \$20,100.00 for the assorted regulatory violations (reduced to a total fine of \$6,325.00 by order of the Administrative Law Court dated Sept. 14, 2007).<sup>26</sup>

A DHEC complaint investigation in response to the death mentioned above was made on October 30, 2006, and a DHEC general sanitation inspection and complaint investigation was made on November 14, 2006. Pursuant to the results of those inspections, DHEC revoked Peachtree's license to operate by letter dated December 5, 2006. Peachtree appealed that revocation to the Administrative Law Court. While the action was pending, the facility remained open and continued to admit new residents. In the meantime, conditions continued to deteriorate and the residents' lives and health were daily placed at greater and greater risk.

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<sup>25</sup> DHEC R. 61-84 703. Individual Care Plan (II) A. The facility shall develop an ICP with participation by, as evidenced by their signatures, the resident, administrator (or designee), and/or the sponsor or responsible party when appropriate, within seven days of admission.

<sup>26</sup> S.C. Dep't of Health & Envtl. Control v. Peachtree Manor Residential Care, LLC, 06-ALJ-07-0765-CC (S.C. Admin. Law Ct., Sept. 14, 2007) (Kittrell, C.J.). Online at <http://www.scalc.net/decisions.aspx?q=4&id=10347>

Finally, on March 28, 2008, after several warnings regarding non-payment, Palmetto Long Term Care Pharmacy terminated its contract with Peachtree and ceased to supply the facility with medications. The pharmacy then notified DHEC of this action and stated that it therefore believed the residents were no longer receiving necessary medications. As a result, DHEC performed an emergency inspection that same afternoon, which confirmed that residents were not receiving required medications, cited several other violations as well, and finally determined that an "imminent threat to the health, safety, and welfare of the residents" existed, which allowed DHEC to immediately suspend Peachtree's license under S.C. Code § 44-7-320(A)(3). Five days later, an emergency hearing was held, and on April 1, 2008, an Administrative Law Court judge confirmed both the license suspension and the earlier revocation action. Finally, after over two years, almost the entirety of which had been spent in noncompliance with regulatory requirements, Peachtree was closed and the remaining residents were moved.

Peachtree's eventual closure was not a success, but the outcome of systemic failure. Its residents suffered, and even died, over a period of years because of the lack of an adequate and competent system to approve initial licenses, inspect facilities, and revoke licenses. Efforts to make Peachtree comply with DHEC's regulations cost hundreds of hours of many agencies' time and tens of thousands of state dollars. While Peachtree represents the extreme of noncompliance, the other facilities discussed in this report, as well as many others across the state, continue to pose health and safety hazards to residents.

### FINDINGS

1. Unsafe, unsanitary, and unacceptable conditions prevail at many residential care facilities throughout the state.
2. Staff and administrators are often unaware, untrained, or apathetic about compliance with the regulations that govern the facilities.
3. Since inspection results are not public and no central database of facility reports exists, it is difficult for agencies and others that serve vulnerable adults to easily access information regarding complaints and actions taken against facilities.

4. Different agencies have varying degrees of oversight and reporting responsibilities.
5. State regulatory agencies have only limited tools, typically monetary penalties that are often reduced significantly, to address problems in CRCFs.<sup>27</sup> Fines imposed on facilities, however, often result in worse resident care rather than curing the problem.
6. There is no process to stop admissions to a deficient facility short of license revocation.
7. The level of noncompliance required for revocation of a facility's license is too high to ensure protection to residents, and the legal process required for facility closure can take years. Meanwhile, residents continue to live in substandard and unsafe conditions.

### Conclusion

The history of the efforts to obtain compliance with the law in these six Community Residential Care Facilities shows the complete ineffectiveness of our state's efforts to protect these people with disabilities, who are usually poor and without family. Facilities that continue to operate with numerous and repeated violations over a long period of time show the callousness with which many administrators and operators treat the people in their care. Such pervasive violations signify a blatant disregard for the law and discredit the ability of agencies and advocacy organizations to compel compliance.

Residents in the facilities in this report lived in unsanitary environments where they were provided no opportunity for activities and were often expected to perform housekeeping duties that should be designated for staff only. These residents often did not receive vital medications, medical treatment in a timely matter, food, heat, and care by an adequate number of properly trained staff with no criminal history. Many of the residents have been threatened, exploited, neglected, and even abused by the staff entrusted with their care.

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<sup>27</sup> See, e.g. <http://www.scalc.net/decisions.aspx?q=4&id=10347>, S.C. ALC 06-ALJ-07-0765-CC, original fine imposed by DHEC against Peachtree \$20,100, final total fine imposed by court; \$6,325. Often, however, DHEC negotiates with the owner instead of taking it through the court: see, e.g., <http://www.scalc.net/decisions.aspx?q=4&id=5515>

Violations of CRCF regulations must be enforced more consistently and more stringently. Administrators and operators must understand that noncompliance will be punished and that repeat offenses will not be tolerated without serious consequences. Public awareness of substandard facilities and of negligent staff should also support decreasing admissions to substandard facilities, a primary goal in any effort to ensure facilities provide quality care and comply with regulatory requirements. Until South Carolina reinforces its commitment to ensuring that Community Residential Care Facility operators are accountable for their actions, administrators will have little incentive to improve the standard of care, residents will not receive the care to which they are entitled, and residents and the state will continue to financially reward operators who fail to meet the most basic standards of care. **CRCF residents deserve to have a place to call home.**

### RECOMMENDATIONS

1. The statutes and regulations governing CRCFs should be revised to give licensing agencies **more enforcement options against frequently cited facilities and administrators, such as:**

- **The power to suspend new admissions to CRCFs with repeated, uncorrected violations that significantly jeopardize residents' life or health while the appellate process to suspend or revoke a license is pending,<sup>28</sup>**
- **The power to make suspension of operations automatic when a license has been revoked, followed by an emergency hearing to determine whether the facility should remain closed during the appeal or be allowed to resume operations;**

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<sup>28</sup> Nursing homes that accept Medicaid payments are barred from accepting new admissions pending appeal of revocation of their operating license, 42 C.F.R. 488.414. Also, the statute could be expanded to include suspensions for prolonged periods of substandard conditions and repeated, uncorrected violations that present an unhealthy living environment. A third option would be to make suspensions automatic when a license has been revoked, followed by an emergency hearing to determine whether the facility should remain closed during the appeal or be allowed to resume operations. A fourth alternative would be to include an option for the licensing agency to request an expedited appeal process as well as injunctive relief pending appeal, if conditions so warrant. This injunctive relief could include a bar on the admission of new residents.

- The ability to suspend the license of an administrator, prior to a hearing, based upon frequent or egregious violations that significantly jeopardize residents' life or health;
- The creation of an expedited appeal process to review license suspensions or bars to new resident admissions; and
- The consideration of information relating not only to the current licensing period, but of all pertinent information regarding the facility and the applicant when considering applications and renewals of licenses.

2. DHEC should inform the public and concerned parties about problem facilities. Facility inspection reports, including corrective actions, should be made available to the public on the agency's website (without any personal information identifying residents)<sup>29</sup> and posted at the facility.

3. The state should create an Adult Abuse Registry of individuals who have substantiated allegations of abuse or neglect of vulnerable adults against them. Facilities should be required to check the Registry before hiring a prospective employee.

4. The General Assembly should fully fund enough DHEC inspection staff to provide for periodic unannounced visits and full, timely investigation of allegations of regulatory violations.

5. The General Assembly should adequately fund the SC Department of Labor, Licensing and Regulation (LLR) to enable prompt investigation of complaints against CRCF administrators.<sup>30</sup>

These measures would significantly improve protection for our state's vulnerable adults who have no choice but to live in these facilities. State law and regulations provide for oversight of Community Residential Care Facilities, but many South Carolinians are harmed every year because the oversight is ineffective and fragmented. We cannot afford to continue the current practice of minimal accountability for serious and continual transgressions. A few of the most serious incidents have been reported by the press; this report illustrates that many others have not. The State and individual

<sup>29</sup> In its 2005 Annual Report, the Adult Protection Coordinating Council (APCC), a group created by the Omnibus Adult Protection Act, recommended that DHEC post inspection reports on its website.

<sup>30</sup> CRCF administrators are licensed by the Board of Long Term Health Care Administrators, located in LLR; complaints are investigated by LLR's Office of Investigation and Enforcement.  
<http://www.llr.state.sc.us/POL/LongtermHealthCare/> <http://www.scstatehouse.gov/coderegs/c093.htm>

residents are paying for services that do not meet the standard of care established by regulation. It is past time to ensure safety and accountability in these facilities.



## APPENDICES

## METHODOLOGY OF THIS REPORT

This report originally began with a focus on one CRCF, Peachtree Manor. However, shortly after Peachtree's doors finally closed, the report was expanded to examine conditions in other CRCFs since P&A's Team Advocacy inspections and other information indicated that problems existed in many CRCFs across the state.

P&A's Team Advocate provided a list of every CRCF inspected from June 29, 2007, through April 3, 2008.<sup>31</sup> From this list, 28 of 67 inspections were selected for further review because the Team Advocacy findings had been sufficiently serious that complaints had been filed with DHEC. Consideration was also given to other information from previous encounters with these facilities while working with clients.

Each of the 28 facilities was then graded by applying a uniform performance scale to the Team Advocacy reports. That scale was based upon three categories:

- Medication. It included the accuracy of MARs, the availability of all prescribed medication on site, the proper storage and labeling of medications, and evidence of appropriate distribution of medication as prescribed.
- Sanitation. This category included overall appearance and condition of the facility, odors, proper food labeling and storage, sufficient cleaning and paper supplies, and insect infestation, as well as the appearance of the residents' cleanliness.
- Other Issues. Some examples include lack of supervision of both staff and residents, incomplete residents' records, lack of staff training documentation, violations of residents' rights, and utilities not working properly.

P&A then requested information on ten facilities from DHEC, the Department of Mental Health (DMH), and the LTC Ombudsman. Based on review of these materials P&A selected five facilities plus Peachtree for inclusion in the report.

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<sup>31</sup> However, an inspection which occurred before the start of the Team Advocacy contract year July 1, 2007 through June 30, 2008 was excluded.

## LEGAL RIGHTS OF CRCF RESIDENTS

### RESIDENT'S BILL OF RIGHTS

<http://www.scdhec.gov/health/licen/hlboreng.pdf>

South Carolina Code of Laws, Section 44-81-20 et seq.

As a resident of this facility, YOU have or your legal guardian has, the right to:

#### MEDICAL TREATMENT

- Choose your own personal physician;
- Receive from your physician a complete and current description of your medical condition in terms you understand;
- Participate in planning the care and treatment you receive;
- Participate in any changes to your care and treatment;
- Be fully informed in advance of any changes in your care and treatment that may affect your well-being;
- Refuse to participate in any type of experimental tests or research;
- Have privacy during treatment;
- Have your medical records treated with confidentiality;
- Approve or refuse release of your medical records to anyone outside this facility, unless you are transferred to another health care facility, or it is required by law or by other third party contracts;

#### PERSONAL POSSESSIONS

- Have security in storing your personal possessions;
- Approve or refuse release of your personal records to anyone outside the facility, except as provided by law;
- Keep and use personal clothing and possessions as long as they do not affect other residents' rights;
- Manage your personal finances. If the facility has been delegated in writing to manage your finances for you, it must provide you with a quarterly report of your finances;

#### PERSONAL TREATMENT

- Be treated with respect and dignity;
- Be free from mental or physical abuse;
- Be free from being restrained either physically or with drugs, unless your doctor has ordered them;
- Be free from working or performing services for the facility unless they are part of your plan of care;
- Be discharged or transferred to another facility against your wishes only for: your welfare; the welfare of the other residents; medical reasons; or for nonpayment. You must be given written notice at least 30 days prior to discharge or transfer, unless your discharge or transfer is for your welfare or the welfare of other residents; in that case the facility must provide you with written notice within a reasonable time under the circumstances.

### COMMUNICATION

- Have your legal guardian, family members, and other relatives see you when they visit;
- Refuse to see your legal guardian, family members, and other relatives;
- Send and receive mail with freedom and privacy;
- Associate and communicate privately with persons of your choice;
- Meet with your legal guardian, family members, or other resident's family members to discuss this facility;
- Meet with and participate in social, religious, and community group activities, unless a written medical order prohibits such activity;

### PERSONAL PRIVACY

- Have privacy when receiving personal care;
- Have privacy when visiting with your husband or wife;
- Share a room with your husband or wife, unless your doctor forbids this in your medical record;
- Have your personal records treated confidentially;
- Employ a sitter from outside this facility to come and provide you with sitter services, unless you have already agreed in writing with this facility not to hire a private sitter. You must choose a sitter from an approved agency or list and that sitter must be approved by the facility. The sitter must also abide by the policies and procedures of this facility. You must agree not to hold the facility liable for any matters involving your private sitter.

**By the time you were admitted to this facility, a representative of this facility must have explained to you:**

**Your Rights:** You must have been told and given a written explanation of your rights as explained in this poster, what to do if you believe your rights have been violated, and how to enforce your rights under state law. You must have acknowledged that you received these explanations in writing, and they must be part of your file.

**Services:** You must have been given a written list of the services that are available to you and their cost. If the services or their costs change, you must be notified of those changes in writing.

**Refund Policy:** This facility must have a policy on giving refunds to residents. The policy must be based on the actual number of days you were in the facility or a bed was held there for you. You must have been given a copy of this policy in writing and you must be notified in writing again of any changes that are made to this policy.

If you contact a member of the facility staff, but no action is taken on your behalf, contact:  
South Carolina Department of  
Health & Environmental Control, Health Licensing, 2600 Bull Street, Columbia, SC  
29201. Or call: (803) 545-4370.

## INSPECTIONS AT THE SIX CRCF FACILITIES

### FACILITY A

#### Resident Care and Documentation

From 2006 through 2008 the following problems in handling medication and failing to fill prescriptions were noted at Facility A: unsecured medications; residents' medications prepared the previous day to take to their day program,<sup>32</sup> in violation of regulations;<sup>33</sup> controlled drug count sheets listed more pills than were actually in stock; Medication Administration Records (MARs) were not signed; MARs were signed even though medications were not in stock and had not been administered; residents were not given appropriate dosages of medicine; an Albuterol Inhaler was not labeled with resident's name or instructions; medicines were prescribed and in residents' medication drawers but not listed on their MARs; medications which were discontinued were still being administered; expired medicines without instructions or the name of residents were in the medication cart; the MAR did not match the prescription; medicines of residents who had left the facility were still in the cart; and resident files did not contain the 72 hour assessment as required. Additionally, staff reported that they sometimes did not administer the medications by the date indicated on the package, and would take medications from other dates to administer it.

DHEC conducted a complaint investigation on February 14, 2007, regarding medication administration, resident and staff records, and sanitation issues. One violation was cited because two residents had no 72-hour assessment available for review.

On January 2, 2007, the CRCF Coordinator at DMH received a call from the county detention center. The staff person there informed her that there had been an

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<sup>32</sup> On September 29, 2007, a resident who attended the Disabilities and Special Needs Board (DSN) day program had come to the day program from the CRCF with medication in her pants pocket. The DSN staff directed the individual to take the medication and soon after found her sleeping on the lawn, unable to be roused. She was transported to the hospital where her stomach was pumped. She had taken an excess of Seroquel. It could not be determined when and where the resident had procured the Seroquel.

<sup>33</sup> DHEC R. 61-84 1203. Administering Medication (I) A. Doses of medication shall be administered by the same staff member who prepared them for administration. Preparation shall occur no earlier than one hour prior to administering. Preparation of doses for more than one scheduled administration shall not be permitted.

altercation between two residents of Facility A; one of the residents was arrested for disorderly conduct. The resident arrived at the detention center with her medications, but they had been prescribed for her the previous August. The staff person believed that the resident had not been receiving the correct medications (psychotropic drugs), which may have led to her problems. The detention center staff stated that it was not the first time they had had residents from Facility A there. She said the residents typically reported not receiving their medications and that staff were "mean" to them. The resident had to remain at the detention center until a new living arrangement was made and bail was posted. The resident had no family to assist her in this process.

In 2006, Facility A sent a letter to the local Mental Health Center (MHC) informing the MHC that a number of residents wanted their mental health cases closed.<sup>34</sup> The CRCF administrator had gathered the signatures of eight residents on this letter to demonstrate their consent. When DMH and MHC employees attempted to visit the residents to speak with them about this letter, the director denied them admission to the facility. The director tried to force the residents to state that they did not want to speak with DMH or the MHC. DMH and MHC finally obtained access to the residents when the administrator arrived at the facility. DHEC was notified of this situation.

DMH and P&A advocates who visited the facility also repeatedly found admission papers, medical assessments and TB tests incomplete or lacking at Facility A during this time period. In February and March of 2006, DMH found residents who had not been given a PPD test for TB and whose admission papers, medical assessments, and

TB tests had not been conducted before the move to the CRCF, as regulations require.<sup>35</sup>

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<sup>34</sup> Some of these residents could not read so they would not have understood the letter closing their case unless it had been read to them. Two of the residents had previously asked that their cases be transferred to another county since they intended to move. One of these residents had recently requested that the MHC help her move closer to her family. Although an employee of the MHC was helping her in this process, when the employee came to help her move a week later, the resident was upset and claimed she no longer wanted to move. However, the following day, the day DMH went to the facility in response to the letter, the resident stated that she definitely wanted to move, to be close to her family and to get away from the "yelling and fighting" at Facility A.

<sup>35</sup> DHEC Regulation R. 64-81 1101. General (I)  
A. A physical examination shall be completed for residents within 30 days prior to admission and at least annually thereafter. The physical examination shall address the appropriateness of placement in a CRCF, medications required and self-administration status, and identification of special conditions/care required,

When P&A's Team Advocacy staff and volunteer inspected the facility in September 2007, they could not locate documentation of a physical exam for two residents and four of the five resident care plans needed to be updated. On December 18, 2007, DHEC cited the facility for several violations, including lack of documentation regarding resident care plans and services provided.

The information reviewed also shows Facility A's failure to procure health care for residents. During the Team Advocacy inspection in September 2007, the Team advocate found that none of the resident records reviewed contained documentation of a podiatry exam over the past year, yet three residents reported needing to see a podiatrist. Three residents reported needing an eye exam, two reported needing a dental exam, and one reported needing a gynecological exam. One resident had open lesions on his forehead and his arm. His arm lesion was bleeding onto his sweatshirt. He had a closed lesion on his other arm.

The information reviewed also shows the failure to obtain level of care evaluations to ensure residents' needs could be met at a CRCF. During an inspection by DMH and Team Advocacy on October 30, 2007, the director of the facility explained that one of the residents had been discharged directly from a hospital to the CRCF. She stated that the resident needed assistance with dressing, bathing, and toileting. The resident wore "pull-ups" and could not change them on her own. She could not get in the shower due to her unsteadiness and size. The staff cleaned her with a wet cloth. This resident was not appropriate for placement in a CRCF. Another resident was placed there by DSS, but the director said he was "very ill" and required more care than they could provide.

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*e.g.*, if a resident has a communicable disease, dental problems, podiatric problems, Alzheimer's disease and/or related dementia, etc.

B. The admission physical examination shall include a two-step tuberculin skin test, as described in Section 1702, unless there is a documented previous positive reaction.

1702. Tuberculin Skin Testing (I)

A. Tuberculin skin testing, utilizing a two-step intradermal (Mantoux) method of five tuberculin units of stabilized purified protein derivative (PPD), is a procedure recommended by the CDC Guidelines for Preventing Transmission of Mycobacterium Tuberculosis in Healthcare Facilities to establish baseline status. The two-step procedure involves one initial tuberculin skin test with a negative result, followed 7-21 days later by a second test.

Other problems with resident care and documentation<sup>36</sup> include a failure to provide organized activities, residents receiving a lower monthly personal allowance than they were entitled to, and not having enough furniture for resident seating.

#### Staff, Documentation and Supervision

Throughout this same time period, problems were also noted with staff documentation of training, supervision, and abuse of residents. Staff reported that the administrator was rarely present. They were unable to tell inspectors what the usual hours were for the administrator, and it was noted that some of the administrator's hours overlapped with her hours at the Mental Health Center where she was also employed.

Incidents of physical altercations between residents often occurred at night while no staff was present.

Training documentation for staff members was not current.

During a January 22, 2007 visit by P&A and DMH, one resident told a P&A staff person that she would like to live with her boyfriend. He apparently lived near the facility and she stated that he used to work at Facility A. She said that when he worked at the home, they would kiss and hug on the back porch. According to the resident, the director found them kissing and prohibited it because he was an employee. The resident reported that he still came to see her and they hug and kiss. The resident had a 9<sup>th</sup> grade education and a diagnosis of psychotic disorder. DMH reported this incident to the Attorney General's office, the Ombudsman, DHEC, LLR, and DSS.

On January 23, 2007, P&A visited a client who had previously lived at Facility A. This resident stated that she had been having sex with a staff person almost every day of her six month stay at Facility A. She stated that he told her to keep their activities a secret and not to tell anyone she was pregnant. He told her they could get in trouble and he would lose his job. She stated that he had been calling her at her new CRCF to check on her. P&A confirmed with staff at the new CRCF that he had indeed been calling the

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<sup>36</sup> In February 2006, DMH found that two residents of a separate unlicensed facility which the administrator of Facility A ran at the time used to walk from that facility to Facility A to have their medications administered, according to the residents and staff. One resident did this three times a day. The records and medications for both facilities were kept at the licensed facility. Upon observation of these records, it was noted that the prescription labels stated that the residents of the unlicensed facility lived at Facility A, not the unlicensed facility. Their mail from Social Security and Food Stamps also had the residence listed as the licensed facility. One resident's hospital discharge papers stated that the patient would go to a community care home but apparently was sent to the unlicensed facility.

resident at the facility. The resident's file noted a serious psychiatric diagnosis and also limited cognitive functioning. DMH reported this incident to the Attorney General's office, the Ombudsman, DHEC,<sup>37</sup> LLR, and DSS. P&A reported the alleged abuse to SLED.<sup>38</sup>

According to a report by the Ombudsman, the staff of a local disabilities and special needs board contacted Facility A on February 5, 2007, after a resident had become agitated at the Work Activity Center. They asked a staff person at Facility A to come transport her back to the CRCF. When the staff person came to pick her up, the resident's frustration had been subdued, yet the Facility A staff person placed her in handcuffs. It is unclear whether these handcuffs were real or a toy. While the resident and staff at Facility A stated this action was performed as a joke, it was unclear whether the resident had the mental capacity to understand the violation of her rights. The complaint was found to be substantiated.

On September 11, 2008, a resident of Facility A came to the Mental Health Center with a scratch on one side of his nose and a bandage on the other side. His eyeglasses were missing. He reported that another resident (his roommate) had knocked him down that morning and taken his glasses. He said the resident pushed him out of bed and stomped on his foot. The resident stated that his roommate had broken two pairs of eyeglasses and harasses him daily. The MHC employee contacted the administrator, who stated that the resident was "lying" and "vindictive." She stated that he did not like his roommate and was trying to get him in trouble with his lies. Another Facility A resident verified what the first resident had told the MHC employee. This resident also reported that the same male who had attacked the resident had previously touched her inappropriately. She stated that the staff had reprimanded him, but he would not listen. When the administrator was contacted again, she responded by saying that the female should not put herself in a position where she could be touched by him. Neither resident

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<sup>37</sup> On February 14, 2007, DHEC visited the facility to follow up on the complaint regarding sexual relations between a staff member and a resident. They interviewed the staff member who had been accused of the conduct and, based upon his interview, no violations were cited. There is no documentation by DHEC that any further inquiry was made.

<sup>38</sup> SLED staff advised P&A they "took the report as information only" because they understood the Attorney General's office had an ongoing investigation.

wanted to press charges. These allegations were reported to the appropriate agencies including DHEC and the LT Care Ombudsman.

### **Sanitation, Health, and Safety**

Between February 2006 and October 2007, the following problems were found during inspections at Facility A: a smoke detector needed a battery replacement; a dryer vent screen was ripped; the bathroom had a rancid odor and its exhaust fan was covered with dust and dirt; in both bathrooms, the safety bars were attached to the toilet seats, but neither the seat nor the bars were attached to the toilet; a bathroom sink was not secured to the wall properly; both bathrooms were dirty; the blankets on the bed were unclean and worn; a fly strip hanging from the ceiling contained many insects; the floor was unlevel, soft, and sinking in places throughout the facility; some items with labels that indicate refrigeration is required after opening were stored improperly in the cabinets; the handrail in the hallway was not adequately secured; the men's bathroom did not have toilet paper, paper towels or liquid soap, there was a hole in the wall, there was urine on the floor and the shower curtain was dirty; the women's bathroom did not have paper towels or liquid soap; neither bathroom was wheelchair accessible; two residents had dirty bed linens; residents reported needing several items, such as socks, underwear, feminine napkins, toiletries, eyeglasses, and canes; the mattresses were worn and sagging. On December 18, 2007, DHEC cited the facility because some of the mattresses needed to be replaced.

### **Food**

Throughout this time period inspectors noted meat defrosting in the sink, in violation of regulations;<sup>39</sup> insufficient food and drink: meals served consisted of only a sandwich and did not match the menu posted; foods in the freezer were not dated or labeled; and food was improperly stored and unsealed, causing discoloration.

### **Financial Management & Utility Maintenance**

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<sup>39</sup>DHEC R. 61-25.II.D.7. Thawing potentially hazardous food.

Potentially hazardous food shall be thawed as follows:

- a. In refrigerated units at a temperature not to exceed 45°F. (7.2°C.); or
- b. Under potable running water from the cold water supply with sufficient water velocity to agitate and float off loose food particles into the overflow; or
- c. In a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire uninterrupted cooking process takes place in the microwave oven; or
- d. As part of the conventional cooking process.

At the visit conducted by DMH and Team Advocacy on October 30, 2007, the thermostat read 56 degrees. Residents were observed wearing sweaters and jackets. One older resident wearing a short sleeved shirt stated that she was cold, but said she was not able to get a sweater. A staff person then obtained a sweater for her. The director stated that the heat had broken the day before and that it was to be repaired the day of the visit. When asked to contact the heating company for a specific time, she did so and informed the Team Advocate and the DMH inspector that it would be after lunch.<sup>40</sup> DHEC was contacted and notified of the temperature in the facility. The facility director said it was fixed the next day.

On June 10, 2008, P&A complained to DHEC regarding a P&A client who had been sent a substantial pharmacy bill after leaving the facility. The client had been led to believe by Facility A that payments were being made toward this bill every month because she had been putting her personal funds toward these costs. The pharmacy bill showed that payment amounts varied each month and many months no payment was made at all. When P&A visited Facility A to check on this matter, the administrator was unable to provide a personal needs ledger or any sort of documentation to show how much the resident had been paying each month for her medications. She was also unable to show what kind of benefits the client had received or the amount of benefits. DHEC regulations require records.<sup>41</sup> When DHEC followed up on this complaint on June 23, 2008, they found no violations.

## **FACILITY B**

Facility B is a 10-bed facility located in an urban county. It has a history of violations, and was briefly shut down in 2001 after the death of a resident. Recent

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<sup>40</sup> A staff person confided in the DMH inspector her gratitude at the request to contact the heating company. She stated that the heat had been broken for at least three days and the residents were cold.

<sup>41</sup> DHEC R. 61-84 902.G. There shall be an accurate accounting of residents' personal monies and written evidence of purchases by the facility on behalf of the residents to include a record of items/services purchased, written authorization from residents of each item/service purchased, and an accounting of all monies paid to the facility for care and services. Personal monies include all monies, including family donations. No personal monies shall be given to anyone, including family members, without written consent of the resident. If a resident's money is given to anyone by the facility, a receipt shall be obtained. H. A report of the balance of resident finances shall be physically provided to each resident by the facility on a quarterly basis in accordance with the Resident's Bill of Rights, regardless of the balance amount, e.g., zero balance.

renovations have improved the physical condition of the facility, but as recently as July 24, 2008, the State LTC Ombudsman's office performed an unannounced inspection and found numerous problems.

A review of the records from DHEC, DMH, the State LTC Ombudsman and P&A reveals: a history of physical abuse by staff; the facility's requiring residents to perform work in the facility; errors or carelessness in handling medication; failure to perform medical tests as required upon admission; and a resident who continued to live at the facility after being committed to a state mental hospital, by court order, as a danger to himself or others.

#### **Resident Care and Documentation**

On July 3, 2007, a resident was removed to a Crisis Stabilization Center after alleging a staff member had severely beaten him, to the point of vomiting blood, with a two-by-four.

When the LTC Ombudsman staff inspected the facility later in July 2007, they found that residents were being assigned many duties not consistent with their care plans. Residents were being required to wash their own laundry and cook and serve their own meals; one resident was charged with mowing the facility lawn.

The July 24, 2007, inspection also found that one resident was on probation for committing a crime and had been court ordered into a state mental facility after being determined to be a danger to himself and others. He had been placed at Facility B when the facility had a 24-hour Department of Mental Health presence. This was no longer the case, but the resident had not been relocated to an appropriate facility.

The March 29, 2008, Team Advocacy inspection also discovered numerous inconsistencies in the residents' medical records and available medications. Thirteen medications prescribed to different residents were not available on hand, including the prescription pain medications. One resident could not have been receiving his anti-anxiety medication as prescribed (there were five full blister packages and one blister pack with 31 tablets remaining, despite the fact that the resident's medication count sheet noted only six remaining tablets). Additionally, five over-the-counter medications had passed their expiration dates.

That March 29<sup>th</sup> inspection found many additional problems with resident records. Contrary to DHEC regulation, two resident records noted tuberculin skin tests had been performed significantly after admission (sixteen days and three months, respectively).<sup>42</sup> None of the resident care plans had been updated within the past six months as required by regulation.<sup>43</sup> Although a resident reported problems with incontinency, there was no reference to this in the resident's records.

Only one resident stated he had enough clothing; two of four residents interviewed were wearing clothes that did not fit appropriately and had holes, stains, or tears. Two of four residents interviewed were observed to have inadequate clothing.<sup>44</sup> Several residents had body odor; several reported needing soap, deodorant, and other toiletries.

Two residents reported needing eyeglasses; one resident reported needing dentures and adult incontinency products as well.<sup>45</sup>

One resident reported that he sometimes went without clean bedclothes for several nights running due to incontinency problems and that his sheets were not washed

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<sup>42</sup> DHEC R 61-84.1101. A. A physical examination shall be completed for residents within 30 days prior to admission and at least annually thereafter. The physical examination shall address the appropriateness of placement in a CRCF, medications required and self-administration status, and identification of special conditions/care required, e.g., if a resident has a communicable disease, dental problems, podiatric problems, Alzheimer's disease and/or related dementia, etc.  
B. The admission physical examination shall include a two-step tuberculin skin test, as described in Section 1702, unless there is a documented previous positive reaction.

<sup>43</sup> DHEC R 61-84.703. A. The ICP shall be reviewed and/or revised as changes in resident needs occur, but not less than semi-annually by the above-appropriate individuals.

<sup>44</sup> DHEC R 61-84.901 D. "Residents shall be neat, clean, appropriately and comfortably dressed in clean clothes, and provided the necessary items and assistance, if needed, to maintain their personal cleanliness, e.g., bar soap." And, 1706. Clean/Soiled Linen and Clothing (II) A. Clean Linen/Clothing. "A supply of clean, sanitary linen/clothing shall be available at all times."

<sup>45</sup> CRCFs are to provide residents with food and shelter from the monthly assessment. They are to ensure that other needs of residents such as clothing, medical care, personal toiletries and transportation are met by coordinating Medicaid, any personal needs allowances and other funding sources. The relevant regulation is DHEC R 61-84 §901 (B) "Residents shall receive care, including diet, services, i.e., routine and emergency medical care, podiatry care, dental care, counseling and medications, as ordered by a physician or other authorized healthcare provider. Such care shall be provided and coordinated among those responsible during the process of providing such care/services and modified as warranted based upon any changing needs of the resident. Such care and services shall be detailed in the ICP." And (D) "Residents shall be neat, clean, appropriately and comfortably dressed in clean clothes, and provided the necessary items and assistance, if needed, to maintain their personal cleanliness, e.g., bar soap. (II)"

in a timely fashion; that resident also reported that the facility administrator ridiculed him for "wetting the bed."

A DHEC inspection on April 24, 2008, found three prescription medications listed on resident MARs that were not in stock at the facility. One resident's MAR indicated that his pain medication had been discontinued, but, at the time of inspection, the facility could not provide an order from a physician discontinuing that medication.

#### **Staff, Documentation and Supervision**

Inspections over the past two years have noted ongoing and continuous problems with staff as well. The July 24, 2007, LTC Ombudsman's inspection found only one staff member on duty to supervise eleven residents, which is well below DHEC regulations for staffing.<sup>46</sup> The March 29, 2008, Team Advocacy inspection noted insufficient staff present on hand to care for residents. When the inspection team arrived, the facility administrator was just arriving at the facility; no staff members were on duty inside the facility. The team received conflicting information as to how long the residents had been without supervision, but it was clear that there was generally only one staff member on duty with residents during the day.

#### **Sanitation, Health, Safety, Maintenance**

The July 24, 2007, visit by the Ombudsman's office found two broken chairs and a broken couch, and found that the facility furnishings were worn, torn and broken. A subsequent P&A visit on March 29, 2008, noted significant ongoing renovations,<sup>47</sup> but also found dust from drywall construction and some incomplete electrical work. Additionally, the facility was in some disarray; several tools, including a power sander, nails, and a circular saw, were left lying on the floor of the sunroom; several light fixtures throughout the facility were exposed leaving open electrical sockets; several smoke detectors were not secure and were hanging from the ceiling; an open gallon container three-fourths full of used hypodermic needles was found on the floor of the facility living room; several bedrooms had torn, worn, thin, and dirty bed linens, and smelled

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<sup>46</sup> DHEC R. 61-84. 503. A. 1. In each building, there shall be at least one staff member/volunteer for each eight residents or fraction thereof on duty during all periods of peak hours.

<sup>47</sup> According to DHEC the deadline for completion of the renovations was July 1, 2008. However, as of June 16, 2008, the facility administrator confirmed to the State Ombudsman that the renovations were not complete.

strongly of urine; several bathrooms lacked paper towels or liquid soap; cleaning supply closets had been left unlocked and residents had unrestricted access to cleaning chemicals and hand tools.

The April 24, 2008, DHEC inspection found two residents' mattresses sunken in. A closet containing chemicals was unlocked during the walkthrough. The facility was cited for a violation and required to have a plan of correction.

#### Food

Residents were observed cooking and serving all their own food. Other observations were: open containers of food labeled "refrigerate after opening" in the pantry; decomposing fruit in a basket in the kitchen; and empty boxed lunches that had reportedly been donated by a local distributor on the dining room table. An April 24, 2008, DHEC inspection found five rolls of turkey sausages thawing in the sink in violation of DHEC regulations.<sup>48</sup>

#### Finances, Utilities, and Other Issues

Conflicting information was provided about the management of resident funds. The administrator's son stated that the resident funds were kept in a "locked petty cash box," but when they asked to see the box to count the residents' money both the administrator and son stated that the box was not at the facility. When the P&A Team Advocate expressed concerns regarding the residents' money, the administrator then pulled out a FedEx envelope with a pile of one dollar bills and mentioned that he stored residents' money in the envelope. The money was not organized or sorted by resident, raising concerns about the safe management of resident funds and ability to provide proper accounting to residents for their personal funds.<sup>49</sup>

At that time, one of the four residents interviewed stated "sometimes people [here] want to harm me[.]" That resident also stated he did not feel safe talking to anyone and that he had no freedom. Two of the four residents reported they were not allowed to go outside the property's front gate.

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<sup>48</sup> See DHEC R 61-25 II C 2b, banning thawing of food except under running water, in refrigerator, or in microwave.

<sup>49</sup> S.C. Code § 44-81-40 (Bill of Rights) (E) "...Each resident ...may manage the resident's personal finances unless the facility has been delegated in writing to carry out this responsibility, in which case the resident must be given a quarterly report of the resident's account."

## FACILITY C

Facility C is a small (licensed for five beds) CRCF in an urban county. The administrator and her husband operate several CRCFs in North and South Carolina. Throughout the time period reviewed for this report, significant problems were noted with resident care and documentation; staff documentation and supervision; sanitation, health and safety; medication administration; and food.

### Resident Care and Documentation

From 2007 through 2008, inspections showed multiple violations of procedures for medication administration: there were no MARs or other records for some residents; MARs were not signed; residents had incorrect dosages listed on their MARs; prescribed medications were not listed on MARs; medicines were in unlocked storage; insulin was not refrigerated; MARs were taken home by the administrator; medications were not administered for over a week; staff could not recall who had administered medications; medications were not in stock; medications for former residents were still in the medicine cart/drawer. Some residents did not have documentation of TB tests prior to admission. Some residents did not have care plans in their files. Some residents reported needing dental exams and visits to doctors such as cardiologists

At least one resident had been performing cleaning duties at the facility for \$5 per day, according to residents and the administrator's husband.<sup>50</sup>

One resident needed a higher level of care than authorized for residency in a CRCF, as he could not bathe or dress himself and was incontinent.

One resident was sleeping on a cot.

DMH made a visit to Facility C on August 3, 2007. In addition to some of the problems mentioned above, DMH also found the facility had six residents at the time of the visit, although the facility is only licensed for five residents. There was also a male in the facility who was a resident of an unlicensed facility with the same operators. The administrator's husband told the DMH inspector that he was moving three residents to his unlicensed facility and that DHEC had stated that he could have up to three residents

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<sup>50</sup> SC Code § 44-81-40 (Bill of Rights) Section I (I): Each resident must be assured that no resident will be required to perform services for the facility that are not for therapeutic purposes as identified in the plan of care for the resident.

without requiring a license. Regulations allow for up to only two residents without a license.<sup>51</sup>

He also said he had told two residents they were moving that day and that he had given them prior notice. He stated that the residents wanted to move. One of the residents informed the inspector that he did not want to move because there was no furniture in the other facility. He and the residents left without their medications or property. These residents had not been given their medication that morning.

When DMH noted that some of the residents' records did not contain a two-step PPD test for tuberculosis, the husband of the administrator stated that he had been confused about the two-step requirement.<sup>52</sup> He said he had recently taken residents to get their injections and produced paperwork for a one-step PPD. He could not produce records of their previous PPD tests; he stated he had discarded them.

The Department of Homeland Security (DHS) had placed three residents in the facility. DMH contacted DHS about the conditions at the facility, including the fact that the residents had not received any personal needs allowances since they arrived at the facility, and requested DHS's help in moving two residents. DHS informed DMH that it was in the process of sending another person there, but that in light of the information provided they would not send any more residents.<sup>53</sup> Homeland Security pays \$1100 per month for room and board, and administrators are not required to give the residents spending money out of this amount. The DHS employee told DMH that DHS staff are not allowed to visit these facilities, but only to check licensure. The employee stated that she would contact the immigration office in Charlotte to seek alternative placement for these residents; if alternative placement could not be located, the residents would be returned to the detention center until a placement was located.

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<sup>51</sup> DHEC R 61-84 103. A. License. No person, ...shall ... operate....a community residential care facility/assisted living facility in S.C. without first obtaining a license from the Department. ....When it has been determined by the Department that room, board, and a degree of personal care to two or more adults unrelated to the owner is being provided at a location, and the owner has not been issued a license ... the owner shall cease operation immediately.....

<sup>52</sup>Pursuant to federal Center for Disease Control, TB testing involves an under skin injection and then a reading of any reaction 2-3 days later. [http://www.cdc.gov/tb/faqs/qa\\_latentbinf.htm#latent2](http://www.cdc.gov/tb/faqs/qa_latentbinf.htm#latent2)

<sup>53</sup> More residents placed there by Homeland Security were discovered during later visits to this facility.

DMH also called the Veterans Administration to inform them that two of the residents they had placed at Facility C were transferred to the unlicensed home.

On August 6, 2007, DMH filed a complaint with LLR, stating that the administrator and her husband were moving residents to an unlicensed boarding home with only mattresses on the floor.

On August 22, 2007, DMH conducted a follow-up visit. Along with the problems concerning medications which were noted above, they discovered seven residents at the facility rather than the five for which Facility C was licensed. The facility had converted one staff bedroom into a resident room. The facility also converted the pantry into a resident room by removing the shelves and cabinets from the pantry and placing a cot-sized bed, small dresser and TV in the room. The resident of this room did not have a bed pillow but had to use two pillows from the couch instead. The DMH inspection also raised concerns about health care. A new resident had not been given a PPD test. Another resident appeared to require nursing facility level of care.<sup>54</sup> A home health aide came to the facility to dress an ulcer on the resident's hip. One resident who reported having pain in all of his joints had requested to visit a doctor; it did not appear that any arrangements had been made to address this resident's pain. On August 23, 2007, DMH sent an email to the Attorney General's Office and LLR to report the problems found at the facility on her August 3 and August 22, 2007, visits.

DHEC conducted a complaint investigation of the facility on January 30, 2008. They found that the facility had six residents, while only licensed for five. One resident had no physical examinations available for review; one resident had no TB skin test record available.

DMH conducted a site visit to Facility C again on February 26, 2008. In addition to many of the medication problems already mentioned, there were, again, six residents at the facility. The staff person reported that the sixth resident had arrived on February 22<sup>nd</sup> and would be moving to a facility in North Carolina operated by the administrator and her husband. The husband of the administrator arrived and stated that he would move the resident to NC that day if it was a problem. He then told the resident to pack his

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<sup>54</sup> The resident with the hip ulcer used a wheelchair, but could not transfer himself. He also could not bathe, toilet, or dress himself and was incontinent.

belongings. The resident had been moved to the facility by the US Department of Justice and had a Medical Summary of Federal Prisoner/Alien in Transit. There was no record of a PPD tuberculosis test in his file. The administrator's husband stated that the resident's crime was stabbing someone with a knife.

The DMH inspector was told that another resident who had previously resided there had been moved to a work camp by the Department of Homeland Security. The administrator and her husband had transferred him to their NC facility. The resident with limited self-care abilities needed a higher level of care and was still residing at the facility.

Despite the serious allegations raised by the DMH inspection February 26, 2008, DHEC did not conduct another inspection for two months, on April 29, 2008. At that time four of five residents did not have physician's orders on file; four of five residents had no assessment within 72 hours after admission; and four of five residents' Individual Care Plans had not been updated every six months. DHEC required the facility to submit a plan of correction.

#### **Staff, Documentation and Supervision**

Team Advocacy's visit to the facility on July 11, 2007, revealed that there was no staff documentation of Cardiopulmonary Resuscitation (CPR) training. In addition, there was an incident report where one resident had struck another resident on the head. The incident had been reported to the Sheriff's office and a report was made. When DMH arrived for their visit on August 3, 2007, at 8:40 a.m., both staff members were asleep on couches even though the residents were awake. The residents had not been provided with breakfast or their morning medications. Staff records contained no documentation of criminal background checks, DHEC trainings, physical examinations, two-step PPD tuberculosis tests, job responsibilities, or job applications.

The husband of the administrator stated that one of the males at the facility was not a resident; he claimed that the resident was a staff person "in training" who was paid \$5 a day; his goal was to work. The resident explained that he helped with bathing and cleaning a resident with a higher level of care when he goes to the bathroom. He also cleaned the facility. Other residents said he is supposed to be paid for these duties, but has not received any money. The resident/staff in training confirmed these statements.

He said he did not want to clean the resident anymore. This person was placed by Homeland Security, which was paying \$1,100 to stay at the facility. His records stated that he was in need of supervision and treatment. Homeland Security confirmed that he was a resident.

On the August 22, 2007, visit by DMH, both staff persons were sleeping upon arrival at 4:02 p.m., while all of the residents were awake. One staff person stated that the administrator would be there to make dinner for the residents between 4-5 p.m. The administrator had not arrived at the conclusion of the visit at 4:31 p.m., nor had she called. This staff person also explained that he lives at the facility but does not receive a salary. The residents sponsored by Homeland Security had not received any personal needs funds since they moved to the facility. They reported that they would like some money to purchase a cup of coffee or soda.

A fire marshal inspection was done by DHEC on September 21, 2007. Five violations were cited for mandated corrections.

DMH went back to the facility on January 23, 2008. A previous resident was now, apparently, a staff person. He provided direct care to residents, including bathing, dressing, and toileting assistance to a resident who needed a higher level of care. This "staff person" had a lengthy criminal background report, and DMH was informed by the administrator's husband that DHEC was aware of the person's history and had approved his employment there. The report included assault and battery charges, but after the visit it was noted that this person is also on South Carolina's sex offender registry website. The address for the facility was listed on the website as his current address. His training and physical exam documents were not signed by the appropriate persons, calling into question their validity. He could not describe the trainings indicated in his file. There was no signature on his CPR form and he had no card.<sup>55</sup> The dates on the forms indicated the trainings were given while the person was still a resident. The Resident's Bill of Rights was present in his file. DMH sent an email to DHEC and the LTC Ombudsman that day informing them of the live-in staff person's conviction of assault and battery of a high and aggravated nature on a twelve year old victim.

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<sup>55</sup> DMH also found that the CPR form was not signed by a trainer or staff and had expired. His physical exam report was not signed by a doctor.

During DHEC's complaint investigation on January 30, 2008, the facility was cited for having a staff member who had been convicted of assault and battery.<sup>56</sup>

During the visit by DMH on February 26, 2008, it was noted that there was an insufficient criminal background check for an employee; this employee's health record was not signed by a physician.<sup>57</sup> The CPR certificates for this employee and the administrator's husband were not signed by the trainer. Neither staff person could present a CPR card.<sup>58</sup>

The administrator's license expired February 29, 2008, and a late fee was assessed by DHEC. The application contained incomplete or inaccurate information.

DHEC cited violations on April 29, 2008, in the following areas in staff documentation: no current first aid training for all four employees; no current OSHA standards/blood borne pathogens training; no current training on the confidentiality of resident records; no documentation of physicals within 12 months prior to initial resident contact for three of four employees. Many of these violations were repeat violations. DHEC required the facility to submit a plan of correction.

On a June 6, 2008, DMH visit, a staff member could not recall all of the residents' names. When the administrator's husband arrived, the inspector asked him to produce a record for an employee who was working in the kitchen. He presented the record for someone with a different name. When shown that this record was incorrect, he insisted that it was not and identified the staff person in question. The inspector informed him of

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<sup>56</sup> DHEC R 61-84 501 B. Staff members/direct care volunteers of the facility shall not have a prior conviction or pled no contest (*nolo contendere*) for child or adult abuse, neglect, or mistreatment. The facility shall coordinate with applicable registries should licensed/certified individuals be considered as employees of the facility. For those staff members/volunteers who are licensed/certified, a copy shall be available for review. (I)

<sup>57</sup> DHEC R 61-84.101. X. Health Assessment. An evaluation of the health status of a staff member/volunteer by a physician, other authorized healthcare provider, or registered nurse, pursuant to written standing orders and/or protocol approved by a physician's signature. The standing orders/protocol shall be reviewed annually by the physician, with a copy maintained at the facility.

<sup>58</sup> DHEC R 6-84.504. Inservice Training (I)

A. The following training shall be provided by appropriate resources, *e.g.*, licensed/registered persons, video tapes, books, etc., to all staff members/direct care volunteers in context with their job duties and responsibilities, prior to resident contact and at a frequency determined by the facility, but at least annually:  
8. Cardiopulmonary resuscitation for designated staff members/volunteers to insure that there is a certified staff member/volunteer present whenever residents are in the facility;

the staff person's name. The administrator's husband then questioned the staff person and the staff person confirmed the name stated by the DMH inspector. The only record for this employee that the husband was able to present was a one-step PPD test. DMH also noted in its report that the name on the record that the administrator's husband originally presented to the inspector was the name of a staff person who on a previous occasion had been identified as a relative of the administrator's. The staff person who was present at the facility was on the S.C. Sex Offender Registry. The conviction was for Criminal Sexual Conduct, First Degree. The address on the registry was not the same as the CRCF, in violation of the Sex Offender Registry Act.<sup>59</sup>

Another staff person present had a medical form in his file that was not dated nor signed by a physician. The record contained no CPR card. A third staff person did not have a record on file. The administrator's husband stated that a record was not needed because that staff member only takes care of the lawn; however, this staff person was observed coming from the staff sleeping quarters and socializing with the residents. The staff person was present at the facility despite the fact that he told the administrator's husband he would not be mowing the lawn again until later in the week.

#### **Sanitation, Health, and Safety**

In 2007, bedrooms in the facility were not clean--a foul smell came from dirty clothes piled up in a closet; there were no hangers available in the closets; sheets were soiled; residents did not have towels; residents reported obtaining sheets from the garbage; a Team Advocacy volunteer was locked inside a bedroom because the door had no doorknob; residents did not have toiletries; there were no paper towels, liquid soap, or toilet paper in either of the residents' bathrooms; one resident reported having to wipe himself with his hands when he had no access to toilet paper; the facility contained dirty couches, bedrooms, and bathrooms; one of the couches had a plastic tablecloth on it for the residents who were incontinent; residents who were incontinent were sleeping on plastic tablecloths; cleaning supplies were stored in unlocked cabinets.

In 2008, DMH reported that the bedroom for the resident who was incontinent smelled of urine, with sheets stained with urine on the floor. There was ill-fitting plastic on the mattress, and the mattress was stained with urine and smelled bad. The bathroom

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<sup>59</sup> SC Code §§ 23-3-400 et seq.

in this resident's bedroom was not accessible for his wheelchair. Again, several other residents had dirty sheets and pillows.

On the February 26, 2008, visit by DMH, exposed wires in a wall socket were covered with paper stapled over it. Chemicals were not in secure storage. Extension cords were going out of windows to other parts of the property. Dirty clothes were lying on the floor; there were also clean clothes on the floor because there were not enough hangers. There were dirty linens and dirty mattress and box spring. An overhead exhaust fan was clogged with dust. The tub was very dirty as well.

During DHEC's general inspection on April 29, 2008, the facility staff could not produce the latest electrical inspection documentation. The DHEC report also noted broken glass in a storage area, a pile of leaves on the patio, standing water in front of the garage, and fire ant mounds and empty beer cans around the yard. There was a torn window screen on an open window, allowing insects to enter. The facility also had numerous cracks in the sheetrock, dirty floors and drapes, dusty vents, cobwebs, a soiled tub, and no paper towels in the bathroom. DHEC required the facility to submit a plan of correction.

On the June 6, 2008, DMH visit, wires were observed exposed from an opening in the wall. There were two sheets tacked over windows as curtains.

#### Food

Throughout 2007 and 2008, inspections by various agencies found there were no beverages for residents; menus did not indicate any special dietary accommodations, although there were residents who needed diabetic diets and other special diets; bags of brown decomposing vegetables and moldy bread were found; meat with no expiration date was leaking in the refrigerator; food was prepared in an unlicensed area of the facility, which also served as staff living quarters; and cleaning supplies were stored in the same compartments as food.<sup>60</sup>

On August 3, 2007, DMH reported that the refrigerator was locked with a large chain and padlock, so that the only beverage available was water: no food was available. The administrator's husband stated inaccurately that locking the refrigerator was a DHEC

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<sup>60</sup> P&A July 2007; DMH January, February, and June 2008, twice in August 2007; DHEC April 2008. Each of these inspection noted food/diet problems.

requirement. No current menu was posted as required by DHEC regulation.<sup>61</sup> The staff reported that grits would be served for breakfast, but the administrator's husband gave a resident \$20 and told him to buy breakfast for everyone at Hardee's. The resident returned with a sausage biscuit for each resident. Again, no drinks were provided. Residents repeatedly reported that they were usually served cereal for breakfast, a sandwich at lunch, and rice and gravy for dinner. They reported that they rarely received chicken and were never served red meat or fish. Again, food was not stored or labeled properly.

During the August 22, 2007, DMH visit, residents reported they had not received anything to drink during the previous night's dinner. Menu items posted for dinner the night of DMH's visit were not available at the facility that day. Again, foods were not stored or labeled properly.

On the January 23, 2008, visit by DMH, residents were observed making their own breakfasts. The menu calendar was inaccurate, and minimal food was in the refrigerator. One refrigerator was inoperable, and the other refrigerator contained a leak from the freezer that was dripping into the refrigerator compartment below. There was half an inch of water in the bottom drawer, along with two plastic containers on the top shelf nearly filled with water.

There was not enough food on site for six people during DMH's February 26, 2008, inspection. Unlabeled meat was leaking in the freezer. The one operable refrigerator was still leaking water inside.

DHEC conducted a food/sanitation inspection on April 29, 2008. They discovered expired food in the refrigerator and an improper use of chemical cleaning products. They also noted that several surfaces in the kitchen were soiled. DHEC required a plan of correction.

During the DMH visit on June 6, 2008, very little food was observed in the facility. There were no fruits and vegetables on site. The posted menu was inaccurate. The meat in the freezer was stored in freezer bags that were neither labeled nor dated.

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<sup>61</sup> DHEC R. 61-84 1307. Menus A. Menus shall be planned and written at a minimum of one week in advance and dated as served. The current week's menu, including routine and special diets and any substitutions or changes made, shall be readily available and posted in one or more conspicuous places in a public area

## FACILITY D

Facility D is located in a suburban area of an urban county. The five-bed facility is a converted house in a local neighborhood. It has had persistent compliance problems for several years, including a general absence of trained staff. As early as 2006 the administrator had entered into a probation agreement with Labor, Licensing, and Regulation based on problems from prior inspections.<sup>62</sup> Since that time there have been multiple complaints and multiple emergency inspections. The Ombudsman's office has responded to seven complaints there between March 21, 2007, and January 11, 2008; DHEC has made four inspections; and P&A has inspected and responded to numerous complaints. In May 2008, after the facility repeatedly failed to meet inspection requirements, DHEC held a consultation with staff. When problems were still not remedied in a final inspection, DHEC recommended an enforcement action in August 2008.

### Resident Records and Documentation

Through 2007 and 2008, numerous problems with resident medical records and medications were noted.

- One resident was prescribed an anti-anxiety drug, but there was no available control count sheet for that medication.
- Another resident's MAR was not present in the MAR book; when located, the resident's sheet had not been initialed for a week for an anti-psychotic prescription and had not been initialed for a month for a sleep medication.<sup>63</sup>
- No physician's orders were available documenting residents' medication needs. Staff could not locate the required orders when asked.
- A DHEC inspection on January 3, 2008, noted that medications were being kept unsecured in an office to the rear of the facility and that

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<sup>62</sup> While DHEC licenses long term care facilities, the administrators of such facilities are separately licensed by the Board of Long Term Health Care Administrators, within the Department of Labor, Licensing, and Regulation. See: <http://www.llr.state.sc.us/>. DHEC R. 61-84; S.C. Code Ann. §40-35-110(1),(2), and (4) (Supp. 2004) and S.C. Code of Regulations 93-230(2), (4), and (6)(Supp. 2004)

<sup>63</sup> None of the records noted whether or not the resident in question had an advance medical directive or health care power of attorney.

prescription medications were being administered without a doctor's order on file. DHEC required a plan of correction.

- Chromium tablets and vitamins were observed in one resident's refrigerator, but no MAR was available for that resident.
- One resident did not have evidence of a PPD (tuberculosis) test in her record.
- There was a shortfall in the controlled medication count for one resident, as the count sheet specified that 24 diazepam pills were on hand for a resident but only 18 tablets were in fact available.

The Policy and Procedures manual did not contain any indication of annual or other regular review.

Twice in February 2008, DMH and P&A noted problems with residents' files when they were assisting residents in moving from the facility. One resident had items missing from her records, including her Medicaid card. Another resident's records were not provided to him; this resident had to relocate without his medical records, Medicaid number, or any form of personal identification.

At the same time, the DMH team helping with the move discovered a new resident in the facility; apparently this resident had been transferred from a facility owned by another CRCF operator. The resident had been discharged from the other CRCF due to the administrator's belief that he needed a higher level of care; the administrator at the former facility had been told that there was a bed available for this resident at another CRCF, but the resident was in fact relocated to Facility D that same day.

The August 6, 2008, DHEC inspection found no dietary orders from a physician in two out of three residents' records. All three residents' records reviewed lacked a resident photo. All three Individual Care Plans had been signed and dated by staff, but the care plans contained no information and were otherwise blank (this was a repeat violation).<sup>64</sup> Among other problems, this meant that the care plan did not contain dietary

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<sup>64</sup>DHEC R. 61-84 703. B. The ICP shall describe:

1. The needs of the resident, including the activities of daily living for which the resident requires assistance, *i.e.*, what assistance, how much, who will provide the assistance, how often, and when;
2. Requirements and arrangements for visits by or to physicians or other authorized health providers;
3. Advanced care directives/healthcare power-of-attorney, as applicable;

requirements; no one was listed as responsible for monitoring care and effectiveness of the plan; there was no documentation of how residents preferred their funds managed; arrangements for doctors' visits had not been filled out; advance medical directives had not been completed; and no recreational or social activities were listed.

Additionally, as noted above this inspection found a shortfall in the controlled medication count for one resident's diazepam pills.

#### **Staff, Documentation and Supervision**

The December 19, 2007, Team Advocacy inspection noted that all four staff members reported living at the facility. One resident reported being locked out of the facility sometimes when returning from work.

On December 21, 2007, a P&A Advocate met with a female client at Facility D who had expressed a desire to move out. During this meeting, P&A staff discovered information of a possible incident of sexual abuse. Repeated calls to the staff and administrators over the next several weeks were unable to determine whether the possible aggressor had been a staff member, resident, or neither. Staff refused to speak with P&A representatives, refused to give basic information, and accused advocates of being "nosey."

On December 27, 2007, the P&A advocate went to the facility to attempt to meet with her client again, but only a young man (between 14 and 17 years old, estimated) answered the door and said the client was with his grandmother.

On January 3, 2008, two P&A advocates went to the facility for a meeting with that same client in order to consult with her about a potential move out of the facility. When the advocates knocked on the front door, they at first were met with only silence, but then heard muffled laughter inside the home. When the door was cracked open, a man came to the door, identified himself as a staff member named "Mr. X",<sup>65</sup> and told the P&A advocates that their client was not present in the home. Moments later, however, the P&A advocates heard their client's voice shouting for help – as best the advocates

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4. Recreational and social activities which are suitable, desirable, and important to the well-being of the resident;  
5. Dietary needs.

<sup>65</sup> To preserve privacy for him and the facility, he will be identified in the report simply as "Mr. X.":

could tell, the client was shouting "they won't let me out." "Mr. X" continued to deny that the client was there, however, and the police were called by P&A advocates.

While awaiting the police, an inspector with the State Ombudsman's office arrived to inspect a different situation. P&A advocates entered the facility, along with the Ombudsman inspector, and met with their client. The client stated that a staff member had refused to let her out of her room and had placed her hand over the client's mouth so she could not yell. (It should be noted that there is some question as to whether or not this person was, in fact, a staff member; DSS records indicate she is also a resident, placed there by DSS. Future references will refer to her as "staff.") When the inspector from the Ombudsman's office asked "Mr. X" who he was, he initially claimed to be staff. He later changed his story repeatedly, claiming first he was just staying there for a while and then that he did not stay there but was only visiting for the day.

Resident interviews conducted by P&A indicated "Mr. X" had been living at the facility since September 2007. The facility administrator that was listed in DHEC records was not at the facility that day, apparently due to illness. During previous calls by P&A staff, the "staff" person refused to provide a contact number for the administrator; when other staff were asked, they gave a number that had been disconnected. Facility staff therefore apparently had no way to contact the administrator in an emergency.

The next day (January 4, 2008), in response to a complaint by the Ombudsman's office and P&A, DHEC made an emergency inspection. That inspection cited Facility D for a number of violations, among them "501.B/I – Staff members / direct care volunteers of the facility should not have a prior conviction or pled no contest (nolo contendere) for child abuse, adult abuse, neglect or mistreatment." DHEC also cited Facility D on this occasion for apparently providing services to non-residents, for the lack of a designated staff member to act in the absence of the administrator, and for having an altered SLED report on file (former SLED Chief Robert Stewart's name was apparently pasted onto the report).

On January 11, 2008, a P&A advocate called the CRCF to attempt to speak with her client. The "staff" person answered, stated the residents were away at a medical appointment, and asked that P&A call again later in the day. When the P&A advocate

called again later that day, a man answered who sounded like "Mr. X," but who gave his name as "Mr. Z."<sup>66</sup> When asked if he was staff, he said yes, but the P&A advocate did not recall any staff members by that name at the facility. When P&A asked for the client, "Mr. Z" replied that she was not there; repeated calls over the course of the day were not answered. Finally, the P&A advocate managed to get in touch with her client and the client confirmed that "Mr. X" was still living with them at the facility.

On February 7, 2008, a P&A advocate traveled to Facility D, along with a DMH inspector, in order to review client records. A P&A client opened the door, and the "staff" person yelled at her for doing so. Two other persons were present; both claimed to be staff, "Mr. X" and "Mr. Y."<sup>67</sup> Mr. Y claimed to be an employee of another facility who had merely stayed at Facility D the night before.

The female "staff" person contacted the operator of Mr. Y's facility, as that facility's operator was supposedly the only person with a working contact number for the listed administrator of Facility D. This administrator from the other facility arrived at Facility D shortly thereafter and demanded that the P&A and DMH representatives leave. She claimed she had "worked it out with DHEC" and had papers stating the DMH inspector was not allowed on her property and was trespassing. She also stated she was "over everything here" and that she pays the bills and "[does] everything;" she said that she was the acting administrator due to the ongoing illness of the administrator listed in the records. The P&A advocate and the DMH inspector refused to leave, insisting that they be allowed to review their client's records. The police were called and when they arrived, they explained to the acting administrator that the P&A advocate and DMH inspector had authority to be there. Approximately ten minutes after that, the listed administrator arrived and stated that the other administrator was actually the owner of Facility D; she allowed both P&A and DMH to access their clients' records. The P&A advocate and the DMH staff did so and left immediately when finished. The police officers remained with the P&A and DMH staff until they left.

During this visit, the P&A advocate noted that the female "staff" member who was believed to be a resident appeared to be administering medications, cooking all

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<sup>66</sup> To protect privacy of the individual and the CRCF, the name given will be referenced as "Mr. Z."

<sup>67</sup> To protect his privacy and that of the CRCF, he will be referred to as "Mr. Y."

meals, and cleaning the home. When asked if she had spoken with anyone from DSS, she said she had not. She continued to share a room with a client (the same client she had reportedly restrained during the prior P&A visit on January 11, 2008).

When the DMH inspector spoke with her client, he showed her a paper that he said the other administrator had made him sign. The top of the paper read "Special Power of Attorney." The document stated that the resident "does hereby appoint [blank] as [his] lawful attorney" and that she would "Represent [him] to all state, local, and federal agencies and to make decisions regarding [his] care to social agencies." The document was signed by the resident, a witness and by the other administrator on the line above "special attorney."

On February 11, 2008, the same P&A advocate and DMH inspector made a final visit to the facility in order to assist the P&A client with moving out and to speak with a DMH client residing there. "Mr. X" was outside when the team arrived but went inside and closed the door when he saw them. The P&A advocate knocked on the door and heard her client yelling from inside that they would not let her open the door. The P&A advocate asked to be allowed inside, but a male voice told her she would have to wait until the other administrator arrived. Her client continued to yell for help, shouting that she was not being allowed out, and asked the P&A advocate to call the police.

The police were called and the same two police officers arrived as on the February 7th visit. As they arrived, the front door of the facility opened and the P&A advocate went inside to meet with the client, who was in her room. The "staff" person began to shout at the P&A client for letting the advocates inside the facility. The P&A advocate explained to her client that she needed to gather her belongings because everything was ready for her to leave, and began helping her pack. A man approached the P&A advocate and demanded she leave immediately, claiming she was "trespassing on his property." One of the officers came into the room and told the man to back away from the P&A advocate or he could be removed from the premises; the man replied "remove me then." While the P&A advocate continued to help her client pack, the "staff" person continued to yell and demand that everyone leave the room, despite repeated explanations that the advocate was only there to assist her client with leaving and would depart as soon as they were finished packing.

On February 27, 2008, a DMH inspector visited Facility D, along with a case manager from the local Mental Health Center, and an official from DMH Quality Management, in order to assist a DMH client with a planned move out of the facility. On their arrival, the front door was open, but was immediately slammed shut. The group knocked on the front door but there was no answer; and when tried, the door was locked. The back door was unlocked, however, and the team therefore opened it and announced themselves and their agency. A large man came to that door and shook his finger in the DMH inspector's face, approximately two inches away, stating she was not allowed in their facility. He then physically pushed the inspector out of the doorway and locked the back door.

The police were called and arrived a few minutes later. While waiting, the Quality Management official called the facility and asked that the client be sent out. The staff person said he was not allowed to send him out and refused to comply with the request. When the police officer arrived, he banged on the door several times. Initially no one answered, but then another male opened the door. When the officer asked to see the client who wanted to move, the man shut the door in the officer's face. The officer knocked again on the door and told him not to close the door and to get the client. The client came to the front door with a bag containing his belongings and prescription medication. No paperwork was provided, including important documents such as the Medicaid number, personal ID, etc. The client put his belongings in the car and said he was happy to be moving.

On March 6, 2008, DHEC investigators made a visit to investigate a complaint. As they pulled up to the facility, they noticed that no vehicles were present. The inspectors knocked on the front and rear doors many times and telephoned the facility, but no one answered. No emergency contact number was posted. The administrator's cell phone was called numerous times, but the voicemail box was full. Over the course of the day the DHEC inspectors made numerous attempts to contact the administrator to gain access to the facility, but were unsuccessful. Shortly after 1:00 p.m., the inspectors returned to their office. A staff person did return their calls around 4:00 p.m., but the administrator never did.

On May 1, 2008, DHEC inspectors reviewed staff records. In one of the five staff records reviewed they were unable to find documentation of training in management and care of persons with contagious or communicable diseases, training in care specific to the conditions of facility residents, job orientation training, or staff health assessments and tuberculin skin testing. No signature page to note annual or other regular review was observed in the Policy and Procedures manual. The facility still lacked a posted notice of a contact phone number where the facility administrator could be contacted when staff or residents were away. While there was a quality improvement plan, it did not address all previously cited issues. Staff were given an opportunity to remedy the missing information, but they did not provide further information.

On May 23, 2008, DHEC officials met with Facility D staff for a consultation to review the last two inspections and to discuss responses, correction, and prevention. Kitchen maintenance, housekeeping, required documentation, and resident records including physicals, TB tests, care plans, finances, observational notes, and doctor's orders were all discussed. Staff record requirements were reviewed, including the need to document annual training, background checks, and TB training.

The August 6, 2008 inspection by DHEC found the Policies and Procedures manual was not updated or revised as required to reflect actual operation. A cat with no veterinary records was observed on the property (a repeat violation). No current shift change log sheet was available for review (also a repeat violation).

#### **Sanitation, Health, Safety, Maintenance**

Throughout 2007 and 2008, inspectors and advocates found multiple serious problems: the facility was extremely dirty, including the walls and floors, and there were persistent foul odors. Specifically, there were spots of blood on the wall of residents' bedrooms and the carpet in the living room was stained and dirty. The bathroom floors were dirty and sticky; the bathtub was dirty; toilets and bathtubs needed caulking; and water temperatures were dangerously high. One bathroom had a hole in the wall above the sink with cockroaches crawling in and out; cockroaches were in residents' bedrooms as well; food safety issues including cabbage decomposing on the kitchen counter and several items in the refrigerator not appropriately wrapped or labeled; the shelves in the kitchen cabinets were filthy with stained foods and dirt; the pots and pans were dirty and

greasy. A couch was covered in plastic (the facility administrator reported that this was due to one resident's incontinence problems); the dining room table was dirty, with dried food stuck to the tablecloth and table mats; bathrooms lacked liquid soap, paper towels, and toilet paper; there was no laundry detergent in the facility; residents lacked sheets on their beds; one bedroom was missing a door; the smoke alarm in the women's bedroom was chirping to indicate it needed a new battery, and the emergency light in the hallway was inoperable. The floor was slanted and soft in some areas.

On January 3, 2008, a DHEC inspection noted the same hole in the wall above the bathroom sink remained after being noted in an earlier inspection. The sink and bathtub needed caulking and the toilet in one bathroom was inoperable; and paint was peeling from the facility exterior. There were ladders, rubbish, and a toilet in the back and side yards. Stray dogs and a stray cat were observed on the facility grounds (no veterinary records existed for these animals at the facility).

A March 6, 2008, DHEC inspectors were able to examine only the exterior of the facility because no one appeared to be at the facility. Nevertheless, several problems were noted, among them trash and debris such as beer cans littering the yard, a bucket of standing water and cigarette butts, and numerous physical maintenance issues, including a large hole in the wall behind the exterior dryer.

A May 1, 2008, DHEC inspection noted the following violations, many of which were repeat violations: the carpet in the den was stained; the residents' bathroom window was broken with sharp glass exposed and no insect screen; the sink and tub still needed re-caulking; a loose board was covering a hole behind the bathtub faucet; and the bathroom door would not lock for privacy. Cleaning agents and other chemicals accessible to residents were observed under the sink in the residents' bathroom.

An August 6, 2008, DHEC inspection found a large space at the side of an air conditioner was open with no screen to keep out insects; drawers in resident bedrooms were missing knobs; and there was a hole in the wall behind the laundry appliance on the back porch (repeat violation). Housekeeping issues found were dirty carpet in the living room and food debris and a heavy accumulation of dust in the room closest to the kitchen (repeat violation). The yard was still littered with beer cans (repeat violation). A memorandum was prepared for enforcement action.

## Food

During this time period, many problems with residents' food were noted. The facility had difficulty providing adequate food for residents; the strong odor of rotten food permeated the facility; filthy food and drink containers were found in the refrigerator; expired foods and discolored containers were in the refrigerator and cabinets; and jars containing filmed-over food and condiments were in kitchen. The DHEC inspection on January 3, 2008, noted open and unlabeled chicken in the freezer.

## FACILITY E

### Resident Care and Documentation

From 2006 through 2008, the following problems were found in Facility E: medications were out of stock and insufficient for the residents' evening dosages as required; medications were expired; medications were listed on the MARs twice and initialed as being given twice, even though the indications on the bottles were to take one tablet daily; medications were listed on MARs, but times of administration were not listed; and medications were not administered. Also several residents had not been given their TB test until after admission; medications for residents who were no longer at the facility, including vials of insulin, were still in the medication drawers and carts; sample medications were in some of the residents' bins, but they were not labeled; discontinued, expired, and empty bottles of medications were in the medication cart; expired vials of an anti-psychotic drug and TB vaccine injections were in the medication refrigerator; staff did not know when/how to administer insulin; medications in the bin were not listed on the MARs; and packages of Albuterol Sulfate were not stored in protective pouches as indicated on the package.

Additional problems included residents who reported that the administrator made them do the dishes if staff failed to come to work; reports the administrator was angry and mean to residents; residents wearing clothes which were too small and which also had holes in them; residents selling their winter coats, clothes and sheets to other residents in exchange for cigarettes with no other coats or appropriate clothing or bed linens available (the residents involved in these transactions had different levels of intellectual abilities); bathrooms without shower curtains and no doors on the stalls in the

bathrooms. Also, resident files contained either blank, but signed care plans or care plans which did not have the residents' signatures. Files often lacked the 72-hour assessments required after initial admission to the facility.<sup>68</sup>

On June 22, 2007, DHEC investigated a complaint regarding sanitation, food, and medications. As a result of the investigation, Facility E was cited for the following medication violations: one resident indicated she was not receiving her medications, and her doctor's orders were not available; and three medications listed on the MAR from the transferring facility were not available. Three pills were in a container, but the MAR indicated that they had been administered. Outgoing staff had not signed the review sheet for MARs during the entire month. DHEC required submission of a plan of correction.

DHEC returned to the facility on September 15, 2007, due to a complaint that the facility had inappropriately admitted a resident. The complaint stated that the administrator contended that the resident was not officially admitted, but spent one night at the facility. The following day, after the resident was taken to an appointment at the Mental Health Center the facility refused to allow the resident to return. A violation was cited for the 72-hour post-admission assessment not being signed by the individual who completed it. DHEC required submission of a plan of correction.

On September 18, 2007, DHEC conducted another investigation based upon a complaint that a resident was being verbally abusive, exposing himself, and harassing neighbors of the CRCF.

According to one staff person, residents frequently eloped from the facility without informing staff of their location. In spite of this, no incident reports had been given to DHEC.<sup>69</sup> These tendencies to elope were not mentioned in the residents' files,

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<sup>68</sup> DHEC R. 61-84 702. Assessment (II) A complete written assessment of the resident in accordance with Section 101.I. shall be conducted by a direct care staff member within a time-period determined by the facility, but no later than 72 hours after admission.

<sup>69</sup> DHEC R. 61-84 601. C. Incidents where residents have left the premises without notice to staff members/volunteers of intent to leave and have not returned to the facility within 24 hours, shall be reported to the next-of-kin, sponsoring agency or any agency providing services to the resident and local law enforcement immediately. When residents who are cognitively impaired leave the premises without notice to staff members/volunteers, regardless of the time-period of departure, law enforcement, next-of-kin, and sponsoring agency shall be contacted immediately. DHL [Division of Health Licensing] shall be notified not later than 10 days of the occurrence.

nor were care plans updated to address this problem. A staff person stated that one resident knocked on the neighbors' doors and sat on their porch, another resident went to the store and begged for money, and a third resident waited at the edge of the road and rode away with different men.

DHEC visited the facility again on November 7, 2007, to investigate a complaint that Team Advocacy had filed two weeks before. The complaint stated that a resident claimed she had not been receiving her personal needs money, needed a cream for lesions on her feet, and that her clothes were dirty and had holes in them. She also stated that she was not allowed to get her hair cut. The men in the facility had shaved heads, but did not want to have their hair cut this way. The complaint also referred to a resident who had been crying and appeared to be upset during Team Advocacy's visit. The staff ignored her for several minutes and then yelled at her and told her to go outside. She wanted to use the telephone, but needed assistance reaching and dialing because she was in a wheelchair. The staff did not provide assistance to her. A male resident complained he had been hit by a staff person. Violations were cited by DHEC as follows:

- One resident's file did not contain written authorization for the facility to manage his funds.
- Medications, that included controlled substances, were not listed on the MAR.
- Expired medications were stored with current medications.
- One medication was listed and initialed on the MAR twice.
- No privacy was available at the tubs or toilets in the men's or women's bathroom.

On November 12, 2007, DHEC again investigated a complaint about this facility. Three resident records were reviewed. Each of these residents received insulin, but no special diet orders were available as would be appropriate for individuals with diabetes. One resident was diagnosed with alcohol dependency, yet this issue, along with his

seizures/falling tendencies, was not addressed in his care plan. There was no incident report for a fall that resulted in a resident's admission to the hospital.<sup>70</sup>

During DHEC's January 9, 2008, visit, problems with residents' records accounted for seven violations. These violations included no documentation that a quarterly report of the balance of funds had been provided to the residents, no accounting of a resident's personal funds for two months, lack of a detailed service agreement, and no documentation of a resident's annual health assessment. Two of these violations were repeats.

Five medications on the MARs were not available during the inspection. None of the MARs had been signed for that day's 8 a.m. medication administration. One resident's MAR indicated that he had not been given his nightly medication for the previous week. The second shift had not signed the MAR for shift change on three days for January. One controlled drug did not have a control sheet. Residents' medications were not stored separately and expired and discontinued medications were stored with current medications. All of the medication citations were repeat violations.

#### **Staff, Documentation and Supervision**

On the date of the September 18, 2007, DHEC inspection, three people were assisting 26 residents at the facility.<sup>71</sup> One was a staff person who was assigned to laundry, one was the administrator's sister, and one was a DSS volunteer. Further, there was no documentation for two volunteers regarding their background checks, necessary training, a health assessment, or basic identifying information.

One resident's sweat pants were soaked in urine during the inspection. She remained wet from 11:45 a.m. to 3:00 p.m.

During a November 8, 2007, inspection DMH and the LTC Ombudsman noted one resident lying on a bare mattress. The left side of his face, the back of his head, and

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<sup>70</sup> DHEC R. 61-84 601. Incidents/Accidents...1. Incidents/accidents and/or serious medical conditions as defined below and any illness resulting in death or inpatient hospitalization shall be reported via telephone to the next-of-kin or responsible party immediately and the sponsoring agency at the earliest practicable hour, but not to exceed 12 hours of the occurrence, and in writing to the Department's Division of Health Licensing (DHL) within 10 days of the occurrence.

<sup>71</sup> At least one more staff member would have been required: DHEC R. 61-84 503. Staffing (I)...1. In each building, there shall be at least one staff member/volunteer for each eight residents or fraction thereof on duty during all periods of peak hours.

his scalp and ear were covered in dried blood. He was wearing a dirty sweatshirt and jeans that were covered with stains and dried blood. His jacket and cap were in the room and were also stained with blood. There were two bloodied bandages on the floor. There were flies in the bedroom and on the resident. The staff person in charge was asked to call 911. The staff person explained that he had fallen and she had cleaned him up sometime after 6:00 p.m. the evening before. She indicated that he had fallen a few more times that evening. She said she asked the administrator about calling 911 and he directed her not to do so. The staff person stated that the resident had used his allowance to buy alcohol and had gotten drunk. She felt this was the cause of his falls. Other residents reported that the individual had been banging on the tables and walls very loudly the previous night. One resident stated that the man had come in the dining room and eaten while blood was dripping down his face. During the inspection, the resident was taken by ambulance to the hospital.

On January 9, 2008, DHEC cited the facility for nearly twenty violations of staff documentation, many of them repeat violations. One staff person was missing training in medication management, specific person care, communicable diseases, OSHA safety standards, confidentiality, and fire response. Another employee had this documentation, but none of the forms was dated. Two employees did not have documentation of annual emergency training. One had not been given a pre-employment physical or an annual PPD tuberculosis test. Two employees did not have documentation of a criminal background check in their files. One employee had been trained in medication management by the administrator, who himself was not licensed to administer medications.

#### **Sanitation, Health, and Safety**

During the June 22, 2007, DHEC inspection, several sanitation violations were noted. These violations included dusty ventilation units; cobwebs throughout the facility; debris in an air conditioning unit; unpleasant odors in four bedrooms; stained floors at three of the toilets; soiled walls at two sinks; soiled floors; chewing gum pieces on a window; stained sheets; and a soiled tub mat. Also, inadequate storage for residents' clothing was noted, as clothes were stored in cardboard boxes or on the floor. The

housekeeping cart with toxic agents was left unsecured and unattended. Flies were observed throughout the facility.

Throughout 2007 and 2008, Facility E staff reported that the administrator was not concerned with the residents' welfare; residents indicated that they had to buy their own soap and toothpaste or go without; roaches were observed in the bedrooms; linens were worn, dirty and not changed frequently; the facility did not always have clean towels and washcloths, and staff had been told to clean residents using tee shirts; bathrooms were missing shower curtains; the bathrooms had no toilet paper; all of the bathrooms and some of the bedrooms had a strong urine odor; some of the bedrooms smelled strongly of cigarette smoke; there were loose handrails in the women's bathroom; residents were wearing clothing with holes or tears; residents appeared to have dirty hair; residents reported bathing only four to six times a month; residents stated they did not have any bath towels and one stated that he received a clean bath towel once every three to four months; there were flies throughout the facility and an open window with no screen; residents had no containers in which to store their dirty clothes; there were oxygen machines with no filter; there were mice droppings in residents' drawers; the mattresses were very worn; there were also several broken chairs sitting on the front lawn; one lounge area seemed to serve as a storage area for unused items and furniture; shower heads were missing so that only a tube was coming from the wall causing the water to come out at a very high pressure, stinging the skin; the ceiling above the shower had water damage, and there was a hole in the wall; bathrooms had inoperable cold water faucets on the bathtubs/showers; toilets leaked when flushed, leaving a puddle of water on the floor; and empty food cans were found under a cabinet in a bathroom.

On September 18, 2007, DHEC investigated a complaint and cited the facility for several sanitation issues. Sheets and pillow cases were soiled on several beds and urine odors were noted in three bedrooms. Urine was observed on the floor in one of the bedrooms. Flies were observed in six resident rooms and in the hallway. Cigarette butts were observed in one bedroom. No clean towels were available in the facility.

A fire marshal inspection was conducted on September 19, 2007. The report cited that cigarette lighters were located in the same bedroom where oxygen was in use. A certain type of fire extinguisher was needed for the kitchen. Two staff members did not

have fire response training. A bedroom door was propped open, in violation of fire safety standards. Two smoke detectors did not activate the fire alarm when tested, which is considered a serious, Class I<sup>72</sup> violation.

On DHEC's November 7, 2007, visit, bedrooms contained worn or torn mattresses and soiled sheets or bedspreads and had an unpleasant odor; vents were clogged with dust; flies were seen throughout the facility; there were no clean towels in the facility; and bathrooms had no toilet paper or liquid soap.

When DHEC conducted its general inspection on January 9, 2008, several housekeeping and maintenance issues were cited. There was a leaking washing machine in the laundry room; a water-stained floor in a bathroom; a broken window pane covered with cardboard; a hole in the wall of a bedroom; and an open window with no screen. Several roaches were found in the cabinet of a resident's restroom, a repeat violation. Soiled carpet, floors, and bed linens were cited as repeat violations. Toxic cleaning agents were stored unlocked and unattended. None of the fire extinguishers had documentation to indicate monthly inspections. There were no paper towels in five restrooms and no toilet paper in the men's bathroom. Several closets were overflowing with clothes. Most of these citations were repeat violations.

During a DMH and Ombudsman visit to the facility on November 8, 2008, one resident had very dry, flaky skin on both legs. She had sores that were healing on her legs. The tops of her feet were a purple-black color and were swollen. Her toenails were yellow and very thick and dirty. Her feet had a very strong odor. She stated that the last time she had been in a shower was June 1<sup>st</sup>, over five months earlier, when she lived at another facility. The staff gave her a small tub of water to wipe herself off because she was too large for the bathtub. She could not reach many parts of her body, such as her back and feet. A staff person had helped wash her back three weeks before this inspection. Her wheelchair was dirty and the upholstery was ripped.

#### Food

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<sup>72</sup> DHEC R. 61-84 302. Violation Classifications...

Violations of standards in this regulation are classified as follows: A. Class I violations are those that the Department determines to present an imminent danger to the health, safety, or well-being of the persons in the facility or a substantial probability that death or serious physical harm could result therefrom.

Throughout 2007 and 2008; the following problems were noted repeatedly: there was very little food in the refrigerator; there was no milk, despite the fact that cereal with milk was listed as the breakfast meal; orange juice was the only beverage available; packages of expired bologna were in the refrigerator; packages of meat had not been resealed properly, causing the meat to become discolored; a thick layer of ice in the freezer had a blackish-brown color; foods were not labeled and dated; staff stated that the residents were given fruit for snacks, but the fruit on site was not fresh; chicken was defrosting in the sink, in violation of regulations;<sup>73</sup> and employees admitted they did not cook at the facility. The staff stated that lunch and dinner were catered by Senior Catering. However, when DMH contacted Senior Catering to confirm this, they were told that Senior Catering provided only lunch to the facility. Senior Catering stated that they provided 26 lunches and no special diets; there were 27 residents at the facility. Senior Catering did not serve meals on weekends.

The DHEC inspection of June 22, 2007, investigated a report that the stove had been broken for some time. The administrator stated that a part had been ordered and the stove was to be repaired that day. Resident meals for breakfast and dinner had been provided from local fast food restaurants. Lunch was catered by Senior Catering. The facility was also grilling some items. Substitutions were not being noted on the posted menu, nor were special diets being observed.

On November 12, 2007, DHEC noted that the items listed on the posted menu were not available in the facility.

DHEC cited several problems with the kitchen on January 9, 2008, including accumulated food debris on several kitchen surfaces, dead insects in cabinet, and roach droppings. Many of the violations were repeats.

DHEC received a complaint on September 14, 2008, stating that leftovers from dinner and lunch were being served for breakfast.

#### **Financial Management & Utility Maintenance**

On the November 8, 2007, DMH visit, the heat did not appear to be working in one of the wings. These rooms did not contain individual heaters and were very cold.

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<sup>73</sup> DHEC R. 61-25 II. D. 7 governs thawing of foods and prohibits thawing in this manner.

## PEACHTREE MANOR

### Resident Records and Documentation

From 2006 until 2008, when it was closed by court order, problems with resident records and documentation were repeatedly noted at Peachtree. For instance, throughout this time period, records did not contain documentation of the required initial 72-hour admission assessments; records frequently failed to contain a care plan; care plans were not signed by the resident or responsible party; records contained only one-step TB tests and some of the two-step TB tests were not performed within 30 days of admission; at least one of the residents had a chest x-ray, but no documentation of a positive TB test or an emergency admission. There was generally a lack of rosters of residents.<sup>74</sup>

Some of the most serious concerns about Peachtree, beginning in 2006 and continuing until the date of closure, involved medication. Throughout this time period, medication was given later than the time prescribed; medications prescribed for residents were out of stock while the MAR was signed as though they had been administered every day; medication that had been discontinued or belonged to prior residents was stored with current medications; controlled drug count sheets displayed an inaccurate number of pills remaining while there was no drug count sheet for other controlled substances; controlled drug count sheets were initialed by one staff member while the MARs indicated that other staff members had actually administered the drugs; MARs indicated that some medications were not being administered as prescribed (too often or not enough); the number of pills remaining in pill containers suggested that some medications were not administered on a regular basis; some medications that had been prescribed were not listed on the MARs; destruction of medication was not properly performed or witnessed; medication destruction records were not available at times; unidentifiable initials and markings were observed on MARs; numerous blanks were observed throughout MARs; there were no MARs for some residents; some residents' medications had been marked "administered" despite the fact that the residents in question had been in the hospital since the day before and were not present to take medications; staff indicated that they

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<sup>74</sup> The administrator repeatedly had problems producing rosters for inspections and keeping track of new admissions. On April 4, 2008, several days after the facility was closed for other reasons, the Board of Labor, Licensing and Regulations finally suspended the license of the Peachtree administrator.

monitored resident blood sugar levels and administered insulin injections, but no Clinical Laboratories Improvement Amendments (CLIA) waiver was available for review;<sup>75</sup> and there was no record of review of MARs by outgoing staff members with incoming staff members.

#### **Financial**

The facility records also showed no documentation of residents' personal allowances and how their money was handled. One resident reported that the CRCF owner had taken that resident's personal checkbook home, but had since returned it. Residents also had complaints of non-receipt of personal funds and that their mail had been opened. During a P&A inspection January 28, 2008, another resident stated that she was supposed to be receiving \$55 a month in personal allowances, but she had not been given any money. Again during a P&A inspection February 28, 2008, a resident stated that she was supposed to be receiving \$55 a month in personal allowances, but she had not been given any money.

#### **Level of care**

Also throughout this time period, several residents at Peachtree needed a higher level of care than could be provided at a CRCF. One such resident received hospice care for end stage coronary artery disease. Discharge notes from a hospitalization earlier that year indicated that "patient is stable for transition into nursing home." Her former CRCF stated that the resident had left because she needed skilled level of care. Another resident had difficulty swallowing and choked several times during the observed meal. He had suffered a stroke the previous year, and at the time of the visit was incontinent, needed physical therapy, and had other serious medical issues. The records of another resident showed that the admission physical did not address the appropriateness of residential care placement or whether or not the resident could self-medicate. A resident who had a Foley (indwelling) catheter and a percutaneous endoscopic gastrostomy (PEG) feeding tube needed care beyond what the facility was licensed to provide, but there was no documentation that the facility had made arrangements to transfer this resident to an

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<sup>75</sup> DHEC R. 61-84 § 1203.B allows CRCF staff to monitor blood sugar levels if they have a CLIA waiver, but specifically prohibits staff from administering insulin injections.

appropriate level of care.<sup>76</sup> Another resident did not meet the required level of care for a community residential care facility, as she could not dress or bathe herself or ambulate using her wheelchair. Another resident had cancer and received hospice care at Peachtree until she moved.

#### Medical care

Other problems included failure to take residents to medical appointments;<sup>77, 78</sup> failure to perform fasting blood sugar tests three times a week as required; failure to perform blood tests for residents on Depakote; allowing residents to prepare charts for new admissions, thereby allowing residents access to the personal information of all the other residents.

On January 2, 2008, DMH and P&A noted during an inspection that a resident had a red, scaly rash on both of his arms. The rash had scabs where he had been scratching, and the resident stated that he needed to go to the doctor. The staff person stated that he had visited the doctor, but the staff could not access the resident records to provide the documentation.

In January 2008, the administrator could not produce a January resident roster. She first said that there had been no new residents admitted, but later recanted this statement. P&A discovered one resident who was not on the December roster. This resident was in need of dialysis; the owner stated he was waiting on a home health

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<sup>76</sup> At one point, four residents who had moved to another CRCF upon Peachtree's license revocation were to be returned to Peachtree because they needed a Nursing Facility level of care and so could not stay at the new CRCF. Adult Protective Services (APS) was contacted to address this situation.

<sup>77</sup> One P&A client complained that staff were not taking her to a doctor. When she complained about missing her appointments with her doctor and psychiatrist twice each, she said the owner had told her she was whining and called her a "druggie" when she asked for her medication.

<sup>78</sup> For residents who are Medicaid recipients, no-cost transportation may be obtained through SC Department of Health and Human Services, "the Medicaid van." See: <http://www.dhhs.state.sc.us/dhhsnew/TransportationFAQ.asp?ID=83&pType=Transportation>.

DHEC Regulation R. 61-84 904 requires the facility to secure or provide medical transportation: Transportation (I) The facility shall secure or provide transportation for residents when a physician's services are needed. Local (as defined by the facility) transportation for medical reasons shall be provided by the facility at no additional charge to the resident. If a physician's services are not immediately available and the resident's condition requires immediate medical attention, the facility shall provide or secure transportation for the resident to the appropriate health care providers such as, but not limited to, physicians, dentists, physical therapists, or for treatment at renal dialysis facilities.

agency to return his call about when to schedule it. He also stated that he was going to transport the resident to the emergency room that night. The resident had a prescribed medication that was not listed on the MAR. Another resident had a permanent pacemaker that was due to be checked on February 9, 2007, but there was no indication in her record that this had occurred.

P&A conducted another monitoring visit to Peachtree on January 18, 2008. During this visit, one resident, who was diabetic, told P&A she had not received her medication for two weeks. She stated that she did not receive a diabetic diet and that she had high blood pressure. When asked how often the staff checked her blood pressure, she responded that they did not do so.<sup>79</sup> One resident was supposed to receive dialysis three times a week and the staff person stated that was taking place, but there was no documentation to verify. Again, there was no staff roster, so the owner had to write one for P&A.

On an Ombudsman visit on February 13, 2008, a resident was wheezing. When asked about her medication, she was told the staff could not administer her inhaler, and she would have to wait until the administrator returned.

During a P&A inspection on February 28, 2008, a resident stated she missed a medical appointment on February 8, 2008; the last time she had gone to the Mental Health Clinic was September, 2007. Another resident reported that he needed to go to the dentist very badly.

#### **Transfers to and from other facilities**

When one resident was moved from Peachtree to a nursing home in Hopkins on February 14, 2008, the nursing home operator reported that the individual was not provided any paperwork including information on his medical providers or his medications. He was also transferred with no medications.

A P&A inspection on February 28, 2008, found even more problems. Staff was initially unable to find one resident's chart when requested, but did eventually locate an incomplete chart that contained no information as to the placing agency. Other residents' records had no resident admission date. One resident stated that he had been homeless

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<sup>79</sup> She had lost her right leg below the knee due to her diabetes.

and a Mental Health client, but since his arrival on February 24, 2008, he had not been taken to a psychiatrist, and he did not have any medication. The resident's file contained very little information about the resident or how he was placed at Peachtree.

#### Staff Documentation and Supervision

Prior to the licensure of Peachtree, DHEC conducted an initial site inspection on January 5, 2006, and cited Peachtree for several violations regarding staff training and health screenings. DHEC could find no documentation which showed that staff had been trained for care of persons with communicable disease, in the use of restraints, in OSHA standards regarding blood borne pathogens, in fire safety, or in recreational activities. Also, Peachtree failed to provide documentation that two staff members had taken physical exams prior to hiring and that two staff members had completed the Tuberculin (TB) Skin Test.

Another inspection was conducted by DHEC on May 31, 2006. Seven different types of documentation failures were noted in regards to staff training and background, including a failure to document a SLED background check for two of four staff records reviewed.<sup>80</sup>

DHEC responded to a complaint at Peachtree by conducting an unannounced inspection on June 21, 2006. They discovered that Peachtree did not have sufficient staff on duty during peak hours. Two staff members were present for 18 residents.

There were deficiencies in staff background checks and training. On June 22, 2006, DHEC returned to Peachtree. Four of the five employee records reviewed contained no SLED background checks and there was no FBI check in the file of a staff member who moved to South Carolina in July 2005 (Peachtree asserted that it was not aware of the FBI check requirement);<sup>81</sup> the Administrative Law Court did not fine Peachtree for these failures as there was no evidence Peachtree had in fact hired any

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<sup>80</sup> Because the Administrative Law Court later found that the regulations do not require documentation of background checks and first aid training be maintained, but only that the background checks be performed, Peachtree was not fined for these documentation failures.

<sup>81</sup> SC Code § 44-7-2920 requires state criminal background checks on direct health care staff at direct care entities (included CRCFs) and if applicant cannot produce proof of at least 12 months residency in SC, a federal background check must be initiated after employment, unless a state check can be completed in a prior state of residence.

individuals who had a prior conviction or pled no contest for child or adult abuse, neglect, or mistreatment, ALC opinion # 06-ALJ-07-0765-CC.<sup>82</sup> DHEC found seven different training documentation failures. Although the ALC found that some of this training had been completed, the facility failed to maintain this information in its records in accordance with the regulations. There were also several issues related to proper documentation of TB testing for staff.

From 2006 to 2008, problems included: lack of documentation for staff training in CPR and first aid; lack of proper assessments and health testing prior to admission or upon arrival to the facility; lack of appropriate staff to resident ratio.

On October 30, 2006, when DHEC conducted an inspection in response to the death of an unsupervised resident who had wandered away and was killed when struck by a car, DHEC found several problems with staff documentation. The documentation of in-service training in one staff member's record indicated that it was not done prior to resident contact. For two staff members, there was no documentation of in-service training in the care of residents specific to their needs. Four individuals (three paid staff and one volunteer) on duty at the time of this incident did not have a criminal background check on file. There was no documentation of a two-step TB skin test in two employees' records reviewed, and there was no physical examination in one employee's record. One employee's record did not contain documentation of orientation.

A DHEC inspection on November 14, 2006, again cited Peachtree for many problems, including those cited in prior inspections. The inspection team found there was no established written time period for review of all policies and procedures, and policies and procedures had not been reviewed as needed. Also, the three persons designated to admit, discharge, and transfer residents no longer worked at the facility. Out of five employee records reviewed at that time, none showed documentation of an appropriate criminal background check. Three of five employee records reviewed failed to show vital signs training, and no one was designated in writing to receive this training. Again, out of the five employee records reviewed, two did not contain evidence of basic

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<sup>82</sup>SCDHEC vs. Peachtree Manor Residential Care Home, LLC 06-ALJ-07-0765-CC Hearing of February 12 and 15, 2007, <http://www.scalc.net/decisions.aspx?q=4&id=10347>

first aid training; two did not contain evidence of training in contagious or communicable disease.

Two did contain documentation of "medicine training" by Palmetto Long Term Care pharmacy; however, there was no documentation for any of the other three employees showing that they had passed a competency test as required by the Nurse Practice Act, S.C. Code § 40-33-43.

Two employee records did not contain adequate documentation of specific personal care training, and two employee records lacked documentation of training in OSHA standards for blood borne pathogens. Two employee records did not contain evidence of fire response training and two did not contain evidence of training in emergency procedures. Of the five employees' records reviewed, one employee's record did not contain evidence of training in confidentiality of resident records, one did not contain a job description, and one did not contain evidence of orientation to the facility. One contained an employment health assessment dated August 10, 2006, almost two months after the June 25, 2006, hire date, well after initial contact with residents. One employee's record contained an employment health assessment that was not signed by a physician or other authorized healthcare provider. One employee's record had TB skin tests dated August 10, 2006, and October 6, 2006, after resident contact; similarly, the record of one employee hired November 11, 2006, contained "documentation" of a TB skin test placed on April 25, 2006, but purportedly read three days earlier, April 22, 2006;<sup>83</sup> the record also lacked documentation in that case of a second-step TB test. For two employees who were present at the time of the inspection, there were no employee records available for review at all.

None of the staff members had CPR (cardiopulmonary resuscitation) certification documentation from the facility. One employee's record did include CPR certification as part of orientation for another facility. There was no documentation of training in the use of restraints for a designated staff member or members. No one at the facility had been designated or trained in recreational activities; it was stated that one person coordinated activities, but there was no record on-site for that employee. Also, the licensee had not

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<sup>83</sup> Pursuant to federal Center for Disease Control, TB testing involves an under skin injection and then a reading of any reaction 2-3 days later. [http://www.cdc.gov/tb/faqs/qa\\_latenttbinf.htm#latent2](http://www.cdc.gov/tb/faqs/qa_latenttbinf.htm#latent2)

notified the Department of Health Licensing in writing within ten days of a change in the facility's administrator as required by regulation. (The staff person who stated that she was the administrator was different from the individual listed in the Department records.) The posted grievance and complaint procedure contained an incorrect and out-of-date telephone number for the DHEC Division of Health Licensing. There was a written quality improvement program, but there was no indication it had been implemented. Finally, several residents expressed fear of retaliation by staff members for being interviewed by or speaking to inspectors.

On December 12, 2006, while DMH was conducting a site visit, two residents outside began to argue and yell and threaten each other. No staff went outside to address the matter, although a volunteer did go outside after a few minutes to watch. The other residents worked to calm the situation. Even when the angry resident came inside in a rage, staff still did nothing.

On November 28, 2007, there was a complaint filed with DHEC that Peachtree did not have enough staff for the residents. On November 29, the staffing was reviewed and no documentation could be provided showing the proper staff to resident ratio.

On December 19, 2007, the local Emergency Medical Service (EMS) sent a letter reporting problems that EMS paramedics had noted at Peachtree over the prior year, along with EMS complaints and visit logs detailing some of the problems EMS responders encountered. From January 25 to December 13, 2007, EMS responded to a total of 154 calls to Peachtree, with the highest number of monthly calls totaling 21 in June 2007. One complaint notes that when they came to pick up a resident, the owner would not stop arguing with the resident, who was on a stretcher, about his radio. As a result, the patient became enraged and began to hit the wall, and the EMS responder was forced to inform the owner that he was interfering with the crew's safety by continuing to argue with the resident. On other occasions, responders could not locate staff or staff was unaware that EMS had been dispatched. EMS crews received complaints from residents about poor care, including lack of staff availability to administer prescribed medications and meals. Also, they reported that they responded to a resident who complained of arm pain. A staff member told the responder that the resident was not really hurting, that he should not have called 911, and tried to convince the resident to return to his room.

### Sanitation, Health, and Safety

From 2006 to 2008, Peachtree had problems with sanitation. For instance, dishes in need of washing were placed on shelves and the overhead lights were full of dead insects; at other times, dirty dishes from breakfast were piled in the dining area well after breakfast had ended. A DHEC inspection conducted on October 30, 2006, found the outdoor area in front of the facility unsafe due to the lack of protection from the physical hazards presented by the road.

The November 14, 2006, DHEC inspection found the following maintenance problems: water damage to the wall and ceiling in the lobby; inoperable emergency light in the hall on Wing B; inoperable or damaged air conditioning unit in two rooms; exit light on Wing A inoperable; ceiling damage around the vent in a bedroom; drawers off track in bathrooms throughout the facility; closet doors missing in residents' rooms throughout the facility; torn screen on porch at the end of Wing A; an inoperable toilet on Wing A; scarred and marred walls throughout facility; fascia board on outside of the facility was peeling and rotting; cool air was inoperable on one air conditioning unit; a stain on the ceiling; no cover on an oscillating fan; an unsecured bed headboard; a wobbly and unsecured toilet rail; and a broken storage door in Wing B. There were no provisions observed in residents' rooms for storing soiled linen. No paper towels or hand drying methods or liquid soap were observed in several common restrooms throughout the facility.

Unsecured oxygen cylinders were observed in a bedroom on Wing B, and twelve unsecured oxygen cylinders were observed in the medication room.<sup>84</sup> Unsecured medications were observed in several residents' rooms.

No rooms had bureaus for storing clothing. Dust was observed throughout the facility. A strong urine odor was noted in one room. Bed linens in several rooms needed replacement. Floors were dirty and stained throughout the facility. Splatter was observed on a bedroom door. Cobwebs were observed throughout. There was a smell of

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<sup>84</sup> Oxygen bottles present a hazard unless properly secured.

smoke on Wing B and throughout facility. Heavy dust was observed in the laundry room and on top of the water heater. Clothing was all over the floor in one bedroom. Chemicals and caustic cleaning agents were stored unsafely in the Wing B storage room, as the door lock was broken. There was no hot water in the men's and women's restrooms. Fire extinguishers throughout the facility had not been initialed monthly to show their inspection by staff. Supplies and equipment were stored on the floor in the storage and medication rooms. First aid kits were not adequate.

At the same time (November 14, 2006), a DHEC Food and Sanitation inspection of Peachtree's kitchen was conducted. That inspection also found many problems: the cook was not wearing a hair restraint while cooking; the dishwasher was inoperable; sanitizing test strips were not available at the three-compartment sink; dishes had been piled in all three compartments of the sink making the standard three-step washing procedure impossible; there were no vacuum breakers observed on two hot-water faucets at the rear wash area; there was no liquid hand soap at the kitchen hand wash sink, and both soap dispensers were empty; numerous live flies were observed in the main kitchen; the kitchen floor and walls were soiled and splattered; walls in the dining room were marred and scarred; untreated and unpainted plywood was being used as a barrier in the dining area; the doorknob was missing from the dining room door; a light over the dishwasher had a loosely hanging cover; light covers were missing on four lights in the dining room and one light under the stove hood; and a staff drink was stored uncovered with residents' foods. The storage room behind the facility, where the floor freezer was stored, was extremely cluttered and soiled, and several broken refrigerators and a broken-down and abandoned van were stored behind the kitchen. The final sanitation grade given was a "C," with a score of 70, the lowest possible passing score.<sup>85</sup>

A year later, conditions had not improved. In November 2007, a complaint was received alleging "filthy" and "unsanitary" conditions, including "roaches in the dining room and food" and "flies all over." A site visit by DMH on November 9, 2007, found cigarette butts on the floor of a resident's room, a half-filled urinal on the floor by a resident's bed, and two dirty residents' bathrooms. The front window of the facility was

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<sup>85</sup> In February 2007, the kitchen received another "C" sanitation rating.

broken, and the glass had been "replaced" with thin cardboard; a window in one activity room had been broken the prior June and replaced with plywood.

An inspection on November 29, 2007, found that while interior areas did not appear unsanitary, there was an unsanitary area behind the facility where garbage had been piled for burning and partially burned. The inspectors did find an "excessive number" of flies in the kitchen and dining room. A visit by DMH four days later, on December 3, 2007, found the large pile of trash still present and large numbers of flies still present in the burned area behind the facility, the kitchen, the dining area, and on residents' food.

On December 18, 2007, DHEC investigators found upwards of thirty partially closed bags of trash and other debris piled at the rear of the facility. The trash was not properly stored in closed containers and many of the bags had been torn open by animals. The garbage had attracted vermin, rodents, flies, and other animals, violating DHEC regulations R. 61-25 and 61-84.1703 (requiring facility and grounds be neat, uncluttered, clean, and free of vermin and offensive odors). The DHEC inspector's report noted that "the trash and debris varied considerably – from cans, bottles, and papers to diapers and clothing."

Several additional violations of health, safety, and fire regulations were found during the December 18 inspection, among them violations of several sections of DHEC Regulation R. 61-84.1502.B (lack of protective light covers and broken electrical receptacle cover for heating unit); two outside bedroom windows, required as emergency exits, were respectively screwed and painted shut, in violation of §2703.B; staff did not have access to the rooms containing the boilers and furnaces, in violation of §2101; one resident's room lacked a heating unit, in violation of §2601.A; panic hardware on the rear exit doors had been torn and dismantled in violation of §2301.A; there was a buildup of lint around dryers in the laundry room, in violation §1601; the fire alarm system could not be tested, as staff had no knowledge how to operate it, in violation of §1503.A.3; there was a lack of documentation to show that fire drills had been performed at least quarterly, in violation of §1504; there was no access to records to determine if periodic inspections and tests of fire protection systems had occurred, in violation of §1502; and a

lack of a cover was missing on the junction box in the ceiling of the dining room, in violation of §1502.B.

DMH and P&A inspections in January 2008 found the mechanisms to open and close the front door and an emergency door had been broken off so that the doors could not be locked; similarly, the windows found broken in earlier inspections had still not been repaired: one was covered in plywood and the other in cardboard; the water fountain was non-functional; a window beside the front door still replaced only with cardboard and duct tape; the floor and couch were dirty; the alarm system was disconnected with visible wires; there was a strong smell of smoke near the kitchen; broken glass, cigarette butts, a discarded walker frame and an old toothbrush were outside one of the backyard exits; the sliding glass doors from the day room were covered with particle board; there was a puddle of water in front of the ice machine, and the drain from the back of the machine was leaking; the kitchen ceiling had water spots and it was falling; bed linens were dirty, stained, and worn; the trash pile was still present in the backyard; there was a covered shed nearby where bags of trash were sitting on top of a table; there were exposed pipes on the exterior porch; the cover for a heating unit in one resident's room was not secure; residents and staff reported seeing mice on the premises; residents' bedrooms lacked sheets entirely; and the toilets and floors were very dirty.

A P&A inspection on February 28, 2006, found several windows had been replaced with plywood or cardboard. One resident room did not have a doorknob. Fire exit doors were not securely locked, so that anyone could enter at any time. A sliding glass door had been replaced by plastic. Roaches were crawling on the kitchen floor. Mouse feces were seen on the floor of the pantry.

During a P&A inspection January 28, 2008, a resident stated she had been hit on the head by another resident. Another resident stated that staff would not let him call P&A if he tried.

#### **Food**

There were also consistent problems with the residents' food supply from 2006 through 2008. As early as May 31, 2006, DHEC staff cited Peachtree because the menus provided for review did not reflect special diets or indicate that they were signed by a dietitian or reviewed by a health care authority. DHEC thus could not determine if

appropriate diets were being served for those who had specific medical dietary needs. (The Administrative Law Court later found insufficient evidence to show that Peachtree had not provided planned menus approved by a dietician or physician.) A subsequent inspection on June 21, 2006 again found no diabetic menus available for review, and Peachtree was again cited for this violation.

Throughout this time period, there were repeated incidents of little to no food or drink for residents; meals served were different from the posted menus; the ingredients for the rest of the day's posted meals and snacks were not in stock; staff in the kitchen did not know what would be served for lunch nor about residents' special diets; residents with food allergies were forced to eat those foods since there was nothing else offered; one of the kitchen refrigerators was not operating; unidentifiable objects were in both of the other operating refrigerators; tacked on a wall in the kitchen was a packet of papers labeled "Renal Diabetic Diet": this packet had phone numbers written on it and pieces of paper torn off the bottom of the sheets; cooks could not explain what was done for residents on special diets.

DHEC conducted a food, safety, and general inspection on November 14, 2006. At the time of that inspection, records of food and supplies purchased during the previous six months were not available for review. There was no documentation that menus for medically-prescribed diets were planned by a professionally qualified dietician or reviewed and approved by a healthcare provider. A current, complete diet manual was not available. There were no special diets listed for diabetic residents or residents in need of any other type of special diet. The cook did not demonstrate sufficient knowledge of food values in order to make appropriate substitutions for residents who needed a special diet. The posted menu was not placed in a conspicuous and resident-accessible location and was several weeks out of date (dated 10/30-11/05). At the time of the inspection, there was less than 1/3 gallon of milk in the facility for 23 residents.

A DHEC visit on November 29, 2007, found there was not a one-week supply of staple foods. The posted menu was not followed, and substitutions were not listed or recorded. There was also no gas for cooking the food that was available (as detailed below). A follow-up visit the next day, November 30, did find that an adequate amount of food had been purchased and was being kept on hand. However, subsequent visits on

December 3 and December 18, 2007, found the kitchen pantry and freezer locked and staff unable to access those areas. Investigators were therefore not able to verify if there was a sufficient supply of staple foods, but on December 18, the food that was verifiably on-hand was not sufficient to meet, and did not agree with, the posted menu.

A resident interviewed by P&A staff on December 3, 2007, stated that the night before, the meal served had been chicken and noodles, but the chicken was spoiled so everyone quit eating; residents ate only green beans.

On December 31, 2007, the LTC Ombudsman's office again noted a "very limited" supply of food, and no snack items were seen. When the administrator called and said she was bringing food, staff members said in the past the administrator promised to bring food, but then did not or brought only small amounts.

During an inspection by P&A staff on January 18, 2008, one resident stated that "nine times out of ten you do not get enough [food]."

Although it was not the reason for the facility's closure, the final inspection on March 28, 2008, found insufficient food on hand to feed the residents, in addition to the other issues that led to closure.

#### **Financial Management & Utility Maintenance**

As early as June 21, 2006, DHEC cited Peachtree for failure to maintain phone service, as an inspection on that date found the phones disconnected and residents dependent on personal cell phones. This also led to a general safety violation, as the fire alarm system was rendered inoperable by the lack of phone service, forcing residents to report emergencies using their personal cell phones.

At about the same time, on June 22, 2006, Peachtree admitted to having problems meeting payroll obligations.<sup>86</sup>

A DHEC inspection on November 14, 2006, also noted several problems with residents' financial records. In four of four resident's records reviewed, no date was listed on which residents were to receive their personal needs allowances and no refund policy was documented. There was no documentation or accounting of the resident's financial records for two residents whose funds were managed by the facility. There was

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<sup>86</sup> While this arguably violated R. 61-84.103(K) requiring CRCFs to be financially able to meet all obligations necessary to proper operation of the facility, the Administrative Law Judge waived this sanction, holding that the regulation applied only to the initial request for licensure.

no documentation of quarterly financial reports to residents whose funds were managed by the facility. Inspectors also noted that, according to several residents interviewed, no telephone was available for residents' use, and residents were only allowed to use the office telephone after office hours.

New problems with the utilities were discovered on November 28, 2007. Following a complaint, a DHEC staff member telephoned Peachtree and spoke with individuals present there. The individuals verified there was no gas for cooking at the facility. Later that same day, Mr. Donnelly the owner informed DHEC that he probably would not be able to obtain gas until the following Monday, five days later.

A November 29, 2007, inspection verified that no cooking gas was available. In addition to the problems noted elsewhere in this report, inspectors noted that the cooking stove in the kitchen was not operable as there was no gas supply on hand. At that time, at least one staff member also reported to the DHEC inspector that staff had not received a paycheck since October 24, 2007. When DMH inspected several days later, on Monday, December 3, 2007, the situation with the lack of gas had apparently still not been resolved, and staff was observed cooking meals on an electric skillet.

On December 18, 2007, a DHEC inspector's report noted that the kitchen was non-functional, lunch was being prepared on a small electric plate, the facility lacked heat, with residents wearing coats inside, and that most of the electric lights were turned off or inoperable. It was also reported that Peachtree was in the early stages of foreclosure on a \$900,000 mortgage and was subject to an outstanding \$56,000 mechanic's lien. An inspection that same day confirmed (among other violations) that the ambient temperature at Peachtree was between 60 and 64 degrees, which violates §2601.C of Regulation 61-84 (requiring facilities to maintain a temperature between 72 and 78 degrees Fahrenheit in resident areas). This was because "the heating unit for [the hallways, corridors, sitting rooms and dining room] operates on natural gas and currently there is no supply of gas to operate the system." (DHEC Inspector's Report 12/18/2007.) Resident rooms did each have individual electrical heating units.

On December 20, 2007, DHEC had received information indicating Peachtree was \$1,867 in arrears on its electric bill and was facing cancellation of basic heat.<sup>87</sup> A visit by the LTC Ombudsman's Office on December 31 confirmed that at least one resident's bedroom did not have heat.

An inspection by DMH and P&A staff on January 2, 2008, found these issues continuing. According to the report that day, there was "no heat in the common living areas including all resident lounges, the dining room, the hallways, the laundry room, the medication room and offices. Reportedly the gas was turned off due to non-payment more than a month ago." Similarly, meals for all 26 residents were still being prepared "using a family-sized electric skillet and a small fryer" as the gas supply to the stove was still cancelled.

An inspection by P&A staff on January 18, 2008, found that interior rooms had temperatures ranging between 65 and 68 degrees. Hot water temperatures were measured as low as 65 degrees and no higher than 101 degrees.

On February 19, 2008, DHEC confirmed reports that the phone service at Peachtree had again been discontinued for nonpayment and that as a result the fire alarm system no longer met regulatory requirements. The fire marshal gave Peachtree 48 hours to restore phone service, but as of February 27, 2008, phone service had not been restored and the local Winnsboro fire marshal had not taken further action.

On February 22, 2008, the LTC Ombudsman visited Peachtree and again found the gas was turned off, the stove and oven did not work, the residents lacked heat, and meals were being cooked over hot plates.

A P&A inspection on February 28, 2008, found the indoor temperature was 56 degrees Fahrenheit in the front common room. The facility's telephones were not functional, and staff and residents were relying on staff's personal cell phones for all calls outside the facility. There was no gas to cook with; the cook stated she prepared meals using a hot plate and skillet as the gas had been out for over two weeks.

*Finally*, on February 29, 2008, Peachtree reached its last crisis point when Peachtree's pharmaceutical provider, Palmetto Long Term Care Pharmacy, sent a letter

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<sup>87</sup> Affidavit by Dennis Gibbs, DHEC staff member, based on communications from the SC Longterm Care Ombudsman

stating it would terminate its contract with Peachtree on April 1st if the entire past due balance was not paid. Peachtree attempted to negotiate partial payment, but the pharmacy would not accept it and demanded full payment, refusing to provide any further medications to the facility. The medications already provided by Palmetto were sufficient for the residents' needs until the evening of March 27, 2008. Peachtree did not satisfy the account, and Palmetto did not provide further medications. Therefore, on the morning of March 28, Palmetto notified DHEC that it believed several residents were without crucial medications, and an emergency situation was likely to exist. DHEC inspectors visited the facility and confirmed that many prescription drugs were not available for inspection; these drugs were necessary to manage a wide range of residents' conditions, from heart conditions to AIDS to potential seizures to mental illness, and sudden cessation of many of them was potentially fatal.<sup>88</sup>

DHEC suspended Peachtree's license to operate based on the "imminent threat" provision, S.C. Code § 44-7-320(A)(3), and closed the facility; five days later, on April 2, 2008, an emergency hearing was held, at which the Administrative Law Judge confirmed both the license suspension and the license revocation.<sup>89</sup> This final and permanent closing of the facility took well over two years from when DHEC first noted deficiencies in 2006 and involved more than 40 inspections by DHEC and other agencies.

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<sup>88</sup> The list of missing drugs included Keppa, Nexium, Abilify, Cerefolin, Risperdal, Phenytoin, Dilatin, Depakote, Topamax, Amlodipine, Zyprexa, Benzotropine, Cogentin, Lisenopril, Lotrel, Terazosin, Amiodarone, Furosemide, Diovan, Metoprolol, Orphenadrine, Hydrochlorothiazide, Invega, Seroquel, Lexapro, Lipitor, Gabapentin, Ryataz, Trovada, Benazepril, Naproxen, Crestor, Amlodipine, Simvastatin, and Trazodone.

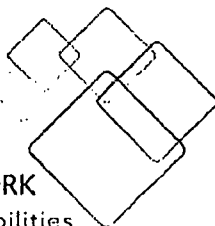
<sup>89</sup> The written order of the Administrative Law Court was issued April 7, 2008.

# Segregated & Exploited

*A Call to  
Action!*

**The Failure of the Disability Service  
System to Provide Quality Work**

NATIONAL  
**DISABILITY RIGHTS**  
NETWORK  
Protection & Advocacy for Individuals with Disabilities



**January, 2011**

Mims0667

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### **National Disability Rights Network: Protection, Advocacy & Assistance**

The National Disability Rights Network (NDRN), is the nonprofit membership organization for the Protection and Advocacy (P&A) system and Client Assistance Program (CAP). The P&A/CAP network was established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. The P&A/CAP network is the largest provider of legally based advocacy services to people with disabilities in the country.

NDRN strives to create a society in which people with disabilities are afforded equal opportunity and are able to fully participate by exercising choice and self determination. It promotes the integrity and capacity of the P&A/CAP national network by providing training, technical assistance, legislative advocacy, and legal support. NDRN advocates for the enactment and vigorous enforcement of laws protecting the civil and human rights of people with disabilities. Reports, like this one, are an integral part of the services NDRN provides to the P&A/CAP network and the disability rights movement in general.

Please visit [www.NDRN.org](http://www.NDRN.org) for more information.

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*Over photo by WQAD in the Quad Cities, IA ([www.wqad.com](http://www.wqad.com)). Image of the unheated and boarded up junkhouse where Henry's Turkey Service housed its workers with disabilities.*

Mims0668



## A Letter from the Executive Director

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Dear Friends,

Today, across the United States of America, hundreds of thousands of people with disabilities are being isolated and financially exploited by their employers. Many are segregated away from traditional work and kept out of sight. Most are paid only a fraction of the minimum wage while many company owners make six -figure salaries. Many people profit off of their labor. All, except the worker. For many people with disabilities, their dream of leaving their "job training program" will never come true. They labor away making only a tiny portion of what they should because there is a system in place that provides no true alternatives.

For the past several decades, activists and advocates for disability rights were complacent in our silence. The National Disability Rights Network, included. We fought for and continue to fight for community integration and an end to the abuse and neglect of people with disabilities while neglecting the evidence that segregated settings, sheltered work and sub-minimum wage contradict is effort. Sheltered workshops are not what they promise to be, and sometimes serve as an unsettling example of how good intentions can lead to terrible outcomes.

The truth is that people with disabilities can—and do—work in all areas of the American workforce. They thrive when they fully participate in their communities, and in turn, the nation thrives.

Unfortunately, sheltered workshops and the sub-minimum wage still exist today because of self-interested employers and systematic neglect by federal agencies, buttressed by outdated stereotypes of people with disabilities and the low expectations held by the general public, lawmakers, and, sadly, even some families and the disability rights community. Simply put, sheltered workshops are just another institution segregating people with disabilities away because of our unwillingness to accept that our perceived notions about their ability to work may be wrong.

This call to action is long over-due. It is time to end segregated work, sheltered employment and sub-minimum wage. Now.

Sincerely,

Curtis L. Decker, Esq.

Mims0670

The National Disability Rights Network (NDRN) has been studying segregated work, sheltered environments, and the sub-minimum wage to determine whether they meet the needs of people with disabilities and whether they comply with federal law. Unfortunately, what we found was disappointing to say the least.

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### NDRN's Policy Recommendations

*Detailed recommendations can be found on page 46.*

#### *End Segregated Employment and Sub-minimum Wage for People with Disabilities*

- Restrict all federal and state money that is spent on employers who segregate employees with disabilities from the general workforce.
- End the ability of employers to pay employees with disabilities a sub-minimum wage.
- End all programs that emphasize moving young adults from the classroom to a segregated or sub-minimum wage employment environment.

#### *Promote and Facilitate Integrated and Comparable Wage Employment Alternatives*

- Strengthen existing and create new federal and state tax incentives for employers to place employees with disabilities in integrated environments at comparable wages.
- Assist employees with disabilities to find employment in the general workforce in jobs that they choose.

#### *Increase Labor Protections and Enforcement*

- Fully investigate violations and abuses perpetrated by employers that pay less than the minimum wage or segregate workers with disabilities.
- Increase penalties for violators.
- Formalize standards for employee evaluations and productivity measurements.

The product of this study is our call to action, **"Segregated & Exploited: The Failure of the Disability Service System to Provide Quality Work."**

Through this report, NDRN casts a spotlight on the problems of segregated work, sheltered environments, and sub-minimum wages. This report identifies the barriers to employment that people with disabilities face and dispels myths about their capability to be fully employed, equally compensated, and an integral member of American workplaces and communities. It illustrates a systemic failure to provide hope and opportunity to young people with disabilities who want to transition into traditional work but instead wind up trapped in sheltered workshops with little chance for something different.

In the best of situations, sheltered environments, segregated work, and the sub-minimum wage do not truly provide a meaningful experience for workers with disabilities. Workshop tasks are often menial and repetitive, the environments can be isolating, and the pay is often well below the federal minimum wage. In the worst situations, the segregated and sheltered nature of the lives of workers with disabilities leaves them vulnerable to severe abuse and neglect.

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## Commonly Used Phrases

**Employment:** an activity performed by an individual where there is an expectation of wage for services rendered and the services are primarily for the benefit of the employer.

**Work:** an activity done on a personal basis to enable personal growth and skills development, improve social interactions, and development of self by contributing to society through volunteerism or increased community interaction and participation in civic events. While there is a valued relationship in this activity, it is not necessarily recognized through financial remuneration.

**Competitive Employment:** work in the labor market that is performed on a full-time or part-time basis in an integrated setting for which the individual is compensated at or above minimum wage, but not less than the customary and usual wage paid by an employer for the same or similar work performed by individuals who are not disabled.

**Supported Employment:** competitive work performed in an integrated work setting where individuals are matched to jobs consistent with their strengths, resources, abilities, capabilities, interests, and informed choice, and are provided individualized supports to learn and keep the job.

**Sheltered Work Settings:** separate environments known as sheltered workshops, affirmative industries, training facilities, and rehabilitation centers which congregate large numbers of people with disabilities and claim to be providing rehabilitation geared toward transition into the general labor market by providing activities that typically involve repetitive tasks; the workshop was designed by parents to give their sons or daughters dignity, self worth, socialization, and most of all respite because parents had peace of mind that their son or daughter was safe, secure, and protected against the risks and demands of the competitive world.

**Financial Exploitation:** the wrongful taking, withholding, appropriation, or use of the money, real property, or personal property of an individual with a disability.

**Sub-minimum Wage:** section 14(c) of the Fair Labor Standards Act allows employers to pay individuals less than the minimum wage if they have a physical or mental disability that impairs their earning or productive capacity.

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**Segregated & Exploited**

*The Failure of the Disability Service System to Provide Quality Work*

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## The Problem of Segregated Work, Sheltered Environments & Sub-minimum Wage

The central arguments against segregated and sheltered work, and the sub-minimum wage can be summarized as the following:

- **Segregated Work, Sheltered Environments, & Sub-minimum Wage Directly Contradict National Policy.** The passage of the Americans with Disabilities Act (ADA) in 1990 was a major step in correcting past wrongs faced by people with disabilities. It provides broad protection in employment, transportation, public accommodations, telecommunications, and public services for people with disabilities. In the following two decades, more laws, legal decisions, and state and federal regulations came to be, all making a very clear statement: people with disabilities should live and work independently in their communities. Segregated and sheltered work—by definition—goes against this very principle. But more than that, it keeps people with disabilities marginalized and hidden in the shadows and these environments create opportunities for abuse and neglect to occur. While good national disability policy exists that could remedy this, there is an incomprehensible lack of oversight and enforcement of these good policies.
- **Work Segregation of People with Disabilities is Damaging.** Segregated work facilitates feelings of isolation for many people and impinges on the natural desire to connect with others. Sheltered workshops have replaced institutions in many states as the new warehousing system and are the new favored locations where people with disabilities are sent to occupy their days. People with disabilities deserve the right to live and work independently in their chosen communities. These work settings violate statutes passed to encourage just that.
- **Sub-minimum Wage Reinforces a Life of Poverty for People with Disabilities.** Labor law exemptions for employers of people with disabilities have created jobs that pay as little as 10% of the minimum wage with most workers earning only 50%. Reports on sheltered workshops often show that workers take home about \$175 each month, while those working in traditional jobs take home about \$456 each week. Few workers receive health or other employment benefits typical for the average American worker, and since workers do not have a voice, there is little opportunity to improve their conditions. Yet their employers are reaping the benefits of their labors.
- **Sheltered Workshops Lead Nowhere.** Sheltered workshops are predominantly set up as a type of “job training program” that teaches valuable skills and prepares people to compete for traditional jobs. Unfortunately, the reality is vastly different. They are often taught skills that are

not relevant or transferable to traditional work environments. Even with the dramatic improvements in competitive employment, there remains three individuals in segregated day programs for every one person working in competitive employment.

- **Sheltered Workshops Profit Greatly from the Status Quo.** While many sheltered workshops argue that the cost to provide work for people with disabilities is higher than similar worksites with a labor force consisting largely of people without disabilities, the facts do not support it. Not only are their profit margins protected by statutes allowing them to pay workers far below the minimum wage, they also receive sizeable subsidies from the local, state and federal governments equaling as much as 46% of their annual revenue. Since sheltered workshops don't have to compete in the open market to earn income, they also don't have to do the things other businesses must do like innovate, adapt, and evolve. Sheltered workshops today are not very different than they were when they were started more than 170 years ago—and that is the problem.

Sheltered workshops are often celebrated for providing an altruistic service to their communities while neglecting the fact that in reality they provide workers with disabilities with dead-end jobs, meager wages, and the glimpse of a future containing little else.

Considering these stark realities, it is clear that segregated and sheltered work no longer provides workers with disabilities an opportunity for "life, liberty, and the pursuit of happiness." They may no longer be warehoused in institutions without meaningful daily interactions, but the change may merely be logistical. Segregation—whether it be in an institution or at work—is still segregation.

Separate is still not equal.



## Americans with Disabilities Act

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### Statement of Findings

*"Historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem, ... individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society...."*

## **Segregated & Exploited**

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Often, good intentions go wrong. Segregated and sheltered work and paying less than the minimum wage are perfect examples of that axiom. They are programs that were designed to help people with disabilities learn meaningful skills and obtain gainful employment, while protecting them from public judgment, ridicule, and shame.

Today, we live in an era of evolving thinking about people with disabilities. Attitudes have changed. So have many laws. But most importantly, what has changed is the quality and quantity of information available illustrating that segregating and sheltering workers with disabilities and paying them less than minimum wage is no longer the best course of action. It is time we value the unique skills and talents of people with disabilities and move toward full workplace integration.

### **A Brief History of Segregated Work, Sheltered Environments, & the Sub-minimum Wage**

Sheltered workshops have existed since as early as 1840 with the Perkins Institute for the Blind, an institution in Massachusetts. Jobs for people who were blind were protected, or sheltered, from competition in order to create permanent job opportunities for them. This concept was cutting-edge 170 years ago. Today, it is a quaint notion at best that should be left behind.

The origin of sub-minimum wages for people with disabilities stems from the National Industrial Recovery Act, one of the early pieces of President Franklin Roosevelt's New Deal. On February 17, 1934, President Roosevelt issued an Executive Order which stated that it was permissible to pay individuals with disabilities "below the minimum established by a Code."<sup>1</sup>

In 1938, the Fair Labor Standards Act (FLSA) was passed. It specified standards for basic minimum wage rates and overtime pay. It also created a special exemption authorizing employers to pay wages that were significantly lower than the minimum wage to workers with disabilities.<sup>2</sup> These wage provisions were originally created to encourage the employment of veterans with disabilities in a manufacturing-centered economy.<sup>3</sup>

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<sup>1</sup> William, Whittaker, *Treatment of Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act, Federal Publications*, Paper 209 [http://digitalcommons.ilr.cornell.edu/key\\_workplace/209](http://digitalcommons.ilr.cornell.edu/key_workplace/209) (2005).

<sup>2</sup> 29 U.S.C. 201, *et seq.*

<sup>3</sup> Whittaker, *supra* note 1

## Segregated & Exploited

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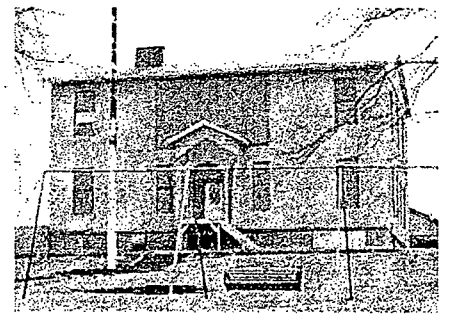
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### Case Study:

#### Henry's Turkey Service

Atalissa, Iowa

The story of the workers at Henry's Turkey Service, a meat processing plant in Iowa, is an appalling example of the abuse that can happen when workers with disabilities are segregated and sheltered away from others. At Henry's, as many as 60 men from Texas with intellectual disabilities once lived together, ate together, traveled together, and worked together. All day. Every day.



The Bunkhouse

Henry's wasn't only these men's employer. They also acted as landlord, "caregiver," and was the representative payee for their Social Security payments. The housing they provided—a 106-year-old cockroach infested, unheated abandoned school turned bunkhouse—had boarded up windows and a cracked foundation. Records show that Henry's paid \$600 each month in rent for use of the tax-free bunkhouse. For the privilege of living in the bunkhouse, the company deducted approximately \$10,000 a week from their paychecks.

These 60 men worked alongside men without disabilities. They did the same job and worked the same long hours. Unfortunately they were not treated the same. They were verbally and physically abused, taunted, and humiliated because of their disabilities. Their movements and contacts were restricted, and they were not allowed appropriate access to medical care.

They were not paid the same either. The men's net pay averaged \$.41 an hour although they performed the same work as their co-workers without disabilities who earned \$9-12 hour. At the end of the month, and after the various levies Henry's assessed, the men got to keep approximately \$65 each month.

*Source: Clark Kaufmann, State closes bunkhouse that housed mentally retarded workers, Des Moines Register, February 8, 2009; Henry's turkey Service once praised, now condemned, Des Moines Reporter, May 25, 2009; Clark Kaufmann, Turkey service faces fines of \$900,000 from Iowa, Des Moines Register, May 29, 2009; Clark Kaufmann, Henry's Turkey Service told to answer state's questions, Des Moines Register, April 13, 2010; Clark Kauffman, Ruling: Henry's cheated workers at Atalissa turkey plant, Des Moines Register, May 7, 2010.*

Mims0678

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In 1938, the Fair Labor Standards Act (FLSA) was passed. It specified standards for basic minimum wage rates and overtime pay. It also created a special exemption authorizing employers to pay wages that were significantly lower than the minimum wage to workers with disabilities.<sup>2</sup> These wage provisions were originally created to encourage the employment of veterans with disabilities in a manufacturing-centered economy.<sup>3</sup>

Sheltered workshops increased in popularity in the 1950's and 1960's. In 1963, the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) was passed. Beginning the shift in national policy, the DD Act focused on the need to provide support and opportunities that promote independence, productivity, integration and inclusion of people with disabilities in the community with an emphasis on employment.<sup>4</sup>

Despite the positive philosophy promoted by the DD Act, in 1966, PL 89-601 created an even broader definition of disability under the FLSA, increasing the number of workers that can be paid less than the federal minimum wage while also increasing the prevalence of sheltered workshops.<sup>5</sup> In contrast, the Rehabilitation Act of 1973 provided a clear emphasis on the importance of competitive wages,

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<sup>1</sup> William, Whittaker, *Treatment of Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act*, Federal Publications, Paper 209 [http://digitalcommons.ilr.cornell.edu/key\\_workplace/209](http://digitalcommons.ilr.cornell.edu/key_workplace/209) (2005).

<sup>2</sup> 29 U.S.C. 201, *et seq.*

Whittaker, *supra* note 1

<sup>4</sup> 29 U.S.C. §§ 15041-15045

<sup>5</sup> Whittaker, *supra* note 1

even for those individuals with the most significant disabilities.<sup>6</sup> However, in 1986, a step backward occurred when the FLSA was amended again. This amendment removed any specific minimum wage floor for workers with disabilities, making it even more profitable for employers to exploit their employees with disabilities.<sup>7</sup>

The ability to pay individuals with disabilities sub-minimum wages for their work is still alive and well today. The Department of Labor (DOL) Wage and Hour Division is given the authority to issue certificates to employers allowing them to pay less than the prevailing wage if a disability interferes with the productive or earning capacity of a worker on the job.<sup>8</sup>

In such cases, the individual with a disability is not given a competitive wage, but is, instead, paid a commensurate wage that compares the individual productivity of the worker with a disability to objective data reflecting the prevailing wages of at least three non-disabled employees who are engaged in comparable work within the community.<sup>9</sup>

For example, if the prevailing wage for a particular job is \$8 an hour and the productivity of the individual with a disability is determined to be 50% of the experienced, non-disabled employee, the commensurate wage would be \$4 an hour.

This narrow sub-minimum wage philosophy, developed more than 70 years ago and designed to help veterans within a largely industrial economy, is not applicable today. The types of jobs available to individuals with disabilities are no longer limited solely to low-skilled or manufacturing-type tasks. Additionally, many kinds of assistive technology—from power wheelchairs to high-tech communication devices—open the door for people with significant disabilities to pursue employment opportunities that were previously thought to be unrealistic or even impossible.

Despite the good intentions to find job opportunities for workers with disabilities, the results have been a disaster. The Vocational Rehabilitation (VR) Longitudinal Study which studied 8,500 VR eligible

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<sup>6</sup> P.L. 93-112

<sup>7</sup> Whittaker, *supra* note 1

<sup>8</sup> FLSA Section 14(c), *the Payment of Special Minimum Wages to Workers with Disabilities for the Work Being Performed*, <http://www.dol.gov/elaws/esa/flsa/14c/>

<sup>9</sup> *Id.*

clients from 1994 to 2000 confirmed that people placed in sheltered work earn far below the minimum wage and fail to make gains in earnings over time.<sup>10</sup>

According to the study, of the 7,765 people placed in sheltered work in 1998, 89.3% earned less than the minimum wage of \$5.15 an hour. The average hourly earnings for people placed in sheltered work was \$3.03. One year later, average hourly wages dropped to \$2.64 an hour. Two years later, average hourly wages rose slightly to \$2.84.<sup>11</sup> The problem of low wages is compounded by limited work hours and limited access to health insurance.<sup>12</sup> People placed in sheltered work averaged 27.6 hours per week. One year later, the average work week was 28.1 hours and the following year 29.1 hours per week.<sup>13</sup>

Lastly, according to the study, for people placed in sheltered work, only 16% had health insurance. One year later, the number dropped to 12%. For people with disabilities in integrated employment, the wages started at \$7.56 an hour, and rose to 13.48 an hour, with 58.8% of individuals having access to health insurance three years post the VR closure.<sup>14</sup>

The history of segregated work, sheltered environments, and sub-minimum wage highlights the contrasting national policies toward people with disabilities and work. It is time to acknowledge that policies developed more than a half century ago that supported sheltered work and sub-minimum wage are out of step with national disability policy today.

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<sup>10</sup> B.J. Hayward & H.S. Davis, Research Triangle Institute, LONGITUDINAL STUDY OF THE VOCATIONAL REHABILITATION (VR) SERVICES PROGRAM, THIRD FINAL REPORT: THE CONTENT OF VR SERVICES (2005), available at <http://www2.ed.gov/rschstat/eval/rehab/vr-final-report-3.pdf>.

<sup>11</sup> Fredrick K. Schroeder, "Address to the 1th Annual National Federation of the Blind Convention" (July 7, 2000) available at <http://nfb.org/legacy/bm/bm00/bm0008/bm000805.htm>.

<sup>12</sup> Institute for Community Inclusion, STATEDATA: THE NATIONAL REPORT ON EMPLOYMENT SERVICES AND OUTCOMES (2009), available at <http://statedata.info/datanotes/pdf/Statedata2009.pdf> citing H. Boeltzig, J.C. Timmons, J. Marrone, (2008).

"Maximizing potential: innovative collaborative strategies between One-stops and mental health systems of care." in *Work: A Journal of Prevention, Assessment, and Rehabilitation*, 31(2), 181-193

<sup>13</sup> Fredrick K. Schroeder, "Address to the 1th Annual National Federation of the Blind Convention" (July 7, 2000) available at <http://nfb.org/legacy/bm/bm00/bm0008/bm000805.htm>.

<sup>14</sup> *Id.*

## **Segregated Work, Sheltered Environments, & Sub-minimum Wage Directly Contradict National Policy**

Activists and advocates for disability rights have worked for decades for community integration of people with disabilities. Building on that work, Congress and the Supreme Court have established a strong national policy promoting the integration of people with disabilities into all facets of life, including employment. Some laws, however, still conflict with this policy.

### **The History of the Development of National Community Integration Policy**

Congress first promoted the idea of community integration when it enacted the Rehabilitation Act in 1973, which identified one of its purposes as “promot[ing] and expand[ing] employment opportunities in the public and private sectors for handicapped individuals and to place such individuals in employment.”

In 1984, Congress amended the DD Act so that the “overall purpose was to assist States to assure that people with developmental disabilities receive the care, treatment, and other services necessary to enable them to achieve their maximum potential through increased independence, productivity, and integration into the community. In 1990, Congress enacted the Americans with Disabilities Act (ADA), declaring that “the Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals.” Congress found that “the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity.”<sup>15</sup>

In 1991, the Department of Justice issued regulations implementing the ADA which required public entities to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”<sup>16</sup>

As part of the Rehabilitation Act Amendments (Rehab Act) of 1998,<sup>17</sup> Congress found that “disability is a natural part of the human experience and in no way diminishes the right of individuals to ... pursue meaningful careers ... and enjoy full inclusion and integration in the economic, political, social,

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<sup>15</sup> 42 U.S.C. § 12101(a)(8)

<sup>16</sup> 28 C.F.R. § 35.130(d).

<sup>17</sup> P.L. 105-220

cultural, and educational mainstream of American society.”<sup>18</sup> Congress stated that the purpose of the Rehab Act is to “empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society.”<sup>19</sup> In 2001, the Rehabilitative Services Administration (RSA) limited employment outcomes in Title I of the VR system to integrated employment. RSA decided that segregated and sheltered work could only be funded with Title I funds under temporary training circumstances leading to integrated employment. It reflects the intent of Congress for rehabilitation to prepare people with disabilities to be equal and productive members of America’s workforce.

The Ticket to Work and Work Incentives Improvement Act of 1999,<sup>20</sup> further recognized that work should be in an integrated setting. The purpose of the Act is “to establish a ... program that will allow individuals with disabilities to seek the services necessary to obtain and retain employment and reduce their dependency on cash benefit programs.”<sup>21</sup>

In 2000, Congress reinforced the national policy promoting community integration when it amended the Developmental Disabilities Act (DD Act) in 2000.<sup>22</sup> Congress stated that the purpose of the DD Act is to assure, among other things, that individuals with developmental disabilities and their families “... have access to needed community services, individualized support and other forms of assistance that promote ... self-determination, productivity, and integration and inclusion in all facets of community life.”<sup>23</sup>

When Congress enacted the Individuals with Disabilities Education Improvement Act (IDEIA) of

<sup>18</sup> 29 U.S.C. § 701(a)(3).

<sup>19</sup> 29 U.S.C. § 701(b)(1).

<sup>20</sup> P.L. 106-170.

P.L. 106-170 § 2(b)(4)

P.L. 106-402, 42 U.S.C. §§ 15001 *et seq.*

<sup>23</sup> 42 U.S.C. § 15001(b)

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### Eleanor’s Story

Eleanor is a 22 year old woman who enjoys spending time hanging out with her friends, chatting and laughing. She graduated from high school in 2008 and like many people her age had to choose the next step in her life. Eleanor decided she wanted to work and that she did not want to go to a sheltered workshop or other segregated training program.

“Sheltered workshops are a waste of time, and they don’t pay minimum wage,” Eleanor said during an interview. “If you’re in a sheltered workshop you can’t interact with people who don’t have a disability.”

Eleanor, who has Down Syndrome, loves people. She wanted a job where she could talk to people and use her customer service skills. She tried getting experience through a program that offered specialized training but they wouldn’t listen to her requests to work with people and made her do tasks they thought were a better fit.

So, being a strong self-advocate, she fired her job developer and hired a new one who found her a job as a courtesy clerk at a new store where she could put to use her best skills. Eleanor represents the next generation of young people with disabilities who won’t settle for an outmoded employment system that offers nothing but segregation and financial exploitation.

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2004,<sup>24</sup> it declared that, "Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities."<sup>25</sup>

In its 1999 landmark decision, *Olmstead v. L.C.*, the Supreme Court held that individuals with disabilities had to be provided services in the most integrated setting appropriate to the needs of qualified individuals with disabilities.<sup>26</sup>

The New Freedom Initiative, announced by President Bush in 2001, was a nationwide effort to remove barriers to community living for people of all ages with disabilities and long-term illnesses. It represented an important step in working to ensure that all Americans have the opportunity to learn and develop skills, engage in productive work, choose where to live and participate in community life. One of its goals is to "integrate Americans with disabilities into the workforce."<sup>27</sup>

President Obama summed up the national policy of promoting community integration of individuals with disabilities when he introduced the "Year of Community Living," stating:

"I am proud to launch this initiative to reaffirm my Administration's commitment to vigorous enforcement of civil rights for Americans with disabilities and to ensuring the fullest inclusion of all people in the life of our nation."<sup>28</sup>

### **Laws Conflicting with National Community Integration Policy**

Although the legislative, judicial and executive branches have promoted integration in all facets of community life for individuals with disabilities, some laws are still in conflict with this policy. One example of such a law is the Javits-Wagner-O'Day Act of 1971,<sup>29</sup> now commonly referred to as the AbilityOne Program. AbilityOne, enacted more than 70 years ago, is a federal law that requires all federal agencies to purchase specific supplies and services from non-profit agencies which employ individuals who are blind or have severe disabilities.<sup>30</sup> While the law does provide for employment

<sup>24</sup> Pub.L. 108-446

<sup>25</sup> 20 U.S.C. § 1400(c)(1).

<sup>26</sup> 527 U.S.C. § 581 (1999)

<sup>27</sup> <http://www.hhs.gov/newfreedom/init.html>.

<sup>28</sup> White House Press Release (6/22/09) [http://www.whitehouse.gov/the\\_press\\_office/President-Obama-Commemorates-Anniversary-of-Olmstead-and-Announces-New-Initiatives-to-Assist-Americans-with-Disabilities/](http://www.whitehouse.gov/the_press_office/President-Obama-Commemorates-Anniversary-of-Olmstead-and-Announces-New-Initiatives-to-Assist-Americans-with-Disabilities/)

41 U.S.C. § 46 – 48c

<sup>30</sup> 41 U.S.C. § 48

opportunities for people with disabilities, it does so at a steep price. The non-profit agencies that fulfill the federal contracts are allowed to pay their employees based upon pay rates that are less than the prevailing wage. These contracts encourage people with disabilities to work in segregated environments, allowing for little, if any, interaction with co-workers without disabilities. In order to obtain an AbilityOne contract, the agency must ensure segregation because at least 75% of the direct labor hours required to produce the commodity must be provided by people with disabilities.<sup>31</sup> The AbilityOne program is lagging behind the national policy of full integration and community inclusion and needs to be updated.

Another law of concern is the Fair Labor Standards Act Section 14(c) described in the previous section which allows employers to pay employees with disabilities less than the minimum wage.<sup>32</sup> NDRN believes this provision to be out of date and that all individuals who can perform the essential functions of their jobs, with reasonable accommodations, should be paid minimum wage, regardless of whether they have a disability.

The continued government sanctioning and support of segregated and sheltered work through AbilityOne and the FLSA sends a message that people with disabilities are not truly equal.

is must change.

### **Enforcement Problems with Federal Laws Regarding Segregated Settings and Sub-minimum Wage**

#### VR Agencies Bungle Compliance and Quality Reviews

State VR agencies cannot use federal funds to help an individual find permanent employment in segregated settings,<sup>33</sup> and are required to conduct an annual review and re-evaluation of people with disabilities who are referred to or who choose to work in them.<sup>34</sup> State VR agencies must also conduct an annual review when an individual achieves employment following participation in a VR program but is paid sub-minimum wage under a 14(c) certificate. These annual reviews must occur for the first two years after the VR case is closed, and then annually if a review is requested.<sup>35</sup> These

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<sup>31</sup> 41 U.S.C. 48b(4)(c)

<sup>32</sup> 29 U.S.C. § 214(c)

<sup>33</sup> 4 C.F.R. § 361.37.

<sup>34</sup> 4 C.F.R. § 361.55.

<sup>35</sup> 34 C.F.R. § 361.55.

reviews are intended to assure that maximum efforts are made to assist the individual in engaging in competitive employment through the identification and provision of VR services, reasonable accommodations, and other necessary support services.

Although clearly laid out in the regulations, RSA does not track compliance of this requirement when collecting annual data from the state VR agencies thus, there is no record of annual reviews taking place or of the quality of reviews and re-evaluations. Without compliance information, people referred to segregated settings may become stuck in a sheltered workshop because the VR did not follow-up. Workers paid less than minimum wage may have improved and be able to earn more, but it would be missed because an annual review was not conducted. Without proper oversight and data by RSA regarding compliance with these federal requirements, VR agencies may be failing to ensure individuals do not become trapped in segregated settings or earning below the minimum wage.

#### Oversight and Enforcement of FLSA 14(c) Certificates

In 2001, the Government Accountability Office (GAO), DOL, and the Office of Inspector General issued reports critical of the oversight of the sub-minimum wage program.<sup>36</sup> The GAO stated that "Labor has not effectively managed the special [sub] minimum wage program to ensure that 14(c) workers receive the correct wages because ... the agency placed a low priority on the program..." noting problems like failure to act on expired certificates, no data nor system to verify worker productivity.<sup>37</sup>

Though DOL's Wage and Hour Division worked to address the GAO's concerns,<sup>38</sup> and focused on low wage and vulnerable workers,<sup>39</sup> oversight and enforcement problems remain. As of 2009 only three Division staff and a supervisor were assigned to review the 2,500 annual renewal applications as well as first time applications for 14(c) certificates. Since each staff member processes 800 applications in a year, it is questionable the level of depth and analysis possible to ensure that the employer is conducting valid productivity measures and wage assessments. This is further compounded by the fact that between 2004 and 2009, DOL conducted on average 135 on-site reviews of 14(c) certificate

<sup>36</sup> Government Accountability Office, *Special Minimum Wage Program: Centered Offer Employment and Support Services to Workers with Disabilities, But Labor Should Improve Oversight*, GAO-01-886 at 4 (September 2001).

<sup>37</sup> U.S. Dept. of Labor, Office of the Inspector General, *The Wage and Hour Division's Administration of Special Minimum Wages for Workers with Disabilities* (March 2001).

<sup>38</sup> *Preventing Worker Exploitation: Protecting Individuals with Disabilities and Other Vulnerable Populations Hearing Before the S. Comm. on Health, Education, Labor and Pensions*, 111th Cong. 13 (2009) (Statement of John L. McKeon, Deputy Administrator for Enforcement, Wage and Hour Division, U.S. Department of Labor. )

Dept. of Labor, US Labor Secretary sends message to America's under-paid and under-protected: 'We Can Help!' <http://www.dol.gov/opa/media/press/whd/WHD20100411.htm> (April 01, 2010).

holders, representing about 4% of the certificates held by employers in 2010. In addition, it is unlikely given the structure of the 14(c) statute that Wage and Hour Division staff consider whether an employer is providing reasonable accommodations as required under Title I of the ADA to allow individuals to properly perform jobs when reviewing employers paying sub-minimum wages.<sup>40</sup>

More critical is the inability, given staffing and other demands, of DOL to properly follow-up on employers who fail to renew a certificate and inform the Department of the reason. Each year approximately 250 employers fail to respond of those employers required to renew a 14(c) certificate, to renewal notices and after follow-up by the Wage and Hour Division, 45 indicate the certificate is no longer needed and another 45 never respond. Thus employers with expired certificates may purposefully or by mistake continue to pay sub-minimum wages in violation of the FLSA as there appears no additional follow-up by the Department of Labor of employer who fail to respond. Henry's Turkey Service mentioned earlier in this report failed to renew a 14(c) certificate while continuing to pay sub-minimum wages. Protection and Advocacy agencies have further uncovered employers who allowed their certificates to expire while continuing to pay a sub-minimum wage.

The DOL reported in 2009 that it receives very few complaints about the sub-minimum wage program.<sup>41</sup> Given the vulnerability of individuals with disabilities paid sub-minimum wage, most of whom have intellectual, cognitive, or mental disabilities, it is not surprising few complain.<sup>42</sup> Therefore, more pro-active oversight is necessary to assure the protection of worker rights for individuals working in sheltered workshops or paid sub-minimum wages.

#### No Implementation of IDEA Transition

Transition services are defined in the IDEA as a coordinated set of activities for a student, designed within a results-oriented process that facilitates movement from school to post-school activities. The areas of adult living to be considered include preparation for postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, and community participation.<sup>43</sup> Services are to be based on the individual student's needs, taking into account the *student's* preferences and interests.<sup>44</sup>

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<sup>40</sup> Dept. of Labor, US Labor Secretary sends message to America's under-paid and under-protected: 'We Can Help!' <http://www.dol.gov/opa/media/press/whd/WHD20100411.htm> (April 01, 2010).

<sup>41</sup> *Id.* at 15

Government Accountability Office, 19, 29 (Statement of James B. Leonard, Former Attorney, U.S. Department of Labor).  
<sup>42</sup> 20 U.S.C. § 1401(34); 34 C.F.R. § 300.43(a).

<sup>44</sup> *Id.* (emphasis added).

Additionally, any other agencies that may be responsible for providing or paying for transition services must be invited to the IEP meeting.<sup>45</sup> Schools are expected to become familiar with the services available to students with disabilities in their communities and "make use of this information in the transition planning for individual students."<sup>46</sup> The result:

[S]chools can facilitate linkage with agencies when needed by students, can ascertain requirements for access to, and participation in, the opportunities offered by these agencies, and thus can effectively communicate this information to students and their families, and identify ways in which they can prepare students with disabilities to take advantage of these opportunities.<sup>47</sup>

All too often, however, neither the requirement to base the transition services on the individual needs of the student, the requirement to base the program on the students interests, nor the requirement to establish linkages to other services while a student is still in school are met. VR linkages are easily forgotten or overlooked because VR's role in the transition planning process is simply advisory until the student completes an application for services and is found eligible for VR services. Therefore a comprehensive needs assessment is not conducted and the individual never actually becomes a VR client, accepting instead, alternatives put forth by the school system.

In Montana, schools do not provide sufficient resources for transition services while the student is still in school; therefore sheltered employment becomes the default placement. Very, very few students receive any sort of employment exposure or job opportunity awareness outside of a resource room setting. The training of professionals on the resources available and how to develop a transition plan are not a priority and almost non-existent. Teacher training seems to always focus on academics. There are extensive waiting lists for services funded through Medicaid waiver for such things as job coaching, job placement assistance and residential services. Parents are often times overwhelmed with the concept of transition planning and service waiting lists. They become willing to accept anything that becomes available because at least it is something. Also, parents may have limited resources and are not able to self-fund services.<sup>48</sup>

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<sup>45</sup> 34 C.F.R. § 300.321(b)(3).

<sup>46</sup> H.R. Rep. No. 101-544 at 12, U.S. Code Cong. & Admin. News 1990, p. 1733.

<sup>47</sup> H.R. Rep. No. 101-544 at 12, U.S. Code Cong. & Admin. News 1990, p. 1733.

<sup>48</sup> January 13, 2011 email from Lori Idland, Disability Rights Montana.

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## Oregon P&A Finds Neglect at Sheltered Workshop

In a large cavernous room, 30 individuals with disabilities were sitting at tables. Some were doing puzzles and art work, others were staring blankly at the wall. When advocates from **Disability Rights Oregon** who were inspecting the facility asked why all of these individuals were in the room, they were told that there was no work available and the law stated "they had to go somewhere." When further questioned about the lack of staff supervision and the absence of structured activities, they received the response "it's a mellow group, they don't need much."

In a far corner of the room sat Barry, segregated away from his peers. On the table in front of him were two boxes, one with rocks and the other without. Advocates were told that Barry's task each day was to count the rocks as he placed them from one box to the other. Barry went to the workshop to build skills that would help him get a job, but was given a box of rocks. Alvin, Barry's housemate, sat three tables away, his hands raw and red. Staff said that though they've tried measures like hot sauce and restraint, they had been unable to prevent him from chewing on his hands. They stopped trying to intervene. Another worker, Mary, asked to speak to the advocates. Staff said she was one of their happiest residents and would share the positive work that the workshop and the provider were doing. When alone in the room, Mary said that she was bored and wanted to do office work. She had tried to express this to the staff but they told her that there were no other options for her and that she should make the best of it.

**Disability Rights Oregon** filed a licensing complaint relating to the health and safety status of the room and for the lack of structured activities and staff supervision of individuals. The provider received both state and federal funds to provide both pre-employment and on-the-job vocational skills but workers received no assessment or vocational training. Advocates filed two abuse complaints based on the neglect of Barry and Alvin. Due to the work by the P&A, the Board of Directors of the provider agency made significant changes in personnel decisions and policies.

Mary received representation from a P&A attorney and is now making plans to move into her own home and is starting to do part time office work in the community.

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## VR Agencies Fail to Meet Their Transition Obligations

The VR system also has a role to play in preparing students for the world of work while they are still in school. In fact, VR agencies must be actively involved, in collaboration with school officials, to plan for and provide services to students with disabilities during their transition years.

The law requires state VR agencies to "increase their participation in transition planning and related activities."<sup>49</sup> Accordingly, there must be coordination between the VR agency and education officials facilitate the transition from the special education system to the VR system. VR agencies are to be

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<sup>49</sup>66 Fed. Reg. 4424 (emphasis added).

actively involved in the transition planning process with the school districts,<sup>50</sup> not just when the student is nearing graduation.”<sup>51</sup>

All too many state VR agencies, however, are still unwilling or unable to get involved until very late in a student’s transition to post-school activities.

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### **From Mike Montgomery**

*Former director of Singing River Industries - a sheltered workshop:*

We found that people could work in the community, if someone was willing to work with employers to accommodate individual disabilities. Our ideas sometimes scared families. They had been told by doctors and service systems that their kids needed to be in a sheltered and safe environment. Although some of the parents of children in the workshop began to realize that their son or daughter could do good work, it was the switching of environments that was troubling. One of our parents, who at the time was very concerned that his son stay in the safe environment of the workshop, recently told me that his son was working in a restaurant where he was very happy. He could now see the benefits of working in the community. His son enjoyed being viewed as a regular employee, but for fewer than forty hours. Families need assurance that their children will have a meaningful job and not spend part of their time at home alone.

In the late 70s folks believed, and I think that many still do, that people need to be sheltered. They just don’t believe that people can grow with the right training and support, that they can have a good life. I believed that we owed it to each individual and family to try new ideas and work diligently for each person regardless of disability. If we fail to put our heart and soul into the challenge for everyone, we would never see their potential. Everyone that I have ever worked with truly wants a life with work, a place to live, friends, and social outings. A job provides the money to secure everything else.

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<sup>50</sup> 4 C.F.R. § 361.22(b).

<sup>51</sup> 66 Fed. Reg. 4424.

## **Work Segregation of People with Disabilities is Damaging**

All individuals, even those with the most significant disabilities, have a right to live and work in the community alongside their peers without disabilities. However, rather than wholeheartedly embracing this inclusive philosophy, people with disabilities are often placed in segregated environments which allow for little contact with those working in the community. Such work settings violate statutes and court decisions, discussed in other sections of this report, which were passed to encourage individuals with disabilities to thrive within community settings.

What is the theory underlying the segregated employment perspective? Put simply, the support for segregated employment environments is predicated on misguided public attitudes and beliefs that it is perfectly acceptable to marginalize and isolate people with disabilities.<sup>52</sup> This philosophy seems to echo the idea behind the so-called "ugly laws," in existence until the early 1970s, which made it illegal for those with "disgusting or unsightly" disabilities to appear in public.<sup>53</sup> These startling laws were eventually repealed, yet surprisingly, segregating people with disabilities still remain.

The detrimental effects of placing individuals with disabilities into segregated work environments are numerous. First, it denies an adult with a disability the opportunity to make meaningful job choices. Almost all of the options within a sheltered workshop are unskilled, low-wage jobs with few, if any, benefits.<sup>54</sup> The limited array of employment choices directly impacts an individual's capacity to live a full, rich life as an active, tax-paying member of the community.

When discussing the concept of choice as it applies to people with disabilities, the central conclusion should be that all people, even those with the most significant disabilities, have the right to enjoy the same choices and options as other people in society.<sup>55</sup> Assuming that a person with a disability is incapable of making choices is often used as a justification for placing that individual into a segregated or sub-minimum wage work environment. You rarely, if ever, will hear a person say, "I want to attend a sheltered workshop!" Rather, a person likely ends up working in a sheltered or segregated environment simply because it was presented as the only available opportunity.

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<sup>52</sup> Jacobus TenBroek, *The Character and Function of Sheltered Workshops*, (1960),

<http://www.blind.net/resources/employment/the-character-and-function-of-sheltered-workshops.html>.

TenBroek founded the National Federation for the Blind (NFB), which copyrighted this article in 1995. TenBroek's classic observations from this article still hold true more than 40 years later.

David Boles, Urban Semiotic, *Enforcing the Ugly Laws, 2007* <http://urbansemiotic.com/2007/05/01/enforcing-the-ugly-laws/>  
 TenBroek, *supra* note 33.

<sup>55</sup> Steven Taylor, *On Choice*, [http://thechp.syr.edu/on\\_choice.htm](http://thechp.syr.edu/on_choice.htm)

**Myth:**

There are no other options for students with disabilities exiting school.

**Fact:**

*Segregated or sheltered work is not the only option for children with disabilities exiting school. IDEA entitles people with disabilities to a "Free and Appropriate Public Education" in the least restrictive environment. However, transition from school to eligibility-based services is a confusing paradigm for most parents and children. They are not always informed of the availability of VR and the vast array of services provided to increase an individual's potential employment. They trust the educators who may falsely believe that sheltered workshop placement is in their child's best option. Children, young adults with disabilities, and their family members or guardians need to learn about other options for employment besides segregated employment. They need to understand the benefits of early attachment to the workforce and understand that person-centered planning and a thorough assessment of skills, interests, and abilities will contribute to a plan of employment that can be meaningful and rewarding. In addition to direct competitive employment, options such as supported employment and customized employment are available through VR and other centers. These services coupled with work incentives can significantly contribute to the financial security of a real job for real wages.*

**Success Story:**

William is 21-years old and works at McDonald's. He loves his job and has even been awarded "employee of the month." William has an intellectual disability and receives supported employment services through a county run program. This program provides him with a job coach who helps with transportation, instruction, and safety precautions. When the county informed him they were cutting his job coach from 3 hours per day to 3 hours per week, William knew he could not perform his duties at McDonald's. Fearing that his only option was a sheltered workshop he asked the **Minnesota P&A** to appeal the cuts. The Judge agreed with William and found no legitimate rationale for the county's decision. William continues to work at McDonald's with the supports he needs.

Many states are now focusing on consumer choice as a key value in the growth and reform of their community-based long-term support systems. With this focus however, has come an awareness that low participation in integrated employment, and community life in general, is evidence of a lack of choice for people with disabilities that needs to be addressed.<sup>56</sup>

On a related note, the importance of considering the job preferences of the individuals with disabilities cannot be underestimated. A 1998 study looked at the relationship between self-determined behavior (control over one's life choices) and positive adult outcomes. It found that 80 percent of the people who were rated as "highly self-determined were working for pay," compared to 43% of the people who were rated as having low levels of self-determination.<sup>57</sup> The individuals with disabilities who had more input into their job selections were more likely to be employed within the community.

<sup>56</sup> Lisa Mills, *Revitalizing Integrated Employment: A Study of Nationwide Best Practice for Increasing Integrated Employment Outcomes Among People With Developmental Disabilities*, (December 2006).

<sup>57</sup> Michael Wehmeyer & Michelle Schwartz, *The Relationship Between Self-Determination and Quality of Life for Adults with Mental Retardation*, 33 *Education and Training in Mental Retardation and Developmental Disabilities*, 3, 12 (1998).

The consistent isolation of people with disabilities from people without disabilities can significantly hinder the proper development of socialization skills and self-esteem. Several important studies have confirmed this key conclusion. For example, a study of the results of the 1994 closing of North Princeton Developmental Center in New Jersey, published by the American Association on Mental Retardation, compared people who moved from institutional settings to similarly situated people who, instead, remained in institutions.<sup>58</sup>

The study produced convincing evidence that the multi-cognitive scores of people who remained in institutional settings significantly decreased over a seven-year period.<sup>59</sup> Based upon this data, it seems possible to draw an analogy between the diminished opportunities for interactions with others resulting from institutional segregation and the diminished social interaction opportunities presented by a segregated employment setting.

This study also concluded that those who moved to community settings demonstrated significant increases in self-care skills over time. The authors concluded, "If we had focused solely on the "movers"...we would have missed one of the most salient findings of this evaluation, namely, the significant loss by "stayers" of their multi-cognitive competencies, particularly in the area of social skills..."<sup>60</sup>

The effects of this segregated isolation may be even more direct and concrete within the employment context. A lack of social skills and/or poor self-esteem issues can be easily misinterpreted by employers as a non-compliant response to a particular work assignment.<sup>61</sup> More specifically, a study that considered self-esteem issues for people with disabilities, revealed that when placed in a

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### **Everyone Deserves a Job They Love**

A young woman, in her 20's, who happened to have a cognitive disability, worked for 5 years at a cafeteria on a college campus. She loved her job and eagerly looked forward to work each day. This young lady particularly loved the variety in her job – she stocked shelves, greeted customers and cleaned tables. Her mother reported that the consistent interaction with others in the community improved her social skills.

When her job at the cafeteria was eliminated by the college, she was placed in a sheltered workshop. She reported being very unhappy due to the boredom and repetitive nature of the work. Her work behaviors are reportedly not nearly as strong as they were when she was working in the community and she no longer looks forward to her job at all.

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<sup>58</sup> P Lerman, D. Apgar et al. *Longitudinal Changes in Adaptive Behavior of Movers and Stayers*. Mental Retardation Journal, American Association on Mental Retardation. 25, 41 (2005).

<sup>59</sup> *Id.* at 41

<sup>60</sup> *Id.*

<sup>61</sup> TenBroek, *supra*, note 33

sheltered workshop environment, individuals with mental illness were more likely to exhibit problem behaviors and demonstrate a poorer attendance record.<sup>62</sup>

Segregated work environments commonly exist in industrial workshops that are situated in remote locations far from major cities or towns. These locales serve to further intensify the sting of the separation because of their limited access to transportation options, community activities as well as infrequent interactions with their family members and friends without disabilities.<sup>63</sup>

The benefits available to people with disabilities working within integrated, traditional jobs are plentiful. According to the DD Act "integration" means "exercising the equal right of individuals with developmental disabilities to access and use the same community resources as are used by and available to other individuals."<sup>64</sup> For instance, a Wisconsin survey of guardians of people with significant disabilities who moved from institutions to integrated community settings led researchers to conclude that the vast majority of guardians felt that the transition to the community led to equal or enhanced satisfaction with their loved one's living arrangements and overall happiness.<sup>65</sup>

A literature review, related to the previously mentioned Wisconsin survey, concluded: "The studies reviewed here demonstrate strongly and consistently that people who move from institutions to community settings have experiences that help them to improve their adaptive behavior skills. The studies suggest that community experiences increasingly provide people with environments and interventions that reduce challenging behavior."<sup>66</sup>

When an adult with a disability has access to effective training and support as well as the opportunity to find a traditional job in the community while becoming an essential part of the community, it is good public policy. When this goal is achieved and implemented appropriately, the lives of people with disabilities will no longer have to center around concerns about dependency and poverty.

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<sup>62</sup> J. Ciardiello, *Job Placement Success of Schizophrenic Clients in Sheltered Workshop Programs*, Vocational Evaluation and Work Adjustment Bulletin, 125, 140 (1981).

<sup>63</sup> *Id.*

<sup>64</sup> 42 USC § 15002(17)

<sup>65</sup> *Northern Wisconsin Center (NWC) Relocation Survey – prepared by APS Healthcare, Inc. for The Wisconsin Department of Health and Family Services (DHFS), Division of Disability and Elder Services (DDES), (2006).*

<sup>66</sup> *Id.*

## **Sub-minimum Wage Reinforces a Life of Poverty for People with Disabilities**

The lack of a true minimum wage for many workers with disabilities keeps them in a life of perpetual poverty. It leaves them dependent on family or government programs just to meet their basic needs of food, shelter, and medical care. It denies them the opportunity to take advantage of the pleasures—continuing education, vacations, restaurants, and hobbies—that many people take for granted. It prevents them from achieving true independence.

Worse, once in this system, it's almost impossible for workers with disabilities to get out. They become trapped in a vicious cycle. Due to an exception in labor laws discussed earlier, workshops can pay less than minimum wage to people with disabilities.<sup>67</sup> This forces them to continue to rely on federal benefits such as SSI and Medicaid which themselves require recipients to be poor.

This circular system is responsible for creating a class of citizens permanently dependent on public benefits and subsidies because their employers pay less than the minimum wage and provide no benefits. Earning at least the minimum wage, if not a living wage, would allow workers with disabilities to support themselves and reduce the amount of aid they receive from government sources.

The majority of workers in sheltered workshops that are paid less than the minimum wage receive incredibly low

<sup>67</sup> 29 U.S.C. § 214(c).

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### **Skills Ignored**

Andy has been working in a sheltered workshop for more than 15 years. He shreds paper. The warehouse where he works is a large and cold cavern where the walls echo with the rumbles of the industrial-sized shredders that are on full power the whole day. The air is filled with dust.

Andy has autism. Outside of the workshop, he completes daily life activities such as shopping, cleaning and even paying bills almost completely independently. His favorite hobby is to buy old computer parts and build new computers. He has taught himself five languages and has a photographic memory which he exercises by telling people what clothes they had on the last time he saw them. He frequents the local library scanning dozens of books on whatever topic is of interest to him at the moment.

His employer, who is also the provider of his housing and other Medicaid funded services, has expanded rapidly over the last five years and Andy's current work environment bears little resemblance to the quiet and warm office he used to work in.

Because of his disability, Andy has a low threshold for social interactions and a sensory sensitivity that causes him to avoid loud and cold areas. The only time Andy will work now is when he is sequestered to a corner of the room. He must wear a winter parka, face mask and ear plugs while working. Getting him to work requires constant coaxing by his supervisor. Yet, Andy's employer and service providers have not looked at other employment possibilities in the community because, they say, he is too shy and there are no other options for him other than shredding paper.

So Andy is only able to fulfill his potential in his free time by putting computers together while reading a manual in Chinese.

pay. According to a 2008 study of 291 individuals with disabilities from 40 sheltered workshops, the average hourly earnings were \$2.30 and average monthly earnings were \$175.69.<sup>68</sup> A recent University of Indiana study indicated that, in May 2009, people in sheltered workshops in Indiana earned an average of \$1.59 per hour.<sup>69</sup> Additionally, employees who receive housing, food or transportation from their employers often find fees for these services deducted from their weekly wages—leaving them even less money for necessities. And even worse, at some sheltered workshops, employers serve as the Representative Payee of their employees' Social Security benefits, giving them even more control over the finances of their employees.

Conversely, people with disabilities in competitive employment earn much more. The 2008 study followed the 291 individuals as they moved from sheltered employment into supported employment, and found that their average hourly earnings increased to \$5.75, with average monthly earnings of \$456—more than twice what they earned in the sheltered workshops.<sup>70</sup> Another report titled, "Sheltered vs. Supported Employment," found workers with disabilities in traditional jobs paired with support services earn two to three times more than their counterparts in sheltered work. A worker making just the minimum wage would earn \$270 each week compared to the \$100 that a sheltered worker would make working full time at \$2.50 an hour.<sup>71</sup>

ypothetically, if a sheltered workshop did pay the minimum wage, you would expect a worker with a disability to earn a decent living in this situation.

This is not the case.

Yet another characteristic of sheltered work prevents workers from ever escaping a life of poverty. Sheltered workshops survive on contract and piece work. They, however, do not secure the number of necessary contracts needed to run the workshop at full capacity resulting in substantial down-time and periods of inactivity. Some of these hours are supposed to be spent improving skills, the reality of life in a sheltered workshop consists of sitting around idle waiting for the next contract or order to come in. Most workers in sheltered workshops work less than part-time. Some work just a few hours

<sup>68</sup> Alberto Milgiore et al., "Why do adults with intellectual disabilities work in sheltered workshops?" 28 J. VOCATIONAL REHABILITATION 29-40 (2008) at 29.

<sup>69</sup> T. Grossi et al., *Indiana Day and Employment Services Outcomes System Report* (May 2009), at 2, available at [http://www.iidc.indiana.edu/styles/iidc/defiles/CCLC/desos\\_5\\_09report.pdf](http://www.iidc.indiana.edu/styles/iidc/defiles/CCLC/desos_5_09report.pdf).

<sup>70</sup> Milgiore, 28 J. VOCATIONAL REHABILITATION at 29.

<sup>71</sup> John Kregel and David H. Dean, *Sheltered vs. Supported Employment: A Direct Comparison of Long-Term Earnings Outcomes for Individuals with Cognitive Disabilities*, in *ACHIEVEMENTS AND CHALLENGES IN EMPLOYMENT SERVICES FOR PEOPLE WITH DISABILITIES: THE LONGITUDINAL IMPACT OF WORKPLACE SUPPORTS MONOGRAPH* (Kregel, et al., editors), at 75, available at <http://www.worksupport.com/main/downloads/dean/shelteredchap3.pdf>

a week. The GAO found that 86% of workers being paid less than the minimum wage were also working part-time.<sup>72</sup> Further, with no opportunity to work full time for people who want to, nor any opportunities to advance internally through regular raises or promotion, workers with disabilities are left with nothing but the fear, stress, depression and despair that comes with poverty.

One alternative is customized employment. Customized employment means individualizing the relationship between employees and employers in ways that meet the needs of both. It is based on a determination of the strengths and interests of the person with a disability, and the needs of the employer.

It may include employment developed through job carving, self-employment, or entrepreneurial initiatives, or other job development or restructuring strategies that result in job responsibilities being customized and individually negotiated to fit the needs of individuals with a disability. Customized employment assumes the provision of reasonable accommodations and supports necessary for the individual to perform the functions of a job that is individually negotiated and developed.

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### Laura's Story

#### Success with Customized Employment with Georgia Employment First

*(based at office of Georgia Advocacy Office – the GA P&A)*

Two to three days a week she wakes early and travels to the bakery shop. Laura, who is a person with mental illness loves baking and has mastered pastries and cookies.

The shop where she works is small and under-capitalized. Both the owner and Laura recognized that the business could benefit from serving coffee, but the state-of-the-art machine was expensive and required major electrical and plumbing work. Through her customized employment program, Laura was able to purchase the espresso maker for the business. This purchase by Laura resulted in a resource partnership and significant expansion of services for the small pastry shop which is now also a coffee shop. Laura maintains ownership of the espresso maker which she can take with her should she choose to change employment. Laura's customized employment and resultant partnership has resulted in improved customer service and profitability for the company and the resource ownership has provided Laura a position of importance which she values. Now, in addition to baking pastries and making coffee, Laura sells chocolates, treats, small games, and trinkets from her own business within a corner of the shop. The owner helps her price the items in her shop, keeps track of her inventory and assists her in calculating costs and profit. This is a win-win situation for the both the coffee shop owner and Laura her employee and resource partner.

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<sup>72</sup> United States General Accounting Office, *Special Minimum Wage Programs: Centers offer Employment and Support Services to Workers With Disabilities, But Labor Should Improve Oversight*, United States General Accounting Office, GAO-01-886 (Sept. 2001), at 4, GAO-01-886, available at <http://www.gao.gov/new.items/d01886.pdf>

Customized employment works because it is person-centered, and driven by the interests, strengths and conditions for success of each individual. It is real work for real pay in integrated settings. It is not based solely on job development techniques to secure existing work through a competitive employment process. A customized job is a set of tasks that differ from the employer's standard job descriptions but are based on actual tasks that are found in the workplace and meet the unmet needs of the employer. Practitioners and innovators in customized employment accomplish customized job descriptions through job carving, negotiated job descriptions, and job descriptions specifically created to meet the employer's unmet needs.

Unlike traditional day and employment programs for people with disabilities, that often encourage an employment path of stereotypic work options, customized employment begins with the assumption that the job seeker is ready for work, and has a valuable contribution to make that is based on their unique skills, interests and preferences. Customized employment does not occur in segregated settings.

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I heard a woman speak about how she would like to work in a "regular job at regular pay." The woman had lived in an institution for many years, then a group home, and eventually an apartment. At that time she had been working in a sheltered workshop for 16 years. The woman wanted to know how long she had to be in training before she could graduate and get a job.

-Vickay Gross, Disability Rights North Dakota

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## Sheltered Workshops Lead Nowhere

Segregated employment was initially conceived to provide people with disabilities opportunities for activity and productivity during the day. As social attitudes that required isolation for people with disabilities started to change, segregated employment's purpose shifted to one that could prepare individuals to be employed in a traditional job in the community. However, purpose and practice part ways as the reality for most individuals working in a sheltered workshop is not a transition point but

rather a dead end. While sheltered workshops purport to offer pre-employment and pre-vocational skills, these programs most often only prepare people with disabilities for long term sheltered employment.

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### The Bigotry of Low Expectations

*A Sad Statement defending sheltered workshops from the Mentally Retarded Citizens of Missouri:*

*"Persons with mental retardation are not normal and they never will be. Quit trying to make them something they are not!"*

<http://www.rcomo.org/whatisasw.htm#Defense>  
(1/13/11)

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It is a common practice for most new employees in traditional jobs to enter a probation period during which they receive on the job training. The probation period then ends. The same options should be encouraged for people with disabilities. Getting ready to go to work is not a lifetime activity and individuals should not have to train for ten or twenty years to get a job, especially when the work for which they are training has nothing to do with their interests, skills, or a potential job match.

Since sheltered workshops are seriously limited by adequate quantities and types of paid work, there are frequent periods of inactivity during which individuals are denied interactions with their peers who do not have disabilities. They spend their time in day wasting activities, often practicing assembly skills which will be taken apart by the line supervisor or their peers in order to keep everyone busy. Low challenge work such as sorting, collating, labeling, folding, mailing, sewing, subassembly, heat sealing, hand packaging or other similarly light assembly work comprise the bulk of services done for businesses on a contract basis.<sup>73</sup> Typically these skills are sometimes not even transferable to traditional work because most sheltered workshops do not have modern tools or machinery. So, in the end, they fail to prepare workers for traditional work—even traditional factory work—at all.

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Alberto Migliore, et al. "Why do adults with intellectual disabilities work in sheltered workshops?" 28 Journal of VOCATIONAL REHABILITATION 29, 6, 29-40.

People with disabilities are often fast tracked into segregated employment and do not have the benefit of individualized work assessments. Even though most individuals with disabilities in sheltered workshops favor employment outside of workshops,<sup>74</sup> questions about where an individual would like to work, or what skills they can strengthen or develop are irrelevant. Choice is largely irrelevant. While individuals may experience the normal task requirements of work such as using a time clocks, working a fixed schedule, and being supervised, most provide bench work and do not promote self direction, self determination or skill development. Many times the very environments they are required to work in do not take into account their disabilities. Loud and dusty industrial settings are often the only option for people with sensory sensitivities or crowded and busy rooms are the settings for people with autism. An argument that service providers make to prove that an individual would not be successful in competitive employment is that their productivity is low in the sheltered workshop. Ironically, a person with a disability would receive more individualized accommodations in a competitive work environment because of the protections set forth in the ADA.

Though it would be less resource intensive and more personally advantageous for people with disabilities to provide employment support in the community, funding for segregated employment continues to flow.

Even with the dramatic improvements in competitive employment, we continue to see that for every one person working in competitive employment, three people remain in segregated settings. Medicaid spending increased from nothing in 1997 to \$108 million in 2002 for competitive employment while only slightly dropping from \$514 million to \$488 million for segregated day programs.<sup>75</sup>

Consequently, \$1 was spent on supported employment compared to the \$4 utilized for segregated day programs.<sup>76</sup>

Staff members' opinions about employment and the employability of people with disabilities strongly influences the future of segregated employees. For example, when a state VR agency conducts a required annual review of an individual who works in a sheltered workshop, the staff will often indicate that the individual needs to remain in the workshop as they are not yet "job ready."<sup>77</sup> This

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<sup>74</sup> Alberto Migliore, et al., "Why do adults with intellectual disabilities work in sheltered workshops?" 28 *Journal of Vocational Rehabilitation* 29, 12.

<sup>75</sup> *Id* at 29.

Alberto Migliore et al., "Why do adults with intellectual disabilities work in sheltered workshops?" 28 *Journal Vocational Rehabilitation* 29-40 (2008) at 37.

<sup>77</sup> 34 C.F.R. § 361.55

bias is not surprising, given that, in order to continue to operate, workshops need to promote their existence.

Sheltered workshops, whether not-for-profit or for-profit, are still businesses that need the income generated from contracts and government sources. And like any other business there is an incentive to keep the best employees on the payroll. This practice perpetuates the stereotype that workers with disabilities cannot work in traditional settings because the best workers, the ones who would most likely succeed in competitive employment, rarely graduate from the workshop's "training program."

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**Myth:**

**People with Disabilities Cannot Fit into Traditional Work.**

**Fact:**

*Workers with disabilities can be employed and be paid equally with the appropriate job development, training, work support, and assistive technology. However, the low expectations of service providers and families contribute to workers with disabilities being unaware of opportunities for employment in the general workforce. Supported employment (and customized employment) opportunities help place workers in a job that is a match for their skills and interests and better meets the needs of employers and workers.*

**Success Story:**

Nancy Ward is an Oklahoma resident who staffs the Medicaid Reference Desk funded by the Administration of Developmental Disabilities. She is an individual with a cognitive disability. Nancy previously worked in a sheltered workshop. After three years of employment, her supervisor at the workshop resigned but before leaving suggested to Nancy that she apply for the supervisory position. Despite performing the job functions on a daily basis, Nancy did not believe she was qualified to be supervisor because no one else at the workshop had ever indicated she could be considered for advancement. She was extremely reluctant to place the application, but finally, after much convincing by her peers and the plant manager, Nancy went to the main office to apply. However, the office personnel at the agency would not allow her to apply because she was "a sheltered employee." Imagine Nancy's surprise several weeks later when she was instructed to train her new supervisor. Angry, Nancy quit the sheltered workshop and found a job at a local nursing home where she was fully integrated into the workforce.

Hear Nancy's story in her own words:  
[www.youtube.com/watch?v=w8uKVH8WxCs](http://www.youtube.com/watch?v=w8uKVH8WxCs)

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## Sheltered Workshops Profit Greatly from the Status Quo

The national policy toward integration of people with disabilities into every aspect of American life is thwarted by the actions of government agencies that provide funding which perpetuates segregated and sheltered work. According to a study by the GAO, sheltered workshops are largely funded as follows:<sup>78</sup>

- 46% from State and County Agencies
- 35% from Production Contracts
- 9% from Retail Sales
- 2% from Donations
- 1% from Investment Income
- 7% from Other Sources

The sheer quantity of government funds subsidizing sheltered workshops illustrates the point that they are not self-sustaining.<sup>79</sup> An eye-opening, 99% of sheltered workshops augment their meager contract income by providing ancillary services funded by government sources. Some government funding supports sheltered workshops directly, however, there are likely not enough sources to total the estimated 46% of workshop income. The ancillary services provided by workshops, such as daily living skills training, case management, housing, transportation, and job-related services, are all linked to funding.<sup>80</sup> This bundling of habilitative services with workshop-based job-training supports the status quo service delivery model of segregated and sheltered employment.

This patchwork of funding is used by sheltered workshop managers to cover the operational costs of the facility. Some of the funding includes:

- **Medicaid.** Medicaid has the most funding for the types of services provided by sheltered workshops. Funding is distributed through several vehicles that can often be used simultaneously, including:

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<sup>78</sup> United States General Accounting Office, *Special Minimum Wage Programs: Centers offer Employment and Support Services to Workers With Disabilities, But Labor Should Improve Oversight*, United States General Accounting Office, GAO-01-886 (Sept. 2001), at 4, GAO-01-886, available at <http://www.gao.gov/new.items/d01886.pdf>

<sup>79</sup> <http://www.tacinc.org/downloads/Pubs/Medicaid-Final-July10.pdf>

<sup>80</sup> United States General Accounting Office, *Special Minimum Wage Programs: Centers offer Employment and Support Services to Workers With Disabilities, But Labor Should Improve Oversight*, United States General Accounting Office, GAO-01-886 (Sept. 2001), at 4, GAO-01-886, available at <http://www.gao.gov/new.items/d01886.pdf>

- Home and Community-Based Services Waivers (HCBS): HCBS waivers fund community services which are defined by each state, therefore, its funding for employment services through Medicaid varies from state to state.<sup>81</sup>
  - Medicaid Rehabilitation Option: This funds "employment-related rehabilitation services to Medicaid eligible individuals in programs that provide both day habilitation and sheltered work."<sup>82</sup>
  - Targeted Case Management: Typical activities reimbursed with these funds are loosely defined to include services like identifying service needs, creating a service plan, referrals to service providers, support, and monitoring.<sup>83</sup>
  - Deficit Reduction Act (DRA): This established a new provision in the Social Security Act to fund home and community-based services to people with disabilities that do not have a HCBS waiver.<sup>84</sup>
- **Vocational Rehabilitation.** This funding is from the RSA. It is largely from Title I of the Rehab Act. Money is provided to states for VR services. The services provided relate to eligible people with disabilities and must help them meet their employment goals.
  - **Social Services Block Grants.** These Social Security formula funds are also known as Title XX Grants. Block Grants are given to states to provide community-based services for people with disabilities. Employment services are commonly paid for using these funds.
  - **Local Taxes.** Many states also provide funding from their own coffers to support employment services for people with disabilities.

This patchwork of funding works together in the following manner: Under Medicaid, employment related services such as helping to build the skills needed to become or stay employed, are reimbursed through HCBS waivers or through the DRA, as long as these services differ from those funded under the Rehab Act.<sup>85</sup> Most Medicaid funds must also be matched. Depending on the situation, Social Services Block Grants or local set-aside dollars can fulfill the matching requirement.

Even without the patchwork, the federal Medicaid program heavily funds sheltered work. Ironically, funding largely comes from a program where Congressional intent was to enable individuals with disabilities to access services in community based instead of segregated settings. Known as the HCBS waiver, it permits funding for habilitation services defined as: services designed to assist individuals in

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<sup>81</sup> PL 109-171. Section 6086, 1915c

<sup>82</sup> 42 CFR §440.130

<sup>83</sup> PL 109-171. Section 6086, 1915g

<sup>84</sup> PL 109-171. Section 6086, 1915i

<sup>85</sup> Leveraging Medicaid: A Guide to Using Medicaid Financing in Supportive Housing.

<http://www.tacinc.org/downloads/Pubs/Medicaid-Final-July10.pdf>

acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community based settings.<sup>86</sup> Included in the category of habilitative service are pre-vocational services, educational and supported employment services.<sup>87</sup>

CMS regulates the spending of Medicaid dollars. CMS has made strides in the past decade to adjust Medicaid long term care programs from traditionally institution-based programs to one that facilitates services in community based settings. For example, CMS published guidance stating that Medicaid should "not [make funding] available for the provision of vocational services (e.g., sheltered work performed in a facility) where individuals are supervised producing in goods or performing services under contract to third parties."<sup>88</sup>

While this sounds like progress, CMS recognizes a major loophole remains that keeps Medicaid money flowing into these segregated settings. Sheltered workshops skirt this prohibition by billing, not for vocational services but for pre-vocational services like skills-building activities aimed at preparing an individual for paid or unpaid employment, for example, building attention spans, and improving fine motor control.<sup>89</sup> The hypocrisy is that these pre-vocational services can be provided for decades on end without CMS ever questioning why they have not lead to vocation.

In other areas funded by Medicaid, CMS often requires the provider to develop an individual plan of services that will lead to

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### **Funding Breakdown for One Workshop**

#### *The Impact Federal Funding has on Sheltered Workshops*

On August 19, 2010, the Evansville Courier & Press ran a story about how rules adopted by CMS in 2008 to implement changes in the Rehab Act were going to be enforced in Indiana, forcing a change in the amount of funding going to sheltered workshops. According to the article, these rules—reducing payments from \$4 per person per hour to \$3.69—would have devastating consequences for the Evansville ARC. Not only would the funding be decreased, but the number of staff covered to supervise the activities would be reduced as well. The total devastation: \$50,000.

Devastating, that is, until you notice that their annual income is more than \$11 million. According to their 2009 Annual Report, they received \$6 million from business contracts; \$3.8 million from government funds, \$565,000 from child care fees, \$279,000 from county taxes, and \$800,000 from community support. Most interestingly, they lost \$66,000 in value from their investments—though that was not mentioned in the article seeking community sympathy and support.

Sheltered workshops, like the one run by the Evansville ARC, clearly depend on federal, state and local dollars to maintain their outdated service system.

<http://www.courierpress.com/news/2010/aug/19/new-rules-rock-arc/>

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<sup>86</sup> § 1915(c)(5)(A)

§1915(c)(5)(B)

CMS Instructions, Technical Guide and Review Criteria (January 2008) page 132

<sup>89</sup> 42 CFR 440.180(c) (2)

a measurable outcome.<sup>90</sup> The plans are intended to be reviewed to see if the services need to be changed or adjusted to better achieve the goal.<sup>91</sup> Unfortunately, CMS requires no such oversight for pre-vocational services provided in sheltered workshops.

In addition to CMS, RSA funds sheltered settings through two avenues. Although extended employment, a euphemism for sheltered workshops, has been eliminated as a final employment outcome, services provided by sheltered workshops continue to be a VR service as an interim step toward achieving integrated employment. For those choosing extended employment as a long term option, it remains available, but outside the VR program.<sup>92</sup>

RSA also supports comprehensive rehabilitation centers which serve as a focal point for VR funding within some communities for the development and delivery of services for persons with disabilities and others.<sup>93</sup> Authorized under the Rehab Act, these facilities are large segregated compounds that provide a broad range of vocational rehabilitation, health, educational, social, and recreational services to persons with disabilities. Clearly the continuance of these facilities has not kept pace with community integration concepts.

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### Maine P&A Finds Better Option

Ten years ago, there were numerous sheltered workshops in every county in Maine and they were largely the only choice of employment for individuals with intellectual and cognitive disabilities. The P&A formed an alliance with Maine's statewide self-advocacy network, Speaking Up for Us (SUFU) and began discussions aimed toward forming a consensus opinion. Though many self-advocates were concerned about losing their jobs, SUFU ultimately, after two years of internal discussions, made a decision that making \$2 for a week's work or worse, owing money for the pizza party at the end of the week, was far worse than losing a few jobs. SUFU and the P&A together publicly denounced sheltered work. SUFU, the P&A, the DD Council and other partners successfully advocated for the State to implement innovative employment programs.

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Michigan, Pennsylvania, Maryland, West Virginia, Virginia, Georgia, Tennessee, Arkansas, and Kentucky operate comprehensive rehabilitation centers funded with Title I VR dollars. In addition, South Carolina operates public community rehabilitation programs which are not multidisciplinary. In 2007, West Virginia closed its comprehensive rehabilitation center, allowing them to triple the amount of money spent on other services.<sup>94</sup>

<sup>90</sup> See e.g., The Medicaid pre-admission screening and resident review program regulations in 42 C.F.R. § 483.440 (c)(1); and the Medicaid Intermediate Care Facilities for Individuals with Mental Retardation program - individual plan requirements at 42 CFR 440.150.

<sup>91</sup> Id. at §483.440(f)(2)

<sup>92</sup> 66 Fed. Reg. 7254

16 FR 5425, Jan. 19, 1981, as amended at 53 FR 17144, May 13, 1988

<sup>94</sup> West Virginia Division of Rehabilitation Services 2009 Annual Report. [http://www.wvdrs.org/press/WVDRS\\_Annual\\_Report\\_2009.pdf](http://www.wvdrs.org/press/WVDRS_Annual_Report_2009.pdf)

His Own Words:***“Pay Me Minimum Wage or I’m Leaving!” – John Alder’s Story***

When I got out of high school, I started working at local markets and then in food service. I realized that it wasn't for me. I wasn't challenged. I decided that I wanted to work with people with disabilities.

I started working at Career Resources which ran a sheltered workshop in Haverill, Massachusetts, hoping to get training for a job helping people with disabilities. There was hardly any work in the sheltered workshop. Most people sat around playing cards all day. When there was work to do, it was boring. They paid me \$1.25 an hour to do piece work and then to be a janitor. Even though I wasn't doing piece work as a janitor, my pay stayed the same. When I told them I wanted to do more with my life and make more money, they let me work in the office, but still at the same pay. I wasn't doing what I really wanted to do though, to help other people with disabilities.

After being in the sheltered workshop for many years, I was tired of earning diddly-squat. I showed my paycheck to the head of the workshop and said, “Is this how little money you can afford to pay me?” He responded that they didn't have enough money to pay more. I was never told that I was being paid so little because the law lets them, or showed how they even came up with my hourly rate.

So I got mad. I said, “Pay me minimum wage, or I'm leaving!” He said no. So, I walked out the door. He even chased after me trying to convince me to change my mind!

After that, I worked with my service coordinator at DDS to find a job doing what I loved—helping people with disabilities reach their potential. Now, I work at the State House as an intern and volunteer for Representative Tom Sannicandro. I research bills and advocate for people with disabilities. I got the name of the Department of Mental Retardation changed to the Department of Developmental Services and the “R” word taken out of state laws.

My next plan is to help close the sheltered workshops and get people jobs out in the community.

*John is an advocate and activist for disability rights in his home state of Massachusetts, and on Capitol Hill. He currently serves as a member of the Board of Directors of the Disability Law Center, and is the former head of Mass Advocates Standing Strong.*

Local funds can also be a significant source of income for sheltered workshops. In Missouri, for example, there is a special property tax that is assessed and collected specifically for services for people with developmental disabilities—including sheltered workshops—which correlates to an investment of \$1.50 per hour per worker.<sup>95</sup> The current rate for the property tax is 8.5¢ for each \$100

<sup>95</sup> <http://moworkshops.org/offer.html>

of assessed property value which generated approximately \$16 million in fiscal year 2010.<sup>96</sup> In 2009, the Missouri Department of Elementary and Secondary Education—the agency that provides technical assistance, guidance, and support to sheltered workshops—estimated that there are approximately 7,500 workers with disabilities in sheltered workshops.<sup>97</sup> This tax provides Missouri sheltered workshops with a significant and reliable revenue stream.

According to Indiana’s HCBS<sup>98</sup> and Social Services<sup>99</sup> Waiver applications, the State will spend \$17.9 million on “Facility Based Habilitation” in 2011—another euphemism for sheltered workshops. The portion of that funding dedicated to the Evansville ARC, or any other individual provider, was undeterminable from the information posted. There are 58 sheltered workshops paying below the minimum wage in that state. A recent University of Indiana study indicated that, in May 2009, people in sheltered workshops in Indiana earned an average of \$1.59 per hour.<sup>100</sup>

Additionally, the FLSA maintains sheltered workshops. Most sheltered workshops take an advantage that few of their for-profit counterparts take—the subminimum wage allowance of the FLSA. In fact, according to the GAO, there are more than 4,700 non-profit workshops paying an average of 86 workers each below the minimum wage while only 500 for-profit businesses pay an average of 3 employees each below the minimum wage.

Through the FLSA, sheltered workshops may pay an hourly wage below the federal minimum. These commensurate wages are set based on productivity standards determined by workshop staff.<sup>101</sup> The ability to pay workers below the minimum wage from the outset is based on an outdated reliance on “an absolute connection between pay and productivity” that carries through to today.<sup>102</sup>

There is another way. Rather than making the absolute link to productivity, customized employment offers an alternative framework normally namely contribution. As discussed earlier in this report, customized and supported employment can work to help met the unmet needs of businesses.<sup>103</sup>

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<sup>96</sup> <http://www.plboard.com/infobase/default.asp>

<sup>97</sup> <http://dese.mo.gov/divspeced/shelteredworkshops/>

<sup>98</sup> <http://www.in.gov/fssa/files/DDW20100930.pdf>

<sup>99</sup> <http://www.in.gov/fssa/files/SSW20100930.pdf>

<sup>100</sup> T. Grossi et al., *Indiana Day and Employment Services Outcomes System Report* (May 2009), at 2, available at [http://www.iidc.indiana.edu/styles/iidc/defiles/CCLC/desos\\_5\\_09report.pdf](http://www.iidc.indiana.edu/styles/iidc/defiles/CCLC/desos_5_09report.pdf).

<http://www.dol.gov/whd/FOH/ch64/64btoc.htm>

- Michael Callahan, *Employment for All TASH Connections* Spring 2010 vol. 36, #2, page 1.

<sup>103</sup> Michael Callahan, *Employment for All TASH Connections* Spring 2010 vol. 36, #2, page 2

Medicaid does provide an option for supported employment which falls under the same HSBC waiver as pre-vocational services. Increasing funding for this program, which must be offered in integrated settings, would be much more in line with national policy.

CMS did, through Section 203 of the Ticket to Work and Work Incentives Improvement Act of 1999, make it easier for states to fund supported employment allocates, by offering Medicaid Infrastructure Grants. As of 2008, at least 41 states had received these federal grants.

Unfortunately, as government agencies face tight budgets, supported employment has been a target for cuts because an individual's supported employment budget is clearly delineated. On the other hand, it is not so easy for an official to determine the cost savings from reducing an individual's pre-vocational services as these services are bundled as pre-vocational income in a complicated formula with other workshop income.

### **Market Solutions Sheltered Workshops Should Adopt**

While the disability rights community tends to think of itself as experts, it could learn a lot from some traditional businesses. Business leaders would also have a lot to teach executives and staff of segregated and sheltered workshops.

Walgreens has a lot to teach disability service providers, in fact.

Central to Walgreens' diversity initiative is a policy of integration. All of Walgreens' employees with disabilities—from the factory to management—work side by side with their colleagues without disabilities. And, they do it for the same pay.<sup>104</sup>

Walgreens has not had to compromise quality or efficiency either. According to their Senior Vice President of Distribution and Logistics, Randy Lewis, Walgreens gained efficiency by having a workforce that is comprised of 40% people with disabilities. In fact, all workers with the same jobs

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### **More from Mike Montgomery**

In the 1970's, the sheltered workshops in Mississippi were run by annually renewable grants. In the 1990's, the funding was converted to a purchase of service arrangement for X dollars per unit of service. People who ran the programs were not motivated to change. They liked the way that the billing flowed and the families were happy to have their children in a safe place and were not pushing for change. There are more than 1,800 people on our waiver waiting list in MS alone. Many could come off the waiting list if we switched the way we use our resources.

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<sup>104</sup> "Walgreens program puts the 'able' in disabled" <http://www.msnbc.msn.com/id/19417759/from/ET/>

have the same productivity standards. What's more, the adaptations they have made to the factory to make it more assessable, have benefitted all their workers, not just the workers with disabilities.<sup>105</sup>

This information is right in line with recent survey of employers about worker accommodations. The survey results indicated that 71% of accommodations cost \$500 or less with 20% costing nothing.<sup>106</sup> Considering the small investment, there is a great potential for wide-ranging benefits that can be reaped by making workplaces more accessible.

Even though advances in technology—and thinking—have created new opportunities for people with disabilities to find meaningful work in the communities where they live, many are still shuttled into sheltered workshops, where they languish for years. The sheltered workshops of today do not look like the sleek and state-of-the-art facilities run by their counterparts—like Walgreens—in the business world. Their equipment is often old and out of date, and the facilities themselves show that few, if any, capital expenditures for improvement were made. A study of workshops in Missouri found that collectively, rather than mimicking traditional factories, they mimic each other both in form and function—they teach the same skills in the same settings.<sup>107</sup>

When questioned, workshop executives often state that the type of work done and the workshop itself reflected the preferences expressed by workers and their families. This level of attention to the needs and desires of the workers with disabilities they employ does not appear to translate to individualized planning and training.<sup>108</sup> For the workers, sheltered workshops offer little training and even less diversity. They simply do "the same work, day after day, rather than the variety of work and the experience of learning that comes from being trained in and doing a changing array of jobs."<sup>109</sup>

The same study found that workshop executives themselves do not have the marketing skills, or business plans in place to run an effective workshop. With of a lack of planning and marketing, workshops do not have enough contract work to keep their doors open and employees working at or near full-time levels.<sup>110</sup> Rather than competition and the drive to achieve motivating work flow, income generated by federal and state service systems place disincentives on the workshop to obtain contract work, unlike their for-profit business counterparts.

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<sup>105</sup> "Walgreens program puts the 'able' in disabled" <http://www.msnbc.msn.com/id/19417759/from/ET/>

<sup>106</sup> <http://askjan.org/media/LowCostHighImpact.doc>

<sup>107</sup> <http://www.iarstl.org/papers/ShelteredWorkshops.pdf>

<http://www.iarstl.org/papers/ShelteredWorkshops.pdf>

<sup>109</sup> <http://www.iarstl.org/papers/ShelteredWorkshops.pdf>

<sup>110</sup> <http://www.iarstl.org/papers/ShelteredWorkshops.pdf>

The current reality of a seemingly endless supply of state and federal funds going to segregated and sheltered work only supports the status quo for people with disabilities. Changing this system will require a stronger hand by the federal and state authorities to fulfill the mandates of our national policy of integration.

**Case Study:**

**Walgreens: *Breaking the Cycle***

At least one major employer realizes the potential of hiring people with disabilities in integrated competitive employment with the expectation that these employees adhere to company performance standards. Walgreens actively hires people with disabilities at two distribution centers located in South Carolina and Connecticut. In June 2007, the company opened a new state of the art distribution center in Anderson, SC. The facility was designed to be accessible to people with a wide range of disabilities in competitive employment.

Walgreens pays employees the same wages regardless of their disability and expects all employees to adhere to the same performance standards. To achieve this goal, Walgreens designed adjustable workstations, clear icon-driven touch screen computers and created signs with pictures to allow people with physical, cognitive, intellectual and mental disabilities to perform various jobs. Training programs consider the disabilities of employees. For example, management and supervisory techniques were developed specifically considering employees with autism, Asperger syndrome, and other cognitive disabilities. Employment at the distribution center was the first real job for many of the Walgreens employees with disabilities.

Walgreens has also made a commitment to helping other companies build on its successes. Walgreen's demonstrates its programs and processes to other retailers in an effort to help others move in a similar direction. Walgreens will offer tours of its facilities along with mentoring, training and guidance. Walgreens also offers students an opportunity to spend one week learning from employees with disabilities about what makes their job work for them in the hopes that the students take this information with them when they graduate.

For more information go to [http://www.walgreens.com/topic/sr/disability\\_inclusion\\_home.jsp](http://www.walgreens.com/topic/sr/disability_inclusion_home.jsp)

## A Way Forward

It is clear that segregated and sheltered work, as well as sub-minimum wages for people with disabilities must end. And in order for that to happen, systemic—and systematic—change must occur. Fortunately, a movement toward change is under way in states across the country. One effort, Employment First, seeks to have individual states adopt policies that focus on integrated, community-based employment at or above minimum wage as the first spending option for state and federal dollars.

Other efforts include the promotion of supported employment and customized employment programs that focus on creating or locating jobs in the community that match the personal employment goals of the person with a disability. These approaches have a high incidence of success because they are personalized, integrated, and pay a prevailing wage.

There are also efforts undertaken by states themselves to increase employment opportunities for people with disabilities. Here are just a few examples:

- **Washington:** In 1997, the Washington state legislature created a supported employment program targeting people with developmental or significant disabilities who are eligible for vocational rehabilitation services and need training and support to perform successfully. These positions do not count against their allotted full-time employee positions for the entire time the individual is employed by the agency.<sup>[1]</sup> In 2007, the Division of Developmental Services issued a policy establishing supported employment as the primary use of employment or day program funds resulting in a 58% employment rate for people with developmental disabilities.
- **Oregon:** The Youth Transition Program is a year-round comprehensive transition program for youth with disabilities that prepares them for employment or career related post secondary education or training. It is operated collaboratively by the office of Oregon Office of Vocational Rehabilitation Services, the Oregon Department of Education, the University of Oregon, and local school districts. It operates in approximately 120 high schools and is funded through a combination of state and local funds from participating education and rehabilitation agencies.
- **Kentucky:** The Community Based Work Transition Program serves students with disabilities during their last two years of high school explore potential careers, get work experience, stay employed, and advance at work. The CBWTP is a cooperative effort between participating local school districts, the Kentucky Department of Education, Office of Vocational Rehabilitation, the Kentucky Department for the Blind, and the Human Development Institute at the University of Kentucky.
- **Georgia:** Georgia has created a cross-disability network of "employment stewards"- both individuals and organizations- working across the state to develop demonstrations of high quality customized employment and to assist individuals with disabilities to start their own businesses and microenterprises.

While these examples indicate progress has been made, there is still quite a long way to go until our national policy of integration is realized. Currently there are only 12 states that have made the Employment First commitment. Supported and customized employment programs, while enormously successful, do not receive the level of funding or attention that segregated and sheltered work does. It is the hope of NDRN, and thousands of advocates and activists, that this soon will change.

## Policy Recommendations

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In 1990, the ADA was passed to end the segregation and other types of discrimination, including in employment, against individuals with disabilities that was a serious and pervasive social problem. The ADA integration mandate as expressed in the Olmstead decision and other federal laws have also recognized the importance of integration over segregation. Yet, there are still far too many situations in which our nation's goal of integration for people with disabilities has not been realized. In addition to being segregated in their employment environment, many people with disabilities also face employment discrimination in the wages they can earn—an act of outright discrimination that is sanctioned by the current law—leading to situations where some people with disabilities are earning pennies an hour for their labor while their colleagues without disabilities earn a prevailing wage doing the same job.

In 2011, it should not be permissible to pay what can be considered exploitive wages based on a person's status of having a disability. It should also not be permissible to segregate people with disabilities at work—or home. NDRN believes that the sub-minimum wage and segregated employment environments violate the spirit of the ADA, the Olmstead decision, and the national policy of inclusion—and they must come to an end.

As society progresses, archaic policies must be abandoned, and replaced with forward thinking ones. We, as a nation, must move forward and realize the promise of the laws already passed that recognize and protect the civil rights of people with disabilities. We must work together to end segregated and sheltered employment. We must end sub-minimum wage.

However, just seeking to end those practices addresses only part of the problem. At the same time we seek to end these archaic policies, we need to focus our efforts on ensuring the availability of integrated employment options that include support, services, and equal pay. To achieve these goals, NDRN makes the following broad public policy recommendations.

## **End Segregated Employment & Sub-minimum Wage for People with Disabilities**

### **Congress**

- Restrict all federal money, including Medicaid and Vocational Rehabilitation (VR) funds, from being spent in a segregated or sub-minimum wage employment environment.
- Stop issuing 14(c) certificates that pay sub-minimum wage to individuals with disabilities.
- Forbid in all relevant federal statutes or regulations moving youth or young adults from the classroom to a segregated or sub-minimum wage employment environment.
- Modify federal contract preferences so that they cannot be used by employers who utilize segregated employment environments or where an employee is paid a sub-minimum wage.

### **States**

- Forbid the use of any state funding from being expended in a segregated or sub-minimum wage work environment.
- Modify state contract preferences so that they cannot be used by employers who utilize segregated employment environments or where an employee is paid a sub-minimum wage.

## **Promote & Facilitate Integrated and Comparable Wage Employment Alternatives**

### **Congress**

- Strengthen existing, and create new, incentives through the federal tax code to employ individuals with disabilities in integrated employment environments paying comparable wages.
- Improve and enhance workforce programs such as apprenticeships and on the job training to require greater participation by individuals with disabilities.
- Increase federal funding for person-centered planning for employment and employment supports for supported employment, customized employment, and self-employment.
- Mandate under the IDEA that transition plans include social skills training components and work preparation, such as placements outside of school in apprenticeship or internship programs.
- Create as part of the reauthorization of the Rehabilitation Act or IDEA a transition coordinator position that will have overall responsibility to coordinate across the education, employment, and disability systems and programs that provide transition services. The number of transition coordinators located at each high school shall be based on the number of students needing transition services at that high school.

- Require state vocational rehabilitation agencies to visit employers employing individuals with disabilities under a sub-minimum wage certificate or which maintain segregated employment environments at least once a year to inform individuals with disabilities of competitive employment opportunities and to assess the vocational rehabilitation needs of those individuals.
- Mandate that supported employment services be funded under the Rehabilitation Act for at least 36 months.
- Require Medicaid to fund services (employment supports, assistive technology, etc.) that will allow individuals with disabilities in segregated or sub-minimum wage employment environments to move to integrated and comparable wage employment.
- Amend Title I of the Rehabilitation Act to require state vocational rehabilitation agencies to review and assess at least once a year the capabilities of individuals referred to train or work in sheltered employment ("extended employment") by the vocational rehabilitation agency.

**Department of Education**

- Establish new performance indicators by which the performance of state vocational rehabilitation services agencies will be evaluated. The new performance indicators need to include consideration of 1) the number of individuals with disabilities whom the vocational rehabilitation agency assisted to move from non-competitive and/or segregated employment or training environments to competitive and/or integrated employment environments, 2) the number of Individual Education Plan (IEP) transition meetings staff from the vocational rehabilitation agency attended to discuss the transition of a student with a disability from secondary education to the vocational rehabilitation agency or to competitive employment, and 3) the number of students with disabilities (eligible for IDEA or covered by Section 504) the vocational rehabilitation agency began to serve before the individual exited the secondary education system.
- Ensure that both RSA and OSEP utilize their monitoring authority under the Rehabilitation Act and IDEA and issue joint policy memoranda to ensure compliance with requirements for coordination and collaboration between the VR and special education systems for transition age youth and young adults in each State.
- Ensure that there are appropriate vocational preparation programs available to prepare students with disabilities for competitive employment. This includes ensuring that vocational preparation programs for general education students comply with the IDEA and Section 504 and with student IEPs and 504 plans in admitting students with disabilities and appropriately meeting their needs. Modified vocational preparation programs that will prepare students with disabilities for competitive employment must also be made available for students who

cannot benefit from the general vocational preparation program even with appropriate supplemental aids and services.

- Fund longitudinal studies that contain outcome data collected at several intervals after students with disabilities exit high school. The data needs to include at a minimum such variables as employment environment (segregated v. integrated), whether the student's employer holds a sub-minimum wage certificate, the number of hours employed, pay rate, and occupation.
- Provide funding to the Protection and Advocacy (P&A) Systems and the Client Assistance Programs (CAP) focused on transition and employment to provide advocacy for individuals with disabilities to work in integrated employment environments at comparable wages.

**Department of Health and Human Services**

- Issue guidance that, for those individual's receiving Medicaid funded pre-vocational services in a segregated employment environment, an annual two level assessment shall be conducted. Level one shall determine if the individual's current menu of pre-vocational supports could otherwise be provided in a more integrated setting; and level two, if pre-vocational services can only continue in a sheltered setting, what adjustments need to be made to their current services, to better reach the goal of "habilitation services" which is to "Obtain the adaptive skills necessary to reside successfully in home and community based settings."

**Department of Labor**

- Create and disseminate information to assist providers and businesses in developing best practices for competitive employment consistent with the person's interests and skills.
- Work with the Office of Personnel Management to encourage the employment of individuals with disabilities in integrated employment environments at comparable wages in the federal government, including by allowing the agency to not count the employee against the agency's allotted full-time employees.

**States**

- Increase state funding for person-centered planning for employment, and employment supports for supported employment, customized employment, and self-employment.
- Enact and implement state policies to encourage the employment of individuals with disabilities in integrated employment environments at comparable wages in state government positions.
- Strengthen existing and create new incentives through the state tax code to employ individuals with disabilities in integrated employment environments at comparable wages.

- Use Medicaid funds for Employment First initiatives to help individuals with disabilities find work in integrated employment environments at comparable wages.
- Fund short-term workforce programs, such as apprenticeships and internships, for individuals with disabilities.

### **Increase Labor Protections & Enforcement**

#### **Congress**

- Increase funding, and ensure access, for Protection and Advocacy Systems and the Client Assistance Programs to monitor and investigate violations and abuses in segregated and sub-minimum wage employment environments.
- Increase funding for the Wage and Hour Division to boost enforcement and oversight of wage and hour laws, including the Section 14(c) program.
- Increase penalties for violations of the Section 14(c) program to ensure that employers take their responsibilities seriously.

#### **Department of Labor**

- Provide funding to the Protection and Advocacy Systems and the Client Assistance Programs focused on monitoring and investigating violations and abuses of sub-minimum wage and integrated employment environment requirements.
- Issue guidance on how to formalize and standardize employee evaluations under a sub-minimum wage certificate, including how to calculate productivity and other factors to determine an individual's wages.
- Require segregated, sheltered, and sub-minimum wage paying employers to report to the Department of Labor yearly the wages, progress, attempts to move to integrated employment environments, and reasons why the individual hasn't moved to integrated employment for each employee.
- Require sub-minimum wage certificate employee evaluations be performed by an independent third party evaluator.
- Place critical information about the sub-minimum wage (14(c)) certificate program on the Department of Labor's website, and ensure it is presented with clarity. Data should be prominently displayed, easily accessible, and include the percentage of employees operating under the certificate, the productivity level of these individuals, salaries of all chief executive officers and management personnel, and the dates for which certificate renewal is required.

- Increase enforcement of federal employment laws and requirements of federal contract work by tasking the Office of Disability Employment Policy (ODEP), the Wage and Hour Division and the Office of Federal Contract Compliance to collaborate and work together.

**Department of Justice**

- Enforce the integration requirements of Title II of the Americans with Disabilities Act against states that fund segregated and sheltered employment more than integrated employment.

**Equal Employment Opportunity Commission**

- Enforce the non-discrimination requirements of the Americans with Disabilities Act against segregated and sheltered employers by forbidding unnecessary segregation.

## Conclusion

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Many people working in support of segregated and sheltered work don't think there is another way. In fact, there is. Thirty years ago no one believed there was another option for people with disabilities but to live in large, state-run institutions. The belief was they could never care for themselves, they were too vulnerable or made people too uncomfortable to live among people without disabilities. But soon we saw these human warehouses for what they were and in state after state institutions closed, and now millions of people with disabilities are living, successfully, in their communities. They evolved and adapted and showed us they are more than we believed, as did the rest of the country who recognized the value of having friends and neighbors with disabilities. We witnessed lives changing.

The same can happen in the workplace. Sheltered workshops are just another institution segregating our neighbors away because of our unwillingness to accept that our own preconceived ideas about the workplace might be wrong. It's time to do things differently.

**Appendix A****Michael Montgomery**

Former Director, Singing River Industries

In March of 1973, I took the job as director of a work activity center which was a part of the services offered through the local mental health center in Pascagoula. At that time, most Mental Health Centers provided services for people with mental health concerns and people with developmental disabilities. Nearly all had sheltered workshops which were innovative at that time. I, like many directors at the time, had a background in education. I didn't feel comfortable running a workshop as I did not have the proper educational background or experience. Training provided through the Developmental Disabilities Training Institute in Durham, North Carolina, helped me and others get the training that we needed through a series of five day workshops. It also connected people from various states and offered an opportunity for collaboration.

Our agency was called the Jackson County Training Center. We often received calls from people who wanted to know what kind of training we did. When I arrived, some people with disabilities were doing arts and crafts, but most people were sitting around in a big semi-circle watching the staff do the work. My initial focus was to change from watching staff doing work to getting the people in the workshop to do the work themselves. Over a period of time, I became successful at acquiring contracts for the workshop. We made surveyor stakes for the state highway department and sandblasted rust and old paint from boat trailers, yard furniture, and other metal objects which were prone to rust in our gulf coast climate. Several of our clients (the term widely used at that time) also learned how to apply primer to those surfaces with a spray gun.

In 1976, I was introduced to the work of Dr. Marc Gold. Marc helped me understand that we could teach really sophisticated skills by using systematic instruction. I began to see that we should not be only providing segregated activities. Rather than keeping people in the workshops, we needed to get people out of sheltered workshops into jobs in the community. I was open to what Marc had to say because I could see, even in 1974 and 1975, that there would be an endless line of people coming to us from voc rehab and the schools. It was my impression at the time, that VR referred about 90% of the people with disabilities that came to them to sheltered workshops. VR would verify them as employable, refer them to workshops for work activity, and we would be the end of the line for them. VR's traditional testing and evaluation procedures did not support the notion that those

individuals could perform real work. I was also open because I could see that we could train people to do what others were doing in the community, but they would never get the opportunity without some assistance.

After meeting and working with Marc, we secured funding through United Way to hire someone to slowly move people from the workshop into community jobs. We found that people could work, if someone was willing to negotiate on behalf of people with disabilities and work with the employers to accommodate individual disabilities. If we trained correctly, and not tested, we could find the right match for people's abilities. We were very successful in getting people out of the workshop and into employment in the community.

We had a subcontract with Macmillan Bloedel to make cedar boards for privacy fencing. The plant manager was Joel Donovan. Rather than building the fences in our workshop and paying for materials to be moved back and forth, our crew went to his location. Our people liked working with the other workers, liked being seen and respected. On days when there was no work, the individuals on that subcontract would come back to shop until their services were needed again. On those days, some of them would stay home or come under pressure from their families. They clearly didn't want to come back. They had graduated from the workshop. I understood and respected their position.

We got people jobs in hospitals, restaurants, and other businesses around the community. One of the people that we trained in the late 1970s worked in a local hospital until his recent retirement. TS came to us straight from an institution, where he had lived from early childhood until his 20's. Like so many people at that time, he never should have been at the institution. TS ran our sandblaster, drove our forklift; it was clear that he could do more. His job started in the hospital laundry, but he moved all around the hospital. He was a good worker. We made ourselves available to the hospital administration; if they had a problem with TS's skills, they could call us, and we would provide additional training. Over the years, the hospital did call us a few times, and we were able to provide the training that was needed. TS was absorbed into the fabric of the community. After he got the job, TS got his own apartment and started dating a woman that he met in the workshop. He didn't have a driver license, but he used his bicycle to get around.

Our ideas sometimes scared families. They had been told by doctors and service systems that their kids needed to be in a sheltered and safe environment. Although some of the parents of children in the workshop began to realize that their son or daughter could do good work, it was the switching of environments that was troubling. One of our parents who at the time was very concerned that his son was staying in the safe environment of the workshop, recently told me that his son was working in a

restaurant where he was very happy. He could now see the benefits of working in the community. His son enjoyed being viewed as a regular employee, but for fewer than forty hours. Families need assurance that their children will have a meaningful job and not spend part of their time at home alone. The Community Calendar developed by Marc Gold and Associates is a tool that we used to develop a life in the community around work and non-work time.

In the seventies, the sheltered workshops in Mississippi were run by annually renewable grants. In the nineties, the funding was converted to a purchase of service arrangement for X dollars per unit of service. People who ran the programs were not motivated to change. They liked the way that the billing flowed and the families were happy to have their children in a safe place and were not pushing for change. Folks believed then, and I think that many still do, that people need to be sheltered. They just don't believe that people can grow with the right training and support, that they can have a good life. I believed that we owed it to each individual and family to try new ideas and work diligently for each person regardless of disability. If we failed to put our heart and soul into the challenge for everyone, we would never see their potential. Everyone that I have ever worked with truly wants a life with work, a place to live, friends, and social outings. A job provides the money to secure everything else.

There are more than 1,800 people on our waiver waiting list in Mississippi alone. Many could come off the waiting list if we switched the way we use our resources. It saddens me that it is taking so long for this switch to occur, but I do now our state leaders move toward the change through a re-balancing initiative.

**Appendix B**

<b>Certified Agencies Paying Sub-minimum Wages</b>	
Private, Not for Profit	2,414
Public (State or Local Government)	595
Private, For Profit	413
Other	16
<b>Total Certified:</b>	<b>3,438</b>
Data by Congressional Research Service from Wage and Hour Division of the U.S. Department of Labor. <i>As of January 5, 2010.</i>	

**Appendix C****Section 14(c) Wage Certificates<sup>111</sup> and Sheltered Workshops<sup>112</sup> by State**

State	Total Served	% Integrated Employment	% Community Based Non work	% Combined Facility Based Settings	Total Section 14(c) Certificates
AK	1,394	24%	54.5%		8
AL	5,269	5%	0%	95%	56
AR					65
AZ					41
CA	78,250	11%	74%	15%	238
CO	5,731	27%	59%	62%	42
CT	8,433	56%	44%	9%	70
DC	1,449	7%	10%	78%	1
DE	1,546	26%	1%	68%	6
FL	18,692	23%	27%	58%	102
GA					98
HI	2,865	4%	98%	56%	8
IA					82
ID	6,980	5%	30%	58%	14
IL	25,500	10%	0%	94%	180
IN	12,491	25%	12.5%	62%	63
KS	5,991	19%	54%	80%	60
KY	7,975	17%	29%	54%	55
LA	4,139	34%	2%	64%	95
MA	14,038	22%	12%	65%	88
MD	9,768	38%	0%	62%	48
ME					21
MI					81
MN					149
MO	4,030	9%	2%	94%	120

Data retrieved by Congressional Research Service (CRS) from Wage and Hour Division (WHD) of the U.S. Department of Labor, Current as of January 5, 2010

<sup>112</sup> Institute for Community Inclusion, STATEDATA: THE NATIONAL REPORT ON EMPLOYMENT SERVICES AND OUTCOMES (2008).

Mims0723

State	Total Served	% Integrated Employment	% Community-Based Non work	% Combined Facility-Based Settings	Total Section 14(c) Certificates
MS	5,904	7%	70.5%	40%	28
MT					32
NC					100
ND	1,782				22
NE	3,668	33%	0%	77%	39
NH	2,159	45%	49%	5%	10
NJ	9,081	15%	5%	80%	74
NM	3,056	32%	31%	65%	8
NV	1,919	20%	2.5%	77%	15
NY	55,420	15%	67%	32%	153
OH	32,133	23%	4%	66%	163
OK	4,168	61%	30.5%	53%	78
OR	3,834	5%	10.5%	67%	68
PA					139
RI					12
SC	7,549	30%	0%	83%	80
SD	2,307	24%	24%	100%	34
TN	7,770	22%			79
TX	40,038	9%	28%	46.5%	165
UT	2,670	33%	72%	0%	42
VA	11,259	21%	2.5%	79%	67
VT	2,252	39%	61%	0%	2
WA	7,183	57%	4%	11%	58
WI	10,338	33%			143
WV					21
WY	1,216	20%	15%	65%	12
	<b>430,247</b>	<b>24%</b>	<b>27%</b>	<b>58%</b>	<b>3,435</b>





**National Disability Rights Network**

900 2<sup>nd</sup> Street NE, Suite 211

Washington DC 20002

Phone: (202) 408-9514

Fax: (202) 408-9520

[www.NDRN.org](http://www.NDRN.org)

Mims0727

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STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
COURT OF COMMON PLEAS

EDWARD MIMS, BY AND THROUGH  
HIS LEGAL GUARDIAN,  
MARGARET MIMS,

Plaintiff,

Case No.: 07-CP-40-03365

vs

BABCOCK CENTER, JUDY JOHNSON,  
SCDDSN, KATHI LACY,  
STANLEY BUTKUS,

Defendants.

D E P O S I T I O N

WITNESS: KATHI LACY  
DATE: Wednesday, June 3, 2009  
TIME: 4:10 p.m.  
LOCATION: Law Office of Patricia Harrison  
611 Holly Street  
Columbia, South Carolina  
TAKEN BY: Attorneys for the Plaintiff  
REPORTED BY: GINA M. SMITH  
Certified Shorthand Reporter  
Registered Professional Reporter

-----

Gina M. Smith, CSR, RPR  
117 Harmon Creek Court  
Lexington, SC 29072  
803-359-5705

1 APPEARANCES:

2 ATTORNEYS FOR PLAINTIFF  
3 EDWARD MIMS, BY AND THROUGH HIS LEGAL  
4 GUARDIAN, MARGARET MIMS:

5 LAW OFFICE OF PATRICIA HARRISON  
6 BY: PATRICIA HARRISON, ESQ.  
7 611 Holly Street  
8 Columbia, SC 29205

9 ATTORNEYS FOR DEFENDANT  
10 BABCOCK CENTER AND JUDY JOHNSON:

11 COLLINS & LACY  
12 BY: CHRISTIAN STEGMAIER, ESQ.  
13 1330 Lady Street, Sixth Floor  
14 P.O. Box 12487  
15 Columbia, SC 29211

16 ATTORNEYS FOR DEFENDANT  
17 SCDDSN, KATHI LACY AND STANLEY BUTKUS:

18 DAVIDSON & LINDEMANN, P.A.  
19 BY: WILLIAM H. DAVIDSON, II, ESQ.  
20 and  
21 KENNETH P. WOODINGTON, ESQ.  
22 1611 Devonshire Drive, Second Floor  
23 P.O. Box 8568  
24 Columbia, SC 29202-8568

25 ALSO PRESENT:

TANA G. VANDERBILT

(INDEX AT REAR OF TRANSCRIPT)

1                   STIPULATION: It is stipulated by  
2 and among Counsel that this deposition is being  
3 taken in accordance with the South Carolina Rules  
4 of Civil Procedure, and that the deponent does not  
5 waive the right to read and sign the deposition  
6 transcript.

7                   -----

8                   KATHI LACY, being first duly sworn,  
9 testified as follows:

10 EXAMINATION

11 BY MS. HARRISON:

12                 Q. Dr. Lacy, you're here to give a deposition  
13 in the matter of Edward Mims versus you  
14 individually and Stan Butkus and the Department of  
15 Disabilities and Special Needs, Judy Johnson and  
16 the Babcock Center.

17                   Have you given your deposition before?

18                 A. Yes.

19                 Q. And you know how the rules work with  
20 depositions?

21                 A. Yes.

22                 Q. So I'll ask you questions. If you don't  
23 understand a question or if you need me to  
24 elaborate it or restate it, will you ask me that?

25                 A. Yes.

1 Q. And if you answer the question, I'll  
2 assume you understood the question. Is that fair?

3 A. Sure.

4 Q. And also, as you heard before, we need you  
5 to respond with verbal responses because the court  
6 reporter can't record your nods or shrugs or eye  
7 rolls or body motions. Is that understandable?

8 A. Yes.

9 Q. Tell me what your -- what's your full  
10 name?

11 A. Kathi Kelly Lacy.

12 Q. And you're married?

13 A. Yes.

14 Q. And you have one child, I believe?

15 A. Yes.

16 Q. And you work at the Department of  
17 Disabilities and Special Needs?

18 A. Yes.

19 Q. And what is your position there?

20 A. The title is associate state director for  
21 policy.

22 Q. And what does that job entail?

23 A. Well, my team and I respond to the  
24 Commission policies related to the type of service  
25 delivery, standards and directives that they wish

1 for people that come to DDSN for services, and then  
2 I also collect different types of data on how that  
3 system is operating.

4 Q. And up until recently, who did you answer  
5 to in your job?

6 A. Stan Butkus.

7 Q. And his position was the state director?

8 A. Correct.

9 Q. And what is Dr. Butkus doing now?

10 A. I do not know.

11 Q. You don't know where he's working now?

12 A. No, I don't.

13 Q. Have you been contacted for a reference?

14 A. No.

15 Q. And so you have no idea where he's  
16 working?

17 A. No.

18 Q. Is he working in the field of  
19 developmental disabilities?

20 A. I have no idea.

21 Q. Have you seen him since he left the  
22 agency?

23 A. I saw him in the elevator at the Davidson  
24 law firm probably about three weeks ago.

25 Q. And where is Dr. Butkus living?

1 A. I do not know.

2 Q. Where does he live in Columbia?

3 A. I think that he lives in -- I forget what  
4 the neighborhood's called actually.

5 Q. Have you ever been to his house?

6 A. No.

7 Q. So you haven't had any e-mails back and  
8 forth with him since he left?

9 A. I have received one e-mail from him.

10 Q. And what did that e-mail say?

11 A. It said he needed to ask me a question and  
12 when would be a good time to call.

13 Q. And how did you respond to that?

14 A. I told him that I would be there for the  
15 rest of that week.

16 Q. And did he get back in touch with you?

17 A. He did.

18 Q. So you have talked with him?

19 A. Yeah. One of the other questions was had  
20 I seen him.

21 Q. Oh, okay. So you have talked with him on  
22 the telephone?

23 A. Yes, I talked with him on the telephone.

24 Q. How many times have you talked with him on  
25 the telephone?

1 findings?

2 A. I have no idea.

3 Q. So he didn't -- you didn't ask him where  
4 he was now?

5 A. No.

6 Q. And he didn't volunteer that?

7 A. No.

8 Q. Do you know whether he's working?

9 A. No.

10 Q. Tell me in your job how you interact with  
11 the folks who are responsible for doing abuse and  
12 neglect investigations.

13 A. Well, the law was changed in July of 2006  
14 giving SLED the authority to investigate all  
15 allegations of abuse, neglect in facilities  
16 operated by or contracted for operation by DDSN and  
17 DMH.

18 Q. Do you know what the precipitating factors  
19 were for changing that law?

20 A. I believe it was the P&A lawsuit or P&A  
21 report, excuse me.

22 Q. Tell me about the P&A report.

23 A. The P&A report was a -- I wouldn't  
24 necessarily call it a study because it didn't have  
25 any research design or methodology applied to it,

1 A. One time.

2 Q. And what was the conversation about?

3 A. The conversation was about the Legislative  
4 Audit Council's audit.

5 Q. And tell me how that conversation went.

6 A. He asked me a question related to the  
7 audit finding that DDSN may not have -- not have  
8 taken -- may not have responded to every allegation  
9 of abuse, neglect, and exploitation.

10 Q. Do you know why after he left the agency  
11 he was concerned about that?

12 A. No.

13 Q. He didn't tell you why he was concerned?

14 A. No.

15 Q. And what was your response?

16 A. I told him that the audit finding with the  
17 Department's response was final and that we haven't  
18 done anything further with that.

19 Q. So was he wanting to change those findings  
20 somehow or what was the purpose of his call?

21 A. I didn't ask him that.

22 Q. Was he wanting you to add information,  
23 provide information to the Audit Council?

24 A. No.

25 Q. Was he planning on trying to change those

1 to my knowledge.

2 And it was a report that didn't identify  
3 people but indicated that there were situations  
4 where people were being abused, and this was a  
5 report that included people that received services  
6 from DDSN and DMH.

7 Q. And as a result of that study, the  
8 legislature changed the law to take the authority  
9 to investigate abuse and neglect away from your  
10 agency?

11 A. We didn't have the authority. The  
12 ombudsman's office entered into a memorandum of  
13 agreement with the Department because they needed  
14 help in reviewing cases of alleged abuse.

15 Q. But my recollection was that prior to this  
16 change in the law, that DDSN was performing  
17 internal investigations, was it not?

18 A. DDSN through that memorandum of agreement  
19 with the ombudsman's office decided to participate  
20 with the ombudsman in investigating or causing to  
21 be investigated allegations of abuse.

22 Q. So it was DDSN's personnels who were doing  
23 these investigations. Is that correct?

24 A. No. In some cases it could be, for  
25 example, if the alleged abuse took place at one of

1 the regional centers, and then in other cases such  
2 as a DSN board, they would have their trained  
3 investigators conduct the investigation.

4 Q. So prior to this change in law,  
5 investigations were being done by DDSN in regional  
6 centers and the local DSN boards for the providers  
7 that were contracted through y'all?

8 A. And more, yeah. In certain cases, if  
9 there were suspicions of multiple sexual assaults,  
10 for example, there was a directive that the report  
11 needed to also go to local law enforcement. The  
12 ombudsman got the same report as abuse, so the  
13 ombudsman was involved. So there were many other  
14 players that were involved in doing investigations.

15 Q. And that sexual abuse policy for reporting  
16 sexual abuse that was in effect prior to this  
17 change of law, I believe that was written by  
18 Dr. Judy Johnson, wasn't it?

19 A. I have no idea.

20 Q. But you don't deny that Dr. Johnson wrote  
21 the policy for reporting sexual abuse?

22 A. Oh, I have no idea.

23 Q. Was it your job to review those policies?

24 A. To review the policy on sexual assaults?

25 Q. Let's talk about the policy on sexual

1 assault. Whose job it was to review those  
2 policies?

3 A. It is an executive staff and district  
4 staff's responsibility, providers, families to read  
5 and follow those directives, those policies.

6 MR. WOODINGTON: Excuse me, we're talking  
7 about DDSN policies, right?

8 MS. HARRISON: We're talking about DDSN  
9 policy, that's right.

10 BY MS. HARRISON:

11 Q. I believe your name appears on most of  
12 those directives, does it not?

13 A. Oh, gosh, that's a good question. I think  
14 that on -- I would venture to say that it might be  
15 at least half, but I'm not certain. There are  
16 other signatures for certain areas, for example, in  
17 human resources, that I don't have jurisdiction  
18 over.

19 Q. What areas do you have jurisdiction over?

20 A. In the directives?

21 Q. Uh-huh.

22 A. You know, really in terms of policy  
23 related to service delivery.

24 Q. So that's your area of responsibility,  
25 service delivery?

1 A. No. Service standards are different than  
2 service delivery. Service standards set the tone.  
3 It's a policy like an insurance policy that helps  
4 those providers who want to bill that insurance  
5 company for services must follow. So it's similar  
6 to that.

7 Q. So you just set policy and you don't have  
8 anything to do with how those services are carried  
9 out?

10 A. Correct.

11 Q. So you don't have any oversight over  
12 whether people are following your policies or not?

13 A. No, that's different. That's a different  
14 question. In terms of following the -- operating  
15 and interpreting the policies at the local level,  
16 that would be David Goodell or the associate state  
17 director for operations.

18 So I believe I commented earlier that the  
19 other part of my job in writing policies is to see  
20 that the policies are being followed as indicated.

21 Q. So what responsibility do you have when  
22 policies are not being followed?

23 A. It depends on the nature of the policy and  
24 what's not being followed.

25 Q. So what do you do in your job when it

1 becomes apparent that a policy is not being  
2 followed?

3 A. Again, it depends on what policy it is and  
4 the extent and the nature, the frequency, pattern,  
5 things like that. So it might be helpful to get a  
6 specific example.

7 Q. Has your office, the area within your  
8 jurisdiction, ever imposed any kind of sanctions or  
9 any kind of consequences to providers if there have  
10 been trends that show there's problems with that  
11 provider?

12 A. I make a recommendation in some cases.

13 Q. And who do you make that recommendation  
14 to?

15 A. To the state director.

16 Q. And so the buck stops with him?

17 A. I wouldn't know. I don't know what the  
18 state director's obligation is in response to what  
19 gets reported to the board.

20 Q. How long have you been with the agency?

21 A. Let's see. 1996.

22 Q. And so you don't know what the state  
23 director's responsibilities are?

24 A. Well, I don't know what his  
25 responsibilities are in terms of what you mentioned

1 in terms of, you know, reporting certain sanctions  
2 against providers.

3 Q. But you recommend the sanctions. Is that  
4 right?

5 A. I am just one person that recommends that.

6 Q. Who else recommends sanctions to him?

7 A. I would say the associate state director  
8 for operations and I would also say the deputy  
9 director of administration. I'd also say the  
10 director of internal audit.

11 Q. Let's talk about the director of internal  
12 audit. Tell me what his responsibilities are.

13 A. His responsibilities, gosh, are to do  
14 internal audits of the Department's kind of fiscal  
15 operations and that of providers that we contract  
16 with.

17 Q. So he just deals with money?

18 A. Not to my knowledge, no.

19 Q. So if a provider is not complying with --  
20 y'all receive a lot of Medicaid funding, don't you?

21 A. Yes.

22 Q. And are there standards and regulations  
23 that have to be complied with as a requirement of  
24 receiving that funding?

25 A. Yes.

1 Q. Your internal auditor, does he just track  
2 the money or does he also go out and determine  
3 whether providers are in compliance with other  
4 programatic requirements?

5 A. I've seen reports that have included other  
6 programatic requirements.

7 Q. So he's required not only to be a bean  
8 counter and a money cruncher but also to audit  
9 programs and how they're carried out. Is that  
10 correct?

11 A. I haven't seen -- not so much programs.  
12 My specific response relates to specifically the  
13 consumer funds. That's --

14 Q. And that's kind of bean counting. That's  
15 following the money, isn't it?

16 A. No. Bean counting -- I would say it's  
17 more in how they're using the money that's been  
18 provided to them to render services.

19 Q. The internal auditor I believe, did he  
20 not -- was he not responsible for conducting an  
21 audit of the Babcock Center in 2001?

22 A. I believe so.

23 Q. And did he just look at the dollars or did  
24 he look at other abuse and neglect problems and  
25 other issues?

1 A. I'm not certain about that.

2 Q. Did you read that report?

3 A. In 2001, I'm not sure.

4 Q. I believe it was issued in 2003, was it  
5 not, the limited scope audit of the Babcock Center?

6 A. I did not know that that was performed by  
7 our internal auditor, no.

8 Q. So you didn't have any involvement in that  
9 audit?

10 A. Very little involvement.

11 Q. So I believe that Mr. Jeffcoat and  
12 Shalonda -- what is her last name?

13 A. Hall.

14 Q. They were sent by your agency to perform  
15 the audit, were they not?

16 A. I am not certain about that, no.

17 Q. When the auditors in that audit made their  
18 findings, were you involved in any way in reviewing  
19 those findings and suggesting changes and --

20 A. The part I was involved in was the  
21 information related to certain performance  
22 indicators, as I would refer to them as, but my  
23 recollection is not about the specific audit and  
24 making recommendations.

25 Q. So you never overwrote any findings of the

1 internal auditors in that limited scope audit. Is  
2 that your testimony?

3 A. I do not recall being involved to make any  
4 recommendations.

5 Q. So did you review it before it was  
6 submitted by HHS?

7 A. Did I review our internal audit before it  
8 was --

9 Q. Did you review the limited scope audit --  
10 the limited scope audit of the Babcock Center was  
11 performed by HHS, wasn't it?

12 A. I believe so.

13 Q. And what involvement did you have in that  
14 audit?

15 A. I did have involvement in reviewing the  
16 report that came back. I do remember reading the  
17 report, yes.

18 Q. But did you have any involvement in making  
19 any changes to that audit?

20 A. Not to my knowledge.

21 Q. The audit -- there was an audit before  
22 that, in fact, wasn't there, that your agency did?

23 A. I believe so.

24 Q. And I believe that Mr. Jeffcoat and  
25 Shalonda were involved in that audit?

1 A. That I don't know who was involved.

2 Q. Did you have any input in making any  
3 changes to their findings?

4 A. Not to my knowledge.

5 Q. So internal audit's pretty much given  
6 leeway to go out and find what's there and to  
7 report it. Is that correct?

8 A. I'm assuming so. I don't -- I'm not in  
9 the -- the internal auditor reports to somebody  
10 else. So I'm not sure what their roles and  
11 responsibilities necessarily are.

12 Q. But you weren't involved in making -- in  
13 smoothing over or sugarcoating anything in any of  
14 those audits?

15 A. No, I would think not.

16 Q. And are you aware of the study that was  
17 conducted by Carolina Medical Review in 2005 of the  
18 Babcock ICF/MRs?

19 A. Very -- yeah, I do remember reading their  
20 report.

21 Q. And do your policies not require providers  
22 to comply with federal laws?

23 A. Yes, they do.

24 Q. And that would be within your  
25 jurisdiction?

1 A. Well, when you're talking about ICF/MRS,  
2 DHEC is actually the -- well, the federal  
3 government -- actually CMS is the entity  
4 responsible for the policy. So we follow whatever  
5 the code of federal regulations requires.

6 They are not superimposed policies for  
7 that particular program because that is  
8 administered by CMS and then implemented by DHEC in  
9 this state.

10 Q. So you have no involvement, that's just  
11 between DHEC and the provider and it doesn't come  
12 through you?

13 A. What doesn't come through me?

14 Q. When there's problems in the ICF/MRS.

15 A. Typically that's the director of  
16 operations.

17 Q. That would be Mr. Goodell?

18 A. Yes.

19 Q. And, now, I believe his predecessor was  
20 Ron Abbot?

21 A. No.

22 Q. I mean Ron Dozier?

23 A. Dozier, yes.

24 Q. Now, when did Mr. Dozier leave the agency?

25 A. I'm not very good with time frames. Maybe

1 three years, four years. I'm not certain.

2 Q. And why did he leave the agency?

3 A. Personal reasons, I believe.

4 Q. Health reasons?

5 A. I do not know that.

6 Q. What do you know about the problems he was  
7 experiencing?

8 A. I know that they related somewhat to his  
9 son being enlisted in the military.

10 Q. Did the person in that role have any  
11 mental health problems of his own?

12 A. Not to my knowledge.

13 Q. So that area now is handled by  
14 Mr. Goodell?

15 A. Yes.

16 Q. And what are his responsibilities?

17 A. His responsibilities in general are to  
18 ensure that the policies, directives, service  
19 standards are being applied.

20 Q. Are you aware that in 2001 the Department  
21 involuntarily admitted Edward Mims?

22 A. I'm not aware of that.

23 Q. So you weren't involved in that?

24 A. No.

25 Q. Tell me about Jim Christian. I believe he

1 signed the petition. Tell me what his role was.

2 A. In 2001?

3 Q. In 2001.

4 A. Nine years, eight years ago. I'm not  
5 certain what his role would have been. It could  
6 have been regional director.

7 Q. And what was his -- what were his  
8 responsibilities as regional director?

9 A. Regional directors are to help the  
10 director of state -- associate state director of  
11 operations work with providers to ensure they're  
12 carrying out their functions.

13 Q. When did you first become aware of Edward  
14 Mims?

15 A. I think it was the -- I believe it was an  
16 event where someone from the Babcock Center had  
17 contacted the Department -- and I believe it was  
18 Jim Hill -- and indicated that his mother wanted to  
19 take him home.

20 Q. And do you know why his mother wanted to  
21 take him home?

22 A. At that point in time I did not know. At  
23 the time that the call came in and when Jim Hill  
24 approached me, we had a conversation and -- when I  
25 first learned that there was a judicial admission.

1 ordered to the Department, and so there seemed to  
2 be some confusion about whether his mother could  
3 take him home.

4 Q. But you were involved in those discussions  
5 about whether his mother -- Jim Hill came to you,  
6 you said?

7 A. He indicated that he'd received a call  
8 from someone at Babcock Center about a phone call  
9 that they had received.

10 MR. WOODINGTON: Let me stop you for a  
11 minute.

12 MS. HARRISON: I'm sorry. Jim's an  
13 attorney. I'm sorry.

14 MR. WOODINGTON: Jim is an attorney and  
15 you shouldn't answer questions --

16 MS. HARRISON: I apologize. I forgot that  
17 Jim was the attorney.

18 BY MS. HARRISON:

19 Q. So you became aware that -- besides Jim  
20 Hill, who else did you discuss what was happening  
21 with?

22 A. At that point in time nobody.

23 Q. Did you -- when was the next time you  
24 discussed it with anyone other than Jim Hill?

25 A. I believe it was the next day that I

1 called -- I'm trying to think about the sequence of  
2 events here. I believe I learned the next day --  
3 I'm trying to think. Okay.

4 I remember that -- getting a phone call  
5 that I believe you and Ms. Mims had showed up at  
6 the facility where he lived and wanted to take  
7 Edward home.

8 MR. WOODINGTON: Once again, if Jim's a  
9 party to this, don't go into it.

10 THE WITNESS: Okay.

11 BY MS. HARRISON:

12 Q. So who other than Jim Hill -- on the day  
13 that Ms. Mims wanted to take Edward home, who other  
14 than Jim Hill did you discuss it with?

15 A. I don't remember.

16 Q. Did you discuss it with the state  
17 director?

18 A. I believe I did.

19 Q. So you and Dr. Butkus had a discussion  
20 about Ms. Mims wanting to take Edward home?

21 A. I believe so.

22 Q. So you and Dr. Butkus have a discussion  
23 that mom showed up with a Court order. Did she not  
24 have a Court order when she showed up?

25 A. I do not know that, but I believe I

1 remember that being told to me, yes.

2 Q. And so you and Stan Butkus discussed it,  
3 and what did -- tell me how that conversation went.

4 A. I was just giving him information that I  
5 had, that you and Ms. Mims had showed up and wanted  
6 to take Edward home, and that you believed you had  
7 a Court order, and that there was some conflict  
8 with that and then the judicial admission order,  
9 and believe that got reconciled by the judge.

10 Q. So tell me about your conversation with  
11 Dr. Butkus. Did you --

12 A. I just told him just what I told you.

13 Q. So you told him Ms. Mims wants to take him  
14 home and you left it at that?

15 A. No, I told him that there was a conflict  
16 between the judicial admission order and the --  
17 whatever was brought to the facility to take him  
18 home.

19 Q. Did y'all discuss, you and Dr. Butkus, the  
20 fact that the facility Kensington had been  
21 decertified?

22 A. No. And my recollection is that it was  
23 not decertified.

24 Q. Did you know of the decertification  
25 process?

1 A. Do I know --

2 Q. That was going on at that facility -- did  
3 you know that immediate jeopardy had been declared  
4 and that had not been resolved at the time?

5 A. No.

6 Q. What did you know about that facility?

7 A. I'm not sure what I knew at that time.

8 Q. Did you know that William Cothran had  
9 lived in that facility?

10 A. No.

11 Q. With Edward Mims?

12 A. No.

13 Q. So you discussed whether Ms. Mims can take  
14 him home with Dr. Butkus. Did you have any --

15 A. Not whether. I didn't say whether or not  
16 she could take him home, I was just giving him  
17 information that I had heard about the conflict.

18 Q. So he's the one who decided that she  
19 wouldn't be able to take him home?

20 A. No.

21 Q. Who made that decision?

22 A. I wasn't involved in that so I do not  
23 know.

24 Q. But you're saying you didn't make that  
25 decision? Are you aware that that decision was

1 made, that the agency --

2 A. No.

3 Q. So you told Dr. Butkus. Who else did you  
4 tell?

5 A. Nobody, to my knowledge.

6 Q. So it was just you and Dr. Butkus, and  
7 somebody made the decision at DDSN that he wouldn't  
8 be allowed to leave there, didn't they?

9 A. I don't remember that he wasn't allowed to  
10 leave.

11 Q. So -- but it wasn't you, is what you're  
12 saying?

13 A. Correct.

14 Q. What was your opinion about whether he  
15 should be allowed to leave Kensington?

16 MR. WOODINGTON: To the extent that calls  
17 for attorney advice, I would ask her not to answer,  
18 but it may not.

19 BY MS. HARRISON:

20 Q. So don't talk about any discussions with  
21 Mr. Hill, but I believe -- how long have you worked  
22 in the area of mental retardation?

23 A. 20 years.

24 Q. Do you consider yourself an expert in the  
25 field of mental retardation and services to persons

1 who have mental retardation?

2 A. I don't think about myself that way, but I  
3 do have a lot of knowledge and work experience.

4 Q. Do you have more than the normal person  
5 would have?

6 A. Yes.

7 Q. And do you think you have sufficient  
8 knowledge and experience to help a judge or a jury  
9 understand the services that are provided and the  
10 needs of people with mental retardation?

11 A. Yes.

12 Q. So you have this discussion with  
13 Dr. Butkus, but you don't give him any opinion  
14 about whether or not Edward Mims should be allowed  
15 to go home?

16 A. I think it was a legal matter at that  
17 point, and as I said, I was letting Dr. Butkus  
18 know.

19 Q. And did you ever discuss Edward Mims with  
20 anyone at the Babcock Center?

21 A. Yes.

22 Q. And who did you discuss Edward Mims with  
23 at the Babcock Center?

24 A. Dorothy Goodwin.

25 Q. Did you ever talk to Judy Johnson about

1 Edward Mims?

2 A. Not to my recollection.

3 Q. So you talked to Dorothy Goodwin. Now  
4 tell me what her role is.

5 A. Dorothy was the -- as I perceived, was the  
6 director of residential services, and Dorothy was  
7 the person that -- who attended the hearing in the  
8 judge's chambers on a Sunday afternoon. So my  
9 contact --

10 Q. Did you attend that hearing?

11 A. I did.

12 Q. Who does Ms. Goodwin report to or who did  
13 she report to?

14 A. Judy Johnson.

15 Q. And what was Judy Johnson's role and  
16 responsibility?

17 A. Judy's the president and CEO of Babcock  
18 Center.

19 Q. So who made the ultimate decision not to  
20 allow Edward Mims to go home with his mother?

21 A. I did not know that that was the outcome.

22 Q. Who objected to it?

23 A. I do not know.

24 Q. Did anyone object to him going home?

25 A. I do not know.

1 Q. So you don't know whether DDSN objected to  
2 him going home or not?

3 A. Correct.

4 Q. So you don't know if Babcock Center  
5 objected to him going home or not?

6 A. That's correct.

7 Q. So as far as you know, you talked to  
8 Dr. Butkus, and y'all said, fine, let him go?

9 A. That's not what I said.

10 Q. So tell me what happened.

11 A. I do not know from that point on. Like I  
12 said, I was making sure that my boss had  
13 information.

14 Q. What other information did you share with  
15 your boss? Did you share anything about concerns  
16 about Ms. Mims' ability to take care of Edward?

17 A. No. I did not know Ms. Mims at the time.

18 Q. Did you share with the director any of the  
19 issues about the immediate jeopardy at Kensington?

20 A. No.

21 Q. Did Dorothy Goodwin share with you  
22 information about the immediate jeopardy?

23 A. No.

24 Q. Would that be a relevant factor that you  
25 think that the director should know if he's

1 deciding whether or not to let someone leave a  
2 facility like that?

3 A. I think there are a lot of different  
4 pieces of data that are relevant when looking at  
5 any person's situation, but in this case, as I  
6 understood it, it was a legal matter, and so I did  
7 not have any --

8 Q. So you didn't have an opinion about  
9 whether he should go home or not?

10 A. I didn't know anything about his situation  
11 in order to have an opinion about that.

12 Q. Do you know what decision the state  
13 director made about to release him on that day from  
14 involuntary admission?

15 A. I'm unfamiliar with the term involuntary  
16 admission.

17 Q. What do you call it when someone's  
18 committed?

19 A. I called it the judicial admission  
20 process.

21 Q. The judicial admission. Do you know  
22 whether your boss -- what was his decision about  
23 whether or not to release Edward Mims?

24 A. I do not know that.

25 Q. You don't know what he decided?

1 A. No, I don't.

2 Q. When did you find out that he decided not  
3 to release him from judicial admission?

4 A. I don't have that recollection at all.  
5 What I remember is that, at some point in time,  
6 Edward Mims did go home with his mother, and that's  
7 when I became involved.

8 Q. Tell me about the hearing you attended. I  
9 believe it was on, you said, a Sunday afternoon?

10 A. Yes.

11 Q. Have you ever been at a hearing on a  
12 Sunday in a Probate Court before?

13 A. I haven't been -- up until that time I had  
14 not been to a Probate Court hearing.

15 Q. So this was unusual for you to get  
16 involved in Probate Court matters?

17 A. It was.

18 Q. Who asked you to attend?

19 A. I'm not sure.

20 Q. Did you discuss your attendance with  
21 Dr. Butkus?

22 A. Yes.

23 Q. And what did he say?

24 A. The reason we were having the hearing was  
25 so that the judge could make a decision about the

1 legal matter, and the outcome of that hearing was  
2 that she was going to be able to take him home for  
3 a weekend visit or maybe that day, but return him  
4 back to the facility that night. I believe that  
5 was it.

6 And so we were discussing -- we were  
7 discussing that particular aspect of the case with  
8 the judge.

9 Q. And if this was a strictly legal matter,  
10 why was it necessary for you to be there on a  
11 Sunday afternoon?

12 A. They were -- part of the discussion was to  
13 work through the conflict, as I understood it,  
14 between the -- I think it was a temporary  
15 guardianship order and a judicial admission order  
16 and what options we had at that point to provide  
17 services, and I think that's why I got involved.

18 Q. So was one of the issues getting the  
19 services in place that Edward would need if he went  
20 home?

21 A. No, not per se. In fact, it was more  
22 along -- the outcome of that hearing was that  
23 Ms. Mims would return her son to the facility, and  
24 I believe it was on a -- I believe it was on a  
25 Sunday night, and that DDSN did not -- and that if

1 she did not, that DDSN would not call the local law  
2 enforcement.

3 That was the -- that was the agreement  
4 that we made is that she could keep him at home and  
5 that if she did not return him to the facility that  
6 the Department would not call local law  
7 enforcement.

8 Q. And you were involved in those  
9 negotiations?

10 A. I was in the discussions with the judge.

11 Q. But, I mean, I'm assuming that you weren't  
12 there for window dressing, there was a reason as  
13 deputy state director for you to be there?

14 A. Again, it centered around making sure that  
15 whatever decision the judge made, that I understood  
16 what it was, and if it had something to do with  
17 services that fell under my jurisdiction, that I  
18 would be able to be of help.

19 Q. Did the judge at that hearing discuss the  
20 provision of services to Edward Mims at home?

21 A. What I recall being discussed was a couple  
22 friend of Ms. Mims -- I remember it being a man and  
23 a woman -- that would be available to help  
24 Ms. Mims.

25 Edward was in an ICF/MR, and that there

1 would be some need for her to get some help, and  
2 that there was discussion around some friends of  
3 hers, I believe, or an acquaintance of yours -- I  
4 can't pinpoint that -- that they would be available  
5 to help her.

6 Q. So there was never any discussion about  
7 waiver services being provided to Edward to provide  
8 supports at home?

9 A. I'm not certain about that. I don't  
10 remember it happening at that meeting. I remember  
11 it happening later when it became apparent to me  
12 through phone calls that the agency was getting  
13 from you there may not be appropriate services in  
14 place for Ms. Mims to take care of her son at home.

15 Q. So as a professional with 20 years' of  
16 experience at that hearing, it was not apparent to  
17 you that Edward was going to need MR/RD waiver  
18 services to provide the supports he needed to  
19 remain safe in the home?

20 A. Correct. My understanding was, again,  
21 from the judge, that he was to be returned to the  
22 facility and that was an ICF/MR.

23 Q. But there was no request for services  
24 under the MR/RD waiver program that you recall?

25 A. Not at that hearing. I do not recall

1 that. Again, I recall it happening at a later  
2 time.

3 Q. Tell me what you recall about the request  
4 Ms. Mims made for MR/RD waiver services.

5 A. What I recall happening is that whatever  
6 couple was going to help her take care of Edward  
7 should he not be returned to the facility, that  
8 that fell through.

9 I also remember getting a phone call  
10 from -- I'm trying to think who it was. I got a  
11 phone call from Michelle Ford who had gotten a  
12 phone call from Mentor that said they had gotten a  
13 call from you about requesting residential services  
14 for Edward.

15 I also remember sending out with your  
16 permission two people to the Mims home so that we  
17 could get an idea about his health and safety and  
18 welfare being in that home without any support  
19 having been put in place with the understanding  
20 that this couple was to help Ms. Mims should he not  
21 be returned to the facility.

22 And when we started getting calls, I think  
23 the call was also made to the regional director at  
24 that time for admission into Midlands Center, the  
25 call from Mentor, and that's when I began to be

1 concerned about Ms. Mims' ability to take care of  
2 Edward at home, that somehow the promised supports  
3 of this couple fell through.

4 And so with your permission, I asked our  
5 nurse and a Mentor staff person to go do an  
6 assessment. One, the nurse was to look at health  
7 and safety, see how he was doing, see if he was in  
8 immediate jeopardy, and from Mentor's standpoint,  
9 to see if he would be a good candidate for one of  
10 their vacancies in CTH II.

11 Q. So it's your testimony that Ms. Mims did  
12 not request or through anyone request MR/RD waiver  
13 services at that hearing at the Probate Court on  
14 that Sunday?

15 A. I just don't remember it coming up then.

16 Q. So you sent -- were you responsible for  
17 sending the people out to do the assessment?

18 A. Yes.

19 Q. And what did the people that did the  
20 assessment come back and tell you?

21 A. All right. I did get a call that  
22 afternoon from the nurse -- it was Vivienne Koon --  
23 and she had indicated that she was pleasantly  
24 surprised by the home environment being in good  
25 shape, that Ms. Mims appeared to be a very caring

1 and loving mother, that Edward seemed to be getting  
2 the kind of care that he needed, and he did not  
3 appear to be in any sort of immediate jeopardy.

4 Q. And who was the Mentor person that you  
5 sent out?

6 A. I don't recollect her name.

7 Q. And did that person have any opinion?

8 A. That person was there to do an assessment  
9 to determine his -- to see if he would be a good  
10 fit in one of the homes that they operated.

11 Q. And what did that person determine?

12 A. That Edward would not be a good fit for  
13 the home in which there was a vacancy at that time.

14 Q. And why wouldn't he be a good fit?

15 A. I believe because the men in this home  
16 were higher functioning than Edward was. We use  
17 that word to talk about, you know, their ability to  
18 carry out activities of daily living and things  
19 like that.

20 Q. Tell me about Edward's functional skills.

21 A. From what I read, he could do certain  
22 things by himself or with prompting.

23 Q. Such as?

24 A. He responded very well to his mother, is  
25 what I recollect. He needed to be reminded, I

1 think, to use the rest room. He might have needed  
2 some assistance with bathing, maybe picking out his  
3 clothes, things like that.

4 Q. But other than that, he was pretty well  
5 independent?

6 A. I wouldn't use that word.

7 Q. Tell me what his -- what kind of supports  
8 did he need for him to stay at home?

9 A. That I did not know at the time that the  
10 Mentor person and the nurse were there.

11 Q. So you didn't ask this nurse to determine  
12 what supports he needed in the home?

13 A. Well, that comes from the service  
14 coordinator and from the people who know Edward and  
15 sitting down and determining what the need is and  
16 the best way to address that need.

17 Q. I believe you showed back up at the  
18 Probate Court, didn't you?

19 A. Yes.

20 Q. Tell me about that.

21 A. I was asked -- I was -- I guess I was a  
22 witness, and I was asked questions in particular by  
23 the judge about how I felt about Ms. Mims' ability  
24 to take care of her son.

25 Q. And I believe at that hearing you told the

1 judge that Edward did not qualify for adult day  
2 health services, did you not?

3 A. Actually, I didn't do it at the hearing --  
4 I'm not sure exactly when that took place. I mean,  
5 there were all kinds of questions related -- that  
6 the judge asked me about my perception about  
7 Ms. Mims' ability to take care of her son.

8 Q. And what was your perception?

9 A. That she -- that the same things that the  
10 nurse had communicated to me, that she was a very  
11 caring and loving parent and that she wanted to  
12 take care of her son, and -- essentially that.

13 Q. Did you not convey at any point in time to  
14 the probate judge a decision that your agency had  
15 made that he did not qualify for adult day health  
16 services?

17 A. Yeah. I do -- what happened is that at  
18 some point during the hearing, there was -- I don't  
19 know if it was that one or if it was another one,  
20 but that we had determined that, you know -- that  
21 Ms. Mims, you know, wanted to keep him at home,  
22 that we recognized that she would need some help in  
23 taking care of him at home.

24 And I believe that somehow in that hearing  
25 that it came up that she would want to get

1 something called adult day health care, and so the  
2 judge asked me if I knew if that was going to be  
3 approved or not, and I said no, I didn't because  
4 I'm not involved in that decision.

5 And so she says, can you find out if  
6 that's going to be approved or not? And in  
7 following the policy that we have related to adult  
8 day health care, the result of the -- based on  
9 what's stated in the waiver, that he could benefit  
10 from something called day habilitation, and  
11 therefore, the way that the waiver was written is  
12 that adult day health care could not be provided.

13 So in other words, what we wanted to make  
14 sure is that somebody that was capable of learning  
15 new tasks got that training and that they didn't  
16 regress and have somebody do things for them to the  
17 point that they could no longer do them.

18 Q. The truth is that the Babcock Center at  
19 the time was the sole provider of those day hab  
20 services, is it not?

21 A. At that time?

22 Q. At that time.

23 A. I think that they were the only provider  
24 at that time for day services, correct, day  
25 habilitation.

1 Q. So your agency's decision was the only  
2 services you would offer him would be for him to  
3 attend the Babcock Center work activity center. Is  
4 that not correct?

5 A. No, I didn't say that. No. There were  
6 actually a lot of different services that I  
7 believed he would benefit from.

8 Q. And what were those?

9 A. They were personal care services and  
10 respite services, and I thought that he could  
11 benefit from some sort of skilled development  
12 training, yes.

13 Q. And in that skilled development training,  
14 he would have to go back to the Babcock Center  
15 workshop or day program where he'd been abused,  
16 wouldn't he?

17 A. That's why those other services came into  
18 the picture. But at one point in time, I was asked  
19 to proceed in looking at day activity, and I had  
20 called Babcock, I believe per your request, to see  
21 if they could take Edward into their day program.

22 Q. Are you testifying that I asked you to put  
23 him back in the day program at the Babcock Center?

24 A. I am -- I'm indicating that I was asked to  
25 look into several different approaches to

1 supporting Edward, and that at one point, that the  
2 family was in desperate need of services and that  
3 you had asked me two things that I recall. One is  
4 could he go to Midlands Center, and two, would  
5 Babcock take him into their day program.

6 And I called Babcock -- I believe it was  
7 Dorothy Goodwin -- and got yes, we can take him  
8 immediately. It was turned down by you eventually,  
9 but I believe that's why I --

10 Q. So you're saying the request came from me  
11 and then I said no, we do not want him to go back  
12 to the Babcock Center?

13 A. I don't remember you saying no, we don't  
14 want him to go back to the Babcock Center, but I  
15 remember you saying that you're turning down that  
16 offer. Yes, I do remember that.

17 Q. So who was responsible for making the  
18 decision that the requested adult day health  
19 services would be allowed?

20 A. I think the judge.

21 Q. The judge decides whether or not --

22 A. Actually, I don't know that I can even  
23 answer that. Somebody -- maybe it was the Medicaid  
24 agency through the fair hearing. I cannot recall.  
25 Somebody made the decision beyond DDSN. That's the

1 fairest way I can respond to that.

2 Q. So you do not recall telling the judge in  
3 the hearing that your agency had determined that he  
4 did not qualify for adult day nursing services?

5 A. Right. I was repeating to the judge  
6 what -- the outcome of a staff member's review of  
7 the situation. In other words, following the  
8 Medicaid policy, that if somebody can benefit from  
9 day habilitation, that we cannot offer adult day  
10 health care to them for the reasons I've mentioned.

11 Q. So you told the judge --

12 MR. WOODINGTON: Just a question. Are you  
13 talking not about the Sunday hearing, but this is  
14 another hearing, right?

15 MS. HARRISON: This is another hearing.

16 MR. STEGMAIER: For my edification, can  
17 you give me an approximate date when that second  
18 hearing would have occurred?

19 THE WITNESS: March 2005.

20 MS. HARRISON: It would be in the -- I  
21 would expect it would be in June 2005 because the  
22 incident occurred in May, and this was soon  
23 thereafter.

24 MR. STEGMAIER: Okay. Thank you.

25 BY MS. HARRISON:

1 Q. So you talked to a staff member at your  
2 agency who said no, he won't qualify for adult day  
3 health because he could go to the Babcock Center  
4 workshop instead?

5 A. No, she didn't say that. She said because  
6 the way that the policy was written into the waiver  
7 document was that it violated what we said to the  
8 feds that we would do in those situations.

9 Q. Who wrote that policy?

10 A. It's a joint effort between Health and  
11 Human Services and DDSN.

12 Q. Who at your agency is responsible for that  
13 policy?

14 A. Well, it's a --

15 Q. Are you involved?

16 A. Yes, absolutely.

17 Q. So what staff member was it that you  
18 called who told you he would not qualify for adult  
19 day health services?

20 A. It was Janet Priest.

21 Q. Now, tell me what Janet Priest's --

22 A. She's the director for the division of  
23 mental retardation, and so --

24 Q. And who does she report to?

25 A. To me.

1 right to appeal that decision as we always do so  
2 that they have, you know, a right to a fair  
3 hearing.

4 Q. The hearing officer determined that you  
5 were wrong, didn't she, Dr. Lacy? The hearing  
6 officer determined that Edward was entitled to  
7 those adult day health services, did she not?

8 A. I can't remember if it was a he or she,  
9 but I remember the outcome being reversed.

10 Q. So you were wrong in what you told the  
11 judge, weren't you?

12 A. No.

13 Q. Was Edward eligible for those services  
14 based on what the hearing officer determined?

15 A. Based on what the hearing officer  
16 determined.

17 Q. But you told the judge that Edward did not  
18 meet eligibility criteria are?

19 A. I told the judge what I was -- exactly,  
20 that what the evidence was, that the evidence did  
21 not meet the criteria for him to be eligible to  
22 receive adult day health care.

23 Q. And --

24 MR. WOODINGTON: Was this hearing on the  
25 record?

1 MR. STEGMAIER: I was about to ask that.

2 MR. WOODINGTON: Was there a transcript of  
3 it?

4 MS. HARRISON: There was no transcript.  
5 It might have been taped, but that was 2005.

6 MR. STEGMAIER: We're talking about  
7 Probate Court, right?

8 MR. WOODINGTON: Yeah.

9 MR. STEGMAIER: So there's no transcript?

10 MS. HARRISON: There's no transcript. I  
11 don't know whether the tape recorder was going and  
12 whether they have that tape left. I would be very  
13 surprised.

14 BY MS. HARRISON:

15 Q. So then what happened?

16 A. What happened when?

17 Q. After you told the judge that -- did the  
18 judge appoint Edward's mother as his guardian?

19 A. Yeah, I believe that -- I believe she did.

20 Q. Did you have any discussions with  
21 Dr. Butkus about whether or not the judge who  
22 judicially admitted him could release him or not?

23 A. No.

24 Q. Are you aware that your agency took the  
25 position that the judge who judicially admitted him

1 would not -- did not have the authority to release  
2 him from DDSN custody?

3 A. No.

4 Q. So you never had any discussions about  
5 that?

6 A. No.

7 Q. So you don't know whether that decision  
8 was made -- you don't know who advised Dr. Butkus  
9 or who he discussed that decision with?

10 A. No, I don't.

11 Q. Did you have any discussions with anyone  
12 other than your legal counsel about Edward's  
13 sister?

14 A. Not to my recollection.

15 Q. What do you know about Edward's sister?

16 A. I was informed -- well, this is in  
17 discussions with Jim Hill.

18 Q. I'm not asking about the discussions, I'm  
19 asking about what you knew about Edward's sister.

20 A. I only knew about Edward's sister by what  
21 was shared with me by Jim Hill.

22 Q. Were you in the Probate Court the day his  
23 sister appeared?

24 A. I believe she was in there. Yes, I think  
25 she was.

1 Q. So let me make sure I understand this.  
2 You're in the courtroom, and you call your employee  
3 who reports to you, Janet Priest, and she tells you  
4 that, based on a policy you've been involved in, he  
5 doesn't qualify for adult day health?

6 A. No. This is a -- I didn't have the  
7 request in front of me. I don't review those at my  
8 level. That is handled by Janet and her staff.

9 What I was asked to do by the judge is to  
10 find out what the outcome of that review was and to  
11 come back to court and tell the judge what the  
12 outcome of that decision was.

13 Q. On that same day that you made that call  
14 from the Probate Court, you immediately came back  
15 into the courtroom and you told the judge that your  
16 agency had determined that Edward could not  
17 receive -- that you would not fund adult day health  
18 services, did you not?

19 A. That's not the way that I've said it.  
20 What I said was that he did not meet the criteria  
21 based on how the waiver was submitted and approved  
22 to CMS, and we were simply following that criteria.

23 Q. That you had been involved in  
24 establishing?

25 A. And that we would give the mother the

1 Q. And who was she represented by?

2 A. I do not know.

3 Q. Was she sitting up at counsel table, at  
4 one of the tables in the courtroom?

5 A. Not to my recollection.

6 Q. So you don't remember her sitting beside  
7 Jim Hill at counsel table?

8 A. No, I don't.

9 Q. Why was she there?

10 A. She had an interest in what happened with  
11 her brother.

12 Q. And prior to that hearing, how long had it  
13 been since she had seen her brother?

14 A. I do not know.

15 Q. Do you remember there being discussions  
16 about the fact that -- the testimony that she  
17 hadn't seen him in 18 months?

18 A. No.

19 Q. She lived in town, didn't she?

20 A. I do not know.

21 Q. So did you have any discussions with  
22 Ms. Goodwin about the sister?

23 A. No.

24 Q. So the only person you -- you didn't  
25 discuss the sister with anyone other than your

1 legal counsel?

2 A. To my knowledge, yes.

3 Q. Did you have an opinion about whether the  
4 sister should be appointed as the guardian?

5 A. No.

6 Q. So how was it that Edward Mims came to be  
7 released from his involuntary confinement at  
8 Babcock Center?

9 A. I believe the judge at the end of that  
10 hearing gave the mother -- moved from temporary  
11 guardianship to legal guardianship. I don't know  
12 the difference. One's time limited, I suppose.

13 Q. Now, you say that you determined that  
14 Edward could benefit from respite services?

15 A. Well, that Ms. Mims needs respite services  
16 in order to work, that she had been bringing Edward  
17 to her job I think as a domestic worker and that  
18 that was interfering with her being able to keep  
19 her employment.

20 Q. And what -- how would Ms. Mims go about  
21 finding a respite provider?

22 A. Well, there's a -- mental retardation  
23 waiver is, you know -- each provider handles that a  
24 bit differently. Some families like to pick their  
25 own person and have them go through the training

1 that's required in order to become a respite  
2 caregiver, and then some families don't want to go  
3 through that. So in other cases, the DSN board or  
4 the provider would assist with that process in  
5 helping to find a qualified respite caregiver.

6 Q. Now, the Babcock Center -- DDSN was paying  
7 the Babcock Center Edward's band payment, was it  
8 not?

9 A. I do not know that.

10 Q. You don't know where the band payments go  
11 that are made from DDSN for waiver payments?

12 A. Well, I am kind of confused about your  
13 timing here because, at some point, Edward did get  
14 enrolled in the Medicaid waiver, and so if you're  
15 talking about once he got into the waiver and that  
16 whole process, then if at that point in 2005 he was  
17 getting waiver services, then I would assume that  
18 the Babcock board would be getting the band  
19 payment, although we've had band payments go to the  
20 Rich/Lex board as well. And so I'm really not  
21 certain.

22 Q. Were you aware of the multiple requests  
23 Ms. Mims made to have his band payments moved --

24 A. No.

25 Q. -- from the Babcock Center?

1 A. No.

2 Q. Do you know of anyone in 2005 and 2006  
3 whose band payments were going to Rich/Lex?

4 A. I don't deal with that side of, you  
5 know -- of DDSN, so I do not know.

6 Q. Well, if the band payment was going to the  
7 Babcock Center, they would get to keep that money  
8 if she wasn't able to find a respite provider,  
9 wouldn't they?

10 A. Not that -- it's not that -- it's not that  
11 direct of a response.

12 Q. What is -- do you know what band Edward  
13 was?

14 A. I believe he was a band E at the time.

15 Q. A band E when he went home?

16 A. No, that's a residential band. So that  
17 would have --

18 Q. How much was he getting --

19 MR. WOODINGTON: Hold on. She needs to  
20 finish the answer. Go ahead if you can remember  
21 where you were going.

22 BY MS. HARRISON:

23 Q. He was a band E.

24 A. Yes, when he was in the ICF/MR facility.

25 Q. And how much was a band E approximately

1 paying at the time?

2 A. I would guess about \$60,000. I don't  
3 know.

4 Q. And Edward was an outlier, wasn't he?

5 A. No. That came up during the course of  
6 this whole process with Edward, and my recollection  
7 is that for a short period of time, maybe in the  
8 previous two years, that he had gotten some outlier  
9 funding, but that that happened for a couple years.  
10 The last two years I believe he was in the ICF.

11 Q. You received a letter, did you not, from  
12 Representative Harrison asking about Edward's  
13 outlier funding, did you not?

14 A. I do remember -- I'm not sure I signed  
15 that letter. I remember it was a letter from  
16 Representative Harrison asking about that and that  
17 there was a response back, and that's how I learned  
18 about the -- that the band that he was in and the  
19 outlier.

20 Q. And Representative Harrison initially was  
21 told that Edward was not receiving outlier funding,  
22 wasn't he?

23 A. No, I don't -- that's not my recollection.  
24 My recollection is that we informed Representative  
25 Harrison about that small period of time that he

1 was getting it.

2 But like I said, in the last couple of  
3 years, he had not needed that, that his needs were  
4 being met without having the outlier payment.

5 Q. Now, so you're denying that Representative  
6 Harrison initially was sent a letter with -- that  
7 did not disclose that Edward was getting outlier  
8 payments?

9 A. I can't answer that. I don't know what he  
10 got. I know I read a draft of a letter that was  
11 brought into the --

12 Q. So Edward's outlier funds -- Edward at one  
13 time requested that his residential services be  
14 moved into a home with William Cothran and Joe  
15 Murray, didn't he?

16 A. I don't remember that.

17 Q. Do you remember why Representative  
18 Harrison was asking about the outlier funds?

19 A. No, I don't.

20 Q. Edward's outlier funds were terminated  
21 when he asked to go to -- if we can go off the  
22 record just a minute.

23 (A recess transpired.)

24 BY MS. HARRISON:

25 Q. Tell me what you recollect about the

1 request from Representative Harrison about the  
2 outlier funds.

3 A. I believe he was requesting information on  
4 a couple of consumers, and I believe it was about  
5 their band payment.

6 Q. And you don't recollect Representative  
7 Harrison being told that -- about the band payment  
8 without the outlier funds?

9 MR. STEGMAIER: Has the letter been  
10 located?

11 MS. HARRISON: Nancy's making copies.

12 MR. WOODINGTON: Can we just show her?

13 MS. HARRISON: I want to ask her before  
14 she sees the letter what she recollects about it.

15 BY MS. HARRISON:

16 Q. Do you recollect conversations?

17 A. No.

18 Q. But you do recollect conversations at some  
19 point about responding to that inquiry?

20 A. Yes.

21 Q. And what do you recollect about the  
22 response?

23 A. Just that a response went out. Again, I'm  
24 not responsible for band or outliers on things like  
25 that. So --

1 Q. So who would have been responsible when  
2 Edward's band payment, his outlier funds, were cut  
3 when he asked to move to another provider? Who  
4 would have made that decision?

5 A. When he moved to another provider?

6 Q. Let's back up a little bit. Let me be  
7 clear.

8 A. Okay.

9 Q. Edward was receiving outlier funds before  
10 he asked to move from the Babcock Center, was he  
11 not? At one time he was receiving outlier funds,  
12 was he not?

13 A. Yes. I recall that, yes.

14 Q. Do you know what precipitated the  
15 termination of those outlier funds?

16 A. What I recall is that Babcock Center did  
17 not need those outlier funds for him and hadn't  
18 needed those funds from him for a couple of years.

19 Q. Were they terminated before or after he  
20 asked to move to a different provider?

21 A. No idea.

22 Q. Who would have made the decision -- how  
23 would they have just ended? What was that process?

24 A. Part of the process that is in place now  
25 that I'm unsure about the process that was in place

1 then is that the outlier funding gets reviewed  
2 every year now by the Department, and that is  
3 handled by the district staff. I believe that  
4 prior to that time that the Department didn't have  
5 any formal processes about how those got reviewed.

6 Q. So if the Babcock Center quit asking for  
7 them, they'd be dropped. Is that correct?

8 A. If the Babcock Center did not have  
9 justification for continuing to receive outlier  
10 funding on a person or a home's behalf, then we  
11 shouldn't continue to pay for them.

12 Q. Y'all -- in that limited scope audit,  
13 y'all -- I say y'all -- DDSN found some problems in  
14 how the outlier payments were being made, didn't  
15 you?

16 A. I believe the limited scope review of the  
17 Babcock Center was -- gosh, I thought we had  
18 determined that was a report prepared by the Health  
19 and Human Service auditors.

20 Q. I'm sorry, you're correct. I stand  
21 corrected.

22 So HHS determined that there was a problem  
23 in how DDSN was awarding outlier funds. Is that  
24 correct?

25 A. I believe that's correct, yes.

1 Q. And --

2 MR. STEGMAIER: I'm sorry to interrupt.  
3 What was the year? Remind me of that, the year of  
4 the limited scope audit.

5 MS. HARRISON: The limited scope audit  
6 came out in 2003. And I can show it to you if you  
7 want to look at it.

8 MR. STEGMAIER: To your recollection, what  
9 was the survey years of the audit? If it came out  
10 in '03, what years of data were they looking at?

11 MS. HARRISON: I believe -- well, it came  
12 out in October '03. Background and scope. Let's  
13 see.

14 MR. STEGMAIER: If you want to go off the  
15 record, we can do that. I'm just interested to  
16 know.

17 MS. HARRISON: It was requested by CMS in  
18 December '02, and it was issued in October '03.

19 MR. STEGMAIER: It doesn't outline at  
20 least explicitly for you what years of data they  
21 were looking at?

22 MS. HARRISON: Do you want to hand that to  
23 him?

24 MR. STEGMAIER: I'll just look at it. I  
25 don't mean to interrupt you.

1 BY MS. HARRISON:

2 Q. So at some point, Edward's outlier funds  
3 were terminated and he received just the E band  
4 funding?

5 A. I do not know that.

6 Q. It appears -- let me get back to this  
7 letter. It appears that the initial response to  
8 Representative Harrison came from Lois Park Mole?

9 MR. WOODINGTON: I'd like to go off the  
10 record a second and take a minute to review this.

11 MR. STEGMAIER: Let's mark it.

12 (PLF. EXH. 18, 4/26/04 Letter, was marked  
13 for identification.)

14 (Off-the-record discussion.)

15 BY MS. HARRISON:

16 Q. I believe you testified that you were  
17 involved in the consultations in preparing this  
18 letter, Dr. Lacy?

19 A. I didn't say in preparing the letter. I  
20 remember seeing the letter.

21 Q. So it went by you before it was sent out.

22 Who does --

23 A. I didn't say before it was sent out.

24 Q. Who does Lois Park Mole report to?

25 A. Bill Barfield.

1 Q. And what is her role?

2 A. She's like a director of government and  
3 community relations.

4 Q. So there was some discussion at DDSN about  
5 this inquiry that came in from Representative  
6 Harrison, and then this letter went out?

7 A. Okay.

8 Q. Is that correct?

9 A. Will you repeat the question?

10 Q. There was an inquiry from Representative  
11 Harrison and you were involved in discussions, and  
12 then this letter went out. Is that correct?

13 A. I was not involved in discussions before  
14 the letter went out. I recall reading the letter  
15 after it went out.

16 Q. And I believe -- do I have the attachments  
17 that have the bands, and it says page 6 at the  
18 bottom? If I don't, we need them.

19 A. Yeah.

20 Q. And what was the E band rate?

21 A. 65,567.

22 Q. So your agency did not disclose to  
23 Representative Harrison in this letter that  
24 Mr. Murray or Mr. Mims had outlier funding, did  
25 you?

1 A. No. It does say that there were outlier  
2 funds spent on Mr. Mims.

3 Q. Where is that?

4 A. Second page of the letter.

5 Q. So there are outlier funds spent in 2002.  
6 Okay. Do you know whether those outlier funds  
7 continued in 2003 and 2004?

8 A. What it says right there is that Mr. Mims  
9 subsequently moved, was assessed for 30 days, and  
10 determined one-on-one staffing was no longer needed  
11 and was discontinued.

12 Q. So it's your testimony that the outlier  
13 funding was discontinued. Is that correct?

14 A. I'm saying that the service was no longer  
15 needed and was discontinued. I don't know what  
16 happened to the outlier funding.

17 Q. So you don't know where it went?

18 A. No, I don't.

19 Q. This is an e-mail from you to Deirdra  
20 Singleton about that same time, is it not? And  
21 let's mark this please as whatever the next exhibit  
22 is.

23 (PLF. EXH. 19, 6/29/04 E-Mail, was marked  
24 for identification.)

25 THE WITNESS: The date on this e-mail to

1 Deirdra and Mr. Hill is June 29, 2004, and the  
2 letter to Representative Harrison is dated  
3 April 26, 2004.

4 BY MS. HARRISON:

5 Q. But this was subsequent to those  
6 discussions about whether these individuals had  
7 outlier funding or not, was it not?

8 A. This was subsequent to, yes.

9 Q. And this is a letter from you to Deirdra  
10 Singleton. Is that correct?

11 A. That's correct.

12 Q. And you tell Ms. Singleton that Babcock  
13 was not spending outlier funding in the past two  
14 years for these gentlemen. Is that correct?

15 A. That's correct. Now I remember where I  
16 got that two years from, yes.

17 Q. And at this point, all three of these  
18 gentlemen are asking to move out. Is that correct?

19 A. Let me see. Yes, that's correct.

20 Q. And you are sharing with -- now, who is  
21 Ms. Singleton?

22 A. She is the general counsel at Health and  
23 Human Services.

24 Q. And you are sharing with her information  
25 about the band payments and the outlier payments,

1 and you were sharing with her somehow you had  
2 become involved in whether or not there was abuse  
3 at this facility, were you not?

4 A. Say that again, please.

5 Q. The third paragraph in your e-mail.

6 A. Okay. I haven't gotten that far yet.

7 Okay. Will you ask your question again?

8 Q. So HHS was asking you -- apparently there  
9 was an allegation of abuse at that facility. Are  
10 you aware that Mr. Cothran and Mr. Mims lived at  
11 the same facility?

12 A. I don't remember that.

13 Q. But you were somehow involved in reviewing  
14 whether there was abuse which occurred at  
15 Mr. Cothran's facility. Is that correct?

16 A. I was reporting to Ms. Singleton --  
17 evidently there was a letter from you that is not  
18 attached here that I would need to see that  
19 determined why I responded about the act of abuse,  
20 as I put it in this e-mail.

21 Q. So you were involved somehow in looking at  
22 whether there was abuse going on at that facility?

23 A. I was involved in looking at this  
24 particular question that must have surfaced from a  
25 letter that you sent to Deirdra Singleton.

1 Q. Was that unusual for you to get involved  
2 in reviewing these incidents that may have involved  
3 abuse or neglect?

4 A. Yeah, I don't get involved in the  
5 day-to-day reports of allegations of abuse. I have  
6 staff that do that. When there are certain  
7 indicators present, then they do inform me.

8 And in this case, I'm assuming that  
9 because Ms. Singleton asked Mr. Hill and me to look  
10 at a letter from you, that I looked into it and  
11 made the following statement about Babcock  
12 completing the appropriate paperwork and following  
13 Department policy.

14 Q. And I believe not too long after this  
15 e-mail you attended a meeting at HHS to discuss  
16 moving these individuals out, and there were about  
17 20 people at that hearing. Do you recall that?

18 A. No.

19 Q. Do you remember a meeting at HHS, I  
20 believe Mr. Davidson was there, Harriet Johnson  
21 participated by telephone, and Representative  
22 Harrison was there?

23 A. And we are talking about these three men?

24 Q. And we were talking about the house that  
25 these three men wanted to move into.

1 A. Gosh, I don't remember that.

2 Q. So you don't recall whether you were -- do  
3 you remember being at a big meeting?

4 A. I do, I just don't remember who was there,  
5 why we were there, no.

6 Q. Why do you think you were there?

7 A. I don't know. I mean, I've been over  
8 there so many times. I honestly cannot recall.

9 Q. So this wasn't an unusual meeting with 20  
10 people and a representative and Harriet Johnson  
11 participating by telephone?

12 A. I really don't recollect it. No, I don't.

13 Q. Do you recollect that Mr. Cothran was dead  
14 several months later?

15 A. No. I knew that he had passed away.

16 Q. Do you know how he passed away?

17 A. I believe he was eating and aspirated on  
18 already digested food.

19 Q. Was the food pureed?

20 A. That I don't recall.

21 Q. Was there any investigation by CMS after  
22 his death?

23 A. Specifically related to his death?

24 Q. And the facility.

25 A. I don't recollect that.

1 Q. So you're not familiar with the finding of  
2 immediate jeopardy at Kensington after this meeting  
3 you attended to get Mr. Cothran and Mr. Mims out of  
4 the Babcock Center?

5 A. I remember there being an immediate  
6 jeopardy at Kensington, correct.

7 Q. And what do you remember about that?

8 A. I don't remember what caused it. I do  
9 remember that there was a response to it that  
10 satisfied the party, and therefore those services  
11 continued at Kensington.

12 Q. Do you remember if there was more than one  
13 finding of immediate jeopardy at Kensington during  
14 that time?

15 A. I do not.

16 Q. At what point do you get involved in any  
17 investigations of abuse and neglect?

18 A. My responsibility is to provide oversight  
19 to the process and to make sure that policy is  
20 being followed, and I also use the data to evaluate  
21 providers' performance in terms of allegations made  
22 and substantiated and unsubstantiated cases.

23 Q. So it's your job to review the data to see  
24 if there's any trends?

25 A. Yes.

1 Q. And then what is your responsibility if it  
2 appears that there's a trend?

3 A. Well, it depends on what the -- again, you  
4 know, you've got to dig deeper into the data to get  
5 a better idea about why a certain provider might be  
6 at the statewide average or below and above.

7 It doesn't necessarily tell you anything.  
8 It's a red flag that helps you dig a little bit  
9 deeper into the data. So in some cases, there may  
10 be a small provider that has had one case of an  
11 alleged abuse and that can throw them over the  
12 statewide average. So you need to dig a little bit  
13 deeper to see what's going on.

14 Depending on what you find out there, you  
15 can take it to a next step and look at some other  
16 performance indicators.

17 Q. What do you remember about the audit  
18 conducted or the investigation, study, whatever you  
19 want to call it, conducted by Carolina Medical  
20 Review of Babcock Center ICF/MR facilities?

21 A. What do I recollect about it?

22 Q. Uh-huh.

23 A. I recollect that Carolina Medical Review  
24 was a current quality improvement organization with  
25 Health and Human Services and that they were asked

1 by Health and Human Services to review against the  
2 regulations, the CMS regulations, how certain  
3 ICF/MRs were performing against those standards.

4 Q. And what did Carolina Medical Review  
5 determine about Babcock Center ICF/MRs?

6 A. They found that there were some problems  
7 with certain standards not being met, but this was  
8 the first time to my knowledge that Carolina  
9 Medical Review had been involved in applying CMS  
10 regulations in an ICF/MR, and that there were  
11 inconsistent findings with what the Health and  
12 Environmental Control Agency found in those same  
13 facilities.

14 Q. But did not Robbie Kerr send a letter out  
15 to your boss, Stan Butkus, and Earl Hunter who was  
16 head of DHEC and CMS and Dr. Johnson informing them  
17 that this review showed that Babcock ICF/MRs were  
18 not in compliance with Medicaid standards?

19 A. I'm not aware of the letter that you're  
20 referring to.

21 Q. So you don't know whether the Carolina  
22 Medical Review came to a conclusion that the  
23 Babcock Center ICF/MRs were not in compliance with  
24 Medicaid standards?

25 A. No. It would not surprise me because

1 rarely do you find any facility that is completely  
2 complying with every single standard and regulation  
3 that exists.

4 Q. Now, your agency found significant  
5 problems at the Babcock Center in the audit  
6 conducted in 2001, did it not?

7 A. I don't know about that audit. I know  
8 about some things following that audit.

9 Q. And Steve Jeffcoat would know about that,  
10 wouldn't he?

11 A. About the findings in 2001?

12 Q. Right.

13 A. I would assume so.

14 Q. And then in 2003, there were significant  
15 health and safety concerns identified in the  
16 limited scope audit by HHS, were there not, of the  
17 Babcock Center specifically?

18 A. Yes, there were.

19 Q. And then Carolina Medical Review  
20 identified these problems, and it's your testimony  
21 they just didn't know what they were looking at.  
22 Is that correct?

23 A. I didn't say that.

24 Q. But you questioned their findings?

25 A. It was obvious from some of the findings

1 that they made that they had not had experience in  
2 applying the regulations, that's correct.

3 Q. And then in 2006, are you familiar with  
4 the audit conducted by HHS which found serious  
5 concerns about health and safety of consumers?

6 A. What I'm aware of is that they used data  
7 that DDSN had collected and used some of that  
8 information in their report.

9 Q. Did you read the report?

10 A. Yes.

11 Q. And did it find significant concerns about  
12 health and safety at the Babcock Center?

13 A. I believe it did.

14 MR. STEGMAIER: I'm sorry, which audit was  
15 this?

16 MS. HARRISON: That was a February 28,  
17 2006, audit.

18 MR. WOODINGTON: What are we referring to  
19 that as?

20 MS. HARRISON: The HHS audit of the  
21 Babcock Center -- I'm sorry, of DDSN. I believe it  
22 was a DDSN MR/RD waiver program.

23 BY MS. HARRISON:

24 Q. So then I believe the South Carolina  
25 Legislative Audit Council came in and health and

1 safety issues were one of the issues they were  
2 asked by legislators to address -- well, let me  
3 back up a little bit.

4 A. Okay.

5 Q. Mr. Cothran died at the Kensington  
6 facility in September '04. Is that correct?

7 A. I do not remember the date or the  
8 location.

9 Q. But after that, CMS came in and found  
10 problems?

11 A. I don't remember why they came in.

12 Q. But you remember they found problems at  
13 Kensington?

14 A. Honestly, I don't remember CMS being  
15 involved.

16 Q. Do you remember around '04 or '05 DHEC and  
17 CMS closing -- finding immediate jeopardy at  
18 Clusters where Edward Mims had previously resided?

19 A. I recollect that there were two units at  
20 the Clusters facilities that had become -- that  
21 were being recommended by DHEC to be decertified.

22 Q. And why were they recommending?

23 A. I would assume because of the health and  
24 safety of the people that lived in those  
25 facilities.

1 Q. And are you aware that Edward Mims was  
2 beaten at least twice at Clusters?

3 A. No.

4 Q. Have you read the pleadings in this case?  
5 Have you read the complaint in this lawsuit?

6 A. Yes.

7 Q. And you don't recall the allegations that  
8 Edward Mims was beaten Clusters?

9 A. I don't remember where. I remember there  
10 being allegations that a staff member -- that there  
11 was allegations of abuse and that they were  
12 substantiated.

13 Q. And you don't remember where that  
14 occurred?

15 A. Correct.

16 Q. And then are you familiar with the study  
17 that was done by Dave Murday's office of the USC  
18 School of Public Health related to the MR/RD waiver  
19 program?

20 A. Yes, I remember it.

21 Q. And did that study find significant  
22 problems?

23 A. Again, I'm going to clarify the word  
24 study. In my opinion, and those of others, the  
25 methodology used to make the conclusions that that

1 study did were unfounded. In other words, the  
2 design cannot lead to any certain conclusions  
3 simply because of how it was set up.

4 Q. It was kind of like Carolina Medical  
5 Review, they didn't understand what they were  
6 doing. Is that what you're testifying?

7 A. No. It wasn't a study, is what I'm  
8 saying. And you use the word study. I just  
9 remember that the research methodology used and the  
10 kind of data that they were collecting and how they  
11 went about collecting their data could not support  
12 the kinds of conclusions that were made in that  
13 particular report.

14 Q. Are you aware of the Unequal Justice  
15 investigations -- the P&A investigations that led  
16 to the Unequal Justice Report that found  
17 significant problems with health and safety at DSN  
18 residential facilities?

19 A. Actually I'm not aware of that. What I'm  
20 aware of more globally is that they worked with  
21 somebody to review the current system of reviewing  
22 allegations of abuse and neglect and exploitation  
23 at the Department of Mental Health and at the  
24 Department of Disabilities and Special Needs.

25 Q. In the Unequal Justice Report?

1 A. That's what I recall.

2 Q. What else do you recall about the Unequal  
3 Justice Report?

4 A. That there were initials of people for  
5 whom the report looked into certain concerns of  
6 theirs, and that's why it made it difficult to  
7 determine whose clients they were or determine what  
8 their current situation was like.

9 Q. Maybe reading this cover letter on the  
10 Unequal Justice Report might refresh your  
11 recollection about the findings.

12 A. Okay.

13 MR. WOODINGTON: Did this get marked  
14 yesterday at all?

15 MS. HARRISON: I hope so.

16 MR. STEGMAIER: It did.

17 MR. DAVIDSON: It ought to be marked in  
18 this deposition too.

19 MS. HARRISON: So if you could refer to  
20 that exhibit number, Gina, when you pull the  
21 transcript together.

22 Is that okay with y'all to refer to the  
23 exhibit number from yesterday.

24 MR. STEGMAIER: I thought that was the  
25 agreement. Otherwise, it's going to be way too

1 unwieldy. Actually that was Plaintiff's 1.

2 MR. DAVIDSON: If we can refer to the  
3 exhibits by exhibit number, that would be helpful.

4 THE WITNESS: Okay.

5 BY MS. HARRISON:

6 Q. Does that help refresh your recollection  
7 about what the Unequal Justice study was about?

8 A. Yes.

9 Q. Did it have anything to do with the  
10 Department of Mental Health?

11 A. It does include -- it says particularly  
12 the Department, but that does not mean it excluded  
13 other entities. In fact, I believe that they  
14 did -- that some of the people that they reported  
15 on were actual clients of the Department of Mental  
16 Health.

17 Q. P&A, in that report they found that there  
18 were serious problems with the failure to properly  
19 investigate and report incidents of sexual abuse,  
20 did they not?

21 A. What this executive summary includes is  
22 that they found cases of abuse. What I don't  
23 recollect is how those got discovered. In other  
24 words, was DDSN and its contracted agencies  
25 properly investigating abuse and reporting that

1 these terrible things were happening to people or  
2 whether it was something different.

3 Q. But you read that -- you are aware of  
4 that -- I assume you read it when it came out, did  
5 you not?

6 A. Yes, I did. Yes.

7 Q. And subsequent to that, they changed the  
8 law, didn't they, to quit allowing your agency to  
9 investigate abuse and neglect?

10 A. DDSN and the Department of Mental Health,  
11 correct.

12 Q. But this study was the impetus behind  
13 that, was it not?

14 A. I believe it surely was, yes.

15 Q. And the LAC audit reported that there were  
16 still concerns in December of 2008 when it was  
17 released about the continued violation of health  
18 and safety regulations, did it not?

19 A. No.

20 Q. Tell me what its findings were as to  
21 health and safety.

22 A. Well, when it related to health and  
23 safety, they indicated that they did not know, that  
24 they could not confirm that there were health and  
25 safety issues, but that they -- well, just that

1 they couldn't confirm.

2 Q. So they weren't sure whether or not there  
3 were any health and safety issues?

4 A. That's correct.

5 Q. Were they concerned about whether funds  
6 that had been allocated by the state legislature to  
7 provide services were actually being used to  
8 provide those services?

9 A. Ask that question one more time.

10 Q. That audit found that tens of millions of  
11 dollars allocated for services for people with  
12 disabilities were used for other purposes, did they  
13 not?

14 A. No.

15 Q. They didn't?

16 A. No.

17 Q. So they didn't find that 20 million  
18 dollars had been spent purchasing real estate that  
19 was not authorized by the governing board or the  
20 legislature?

21 A. No. I don't think that's how I would  
22 state it.

23 Q. How would you state their findings about  
24 not being able to follow the money?

25 A. Who not being able to follow the money?

1 Q. The Legislative Audit Council not being  
2 able to follow the money that was provided for  
3 services.

4 A. I don't recollect that that's what was  
5 said. What I recollect is that they did not fully  
6 understand that money used for residential  
7 development also needed to be used for places for  
8 those people to live.

9 Q. So it's kind of like Carolina Medical  
10 Review and USC School of Public Health, they just  
11 didn't understand what you understand. Is that  
12 correct?

13 A. No.

14 Q. After this audit came out and the  
15 Legislative Audit Council reported that 20 million  
16 dollars had been spent purchasing real estate, I  
17 have been told that you made a statement at a -- I  
18 don't know if it was a DD council meeting or some  
19 partnership meeting or some group of advocates that  
20 the money was spent providing a safe work  
21 environment, and I quote safe work environment, for  
22 consumers. Did you make that statement?

23 A. I believe so, yeah. I believe that some  
24 of the money -- and anytime you expand residential  
25 services, that comes with a day service, because

1 the way that residential is funded is usually two  
2 shifts because people are typically doing something  
3 like working during the day, and so that includes a  
4 day component.

5 So in order to address capacity issues at  
6 certain disability organizations, that they needed  
7 to make some accommodations to expand the square  
8 footage of some buildings or to purchase other  
9 buildings to accommodate the growth.

10 Q. And so you did make the statement that the  
11 money was spent to provide a safe work environment  
12 for your consumers?

13 A. I do remember that, yes.

14 Q. And was one of these safe work  
15 environments that DDSN provided funding for a  
16 Superfund site in Spartanburg, South Carolina?

17 A. That I don't know.

18 Q. Do you know if DDSN provided funding for  
19 the workability center in Inman?

20 A. No.

21 Q. They didn't provide any funds for that?

22 A. I don't know. I don't get involved in  
23 requests from providers to expand their day  
24 facilities at all.

25 What I am involved in is ensuring that the

1 capacity follows state code, and so in order to  
2 ensure that they -- the provider is adhering to  
3 state code, we make sure that there's sufficient  
4 square footage.

5 Q. So you -- what do you know about the funds  
6 being used to provide that, quote, as you called  
7 it, safe work environment?

8 A. All I know is that there were requests  
9 from some provider organizations that the increase  
10 in the allocation of residential and day services  
11 was going to go beyond their capacity to serve  
12 those people in a safe environment.

13 Q. You have a child, don't you, Dr. Lacy?

14 A. Yes.

15 Q. How old is your child?

16 A. Five.

17 Q. Would you send your child to a site that  
18 had deed restrictions prohibiting its use for a  
19 school or a hospital or human habitation?

20 A. I would have to look -- I would look into  
21 it.

22 Q. Would that give you any concern if there  
23 were deed restrictions that said this site contains  
24 toxic waste and it may not be used for human  
25 habitation?

1 A. Again, I would look into it and see what  
2 was, you know -- what evidence was produced, and  
3 you know, I would look into it, absolutely, yes.

4 Q. The judicial admission process, what  
5 involvement do you or your division have in that  
6 process?

7 A. You know, I haven't been involved in one.

8 Q. Whose division does that fall under?

9 A. I guess it would be an executive, you  
10 know, decision. I don't think it's, you know, any  
11 one entity.

12 I believe that, you know, our legal  
13 counsel would be involved, obviously, and the  
14 provider. It could be DDSN if it were somebody  
15 receiving services directly from us or who we were  
16 contracting with, director of operations.

17 Q. Okay. So all of you are involved in that  
18 decision. Is that correct? And let me back up and  
19 make sure I understand correctly.

20 You have Stan Butkus at the top. Formerly  
21 at the top. He's not at the top anymore. You have  
22 Stan Butkus who was at the top during this time.  
23 And you have at the next level Bill Barfield, and  
24 you have Dave Goodell, and you have you. Is that  
25 correct?

1 A. And our internal auditor.

2 Q. And your internal auditor is like a fourth  
3 person who reports directly to the director?

4 A. Correct.

5 Q. Within those -- does the internal auditor  
6 have anything to do with judicial admissions?

7 A. Not to my knowledge.

8 Q. What about Bill Barfield?

9 A. Like I said, I haven't been involved in  
10 one, so I'm really unsure.

11 Q. So does the director make that decision  
12 without consulting those four individuals directly  
13 under him?

14 A. That's what I'm saying, I would think not.  
15 I would think that it would be us getting as much  
16 information as we could in order to make an  
17 informed decision.

18 Q. And would you be one of those people that  
19 would be helping the director to make an informed  
20 decision about judicial admission?

21 A. I would hope so.

22 Q. And why would you be involved?

23 A. Simply from the perspective of running the  
24 risk management, you know, piece of the agency,  
25 getting the reports of abuse and neglect,

1 understanding the way that the service delivery  
2 system, you know, works, things of that nature.

3 Q. So risk management and abuse and neglect  
4 are within your jurisdiction?

5 A. They're one and the same, yes.

6 Q. Now, at the Mims proceedings in the  
7 Probate Court, the agency took the position that no  
8 one in the world other than the director of DDSN  
9 has the right to release someone from judicial  
10 admission?

11 A. I don't know. I know that the code says  
12 that the director has final authority over where  
13 people are placed.

14 Q. So in your mind, does the director's  
15 opinion override the opinion of the judge about  
16 whether someone should be released?

17 A. No.

18 Q. So the judge can override the director.  
19 Is that correct?

20 A. I would think so.

21 Q. And once a person is placed in judicial  
22 admission, what responsibility -- who has a  
23 responsibility to make sure on an ongoing basis his  
24 needs are being met and that he's safe?

25 A. Again, I haven't been involved in one, so

1 I'm unsure of that, but if somebody -- regardless  
2 if they were judicially admitted or otherwise, if  
3 they're receiving services from DDSN or one of its  
4 contracted providers, then we do have a  
5 responsibility for their care.

6 Q. What personal insurance do you have -- you  
7 know, you have been sued individually. Are you  
8 aware of that?

9 A. Yes.

10 Q. And under 1983, if it's determined that  
11 you participated in a conspiracy, that the judgment  
12 could be against you individually.

13 What insurance policies do you have that  
14 would cover any potential jury verdict that was  
15 returned in this case?

16 A. None.

17 Q. So you don't have any personal liability  
18 insurance?

19 A. I don't know. I'm not buying any  
20 insurance to protect me against being sued as an  
21 individual.

22 Q. Do you have homeowner's insurance that  
23 might cover if -- an award that would be --

24 A. I have no idea.

25 Q. What is your current net worth?

1 A. God, I have no idea.

2 Q. Do you own your own home?

3 A. The bank owns most of it.

4 Q. Do you have assets that if the jury did  
5 award punitive damages and an individual award --

6 MR. STEGMAIER: Let's take a break for a  
7 second. I'm sorry to cut you off. Mr. Davidson,  
8 let me see you for a second.

9 (A recess transpired.)

10 BY MS. HARRISON:

11 Q. I was asking just before we took a break  
12 what personal assets if the jury returned an award  
13 against you individually would be available to pay  
14 off that jury verdict, and --

15 A. I have some money in a bank account.

16 Q. And how much money do you have in the bank  
17 account?

18 A. Probably three grand.

19 Q. Do you own any other real estate?

20 A. No.

21 Q. Whose name is your home held in?

22 A. Mine.

23 Q. And what's the value of your home?

24 A. Probably, I don't know, 280.

25 Q. And what do you owe on the home?

1 A. Probably half of it.

2 Q. Do you have any other real estate?

3 A. No.

4 Q. No other assets?

5 A. No.

6 Q. Have you transferred any assets since this  
7 litigation was filed?

8 A. No.

9 MS. HARRISON: That's all I have.

10 MR. STEGMAIER: No questions.

11 (The deposition concluded at 6:24 p.m.)

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1	ERRATA PAGE		
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19 THE ABOVE CHANGES WERE NOTED BY ME ON THIS ERRATA

20 PAGE BEFORE SIGNING THE ATTACHED VERIFICATION OF

21 DEPONENT. I HAVE RETAINED A COPY OF THIS ERRATA

22 PAGE FOR MY RECORDS, AND THE COURT REPORTER IS TO

23 ATTACH THIS PAGE AND MY VERIFICATION TO THE

24 ORIGINAL TRANSCRIPT.

25 DATED: \_\_\_\_\_

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KATHI LACY

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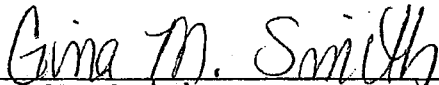
## CERTIFICATE OF REPORTER

I, Gina M. Smith, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 18th day of June, 2009, at Columbia, Richland County, South Carolina.

  
\_\_\_\_\_  
Gina M. Smith  
RPR, CSR, Notary Public,  
State of South Carolina  
at Large.  
My Commission expires  
July 23, 2013.

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Stanley J. Butkus, Ph.D.  
State Director  
Robert W. Barfield  
Deputy State Director  
Administration  
Ronald G. Dozier  
Associate State Director  
Operations  
Kathi K. Lacy, Ph.D.  
Associate State Director  
Policy

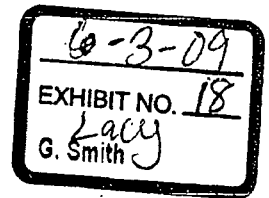


3440 Harden Street Ext (29203)  
PO Box 4706, Columbia, South Carolina 29240  
V/TTY: 803/898-9600, FAX: 803/898-9653  
Toll Free: 888/DSN-INFO  
Home Page: [www.state.sc.us/ddsn/](http://www.state.sc.us/ddsn/)

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April 26, 2004

The Honorable James H. Harrison  
State Representative  
512 Blatt Building  
Columbia, South Carolina 29211



Dear Representative Harrison:

Thank you for your inquiry on behalf of Mr. Billy Cothran, Mr. Ed Mims and Mr. Joe Murray.

As you know, DDSN changed its policy in 1998 to allow consumers and families to pick any qualified provider from which to receive services. To further increase choice, DDSN initiated in 2002 the development of a national solicitation to create a Qualified Provider List. This initiative was done in conjunction with the Materials Management Office of the State Budget and Control Board. This resulted in the approval of new service providers as additional choices for consumers. UCP-SC and Lutheran Family Services are two of these additional choices.

Each DDSN eligible consumer is assessed for service levels and, based on their level of need, resources are assigned to them upon their availability. (Note: Many individuals have few, if any, resources assigned to them and are on waiting lists for services pending new state appropriations to DDSN.) When the consumer/family selects a service provider or a change of service provider, funding resources go with him/her.

Following is service funding information for each of the three men named in your inquiry:

Mr. Billy Cothran –

- Band E – Residential High Needs - \$65,567 for FY2003 and FY2004
- No outlier service funds spent
- No ICAP performed

Mr. Joe Murray –

- Band E – Residential High Needs - \$65,567 for FY2003 and FY2004
- No outlier service funds spent
- No ICAP performed

DISTRICT I

8301 Farrow Road, Columbia, SC 29203  
Phone: 803/935-7412

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

DISTRICT II

PO Box 3209, Florence, SC 29502-3209  
Phone: 843/664-2601

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

Mims0830

James H. Harrison  
April 26, 2004  
Page 2

Mr. Ed Mims -

- Band E - Residential High Needs - \$65,567 for FY2003 and FY2004
- Outlier funds spent in FY2002 for one-on-one supervision following incident with another consumer. Mr. Mims subsequently moved, was assessed for 30 days, and determined one-on-one staffing was no longer needed and was discontinued.
- ICAP performed, score = 3

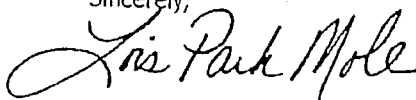
For each of these gentlemen, a maximum of \$65,567 will "move" with them to their new choice of service provider dependent upon the rate amount the provider bid in the RFP for Residential High Needs. These funds are available to pay for their residential supports, day supports, enhanced waiver supports and service coordination. In addition, their SSI (probably paid directly to Babcock today) would transfer as well to help pay for room and board expenses.

To change providers, a consumer/family should first contact their provider of service coordination notifying them of their desire to change. Specific to these gentlemen, their current service coordinator is a Babcock Qualified Mental Retardation Professional (QMRP) as they each live in a facility licensed as an Intermediate Care Facility for the Mentally Retarded (ICF/MR). Next the consumer/family should contact the new provider to verify (a) their ability to serve the consumer and (b) a general timeframe that they could begin to provide the service. Again for these gentlemen, selecting a new provider of residential services means they will also select a new provider of service coordination. The Babcock QMRP will coordinate this. Once the new service coordination provider is selected and a new service coordinator is assigned, the new service coordinator will work with the current service coordinator (in this case, the Babcock QMRP), and the new residential provider of choice. This should begin a series of planning meetings for a smooth discharge/admission. The consumer/family should actively participate in these meetings.

I hope this information is helpful. Enclosed are two fact sheets. If you need anything further, please do not hesitate to contact me.

Thank you.

Sincerely,



Lois Park Mole  
Director  
Government and Community Relations

LPM/sd

Mims0831

# FUNDING BANDS - WHO'S IN WHICH BAND?

<p>BAND E Residential High Needs</p>	<p>Individuals Residing In:</p> <ul style="list-style-type: none"> <li>• ICF/MR</li> <li>• CRCF - High Needs</li> <li>• CTH II - High Needs</li> </ul>
<p>BAND D Residential Low Needs:</p>	<p>Individuals Residing In:</p> <ul style="list-style-type: none"> <li>• CRCF - Low Needs</li> <li>• CTH II - Low Needs</li> </ul>
<p>BAND C Residential Low Needs:</p>	<p>Individuals Residing In:</p> <ul style="list-style-type: none"> <li>• CTH I</li> <li>• SLP I</li> <li>• SLP II</li> </ul>
<p>BAND B Family Supports - Home Supports</p>	<p>Individuals who:</p> <ul style="list-style-type: none"> <li>• Reside at Home</li> <li>• Are in the MR/RD HCB Waiver</li> <li>• Receive Day Habilitation Supports, and</li> <li>• Receive Enhanced Waiver Supports</li> </ul>
	<p>AND</p> <p>Individuals who:</p> <ul style="list-style-type: none"> <li>• Reside at Home</li> <li>• Are in the MR/RD HCB Waiver</li> <li>• Only receive Enhanced Waiver Supports</li> </ul>
<p>BAND A Family Supports - Day Only Supports</p>	<p>Individuals who:</p> <ul style="list-style-type: none"> <li>• Reside at Home</li> <li>• Only receive Day Habilitation Supports</li> <li>• Funded by either MR/RD HCB Waiver, Rehabilitation Supports Phase I or State Dollars</li> </ul>

SOUTH CAROLINA DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS  
STATEWIDE INDIVIDUAL FUNDING LEVELS - EFFECTIVE JULY 1, 2003

		FY 04 Funding
Band E	Residential High Needs	\$ 65,567
Band D	Residential Low Needs	\$ 45,076
Band C	Supported Residential	\$ 19,434
Band B	Family Supports - Home Supports	\$ 12,544
Band A	Family Supports - Day Only Supports	\$ 7,715

Outliers:

Residential Band E - Individuals whose budgets exceed \$83,195 are considered for outlier status.

At Home Band B - Individuals whose budgets exceed \$27,987 are considered for outlier status. The majority of the approved outliers are individuals with high levels of nursing service needs.

**NON CAPITATED SERVICE COORDINATION RATE**

\$1,116 per individual on active service coordination

Patricia L. Harrison

From: "Lacy, Kathi" <KLacy@ddsn.sc.gov>  
To: "Deirdra Singleton" <Singled@dhhs.state.sc.us>  
Cc: "James Hill" <jamesh@senioroptions.org>  
Sent: Tuesday, June 29, 2004 9:45 AM  
Subject: RE: Billy Cothran

Deirdra,

As we discussed yesterday, DDSN assesses each eligible consumer for service levels, and based on their level of need, resources are assigned to them upon availability. When the consumer selects a service provider or a change of service provider, the funding is portable and goes with the consumer. In the 3 cases referenced in Patricia Harrison's letter, about \$65,567 is currently assigned and being spent on each consumer - Babcock was not spending any outlier funding on any of these gentlemen in the last 2 years. Therefore, up to \$65,567 is available to each consumer when they choose other service providers (note: the \$65,567 includes residential habilitation, day support services, waiver supports and service coordination. The service providers' rates are approved by the Budget and Control Board, Materials Management Office.

DDSN contracts with the Richland/Lexington County DSN Board to provide service coordination; each of the 3 consumers have been assigned a service coordinator to facilitate their move to another home operated by a different residential service provider. Therefore, there is no need for Ms. Harrison to meet with DDSN or DHHS to work this move out. There is already action being taken on the part of the service coordinator.

As far as Ms. Harrison's question of whether Billy Cothran really fell or whether this was an act of abuse, Babcock Center completed the appropriate paperwork and followed Departmental policy. Billy was sitting in a chair on the patio with Babcock staff present when he bent over to pick up something on the floor and accidentally hit his head (side of right eye) on the wall. A nurse and the QMRP were immediately notified. The nurse cleaned the one inch laceration with water and applied gauze. Billy was then taken to the ER where they released him without additional treatment. No sutures were required and neosporin was ordered twice a day for treatment.

Please let me know if you need additional information. Thank you. Kathi

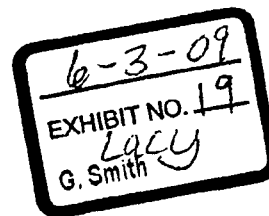
-----Original Message-----

From: Deirdra Singleton [mailto:Singled@dhhs.state.sc.us]  
Sent: Friday, June 25, 2004 3:00 PM  
To: Lacy, Kathi; James Hill  
Cc: George Maky; Byron Roberts; Sam waldrep; [plh.cola@worldnet.att.net](mailto:plh.cola@worldnet.att.net)  
Subject: Fwd: Billy Cothran

Pls see attached from Patricia Harrison. Pls give me a call today to discuss. thanks

Confidentiality Note

This message is intended for the use of the person or entity to which it is addressed and may contain information, including health information, that is privileged, confidential, and the disclosure of which is governed by applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is STRICTLY PROHIBITED. If you have received this in error, please notify us immediately and destroy the



Mims0834

related message. Thank you.

Mims0835

STATE OF SOUTH CAROLINA  
 COUNTY OF RICHLAND  
 PROTECTION AND ADVOCACY  
 FOR THE PEOPLE WITH  
 DISABILITIES, INC., ET. AL,  
 Plaintiffs,  
 vs. CASE NO. 07-CP-40-2187  
 SOUTH CAROLINA DEPARTMENT  
 OF DIABILITIES AND SPECIAL  
 NEEDS, ET. AL,  
 Defendants.

DEPOSITION OF: KATHI M. LACY

DATE: July 9, 2009

TIME: 9:30 a.m.

LOCATION: Law Offices of  
 Richardson, Plowden & Robinson  
 1900 Barnwell Street  
 Columbia, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: L. Skyler Hare,  
 Court Reporter

---

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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A. WILLIAM ROBERTS, JR. & ASSOCIATES 800-743-DEPO  
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Mims0837

Page 2

1 APPEARANCES OF COUNSEL:  
 2  
 3 ATTORNEYS FOR THE PLAINTIFF  
 PROTECTION AND ADVOCACY  
 FOR THE PEOPLE WITH  
 4 DISABILITIES, INC., ET AL:  
 5 RICHARDSON PLOWDEN & ROBINSON  
 BY: STEVEN W. HAMM &  
 6 JO ANNE WESSINGER HILL  
 1900 Barnwell St  
 7 Columbia, SC 29201  
 (803) 799-7555  
 8 shamm@richardsonplowden.com  
 jwessingerhill@richardsonplowden.com  
 9  
 10 ATTORNEYS FOR THE DEFENDANT  
 SOUTH CAROLINA DEPARTMENT  
 OF DIABILITIES AND SPECIAL  
 11 NEEDS, ET AL:  
 12  
 13 DAVIDSON & LINDEMANN  
 BY: KENNETH P. WOODINGTON  
 1611 Devonshire Drive, Second Floor  
 14 Columbia, SC 29204  
 (803) 806-8222  
 kwoodington@dnl-law.com  
 15 ALSO PRESENT:  
 16 Anna Maria Darwin, with  
 Protection & Advocacy for  
 17 People with Disabilities  
 18 Gloria Prevost, with Protection  
 & Advocacy for People with  
 19 Disabilities  
 20 Nancy McCormick, with Protection  
 & Advocacy for People with  
 21 Disabilities  
 22  
 23 (INDEX AT REAR OF TRANSCRIPT)  
 24  
 25

Page 4

1 MR. WOODINGTON: Correct.  
 2 BY MR. HAMM:  
 3 Q. Okay. And what that means is that I  
 4 may ask you a question and your counsel may say,  
 5 object to form, that you still have an obligation to  
 6 answer truthfully to the questions proposed and  
 7 we'll argue later as to whether or not the form is  
 8 an issue in the Courts.  
 9 I am aware that you have had your  
 10 deposition taken because I read a recent deposition  
 11 that you took within, I guess, the last month or so.  
 12 MR. WOODINGTON: That the one from  
 13 Mimms case?  
 14 MR. HAMM: Yes, yes.  
 15 BY MR. HAMM:  
 16 Q. I just wanted to get a sense of who it  
 17 was I might be talking to today. So good morning  
 18 and welcome, by the way.  
 19 A. Thank you.  
 20 Q. Let me maybe walk through this  
 21 procedure. I want to make sure you and I are clear  
 22 on how I want to proceed this morning. Obviously,  
 23 you have counsel that I hold in very high regard. I  
 24 have known that character for a long time and I  
 25 think he actually knows something about the law.

Page 3

1 STIPULATION  
 2 It is stipulated by and among  
 3 Counsel that this deposition is being taken in  
 4 accordance with the South Carolina Rules of Civil  
 5 Procedure, Rule 30; that all objections as to Notice  
 6 of this deposition are hereby waived; that all  
 7 objections except as to form are reserved until the  
 8 time of trial; and that the deponent waives reading  
 9 and signing of this deposition.  
 10 \* \* \* \* \*  
 11 KATHI M. LACY,  
 12 being first duly sworn, testified as follows:  
 13 EXAMINATION  
 14 BY MR. HAMM:  
 15 Q. Good morning. My name is Steve Hamm  
 16 and I, along with my law partner, Jo Anne Wessinger  
 17 Hill, who will be in here in just a moment unless  
 18 she decides to give birth in the next few minutes,  
 19 which anything is possible.  
 20 MR. WOODINGTON: This is off the  
 21 record.  
 22 (Off-the-record conference.)  
 23 MR. HAMM: For purposes of the record,  
 24 Mr. Woodington, we're going to reserve all  
 25 objections except to form and then --

Page 5

1 That's as far as I'll say on the record but you have  
 2 good counsel and --  
 3 MR. WOODINGTON: Remember you're under  
 4 oath.  
 5 MR. HAMM: I know, I know. I just was  
 6 thinking the same thing but -- so I won't go any  
 7 farther.  
 8 MR. WOODINGTON: Okay.  
 9 BY MR. HAMM:  
 10 Q. But I do want to welcome you and I do  
 11 hold your counsel in very high regard.  
 12 All right. I'm going to ask a series  
 13 of question and your obligation, as I know that you  
 14 know, is to testify truthfully to the best of your  
 15 ability. You do understand that?  
 16 A. Yes.  
 17 Q. I may ask a question in which you go,  
 18 Mr. Hamm, and you're welcome to call me Steve,  
 19 what's the appropriate -- I want you -- or Dr. Lacy,  
 20 would you like to be referred to as Dr. Lacy? I'd  
 21 be very happy to do that in the course of this --  
 22 A. Kathi is fine.  
 23 Q. All right. And you're certainly  
 24 welcome to reference to me as Steve, Mr. Hamm,  
 25 whatever you're comfortable with. I do want to be

Page 6

1 respectful to you and address you in the way you  
 2 deem appropriate. So either Dr. Lacy or Kathi would  
 3 illicit a response?  
 4 A. Yes.  
 5 Q. Okay. Good.  
 6 To the extent I ask a question and you  
 7 don't understand it, I would ask that you tell me  
 8 that. To the extent I ask a question and you answer  
 9 it, I'm going to assume that you understood the  
 10 question and that your answer was attempting to be  
 11 responsive to it.  
 12 So to the extent that you have any  
 13 doubt or whatever, I respectfully invite you to say,  
 14 Steve, you need to say that again or ask it a  
 15 different way or whatever, and I will endeavor to do  
 16 that.  
 17 A. Okay.  
 18 Q. I'm going to try to move through this  
 19 relatively quickly. This is not intended -- we're  
 20 not here to have an endurance contest or and this  
 21 deposition is not in any way intended to be a  
 22 harassment of either you or the agency that you work  
 23 with. It's simply an opportunity for the plaintiffs  
 24 in this case to have a better understanding of what  
 25 someone in your position, the answers would be so we

Page 7

1 better fill out the dispute that has been filed.  
 2 To the extent that you need to take a  
 3 break at any time, you simply need to tell me and  
 4 we'll certainly do that. The restrooms are out that  
 5 door and to the right. You now know where the  
 6 coffee machine is and the water. And to the extent  
 7 that you need a refill or a change, you simply need  
 8 to tell me.  
 9 To the extent that we take a break, you  
 10 are not to discuss the questions or answers that you  
 11 and I have been going through during the course of  
 12 the deposition. Do you understand that?  
 13 A. Yes.  
 14 Q. As you're aware, we have a court  
 15 reporter and that's simply the device by which we  
 16 record for the judicial process, answers to  
 17 questions. And your answers may or may not be  
 18 involved in decisions that the Court may be asked to  
 19 address in the coming months and years.  
 20 To the extent that I ask you a  
 21 question, I need you to answer verbally. The court  
 22 reporter can't properly record an answer unless you  
 23 verbalize an answer. So shaking your head, while I  
 24 might clearly understand what you're saying, when  
 25 you look at a deposition transcript would be unknown

Page 8

1 what your answer was. So if you will verbalize and  
 2 answer as best you can to any question that I give  
 3 to you.  
 4 Are you under -- are you taking any  
 5 drugs or medications that might affect your ability  
 6 to clearly think through a question propounded to  
 7 you and provide a response to me?  
 8 A. No.  
 9 Q. Okay. Is there any reason that you  
 10 can't tell the full and complete truth as you  
 11 understand it during the course of this deposition  
 12 today?  
 13 A. No.  
 14 Q. Okay. Let me go back to something that  
 15 Mr. Woodington and I were just discussing. He  
 16 may -- I may ask you a question and he may say,  
 17 object to form. I want to make sure that we're  
 18 clear. He can do that but you still have an  
 19 obligation to answer the question as best you're  
 20 able.  
 21 A. Right.  
 22 Q. Okay.  
 23 MR. WOODINGTON: And in the unlikely  
 24 event you try to go into privileged material, I  
 25 would address that accordingly.

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1 BY MR. HAMM:  
 2 Q. Okay. And just so on the record,  
 3 Mr. Woodington and I have an understanding of that.  
 4 He's talking about conversations that you may have  
 5 had with Mr. Woodington in preparing for this  
 6 deposition or legal advice that you may have  
 7 received during the course of this deposition.  
 8 I will not intentionally be asking you  
 9 to divulge any privileged information. And to the  
 10 extent that Mr. Woodington thinks that I have asked  
 11 that question, we'll address it but I understand the  
 12 issue of the privilege, I respect it and I do not  
 13 believe that that's going to be a problem. But that  
 14 doesn't mean that he might interpret a question in  
 15 such a way.  
 16 All right. Have any questions just  
 17 about the process that we're about to go through?  
 18 A. No.  
 19 Q. Okay. And I am aware -- like I say, I  
 20 read a deposition that you did about a month ago.  
 21 Had you done depositions before that one?  
 22 A. Maybe one or two.  
 23 Q. Okay. Okay. For the record, please  
 24 tell me your complete full name and spelling. I  
 25 think I know what it is but for the record, I want

Page 10

1 to make sure.  
 2 A. It's Kathi, K-A-T-H-I, Kelly,  
 3 K-E-L-L-Y, Lacy, L-A-C-Y.  
 4 Q. All right. Have you ever been known by  
 5 any other names?  
 6 A. Uh-huh, yes.  
 7 Q. And that would be?  
 8 A. Kathi Michelle Kelly. It's my maiden  
 9 name.  
 10 Q. Okay.  
 11 A. And Kathi Michelle Peoples was a former  
 12 marriage. That should be it.  
 13 Q. All right. Was that former marriage  
 14 here in South Carolina?  
 15 A. Got married in North Carolina.  
 16 Q. Okay. You're currently married?  
 17 A. Yes.  
 18 Q. And your husband's name is?  
 19 A. Benjamin Rice Lacy.  
 20 Q. Where do you live?  
 21 A. Columbia.  
 22 Q. Based on the answers that you've just  
 23 given me, you had a previous marriage?  
 24 A. Yes, sir.  
 25 Q. All right. And where -- where did that

Page 11

1 divorce take place?  
 2 A. In South Carolina.  
 3 Q. And when was that?  
 4 A. 1988 -- '88.  
 5 Q. Okay. You have any children?  
 6 A. I have a daughter.  
 7 Q. All right. How old is she?  
 8 A. 5.  
 9 Q. 5?  
 10 A. Yes.  
 11 Q. Well, then, I don't need to worry about  
 12 her showing up on a jury somewhere.  
 13 A. No.  
 14 Q. Okay. Have any other children?  
 15 A. No.  
 16 Q. And let's -- I want to next go into  
 17 your -- I was talking to my mother -- I was just  
 18 about to ask you when you were born and my mother --  
 19 I told my mom, who's 84, I was getting ready to have  
 20 a deposition, what kind of things do you ask? Well,  
 21 mom, I'll ask about their name, ask about their  
 22 background or previous marriages because I'm trying  
 23 to have a sense of who else is out there and I would  
 24 ask them when they were born and my mother was  
 25 horrified. But I'm going to ask anyway. You were

Page 12

1 born when?  
 2 A. June 4th, 1960.  
 3 Q. And where were you born?  
 4 A. Sacramento, California.  
 5 Q. I was born in Los Angeles.  
 6 What is your Social Security number?  
 7 A. ~~XXXXXXXXXX~~  
 8 Q. I recognize that that is an important  
 9 and private piece of information and it is -- I ask  
 10 that question simply because there's times when  
 11 someone tells someone that they're a certain  
 12 somebody and it turned out that they weren't. So  
 13 I'm just wanting you to know that that is not  
 14 something that will be disseminated in this  
 15 proceedings. I'm telling you that because my mother  
 16 wanted to know. So I just thought, well --  
 17 A. Okay.  
 18 Q. -- if my mom wanted to know, maybe you  
 19 might want to know too.  
 20 Okay. In terms of where you live now,  
 21 is that -- how long have you lived where you live?  
 22 A. About 11 years.  
 23 Q. Okay. And do you own it, rent it?  
 24 A. Own.  
 25 Q. Where is it you live?

Page 13

1 A. The address?  
 2 Q. You can give me a street number and  
 3 county, that will be fine.  
 4 A. 3424 Duncan Street in Richland County.  
 5 Q. Any previous residences here in South  
 6 Carolina other than this one?  
 7 A. Yes.  
 8 Q. Okay. And where was that?  
 9 A. Laurens Street in Richland County.  
 10 Q. Do you have any -- other than your  
 11 husband and your 5-year-old daughter, do you have  
 12 any other relatives that live in Richland County?  
 13 A. No.  
 14 Q. Do you have any brothers or sisters  
 15 that live in South Carolina?  
 16 A. No.  
 17 Q. Do you have any brothers and sister,  
 18 period?  
 19 A. Yes.  
 20 Q. And where are they?  
 21 A. California.  
 22 Q. Okay.  
 23 A. And Washington State.  
 24 Q. Okay. Now, I want to go through where  
 25 did you graduate from high school?

Page 14	Page 16
<p>1 A. Colorado Springs. It's called Air 2 Academy High School. 3 Q. Colorado Springs in Colorado? 4 A. Yes. 5 Q. All right. What year was that? 6 A. '82. 7 Q. And after high school where -- 8 A. University of Colorado in Boulder and 9 then University of North Carolina at Greensboro. 10 Graduated there in 1982 -- wait, I graduated from 11 high school in '78 -- sorry, getting confused. 12 Q. That's all right. 13 A. '82 from college -- 14 Q. Wait a minute. Wait a minute. I'm 15 not -- make sure I've got this down right. 16 A. Okay. 17 Q. University of Colorado at Boulder in 18 1982. 19 A. I -- I attended there in 1979. 20 Q. Okay. And then next -- so your first 21 year of college was there and then apparently you 22 went to North Carolina? 23 A. Correct. 24 Q. All right. Tell me about that. Tell 25 me --</p>	<p>1 fact, served as a nurse for a period of time? 2 A. Right. And it's a bachelor of science, 3 BS. 4 Q. BS. 5 A. Yes, I practiced as a license 6 registered nurse. 7 Q. Where? 8 A. Greensboro, North Carolina. 9 Q. Okay. And what time period? 10 A. '82 to '84. 11 Q. And you were doing -- you were 12 providing nursing services in a hospital for a 13 doctor's practice? 14 A. In a hospital. 15 Q. In which hospital? 16 A. Moses Cone. 17 Q. All right. So we're now in 1984 and, 18 apparently, you left to do -- you went somewhere 19 else, apparently? 20 A. Did, moved to Columbia. 21 Q. Okay. So 1984 is when you came to 22 Columbia? 23 A. Yes. 24 Q. And what were you doing when you came 25 to Columbia?</p>
Page 15	Page 17
<p>1 A. University of North Carolina at 2 Greensboro. I graduated in '82. 3 Q. With a degree in? 4 A. Bachelor of science and nursing. 5 Q. Okay. And that was in 1982? 6 A. Right. 7 Q. Since I've already noted that you can 8 be respectively referred to as Dr. Lacy, tell me 9 about how you got to that degree. 10 A. I got a master's in health 11 administration from University of South Carolina 12 in -- probably 1993. 13 Q. Okay. 14 A. I might be off a couple years. 15 Q. That's fine. That's fine. 16 A. Okay. And then I got my doctorate 17 degree in public health administration in 1995. 18 Q. Also from USC? 19 A. Correct. 20 Q. Now, do you have -- have you had any 21 additional education or degrees beyond your Ph.D. in 22 public health in '95? 23 A. No. 24 Q. All right. Now, let's go -- you got a 25 BA in nursing in 1982. Should I assume that you, in</p>	<p>1 A. I worked at the Health Department. 2 Q. The County Health Department, State -- 3 A. Richland County. 4 Q. Richland County. 5 A. Yeah, Richland County Health 6 Department. 7 Q. Okay. 8 A. I did that for less than a year. 9 Q. Okay. 10 A. And then I worked at the Health and 11 Human Services Finance Commission as it was called 12 then. 13 Q. Is that where Andy Laurent was? 14 A. Correct. 15 Q. Did you know him then? 16 A. Yes. 17 Q. I've known Andy a long time. Have high 18 regard for him. 19 So, apparently, in -- you said you were 20 at Richland County Health Department maybe a year so 21 that gets us sometime into 1985, if I'm sort of 22 guessing. 23 A. That's right, um-hum. 24 Q. So Health and Human Services in 1985. 25 Then what?</p>

Page 18	Page 20
<p>1 A. And then in 1989 --</p> <p>2 Q. All right.</p> <p>3 A. -- I went to work for the Department of</p> <p>4 Mental Retardation.</p> <p>5 Q. Okay. When you were at Health and</p> <p>6 Human Services, you were doing what?</p> <p>7 A. I started out as a -- was in the</p> <p>8 Division of Program Integrity and I was responsible</p> <p>9 for reviewing physicians' file for Medicaid</p> <p>10 compliance.</p> <p>11 Q. All right. Now, we're in 1989 and</p> <p>12 you're now at the Department of Mental Retardation</p> <p>13 and what are you doing?</p> <p>14 A. I'm the medicaid coordinator and was</p> <p>15 hired to take the programs that the Department had</p> <p>16 been delivering and using a 100 percent state</p> <p>17 dollars and generating medicaid revenue from them.</p> <p>18 Q. The multiplier effect?</p> <p>19 A. Right.</p> <p>20 Q. So in -- when you came to the Richland</p> <p>21 County Health Department, were your roles in the</p> <p>22 form of a nurse?</p> <p>23 A. Correct.</p> <p>24 Q. And then in 1985, you're now using</p> <p>25 your -- your nursing background, look at files for</p>	<p>1 Q. Okay.</p> <p>2 A. Health and Human Services.</p> <p>3 Q. You earned -- again, going back to my</p> <p>4 previous notes, you earned your master's in '93, so</p> <p>5 because you've been, as I now hear you, you'd been</p> <p>6 working part-time on it, and then you go back to</p> <p>7 graduate school to complete your coursework to earn</p> <p>8 your Ph.D?</p> <p>9 A. Correct.</p> <p>10 Q. And your focus in graduate school</p> <p>11 was -- your Ph.D. is in what?</p> <p>12 A. Public health administration.</p> <p>13 Q. So that's sort of '93 to '95 you're</p> <p>14 getting your coursework and whatever and, I guess,</p> <p>15 your thesis done?</p> <p>16 A. Dissertation.</p> <p>17 Q. Right.</p> <p>18 A. Yes.</p> <p>19 Q. And your dissertation was in what?</p> <p>20 A. Was evaluating the effectiveness of a</p> <p>21 private/public partnership between USC School of</p> <p>22 Medicine, DHEC and Palmetto Richland Hospital with a</p> <p>23 new clinic that they had started for children with</p> <p>24 special healthcare needs.</p> <p>25 Q. And in your dissertation you concluded</p>
Page 19	Page 21
<p>1 medicaid compliance and then in '89 you go to the</p> <p>2 Department of Mental Retardation. You're the</p> <p>3 medicaid coordinator. I've always used the term</p> <p>4 over the years "multiplier effect," and you seem to</p> <p>5 understand what I meant.</p> <p>6 A. Yes.</p> <p>7 Q. That is were you're trying to get state</p> <p>8 dollars to justify additional federal dollars?</p> <p>9 A. Trying to take the state dollars that</p> <p>10 are appropriated to the agency --</p> <p>11 Q. Right.</p> <p>12 A. -- and earn --</p> <p>13 Q. Right.</p> <p>14 A. -- medicaid.</p> <p>15 Q. Okay. How long were you at the</p> <p>16 Department of Mental Retardation?</p> <p>17 A. Until '93.</p> <p>18 Q. What happened then?</p> <p>19 A. I went to graduate school.</p> <p>20 Q. Full time?</p> <p>21 A. Yes.</p> <p>22 Q. And that's when you're getting your</p> <p>23 master's in health administration.</p> <p>24 A. That's when I'm getting my Ph.D. I was</p> <p>25 working on my master's part-time while I worked.</p>	<p>1 what?</p> <p>2 A. That the kids were -- well, that the</p> <p>3 parents were very satisfied with the clinic and that</p> <p>4 they reduced inpatient hospitalization and</p> <p>5 unnecessary emergency room visits.</p> <p>6 Q. So your -- the evaluation you concluded</p> <p>7 that that public/private partnership was, in fact,</p> <p>8 effective?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. We're now in 1995 and people are</p> <p>11 now able to say Dr. Lacy.</p> <p>12 A. Uh-huh.</p> <p>13 Q. All right. Then what?</p> <p>14 A. I worked self-employed for a year. I</p> <p>15 did -- helped different organizations with that</p> <p>16 multiplier.</p> <p>17 Q. Is it fair to characterize you as a,</p> <p>18 quote, consultant at that point?</p> <p>19 A. Yes.</p> <p>20 Q. And clients that you might have helped</p> <p>21 would include who?</p> <p>22 A. Pine Grove School in Elgin.</p> <p>23 Q. Is that a public school?</p> <p>24 A. It is a private, private residential</p> <p>25 treatment facility. Primarily for children with</p>

Page 22

1 autism. And Planned Parenthood.  
 2 Q. All right. Who else?  
 3 A. That's it.  
 4 Q. All right. So that's -- we're still in  
 5 calendar year 1995?  
 6 A. '96.  
 7 Q. Okay.  
 8 A. Moved kind of between time.  
 9 Q. Because I think I had read -- something  
 10 that I read in getting ready for your deposition was  
 11 that you joined DDSN in '96; is that right?  
 12 A. That's right, it was in the fall.  
 13 Q. And you joined to serve what capacity?  
 14 A. I was the Division Director for Mental  
 15 Retardation.  
 16 Q. And being a Division Director for  
 17 Mental Retardation required you to do what?  
 18 A. Essentially, running and ensuring that  
 19 we're compliant with federal law regarding the  
 20 operation of a home and community-base waiver that  
 21 serves people with mental retardation. Developing  
 22 service standards that the providers we contract  
 23 with would need to follow.  
 24 Q. Those stands were federal standards?  
 25 A. No, they were state. They were federal

Page 23

1 requirements and those requirements were turned into  
 2 kind of like a operational manual of sort for people  
 3 to know how to implement the service and what the  
 4 department's expectations were and things like that.  
 5 Q. So you were the Director of Mental  
 6 Retardation for what period of time?  
 7 A. Let's see, '96 to 2002.  
 8 Q. The way you said that, are you  
 9 comfortable, you think that's right or you're not  
 10 sure?  
 11 A. Yeah, I mean, I'm always going to be a  
 12 little off. I mean, I think -- I'm trying to be as  
 13 factual as possible.  
 14 Q. And I appreciate that very much.  
 15 When you joined in 1996, who was the  
 16 Director of DDSN?  
 17 A. Actually came on at the same time, it  
 18 was Dr. Stan Butkus.  
 19 Q. Now, did you have a prior working  
 20 relationship with Dr. Butkus before you joined DDSN?  
 21 A. No.  
 22 Q. All right. So we're now into 1992, you  
 23 have your Ph.D., you have been the Director of  
 24 Mental Retardation, what happens --  
 25 MR. WOODINGTON: 2002.

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1 THE WITNESS: Yeah, 2002.  
 2 MR. HAMM: Excuse me, what did I say?  
 3 THE WITNESS: That's okay.  
 4 MR. WOODINGTON: 1992.  
 5 THE WITNESS: Yeah, I was like, what?  
 6 MR. HAMM: Back in time.  
 7 THE WITNESS: Okay, so we're in 2002  
 8 and I was promoted to the Associate State Director  
 9 of Policy.  
 10 BY MR. HAMM:  
 11 Q. Associate State Director. And an  
 12 Associate State Director of Policy would do what?  
 13 A. Primarily responsible for the -- the  
 14 directives related to how the department, you know,  
 15 functions, responsibilities that it carries out,  
 16 setting forth policy based on the Commission's  
 17 direction, setting forth the service standards, some  
 18 of the things in my previous job.  
 19 Q. Only is it fair at this point that the  
 20 scope of your job is just it's now broader, it now  
 21 encompasses more than mental retardation, right?  
 22 A. Yes.  
 23 Q. All right. What's next?  
 24 A. The other responsibilities that I have?  
 25 Q. Yes.

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1 A. The other -- I'm responsible for five  
 2 different divisions.  
 3 Q. What are they?  
 4 A. Mental retardation, head and spinal  
 5 cord injury, autism, consumer assessment team. They  
 6 are the group that determine eligibility. And  
 7 quality management.  
 8 Q. Is the position that you hold now that  
 9 same position that you've earned -- that you were  
 10 appointed to? Who -- well, let me -- first answer  
 11 that.  
 12 A. I'm in the same position.  
 13 Q. And who -- did Dr. Butkus -- who -- I  
 14 don't understand --  
 15 A. Dr. Butkus, yes, hired me in the  
 16 position I am in now.  
 17 Q. Okay. Now, you make -- you told me  
 18 that you were responsible for directives of the  
 19 department.  
 20 A. Yes.  
 21 Q. Tell me what a directive is.  
 22 A. It's comparable to policy and it  
 23 describes certain expectations that the department  
 24 has regarding people that we support, services that  
 25 they receive, the responsibilities that providers

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1 have.  
 2 Q. Where does the term "directive" come  
 3 from?  
 4 A. It's been there since I've gotten  
 5 there, so I can't --  
 6 Q. I went hunting for a statute that  
 7 talked about directives, and is there one that I've  
 8 just simply missed?  
 9 A. Not that I'm aware of.  
 10 Q. So the term "directive" is a term  
 11 created by DDSN as a way of addressing its  
 12 responsibilities?  
 13 A. Yes, I assume so.  
 14 Q. You said that -- you said that a  
 15 directive was comparable to policy and I didn't  
 16 exactly understand what that meant.  
 17 A. Well, I mean, in, you know, my  
 18 educational experience, I mean, healthcare policy,  
 19 you know, is a broad term used to describe, you  
 20 know, many, many, you know, different things.  
 21 Health insurance companies use policy  
 22 to communicate to their subscribers about what they  
 23 cover, what their reimbursement rates are, who the  
 24 providers that can render those services and things  
 25 like that.

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1 Q. And I don't say this disrespectfully,  
 2 are you the policy guru for DDSN?  
 3 A. Well, it's my title.  
 4 Q. All right. And that's why I'm asking.  
 5 A. I'm not sure if I'm a guru or not but  
 6 I -- but I have that title, yes.  
 7 Q. So if you have that title, do you have  
 8 ownership of the creation of policy?  
 9 A. Part of the distinction between the  
 10 policy directive is that the Commission is  
 11 ultimately responsible, that's the Board of  
 12 Directors, so to speak, to DDSN. And the Commission  
 13 really sets forth the policy and the direction for  
 14 the agency. And the directives are the instruments  
 15 used to communicate that policy to DDSN, its network  
 16 of providers, our customers, their family, the  
 17 public.  
 18 Q. In terms of these directives, you've  
 19 told me that they describe the expectation of DDSN  
 20 for the services received by your -- you use the  
 21 word "customer" and you talked about providers and  
 22 so forth. Help me understand how you understand  
 23 what the policy is of the Commission.  
 24 A. There are a couple ways, one is through  
 25 the Code of Laws, it sets up the department. And

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1 then the second way is through the policies that  
 2 they approved.  
 3 Q. They, being the --  
 4 A. The Commission. They're called  
 5 Commission policies.  
 6 Q. Again, tell me how you -- I'm trying to  
 7 understand how you understand the policies approved  
 8 by the Commission. Tell me how -- tell me how the  
 9 process works when you have -- the Commission has a  
 10 policy that you understand they have approved. Now,  
 11 help me understand how it gets apparently translated  
 12 into a directive; is that correct?  
 13 A. Well, we use those to write directives,  
 14 to update directives, to change service models, the  
 15 way, you know, people desire to receive services in  
 16 the likes. So we use those as our guiding  
 17 principles.  
 18 Q. So that a customer of DDSN who has  
 19 concerns about either the services they are  
 20 receiving or not receiving, those concerns are  
 21 presented to the Commission -- are those concerns  
 22 presented to the Commission?  
 23 A. Not necessarily.  
 24 Q. So you're creating directives on issues  
 25 that have not been presented to the board?

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1 MR. WOODINGTON: Object to the form.  
 2 THE WITNESS: No, I think you might be  
 3 misunderstanding or I'm not clear but the  
 4 directives, for example, let's say a person using  
 5 your example does not like the services that they're  
 6 getting, there is a directive that speaks to the  
 7 process that they can use in order to voice a  
 8 complaint or a concern for that concern to be  
 9 remediated.  
 10 BY MR. HAMM:  
 11 Q. Okay, let's go back. Let's go back to  
 12 the board. You told me a few minutes ago that the  
 13 board creates the policy.  
 14 MR. WOODINGTON: For clarification, I  
 15 think this is always called the Commission.  
 16 MR. HAMM: Okay.  
 17 MR. WOODINGTON: Am I right about that?  
 18 THE WITNESS: Correct.  
 19 MR. HAMM: All right. Well, then,  
 20 thank you.  
 21 MR. WOODINGTON: All right.  
 22 BY MR. HAMM:  
 23 Q. The Commission creates policy?  
 24 A. The -- the Commission is a governing  
 25 body that sets the direction for how the agency

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1 operates. And they have six policies, I believe,  
 2 that we use in order to create, develop, refine,  
 3 modify our directives or our service standards,  
 4 contracts.  
 5 Q. All right. Where do I find these six  
 6 policies?  
 7 A. They're on the DDSN Web site.  
 8 Q. Where?  
 9 A. If you get to the home page, there is a  
 10 icon that you'd click on about DDSN. And when you  
 11 click on about DDSN, and I think that's the way it's  
 12 worded, I could be off a little bit, there's a  
 13 section for directives and standards.  
 14 Q. I'm going to turn my notebook around.  
 15 A. Uh-huh.  
 16 MS. HILL: Steve --  
 17 MR. HAMM: You have a copy of that?  
 18 MS. HILL: Yes.  
 19 MR. HAMM: Okay, good.  
 20 BY MR. HAMM:  
 21 Q. I'm handing you what we we'll mark as  
 22 Plaintiff's Exhibit No. 1.  
 23 (PLF. EXH. No. 1, Home Page, was marked  
 24 for identification.)  
 25 BY MR. HAMM:

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1 Q. Is this what you were just referring to  
 2 in your response to me, Kathi?  
 3 A. Yes.  
 4 Q. Okay. Now, just -- we're looking --  
 5 for the record, I'm going to identify that  
 6 Plaintiff's Exhibit No. 1 is what?  
 7 A. The home page.  
 8 Q. It is the home page that we were just  
 9 talking about. And Exhibit No. 1 is -- consists of  
 10 four pages.  
 11 All right. Now, I'm providing this to  
 12 you because I did not expect you to have this  
 13 ingrained in your memory. Of course, you've got a  
 14 Ph.D., you may have it in there anyway.  
 15 A. Well, actually, I was right about the  
 16 wording so that's --  
 17 Q. Okay.  
 18 A. -- pretty good for me.  
 19 Q. Okay. And so are you now -- I'm  
 20 looking on Page 104 sort of in the middle of the  
 21 page where it says about DDSN and then the second  
 22 listing, directives and standards, is that what  
 23 you're referring to in your answer to me a moment  
 24 ago?  
 25 A. Yes.

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1 Q. So the Commission -- I apologize for  
 2 referring to the board. Every agency seems to have  
 3 a different way of referring to itself, which is  
 4 fine. Do you attend Commission meetings?  
 5 A. Yes.  
 6 Q. Do you make presentations on policies  
 7 and directives?  
 8 A. Not -- not that specific.  
 9 Q. You -- in 1996 when you joined DDSN,  
 10 you joined in the same time frame that Dr. Butkus  
 11 joined.  
 12 A. Yes.  
 13 Q. I understand that Dr. Butkus is not at  
 14 DDSN anymore.  
 15 A. Right.  
 16 Q. And Dr. Andy Laurent is, I think,  
 17 serving as an interim --  
 18 A. Yes.  
 19 Q. -- director. Is there a ongoing search  
 20 for a replacement for Dr. Butkus or --  
 21 A. Yes.  
 22 Q. -- what's your best understanding? I'm  
 23 not trying to --  
 24 A. Best understanding is the Commission  
 25 has formed a committee to do a search for a State

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1 Director.  
 2 Q. Now, walk me through -- you say -- do  
 3 you go to every Commission meeting?  
 4 A. When I'm in town, yes.  
 5 Q. Okay.  
 6 A. Yeah.  
 7 Q. And you told me that -- at least I  
 8 understood your response to suggest that you did not  
 9 routinely make presentations about policy and  
 10 directives; is that correct?  
 11 A. Right.  
 12 Q. Are you involved in training the  
 13 members of the Commission with regard to their  
 14 obligations as members of the Commission?  
 15 MR. WOODINGTON: Object to the form.  
 16 THE WITNESS: No.  
 17 BY MR. HAMM:  
 18 Q. Your best understanding is who -- who  
 19 would do that?  
 20 A. The Director.  
 21 Q. Okay. But you have not -- as the  
 22 Associate State Director of Policy, you have not  
 23 been involved in the training of members of the  
 24 Commission on policy issues?  
 25 A. No, you asked me if I was involved in

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1 training them on their responsibilities.  
 2 Q. Right.  
 3 A. And I said no to that.  
 4 Q. Okay. All right. Is one of their  
 5 responsibilities establishing policies?  
 6 A. Yes.  
 7 Q. So I was somewhat surprised to hear  
 8 that you don't -- and I'm not trying to put words in  
 9 your mouth -- and feel free to -- but I thought I  
 10 just understood you to say, well, Steve, I don't --  
 11 I don't regularly make presentations to the  
 12 Commission on directives and policies.  
 13 And all I'm just trying to understand  
 14 is, well, if they're the policymakers and you're not  
 15 making regular presentations, how is it that you  
 16 understand that a directive is consistent with the  
 17 policy established by the Commission?  
 18 A. Through the State Director.  
 19 Q. So the State Director -- he learns from  
 20 the Commission and then he advises you?  
 21 A. Well, we all learn from the Commission.  
 22 Q. Right.  
 23 A. But my obligation is to perform  
 24 according to my job duties and that's -- I report to  
 25 the State Director.

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1 Q. Okay. Does -- has the State Director  
 2 given you any written instruments reflecting his  
 3 understanding of the Commission's policy that you  
 4 have converted -- I'm trying to use my words  
 5 carefully -- into a directive?  
 6 A. No.  
 7 Q. So there's no formalized basis in which  
 8 the policies of the Commission are in turn used to  
 9 create directives?  
 10 MR. WOODINGTON: Object to the form.  
 11 THE WITNESS: There is a directive on  
 12 the purpose of the directives.  
 13 BY MR. HAMM:  
 14 Q. Now, when we asked for minutes of the  
 15 board, I didn't see much with regard to directives.  
 16 Am I correct in understanding the directives are not  
 17 specifically approved by the Commission?  
 18 A. Correct.  
 19 Q. Okay. Let me restate what I've heard  
 20 to set the basis for my next question. I want to  
 21 make sure I haven't misunderstood you.  
 22 You indicated that you, when you're in  
 23 town, would attend a Commission meeting. How often  
 24 do they meet?  
 25 A. Monthly.

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1 Q. Okay. And where do they meet?  
 2 A. In Columbia at the office.  
 3 Q. Okay. At the office over there near  
 4 Richland Memorial Hospital?  
 5 A. Right.  
 6 Q. What is that campus or facility? Does  
 7 it have a name that sort of stands? I mean, is  
 8 it --  
 9 A. It's like a central office --  
 10 Q. -- headquarters or whatever?  
 11 A. -- that we refer to it as.  
 12 Q. Central office, okay. So the  
 13 Commission meets on a monthly basis. You may or may  
 14 not be there depending on your own professional  
 15 schedule and travel.  
 16 A. Right.  
 17 Q. If you were -- well, let's go  
 18 backwards. When was the last Commission meeting you  
 19 attended?  
 20 A. June.  
 21 Q. Okay. And before that?  
 22 A. I believe there were two in June.  
 23 Q. Okay. And you went to both of those?  
 24 A. Right.  
 25 Q. All right. And what about May?

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1 A. As far as I can remember, I was at the  
 2 May one also.  
 3 Q. Okay. Well, let me make it easier.  
 4 I'm not -- going back in relatively recent time,  
 5 when did you miss?  
 6 A. I missed one this year.  
 7 Q. Okay.  
 8 A. I'm not sure what month it was.  
 9 Q. Okay. And that was just simply  
 10 reflection of you can't be more than one place --  
 11 A. I was on vacation.  
 12 Q. Oh, good.  
 13 A. I was on vacation.  
 14 Q. Good for you. Good for you.  
 15 So I'm very intrigued by these  
 16 directives and I'm -- and you just told me that the  
 17 Commission doesn't formally -- they don't -- let me  
 18 rephrase. Do you have a practice of submitting the  
 19 directives to the Commission for approval?  
 20 A. No.  
 21 Q. So if they're not directly approved by  
 22 the Commission, who are the directives approved by?  
 23 A. The State Director.  
 24 Q. Okay.  
 25 A. And whoever originated the document.

1 Q. Okay. Well, how -- help me understand  
 2 how it is that you as the Associate State Director  
 3 of Policy would know that a directive, in fact,  
 4 comported with the wishes of the Commission?  
 5 MR. WOODINGTON: Object to the form.  
 6 THE WITNESS: Through the State  
 7 Director.  
 8 BY MR. HAMM:  
 9 Q. Okay. And I say this respectively so  
 10 I'm not being a smart aleck. So the State Director  
 11 serves as the filter for whatever the Commission is  
 12 thinking. And if the State Director is happy with a  
 13 directive, that's where it stops.  
 14 MR. WOODINGTON: Object to the form.  
 15 THE WITNESS: Directives are changed  
 16 frequently so and the process used to get  
 17 information from our customers and their families  
 18 and other stakeholders is incorporated into the  
 19 document. And one of the Commission policies is to  
 20 ensure that we are being responsive to consumers and  
 21 their family's needs.  
 22 Q. Is there a checklist or a chart that  
 23 you must consult in constructing a directive?  
 24 A. Those kinds of things don't exist  
 25 anywhere.

1 more of a guideline or a principle. So there's, you  
 2 know, things that you learn, you know, through your  
 3 education and experience that help you shape policy.  
 4 Q. So to the extent that an individual is  
 5 not in your position or is indeed not even employed  
 6 by DDSN, they might not know about the  
 7 consideration, construction, or adoption of a  
 8 directive; is that correct?  
 9 A. Can you rephrase it?  
 10 Q. I'll be happy to.  
 11 A. Yeah.  
 12 Q. Let's just use me. I don't work for  
 13 DDSN. I have developed a great interest in your  
 14 fine organization. I want to say that. And I want  
 15 to know about directives that are under  
 16 consideration, how would I learn that?  
 17 A. Through the Web site.  
 18 Q. All right. Now -- but the Web site as  
 19 I understand it reflects directives that have been  
 20 adopted; is that correct?  
 21 A. No, it also reflects directives that  
 22 are undergoing review or new directives.  
 23 Q. All right. Now, have you all done a  
 24 determination that all of the individuals served by  
 25 DDSN have computers and access to the DDSN Web site?

1 Q. So the Commission establishes policy,  
 2 you report to the Director -- let me make sure I'm  
 3 clear of what you're telling me. As the Associate  
 4 State Director of Policy, do you have ownership of  
 5 all directives so that they're consistent with  
 6 whatever the so-called policy is?  
 7 MR. WOODINGTON: Object to the form.  
 8 THE WITNESS: To a certain agree, yes.  
 9 BY MR. HAMM:  
 10 Q. Okay. Are you telling me that -- well,  
 11 let me asked it another way: Have you created a  
 12 directive that says we're going to make sure every  
 13 directive meets the following standards and is there  
 14 a document that says, all right, here's the  
 15 directive and here's what we've got to make sure  
 16 every directive does and I'm going to make sure they  
 17 meet that. I think I just heard you say, no, Steve,  
 18 that's just not how we do things; is that a fair  
 19 characterization?  
 20 A. I mean, I've worked in different  
 21 sectors that it just -- yeah, it just doesn't work  
 22 that way. There's not a manual for creating policy.  
 23 You can learn about what components and, you know,  
 24 what needs to be included in policy, what doesn't  
 25 need to be included in policy, what might need to be

1 A. No, I would say not everybody does.  
 2 Q. Okay. So to the extent that I don't  
 3 have a computer, what notices do you send out to  
 4 potentially affected parties that you are  
 5 considering a directive that might either change or  
 6 eliminate some service I'm currently receiving?  
 7 MR. WOODINGTON: Object to the form.  
 8 THE WITNESS: Directives don't  
 9 eliminate services, first of all, so I can't answer  
 10 the question the way it was phrased.  
 11 BY MR. HAMM:  
 12 Q. All right. Well, let me just phrase it  
 13 another way.  
 14 You just told me that I don't ever need  
 15 to worry, no directive has ever eliminated a current  
 16 existing service.  
 17 A. Correct.  
 18 Q. All right. Has a directive ever  
 19 changed the standards or eligibility by which a  
 20 service might be received?  
 21 A. The eligibility directive has undergone  
 22 revision.  
 23 Q. Okay.  
 24 A. Yes, just like the other directives.  
 25 Q. Okay. Let me -- let's go back to what

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<p>1 I was just saying.</p> <p>2 A. Okay.</p> <p>3 Q. I -- I live in Laurens, I don't have a</p> <p>4 computer. Someone in my family is the recipient of</p> <p>5 services from DDSN, I don't know about the Web site.</p> <p>6 What -- what is the policy that ensures that a</p> <p>7 directive that might change or alter my son or</p> <p>8 daughter's eligibility, how do I -- what is the</p> <p>9 procedure and policy to make sure I know about it?</p> <p>10 A. Well, there's all kinds of vehicles</p> <p>11 that are used. We used advocacy organizations to</p> <p>12 communicate that to people. We have our service</p> <p>13 coordination system.</p> <p>14 Q. What does that mean?</p> <p>15 A. These are people that work directly</p> <p>16 with our customers and that they are responsible for</p> <p>17 ensuring that people, you know, are informed about</p> <p>18 services and how best to meet their needs, options</p> <p>19 that might be available to them, things of that</p> <p>20 nature.</p> <p>21 Q. Is there a -- how do you know that</p> <p>22 that's taken place? Is there a directive that says,</p> <p>23 that someone could report to you, is there a form</p> <p>24 that I would know, I'm in Laurens, how is it that</p> <p>25 you know that that communication with an advocacy</p>	<p>1 A. No.</p> <p>2 Q. That would not surprise you?</p> <p>3 A. No.</p> <p>4 Q. All right. But at the moment, there is</p> <p>5 not a process by which you have a directive, a</p> <p>6 checklist or even a policy that attempts to ensure</p> <p>7 that me in Laurens, no access to the Internet,</p> <p>8 whatever, know about a change? In respective, I</p> <p>9 think what I've heard you say is, well, no, we try</p> <p>10 to do our best for an advocacy organization but I</p> <p>11 think I'm hearing you say, no, we don't have a</p> <p>12 process to make sure that the example I've been</p> <p>13 using -- using me as an example in Laurens, that I</p> <p>14 might not know about it despite your efforts?</p> <p>15 A. Right.</p> <p>16 Q. Now, when you have a meeting -- let's</p> <p>17 just talk -- again, I'm intrigued by these</p> <p>18 directives. You've already told me they can change,</p> <p>19 yes?</p> <p>20 A. Right.</p> <p>21 Q. Who decides when a directive can</p> <p>22 change?</p> <p>23 A. Well, there's a directive that</p> <p>24 describes the process that the directives go through</p> <p>25 to ensure that they're up to date and current and</p>
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<p>1 organization actually resulted in me knowing about a</p> <p>2 directive?</p> <p>3 A. Oh, I mean, I can't -- I can give you</p> <p>4 an example. Last night we had a public meeting and</p> <p>5 at that public meeting there were people who use</p> <p>6 services. The public meeting was announced through</p> <p>7 the Web site and we had families and customers</p> <p>8 attend the public meeting as a result.</p> <p>9 Q. All right.</p> <p>10 A. And service coordinators were there and</p> <p>11 actually one of the service coordinators commented</p> <p>12 on getting her folks on her caseload together to</p> <p>13 talk about some reductions that were being proposed</p> <p>14 in one of our home and community-based waivers. And</p> <p>15 she came and presented their viewpoints for us to</p> <p>16 hear. So she had shared the information so that</p> <p>17 they could respond.</p> <p>18 Q. You've just told me that there is no</p> <p>19 directive that says in -- number one, is there a</p> <p>20 directive that deals with individuals that don't</p> <p>21 have access to the Internet?</p> <p>22 A. No, not to my knowledge.</p> <p>23 Q. Okay. Would it surprise you that</p> <p>24 individuals receiving service from DDSN don't all</p> <p>25 have access to the Internet?</p>	<p>1 reflect the mission and values and principles of</p> <p>2 DDSN. So through that process they automatically go</p> <p>3 through a review period and comment period.</p> <p>4 Q. Well, again, using the example that</p> <p>5 I've used in me -- I don't have access to the Web</p> <p>6 site -- in fact, let me follow up.</p> <p>7 You talked about advocacy</p> <p>8 organizations, help me understand what organizations</p> <p>9 you might be referring to.</p> <p>10 A. South Carolina Autism Society.</p> <p>11 Q. Is there a -- excuse me, I interrupted</p> <p>12 you and I apologize.</p> <p>13 A. The South Carolina Association for</p> <p>14 Retarded Citizens, the South Carolina Brain Injury</p> <p>15 Association, the South Carolina --</p> <p>16 Q. Whoa, whoa, whoa, whoa.</p> <p>17 A. Oh.</p> <p>18 Q. I have enough trouble reading my</p> <p>19 writing when I do it slowly.</p> <p>20 A. Okay.</p> <p>21 Q. Okay. Association for Retarded</p> <p>22 Parties --</p> <p>23 A. Citizens.</p> <p>24 Q. -- Citizens.</p> <p>25 A. Uh-huh.</p>

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1 Q. Okay. Autism Society. What else?  
 2 A. The South Carolina Brain Injury  
 3 Alliance.  
 4 Q. Okay. What else?  
 5 A. The South Carolina Spinal Cord Injury  
 6 Association.  
 7 Q. Okay.  
 8 A. And there's a Partnership for  
 9 Disability Organization.  
 10 Q. Organizations?  
 11 A. Uh-huh.  
 12 Q. So --  
 13 A. It's a compilation of the ones that  
 14 I've mentioned above. They get together and work  
 15 with one another.  
 16 Q. What others?  
 17 A. Then there's the -- there's consumer  
 18 support groups.  
 19 Q. Is consumer --  
 20 A. Customer support groups.  
 21 Q. Yeah, but is that sort of informal  
 22 alliances of parents or whatever, what is that?  
 23 A. No, they're -- well, the -- you know,  
 24 they are self-advocacy groups that are very formal.  
 25 We have a statewide advocacy group, self-advocacy

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1 group.  
 2 Q. Which -- that would be what?  
 3 A. They call themselves South Carolina  
 4 Impact.  
 5 Q. Okay. What else?  
 6 A. And then each county typically has a  
 7 self-advocacy group where they get together and talk  
 8 about issues and problems and concerns and things  
 9 that they want to see changed about anything -- very  
 10 simply about what they eat for breakfast to where  
 11 they want to live.  
 12 Q. Right. Who else? I'm just trying to  
 13 get as complete an understanding when you say you  
 14 communicate with advocacy organizations. You've  
 15 been kind enough to share half a dozen at least.  
 16 Are there others?  
 17 A. There's all kinds of committees.  
 18 There's the Adult Protection Coordinating Council.  
 19 One way to communicate different activities.  
 20 There's the Professional Association like the South  
 21 Carolina Association on Intellectual and  
 22 Developmental Disabilities, which is a professional  
 23 organization. There's the Human Service Providers  
 24 Association.  
 25 Q. Is there a directive that identifies

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1 the advocacy organizations that must be notified  
 2 when either a directive is either under  
 3 consideration for creation or is under consideration  
 4 for change?  
 5 A. No, but the directives are on the Web  
 6 site and you can comment on them at any time.  
 7 Q. So there's no directive that addresses  
 8 what organizations must be contacted for purposes of  
 9 putting them on notice about changed directives?  
 10 A. Right.  
 11 Q. And, again, you've been kind enough to  
 12 list to me. Are there others?  
 13 A. I'm sure there are.  
 14 Q. I'm just --  
 15 A. Yeah.  
 16 Q. -- I recognize there's a lot. I'm just  
 17 wanting to make sure that I take the time to give  
 18 you the opportunity, well, Steve, I just thought of  
 19 so and so and I want to -- I invite you to --  
 20 A. There's at least -- there's at least 40  
 21 self-advocacy groups across the state.  
 22 Q. All right.  
 23 A. There's at least, you know, 20 support  
 24 groups across the state. There are Internet  
 25 networks where, you know, information is

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1 disseminated, that kind of thing so, yeah.  
 2 Q. All right. What mailings -- does your  
 3 directive that describes the process to create  
 4 directives, does it require mailings to anyone?  
 5 A. No.  
 6 Q. Does it require logging phone contacts  
 7 to confirm that an organization knows about a  
 8 directive or potential change in directive?  
 9 A. Well, we -- we send all the directives  
 10 to the providers that we have contracts with via  
 11 e-mail.  
 12 Q. Okay. Is there a directive that  
 13 requires a provider to share the contents of that  
 14 communication with individuals or their families  
 15 receiving services?  
 16 A. No.  
 17 Q. So there could be a directive that a  
 18 provider knows about but there's -- that doesn't  
 19 necessarily mean that someone receiving those  
 20 services would necessarily know about it?  
 21 A. Right.  
 22 Q. And there's no policy or directive that  
 23 addresses that dissemination of information?  
 24 A. Right.  
 25 Q. So how -- how does -- try to be

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1 respectful -- the Associate State Director of Policy  
 2 affirm that all of sort of the stakeholders in a  
 3 particular directive know about it?  
 4 A. How do I know that --  
 5 Q. How do you confirm -- you have  
 6 indicated to me --  
 7 A. You can't ever confirm that all your  
 8 stakeholders --  
 9 Q. Okay.  
 10 A. -- know about -- yeah.  
 11 Q. But do you have a process and by which  
 12 you attempt to confirm in some sort of document or  
 13 directive that we know the following organizations,  
 14 individuals and family members who may be affected  
 15 by a directive know about it?  
 16 A. We get -- comment on a regular and  
 17 routine basis from the Web site when people question  
 18 a directive or want more information, we do customer  
 19 surveys about things that are working well in their  
 20 lives and thing that are -- they want to see  
 21 changed. We do personal outcome interviews to get a  
 22 sense of the quality and meaning that's in that  
 23 person's life. We do organizational reviews of our  
 24 providers to determine if they're fulfilling the  
 25 mission. We interview people on site that are

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1 getting services. So it's more of the impact that  
 2 directives have.  
 3 Directives are intended to protect  
 4 people that use services. They're intended to, you  
 5 know, strengthen the service delivery system. Not  
 6 intended to harm people.  
 7 Q. I wasn't attempting by my questions to  
 8 suggest --  
 9 A. I didn't say you were.  
 10 Q. Okay.  
 11 A. I was just adding that as a personal  
 12 matter.  
 13 Q. But I understand you to say, well,  
 14 Steve, if you came to my office, I would be unable  
 15 to show you that -- let's just say you and I in  
 16 random picked up a directive, you would be un- --  
 17 you don't have a process, let me be fair. You don't  
 18 have a process to say, Steve, our policy is and  
 19 since I'm the -- and I say, this respectfully, I'm  
 20 going to refer to you as a policy guru, and I don't  
 21 mean that in any way to be derogatory.  
 22 A. Sure.  
 23 Q. I think that is what you are. It's an  
 24 important position and I appreciate that it's  
 25 important. But you'd be unable to say, well, Steve,

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1 if you look at this, I can assure you that and I'd  
 2 have a list -- I'm not going to be able to look at a  
 3 list that you would say, don't worry, I can tell you  
 4 every one of these organizations got it, that's  
 5 fair, right?  
 6 A. No, I can tell you every organization  
 7 that got it.  
 8 Q. Well, tell me how you -- is there a  
 9 directive that ensures that that happens?  
 10 A. I -- you know, I can't go back to  
 11 saying whether it's in the directive that  
 12 establishes the directive process but I think that  
 13 it's included in there.  
 14 Q. Okay.  
 15 A. And we do have distribution lists so it  
 16 may be an internal --  
 17 Q. Okay.  
 18 A. -- operational matter rather than a  
 19 directive. Directives don't necessarily tell DDSN  
 20 how to operate. Okay, that would be a whole  
 21 different matter --  
 22 Q. Okay.  
 23 A. -- than what the directives' intents  
 24 are.  
 25 Q. You've just made reference to another

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1 entity or concept I don't think I'd heard just yet.  
 2 It may not be a directive, it may be and I missed  
 3 what you just said.  
 4 A. Well, I'm saying that there are, you  
 5 know, standard operating procedures. I mean, you  
 6 know, procedures are aren't always written down  
 7 about when you do what and how you do it. They  
 8 might be in your job description but talking about,  
 9 you know, how things get done is part of being the  
 10 professional in the job you're in.  
 11 So we do have a way to verify who we  
 12 sent directives that are under proposed revision or  
 13 just proposed review. We do know who those go to.  
 14 Q. Okay. And I'm not arguing with you.  
 15 I'm trying to understand what is it -- you say that  
 16 to me. Do you have a directive that requires you to  
 17 audit that, in fact, directives are being followed?  
 18 A. Yeah -- we do have other things that  
 19 help us understand whether directives are being  
 20 followed, yes.  
 21 Q. All right. One of the things I notice  
 22 in the Legislative Audit Council report was you all  
 23 committed to, in fact, enforce a directive that LAC  
 24 said you weren't enforcing so that caused me to  
 25 wonder do you have an audit procedure?

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<p>1 A. I'm --</p> <p>2 Q. Because in the --</p> <p>3 A. I'm unfamiliar with the statement you</p> <p>4 just made --</p> <p>5 Q. And I'm going to point it out.</p> <p>6 A. Okay. Well, that would be helpful</p> <p>7 because if you're basing your question on that --</p> <p>8 Q. You're not familiar with that. We'll</p> <p>9 go to that. We're going to get to that. I'm</p> <p>10 just -- again, I'm trying to understand there's</p> <p>11 directives and then there's -- and I don't think</p> <p>12 I've heard you use a term to describe it but there's</p> <p>13 directives but there's also other things that apply</p> <p>14 to make sure things happen. And I think you used a</p> <p>15 term and maybe I missed it or maybe I misunderstood</p> <p>16 you.</p> <p>17 A. I don't understand --</p> <p>18 Q. Okay.</p> <p>19 MR. WOODINGTON: Steve, when you get to</p> <p>20 a breaking moment --</p> <p>21 MR. HAMM: Well, why don't we break.</p> <p>22 I'll be happy to.</p> <p>23 MR. WOODINGTON: Fine.</p> <p>24 (Off-the-record conference.)</p> <p>25</p>	<p>1 A. Yes.</p> <p>2 Q. Does this position questionnaire</p> <p>3 accurately reflect your job responsibilities and</p> <p>4 obligations as of now?</p> <p>5 A. Yes.</p> <p>6 Q. It says that you -- can I read this and</p> <p>7 conclude that Dr. Kathi Lacy has a thorough</p> <p>8 knowledge of state level policies, procedures,</p> <p>9 functions and interagency relationships -- I'm</p> <p>10 reading in Number 2 on the first page.</p> <p>11 A. Oh. Excuse me. Yes.</p> <p>12 Q. And that you have a thorough knowledge</p> <p>13 of public sector administration practice procedures</p> <p>14 and standards?</p> <p>15 A. Yes.</p> <p>16 Q. And that you have extensive knowledge</p> <p>17 of disability populations and service delivery</p> <p>18 systems?</p> <p>19 A. Yes.</p> <p>20 Q. And that you are a skilled developer of</p> <p>21 policies and procedures to enhance efficiency and</p> <p>22 effective of service delivery systems?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. I want to focus on that for a</p> <p>25 moment.</p>
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<p>1 BY MR. HAMM:</p> <p>2 Q. Welcome back. I just asked the court</p> <p>3 reporter to help both of us. I asked her to go back</p> <p>4 about that phrase that I thought I heard you say.</p> <p>5 And I think you used the phrase internal operating</p> <p>6 matter?</p> <p>7 A. Uh-huh. Right.</p> <p>8 Q. Okay. An internal operating matter is</p> <p>9 what?</p> <p>10 A. How you do your job.</p> <p>11 Q. Okay. We'll mark as Hearing Exhibit</p> <p>12 No. 2 a job position description.</p> <p>13 (PLF. EXH. No. 2, A Job Position</p> <p>14 Description, was marked for identification.)</p> <p>15 BY MR. HAMM:</p> <p>16 Q. Do you recognize this document, Kathi?</p> <p>17 A. Yes.</p> <p>18 Q. Describe what I've handed you for the</p> <p>19 record, Kathi, please.</p> <p>20 A. The position description for a program</p> <p>21 manager III, which I'm in that current state title.</p> <p>22 Q. Okay. Now, does this document serve as</p> <p>23 part of the standards of how you serve as the -- let</p> <p>24 me back up in my notes here -- Associate State</p> <p>25 Director of Policy?</p>	<p>1 A. Okay.</p> <p>2 Q. When this refers to policies, skilled</p> <p>3 developer of policies, I thought the Commission</p> <p>4 established policies. Is this suggesting that you</p> <p>5 have taken over some of the policy obligations from</p> <p>6 the Commission?</p> <p>7 MR. WOODINGTON: Object to the form.</p> <p>8 THE WITNESS: No.</p> <p>9 BY MR. HAMM:</p> <p>10 Q. Okay. Well, help me understand what</p> <p>11 this means.</p> <p>12 A. You know, the -- the word program</p> <p>13 policy is actually used on the next page.</p> <p>14 Q. Yeah, and I want to get to that.</p> <p>15 A. Well, I'm answering your question,</p> <p>16 though.</p> <p>17 Q. Oh. Okay, fine. Fine.</p> <p>18 A. So program policy is different than a</p> <p>19 Commission policy. And as I alluded to earlier, I</p> <p>20 believe, the term department directive was there</p> <p>21 when I got to the office. And with my educational</p> <p>22 background, I considered those to be more, you know,</p> <p>23 policy-related kinds of documents. But they</p> <p>24 certainly reflect what the Commission has and what</p> <p>25 the state statute has directed us in terms of</p>

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<p>1 service delivery system for people.  2 Q. Were you involved in the creation of  3 the language describing the position?  4 A. The -- this 1, 2 and 3?  5 Q. Yes.  6 A. 4?  7 Q. Yes.  8 A. No.  9 Q. So who in your position description  10 created the phrase skilled development -- developer  11 of policies?  12 A. I guess that would be Dr. Butkus.  13 Q. You have in the course of a response to  14 me a few minutes ago, Kathi, said, well, I think you  15 were suggesting -- well, Steve, you ought to sort of  16 read into skill development of program policies?  17 MR. WOODINGTON: Object to the form.  18 THE WITNESS: I was just saying that  19 the detail about what kind of policies is laid out  20 in the actual job duties and it referred to program  21 policies.  22 BY MR. HAMM:  23 Q. But I'm -- and again, I'm not trying to  24 be difficult, I'm just looking at a document that  25 describes the position that you currently hold</p>	<p>1 how you're known inside the organization as running  2 the office of policy?  3 A. Yes.  4 Q. Okay. And then it goes on and, in  5 fact, I think this job purposes, it goes on and  6 basically lists your areas of responsibility that  7 you described to me in response to an earlier  8 question when we were talking about mental  9 retardation, health and spinal, that's -- that's  10 where that -- I guess would be the source document  11 of why you have that area of responsibility because  12 it's listed here, correct?  13 A. Yes.  14 Q. Okay. Has the organizational structure  15 of DDSN as it regards -- let's start with just you.  16 Has it been reorganized or have you reorganized when  17 you obtained that position, I think you told me in  18 2002?  19 A. Right.  20 Q. Okay. And I'm noting that this  21 document was created in January of 2003. Does this  22 reflect that the position -- that the position  23 description was altered to reflect changes in that  24 position? Who had your -- well, let's not ask too  25 many questions at once.</p>
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<p>1 and -- so you're -- this is not a trick question and  2 I'm not trying to play around with you, so let me  3 just say that.  4 When it says you're a skilled  5 development of policies, is that -- does that  6 somehow not accurately describe your job position  7 description?  8 MR. WOODINGTON: Object to the form.  9 THE WITNESS: This says what knowledge,  10 skills and abilities are needed by an employee upon  11 entering into the job --  12 BY MR. HAMM:  13 Q. Right.  14 A. -- including any special certification.  15 Q. Right.  16 A. So I had skills in developing policies  17 because of the graduate work that I performed.  18 Q. Okay. Okay. And that's fine. All  19 right. Now go -- let's now go to Page No. 2.  20 I'm looking at job purpose on page  21 No. 2, Kathi. Management oversight of the office of  22 policy. If I were to call over there and try to  23 track you down, if I asked, well, I need to talk  24 to -- I can't think of her name, but the lady who's  25 the head of the office of policy, is that -- is that</p>	<p>1 A. The position before I took it -- well,  2 it was a newly created position that broke Dr. Brent  3 Coyles who was the Deputy Director of I want to say  4 programs, I could be wrong about what his title was.  5 And he was in charge of both, you know, we called  6 it programs back then and updated it to policies and  7 operations.  8 Q. So is the office of policy an office  9 that was denominated under that name to reflect the  10 job assignment given to you in 2002 when you  11 received that position?  12 A. Yes.  13 Q. Okay. So we wouldn't see a prior  14 position description because -- I think I'm hearing  15 you say you essentially were placed in a new  16 position with job assignments that reflected some  17 reorganization of senior management?  18 A. Sort of.  19 Q. Okay.  20 A. There was one person in a position that  21 had both what we used to call program equated to  22 policy. I don't know what was in his job  23 description. I can't attest to that. But he had  24 these functions and he also had functions related to  25 the operations component of the agency.</p>

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1 Q. Okay.

2 A. And that position was divided into two

3 positions.

4 Q. Okay. And is that still the structure

5 that exists at the moment?

6 A. Yes.

7 Q. And both -- you fill one of those

8 positions and who fills the other?

9 A. David Goodell.

10 Q. Okay. That's a name I recognize.

11 One of the things I didn't ask you

12 before when we first started but let me go ahead and

13 do it now. You've indicated that you've had some

14 other depositions. I took the time to read your

15 earlier one just to get a flavor of how you came

16 across in writing. What did you do to prepare for

17 this deposition?

18 A. This one?

19 Q. This one. Yeah, I'm not -- I'm not

20 getting involved in other cases.

21 A. Okay.

22 Q. I'm going to stick with what I --

23 A. I --

24 Q. I read it as simply as a matter of

25 trying to educate myself. I am not -- I'm not

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1 involved in that other litigation. Don't fully

2 understand what it is, nor do I need to at the

3 moment.

4 A. I read the briefs, I don't know what

5 all of them are exactly called.

6 Q. Okay.

7 A. But the questions that you proposed and

8 that our attorneys responded to.

9 Q. Okay. What else?

10 A. I met with my general counsel Tana or

11 Ken Woodington.

12 Q. Okay. When did that -- I don't -- I

13 don't want to know what was said.

14 A. Right.

15 Q. But when did that happen?

16 A. It was either last week -- maybe last

17 week.

18 Q. Okay. And how long did you meet with

19 him?

20 A. A little over an hour.

21 Q. Okay.

22 MR. WOODINGTON: And actually, it's not

23 coaching, it was this Monday, I think.

24 THE WITNESS: Okay.

25 MR. WOODINGTON: Time flies when you're

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1 having fun.

2 MR. HAMM: I understand totally and

3 completely. I get two or three days away from

4 something, I don't know if it was this week or three

5 weeks ago so that's not a problem.

6 BY MR. HAMM:

7 Q. So was it as a result of that meeting

8 that you read the briefs or memos that were filed in

9 this matter?

10 A. Yes.

11 Q. What else did you do to prepare?

12 A. I read the state statute related to

13 DDSN.

14 Q. Okay.

15 A. And that might be about it.

16 Q. Okay. And how much time did it take

17 you to accomplish those various tasks?

18 A. Maybe three hours.

19 Q. And you were excited by the brilliance

20 and pros of both sides when you read all these

21 documents?

22 A. Sure.

23 Q. Good. Well, very good answer. Very

24 good answer.

25 Did you read the complaint in this

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1 lawsuit?

2 A. Yes.

3 Q. Okay. Again, I am not asking you any

4 question about any conversation you've had with your

5 very distinguished counsel. But I do want to

6 know -- you read -- when you read the lawsuit, was

7 that in preparation for this deposition?

8 A. I believe I read the lawsuit when it

9 first came.

10 Q. Okay.

11 A. And then I read it again in preparation

12 for the deposition.

13 Q. Okay. And you're aware that counsel

14 provided an answer?

15 A. Yes.

16 Q. Okay. Were you involved in the

17 creation and approval of the answer?

18 A. Yes.

19 Q. Again, without -- without going into

20 any conversation you had with counsel, so you saw

21 the lawsuit when it was filed, apparently you must

22 have had a meeting with counsel?

23 A. In 2007?

24 Q. Yes.

25 A. I believe so.

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1 Q. And I think I just heard you, I'm to  
 2 understand to say, that you were involved in  
 3 providing DDSN's response or answer?  
 4 MR. WOODINGTON: Object to the form.  
 5 THE WITNESS: Correct.  
 6 BY MR. HAMM:  
 7 Q. So the answers contained in that  
 8 document reflect that you reviewed and approved all  
 9 of those?  
 10 A. I'm not saying I approved all of them  
 11 because there are legal terms and things in there  
 12 that I wouldn't have known how to put together.  
 13 Q. Okay. I think you indicated to me you  
 14 looked at the memorandum and I'm excited that you  
 15 were excited with the brilliance written on both  
 16 sides. Kind of you to say that.  
 17 You looked at the complaint that was  
 18 filed and you've just acknowledged that you had some  
 19 involvement in the creation of the answer to that.  
 20 A. Yes.  
 21 Q. And I think I also heard you say that  
 22 you had some involvement in the response to  
 23 interrogatories in which we asked certain questions  
 24 and some of which may have been answered, some of  
 25 which were not?

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1 A. Yes.  
 2 Q. Okay. So to the extent that you and  
 3 I -- we're going to go over some of those in the  
 4 course of this. Those are questions and responses  
 5 that you were exposed to and were familiar with  
 6 prior to our having this opportunity to talk today.  
 7 A. Yes.  
 8 Q. Let's -- I want to -- I want to make  
 9 sure that I understand. We're going to mark as  
 10 Hearing Exhibit No. 3 a document that -- let me hand  
 11 that to you.  
 12 (PLF. EXH. No. 3, DDSN Organizational  
 13 Chart, was marked for identification.)  
 14 BY MR. HAMM:  
 15 Q. This is a document that your counsel  
 16 gave to us as part of the discovery process. Do you  
 17 recognize this document?  
 18 A. Yes.  
 19 Q. What is it?  
 20 A. It's a DDSN organizational chart.  
 21 Q. Right now the State Director is no  
 22 longer Dr. Butkus and Dr. Andy Laurent is, as I  
 23 understand it, serving on an interim basis?  
 24 A. Yes.  
 25 Q. And your position is reflected in the

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1 box immediately below the State Director?  
 2 A. Yes.  
 3 Q. Okay. When you -- your position of  
 4 State -- Associate State Director of Policy, does  
 5 your policy obligations and responsibilities also  
 6 cover policies and administration shown by Deputy  
 7 State Director of Administration and there's a  
 8 series of positions below it, Director of Government  
 9 and Community Relations, do you have obligation to  
 10 make sure that whatever they're doing are consistent  
 11 with policies of the Commission?  
 12 MR. WOODINGTON: That got kind of long.  
 13 MR. HAMM: Okay.  
 14 MR. WOODINGTON: Could you try again.  
 15 MR. HAMM: I'd be happy to. I'd be  
 16 happy to.  
 17 BY MR. HAMM:  
 18 Q. Kathi, look at Deputy State Director of  
 19 Administration. Do you see that box?  
 20 A. Yes.  
 21 Q. And then I'm just picking a box,  
 22 Director of Government and Community Relations.  
 23 What is that position? What is that?  
 24 A. That's the person that spends time in  
 25 educating the legislature, follows up on some

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1 constituent issues that they might have, responsible  
 2 for communicating with the media.  
 3 Q. Okay. Now, who holds that position?  
 4 A. Lois Park Mole.  
 5 Q. That's three words?  
 6 A. Yes.  
 7 Q. Lois Park Mole, M-O-L-E?  
 8 A. Right.  
 9 Q. I didn't know if Park Mole was one name  
 10 or two.  
 11 Do you have responsibilities to make  
 12 sure that the Director of Government and Community  
 13 Relations is, in fact, correctly sharing the  
 14 policies and directives of DDSN?  
 15 A. No.  
 16 Q. So the Director of Government and  
 17 Community Relations may, in fact, be articulating a  
 18 position unknown to you since you don't have  
 19 responsibility for that position?  
 20 MR. WOODINGTON: Object to the form.  
 21 THE WITNESS: Sure.  
 22 BY MR. HAMM:  
 23 Q. Now, finance and accounting is -- the  
 24 Director of Finance and Accounting is I am assuming,  
 25 and correct me if I'm wrong in this assumption, that

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<p>1 they are making sure that on -- on an internal basis 2 that the funds are being -- are going where they're 3 supposed to be going and you can account for them, 4 yes? 5 A. I assume so. 6 Q. Okay. If you don't know, that's fine. 7 I'm not trying to put words in your mouth. I'm just 8 trying to understand just how broad Associate State 9 Director of Policy. And I think I heard you say, 10 well, whether the government community relations 11 person is communicating policy of directives as you 12 understand it, that's not an obligation or 13 responsibility you have in your position? 14 A. Right. 15 Q. Now, is the Director of the Legal 16 Services Division the very fine lawyer that's 17 sitting here with us today? 18 A. Yes. 19 Q. Okay. And that's the position that was 20 formally held by Jim Hill? 21 A. Yes. 22 Q. Okay. All right. So I think I hear 23 you telling me that, well, Steve, if you go over on 24 this organizational chart to Deputy State Director 25 of Administration that is not an area that you have</p>	<p>1 directors, two of them, are, in fact, implementing 2 and following the directives that you have 3 responsibilities for? 4 A. To a certain degree. Depends on what 5 directive you're talking about. 6 Q. Well, I'm trying to understand the 7 scope of your responsibilities. And so far, if I'm 8 hearing you correctly, and correct me if I'm wrong, 9 Steve, look at the chart. Look underneath my box 10 and that's where I'm responsible for these policies 11 and directives. I mean, that, you've already told 12 me, that's correct, yes? 13 A. Yes. 14 Q. Okay. I think, and I'm not trying to 15 put words in your mouth, if I went to the left box 16 under Deputy State Director of Administration, that 17 is whether they are or are not complying with 18 whatever the directives of policies, that does not 19 come under your responsibilities, at least that's 20 what I thought I understood you to say? 21 A. Right. I mean, it -- 22 Q. Okay. 23 A. -- most of the -- I mean, it's kind of 24 a strange way to form the question because many of 25 the directives don't apply to people that work for</p>
<p>Page 71</p> <p>1 responsibility for or have to be -- and they're not 2 accountable to you to make sure that they're 3 following whatever your policy or directives are? 4 A. That's correct. 5 Q. All right. Let's go on the chart now 6 and go to the right. Associate State Director of 7 Operations, now what is that? 8 A. The person that's in that job is David 9 Goodell. 10 Q. Okay. 11 A. And he has responsibility to make sure 12 that the providers that we contract with understand 13 the policies, directives, service standards and are 14 using them. 15 Q. So he -- you work with him to ensure 16 that he is implementing the directives and internal 17 operational matters? 18 A. They're not internal operational 19 matters, they're more in the day-to-day operations 20 of how our providers are operating. 21 Q. But there are directives that deal with 22 how providers are supposed to do and not do. 23 A. Yes. 24 Q. So again, do you have responsibility 25 for ensuring that Mr. Goodell and these district</p>	<p>Page 73</p> <p>1 the Deputy State Director of Administration. 2 Q. All right. And so let me rephrase the 3 question -- 4 A. Okay. 5 Q. -- so it's not strange. 6 A. Okay. 7 Q. To the extent that a directive has an 8 impact on communications and government in community 9 relations, you don't determine, monitor whether or 10 not communications are, in fact, consistent with the 11 directives, that's all I'm trying to get clear on. 12 A. Yeah, I'm not -- I'm not that person's 13 supervisor. 14 Q. Okay. So who is responsible for doing 15 that? 16 A. The person's supervisor. 17 Q. Okay. And is there -- has the 18 Commission adopted a policy about how these policies 19 and directives must or must not be applied in the 20 organizational chart? 21 A. That wouldn't be their responsibility, 22 no. 23 Q. That wouldn't be the Commission's 24 responsibility? 25 A. Not to my -- I mean, not to the Deputy</p>

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1 State Director of Administration. It would be them  
 2 communicating to the State Director what they're  
 3 vision, mission, values, principles and what they  
 4 direct him to direct us to do.  
 5 Q. Well, if the -- if there is a change on  
 6 funding for services, that would have an impact on a  
 7 directive, yes?  
 8 A. Not to my knowledge.  
 9 Q. Okay. So you can have a directive  
 10 and -- that indicates that something is going to  
 11 take place and the -- and the funding is changed  
 12 that impacts the ability to comply with the  
 13 directive, that's not your responsibility to  
 14 determine that or follow up on that?  
 15 A. You've lost me.  
 16 Q. Okay.  
 17 A. Try it again.  
 18 Q. I'll be happy to.  
 19 A. Okay.  
 20 Q. Deputy State Director of  
 21 Administration -- so again, I'm just trying to so  
 22 you and I are looking at the same document.  
 23 Directives, as I understand it, apply  
 24 to a wide range of operations, provision of  
 25 services, and so forth at DDSN.

1 again.  
 2 A. I'll use an example.  
 3 Q. Please do.  
 4 A. There's a directive on how to report  
 5 abuse, neglect and exploitation.  
 6 Q. Okay.  
 7 A. Okay. So that directive probably has,  
 8 you know, broad applicability. Maybe one of the  
 9 broadest --  
 10 Q. Right.  
 11 A. -- of our directives. And so if -- if  
 12 through one of their job duties the Director of  
 13 Human Resources is visiting a regional center campus  
 14 and finds that -- that sees something that they  
 15 think might fit into abuse, neglect or exploitation,  
 16 then they would have an obligation to report it.  
 17 Okay?  
 18 My job is to make sure that those  
 19 directives that do apply to people in the  
 20 organization, that they understand them.  
 21 Q. Okay.  
 22 A. Okay.  
 23 Q. And I appreciate that answer but it  
 24 really goes back to the question that I'm asking and  
 25 let's use human resources since that was the example

1 A. The intern -- not about internal  
 2 operations. They are directed more towards, and if  
 3 you look at the their applicability, each directive  
 4 has a different applicability group. One could be  
 5 toward providers, contract and service providers,  
 6 regional center, others may --  
 7 Q. Okay. Assume for purposes of my  
 8 question that I am not trying to suggest that every  
 9 director -- every directive has an impact on  
 10 administration. I'm just positing the question that  
 11 to the extent that the government and community  
 12 relations, which is you've talked about sort of  
 13 outreach and communications, I think that might  
 14 have -- communications, I know was a word that you  
 15 used -- or the financing -- finance and accounting,  
 16 if they make decisions or changes that impact on a  
 17 directive that might apply to them, you are not the  
 18 person to make that determination; is that right?  
 19 A. If they make changes that apply to the  
 20 directive?  
 21 Q. A directive says we're going to  
 22 reim- -- that a provider can only provide X, Y, Z  
 23 services. Start with there.  
 24 A. A directive doesn't do that.  
 25 Q. Okay. Describe the directive to me

1 that you gave.  
 2 How is it since you're the office of  
 3 policy, how is it that you know and evaluate whether  
 4 the Director of Human Resources makes decisions  
 5 consistent with a directive or a policy?  
 6 A. Again, there are -- most of the  
 7 directives that I am the originator of do not apply  
 8 to the Director of Human Resources.  
 9 Q. Well, let me -- let's narrow it. Are  
 10 there any directives that apply to human resources?  
 11 A. They are the originator of many  
 12 directives.  
 13 Q. All right. But you --  
 14 A. For example, on prohibition of sexual  
 15 harassment in the organization.  
 16 Q. Okay.  
 17 A. Okay. No, and it is not my job to  
 18 ensure that the Director of Human Resources is  
 19 following that directive. It's not my job.  
 20 Q. Okay. Again, I'm not trying to be  
 21 argumentative or suggesting that I think you should  
 22 be, I'm just trying to understand. So whose job is  
 23 it?  
 24 A. The person's supervisor.  
 25 Q. But if you're the office of policy, is

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<p>1 there any -- can a directive come into existence 2 without your knowledge? 3 A. I suppose so. 4 Q. So you're the Director of the Office of 5 Policy and you told me when we first started this 6 morning, Kathi, that you were responsible for the -- 7 I wrote it down -- you were the responsible for the 8 directives of the department. Am I now 9 understanding that's not entirely accurate? 10 A. You asked me the question if there 11 could be a directive developed without my knowledge 12 and I answered yes. 13 Q. Okay. And I'm now asking you does that 14 mean when you said you were responsible for 15 directives of the department that that may not be 16 entirely accurate because I don't -- or are you 17 saying you're responsible for stuff you don't know 18 even about? 19 MR. WOODINGTON: Object to the form. 20 THE WITNESS: I'm saying that I have a 21 State Director that has authority over me and 22 control over what I do. And if he or she determined 23 that there is going to be a directive and it falls 24 under the Deputy State Director of Administration, 25 that I may not know about that.</p>	<p>1 Q. And you are and I thank you for that. 2 I mean, we're doing fine and I appreciate that. I'm 3 not -- I'm not trying to create a dispute here. 4 I'm -- when you hear me ask you a question, I'm just 5 trying to make sure I understand. 6 A. Sure. 7 Q. So let me go back to it because I think 8 I've missed something and that's why I'm going back. 9 You're responsible for the directives 10 of the department. 11 A. Responsible for the system and the 12 process. 13 Q. Okay. But -- I'm trying to make sure I 14 understand what that -- what that means. You've 15 been clear to me in terms of here in Exhibit No. 3 16 that the box of the, I guess, MR, Mental 17 Retardation -- is that mental retardation division 18 and then quality -- that -- 19 A. Yes. 20 Q. -- that -- you've told me, Steve, I 21 have responsibility for all those directives. To 22 the extent that a directory -- a directive 23 originates somewhere else, on this organizational 24 chart, do I understand that you when the directive 25 is either under consideration or approved you may or</p>
<p>1 BY MR. HAMM: 2 Q. So -- 3 A. And that I have somebody else that's 4 managing the directive system for me and that there 5 could possibly be something that gets developed that 6 I do not know about. That's basically it. It would 7 be unusual, it's never happened to me. 8 Q. But as we sit here, it may have 9 happened and you don't know because there may be a 10 directive you don't know about? 11 A. No, I do know about all the directives. 12 Q. Oh, so -- 13 A. You asked me if it was possible and I 14 said yes, it's possible. 15 Q. And I appreciate that. 16 A. Okay. 17 Q. And again, I'm not trying to be 18 argumentative and I'm not trying to put words in 19 your mouth, so. And I appreciate your candor with 20 me and I'm not -- I'm not quarreling with you when 21 I'm asking these questions. I'm trying to make sure 22 I understand so don't -- don't read anything into 23 that I am not -- that I'm quarreling with your 24 answer, I'm not. 25 A. I'm just responding --</p>	<p>1 may not be involved in that? 2 A. No, when it gets -- when it gets 3 originated and sent out for distribution and 4 comment, I am part of that process. 5 Q. Okay. All right. And now let's go 6 back to something I was asking you. Distribution 7 and comment. I used the example of someone who is 8 not connected to the Internet or whatever and may 9 not for any number of reasons be a member of an 10 organization, there is no directive that addresses 11 how you ensure that everyone may know about either a 12 directive or a change in directive? 13 A. Right. 14 Q. Okay. Okay. And very candidly, I have 15 not looked at, you have referenced that there was a 16 directive on directives. 17 A. Yes. 18 Q. Okay. When I asked you some questions 19 a little while ago, I thought I heard you to say, 20 well, Steve, we don't -- well, let me ask it: Do 21 you have an audit procedure to know that the 22 directive on directives is, in fact, complied with 23 every time? 24 A. Yes. 25 Q. And what document would I look at that</p>

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<p>1 would tell me, well, Steve, here's a document that 2 shows the procedures that we go through to show 3 consistent compliance with directives? 4 A. That would be from a woman that works 5 for me that is responsible for the day-to-day 6 management of that process. 7 Q. Okay. So if I were to talk with her or 8 she was sitting where you're sitting right now, she 9 would be able to say, we have a procedure that we 10 can show that we consistently apply to assure 11 compliance with the directive on directives? 12 A. Yes. 13 Q. And what is your understanding of what 14 document I would look at? What does it say? 15 A. Well, I get a report periodically that 16 tells me which directives are do for review. 17 Q. All right. 18 A. For example, the current directive on 19 directives says they have to be reviewed at a 20 minimum every three years. 21 Q. Okay. 22 A. And so I know which directives are -- 23 that there's a timely response to that. 24 Q. Okay. 25 A. And which directives, you know, that</p>	<p>1 once every three years. 2 A. Yes, that's correct. At a minimum. 3 Q. I understand that. I understand that. 4 But I'm just going by what I was reading. You've 5 told me about directives on directives and I saw 6 some examples where the Legislative Audit Council 7 concluded that that was not happening. 8 A. Correct. 9 Q. Okay. So the move to change it from 10 yearly review to three-year review was -- is that 11 something that was done recently in response to the 12 Legislative Audit Council? 13 A. It was done -- it was in the works 14 because it wasn't -- we were reviewing directives on 15 an annual basis when there wasn't any futility to 16 doing so anymore. That there -- we were sending 17 stuff out on a regular basis to providers that was 18 causing, you know, more problems than it was helping 19 since there were many directives that didn't need 20 any changes. 21 Q. Is that a decision that rests with you 22 whether a directive needs changes? 23 A. No. It depends on who the document 24 manager is for the directive. There all -- all the 25 directives are assigned a document manager who's</p>
<p>Page 83</p> <p>1 we're shooting the originators more information to 2 make sure that they're getting done timely. 3 Q. So there is a document that I could 4 look at for every directive that tells me where they 5 are on the review status? 6 A. Yes. 7 Q. Because I noticed in the Legislative 8 Audit Council report there was an acknowledgment 9 that that time period had not necessarily been 10 complied with consistently, you recall that finding? 11 A. Yes. Yes. 12 Q. So how is it that that happened if you 13 have a procedure designed to make sure that you 14 comply with the directive of directives? 15 A. Well, the -- the thing that the Audit 16 Council responded upon was that they weren't being 17 reviewed yearly. And so we revamped the process to 18 ensure that there would be a review process. 19 When I set up the directive for the 20 directives, I was ambitious thinking that those 21 directives could be reviewed on an annual basis. 22 Q. Right. 23 A. And it wasn't practical to do so. 24 Q. So the directive on directives, what, 25 in fact, happened was the yearly review was moved to</p>	<p>Page 85</p> <p>1 responsible for reviewing the directive at a minimum 2 every three years. A lot of the changes to a 3 directive result from a variety of different things. 4 Q. Can someone receiving services from 5 DDSN rely on a directive? 6 MR. WOODINGTON: Object to the form. 7 THE WITNESS: In what way? 8 BY MR. HAMM: 9 Q. To the extent that it establishes -- 10 like, we'll go -- we're going to go through the 11 pleadings in a minute. One of the allegations and 12 the complaint was that some directives were changed 13 that altered whether or not an individual could, in 14 fact, continue to receive certain benefits. So I'm 15 trying to understand -- we'll deal with it 16 specifically. 17 A. Oh, okay. 18 Q. But I'm trying to understand simply 19 because there's a directive doesn't mean that it 20 might not change, right? 21 A. Correct. 22 Q. And going back to our earlier 23 conversation, an individual who's not connected to 24 the Internet, for example, may or may not know 25 either of the existence of a directive or a change</p>

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1 in a directive that may, in fact, have an impact on  
 2 someone in their household?  
 3 A. Right.  
 4 Q. One of the things that we asked in the  
 5 course of our discovery was we asked for the minutes  
 6 of the Commission where they discussed the  
 7 promulgation of any regulations for policy. Do you  
 8 remember that question?  
 9 A. Yes.  
 10 Q. And what -- do you recall what the  
 11 answer was?  
 12 MR. WOODINGTON: Would you care to  
 13 refer her to the --  
 14 THE WITNESS: Yeah, can I --  
 15 MR. HAMM: Yes, I'll be happy to but  
 16 before we do that I'm just trying to understand what  
 17 she knows. I'm not --  
 18 THE WITNESS: Just ask it again.  
 19 MR. HAMM: Yes.  
 20 THE WITNESS: I've got distracted here.  
 21 BY MR. HAMM:  
 22 Q. Okay. We asked for the minutes of  
 23 where the Commission was advised about regulations  
 24 to establish policy or anything else -- let me just  
 25 say it -- and the answer was, well, we couldn't find

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1 any.  
 2 A. Uh-huh.  
 3 Q. So I'm trying to understand if the  
 4 Commission has never even under their minutes  
 5 discussed policies through regulations, I'm trying  
 6 to understand how it is that you as the head of the  
 7 office of policy have been guided with regard to the  
 8 use of regulations when the Commission's minutes  
 9 don't reflect any discussion on that issue.  
 10 MR. WOODINGTON: I object to the form  
 11 of that --  
 12 BY MR. HAMM:  
 13 Q. That's fine, you have to answer. Go  
 14 ahead and answer.  
 15 A. Since I've been at DDSN, the practice  
 16 has been and the interpretation of the state statute  
 17 has been that the issuance or promulgation of  
 18 regulations is permissible but not required. And --  
 19 Q. There has been a change in the  
 20 composition of the Commission.  
 21 A. Yes.  
 22 Q. Remind me how many -- are there seven  
 23 members of the Commission?  
 24 A. Yes.  
 25 Q. And am I correct that, what, there's

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1 either been three or four new members?  
 2 A. Four.  
 3 Q. You already told me you're not  
 4 responsible for the and perhaps training is not the  
 5 right word. But you're not responsible for training  
 6 the Commission as to their responsibilities, that  
 7 lies, I guess, I think you told me with the  
 8 Director?  
 9 A. Yes.  
 10 Q. Okay. Have you had conversations with  
 11 the Director about the training of the Commission  
 12 and the issue of using regulations approved by the  
 13 general assembly to establish policy?  
 14 MR. WOODINGTON: Do you mean the  
 15 current Director or the previous Director?  
 16 MR. HAMM: I'm talking about -- well,  
 17 let's first go with the previous Director.  
 18 THE WITNESS: Have I had discussions  
 19 with the previous Director about training the  
 20 Commission --  
 21 BY MR. HAMM:  
 22 Q. Or --  
 23 A. -- on the promulgation of regulations?  
 24 Q. Right.  
 25 A. No.

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1 Q. All right. Have you had that  
 2 conversation with the -- Dr. Laurent, the new  
 3 Director?  
 4 A. Dr. Laurent did -- we did have a  
 5 conversation about that.  
 6 Q. All right. Tell me about that  
 7 conversation.  
 8 A. I just told him what my understanding  
 9 was of the state statute.  
 10 Q. And that understanding is what?  
 11 A. It that the promulgation of regulations  
 12 is permissible.  
 13 Q. Okay. And who decides -- who decides  
 14 what the policy is with regard to DDSN with regard  
 15 to how they create policies? Is that you or the  
 16 Commission?  
 17 A. Of how policies are created?  
 18 Q. Yes.  
 19 A. The only policies that we have are  
 20 created by the Commission.  
 21 Q. Okay. But you told me you don't have a  
 22 process of having the Commission review and approve  
 23 directives, right?  
 24 A. That's right.  
 25 Q. And you've told me that you had not had

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1 conversation with Dr. Butkus with regard to using  
 2 regulations to establish policy, right?  
 3 A. Right, to my knowledge, right, yes.  
 4 Q. And you just told me that you had a  
 5 brief conversation where you shared your view, I  
 6 guess, your -- did you share your view of what state  
 7 law was?  
 8 A. I read the state law to the Director --  
 9 Q. Okay.  
 10 A. -- and said that since I've been here,  
 11 this has been my understanding.  
 12 Q. Okay.  
 13 A. This is how the department is  
 14 practiced.  
 15 Q. Okay. Let me hand to you -- we'll mark  
 16 it as Plaintiff's Exhibit No. 4.  
 17 (PLF. EXH. No. 4, Defendant's Responses to  
 18 Plaintiff's First set of Request for Production of  
 19 Documents, was marked for identification.)  
 20 BY MR. HAMM:  
 21 Q. For the record, I'll identify it as  
 22 defendant's responses to plaintiff's first set of  
 23 request for production of documents. Let me hand  
 24 that to you, Kathi.  
 25 A. Okay.

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1 Q. All right. Let's first -- you hold in  
 2 your hand Exhibit -- what has been marked as  
 3 hearing -- Exhibit No. 4, Kathi?  
 4 A. Yes.  
 5 Q. Okay. And did I correctly refer to it  
 6 as defendant's responses to plaintiff's first set of  
 7 request for production of documents?  
 8 A. Yes.  
 9 Q. Okay. And the total number of pages in  
 10 that exhibit is seven?  
 11 A. Yes.  
 12 Q. I'm just trying for the record to make  
 13 sure you and I are looking at the same thing, Kathi.  
 14 Let me -- you had previously when I  
 15 asked you told me that you had reviewed the  
 16 responses to our discovery request. Did you review  
 17 this document?  
 18 A. I didn't review -- this is not one that  
 19 I reviewed yesterday.  
 20 Q. Okay.  
 21 A. But -- but I do recall having read it.  
 22 Q. Okay. So is it your testimony that you  
 23 were aware of the planned response before it was  
 24 served on us?  
 25 A. Yes.

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1 Q. Okay. Turn to Page 2, if you would,  
 2 Kathi, and question No. 1. Would you read into the  
 3 record the question No. 1, please.  
 4 A. "The minutes of any meetings of the  
 5 Commission including but not limited to executive  
 6 sessions and meetings of any board committees,  
 7 members, subcommittees, support groups from the  
 8 period from 1993 through present regarding  
 9 discussion of the promulgation of regulations of the  
 10 criteria for the promulgation of regulations or any  
 11 decision whether or not to promulgate regulations."  
 12 Q. Okay. And would you read -- you're  
 13 welcome to read all of it -- the only thing that I  
 14 think is relevant but I leave that -- you have a  
 15 Ph.D -- I think the relevant answer is contained in  
 16 the subsection C as in cat. Would you read that.  
 17 A. "To the best of counsel's knowledge  
 18 after due investigation, there are no minutes of  
 19 board committees, members, subcommittees, support  
 20 groups that relate to the discussion of promulgation  
 21 of regulations, the criteria for the promulgation of  
 22 regulations or any decision whether or not to  
 23 promulgate regulations. If such documents are  
 24 subsequently located, they will be made available  
 25 promptly unless privileged in which case the

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1 privileged law will be supplied."  
 2 Q. Okay. Now, this document was provided  
 3 in response dated December the 17th, 2008.  
 4 A. 17th, yes.  
 5 Q. Okay. Since December the 17th of 2008,  
 6 do you, as we're sitting here today, are you aware  
 7 of any discussion regarding the criteria for the  
 8 promulgation of regulations or any decision whether  
 9 or not to promulgate regulations?  
 10 A. With the Commission?  
 11 Q. Yes.  
 12 A. No.  
 13 Q. This is telling me that since 1993, the  
 14 minutes of the Commission show that it was not an  
 15 issue ever put before them to decide one way or the  
 16 other; is that correct?  
 17 A. Yes.  
 18 Q. Okay. So help me understand --  
 19 MR. WOODINGTON: Could we go off the  
 20 record for a second?  
 21 MR. HAMM: Sure.  
 22 (Off-the-record conference.)  
 23 BY MR. HAMM:  
 24 Q. Hello again.  
 25 A. We're on the record.

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1 Q. We're on the record.  
 2 A. Okay.  
 3 Q. Welcome back.  
 4 A. Okay.  
 5 Q. Let's go back to this response. You  
 6 indicated to me that you were exposed to these  
 7 responses before they were served on the plaintiffs.  
 8 A. Yes.  
 9 Q. You have hold me that you, depending on  
 10 your work schedule, regularly attend Commission  
 11 meetings.  
 12 A. In my current job.  
 13 Q. In your current job.  
 14 A. Right.  
 15 Q. And that is since?  
 16 A. 2002.  
 17 Q. Okay. Prior to that, did you go to --  
 18 A. No, not -- not on a regular basis, no.  
 19 Q. All right. Well, then let's talk about  
 20 you got your new job as a matter of policy, yes?  
 21 A. Yes.  
 22 Q. All right. Now, tell me what you did  
 23 to prepare and understand that the Commission's  
 24 policies were prior to the time that you attended  
 25 Commission meetings.

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1 A. From my previous supervisor Brent  
 2 Coyle.  
 3 Q. Okay. Did you in preparation for and  
 4 consistent with your job description previously  
 5 marked as Exhibit No. 2, did you examine DDSN  
 6 documents including the Commission minutes to make  
 7 sure you understood what the policies were of the  
 8 Commission?  
 9 A. I did not --  
 10 Q. Okay.  
 11 A. -- review Commission meeting minutes.  
 12 Q. Okay. So when you are the head of the  
 13 office of policy, you did not examine the Commission  
 14 minutes prior to -- is it late 2002 or something  
 15 like that?  
 16 A. In June.  
 17 Q. I notice that position questionnaire is  
 18 dated in early of 2003 which I think that's a  
 19 reflection. You were telling me we're sort of  
 20 reorganizing and we're getting the paperwork in  
 21 place to have one position now reflected in two, is  
 22 that --  
 23 A. Yes.  
 24 Q. -- fair characterization?  
 25 A. Yes, uh-huh.

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1 Q. Okay. Well, then let's go -- when was  
 2 the first Commission meeting you ever went to?  
 3 A. I cannot recall.  
 4 Q. When you became the head of the office  
 5 of policy in 2002, your position questionnaire is  
 6 that -- is -- I notice that it's -- you signed it in  
 7 June of 2002.  
 8 A. Right.  
 9 Q. And it's received in the HR consulting  
 10 services, which I understand under the terms of that  
 11 organizational chart that you and I were looking at,  
 12 that is the office that's under the control of the  
 13 Deputy State Director of Administration?  
 14 A. The -- will you ask that again.  
 15 Q. Sure.  
 16 A. Okay.  
 17 Q. I'm looking on the top -- show me what  
 18 you saw. I want to make sure you and I are looking  
 19 at the same thing. Look at the first page, Kathi,  
 20 of Exhibit No. 2. It shows that it's received in  
 21 the HR Consulting Services and I'm assuming --  
 22 A. Oh, okay.  
 23 Q. -- in January of 2003, some seven  
 24 months after you signed it in June of 2002.  
 25 A. Uh-huh.

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1 Q. That date may or may not have a  
 2 significance and you can help as to whether or not  
 3 that it does. But did this position questionnaire  
 4 reflect your duties and obligations at the time you  
 5 accepted your current position in 2002?  
 6 A. Yes.  
 7 Q. So the stamping is more the  
 8 bureaucratic movement of paper within DDSN?  
 9 A. I'm not sure --  
 10 Q. Okay.  
 11 A. -- what the January 2009 -- I don't  
 12 know if that's Office of Human Resources within the  
 13 budget and control board or DDSN's. I'm just not  
 14 sure.  
 15 Q. Well, look at -- are you referring to  
 16 January 23, 2003?  
 17 A. Referring to January 29th, 2003.  
 18 Q. Okay. And then the December 5th, 2008  
 19 it's SCDDSN, so we know it's your organization,  
 20 policy and operations, is that you?  
 21 A. Yes.  
 22 Q. Okay.  
 23 A. I'm policy. And then operations is  
 24 David Goodell. We had shared the same  
 25 administration assistant.

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<p>1 Q. Okay.</p> <p>2 A. Yeah.</p> <p>3 Q. Okay. So reach back in time with me,</p> <p>4 Kathi, I'll wave a thing in front of you.</p> <p>5 A. Okay.</p> <p>6 Q. Go back in time.</p> <p>7 A. All right.</p> <p>8 Q. Give me your best memory of when you</p> <p>9 first attended a Commission meeting as the head of</p> <p>10 the office of policy.</p> <p>11 A. Oh, well, it probably would have been</p> <p>12 the first meeting of the month that I -- so it was</p> <p>13 probably in July.</p> <p>14 Q. Okay.</p> <p>15 A. Yeah.</p> <p>16 Q. And I'm -- your counsel and I had a</p> <p>17 conversation off of the record but let me just --</p> <p>18 and you heard the exchange that we just had. Do you</p> <p>19 have any, as the head of office of policy, do you</p> <p>20 have any awareness of the minutes of any meetings of</p> <p>21 the Commission dealing with the discussion of the</p> <p>22 promulgation of regulations, of the criteria for the</p> <p>23 promulgation of regulations or any decision whether</p> <p>24 or not to promulgate regulations?</p> <p>25 A. No.</p>	<p>1 had been there had been the understanding that the</p> <p>2 promulgation of regulations was not something that</p> <p>3 we did because we used other vehicles to -- to issue</p> <p>4 directives and hold people accountable to what our</p> <p>5 expectations were.</p> <p>6 Q. All right. And tell me how you arrived</p> <p>7 at that understanding.</p> <p>8 A. From reading the code, the state</p> <p>9 statute.</p> <p>10 Q. Okay. So had you -- I'm not asking</p> <p>11 what you were told. Have you met with your legal</p> <p>12 counsel at any time during your service as the</p> <p>13 office of policy to discuss the issue of</p> <p>14 promulgation of regulations of policy?</p> <p>15 A. Have I met with my legal staff --</p> <p>16 repeat it again, I'm sorry.</p> <p>17 Q. You met with your legal staff --</p> <p>18 A. Uh-huh.</p> <p>19 Q. I mean, with regard to the issue of</p> <p>20 promulgations of regulations, since you've just told</p> <p>21 me you told Andy Laurent your understanding of the</p> <p>22 law was that you didn't do it.</p> <p>23 A. That we -- that we were not required to</p> <p>24 promulgate regulations.</p> <p>25 Q. All right. And but that's an</p>
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<p>1 Q. Okay. So from mid 2002 -- today is</p> <p>2 July the 9th -- how did that happen? July the 9th.</p> <p>3 Wow. You have not been present at any Commission</p> <p>4 meeting where there's been a discussion of the</p> <p>5 promulgation of regulations, the criteria for the</p> <p>6 promulgation of regulations or any decision whether</p> <p>7 or not to promulgate regulations?</p> <p>8 A. Correct.</p> <p>9 Q. And you indicated to me that at the</p> <p>10 time you took the job you did not undertake an</p> <p>11 examination of the Commission's minutes in order to</p> <p>12 understand what the Commission's policy was on</p> <p>13 regulations, promulgation of regulations or whether</p> <p>14 or not to promulgate regulations.</p> <p>15 A. Correct.</p> <p>16 Q. Now, you just told me earlier in</p> <p>17 response to a question that you advise the current</p> <p>18 interim Director, Dr. Andy Laurent, of your -- I</p> <p>19 think you used the word understanding, I'm trying to</p> <p>20 quote you fairly.</p> <p>21 A. Yeah, I think that's right.</p> <p>22 Q. Understanding of the state statute.</p> <p>23 A. Correct.</p> <p>24 Q. And tell me again what you told him.</p> <p>25 A. That my -- the practice at DDSN since I</p>	<p>1 understanding you developed by your own reading of</p> <p>2 the statute?</p> <p>3 A. And the practice at DDSN. There are</p> <p>4 other mechanisms that you can use besides</p> <p>5 promulgating regulations.</p> <p>6 Q. Okay. So -- but the ultimate</p> <p>7 policymaking body is the Commission?</p> <p>8 A. Yes.</p> <p>9 Q. And you've indicated to me that since</p> <p>10 you have been there, you've now been there, what are</p> <p>11 we now talking about -- seven years?</p> <p>12 A. In this job?</p> <p>13 Q. In the current position?</p> <p>14 A. Yes.</p> <p>15 Q. During that entire period, you have no</p> <p>16 awareness of the Commission ever formally adopting a</p> <p>17 position pro, con or otherwise with regard to</p> <p>18 regulation?</p> <p>19 A. Correct.</p> <p>20 Q. All right. Now, help me -- this is</p> <p>21 where I'm stumbling. You indicated that you were</p> <p>22 involved in the creation of the answer to the</p> <p>23 lawsuit, yes?</p> <p>24 A. Which one?</p> <p>25 Q. I'm -- the -- we're going to get -- I'm</p>

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1 talking about the lawsuit that was filed in 2007  
 2 about the issue of regulations.  
 3 A. Right. But there are many responses --  
 4 Q. No, I know. I know.  
 5 A. Oh, okay.  
 6 Q. Right now I'm talking about the answer  
 7 to the lawsuit, just generically.  
 8 A. I don't -- you know what --  
 9 Q. Do I need to put that in front of you?  
 10 A. Yeah, that would be helpful.  
 11 Q. And I will be happy to do that in a  
 12 moment.  
 13 A. Okay.  
 14 Q. I'm not trying to confuse you. I'm  
 15 just trying to understand if you have, as the head  
 16 of policy, have not discussed this matter or heard a  
 17 conversation about this matter of the Commission and  
 18 they're the policymaking body, did the Commission  
 19 review and approve the answer filed in this lawsuit?  
 20 A. I do not know.  
 21 Q. Okay. But you reviewed it in your role  
 22 as the head of policy.  
 23 A. I have to see it. I'm not sure.  
 24 Q. Okay. We're going to get it out. Just  
 25 a second.

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1 A. Okay.  
 2 Q. But so let's just focus on this for a  
 3 moment. This answer -- you just told -- you have  
 4 been kind enough and confirmed to me as of mid 2002  
 5 you've never had a conversation with the Commission  
 6 about either the promulgation or no promulgation and  
 7 you're not aware of any conversations or discussions  
 8 by the Commission after December the 17th of 2008,  
 9 right?  
 10 A. Correct.  
 11 Q. Okay.  
 12 MR. HAMM: Now, do we have a copy of  
 13 this --  
 14 MR. WOODINGTON: We're about to a  
 15 breaking point unless there --  
 16 MR. HAMM: No, no, no, breaking now  
 17 will be fine.  
 18 (Off-the-record conference.)  
 19 BY MR. HAMM:  
 20 Q. For the record, Jo Anne Wessinger Hill  
 21 has gone to get the answer, Kathi, so I can put  
 22 that --  
 23 MR. HAMM: Are you bringing the answer?  
 24 MS. HILL: Yes.  
 25

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1 (PLF. EXH. No. 5, Protection and Advocacy  
 2 v. DDSN document, was marked for identification.)  
 3 MR. HAMM: Let's go back on the record.  
 4 Ken, you have your answer with you?  
 5 MR. WOODINGTON: I do have a copy.  
 6 MR. HAMM: Okay. And I have a copy I'm  
 7 going to give to Kathi.  
 8 BY MR. HAMM:  
 9 Q. Kathi, let me hand to you what as been  
 10 marked as Hearing Exhibit No. 5, which if you'll  
 11 look at the first page is styled as the Protection  
 12 and Advocacy v. DDSN and it's the answer of all  
 13 defendants. Are you and I looking at the same  
 14 document?  
 15 A. Yes.  
 16 Q. All right. And does the document that  
 17 you have in front of you is it comprised of 13 pages  
 18 plus a certificate of service that is a two-page  
 19 part of it?  
 20 A. Yes.  
 21 Q. Okay. Okay. What do you understand  
 22 this document to be, Kathi?  
 23 A. Answers of the defendants --  
 24 Q. All right.  
 25 A. -- questions by the plaintiff.

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1 Q. Okay. In terms -- you recognize the  
 2 document now?  
 3 (Off-the-record conference.)  
 4 BY MR. HAMM:  
 5 Q. I have handed you what has been marked  
 6 as Exhibit 5 and you've confirmed it's the answer of  
 7 DDSN. And you had indicated to me earlier that you  
 8 had been consulted and were aware of the positions  
 9 that were being taken in this lawsuit when the DDSN  
 10 answered, do you recall that answer?  
 11 A. I -- I'm not sure I recall specifically  
 12 answering that I was involved in the answers of all  
 13 defendants.  
 14 Q. Okay. Okay. Well --  
 15 A. But I was aware of DDSN's position.  
 16 Q. Okay. And you understand DDSN's  
 17 position to be what?  
 18 A. That the statute is permissive in terms  
 19 of whether or not regulations need to promulgated.  
 20 Q. Do you know whether or not the  
 21 Commission was briefed on that answer prior to the  
 22 time the answer was filed in this case?  
 23 A. I just don't recall.  
 24 Q. Okay. Do you view this lawsuit as  
 25 addressing issues of policy?

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1 A. Not really.  
 2 Q. Well, what do you view this lawsuit's  
 3 addressing?  
 4 A. As to whether or not there's a -- going  
 5 through regulatory process promotes a better product  
 6 than the way we currently do it.  
 7 Q. That's not policy?  
 8 A. Maybe in the broad sense.  
 9 Q. Okay.  
 10 A. You know, it might fit.  
 11 Q. Okay. So it may address policy?  
 12 A. Sure, yeah.  
 13 Q. You may have indicated to me in the  
 14 break that you may not necessarily recognize this  
 15 document, is that --  
 16 A. I do not recognize it.  
 17 Q. Okay. Well, when did you first become  
 18 aware of this lawsuit?  
 19 A. When we got the lawsuit.  
 20 Q. Okay. So shortly after it was served  
 21 you knew about it?  
 22 A. Yes.  
 23 Q. Okay. Did you get a copy of the  
 24 lawsuit?  
 25 A. You know, I know I read it.

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1 Q. Okay.  
 2 A. So I must have had a copy of it.  
 3 Q. Do you have an idea who gave it to you?  
 4 A. Probably whoever was the general  
 5 counsel at the time.  
 6 Q. Okay. So it may have been Mr. Hill?  
 7 A. It might have been, yes.  
 8 Q. If I don't -- I don't know what the time  
 9 frame of counsel, that's fine.  
 10 A. I think it was Jim Hill.  
 11 Q. Okay. And you don't know, as the head  
 12 of the office of policy, whether or not the  
 13 commission signed off on the answer?  
 14 MR. WOODINGTON: Object to the form.  
 15 THE WITNESS: I -- I do not know.  
 16 BY MR. HAMM:  
 17 Q. All right. Without discussing any  
 18 specifics, were you ever present at a Commission  
 19 meeting where the lawsuit was discussed?  
 20 A. Yes.  
 21 Q. All right. And without telling me  
 22 whoever was talking to you, was the Commission asked  
 23 to take any votes on responses to a lawsuit?  
 24 A. Not to my knowledge.  
 25 Q. Okay. So let's go back to -- you've

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1 indicated that you had an awareness of what we've  
 2 marked as Exhibit No. 4. And I want to go back to  
 3 that right now if we can. And keep that complaint  
 4 with you because we're going to kind of jump back  
 5 and forth a little bit.  
 6 A. Okay.  
 7 Q. In terms of response No. 1 and this  
 8 is -- I think you testified you were aware of this  
 9 document.  
 10 A. The defendant's responses to  
 11 plaintiff's first set?  
 12 Q. Yes. Yes, ma'am.  
 13 A. Yes.  
 14 Q. Okay. And you either signed off on  
 15 them or expressed no objection to the responses  
 16 contained therein?  
 17 A. Right, I've reviewed it.  
 18 Q. Okay. And you have confirmed that  
 19 since mid 2002 until today, a span of some seven  
 20 years, you have not been present when the Commission  
 21 was discussing, considering the pros and cons of a  
 22 regulation.  
 23 A. Correct.  
 24 Q. Take me to Page 3, Exhibit 4, Question  
 25 6.

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1 A. Okay.  
 2 Q. Read the question, please.  
 3 A. "Copies of any and all memorandum,  
 4 bulletins, reports, e-mails, letters or other  
 5 documents discussing whether any policies,  
 6 directives and standards of you and/or SCDDSN should  
 7 be or should not be issued and promulgated as  
 8 regulations."  
 9 Q. Okay. And then you've indicated that  
 10 the response that is given here is something that  
 11 you have signed off on? There are no word documents  
 12 responsive to the request?  
 13 MR. WOODINGTON: Well --  
 14 THE WITNESS: To the extent the  
 15 documents, whatever 7400A- -- yeah.  
 16 BY MR. HAMM:  
 17 Q. Right. And we're going to get to  
 18 those. We're going to get to those.  
 19 I'm still -- Kathi, what I'm struggle  
 20 is, how it is you as the head of policy know what  
 21 the Commission's policy is when you have not been  
 22 involved in any memorandum, bulletin, reports,  
 23 e-mails or other documents discussing whether any  
 24 policies, directives or standards should or should  
 25 not be promulgated as regulations.

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1 But you told me the Commission  
 2 established policy and I understand this answer to  
 3 say and your earlier responses to say, well, Steve,  
 4 Kathi Lacy, as the head of office of policy, I sure  
 5 didn't raise that policy question with the  
 6 Commission, you've told me that.  
 7 I'm sort of struck by the phrase well,  
 8 that's the way we've always done it. Is that where  
 9 this policy is coming from? Since the Commission,  
 10 at least in your seven years, based on your best  
 11 knowledge of what you know, and that's all we can  
 12 talk about is what you know, they haven't addressed  
 13 it. So help me understand how you're so firm in  
 14 your position that that's the Commission's policy?  
 15 MR. WOODINGTON: Object to the form.  
 16 THE WITNESS: That's something that I  
 17 learned from working for, you know, my boss.  
 18 BY MR. HAMM:  
 19 Q. Okay.  
 20 A. Is that this is the way that things  
 21 had -- you know, had been determined that these  
 22 were -- there were better ways and I agreed with  
 23 those --  
 24 Q. Okay.  
 25 A. -- to hold providers accountable. I

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1 mean, I've experienced times where we've tried to  
 2 use the regulatory process to no avail. In fact,  
 3 Ms. Gloria Prevost in this room has been part of a  
 4 subcommittee where we were trying to get DHEC law  
 5 changed and we got nowhere through the legislative  
 6 process by promulgating regulations. And I  
 7 explained to that subcommittee that DDSN could have  
 8 handled that request instantly by changing a  
 9 contract or a directive.  
 10 So I've been involved in times where  
 11 the regulatory process is ineffective, it's not time  
 12 sensitive and it's -- you know, our process that we  
 13 have in place gives the entire public, the nation  
 14 really, an opportunity to comment at any time on any  
 15 of our directives.  
 16 Q. But we've already -- we've already  
 17 established that you don't have a procedure or a  
 18 directive to deal with folks that may not have  
 19 access to the Internet, correct?  
 20 A. That is correct.  
 21 Q. Okay. And you've already told me that  
 22 you don't publish notices of potential changes in  
 23 directives and anything in newspapers, you don't do  
 24 it in the documents. What's the state -- and you  
 25 don't do it in the State Register, correct?

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1 A. No. Correct.  
 2 Q. Okay. So and --  
 3 A. Not everybody reads newspapers or the  
 4 State Registry either so, you know, it's --  
 5 there's --  
 6 Q. But at least the General Assembly has  
 7 determined that promulgation and notices in the  
 8 State Register is -- meets constitutional  
 9 requirements of notice, yes?  
 10 A. I don't know that, no.  
 11 Q. Do you know if the South Carolina  
 12 Supreme Court has issued any rulings that notice on  
 13 a Web site meets constitutional requirements of  
 14 notice? Okay.  
 15 MR. WOODINGTON: Was that a no?  
 16 THE WITNESS: No.  
 17 MR. WOODINGTON: I didn't get the  
 18 answer that it was a no.  
 19 MR. HAMM: I heard it.  
 20 MR. WOODINGTON: I didn't hear it.  
 21 MR. HAMM: We are now at break time.  
 22 (A luncheon recess transpired.)  
 23 BY MR. HAMM:  
 24 Q. Kathi, during the lunch break you did  
 25 not have any conversation about this deposition with

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1 anyone, did you?  
 2 A. No.  
 3 Q. I assume that, I just ask.  
 4 Let's go back to what has been marked  
 5 as Plaintiff's Exhibit No. 4. I just want to make  
 6 sure you and I are looking at the same document.  
 7 Off the top of your head -- we went to go look for  
 8 the directive on directives and for whatever reason  
 9 we were not having a great deal of success. What  
 10 guidance can you give me?  
 11 A. It's one of the low numbers, 101-01 or  
 12 102-02.  
 13 Q. We will try again.  
 14 A. Something like that.  
 15 Q. I didn't want to be asking you about  
 16 something without you and I both having a copy of  
 17 it. We just weren't able to locate it.  
 18 Let me kind of reset the stage in terms  
 19 of where I thought we left and then we can go from  
 20 there. I think one of the last things we were  
 21 talking about, I asked you about your personal  
 22 knowledge of any minutes or relating to the  
 23 discussion or promulgations of regulations and since  
 24 this response was provided in December 17th, 2008,  
 25 you weren't aware of any in the subsequent time.

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1 And I think you indicated to me that you thought you  
 2 had probably attended most of the Commission  
 3 meetings in that interim time, but may have been  
 4 gone for one or two because of your own schedule,  
 5 right?  
 6 A. Right.  
 7 Q. I'm just looking at the questions. As  
 8 the head of the office of policy, is there any other  
 9 vehicle other than minutes in which the Commission  
 10 would articulate some policy or position on a matter  
 11 that you're aware of?  
 12 A. Not that I'm aware of.  
 13 Q. One of the things that we were talking  
 14 about in terms of you were kind enough to talk to me  
 15 about getting out information, looking back at my  
 16 notes, of various organizations as a way of trying  
 17 to communicate with advocacy organizations. Do you  
 18 have a policy of posting proposed changes or  
 19 creation of directives in facilities operated  
 20 directly by DDSN or by service providers?  
 21 A. If I'm understanding the question, the  
 22 directive that y'all are trying to locate might have  
 23 some procedures in there for -- yeah, directives  
 24 that affect the operations of facilities.  
 25 Q. Again, in fairness, you don't have it

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1 in front, and I'm not asking you to remember  
 2 verbatim, but of your own knowledge, as we sit  
 3 here -- again, respectively, the policy guru, do you  
 4 have a memory or an expectation that you have to  
 5 physically post proposed policies or changes --  
 6 proposed directives or changes of directives in  
 7 facilities?  
 8 A. Our practice is that we do on the Web  
 9 site post all directives and all proposed  
 10 directives.  
 11 Q. And respectively to you, can I  
 12 reasonably conclude that what you just said is that  
 13 you don't physically post directives or proposals in  
 14 changed directives on the wall in a facility?  
 15 A. Correct.  
 16 Q. You don't?  
 17 A. Correct.  
 18 Q. Let me look one more time at this and  
 19 then I want to go to -- now, my understanding is  
 20 prior to the filing of the lawsuit you were not  
 21 posting directives on your Web site?  
 22 A. I --  
 23 Q. Let me establish the basis for that.  
 24 We got a letter back --  
 25 MR. HAMM: Do we have that?

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1 MS. HILL: Yeah.  
 2 BY MR. HAMM:  
 3 Q. Let's do that right now. We're going  
 4 to mark this as Hearing Exhibit No. 6.  
 5 (PLF. EXH. 6, A Letter dated November the  
 6 22nd, 2005 to Steven W. Hamm, was marked for  
 7 identification.)  
 8 BY MR. HAMM:  
 9 Q. Let me let you look at that, Kathi,  
 10 before I --  
 11 I have handed to you what has now been  
 12 marked as Exhibit No. 6, which is a letter dated  
 13 November the 22nd, 2005, addressed to me, Steven W.  
 14 Hamm, and signed by Mr. Hill. Have you seen this  
 15 letter prior to the time you and I are meeting  
 16 today?  
 17 A. No.  
 18 Q. Okay. If you would, go to Page 2 of  
 19 that letter, second paragraph.  
 20 A. Uh-huh.  
 21 Q. Would you read -- for the record, would  
 22 you read that paragraph, please.  
 23 A. "The point you made concerning having  
 24 the policies available to the public is a reasonable  
 25 suggestion. Availability of these policies has

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1 never been a problem. All request for copies of  
 2 policies are fulfilled but this can be one more way  
 3 to provide this information. DDSN will add its  
 4 directives to the Web site by the spring of next  
 5 year."  
 6 Q. All right. Since we're now talking  
 7 about policies, we're now talking about an area of  
 8 which you are responsible at DDSN. Were you  
 9 involved in the creation of the response -- I  
 10 recognize you said you hadn't seen the letter.  
 11 A. Uh-huh.  
 12 Q. But were you involved in the creation  
 13 of the response to this letter?  
 14 A. No.  
 15 Q. So you weren't asked to express a  
 16 position one way or the other on a policy in a  
 17 letter that was sent to me?  
 18 MR. WOODINGTON: Object to the form.  
 19 THE WITNESS: Not -- not to my  
 20 knowledge.  
 21 BY MR. HAMM:  
 22 Q. Okay. So people other than yourself  
 23 can state what a policy is -- on staff, I'm talking  
 24 about. What a policy is without going through you?  
 25 MR. WOODINGTON: Object to the form.

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1 THE WITNESS: What a policy is?  
 2 BY MR. HAMM:  
 3 Q. Yes, ma'am.  
 4 A. Yes.  
 5 Q. Okay. So when -- when I received this  
 6 letter stating that the policy was going to be  
 7 changed, you just told me that it was not -- this is  
 8 not something you were consulted with prior to its  
 9 happening?  
 10 A. I assume that the way that it was  
 11 handled was that my boss, Dr. Butkus, asked me to  
 12 move forward in putting -- I don't know at the time  
 13 because this -- this doesn't say that -- none of  
 14 these directives were on the Web site. I honestly  
 15 do not recall. We had an Extranet and we had an  
 16 Internet. And I don't know if some of them were on  
 17 the Internet at that time on the Web site or not.  
 18 Q. Okay. But you won't be surprised if I  
 19 represent to you that prior to this letter they were  
 20 not on the Web site.  
 21 A. No.  
 22 Q. Okay. When you talk about the  
 23 Extranet --  
 24 A. Right.  
 25 Q. -- is that internal communication

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1 system for DDSN employees?  
 2 A. Or our provider network.  
 3 Q. Right. Okay.  
 4 A. But it doesn't exist anymore.  
 5 Q. Okay.  
 6 A. Yeah.  
 7 Q. So why -- why did it take until  
 8 November of 2006 to place the directives on the Web  
 9 site?  
 10 A. I don't know.  
 11 Q. Okay.  
 12 MR. WOODINGTON: I want to object to  
 13 the form of that last question. Let's go off the  
 14 record for a second.  
 15 (Off-the-record conference.)  
 16 BY MR. HAMM:  
 17 Q. In your role, do you recognize -- in  
 18 fact, you made reference to Gloria --  
 19 A. Uh-huh.  
 20 Q. -- in the room.  
 21 A. Yes.  
 22 Q. That you -- when did you first come in  
 23 contact with her?  
 24 A. Probably when I served on an advisory  
 25 counsel with Protection Advocacy.

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1 Q. Okay. Would that have been your -- is  
 2 that after you became the head of the Office of  
 3 Policy?  
 4 A. No.  
 5 Q. So you had had contact with her before?  
 6 A. Yes.  
 7 Q. So to the extent that Mr. Hill is  
 8 making reference to -- I'm looking at the paragraph  
 9 following that he was not aware of any concerns  
 10 about promulgation of regulations, that is also a  
 11 response that was not originated by some position  
 12 you expressed to Mr. Hill?  
 13 A. No.  
 14 Q. What do you understand P and A is?  
 15 A. An organization that's set up by the  
 16 federal government to ensure that the rights of  
 17 people's disabilities are taking place.  
 18 Q. All right. Do you -- what kind of  
 19 relationship do you have as the Office of Policy  
 20 with P and A, just as a general organization?  
 21 A. Not -- not very much.  
 22 Q. Okay. Is that -- it's just -- there  
 23 was no need to or...  
 24 A. Well, the -- there was somebody else  
 25 set up to be the liaison with Protection Advocacy at

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1 DDSN.  
 2 Q. Okay.  
 3 A. And then there's somebody else  
 4 responsible for kind of the dissemination of  
 5 policies and such to stakeholders and things like  
 6 that. My job is to ensure that the process is in  
 7 place and that things are up to date and reflective  
 8 of what the Commission, you know, has directed us to  
 9 do and things like that.  
 10 Q. Do you view your job responsibilities  
 11 of having personal relationships with leaders and  
 12 various stakeholder organizations?  
 13 A. Do I have good relationships with  
 14 leaders and organizations?  
 15 Q. Well, do you view that as part of your  
 16 job responsibilities?  
 17 A. Yeah, I do.  
 18 Q. Okay. And you may have just answered  
 19 it, then, do you feel like you have gone out and  
 20 developed and maintained those relationships?  
 21 A. When it's -- when it's called for. I  
 22 mean, there's -- it depends on who in the agency  
 23 that responsibility falls under, yeah.  
 24 Q. Okay. I want to talk -- and I now want  
 25 to go to -- we're still talking about here in

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1 Exhibit No. 4. I want to go to this question of  
 2 eligibility.  
 3 A. Okay.  
 4 Q. An eligibility for -- to determine  
 5 whether or not someone, in fact, is going to receive  
 6 the benefit of any services that DDSN might provide.  
 7 A. Okay.  
 8 Q. Now, one of the allegations in the  
 9 lawsuit, which I'm going to get to in just -- that's  
 10 where I want to go next, the lawsuit. Goes to the  
 11 question about the standards of determining  
 12 eligibility, who decides, and what formal process  
 13 exist to advise a party that, well, we've decided  
 14 you're not eligible, that's a broad overview  
 15 question.  
 16 And in the interrogatory responses,  
 17 your name -- you're the master of a lot of things  
 18 based on the interrogatory responses. Your name  
 19 shows up more than anybody's, so it's based on that  
 20 interrogatory response that I'm wanting to talk  
 21 about this a little bit.  
 22 Number one, has DDSN formally enacted  
 23 any regulation addressing the issue of eligibility  
 24 standards, processed to determine eligibility and  
 25 appeal from a denial of eligibility?

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1 A. In promulgating regulations, no.  
 2 Q. Okay.  
 3 A. I don't think that it's required that  
 4 we do.  
 5 Q. I understand.  
 6 A. Okay.  
 7 Q. I understand. And because it's not  
 8 required is -- is it your position that the DDSN  
 9 should not?  
 10 A. Promulgate regulations?  
 11 Q. Yes, ma'am.  
 12 A. Any regulation? I -- I gave some  
 13 examples of where it has acted to the detriment of  
 14 the health, safety and welfare of people with  
 15 disabilities. And I have seen that firsthand and  
 16 I --  
 17 Q. Okay. So it would be detrimental for  
 18 the health, safety and welfare for the Commission to  
 19 promulgate regulations on the issue of  
 20 eligibility -- let's just focus on eligibility for a  
 21 moment.  
 22 A. Depends -- you know -- you know, you're  
 23 asking a hypothetical question. If you promulgated  
 24 regulations, and it could take years and years and  
 25 years. So it could be detrimental to people if --

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1 if, for example, new criteria came out about the  
 2 definition of mental retardation, so yes, it could.  
 3 Q. Well, are you familiar with the ability  
 4 of regulations to account for those kinds of  
 5 changes?  
 6 A. I'm not sure I understand those, no.  
 7 Q. Okay. All right. Let me ask it  
 8 another way. Are you aware if the General Assembly  
 9 has, in fact, enacted and approved regulations that  
 10 contemplated changing standards and gave the  
 11 regulatory agency the authority to deal with  
 12 changing standards?  
 13 A. No.  
 14 Q. Okay.  
 15 A. I'm not. And if there were an issue  
 16 with the examples I provided, it would have been  
 17 good to know in that subcommittee because lives were  
 18 being threatened of vulnerable adults --  
 19 Q. So --  
 20 A. -- in community residential care  
 21 facilities.  
 22 Q. Okay. So when you appear before the  
 23 subcommittee, you were not aware of regulations  
 24 that, in fact, give some flexibility to an agency  
 25 subject to a regulation?

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1 A. No, sir.  
 2 Q. Okay. Who was with you in that  
 3 presentation to the subcommittee?  
 4 A. Ms. Prevost was there, she was a member  
 5 of the subcommittee.  
 6 Q. Okay.  
 7 A. There was an attorney from Mental  
 8 Health there.  
 9 Q. Okay.  
 10 A. There was the -- somebody from the  
 11 Medicaid Agency.  
 12 Q. Okay.  
 13 A. Somebody representing -- I can't  
 14 remember everybody.  
 15 Q. Okay.  
 16 A. We can get that.  
 17 Q. And that's fine.  
 18 A. Okay.  
 19 Q. That's fine. What time period are we  
 20 talking about in this response?  
 21 A. It was after this lawsuit.  
 22 Q. And the committee that you're appearing  
 23 before -- help me clear -- clarify?  
 24 A. The subcommittee is a subcommittee of  
 25 the Adult Protection Coordinating Council.

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1 Q. Okay.

2 A. And we were formed a subcommittee to

3 address the health and safety of people living in

4 community residential care facilities to hold those

5 facilities more accountable to protecting those

6 people.

7 Q. Okay.

8 A. Because there were numerous instances

9 where they were not protected.

10 Q. Okay.

11 A. And we went about trying to give DHEC

12 more enforcement and we never got that through.

13 Q. Now, do you have, since you're the head

14 of the Office of Policy, have you developed

15 relationships with members of the General Assembly

16 to be able to express those concerns?

17 A. There are other people in the agency

18 that handle that responsibility including the State

19 Director.

20 Q. Okay. Are telling me so you as the

21 head of the Policy Office for DDSN have not

22 developed relationships with the General Assembly?

23 A. That's correct.

24 Q. In the organizational chart that you

25 and I looked at, Kathi, and I'm trying to -- I

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1 think -- if memory serves me correctly, it was

2 the -- it's Exhibit -- I want to just make sure you

3 and I are looking at the same document.

4 A. Yeah.

5 Q. Plaintiff's Exhibit No. 3, which is the

6 Department of Disability and Special Needs Agency

7 organizational chart.

8 A. Right.

9 Q. It is the Director of Government and

10 Community Relations that has those relationships

11 with the General Assembly or is it someone -- it may

12 be somebody else, I don't know?

13 A. It's the State Director, the Deputy

14 State Director of Administration and the Director of

15 Government of Community Relations.

16 Q. Right. Have you ever been -- have you

17 ever requested an opportunity to develop

18 relationships with members of the General Assembly

19 on a policy or other questions for DDSN as the head

20 of the Policy Office?

21 A. No, that was Dr. Butkus's decision.

22 Q. And he's never asked -- and he never

23 asked you to do that?

24 A. No.

25 Q. So he didn't ask you to do it and you

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1 didn't ask him for that authority.

2 A. Right.

3 MR. HAMM: Have we found the directive

4 on directives?

5 MS. HILL: Do you want to take a quick

6 break?

7 MR. HAMM: Yeah.

8 (Off-the-record conference.)

9 (PLF. EXH. No. 7, Reference Number

10 100-01-DD, Department Directive, was marked for

11 identification.)

12 (PLF. EXH. No. 8, Reference Number

13 100-02-DD, Department Directive, was marked for

14 identification.)

15 BY MR. HAMM:

16 Q. Let us look at Reference No. 100-01-DD,

17 and we'll mark that as Exhibit No. 7. Kathi, do you

18 have that in front of you?

19 A. Yes.

20 Q. And I notice that it was originally

21 issued in 1987 and it was reviewed apparently and

22 revised on April the 1st of 2009, am I reading that

23 correctly?

24 A. There certainly could have been lots of

25 other last review dates. This document doesn't show

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1 that.

2 Q. Okay. It will just show the most

3 recent --

4 A. Correct.

5 Q. -- revision?

6 A. Yes.

7 Q. Now, what -- looking at this, can you

8 tell me what was revised?

9 A. Not from looking at this, no.

10 Q. Okay. What do you know about the

11 minutes or bylaws that the Commission itself may

12 apply -- that may apply to themselves about how they

13 alter positions or authorize a member of the

14 Commission to take action binding on the Commission?

15 Do you know anything about that?

16 A. That would be binding on the

17 Commission?

18 Q. Right.

19 A. I -- I don't know.

20 Q. Well, I'm looking at this Exhibit

21 No. 7, in the purpose it says: The Commission

22 Chairman, the State Director and the Deputy

23 Director, the Associate State Directors or Director

24 of Internal Audit may originate or declare obsolete

25 these official documents.

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1 A. Uh-huh.  
 2 Q. And then they must be approved by the  
 3 Chairman. And I just -- that's why I was wondering  
 4 is that the result of a policy adopted by the  
 5 Commission? Help me understand how all those pieces  
 6 fit together.  
 7 A. It says the documents are approved  
 8 by -- it depends on what kind of policy it is. So  
 9 the Commission Chair would sign off on one that was  
 10 one of the Commission Policies noted below and the  
 11 types of documents. And then the State Director  
 12 typically signs off on all of the directives. He  
 13 has not -- to my knowledge, either Dr. Butkus or  
 14 Dr. Laurent has designated anybody to sign on their  
 15 behalf.  
 16 Q. That they have not?  
 17 A. Correct.  
 18 Q. One of the things that caught my  
 19 attention when I saw this is the documents must be  
 20 approved by the Commission Chairman. And I'm trying  
 21 to understand the precedent of this. Is this -- I  
 22 thought I understood you to tell me that the  
 23 Commission does not approve directives.  
 24 A. They approve policies.  
 25 Q. Right.

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1 A. Right. And in the Electronic  
 2 Communication System there are I believe six  
 3 Commission policies.  
 4 Q. Okay.  
 5 A. Of which the Chairman must sign.  
 6 Q. Okay. So --  
 7 A. So that latter sentence is just  
 8 depending on what kind of directive it is who's  
 9 final signature approval needs to be on those  
 10 documents.  
 11 Q. Based on your position as the head of  
 12 the Office of Policy who was most likely to be the  
 13 one to approve the documents: The Commission  
 14 Chairman, the State Director and/or his slash her  
 15 designee?  
 16 A. The State Director.  
 17 Q. Okay. So you --  
 18 A. On directives.  
 19 Q. On directives.  
 20 A. Uh-huh.  
 21 Q. And am I correct, this is a directive,  
 22 is it not?  
 23 A. Uh-huh. Yes, sir.  
 24 Q. Okay. So this directive includes the  
 25 Commission Chairman but as a practical matter --

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1 A. No -- I see what you're asking.  
 2 Q. I'm just trying to sort in mind some  
 3 things that you've said to me and I'm trying to make  
 4 them fit together.  
 5 A. Okay.  
 6 Q. This directive includes a requirement  
 7 that it must be approved by the Commission Chairman,  
 8 the State Director or her designee. You had earlier  
 9 told me that the Commission did not approve  
 10 directives.  
 11 A. Correct.  
 12 Q. So -- and is that the result of a  
 13 policy adopted by the Commission?  
 14 A. I do not know.  
 15 Q. Okay. But in terms of the way I am  
 16 reading this document for the first time, it  
 17 certainly suggest that, in fact, the Commission  
 18 Chairman may approve directives. But you have told  
 19 me that is not the normal course of action.  
 20 A. I'm interpreting it differently,  
 21 obviously, so --  
 22 Q. Okay. Well, help me -- I'm not trying  
 23 to put words in your mouth. Help me understand.  
 24 Have a misstated what it reads?  
 25 A. What it's trying to say is that there

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1 are people that can originate or declare obsolete  
 2 these documents. And that it's setting up a system  
 3 for how these documents are labeled and what kind of  
 4 process they go through for review. That's all it's  
 5 doing.  
 6 So it's saying to the public, and in my  
 7 words, that depending on what kind it is, that one  
 8 of these two people, unless the Director designates  
 9 someone, are going to sign off on every directive.  
 10 Q. A directive reflects or is consistent  
 11 with Commission policy. I think that's what you  
 12 told me earlier today.  
 13 A. Yes, yes.  
 14 Q. Okay. So -- and again, I'm not trying  
 15 to put words in your mouth. But I think you've just  
 16 told me, well, Steve, as a practical matter, the  
 17 Director -- I'm creating a word I don't think you  
 18 used, but sort of routinely is the one that does  
 19 that not the Chairman of the Commission, is that  
 20 a -- am I --  
 21 A. Directives. I mean, the purpose is --  
 22 of this directive is to identify the requirement for  
 23 a communication system to support management, filing  
 24 and classification of the directives. And  
 25 directives are typically, if you get to the second

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1 one that talks about their purpose --  
 2 Q. And we'll get to that in a minute.  
 3 A. -- is not to communicate -- for the  
 4 Commission to communicate to us, it is for us to  
 5 communicate what the Commission desires for us to  
 6 carry out.  
 7 Q. I understand that.  
 8 A. Okay.  
 9 Q. And I understand that. But I'm trying  
 10 to understand to the extent that a directive is  
 11 intended to be consistent with Commission policy but  
 12 the Commission itself is not, according to  
 13 directives, the parties that reviews them to  
 14 determine whether they're consistent with their  
 15 policy, right?  
 16 A. Right, that's a staff job.  
 17 Q. Okay.  
 18 A. A professional judgment, expertise.  
 19 Q. So -- okay.  
 20 MR. WOODINGTON: Not to put words in  
 21 her mouth but she's already said the Commission  
 22 Chairman, I think, signs the CPs and the Director  
 23 signs the DDs. She said that. You may have not  
 24 picked that up when she said that the first time.  
 25 MR. HAMM: I may not have.

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1 MR. WOODINGTON: At least I think  
 2 that's what you said.  
 3 THE WITNESS: That is what I said, yes.  
 4 BY MR. HAMM:  
 5 Q. All right. Since I missed something.  
 6 A. Okay.  
 7 Q. A CP is a Commission policy.  
 8 A. Right.  
 9 Q. Right. And a DD is a department  
 10 directive.  
 11 A. Yes.  
 12 Q. But, again, I'm not -- I'm not  
 13 attempting to argue. I'm just reading where it says  
 14 this directive has either got to be approved by the  
 15 Chairman or -- so, what you're saying --  
 16 A. Not this directive. The documents that  
 17 are in the Electronic Communication System. The  
 18 documents. And the documents are listed below. It  
 19 says type of documents in the second paragraph.  
 20 Q. All right. Now, help me understand,  
 21 where will I go to see the policy or philosophical  
 22 statements issued by the Commission?  
 23 A. The same location that y'all found this  
 24 directive in.  
 25 Q. Okay. And there is -- and there is a

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1 specific group of policies and philosophical  
 2 statements that I'm going to find?  
 3 A. You'll find that on the home page one  
 4 of the -- probably the first thing you showed me --  
 5 Q. Right.  
 6 A. -- on the home page is a -- talks about  
 7 our mission and values.  
 8 Q. Okay.  
 9 A. Vision and principles, strategic plans,  
 10 strategic goals, things like that.  
 11 Q. Is there any documents that would bear  
 12 a designation of either CP and DD?  
 13 A. Yes.  
 14 Q. Okay. Give me an example of that.  
 15 A. A designation?  
 16 Q. Yes.  
 17 A. They're listed right there under type  
 18 of documents.  
 19 Q. No. No, I'm talking about would there  
 20 be a single document that could be both a directive  
 21 and a -- a DD and a CP as well?  
 22 A. No.  
 23 Q. No. Okay.  
 24 Now, to your knowledge, when was the  
 25 most recent policy or philosophical statement issued

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1 by the Commission?  
 2 A. Well, that's part of our mission. We  
 3 went through that, gosh, I am trying to think, many,  
 4 many years ago.  
 5 Q. Okay.  
 6 A. And so that was our mission and values  
 7 probably haven't -- gosh, 1997.  
 8 Q. Okay.  
 9 A. We did it again in 2000, I believe.  
 10 Q. Okay. And to your knowledge, as we sit  
 11 here today on July the 9th, it hasn't -- that  
 12 hasn't -- changes haven't taken place perhaps since  
 13 2000?  
 14 A. I believe so.  
 15 Q. Okay. Now, remind me, we both in our  
 16 earlier conversations recognize that the composition  
 17 of the Commission has changed fairly substantially  
 18 for this calendar year.  
 19 A. Right. In fact, last month.  
 20 Q. Okay. And I don't know, what is the  
 21 term of a member of the Commission, do you know?  
 22 A. I think it depends.  
 23 Q. Okay. Is there a limit on how long  
 24 someone can serve as a member of the Commission?  
 25 A. I believe so.

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1 Q. Okay. And do you know offhand? It  
 2 won't hurt my feelings if you don't know. If you do  
 3 know, share it with me.  
 4 A. I don't.  
 5 Q. Okay. So I had previously asked you  
 6 earlier this morning about the process of changing  
 7 or training or advising members of the Commission  
 8 and, again, in your role as the head of the Policy  
 9 or Office of Policy, you told me you did not get  
 10 involved in the training of Commissioners, am I  
 11 remembering correctly?  
 12 A. In their role as a governing body.  
 13 Q. Right.  
 14 A. I said that, yes.  
 15 Q. Yes. Okay.  
 16 A. But, certainly; I provide educational  
 17 materials and information to them --  
 18 Q. Okay.  
 19 A. -- that hopefully helps them in their  
 20 role as a governing body.  
 21 Q. Okay. Again, trying to sort of stay in  
 22 a time frame that was within reasonable memory, the  
 23 most recent document that you would have given them  
 24 on a policy-related question would have been what?  
 25 A. Gosh, that I would have given them?

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1 Q. Yes, ma'am.  
 2 A. Oh, I have -- all my work recently has  
 3 gone through the new Director.  
 4 Q. Okay.  
 5 A. So they -- the Commission is to be  
 6 requesting information that way.  
 7 Q. Okay. Have you made a recommendation  
 8 to the -- is the right thing to call Andy the  
 9 Interim Director or, I mean, what's the  
 10 respectful --  
 11 A. Yeah, that's fine.  
 12 Q. -- thing to do with him or just --  
 13 A. Yeah, I call him State Director.  
 14 Q. Well, I guess, he is --  
 15 A. Yeah, and he's just doing it for an  
 16 interim basis, yeah.  
 17 Q. Yeah, that's fair. So have you made a  
 18 recommendation to Dr. Laurent regarding the need for  
 19 training or updates or overviews of Commission  
 20 policies?  
 21 A. The Commission members are provided --  
 22 I guess the answer would be no. The Commission  
 23 policies are given to every Commission member as a  
 24 part of their orientation.  
 25 Q. Okay.

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1 A. And Dr. Laurent handled that  
 2 orientation and continues to handle that.  
 3 Q. So is it your position that the current  
 4 Commission cannot change current policy?  
 5 A. No.  
 6 Q. So have the -- have you given any  
 7 materials to the current -- currently composed  
 8 Commission, say, regarding this lawsuit?  
 9 A. Oh, there hasn't been time to do  
 10 anything but respond to --  
 11 Q. Okay.  
 12 A. -- budget cuts at this point in time.  
 13 Q. Okay. And that's fair. So given that,  
 14 the answer is --  
 15 A. No.  
 16 Q. No. Okay. So of your own knowledge,  
 17 do the -- does the currently -- do the newest  
 18 members of the Commission even know about this  
 19 lawsuit or do you know?  
 20 A. I know it's on the agenda for the work  
 21 session this month.  
 22 Q. Okay. And talk to me about -- what is  
 23 a work session?  
 24 A. Well, we typically have held two a year  
 25 where we provide more in-depth information instead

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1 of, you know, in a two-hour meeting just trying to  
 2 equip them with --  
 3 Q. Right.  
 4 A. -- trends and things that have occurred  
 5 to give them kind of a broader perspective of how  
 6 things have been going, where the money has been  
 7 spent.  
 8 Q. Right.  
 9 A. Things like that.  
 10 Q. And a work session is conducted in  
 11 conjunction with a board meeting -- I mean, a  
 12 Commission meeting or it's another --  
 13 A. Typically.  
 14 Q. Okay. And is that a open forum  
 15 session?  
 16 A. Yes.  
 17 Q. Okay. Remind me, do y'all comply with  
 18 the Administrative Procedure Act in terms of the  
 19 requirements of notice of Commission meetings,  
 20 agenda items and those matters?  
 21 A. Yes.  
 22 Q. Okay. And you -- I'm not questioning  
 23 you, you say yes because -- how is it that you know  
 24 that?  
 25 A. Well, I see them posted in our

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1 building.  
 2 Q. Okay.  
 3 A. And I'm around when there's chatter  
 4 about things going out and things of that nature and  
 5 I know who's responsible for it.  
 6 Q. Okay.  
 7 MR. WOODINGTON: And I assume you meant  
 8 FOIA, Freedom of Information Act?  
 9 MR. HAMM: Yes.  
 10 MR. WOODINGTON: Not APA.  
 11 MR. HAMM: Well, yeah, excuse me, I  
 12 did. Thank you.  
 13 BY MR. HAMM:  
 14 Q. FOIA, Freedom of Information Act. APA,  
 15 which is, of course, the Administrative Procedure  
 16 Act, but that's --  
 17 A. I knew what you meant.  
 18 MR. HAMM: Thank you, Counsel.  
 19 BY MR. HAMM:  
 20 Q. And in that -- will you have any role  
 21 in advising the newest members of the Commission  
 22 about this lawsuit?  
 23 A. No.  
 24 Q. Who will?  
 25 A. I think that is our legal counsel,

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1 Mr. Davidson or Mr. Woodington. I'm not exactly  
 2 sure who Dr. Laurent is having come but I believe  
 3 it's Will Davidson.  
 4 Q. And again, do you know whether that is  
 5 in open session?  
 6 A. I do not know.  
 7 Q. Okay. All right. Now, let's go to  
 8 Plaintiff Exhibit No. 8. A Reference Number  
 9 100-02-DD, which is a department directive. And as  
 10 I looked at this, I think this is the directive on  
 11 directives?  
 12 A. I think so.  
 13 Q. Okay. Well --  
 14 A. Is how you're labeling it, yes.  
 15 Q. Well, and I am.  
 16 A. Yes.  
 17 Q. And if there's a better way to --  
 18 A. No, I think that's okay.  
 19 Q. If you have a --  
 20 A. That's right.  
 21 Q. If you think of it as a different name,  
 22 I'd be happy to use that.  
 23 A. Okay.  
 24 Q. Again, I'm not trying to put words in  
 25 your mouth, I'm just trying to understand.

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1 A. Sure.  
 2 Q. Okay. So for short -- shorthand, this  
 3 is the directive on directives?  
 4 A. Yes.  
 5 Q. Okay. All right. And it's been  
 6 revised on December the 1st. I noticed in here that  
 7 it contained the three-year time period for purposes  
 8 of reviewing them. Didn't it used to say a year?  
 9 A. Yes.  
 10 Q. Okay. So that would be one of the  
 11 changes to it?  
 12 A. Yes.  
 13 Q. Okay. And is it fair to characterize  
 14 that change as an effort to be responsive to the  
 15 Legislative Audit Council report?  
 16 A. No.  
 17 Q. Okay.  
 18 A. It was -- and I think I mentioned  
 19 earlier that it was in response to -- I had put the  
 20 one-year time frame in the original document.  
 21 Q. Right.  
 22 A. And it was an overzealous goal. I had  
 23 realized when I was taking over this responsibility  
 24 that there were directives that were very old and I  
 25 was trying to get them updated as quickly as

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1 possible and I bogged down the system.  
 2 Q. Okay.  
 3 A. Yeah.  
 4 Q. And so that -- the one year to three  
 5 year is in here. Can you help me with any other  
 6 revisions that -- because what I have I don't know  
 7 what was revised and I'm just looking to you to  
 8 maybe guide me on what was revised.  
 9 A. All right. You know there's a memo  
 10 that gets sent out with these when there is a  
 11 revision and those aren't attached. But that would  
 12 be available if you were interested in all the  
 13 changes ensuring that I covered everything.  
 14 Q. Kathi, when you -- go ahead.  
 15 A. Excuse me.  
 16 Q. I didn't mean to interrupt.  
 17 A. I'm really -- I think what we revised  
 18 in here was to state our intent that -- that we want  
 19 to ensure that people have an opportunity to comment  
 20 and to have input into the creating or revision to  
 21 directives.  
 22 Q. Okay. Kathi, turn to Page 7 of 11,  
 23 steps for having a new document approved.  
 24 A. Okay.  
 25 Q. Tell me when -- why don't you take a

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1 look at -- I'm going to want to talk about Paragraph  
 2 A as in apples. Why don't you look at that.  
 3 A. Yes.  
 4 Q. Okay. Let's go back to a question that  
 5 I was asking you earlier. Number one, this  
 6 Paragraph A indicates that the distribution method  
 7 to the public is via the Web site, correct?  
 8 A. Yes.  
 9 Q. And I had asked you whether there was  
 10 any requirement in a directive that also required  
 11 physically posting like you just referenced the  
 12 Commission agenda is posted around, and I didn't see  
 13 that in here. Am I missing that?  
 14 A. No.  
 15 Q. Or it's just not in there?  
 16 A. Not in there.  
 17 Q. Okay. Now, go to Paragraph D as in  
 18 dog, please. It says: The originator or document  
 19 manager will deliver the signed originals to the ECS  
 20 coordinator. Remind me what ECS is.  
 21 A. Electronic Communication System.  
 22 Q. Okay. With a listing of parties. And  
 23 then if there are entities designated who do not  
 24 have access to the Internet or e-mail, the  
 25 originator will arrange to have a hard copy mailed

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1 to those entities upon written request.  
 2 A. Right.  
 3 Q. Now, how -- if someone doesn't have  
 4 access to the Internet and doesn't even know that  
 5 this is out there, how would they know to ask for a  
 6 written request?  
 7 A. Well, it just -- you know, by word of  
 8 mouth. I mean, if they were looking for information  
 9 about, you know, what's DDSN's position on abuse and  
 10 neglect, you know, where would I go to find that  
 11 information, they wouldn't have to know to ask for  
 12 something specific like a Electronic Communication  
 13 System. We've had plenty of people request these  
 14 documents that we have provided.  
 15 Q. Would you agree with me that the fact  
 16 that some people are requesting documents is not  
 17 necessarily an indication that all interested  
 18 parties would know about the documents?  
 19 A. Oh, yes.  
 20 Q. Okay. Go back to A as in apple, if you  
 21 would, Kathi.  
 22 A. Okay.  
 23 Q. And when it says a minimum of 30  
 24 calendar days will be the default, help me  
 25 understand what that means.

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1 A. In other words, if -- there have --  
 2 there could be instances where people don't post it  
 3 long enough to get enough feedback or to allow  
 4 sufficient time.  
 5 Q. Right.  
 6 A. I wanted to make sure that in this  
 7 process that there was a minimum of 30 days allowed  
 8 for that.  
 9 Q. Okay. And is there -- this is part of  
 10 a question you and I talked about earlier, how is it  
 11 that you -- you know that that is, in fact, the  
 12 standard that is applied?  
 13 A. Because of the Electronic Communication  
 14 System coordinator.  
 15 Q. So the ECS coordinator -- well, let me  
 16 ask another way. What is it that you think the ECS  
 17 coordinator is directed to do here?  
 18 A. To manage the system.  
 19 Q. Okay. And managing the system in the  
 20 context of the policies that you and I are talking  
 21 about means what here?  
 22 A. It means that the time frames for  
 23 reviewing a document are being adhered to and that  
 24 the directives are being placed on the Web site for  
 25 the minimum of 30 calendar days, that sort of thing.

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1 Q. Okay. I asked this earlier but I want  
 2 to make sure maybe this is the person that has it.  
 3 Is there an internal procedure that someone would  
 4 know, all right, I'm getting ready to take a look at  
 5 this and here's my checklist, and I'm going to make  
 6 sure that they gave 30 days and they did these  
 7 various things. Is there such a checklist in the  
 8 possession -- I think you indicated you didn't have  
 9 one, but would this --  
 10 A. I don't know what she uses to manage  
 11 the system.  
 12 Q. Okay. So have you as the head of  
 13 Office of Policy audited compliance with the  
 14 directive on directives?  
 15 A. Yes.  
 16 Q. Okay. Tell me how you do that.  
 17 A. Because I get a statement periodically.  
 18 I think I mentioned this before where I ask which  
 19 directives are up to date, which ones are near, you  
 20 know, the date for review, which ones are dated,  
 21 that kind of thing. And so I get a periodic report  
 22 of where things stand.  
 23 Q. Okay. Do people -- who's responsible  
 24 for a directive that's not up to date?  
 25 A. Well, that's a good question. It's --

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1 I've had some leverage when it's outside my, you  
 2 know, direct line of authority. So in most cases it  
 3 would eventually be the State Director.  
 4 Q. You and I have talked about that  
 5 organizational chart, are we now talking about those  
 6 lines of boxes that are not included in your line  
 7 of --  
 8 A. Authority.  
 9 Q. -- subordinates?  
 10 A. Yes.  
 11 Q. Have you had to go to the State  
 12 Director to request assistance in getting compliance  
 13 with directives in other lines?  
 14 A. Yes.  
 15 Q. And did you get what you were looking  
 16 for?  
 17 A. To a certain degree. I got progress.  
 18 Q. Is that another way of saying you're  
 19 getting there?  
 20 A. Yes.  
 21 Q. Okay. Who maintains a -- obviously  
 22 y'all are moving because of the electronic world as  
 23 I'm reading this exhibit, which is -- you and I are  
 24 now talking about Exhibit No. 8.  
 25 Does your system -- does your data

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1 collection system maintain copies of all directives  
 2 both in original and in revised form or does your  
 3 system only reflect whatever the current directive  
 4 says?  
 5 A. No, we keep the other documents  
 6 according to a record retention schedule that we  
 7 have.  
 8 Q. Okay. And a record retention schedule  
 9 is generally understood to mean that at some point  
 10 material begins to be deleted because of passage of  
 11 time or whatever. Am I understanding that  
 12 correctly?  
 13 A. Yes.  
 14 Q. Do you know what that time period is?  
 15 A. Maybe it's six years.  
 16 Q. Okay. But you're -- you're not sure.  
 17 And I'm not trying to hold you to it.  
 18 A. Yeah.  
 19 Q. I'm just trying to understand.  
 20 A. Yeah.  
 21 Q. So to the extent that you and I were  
 22 having a conversation in your office, the material  
 23 that you could discuss with me might necessarily be  
 24 limited by whatever the retention schedule is and  
 25 that may or may not be six years but it's some time

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1 period?  
 2 A. Right. There's Medicaid, you know, is  
 3 our, you know, contract with them and our biggest  
 4 revenue source so we typically follow what their  
 5 guidelines are for records.  
 6 Q. Okay. Go back if you would for me,  
 7 Kathi, we're still on this Exhibit No. 8. And look  
 8 at -- look at Page No. 4 of 11, it is in the  
 9 definition area. And I'm looking again at the  
 10 definition.  
 11 A. Uh-huh.  
 12 Q. This departmental director a mandate  
 13 approved by the State Director or the Commission  
 14 Chairman. Is a mandate different than a policy?  
 15 A. You know, it doesn't say policy  
 16 approved by the State Director. Department  
 17 directive is --  
 18 Q. I know, and that's --  
 19 A. -- no, I don't think you can  
 20 interchange that.  
 21 Q. Okay. A mandate. And where is the  
 22 source of the authority for a mandate by the State  
 23 Director or the Commission Chairman?  
 24 A. Well, the State Director is, you know,  
 25 responsible for the day-to-day operations of the

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1 agency and has authority to mandate, create, direct,  
 2 authorize, et cetera.  
 3 Q. Okay. I have gone back to this because  
 4 as we have seen immediately above a Commission  
 5 policy is a policy or philosophical statement. And  
 6 then -- but I'm -- I'm trying to understand to the  
 7 extent that the directives are not approved by the  
 8 Commission, this directive on directives includes  
 9 the Commission Chairman. Is that a result -- I  
 10 mean, did you draft this, by the way?  
 11 A. No.  
 12 Q. Okay.  
 13 A. I think that definitions have been  
 14 there for, you know, since the inception.  
 15 Q. '87?  
 16 A. Yeah.  
 17 Q. Okay. And any revisions that have  
 18 taken place, have any of them included changes to  
 19 these definitions?  
 20 A. Well, I would think so because a  
 21 Commission policy -- we used to be called the  
 22 Department of Mental Retardation so I would think  
 23 that there's been some update to that kind of thing.  
 24 Q. Remind me what that time frame is when  
 25 the change of name?

1 A. '93.  
 2 Q. And at that point, you were working for  
 3 Department of Mental Retardation, correct?  
 4 A. No, I was in graduate school.  
 5 Q. Oh, that's when you were in graduate  
 6 school.  
 7 Based on your own memory, and I'll look  
 8 at it later, I won't take time on it, but does the  
 9 Commission policy or philosophical statement, which  
 10 you were kind enough and you referred me back to  
 11 that Web site which we referenced as Hearing Exhibit  
 12 No. 1. Do you know of your own knowledge, and  
 13 that's all I need at this point, do you know of your  
 14 own knowledge whether the Commission itself has  
 15 authorized the Chairman to sign off on directives  
 16 mandating certain actions?  
 17 A. Do I know if the chairman knows?  
 18 Q. No, if the Commission itself has  
 19 adopted a policy authorizing the Chairman to sign as  
 20 approving a departmental directive?  
 21 A. I don't know.  
 22 Q. Okay.  
 23 A. I mean, it might be in one of the CPs.  
 24 I don't know.  
 25 Q. Okay. I'm asking what you know. I'm

1 signatures at the end depending on the originator.  
 2 Commission policies will be designed by the Chairman  
 3 and any other member warranted. Are you aware of  
 4 policies that have been signed by -- I mean, members  
 5 referring to members of the Commission?  
 6 A. Do I know of policies that's been  
 7 signed by members of the Commission?  
 8 Q. Yes, I'm just looking at this wording.  
 9 A. Other than those two?  
 10 Q. I'm trying to understand what it means.  
 11 Before now we've talked about needing  
 12 the signature of either the Director or the Chairman  
 13 and now I'm seeing language that says that now it  
 14 can be signed by the Chairman and -- and any other  
 15 member warranted. And what other member are we  
 16 talking about?  
 17 A. It depends on who might have been --  
 18 the Chair might have delegated to a committee to  
 19 develop a directive.  
 20 Q. Okay. But the question I'm asking is  
 21 is the reference to member a member of the  
 22 Commission or a member of some other member entity?  
 23 A. Oh, no, the member of a Commission.  
 24 Q. Okay. And then it says departmental  
 25 directives, the DD's that originate with the State

1 not --  
 2 A. Yeah.  
 3 Q. I'm not asking -- and I'm not asking  
 4 you to surmise. I thought you might know.  
 5 All right. Let's now go to what I  
 6 think is a subcomponent of this same area of  
 7 questions. Go to the last page, Kathi.  
 8 A. Okay.  
 9 Q. I'm trying to put all these pieces  
 10 together because now we're talking -- we're now on  
 11 Page 9 of 11. Are you where I am?  
 12 A. No.  
 13 Q. Okay. Look at 9 and 11. 9 of 11,  
 14 excuse me.  
 15 A. Okay.  
 16 Q. Look at the bottom of the page.  
 17 A. Uh-huh.  
 18 Q. We're talking about -- at this point  
 19 we're now literally in the sort of formatting what a  
 20 document will look like. I'm assuming you're trying  
 21 to have some common format so people will sort of  
 22 immediately know what they're looking at.  
 23 A. Uh-huh.  
 24 Q. All right. Now, the body of the  
 25 document will follow. There may be one or two

1 Director will be signed by the Director.  
 2 Now, give me an example of a directive  
 3 that originates by the State Director because as I  
 4 understood it, even directives either had to be  
 5 signed by the State Director or signed by the  
 6 Chairman and this appears to be saying something  
 7 else or maybe I'm not --  
 8 A. No, the --  
 9 Q. -- reading correctly?  
 10 A. Right, I think the latter is the case.  
 11 Q. Okay.  
 12 A. The originator is somebody who takes  
 13 responsibility for -- it describes who they are in  
 14 another part of the directive. And it's usually  
 15 somebody that reports to the State Director. And in  
 16 those instances where the State Director originated,  
 17 which is very uncommon, and I can't tell you of one  
 18 that he's the only one whose signature is on a  
 19 directive, there would be no other need to have  
 20 anybody else's signature on the directive.  
 21 Q. Okay. We're still together.  
 22 A. Okay.  
 23 Q. So but again, maybe I have  
 24 misunderstood. I thought that all directives  
 25 ultimately needed to be signed off by the director.

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1 A. Correct, and they are.  
 2 Q. Regardless of -- okay.  
 3 A. They are.  
 4 Q. And but so this tells me all directives  
 5 are signed by the Director which is his way of  
 6 knowing what directives are out there?  
 7 A. No, which -- because he has final  
 8 authority on ensuring that the directives are  
 9 following the Commission policies and what they have  
 10 communicated to him as their employee.  
 11 Q. And I'm not trying to -- I'm truly not  
 12 trying to beat a dead horse, it may be dead, I just  
 13 haven't heard the final whinny so let me try make  
 14 sure.  
 15 If there is a directive -- if there is  
 16 a directive, there can be directives out there that  
 17 bear the signature of subordinate to the State  
 18 Directory and they are binding directives?  
 19 A. No, I didn't say that.  
 20 Q. Okay.  
 21 A. The directives -- you need to describe  
 22 what you mean by binding but the -- all directives  
 23 are signed by the State Director and by the  
 24 originator and the originator can be somebody other  
 25 than Kathi Lacy. If you look on that organizational

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1 chart, there are other people that report to the  
 2 State Director.  
 3 Q. And I saw that.  
 4 A. Okay. Okay.  
 5 Q. So by looking at a directive, just  
 6 under what you've told me, I would know who  
 7 originated it.  
 8 A. Yes.  
 9 Q. Because if there's a signature other  
 10 than the Director, that signature will be whoever  
 11 was taking responsibility for creating the  
 12 directive, am I now got this straight?  
 13 A. Yes. So if you go to the front page of  
 14 100-02-DD, you'll see that I was the originator of  
 15 this thing and Dr. Butkus approved it.  
 16 Q. Yeah, and I was going to go -- just  
 17 that's exactly where I was going next.  
 18 A. Okay.  
 19 Q. Very -- you're good.  
 20 A. All right.  
 21 Q. So that's -- you have now -- this is --  
 22 you've now taken me where I wanted to go.  
 23 A. Okay.  
 24 Q. Bless your heart.  
 25 A. Okay.

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1 Q. So by looking at this document, the  
 2 directive on directive is a -- its current  
 3 manifestation is a result of decisions you made and  
 4 Dr. Butkus approved.  
 5 A. The current revisions, yes.  
 6 Q. Right. Okay.  
 7 A. That's right.  
 8 Q. You need to be proud of me. I'm doing  
 9 good.  
 10 So then going back to -- going back to  
 11 Page 7 of 11, Paragraph A as in apple. You are the  
 12 one that has concluded and has been signed off by  
 13 Dr. Butkus that the Web site is the approved method  
 14 of disseminating information to interested parties.  
 15 A. Yes. And I believe that this change  
 16 was made as a result of the Legislative Audit  
 17 Council's audit.  
 18 Q. Right. Right. Did you consider other  
 19 forms of dissemination of information and rejected  
 20 them or you just hadn't thought about it?  
 21 A. It is what the LAC asked us to do.  
 22 Q. Okay.  
 23 A. So we were following their  
 24 recommendation.  
 25 Q. Okay. And did you understand them to

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1 not want you to post proposed directives in  
 2 locations or it just didn't come up?  
 3 A. It never has -- it was never a  
 4 consideration, posting a directive.  
 5 Q. Okay. So in fairness to you, it's not  
 6 like, well, Steve, I thought about it and by damn I  
 7 didn't want to do it?  
 8 A. Right.  
 9 Q. That's just not an issue that's come  
 10 up?  
 11 A. Right.  
 12 Q. Okay. Let us now go -- I want to get  
 13 to the Complaint.  
 14 MR. WOODINGTON: Do you want to  
 15 continue or take a break?  
 16 MR. HAMM: We can take a break any --  
 17 THE WITNESS: I'm okay for a little  
 18 while. Yeah, I've got an infected eye, obviously.  
 19 MR. HAMM: I have been there.  
 20 THE WITNESS: Yeah.  
 21 MR. HAMM: I've been there. And you're  
 22 welcome to break at any time, Kathi.  
 23 MS. HILL: Because we've been going  
 24 about over an hour.  
 25 THE WITNESS: I'm okay. I mean, I --

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<p>1 MR. HAMM: I'm going to be good for a 2 little while then I'm going to need to take a break. 3 THE WITNESS: Okay. 4 MR. HAMM: I don't know about -- 5 MR. WOODINGTON: Let's go about 15 more 6 minutes. 7 MR. HAMM: All right. 8 THE WITNESS: Yeah. 9 MR. HAMM: All right. It is -- so that 10 we're clear, it's my intention to get this done 11 today. This is not -- 12 MR. WOODINGTON: I hope so, yeah. 13 (Off-the-record conference.) 14 BY MR. HAMM: 15 Q. So let us now mark as the next Hearing 16 Exhibit, which I believe will be No. 9. 17 (PLF. EXH. No. 9, Lawsuit Filed, was 18 marked for identification.) 19 BY MR. HAMM: 20 Q. Do you recognize this document that 21 I've just handed you, Kathi? 22 A. Yes. 23 Q. And I know you admire it for it's 24 brilliance and clarity of thought, would that be 25 true?</p>	<p>1 A. I didn't say I was opposed. 2 Q. Okay. 3 A. I said I think that we have a vehicle 4 that accomplishes the same thing. 5 Q. Okay. Well, we've already -- you have 6 already acknowledged that your current -- are you 7 aware that the process referenced in your directive 8 since you're the one that originated it, the 9 directive on directives, that the notice provisions 10 are different than the notice provisions of 11 regulations? Are you aware of that? 12 A. I would assume they're different. 13 Q. Okay. So you have -- and I recognize 14 you're not a lawyer and I'm not trying to make you 15 one. But you have concluded that any additional 16 notice requirements of the Administrative Procedure 17 Act should not apply to directives? 18 A. No, I'm saying I -- we haven't either 19 thought about it or done it or anything in between. 20 Q. Okay. So that's simply not an issue 21 that you've considered for purposes of trying to 22 render an opinion one way or the other. Is that 23 fair based on what I just heard you say? 24 A. That I haven't given it consideration? 25 That I haven't --</p>
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<p>1 A. Yes. 2 Q. Good. You're wonderful. 3 Okay. On a more serious note, is the 4 document I've handed you, despite the remarks of 5 your now semi-distinguished counsel -- it is the 6 lawsuit filed by Protection and Advocacy as well as 7 on behalf of individuals who are listed by initials, 8 against the department -- DDSN, Dr. Butkus and then 9 existing members of the Commission? 10 A. Correct. 11 Q. Yes. And you've already told me that 12 you saw this document sometime after it was served. 13 A. Correct. 14 Q. All right. I do not intend to go 15 through all the provisions of it, just for your 16 information, but I do want to -- as I heard your 17 earlier testimony, you already testified that you 18 advised Dr. Laurent with regard to your opinion of 19 what the statute required with regard to 20 regulations, do you remember that answer? 21 A. Correct, yes. 22 Q. Okay. And I have also understood you 23 to say that you in your role as the head of the 24 Office of Policy are opposed to the promulgation of 25 any regulations beyond what exist.</p>	<p>1 Q. Well, you haven't thought about it in 2 such a way that, okay, Steve, I've thought about and 3 I reached the following conclusions. Again, I'm not 4 trying to put words in your mouth but I think that's 5 what I heard you say and if I'm wrong -- 6 A. Well, my job is to follow what, you 7 know, the State Director asked me to do. 8 Q. Right. 9 A. Based on what he gets from the 10 Commission. 11 Q. Okay. 12 A. And so the assumption there is that we 13 were following the wishes of the Commission since 14 there have been no promulgation of regulation issued 15 since I've been at the department. 16 Q. Okay. And when you -- of course you've 17 been at the department since 1996, is that the time 18 frame you're referencing? 19 A. Well, I also worked there previously. 20 Q. Okay. So at least since '96, then, 21 your answer would apply? 22 A. Yeah. 23 Q. Let's now talk about the enforceability 24 of a directive. 25 A. Okay.</p>

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1 Q. What is your understanding the  
 2 directive on directives gives a 30-day default  
 3 period, yes?  
 4 A. Yes.  
 5 Q. So does that mean that under the  
 6 directive on directives within a 30 -- after a  
 7 30-day period, a directive may be changed?  
 8 A. Could you ask that again.  
 9 Q. Be happy to. There is a -- there is an  
 10 existing directive, one -- someone in your system  
 11 determines we need to change it. Your directive on  
 12 directives says we're going to utilize the Web site  
 13 as the vehicle to put out notice, yes?  
 14 A. Yes.  
 15 Q. Okay. And then it contains that  
 16 language, and maybe it would be helpful for me and  
 17 you to look at, again, 100-02-DD, which is the one  
 18 that shows you're the originator -- and when I say  
 19 it's your document, I'm not -- I'm not trying to  
 20 tard fed you with your document. But under your  
 21 system, you have organizational responsibility for  
 22 it.  
 23 And we've talked about Page 7 of 11  
 24 that before the document with any major changes  
 25 highlighted and allowing sufficient time for

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1 feedback, a minimum of 30-calendar days will be  
 2 default, and I understood in an earlier question  
 3 that you couldn't change it without that 30-days.  
 4 That that was the minimum time period before the  
 5 directive on directives would allow a directive to  
 6 be changed.  
 7 A. That's the -- that's the typical --  
 8 that's the routine.  
 9 Q. Okay.  
 10 A. That directives have been issued  
 11 without -- under a 30-day period of time.  
 12 Q. In less than 30 days?  
 13 A. Yeah.  
 14 Q. So this directive when it says a  
 15 minimum of 30-calendar days will be the default is,  
 16 in fact, not a final and binding position for DDSN?  
 17 A. Right.  
 18 Q. Okay. So to the extent that someone  
 19 thought they had 30 days and saw this --  
 20 A. It would be posted with the directive  
 21 so that they would know they had under 30 days if we  
 22 did that.  
 23 Q. Okay. And you just told me you have  
 24 done that.  
 25 A. I believe we have sent one out that --

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1 and I'm trying -- I can't even think which one it  
 2 was.  
 3 Q. All right. We'll give you a moment to  
 4 think.  
 5 A. But we did -- we did put one -- I'm not  
 6 going to be able to do it.  
 7 Q. Okay.  
 8 A. I do so much during the day.  
 9 Q. I am not expecting you to be a human  
 10 encyclopedia.  
 11 A. I mean, I can get it for you but --  
 12 Q. Well, maybe through your counsel let me  
 13 ask that you do that simply because it will help me  
 14 understand what you're referring to.  
 15 A. Okay. Sure.  
 16 Q. But I don't expect you to.  
 17 MR. WOODINGTON: So just so the record  
 18 is clear, we're trying to locate one where --  
 19 THE WITNESS: Less than 30 days.  
 20 MR. WOODINGTON: -- where the posting,  
 21 the original posting --  
 22 MR. HAMM: Was less than 30 days.  
 23 MR. WOODINGTON: -- has less than a  
 24 30-day period stated on it.  
 25 MR. HAMM: Yes.

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1 THE WITNESS: And an example of that --  
 2 I mean, I did think of it. How about that?  
 3 BY MR. HAMM:  
 4 Q. I'm impressed. Go for it.  
 5 A. The directive on abuse and neglect and  
 6 exploitation.  
 7 Q. Okay.  
 8 A. I believe that was the one that it was.  
 9 And when the law changed, the -- we tried to  
 10 incorporate those changes to the law that happened  
 11 in January or were implemented in January 2007. And  
 12 then there are times, you know, where that directive  
 13 has been reviewed, clarification has been added.  
 14 And there are times when after meeting with the  
 15 unit, the SLED organization, we have had to issue  
 16 something very quickly without getting comment  
 17 because this is what SLED asked us to do.  
 18 Q. Okay.  
 19 A. So there would have been an occasion  
 20 that we did not give people an opportunity to  
 21 comment but to say there has been a change in  
 22 practice with how reports are submitted and that  
 23 kind of thing. That's an example.  
 24 Q. Okay. So again, the directive on  
 25 directives, Page 7 of 11, does not within itself --

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<p>1 A. Right.</p> <p>2 Q. -- authorize or suggest or recognize</p> <p>3 that there may be circumstances where the 30-day</p> <p>4 standard will not apply; is that correct?</p> <p>5 A. Yeah.</p> <p>6 Q. Okay.</p> <p>7 A. And I think we didn't think about that</p> <p>8 at the time that we updated this directive so I</p> <p>9 might have to go back and update it.</p> <p>10 Q. Okay. Now, let's say a directive --</p> <p>11 what is the enforceability of a directive?</p> <p>12 A. It depends on which one it is.</p> <p>13 Q. Okay.</p> <p>14 A. If I use the abuse and neglect one,</p> <p>15 have a division of quality management, every report</p> <p>16 that gets submitted to SLED is simultaneously sent</p> <p>17 to the department, we make sure that it's complete,</p> <p>18 accurate, that the correct personnel action has been</p> <p>19 taken and that type of thing. So we do a</p> <p>20 prospective review and then we also do a kind of a</p> <p>21 concurrent and a post-review, looking at trends and</p> <p>22 analyzing what's going on in organizations. So</p> <p>23 there's all kinds of ways to look to see if the</p> <p>24 directive is being carried out as intended.</p> <p>25 Q. Okay. Let me -- obviously, you're much</p>	<p>1 of Page 5, Paragraph 17.</p> <p>2 A. Uh-huh.</p> <p>3 Q. Then it's then going to go on to Page 6</p> <p>4 and I want to take a break.</p> <p>5 (Off-the-record conference.)</p> <p>6 BY MR. HAMM:</p> <p>7 Q. Prior to the break I gave you a copy of</p> <p>8 the Complaint filed by P and A in this case and I</p> <p>9 asked you to take a look at Paragraph 17. I will</p> <p>10 represent to you that in the preparation of this</p> <p>11 complaint we met with families for purposes of</p> <p>12 creating this document. And Paragraph 17 alleges</p> <p>13 that there was a change in policy which eliminated</p> <p>14 this individual's eligibility to receive certain</p> <p>15 services.</p> <p>16 Now, I had asked you earlier today</p> <p>17 whether changes in policies might eliminate existing</p> <p>18 services and, quite honestly, I don't remember what</p> <p>19 you said so I don't -- I do not want to be trying to</p> <p>20 put words in your mouth. I think you may have said,</p> <p>21 well, no, we don't do that. But let's just look at</p> <p>22 the allegation here.</p> <p>23 I am -- for purposes of the question, I</p> <p>24 will represent to you that these individuals and</p> <p>25 guardians knew nothing about the change in the</p>
<p>Page 171</p> <p>1 more familiar with your system than I am. Let's say</p> <p>2 there's an existing directive and someone is -- to</p> <p>3 whom the directive applies and is changed and for</p> <p>4 purposes of my -- we'll make this a hypothetical.</p> <p>5 The directive is changed, whoever</p> <p>6 doesn't know it and they say, wait a minute, we --</p> <p>7 we didn't know about this change, you shouldn't</p> <p>8 apply the new one to us. What is the -- I didn't</p> <p>9 see anything there about someone who would claim,</p> <p>10 well, we didn't even know the directive changed.</p> <p>11 A. They would always know that the</p> <p>12 directive changed because we've got confirmation</p> <p>13 that e-mail was sent to the distribution list and</p> <p>14 they received it.</p> <p>15 Q. Okay. And again, I'm now thinking</p> <p>16 about a family who has a member that receives</p> <p>17 services to which a directive might change something</p> <p>18 and they didn't know about it, what is --</p> <p>19 A. Like a -- like a -- can you give me an</p> <p>20 example?</p> <p>21 Q. Yes, I think I can. In fact, let's go</p> <p>22 to the pleadings and see if we can't do it that way.</p> <p>23 A. Okay.</p> <p>24 Q. Let me find that; if I might. Okay.</p> <p>25 Okay. Yeah. If you would, Kathi, go to the bottom</p>	<p>Page 173</p> <p>1 policy and that resulted in a change of eligibility.</p> <p>2 And is that an allegation that you've ever heard</p> <p>3 before?</p> <p>4 A. I don't understand the dynamics. I</p> <p>5 mean, it's not enough information.</p> <p>6 Q. Okay. Well, we'll have some</p> <p>7 depositions that will -- again, I'm not -- I'm not</p> <p>8 trying to surprise you. I'm just trying to --</p> <p>9 So taking for purposes of this</p> <p>10 discussion, if a family did not know that services</p> <p>11 that their -- that someone in the family was</p> <p>12 eligible to receive were changed and they were no</p> <p>13 longer eligible to receive them, that is not a</p> <p>14 generic circumstance that you have any familiarity</p> <p>15 with as the head of the Office of Policy?</p> <p>16 A. Not through the department directive</p> <p>17 process, no. If the person is in an SLP II, then</p> <p>18 that person is getting something called residential</p> <p>19 habilitation. And residential habilitation has a</p> <p>20 definition around it. And those definitions are</p> <p>21 approved by the Medicaid Agency here in South</p> <p>22 Carolina and also by the Centers for Medicare and</p> <p>23 Medicaid Services. So we just can't up and change</p> <p>24 something without going through a pretty extensive</p> <p>25 process.</p>

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1 Q. And I under -- and I'm not quarreling  
 2 with that answer.  
 3 A. Uh-huh.  
 4 Q. What I'm asking is would it surprise  
 5 you that since I already know from the directive on  
 6 directives that the only way that these potential  
 7 changes are being posted is in the Web site --  
 8 A. No, sir, you --  
 9 Q. -- that a family might not know?  
 10 A. -- you're misunderstand the department  
 11 directives.  
 12 Q. Okay.  
 13 A. Okay. We have a contract with the  
 14 providers that spells out what we are buying, how  
 15 much we're buying and what our expectations are.  
 16 There's a set of service standards that are also  
 17 posted on the Web site and available. Service  
 18 coordinators use them, residential managers use  
 19 them, executive directors use them to carry out  
 20 their responsibilities. Okay, it could be like a  
 21 doctor using a manual for filing and billing  
 22 insurance. There are rules that you have to follow.  
 23 Okay?  
 24 So these manuals are available for  
 25 anybody and most of that information is provided

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1 through our service coordination system which are  
 2 contracted entities to DDSN. We are not service  
 3 coordination agencies. Okay?  
 4 And so if -- if this person had a  
 5 reduction in service, it would have been a result of  
 6 his service coordinator eliminating the service from  
 7 his service plan and providing the family with an  
 8 opportunity to appeal that decision.  
 9 Q. Does the service --  
 10 A. It's okay.  
 11 Q. I'm absorbing what you just told me.  
 12 A. Okay.  
 13 Q. I'm going to focus on the last part of  
 14 your response, Kathi, if I may. Service provider  
 15 has an obligation to tell the party affected of a  
 16 right to appeal?  
 17 A. Absolutely.  
 18 Q. Okay. Now, tell me -- tell me where I  
 19 would find that.  
 20 A. The right to appeal? Well, it depends  
 21 on what service it is. In this type, SLP II, there  
 22 would be information provided to a case manager.  
 23 It's a waiver requirement, it's a federal government  
 24 requirement. If we say we're going to do it, you  
 25 can get a copy of the waiver document. It's posted

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1 on DHHS's Web site. A waiver manual is posted on  
 2 our Web site, you can go look at it.  
 3 But the information related to what  
 4 service coordinators need to do in an instance where  
 5 they're reducing, suspending, terminating any  
 6 service is quite clear and there are procedures for  
 7 them to follow.  
 8 MR. WOODINGTON: Let me interpret for  
 9 just a second. When she says waiver, are you  
 10 familiar with the medicaid waiver and so forth?  
 11 MR. HAMM: I am.  
 12 MR. WOODINGTON: Okay.  
 13 BY MR. HAMM:  
 14 Q. Okay. What I'm trying to be clear on  
 15 is there a uniform document that is given to the  
 16 individual receiving the services that are about to  
 17 change? Is it --  
 18 A. Absolutely. I mean, you can't go  
 19 change a service on a person's plan without  
 20 notifying them as to the reason why. Medicaid is a  
 21 medically, you know, necessary, you know, insurance  
 22 type and so there are rules that you have to follow.  
 23 And if services are no longer medically  
 24 necessary or if a service coordinator wasn't  
 25 following the rules to begin with and was

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1 authorizing stuff that was a duplication of services  
 2 that were already being provided, anything along  
 3 those lines, then the family has a right to appeal  
 4 anything that we do to suspend, terminate or reduce  
 5 services. And that information is provided in  
 6 writing to the family.  
 7 Q. Okay. Is that information the subject  
 8 of a directive?  
 9 A. It's -- that information is in a  
 10 service coordination manual. There's something  
 11 called a Mental Retardation Related Disabilities  
 12 Manual. It's on the Web site. They're, you know,  
 13 available for download review. You can ask your  
 14 service coordinator for a copy. You can -- you  
 15 know, just all kinds of ways you can retrieve  
 16 information that you're interested in knowing about.  
 17 Q. So do you know anything about a change  
 18 on the issue of 24-hour-a-day on-site supervision  
 19 that was changed?  
 20 A. No, I don't.  
 21 Q. Okay.  
 22 A. We -- not related to an SLP program.  
 23 I'm not exactly sure what that's about. There -- we  
 24 made a directive change in accordance with --  
 25 changed it to the amount of supervision that a

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<p>1 person needs instead of calling it accountability of 2 consumers. So it went from a directive called 3 accountability of consumers to supervision of 4 consumers and I'm not exactly sure what this is 5 referring to. 6 Q. Okay. 7 A. To be honest with you. 8 Q. Okay. That's fine. 9 A. Okay. 10 Q. Is it accurate that DDSN has not 11 promulgated any regulation under the APA with regard 12 to the operation of SLPs? 13 A. There is no requirement, yes. There is 14 no requirement that we do so. 15 Q. And I understand -- I understand 16 that -- 17 A. I know, but you keep repeating stuff so 18 I just want to keep repeating myself. 19 Q. Oh, that's fine. That's fine. 20 A. Okay. 21 Q. And you're welcome to do that. 22 A. Okay. 23 Q. I'm not -- again, I'm not trying to put 24 words in your mouth. 25 Remind me, Kathi, in terms of you,</p>	<p>1 A. -- then we have mechanisms in place to 2 find out what the story is -- 3 Q. Right. 4 A. -- because sometimes it's not always 5 what the family member thinks it is and we get to 6 the bottom of it and we correct whatever needs to be 7 corrected. 8 Q. Well, I can tell you I used to be the 9 head of the Department of Consumer Affairs and 10 someone would complain and I learned that I needed 11 to make sure I had the rest of the story. So I 12 appreciate what you're saying but there was on 13 occasion when the consumer was absolutely correct in 14 whatever it was they were asserting. 15 A. Oh, sure, absolutely. 16 Q. So you determine -- in this scenario -- 17 I want to make sure I -- let's follow this through. 18 In this scenario, a family says, we didn't even know 19 we can appeal, which I have had people sit in this 20 room and tell me, so. 21 A. Sure. And I've had people say that too 22 and yet I also have seen correspondence to the 23 opposite. 24 Q. Okay. 25 A. So people don't recollect that they</p>
<p>Page 179</p> <p>1 Commission, Dr. Butkus and then you and your 2 official responsibilities as shown on that position 3 questionnaire that you and I looked at earlier 4 today. Help me understand what you would do if you 5 learned that a provider had not given someone the 6 appeal information you and I have talked about. 7 A. If someone did not provide appeal 8 information? 9 Q. Right. If someone was not given 10 information, what is it that you are obligated to do 11 in that circumstance, if anything? 12 A. It depends on what it is. I mean, if 13 it was a reduction, termination or suspension of a 14 service, then we would make it right. 15 Q. What does that mean, Kathi? 16 A. Well, we -- someone would have to let 17 us know that that happened -- 18 Q. Right. 19 A. -- in order for us to find out. 20 Q. Right. 21 A. It's a provider responsibility. So if 22 the call were made to me to say, you know, my 23 service was reduced and I never got a chance to 24 appeal it -- 25 Q. Right.</p>	<p>Page 181</p> <p>1 always were given that opportunity -- 2 Q. I understand. 3 A. -- to appeal. 4 Q. But -- 5 A. So again, it's -- 6 Q. No, I understand. I'm not -- I'm not 7 at all quarreling. Let's just say because things -- 8 there's an interesting bumper sticker around that 9 I'm not going to quote but things happen. Let's say 10 they didn't recognize those things happened for 11 whatever reason. That they had an appeal right and 12 the time period has passed, help me understand what 13 happens then. 14 A. Well, if there is no documentation that 15 they were informed of their right to appeal, you go 16 one direction. 17 Q. Okay. 18 A. If there is documentation that they had 19 to appeal, then you go in another direction. And it 20 really depends. 21 Q. Okay. 22 A. I mean, you know, some families are -- 23 you know, there might be some extenuating 24 circumstances. You know, maybe they can't read, 25 maybe they weren't -- you know, maybe they don't</p>

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1 remember what the service coordinator told them.  
 2 Maybe they got into a car accident the next day and  
 3 30 days has come and gone and blah, blah, blah. So  
 4 there's extenuating circumstances that would need to  
 5 be looked into and the course of action determined.  
 6 Q. Okay. And I want to follow both of the  
 7 paths you just mentioned. Let's say they didn't and  
 8 then we'll follow the other.  
 9 A. Okay.  
 10 Q. They didn't. Tell me what happens.  
 11 A. So if they weren't informed of their  
 12 right to appeal --  
 13 Q. Right.  
 14 A. -- then we would, you know, assign  
 15 somebody to follow that case.  
 16 Q. Right.  
 17 A. Find out what -- what was suspended,  
 18 reduced or terminated.  
 19 Q. Okay.  
 20 A. Okay. These are words that are  
 21 commonly used.  
 22 Q. Right.  
 23 A. And find out how long they have not  
 24 been being provided or reduced or one of the others.  
 25 Q. Okay.

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1 A. And restore the service. And get the  
 2 plan corrected and then --  
 3 Q. Terminated.  
 4 A. And then -- no. And then talk with the  
 5 family about, you know, it could have been a mistake  
 6 on the service coordinator's part that services were  
 7 being authorized for things for which there was not  
 8 a need to find, there could have been services that  
 9 were duplicative of other services received.  
 10 And in this case if it's a SLP II in  
 11 companion, the SLP II definition in and of itself by  
 12 what it's called residential habilitation, is, you  
 13 know, contains a component of a companion. So -- so  
 14 things could have been a mistake on the service --  
 15 there's all kinds. There's probably a thousand  
 16 different scenarios.  
 17 So there's not really -- there's no  
 18 ever simple solution. We handle each case  
 19 individually, so --  
 20 Q. I'm not suggesting there is.  
 21 A. Yeah.  
 22 Q. But for example, in the circumstance  
 23 that we've talked about, is there a directive or  
 24 policy in order to eliminate a claim that someone  
 25 wasn't advised? Do they have to sign and say, look,

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1 I want you to understand we're following procedures.  
 2 Here's a document that tells your appeal rights and  
 3 I need you to sign this so I can demonstrate you got  
 4 it, is that --  
 5 A. They don't have to sign it. I mean, I  
 6 don't think that that is a -- is a standard. But  
 7 there is information that must be documented in the  
 8 record that they shared that information with the  
 9 family and that written notification was sent.  
 10 Q. And again, I have been involved in some  
 11 other cases where individuals falsely --  
 12 A. Sure.  
 13 Q. -- wrote down that they had a  
 14 conversation or whatever, that it turned out that  
 15 they didn't.  
 16 A. Sure.  
 17 Q. And that's the reason I'm asking --  
 18 A. Well, you know what --  
 19 Q. -- from you as the policy -- is there a  
 20 reason that you don't ask whoever the affected party  
 21 is to sign a document so you, you, Kathi, know, you  
 22 know, here -- I hear you saying this, but I have a  
 23 copy of the document that you signed, so --  
 24 A. Well, this is -- this is how that  
 25 normally takes place. And we -- we review a

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1 randomly selected samples of clients' file every  
 2 year. Quality Improvement Organization does that  
 3 for us. We don't do it ourselves so that we get  
 4 reliable and valid information.  
 5 And what that does is help us look at  
 6 trends and patterns that are going on in that  
 7 organization or with a certain service coordinator  
 8 or provider. And it -- if there is suspicion of  
 9 fraud, we report it to the Attorney General's  
 10 office. Actually, we report it to SLED --  
 11 Q. SLED, right.  
 12 A. -- right now and they would refer it on  
 13 to the Attorney General's office. And that happens  
 14 and we do detect it. But people are going to do  
 15 that and -- and, you know, we haven't made it a part  
 16 of our business practice because it is hard to get  
 17 families to sign information because they're not  
 18 home, they're unavailable, they don't come to the  
 19 office, they do this -- it's impractical.  
 20 We've tried it with some other things  
 21 and it becomes impractical to have a family sign  
 22 information.  
 23 Q. Okay.  
 24 A. Calling on the telephone, there's  
 25 probably a telephone record but we do submit

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<p>1 everything in writing. So there should be some sort 2 of log at that I'm sure that you can look at each 3 provider that we contract with. I'm sure that they 4 have their own internal quality controls that they 5 use in order to do that.</p> <p>6 Q. So DDSN does not have a standard 7 quality control on -- regardless of provider or 8 service where there is -- I'm trying to -- you said 9 the sort of standard practice, termination, 10 reduction or whatever that phrase was.</p> <p>11 A. Absolutely we do. I gave you an 12 example.</p> <p>13 Q. Okay. I heard you. My question is, is 14 there a uniform directive that doesn't make any 15 difference. If you're getting DDSN dollars, 16 everybody does X regardless?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. But --</p> <p>19 A. I have said a couple of times it's in 20 the Service Coordination Manual. Okay.</p> <p>21 Q. But I'm trying to understand is a 22 Service Coordinating Manual a directive?</p> <p>23 A. No.</p> <p>24 Q. Okay. A Service Coordination Manual -- 25 help me understand in the hierarchy we've got</p>	<p>1 this matter and that is and it's quoted in one of 2 the memorandums filed by your counsel. And that is 3 the reference to the -- in Section 44-20-240, the 4 business of treating individuals with mental 5 retardation and related disabilities. You're 6 familiar with that? With the term ---</p> <p>7 A. In how we treat them?</p> <p>8 Q. Pardon me?</p> <p>9 A. In how we treat them?</p> <p>10 Q. No, I'm --</p> <p>11 A. Oh.</p> <p>12 Q. What I'm trying to -- what I'm focusing 13 on now is in the context of how the Commission 14 policies are reflected in the directives, state law 15 says that you must treat individuals with mental 16 retardation and related disabilities. You're 17 familiar with the term related disabilities?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Okay. I know you have not promulgated 20 a regulation on defining the term related 21 disabilities.</p> <p>22 A. It's in the State statute.</p> <p>23 Q. I understand.</p> <p>24 A. Okay.</p> <p>25 Q. I'm just -- I know that. I'm</p>
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<p>1 Commission policies, we've got directives --</p> <p>2 A. Directives are those things that are, 3 you know, so important that we -- you know, we put 4 them aside and make them a separate thing. 5 Standards are things that are used to guide. 6 They're like a manual. Okay. Just like anybody 7 uses to do their job.</p> <p>8 You know, you might use a Code of 9 Federal Regulations, you might use a DSM.IV to 10 diagnosis as a physician. You use law books as an 11 attorney. It is a guide. It is something that you 12 use to help you do your job.</p> <p>13 And the federal government allows 14 states to operationalize their regulations. There's 15 already regulations written about home 16 community-base waivers. Okay. So there are 17 regulations that we follow that are in the federal 18 statute. And the federal government approves the 19 states to implement those federal statutes. And 20 they also require evidentiary information that those 21 federal statutes are being followed. We have to 22 produce that information in order to get a waiver 23 approved.</p> <p>24 Q. Okay. I want to -- one of the things 25 that I was interested when I first got involved in</p>	<p>1 focusing --</p> <p>2 A. Okay. I'm just helping you to 3 understand that it is in the State statute.</p> <p>4 Q. I do know. I do know that.</p> <p>5 A. Okay.</p> <p>6 Q. So you're going -- you're going to the 7 question that I'm wanting you to answer. So you're 8 attitude -- not attitude. Your position is that the 9 term related disabilities is adequately defined in 10 the statute?</p> <p>11 MR. WOODINGTON: Object to the form.</p> <p>12 THE WITNESS: No, I'm saying that the 13 term related disability is defined in the State 14 statute and that we also have a department directive 15 on what a related disability is.</p> <p>16 BY MR. HAMM:</p> <p>17 Q. All right.</p> <p>18 A. And how we go about determining what a 19 related disability is:</p> <p>20 Q. All right. And there is no -- again, 21 for this record, there is no regulation that the 22 DDSN has sent for promulgation of DDSN's 23 construction of the term related disability?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. Talk to me about -- I looked in</p>

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1 the statute and I didn't see anything but it's  
 2 certainly possible that I missed it so you maybe can  
 3 help me.  
 4 A. Okay.  
 5 Q. To the extent that DDSN decides to deny  
 6 services --  
 7 A. Eligibility?  
 8 Q. Yes, ma'am.  
 9 A. Okay.  
 10 Q. Is it your position that eligibility is  
 11 defined in the statute?  
 12 A. The definition?  
 13 Q. Yes.  
 14 A. Yes.  
 15 Q. For eligibility?  
 16 A. Yes.  
 17 Q. In what statute are you referring to?  
 18 A. There's a definition for mental  
 19 retardation.  
 20 Q. Okay. But mental retardation includes  
 21 this related disability phrase.  
 22 A. Right. And the related disability  
 23 phrase is in the -- I guess it's in the Code of  
 24 Federal Regulations.  
 25 Q. Right. So again, for determinations of

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1 eligibility --  
 2 A. Uh-huh.  
 3 Q. -- I did not locate a statute that  
 4 specifically outlined all the factors that might  
 5 apply to determining eligibility. Did I miss  
 6 something?  
 7 A. I don't know what -- I don't know.  
 8 Q. Okay.  
 9 A. I don't know what you've seen --  
 10 Q. Okay.  
 11 A. -- so unless you show me, I'm not going  
 12 to be able to --  
 13 Q. Well, I can't show you what I can't --  
 14 A. -- answer.  
 15 Q. -- what I didn't find. That's all I --  
 16 A. Well, you must have found something.  
 17 So I could tell you whether you were comprehensive  
 18 in what you located or whether there was additional  
 19 information there.  
 20 Q. Okay. Well, you have testified  
 21 consistently, Steve, we don't need a regulation, we  
 22 think our directives is a better path to follow.  
 23 A. I haven't said that.  
 24 MR. WOODINGTON: I object to the form.  
 25 THE WITNESS: What I've said is that

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1 we've got other -- other ways. A directive is one  
 2 of those.  
 3 BY MR. HAMM:  
 4 Q. Okay.  
 5 A. We have a contract.  
 6 Q. Okay.  
 7 A. Most -- DHEC is a regulatory agency.  
 8 Does not pay its people that it regulates. So the  
 9 DHEC regulatory process makes sense. DDSN has  
 10 contracts with its providers. It pays its provider.  
 11 So we have other ways of holding people accountable  
 12 for what we're requiring.  
 13 Q. Okay.  
 14 A. Mental Health does not have regulations  
 15 around eligibility. There are lots of state  
 16 agencies that don't use the regulatory process but  
 17 that rather use a contractual basis to do that and  
 18 whatever else you want to add on to that.  
 19 But we have a multifaceted approach to  
 20 ensuring that -- that people have opportunities  
 21 including Protection Advocacy that have known for a  
 22 while what our policy is on eligibility to -- you  
 23 know, to get some more information about it, to get  
 24 into debate about it, to find out what other states  
 25 are doing, to provide us information, show us where

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1 we are wrong.  
 2 There's plenty of opportunity for that.  
 3 And I'm not saying that if our Commission didn't  
 4 want us to promulgate regulations that I would say  
 5 try to talk them out of it. I mean, that's a  
 6 decision that they get to make.  
 7 What I'm saying is that when I read the  
 8 Code, it is permissible. And that we do have other  
 9 ways and that is what I think our Commission has  
 10 chosen to do via the vehicle of my State Director in  
 11 asking me to continue to write policies, directives,  
 12 service standards, et cetera. The federal  
 13 government accepts it. They're a major source of  
 14 funding. Usually when you're funding agency likes  
 15 what you're doing, you're in pretty good shape.  
 16 The Medicaid Agency looks at all of our  
 17 level of care determinations where a diagnosis of  
 18 mental retardation with a disability issues and  
 19 we're in 100 percent compliance. So we've got  
 20 somebody else looking over our shoulders to ensure  
 21 that how we're interpreting and applying our own  
 22 policies are being followed.  
 23 Q. You've mentioned contracts and you've  
 24 mentioned directives, help me just --  
 25 A. Service standards, manuals.

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1 Q. Manuals have --  
 2 A. Memos, correspondence, teachings,  
 3 trainings.  
 4 Q. Okay. Let's hit them one at a time.  
 5 Does a manual have the force of law?  
 6 A. I don't know what the force of law  
 7 means.  
 8 Q. Well, let's -- give me -- give me an  
 9 example of a manual then I ask can ask.  
 10 A. A manual would be, you know, to a  
 11 provider of counseling services.  
 12 Q. Okay. So there's a contract and does  
 13 the contract reference that they have to comply with  
 14 the terms of the manual?  
 15 A. Yes.  
 16 Q. So together they constitute the  
 17 agreement between the parties?  
 18 A. Right.  
 19 Q. Okay. Does an individual who receives  
 20 services from that provider, can they claim -- do  
 21 they have the right to claim they're not following  
 22 the manual?  
 23 A. Absolutely.  
 24 Q. Okay. And how is it that the  
 25 individual receiving those services would know what

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1 the manual standards are for purposes of even  
 2 knowing they're not -- either are or are not  
 3 compliant?  
 4 A. Well, there's all kinds of things. I  
 5 mean, their rights are shared with them. They have  
 6 to document -- our contractors have to document that  
 7 they share that.  
 8 Q. When you -- explain that just a little  
 9 bit there.  
 10 A. You have the right to be treated with  
 11 dignity and respect.  
 12 Q. All right.  
 13 A. You have the right to receive services  
 14 that are meeting your needs, that are based on your  
 15 preferences. We assess for all that. We take into  
 16 consideration their interests, their likes, their  
 17 dislikes, all kinds of things when we're putting a  
 18 plan of care together. It's all in this manual  
 19 about what our expectations are.  
 20 How those are carried out, are then  
 21 evaluated by Quality Improvement Organization and by  
 22 the Medicaid Agency and by the federal government.  
 23 Q. So we've now talked about the manuals,  
 24 we've talked about directives, we've talked about  
 25 contracts. What else? I'm just -- what else might

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1 serve as a vehicle to make sure that whatever  
 2 standards are being complied with?  
 3 A. That we know the standards are being  
 4 complied with?  
 5 Q. Yes.  
 6 A. Okay. The reviews that I just talked  
 7 about. We have a Quality Improvement Organization  
 8 that does a random sample review of every provider  
 9 that we contract with. And in addition, they go  
 10 into residences and they look at the services  
 11 actually being delivered to see if, in fact, the  
 12 person understands what they're doing on their job.  
 13 We also have --  
 14 Q. That's the employee of provider we're  
 15 talking about?  
 16 A. Yes. We also interview through this  
 17 Quality Improvement Organization using a federally  
 18 standardized consumer interview tool, how things are  
 19 going on in that person's life, what's going well,  
 20 and what changes that they would like to see made.  
 21 We also do the boards and other  
 22 contracted providers are required to do their own  
 23 consumer surveys to see how responsive the system  
 24 is. And they're required through our retrospective  
 25 review with this Quality Improvement Organization to

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1 ensure that they're using that information and it's  
 2 not just a token.  
 3 We have the Medicaid Agency that does  
 4 post-payment reviews on all the services that are  
 5 provided by DDSN and its contract identities. We  
 6 also have CMS that comes in and does reviews and  
 7 they would not renew our waivers --  
 8 Q. Remind me CMS.  
 9 A. Centers for Medicare and Medicaid.  
 10 They're the branch of Health and Human Services that  
 11 administer the home and community-base waivers.  
 12 So we're pretty reviewed to death. We  
 13 also have licensing which DHEC does in the community  
 14 residential care facilities and the institutions for  
 15 people with mental retardation. And DDSN does its  
 16 own licensing for the next 20 days, that will be  
 17 contracted out to DHEC on August 1st to go in and to  
 18 look at the plans that are in place for people in  
 19 residential settings and in day program settings.  
 20 And we look at what -- to ensure that those plans  
 21 are being fulfilled, that progress is being made,  
 22 that services are being delivered, et cetera. So we  
 23 have all kinds of systems in place to determine  
 24 whether or not directives are being followed.  
 25 Q. I want to talk about just so you have a

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1 sense of what I want to get to. I want to get to  
 2 the Human Rights Committee.  
 3 A. Okay.  
 4 Q. I want to get to -- I want to get to  
 5 the issue of waiting list and I want to talk  
 6 about -- I'm drawing a blank. Is it plan of --  
 7 what's -- I'm trying to think of the letters, Plan  
 8 of Service?  
 9 A. Plan of Care. I use them  
 10 interchangeably.  
 11 Q. Okay.  
 12 A. Yeah.  
 13 Q. Well, let's start with the Plan of Care  
 14 and I'll try to get your -- I have it marked in  
 15 this. I'm just trying to find my own note here.  
 16 Plan of Care, one of the allegations in  
 17 the Complaint is that one of the parties of this  
 18 lawsuit were constantly trying to get a Plan of Care  
 19 established and it took well over a year for that to  
 20 happen. And I'm trying to understand how is it --  
 21 how is it that it would take that length of time for  
 22 that to happen?  
 23 A. I have no idea.  
 24 Q. Okay.  
 25 MR. WOODINGTON: And you understand --

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1 just a reminder to everybody for the record, that  
 2 these people are referred to by initials only. We  
 3 filed a motion to make more definite and certain,  
 4 which the Court denied, and we don't literally know  
 5 who all these people are and probably some of them  
 6 we can surmise. We don't have the information about  
 7 these individuals confirmed. I doubt if she's  
 8 reviewed any individual case.  
 9 MR. HAMM: And I did not expect that  
 10 she would have one way or the other. So for  
 11 purposes of this deposition --  
 12 MR. WOODINGTON: Okay.  
 13 MR. HAMM: -- that is not an  
 14 expectation I think I can reasonable apply to her.  
 15 And for the record, we're not attempting to do that  
 16 with her. But she is the witness by her own job  
 17 description, her job title, she is responsible for  
 18 implementing policies and directives and that's what  
 19 I'm trying to --  
 20 THE WITNESS: I'm not responsible for  
 21 implementation. I've never said -- I am responsible  
 22 for making sure that -- that's David job in  
 23 operations.  
 24 BY MR. HAMM:  
 25 Q. All right.

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1 A. Okay.  
 2 Q. Let me rephrase that --  
 3 A. Okay.  
 4 Q. -- so I speak accurately.  
 5 A. Okay.  
 6 Q. You are responsible for the creation  
 7 ultimately of directives and you report to the State  
 8 Director on the issue of directives and others  
 9 implement those directives. Is that --  
 10 A. That's right.  
 11 Q. So I did understand?  
 12 A. Yeah, others implement.  
 13 Q. No.  
 14 A. Okay.  
 15 Q. And that's what I said.  
 16 A. Okay. I thought I heard you say and  
 17 implement.  
 18 Q. No, no, no, no, no. I --  
 19 A. Excuse me.  
 20 Q. No, I have not -- I have never heard  
 21 you say today --  
 22 A. Okay.  
 23 Q. -- I would have loved to have you say  
 24 that, but you did --  
 25 A. Okay, right.

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1 Q. Fair is fair. You didn't say that.  
 2 A. All right. Number 14 is -- looks like  
 3 is the person you're talking about.  
 4 Q. All right. Let me look --  
 5 A. JB, it's at the bottom of that last  
 6 paragraph. For over a year --  
 7 Q. Yes, yes, yes.  
 8 A. -- JB was trying to get a Behavior  
 9 Support Plan developed.  
 10 Q. There, that's what I'm looking for.  
 11 A. Right. And at DDSN, if -- I'm trying  
 12 to -- he was in a community training home -- DDSN  
 13 does not operate a community training home.  
 14 Q. Nor do you fund one?  
 15 A. No, we fund one. But it says DDSN  
 16 failed to develop the BSP. We're not responsible  
 17 for developing BSPs. It's a little --  
 18 Q. Okay. I understand.  
 19 A. It's worded a little interesting.  
 20 Q. Well, let me -- let me go back to my  
 21 understanding --  
 22 A. Okay.  
 23 Q. -- having been involved with Jo Anne  
 24 and some others in the drafting of this.  
 25 A. Okay.

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1 Q. And this goes -- let me tie in what  
 2 I -- sometimes I'm trying to repeat what I've heard  
 3 you say in fairness to you so you can say, well,  
 4 Steve, you didn't hear me correctly. So let me --  
 5 let me go back through this.  
 6 A. Uh-huh.  
 7 Q. In Paragraph 14, I understood that this  
 8 community training home was, in fact, funded by DDSN  
 9 and that one of its obligations was, in fact, to  
 10 timely develop a Behavior Support Plan.  
 11 A. No.  
 12 Q. So --  
 13 A. That's in a contract relationship with  
 14 our providers.  
 15 Q. So --  
 16 A. They operate the home, they deliver the  
 17 service or they arrange for the service to be  
 18 delivered. In this case, most of the DSN boards and  
 19 private residential habilitation providers that  
 20 operate CTH IIs also do not provide behavior support  
 21 services.  
 22 Q. So --  
 23 A. They are --  
 24 Q. So does that mean -- excuse me.  
 25 A. There's a list of qualified providers

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1 for behavior support and the service coordinator  
 2 along with the residential staff are responsible for  
 3 trying to, you know, authorize the service and get a  
 4 service in place.  
 5 Q. Okay.  
 6 A. And it's been -- it's been a tough  
 7 service. There's not a -- you know, a lot of  
 8 providers in the state although it's getting better  
 9 that do that service.  
 10 Q. Is -- let me make sure. When you  
 11 contract with a provider, the provider is doing it  
 12 on behalf of DDSN through the contract, right?  
 13 A. Doing -- they're providing through a  
 14 contractual arrangement.  
 15 Q. Right. In this circumstance, the  
 16 allegation is, and again, I'm treating it as an  
 17 allegation, that these individuals went for well  
 18 over a year despite raising the issue repeatedly.  
 19 A. Uh-huh.  
 20 Q. Is that because the provider didn't  
 21 make sure they got to the right place? I mean, I  
 22 want to -- I think I'm hearing you say --  
 23 A. Well, it really --  
 24 Q. -- don't make DDSN responsible.  
 25 A. No, I didn't say that. I said that the

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1 wording in here was interesting because it says that  
 2 SCDDSN failed to develop a Behavior Support Plan.  
 3 And DDSN doesn't develop Behavior Support Plans.  
 4 Q. All right.  
 5 A. And DDSN does not authorize the  
 6 opportunity for people to get Behavior Support  
 7 Service. That is a job of our contracted providers.  
 8 Q. Okay.  
 9 A. So I was just, you know, probably  
 10 speaking out loud about this particular person.  
 11 Q. Okay. And I'm happy for you to do  
 12 that. But I'm trying to make sure -- but under the  
 13 contract is there any question that in the  
 14 circumstances described in Paragraph 14 of the  
 15 Complaint that an appropriate BSP needed to be done?  
 16 A. Well, I don't know this person and --  
 17 I -- you know, I --  
 18 Q. Okay.  
 19 A. I would assume that this person needed  
 20 something to -- because of his tendency. Tendency  
 21 is kind of a questionable -- to us -- I know,  
 22 tendency is a questionable thing for me to. I mean,  
 23 there's all kinds of things I'd have questions about  
 24 in reading No. 14 about JB.  
 25 Q. Okay. And I hear what you're saying.

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1 I'm just trying to understand to the extent that the  
 2 provider -- I understand you're saying, look, Steve,  
 3 you need to understand DDS doesn't to that and I  
 4 understand you.  
 5 I'm trying to understand how either the  
 6 policies or the directives and the contract would  
 7 put a family in the circumstance where they are  
 8 regularly asking for one and it took --  
 9 A. A year --  
 10 Q. -- a year. Right.  
 11 A. -- to develop. Yes, I see that.  
 12 Q. And so my -- and here's the crux of the  
 13 question, regardless DDSN funded the provider to do  
 14 whatever. To the extent that, in fact, an  
 15 appropriate Behavior Support Plan should have been  
 16 created, help me understand where that family should  
 17 have been looking to get it done in a time period of  
 18 less than a year.  
 19 A. Uh-huh. Well, and again, some of these  
 20 things -- you know, based on what little I have --  
 21 Q. I understand.  
 22 A. -- I'm surmising that to some degree  
 23 that the Behavior Support Plan was either not put in  
 24 place because of some problem with the service  
 25 coordinator, you know --

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<p>1 Q. And the service coordinator is the 2 coordinator in by -- of the provider or DDSN? 3 A. DDSN does not provide service 4 coordination. It's all contracted out. 5 Q. That's what I thought. Okay. 6 A. So -- 7 Q. So we're now talking about -- I 8 apologize for -- what we're talking about right now 9 is the provider. 10 A. Well, the provider of service 11 coordination could be different than the provider of 12 the residential habilitation service. 13 Q. Okay. 14 A. Okay. So the service coordinator for 15 JB either was having trouble locating a behavior 16 support provider that can do this. 17 Q. Okay. 18 A. Because there have been a lot of 19 difficulty in finding qualified people to do this 20 work for people with intellectual disabilities. 21 It's a real rare gift and skill. And it could be 22 that the service coordinator was negligent in terms 23 of carrying out her duties. I would suspect that -- 24 Q. Would that be -- 25 A. -- the family would and P and A would</p>	<p>1 There's right -- at the moment, simply 2 because it took a year, that doesn't violate, as I 3 understand it, a directive. It certainly doesn't 4 violate a regulation because it's not there. So 5 does that kind of delay violate any standard 6 policies? 7 A. Sure. 8 Q. What? 9 A. We -- you know, it's in the Service 10 Coordination Manual, again, that when there's a need 11 identified, that that need, that they work, you 12 know, diligently to get that need met. And in this 13 case, I don't know about the diligence of the 14 service coordinator or the supply, behavior support 15 providers. I don't know how -- to what extent DDSN 16 was involved in assisting -- 17 Q. Right. 18 A. -- the service coordination provider in 19 finding a behavior support provider. So there's all 20 kinds of ways to look at Number 14. 21 Q. Okay. 22 A. I don't have enough -- 23 Q. Okay. 24 A. -- detail about it. But there are 25 things to hold providers accountable. If there is a</p>
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<p>1 have carried it up the chain of command in that 2 service coordination agency to get a Behavior 3 Support Plan in place. 4 There are all kinds of things around 5 here. And I guess, you know, from the Director of 6 Policy perspective is that these kinds of things do 7 happen. And what we're looking for when we do 8 reviews is that providers have systems in place to 9 address these kinds of things when they do happen. 10 That mostly the system is working and 11 functioning well for the majority of people but 12 you're going to have people that fall through the 13 cracks, where we make mistakes, where bad decisions 14 were made, where there's a rogue service 15 coordinator, and all those kinds of things. 16 Q. And I understand the sort of the real 17 world -- 18 A. Yeah. 19 Q. -- having been -- I was in state 20 government for 18 years. I think I have some 21 exposure to the real world and providing services. 22 What I'm trying to understand in terms 23 of this lawsuit is where is the contractual 24 obligation or time period to timely provide what 25 ultimately was provided here this.</p>	<p>1 need on the plan and it's not being met, our Quality 2 Improvement Organization would pick that up and 3 would find this particular file out of compliance 4 for not implementing a service that the consumer 5 needed. And what we would be looking for is 6 documentation that there were efforts in place to 7 try to meet that need. 8 There are all kinds of unmet needs in 9 South Carolina, it doesn't matter what agency you go 10 to, where you can't find a nurse because of the 11 geographical location, you can't find a personal 12 care provider because there aren't enough around. 13 There's all kinds of things and CMS understands 14 that, Medicaid understand that. 15 What we're trying to do is look at a 16 bigger picture. Are the systems working, do we have 17 things in place to detect things like this so that 18 we can improve upon the system. And so yes, the 19 Quality Improvement Organization if they picked this 20 file, as part of their random selection, would find 21 it out of compliance -- 22 Q. Okay. But -- 23 A. -- for not implementing the Behavior 24 Support Plan in a timely manner. 25 Q. And that is -- can I fairly reference</p>

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1 that as sort of an audit procedure?  
 2 A. Yes.  
 3 Q. Okay.  
 4 A. We call it a compliance, a contractual  
 5 compliance review.  
 6 Q. All right. And isn't it true that an  
 7 audit procedure will not necessarily look at every  
 8 file or pick up every --  
 9 A. That's the beauty about statistics and  
 10 random selection because what it does is it allows  
 11 you to generalize your findings to the entire  
 12 population so that if you're using a large enough  
 13 sample that you can say within confidence, depending  
 14 on what that interval is, that you have -- you can  
 15 say this is how the provider is doing. And it's  
 16 sufficient enough so that you know that the systems  
 17 are in place or not.  
 18 Q. Okay. All I'm wanting to make sure  
 19 that we -- are we in agreement that even a  
 20 statistical sampling to the extent that it does not  
 21 cover every file and would not necessarily uncover  
 22 every circumstance that did not meet the service  
 23 manual, the contract or a directive?  
 24 A. Of course.  
 25 Q. Okay. And I'm not trying to be

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1 critical of that. What I'm trying to understand is  
 2 the affected family, they don't have a copy of the  
 3 manual so --  
 4 A. Well, P and A was involved, it says.  
 5 Q. I understand.  
 6 A. Okay.  
 7 Q. But they had a problem for a while  
 8 before P and A got involved.  
 9 A. Oh, okay.  
 10 Q. I'm just trying to understand --  
 11 A. You just --  
 12 Q. -- under the system --  
 13 A. Uh-huh.  
 14 Q. -- to the extent that there was an  
 15 applicable directory, the only -- excuse me,  
 16 directive, there may be something out there but  
 17 under the current system of posting them on the Web  
 18 site, they may not have honestly known about it.  
 19 I'm just trying to understand the sort of backup  
 20 systems.  
 21 A. And there are plenty of them. And, you  
 22 know -- see, I honestly don't know where you're  
 23 headed with this. I wish I did so that I -- we  
 24 could get to the point because this is a  
 25 hypothetical situation here, I don't know who this

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1 family is, I don't know what the circumstances were  
 2 and -- and it's really difficult to talk about  
 3 hypotheticals.  
 4 Q. Okay.  
 5 A. I've already talked about the multiple  
 6 systems that we have in place --  
 7 Q. You have. You have.  
 8 A. -- that would -- that are in place that  
 9 are sufficient that go way beyond national standards  
 10 for looking not only at contract compliance but also  
 11 quality of life. And I don't know how the  
 12 promulgation of regulations would change that  
 13 regarding this family.  
 14 Q. Well --  
 15 A. If that's where you're headed. Because  
 16 I don't know what the regulation is going to do for  
 17 that family if this provider is not performing. And  
 18 like I said, the CRCS were not performing and DHEC  
 19 could not sanction them and we try to go through the  
 20 regulatory process, it failed us. And we could have  
 21 used what we use in place at DDSN and it corrected  
 22 that immediately.  
 23 Q. For purposes of this Paragraph 14 -- I  
 24 think I understood your answer, say, Steve, we just  
 25 cannot -- because of the variables we can't

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1 require -- I mean, there may be plenty of reasons  
 2 and so it may be acceptable that it took a year to  
 3 do this or more?  
 4 A. I'm not saying that it is acceptable,  
 5 I'm saying that there might be some mitigating  
 6 circumstances here that I don't know about.  
 7 Q. Okay.  
 8 A. And I can go off in all kinds of  
 9 directions and we've already tried to go into and  
 10 they lead to even more paths about different  
 11 scenarios.  
 12 Q. Right.  
 13 A. And you're talking about one person  
 14 here. And I -- you know, we hate when stuff like  
 15 this happens. If this happened that for whatever  
 16 reason that we couldn't get a provider to get in  
 17 there and write a Behavior Support Plan and this  
 18 client needed it, then I -- I feel bad about that.  
 19 I'm concerned about that. And I would ensure that  
 20 either we had a system to detect it earlier, to  
 21 respond to this family in an appropriate, meaningful  
 22 way, that they knew about the efforts that were  
 23 going on to try to intervene and that kind of thing.  
 24 So without knowing any of that, you  
 25 know, I would hope that we would have been involved

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1 to help the family.  
 2 Q. Let's talk about the Human Rights  
 3 Committee. Again, my understanding that the DDSN  
 4 has not promulgated a regulation regarding their  
 5 authority, timing or anything else with regard to  
 6 when they act or don't act; is that correct?  
 7 A. And I would say that we've not  
 8 promulgated regulations because it's not required to  
 9 do so.  
 10 Q. Okay.  
 11 A. Correct.  
 12 Q. And have you promulgated a directive  
 13 regarding the composition, responsibilities and  
 14 scope of authority of Human Rights Committees?  
 15 A. Yes.  
 16 Q. All right. Where is that?  
 17 A. It's in the directives.  
 18 Q. Okay. Tell me --  
 19 A. What number it is?  
 20 Q. Yeah.  
 21 A. It's in your menu. That was the first  
 22 exhibit. I must have changed my order.  
 23 MR. WOODINGTON: Can I give you the  
 24 answer?  
 25 THE WITNESS: Well, yeah, why don't you

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1 show it to me and I'll give it to him. It's 535-02.  
 2 It's called Human Rights Committee.  
 3 MR. HAMM: Give me that number again.  
 4 MR. WOODINGTON: 535-02-DD.  
 5 BY MR. HAMM:  
 6 Q. Okay. And without taking a lot of  
 7 time, remind me what it says.  
 8 A. It really -- it takes the part in the  
 9 State Code that references the requirement for Human  
 10 Rights Committees and it, again, provides guidance  
 11 to contracted providers about what their obligations  
 12 are to form a Human Rights Committee, what the  
 13 composition needs to be, how frequently they need to  
 14 meet, what kinds of issues that they debate, the  
 15 rights of the person whose rights are being  
 16 challenged in some way and need to go to the Human  
 17 Rights Committee, et cetera.  
 18 Q. One of the allegations in the Complaint  
 19 in Paragraph 17 goes to this question of timing and  
 20 that's really what I'm just trying to get clear  
 21 here.  
 22 A. Okay.  
 23 Q. The Human Rights Committees don't have  
 24 the authority to direct that something be done in a  
 25 certain time frame and that includes the directive

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1 as I understand it.  
 2 A. I would have to read over it to --  
 3 Q. Okay.  
 4 A. -- to give you that.  
 5 Q. And help me because maybe I missed it.  
 6 In terms of -- what is the appeal process to the  
 7 extent, that paragraph, that family encountered  
 8 these difficulties in getting that done, what is the  
 9 appeal process for that not happening?  
 10 A. For a BSP not being developed?  
 11 Q. Yes, ma'am.  
 12 A. They appeal to DDSN.  
 13 Q. Okay.  
 14 A. And then if -- if we don't satisfy  
 15 them, they have a right to appeal to Health and  
 16 Human Services.  
 17 Q. Okay. And to the extent a family is  
 18 asserting that one of these plans needed to be  
 19 developed, it's not -- you're saying you appeal to  
 20 DDSN.  
 21 A. Uh-huh.  
 22 Q. Appeal in the context of this  
 23 conversation means what?  
 24 A. It means that they send in why they  
 25 believe that -- and in this case, it sounds like

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1 that the BSP wasn't developed within a reasonable  
 2 time frame, for whatever reason, and that they're  
 3 appealing that the Behavior Support Plan has not  
 4 been implemented or written or something.  
 5 Q. Right. Right.  
 6 A. Yeah.  
 7 Q. So --  
 8 A. So then they can write to the State  
 9 Director and ask for a review of their complaint or  
 10 their appeal and we issue a letter back in 30 days  
 11 letting them know what the outcome of that is.  
 12 Q. Is the complaint or the appeal the  
 13 failure of the Human Rights Committee to act or the  
 14 provider to act because I thought --  
 15 A. Well, in this case it would be -- I  
 16 mean, I'm not certain but if the Behavior Support  
 17 Plan was not implemented in a timely fashion or  
 18 developed in a timely fashion, then it would be the  
 19 responsibility of the service coordinator. Because  
 20 the service coordinator is the one that  
 21 authorizes --  
 22 Q. Okay.  
 23 A. -- services on behalf of her customers.  
 24 Q. So the service coordinator -- is it  
 25 fair for me to go coordinator/provider in this

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1 context?  
 2 A. Uh-huh. Service coordination provider.  
 3 Q. Okay. They are the -- they, not DDSN  
 4 have the authority to implore, push, demand from the  
 5 Human Rights Committee action or is the Human Rights  
 6 Committee --  
 7 A. I -- you know, I don't -- I don't know  
 8 that --  
 9 Q. I --  
 10 A. -- Human Rights Committees don't --  
 11 Q. Let me put it -- let me --  
 12 A. -- it says Human Rights Committee has  
 13 the authority to order that a BSP be developed  
 14 within a certain time frame.  
 15 Q. Okay. Here, go up higher and let me  
 16 tell you.  
 17 A. Okay.  
 18 Q. Because when I was preparing for  
 19 this --  
 20 A. Okay.  
 21 Q. -- you have a directive that said these  
 22 BSPs have got to be approved by a Human Rights  
 23 Committee.  
 24 A. Oh, well, I -- I don't know about that.  
 25 Q. Okay.

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1 A. I would like to see that.  
 2 Q. Okay.  
 3 A. Where it says -- I know that people on  
 4 psychotropic medications must.  
 5 Q. Okay.  
 6 A. Just show it to me so I can see it.  
 7 Q. Okay. And I'm going to see if I can't  
 8 do that.  
 9 A. Okay.  
 10 MR. HAMM: Jo Anne, do you have that?  
 11 THE WITNESS: Okay, that would be good.  
 12 MR. HAMM: Find that for me.  
 13 THE WITNESS: And instead of --  
 14 BY MR. HAMM:  
 15 Q. And that's where I'm trying to -- I'm  
 16 just trying to make the connection between the  
 17 provider, service coordinator --  
 18 A. Uh-huh.  
 19 Q. -- the Human Rights Committee and I'm  
 20 trying to be clear in my mind and then you tell me  
 21 that they can appeal to DDSN.  
 22 A. Well, all that needed to be done in  
 23 this time if the issue was that somebody wanted the  
 24 Human Rights Committees to have authority to -- that  
 25 a BSP developed within a certain time frame is to

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1 but put a comment on the Web site to say blah, blah,  
 2 blah. I mean, you know, we think that there needs  
 3 to be some more, you know, teeth to this. You know,  
 4 I don't know how the promulgation of regulations  
 5 like in the next sentence would have helped any of  
 6 this.  
 7 Q. Okay.  
 8 A. And I know that's what this lawsuit is  
 9 about so I keep going back to that. The Human  
 10 Rights Committees don't have the authority to order.  
 11 That's not their role. They're not an authoritarian  
 12 body. What they're trying to do is protect the  
 13 rights of a person. And for whatever matter that  
 14 the Behavior Support Plan for a particular person  
 15 wasn't developed in a timely manner does not mean  
 16 that the system is flawed and that the promulgation  
 17 of regulations is the answer.  
 18 What it means is that there's something  
 19 that went awry that needs to be looked into and,  
 20 unfortunately, it took a long time in this person's  
 21 case. That is not -- that is not the practice. And  
 22 we have systems in place to see whether Behavior  
 23 Support Plans are being developed and implemented in  
 24 a timely manner.  
 25 Q. And I'm going to hand this to you in

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1 just a second.  
 2 A. Okay.  
 3 Q. I'm looking at just so you'll know --  
 4 in fact, why don't we just hand that to her and  
 5 we'll look at it together.  
 6 A. Oh, this is the State Statute.  
 7 Q. Right.  
 8 A. Okay.  
 9 Q. Yes.  
 10 A. Okay.  
 11 Q. Let's go ahead just for purposes since  
 12 we're looking at a common document, let's get it  
 13 marked as an exhibit. I think it would be Exhibit  
 14 No. 10.  
 15 (PLF. EXH. No. 10, State Statute, was  
 16 marked for identification.)  
 17 MR. HAMM: Can we go off the record for  
 18 a second.  
 19 (Off-the-record conference.)  
 20 (PLF. EXH. No. 11, Behavior Support Plan,  
 21 was marked for identification.)  
 22 BY MR. HAMM:  
 23 Q. Kathi.  
 24 A. Yes.  
 25 Q. Turn to Page 7.

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<p>1 A. Okay.</p> <p>2 Q. This is the basis of the allegation in</p> <p>3 the Complaint so I just --</p> <p>4 A. Okay. Good.</p> <p>5 Q. If you'll look on Page 7, Item 4,</p> <p>6 Behavior Support Plan Review and Approval. And then</p> <p>7 go to the second paragraph, the DDSN Board/QPL.</p> <p>8 Remind me what QPL is.</p> <p>9 A. Qualified Provider List which doesn't</p> <p>10 really doesn't make sense but it's a qualified</p> <p>11 provider.</p> <p>12 Q. Okay, whatever.</p> <p>13 A. Yeah.</p> <p>14 Q. It says: Must designate and use a</p> <p>15 Human Rights Committee to review, approve and</p> <p>16 monitor individual plans designed to manage</p> <p>17 inappropriate behavior and other plans. That is</p> <p>18 where that allegation is coming from since you were</p> <p>19 asking me.</p> <p>20 A. That in the opinion of the committee</p> <p>21 involve risk to individual protection and rights.</p> <p>22 Q. Right.</p> <p>23 A. Individual plans that involve risk</p> <p>24 including but not limited to procedures designated</p> <p>25 by the Board as being restricted require consent</p>	<p>1 (PLF. EXH. No. 12, SCDDSN End Policy, was</p> <p>2 marked for identification.)</p> <p>3 BY MR. HAMM:</p> <p>4 Q. Kathi, I think what has been marked</p> <p>5 Plaintiff's Exhibit No. 12, I asked Jo Anne because</p> <p>6 I've looked at them a while ago.</p> <p>7 A. Okay.</p> <p>8 Q. I understand this to be one of the</p> <p>9 policies issued by -- a policy issued by the</p> <p>10 Commission.</p> <p>11 A. That's correct.</p> <p>12 Q. And it shows up on your Web site as</p> <p>13 that.</p> <p>14 A. Correct.</p> <p>15 Q. And I noticed that this policy was</p> <p>16 created on January the 18th of 2007.</p> <p>17 A. Correct.</p> <p>18 Q. Okay. I want to go through all of them</p> <p>19 quickly for purposes of this exercise. I'm going to</p> <p>20 hand you what will be marked as Exhibit 13.</p> <p>21 (PLF. EXH. No. 13, Governance Policy, was</p> <p>22 marked for identification.)</p> <p>23 BY MR. HAMM:</p> <p>24 Q. Which is the governance policy which</p> <p>25 was created on January the 18th of 2007.</p>
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<p>1 pursuant to.</p> <p>2 Q. Right.</p> <p>3 A. Okay. There's a caveat there.</p> <p>4 Q. No, I understand that.</p> <p>5 A. Okay.</p> <p>6 Q. I understand that.</p> <p>7 A. All right.</p> <p>8 Q. I'm just -- you were asking and I</p> <p>9 wanted to at least demonstrate that we thought we</p> <p>10 were doing our homework when this was put together.</p> <p>11 A. Uh-huh.</p> <p>12 Q. I just wanted you to see it.</p> <p>13 A. Uh-huh.</p> <p>14 Q. And I don't have any -- we don't need</p> <p>15 to discuss -- I'm not asking you to interpret that.</p> <p>16 I just wanted for the record to reflect where</p> <p>17 that -- where that assertion in the Complaint came</p> <p>18 from.</p> <p>19 And mindful of a commitment that I made</p> <p>20 to you, which I will keep -- yeah, let's go to this</p> <p>21 one next. I asked Jo Anne to go determine --</p> <p>22 MS. HILL: This is Number 1. There</p> <p>23 were five.</p> <p>24 BY MR. HAMM:</p> <p>25 Q. Let's make this Hearing Exhibit No. 12.</p>	<p>1 A. Uh-huh.</p> <p>2 Q. So we have marked Exhibit 12, Exhibit</p> <p>3 13 -- wait a minute. This is mine. I'm looking</p> <p>4 for -- oh, here it is. That's 13. Okay, so the</p> <p>5 next one is 14.</p> <p>6 (PLF. EXH. No. 14, SCDDSN Executive</p> <p>7 Limitation Policy, was marked for identification.)</p> <p>8 BY MR. HAMM:</p> <p>9 Q. I'm handing you the policy, Kathi, that</p> <p>10 was marked Exhibit 14 also created on January the</p> <p>11 18th of 2007. Do you have that one in front of you?</p> <p>12 A. I don't have 03. I have 02 -- 01 and</p> <p>13 02.</p> <p>14 Q. Okay.</p> <p>15 MR. WOODINGTON: Now you have 03.</p> <p>16 THE WITNESS: Okay.</p> <p>17 MR. HAMM: And do we have one more,</p> <p>18 Jo Anne? Or there's seven, isn't there?</p> <p>19 (PLF. EXH. No. 15, SCDDSN Commission Staff</p> <p>20 Linkage Policy, was marked for identification.)</p> <p>21 BY MR. HAMM:</p> <p>22 Q. So I'll now hand you what has been</p> <p>23 marked, Kathi, Exhibit 15 which was also created on</p> <p>24 January -- you can --</p> <p>25 (PLF. EXH. No. 16, SCDDSN Public</p>

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<p>1 Innovation Policy, was marked for identification.)  2 BY MR. HAMM:  3 Q. Kathi, I'm handing you what is marked  4 05.  5 A. Okay.  6 Q. And that has been marked as Exhibit 16.  7 MR. HAMM: Do I have them all?  8 MS. HILL: Yeah.  9 BY MR. HAMM:  10 Q. And 05 was also -- was created in  11 October of 2008.  12 A. Correct.  13 Q. Okay. Now, let's very quickly, mindful  14 of my commitment to you. Now, go to 01, please.  15 What policy existed prior to January the 18th, 2007  16 with regard to this ends policy?  17 A. None.  18 Q. Okay.  19 A. To my knowledge.  20 Q. Okay. All right. Go to 02, please,  21 which has been marked as Hearing Exhibit --  22 MS. HILL: 13.  23 BY MR. HAMM:  24 Q. -- 13. Governance Process Policy. Same  25 question, what policy existed prior to January 18th,</p>	<p>1 them to ensure that they covered all the necessary  2 policy issues that they wanted to through the  3 execution of these new policies.  4 Q. Well, one of the things that caught my  5 interest in Exhibit 14, 03, was it makes -- this  6 is -- as I understand it is sort of establishing the  7 policies that apply to the Director. Is that a --  8 A. Yes.  9 Q. -- fair characterization?  10 A. Yes.  11 Q. And I thought it was -- it was  12 interesting to me when I took a look at this that  13 this references department directives. And when I  14 was looking at Section 44-20-220, which you evidence  15 a knowledge of, says that the department shall  16 promulgate regulations. That's on the hiring of  17 employees and whatever.  18 But this -- this policy does not make  19 reference to the statutory obligation to promulgate  20 regulations. And this is in a time period when you  21 were the chief policy person. Did you have any  22 input in the creation of this -- of these policies?  23 A. No, sir.  24 Q. Okay. Have you been involved in the  25 promulgation of regulations under the terms of that</p>
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<p>1 2007?  2 A. None, to my knowledge.  3 Q. Okay. Look on Page 2 of that Exhibit  4 13, if you would, Kathi.  5 A. Uh-huh.  6 Q. The Commission will approve and adopt  7 bylaws. Do you know whether they had bylaws before  8 that?  9 A. I believe so.  10 Q. Okay. And that it says it's going to  11 establish policy that govern all department  12 directives. Okay.  13 Now, go to what has been marked as  14 Exhibit 14, executive limitations policy created  15 January 18, 2007. What policy existed by the  16 Commission prior to that date?  17 A. A limitations policy? None, to my  18 knowledge.  19 Q. Okay.  20 A. Now, there was something in place, I  21 don't know what it was, that these were created from  22 and I don't know that we called them Commission  23 policies then. But something was used because all I  24 can remember in one of the Commission meetings is  25 that they wanted to hold on to one of them or two of</p>	<p>1 44-20-220 where the language talks about shall  2 promulgate regulations?  3 A. I don't think the statute says shall  4 promulgate regulations. I don't -- you need to show  5 it to me.  6 Q. I can do that.  7 A. That will help me put it into context.  8 Q. I can do that.  9 A. Okay.  10 MR. WOODINGTON: Do you have the whole  11 statute?  12 MS. HILL: Uh-huh. I have the whole  13 thing.  14 MR. HAMM: Hand me that next.  15 BY MR. HAMM:  16 Q. Is what you do part of the operation of  17 DDSN in your role?  18 MR. WOODINGTON: Object to the form.  19 THE WITNESS: I'm trying to respond  20 back -- ask it again, please.  21 BY MR. HAMM:  22 Q. Yes, ma'am, I'll be happy to.  23 A. Okay.  24 Q. Is what you do part of the operations  25 of DDSN, part of the operation of DDSN?</p>

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<p>1 MR. WOODINGTON: Object to the form.</p> <p>2 THE WITNESS: How do you define</p> <p>3 operation?</p> <p>4 BY MR. HAMM:</p> <p>5 Q. All right. Operation would be both.</p> <p>6 We already have in the record your job description,</p> <p>7 it talks about policies. I think there might even</p> <p>8 be -- I think somewhere in there is the word</p> <p>9 operation.</p> <p>10 A. Okay.</p> <p>11 Q. And I'm just -- I'm trying to</p> <p>12 understand if what you do is part of the operation</p> <p>13 of the department.</p> <p>14 A. Well, the internal operations of the</p> <p>15 department have to do with how we carry out our job</p> <p>16 responsibilities.</p> <p>17 Q. Okay.</p> <p>18 A. So in that aspect, yes.</p> <p>19 Q. Okay. And your job responsibility is</p> <p>20 as the head of the Office of Policy is to make sure</p> <p>21 that the policies of the Commission and the</p> <p>22 directives approved by the Director comply with law,</p> <p>23 statute, regulations, state or federal, yes?</p> <p>24 MR. WOODINGTON: Object to the form of</p> <p>25 the question.</p>	<p>1 I'm trying to -- as a result of the conversations</p> <p>2 that you and I have had today, Kathi, I'm trying</p> <p>3 to -- Section 44-20-220, which has been marked as</p> <p>4 Hearing Exhibit No. 17, says: The Commission shall</p> <p>5 determine the policy and promulgate regulations</p> <p>6 governing the operation of the department.</p> <p>7 And I'm trying to understand -- you</p> <p>8 have apparently offered an opinion to the current</p> <p>9 director, Dr. Laurent, and I'm trying to -- I'm</p> <p>10 focusing on the first sentence at the moment. I'm</p> <p>11 trying to understand, number one, I recognize you're</p> <p>12 not a lawyer. I'm not asking you to be one. But</p> <p>13 since you have volunteered to me that you have given</p> <p>14 some at least advice or shared your views that the</p> <p>15 statute itself talks about the shall determine the</p> <p>16 policy and promulgate regulations governing the</p> <p>17 operation of the department.</p> <p>18 A. Right.</p> <p>19 Q. And I was asking you just before that</p> <p>20 is what you do part of the operations of the</p> <p>21 department and I understood you to say yes, part of</p> <p>22 it. And so I'm trying to understand whatever</p> <p>23 demarcation or whatever you have reached to say,</p> <p>24 Andy, you don't have to do it.</p> <p>25 And so all I'm trying to do right now,</p>
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<p>1 THE WITNESS: Part of my job</p> <p>2 responsibility is to ensure that we -- our policies</p> <p>3 are consistent with federal and state laws.</p> <p>4 BY MR. HAMM:</p> <p>5 Q. Okay. Okay. Well, let me now --</p> <p>6 A. But I don't see operations in my --</p> <p>7 Q. Okay. Look --</p> <p>8 A. I'm going back to my job description --</p> <p>9 Q. Yeah, go --</p> <p>10 A. -- and I'm looking for it --</p> <p>11 Q. Please, please keep looking.</p> <p>12 A. -- and I don't see it anywhere.</p> <p>13 Q. Okay. Are the -- do the directives of</p> <p>14 the -- that y'all deal with sort of govern the</p> <p>15 operation of DDSN as a practical matter?</p> <p>16 A. No.</p> <p>17 Q. No. Okay. Then let's mark as the next</p> <p>18 Hearing Exhibit which may be 17.</p> <p>19 (PLF. EXH. No. 17, West Law Code 1976, was</p> <p>20 marked for identification.)</p> <p>21 BY MR. HAMM:</p> <p>22 Q. And I invite your attention simply to</p> <p>23 the first sentence.</p> <p>24 A. Uh-huh. Okay.</p> <p>25 Q. This is Exhibit No. 17. This is where</p>	<p>1 again, recognizing respectfully that you're not a</p> <p>2 lawyer, that the Commission shall determine the</p> <p>3 policy and promulgate regulations governing the</p> <p>4 operation of the department. Is that part of the</p> <p>5 statute that you offered your opinion on to</p> <p>6 Dr. Laurent?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 MR. WOODINGTON: And I would note that</p> <p>10 every time you quoted that you've left off the last</p> <p>11 few words which are --</p> <p>12 MR. HAMM: And I'll be happy to do</p> <p>13 that. I'm not trying to --</p> <p>14 MR. WOODINGTON: Okay. I just want to</p> <p>15 point that out on the record.</p> <p>16 MR. HAMM: That's fine.</p> <p>17 MR. WOODINGTON: It says: And the</p> <p>18 employment of professional staff and personnel as</p> <p>19 well.</p> <p>20 BY MR. HAMM:</p> <p>21 Q. For purposes of the record: The</p> <p>22 Commission shall determine the policy and promulgate</p> <p>23 regulations governing the operation of the</p> <p>24 department and the employment of professional staff</p> <p>25 and personnel. So we're fully -- I'm not trying to</p>

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1 be selective in quoting.  
 2 So do you understand as the policy guru  
 3 of DDSN that the operations of the department which  
 4 you have told me a few minutes ago are part of what  
 5 you do?  
 6 A. Well, I help carry out functions  
 7 related to how the department operates --  
 8 Q. Okay.  
 9 A. -- by having management  
 10 responsibilities of staff. And evaluating staff  
 11 performance, ensuring that they're carrying out  
 12 their job duties. That's how I look at the  
 13 operation of the department in the employment of  
 14 professional staff and personnel.  
 15 So I think that the governing of the  
 16 operation is how we operate internally as an  
 17 organization and the employment of professional  
 18 staff and personnel.  
 19 So having ensuring that we've got  
 20 job -- position descriptions for people, you know,  
 21 ways to evaluate their performance, ensuring that  
 22 they're carrying out those job duties effectively  
 23 and so on and so forth.  
 24 Q. So you're construing this statute as  
 25 the operations of the department -- let me ask: Why

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1 does the department exist?  
 2 A. The -- that's also in the State  
 3 Statute. We exist to provide support and services  
 4 to people that have the conditions of mental  
 5 retardation, related disabilities, head injuries,  
 6 spinal cord injuries and promote the best interest  
 7 of persons with those disabilities.  
 8 And after that the Commission in this  
 9 article it says: The Commission is authorized to  
 10 promulgate regulations to carry out the provisions  
 11 of the chapter. So there again, it's kind of the  
 12 permissive language there.  
 13 Q. So you're telling me that the  
 14 directives are not part of the operation of the  
 15 department?  
 16 MR. WOODINGTON: Object to the form.  
 17 THE WITNESS: Are not part of the  
 18 operation.  
 19 BY MR. HAMM:  
 20 Q. Right.  
 21 A. No, because I'm -- no.  
 22 Q. So the directives are unassociated with  
 23 the department and the reason that it exist and,  
 24 therefore, your construction of the statute -- well,  
 25 we certainly don't have to -- not trying to put

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1 words in your mouth.  
 2 A. What I'm -- what --  
 3 MR. WOODINGTON: Object to the form.  
 4 THE WITNESS: What it reads is the  
 5 Commission shall determine the policy so it is  
 6 requiring the Commission to determine the policy.  
 7 BY MR. HAMM:  
 8 Q. Right.  
 9 A. It does not say and shall promulgate  
 10 regulations.  
 11 Q. Okay.  
 12 A. Okay?  
 13 Q. Okay.  
 14 A. There we go.  
 15 Q. Okay. Wait a minute. Let me go back  
 16 because you've told me you don't think the  
 17 development of directives is part of the operation  
 18 of the department.  
 19 A. In how we function, no. No. In how we  
 20 function -- the directives are out there to -- the  
 21 directives that I'm speaking about, how to report  
 22 and neglect, is not how the department at central  
 23 office functions and operates. It's what we do to  
 24 ensure that the Commission policies, okay, are being  
 25 carried out. And that we emphasize those things

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1 that are in law or required or best practices and we  
 2 emphasize those through directives.  
 3 Q. So tell me what -- looking at this  
 4 first sentence of the statute.  
 5 A. Uh-huh.  
 6 Q. Demarcate for me the difference of why  
 7 a directive is not part of the -- you've already  
 8 told me the reason -- we've talked about why the  
 9 department exist is ultimately to take such steps to  
 10 make sure that the public who needs your services  
 11 are protected, that's fair, isn't it?  
 12 A. Or supported and provide services to.  
 13 Q. Right. And I am struggling, and I'm  
 14 not trying to be difficult, I'm just trying to  
 15 struggle what -- how it is that in your mind a  
 16 directive isn't part of the operations of the  
 17 department when everything you do is focused on  
 18 ultimately providing the appropriate services and  
 19 maintaining the dignity of the people that you  
 20 serve. And you seem to be drawing a line say,  
 21 Steve, no, I cut those -- I cut those -- you know,  
 22 how we run the department and our directives are two  
 23 different things.  
 24 MR. WOODINGTON: Object to the form.  
 25 THE WITNESS: There's -- one is the

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1 management responsibilities that I am responsible  
 2 for to ensure that I hire professional staff to  
 3 carry out the job duties that are required in order  
 4 to provide services and support to people with  
 5 disabilities.  
 6 BY MR. HAMM:  
 7 Q. Right. Do you have an obligation to  
 8 act consistently with the directives?  
 9 A. Many of the directives do not apply to  
 10 me. No. No.  
 11 Q. Okay.  
 12 A. I do not.  
 13 Q. All right. Let me --  
 14 A. I'm not obligated because I am not --  
 15 Q. -- make it a narrower question.  
 16 A. Okay.  
 17 Q. To the extent that a directive applies  
 18 to you, do you have an obligation to act in  
 19 accordance with those directives?  
 20 A. I don't -- you know, if we're looking  
 21 at the majority of the directives, you look at their  
 22 applicability and it does not say DDSN central  
 23 office staff. Okay? So there are some directives  
 24 that are employment practices and those are the 400  
 25 series. If you look at the menu again or the -- not

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1 the menu but in the --  
 2 Q. Web site?  
 3 A. No. What we were going over the -- the  
 4 directive of the directives and it lists the series.  
 5 Q. Right. Right.  
 6 A. 100 means this. 200. 400 serious are  
 7 things that I am obligated as part of the operations  
 8 of the department to carry out and that means I will  
 9 not sexually harass anybody. It means that I will  
 10 do X, Y and Z as an employee of the department.  
 11 That is what I consider to be the operations.  
 12 Q. But didn't you also tell me that you  
 13 have an obligation to make sure that the terms of  
 14 the directives are complied with by the --  
 15 A. By our providers.  
 16 Q. Right.  
 17 A. Yes.  
 18 Q. And is that part of the operation of  
 19 the department since you're hiring third parties by  
 20 contract to provide those services?  
 21 A. I don't know how to explain it any  
 22 different. I -- the operation, the day-to-day  
 23 operations of the department is one of the functions  
 24 that I do to carry out the day-to-day operations  
 25 are, yes, to ensure that the directives are being

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1 adhered to. Certain directives depending on the  
 2 their applicability.  
 3 Q. So part of the operation of the  
 4 department and your responsibilities is to ensure  
 5 that third-party providers are following the  
 6 standards created by DDSN.  
 7 A. Yes.  
 8 Q. Okay. Well, I want you to know that I  
 9 am a man of my word.  
 10 A. Okay. Fabulous. Uh-oh.  
 11 Q. Uh-oh.  
 12 A. Jo Anne may be changing that. It is  
 13 5:00.  
 14 Q. She is reminding me. Remember our  
 15 organizational chart that we were looking at?  
 16 A. Yeah.  
 17 Q. We were talking about in terms of  
 18 policies, the boxes under your box, your kingdom --  
 19 A. Uh-huh.  
 20 Q. -- and I don't mean that to be  
 21 smart-alecky but your area of responsibility?  
 22 A. Right.  
 23 Q. And the Associate State Director of  
 24 Operations -- now, a lot of these directives deal  
 25 with the process that you go through in order to

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1 enter into contracts and do whatever. So is that  
 2 series of boxes to the right of your box are they  
 3 subject to whatever directives that may apply in  
 4 that area?  
 5 A. No.  
 6 Q. No.  
 7 A. I mean, the same thing applies. These  
 8 are -- what they're doing is ensuring that the  
 9 directives are understood. Well, first of all, that  
 10 the providers have them, that they're understood,  
 11 that they know how to implement, et cetera.  
 12 Q. Okay.  
 13 A. So the operation is actually the  
 14 operation of the provider organizations.  
 15 Q. We're about there. Yeah. Who at DDSN  
 16 is most knowledgeable about the implementation of  
 17 these directories or department policy in addition  
 18 to you?  
 19 A. Who at the department are knowledgeable  
 20 about the implementation of the directives?  
 21 Q. Yes, ma'am.  
 22 A. The implementation of the directives.  
 23 Well, there are -- it depends on which  
 24 ones you're talking about. It could be the Director  
 25 of Human Resources as they apply to the 400 series.

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1 Q. Okay.

2 A. It could be David Goodell and the

3 Associate State Director of Operations as it

4 pertains and the District Directors that work for

5 him.

6 Q. Okay.

7 A. There is a directive I think on the --

8 on internal audit so the Director of Internal Audit

9 would know certain respects of that.

10 Q. So is it fair that it's sort of spread

11 around depending on the directive of where it

12 applies?

13 A. I think -- yeah, I think so. And then,

14 of course, the Director of Quality Management, which

15 fits under me, when you ask about whether or not

16 they're being followed, you know, that's -- that's

17 under my area in terms of measurement for certain

18 indicators. We probably measure over 500 different

19 things a year.

20 Q. All right. Who is it -- remind me,

21 because you've made reference to someone who works

22 directly for you that --

23 A. Manages the Electronic Communication

24 System?

25 Q. Yes. Who is that?

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1 A. Her name is Pam Kirbin.

2 Q. And how long has she been -- how long

3 has Pam Kirbin, K --

4 A. I-R-B-I-N.

5 Q. Okay. How long has she been there?

6 A. She was -- she's been working for me

7 since -- since I've been the Associate State

8 Director of Policy. She worked under the Director

9 of Quality Management.

10 Q. Okay. Let me speed up. You've

11 indicated that in your records you'd have -- that

12 you have the basically the various versions of

13 directives. I'm talking specifically about 100-01

14 and 02.

15 A. Okay.

16 Q. Could you, through your attorney, help

17 me get those various versions so that I could see

18 that, please?

19 A. Yes.

20 MR. WOODINGTON: How far back is the

21 question, I guess? Of just 100? Of just the

22 directive on directives?

23 MR. HAMM: Right.

24 MR. WOODINGTON: Well, we can just

25 produce whatever we have.

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1 MR. HAMM: That's fine. That's fine.

2 THE WITNESS: Okay.

3 MR. HAMM: I'm hoping you're

4 appreciating how limited that request is.

5 MR. WOODINGTON: Yes, I am. 102,

6 right? 100-02.

7 MR. HAMM: Right.

8 BY MR. HAMM:

9 Q. And I also would like to have ask for

10 your assistance, Kathi, if I could get it, and that

11 is the Commission policies. I'm trying to sort of

12 track down what the predecessor documents look like.

13 A. Okay.

14 Q. You indicated at least some

15 understanding there was something or you thought

16 there might be something that predated.

17 A. Yes.

18 Q. I mean, I was just very interested in

19 terms of what's on your Web site. They're all --

20 they're all dated after we filed this lawsuit. It

21 may be totally coincidence and if it's -- or it's

22 not. That doesn't make any difference. I just like

23 to see what the previous --

24 THE WITNESS: Oh, when was the lawsuit

25 filed?

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1 MR. WOODINGTON: Actually, I think they

2 were dated a few months before that.

3 THE WITNESS: Yeah, January 18, 2007.

4 MR. WOODINGTON: It was also filed

5 April the 7th.

6 THE WITNESS: That's what I was

7 thinking. It says here it's April 5th, 2007.

8 MR. HAMM: I think that's right.

9 It's -- it's after the meeting and the letter.

10 MR. WOODINGTON: Right.

11 MR. HAMM: That's -- okay. Okay.

12 After the meeting.

13 THE WITNESS: The Jim Hill letter or

14 something.

15 MR. HAMM: That's the meeting when we

16 went over there was October the 24th of 2006.

17 MS. HILL: 5.

18 MR. WOODINGTON: 5.

19 THE WITNESS: 5.

20 MR. HAMM: 2005? Okay.

21 THE WITNESS: Yeah.

22 MR. HAMM: Oh, that's right. That's

23 right. That is three days before I found out that I

24 had cancer.

25 Kathi, I have nothing further. I would

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<p>1 like to thank you for your courtesy to me. I have  2 certainly tried -- I hope I -- I hope you feel I've  3 tried to show respect to you.  4 THE WITNESS: Yeah, I appreciate it.  5 MR. HAMM: I certainly wanted to.  6 THE WITNESS: Yeah. Yes, I can say  7 that you've been better at deposing me than others.  8 MR. WOODINGTON: I have no questions.  9 (The deposition was concluded at 5:00  10 p.m.)  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>	<p>1  2 INDEX  3 WITNESS/EXAMINATION  4 KATHI M. LACY 3 11  5 EXAMINATION 3 13  6 BY MR. HAMM  7 CERTIFICATE OF REPORTER 248 1  8  9  10 REQUESTED INFORMATION INDEX  11  12 (No Information Requested)  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
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<p>1 CERTIFICATE OF REPORTER  2  3 I, L. Skyler Hare, Certified Shorthand  4 Reporter and Notary Public for the State of South  5 Carolina at large, do hereby certify that the  6 foregoing transcript is a true, accurate and  7 complete record.  8  9 I further certify that I am neither  10 related to nor counsel for any party to the cause  11 pending or interested in the events thereof.  12  13 WITNESS MY HAND, I have hereunto  14 affixed my official seal this 9th day of July, 2009  15 at Charleston County, South Carolina.  16  17  18  19 _____  20 L. SKYLER HARE  21 My Commission Expires  22 April 20, 2019  23  24  25</p>	<p>1 EXHIBITS  2 Page/Line  3 PLF. EXH. No. 1, Home Page 30 23  4 PLF. EXH. No. 2, A Job 55 13  5 Position Description  6 PLF. EXH. No. 3, DDSN 67 12  7 Organizational Chart  8 PLF. EXH. No. 4, Defendant's 90 17  9 Responses to Plaintiff's  10 First set of Request for  11 Production of Documents  12 PLF. EXH. No. 5, Protection 104 1  13 and Advocacy v. DDSN document  14 PLF. EXH. 6, letter dated 116 5  15 November the 22nd, 2005 to  16 Steven W. Hamm  17 PLF. EXH. No. 7, Reference 128 9  18 Number 100-01-DD, Department  19 Directive  20 PLF. EXH. No. 8, Reference 128 12  21 Number 100-02-DD, Department  22 Directive  23 PLF. EXH. No. 9, Lawsuit Filed 162 17  24 PLF. EXH. No. 10, State Statute 221 15  25 PLF. EXH. No. 11, Behavior Support 221 20  Plan  PLF. EXH. No. 12, SCDDSN End Policy 224 1  PLF. EXH. No. 13, Governance Policy 224 21  PLF. EXH. No. 14, SCDDSN Executive 225 6  Limitation Policy  PLF. EXH. No. 15, SCDDSN Commision 225 19  Staff Linkage Deligation</p>

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