

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

FEB 09 2016

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 IX

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND

3
4 EDWARD MIMS, BY AND THROUGH
5 HIS LEGAL GUARDIAN,
6 MARGARET MIMS,

7 Plaintiff,

Case No.: 07-CP-40-03365

8 vs

9 BABCOCK CENTER, JUDY JOHNSON,
10 SCDDSN, KATHI LACY,
11 STANLEY BUTKUS,

12 Defendants.

13 D E P O S I T I O N

14 WITNESS: JUDY JOHNSON

15 DATE: Thursday, July 2, 2009

16 TIME: 10:27 a.m.

17 LOCATION: Law Office of Patricia Harrison
18 611 Holly Street
19 Columbia, South Carolina

20 TAKEN BY: Attorneys for the Plaintiff

21 REPORTED BY: GINA M. SMITH
22 Certified Shorthand Reporter
23 Registered Professional Reporter

24 -----

25

26 Gina M. Smith, CSR, RPR
27 117 Harmon Creek Court
28 Lexington, SC 29072
29 803-359-5705

Mims 0902

1 APPEARANCES:

2 ATTORNEYS FOR PLAINTIFF
3 EDWARD MIMS, BY AND THROUGH HIS LEGAL
GUARDIAN, MARGARET MIMS:

4 LAW OFFICE OF PATRICIA HARRISON
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17
18 (INDEX AT REAR OF TRANSCRIPT)

19
20
21
22
23
24
25

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 JUDY JOHNSON, being first duly
9 sworn, testified as follows:

10 EXAMINATION

11 BY MS. HARRISON:

12 Q. Dr. Johnson, I'm Patricia Harrison.
13 You're here today to give a deposition in the case
14 involving Edward Mims that the -- Edward Mims
15 through his guardian has sued you and the Babcock
16 Center, the Department of Disabilities and Special
17 Needs, Kathi Lacy, and Stan Butkus.

18 Have you had your deposition taken before?

19 A. I have.

20 Q. And when was that?

21 A. The first time I had my deposition taken I
22 believe was sometime in the 1980s, and it involved
23 an employment situation with the Department of
24 Disabilities and Special Needs and a parity issue
25 regarding compensation.

1 Q. Well, I'll be taking your deposition today
2 and I'll be asking you some questions. If you
3 don't understand the question, if you would please
4 ask me to restate it or to explain. If you do
5 understand -- if you answer, I'll assume that you
6 understood my questions.

7 If you would be sure, please, to answer
8 verbally because the court reporter has trouble
9 taking shrugs or nods or uh-huhs down. So we'd
10 request a clear verbal answer.

11 Let's get back to this lawsuit in the
12 '80s. Tell me about that.

13 A. The -- as I recall, since it was so long
14 ago, this involved an employee at the Department of
15 Disabilities and Special Needs who felt her
16 compensation was not in line with other people
17 within the organization.

18 Q. So you were sued as a manager?

19 A. No, I was not.

20 Q. So you were just a witness?

21 A. Yes, ma'am.

22 Q. And who was that? Do you remember the
23 name of the employee?

24 A. At the time I believe it was Joan Hummel.

25 Q. And tell me about Joan Hummel.

1 A. She worked for the Department of
2 Disabilities and Special Needs.

3 Q. Did she ever work for you?

4 A. Yes, she did.

5 Q. Do you remember what the outcome of that
6 lawsuit was?

7 A. I do not.

8 Q. What was your position in the lawsuit?

9 A. I was her immediate supervisor. The
10 situation happened prior to me coming.

11 Q. And after that, what lawsuits have you
12 been involved in?

13 A. As I recall, there was a lawsuit at
14 Whitten Center concerning the termination of an
15 employee. I terminated a physician because of a do
16 not resuscitate order where he had convinced the
17 family for no hydration and no nutrition, which was
18 against the Department of Disabilities and Special
19 Needs' policy.

20 Q. And what was the name of that physician?

21 A. I can't remember.

22 Q. When was that?

23 A. I'm guessing early '90s.

24 Q. Who was -- were you the director of
25 Whitten Center then?

1 A. Yes, ma'am.

2 Q. And who was your immediate -- who was
3 underneath you?

4 A. There were several people underneath me.
5 As the director of the Whitten Center, I had --
6 Dr. Delaportas would have been our medical
7 director. Jane Long would have been over our
8 residential area. There's, you know, probably,
9 Ms. Harrison -- probably at least ten folks at the
10 Whitten Center under my leadership.

11 Q. Now, I understand a year -- in the last
12 year or two the director at Whitten Center and
13 the -- his assistant have left. Are you familiar
14 with that?

15 A. I know that the director left.

16 Q. Do you know why he left?

17 A. No, I don't.

18 Q. Do you know what was the word the
19 Department gave about why he left?

20 A. They didn't. I didn't read anything why
21 he left.

22 Q. Was he there when you were there?

23 A. I hired him.

24 Q. When did you hire him?

25 A. Again, these are old dates for me, so I'm

1 thinking in the '90s.

2 Q. But you don't know why he left?

3 A. No.

4 Q. After the Whitten Center lawsuit in the
5 '90s, tell me about other lawsuits you've been
6 involved in.

7 A. There was another lawsuit at Whitten
8 Center that involved an individual -- it was a
9 reverse discrimination lawsuit.

10 Q. And what was -- do you remember that
11 person's name?

12 A. I do not.

13 Q. What was the result of that lawsuit?

14 A. It was settled out of court.

15 Q. And after that?

16 A. There have been -- you know, I've had many
17 in my career. So I'm trying to think of other
18 ones. There definitely was some that involved
19 personnel matters at the Babcock Center.

20 Q. We're not there yet. Anything else at
21 Whitten Center?

22 A. Not that I can recall.

23 Q. Were there any investigations that were
24 done while you were at the Whitten Center?

25 A. Oh, lots.

1 Q. Tell me about them.

2 A. What would you like to know?

3 Q. Which investigations -- what were the
4 biggest investigations while you were there?

5 A. What brought me to Whitten Center was in
6 the early '90s, there was a complicity situation
7 where staff at one of their dormitories used
8 corporal punishment as a means to manage
9 individuals in that building, and all of the staff
10 were subsequently terminated and prosecuted. This
11 is before I came.

12 Q. And who did that? Who conducted that?

13 A. State Law Enforcement Division.

14 Q. Any federal investigations while you were
15 at Whitten Center?

16 A. While I was there, we had received a
17 letter from Patrick Deval from the Department of
18 Justice as it related to the Civil Rights of
19 Institutionalized Persons Act.

20 In that era, they were looking at three
21 types of facilities around the nation:
22 Facilities -- institutions that supported folks
23 with mental retardation, folks that were in the
24 juvenile justice system, and folks that were in the
25 mental health system.

1 Q. And what did they find at Whitten?

2 A. When they initially sent us a letter --
3 what I recall is when they initially sent us a
4 letter, we were required to send lots of
5 correspondence back in terms of -- they had a
6 series of questions they ask every institution when
7 they come in, and we were required to produce
8 documentation in response to those questions. And
9 that's what I recall.

10 Q. They didn't issue any findings?

11 A. Not that I can remember, Ms. Harrison.

12 Q. Maybe this might help you remember. I'll
13 give you a minute to look at this. And if we could
14 mark it first, please. Dr. Johnson, if you can
15 give to the court reporter before you start reading
16 it and she'll mark it for you.

17 (DEPO. EXH. 35, Office of Civil Rights
18 Report, was marked for identification.)

19 MR. STEGMAIER: Mrs. Harrison, what has
20 been marked as Exhibit 1, do you have a copy of the
21 executed report?

22 MS. HARRISON: This is all I have.

23 MR. STEGMAIER: So you don't have a copy
24 of the executed report?

25 MS. HARRISON: Not at this time. This

1 came off the internet. I'll be asking Mr. Davidson
2 to find one, though.

3 BY MS. HARRISON:

4 Q. Just let me know when you're ready to
5 proceed.

6 A. Do you know when this date -- when this
7 was -- is there a date on here?

8 Q. Looks like 2/8/95 has been written up at
9 the top. Has some dates in '93 and '94.

10 Now, when were you at Whitten?

11 A. I believe I went there in the early '90s
12 until about '94 -- '93, '94. Probably '94.

13 Q. And what was your position there?

14 A. I was the deputy state director for the
15 Department of Disabilities and Special Needs.

16 Q. So were you -- were your responsibilities
17 limited to Whitten?

18 A. No, ma'am. I was over the regional
19 centers in the state.

20 Q. So you were over Whitten and other
21 regional centers also?

22 A. Yes, ma'am.

23 Q. But you were stationed at Whitten?

24 A. Yes, ma'am.

25 Q. Who was responsible for Whitten Center at

1 that time?

2 A. You mean in terms of -- as the facility
3 administrator?

4 Q. Uh-huh.

5 A. I was during the early '90s until I think
6 around '94, but that's an approximation.

7 Q. So you were the -- you were responsible
8 for the facility if it appears -- I know that the
9 footnotes here are in '94, '93, '93, '94. You were
10 responsible for the facility at that time. Is that
11 correct?

12 A. Yes, ma'am.

13 Q. And tell me, who is Deval Patrick?

14 A. As I recall, Deval Patrick was an
15 Assistant Attorney General for the civil rights
16 division.

17 Q. Do you know what Deval Patrick is doing
18 now?

19 A. No, I don't.

20 Q. What about Arthur Peabody?

21 A. I don't know who he is.

22 Q. But you do remember Deval Patrick coming
23 to Whitten Center?

24 A. No. I remember receiving a letter from
25 Deval Patrick stating that, under the Civil Rights

1 of Institutionalized Persons Act, they wanted us to
2 respond to a series of questions.

3 Q. It says on here, information we have
4 obtained indicates that residents of Whitten are
5 being harmed and exposed to unreasonable risks of
6 harm in violation of their institutional and
7 statutory rights.

8 Alleged unconstitutional conditions
9 include abuse and neglect of residents, inadequate
10 medical and psychiatric care and failure to provide
11 residents with adequate training.

12 Could you tell me something -- why would
13 they make those findings?

14 A. I don't know why they would have made
15 those findings. This is the first time I've seen
16 this report.

17 Q. On page 2, it says, abuse against clients
18 is far more prevalent at Whitten than at other
19 similar state-run facilities in South Carolina.

20 Was your abuse and neglect rate higher
21 than other facilities at that time?

22 A. I don't remember, Ms. Harrison. I don't.
23 I don't have that data with me.

24 Q. Now, down here they talk about a telephone
25 interview with Jean Shirley. Do you know Jean

1 Shirley?

2 A. I do.

3 Q. Tell me about Jean Shirley.

4 A. She is a -- I don't know if her son is
5 still at Whitten Center, but she had a son that
6 received services there.

7 Q. If you'd -- on page 3, if you'd read me
8 that first full paragraph.

9 A. Where it starts with the local?

10 Q. Uh-huh.

11 A. The local Protection and Advocacy,
12 parenthetically, quotation, P&A, end of quotation,
13 end of parentheses, group expressed concerns about
14 the compromised impartiality of the Whitten abuse
15 and neglect investigator stating, parentheses, we
16 have some questions about the investigator being a
17 paid department employee, end of parentheses.

18 A parent of a client at the facility
19 indicated that there is abuse occurring at Whitten
20 and that it occurs every day. She indicated that
21 many of the incidents are not uncovered because the
22 Whitten internal investigator is not to be trusted.
23 In fact, she indicated that she trusts the Whitten
24 abuse investigator as far as she can throw him.

25 The parent implied that the Whitten

1 facility director, Judy Johnson, may aid in
2 covering up the truth. The parent said that the
3 director talks out of both sides of her mouth and
4 that she tells parents what they want to hear
5 regardless of the truth.

6 Q. So you've never seen this report before?

7 A. No, ma'am.

8 Q. When did you leave Whitten Center?

9 A. As I think I mentioned earlier, I think it
10 was around '94, is what I'm guessing. It was
11 around '94.

12 Q. Did this investigation have anything to do
13 with your leaving?

14 A. Oh, no. We knew about the Department of
15 Justice having an interest in the Whitten Center
16 while I was there.

17 Q. Now, it says, it is clear that the staff
18 at Whitten subjected the residents to neglect. For
19 example, on a recent site visit by Title 20
20 surveyors, they found that for over an hour no
21 staff intervened to assist one Whitten Center
22 client who had urinated in her pants.

23 So that appears to me that they sent
24 federal investigators to the facility, did they
25 not?

1 A. Actually, it says Title 19 surveyors,
2 which could have been the Department of Health and
3 Environmental Control surveyors.

4 Q. Do you know why they would say on page 4
5 the facility neglects to provide a sanitary
6 environment for its residents? Were there problems
7 with sanitation at Whitten?

8 A. There were.

9 Q. But you were the director. Why -- can you
10 explain to me why those didn't get rectified?

11 A. Well, we were -- I was there because we
12 had problems at Whitten Center. That's what
13 brought me from the deputy state director job into
14 Whitten Center to try to make a positive change.

15 There were 917 people living there when I
16 first arrived supported by approximately 1700
17 individuals, and many of these individuals had
18 significant challenges.

19 And we were retraining staff, fixing the
20 facilities that needed to be modified, doing lots
21 of things to make improvements there, but there
22 were always areas that needed to have improvement
23 and I'm sure still are.

24 Q. What was your staffing ratio when you
25 left?

1 A. I don't remember. I think it was -- when
2 you mean staffing ratio, do you mean overall as it
3 relates to the individuals that we supported? I
4 can't remember.

5 Q. What about meal times? The report says,
6 facility staff present at meal time provide little
7 prompting to self-feeders. That's on page 6. That
8 appears to be a 1994 survey finding. And the
9 facility does not always observe strict dietary
10 orders. Staff fed a resident on a low salt diet a
11 bag of potato chips.

12 It appears that this is pretty systemic.
13 Is that how you would assess in '94 the situation
14 at Whitten?

15 A. I think there were areas of concern in '94
16 at Whitten Center. There were always areas of
17 improvement that were needed.

18 Q. So, now, let's -- let me get this straight
19 about where were you before Whitten Center?

20 A. I was at the Department of Disabilities
21 and Special Needs.

22 Q. And what was your role there?

23 A. Deputy state director.

24 Q. And who did you report to?

25 A. Dr. Philip Massey.

1 Q. When did you begin working for Dr. Massey?

2 A. As a deputy state director, probably 1998.

3 I think around August, approximately. Did I say
4 1998?

5 MR. STEGMAIER: Yes, ma'am.

6 THE WITNESS: I'm sorry, 1988.

7 BY MS. HARRISON:

8 Q. So you were in the state office in 1988?

9 A. Yes, ma'am.

10 Q. And how long were you in the state office?

11 A. I had an office at Whitten Center and I
12 had an office at the Department of Disabilities and
13 Special Needs. So when you say how long, I would
14 have to include the time that I still had -- I
15 never gave up a total office at the Department of
16 Disabilities and Special Needs from 1988 until
17 1996.

18 Q. So from 1988, you had an office at Whitten
19 Center?

20 A. The early '90s. I started at the State
21 Department of Disabilities and Special Needs around
22 August of 1988 as their deputy state director.

23 Q. And then when did you open the office at
24 Whitten?

25 A. I became the facility director following

1 that abuse case in the early -- that I had
2 mentioned earlier in the early 1990s.

3 Q. So there was an abuse case at Whitten
4 prior to this case?

5 A. Yes, ma'am.

6 Q. And tell me about that.

7 A. That's the one that I mentioned earlier
8 where there was complicity in a -- one of the dorms
9 where staff used corporal punishment as a means of
10 treatment for the majority of the individuals that
11 lived at that -- in that unit.

12 Q. And who did that investigation?

13 A. The State Law Enforcement Division were
14 certainly involved because the employees were
15 prosecuted.

16 Q. Who initiated that investigation?

17 A. I don't know.

18 Q. So that was in -- that was before the
19 1994, '95 investigation?

20 A. Yes, ma'am.

21 Q. So you had been there for several years
22 when this civil rights investigation was --

23 A. As I mentioned, I believe that I went to
24 Whitten Center around 1991, 1992. So if this is
25 1994, my math would tell me two or three years.

1 A. In terms of the improvements that we felt
2 comfortable to put it in the hands of another --
3 that was when Mr. Killian was hired, and I can't
4 remember when he was hired. '93, '94 someplace
5 around there.

6 Q. But you were still involved in '93, '94?

7 A. Yes, ma'am.

8 Q. '95?

9 A. I was still -- I was over the regional
10 centers until '96.

11 Q. Did you tell parents? Did you give them
12 any warning about the condition at Whitten Center?

13 A. We had regular parents meetings. We had
14 parents that were doing unannounced visits in
15 units. Ms. Shirley and I met on several occasions.
16 So yeah, many parents were involved in terms of
17 making the necessary improvements that were needed
18 at the Whitten Center.

19 Q. When these reports came out, did you
20 notify parents of the findings?

21 A. When -- describe when these reports came
22 out.

23 Q. When a report like this from the
24 department -- the Office of Civil Rights --

25 A. Remember, I didn't get this.

1 Q. That's really odd.

2 Now, when did you leave?

3 A. When did I leave where?

4 Q. When did you leave Whitten Center?

5 A. Remember '93, '94. You know, I'm --
6 you're asking me to do something that --

7 Q. What was the impetus for your leaving
8 Whitten Center?

9 A. At the time that we left Whitten Center,
10 we had hired Mr. Bill Killian, and he was doing a
11 really good job, and we decided to bring me back to
12 the Department of Disabilities and Special Needs
13 where I could focus on other areas including the
14 regional centers.

15 Q. Now, was there a lawsuit that had some
16 trigger in your leaving? Were you involved in the
17 Department in 1996?

18 A. I left in the spring of 1996.

19 Q. But prior to that time, you had some
20 involvement in supervising the Whitten Center?

21 A. Yes, ma'am.

22 Q. What was your involvement when you left as
23 to supervision of the Whitten Center?

24 A. When I left the Department of Disabilities
25 and Special Needs?

1 Q. When you left South Carolina.

2 A. What was my involvement in terms of --

3 Q. What were your responsibilities for
4 Whitten Center?

5 A. None. After I left the Department of
6 Disabilities and Special Needs?

7 Q. No, when you left. When you left in
8 '96 -- at the time just before you left, what were
9 your responsibilities for the Whitten Center?

10 A. Oh, before I left the Department of
11 Disabilities and Special Needs while I was the
12 deputy state director, is that the question?

13 Q. Uh-huh.

14 A. I was over the -- I supervised all of the
15 facility directors around the state. So the
16 facility directors that were at the five regional
17 centers that we had at the time, I was their direct
18 supervisor.

19 Q. So you would have known about problems --
20 serious problems at any of those facilities?

21 A. Yes, ma'am.

22 Q. So what would you do with that information
23 knowing about the problems at the facilities?

24 A. I would work with the facility director to
25 make sure that proper procedures were being

1 followed and would work with them to make any
2 changes that were necessary as a result of those.

3 Q. Now, you were a defendant in a lawsuit in
4 1996, were you not?

5 A. I believe that I was.

6 Q. And tell me about that lawsuit.

7 A. Are we referring to the Jennings?

8 Q. Were there others?

9 A. Well, you're asking me to go back a long
10 time ago, and that's one that I believe -- I don't
11 even know if I have the right name, but there was
12 an individual in the mid-'90s in which there was a
13 lawsuit. I don't recall all of the details.

14 Q. You don't recall why Patricia Jennings
15 sued you?

16 A. As I recall, it had something to do with a
17 situation that happened at the Midlands Center, but
18 I don't remember the specifics, I'm sorry.

19 Q. And, now, you were over the Midlands
20 Center and those other facilities, were you not?

21 A. Yes, ma'am.

22 Q. Do you remember that there were
23 allegations that Scott Jennings was attacked at
24 Midlands Center?

25 A. Yes.

1 Q. And that he was repeatedly attacked?

2 A. I don't remember the repeatedly.

3 Q. What do you remember?

4 A. Not much.

5 Q. Do you remember there being allegations of
6 sexual abuse?

7 A. I don't remember.

8 Q. Now -- and I'm not going to put this in as
9 an exhibit, but just since Dr. Johnson's memory is
10 fading, if you would look at that, please, ma'am.
11 This might help her remember this individual.

12 If you'll look at those pictures, does
13 that help you remember this individual?

14 A. I'm sorry, it does not.

15 Q. So do you remember Patricia Jennings?

16 A. I remember the name.

17 Q. But you don't remember Mrs. Jennings?

18 A. No, ma'am.

19 Q. Now, she also sued Phil Massey, did she
20 not?

21 A. I don't know. I don't remember.

22 Q. So you don't remember whether Phil Massey
23 was a codefendant with you?

24 A. No, I don't.

25 Q. Did that lawsuit have anything to do with

1 your leaving South Carolina?

2 A. No, it did not.

3 Q. It came about, I believe, in 1996, did it
4 not?

5 A. I left in April, and it -- in '96, and
6 this came in June of '96.

7 Q. So you didn't know that lawsuit was being
8 filed when you left?

9 A. Absolutely not.

10 Q. Now, tell me, in April of '96, why did you
11 leave?

12 A. I was extremely active with the American
13 Association on Mental Retardation, a national
14 organization, and I had met an acquaintance called
15 Dr. Allen Marchetti who had recently joined a
16 company called Normal Life as their vice president,
17 and he contacted me and asked me if I wanted to go
18 work for him in the private for-profit industry and
19 that he wanted me to move to Louisville, Kentucky.

20 And I said, no, thanks, not interested,
21 but I'll tell you what, I've got six sisters that
22 live in Florida, so if you ever find something in
23 Florida, let me know.

24 And about six weeks later, he calls me and
25 says, what about Tampa? And my life began to

1 change. I talked to my husband about the
2 possibility of moving to Florida. Family was
3 extremely important to me. And so we decided that
4 that -- based on our family and the relationships
5 that I wanted to nurture and develop, we took the
6 job, and I moved to work for Normal Life as their
7 regional director.

8 Q. Did you immediately move to Florida from
9 South Carolina?

10 A. Yes, ma'am.

11 Q. And what were your responsibilities at
12 Normal Life?

13 A. I was the regional director over their
14 operations in Florida, Louisiana, and Georgia.

15 Q. So you moved straight from South Carolina
16 to Florida?

17 A. Yes, ma'am.

18 Q. And where did Mr. -- where did Dr. Massey
19 go?

20 A. Right after he left the agency, I don't --
21 I don't know.

22 Q. Now, Normal Life became ResCare, did it
23 not?

24 A. 18 months after I joined Normal Life they
25 sold the company to ResCare, that's correct.

1 Q. Now, did you remain on at ResCare?

2 A. For nine months.

3 Q. Now, did we mark that first exhibit, the
4 Whitten report?

5 MR. DAVIDSON: Don't you think we ought to
6 mark the Jennings lawsuit just for future
7 reference?

8 MR. STEGMAIER: I concur. We'll mark this
9 as 2.

10 (DEPO. EXH. 36, Jennings Lawsuit, was
11 marked for identification.)

12 MS. HARRISON: I left in front of you --
13 and if we can mark this Neglect for Sale article,
14 please.

15 (DEPO. EXH. 37, 11/30/02 Neglect for Sale,
16 was marked for identification.)

17 BY MS. HARRISON:

18 Q. Have you ever seen this article before?

19 A. I have.

20 Q. Now, are they describing the agency you
21 were working for in Florida?

22 A. For the nine months, yes, they are.

23 Q. And I believe that -- tell me about this
24 incident.

25 A. This incident?

1 Q. Are you familiar of this --

2 A. Only what I read, like you.

3 Q. Now, in '98, were you there? Were you
4 working for this company?

5 A. No, ma'am. 1998, let me think. You know,
6 we'd have to do the math. I know that I left the
7 Department in April and I stayed with Normal Life
8 for 18 months, so however that was. So that would
9 be -- '96. So approximately '98. And then during
10 nine months, I was with ResCare. So that would be
11 '98, I think so.

12 Q. So in '98, you were involved with ResCare?

13 A. Yes.

14 Q. And this incident happened April 14, '98,
15 did it not?

16 A. Actually I thought they talked about
17 several incidents. Are you talking about the
18 incident on the front page?

19 Q. The one on the front page.

20 A. Okay.

21 Q. Do you remember that incident?

22 A. No.

23 Q. But you were there in April of '98?

24 A. Not in their Texas operations. I was in
25 Florida.

1 Q. You were in Florida. Okay.

2 Does it talk -- so you didn't have
3 anything to do with the Texas operations of
4 ResCare?

5 A. No, ma'am.

6 Q. Were there any problems with ResCare in
7 Florida?

8 A. Yes.

9 Q. Tell me about those.

10 A. I left ResCare because I did not like how
11 the company was managing supports for disabilities
12 in Florida or Georgia or Louisiana.

13 Q. And the article on page 7 of 9 -- and this
14 article is written -- refers to an investigation in
15 '98. It says, nowhere was this silence more
16 disturbing than in Florida where the state's P&A,
17 known as the Advocacy Center for Persons with
18 Disabilities, actually quashed a critical
19 investigation into ResCare's operation.

20 In March of '98, ResCare acquired seven
21 troubled group homes in the Tampa, St. Petersburg
22 area formerly run by Normal Life in which three
23 clients had died in the three-week period just
24 prior to ResCare's takeover.

25 Were you there --

1 A. Yes, I was.

2 Q. -- at that time?

3 Tell me what you remember about that.

4 A. I don't.

5 Q. Three people died and you don't remember?

6 A. I'm sorry, I don't remember the specifics
7 at that time.

8 Q. Do you remember anything about that?

9 A. I know that the group homes at Normal Life
10 at that time were intermediate care facilities for
11 people with mental retardation, and we had trouble
12 keeping staff. We had trouble keeping nursing --
13 nurses, and that's what I remember. But the
14 specific reasons in terms of why these three
15 individuals died I don't remember.

16 Q. Now, who was your supervisor when you were
17 at ResCare in Florida -- Normal Life and then
18 ResCare?

19 A. Dr. Allen Marchetti was for Normal Life
20 and a Jeffery Cross was for ResCare.

21 Q. How do you spell Cross?

22 A. Cross, C-R-O-S-S.

23 Q. And so Jeffery Cross was your supervisor?

24 A. Yes, ma'am.

25 Q. And who were the people who worked

1 directly underneath you?

2 A. In Florida, under Normal Life, is that the
3 question, the staff that worked --

4 Q. Well, let's start with under Normal Life,
5 yes.

6 A. But my Florida operation, not Louisiana or
7 Georgia?

8 Q. Uh-huh.

9 A. There was the administrator over the
10 program, which we would call the executive
11 director, and there --

12 Q. And that person's name was?

13 A. Oh, my goodness. Marilyn was her first
14 name. I'm sorry, I can't remember her last.

15 Q. How did you get along with Marilyn?

16 A. Fine.

17 Q. Now, what caused you to leave that
18 position?

19 A. Normal Life was sold to ResCare.

20 Q. But you continued on with ResCare, did you
21 not?

22 A. For nine months.

23 Q. For nine months after Normal Life was sold
24 you continued?

25 A. Yes, ma'am.

1 Q. Now, what caused you to leave the position
2 with ResCare?

3 A. I didn't like how ResCare was operating
4 their programs and supports for people with
5 disabilities as a company.

6 Q. And who was your supervisor at that point?

7 A. Jeffery Cross.

8 Q. So he continued to be your supervisor both
9 at Normal Life and ResCare?

10 A. He was never my supervisor at Normal Life.

11 Q. Is he still in the system?

12 A. I do not know.

13 Q. Tell me about any litigation you might
14 have been involved in during that time.

15 A. The nine months with ResCare? None that I
16 can recall.

17 Q. Nine months or anything with Normal Life
18 or ResCare.

19 A. Ms. Harrison, you're asking me to think of
20 something that happened in -- between '96 and '98,
21 and I can't recall anything at this moment.

22 Q. Do you remember being named as a defendant
23 in any lawsuits?

24 A. Not that I can recall.

25 Q. Do you remember testifying in any

1 lawsuits?

2 A. No, ma'am, not that I can recall.

3 Q. Do you remember being a plaintiff in any
4 lawsuits?

5 A. Yes. Sorry, yes, I do. I forgot about --
6 I had an employment lawsuit that I filed against
7 ResCare. Sorry. I was thinking more related to
8 clients.

9 Q. And tell me about that lawsuit.

10 A. When I joined the Normal Life, I signed a
11 contract not to compete. When I wanted to leave
12 ResCare -- as a matter of fact, I found another job
13 with a company called American Habilitation
14 Services and I gave ResCare my notice.

15 It wasn't until I went to American
16 Habilitation Services that a few weeks later I
17 received a notice from ResCare stating that I had a
18 contract not to compete with them and that I could
19 not work for American Habilitation Services.

20 Q. And who were the persons involved in this
21 lawsuit?

22 A. The lawsuit that I filed was against
23 ResCare.

24 Q. Who were the individuals involved in the
25 lawsuit?

1 A. I didn't name any individuals.

2 Q. Was this Mr. Cross involved?

3 A. Yes.

4 Q. Who else -- who else specifically did you
5 name as witnesses in that lawsuit?

6 A. My goodness. Dr. Allen Marchetti,
7 certainly Mr. Jeffery Cross. And I don't remember
8 others. I'm sorry.

9 Q. How do you spell Marchetti?

10 A. M-A-R-C-H-E-T-T-I.

11 Q. And do you know where Dr. Marchetti is
12 now?

13 A. No, I do not.

14 Q. So did you file the lawsuit -- you filed
15 that after you left Florida?

16 A. No, after I left ResCare. I still stayed
17 in Florida.

18 Q. So you -- did you quit or were you fired?

19 A. Remember I quit and went to American
20 Habilitation Services, but I was over their Florida
21 operations.

22 Q. So you were with American Habilitation
23 immediately after leaving ResCare?

24 A. Yes, ma'am.

25 Q. So you were over the Florida operations of

1 American Habilitation Services. Did you -- tell me
2 what your responsibilities were there.

3 A. For American Habilitation, I was over
4 their state operations in Florida and in Georgia.

5 Q. Now, at some point, you became involved in
6 their operations in Texas, did you not?

7 A. Approximately a year, year and a half
8 after I was hired by American Habilitation
9 Services, they promoted me to their chief operating
10 officer where I moved to Texas and was over their
11 operations in six states.

12 Q. And what were your duties with the
13 operation in Texas?

14 A. It was the policies and the state
15 directors of each one of those states reported to
16 me.

17 Q. So you were over the entire operations --

18 A. Yes, ma'am.

19 Q. -- in Texas? You were where the buck
20 stopped in Texas?

21 A. Well, I reported to a CEO.

22 Q. And who was your CEO?

23 A. Deborah Moffett.

24 Q. Do you maintain relations with Deborah
25 Moffett?

1 A. No.

2 Q. When was the last time you saw

3 Ms. Moffett?

4 A. When I left.

5 Q. And how do you spell Moffett?

6 A. M-O-F-F-E-T-T.

7 Q. Is she still with the company?

8 A. I don't know.

9 Q. Now, when did you leave American
10 Habilitation Services in Texas?

11 A. You hired me to become the executive
12 director for the Babcock Center beginning part time
13 in May of 2002.

14 MS. HARRISON: And there's several more
15 copies, Will. If you'd pass those down, please.

16 And if we can mark that as an exhibit.

17 (DEPO. EXH. 38, 12/4/03 Attorney General
18 of Texas Greg Abbott, was marked for
19 identification.)

20 BY MS. HARRISON:

21 Q. Now, do you recall a facility known as
22 Indian Wells?

23 A. Yes. Barely, but yes.

24 Q. Was that under your supervision?

25 A. While I was the chief operating officer?

1 Q. Right.

2 A. Yes.

3 Q. Now, tell me -- there was an incident
4 involving a 32-year-old woman at Indian Wells.
5 Tell me what you remember about that.

6 A. Can I read what you just put in front of
7 me?

8 Q. Sure.

9 A. Thank you. Okay.

10 Q. Now, you were over the facilities in Texas
11 in 2001, were you not?

12 A. I was -- yes, ma'am.

13 Q. And tell me about this incident where the
14 woman with mild mental retardation reported that
15 she'd been sexually assaulted.

16 A. What would you like me to say? I mean,
17 I'm reading it.

18 Q. Tell me what you remember about it.

19 A. I don't.

20 Q. You don't remember this case?

21 A. No, ma'am. I was responsible for 5,000
22 individuals across six states.

23 Q. So you don't remember an incident where a
24 woman was sexually assaulted and it wasn't reported
25 to authorities?

1 A. Where did it say it wasn't reported to
2 authorities?

3 Q. Tell me why the Attorney General got
4 involved in this case.

5 A. I don't know.

6 Q. Were you aware of this case when you left
7 Florida -- I mean left Texas?

8 A. I don't remember this case.

9 Q. Did you ever become aware that this case
10 was being investigated by Attorney General Greg
11 Abbott?

12 A. No.

13 Q. Is this the first you've known of it?

14 A. Yes, ma'am.

15 Q. So when you came to South Carolina, you
16 didn't know there was an ongoing investigation by
17 the Texas Attorney General?

18 A. Not that I recall.

19 Q. Tell me what you recall about lawsuits
20 brought when you were in Texas.

21 A. I can't remember any specific lawsuit. If
22 you could reference one, then I might be able to
23 recall it.

24 Q. How many were brought?

25 A. I can't recall any at this particular

1 moment.

2 Q. So you don't remember any lawsuits being
3 brought against American Habilitation or you
4 individually in Texas?

5 A. While I was in Texas. Not that I can
6 recall.

7 Q. What do you remember about Indian Wells?

8 A. I don't.

9 Q. And so when you came here, you had no
10 knowledge of this investigation?

11 A. Not that I can recall.

12 Q. Tell me what made you decide you wanted to
13 leave Texas.

14 A. My husband and I had moved to Texas after
15 Normal Life had been acquired by ResCare. Texas
16 has 4.3 -- the state -- Houston has 4.3 million
17 people living in the city. It was an extremely
18 large city.

19 In 2001, my husband died suddenly of a
20 pulmonary embolism, and I found myself in an
21 extremely large city with no sisters, with no
22 social support, and I was going through a terrible
23 grieving process, and I didn't want to be there.

24 Q. Now, are you married now?

25 A. No, ma'am.

1 Q. Have you been married since you came to
2 South Carolina?

3 A. No, ma'am.

4 Q. How many times have you been married?

5 A. Twice.

6 Q. And what happened to your first marriage?

7 A. We divorced.

8 Q. And then your second husband passed away?

9 A. Yes, ma'am.

10 Q. Now, tell me, since you came to the
11 Babcock Center, tell me about the lawsuits that
12 have been filed against the Babcock Center or
13 against you.

14 A. When I first came to the Babcock Center,
15 as you're aware, we terminated a number of
16 individuals, and as a result of that, there were
17 employment lawsuits that were filed by at least
18 four individuals, as I recall.

19 Q. What about lawsuits brought by individuals
20 who were -- who claim to have been abused or
21 neglected at the Babcock Center?

22 A. I remember one particular lawsuit early on
23 when I first came that involved an individual with
24 the first name -- initial K, which was initially
25 filed but never went to court.

1 Q. Is that the Taylor lawsuit?

2 A. Yes, ma'am.

3 Q. And how did that lawsuit -- what were the
4 results of that?

5 A. It was settled out of court.

6 Q. And how much was that settled for?

7 MR. STEGMAIER: Hold on. I don't know if
8 those suits were settled with a confidentiality
9 order. I don't recall seeing that release. So in
10 the interest of not knowing that, I would instruct
11 Dr. Johnson not to answer that question even if she
12 knows. And I'm going to review the release, and if
13 we find out there's not a confidentiality
14 provision, we can supplement by affidavit.

15 BY MS. HARRISON:

16 Q. Now, is the Babcock Center a local county
17 board?

18 A. We're treated as a local board.

19 Q. Now, does that mean you have all the
20 responsibilities of a local county board?

21 A. No, ma'am.

22 Q. Tell me how that works.

23 A. In -- I want to say in the 1980s, and I
24 can be wrong with that time period as well, the
25 Department of Disabilities and Special Needs

1 reorganized and established several entities around
2 the state, four of which were 501c3 private
3 not-for-profits that had been supporting
4 individuals with disabilities for a number of
5 years.

6 In those counties, there were -- if I
7 recall, those entities were asked to serve as the
8 Disabilities and Special Needs board and were
9 treated as such.

10 Q. And what's the statutory basis for your
11 being treated as a county board?

12 A. There's none that I can quote.

13 Q. Now, is your board appointed by the county
14 council or the legislative delegation?

15 A. No, ma'am.

16 Q. And do they have term limits?

17 A. Yes, ma'am.

18 Q. And what are the term limits?

19 A. They can serve two four consecutive-year
20 terms.

21 Q. Are they -- I believe the statute says the
22 county board is a public body. Is the Babcock
23 Center a public body?

24 A. We're a 501c3 private not-for-profit
25 corporation.

1 Q. Now, can the governor remove members of
2 the Babcock Center board?

3 A. No, ma'am.

4 Q. So what document is it that allows the
5 Babcock Center to be treated as a public county
6 board?

7 A. It's a contractual relationship between
8 the Department of Disabilities and Special Needs
9 and the Babcock Center.

10 Q. And where would I find that contract?

11 A. I'm sure you could get one from the
12 Department of Disabilities and Special Needs.

13 Q. So you're saying every year they sign some
14 document saying you get to be a county board?

15 A. I don't think that's the question that you
16 asked.

17 Q. Well, tell me how it is -- what paper
18 authorizes the Babcock Center to be a county board?

19 A. We have been treated -- there are policies
20 and procedures within the Department of
21 Disabilities and Special Needs I believe that will
22 attest to that fact. I just can't produce one
23 immediately.

24 Q. Who has the authority to -- at the
25 Department of Disability -- has the legislature

1 designated the Babcock Center as a county DSN
2 board?

3 A. No.

4 Q. Has Department of Health and Human
5 Services designated the Babcock Center as a local
6 county board?

7 A. Have they designated us as -- no, they
8 would not.

9 Q. Now, are there regulations promulgated by
10 the legislature that have designated the Babcock
11 Center as a local county board?

12 A. No, not that I'm aware of.

13 Q. So who is it at the Babcock Center that
14 determined -- I'm sorry, who is it at DSN that
15 determined that Babcock Center would be a local
16 board? Is there anything that's authorized by the
17 governing board of the Agency that designates --
18 the governing board of DDSN that designates the
19 Babcock Center as a local county board?

20 A. You'll have to ask DDSN.

21 Q. Are you familiar with such a paper or a
22 vote taken by the governing board?

23 A. Not that I can recall.

24 Q. So who is it that has designated the
25 Babcock Center as a local county board?

1 A. As I described earlier, in the 1980s is
2 when the Department of Disabilities and Special
3 Needs created all of these Disabilities and Special
4 Needs boards and grandfathered four 501c3s to serve
5 as boards in the local communities.

6 Q. Now, my recollection is at that time the
7 Rich/Lex board was appointed by either county
8 council or the legislative delegation as the county
9 board for Richland and Lexington Counties. Is that
10 not correct?

11 A. In the early '80s, it was only Babcock
12 Center. In sometime in the late '80s or '90s --
13 again, dates are confusing at times -- they
14 established the Rich/Lex Disabilities and Special
15 Needs Board.

16 Q. And, now, that board does comply with the
17 statutory requirements of a local DSN board, does
18 it not?

19 A. I don't know.

20 Q. Can you tell me why they have a board
21 that's appointed by -- who appoints the Rich/Lex
22 board?

23 A. What I remember was the Richland County
24 Council and Lexington County Council, but it might
25 be county delegation. So I'm not sure.

1 Q. So they appoint the Rich/Lex board?

2 A. The two counties.

3 Q. And tell me what document it is that
4 distinguishes that DSN board's responsibilities
5 from any document giving the Babcock Center the
6 authority as a county board.

7 A. It's been a pattern of practice since the
8 '80s that Rich/Lex DSN board would be responsible
9 for service coordination and that Babcock Center
10 would be the primary service provider in that
11 county. That's what started in the 1980s, two
12 separate entities were established.

13 Q. Is there any document which sets forth how
14 this came about and what authority each entity has?

15 A. I don't know.

16 Q. Tell me -- let's get back to these
17 lawsuits. Tell me about the -- does anybody need
18 to take a break? I'm fine to go on, but I don't
19 know if --

20 MR. STEGMAIER: Keep trucking.

21 THE WITNESS: I'm okay.

22 MR. DAVIDSON: I'm fine.

23 BY MS. HARRISON:

24 Q. Tell me about some other lawsuits. You
25 mentioned the Taylor lawsuit. And tell me what

1 happened in that lawsuit.

2 A. It was settled.

3 Q. What were the allegations?

4 A. As I recall, it had to do with how he was
5 treated as a consumer at the Babcock Center and
6 that there were accidents of injuries. Those were
7 some of the allegations centered around him being
8 injured at the Babcock Center.

9 Q. Tell me about other lawsuits or
10 settlements that the Babcock Center has been
11 involved in.

12 A. About a year after I was there, there were
13 a number of -- I can't describe -- tell you how
14 many for sure, but some individuals in which you
15 were involved with that said that they were going
16 to sue the Babcock Center concerning quality of
17 care issues, but those lawsuits were not filed.

18 Q. And who -- were there any settlements in
19 those lawsuits?

20 A. Yes, ma'am.

21 Q. And who was the lawyer representing those
22 people?

23 A. Representing those people. I can't
24 remember.

25 Q. And tell me how many settlements and what

1 the facts were about each case.

2 A. This was over, you know, six years ago,
3 seven years ago. There were several of those at
4 that time. My goodness. I can't recall them, you
5 know, the specifics at the moment.

6 Q. One of those I believe was Danny Timmons,
7 was it not?

8 A. It could have been, yes.

9 Q. Do you remember the Danny Timmons
10 incident?

11 A. Yes, I do.

12 Q. Tell me what the Danny Timmons --

13 A. Danny --

14 MR. STEGMAIER: I'm going to instruct you
15 not to use names.

16 MS. HARRISON: We'll call it DT.

17 MR. STEGMAIER: For purposes of our
18 complying with HIPAA, I'll instruct Dr. Johnson to
19 use initials rather than complete identifiers.

20 BY MS. HARRISON:

21 Q. DT, I believe the allegations were that an
22 employee threw scalding water on the individual?

23 A. That's correct.

24 Q. Was the individual burned?

25 A. Yes, ma'am.

1 Q. And was that immediately reported to the
2 ombudsman?

3 A. As soon as we were notified that DT would
4 possibly have been abused, yes, it was reported to
5 the ombudsman's office. It was reported to the
6 Department of Disabilities and Special Needs. It
7 was reported to his family.

8 Q. It was reported as soon as he was scalded?

9 A. No, ma'am.

10 Q. How long after he was scalded was it
11 reported?

12 A. The next morning, if I remember correctly.

13 Q. To the ombudsman?

14 A. Yes, ma'am, as soon as we knew about it.
15 The next morning is when I believe we heard about
16 it.

17 Q. And that lawsuit settled?

18 A. Yes, ma'am.

19 Q. And how much did that lawsuit settle for?

20 MR. STEGMAIER: Again, I'll instruct
21 Dr. Johnson not to answer that question just
22 because I haven't seen the release and it might
23 have been signed pursuant to a confidentially
24 order. Obviously if the release doesn't contain a
25 confidentiality agreement, we'll supplement by

1 affidavit.

2 MS. HARRISON: Is it your position that a
3 local county board -- under the open records ruling
4 of Justice Toal, is it your position that a local
5 county board can have secret settlements?

6 MR. STEGMAIER: I don't think there's a
7 prohibition on a confidentiality agreement that's
8 entered into and agreed upon by the parties. I
9 think what you're talking about is a prohibition
10 that includes some sort of court certification or
11 some sort of court approbation concerning the
12 sealing of records. They're two completely
13 separate and distinct concepts.

14 So with that said, the possibility does
15 exist that a confidentiality agreement does exist
16 in those releases, and for the time being, I'm
17 going to instruct Dr. Johnson not to answer the
18 question. But as I said, if the release does not
19 contain a confidentiality agreement, we'll
20 supplement the response.

21 MS. HARRISON: And I would ask that you
22 look not only at the confidentiality agreement, but
23 I believe the Probate Court proceedings are not
24 sealed.

25 MR. STEGMAIER: Well, if the matter

1 emanated in the Court of Common Pleas, then I don't
2 know how the Probate Court's involved, but --

3 MS. HARRISON: Because the settlement has
4 to be approved by the Probate Court.

5 MR. STEGMAIER: Not necessarily.

6 MS. HARRISON: I believe they have been.
7 So I would ask if you're going to instruct the
8 witness not to answer the questions, that you
9 provide those documents which are a matter of
10 public record.

11 MR. STEGMAIER: That's your opinion, but
12 we'll definitely look into it.

13 BY MS. HARRISON:

14 Q. Now, after the DT -- was that the first --
15 the KT and the DT case, were those the first to
16 come about after you got here?

17 A. I don't know the sequence, but no, they
18 weren't the first.

19 Q. What were the first ones once you got
20 here?

21 A. I believe KT was definitely early on.
22 There was a JJ, as you know. That's where you and
23 I fell out over that particular situation.

24 Q. And tell me what the facts were
25 surrounding the JJ --

1 A. There was an individual that was found
2 with blood on his sheets who stated, that boy got
3 me. The incident was reported to the Department of
4 Disabilities and Special Needs. The individual was
5 taken to the doctor's office. If I recall, at
6 least two different doctors saw the individual and
7 could not determine what caused the tear for sure.

8 Q. The tear where?

9 A. There was a rectal tear.

10 Q. Now, did you personally speak with
11 Dr. Butkus about this case?

12 A. Yes, I did.

13 Q. And did you and Butkus talk about whether
14 or not you would report it to the authorities?

15 A. As you recall, you wrote me several
16 e-mails concerning the JJ case, and you made it
17 quite clear that I was required to report it under
18 the statute. And my e-mail response to you was no,
19 I'm not, because the statute doesn't require
20 reporting of client-to-client assaults.

21 You stated there was no exception to the
22 rule, you understood the law, and if I didn't
23 report it, you were going to report it. I told you
24 if you felt it was important to report, then you
25 had -- if you felt it needed to be reported, then

1 you had an obligation to report it.

2 I had called the ombudsman, John Cook, and
3 asked him if client-to-client assaults were to be
4 reported, and he said no. And I did the same thing
5 with Dr. Massey -- I'm sorry, I apologize --
6 Dr. Butkus, and he also said no.

7 Q. So you talked about this -- you and
8 Dr. Butkus talked about whether or not you would
9 report the alleged sexual assault of JJ, and I
10 believe you've testified before that you and
11 Dr. Butkus decided that you would not report it.
12 Is that correct?

13 A. The Department of Disabilities and Special
14 Needs directives to which we were responsible to
15 comply with defined those kind of situations to be
16 reported under the critical incident provision. So
17 the incident was reported as a critical incident,
18 and you knew that.

19 Q. But you and Dr. Butkus discussed whether
20 or not it would be reported, didn't you?

21 A. Yes, ma'am.

22 Q. And you and Dr. Butkus came to a
23 conclusion that you would not -- you made a
24 decision together with him, did you not, that you
25 would not report that rape?

1 A. It was not a rape. It was never been
2 proven as a rape. You keep saying that, but it was
3 never proven by anybody as a rape.

4 Q. But you and Dr. Butkus together -- how
5 long did you talk with Dr. Butkus about this
6 incident?

7 A. It was a phone call.

8 Q. And what did you tell Dr. Butkus about the
9 facts of the case?

10 A. As I recall, he knew everything. He knew
11 the individual. He knew that it was an allegation
12 against another individual. He knew that we had
13 taken him to seek medical care and treatment, and
14 he knew that we filed it according to the critical
15 incident policy. He said our reporting was as
16 expected and what we were required to do.

17 Q. And I believe you've testified before that
18 he told you not to report it to law enforcement?

19 A. He told me not to report it? He told me
20 it was not required to be reported. I don't know
21 that he ever told me not to report it.

22 Q. Now, when you talked to the ombudsman
23 about this case, did you tell him that there was, I
24 believe, a four-centimeter laceration in the anus
25 of this individual?

1 A. Oh, no.

2 Q. Did you tell the ombudsman that another
3 individual had admitted going into JJ's room the
4 night before?

5 A. No, I did not.

6 Q. Did you know that when you were talking
7 with him?

8 A. Yes, I did.

9 Q. Why didn't you tell the ombudsman that
10 there had been an anal tear and that another
11 individual had gone into JJ's room?

12 A. Because the statute to me was very clear
13 at the time where it didn't talk about anal tears.
14 It talked about client-to-client assaults are not
15 to be reported under this act.

16 Q. Now, one or both of these individuals,
17 were they on a one-on-one supervision?

18 A. I don't remember.

19 Q. Did it ever occur to you that some outside
20 entity might come in and investigate and determine
21 that this was neglect because proper supervision
22 had not been provided?

23 A. I can tell you that as a result of your
24 complaints of this incident to several outside
25 entities, we were reviewed by Centers for Medicare

1 and Medicaid, the Department of Health and
2 Environmental Control, Health and Human Services,
3 the ombudsman's office, local law enforcement, none
4 of which said sexual assault had occurred or that
5 we were negligent in supervision, none.

6 Q. Now, CMS issued a report, did they not,
7 saying that it was substantiated that sexual abuse
8 had occurred?

9 A. They absolutely did not.

10 Q. So is your testimony that CMS never issued
11 a report saying that James Jordan had been sexually
12 assaulted?

13 A. That is correct.

14 Q. So that was never a finding of CMS?

15 A. No, ma'am.

16 Q. Now, tell me about other lawsuits.

17 A. From what time period?

18 Q. Well, since you've been at the Babcock
19 Center.

20 A. We are currently involved in -- there was
21 a lawsuit for us reporting -- I think it was a
22 lawsuit -- for us reporting a community training
23 home one provider for abuse, and they filed a
24 lawsuit against us for reporting that.

25 Q. And I believe that was the -- and that I

1 believe has -- went up on appeal and has been
2 dismissed, has it not?

3 A. That's correct.

4 Q. I'm really more interested in lawsuits or
5 settlements where the individual or his
6 representative or her representative alleged abuse
7 or neglect.

8 A. As you know, your relative, BC, there was
9 a lawsuit filed on his behalf as a result of his
10 death.

11 Q. Now, did CMS come in and do any kind of
12 investigation?

13 A. Yes, I believe they did.

14 Q. And what did they find?

15 A. I can't remember the specifics.

16 Q. You can't -- do you remember that they
17 found that the house was understaffed?

18 A. As I recall, there was a citation that
19 they felt that it was understaffed. We had two
20 staff on duty for seven individuals, and the ICF/MR
21 requirements for folks when they're awake is one to
22 eight.

23 Q. How much were you billing Medicaid for
24 staffing at that house at the time?

25 A. I don't know we were billing Medicaid. We

1 had a contract with the Department of Health and
2 Human Services and I don't remember the rate. It's
3 whatever rate that the Department of Disabilities
4 and Special Needs established.

5 Q. Well, that was Medicaid money, was it not?

6 A. I don't know the actual that was Medicaid
7 money. I know that the Department of Disabilities
8 and Special Needs gets money, and we had a contract
9 with the Department of Health and Human Services at
10 that time, so I don't know whose money it was. It
11 probably was a combination.

12 Q. Do you know if it had any Medicaid money
13 attached to it?

14 A. Not specifically. I would assume that it
15 did, but I can't -- I'm not an expert on how the
16 money works.

17 Q. Would CMS have been doing an investigation
18 if it did not have Medicaid money attached?

19 A. CMS -- the facility itself was licensed as
20 an intermediate care facility for the mentally
21 retarded, and as part of CMS' responsibilities,
22 they can look at those facilities around the
23 nation, and they do.

24 Q. And now, they also found that staff was
25 undertrained, did they not, in that investigation?

1 A. That might have -- yes, that was a
2 citation.

3 Q. And I believe they cited the facility
4 because the death was not thoroughly investigated,
5 did they not?

6 A. I don't remember. They may have on that.
7 I don't remember that one.

8 Q. Let me see. I think we already have --
9 (Off-the-record discussion.)

10 BY MS. HARRISON:

11 Q. Now, prior to that time, had there been a
12 finding of immediate jeopardy?

13 A. Prior to what time?

14 Q. At Kensington, prior to the death of BC.

15 A. There could have been, and this is by --
16 repeat the question.

17 Q. Prior to Billy Cothran's death, in that --
18 I believe he died in 2004. Is that correct?

19 A. I apologize, it could have been 2004.

20 Q. In the -- and I believe that was in
21 September, was it not?

22 A. That's the approximate time period.

23 Q. In that year, earlier in 2004, had any
24 entity made a prior finding of immediate jeopardy
25 at that facility?

1 A. We had several -- at that time, we were
2 operating 30 intermediate care facilities for the
3 mentally retarded, if I remember correctly, and so
4 on an annual basis, and sometimes twice a year, we
5 have surveyors coming in and out all the time doing
6 surveys.

7 So it's difficult for me to relate a
8 specific time with a survey result, but I can tell
9 you that there was a time when the Kensington did
10 receive an immediate jeopardy.

11 Q. And what was -- now, it received an
12 immediate jeopardy citation from CMS after their
13 investigation of the Cothran death, did they not?

14 A. Yes, ma'am.

15 Q. Now, prior to that time, there had been
16 another immediate jeopardy finding, had there not,
17 at Kensington?

18 A. Can you be more specific?

19 Q. What do you remember about the immediate
20 jeopardy finding prior to the death of BC?

21 A. Again, I can't go with the prior to. I
22 can tell you at Kensington there was another period
23 where there was an issue at Kensington surrounding
24 the administration of psychotropic medication.

25 Q. And tell me about that.

1 A. There was -- our surveyors, and I can't
2 remember whether it was CMS or DHEC, but they felt
3 that the documentation surrounding that particular
4 individual did not support his medication, but the
5 psychiatrist did.

6 Q. But the -- I believe that immediate
7 jeopardy citation was by DHEC. They did cite your
8 facility for immediate jeopardy for that, did they
9 not?

10 A. I know they cited our facility for that,
11 that's absolutely correct.

12 Q. And there was an immediate jeopardy
13 finding, was there not?

14 A. I can't remember if it was immediate
15 jeopardy or client protection. You know, there's
16 several of those.

17 Q. Tell me what immediate jeopardy means.

18 A. Immediate jeopardy means that they feel
19 that folks are in imminent harm and there needs to
20 be changes put in place prior to their departure.

21 Q. And how often have you gotten an immediate
22 jeopardy citation?

23 A. In my career?

24 Q. No, at Babcock Center.

25 A. I would -- you know, I can't cite for

1 sure, but I would guesstimate them to be four or
2 five.

3 Q. What facilities have been cited for
4 immediate jeopardy?

5 A. I know that Kensington was. I know that
6 Wire Road was. I know that unit C at the
7 Clusters -- B -- one of those. I think it was B at
8 the Clusters. That's what I can remember
9 immediately.

10 Q. And now, that Wire Road facility, that is
11 where JJ -- the incident happened that was alleged
12 to be a sexual assault, was it not?

13 A. That's correct.

14 Q. That was at Wire Road?

15 A. That's correct.

16 Q. Let's talk a little bit about Clusters.
17 Clusters was a facility in Lexington, was it not?

18 A. That's correct.

19 Q. And --

20 MR. STEGMAIER: Let's go ahead and mark
21 that.

22 (DEPO. EXH. 39, CMS Survey, was marked for
23 identification.)

24 BY MS. HARRISON:

25 Q. Are you aware that the plaintiff, Ed Mims,

1 was involuntarily admitted to Clusters?

2 A. Yes, prior to me coming there.

3 Q. Tell me what you know about that.

4 A. Just what I've read.

5 Q. Why do you think he was involuntarily
6 admitted?

7 A. I wasn't involved in that decision.

8 Q. But you took over the operation of
9 Clusters when?

10 A. 2002.

11 Q. Now, are you familiar with this survey of
12 Clusters which occurred in 2003?

13 A. As I mentioned earlier, we had 30
14 facilities at the time where they were surveyed at
15 least annually and sometimes twice a year. And
16 this looks like a 2567, and it is, in the bottom
17 left -- that's what the form's usually
18 distinguished as -- as a survey result for
19 Lexington Clusters B.

20 Q. Now, what's a finding there at the bottom
21 left, starts on 11/4/03?

22 A. It states, on 11/4/03 at 9:30 a.m. the
23 residence was observed. The following problems
24 were noted: Walls in the living area, kitchen,
25 dining room, both side hallways, the back hallway,

1 and all eight bedrooms were damaged. Most walls
2 had holes, some of which had been patched, but not
3 painted.

4 Q. And then the next page continues with
5 problems of the condition of the home, does it not?

6 A. Yes, ma'am.

7 Q. And if you'll go over to page -- down here
8 it says sheet 4 of 53 at the bottom.

9 A. Yes, ma'am.

10 Q. And would you read that first sentence for
11 me, please.

12 A. At the top of the page?

13 Q. In fact, read that whole paragraph for me,
14 please.

15 A. Based on interviews, observations, and
16 record reviews, the facility failed to provide
17 sufficient interventions to ensure clients are
18 protected from assaults and injuries resulting from
19 client-to-client aggression, including identifying
20 perpetration and victimization trends and
21 conducting functional analysis of the maladaptive
22 behaviors in order to develop effective behavioral
23 strategies.

24 In addition, the facility failed to
25 consistently provide the staffing they identified

1 as necessary to protect people and to provide
2 adequate training to staff in conducting one-to-one
3 supervision.

4 Based on these findings, it was determined
5 that immediate jeopardy existed, which resulted
6 from the facility's failure to ensure clients were
7 not neglected and placed at risk from other clients
8 living in the home.

9 Q. Now, is this -- does this appear to be an
10 accurate copy of the CMS survey report for
11 Clusters?

12 A. I'm trying to see if it was from CMS. It
13 appears to be an appropriate report. I can't tell
14 if it's Department of Health -- DHEC did it or CMS
15 did it.

16 Q. But it is a -- it appears to be an
17 accurate copy of Form CMS-2567?

18 A. Yes, ma'am.

19 Q. And this is a survey report of the
20 facility.

21 And, now, how long had you been there by
22 11/06/03?

23 A. I came part time in June of '02.

24 Q. And, now, Clusters was eventually --
25 wasn't there a finding of immediate jeopardy and I

1 believe DHEC closed one of the buildings and CMS
2 closed the other, did they not?

3 A. Unit B was closed by the Centers for
4 Medicare and Medicaid where they felt we didn't
5 meet the requirements of the intermediate care
6 facilities for the mentally retarded.

7 We had the right to fix those procedures
8 and reapply for licensing. We chose not to do that
9 because we did not like the concept of 48 people
10 living on an institutional campus.

11 As you're aware, throughout the states,
12 throughout our nation, people are closing those
13 kind of large congregate living facilities, and we
14 felt it was appropriate to close the Clusters.

15 Q. Now, was that your -- was that your
16 approach when you came here?

17 A. I think you knew when I came here we
18 talked about the Clusters, and it wasn't an
19 appropriate place for individuals to live there.
20 There were many problems at the Clusters at that
21 time.

22 Q. Now, I believe, though, that in 2002, DDSN
23 provided a capital grant of five or \$600,000 to
24 improve Clusters?

25 A. They did.

1 Q. And, now, you'd had that money for about a
2 year when this survey was conducted, had you not?

3 A. That could be true.

4 Q. And can you tell me why if you had five or
5 \$600,000 that had been specifically paid to the
6 Babcock Center to fix these problems in November of
7 '03 they still weren't fixed?

8 A. Certainly. We have -- when the Department
9 of Disabilities and Special Needs gives us money
10 for capital improvements, they oversee all
11 operations with any of those renovations.

12 Because it was an ICF/MR facility, any of
13 the renovations had to be approved by the
14 Department of Disabilities, the Department of
15 Health and Environmental Control and even the state
16 fire marshal.

17 Those repairs that were intended for the
18 majority of that money for replacement of roofs and
19 modifications to the interior of the facilities.
20 As you're aware, those facilities were in bad
21 shape. They needed lots of renovations and
22 repairs.

23 So we also have to comply with the South
24 Carolina State Procurement Code because we're
25 treated like a disabilities and special needs

1 board, and in that capacity we had to go through
2 the bidding process to get contractors in there to
3 do the necessary repairs. All of those
4 requirements take a tremendous amount of time.

5 Q. So you had these conditions existing for
6 more than a year and you had \$500,000 or more
7 sitting in an account, but you didn't make the
8 improvements during that year, isn't that right,
9 Dr. Johnson?

10 A. These conditions were there when you were
11 chairman of the board and prior to me coming for
12 years, and so once we -- after I was here, we wrote
13 the capital improvement request, and it took time,
14 as I just tried to describe carefully why those
15 repairs were not done.

16 Q. Now, when did -- when was Clusters closed?

17 A. I can't give you the specific date, but I
18 can tell you that we approached the Department of
19 Disabilities and Special Needs to take over the
20 Clusters, and we were hoping that they would use
21 that as a facility in which they would manage, but
22 they were not interested in taking over the
23 facility initially at all.

24 Q. Now, has the facility been sold since that
25 time?

1 A. It has a contract for sale. It's not been
2 sold yet.

3 Q. And who is purchasing the facility?

4 A. Oh, my goodness. I can't give you the
5 specific name of the group, but they're responsible
6 for homeless veterans. Christ Ministries.

7 Q. And where will that money go?

8 A. The Department of Disabilities and Special
9 Needs.

10 Q. And when is that sale set to be?

11 A. They had hoped to be able to close it by
12 the end of this year.

13 Q. And what was the sales price?

14 A. I can't recall.

15 Q. But you have a contract for it?

16 A. Yes, ma'am.

17 Q. And who approved that at the Department?

18 A. Certainly Bill Barfield knew about it,
19 Stan Butkus knew about it. I mean, they've all
20 been involved in it.

21 Q. Now, this is -- if we could mark this as
22 the next exhibit.

23 (DEPO. EXH. 40, 12/9/03 Letter, was marked
24 for identification.)

25 BY MS. HARRISON:

1 Q. Can you tell me what this is?

2 (Off-the-record discussion.)

3 BY MS. HARRISON:

4 Q. I believe what I just passed out was the
5 CMS immediate jeopardy findings at Wire Road.
6 Dr. Johnson, can you tell me about these?

7 A. What you handed me was a letter from
8 Senator Pace from the Associate Regional
9 Administrator of the Division of Survey and
10 Certification citing immediate jeopardy at Wire
11 Road.

12 Q. And I believe -- is that the facility
13 where JJ resided?

14 A. Yes, ma'am.

15 Q. And what was the -- this is an immediate
16 jeopardy finding for failure to protect a resident
17 from choking. Is that correct?

18 A. Can you point that to me where it says
19 that?

20 Q. I believe it says -- on the last page,
21 health care services supervisor stated client two
22 had problems with swallowing --

23 A. Where am I looking?

24 Q. The first full paragraph on the last page.
25 Health care services supervisor --

1 A. Wait. I'm not there yet. I apologize.

2 MR. STEGMAIER: Page 5 of 5 documents you
3 handed us?

4 MS. HARRISON: Uh-huh.

5 MR. STEGMAIER: What paragraph?

6 MS. HARRISON: The second paragraph.

7 BY MS. HARRISON:

8 Q. Does that not talk about the client number
9 two was on a pureed diet to prevent choking? Is
10 that not what that paragraph says?

11 A. Yes, ma'am.

12 Q. And the paragraph above that says that
13 this individual was eating cookies. Is that
14 correct?

15 A. I'd like to have the opportunity to read
16 it.

17 Okay.

18 Q. Is that correct?

19 A. Yes.

20 Q. And the page before, it's the first page
21 of the Wire Road II Federal Survey Team, that says
22 that the individual staff -- included two bologna
23 sandwiches with lettuce?

24 A. What paragraph are you on, please?

25 Q. The last paragraph. Staff took client

1 number two's lunch out of the insulated cooler.
2 The lunch included two bologna sandwiches with
3 lettuce, a container of potato salad, a container
4 of fruit cocktail and several cookies. Is that
5 correct?

6 A. That's what the report says.

7 Q. And this is the same client that we were
8 referring to that was on a pureed diet?

9 MR. STEGMAIER: Where is that from?

10 THE WITNESS: Where's that?

11 BY MS. HARRISON:

12 Q. Well, the next page, client number two's
13 home. We're all talking about client number two
14 here, are we not? Isn't all this about client
15 number two? Isn't client number two the same
16 person?

17 A. It's interesting. I've never seen this
18 report. You somehow got ahold of Federal Survey
19 Team notes, which are never given to providers.
20 The only official document is the 2567.

21 So as to the accuracy, any survey team is
22 required to go through quality assurance after they
23 survey. They go to their supervisors and they say
24 these are my findings and these are my
25 recommendations, and as a result that's put on a

1 2567. That's what all of us receive. We don't
2 receive these.

3 Q. But you would agree that this is the Wire
4 Road II Federal Survey Team report? Was Laverne
5 Dixon an employee?

6 A. No.

7 Q. I'm sorry, Linda Joyce?

8 A. No.

9 Q. Those are CMS employees, then?

10 MR. STEGMAIER: Dr. Johnson isn't going to
11 authenticate a document she's never seen and, that
12 she's testified to, nor should you have. So she's
13 not going to authenticate this document.

14 BY MS. HARRISON:

15 Q. So you don't know whether or not this is
16 the Wire Road Federal Survey Team finding that
17 was -- that led to the immediate jeopardy report?

18 A. Their findings that led to the immediate
19 jeopardy report would be on a 2567. Do you have
20 that?

21 Q. This is what I have. This is what CMS
22 provided me.

23 So you do agree that this letter to Gilda
24 Williams transmits the finding of Wire Road II
25 immediate jeopardy to you?

1 A. I don't know who Laverne Dixon is, Linda
2 Joyce or Amanda Cade. I don't know where this
3 document came from.

4 Q. I'm talking about the letter dated
5 December 9, 2003.

6 A. Okay.

7 Q. Sandra Pace, you know who she is, I
8 assume?

9 A. I know the name, yes, ma'am.

10 Q. And is this not the letter that was sent
11 to your agency transmitting a finding of immediate
12 jeopardy at Wire Road?

13 A. That is correct.

14 Q. And you're familiar with this document?

15 A. I recall seeing this document.

16 Q. And so this Wire Road II Federal Survey
17 Team report, you're saying you've never seen this?

18 A. That's correct.

19 Q. And is it -- you didn't know about this
20 finding of the survey team?

21 A. I didn't say I didn't know about the
22 finding of the survey team. I don't remember the
23 specifics. If you showed me a 2567 that showed
24 that, then that would help.

25 Q. So you don't remember a finding that

1 client number two took sandwiches, potato salad and
2 these things -- or took regular food and that
3 client was on a pureed diet? You don't remember
4 that?

5 A. I remember that we were cited for
6 immediate jeopardy because an individual's diet was
7 not followed properly. I do remember that. The
8 specifics, whether it was a sandwich, whether it
9 was a cookie, I don't remember the specifics. As I
10 mentioned, we had 30 facilities getting surveyed
11 all the time.

12 Q. And how often did you get a finding of
13 immediate jeopardy?

14 A. Remember, I thought I told you, less than
15 five, three or four, five.

16 Q. So this was a significant --

17 A. Yes. I just can't remember -- I remember
18 it involved -- it involved the consumer's diet not
19 being followed properly, and we as a result were
20 cited with immediate jeopardy.

21 Q. And you had --

22 A. I had mentioned that in earlier testimony.

23 Q. Did they talk to you about their concern
24 about the choking hazard of this individual?

25 MR. STEGMAIER: Who's they?

1 BY MS. HARRISON:

2 Q. Did CMS, the survey team, did they talk
3 with you about their concern --

4 A. No, they did not.

5 Q. They didn't talk with you about their
6 concern -- that they were concerned that this
7 individual was at a risk for choking?

8 A. No, they did not.

9 Q. What did they tell you?

10 A. They didn't tell me anything.

11 Q. So they came and they surveyed and they
12 just sent you an immediate jeopardy finding and you
13 never asked to see their --

14 A. Actually they sent Gilda Williams the
15 immediate jeopardy finding. I never met with them.

16 Q. You never met with the CMS team?

17 A. No, ma'am.

18 Q. And so did it occur to you -- who was
19 responsible when there was a problem at the Babcock
20 Center?

21 A. We're all responsible when there's a
22 problem at the Babcock Center.

23 Q. Does the buck stop with you? I think
24 that's what you testified to in an earlier suit?

25 MR. STEGMAIER: You're going to have to

1 show her that testimony. You can't impeach
2 somebody that way.

3 BY MS. HARRISON:

4 Q. Do you remember saying that you were,
5 ultimately responsible?

6 A. I may have said that. As the CEO or a
7 facility director of the Babcock Center, you know,
8 I'm responsible for the day-to-day operations, as
9 are the people that provide the services, as are
10 the board that implements the policy, as are the
11 overseers of -- such as the Department of
12 Disabilities and Special Needs. All of us have a
13 responsibility.

14 Q. And I believe you felt that the board was
15 getting too involved, that you needed to be the one
16 to handle things. Is that not correct?

17 A. I felt you were getting too involved as
18 our board chairman, but I've not had that complaint
19 with our board.

20 Q. So do they -- when these immediate
21 jeopardy findings come out -- have come out in the
22 last -- well, '03, '04, '05, what do -- what are
23 the board members told about it? For example, was
24 this -- was the board told that this person took a
25 sandwich to the center and he was on a pureed diet?

1 A. The board of directors and our quality
2 assurance and critical incident reporting committee
3 would receive notification of any survey findings
4 where there was immediate jeopardy.

5 Q. But you don't ask to see the survey team
6 notes?

7 A. We're not allowed to see the survey team
8 notes. I've never in my career seen survey team
9 notes. The document's on the 2567.

10 Q. Do you think if I got these under FOIA
11 that you could get them too?

12 A. I never thought to ask.

13 Q. Do you think that would be helpful --

14 A. No.

15 Q. -- when there are findings for you to
16 review the survey team notes to see specifically
17 what they were?

18 A. Not necessarily.

19 Q. Do you have confidence in CMS' surveys?

20 A. Overall I think CMS does an adequate job
21 of surveying. It's important. That's why they
22 have their quality assurance review, just like DHEC
23 has their quality assurance review, whereas one
24 surveyor may see one thing and another surveyor may
25 see an entirely different thing when they survey.

1 That's why they go through a QA process.

2 MR. DAVIDSON: Have you got pages after
3 this?

4 MS. HARRISON: That's all I have, Will.

5 MR. DAVIDSON: Just for the record, it
6 looks like it just ends.

7 MS. HARRISON: That's what I have.

8 MR. STEGMAIER: There are at least seven
9 more pages ahead of this. You've shown Dr. Johnson
10 page 8 and 9.

11 MS. HARRISON: This is what I have.

12 MR. STEGMAIER: Well, it was faxed to you
13 and it has pages 8 and 9.

14 MS. HARRISON: I will try to find the rest
15 of those. Would you like to have that?

16 MR. STEGMAIER: Yes, I would. And the
17 other thing I would like to have -- are you
18 representing that this letter dated December 9,
19 2003, from Ms. Pace to Gilda Williams would have
20 been accompanied by these two pages?

21 MS. HARRISON: Oh, no. I have no idea. I
22 don't know what that process is. Apparently it
23 appears that one I received by fax and one must
24 have come another way. So I would suggest that
25 they are not. But I don't know. I'll have to find

1 the other pages.

2 MR. DAVIDSON: Let's mark the Federal
3 Survey Team as 41. And I would like to -- if there
4 are other pages that go with it, we'd like to see
5 that.

6 And quite honestly, if you did a FOIA
7 request, I'd like to see what that was just so we
8 can make sure that's responsive to this -- or this
9 is responsive to that.

10 MS. HARRISON: And I will look for that,
11 and I have no idea if I'll be able to find that.

12 (DEPO. EXH. 41, Wire Road II Federal
13 Survey Team, was marked for identification.)

14 BY MS. HARRISON:

15 Q. So you don't as a matter of course talk to
16 the surveyors yourself?

17 A. No, ma'am.

18 Q. Do you think that would be a good idea?

19 A. No.

20 Q. Do you think it might help you resolve
21 some of these chronic problems?

22 A. I think we have resolved several of the
23 problems that were there at the Babcock Center.

24 Q. Now, I'm going to give you a letter dated
25 January 19, 2005, and if we can mark this as the

1 next exhibit.

2 (DEPO. EXH. 42, 1/19/05 Letter, was marked
3 for identification.)

4 BY MS. HARRISON:

5 Q. Can you tell me what this is?

6 A. This is a letter -- appears to be a letter
7 from Robert Kerr who was the director of the
8 Department of Health and Human Services addressed
9 to me dated January 19, 2005.

10 Q. And what was the concern he was writing to
11 you about?

12 A. If I could have a chance just to look at
13 the letter real quick again, please.

14 Okay. Thank you.

15 Q. Carolina Medical Review conducted a review
16 of the ICF/MR facilities at Babcock Center, did
17 they not, in 2005?

18 A. That's correct.

19 Q. I guess 2004 was the study, was that
20 right?

21 A. I can't attest to the specific date, but
22 the Carolina Medical Review was there.

23 Q. Do you remember when they were reviewing
24 the Babcock Center?

25 A. Yes.

1 Q. And did you participate in that review?

2 A. To some extent, yes, I did.

3 Q. And it appears from this letter and other
4 letters that I have seen that Carolina Medical
5 Review found that the Babcock Center was not in
6 compliance with federal regulations for operation
7 of ICF/MRs. Is that correct?

8 A. Actually, it says that there was lack of
9 evidence of ongoing active treatment for the
10 clients, is what Mr. Kerr says in his letter.

11 Q. Did you see the other letters that he sent
12 out to other individuals?

13 A. I saw some of them.

14 Q. The Carolina Medical Review determined
15 that Babcock was not in compliance with federal
16 Medicaid regulations, didn't they?

17 A. I don't think they specifically cited it
18 that way. I think they -- do you have the report
19 in front of you? Can I refer to it?

20 Q. I think it's already in the record, but I
21 don't have it -- I can get it when we take another
22 break.

23 A. Thank you.

24 Q. Did Mr. Kerr speak with you personally
25 about his concerns about this?

1 A. He met with me before the Carolina Medical
2 Review came in, and he told me that he had received
3 a series of complaints from you personally about
4 the Babcock Center and that the complaints had
5 continued and continued and continued, and he felt
6 it was important perhaps to bring in an independent
7 group to look at our facility.

8 Q. And what did that independent group find?

9 A. The Carolina Medical Review was brought in
10 to look at our ICF/MR facilities, and they did not
11 feel that we would necessarily meet the federal
12 requirements as it relates to compliance with
13 intermediate care facilities.

14 I will note that the Carolina Medical
15 Review had no experience with the regulations of
16 Title 19 under the intermediate care facilities for
17 the mentally retarded as surveyors.

18 Q. Now, they were selected by Mr. Kerr and
19 the State Medicaid agency, were they not?

20 A. I don't know who selected them.

21 Q. Do you have any idea why Mr. Kerr and the
22 State Medicaid agency would select a quality review
23 organization that didn't know what they were doing?

24 A. No, I don't.

25 Q. But you don't believe that they were

1 qualified to review you?

2 A. That's correct.

3 Q. And do you believe that you were in
4 compliance with federal Medicaid regulations?

5 A. I can tell you since they've been there
6 we've been in compliance.

7 Q. So did they help you get into compliance?

8 A. Not necessarily, no.

9 Q. Tell me about the other lawsuits that have
10 been brought against the Babcock Center while
11 you've been there.

12 A. As I stated earlier, I don't think I'm
13 going to be able to recall everything. I had
14 mentioned that there were some employment, but you
15 weren't interested in the employment. You're
16 interested in the people that we support. Is that
17 accurate?

18 Q. Well, let's talk about the abuse and
19 neglect allegations. I'd like to know about
20 settlements as well as actual lawsuits.

21 A. If you could give me initials of some that
22 you know, then I'd be more than happy --

23 Q. Why don't you tell me about the ones that
24 you know and then if you miss some I'll help you.

25 Are there any ongoing at the present time?

1 A. Yes, there are.

2 Q. And tell me about those, just initials.

3 MR. STEGMAIER: Hold on. As to abuse and
4 neglect or any litigation?

5 BY MS. HARRISON:

6 Q. Well, any litigation. What's ongoing?

7 A. There is one current lawsuit where the
8 Babcock Center and DART are named defendants in an
9 injury involving an individual who fell off a DART
10 lift and was injured.

11 Q. And what's the status of that lawsuit?

12 A. It's in litigation and they're still going
13 through --

14 Q. Are you named personally or the agency?

15 A. No, the agency.

16 Q. And what other litigation is going on now?

17 A. This one.

18 Q. Yeah, I know about this one.

19 A. I can't recall any other ones. I believe
20 that's it.

21 Q. Now, between the time you arrived, we've
22 talked about KT, we've talked about DT, we've
23 talked about JJ. I believe you were referring to
24 RO. There's the DART lawsuit?

25 A. That's correct.

1 Q. What other lawsuits -- I believe one was
2 settled, was it not, having to do with an alleged
3 sexual assault prior to your coming to the Babcock
4 Center?

5 A. Alleged sexual assault? Prior to me
6 coming to Babcock Center --

7 Q. The Madison case.

8 A. Oh, I'm sorry. Yes.

9 Q. What were the allegations of that lawsuit?

10 A. I can't cite the specifics. I apologize.
11 I know it had to do with an individual who left her
12 location and met up with friends, and when she came
13 back to the facility, she alleged that in talking
14 with her mother and others that she had been
15 sexually assaulted.

16 Q. And I believe the Babcock Center settled
17 that, what, a year, two years ago, since you've
18 been there?

19 A. That's correct.

20 Q. And how much did the Babcock Center settle
21 that lawsuit for?

22 A. I don't remember.

23 Q. Was it more than \$200,000?

24 A. I truly don't remember.

25 Q. You don't remember?

1 A. No, ma'am.

2 Q. Who -- were you covered by insurance for
3 that?

4 A. Was the Babcock Center?

5 Q. Right.

6 A. To the best of my knowledge they were.

7 Q. Now, who's covering -- what coverage do
8 you have, to your knowledge, for this lawsuit?

9 A. The Babcock Center, I mean, and their
10 insurance coverage.

11 Q. And what company is covering this lawsuit?

12 A. I can't remember.

13 Q. You don't know?

14 A. I haven't talked to them personally.

15 Q. What personal -- you know, you've been
16 sued individually. You're aware of that?

17 A. Yes.

18 Q. Let's talk about you for a little bit.

19 MR. STEGMAIER: And she's not going to
20 answer any questions about her finances or
21 financial holdings or any ability to pay a
22 judgment. That's why we have supplemental
23 proceedings. She's not going to answer one
24 question about it.

25 MS. HARRISON: I don't think that --

1 MR. STEGMAIER: I'm not going to let her
2 answer any of those questions.

3 MS. HARRISON: We'll just reconvene, then.

4 MR. STEGMAIER: No, you make your motion
5 if you want to make your motion.

6 MS. HARRISON: Okay.

7 BY MS. HARRISON:

8 Q. What jobs have you had where you've
9 received compensation other than your work at the
10 Babcock Center?

11 A. In my life?

12 Q. No. I mean since you've come here, what
13 other --

14 A. The only thing that I'm aware of is I have
15 been asked to be an expert witness in a case.

16 Q. And what case is that?

17 A. It's a case in -- wrongful death case in
18 Florida.

19 Q. And what's the name of the case?

20 A. Jennifer McDonald is the plaintiff, or it
21 might be her parents are the plaintiff.

22 Q. And what court is that in?

23 A. I don't know.

24 Q. Who contacted you about that?

25 A. An attorney from Jacksonville.

1 Q. What was his name?

2 A. A female.

3 Q. Her name.

4 A. I apologize, I have name blocks all the
5 time. Teresa is her first name, and I can furnish
6 you that information later, I just don't have that
7 right in front of me.

8 Q. And when is that trial expected?

9 A. Sometime in the fall.

10 Q. And what are the facts of that case?

11 A. It surrounds an individual that has
12 Tourette's -- had Tourette's syndrome and was
13 receiving care at a group home in the Jacksonville
14 area. She had some medical complications and she
15 died.

16 Q. And when was that?

17 A. I think it was in 2007. Might have been
18 2008.

19 Q. Now, I'm assuming you sent them
20 information on your qualifications as an expert
21 witness?

22 A. My qualifications -- they wanted a copy of
23 my resume.

24 Q. And I'm assuming you sent them that?

25 A. Yes.

1 Simmons is the attorney's last name.

2 Q. Teresa Simmons?

3 A. Yes, if I remember that correctly.

4 Q. And she's representing the defendant?

5 A. Yes, ma'am.

6 Q. So you're an expert witness for the
7 defendant?

8 A. That's correct.

9 Q. Now, other than your salary with the
10 Babcock Center, have you performed any other work
11 for compensation since 2002?

12 A. Not that I can recall off the top of my
13 head.

14 Q. Have you been a consultant since 2002?

15 A. Not that I can remember.

16 Q. Have you received any compensation outside
17 of your salary from DDSN?

18 A. Other than what I just mentioned, not that
19 I can remember.

20 Q. Now, I believe that there was a bonus that
21 was paid to you since you came to the Babcock
22 Center?

23 A. That's correct.

24 Q. Tell me about that.

25 A. The board of directors felt that I was

1 doing a remarkable job and, as a result,
2 compensated me a bonus of approximately 20,000 -- I
3 think it was \$20,000.

4 The bonus was subsequently returned
5 because there was -- the Department of Disabilities
6 felt that the board of directors had not complied
7 with their bonus policy.

8 MS. HARRISON: And, now, Christian, are
9 you directing her not to answer my questions about
10 her salary?

11 MR. STEGMAIER: She's not going to answer
12 any questions about judgments, abilities to pay
13 judgments. That's why we have supplemental
14 proceedings.

15 MS. HARRISON: Are you saying that you are
16 going to instruct her not to answer my questions
17 about salary?

18 MR. STEGMAIER: If you're going to ask her
19 what her compensation at Babcock Center is, you can
20 certainly ask her that question.

21 MS. HARRISON: And I do want to formally
22 on the record make an objection that we believe
23 this is relevant testimony about the other
24 financial information and that we will make a
25 motion to reconvene and to take that testimony.

1 BY MS. HARRISON:

2 Q. What is your salary now at the Babcock
3 Center?

4 A. The base salary is approximately \$144,000.

5 Q. In addition to the base salary, what --

6 A. It's the -- actually it's less than what
7 you gave me. In addition, I get compensation for
8 vehicle allowance of \$550, same as when you hired
9 me, and I get -- instead of a 6 percent match, I
10 reduced it to a 5 percent match for retirement
11 purposes.

12 Q. Now, when did your salary go from -- in
13 the neighborhood of 120 to 144?

14 A. Throughout the years. Whenever there was
15 a -- whenever there were raises given to State
16 employees, the Babcock Center and all the other
17 provider groups received the same raise. And so
18 whatever --

19 Q. Including your salary?

20 A. -- whatever State employees got, I
21 received.

22 Q. Now, after the 20,000 was paid back, the
23 bonus -- and do you remember what year that was?

24 A. 2003 or four or five, one of those.

25 Q. Was there any increase in your salary

1 other than the increase for -- to go along with the
2 State employment pay?

3 A. For cost of living adjustments, no.

4 Q. Well, when the 20,000 was paid back, was
5 there any corresponding increase in your salary?

6 A. No. Not that I remember, no.

7 Q. So you just paid it back?

8 A. Yes, ma'am.

9 Q. And they didn't increase your salary?

10 A. No, ma'am.

11 Q. Have you ever been compensated for any
12 legal fees you have incurred by the Babcock Center?

13 A. No, ma'am.

14 Q. So none of your legal fees in your other
15 lawsuits that you might have brought were
16 compensated by the Babcock Center?

17 A. No, ma'am.

18 Q. Let's talk about the money that the
19 Babcock Center paid to hire Larry Marchant.

20 MR. STEGMAIER: Ms. Harrison, let me ask
21 this question: Discovery is covered by Rule 26
22 which pertains to the discovery of facts and
23 circumstances that are reasonably calculated to
24 lead to admissible evidence. This is a lawsuit
25 that is primarily of a personal injury case

1 emanating from an alleged act of negligence by
2 Babcock Center in May 2005.

3 At this point in time, I question
4 seriously the relevance of any of this line of
5 questioning as it comports with Rule 26. Before we
6 get into this whole line of questioning about
7 Mr. Marchant, who I have no idea who he is, what is
8 this all about?

9 MS. HARRISON: Well -- and first of all,
10 objections are held other than attorney-client
11 privileges by agreement. Secondly, when the
12 Babcock Center is paying tens of thousands of
13 dollars in bonuses and to lobbyists, that money was
14 money -- I believe was taken away from consumers
15 like Ed Mims so that he didn't have the supervision
16 that he needed to keep him from being sexually
17 assaulted.

18 So when they're taking money that was
19 intended to provide services and they're paying it
20 to lobbyists, I believe that's very relevant. And
21 the Rule's pretty clear that any evidence that is
22 admissible or may be likely to lead to admissible
23 evidence is fair game in a deposition.

24 MR. STEGMAIER: Go ahead and ask your
25 questions.

1 BY MS. HARRISON:

2 Q. Were you involved in the hiring of Larry
3 Marchant?

4 A. Specifically Larry Marchant, no, I was
5 not.

6 Q. Did you know that the Babcock Center was
7 hiring Larry Marchant?

8 A. The Babcock Center did not hire Larry
9 Marchant.

10 Q. The Babcock Center Foundation, I believe?

11 A. Which is a separate legal entity. It's
12 not the Babcock Center.

13 MR. STEGMAIER: Which is not a named
14 defendant in this case.

15 BY MS. HARRISON:

16 Q. What's the relationship between the
17 Babcock Center and the Babcock Center Foundation?

18 A. We are two separate 501c3s. One provides
19 programs and supports for people with disabilities,
20 the other one is a funding agreement. It's a
21 fund-raiser to support the efforts of the Babcock
22 Center.

23 Q. And I believe that, in 2003, there was a
24 finding that money from the Babcock Center was
25 supporting the salaries of the people who were

1 working on the Foundation, was it not?

2 A. I don't remember which audit. I think it
3 was the audit when you were the chairman of the
4 board of directors when the Department of
5 Disabilities did their findings.

6 As a matter of fact, I'm almost sure it
7 was that audit where they said that some of the
8 salaries of the Foundation were paid by the Babcock
9 Center. That is accurate.

10 Q. I believe too, does the Foundation pay for
11 funerals when people die in ICF/MR facilities?

12 A. Sometimes, sometimes not. If the
13 individuals have money or they have burial
14 accounts, that's taken out of that.

15 Q. Now, what was the purpose of hiring -- are
16 you aware that Mr. Marchant is a lobbyist, a
17 registered lobbyist?

18 A. Yes, I am.

19 Q. And I believe that families were told that
20 he was hired to clean up the image of the Babcock
21 Center. Is that correct? Or tell me why he was
22 hired.

23 A. He wasn't hired.

24 Q. He wasn't hired?

25 A. No, ma'am.

1 Q. What relationship did he have with the
2 Babcock Center or the Babcock Center Foundation?

3 A. There was a gentleman named Tony Dendy who
4 is a registered lobbyist that -- and his company
5 was hired by the Babcock Center Foundation.

6 Q. And what is his company?

7 A. I can't remember it. It happened in 2003.

8 Q. Did they discuss that with you?

9 A. Yes.

10 Q. And what was the purpose of this lobbyist
11 being hired?

12 A. He was also in governmental relations, and
13 he was to assist the Babcock Center in improving
14 their image as a result of the attack that we had
15 received for many months once you were asked to
16 resign from the board.

17 Q. And tell me who decided to hire Tony
18 Dendy.

19 A. It was a group -- several of us.

20 Q. Who is several of us?

21 A. The Foundation, board members, myself.

22 Q. Was this discussed with the Babcock Center
23 board?

24 A. I don't remember.

25 Q. Sue Slater?

1 A. It might have been. I don't remember.

2 Q. Was she aware of it?

3 A. She may have been. I don't remember.

4 Q. Did you discuss this with Dr. Butkus or
5 Bill Barfield?

6 A. I can't remember.

7 Q. So you don't remember -- now, did -- at
8 the time Tony Dendy's firm was hired, was there a
9 bill that was going to put the Babcock Center under
10 an umbrella agency -- I'm sorry, that was going to
11 put DDSN under an umbrella agency?

12 A. There could have been. There's been
13 several bills that were going to put DDSN -- I just
14 can't put the time period with that. That's
15 certainly not why we hired them.

16 Q. Well, tell me more about why you hired the
17 firm.

18 A. I thought I explained that. It's as a
19 result of the continuous attacks that we were
20 receiving as an agency by you and the number of the
21 complaints that we were receiving, the number of --
22 the image that was being portrayed, we needed help
23 because we wanted the truth out.

24 Q. And I'm assuming there was a contract with
25 this Tony Dendy?

1 A. Yes.

2 Q. And I'm assuming that would be a matter of
3 public record?

4 A. Well, I don't know, because it's under the
5 Foundation.

6 Q. And how much did you pay Tony Dendy?

7 A. I don't remember the exact figures at this
8 time.

9 Q. Was it five or \$6,000 --

10 MR. STEGMAIER: When you say you, who are
11 you talking about?

12 BY MS. HARRISON:

13 Q. How much did the Babcock Center Foundation
14 pay? I believe it was five or \$6,000 a month,
15 wasn't it?

16 A. A month? I'm sure not that high.

17 Q. Well, how much do you think it was?

18 A. I don't remember.

19 Q. You don't have any idea?

20 A. No, ma'am.

21 Q. \$30,000 seem like more or less?

22 A. It seems more.

23 Q. 20?

24 A. I'm not going to guess.

25 Q. But those records would be available with

1 the Babcock Center Foundation?

2 A. I'm sure the records are in the Babcock
3 Center Foundation, that's correct.

4 Q. You had a contract with them?

5 A. Yes.

6 Q. And how long did Mr. Dendy work trying to
7 clean up the image of the Babcock Center?

8 A. It was either six months to a year, if I
9 remember correctly.

10 Q. Now, was he cleaning up the image of the
11 Babcock Center Foundation or cleaning up the image
12 of the Babcock Center?

13 A. Both.

14 Q. And specifically, what did he do to clean
15 up the image of the Babcock Center?

16 A. Well, there were several things that he
17 did that helped us be able to manage public
18 relations, respond to media inquiry, talk with
19 legislators, assist us in responding to requests
20 from legislators on information. Those are
21 examples.

22 Q. And so did he give you like a handbook or
23 specifically what did he --

24 A. There were several meetings.

25 Q. Several meetings with whom?

1 A. With him and Larry Marchant, members of
2 the board, and myself.

3 Q. Did he meet with any legislators?

4 A. I'm sure he did, yes.

5 Q. And tell me about those meetings.

6 A. Well, there were several times when he
7 would introduce me to legislators. He would take
8 me to their office. It was my first time for
9 meeting them.

10 Q. And what legislators did he take you to
11 meet?

12 A. Oh, my goodness. I can't remember them
13 all. It's been several years, Ms. Harrison.

14 Q. Were they legislators just in the Richland
15 and Lexington area or were some of them outside the
16 Richland and Lexington area?

17 A. Even outside the Richland/Lexington area.

18 Q. Did he take you to meet Senator Knotts?

19 A. I don't know when -- I met Senator Knotts
20 on several occasions. I don't know if my
21 introduction was with Tony Dendy and the senator.

22 Q. Did he take you to meet the governor or
23 anyone on the governor's staff?

24 A. No. I don't know about governor's staff.

25 Q. Did he take you to meet Representative

1 Harrison?

2 A. Not that I can remember.

3 Q. Are there any of the legislators he took
4 you to visit that you remember?

5 A. My goodness. The retired senator from
6 Richland County, very distinguished, and I'm
7 blocking his name. I apologize.

8 Q. Was this Senator Patterson?

9 A. Yes, ma'am, that's who it was.

10 Q. So y'all met with Senator Patterson?

11 A. Yes, we did.

12 Q. How did this meeting go? What did you
13 talk about?

14 A. The Babcock Center and the Babcock Center
15 Foundation and what we were about and the services
16 that we provided.

17 Q. Did you talk about the proposed
18 restructuring?

19 A. No, not that I recall.

20 Q. Would you deny that you talked about the
21 proposed restructuring?

22 A. That never was the intent on our visit, so
23 I don't know what we could have talked about.

24 Q. How long did that meeting last?

25 A. Oh, my goodness. Usually they give you

1 about five minutes, ten minutes max, and you're out
2 of there.

3 Q. Did you visit with more than one
4 legislator when you went down to the Statehouse
5 with him?

6 A. Yes.

7 Q. And how many did you visit?

8 A. I can't remember.

9 Q. Did you go to the senate building and the
10 house building?

11 A. Yes.

12 Q. How many of these were outside
13 Richland/Lexington County and how many were within
14 Richland and Lexington County?

15 A. If I can't remember who I went to, how am
16 I going to remember how many were in one county and
17 how many were in the other?

18 Q. What about Senator McConnell?

19 A. I don't know him.

20 Q. Darryl Jackson?

21 A. I know him.

22 Q. Did you go there with -- was it with
23 Mr. Dendy or Mr. Marchant you went to meet these
24 legislators?

25 A. Primarily Mr. Dendy.

1 Q. And when you met with Representative
2 Jackson, were you with Mr. Dendy?

3 A. I've met with Senator Jackson several
4 times. I can't remember whether Tony was in the
5 room or Judy was in the room because there's just
6 been so many interactions.

7 Q. How many days did you go down to the
8 Statehouse with Tony Dendy?

9 A. Probably three or four.

10 Q. Did you spend all day or --

11 A. No.

12 Q. -- an hour or how long were you there with
13 him?

14 A. It was typically just on the availability
15 of the senators and representatives and their time.
16 So it just varied on their schedules.

17 Q. How many of them were from outside the
18 Richland and Lexington area? Half of them?

19 A. I met several of them in elevators, in
20 hallways, so when you say did he introduce me to,
21 he introduced me to lots of folks.

22 Q. And did they do anything other than take
23 you around to meet these legislators and meet with
24 you and did they do any kind of report?

25 A. As I recall, I told you that they assisted

1 us in preparing some documentation and some media
2 ways in which we could get better publicity and the
3 true story about what was going on at the Babcock
4 Center. Some of that was going on.

5 Q. Now, several times there's been a bill
6 introduced to include the Babcock Center and the
7 Charles Lea Center as boards for purposes of
8 insurance and -- is that correct?

9 A. That's correct.

10 Q. And was that bill pending when you and
11 Mr. Dendy were visiting the --

12 A. Not that I recall.

13 Q. Did you talk about any of that with
14 Mr. Dendy?

15 A. I can't remember.

16 Q. And did you talk with any of the
17 legislators about parity of the Babcock Center with
18 the other boards?

19 A. Certainly.

20 Q. And tell me about that.

21 A. There were -- Ralph Courtney and -- who
22 was the executive director over the Tri-Development
23 Center in Aiken County, and Alice Shook, who's the
24 executive director over Berkeley Citizens, and
25 David Kiely, who at the time was the executive

1 director over at the Charles Lea Center, the four
2 of us met several times.

3 And we all felt that we should be able to
4 get the same benefits as other state employees
5 since we were being treated as a disabilities and
6 special needs board.

7 So I believe Ralph and David have -- I
8 believe that to be true -- came up with a statute,
9 a proposed -- whatever you call that document, to
10 try to get into law that we would be able to
11 comply -- that we would be able to receive those
12 benefits.

13 Q. And when you were talking to these
14 legislators, were you informing them about your
15 feeling that you should be treated as -- this
16 should be parity?

17 A. Certainly. We all -- Alice Shook went to
18 her senators and representatives, and Ralph went to
19 his, and David Kiely went to his, and I went to
20 mine. I mean, that's what we were doing. We were
21 trying to get legislation passed that we would be
22 able to get benefits.

23 Q. And do you recall if Tony Dendy joined you
24 on any of these meetings?

25 A. I don't believe that he did.

1 Q. But that was about the same time, wasn't
2 it?

3 A. No.

4 Q. Tell me the time line.

5 A. Tony Dendy, I want to say, was early on
6 2002, three, 2004. The effort to get health
7 insurance and employee retirement was within the
8 last two years, around 2007.

9 Q. So that wasn't on the table, you weren't
10 talking with the legislators about that?

11 A. Not that I can recall.

12 Q. And did the other boards -- did they have
13 lobbyists too?

14 A. I don't know.

15 Q. I'm assuming the contract with Mr. Dendy
16 is still available in the records of the
17 Foundation?

18 A. It should be.

19 Q. Let's talk about other lawsuits.

20 MR. STEGMAIER: Ms. Harrison, let me give
21 you fair warning. When we had taken the deposition
22 of Ms. Mims last week, that deposition lasted for
23 three and a half hours. And at one point you
24 advised us that you were going to leave and that
25 the deposition was going to be ended after three

1 and a half hours.

2 At this point in time, by my calculation,
3 we were at the two and a half hour mark. By virtue
4 of the rule that apparently was set with Ms. Mims,
5 we've got another hour of this deposition.

6 MS. HARRISON: I think we'll be done in an
7 hour, but I believe that --

8 MR. STEGMAIER: But I wanted to get --

9 MS. HARRISON: -- y'all convinced the
10 judge to say there's no limit on depositions.

11 MR. STEGMAIER: You apparently overrode
12 what the judge had to say and told us you were
13 going to leave after three and a half hours.

14 I appreciate you telling me we'll be done
15 within an hour, but I wanted to give you that fair
16 warning.

17 MS. HARRISON: And I believe that, for the
18 record, Mr. Davidson came in at about -- did we
19 set -- have the time when the deposition started?

20 MR. STEGMAIER: We started at around
21 10:30.

22 MS. HARRISON: Thank you.

23 MR. STEGMAIER: Thank you.

24 BY MS. HARRISON:

25 Q. Other lawsuits, can you tell me about

1 other lawsuits, abuse and neglect lawsuits?

2 A. In my career?

3 Q. No. I'm talking about the Babcock Center,
4 is what I'm interested in.

5 A. Other lawsuits. I can't -- none
6 immediately come to mind.

7 Q. Do you recall a lawsuit brought by Richard
8 Gergel?

9 A. The KT -- I don't know if Richard Gergel
10 mentioned him or not. Can you give me the initial
11 on the consumer?

12 Q. In 2007, do you remember any lawsuits?

13 A. By Richard Gergel?

14 Q. HS.

15 MR. STEGMAIER: Let's go off the record
16 for a second.

17 (Off-the-record discussion.)

18 BY MS. HARRISON:

19 Q. You remember that lawsuit?

20 A. Yes, now I do.

21 Q. And that lawsuit alleged that the Babcock
22 Center was negligent in transferring Cathy Brown,
23 did it not?

24 A. That's correct.

25 Q. And Cathy Brown was dropped, which

1 resulted in a head injury. Is that correct?

2 A. That's correct.

3 Q. And how was that lawsuit settled?

4 A. You mean -- what do you mean how was it
5 settled? You mean what were the monetary damages?

6 Q. Right.

7 A. I don't remember.

8 Q. Was it more than half a million dollars?

9 A. No.

10 Q. Was it more than \$200,000?

11 A. I don't remember.

12 Q. But I'm assuming since she was an
13 incapacitated person there is a court settlement of
14 this lawsuit?

15 A. I would assume so.

16 Q. Tell me about -- in the Madison case, the
17 Babcock Center appeared before the South Carolina
18 Supreme Court, did they not?

19 A. The Babcock Center?

20 Q. Right.

21 A. I believe the attorneys did, yes, that's
22 correct.

23 Q. But y'all were paying the attorneys, were
24 you not?

25 A. I think our insurance was paying the

1 attorneys.

2 Q. And were they -- were you as the director
3 of the agency not calling the shots on that
4 litigation?

5 A. Absolutely not.

6 Q. Who was the calling the shots in the
7 litigation?

8 A. Our attorney.

9 Q. What direction was your attorney being
10 given?

11 MR. STEGMAIER: I think that's -- although
12 we weren't counsel to Babcock in that matter, I
13 think the objecting matter is concerning
14 attorney-client privilege there. So I'm going to
15 instruct Dr. Johnson not to answer those questions.

16 BY MS. HARRISON:

17 Q. Has the board of directors met and
18 discussed the position you're taking in the Madison
19 case or you were taking?

20 A. Yes, with our attorney.

21 Q. And don't tell me about any meetings with
22 the attorney.

23 Can you tell me why the Babcock Center
24 took the position that you had no duty of care to
25 Madison?

1 MR. STEGMAIER: Dr. Johnson's not a
2 lawyer, and this goes to matters of legal strategy,
3 which I think would, again, inject matters
4 concerning the attorney-client privilege, and I'm
5 going to direct her not to answer this.

6 MS. HARRISON: You object to that refusal
7 I believe that it's outside the issue of the
8 attorney-client privilege exception that is the
9 only exception that's allowed in these depositions.

10 MR. STEGMAIER: But it's an ongoing piece
11 of litigation that has yet to be resolved where
12 counsel is still retained, and --

13 MS. HARRISON: No, it's not. It's
14 resolved as to the Babcock Center.

15 MR. STEGMAIER: Well, as far as their
16 strategy concerning -- as far as their strategy
17 concerning what they did or didn't do, that would
18 certainly go to the attorney-client privilege.
19 She's not going to answer the question.

20 MS. HARRISON: The Babcock Center argued
21 as a matter public record that -- the Babcock
22 Center argued that they had no duty of care to
23 protect Madison from sexual assault.

24 MR. STEGMAIER: That's your
25 interpretation.

1 BY MS. HARRISON:

2 Q. What duty of care do you have to protect
3 consumers of the Babcock Center from sexual
4 assault?

5 A. We're responsible to provide day-to-day
6 oversight of individuals with disabilities based on
7 their -- in a disciplinary team process and their
8 level of care and the -- based on their ability to
9 do things themselves.

10 Q. Do you have a duty of care to protect
11 residents of Babcock Center facilities from sexual
12 assault?

13 A. There are always duties of care to protect
14 individuals with disabilities, but there are
15 individuals with disabilities that also make
16 choices regarding certain matters that we don't
17 have a duty of care to.

18 Q. Do you have a duty of care to provide
19 accountability checks?

20 A. We have a procedure and a policy that's
21 developed by the Department of Disabilities and
22 Special Needs that requires all of us to come up
23 with accountability levels for the individuals that
24 we support.

25 Q. And I believe, Dr. Johnson, you wrote the

1 sexual abuse policy that was in effect when this
2 case was argued at the Supreme Court, did you not?

3 A. As the deputy state director?

4 Q. As the deputy state director.

5 A. I could have.

6 Q. And tell me, did you have a duty of care
7 to protect Edward Mims when he was in the ICF/MR?

8 A. Yes.

9 Q. Now, when the incident occurred where his
10 penis was lacerated, his mother obtained a Court
11 order, did she not, to get him out of the facility?

12 A. There was a Court order, but I don't know
13 the exact dates when that happened.

14 Q. Were you in the loop when a decision was
15 made not to allow him to leave the facility?

16 A. No, I was not.

17 Q. Who was in that loop?

18 A. Jean Marlow -- to the best of my
19 recollection, Jean Marlow and Dorothy Goodwin.

20 Q. Now, at what point did you become aware
21 that there was a Court order to remove?

22 A. When I returned from vacation.

23 Q. So you were on vacation when that
24 happened?

25 A. Yes, ma'am.

1 Q. When you returned from vacation, did you
2 speak with anyone at the Department of Disabilities
3 and Special Needs about Edward Mims and what had
4 happened to him?

5 A. I know that Jean Marlow had talked to Jim
6 Hill, the attorney for the Department of
7 Disabilities and Special Needs. I don't remember
8 personally calling anybody else at the Department
9 of Disabilities and Special Needs.

10 Q. So you never talked with Stan Butkus about
11 the Edward Mims case?

12 A. I don't recall having that conversation
13 with Dr. Butkus.

14 Q. And you never talked with Kathi Lacy about
15 Edward Mims?

16 A. To the best of my recollection, I don't
17 remember talking to Dr. Lacy.

18 Q. Now, Edward Mims' sister worked for you,
19 didn't she?

20 A. Yes.

21 Q. And Edward Mims' sister was sent to the
22 courthouse to object to his mother being appointed
23 his guardian, was she not?

24 A. I wasn't there.

25 Q. Did you know about that?

1 A. Not at the time, no.

2 Q. When did you find out about that?

3 A. When I was reading the depositions.

4 Q. So you didn't know that your risk manager
5 and this employee were sent to the court and that
6 Jim Hill argued in opposition of his mother being
7 appointed as guardian?

8 A. No, ma'am. I believe that occurred while
9 I was on vacation.

10 Q. Where were you on vacation?

11 A. Key West.

12 Q. Have you applied for any jobs in the last
13 five years outside of the Babcock Center?

14 A. No, not that I can recall.

15 Q. So you've not submitted any resumes to
16 anyone other than this person that --

17 A. Oh, wait a minute. Yes, I did. Yes, I
18 did.

19 Q. Tell me about that.

20 A. A few years ago, there was an ad in the
21 paper locally, and it had to do with, if I
22 remember, the homeless, which I have a personal
23 passion for, to help folks that are homeless in our
24 community. And it was the executive director, if I
25 remember correctly, for that involvement, and I

1 applied for a position there.

2 Q. Did you get an interview?

3 A. No.

4 Q. Is this an article that came out in the
5 Lexington Chronicle --

6 MR. STEGMAIER: Why don't we mark this
7 first, please.

8 (DEPO. EXH. 43, Lexington Chronicle
9 Article, was marked for identification.)

10 BY MS. HARRISON:

11 Q. Is this an article that came out in the
12 Lexington Chronicle about the Madison case?

13 A. That's correct.

14 Q. And tell me, do you believe this is an
15 accurate assessment of this?

16 A. Do I believe the article is an accurate
17 assessment?

18 Q. Uh-huh.

19 A. I'd have to read the whole article.

20 Q. I'll let you do that.

21 Tell me what you think is not an accurate
22 assessment in this newspaper article.

23 A. I don't feel competent to describe what is
24 or is not accurate.

25 Q. But this is an article about the case that

1 was settled with Madison. Is that not correct?

2 A. That's correct.

3 Q. And I believe another article said that
4 the -- it was settled for \$250,000?

5 A. Can you show me that article?

6 Q. Is that correct? Is that the amount of
7 the settlement?

8 A. I don't remember.

9 Q. What insurance company settled this case?

10 A. I don't remember.

11 Q. Let's take a look at -- if we can mark
12 this next.

13 (DEPO. EXH. 44, 1/12/07 Letter, was marked
14 for identification.)

15 BY MS. HARRISON:

16 Q. And I've handed you, Dr. Johnson, a letter
17 dated January 12, 2007, and this is a letter from
18 Lynda Tyler, right, a letter from Lynda Tyler? Is
19 that correct?

20 A. Yes, ma'am.

21 Q. Now, did she work for you at that time?

22 A. She did.

23 Q. Tell me something about Lynda Tyler.

24 MR. STEGMAIER: Let me ask a question
25 beforehand because this hasn't been produced thus

1 far in the course of discovery. Ms. Harrison, how
2 did you acquire this letter?

3 MS. HARRISON: I got it from the
4 Department of Disabilities.

5 MR. STEGMAIER: Did you obtain it by way
6 of subpoena or FOI or by discovery request?

7 MS. HARRISON: I've had this letter for
8 several years, and it was given to me.

9 MR. STEGMAIER: And who gave you this
10 letter?

11 MS. HARRISON: I've got so many boxes of
12 information I can't tell you who gave me this
13 letter.

14 MR. STEGMAIER: The question I have for
15 you is who gave you this letter?

16 MS. HARRISON: This was given to me -- I
17 don't know. I've got boxes of information.

18 MR. STEGMAIER: Did Mr. Jeffcoat give you
19 this letter?

20 MS. HARRISON: No, it did not come from
21 Mr. Jeffcoat. I know that because Mr. Jeffcoat has
22 not given me documents. A lot of people have given
23 me documents. I've had documents show up
24 anonymously dropped through my mailbox over the
25 last few years, and I could not tell you

1 specifically where, but I can tell you that it
2 didn't come from Mr. Jeffcoat.

3 BY MS. HARRISON:

4 Q. Ms. Tyler worked for you?

5 A. Yes, ma'am.

6 Q. And tell me what her -- do you know
7 anything about her -- she was your director of
8 finance?

9 A. That's correct.

10 Q. And do you know anything about her
11 educational background?

12 A. Not that I can remember.

13 Q. But you hired -- where did she work before
14 you, before she came to you?

15 A. At a company in Greenville, and I can't
16 remember the specific company.

17 Q. Was she with the Greenville board then?

18 A. Prior to that company.

19 Q. So she went from the Greenville board to
20 another company, then she was your finance
21 director?

22 A. Yes, ma'am.

23 Q. Now, Ms. Tyler, she now works for the
24 Charleston DSN board, does she not?

25 A. She left us to go to the Charleston

1 Disabilities and Special Needs Board.

2 Q. Was that a voluntary separation?

3 A. When -- Yes.

4 Q. And you were getting ready to say when.

5 A. She gave her letters of resignation

6 because she was going to the Charleston

7 Disabilities and Special Needs Board.

8 Q. Now, is this a corrective action plan?

9 Tell me what a corrective action plan is.

10 A. Once a year, all disability boards and
11 board-like entities are required to have
12 independent audits from external auditors that
13 would come in and take a look at the financial
14 affairs of the organization. Then the audit
15 results are shared with the Department of
16 Disabilities and Special Needs, and the director of
17 internal audit, or Mr. Steve Jeffcoat, would have
18 gotten a copy.

19 Then, as per policy, any audit findings
20 that were developed, the provider is required to
21 write a corrective action plan in terms of what
22 they plan to do to address those concerns.

23 Q. Now, there's handwritten notes on page 2
24 and three and four. Do you know who wrote those
25 notes?

1 A. I do not.

2 Q. You don't recognize that handwriting?

3 A. No.

4 Q. It appears the audit scheduled finding --
5 that that was a repeat from '04 and '05. Is that
6 correct that that was a repeat finding?

7 A. I don't remember.

8 Q. Do you remember if --

9 A. It appears that it could have been Steve
10 Jeffcoat that made these because he would have had
11 the corrective action plans for every year.

12 Q. So do you recognize that as his
13 handwriting?

14 A. No. But somebody had them, had the audits
15 from previous years.

16 Q. Who would have those?

17 A. I said we sent them to the Department of
18 Disabilities and Special Needs every year. We also
19 sent them to our board of directors.

20 Q. So who at the Department would have this
21 letter?

22 A. The director of internal audit.

23 Q. Would anyone else at the Department?

24 A. I don't know where they go. We send our
25 reports to the director of internal audit, as I

1 remember.

2 Q. I'm assuming that these are -- this would
3 be a public document, would it not?

4 A. I believe that it would be.

5 Q. And someone could get this through a FOIA
6 request?

7 A. Yes, ma'am, should be able to.

8 Q. I'm assuming if someone wrote you a FOIA
9 request they could get this document and other
10 documents like this?

11 A. Certainly.

12 Q. And do y'all have other corrective action
13 plans? How long do you keep the corrective action
14 plans?

15 A. I believe we have them for, you know, a
16 number of years.

17 Q. So those would be available?

18 A. They should be.

19 Q. So this isn't some kind of secret
20 document, is it?

21 A. No, ma'am.

22 Q. So it appears that a number of these
23 findings are repeat findings, and you don't recall
24 whether -- if you'll look through each one of them
25 and tell me your recollection. Are these notes

1 accurate that these are repeat findings?

2 A. Can I have the chance to read it, please?

3 Q. Sure.

4 A. As it relates to item number one under
5 audit schedules, when Lynda came to the agency, we
6 were using a -- as I remember correctly, a
7 self-made MS-DOS accounting system that was very
8 antiquated that had been built by our previous IT
9 manager, and we needed to have it replaced.

10 So doing a lot of the fieldwork and
11 schedules for the audit, because I believe Lynda
12 came around the spring, was very difficult for her
13 to pull out all that information together. So as a
14 result of that -- well, you can see what the
15 finding was. We have since bought a new accounting
16 package.

17 Q. Where did you buy that package from?

18 A. We did the procurement under the South
19 Carolina Procurement Code, and it came from
20 Blackbaud.

21 Q. Now, the software you were using, I
22 believe there was an individual Russ --

23 A. Yes.

24 Q. -- who was doing your computer work, was
25 he not?

1 A. When you were on the board, yes, Russ
2 Bunting.

3 Q. And how long did he stay at the Babcock
4 Center?

5 A. After I got there in 2002, I want to say
6 he stayed for a couple years perhaps. I can't be
7 specific.

8 Q. And do you remember what his salary was?

9 A. No, I don't. I know it was very high.

10 Q. And was he the one doing these accounting
11 systems?

12 A. He assisted with those, that is correct.

13 Q. And was he being paid somewhere in the
14 neighborhood of \$120,000 a year to do that?

15 A. I don't think it was that high, but it was
16 very high.

17 Q. Do you disagree with these notes on here
18 that these were repeat findings?

19 A. Without having the plans in front of me, I
20 don't want to attest that that -- that somebody's
21 handwritten notes are accurate.

22 Q. Do you remember that it was a repeat
23 finding for several years on the audit schedules?

24 A. Well, it says several -- you must be
25 defining as 2005, 2004. That's what the

1 handwritten note says.

2 Q. Which is a repeat schedule for every
3 year -- for those years?

4 A. I don't remember. I'd have to see it in
5 front of me.

6 Q. So you probably wouldn't remember whether
7 these were repeat findings?

8 A. Do you want me to look at the next?

9 Q. Yeah, if you'll look through and tell me
10 if you remember whether or not these were repeat
11 findings.

12 A. Okay. And your question is?

13 Q. Are those repeat findings?

14 A. I can't remember. I know, you know, we
15 have audits every year and there have been repeat
16 findings noted on some of those. I can't be
17 specific to the categories.

18 Q. Do you remember an employee named Debbie
19 Wofford?

20 A. I do.

21 Q. And did she -- did you deny her
22 unemployment benefits when she applied for them?

23 A. Did I deny Deborah Wofford unemployment
24 benefits? No, I did not.

25 Q. Did the agency?

1 A. I don't remember.

2 Q. Do you remember if there was a finding by
3 the Employment Security Commission that she was a
4 victim of reprisals?

5 A. I know that you spoke on her behalf.

6 Q. Do you remember what the result of that
7 hearing was?

8 A. Sorry, I don't. That would have been in
9 2002, it's now 2009.

10 Q. I believe that would have been in 2003,
11 was it not?

12 A. I don't -- I don't remember. I know she
13 did not stay very long when I came. She was only
14 there for a few months, if I remember correctly.

15 Q. Were you -- was she reporting to you that
16 employees felt like there were reprisals when they
17 reported abuse and neglect? Did she ever tell you
18 that?

19 A. She was reporting that to you as our board
20 chairman.

21 Q. Well, I believe I resigned in September of
22 '02.

23 A. If I remember correctly, you were asked to
24 resign, and then you did resign in September of
25 2002.

1 Q. And what is your recollection about who
2 asked for the chairman's resignation?

3 A. My recollection is I was present at a
4 phone conversation that Ira Zolin and Elizabeth
5 Tuck made directly to you, and Ira Zolin and
6 Elizabeth Tuck were on our board of directors.
7 Jean Marlow was also present.

8 Q. Did you have any discussions with
9 Dr. Butkus about the resignation of the chair?

10 A. When?

11 Q. During that period of time, during 2002.

12 MR. STEGMAIER: I'm sorry, who was the
13 chairman?

14 MS. HARRISON: I was the chairman.

15 MR. STEGMAIER: Thank you.

16 BY MS. HARRISON:

17 Q. Did you have any discussions with
18 Dr. Butkus?

19 A. I had lots of discussions with Dr. Butkus
20 during that time.

21 Q. Tell me about the discussions with
22 Dr. Butkus.

23 A. I mean, there were several matters going
24 on. I can't note -- I can't sit here and recall a
25 specific conversation about you with Dr. Butkus.

1 Q. Do you recall conversations with
2 Dr. Butkus about abuse and neglect problems at the
3 Babcock Center?

4 A. Over the years there were issues that we
5 would discuss about abuse and neglect around the
6 state and certainly at Babcock Center.

7 Q. And you don't remember discussing with
8 Dr. Butkus the need to get rid of the chair because
9 she was asking too many questions?

10 A. Absolutely not.

11 Q. What do you remember about the discussions
12 with Dr. Butkus?

13 A. As I've said, I don't recall talking to
14 Dr. Butkus specifically about you or your removal
15 during that time. Your removal was based on the
16 fact that I was ready to quit. I could not take
17 your micromanagement of the Babcock Center and your
18 insistence that I fire a number of individuals when
19 the attorney advised otherwise.

20 Q. Do you have any documentation, anything in
21 writing instructing you to fire anyone?

22 A. I have a series of e-mails from you, or
23 had -- I'd have to go back and find them. I'm sure
24 you have them -- where you talked about several
25 employees at the Babcock Center being criminals and

1 several people at the Babcock Center failing to
2 report abuse.

3 And then, you know, we had the secret
4 meeting at your cabin where other board members
5 were not involved with where we also talked about
6 the need to fire a number of individuals at the
7 Babcock Center.

8 Q. Did the limited scope audit confirm --
9 conducted by the Department of Disabilities and
10 Special Needs -- that there were significant
11 problems at the agency?

12 A. Is that the audit when you were the board
13 chair?

14 Q. That's -- I believe that came out in '03.

15 A. No, the limited scope audit came out --
16 was coming out when I came in 2002, and that's when
17 you were chair.

18 Q. But I believe it came out in '03, did it
19 not?

20 A. The draft came out in '02, and remember
21 that's when it was released to the local paper.

22 Q. I think that we're talking about two
23 different audits.

24 A. Could be.

25 Q. HHS in '02 or early '03 directed DDSN to

1 do a limited scope audit after that initial audit
2 of DDSN, did they not?

3 A. There were so many audits. Whether that
4 was done by Health and Human Services, the
5 Department of Disabilities and Special Needs, DHEC,
6 Centers for Medicare, Medicaid, you know, if you
7 could show me the document, I'd be able to be more
8 specific.

9 Q. Just a minute. And that's in the record,
10 but I'll get one for you to refresh your
11 recollection.

12 Maybe this will refresh your recollection.

13 MR. STEGMAIER: Let's mark this as 45,
14 please.

15 MS. HARRISON: This is already in the
16 record.

17 MR. STEGMAIER: I know, but we're going to
18 mark this one.

19 (DEPO. EXH. 45, South Carolina Department
20 of Health and Human Services Audit, was marked for
21 identification.)

22 BY MS. HARRISON:

23 Q. What's the date of that audit?

24 A. This audit was not done by the Department
25 of Disabilities and Special Needs.

1 Q. Who was that by?

2 A. It was completed by the South Carolina
3 Department of Health and Human Services, and it's
4 dated October 2003.

5 Q. Did that find some significant problems at
6 the Babcock Center?

7 A. Yes, it did.

8 Q. And that was a year and a half after you
9 first came to the Babcock Center, was it not?

10 A. About a year and a half, year and three
11 months when I became full time.

12 Q. And that was over a year after the
13 chairman resigned, was it not?

14 A. Yes, but they looked back over several
15 years prior to your resignation.

16 Q. Now, subsequent to that audit, there was
17 another audit of the MR/RD waiver by the Department
18 of Health and Human Services, was there not?

19 A. After this?

20 Q. Right.

21 A. But I can't tell you if it was before or
22 after. As I mentioned earlier, there were several
23 audits, as you know, Ms. Harrison. But there was
24 an audit of the Department of Disabilities and
25 Special Needs by Health and Human Services, that's

1 correct.

2 Q. And it specifically talked about the
3 problems at the Babcock Center, did it not?

4 A. Can you show me the document and show me
5 what you want specifically?

6 MR. DAVIDSON: Let's take a short break.

7 (A recess transpired.)

8 BY MS. HARRISON:

9 Q. This is the February 28, 2006, audit,
10 which is already in the record. I wanted to ask
11 you to read the -- I believe it's on page 19 and
12 20, or is it 18 and 19, the highlighted --

13 A. Is it the limited scope?

14 MR. DAVIDSON: Which one do you want her
15 to read out of?

16 MS. HARRISON: The February 2006 audit by
17 HHS.

18 MR. DAVIDSON: Mark it.

19 MR. STEGMAIER: We'll mark this one as 46.

20 (DEPO. EXH. 46, 2/28/06 Audit by South
21 Carolina Department of Health and Human Services,
22 was marked for identification.)

23 BY MS. HARRISON:

24 Q. Are you familiar with this February 2006
25 audit by the Department of Health and Human

1 Services?

2 A. Yes. This audit is a review of the MR/RD
3 waiver as operated by the South Carolina Department
4 of Disabilities and Special Needs.

5 Q. And I've highlighted several sections I'd
6 like for you to read for me from pages -- is it 18
7 and 19 or 19 and 20?

8 A. What's difficult is it is cut off at the
9 bottom.

10 Q. Check the two pages before, maybe you can
11 figure out which page that is.

12 A. The page that follows 18. So it could be
13 19.

14 Q. Read the highlighted portions for me.

15 A. It says, the number of deficiencies cited
16 by DDSN state licensing division. Deficiencies
17 found in multiple residential facilities, many of
18 which were repeat issues from prior licensing
19 surveys. Babcock did not adequately address or
20 correct all findings in its first corrective action
21 plan.

22 Q. And continue with the highlighted
23 portions.

24 MR. STEGMAIER: Keep in mind the court
25 reporter's taking down what you're saying, so if

1 you'd slow down a little bit.

2 THE WITNESS: I'm sorry.

3 I'm turning the page over, so what appears
4 to be perhaps page 20. The items that have been
5 underlined include the statements: The
6 deficiencies were repeat findings from the 2003
7 review, and many were found in multiple facilities.
8 A total of 409 residential deficiencies were cited
9 by DDSN licensing and are categorized as follows,
10 and you've not highlighted that chart.

11 MR. STEGMAIER: But the chart for purposes
12 of the record is table five entitled licensing
13 deficiencies by deficiency and facility type.

14 THE WITNESS: And underneath the table,
15 the highlighted comments are: Some significant
16 deficiencies noted by the surveyors included:
17 Consents for psychotropic medications were
18 falsified for one consumer and training data was
19 falsified for another client; Babcock did not
20 report one critical incident as required by DDSN
21 policy 533-02-PD, parentheses, sexual assault and
22 incident procedure follow-up, end of parentheses;
23 some homes were unsanitary, quotation, dot, dot,
24 dot, to the point of being uninhabitable, dot, dot,
25 dot, end of quotation, and in need of repairs and

1 maintenance; kitchens and bathrooms were,
2 quotation, very dirty, end of quotation, with
3 broken appliances, water damage and rotten
4 cabinets; caregivers in all CTH IIs and SLPs failed
5 to have DSS child abuse and neglect central
6 registry checks performed; medication technician --
7 sorry -- the next one, for many consumers, training
8 goals and objectives assigned or not functional,
9 based on a true need, and based on assessments;
10 physical and dental exams were not completed
11 annually or as ordered; medications were not being
12 kept under proper conditions; medications in one
13 SLP II were found to be unsecured without staff
14 present; the surveyors noted approximately five
15 pages of medication errors.

16 BY MS. HARRISON:

17 Q. Were those findings of the Department of
18 Health and Human Services?

19 A. Actually, no.

20 Q. Those were findings of the Department of
21 Disabilities and Special -- who made those
22 findings?

23 A. If you go to the previous page, it's --
24 the Health and Human Services report says we
25 reviewed DDSN's 2004 annual licensing survey

1 reports.

2 Q. So that's what the annual licensing survey
3 reports found when they reviewed the Babcock
4 facilities. Is that correct?

5 A. That's correct.

6 Q. Now, there was another audit, was there
7 not, that came out in December of --

8 A. Excuse me, because the dates include for
9 this report 2002, 2000 -- when you were chair,
10 2003, 2004, as well as the recently finished report
11 2005. So they could have gone back to several
12 years and cited deficiencies.

13 Q. And you were there during all those years?

14 A. Well, I wasn't there during the whole
15 2002..

16 Q. But you came in May 2002?

17 A. I did part time.

18 Q. There was another audit, was there not,
19 after this one by the Legislative Audit Council?
20 Is that correct? Are you familiar with that audit?

21 A. The Legislative Audit Council surveys lots
22 of folks. Are you talking about the one that
23 refers to the Department of Disabilities and
24 Special Needs?

25 Q. Right, the December '08 audit by the South

1 Carolina Legislative Audit Council --

2 A. Yes, ma'am.

3 Q. -- did it find that there continued to be
4 problems at the Babcock Center?

5 A. It cited the same things that had been
6 cited in previous years, that's correct.

7 Q. Now, tell me a little bit -- and we're
8 about to wrap up. I'm getting hungry, I don't know
9 about y'all.

10 Tell me, is the Babcock Center an arm of
11 the State?

12 A. As I mentioned earlier, we're a 501c3
13 private not-for-profit corporation.

14 Q. So it's a private company?

15 A. We're a charitable organization, 501c3.

16 Q. So you're not an arm of the State of any
17 sort?

18 A. I don't know what you mean by that.

19 Q. I mean are you totally independent of the
20 South Carolina Department of Disabilities and
21 Special Needs?

22 A. Absolutely not.

23 Q. Tell me what your connection is with the
24 Department of Disabilities and Special Needs.

25 A. We wouldn't exist if there wasn't a

1 Department of Disabilities and Specialty Needs.

2 Q. So what is your relationship with the
3 director of the Department of Disabilities and
4 Special Needs?

5 A. What do you mean by what is my
6 relationship?

7 Q. Well, if you're a part of them, if you
8 have this close connection with them, what is your
9 relationship?

10 A. For the past several hours now, we've
11 talked about the Babcock Center being treated as a
12 disabilities and special needs board since the
13 1980s. Although it may not be specified under the
14 enabling legislation, that's how we and three other
15 disability agencies, also 501c3s, have been
16 treated. So when State employees get raises, we
17 get raises. The DDSN policies and procedures that
18 apply to State employees apply to us.

19 Q. Does the State Ethics Act apply to you?

20 A. Yes, we're expected to sign State ethics
21 every year.

22 Q. Now, if you have that kind of connection
23 with DDSN, who at the top level of DDSN do you most
24 frequently communicate with?

25 A. All depends on the issue.

1 Q. Generally speaking, who are the people you
2 have the most contact with?

3 A. Dr. Lacy, Dr. -- I'm sorry, David Goodell,
4 Bill Barfield, typically.

5 Q. And Dr. Lacy, tell me what your -- you
6 communicate with her about.

7 A. Policy decisions, interpretation of
8 waiver, situations that have involved consumer
9 choice, service coordination, lots of things.

10 Q. Who at the Department have you talked
11 about Ed Mims with?

12 A. Goodness. Nobody that I recall recently.

13 Q. In any year, who have you communicated
14 with at the Department of Disabilities about Edward
15 Mims?

16 A. I can't remember any specific person about
17 Edward Mims. Perhaps I'm getting tired, but I just
18 can't pull a name out of the hat. Do you want to
19 talk about a conversation I may have had?

20 Q. Well, who have you --

21 A. I can't remember.

22 Q. Have you talked with Dr. Lacy about Edward
23 Mims?

24 A. Not that I recall.

25 Q. And what about Dr. Butkus?

1 A. Not that I recall at all.

2 Q. Have you had any meetings with
3 Dr. Laurent?

4 A. Personal, no. I've been at a Commission
5 meeting where he was introduced and said hello,
6 those kind of things.

7 MS. HARRISON: Well, with the reservation
8 under our objections to your instructing the
9 witness not to provide information about insurance
10 information or financial information, I think I'm
11 through, but I do reserve upon our motion the right
12 to recall this witness.

13 MR. STEGMAIER: That's assuming the Court
14 grants that motion.

15 MS. HARRISON: Well, that's usually the
16 way that works.

17 MR. STEGMAIER: None of us in here are a
18 circuit judge.

19 I don't have any questions. Mr. Davidson?

20 MR. DAVIDSON: No.

21 (The deposition concluded at 1:53 p.m.)
22
23
24
25

SIGNATURE OF DEPONENT

I, the undersigned, JUDY JOHNSON, have read the foregoing deposition consisting of 141 pages which was reported by Gina M. Smith, Notary Public in and for the State of South Carolina on July 2, 2009.

I find the transcript of this deposition to be a true and accurate transcript according to my testimony on that date with the exception of the corrections as listed on the attached correction sheet, which was filled in by me.

JUDY JOHNSON

_____, 2009

1	ERRATA PAGE		
2	PAGE	LINE	CHANGE AND/OR CORRECTION
3			(AND EXPLANATION)
4	_____	_____	_____
5	_____	_____	_____
6	_____	_____	_____
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17	_____	_____	_____

18
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
26 DATED: _____
27 _____
28 JUDY JOHNSON

1 CERTIFICATE OF REPORTER

2 I, Gina M. Smith, Registered Professional
3 Reporter and Notary Public for the State of South
4 Carolina at Large, do hereby certify:

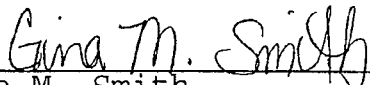
5 That the foregoing deposition was taken
6 before me on the date and at the time and location
7 stated on page 1 of this transcript; that the
8 deponent was duly sworn to testify to the truth,
9 the whole truth and nothing but the truth; that the
10 testimony of the deponent and all objections made
11 at the time of the examination were recorded
12 stenographically by me and were thereafter
13 transcribed; that the foregoing deposition as typed
14 is a true, accurate and complete record of the
15 testimony of the deponent and of all objections
16 made at the time of the examination to the best of
17 my ability.

18 I further certify that I am neither related
19 to nor counsel for any party to the cause pending
20 or interested in the events thereof.

21 Witness my hand, I have hereunto affixed my
22 official seal this 11th day of July, 2009, at
23 Columbia, Richland County, South Carolina.

24

25


Gina M. Smith
RPR, CSR, Notary Public,
State of South Carolina
at Large.
My Commission expires
July 23, 2013.

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1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND

3
4 EDWARD MIMS, BY AND THROUGH
5 HIS LEGAL GUARDIAN,
6 MARGARET MIMS,

7 Plaintiff,

Case No.: 07-CP-40-03365

8 vs

9 BABCOCK CENTER, JUDY JOHNSON,
SCDDSN, KATHI LACY,
10 STANLEY BUTKUS,

EXHIBITS

11 Defendants.

12 D E P O S I T I O N

13 WITNESS: JUDY JOHNSON

14 DATE: Thursday, July 2, 2009

15 TIME: 10:27 a.m.

16 LOCATION: Law Office of Patricia Harrison
611 Holly Street
Columbia, South Carolina

17 TAKEN BY: Attorneys for the Plaintiff

18 REPORTED BY: GINA M. SMITH
19 Certified Shorthand Reporter
20 Registered Professional Reporter

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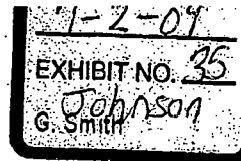
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DJ 168-67-86



4/6/95

CRIPA Investigation



MR-SC-001-001

Recommendation to Investigate
Whitten Center
Clinton, South Carolina

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Arthur E. Peabody, Jr.
Chief
Special Litigation Section

INTRODUCTION

We recommend that the Department initiate an investigation into the conditions of confinement at the Whitten Center ("Whitten") in Clinton, South Carolina, pursuant to its authority under the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 et seq. Whitten is a state-operated institution housing approximately 800 developmentally disabled children and adults.

Residents of state-operated facilities for the developmentally disabled and mentally retarded have a fundamental Fourteenth Amendment due process right to reasonable safety, adequate medical care and training. Youngberg v. Romeo, 457 U.S. 307 (1982). Such training must be sufficient to protect each resident's liberty interests and permit each resident an opportunity to function as independently as their individual handicapping conditions permit. See, e.g., Halderman v. Pennhurst State School & Hosp., 154 F.R.D. 594 (E.D. Pa. 1994); United States v. Tennessee, No. 92-2062, slip op. at 12 (W.D. Tenn. Feb. 17, 1994); Thomas S. by Brooks v. Flaherty, 699 F. Supp. 1178 (W.D.N.C. 1988). See also 42 C.F.R. § 483.440.

Information we have obtained indicates that residents of Whitten are being harmed and exposed to unreasonable risks of ~~harm in violation of their constitutional and statutory rights.~~ ~~Alleged unconstitutional conditions include abuse and neglect of residents, inadequate medical and psychiatric care, and failure to provide residents with adequate training.~~ ~~Such deficiencies subject residents at Whitten to unreasonable risks to their personal safety and violate their constitutional rights.~~ ~~In addition, Whitten is a large and isolated institution which unduly segregates its residents from the rest of society solely on the basis of their disabilities. As a result, the facility is failing to provide services to its residents in the least separate, most integrated setting as required by the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101 et seq.~~

cc: Records Chrono Peabody Frohboese Farano Wilkinson Hold

Mims 1065

and Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794 et seq.

POSSIBLE VIOLATIONS

- A. The State Fails to Ensure that Whitten Residents are Free from Abuse and Neglect.

Abuse

Abuse against clients is far more prevalent at Whitten than at any other similar state-run facility in South Carolina.^{1/} A recent state-generated compilation of total abuse incidents at all the South Carolina institutional facilities reveals that in fiscal year 1992-93^{2/}, Whitten had forty-four separate allegations of abuse.^{3/}

Another local advocate indicated that there is "plenty" of staff abuse at Whitten.^{3/} She indicated that the Whitten staff regularly "whup their young'ins" at home, so it's natural that they would carry the same attitudes with them to work.^{4/} Naturally, this can lead to abuse of the residents. This account is corroborated by a Whitten parent who indicated that the staff at the facility can be "violent."^{5/} Last Fall, she noticed that one resident had a clearly marked shoe print on his buttock area revealing that he had been kicked.^{6/}

State surveyors, who annually enforce the Health Care Financing Administration's ("HCFA") Title XIX regulations, have noted that Whitten staff are abusive in that they verbally insult residents. For example, for one resident with a urostomy bag, a staff member commented, "She can't come over here smelling like

^{1/} Telephone Interview with Kimberly McAllister, South Carolina Protection & Advocacy System for the Handicapped, Inc., May 10, 1994.

^{2/} Id.

^{3/} Telephone Interview with Sharon Bellwood, Regional Coordinator, South Carolina Protection & Advocacy System for the Handicapped, Inc., May 10, 1994.

^{4/} Id.

^{5/} Telephone Interview with Jean Shirley, parent of a Whitten resident, September 14, 1994.

^{6/} Id.

this ... The smell burns my eyes."⁷/ The surveyor noted that the client was aware of the comment.⁸/ Staff also refer to adult clients inappropriately as "baby," "good little girl," "sweetie" or good boy."⁹/ Moreover, contrary to state law, the facility is failing to report the results of all abuse and/or neglect investigations to the administrator or other officials in a timely fashion.¹⁰/

The local Protection and Advocacy ("P&A") group expressed concerns about the compromised impartiality of the Whitten abuse and neglect investigator, stating "[w]e have some questions about the investigator being a paid department employee."¹¹/ A parent of a client at the facility indicated that "there IS abuse" occurring at Whitten and that it occurs everyday.¹²/ She indicated that many of the incidents are not uncovered because the Whitten internal investigator is not to be trusted. In fact, she indicated that she trusts the Whitten abuse investigator "as far as she can throw him."¹³/ The parent implied that the Whitten facility director, Judy Johnson, may aid in covering up the truth. The parent said that the director "talks out of both sides of her mouth" and that she "tells parents what they want to hear regardless of the truth."¹⁴/

Neglect

It is clear that the staff at Whitten subject the residents to neglect. For example, on a recent site visit by Title XIX surveyors, they found that for over an hour, no staff intervened to assist one Whitten client who had urinated in her pants.¹⁵/

⁷/ State Title XIX survey conducted for the Health Care Financing Administration ("HCFA Survey"), March 19, 1993, at 31.

⁸/ Id.

⁹/ Id.; HCFA Survey, June 16, 1993, at 17.

¹⁰/ HCFA Surveys, August 26, 1993, at 6, March 17, 1994, at 1.

¹¹/ Letter from the South Carolina Protection & Advocacy System for the Handicapped, Inc. ("P&A Letter"), Sharon Bellwood, Regional Coordinator, Genia Batson, Institutional Advocate, Mary Barr Behlke, PAIMI Advocate, June 7, 1994 at 2.

¹²/ Telephone interview with Jean Shirley, September 14, 1994.

¹³/ Id.

¹⁴/ Id.

¹⁵/ HCFA Survey, June 16, 1993, at 7.

Staff also neglected to intervene to stop one female resident who had been repeatedly hitting her head on her knee.^{16/} Similarly, staff failed to intervene to assist a blind client who was sitting on a couch hollering and hitting himself for ten minutes.^{17/} The surveyors found that the staff allowed many residents to leave the dining area with food on their mouths and faces.^{18/} ~~The staff also subject the Whitten residents to neglect by leaving them to sit for prolonged periods of time unengaged in any purposeful activity.~~ On one of their recent visits, the surveyors observed the following during the day: clients not actively engaged in specified activities, clients sleeping in wheelchairs or in regular chairs, and clients sitting or laying by themselves.^{19/} One staff member was smoking outside leaving the residents unengaged.^{20/}

The facility neglects to provide a sanitary environment for its residents. For example, on a recent visit, surveyors noted full urinals, commodes with unflushed feces, and dirty clothes with bad odors.^{21/} Staff made no effort to clean or disinfect a chair where one client had been sitting with urine soaked pants.^{22/} On a more recent visit, surveyors noted one client sitting in urine which had seeped down her legs and saturated her socks.^{23/} A staff member discarded the socks in the hamper, but then dispensed evening snacks without washing her hands.^{24/}



B. The State Fails to Provide Whitten Residents with Adequate Medical Care.

The P&A group expressed great concern about the large number of recent deaths at the facility. The group indicated that "[d]uring the past month or so there have been approximately ten

^{16/} Id.

^{17/} Id.

^{18/} Id.

^{19/} HCFA Survey, March 19, 1993, at 24.

^{20/} Id.

^{21/} Id. at 32.

^{22/} Id.

^{23/} HCFA Survey, September 24, 1993, at 15.

^{24/} Id.

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deaths at Whitten.^{25/} They added "some of these deaths were totally unexpected."^{26/} One parent characterized some of the deaths as "out-of-the-blue."^{27/} These comments are troubling and imply deficient medical care. This parent believed that more Whitten residents have died in the first six months of 1994 than the total number who died in all of 1993.^{28/}

This parent indicated that the physician to client ratio is poor at Whitten. She believed there were only four doctors on staff to care for about 800 residents -- about a 1:200 ratio.^{29/} This ratio is well outside any acceptable limits. She also believes that Whitten does not provide the many epileptic individuals with the services of a consult neurologist.^{30/} She said that her son is epileptic, and yet, she is forced to transport him to a neurologist off-site.^{31/}

Surveyors enforcing the Title XIX regulations have repeatedly cited Whitten for its failure to provide adequate preventive and general medical care for its residents. For example, the facility program team did not address the diagnosis of degenerative arthritis for one resident for either prevention or general care.^{32/} In another instance, a resident who was initially described as being hearing impaired and is listed as being deaf, has not had an audiological test in five years.^{33/} Two residents without a plan for alternate positioning have experienced skin breakdown from their inability to adjust their bodies independently.^{34/}

Many of the cited medical deficiencies center on feeding or on the provision of meals and mealtime services to the residents. For example, during the swallowing assessment of one Whitten

^{25/} P&A Letter, June 7, 1994, at 2.

^{26/} Id.

^{27/} Telephone Interview with Jean Shirley, September 14, 1994.

^{28/} Id.

^{29/} Id.

^{30/} Id.

^{31/} Id.

^{32/} HCFA Survey, September 17, 1992, at 14.

^{33/} Id.

^{34/} Id.

resident, an outside consultant recommended that the resident be provided with oral motor exercises to decrease his tongue thrust. The consultant recommended that the exercises be performed by a competent therapist with a goal to enable the client to swallow small bites of food. However, Whitten completely failed to follow up on the recommendation.^{35/}

Facility staff present at mealtimes provide little prompting to self-feeders.^{36/} For example, the surveyors observed that clients stuff large amounts of food in their mouths at one time.^{37/} This is potentially dangerous. Clients who had been assessed as being independent in dining skills, were allowed to use their spoons inappropriately.^{38/} The surveyors also noticed that some clients were allowed to eat with their fingers and to eat off the tables and off their bibs.^{39/}

The facility staff does not always observe strict dietary orders for certain residents. For example, staff have fed diabetic individuals foods that do not comport with their dietary orders.^{40/} In addition, staff fed a resident on a low salt, 1800-calorie diet a full bag of potato chips.^{41/} The facility also fails to coordinate weight reduction diets with plans for exercise. Some clients who are on weight reduction plans have actually gained weight. For example, one client, whose ideal body weight is 95-115 lbs., currently weighs 220.50 lbs.^{42/}

Surveyors found that some clients never leave their wheelchairs despite a physical therapy recommendation to the contrary. For example, the facility ignored a physical therapist's recommendation that one client be taken out of his wheelchair regularly. As a result, this client's legs have turned blue and cold to the touch.^{43/} Another client was to be out of his wheelchair every third hour, yet, the staff indicated

^{35/} HCFA Survey, March 17, 1994, at 8.

^{36/} Id.

^{37/} HCFA Survey, June 16, 1993, at 7.

^{38/} HCFA Survey, March 19, 1993, at 25.

^{39/} HCFA Survey, June 16, 1993, at 7.

^{40/} HCFA Survey, June 30, 1993, at 13.

^{41/} Id.

^{42/} Id.

^{43/} HCFA Survey, September 24, 1993, at 7.

that they were unaware of this order.^{44/} In fact, the surveyor observed that the client never left his wheelchair.^{45/}

C. The State Fails to Ensure Appropriate Use of Psychotropic Medication at Whitten.

Chemical restraints are unduly utilized at Whitten Center.^{46/} The facility fails to ensure that prior to the use of more intrusive techniques that programs incorporating the use of less intrusive or more positive techniques have been tried systematically and demonstrated to be ineffective.^{47/} For example, the facility increased one client's medications without attempting other less restrictive interventions to control his behavior.^{48/}

In March 1993, the Title XIX surveyors noted that the facility had attempted no reduction of the behavior modifying medication for one resident since February of 1990 -- over three consecutive years.^{49/} The unsuccessful reduction in 1990 was attempted with no other accompanying revisions to the client's program plan.^{50/} The surveyors discovered that for another client, the facility provided no indication of systematic programmatic intervention between the discontinuation of Lithium and the implementation of Tegretol to assure success of the attempted medication change.^{51/} One resident with extreme attention getting behavior was seen by the hospital staff on three different occasions, approximately two weeks apart, for emergency suturing from self-inflicted wounds for more than fifty-five sutures.^{52/} The resident's dosage of Mellaril had been increased three times in four months but the incidents had increased in severity with no programming intervention.^{53/}

^{44/} Id. at 5.

^{45/} Id.

^{46/} HCFA Survey, September 24, 1993, at 11.

^{47/} HCFA Survey, June 30, 1993, at 11.

^{48/} Id.

^{49/} HCFA Survey, March 31, 1993, at 2.

^{50/} Id. at 3.

^{51/} HCFA Survey, September 24, 1993, at 4.

^{52/} HCFA Survey, August 10, 1992, at 6.

^{53/} Id.

Moreover, after one resident had been chemically restrained, the facility failed to convene the IDT within one working day, pursuant to facility policy.^{54/} Furthermore, the facility psychologist was only vaguely aware of the incident leading up to the restraint.^{55/}

D. The State Fails to Provide Adequate Programming to Whitten Residents.

Restraint

Mechanical and physical restraint use appears to be common at Whitten.^{56/} Whitten staff frequently use various forms of restraint as a convenience instead of as a means of aiding the resident.^{57/} Whitten currently employs the papoose chair and other forms of restraint including masks, a full-bed, four-point restraint and a bed-net restraint.^{58/} Surveyors found that staff used restraint as a substitute for active treatment programs.^{59/} For example, one client's behavior support plan indicates that if staff suspect that the client is about to bite someone, he is to be placed in "full face mask and helmet."^{60/} When the face mask was used after a biting incident, the facility psychologist did not even attend the meeting that discussed the procedure.^{61/} Surveyors found that another resident had been placed in a papoose chair six times since his admission only a

^{54/} HCFA Survey, September 24, 1993, at 11.

^{55/} Id.

^{56/} Telephone Interview with Sharon Bellwood, May 10, 1994.

^{57/} Id.

^{58/} Id.

^{59/} HCFA Survey, August 26, 1993, at 23. Staff behavior also exacerbates problematic situations. For example, the surveyors noticed that one client had been hollering and yelling for over an hour. In attempting to redirect the individual, the staff told her that if she did not stop, she would be restrained. However, the behavior program only directed staff to speak to her in a calm, low voice. HCFA Survey, June 16, 1993, at 13.

^{60/} HCFA Survey, August 26, 1993, at 24.

^{61/} Id.

few months earlier.^{62/} However, his behavior management program did not address the use of the chair, and after each use of the chair, his program was not revised.^{63/} Surveyors noted that because another client's verbal aggression and self-abuse increased, the staff felt compelled to restrain the resident.^{64/} A local advocate observed that Whitten employs the papoose chair inappropriately to teach.^{65/} Surveyors observed staff put one client in the papoose chair even though they never contacted the client's physician to get approval for the restraint.^{66/}

Behavior Programs

Whitten fails to provide the professional program services and needed interventions necessary to implement successfully the active treatment programs defined on each resident's individual program plan.^{67/} Whitten's failure to adequately provide program services and needed interventions has been documented in eleven separate surveys from 1992 to the present.^{68/}

This is having a very real and negative effect on the Whitten residents. For example, Title XIX surveyors recently found residents with PICA behavior outside picking up debris and putting it in their mouths.^{69/} They also observed another client sit unengaged for thirty minutes during which time she bit

^{62/} Id. at 11. A papoose chair restraint involves placing a large strap over the chest and across the legs of a seated individual. Sometimes this restrictive procedure can be used for as long as an hour and a half. Telephone Interview with Jean Shirley, September 14, 1994.

^{63/} HCFA Survey, August 26, 1993, at 1.

^{64/} Id.

^{65/} Telephone Interview with Sharon Bellwood, May 10, 1994.

^{66/} HCFA Survey, June 16, 1993, at 19.

^{67/} HCFA Surveys, March 19, 1993, at 23, May 14, 1992, at 5-7, September 24, 1993, at 8.

^{68/} HCFA Surveys, January 31, 1992, May 14, 1992, May 22, 1992, August 10, 1992, September 17, 1992, March 19, 1993, June 16, 1993, July 29, 1993, August 26, 1993, September 24, 1993, and March 17, 1994.

^{69/} HCFA Survey, September 24, 1993, at 8-9.

her hand three times and twirled her head thirteen times.^{70/} On another visit, the surveyors observed one client biting her hand, but noticed that the staff did not redirect her into an activity nor hand her an object to manipulate as stated in her behavior program.^{71/} They observed that staff did not verbally correct or redirect another resident's repeated hand mouthing behavior even though this was specified in the client's behavior program.^{72/} Staff did not redirect another client who was constantly tugging and pulling at a surveyor's tie.^{73/} The surveyors found that in one year, another resident had engaged in 27 different episodes of physical aggression towards staff or other clients, and yet, the staff never intervened.^{74/}

As a result, the Whitten residents are subjected to injuries from their own behaviors or from the behaviors of others. One local advocate reported that in her visits to Whitten, she routinely notices scratches, bruises and occasionally bite marks on the residents.^{75/} She also indicated that injuries from falls are quite common.^{76/}

The attitude of the staff towards programming is troubling. For example, a staffer commented in front of a client, "He's not on a program for PICA. He's too low level for a program."^{77/} There is no one who is too "low level" for a program. Anyone can benefit from programming. This comment, therefore, was not only inconsiderate, it was also grossly inaccurate.

The P&A group indicated that Whitten males with "sexual acting out problems" are provided "no counseling ... in order to help with their needs."^{78/} The facility fails to provide individuals with deviant sexual behaviors with adequate

^{70/} Id.

^{71/} HCFA Survey, March 19, 1993, at 23.

^{72/} HCFA Survey, June 16, 1993, at 13.

^{73/} Id.

^{74/} Id. at 8.

^{75/} Telephone Interview with Sharon Bellwood, May 10, 1994.

^{76/} Id.

^{77/} HCFA Survey, March 19, 1993, at 31.

^{78/} P&A Letter, June 7, 1994, at 2.

programming, qualified psychology staff or proper implementation of whatever programs are in place.^{79/}

Training Programs

The facility is failing to promote the growth, development, and independence of the clients.^{80/} The facility is failing to ensure that individual program plans include opportunities for client choice and self-management.^{81/} For example, the facility has chosen to keep certain verbal residents in diapers. This impedes their growth and independence.^{82/} The facility has denied communication devices to other residents who could achieve greater independence and self-management with such devices.^{83/} Staff fail to reinforce sign language training with the Whitten clients.^{84/} Surveyors observed one client, who was on an objective to change into fresh clothing on a daily basis, wearing the same clothes throughout the survey.^{85/} Staff also open containers and other sealed items for clients instead of allowing them to do it.^{86/} Staff pour drinks for the clients and they fail to encourage or assist them to pour their own drinks.^{87/} The surveyors also noted that the facility staff missed many opportunities to reinforce independence already gained and reinforce on-going training as identified in the individual program plan.^{88/}

The facility fails to ensure that written training programs are actually implemented. For example, Title XIX surveyors found that one client performed the same task repetitively for over an

^{79/} Telephone Interview with Sharon Bellwood, May 10, 1994.

^{80/} HCFA Surveys, June 16, 1993, at 17, June 30, 1993, at 1, July 29, 1993, at 3, September 24, 1993, at 3, 12.

^{81/} HCFA Survey, March 17, 1994, at 5-6.

^{82/} Id. at 6.

^{83/} Id.

^{84/} HCFA Survey, September 24, 1993, at 9.

^{85/} Id.

^{86/} HCFA Surveys, March 19, 1993, at 31, June 16, 1993, at 17, September 24, 1993, at 12.

^{87/} HCFA Surveys, June 16, 1993, at 17, Sept. 24, 1993, at 12.

^{88/} HCFA Surveys, March 19, 1993, at 25, August 25, 1993, at 16.

hour despite having performed it correctly the first time.^{89/} Later, he sat doing nothing for thirty minutes instead of completing tasks as provided in his program. Apparently, the client had been working with the same program for the past five years with little progress.^{90/} Staff revealed that they were unaware of his and other clients' residential training objectives and behavior management program targeted behaviors and interventions.^{91/}

The facility is failing to adequately review and revise individual program plans where the resident is failing to progress towards identified objectives after reasonable efforts have been made.^{92/} Some individuals have been kept on programs for months with no progress and no revision by the facility.^{93/} Surveyors found clients who had made no progress for five to six months on their residential training objectives, and yet, staff did not make any revisions to the clients' programs.^{94/} After no progress is made, staff often discontinue the objective entirely instead of revising it to achieve success.^{95/}

In addition, the facility is failing to revise individual program plans as necessary when an individual has successfully completed an objective identified in the individual program plan.^{96/} For example, the surveyors noted that one client who had succeeded in independently washing his face was placed on another program to wash his face.^{97/} Other clients met program objectives to brush their teeth, drink from a cup, and take a bath, and yet, no revisions were made in their programs.^{98/}

^{89/} HCFA Survey, March 19, 1993, at 4.

^{90/} HCFA Survey, March 19, 1993, at 4.

^{91/} Id.; Surveyors found that staff were repeatedly not aware of the details of important client programs. HCFA Survey, August 26, 1993, at 3-4, 9-12.

^{92/} HCFA Survey, March 17, 1994, at 11-2, 29.

^{93/} Id. at 12.

^{94/} HCFA Survey, June 16, 1993, at 16.

^{95/} HCFA Survey, March 19, 1993, at 30.

^{96/} Id. at 28-29.

^{97/} Id.

^{98/} Id.

independence.^{100/} Often, staff feed the residents themselves instead of implementing their program by providing hand over hand assistance.^{101/} Surveyors noticed staff failing to provide training during the course of all meals observed.^{102/}

Even for residents provided with training programs, the facility often fails to provide the direct care staff with the necessary methodology to actually implement the programs.^{103/} This has adversely affected individual residents' speech, ambulation, washing, brushing and dressing objectives.^{104/} The facility does not ensure that the staff are provided with current copies of the clients' training programs.^{105/}

E. The State Fails to Provide Adequate Staff to Meet the Needs of the Whitten Residents.

The local advocacy group in South Carolina characterized Whitten as a "large facility, located in a rural area, with a limited draw for staff."^{106/} The P&A stated that some of the problems at Whitten are directly caused by "not enough direct care staff."^{107/} The P&A stressed that the "quality" of the staff was problematic in that "[m]ost have very limited 'people' skills, even after their required on job training."^{108/} A Whitten parent also expressed concerns about inadequate numbers and quality of staff at the facility.^{109/} She indicated that staff often do not show up for work, causing other staff to be "pulled" from other units to meet staffing ratios. She indicated

^{100/} Id.

^{101/} Id. at 23-4.

^{102/} HCFA Survey, September 24, 1993, at 8.

^{103/} HCFA Surveys, March 19, 1993, at 3, June 30, 1993, at 7.

^{104/} HCFA Survey, March 19, 1993, at 3.

^{105/} HCFA Survey, June 16, 1993, at 12.

^{106/} P&A Letter, June 7, 1994, at 1.

^{107/} Id.

^{108/} Id.

^{109/} Telephone Interview with Jean Shirley, September 14, 1994.

staff often do not show up for work, causing other staff to be "pulled" from other units to meet staffing ratios. She indicated that this is a problem because the pulled staff are often unfamiliar with the residents they are to care for.^{110/}

The surveyors noted that the facility is failing to provide sufficient direct care staff to manage and supervise clients in accordance with their individual program plans. As a result, clients are left unattended while staff assisted wheelchair clients in bathing and toileting.^{111/} Staff are forced to hold, chase, and corral clients with challenging behaviors.^{112/} The surveyors noted that staff were so busy "catching and corralling" clients that behavioral data was not recorded. The psychologist responded that there was "nothing" he could do.^{113/} Staff were unable to engage clients in meaningful activities or to document the behaviors that were occurring because of the severity and frequency of interfering behaviors.^{114/}

F. The State of South Carolina Fails to Provide Whitten Residents with Services in the Least Separate, Most Integrated Setting.

An isolated, self-contained, institutional environment which separates residents from the rest of society on the basis of their disabilities, necessarily subjects these individuals to conditions which are violative of the ADA and Section 504. Whitten is the largest such institution in the state, currently housing approximately 800 individuals with developmental disabilities. One local advocate indicated that most of these individuals should be placed in the community.^{115/}



^{110/} Id. This is exactly what the surveyors have found on their visits. Staff are pulled from other units and are forced to care for unfamiliar residents simply because of staff shortages. As a result, the pulled staff are totally unaware of the clients' individual programs or needs. HCFA Survey, March 19, 1993, at 24.

^{111/} HCFA Survey, March 19, 1993, at 12.

^{112/} Id. at 12.

^{113/} Id. at 11, 25.

^{114/} Id. at 13.

^{115/} Telephone Interview with Sharon Bellwood, May 10, 1994.

CONCLUSION

The information gathered thus far indicates that the inadequate conditions at Whitten deprive residents of their ~~constitutional and statutory rights~~. We therefore recommend that an investigation of Whitten be instituted under our CRIPA authority. Funds are available to conduct this investigation.

Approved: _____

Disapproved: _____

Comments:



EXHIBIT A

7-2-09
EXHIBIT NO. 26
Johnson
G. Smith

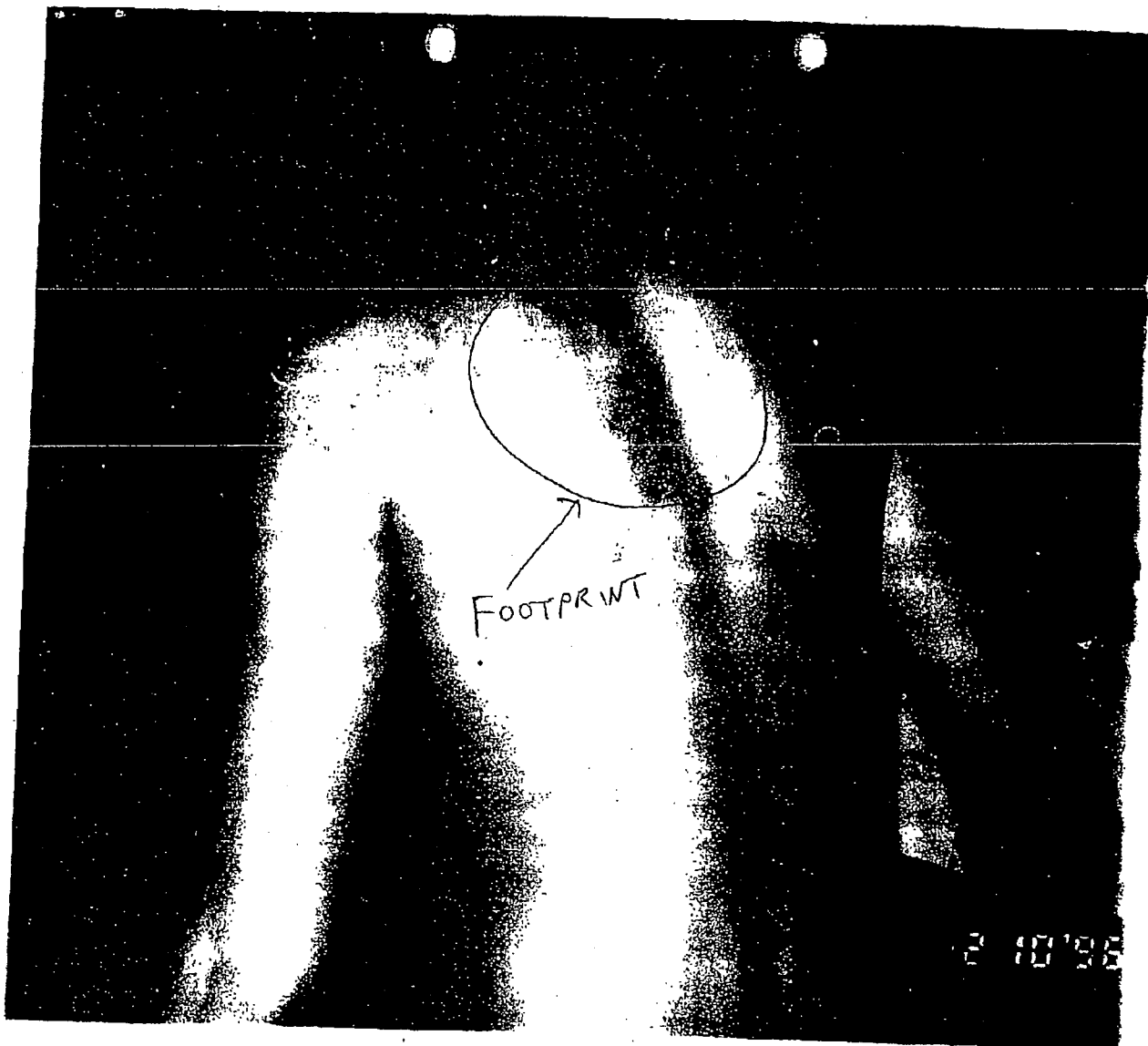


EXHIBIT B

024

NARA SE REGION

09/12/2002 17:21 FAX 404 763 7815 Mims 1081

United States District Court **FILED**

DISTRICT OF SOUTH CAROLINA

Michael Scott Jennings, a Minor by His
Guardians Ad Litem Rev. Charles Jennings
and Patricia Jennings, on behalf of
Himself and as Representatives of a Class
Similarly Situated.

SUMMONS IN A CIVIL ACTION

LARRY W. PROPPES, CLERK

JUN 10 1996

CASE NUMBER: **3 96 1720 23**

V.
James Christian, Clint Fuchs,
Michael Bernard Goodwin, Alberta Gibbes,
Gracilda Gross, John Hancock, Judy
Johnson, Phillip Massey, Roger Smith,
(See Attachment A for description of
defendants)

TO: (Name and Address of Defendant)

Clint Fuchs
Midlands Regional Center
8301 Farrow Road
Columbia, South Carolina 28203

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Donald M. Brown, Jr.
6416 Carmel Road
Suite 404
Charlotte, NC 28226
704/542-2525

an answer to the complaint which is herewith served upon you, within 20 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

LARRY W. PROPPES, CLERK

CLERK

JUN 10 1996

DATE

BY DEPUTY CLERK

Karen Fuchs

FILED

United States District Court JUN 10 1996

DISTRICT OF SOUTH CAROLINA LARRY W. PROPE, CLERK
COLUMBIA, S.C.

Michael Scott Jennings, a Minor by His
Guardians Ad Litem Rev. Charles Jennings
and Patricia Jennings, on behalf of
Himself and as Representatives of a Class
Similarly Situated.

SUMMONS IN A CIVIL ACTION

V.

CASE NUMBER: 3 96 1720 23

James Christian, Clint Fuchs,
Michael Bernard Goodwin, Alberta Gibbes,
Gracilda Gross, John Hancock, Judy
Johnson, Phillip Massey, Roger Smith,
(See Attachment A for description of
defendants)

TO: (Name and Address of Defendant)

Michael Bernard Goodwin
Midlands Regional Center
8301 Farrow Road
Columbia, South Carolina 28203

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Donald M. Brown, Jr.
6416 Carmel Road
Suite 404
Charlotte, NC 28226
704/542-2525

an answer to the complaint which is herewith served upon you, within 20 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

LARRY W. PROPE, CLERK

CLERK

JUN 10 1996

DATE

BY DEPUTY CLERK

Karen Scott

United States District Court

FILED

DISTRICT OF SOUTH CAROLINA

JUN 10 1996

Michael Scott Jennings, a Minor by His
Guardians Ad Litem Rev. Charles Jennings
and Patricia Jennings, on behalf of
Himself and as Representatives of a Class
Similarly Situated.

LARRY W. PROPES, CLERK
COLUMBIA, S. C.

SUMMONS IN A CIVIL ACTION

V.

CASE NUMBER:

3 96 1720 23

James Christian, Clint Fuchs,
Michael Bernard Goodwin, Alberta Gibbes,
Gracilda Gross, John Hancock, Judy
Johnson, Phillip Massey, Roger Smith,
(See Attachment A for description of
defendants)

TO: (Name and Address of Defendant)

Alberta Gibbes
Midlands Regional Center
8301 Farrow Road
Columbia, South Carolina 28203

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Donald M. Brown, Jr.
6416 Carmel Road
Suite 404
Charlotte, NC 28226
704/542-2525

an answer to the complaint which is herewith served upon you, within 20 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

LARRY W. PROPES, CLERK

CLERK

JUN 10 1996

DATE

BY DEPUTY CLERK

Karen J...

United States District Court **FILED**

DISTRICT OF SOUTH CAROLINA

JUN 10 1996

Michael Scott Jennings, a Minor by His
Guardians Ad Litem Rev. Charles Jennings
and Patricia Jennings, on behalf of
Himself and as Representatives of a class
Similarly Situated.

LARRY W. PROPES, CLERK
COLUMBIA, S. C.

SUMMONS IN A CIVIL ACTION

v.

CASE NUMBER: **3 96 1720 23**

James Christian, Clint Fuchs,
Michael Bernard Goodwin, Alberta Gibbes,
Gracilda Gross, John Hancock, Judy
Johnson, Phillip Massey, Roger Smith,
(See Attachment A for description of
defendants)

TO: (Name and Address of Defendant)

Gracilda Gross
Midlands Regional Center
8301 Farrow Road
Columbia, South Carolina 28203

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Donald M. Brown, Jr.
6416 Carmel Road
Suite 404
Charlotte, NC 28226
704/542-2525

an answer to the complaint which is herewith served upon you, within 20 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

LARRY W. PROPES, CLERK

CLERK

JUN 10 1996

DATE

BY DEPUTY CLERK

[Signature]

Mims 1085

United States District Court **FILED**

DISTRICT OF SOUTH CAROLINA

JUN 10 1996

Michael Scott Jennings, a Minor by His
Guardians Ad Litem Rev. Charles Jennings
and Patricia Jennings, on behalf of
Himself and as Representatives of a Class
Similarly Situated.

LARRY W. PROPES, CLERK
COLUMBIA, SC
SUMMONS IN A CIVIL ACTION

V.

CASE NUMBER: **3 96 1720 23**

James Christian, Clint Fuchs,
Michael Bernard Goodwin, Alberta Gibbes,
Gracilda Gross, John Hancock, Judy
Johnson, Phillip Massey, Roger Smith,
(See Attachment A for description of
defendants)

TO: (Name and Address of Defendant)

John Hancock
Midlands Regional Center
8301 Farrow Road
Columbia, SC 28203

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Donald M. Brown, Jr.
6416 Carmel Road
Suite 404
Charlotte, NC 28226
704/542-2525

an answer to the complaint which is herewith served upon you, within 20 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

LARRY W. PROPES, CLERK

CLERK

Larry W. Propes

BY DEPUTY CLERK

JUN 10 1996

DATE

United States District Court **FILED**

DISTRICT OF SOUTH CAROLINA JUN 10 1996

Michael Scott Jennings, a Minor by His
Guardians Ad Litem Rev. Charles Jennings
and Patricia Jennings, on behalf of
Himself and as Representatives of a Class
Similarly Situated.

LARRY W. PROPES, CLERK
COLUMBIA, S.C.

SUMMONS IN A CIVIL ACTION

v.

CASE NUMBER: **3 96 1720 23**

James Christian, Clint Fuchs,
Michael Bernard Goodwin, Alberta Gibbs,
Gracilda Gross, John Hancock, Judy
Johnson, Phillip Massey, Roger Smith,
(See Attachment A for description of
defendants)

TO: (Name and Address of Defendant)

Roger Smith
Midlands Regional Center
8301 Farrow Road
Columbia, South Carolina 28203

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Donald M. Brown, Jr.
6416 Carmel Road
Suite 404
Charlotte, NC 28226
704/542-2525

an answer to the complaint which is herewith served upon you, within 20 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

LARRY W. PROPES, CLERK

CLERK

DATE

JUN 10 1996

BY DEPUTY CLERK

Larry W. Propes

United States District Court

FILED

DISTRICT OF SOUTH CAROLINA

JUN 10 1996

Michael Scott Jennings, a Minor by His
Guardians Ad Litem Rev. Charles Jennings
and Patricia Jennings, on behalf of
Himself and as Representatives of a Class
Similarly Situated.

LARRY W. PROPPES, CLERK
COLUMBIA, S. C.

SUMMONS IN A CIVIL ACTION

V.

CASE NUMBER:

3 96 1720 23

James Christian, Clint Fuchs,
Michael Bernard Goodwin, Alberta Gibbes,
Gracilda Gross, John Hancock, Judy
Johnson, Phillip Massey, Roger Smith,
(See Attachment A for description of
defendants)

TO: (Name and Address of Defendant)

James Christian
Facilities Director
Midlands Regional Center
8301 Farrow Road
Columbia, South Carolina 28203

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Donald M. Brown, Jr.
6416 Carmel Road
Suite 404
Charlotte, NC 28226
704/542-2525

an answer to the complaint which is herewith served upon you, within 20 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

LARRY W. PROPPES, CLERK

CLERK

Kam Snot

BY DEPUTY CLERK

DATE

JUN 10 1996

United States District Court

FILED

JUN 10 1996

DISTRICT OF SOUTH CAROLINA LARRY W. PROPPS, CLERK
COLUMBIA, S.C.

Michael Scott Jennings, a Minor by His
Guardians Ad Litem Rev. Charles Jennings
and Patricia Jennings, on behalf of
Himself and as Representatives of a class
Similarly Situated.

SUMMONS IN A CIVIL ACTION

V.

CASE NUMBER: 3 96 1720 23

James Christian, Clint Fuchs,
Michael Bernard Goodwin, Alberta Gibbs,
Gracilda Gross, John Hancock, Judy
Johnson, Phillip Massey, Roger Smith,
(See Attachment A for description of
defendants)

TO: (Name and Address of Defendant)

Phillip Massey
Director
South Carolina Department of Disability Services
3440 Harden Street Extension
Columbia, South Carolina 29203

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Donald M. Brown, Jr.
6416 Carmel Road
Suite 404
Charlotte, NC 28226
704/542-2525

an answer to the complaint which is herewith served upon you, within 20 days after service of
this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

LARRY W. PROPPS, CLERK

CLERK

BY DEPUTY CLERK

Lauren Switz

DATE

JUN 10 1996

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

FILED

AUG 20 1996

LARRY W. PROPER, CLERK
COLUMBIA, S.C.

Civil Action No. 3:96-1720-23

Michael Scott Jennings, a minor
by His Guardians Ad Litem Rev.
Charles Jennings and Patricia
Jennings, on behalf of Himself
and as Representative of a Class
Similarly Situated,

Plaintiffs,

vs.

James Christian, Individually and
in His Capacity as Facilities
Director for the Midlands Regional
Center, South Carolina Department
of Disabilities and Special Needs;
Clint Fuchs, Individually and in
His Capacity as a Staff Member for
the Midlands Regional Center,
South Carolina Department of
Disabilities and Special Needs;
Michael Bernard Goodwin,
Individually and in His Capacity
as a Staff Member for the Midlands
Regional Center, South Carolina
Department of Disabilities and
Special Needs; Alberta Gibbes,
Individually and in Her Capacity
As a Staff Member For the Midlands
Regional Center, South Carolina
Department of Disabilities and
Special Needs; Gracilda Gross,
Individually and in Her Capacity
As a Staff Member for the Midlands
Regional Center, South Carolina
Department of Disabilities and
Special Needs; John Hancock; Judy
Johnson, Individually and in Her
Capacity as Director of Residential
Care for the Defendant Midlands
Regional Center, South Carolina
Department of Disabilities and
Special Needs; Philip Massey,
Individually and in His Capacity
as Director for the South Carolina
Department of Disability Services
and Special Needs; Roger Smith,

NOTICE OF MOTION AND
MOTION TO ENLARGE TIME
ON BEHALF OF DEFENDANTS
JAMES CHRISTIAN, CLINT FUCHS,
MICHAEL BERNARD GOODWIN,
ALBERTA GIBBES, GRACILDA
GROSS, PHILIP MASSEY, AND
ROGER SMITH

Mims 1090

Michael Scott Jennings, a minor) Civil Action No. 3:96-1720-23
by His Guardians Ad Litem Rev.)
Charles Jennings and Patricia)
Jennings, on behalf of Himself)
and as Representative of a Class)
Similarly Situated,)
)
Plaintiffs,)

CERTIFICATE OF SERVICE

Mims 1091

Individually and in His Capacity)
as a Staff Member for the Midlands)
Regional Center, South Carolina)
Department of Disabilities and)
Special Needs,)
Defendants.)

The undersigned employee of Ellis, Lawhorne, Davidson & Sims, P.A., attorneys for the Defendant, does hereby certify that service of the attached Notice of Motion and Motion to Enlarge Time, Memorandum in Support of Motion to Enlarge Time, Affidavit of William H. Davidson, II and proposed Order on behalf of Defendants James Christian, Clint Fuchs, Michael Bernard Goodwin, Alberta Gibbes, Gracilda Gross, Philip Massey and Roger Smith in the above-referenced action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 19th day of August, 1996, addressed as follows:

Donald M. Brown, Jr., Esquire
6416 Carmel Road
Suite 404
Charlotte, North Carolina 28226

Margaret J. Self

IN THE UNITED STATES DISTRICT COURT

AUG 20 1996

LARRY W. PROPER, CLERK
COLUMBIA, S. C.

DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Michael Scott Jennings, a minor)
by His Guardians Ad Litem. Rev.)
Charles Jennings and Patricia)
Jennings, on behalf of Himself)
and as Representative of a Class)
Similarly Situated,)

Plaintiffs,

vs.

James Christian, Individually and in His Capacity as Facilities Director for the Midlands Regional Center, South Carolina Department of Disabilities and Special Needs; Clint Fuchs, Individually and in His Capacity as a Staff Member for the Midlands Regional Center, South Carolina Department of Disabilities and Special Needs; Michael Bernard Goodwin, Individually and in His Capacity as a Staff Member for the Midlands Regional Center, South Carolina Department of Disabilities and Special Needs; Alberta Gibbes, Individually and in Her Capacity As a Staff Member For the Midlands Regional Center, South Carolina Department of Disabilities and Special Needs; Gracilda Gross, Individually and in Her Capacity As a Staff Member for the Midlands Regional Center, South Carolina Department of Disabilities and Special Needs; John Hancock; Judy Johnson, Individually and in Her Capacity as Director of Residential Care for the Defendant Midlands Regional Center, South Carolina Department of Disabilities and Special Needs; Philip Massey, Individually and in His Capacity as Director for the South Carolina Department of Disability Services and Special Needs; Roger Smith,

Civil Action No. 3:96-1720-23

MEMORANDUM IN SUPPORT OF
NOTICE OF MOTION AND
MOTION TO ENLARGE TIME
ON BEHALF OF DEFENDANTS
JAMES CHRISTIAN, CLINT FUCHS,
MICHAEL BERNARD GOODWIN,
ALBERTA GIBBES, GRACILDA
GROSS, PHILIP MASSEY, AND
ROGER SMITH

Individually and in His Capacity)
as a Staff Member for the Midlands)
Regional Center, South Carolina)
Department of Disabilities and)
Special Needs,)
Defendants.)

This Memorandum is in support of the motion for an extension of time to answer, move, object to jurisdiction, or otherwise plead on behalf of the Defendants, James Christian, Individually and in His Capacity as Facilities Director for the Midlands Regional Center, South Carolina Department of Disabilities and Special Needs; Clint Fuchs, Individually and in His Capacity as a Staff Member for the Midlands Regional Center, South Carolina Department of Disabilities and Special Needs; Michael Bernard Goodwin, Individually and in His Capacity as a Staff Member for the Midlands Regional Center, South Carolina Department of Disabilities and Special Needs; Alberta Gibbes, Individually and in Her Capacity As a Staff Member For the Midlands Regional Center, South Carolina Department of Disabilities and Special Needs; Gracilda Gross, Individually and in Her Capacity As a Staff Member for the Midlands Regional Center, South Carolina Department of Disabilities and Special Needs; Philip Massey, Individually and in His Capacity as Director for the South Carolina Department of Disability Services and Special Needs; Roger Smith, Individually and in His Capacity as a Staff Member for the Midlands Regional Center, South Carolina Department of Disabilities and Special Needs in the above-referenced case.

WHL #1

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Michael Scott Jennings, a minor) Civil Action No. 3:96-1720-23
by His Guardians Ad Litem Rev.)
Charles Jennings and Patricia)
Jennings, on behalf of Himself)
and as Representative of a Class)
Similarly Situated,)

Plaintiffs,)

vs.)

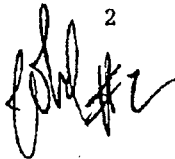
James Christian, Individually and)
in His Capacity as Facilities)
Director for the Midlands Regional)
Center, South Carolina Department)
of Disabilities and Special Needs;)
Clint Fuchs, Individually and in)
His Capacity as a Staff Member for)
the Midlands Regional Center,)
South Carolina Department of)
Disabilities and Special Needs;)
Michael Bernard Goodwin,)
Individually and in His Capacity)
as a Staff Member for the Midlands)
Regional Center, South Carolina)
Department of Disabilities and)
Special Needs; Alberta Gibbes,)
Individually and in Her Capacity)
As a Staff Member For the Midlands)
Regional Center, South Carolina)
Department of Disabilities and)
Special Needs; Gracilda Gross,)
Individually and in Her Capacity)
As a Staff Member for the Midlands)
Regional Center, South Carolina)
Department of Disabilities and)
Special Needs; John Hancock; Judy)
Johnson, Individually and in Her)
Capacity as Director of Residential)
Care for the Defendant Midlands)
Regional Center, South Carolina)
Department of Disabilities and)
Special Needs; Philip Massey,)
Individually and in His Capacity)
as Director for the South Carolina)

A F F I D A V I T
OF

WILLIAM E. DAVIDSON, II.

Department of Disability Services)
 and Special Needs; Roger Smith,)
 Individually and in His Capacity)
 as a Staff Member for the Midlands)
 Regional Center, South Carolina)
 Department of Disabilities and)
 Special Needs,)
 Defendants.)

PERSONALLY APPEARED BEFORE ME, WILLIAM H. DAVIDSON, II, who first being duly sworn deposes and states that he is the attorney for the Defendants, James Christian, Individually and in His Capacity as Facilities Director for the Midlands Regional Center, South Carolina Department of Disabilities and Special Needs; Clint Fuchs, Individually and in His Capacity as a Staff Member for the Midlands Regional Center, South Carolina Department of Disabilities and Special Needs; Michael Bernard Goodwin, Individually and in His Capacity as a Staff Member for the Midlands Regional Center, South Carolina Department of Disabilities and Special Needs; Alberta Gibbes, Individually and in Her Capacity As a Staff Member For the Midlands Regional Center, South Carolina Department of Disabilities and Special Needs; Gracilda Gross, Individually and in Her Capacity As a Staff Member for the Midlands Regional Center, South Carolina Department of Disabilities and Special Needs; Philip Massey, Individually and in His Capacity as Director for the South Carolina Department of Disability Services and Special Needs; Roger Smith, Individually and in His Capacity as a Staff Member for the Midlands Regional Center, South Carolina Department of Disabilities and Special Needs, in the above-referenced case. The Affiant further states that he will need up to and including September 10, 1996, to

2


and including September 10, 1996, as to these Defendants, subject
to proper service being effectuated.

AND IT IS SO ORDERED.


THE HONORABLE PATRICK MICHAEL DUFFY
UNITED STATES DISTRICT COURT JUDGE

Columbia, South Carolina
August 22nd, 1996.

#3

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Michael Scott Jennings, a minor
by His Guardians Ad Litem Rev.
Charles Jennings and Patricia
Jennings, on behalf of Himself
and as Representative of a Class
Similarly Situated,

Plaintiffs,

vs.

James Christian, Individually and
in His Capacity as Facilities
Director for the Midlands Regional
Center, South Carolina Department
of Disabilities and Special Needs;
Clint Fuchs, Individually and in
His Capacity as a Staff Member for
the Midlands Regional Center,
South Carolina Department of
Disabilities and Special Needs;
Michael Bernard Goodwin,
Individually and in His Capacity
as a Staff Member for the Midlands
Regional Center, South Carolina
Department of Disabilities and
Special Needs; Alberta Gibbs,
Individually and in Her Capacity
As a Staff Member For the Midlands
Regional Center, South Carolina
Department of Disabilities and
Special Needs; Gracilda Gross,
Individually and in Her Capacity
As a Staff Member for the Midlands
Regional Center, South Carolina
Department of Disabilities and
Special Needs; John Hancock; Judy
Johnson, Individually and in Her
Capacity as Director of Residential
Care for the Defendant Midlands
Regional Center, South Carolina
Department of Disabilities and
Special Needs; Philip Massey,
Individually and in His Capacity
as Director for the South Carolina
Department of Disability Services
and Special Needs; Roger Smith,

Civil Action No. 3:96-1720-23

CERTIFICATE OF SERVICE

Certificate of Service - September 10, 1996
3:96-1720-23, Page Two

Individually and in His Capacity)
as a Staff Member for the Midlands)
Regional Center, South Carolina)
Department of Disabilities and)
Special Needs,)
Defendants.)

The undersigned employee of Ellis, Lawhorne, Davidson & Sims, P.A., attorneys for the Defendant, does hereby certify that service of the attached Answers on behalf of Defendants James Christian, Clint Fuchs, Michael Bernard Goodwin, Alberta Gibbes, Gracilda Gross, Philip Massey, Roger Smith and Interrogatories and Request for Production on behalf of the Defendant James Christian in the above-referenced action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 10th day of September, 1996, addressed as follows:

Donald M. Brown, Jr., Esquire
6416 Carmel Road
Suite 404
Charlotte, North Carolina 28226

Margaret J. Self

FILED

SEP 10 1996

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA LARRY W. PROPP, CLERK
COLUMBIA, S.C.

COLUMBIA DIVISION

Michael Scott Jennings,
a minor, by his Guardians
ad Litem, Reverend Charles
Jennings and Patricia
Jennings, on behalf of
himself and as representative
of a class similarly
situated,

Plaintiffs,

v.

James Christian, individually
and in his capacity as
Facilities Director for the
Midlands Regional Center,
South Carolina Department of
Disabilities and Special
Needs; Clint Fuchs,
individually and in his
capacity as a Staff Member
for the Midlands Regional
Center, South Carolina
Department of Disabilities
and Special Needs; Michael
Bernard Goodwin, individually
and in his capacity as a
Staff Member for the Midlands
Regional Center, South
Carolina Department of
Disabilities and Special
Needs; Alberta Gibbs,
individually and in her
capacity as a Staff Member
for the Midlands Regional
Center, South Carolina
Department of Disabilities
and Special Needs; Gracilda
Gross, individually and in
her capacity as a Staff
Member for the Midlands
Regional Center, South
Carolina Department of
Disabilities and Special

CIVIL ACTION NUMBER: 3:96-1720-23

ANSWER ON BEHALF OF DEFENDANT,
ROGER SMITH
(Jury Trial Demanded)

Needs; John Hancock; Judy
 Johnson, individually and in
 her capacity as Director of
 Residential Care for the
 Defendant Midlands Regional
 Center, South Carolina
 Department of Disabilities
 and Special Needs; Phillip
 Massey, individually and in
 his capacity as Director for
 the South Carolina Department
 of Disabilities and Special
 Needs; and Roger Smith,
 individually and in his
 capacity as a Staff Member
 for the Midlands Regional
 Center, South Carolina
 Department of Disabilities
 and Special Needs,
 Defendants.

The Defendant, Roger Smith, answers the Complaint of the
 Plaintiff as follows:

1. The Defendant, Roger Smith, denies each and every
 allegation of the Plaintiffs' Complaint not hereinafter
 specifically admitted, qualified, or otherwise explained.

FOR A FIRST DEFENSE

2. As to Paragraph 1 of the Plaintiffs' Complaint, the
 Defendant would allege, upon information and belief, that the
 Plaintiffs have set forth legal conclusions which can neither be
 admitted nor denied and, therefore, would crave reference thereto.

3. As to Paragraph 2 of the Plaintiffs' Complaint, the
 Defendant would deny same.

4. As to Paragraph 3 of the Plaintiffs' Complaint, the
 Defendant would deny same.

5. As to Paragraph 4 of the Plaintiffs' Complaint, the Defendant would deny same.

6. As to Paragraph 5 of the Plaintiffs' Complaint, the Defendant would admit same upon information and belief.

7. As to Paragraph 6 of the Plaintiffs' Complaint, the Defendant would admit same upon information and belief.

8. As to Paragraph 7 of the Plaintiffs' Complaint, the Defendant would admit same upon information and belief.

9. As to Paragraph 8 of the Plaintiffs' Complaint, the Defendant would allege, upon information and belief, that the Plaintiffs have set forth legal conclusions which can neither be admitted nor denied and, therefore, would crave reference thereto.

10. As to Paragraph 9 of the Plaintiffs' Complaint, the Defendant would deny same.

11. As to Paragraph 10 of the Plaintiffs' Complaint, the Defendant would admit that the South Carolina Department of Disabilities and Special Needs is a state agency in South Carolina which operates public facilities. The duties and responsibilities are set forth in the laws of the State of South Carolina. As to the remaining allegations of Paragraph 10, the Defendant would deny same.

12. As to paragraph 11 of the Plaintiffs' Complaint, the Defendant would admit that the Midlands Regional Center is a public facility located in Columbia, South Carolina and operated by the South Carolina Department of Disabilities and Special Needs. As to

the remaining allegations of Paragraph 11, the Defendant would deny same.

13. As to Paragraph 12 of the Plaintiffs' Complaint, the Defendant would admit that James G. Christian, Ed.D. is a citizen and resident of the State of South Carolina and, at all times relevant herein, was the Facility Director for the Midlands Regional Center, a public facility. As to the remaining allegations of Paragraph 12, the Defendant would deny same.

14. As to Paragraph 13 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that Clint Fuchs is a citizen and resident of the State of South Carolina and, at all times relevant herein, was an employee of the Midlands Regional Center, a public facility. As to the remaining allegations of Paragraph 13, the Defendant would deny same.

15. As to Paragraph 14 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that Michael Bernard Goodwin is a citizen and resident of the State of South Carolina and, at all times relevant herein, was an employee of the Midlands Regional Center, a public facility. As to the remaining allegations of Paragraph 14, the Defendant would deny same.

16. As to Paragraph 15 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that Alberta Gibbes is a citizen and resident of the State of South Carolina and, at all times relevant herein, was an employee of the Midlands Regional Center, a public facility. As to the remaining allegations of Paragraph 15, the Defendant would deny same.

17. As to Paragraph 16 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that Gracilda Gross is a citizen and resident of the State of South Carolina and, at all times relevant herein, was an employee of the Midlands Regional Center, a public facility. As to the remaining allegations of Paragraph 16, the Defendant would deny same.

18. As to Paragraph 17 of the Plaintiffs' Complaint, the Defendant can neither admit nor deny same as the information requested is confidential and privileged in nature.

19. That as to Paragraph 18 of the Plaintiffs' Complaint, the Defendant can neither admit nor deny same as the information requested is confidential and privileged in nature.

20. As to Paragraph 19 of the Plaintiff's Complaint, the Defendant would deny, upon information and belief, that Judy Johnson is a citizen and resident of the State of South Carolina. However, the Defendant would admit that, at all times relevant herein, Judy Johnson was employed as the Deputy State Director for Regional Centers for the South Carolina Department of Disabilities and Special Needs. As to the remaining allegations of Paragraph 19, the Defendant would deny same.

21. As to Paragraph 20 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that Philip Massey is a citizen and resident of the State of South Carolina and, at all times relevant herein, was employed as State Director for the South Carolina Department of Disabilities and Special

Needs. As to the remaining allegations of Paragraph 20, the Defendant would deny same.

22. As to Paragraph 21 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that Roger Smith is a citizen and resident of the State of South Carolina and, at all times relevant herein, was an employee of the Midlands Regional Center, a public facility. As to the remaining allegations of Paragraph 21, the Defendant would deny same.

23. As to Paragraph 22 of the Plaintiffs' Complaint, the Defendant would allege, upon information and belief, that the Plaintiffs have set forth legal conclusions which can neither be admitted nor denied and, therefore, would crave reference thereto.

24. As to Paragraph 23 of the Plaintiffs' Complaint, the Defendant would deny same.

25. As to Paragraph 24 of the Plaintiffs' Complaint, the Defendant would allege, upon information and belief, that the Plaintiffs have set forth legal conclusions which can neither be admitted nor denied and, therefore, would crave reference thereto.

26. As to Paragraph 25 of the Plaintiffs' Complaint, the Defendant would deny same.

27. As to Paragraphs 26 and 39 of the Plaintiffs' Complaint, the Defendant would deny same.

28. As to Paragraph 27 of the Plaintiffs' Complaint, the Defendant would allege, upon information and belief, that the Plaintiffs have set forth legal conclusions which can neither be admitted nor denied and, therefore, would crave reference thereto.

29. As to Paragraph 28 of the Plaintiffs' Complaint, the Defendant would admit same upon information and belief.

30. As to Paragraph 29 of the Plaintiffs' Complaint, the Defendant can neither admit nor deny same and would crave reference to the medical records of the Minor Plaintiff.

31. As to Paragraph 30 of the Plaintiffs' Complaint, the Defendant would admit same upon information and belief.

32. As to Paragraph 31 of the Plaintiffs' Complaint, the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, would deny same as stated and crave reference thereto.

33. As to Paragraphs 32 through 38 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that the medical records of the Minor Plaintiff from the Midlands Regional Center show that the Minor Plaintiff had scratches on his left forearm as well as other abrasions noted during the time period set forth in these paragraphs. However, the Defendant would deny that such abrasions or scratches resulted in any injury or damage to the Minor Plaintiff and, further, denies that such scratches or abrasions were caused by any physical abuse or violence by this Defendant or any of the Defendants.

34. As to Paragraph 40 through 48 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that on January 3, 1996, as a result of the inappropriate behavior of the Minor Plaintiff in attempting to hit and kick the staff and potentially causing injury to himself, an order was received to

place the Minor Plaintiff in an approved restraint procedure commonly known as a "four point restraint." During the period of attempting to restrain the Minor Plaintiff, Valium was administered in an attempt to calm the Minor Plaintiff. As to the remaining allegations of Paragraphs 40 through 48, the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, would deny same and demands strict proof thereof.

35. As to Paragraphs 49 through 52 of the Plaintiffs' Complaint, the Defendant, upon information and belief, would crave reference to the records of the Midlands Regional Center as to the events surrounding the alleged attack on the Minor Plaintiff. Upon information and belief, the Defendant would specifically allege that such an event occurred as a result of the actions of the Minor Plaintiff in bothering the individual after the Minor Plaintiff was warned to leave the individual alone. As to the remaining allegations of Paragraphs 49 through 52, the Defendant would deny same and demands strict proof thereof.

36. As to Paragraphs 53 through 55 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that on January 20, 1996, the Minor Plaintiff was pushed to the floor by another individual but that such actions were caused by the actions of the Minor Plaintiff. As to the remaining allegations of Paragraphs 53 through 55, the Defendant would deny same and demands strict proof thereof.

37. As to Paragraphs 56 through 58 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that on February 2, 1996, the Minor Plaintiff received a scratch down his right cheek from another individual but that such was caused as a direct result of the activities of the Minor Plaintiff. As to the remaining allegations of Paragraphs 56 through 58, the Defendant would deny same and demands strict proof thereof.

38. As to Paragraphs 59 through 77 of the Plaintiffs' Complaint, the Defendant, upon information and belief, would allege that on or about February 10, 1996, the Minor Plaintiff, who was under one on one supervision because of prior behavioral problems as well as other problems he had experienced at the Midlands Regional Center, began picking on another individual. This individual became agitated toward the Minor Plaintiff which resulted in the individual hitting the Minor Plaintiff. At that point, the Minor Plaintiff struck the individual in the head and the staff separated the two. However, the Minor Plaintiff ran and assaulted the individual which resulted in the individual striking the Minor Plaintiff again. As a result of this renewed assault by the Minor Plaintiff and the resulting blows, the staff attempted to separate the two and called for help. As a result of this incident, the Minor Plaintiff sustained certain injuries and the Defendant would crave reference to the medical records of the Minor Plaintiff as to the exact nature and extent of the injuries. Further, the Defendant would admit, upon information and belief, that during this period of time, the parents of the Minor Plaintiff

parents were contacted, advised of the incident, and the nature of the injuries. Upon information and belief, as a result of this incident, the Minor Plaintiff was separated and placed in the infirmary for his own safety, the safety of other individuals being serviced by the Midlands Regional Center, and the safety of the staff.

39. As to Paragraphs 78 through 88 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that the Minor Plaintiff, as part of his behavior, self-induces vomiting and participates in other aberrant behavior. As to the remaining allegations of Paragraphs 78 through 88, the Defendant would deny same.

40. As to Paragraphs 89 through 95 of the Plaintiffs' Complaint, the Defendant would neither admit nor deny same and would crave reference to the specific medical records of the events of the examination of the Minor Plaintiff at the infirmary of the Midlands Regional Center by an outside physician employed by Richland Memorial Hospital. Further, the Defendant would admit, upon information and belief, that on or about February 26, 1996, the Defendant, James Christian, wrote the Plaintiff, Patricia Jennings, and apologized for the beating and renewed the commitment of the Midlands Regional Center to try to ensure the safety of the Minor Plaintiff while he remained at the Midlands Regional Center.

41. As to Paragraphs 96 through 105 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that on March 6, 1996, as a result of the Minor Plaintiff becoming

aggressive toward and striking the Defendant, Clint Fuchs, on the back of his head, the Defendant, Clint Fuchs, was required to use an accepted restraint hold commonly referred to as the "basket hold" to prevent further aggression. The Defendant would further admit, upon information and belief, that, as a result of the struggle of the Minor Plaintiff, the Minor Plaintiff sustained certain minor injuries and, according to the report of the Minor Plaintiff, was not hurt. As to the medical records referenced herein, the Defendant would crave reference to those medical records as the best evidence of the events shown therein and would specifically deny that any actions on the part of the Defendant, Clint Fuchs, were unwarranted or excessive.

42. As to Paragraphs 106 through 108 of the Plaintiffs' Complaint, the Defendant would deny same and demands strict proof thereof.

43. As to Paragraphs 109, 119, 149, and 163 of the Plaintiffs' Complaint, the Defendant reiterates and makes a part hereof all of the foregoing paragraphs and affirmative defenses.

44. As to Paragraphs 110, 111, 112, 113, 114, 115, 116, 117, 118, 120, 121, 122, 123, 124, 125, 127, and 130 of the Plaintiffs' Complaint, the Defendant would deny same.

45. As to Paragraph 126 of the Plaintiffs' Complaint, the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, would deny same as stated and crave reference thereto.

46. As to Paragraph 128 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that the Minor Plaintiff has been a resident of J. Claude Fort Community Residence in Cherokee County. As to the exact dates and times, the Defendant would crave reference to the records from J. Claude Fort Community Residence.

47. As to Paragraph 129 of the Plaintiffs' Complaint, the Defendant would deny same as stated.

48. As to Paragraphs 131, 132, 133, 134, 135, 136, and 137 of the Plaintiffs' Complaint, the Defendant would deny same as stated and would crave reference to the specific report or reports concerning such events.

49. As to Paragraph 138 of the Plaintiffs' Complaint, the Defendant would admit same upon information and belief.

50. As to Paragraphs 139 and 140 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that there had been prior meetings. As to the nature of such meetings, the Defendant would deny same and demands strict proof thereof.

51. As to Paragraph 141 of the Plaintiffs' Complaint, the Defendant would admit same upon information and belief.

52. As to Paragraphs 142, 143, 144, and 145 of the Plaintiffs' Complaint, the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, would deny same as stated and crave reference thereto.

53. As to Paragraphs 146 through 162, 164 and 165 of the Plaintiffs' Complaint, the Defendant would deny same.

FOR A SECOND DEFENSE

54. The Complaint fails to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE

55. The Defendant at no time violated any clearly established constitutional rights which were known or should have been known to him and, therefore, is entitled to immunity.

FOR A FOURTH DEFENSE

56. Upon information and belief, at all times referred to herein, the Defendant was an employee of the State of South Carolina, South Carolina Department of Disabilities and Special Needs, an agency of the State of South Carolina, and acted within the course and scope of his duties under the Constitution and laws of the State of South Carolina and acted within the full range of his discretion permitted under the laws of the State of South Carolina and, at all times, acted in good faith and is immune from suit.

FOR A FIFTH DEFENSE

57. The Defendant was acting in his official capacity at all times and is an alter ego of the State of South Carolina and, therefore, is immune from suit pursuant to the Eleventh Amendment of the United States Constitution.

FOR A SIXTH DEFENSE

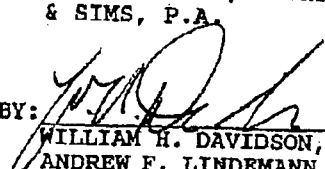
58. The Defendant, in his official capacity, is the alter ego of the State of South Carolina and, therefore, is not a "person" amenable to suit under 42 U.S.C. § 1983.

FOR A SEVENTH DEFENSE

59. The Defendant alleges, upon information and belief, that the Plaintiffs lack standing to represent the various alleged class members.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant, Roger Smith, prays that the Complaint be dismissed with prejudice and for such other and further relief as the Court deems just and proper.

ELLIS, LAWHORNE, DAVIDSON
& SIMS, P.A.

BY: 

WILLIAM H. DAVIDSON, II #425
ANDREW F. LINDEMANN #5070
The Keenan Building
1330 Lady Street, 4th Floor
Post Office Box 2285
Columbia, SC 29202
(803)254-4190

ATTORNEYS FOR THE DEFENDANT,
ROGER SMITH

COLUMBIA, SOUTH CAROLINA

September 10, 1996

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

SEP 10 1996

LARRY W. PROPPS, CLERK
COLUMBIA, S. C.

Michael Scott Jennings,
a minor, by his Guardians
ad Litem, Reverend Charles
Jennings and Patricia
Jennings, on behalf of
himself and as representative
of a class similarly
situated,

Plaintiffs,

v.

James Christian, individually
and in his capacity as
Facilities Director for the
Midlands Regional Center,
South Carolina Department of
Disabilities and Special
Needs; Clint Fuchs,
individually and in his
capacity as a Staff Member
for the Midlands Regional
Center, South Carolina
Department of Disabilities
and Special Needs; Michael
Bernard Goodwin, individually
and in his capacity as a
Staff Member for the Midlands
Regional Center, South
Carolina Department of
Disabilities and Special
Needs; Alberta Gibbes,
individually and in her
capacity as a Staff Member
for the Midlands Regional
Center, South Carolina
Department of Disabilities
and Special Needs; Gracilda
Gross, individually and in
her capacity as a Staff
Member for the Midlands
Regional Center, South
Carolina Department of
Disabilities and Special

CIVIL ACTION NUMBER: 3:96-1720-23

ANSWER ON BEHALF OF DEFENDANT,
JAMES G. CHRISTIAN, ED.D.
(Jury Trial Demanded)

Needs; John Hancock; Judy
 Johnson, individually and in
 her capacity as Director of
 Residential Care for the
 Defendant Midlands Regional
 Center, South Carolina
 Department of Disabilities
 and Special Needs; Phillip
 Massey, individually and in
 his capacity as Director for
 the South Carolina Department
 of Disabilities and Special
 Needs; and Roger Smith,
 individually and in his
 capacity as a Staff Member
 for the Midlands Regional
 Center, South Carolina
 Department of Disabilities
 and Special Needs,
 Defendants.

The Defendant, James G. Christian, Ed.D., answers the
 Complaint of the Plaintiff as follows:

1. The Defendant, James G. Christian, Ed.D., denies each and
 every allegation of the Plaintiffs' Complaint not hereinafter
 specifically admitted, qualified, or otherwise explained.

FOR A FIRST DEFENSE

2. As to Paragraph 1 of the Plaintiffs' Complaint, the
 Defendant would allege, upon information and belief, that the
 Plaintiffs have set forth legal conclusions which can neither be
 admitted nor denied and, therefore, would crave reference thereto.

3. As to Paragraph 2 of the Plaintiffs' Complaint, the
 Defendant would deny same.

4. As to Paragraph 3 of the Plaintiffs' Complaint, the
 Defendant would deny same.

5. As to Paragraph 4 of the Plaintiffs' Complaint, the Defendant would deny same.
6. As to Paragraph 5 of the Plaintiffs' Complaint, the Defendant would admit same upon information and belief.
7. As to Paragraph 6 of the Plaintiffs' Complaint, the Defendant would admit same upon information and belief.
8. As to Paragraph 7 of the Plaintiffs' Complaint, the Defendant would admit same upon information and belief.
9. As to Paragraph 8 of the Plaintiffs' Complaint, the Defendant would allege, upon information and belief, that the Plaintiffs have set forth legal conclusions which can neither be admitted nor denied and, therefore, would crave reference thereto.
10. As to Paragraph 9 of the Plaintiffs' Complaint, the Defendant would deny same.
11. As to Paragraph 10 of the Plaintiffs' Complaint, the Defendant would admit that the South Carolina Department of Disabilities and Special Needs is a state agency in South Carolina which operates public facilities. The duties and responsibilities are set forth in the laws of the State of South Carolina. As to the remaining allegations of Paragraph 10, the Defendant would deny same.
12. As to paragraph 11 of the Plaintiffs' Complaint, the Defendant would admit that the Midlands Regional Center is a public facility located in Columbia, South Carolina and operated by the South Carolina Department of Disabilities and Special Needs. As to

the remaining allegations of Paragraph 11, the Defendant would deny same.

13. As to Paragraph 12 of the Plaintiffs' Complaint, the Defendant would admit that James G. Christian, Ed.D. is a citizen and resident of the State of South Carolina and, at all times relevant herein, was the Facility Director for the Midlands Regional Center, a public facility. As to the remaining allegations of Paragraph 12, the Defendant would deny same.

14. As to Paragraph 13 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that Clint Fuchs is a citizen and resident of the State of South Carolina and, at all times relevant herein, was an employee of the Midlands Regional Center, a public facility. As to the remaining allegations of Paragraph 13, the Defendant would deny same.

15. As to Paragraph 14 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that Michael Bernard Goodwin is a citizen and resident of the State of South Carolina and, at all times relevant herein, was an employee of the Midlands Regional Center, a public facility. As to the remaining allegations of Paragraph 14, the Defendant would deny same.

16. As to Paragraph 15 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that Alberta Gibbes is a citizen and resident of the State of South Carolina and, at all times relevant herein, was an employee of the Midlands Regional Center, a public facility. As to the remaining allegations of Paragraph 15, the Defendant would deny same.

17. As to Paragraph 16 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that Gracilda Gross is a citizen and resident of the State of South Carolina and, at all times relevant herein, was an employee of the Midlands Regional Center, a public facility. As to the remaining allegations of Paragraph 16, the Defendant would deny same.

18. As to Paragraph 17 of the Plaintiffs' Complaint, the Defendant can neither admit nor deny same as the information requested is confidential and privileged in nature.

19. That as to Paragraph 18 of the Plaintiffs' Complaint, the Defendant can neither admit nor deny same as the information requested is confidential and privileged in nature.

20. As to Paragraph 19 of the Plaintiff's Complaint, the Defendant would deny, upon information and belief, that Judy Johnson is a citizen and resident of the State of South Carolina. However, the Defendant would admit that, at all times relevant herein, Judy Johnson was employed as the Deputy State Director for Regional Centers for the South Carolina Department of Disabilities and Special Needs. As to the remaining allegations of Paragraph 19, the Defendant would deny same.

21. As to Paragraph 20 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that Philip Massey is a citizen and resident of the State of South Carolina and, at all times relevant herein, was employed as State Director for the South Carolina Department of Disabilities and Special

Needs. As to the remaining allegations of Paragraph 20, the Defendant would deny same.

22. As to Paragraph 21 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that Roger Smith is a citizen and resident of the State of South Carolina and, at all times relevant herein, was an employee of the Midlands Regional Center, a public facility. As to the remaining allegations of Paragraph 21, the Defendant would deny same.

23. As to Paragraph 22 of the Plaintiffs' Complaint, the Defendant would allege, upon information and belief, that the Plaintiffs have set forth legal conclusions which can neither be admitted nor denied and, therefore, would crave reference thereto.

24. As to Paragraph 23 of the Plaintiffs' Complaint, the Defendant would deny same.

25. As to Paragraph 24 of the Plaintiffs' Complaint, the Defendant would allege, upon information and belief, that the Plaintiffs have set forth legal conclusions which can neither be admitted nor denied and, therefore, would crave reference thereto.

26. As to Paragraph 25 of the Plaintiffs' Complaint, the Defendant would deny same.

27. As to Paragraphs 26 and 39 of the Plaintiffs' Complaint, the Defendant would deny same.

28. As to Paragraph 27 of the Plaintiffs' Complaint, the Defendant would allege, upon information and belief, that the Plaintiffs have set forth legal conclusions which can neither be admitted nor denied and, therefore, would crave reference thereto.

29. As to Paragraph 28 of the Plaintiffs' Complaint, the Defendant would admit same upon information and belief.

30. As to Paragraph 29 of the Plaintiffs' Complaint, the Defendant can neither admit nor deny same and would crave reference to the medical records of the Minor Plaintiff.

31. As to Paragraph 30 of the Plaintiffs' Complaint, the Defendant would admit same upon information and belief.

32. As to Paragraph 31 of the Plaintiffs' Complaint, the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, would deny same as stated ~~and~~ *crave reference thereto*

33. As to Paragraphs 32 through 38 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that the medical records of the Minor Plaintiff from the Midlands Regional Center show that the Minor Plaintiff had scratches on his left forearm as well as other abrasions noted during the time period set forth in these paragraphs. However, the Defendant would deny that such abrasions or scratches resulted in any injury or damage to the Minor Plaintiff and, further, denies that such scratches or abrasions were caused by any physical abuse or violence by this Defendant or any of the Defendants.

34. As to Paragraph 40 through 48 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that on January 3, 1996, as a result of the inappropriate behavior of the Minor Plaintiff in attempting to hit and kick the staff and potentially causing injury to himself, an order was received to

place the Minor Plaintiff in an approved restraint procedure commonly known as a "four point restraint." During the period of attempting to restrain the Minor Plaintiff, Valium was administered in an attempt to calm the Minor Plaintiff. As to the remaining allegations of Paragraphs 40 through 48, the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, would deny same and demands strict proof thereof.

35. As to Paragraphs 49 through 52 of the Plaintiffs' Complaint, the Defendant, upon information and belief, would crave reference to the records of the Midlands Regional Center as to the events surrounding the alleged attack on the Minor Plaintiff. Upon information and belief, the Defendant would specifically allege that such an event occurred as a result of the actions of the Minor Plaintiff in bothering the individual after the Minor Plaintiff was warned to leave the individual alone. As to the remaining allegations of Paragraphs 49 through 52, the Defendant would deny same and demands strict proof thereof.

36. As to Paragraphs 53 through 55 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that on January 20, 1996, the Minor Plaintiff was pushed to the floor by another individual but that such actions were caused by the actions of the Minor Plaintiff. As to the remaining allegations of Paragraphs 53 through 55, the Defendant would deny same and demands strict proof thereof.

37. As to Paragraphs 56 through 58 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that on February 2, 1996, the Minor Plaintiff received a scratch down his right cheek from another individual but that such was caused as a direct result of the activities of the Minor Plaintiff. As to the remaining allegations of Paragraphs 56 through 58, the Defendant would deny same and demands strict proof thereof.

38. As to Paragraphs 59 through 77 of the Plaintiffs' Complaint, the Defendant, upon information and belief, would allege that on or about February 10, 1996, the Minor Plaintiff, who was under one on one supervision because of prior behavioral problems as well as other problems he had experienced at the Midlands Regional Center, began picking on another individual. This individual became agitated toward the Minor Plaintiff which resulted in the individual hitting the Minor Plaintiff. At that point, the Minor Plaintiff struck the individual in the head and the staff separated the two. However, the Minor Plaintiff ran and assaulted the individual which resulted in the individual striking the Minor Plaintiff again. As a result of this renewed assault by the Minor Plaintiff and the resulting blows, the staff attempted to separate the two and called for help. As a result of this incident, the Minor Plaintiff sustained certain injuries and the Defendant would crave reference to the medical records of the Minor Plaintiff as to the exact nature and extent of the injuries. Further, the Defendant would admit, upon information and belief, that during this period of time, the parents of the Minor Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

FILED

SEP 10 1996

LARRY W. PROPPS, CLERK
COLUMBIA, S. C.

Michael Scott Jennings,
a minor, by his Guardians
ad Litem, Reverend Charles
Jennings and Patricia
Jennings, on behalf of
himself and as representative
of a class similarly
situated,

Plaintiffs,

v.

James Christian, individually
and in his capacity as
Facilities Director for the
Midlands Regional Center,
South Carolina Department of
Disabilities and Special
Needs; Clint Fuchs,
individually and in his
capacity as a Staff Member
for the Midlands Regional
Center, South Carolina
Department of Disabilities
and Special Needs; Michael
Bernard Goodwin, individually
and in his capacity as a
Staff Member for the Midlands
Regional Center, South
Carolina Department of
Disabilities and Special
Needs; Alberta Gibbs,
individually and in her
capacity as a Staff Member
for the Midlands Regional
Center, South Carolina
Department of Disabilities
and Special Needs; Gracilda
Gross, individually and in
her capacity as a Staff
Member for the Midlands
Regional Center, South
Carolina Department of
Disabilities and Special

CIVIL ACTION NUMBER: 3:96-1720-23

ANSWER ON BEHALF OF DEFENDANT,
PHILLIP MASSEY
(Jury Trial Demanded)

Needs; John Hancock; Judy
 Johnson, individually and in
 her capacity as Director of
 Residential Care for the
 Defendant Midlands Regional
 Center, South Carolina
 Department of Disabilities
 and Special Needs; Phillip
 Massey, individually and in
 his capacity as Director for
 the South Carolina Department
 of Disabilities and Special
 Needs; and Roger Smith,
 individually and in his
 capacity as a Staff Member
 for the Midlands Regional
 Center, South Carolina
 Department of Disabilities
 and Special Needs,
 Defendants.

The Defendant, Phillip Massey, answers the Complaint of the Plaintiff as follows:

1. The Defendant, Phillip Massey, denies each and every allegation of the Plaintiffs' Complaint not hereinafter specifically admitted, qualified, or otherwise explained.

FOR A FIRST DEFENSE

2. As to Paragraph 1 of the Plaintiffs' Complaint, the Defendant would allege, upon information and belief, that the Plaintiffs have set forth legal conclusions which can neither be admitted nor denied and, therefore, would crave reference thereto.

3. As to Paragraph 2 of the Plaintiffs' Complaint, the Defendant would deny same.

4. As to Paragraph 3 of the Plaintiffs' Complaint, the Defendant would deny same.

aggressive toward and striking the Defendant, Clint Fuchs, on the back of his head, the Defendant, Clint Fuchs, was required to use an accepted restraint hold commonly referred to as the "basket hold" to prevent further aggression. The Defendant would further admit, upon information and belief, that, as a result of the struggle of the Minor Plaintiff, the Minor Plaintiff sustained certain minor injuries and, according to the report of the Minor Plaintiff, was not hurt. As to the medical records referenced herein, the Defendant would crave reference to those medical records as the best evidence of the events shown therein and would specifically deny that any actions on the part of the Defendant, Clint Fuchs, were unwarranted or excessive.

42. As to Paragraphs 106 through 108 of the Plaintiffs' Complaint, the Defendant would deny same and demands strict proof thereof.

43. As to Paragraphs 109, 119, 149, and 163 of the Plaintiffs' Complaint, the Defendant reiterates and makes a part hereof all of the foregoing paragraphs and affirmative defenses.

44. As to Paragraphs 110, 111, 112, 113, 114, 115, 116, 117, 118, 120, 121, 122, 123, 124, 125, 127, and 130 of the Plaintiffs' Complaint, the Defendant would deny same.

45. As to Paragraph 126 of the Plaintiffs' Complaint, the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, would deny same as stated and crave reference thereto.

46. As to Paragraph 128 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that the Minor Plaintiff has been a resident of J. Claude Fort Community Residence in Cherokee County. As to the exact dates and times, the Defendant would crave reference to the records from J. Claude Fort Community Residence.

47. As to Paragraph 129 of the Plaintiffs' Complaint, the Defendant would deny same as stated.

48. As to Paragraphs 131, 132, 133, 134, 135, 136, and 137 of the Plaintiffs' Complaint, the Defendant would deny same as stated and would crave reference to the specific report or reports concerning such events.

49. As to Paragraph 138 of the Plaintiffs' Complaint, the Defendant would admit same upon information and belief.

50. As to Paragraphs 139 and 140 of the Plaintiffs' Complaint, the Defendant would admit, upon information and belief, that there had been prior meetings. As to the nature of such meetings, the Defendant would deny same and demands strict proof thereof.

51. As to Paragraph 141 of the Plaintiffs' Complaint, the Defendant would admit same upon information and belief.

52. As to Paragraphs 142, 143, 144, and 145 of the Plaintiffs' Complaint, the Defendant lacks sufficient information upon which to form a belief as to the truth and veracity of same and, therefore, would deny same as stated and crave reference thereto.

53. As to Paragraphs 146 through 162, 164 and 165 of the Plaintiffs' Complaint, the Defendant would deny same.

FOR A SECOND DEFENSE

54. The Complaint fails to state a claim upon which relief can be granted.

FOR A THIRD DEFENSE

55. The Defendant at no time violated any clearly established constitutional rights which were known or should have been known to him and, therefore, is entitled to immunity.

FOR A FOURTH DEFENSE

56. Upon information and belief, at all times referred to herein, the Defendant was an employee of the State of South Carolina, South Carolina Department of Disabilities and Special Needs, an agency of the State of South Carolina, and acted within the course and scope of his duties under the Constitution and laws of the State of South Carolina and acted within the full range of his discretion permitted under the laws of the State of South Carolina and, at all times, acted in good faith and is immune from suit.

FOR A FIFTH DEFENSE

57. The Defendant was acting in his official capacity at all times and is an alter ego of the State of South Carolina and, therefore, is immune from suit pursuant to the Eleventh Amendment of the United States Constitution.

FOR A SIXTH DEFENSE

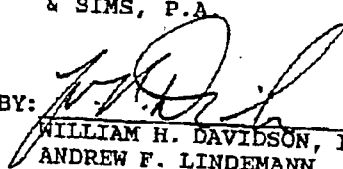
58. The Defendant, in his official capacity, is the alter ego of the State of South Carolina and, therefore, is not a "person" amenable to suit under 42 U.S.C. § 1983.

FOR A SEVENTH DEFENSE

59. The Defendant alleges, upon information and belief, that the Plaintiffs lack standing to represent the various alleged class members.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant, James G. Christian, Ed.D., prays that the Complaint be dismissed with prejudice and for such other and further relief as the Court deems just and proper.

ELLIS, LAWHORNE, DAVIDSON
& SIMS, P.A.

BY: 

WILLIAM H. DAVIDSON, II #425
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ATTORNEYS FOR THE DEFENDANT,
JAMES G. CHRISTIAN, ED.D.

COLUMBIA, SOUTH CAROLINA

September 10, 1996



FAX TRANSMISSION

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JUN 10 1996

LARRY W. PROPPS, CLERK
COLUMBIA, S. C.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

3 96 1720 23

Michael Scott Jennings,
a Minor by His Guardians
Ad Litem Rev. Charles
Jennings and Patricia
Jennings, on behalf of
Himself and as
Representative of a
Class Similarly Situated,

Plaintiffs,

Vs.

James Christian,
Individually and
in His Capacity as
Facilities Director for
the Midlands Regional
Center, South Carolina
Department of
Disabilities and
Special Needs;

Clint Fuchs, Individually
and in His Capacity
as a Staff Member
for the Midlands
Regional Center,
South Carolina Department
of Disabilities and
Special Needs;

Michael Bernard Goodwin,
Individually and
in His Capacity as
a Staff Member For
the Midlands Regional
Center, South
Carolina Department
of Disabilities
and Special Needs;

Alberta Gibbes,
Individually and
in Her Capacity
As a Staff Member

For the Midlands)
Regional Center,)
South Carolina)
Department of)
Disabilities and)
Special Needs;)

Gracilda Gross,)
Individually and in)
Her Capacity As)
a Staff Member For)
the Midlands Regional)
Center, South Carolina)
Department of Disabilities)
and Special Needs;)

John Hancock;)

Judy Johnson, Individually and)
in Her Capacity as Director of)
Residential Care for the)
Defendant Midlands Regional)
Center, South Carolina)
Department of Disabilities and)
Special Needs;)

Philip Massey, Individually)
and in His Capacity as)
Director for the South)
Carolina Department of)
Disability Services and)
Special Needs;)

Roger Smith, Individually and)
in His Capacity as a Staff)
Member For the Midlands)
Regional Center, South)
Carolina Department of)
Disabilities and Special)
Needs;)

Defendants.)

C.A. NO.

COMPLAINT

NOW COMES the Plaintiff by and through counsel, complaining of the Defendants, and alleges as follows:

Introduction

1. This is an individual action by Michael Scott (Scottie) Jennings, a fourteen year old minor plaintiff, brought against the defendants for violations of his federal constitutional rights as a result of repeated beatings and for brutal and inhumane treatment directed against him while he was a patient at Midlands Regional Center, a rehabilitation facility owned and operated by the Defendant South Carolina Department of Disabilities and Special Needs.
2. This is also brought as a class action under Rule 23 of the Federal Rules of Civil Procedure against the Defendants Christian, Johnson, and Massey, by the plaintiff and other plaintiffs similarly situated who have been exposed to assaults, to brutal treatment and to the danger of assaults while under the care of Midlands Regional Center and other DDS facilities on the grounds that the named defendants have violated the constitutional rights of the class by failing to provide a program insuring adequate protection from dangerous conditions for members of the class.
3. Upon information and belief, there are at least two thousand clients with disabilities located in DDS facilities throughout the State of South Carolina who constitute the class of plaintiffs represented by the plaintiff.
4. Upon information and belief, the class is so numerous that joinder of all members is impracticable, there are questions of law or fact common to the class, the claims of the representative parties are typical of the claims of the class, and the representative parties will fairly and adequately protect the interests of the class.

The Parties

5. Plaintiff, Michael Scott (Scottie) Jennings, is a fourteen year old minor plaintiff, and is a citizen and resident of Rock Hill, South Carolina, and is the adopted son of the Plaintiffs Charles Jennings and Patricia Jennings.
6. The Plaintiff Charles Jennings is a citizen and resident of Rock Hill, South Carolina, and is the father and guardian ad litem for the minor plaintiff, and is a Methodist minister.

7. The Plaintiff Patricia Jennings is a citizen and resident of Rock Hill, South Carolina, and is the mother and guardian ad litem for the minor plaintiff.
8. The Plaintiffs also bring this claim on behalf of other plaintiffs similarly situated against the Defendants Christian, Johnson, and Massey.
9. The class action suit against the Defendants Christian, Johnson, and Massey is brought by the plaintiff and similarly situated class members who have been exposed to assaults and the danger of assaults while under the care of Midlands Regional Center and other DDS facilities on the grounds that the named defendants have violated the constitutional rights of the class by failing to provide a program insuring adequate protection from dangerous conditions for members of the class.
10. Upon information and belief, the South Carolina Department of Disabilities and Special Needs (hereinafter referred to as DDS) is a South Carolina state agency operating public facilities for the care and rehabilitation of citizens with medically recognized physical and mental handicaps and disabilities and is subject to the federal civil rights laws as enunciated hereunder.
11. Upon information and belief, the Midlands Regional Center (hereinafter referred to as "Midlands") is a public facility located in Columbia, South Carolina, and operated by the defendant South Carolina Department of Disabilities and Special Needs and is subject to the federal civil rights laws as enunciated hereunder.
12. Upon information and belief, the defendant James Christian is a citizen and resident of the state of South Carolina, and at all relevant times herein was the facility director for the Midlands Regional Center, and is subject to the federal civil rights laws as enunciated hereunder.
13. Upon information and belief, the defendant Clint Fuchs is a citizen and resident of the state of South Carolina, and was at all relevant time herein an employee of the Midlands Regional Center, a public facility, and is subject to the federal civil rights laws as enunciated hereunder.
14. Upon information and belief, the defendant Michael Bernard Goodwin is a citizen and resident of the state of South Carolina, and was at all relevant time herein an employee of the Midlands Regional Center, a public facility, and is subject to the federal civil rights laws as enunciated hereunder.

15. Upon information and belief, the defendant Alberta Gibbes is a citizen and resident of the state of South Carolina, and was at all relevant time herein an employee of the Midlands Regional Center, a public facility, and is subject to the federal civil rights laws as enunciated hereunder.
16. Upon information and belief, the defendant Gracilda Gross, is a citizen and resident of the state of South Carolina, and was at all relevant time herein an employee of the Midlands Regional Center, a public facility, and is subject to the federal civil rights laws as enunciated hereunder.
17. Upon information and belief, the defendant John Hancock is a citizen and resident of the State of South Carolina, and was at all relevant times herein a patient or client in residence at the Midlands Regional Center.
18. Upon information and belief, the defendant Hancock has been diagnosed as having "intermittent explosive disorder" and records from the defendants Midlands and DDS show that he exhibits "physical aggression" towards those around him.
19. Upon information and belief, the Defendant Judy Johnson is a citizen and resident of the State of South Carolina, was at all relevant times herein employed as Director of Residential Care for the Midlands, and is subject to the federal civil rights laws as enunciated hereunder.
20. Upon information and belief, the defendant Philip Massey is a citizen and resident of the State of South Carolina, was at all relevant times herein employed as state director for the South Carolina Department of Disability Services and Special Needs, and is subject to the federal civil rights laws as enunciated hereunder.
21. Upon information and belief, the defendant Roger Smith, is a citizen and resident of the state of South Carolina, and was at all relevant time herein an employee of the Midlands Regional Center, a public facility, and is subject to the federal civil rights laws as enunciated hereunder.

Jurisdictional Allegations

22. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331, 28 U.S.C. §1343, 28 U.S.C. §1367, 42 U.S.C. §1983 et seq.
23. The Court also has "pendant jurisdiction" over applicable state claims under 28 U.S.C. §1367.
24. Additionally, the Court has jurisdiction under the 5th and

14th Amendments to the United States Constitution.

25. The Court also has jurisdiction under 42 U.S.C. §1983 (the Civil Rights Act of 1871) in that the conduct complained of by the defendants Christian, Fuchs, Goodwin, Gibbes, Gross, Johnson, Massey, and Smith was under the color of state law and such conduct subjected the plaintiff and other members of the class to a deprivation of his rights, privileges or immunities secured by the Constitution and laws of the United States.
26. Additionally, the defendants the conduct complained of by the defendants Christian, Fuchs, Goodwin, Gibbes, Gross, Johnson, Massey, and Smith was under the color of state law and such conduct subjected the plaintiff and other members of the class to a deprivation of rights under the due process clause of the Fourteenth Amendment of the United States Constitution.
27. The jurisdiction of the Court is also further invoked under the 42 U.S.C. §1988 which allows a prevailing plaintiff to recover reasonable attorney fees under the applicable civil rights laws enunciated herein.

Facts

28. The minor plaintiff, Scottie Jennings, is the adopted son of the Rev. Charles and Patricia Jennings of Rock Hill, S.C.
29. The minor plaintiff was born with several physical ailments, including fetal alcohol syndrome, and as a result, has occasionally been in need of "special care" throughout the course of his young life.
30. On December 19, 1995, Scottie Jennings was admitted to Midlands Center in Columbia for temporary "respite" care.
31. Other members of the plaintiff class include other clients who have been admitted to the Midlands Center and other DDS run facilities for temporary and permanent care.
32. Soon after his admission, Midlands internal "Professional/Paramedical" Records reveal that Scottie Jennings was suffering mysterious "injuries" for which there was no accountability.
33. For example, on December 20, 1995, the records reveal three scratches on the inside of Scottie's left arm where his arm bends at the elbow joint.
34. The next day, December 21, 1995, the Midlands "Professional/Paramedical" Records reveal that Scottie had

received new injuries, this time "3 small scratches on his left forearm."

35. A subsequent entry on the December 21, 1995 "Professional/Paramedical" Records revealed that Scottie had suffered what the report deemed as "3 small scratches" on his left "antiorbital area."
 36. On December 23, 1995, the records showed that Scottie has sustained a "10 centimeter abrasion" in the middle of his back."
 37. On December 24, 1995, the same records showed an abrasion on the lower left ankle area and that Scottie was walking with a limp.
 38. On December 29, 1995 the same records showed an abrasion on the plaintiff's the right arm and upper wrist.
 39. Soon after his admission to Midlands, Scottie Jennings became the target of physical abuse and violence by the defendant Goodwin and members of the Midlands Center Staff, all acting under the color of state authority.
- Plaintiff Placed In "4 Point Restraint" For
One Hour In Violation Of Doctors Orders
40. For example, on January 2, 1996, Scottie Jennings was Placed in what the Midlands Records have deemed as an "Emergency 4-point restraint" whereas the plaintiff child's hands and feet were strapped tied to a bed by the defendants Alberta Gibbes and Gracilda Gross.
 41. The defendants Gross and Gibbes left the plaintiff child bound for a period of one hour with his hands and feet strapped tightly to bedposts.
 42. During this incident, 5 milligrams of Valium was involuntarily administered.
 43. The extraordinary length of time during which the plaintiff ~~child's hands and feet were tightly tied and strapped by these state employees was cruel and barbaric treatment, was a violation of physicians orders and was found by the Midlands Center to be a violation of their own policy.~~
 44. In fact, internal records documenting this incident found specifically that "The time frame the individual remained in restraints was a violation of policy. He remained for one hour."
 45. Because such barbaric treatment against this child caused

him emotional scarring and mental anguish, Scottie Jennings was referred to a psychiatrist, who recommended that Scottie always have one-on-one supervision with a staff member.

46. The Midlands report documenting this incident included the following recommendation:

D: RECOMMENDATIONS

program team follow through with Psychiatrist recommendation. Individual remain on 1:1 supervision.

47. Despite the excessive restraints placed on him on January 2, 1996, on January 3, 1996, according to Midland Records, Scottie Jennings was again placed in a "four point restraint" by the defendant Gracilda B. Gross, whereby the plaintiffs arms and legs were tightly bound to bedposts.
48. According to the Midlands "Emergency Restraint Form" dated January 3, 1996, Scottie Jennings was again restrained for a period of one hour.

Scott Jennings Attacked By Unnamed Individual
January 11, 1996

49. The Midland Records for January 11, 1996 indicate that an unnamed individual "became upset and began hitting on Scott Jennings."
50. According to the report for that day, as a result of the beating inflicted upon him, Scottie was left with red areas on the right side of his face, red areas on his upper back and red areas on his leg.
51. Upon information and belief, the unnamed "other individual" is the defendant John Hancock, an adult resident client at Midlands who has been diagnosed with "intermittent explosive disorder" and "severe retardation."
52. Upon information and belief, Midland records on the defendant Hancock shows that he (Hancock) "exhibits physical aggression toward those around him in certain circumstances."

Scott Jennings Attacked By Unnamed Individual
January 20, 1996

53. On January 20, 1996 at 2:45 PM, Scottie Jennings was attacked and pushed to the floor by a person identified in the Midland Records only as "another individual."

54. Upon information and belief, the unnamed "other individual" is the defendant John Hancock, an adult resident client at Midlands who has been diagnosed with "intermittent explosive disorder" and "severe retardation."
55. On this occasion, according to Midland Records, Scottie Jennings suffered from injuries on the 4th and 5th fingers of his right hand.

Scott Jennings Attacked By Unnamed Individual
February 2, 1996

56. On February 2, 1996 at 2:45 PM, Scottie Jennings was attacked by a person again identified in the Midland Records only as "another individual."
57. On this occasion, Scottie received a 10 cm scratch down his right cheek by the attack, which according to records, occurred at approximately 8:45 A.M.
58. The Professional/Paramedical Record entry for this day was made by John Brunson, LPN and stated that Nursing Supervisor Ann Gammer, RN. was notified. However, the plaintiff parents not notified.

Scott Jennings Attacked By John Hancock
February 10, 1996

59. On February 10, 1996 at 5:50 PM, Scottie Jennings was attacked by a person again initially identified in the Midland Records only as "another individual."
60. On this occasion, the defendant Midland Records initially showed that Scottie Jennings suffered from scratches and bruises to both sides of his face, that he suffered from swelling under his left eye, and that he suffered scratches to both arms, to his back and to his legs.
61. A copy of a photograph taken by Midlands officials documenting the attack on Scottie Jennings is attached hereto as "Exhibit A" showing bruises around the boy's eyes, across his nose, on his lips and on the left side of his face.
62. A copy of a photograph taken by Midlands officials documenting the attack on Scottie Jennings is attached hereto as "Exhibit B" showing a footprint on the boys back, which was later noted by Dr. Susan Ryan, M.D. during her examination of Scottie after the attack.

63. A late entry in the Midland records identified the unnamed "other individual" as the defendant John Hancock, an adult resident client at Midlands who has been diagnosed with "intermittent explosive disorder" and "severe retardation."
64. A subsequent late entry for February 10, 1996, further described injuries suffered by Scott Jennings as a result of this brutal attack, describing bruises and swelling all over the boy's body.
65. On February 10, 1995, at 7:00 P.M., Charlene Bell of the Midlands Center called Rev. Jennings and indicated that Scottie was involved in a fight.
66. Ms. Bell falsely reported that Scottie had received only minor abrasions, but that he was "fine."
67. On February 10, 1996, at approximately 8:00 P.M. the plaintiff Patricia Jennings telephoned the Hickory Residence Hall at Midlands Center to check on Scottie and ask where the 1:1 staff was when the attack occurred.
68. The person who answered Mrs. Jennings' call would not respond to her questions, but instead transferred Ms. Jennings to Officer of the Day (OOD), David Hagler.
69. David Hagler, the OOD, told Ms. Jennings that Scottie had been beaten badly and had received a number of blows.
70. The OOD said he didn't know where Scottie's staff worker was at the time and stated that said Scottie had returned to Hickory residence with his staff worker, Mr. Goodwin.
71. Ms. Jennings then demanded that Scottie be removed from the Hickory residence and away from Mr. Goodwin, and the OOD agreed to return Scottie to the infirmary with another staff person.
72. On February 10, 1996 at 9:00 P.M., Ms. Jennings telephoned Mr. John King, York County Director of DDS at home and asked that Mr. King contact someone in charge at Midlands Center to ascertain the scope of Scottie's condition.
73. Shortly thereafter, the defendant Jim Christian, Director of Midlands Facility, called back to speak with Mrs Jennings and confirmed that Scottie had taken a beating in the Midlands facility.
74. Mr. Christian did not volunteer any more details of the

beating at that time.

75. At 10:00 P.M. on February 10, 1996, the defendant Christian called back to confirm that Scottie had been removed from the Hickory residence hall to the infirmary and that another staff person had been assigned to him.
76. At that time, Mrs. Jennings requested to speak with Scottie and the telephone was handed to Scottie.
77. Mrs. Jennings asked Scottie several questions about details of the beating, however, Scottie was afraid to answer his mother's questions because Midlands staff members were standing over him during the course of the conversation.

February 10, 1996 Attack On Scottie Jennings
Engineered by Defendant Goodwin

78. In the days leading up to February 10, 1996, the defendant Michael Bernard Goodwin had become upset with young Scottie Jennings because the boy had vomited on several occasions.
79. In fact, the Midland records show that "S. Jennings vomited in room" on January 19, 1996.
80. Moreover, Midland records report that Scottie Jennings had suffered from incidents of "vomiting on January 20, 1996 and February 2, 1996."
81. These vomiting incidents upset the defendant Goodwin, who had been assigned as Scottie's counselor since his (Scottie's) enrollment at Midlands.
82. Then on or about February 10, young Scottie Jennings vomited again.
83. Frustrated and angry by Scottie's action in having vomited, the defendant Goodwin, while on duty as Scottie's supervisor, decided that he would teach Scottie "a lesson" by inviting and encouraging the defendant Hancock to attack the plaintiff Scottie.
84. On this occasion, the defendant Goodwin had become angry at Scottie Jennings for throwing up, and instructed the defendant Hancock to "get him," meaning that the defendant Hancock was encouraged to physically attack young Scott Jennings.
85. Encouraged by the defendant Goodwin's remarks, the defendant Hancock, who is much older, larger and stronger than the plaintiff Scottie Jennings, attacked the minor plaintiff and

administered a brutal beating of him.

86. Thus, the attack on Scottie Jennings of February 10, 1996 by John Hancock was encouraged and precipitated by the Defendant Goodwin while Goodwin was working as a counselor for Midlands.
87. Additionally, and upon information and belief, Mr. Hancock had been used by Mr. Goodwin to beat up other resident clients and members of the class as a means of enforcing "discipline."
88. Moreover, other staff members of the defendant Midland have struck Scottie Jennings on numerous occasions, by hitting him on the top of his head, and striking him in his genital section.

Medical Examination After Beating

89. On February 12, 1996, Scott Jennings was examined by Dr. Susan B. Ryan, M.D. of Richlands Memorial Childrens Hospital in Columbia.
90. During the course of her investigation, Dr. Ryan reported that Scottie had been attacked on two separate occasions by Mr. Hancock.
91. Dr. Ryan's examination of Scottie showed scratch marks on left arm where Hancock scratched him, scratches on the back from finger nails, on left side a patch of petechiae (minute reddish or purplish spot containing blood).
92. Her examination also showed a tender bruised area on left back with reddish outline where the child had been bruised.
93. Dr. Ryan concluded that the Pattern of injury appears consistent with a severe beating. ... Beating appears so severe in the photographs that it suggests that there was a great deal of rage or other strong emotion involved.
94. These findings were reported to the defendant Jim Christian in a letter from Dr. Ryan dated February 26, 1996.
95. On that day, February 26, 1996, the defendant James Christian wrote Mrs. Patricia Jennings to apologize for the beating that Scottie Jennings had suffered, and made a commitment to "ensure Scottie's safety while he remains in our care."

March 6, 1996

Scottie Jennings Assaulted by Staff Member Clint Fuchs

96. Despite Mr. Christian's apology and his promise to ensure the plaintiff's safety, Scott Jennings remained the target of excessive violence and physical abuse by Midlands personnel.
97. In fact, on March 6, 1996, Scottie Jennings was placed in what is described as a "basket hold" by the Midlands Regional Center Preliminary Investigation Form for that date.
98. The "basket hold" was performed by Midlands staff member Clint Fuchs, an adult and a named defendant in this lawsuit.
99. Again, according to Midlands reports, as a result of the "basket hold," Scottie Jennings received scratches to his upper arm, under his right eye, bruises to his upper back, bruises on the front of his chest and bruises on his right upper arm.
100. This self-described "basket hold" constituted an unwarranted assault against the plaintiff, and was done with excessive force in violation of his constitutional rights.
101. On that day, March 6, 1996, Scottie Jennings was given medical treatment as a follow up to the assault by Mr. Fuchs.
102. The medical records in Scottie's file at Midlands show that he was treated on that day for "cuts" on his "wrist."
103. The same medical records show that Scottie Jennings was again seen on March 7th and March 8th, 1996, for injuries sustained in the March 6, 1996 incident.
104. The same medical records show that on March 12, 1996, Scottie Jennings was checked for "abdominal injuries."
105. The same medical records show that on March 12, 1996, Scottie Jennings was checked for "facial injuries."
- March 14, 1996
Scottie Jennings Slapped by Staff Member
106. On or about March 14, 1996, Scottie Jennings was again assaulted by a Midlands staff member when the staff member slapped him in the face.
107. On this occasion, the plaintiff was slapped by Midlands Staff member Roger Smith, who was working on duty at the time of the occurrence.
108. As a result of the foregoing, the plaintiffs assert the

following causes of action.

FIRST CAUSE OF ACTION
VIOLATION OF 42 U.S.C. §1983

109. The plaintiffs reallege and reincorporate herein the allegations as set forth above in the complaint.
110. The defendants Fuchs, Goodwin, Gibbes, Gross and Smith, by committing acts of assault against the minor plaintiff, by encouraging acts of assault against the minor plaintiff, and by physically restraining the minor plaintiff for excessive time periods against his will, deprived the minor plaintiff of his right to be free from assault and battery, as set forth by state law, and intentional infliction of emotional distress.
111. The defendants Christian, Johnson and Massey were grossly negligent toward the plaintiff and other members of the class by exposing them to obvious and extreme dangers, and failed to act to provide reasonable protection due to a conscious lack of concern for the plaintiffs' safety.
112. In such gross negligence, defendants Christian, Johnson and Massey acted with "deliberate indifference" toward the plaintiffs and other members of the class.
113. In this case, the pattern of physical injuries sustained by the minor plaintiff since his admission, and partially documented in the body of this complaint, and upon information and belief, the pattern of injuries sustained by other members of the class, should have placed the defendants Christian, Johnson and Massey on notice of the dangerous conditions faced by the minor plaintiff and other members of the class.
114. In this case, the pattern of physical injuries sustained by the minor plaintiff since his admission, and partially documented in the body of this complaint, and the pattern of injuries sustained by other members of the class, should have placed the defendants Christian, Johnson and Massey on notice that the Midlands Center provided an inadequate protection from dangerous conditions faced by the minor plaintiff and other members of the class.
115. In this case, the existence of Midlands records showing that the defendant John Hancock has been diagnosed as having "intermittent explosive disorder" and records from the defendants Midlands and DDS showing that he (Hancock) exhibits "physical aggression" towards those around him should have placed the defendants Christian, Johnson and Massey on notice that the Midlands Center and other DDS

facilities provided an inadequate protection from dangerous conditions faced by the minor plaintiff and other members of the class.

116. Failure by the defendants Christian, Johnson and Massey to provide a protective program insuring that the plaintiff and other members of his class be kept separated from Mr. Hancock and other dangerous clients to prevent, constitutes a deprivation of the constitutional rights of the minor plaintiff and members of the class.
117. Moreover, the aforementioned conduct constitutes a violation of 42 U.S.C. §1983 against the plaintiff individually and against all members of the class of plaintiffs similarly situated who have been exposed to the danger of assault and who have been assaulted by DDS staff members and clients.
118. The aforementioned conduct by the defendants deprived the plaintiff and all class members similarly situated of their rights to be free from assault and battery and their right to be free from intentional infliction of emotional distress. All of these rights are secured to the plaintiff and members of the class similarly situated by the provisions of South Carolina law which are invoked under the supplementary jurisdiction of this court.

SECOND CAUSE OF ACTION
VIOLATION OF 42 U.S.C. §1988

119. The plaintiffs reallege and reincorporate herein the allegations as set forth above in the complaint.
120. The defendants Fuchs, Goodwin, Gibbes, Gross and Smith, by committing acts of assault against the minor plaintiff, by encouraging acts of assault against the minor plaintiff, and by physically restraining the minor plaintiff for excessive time periods against his will, deprived the minor plaintiff of his right to be free from assault and battery, as set forth by state law, and intentional infliction of emotional distress.
121. The defendants Christian, Johnson and Massey were grossly negligent toward the plaintiff and other members of the class by exposing them to obvious and extreme dangers, and failed to act to provide reasonable protection due to a conscious lack of concern for the plaintiffs' safety.
122. In such gross negligence, defendants Christian, Johnson and Massey acted with "deliberate indifference" toward the plaintiffs and other members of the class.
123. In this case, the pattern of physical injuries sustained by

the minor plaintiff since his admission, and partially documented in the body of this complaint, and upon information and belief, the pattern of injuries sustained by other members of the class, should have placed the defendants Christian, Johnson and Massey on notice of the dangerous conditions faced by the minor plaintiff and other members of the class.

124. In this case, the pattern of physical injuries sustained by the minor plaintiff since his admission, and partially documented in the body of this complaint, and the pattern of injuries sustained by other members of the class, should have placed the defendants Christian, Johnson and Massey on notice that the Midlands Center provided an inadequate protection from dangerous conditions faced by the minor plaintiff and other members of the class.
125. In this case, the existence of Midlands records showing that the defendant John Hancock has been diagnosed as having "intermittent explosive disorder" and records from the defendants Midlands and DDS showing that he (Hancock) exhibits "physical aggression" towards those around him should have placed the defendants Christian, Johnson and Massey on notice that the Midlands Center and other DDS facilities provided an inadequate protection from dangerous conditions faced by the minor plaintiff and other members of the class.
126. Prior to his admissions to Midlands in December of 1995, Scottie Jennings had spent time in other state DDS facilities and had been physically and sexually assaulted.
127. Moreover, the defendant Massey was warned on numerous occasions about violence inflicted against Scottie Jennings during the youngsters' previous visits to state controlled facilities.
128. For example, in November of 1992, young Scottie Jennings was admitted to the J. Claude Fort Community Residence in Cherokee County for treatment on a short term basis.
129. The J. Claude Fort Community residence at that time was a part of the South Carolina Department of Mental Retardation, which has since become South Carolina Department of Disabilities Services as a result of recent state government reorganization.
130. On November 16, 1992, while a client at J. Claude Fort, Scottie Jennings was sexually assaulted by another resident at J. Claude Fort.

January 1993 Report Notes Dangerous Conditions

131. After an investigation personally ordered by the defendant Massey concerning the incident, a Department of Mental Retardation Report dated January 28, 1993 disclosed that the resident in question admitted that he had "sexually bothered" the plaintiff Scottie Jennings "a couple of times."
132. The same report of January 28, 1993 noted three incidents of sexual activity for November of 1992 and noted that the clients behavior support program did not address inappropriate sexual behavior.
133. The January, 1993 report also noted that Scottie Jennings had been led around by J. Claude Fort personnel with the use of a "leash" which had been purchased from Wal Mart and that the use of such a restraint had not been approved by the Human Rights Committee.
134. The report found that the leash was kept in a desk drawer in the office of the community residence at J. Claude Fort.
135. The report recommended that the leash be removed from the facility at J. Claude Fort.
136. The report also found instances where wrong medications had been given to clients, and where at least two persons had been sent home with wrong medications.
137. The report could not determine whether any clients had actually taken wrong medication.
138. A copy of this report was provided for the defendant Mr. Massey.
139. Moreover, the dangerous conditions found and conveyed in this report were directly brought to the Defendant Massey's attention in February of 1993 when Mr. Massey met with Mrs. Jennings to discuss the issues raised in the report.
140. In the February 1993 meeting, Mrs. Jennings informed the defendant Massey that Scottie Jennings and other clients had previously been assaulted in state-run DDS facilities and that additional protective measures were needed to protect clients from assault.
141. Upon information and belief, the defendant Judy Johnson, at the time of the January 1993 report referenced above, was Deputy Commissioner for Client Services for South Carolina Department of Retardation.

142. As Deputy Commissioner for Client Services for South Carolina Department of Retardation, upon information and belief, the defendant Johnson knew or should have know about ~~the report and knew or should have known about dangerous conditions to clients in the South Carolina Department of Retardation.~~
143. In December of 1995, prior to the brutal attacks which are the subject of this lawsuit, another meeting was held involving Mrs. Jennings, Mr. Ron Abbot who was the DDS Regional Director and Mr. John King.
144. In the December of 1995 meeting, Mrs. Jennings discussed the dangers facing Scottie Jennings and other clients, and expressed her concern about previous physical and sexual assaults against Scottie Jennings and other clients.
145. Mrs. Jennings warned Abbot and King that Scottie would need one-on-one supervision to insure protection against such attacks.
146. Despite such warnings, and despite past physical assaults on Scottie Jennings and other clients, the defendants Christian, ~~Johnson and Massey~~ failed to provide a protective program insuring that the plaintiff and other members of his class be kept separated from Mr. Hancock and other dangerous clients to prevent assaults.
147. Failure by the defendants Christian, Johnson and Massey to provide a protective program insuring that the plaintiff and other members of his class be kept separated from Mr. Hancock and other dangerous clients to prevent, constitutes a deprivations of the constitutional rights of the minor plaintiff and members of the class.
148. Moreover, the aforementioned conduct constitutes a violation of 42 U.S.C. §1988 against the plaintiff individually and against all members of the class of plaintiffs similarly situated who have been exposed to the danger of assault and who have been assaulted by DDS staff members and clients, thereby entitling them to a recovery of damages and attorneys fees in the prosecution of this action.

THIRD CAUSE OF ACTION
VIOLATION OF PLAINTIFFS CONSTITUTIONAL RIGHTS
UNDER THE 14TH AMENDMENT OF THE
UNITED STATES CONSTITUTION

149. The plaintiffs reallege and reincorporate herein the allegations as set forth above in the complaint.
150. Under the due process clause of the 14th Amendment of the United States Constitution, an individual legally entrusted to the care or protection of governmental officials has the right not to suffer injury as a proximate result of the failure of such officials to render reasonable care or protection to their deliberate indifference to his welfare.
151. The defendants Fuchs, Goodwin, Gibbes, Gross and Smith, by committing acts of assault against the minor plaintiff, by encouraging acts of assault against the minor plaintiff, and by physically restraining the minor plaintiff for excessive time periods against his will, deprived the minor plaintiff of his right to be free from assault and battery, as set forth by state law, and intentional infliction of emotional distress.
152. Moreover, such actions caused the plaintiff and other members of the class to suffer injury as a proximate result of the failure of such officials to render reasonable care or protection to their deliberate indifference for the plaintiffs' welfare.
153. The defendants Christian, Johnson and Massey were grossly negligent toward the plaintiff and other members of the class by exposing them to obvious and extreme dangers, and failed to act to provide reasonable protection due to a conscious lack of concern for the plaintiffs' safety.
154. In such gross negligence, defendants Christian, Johnson and Massey acted with "deliberate indifference" toward the plaintiffs and other members of the class.
155. In this case, the pattern of physical injuries sustained by the minor plaintiff since his admission, and partially documented in the body of this complaint, and upon information and belief, the pattern of injuries sustained by other members of the class, should have placed the defendants Christian, Johnson and Massey on notice of the dangerous conditions faced by the minor plaintiff and other members of the class.
156. In this case, the pattern of physical injuries sustained by the minor plaintiff since his admission, and partially documented in the body of this complaint, and the pattern of injuries sustained by other members of the class, should have placed the defendants Christian, Johnson and Massey on notice that the Midlands Center provided an inadequate protection from dangerous conditions faced by the minor plaintiff and other members of the class.

157. In this case, the existence of Midlands records showing that the defendant John Hancock has been diagnosed as having "intermittent explosive disorder" and records from the defendants Midlands and DDS showing that he (Hancock) exhibits "physical aggression" towards those around him should have placed the defendants Christian, Johnson and Massey on notice that the Midlands Center and other DDS facilities provided an inadequate protection from dangerous conditions faced by the minor plaintiff and other members of the class.
158. Failure by the defendants Christian, Johnson and Massey to provide a protective program insuring that the plaintiff and other members of his class be kept separated from Mr. Hancock and other dangerous clients to prevent, constitutes a deprivations of the constitutional rights of the minor plaintiff and members of the class.
159. In the manner described herein, the defendants acted with reckless disregard of the plaintiffs' constitutional rights under the due process clause of the 14th Amendment.
160. Moreover, in the manner described herein, the defendants acted with reckless disregard of the constitutional rights under the due process clause of the 14th Amendment of all class members.
161. The actions of the defendants as described herein constitutes "deliberate indifference" toward the plaintiffs and other members of the class under the defendants' care.
162. Moreover, the aforementioned conduct constitutes a violation of the 14th Amendment against the plaintiff individually and against all members of the class of plaintiffs similarly situated who have been exposed to the danger of assault and who have been assaulted by DDS staff members and clients.

FOURTH CAUSE OF ACTION
COMMON LAW ASSAULT
AS TO DEFENDANT HANCOCK

163. The plaintiffs reallege and reincorporate herein the allegations as set forth above in the complaint.
164. This action for state common law assault is brought herein pursuant to the Court's pendant jurisdiction under 28 U.S.C. §1367.
165. The actions of the defendant John Hancock, in attacking the plaintiff constitutes common law assault in violation of the laws of the State of South Carolina for which the minor plaintiff has suffered damages in an amount to be determined

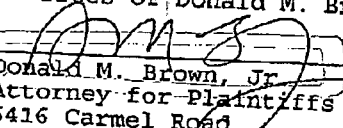
at trial.

WHEREFORE, the plaintiffs pray the Court that:

1. They be given a trial by jury;
2. That the Court render a judgment against the defendants jointly and severally and in favor of the plaintiffs;
3. That they receive compensatory damages in an amount this Court shall consider to be just, reasonable and fair;
4. That they receive punitive damages in an amount this Court shall consider to be just, reasonable and fair;
5. That they be awarded attorney fees and the costs of this action;
6. That the Court order such other relief, including injunctive relief, as this Court shall consider to be fair and equitable.

This the 7th day of June, 1996

Law Offices of Donald M. Brown, Jr.

By: 
Donald M. Brown, Jr.
Attorney for Plaintiffs
6416 Carmel Road
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Charlotte, North Carolina 28226
704-333-7017

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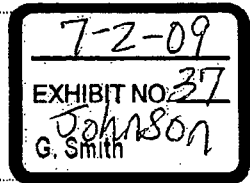
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On April 14, 1998, two days after Easter, Janice Lacy called the Appleridge group home in Houston, Texas, to see how her sister Trenia had spent the holiday. "They told me she'd had a nice Easter and was asleep," says Janice, recalling her conversation with a caregiver at the home where Trenia and five other mentally retarded women lived. The next morning, around 10:00 a.m., Janice received a call at work informing her that Trenia had been rushed to the hospital in the middle of the night. Twenty-four hours later, Trenia Wright was dead.

Janice was never told the circumstances that led to her sister's sudden death. But after the body was brought to Dallas to be buried alongside Trenia's father, the family grew curious enough to contact a lawyer. Hospital records and an investigation by the Texas Department of Human Services soon revealed that Trenia's Easter Sunday was anything but nice. That evening a group of male visitors had come from a nearby home to share an Easter dinner with the ladies at Appleridge. Trenia, who was diagnosed with both cerebral palsy and mental retardation, generally liked male company, but on this night, she grew distraught. Just as the visitors were leaving, she defecated in the hallway and fell to the ground, screaming.

At this point, a state investigation found, the direct-care staff on duty poured a mixture of cleaning agents and chemical bleach on the floor--and left Trenia, who had trouble lifting herself on her own, to wallow in it for more than two hours. For the next three days, the staff made no effort to wash Trenia even as she complained that burns from the chemicals were causing her clothes to stick to her skin. By the time she arrived at the emergency room on Wednesday morning, 40 percent of Trenia's body was covered in burns so severe that one witness said it "looked like she had been napalmed."

Janice Lacy did not know any of these details until it was too late. She also didn't know that Texas Home Management (THM), the company that operated Appleridge, is part of a national for-profit chain with a history of problems.

The parent corporation, ResCare, contracts with federal and state governments to serve a variety of special-needs populations, from the developmentally disabled to troubled youth. Buoyed by a flurry of recent acquisitions, ResCare is now the nation's largest provider of services to people with developmental disabilities. It operates group homes and other facilities, which are primarily underwritten by Medicaid, in 28 states, and earned more than \$485 million in the first nine months of 1999.

A New Bonanza

ResCare is not alone. In recent years, numerous large, publicly traded companies--including MENTOR, a division of Magellan Health Services, one of the nation's largest behavioral health corporations--have emerged as dominant players in the disabilities sector, a trend that mirrors the for-profit takeover of hospitals and nursing homes. The companies, which have drawn praise from stock analysts, are capitalizing on a little-noted trend: Since 1977, government spending on the disabled has risen from \$3.4 billion to more than \$22 billion, turning care for the mentally retarded into a major growth industry.

It's a development that has caught advocates for the disabled by surprise. In the early 1970s, these advocates fought to close down abusive state institutions where the mentally retarded were being warehoused, and replaced them with a network of small, community-based providers, many of them nonprofits with a social mission. Today, as corporate chains swallow up these smaller providers, many worry that the range of civic functions traditionally performed by nonprofits (education, outreach, advocacy) will be abandoned and that the quest for profits will come at the expense of a vulnerable population that cannot advocate for itself.

Prior to the 1970s, disabled people under the care of the state were placed in large institutions. Thanks to the deinstitutionalization

movement and the expansion of federal and state Medicaid and disability (SSI) funding, a decentralized system emerged, ranging from traditional institutions (for the severely disabled and those with acute medical needs) to so-called intermediate care facilities (group homes with six people or more) to "waiver" homes, typically with three people or less, which are less strictly regulated. The ideology of client empowerment, legally enshrined in the 1990 Americans with Disabilities Act, was intended to foster client and family choice in deciding where individuals are placed. But it also opened the door to for-profit companies, which have deftly embraced the rhetoric of empowerment while carving out a growing share of this increasingly decentralized--but publicly funded--system.

ResCare, which stands for "Respect + Care," touts its "innovative, efficient services" as a boon for states looking to control costs while moving individuals out of expensive state facilities into a variety of community-based programs, and insists that Trenia Wright's death was "an isolated incident" that "has nothing to do with ResCare's overall quality of supports."

But a review of thousands of pages of state documents from across the country--along with interviews with advocates, case managers, and former ResCare employees--opens a window onto a broader pattern of neglect:

- In Texas, ResCare's subsidiary, THM, has "had sanctions or penalties that are pervasive across the chain," state documents reveal.
- In Indiana, eight clients died within nine months in a group of ResCare homes that parents, advocates, and case managers complained were wracked with deficiencies. The homes are part of a rapidly expanding Medicaid program that has virtually no federal standards and limited state oversight.
- In Florida, state investigators found that several ResCare homes posed an "Immediate Jeopardy" to clients' safety and health, and recommended termination from Medicaid.

To be sure, not every operator of services to the disabled exhibits such problems. Yet in a recent *Washington Post* series, Pulitzer Prize-winning reporter Katherine Boo exposed rampant abuse and profiteering among private providers serving people with disabilities in Washington, D.C. Our investigative article, which examines one major company in detail, suggests this is a national problem and highlights the dangers that can arise when highly sensitive public functions are transferred to the private sector without adequate oversight.

To this day, Janice Lacy has never seen the pictures taken of the burns on Trenia's body. "I don't know what they looked like, and I don't want to see," she explained, her eyes welling with emotion as she spoke to us in the Dallas office of the family's attorney, Kimberly Stovall. Dressed in a navy blue dress and aqua silk scarf, Janice looked like she was on her way to church, a place she enjoyed going with Trenia. "Trenia was a happy person, and she loved to go to church," Janice recalled. "She just loved people. You know, everybody she would meet was her friend."

She also, despite her disabilities, knew when people were mistreating her. And mistreatment was about all Trenia got after the incident on Easter Sunday. When she was finally lifted out of the bleach that night, the direct-care staff contacted their residential team leader, a person with no medical training; they did not contact the facility's nurse or seek immediate medical attention. Instead of being thoroughly bathed, Trenia was rubbed down with Vaseline, which only sealed in the chemicals. The next morning, she was scheduled to see the company's contracted doctor but, rather than being taken there directly, was loaded into a van with her housemates, who were going to their day program.

Rose Wilson, an employee at the day program, was the first person outside Applridge to see Trenia. "She showed me burns from the neck down to the calf of her leg," says Wilson. "She told me, 'Rose, they set me on fire, with bleach, Rose.' And I said, 'Oh my God, what did they do? Pour the bleach and strike a match?' It looked like someone had just walked through a blaze and walked out."

This description of Trenia's burns could not contrast more sharply with the report that Dr. R.R. Yalamanchilli, ResCare's contract physician for its 10 group homes in Houston, wrote after seeing Trenia later that morning: "Pt. rolled over in Clorox ... very superficial chemical burn." Dr. Yalamanchilli prescribed whirlpool treatments, which were never given, and painkillers, which Trenia received six hours later, and told Trenia to come back in a week.

ResCare will not discuss the Trenia Wright case because it is in litigation. But Steve Dillawn, the company's attorney, has told the *Houston Chronicle* that ResCare was not at fault and fired the four staff members who didn't follow company policies and procedures.

Two of the staff have since been indicted, and one has been convicted of felony injury to a disabled person.

A closer look at Trena's medical history, however, suggests long-standing neglect. In 1991 the Dallas County Mental Health and Mental Retardation Center conducted a comprehensive medical evaluation, which strongly recommended that Trena's caregivers place her on "a behavior management plan" to address her "physically aggressive and acting out behaviors." Trena, like many people with mental retardation, was prone to seizures, but she also exhibited a tendency to fake seizures and fall to the floor as an attention-seeking device, causing frequent head injuries that required sutures. "Trena went to Appleridge [in 1992] with this evaluation in hand," says Kimberly Stovall, the family's attorney. "But ResCare never provided her with active treatment or training to stop her self-injurious behavior, despite the fact that, during the time they ran the home, records indicate Trena fell more than 120 times, requiring some 25 hospitalizations."

Vendor Holds

Trena was not the only client receiving questionable care: A state investigation of Appleridge following her death charged ResCare's THM subsidiary with a disturbing pattern of medical neglect, delays in administering medications, and lack of treatment programs to address behavioral needs--putting "all facility clients' health and safety at risk."

These findings prompted the Texas attorney general to shut down Appleridge, but ResCare maintains that it was unfairly punished for a lone accident at one facility. "ResCare delivers more than six million days of service a year and has a good compliance record," says Nel Taylor, a ResCare spokesperson. "It's very easy to document negative things, especially because we are such a big provider. We have thousands and thousands of success stories under our belt." In hearings ResCare insisted that its other facilities in Houston "for the most part have been found to be deficiency free."

In fact, however, documents obtained under the Texas Open Records Act indicate that, from 1994 to 1998, 56 ResCare group homes received a startling 52 "vendor holds"--major punitive actions in which state surveyors found deficiencies so serious that they threatened termination unless immediate improvements were made. At various homes in the chain, investigators discovered evidence of physical and verbal abuse by caregivers, insufficient numbers of trained staff, failure to treat injuries and medical problems, and a lack of active treatment programs. At one home, in Abilene, Texas, a profoundly retarded 23-year-old male client was physically abused by a staff member, resulting in "a bloody nose, multiple abrasions, and a black eye," yet staff "did not report the incident immediately" and initially told state investigators the man was attacked by another client. At another, "the facility failed to provide a client with needed dental surgery to remove decayed teeth," even though surgery had been recommended for over a year. At one more, "staff were not trained to deal with the selfinjurious behaviors of one client [who] sustained serious injuries" but for whom "staff did not seek timely medical intervention."

Janice Lacy is amazed that a company whose lifeblood is government contracts can get away with such things. "They're stealing money from the taxpayer," she complained, her calm demeanor giving way to anger. "They were getting enough money to make sure Trena and other clients got proper treatment, but they don't train the caregivers, they cut medical care... And people's lives are being lost."

The irony is that Janice and her family had great hopes when Trena was moved out of another facility, Familiar Footsteps, into her community home at Appleridge. Integration into society, after all, is precisely what advocates for the mentally retarded had fought so hard to achieve.

In the early 1970s, after Geraldo Rivera broadcast shocking images of mentally retarded children living like caged animals in feces-smearred wards at the Willowbrook Developmental Center in Staten Island, New York, a movement arose to recognize the rights of people with disabilities. Within a decade, parents and advocates filed lawsuits nationwide forcing states to replace these virtual prisons with an array of community programs designed to foster independence and enable individuals to live in society.

Deinstitutionalization of the retarded paralleled deinstitutionalization of the mentally ill, as state psychiatric hospitals were closed in favor of what was supposed to be a benign system of community mental health. As events played out, large state institutions were indeed shut down in the 1970s, but the promise of high-quality community-based care collided with the fiscal cutbacks of the 1980s.

Although deinstitutionalization has been hampered by inadequate funding, numerous studies have found that most people with developmental disabilities have benefited from leaving state institutions. Pennsylvania's landmark Pennhurst Longitudinal Study, conducted over a five-year period by a team of experts, found that clients were more independent, displayed marked behavioral

growth, and reported being happier with community programs, as did the overwhelming majority of families.

"The accomplishments of the past 25 years are nothing short of astounding," said Clarence Sundram, the former chairman of the New York State Commission on Quality of Care for the Mentally Disabled and a leading authority in the field. "Almost the entire agenda of the most visionary advocates has come to pass, from the decline of institutions to the growth of community services, to the passage of new laws, such as the Americans with Disabilities Act [1990]."

The Disability Business

One thing that advocates did not anticipate, however, is that serving people with disabilities would one day become big business. Originally, proponents of deinstitutionalization envisioned a broad network of community-based providers that would offer clients a wide array of services and choice. However, "in many states," explains Bob Gettings, head of the National Association of State Directors of Developmental Disabilities Services, "this well-developed provider network simply did not exist, so states turned to large companies like ResCare to satisfy the dire need for services" as people flooded out of state institutions. By 1993 a congressional report prepared for the House Subcommittee on Regulation, Business Opportunities, and Technology warned that large "multi-state, multi-home" corporations were buying up "mom and pop" operations in many regions, dangerously eroding competition and client choice.

Today, corporate chains like ResCare are expanding as never before. "As states are downsizing and moving people into the community," says Jeffrey Cross, executive vice president of ResCare's disabilities division, "we have access to working capital that smaller providers don't. This significantly reduces risk for states and allows a much faster implementation of community services." But many nonprofit providers, who are also ResCare's competitors, see this expansion as a threat.

Last December a group of executive directors from chapters of the Association for Retarded Citizens (ARC), the nation's oldest network of nonprofit providers, gathered in California to discuss ResCare's and MENTOR's growing prominence in their state. Chief among their concerns: Will publicly traded companies exhibit the same long-term commitment to clients as community-based providers? Many drew parallels to the nursing home industry, where the bankruptcy of several large corporate chains recently left the state stranded with thousands of elderly Californians and no one to care for them. (W. Bruce Lunsford, a member of ResCare's board of directors, is the former CEO of Vencor, a nursing chain that recently went bankrupt and that was fined \$260,000 in 1998 for systematically discharging Medicaid clients, who earned the company \$18,000 less on average than other patients.) Others worried that MENTOR and ResCare, which boast that they have hired off some of the best talent from state agencies, will use their connections and political clout to gain unfair advantages in winning contracts [see sidebar, "Insider Influence?"].

To be sure, some tax-exempt agencies are "not-for-profit" in name only. Nevertheless, many providers question how corporations can satisfy their shareholders without sacrificing care. "We're in the middle of a rate crisis," says Barbara Maizie, executive director of the ARC in Contra Costa. "Most of us have to raise hundreds of thousands of dollars in donations just to break even. So frankly, we're baffled that companies like ResCare can actually make money off these services."

ResCare insists its profits come from operating efficiencies, not reduced services. "We have lower administrative costs and more efficient management systems than many providers," says Jeffrey Cross. But the California nonprofits, having observed ResCare's and MENTOR's numerous acquisitions in recent years, suspect that both companies may be sacrificing earnings in the short term to expand their market share. "Eventually," speculates Laurie Shields, head of the ARC of California, "the state may come to depend on these companies for services. At that point, they can hold states hostage."

In Texas, ResCare's grip on services may already be holding the state hostage. Even after the Texas Department of Human Services detailed deficiencies in its homes "that are pervasive across the chain," ResCare continues to be a certified provider and runs more programs in Texas today than ever before. Why? "The problem is that we just don't have places to put people," explained a state source, who wishes to remain anonymous. "So we can't say, 'No, you won't run these facilities,' even if a provider has had problems, because Texas is committed to shutting down state institutions." On two occasions—back in 1995, and again after Trenia Wright's death—the state actually threatened to deny ResCare operating licenses due to chronic compliance problems, but each time, the company responded by filing suit (a tactic common among corporations contracting with government), and the state agreed to settle, on the condition that the company improve. Frustrated by ResCare's shoddy record, a 1999 report by the Texas Department of Human Services asked, "Would these facilities have continued with such a poor history of coming into compliance...if ResCare had used their profits to improve their existing facilities instead of purchasing additional facilities?"

It's a reasonable question. Yet with an estimated 220,000 disabled people on waiting lists for residential services, and nearly half-a-

million more living with family caregivers over the age of 60, ResCare's growth outlook--which is predicated on acquisitions and market expansion--has never looked brighter.

Read article sidebar: Insider Influence >>

Lack of Standards

Alarming, however, as states expand their community operations, they are enrolling individuals in a new Medicaid program--known as the Home and Community-Based Services Waiver--that has virtually no federal standards and only limited oversight. The waiver program was launched in 1981 to offer a more flexible Medicaid reimbursement option to people living in the community (in three-person homes and single apartments, for example) who need a variety of individualized supports. But in numerous states, including California, the lack of oversight has prompted harsh criticism from the Health Care Financing Administration, the federal agency that administers Medicaid. "There is increasing reliance on unlicensed residential programs, which do not have to meet any standards," warned Clarence Sundram in a recent speech before the American Association on Mental Retardation. "What we are fighting is not the stark horrors of a Willowbrook that could easily galvanize even the most stone-hearted person. The risks are more subtle ones of isolation, neglect, and abandonment."

Stark horrors, perhaps not, but in dozens of waiver homes that ResCare opened recently in Indiana, conditions were shocking nonetheless. In the spring of 1998, ResCare struck a deal with Indiana to convert three of its large intermediate care facilities (ICFs), housing 116 clients, into numerous smaller four-person homes and individual apartments, financed under Medicaid's waiver program. "This community-based setting will allow your family member to grow as a person and as a member of his or her community," ResCare promised in a letter to parents. Soon, however, the Indiana Bureau of Developmental Disabilities Services (BDDS), which administers the waiver homes, was flooded with angry letters from parents, guardians, and case managers contending that medically fragile people had been thrust into inappropriate living situations without adequate care.

The problem? Documents obtained under the Indiana Public Records Act indicate that ResCare and the state reached an agreement to cap costs by establishing a \$129-per-diem reimbursement rate for each client, regardless of medical need--a rate that effectively eliminated competition, since other community providers considered it too low to provide adequate care. They were right. No sooner had clients been relocated than the Indiana Protection & Advocacy Services (P&A), a federally funded agency that advocates for people with disabilities, began complaining about systemic staff shortages, a lack of transportation vehicles for clients to access the community, and the failure to implement behavior plans--all of which was later confirmed by the Indiana bureau. In April 1999, eight months into the transition, an Indiana bureau surveyor found inadequate staffing at three homes that should have been double-staffed; the surveyor questioned whether ResCare might be trying to make it appear that the homes were properly staffed by having one employee float between facilities. "Appointments are being missed and work on goals and objectives is virtually impossible when homes are not properly staffed," the surveyor complained.

Eight clients died in less than a year at ResCare's new homes, prompting questions about why the death rate was so high. "These were severely mentally retarded clients with multiple health problems who had previously had 24-hour-a-day nursing care," explains Dan Croke, the former administrator of ResCare's northern Indiana operations, who resigned in June 1999. "Their deaths raise the question of whether it was right to move them into smaller homes where they were being served by minimally trained people and a nurse who stopped by once a week."

One factor contributing to the chaotic transition, says Croke, is that ResCare tried to minimize costs by moving clients out of its large intermediate care facilities before the leases on these buildings expired on August 31, 1998. The company that owned these facilities, Omega, has filed suit, charging that ResCare surreptitiously evacuated the facilities without informing Omega, to prevent a competitor from taking over the lease and to ensure that most clients--and their Medicaid funding--would be transferred to ResCare's new community homes, even though clients ostensibly had the option to choose another provider. ResCare spokesperson Nel Taylor says that the lease had already expired and that ResCare dismisses the charge as a "landlord-tenant dispute." Nevertheless, state documents show that ResCare, scrambling to meet the August 31 deadline, temporarily put clients up in motels and its own employees' homes because many community residences were not ready on time. (One diabetic was placed in a mobile home with a former ResCare employee who was "let go" due to multiple allegations of abuse, a Protection & Advocacy Services investigator learned from several staff.) Others were placed in permanent homes that lacked wheelchair accessibility for months.

ResCare claims initial problems were caused by the failure of two contractors to modify homes on schedule, but that clients received "suitable accommodations." The company recently reached an agreement with the state to replace the \$129-per-diem rate with a more

flexible reimbursement system based on medical need, but insists that, even before, it "was diligent in its medical care of the individuals" in Indiana. "We draw a box around the essential services, and there is no gain to us if we were to cut back on those services or alter staffing ratios," says Jeffrey Cross.

A close look at one home in Sullivan, Indiana, however, suggests that holding down costs often trumped client needs. In this home, which housed four female clients with aggressive behaviors and mental health problems, the P&A and case managers found that serious client-on-client abuse went unreported, psychological and behavioral needs were not addressed, staffing was inadequate, and food was often missing from the shelves. One wheelchair-bound client couldn't access the toilet properly because only one staff person was frequently assigned to the home, even though ResCare's own "Person Centered Planning" report stated that the client required two staff to assist with transferring and lifting. As a result, the client was left hanging for hours in a Hoyer lift above the toilet (an experience that terrified her), or sometimes was simply found in her room "sit[ting] in feces or urine for up to hours," the P&A complained. The inadequate staffing persisted for months.

Initially, ResCare's Administrator Michael Smith told parents and advocates that the company "can't afford to put two people in the house," according to notes taken by a case manager (an independent contractor funded by Medicaid to serve as a client resource and advocate). Yet months later, ResCare informed parents that double shifts were being reduced because "additional staffing simply increases the noise level in the home at a time the ladies seem to enjoy solitude." An irate parent wrote back, "Just who do you think you're kidding? You already have had less staff than I was promised for some time... You promised these homes would be like living in their own homes. What a farce."

Milo Gray, lead counsel at the Indiana P&A, shares the parents' frustration. "The trouble is, under the waiver program, a case manager may go into a home and find problems," he explained, "but because there are no federal standards, short of criminal law, there is no way to hold providers accountable." It's a problem that proponents of privatization rarely recognize: Handing over services to the private sector does not eliminate the role of government, but instead makes it all the more urgent that public agencies hold private contractors to well-defined standards. "When you cannot clearly measure the outcome in a government contract," notes Dennis Felty, an expert on government outsourcing of social services, "you end up allowing the for-profit entity to define the product--and the level of profit it can take out--for itself."

The Human Evidence

Unlike the waiver program, Medicaid's intermediate care facilities--group homes that generally have six or more clients--are subject to a host of federal quality-assurance standards and routine inspections. But interviews with former ResCare employees indicate that, even here, the company can, and does, evade regulations.

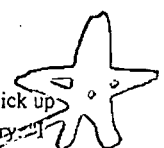
One evening last December, we visited the home of Terry Lockard, a former ResCare employee who used to work at the Memorial group home in Houston. "There was a girl there" who became ill in the spring of 1995, said Lockard, settling onto a stool in her living room. "She was an active, outgoing girl, just a great individual. But then she got sick. She started having diarrhea, throwing up her food, throwing up bile--it was real bad."

The client attended a day program, which was not run by ResCare, and workers there began asking Lockard to take her home. Lockard was dissuaded from doing that, she said, "because from 10:00 to 2:00 each day, there was no staff in the home. They didn't want to pay the extra hours for me to be there, so I was told to keep taking her to the day program."

Eventually, Lockard said, the day program grew so concerned that someone called Adult Protective Services, an independent monitoring agency, and ResCare received notice that state inspectors would be coming to investigate. "The night before they came, we were real busy," Lockard recalled. The reason, she said, is that staff should have been documenting a range of programs for clients--doing laundry, washing dishes, bathing with soap--three times a week. "Well, we never did," she said. "So that night, we were instructed to get the books in order."

Even more remarkable was what happened the next morning. "When the state came, I was instructed to go to the group home, pick up the client, take the individuals to the workshop, and take the client home with me," said Lockard, shaking her head at the memory. "I kept her there all day long, so that the state wouldn't have any contact with her. I had her until almost 8:00 that night."

Needless to say, state investigators discovered little, and the client's health worsened. "I would take her to Dr. Yalamanchilli--he would lift her arms, open her mouth, and say she's all right," Lockard said. One day, exasperated, Lockard dug through the client's medical



files herself and discovered that she had been diagnosed with colitis, an inflammation of the colon that, if untreated, can be fatal. "She could have died from that infection," said Lockard, clearly upset. "So I took the files home, made copies, and turned them over to the day program."

"I know what I did may have been illegal," she explained. "But I'd do it again. I did it to save this client's life."

Lockard's rendition of this story was confirmed by another source who was with us in Lockard's living room, but who wished to remain anonymous. This source worked at the day program used by ResCare and said that she, too, was concerned that clients' medical needs went ignored, including one who complained of chronic stomach pain. "ResCare staff kept saying, 'It's just a behavior--she's fine.' Then she died of stomach cancer. She'd been trying to let people know for a long time."

Terry Lockard's account of "getting the books in order" before state inspections was likewise echoed by other former ResCare workers we interviewed. Rita Crosby, who worked as the QMRP (qualified mental retardation professional) at three ResCare facilities in Fort Worth, says, "My supervisor would actually brag about being able to go into any home and create charts for six people to pass state inspections." The reality, says Crosby, was rather different. "The conditions in those homes were absolutely deplorable... There would be no food in the cupboards, the places were filthy.... Ninety-nine percent of the direct-care staff they hired were uneducated, inexperienced people who were getting paid minimum wage. But all they cared about was filling the beds and getting the Medicaid payments."

If Crosby sounds bitter, it's because working for ResCare, she says, nearly caused her to have "a nervous breakdown." Shortly after Christmas in 1998, a client who lived at the Cedar Oaks home was rushed to the hospital and died of what was officially labeled stomach blockage. "I went to the home and spoke to the clients," says Crosby. "They told me that Christy, the woman who died, had been sick and vomiting all day. There was vomit all over her bed covers, all over the bathroom, and along the walls, which indicated to me that this was not a sudden attack." Shocked by the death, Crosby says she informed her superior that she was reporting the incident because she suspected the direct-care staff had either left Christy unattended or had not responded to her cries for help. Although ResCare says it "demand[s]" that employees report any abuse or neglect, Crosby says she was discouraged by her supervisor from doing so. She eventually reported the incident on her own to the Texas Department of Health, she says--and then quit in protest.

To prevent such abuses, the federal government mandated in 1975 that every state establish a protection and advocacy agency to provide legal assistance and monitoring on behalf of people with disabilities. The P&As took the lead in filing lawsuits throughout the country to shut down state institutions. But when we called around to P&As in 10 states for this article, we found that--with the sole exception of Indiana--none could offer specific information on the quality of care in the large, for-profit chains in their states. Why? Some advocates say the reason is simply a lack of resources, but others contend it is also ideological. Because the P&As were so instrumental in closing state institutions, several advocates told us, they fear divulging anything, particularly to the media, that might reflect negatively on community-based programs.

Nowhere was this silence more disturbing than in Florida, where the state's P&A--known as the Advocacy Center for Persons with Disabilities--actually quashed a critical investigation into ResCare's operations. In March of 1998, ResCare acquired seven troubled group homes in the Tampa-St. Petersburg area, formerly run by Normal Life, in which three clients had died during a three-week period just prior to ResCare's takeover. The deaths prompted the Advocacy Center's monitoring unit, based in Orlando, to launch an investigation that, according to news reports at the time, was scheduled for release in May. Brenda Marcellino, then director of the monitoring unit, informed reporters that ResCare had repeatedly blocked the agency's access to clients and their records (an authority protected under the P&A's federal statute) and had done little to turn the facilities around. "We do not believe ResCare is the 'good guy' galloping in," she cautioned.

Yet when we contacted the Advocacy Center to obtain a copy of this report, we discovered that not only had the new executive director, Pat Ware, blocked the report from being made public, evidently wanting to give ResCare more time to improve conditions; he had instigated a follow-up investigation in October of 1998, performed jointly with ResCare, which gave the facilities a clean bill of health. Also at this time, Ware shut down the monitoring unit, fired its director, and let go numerous other veteran lawyers and staff.

Had ResCare made dramatic improvements? In an interview, Ware said, "My impression is that ResCare has made a considerable investment, particularly in terms of safeguarding the health and care of the clients." But a review of close to 1,000 pages of state monitoring reports, obtained under the Florida Public Records Act, reveals that all seven homes were riddled with problems long after ResCare took over--problems that the monitoring unit's suppressed report, a copy of which we were able to obtain, accurately identified.

While the Advocacy Center applauded improvements at ResCare's homes, Florida's Agency for Health Care Administration, which monitors intermediate-care facilities, found the homes wracked with deficiencies, including poor management, medical neglect, understaffing, improper employee background screening, and lack of active treatment plans. At several homes, state surveyors deemed the situation so serious that they declared "Immediate Jeopardy." At the Sadie home, where ResCare "failed to provide sufficient staff to meet the needs of six of six clients for an extended period of time," a woman in the "severely retarded category of intellectual and adaptive functioning" mysteriously sustained "a vaginal laceration, requiring surgery, in June of 1998." The alleged perpetrator was a ResCare employee who, a year earlier, had been suspended "due to allegations of a sexual nature" brought by the same female client.

In the end, the state of Florida moved to terminate four of these homes from the ICF program. ResCare, however, slipped out of the regulator's grasp by cutting a deal with the state and reopening several of the homes under the waiver program, where the company continues to receive Medicaid dollars and is subject to far less stringent oversight. Is this a pattern? Shortly after Texas shut down Appleridge, ResCare converted that home to the waiver program as well, where it currently operates under a newly acquired subsidiary, Educare.

Last December we visited a day program in Ojai, California, that is a model of what community care can be at its best. Located on a residential, tree-lined street, the facility, which serves 56 mentally retarded clients and has over 20 staff, consists of a series of workshops--for ceramics, computers, painting, and other activities--that are built around an open, sunlit quadrangle. In virtually every room, the clients were engaged in activities. One wheelchair-bound woman practiced physical therapy with a caregiver; next door, roughly two dozen clients gathered for an afternoon sing-along with a local guitarist.

"We opened this program because for years people had to get on a bus and drive 15 miles, to Ventura, for their day program," said Fred Robinson, head of the ARC of Ventura, as we toured the grounds. "We did it because our motivation is to improve the quality of life for people with disabilities who live in this community."

What Robinson and other nonprofit providers fear is that, as corporations take over the disabilities field, financial considerations will overshadow all else, leaving nobody to perform the advocacy and outreach that nonprofits frequently undertake because they are motivated by a social mission. "ARCs in the community do more than just provide services," explained Robinson. "We're a clearinghouse for information. We visit schools to educate the public about issues like fetal alcohol syndrome."

Sometimes, serving as advocates also requires the nonprofits to challenge the agencies they depend on for funding. Virtually every year, notes Barbara Maizie of the ARC of Contra Costa, the regional centers in California--which control the funding strings at the local level--attempt to reduce services. "So the providers face a choice: Should they go to testify against the cuts despite the risk of alienating their funding source, or should they stay silent?" asks Maizie. "For those of us who are mission driven," she explains, "we will go and appeal on behalf of our customers: the clients. But the large for-profits won't bite the hand that feeds because their principle customers are the funding agency and their shareholders."

Advocates of privatization counter that gains in efficiency outweigh these costs. But are corporations always more efficient? In a recent study published in the Journal of Economic Issues, William Van Lear, a professor at Belmont Abbey College, and Lynette Fowler, assistant director of business at Gaston Residential Services, found that nonprofits operating group homes for the mentally retarded in North Carolina were actually 7 percent more efficient than for-profit firms, as measured by the percentage of total revenue spent on direct services (rather than overhead and other indirect costs).

Where corporations do seem more adept is in squeezing the most out of their government contracts. In 1995 James Verdier, then assistant secretary for Medicaid policy and planning in Indiana, published a report showing that for-profit group homes used a range of sophisticated accounting techniques to bill Indiana \$3.7 million more than their actual costs.

As we left the day program in Ojai, it was hard not to think back to an earlier, unannounced visit we paid to a day program in Houston that was recently opened by Adult Business Services, a ResCare subsidiary. Entering the facility, which was located in a busy shopping plaza, we found roughly 30 clients clustered in a single room with a bare cement floor. None was engaged in any activities or treatment programs, and not a single staff member was present in the room. Eventually, after we asked for a supervisor, one mentally retarded man motioned toward a door in the back, which opened onto a concrete lot outside. There, two staff members, who looked to be in their early 20s, were blowing up inflatable rubber balls while a group of 20 more clients lingered about aimlessly. This, it appeared, was to be the day's main activity.

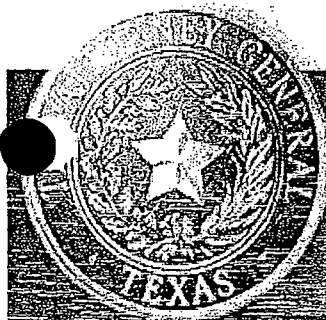
"It's sad," says Janice Lacy when we described what we had seen. "A lot of these providers don't care about the people. They just look

at them as a way to make money." □

[Read article sidebar: Rescare in Florida: What the Advocacy Center Missed >>](#)

Eyal Press is a contributing writer at *The Nation* and the author of *Absolute Convictions: My Father, a City, and the Conflict that Divided America*, just out in paperback from Picador.

Jennifer Washburn is a fellow at the Open Society Institute, where she is examining the impact of privatization, and a newly appointed fellow at the New America Foundation.



ATTORNEY GENERAL OF TEXAS GREG ABBOTT

Thursday, December 4, 2003

Printer Friendly

Attorney General Abbott Files Lawsuit in Sexual Assault Of Mentally Challenged Woman

Austin facility accused of not protecting Texas woman entrusted to their care

AUSTIN - Texas Attorney General Greg Abbott filed a lawsuit against American Habilitation Services, Inc., alleging the Houston-based company did not protect a mentally challenged 32-year old Austin woman from an employee at the company's workshop. The woman resides at the company's Indian Wells House, a Travis County facility that houses several individuals who have mental illness or are mentally retarded.

The lawsuit announced today which follows an investigation by the Texas Department of Human Services, alleges American Habilitation and Indian Wells House failed to recognize and respond to allegations of psychological and sexual abuse. The suit stems from a 2001 incident where a woman with mild mental retardation said she had been sexually assaulted.

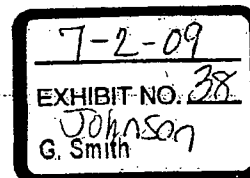
Court documents show a workshop director for the facility invited the woman to accompany him to a local hardware store and afterward took the woman to his house, where the sexual assault allegedly occurred. After the woman reported the incident, the suit alleges, administration at the facility quickly dismissed her claims, did not provide an appropriate medical exam to determine if injury had occurred, and continued to send the woman to the workshop where she was subjected to the workshop director's influence, control and manipulation.

"Not enough was done by administrators of Indian Wells House to investigate the allegations or to protect their clients," said Attorney General Abbott. "Now a 32-year-old woman has to live with the company's failure to fulfill minimum standards set forth in Texas law. Nothing will fully restore this woman's sense of security, but my office will hold these kinds of facilities accountable."

A Texas Department of Human Services investigation found officials at Indian Wells House failed to ensure all allegations of abuse were thoroughly investigated and reported immediately to the facility administrator or to other officials as required by State law, and to ensure the victim was protected from further abuse.

The man accused of sexually assaulting the 32-year-old woman has been charged in Hays County and is out on bond awaiting trial. The Attorney General's lawsuit seeks civil penalties of \$100 to \$10,000 for each violation of the Texas Health and Safety Code, plus payment of attorneys' fees.

[View Original Petition](#)



CENTERS FOR MEDICARE & MEDICAID SERVICES

OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 42G081	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED C 11/06/2003

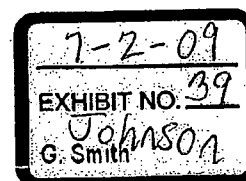
NAME OF PROVIDER OR SUPPLIER

KINGSTON CLUSTERS B

STREET ADDRESS, CITY, STATE, ZIP CODE

P.O. BOX 3817
COLUMBIA, SC 29230

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
W 000	INITIAL COMMENTS A complaint/fundamental federal survey was conducted 11/4/03 through 11/6/03 by QMRP #19013 and QMRP/Team Leader #16237. The sample consisted of 4 clients and 4 additional clients added on based on issues of client protection. The census during the survey was 8 clients. On 11/04/03, the facility was informed that Immediate Jeopardy existed in the area of Client Protections related to client to client aggression and the failure of the facility to adequately protect people from harm.	W 000		
W 104	483.410(a)(1) GOVERNING BODY The governing body must exercise general policy, budget, and operating direction over the facility. This Standard is not met as evidenced by: Based on observation and interview, the governing body did not assure a clean and well maintained living environment for eight of eight clients living in the home. In addition, the governing body failed to assure the provision of an appropriate wheelchair that was designed to fit one of one client in the sample who required a wheelchair for mobility (Client #4). See W 436. Findings; On 11/4/03 at 9:30 a.m. the residence was observed. The following problems were noted: (1.) Walls in the living area, kitchen, dining room, both side hallways, the back hallway and in all eight bedrooms were damaged. Most walls had holes, some of which had been patched but not painted.	W 104	The governing body will exercise general policy, budget, and operating direction over the facility. The facility is scheduled for a major renovation that will make the living environment a better place to reside. The facility staff will be in-serviced on daily cleaning tasks as well as the reporting procedures for maintenance issues. The facility has ordered a wheelchair for Client # 4, as well as any other client that is in need of a wheelchair. The Facility Administrator and the Residential Director will monitor for compliance. Person(s) Responsible: Facility Administrator, Residential Director Projected Completion Date: 1/6/04	



LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

Norothy Goodwin *Director, Quality Enhancement* 11/29

Any deficiency statement ending with an asterisk (*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other wards provide sufficient protection to the patients. Except for nursing homes, the findings above are disclosable 90 days following the date of survey whether or not a correction is provided. For nursing homes, the above findings and plans of correction are disclosable 14 days following the date these documents are made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 42G081	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED C 11/06/2003
NAME OF PROVIDER OR SUPPLIER AINGTON CLUSTERS B		STREET ADDRESS, CITY, STATE, ZIP CODE P.O. BOX 3817 COLUMBIA, SC 29230		
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W 104	Continued From page 1 (2.) The living room was furnished with only a table and chairs for staff, and two couches, vinyl covered, with many holes torn in the upholstery exposing the interior stuffing. On 11/5/03 at 5:00 p.m. a strong urine smell was identified coming from the couches in the living room. Between the seat cushions and the seating base of both couches, pools of urine were observed. (3.) The dining room walls had been marked upon with blue marker. The tile floor in the dining room was dirty with food and fluid spills and was stained with rust. The floor surface was scuffed and dingy. (4.) The dishwasher in the kitchen was in poor repair with the door secured with only one hinge. The kitchen floor was dirty with food and fluid spills. The floor surface was scuffed, stained and dingy. The kitchen counter tops were worn through to the wooden interior support. (5.) The bathroom on the right side of the home was dirty with fecal matter smeared on the toilet seat. The sink and bath faucets dripped steadily. The floor was dirty with dirt and hair. (6.) The bathroom on the left side of the home was dirty. The floor was dirty, dingy and scuffed. The sink was not firmly mounted to the wall and the floor molding was not adhered to the floor surface. Water damage was evident along the walls around the shower. (7.) The 4 client bedrooms on the left side of the home were found to be dirty, with accumulated trash, coated with dust, on the floors. The first bedroom on the left side had a large area where the wall had been only minimally repaired: the patch had not been sanded or painted. The last bedroom on the left had a window mini-blind that was broken and twisted. (8.) The 4 client bedrooms on the right side of the house were found to be dirty, with accumulated trash, coated with dust, on the floors. The bedrooms that had carpet, contained low pile carpet that was dirty,	W 104		

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021199

FJQM11

If continuation sheet 2 of 53

Mims 1162

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 42G081	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED C 11/06/2003

OF PROVIDER OR SUPPLIER LEXINGTON CLUSTERS B	STREET ADDRESS, CITY, STATE, ZIP CODE P.O. BOX 3817 COLUMBIA, SC 29230

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W 104 Continued From page 2
frayed and damaged and contained paper trash around the floor of the room.
(9.) There was a very strong stench in the bedroom of Client #2 that smelled like urine, fecal matter and body odor. Trash was accumulated behind his bedroom door and there was little room to maneuver in the room due to the excess number of boxes stacked around the room.
(10.) The double front doors of the home did not seal when closed resulting in a gap which exposed the interior of the home to the external weather conditions.

On 11/5/03 at 5:30 p.m. the House Manager was interviewed about the cleanliness of the residence. He said the home was much cleaner than it was when the previous house manager was in charge. He said he was working to get the home cleaned to a higher standard but said it was a difficult task.

On 11/6/03 at 2:20 p.m. the Assistant Director/Acting Qualified Mental Retardation Professional was interviewed about the unclean and poorly maintained condition of the home. She said the home needed additional attention but she added that the home was much cleaner than it had been under the previous House Manager. She reported the home was scheduled for a complete renovation. The original start date of the renovation had been delayed but the Assistant Director anticipated the renovations to begin within the month.

W 104

W 122 483.420 CLIENT PROTECTIONS

W483.420 Condition of participation:
Client protections.

This Condition is not met as evidenced by:
This Condition is not met as evidenced by:

W 122

DEPARTMENT OF HEALTH AND HUMAN SERVICES
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W 122	Continued From page 3 Based on interviews, observations, and record reviews, the facility failed to provide sufficient interventions to ensure clients are protected from assaults and injuries resulting from client to client aggression, including identifying perpetration and victimization trends and conducting functional analysis of maladaptive behaviors in order to develop effective behavioral strategies. In addition, the facility failed to consistently provide the staffing they identified as necessary to protect people and to provide adequate training to staff in conducting one to one supervision. Based on these findings, it was determined that Immediate Jeopardy existed which resulted from the facility's failure to ensure clients were not neglected and placed at risk from other clients living in the home. See W 149: Based on interviews, observations, and record reviews, the facility failed to develop and implement policies and procedures that ensure that clients are provided sufficient interventions to be protected from assaults and injuries resulting from client to client aggression. Further the facility failed to implement a system that included identifying perpetration and victimization trends and conducting functional analysis of maladaptive behaviors in order to develop effective behavioral strategies affecting seven of eight clients (Client #1, Client #2, Client #4, Client #5, Client #6, Client #7, and Client #8). Based on these findings, it was determined that Immediate Jeopardy existed resulting from the facility's failure to ensure clients were not neglected and placed at risk from other clients living in the home. Specifically, Client #5 was identified as a frequent victim of other client's aggression. In addition, based on interview and record review the facility failed to develop and implement policies and procedures to assure that 3 of 5 injuries of unknown origin were immediately	W 122	Please see IJ Corrections.	

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W 122	Continued From page 4 reported to the Director (Clients #3, #7, and #8). See W 153: Based on interview and record review the facility failed to ensure that 1 of 8 allegations of abuse, neglect or mistreatment (Client #1) and 3 of 5 injuries of unknown origin were immediately reported to the administrator (Client #3, Client #7, and Client #8). See W 154: Based on interview and record review the facility failed to assure 1 of 8 investigations of abuse, neglect or mistreatment and 5 of 7 injuries of unknown origin were thoroughly investigated affecting five of eight clients (Client #1, Client #3, Client #5, Client #7, and Client #8). See W 156: Based on interview and record review the facility failed to ensure the results of 10 of 51 investigations were reported to the Director within five working days affecting seven of eight clients living in the home. (Client #1, Client #2, Client #3, Client #5, Client #6, Client #7, and Client #8.) See W 157: Based on interview and record review the facility failed to take appropriate corrective action which would be reasonably likely to prevent reoccurrence of mistreatment to one of four clients included in the core sample (Client #1) and ongoing client to client assaults affecting seven of eight of clients (Client #1, Client #2, Client #4, Client #5, Client #6, Client #7, and Client #8). See W 186: Based on interview and record review the facility failed to provide sufficient staff in order to meet their established staffing minimums and to prevent ongoing client to client assaults affecting eight of eight clients (Client #1, Client #2, Client #3, Client #4, Client #5, Client #6, Client #7, and Client #8.). See W 189: Based on observation, interview and	W 122		

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W 122	Continued From page 5 record review the facility failed to provide adequate training and instruction for 1 on 1 staffing assignments which would be reasonably likely to prevent reoccurrence of mistreatment to one of four clients included in the core sample (Client #1) and to enable employees to perform 1 on 1 staff assignments with sufficient competency to prevent ongoing client to client assaults affecting four of eight (Client #1, Client #4, Client #5, and Client #7). See W 214: Based on interview and record review the facility failed to conduct functional analyses of maladaptive behavior for 3 of 8 clients (Client #1, Client #5 and Client #7).	W 122			
W 124	483.420(a)(2) PROTECTION OF CLIENTS RIGHTS The facility must ensure the rights of all clients. Therefore the facility must inform each client, parent (if the client is a minor), or legal guardian, of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment. This Standard is not met as evidenced by: Based on observation and interview the facility failed to obtain consent for a blanket restriction on viewing movies containing profanity, nudity and or sexual activity for four of four clients included in the sample (Client #1, Client #2, Client #3, and Client #4.) Findings: On 11/6/03 at 10:00 AM a staff instruction memorandum was observed posted on the bulletin board in the medication/record room. The memorandum, dated 9/14/00, was directed to "All Clusters Staff" from the Executive Director. It	W 124			

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DEPARTMENT OF HEALTH AND HUMAN SERVICES
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NAME OF PROVIDER OR SUPPLIER LEXINGTON CLUSTERS B		STREET ADDRESS, CITY, STATE, ZIP CODE P.O. BOX 3817 COLUMBIA, SC 29230		
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W 125	Continued From page 7 profanity, nudity, and or sexual activity (Client #1, Client #2, Client #3, and Client #4). Findings: On 11/6/03 at 10:00 AM a staff instruction memorandum was observed posted on the bulletin board in the medication/record room. The memorandum, dated 9/14/00, was directed to "All Clusters Staff" from the Executive Director. It documented, "Movies that contain profanity, nudity, and or sexual activity are NOT to be viewed at the Lexington Clusters. Parents have voiced these concerns relative to the movies being shown to our residents. Any deviation from this requirement will be addressed with the appropriate disciplinary action." On 11/5/03 at 3:00 PM record reviews for Client #1, Client #2, Client #3, and Client #4 revealed no evaluation of the need for the restriction of access to the above referenced movies. On 11/6/03, at 10:30 a.m. an interview with the House Manager found that the "movie restriction" was in place and that the Clients who lived in the "B" house were to see "just G-rated movies, at home and in the community because of their behaviors." On 11/6/03 at 11:00 p.m., an interview with Assistant Director/Acting Qualified Mental Retardation Professional confirmed that no individual evaluations of need had been conducted for the restriction of access to movies that contain profanity, nudity and or sexual activity.	W 125	The facility will ensure that the rights of Clients 1, 2, 3, and 4, as well as all the other clients in the house, are protected. The facility will remove the memo on the restriction of viewing movies containing profanity, nudity, and/or sexual activity that was posted in the facility from the prior Executive Director. All staff will be in-serviced on clients rights, to include their ability to chose their own leisure activities. The House Manager and QMRP will monitor for compliance. Person(s) Responsible: House Manager, QMRP Projected Completion Date: 1/6/04	
W 148	483.420(c)(6) COMMUNICATION WITH CLIENTS, PARENTS &	W 148		

FORM CMS-2567(02-99)

021199

FJQM11

If continuation sheet 8 of 53

Mims 1167

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

OMB NO. 0938-039

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 42G081	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED C 11/06/2003

NAME OF PROVIDER OR SUPPLIER
LEXINGTON CLUSTERS B

STREET ADDRESS, CITY, STATE, ZIP CODE
**P.O. BOX 3817
COLUMBIA, SC 29230**

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
W 148	Continued From page 8 The facility must notify promptly the client's parents or guardian of any significant incidents, or changes in the client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence. This Standard is not met as evidenced by: Based on interview and record review the facility failed to provide notification to family members of 47 of 51 incidents defined by agency policy as "serious" and "significant" including accidents, injuries, and assaults affecting eight of eight clients (Clients #1, #2, #3, #4, #5, #6, #7, and #8). Findings; On 11/4/03 at 9:30 a.m. a review was conducted of the "Accident/Injury Records" maintained by the facility for the period of 11/4/02 through 11/4/03. A field was included on each accident/injury record for documentation of notification of family members and guardians. Of the 51 records, 47 included no documentation of notification of guardians, family members, or surrogate decision makers of the nature of the accident/injury, the details of the incident, or the status of the client. Of the 47 accident/injury records where no guardian/family member/surrogate notification was present, 3 involved injuries that required notification of the facility physician or treatment by the local community Urgent Care Center and 44 involved injuries that required intervention from the facility nursing staff. There was no evidence of family or guardian notification of these significant incidents. The 3 "Accident/Injury Reports" involving injuries requiring notification of the facility physician or treatment by the local community Urgent Care Center	W 148	The facility will promptly notify clients' parents or guardians of any significant incidents or changes in the client's condition, including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence. The notification of parents and guardians are on the Accident/Injury forms. The facility will also place this notification on the Behavior Incident Form. All staff will be in-serviced on promptly notifying parents and guardians of these events. The QMRP and Administrator will be responsible for ensuring that the notification to family members are prompt. Person(s) Responsible: QMRP, Administrator Projected Completion Date: 1/6/04	

FORM CMS-2567(02-99)

02/199

FJQM11

If continuation sheet 9 of 5.

Mims 1168

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 42G081	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED C 11/06/2003
NAME OF PROVIDER OR SUPPLIER LEXINGTON CLUSTERS B		STREET ADDRESS, CITY, STATE, ZIP CODE P.O. BOX 3817 COLUMBIA, SC 29230		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
W 148	Continued From page 9 included; (1.) On 12/23/02 at 4:55 PM Client #1 pushed another client no longer residing in the home. The client hit his head when falling from being pushed. The client was taken to the Lexington Medical Center Urgent Care Center for observation. No further treatment noted. (2.) On 4/9/03 at 2:55 PM Client #7 became agitated after an altercation with Client #4 and ran into the corner of the fireplace causing a scratch and bruise to the right eye. Client #7 was taken to the Lexington Medical Center Urgent Care Center for treatment. (3.) On 4/23/03 at 7:15 AM an unknown Client bit Client #5. Client #5 received a "deep bite mark on the left outside biceps." The Facility Physician was contacted and prescribed an antibiotic cream to be applied to the area. The 44 "Accident/Injury Reports" involving injuries requiring notification of and intervention by the facility nursing staff included; (1.) On 10/19/03 Client #2 kicked Client #1 in the mouth, causing Client #1 to bite through his upper lip, (2.) On 10/5/03 at 2:45 PM Client #1 hit Client #4, (3.) On 10/1/03 at 11:50 AM Client #7 was scratched and hit by Client #6, receiving a split lip, (4.) On 9/29/03 at 9:00 a.m. Client #5 fell from a chair in the nurses office, abrasion was noted to the left knee cap, (5.) On 9/22/03 the Qualified Mental Retardation Professional noted that a large scratch was found by staff on Client #8's arm, date and perpetrator unknown, (6.) On 9/21/03 at 2:00 p.m. a nurse noted that Client #8 had a "red scratch marks below ear about one inch long", (7.) On 9/13/03 at 5:20 PM Client #8 was "attacked" by Client #7 with a shoe, (8.) On 9/13/03 at 5:20 PM Client #5 was pushed down by Client #7, which caused an abrasion to Client	W 148		

FORM CMS-2567(02-99)

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FJQM11

If continuation sheet 10 of 53

Mims 1169

CENTERS FOR MEDICARE & MEDICAID SERVICES

OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 42G081	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED C 11/06/2003
NAME OF PROVIDER OR SUPPLIER KINGSTON CLUSTERS B		STREET ADDRESS, CITY, STATE, ZIP CODE P.O. BOX 3817 COLUMBIA, SC 29230		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
W 148	Continued From page 10 #5's left knee, (9.) On 9/7/03 at 3:35 PM Client #7 became self-abusive after a physical altercation with Client #1, (10.) On 9/6/03 at 2:00 PM Client #8 scratched Client #6 on his face and right arm, (11.) On 9/6/03 at 4:15 PM Client #5 was pushed by Client #1, red marks and bruising noted, (12.) On 8/25/03 at 11:10 AM an unknown Client at the workshop stabbed Client #7 in the neck with a pen, laceration noted, (13.) On 8/22/03 at 7:30 a.m. Client #2 scratched his head while having a seizure, (14.) On 8/9/03 at 12:35 PM Client #1 bit Client #5 on his right shoulder, bite marks noted, (15.) On 7/29/03 at 7:30 p.m. Client #5 fell on the sidewalk, scratches were noted above his right eye, (16.) On 7/26/03 at 9:30 AM Client #7 attempted to bite an unknown Client, which caused injury to his mouth, (17.) On 7/26/03 at 9:30 AM Client #7 scratched Client #5, scratches noted on Client #5's back and chest, (18.) On 7/4/03 at 10:30 a.m. Client #4 fell in the kitchen pantry, small red areas were noted to the back of his head, (19.) On 7/1/03 at 8:57 AM Client #5 was bitten by a female Client at the workshop, requiring seven stitches, (20.) On 6/30/03, time unknown, Client #7 bit Client #5 on his calf, bite marks noted, (21.) On 6/10/03 at 11:15 p.m. Client #5 dropped a television on his toe causing the toenail to crack and the tow to bruise, (22.) On 5/10/03 at 7:15 AM Client #5 was pushed by an unknown Client. Client #5 sustained a bruise on his right knee, (23.) On 4/29/03, time unknown, client #2 reported that he hit his left eye against the railing of his bed, eye area bruised,	W 148		

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM 01-10-01
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 42G081	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED C 11/06/2003

NAME OF PROVIDER OR SUPPLIER
LEXINGTON CLUSTERS B

STREET ADDRESS, CITY, STATE, ZIP CODE
P.O. BOX 3817
COLUMBIA, SC 29230

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
W 148	Continued From page 11 (24.) On 4/23/03 at 4:45 PM Client #5 attempted to bite Client #1, Client #1 responded by biting Client #5. Client #5 had bite marks on his left knee, (25.) On 4/10/03 at 7:30 PM an unknown Client hit Client #5. Client #5 sustained "red marks to [his] back", (26.) On 4/8/03 at 4:00 p.m. Client #5 reported that he scratched his neck, red marks noted, (27.) On 4/5/03 at 4:30 p.m. client #5 fell on the sidewalk, abrasion noted on face, (28.) On 3/20/03 at 8:10 p.m. client #5 reported that he hit his left leg against his bed, scratches noted, (29.) On 3/11/03 at 5:29 PM, Client #1 pushed Client #5, causing an abrasion to Client #5's right elbow, (30.) On 2/18/03 at 5:00 p.m. Client #8 injured his fingers during self-abusive behaviors, (31.) On 1/29/03 at 1:25 PM, while at the workshop another client hit Client #5 with a chair, (32.) On 1/11/03 at 11:40 a.m. Client #8 hit his head on the corner of the dresser, laceration noted, (33.) On 12/25/02 at 6:55 a.m. Client #5 ran into the corner of the fireplace, cutting his left eye, (34.) On 12/23/02 at 3:40 p.m. Client #3 was found to have a laceration on the heel of his left foot, (35.) On 12/19/02 at 6:40 PM Client #1 bit Client #7 causing bite marks on Client #7's left ankle, (36.) On 12/18/03 at 4:55 PM Client #1 pushed a Client no longer residing in the home, (37.) On 12/13/02 at 4:55 PM Client #7 hit a Client no longer residing in the home, cutting his head, (38.) On 12/13/02 at 7:32 AM Client #7 hit Client #5 on his back, (39.) On 12/13/02 at 7:35 AM Client #7 hit a Client no longer living in the home on the head, (40.) On 12/13/03 at 7:37 AM Client #5 or a Client no longer living in the home bit Client #7 causing red marks on Client #7's back and a cut on Client #7's thumb, (41.) On 12/9/02 at 8:30 AM Client #1 kicked Client	W 148		

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FJQM11

If continuation sheet 12 of 53

Mims 1171

Mims 1172

Mail Form 1041-V to the
Internal Revenue Service Center
at the address listed below.

Form 1041-V (2012)

▼ Detach Here and Mail With Your Payment and Return ▼

Department of the Treasury
Internal Revenue Service (99)

2012**Form 1041-V Payment Voucher**

- ▶ Use this voucher when making a payment with Form 1041.
- ▶ Do not staple this voucher or your payment to Form 1041.
- ▶ Make your check or money order payable to the 'United States Treasury.'
- ▶ Write your employer identification number (EIN) on your check or money order.

Enter the amount of your payment	32.

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1030

A SHEFFIELD HODGE TRUST
ANNE T. HODGE, TRUSTEE
C/O SC BANK & TRUST, PO BOX
COLUMBIA SC 29202-1030

Department of the Treasury
Internal Revenue Service Center
Cincinnati, OH 45999-0148

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DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVAL
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 42G081	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED C 11/06/2003

NAME OF PROVIDER OR SUPPLIER LEXINGTON CLUSTERS B	STREET ADDRESS, CITY, STATE, ZIP CODE P.O. BOX 3817 COLUMBIA, SC 29230

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
W 148	Continued From page 12 #5, causing an abrasion to Client #5's right knee, (42.) On 11/22/02 at 3:15 p.m. Client #7 was found to have a "swollen and blue" left big toe, (43.) On 11/15/02 at 4:59 p.m. Client #1 was pushed by Client #2, cutting his head, (44.) On 11/5/02 at 5:15 PM Client #1 bit a Client no longer residing in the home on the right arm causing bite marks. On 11/5/03 at 9:00 a.m. a review was conducted of the agency policy "Reporting of Critical Incidents", dated 8/26/03, identified for reference as "100-09-PD". The policy defined critical incidents to include, "accidents that result in serious injury", and "significant acts of aggression by or against supported persons". The policy did not define "serious" injuries or "significant" acts of aggression. The policy documented, "Family members will be notified of the critical incident, as soon as possible, in the most expeditious manner possible and will be kept informed of the results of the investigation/management review." On 11/6/03 at 11:00 AM, an interview with the Consumer Advocate (a staff member of the agency responsible for investigations) confirmed that all incidents involving injury or assault should be reported to the guardians, family members, and surrogate decision makers. On 11/6/03, at 3:00 PM, an interview with the Assistant Director/Acting Qualified Mental Retardation Professional revealed that all "Accident/Injury Records" should include a "narrative note or at least a signature" in the field which records family/guardian notification in order to document that the parent/guardian/surrogate was notified. She was unable to provide further documentation of such notification or follow up for the incidents listed above.	W 148		

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVED
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 42G081	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED C 11/06/2003

OF PROVIDER OR SUPPLIER LEXINGTON CLUSTERS B	STREET ADDRESS, CITY, STATE, ZIP CODE P.O. BOX 3817 COLUMBIA, SC 29230

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
W 149	483.420(d)(1) STAFF TREATMENT OF CLIENTS The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of the client. This Standard is not met as evidenced by: Based on interviews, observations, and record reviews, the facility failed to develop and implement policies and procedures that ensure that clients are provided sufficient interventions to be protected from assaults and injuries resulting from client to client aggression. Further the facility failed to implement a system that included identifying perpetration and victimization trends and conducting functional analysis of maladaptive behaviors in order to develop effective behavioral strategies affecting seven of eight clients (Client #1, Client #2, Client #4, Client #5, Client #6, Client #7, and Client #8). Based on these findings, it was determined that Immediate Jeopardy existed resulting from the facility's failure to ensure clients were not neglected and placed at risk from other clients living in the home. Specifically, Client #5 was identified as a frequent victim of other client's aggression. In addition, based on interview and record review the facility failed to develop and implement policies and procedures to assure that 3 of 5 injuries of unknown origin were immediately reported to the Director (Clients #3, #7, and #8). Findings: (A.) On 11/4/03 at 1:30 p.m. a review was conducted of the agency policy on "Abuse, Neglect, or Exploitation: Prohibition of and Employee Reporting Responsibilities, Procedures for Reporting, Investigating, and Preventing Abuse, Neglect, or Exploitation of People Receiving Services and Supports", dated 7/22/03. The policy included a	W 149	Please see IJ Corrections.	

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVED
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 42G081	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____		(X3) DATE SURVEY COMPLETED C 11/06/2003
OF PROVIDER OR SUPPLIER LEXINGTON CLUSTERS B			STREET ADDRESS, CITY, STATE, ZIP CODE P.O. BOX 3817 COLUMBIA, SC 29230		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)		(X5) COMPLETE DATE
W 149	Continued From page 14 section labeled, "Acts of Assault Between People Receiving Services" which documented, "Reporting requirements pursuant to the state laws do not apply to altercations or acts of assault between people receiving supports protected by these laws except as noted below. However, corrective/preventive action should be taken to protect and intervene whenever people receiving services may be harming themselves or others. All injuries should be thoroughly reviewed and appropriate action taken to prevent similar occurrences. Failure to provide proper supervision to prevent people receiving services from assaulting each other could e a form of neglect if the employee fails to intervene or provide proper supervision when they clearly have a duty to do so. Each situation will be reviewed and if it is determined that the employee failed to provide appropriate supervision which resulted in risk to the life safety of the person receiving services, the incident should be reported as suspected neglect and investigated by established procedures as outlined in this policy and in compliance with state law." (B.) A review of the incident reports on 11/4/03 revealed 29 incidents of client-to-client aggression within the time frame of 11/1/02 through 11/4/03. These incidents included: (1.) On 10/19/03 Client #2 kicked Client #1 in the mouth, causing Client #1 to bite through his upper lip. (2.) On 10/5/03 at 2:45 PM Client #1 hit Client #4. (3.) On 10/1/03 at 11:50 AM Client #7 was scratched and hit by Client #6, receiving a split lip. (4.) On 9/22/03 the Qualified Mental Retardation Professional noted that a large scratch was found by staff on Client #8's arm, date and perpetrator unknown. (5.) On 9/13/03 at 5:20 PM Client #8 was "attacked" by Client #7 with a shoe. (6.) On 9/13/03 at 5:20 PM Client #5 was pushed down by Client #7, which caused an abrasion to Client	W 149			

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021199

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Mims 1175

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVED
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 42G081	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED C 11/06/2003

NAME OF PROVIDER OR SUPPLIER JEXINGTON CLUSTERS B	STREET ADDRESS, CITY, STATE, ZIP CODE P.O. BOX 3817 COLUMBIA, SC 29230

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
W 149	Continued From page 15 #5's left knee. (7.) On 9/7/03 at 3:35 PM Client #7 became self-abusive after a physical altercation with Client #1. (8.) On 9/6/03 at 2:00 PM Client #8 scratched Client #6 on his face and right arm. (9.) On 9/6/03 at 4:15 PM Client #5 was pushed by Client #1, red marks and bruising noted. (10.) On 8/25/03 at 11:10 AM an unknown Client at the workshop stabbed Client #7 in the neck with a pen, laceration noted. (11.) On 8/9/03 at 12:35 PM Client #1 bit Client #5 on his right shoulder, bite marks noted. (12.) On 7/26/03 at 9:30 AM Client #7 attempted to bite an unknown Client, which caused injury to his mouth. (13.) On 7/26/03 at 9:30 AM Client #7 scratched Client #5, scratches noted on Client #5's back and chest. (14.) On 7/1/03 at 8:57 AM Client #5 was bitten by a female Client at the workshop, requiring seven stitches. (15.) On 6/30/03, time unknown, Client #7 bit Client #5 on his calf, bite marks noted. (16.) On 5/10/03 at 7:15 AM Client #5 was pushed by an unknown Client. Client #5 sustained a bruise on his right knee. (17.) On 4/23/03 at 4:45 PM Client #5 attempted to bite Client #1, Client #1 responded by biting Client #5. Client #5 had bite marks on his left knee. (18.) On 4/10/03 at 7:30 PM an unknown Client hit Client #5. Client #5 sustained "red marks to [his] back." (19.) On 3/11/03 at 5:29 PM, Client #1 pushed Client #5, causing an abrasion to Client #5's right elbow. (20.) On 1/29/03 at 1:25 PM, another Client, while at the workshop, hit Client #5 with a chair. (21.) On 12/19/02 at 6:40 PM Client #1 bit Client #7 causing bite marks on Client #7's left ankle. (22.) On 12/18/03 at 4:55 PM Client #1 pushed a	W 149		

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVED
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 42G081	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED C 11/06/2003

N. OF PROVIDER OR SUPPLIER LEXINGTON CLUSTERS B	STREET ADDRESS, CITY, STATE, ZIP CODE P.O. BOX 3817 COLUMBIA, SC 29230

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
W 149	Continued From page 16 Client no longer residing in the home. (23.) On 12/13/02 at 4:55 PM Client #7 hit a Client no longer residing in the home, cutting his head. (24.) On 12/13/02 at 7:32 AM Client #7 hit Client #5 on his back. (25.) On 12/13/02 at 7:35 AM Client #7 hit a Client no longer living in the home on the head. (26.) On 12/13/03 at 7:37 AM Client #5 or a Client no longer living in the home bit Client #7 causing red marks on Client #7's back and a cut on Client #7's thumb. (27.) On 12/9/02 at 8:30 AM Client #1 kicked Client #5, causing an abrasion to Client #5's right knee. (28.) On 11/15/02 at 4:59 PM Client #1 was pushed by Client #2, cutting his head. (29.) On 11/5/02 at 5:15 PM Client #1 bit a Client no longer residing in the home on the right arm causing bite marks. Client #1 was responsible for 9 incidents and Client #7 was responsible for 8 incidents. There were four incidents in which the perpetrator was not identified on the incident report. Five incidents identified five other clients living in the home as perpetrators: #2, #4, #5, #6, and #8. There were two other incidents in which the perpetrator was not a client living in the home. All 29 incidents resulted in injuries to the victim. Client #5 was identified as the victim of assault in 14 of the 29 incidents. The primary perpetrators of these assaults were Client #1 (5) and Client #7 (4). In three of these incidents to client #5 the perpetrator was unknown. In two the perpetrator was not a person living in his home. (C.) On 11/4/03, beginning at 10:45 a.m., reviews were conducted of the records of Clients #1, #5 and #7. The BSP for Client #5, the primary victim of	W 149		

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021199

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If continuation sheet 17 of 53

Mims 1177

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVED
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 42G081	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED C 11/06/2003

NAME OF PROVIDER OR SUPPLIER LEXINGTON CLUSTERS B	STREET ADDRESS, CITY, STATE, ZIP CODE P.O. BOX 3817 COLUMBIA, SC 29230

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
W 149	Continued From page 17 assaults, focused on staff prompting him to avoid assaults by avoiding conflict with other clients. The Behavior Support Plan (BSP) for Client #5 did not include a functional analysis of behavior. The BSP for Client #1, dated 9/17/02, identified the maladaptive behaviors to include; "physical aggression: defined as any action with the intent of causing harm to another person, including biting, kicking, hitting, etc., Verbal Aggression: any verbalization intended to cause harm to another person to include screaming, cursing, name-calling, etc.", "Self abuse", Hallucinations", "Non-cooperation", and "Inappropriate sexual behavior. The BSP did not include a functional analysis of the maladaptive behaviors. The intervention focus of the BSP relied primarily on 1 on 1 staff support that was to be in place during waking hours. The plan did not include a description of what the 1 on 1 staffing would entail or how it was to be implemented in the home. The data for Client #1's aggression for the time period 11/02 to 9/03 revealed he had exhibited 249 physically aggressive incidents. Examples of the documentation of these incidents of physical aggression included: 11/5/02 at 5:15 p.m.- Client #1 bit another client on the right arm causing bite marks, 12/9/02 at 8:30 a.m.- Client #1 kicked another client causing an abrasion to the right knee, 12/23/02 at 4:55 p.m.- Client #1 pushed another client to the floor resulting in a wound to the top of his head requiring 5 sutures to close, 3/11/03 at 5:29 p.m.- Client #1 pushed another client causing an abrasion to the right elbow, 5/26/03 at 7:30 p.m.- Client #1 pushed another client from his walker to the floor, resulting in a wound to his forehead requiring 8 sutures to close, 8/9/03 at 12:35 p.m.- Client #1 bit another client on his right shoulder, bite marks noted, 9/6/03 at 4:15 PM Client #1 pushed another client causing red marks and bruising.	W 149		

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W 149	Continued From page 18 The BSP for Client #7 identified the maladaptive behaviors to include physical aggression defined as any action with the intent of causing harm to another person, including biting, kicking, hitting, etc. The BSP did not include a functional analysis of the targeted behavior. Per the Interdisciplinary team meeting held on 10/31/03 Client #7 was placed on 1:1 staffing ratio on that day for unrelated sexual behavior and not for his aggression. The data for Client #7's aggression for the time period 11/02 to 9/03 revealed he had exhibited 223 aggressive incidents. Examples of the documentation of these incidents of physical aggression included; 12/13/02 at 4:55 p.m.- Client #7 hit another client resulting in a laceration to his head, 6/30/03, time unknown, Client #7 bit another client on the calf of his leg, bite marks noted, 7/26/03 at 9:30 a.m.- Client #7 scratched another client resulting in scratches noted on his back and chest, 9/13/03 at 5:20 p.m.- Client #7 "attacked" another client with a shoe. (D.) On 11/4/03 at 9:00 a.m. the staff member assigned to provide 1 on 1 for Client #1 was observed in his home. The staff member responded to four telephone calls between 9:00 and 10:00 a.m. that required him to leave the living room to answer the telephone in the entry hall. During each phone call Client #1 was unattended as he sat on the couch in the living room and beyond an arm's length of the assigned staff member. On 11/4/03 at 11:00 a.m. an interview was conducted with that same staff member assigned 1 on 1 to Client #1. Asked how he prevented Client #1 from assaulting others he said, "I try to keep him within an arm's length, pull him away by his back if he tries to attack anyone and redirect him." He said these interventions "work sometimes." He said Client #1 usually "picked on" Client #5. He was asked if the residence was a safe place for clients to live. He said, "Well, there are a lot	W 149			

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N. OF PROVIDER OR SUPPLIER LEXINGTON CLUSTERS B	STREET ADDRESS, CITY, STATE, ZIP CODE P.O. BOX 3817 COLUMBIA, SC 29230

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W 149	Continued From page 19 of fights." On 11/5/03 at 10:00 a.m. an interview was conducted with another staff member assigned 1 on 1 to Client #1. Asked how he prevented Client #1 from assaulting others he said, "I've known him for over three years and I can usually talk him down if he is upset." He said he kept Client #1 within an "arms length" and used redirection sometimes when Client #1 became upset. Asked if he could describe the behavior interventions prescribed in Client #1's BSP, the staff member said, "No, not exactly, it's been altered some." He also stated "Problems come up with Client #1 when staff are inconsistent in how they respond to him. Staff on the 3-11 shift do it a little different". (E.) On 11/4/03 at 2:00 p.m. an interview was conducted with the Behavior Supervisor who served as the behavior specialist for clients of Cluster Building B. He reported the behavior plans were lacking in that functional analyses of behaviors were not included in psychological assessments or BSP's. He reported the correct method of physical management to prevent Client #1 from assaulting others did not include pulling him away by his back. He said staff members received initial and ongoing training on BSP's and physical intervention techniques approved by the agency. He reported an awareness of the frequency of targeted behaviors for the Client's #1, #5, and #7 but said the data collection system used by the facility was not capable of trend analysis. The data collection system recorded the frequency of maladaptive behavior only. This resulted in a failure of the facility to be aware that Client #5 was being victimized. The Behavior Supervisor said he had not conducted an	W 149		

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NAME OF PROVIDER OR SUPPLIER LEXINGTON CLUSTERS B.			STREET ADDRESS, CITY, STATE, ZIP CODE P.O. BOX 3817 COLUMBIA, SC 29230		
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W 149	Continued From page 20 analysis of the client-to-client assaults to determine if a particular client was being victimized. He reported Client #5 frequently "was in the wrong place at the wrong time" in that he was sometime assaulted when he approached other clients when they were engaged in maladaptive behavior resulting in his being assaulted. When asked if he believed Client #5 was safe in his residence, the Behavior Supervisor said, "I won't go out on a limb and say nothing's going to happen to him." He added that in a meeting during the previous week regarding problems in the Clusters Building B the management team determined the need for additional staffing. He said the home had been "running on bare minimum" and the one on one requirement for two clients could not be always maintained. (F.) On 11/4/03 at 4:45 p.m., the Consumer Advocate for Babcock Center was interviewed. The Consumer Advocate explained that she primarily investigated "Critical Incidents" which consisted of those incidents that require hospitalization, police involvement, staff abuse or neglect, or financial exploitation. When asked whether she was aware of the level of Client-to-Client abuse in the home she replied, "that house is tough, the staff have their hands full." When asked if she was aware of Client #5's being targeted by his peers, the Consumer Advocate stated that "we all fall in to the trap of 'oh, that's just [Client #5] name.' If they had to document every behavior of his that is all they would be doing. We need people to come in and tell us what we're missing because we're just not seeing it now." (G.) On 11/5/03 at 8:30 a.m. an interview was conducted with the Director of Babcock Clusters. She reported being aware of staffing problems in the home, particularly since two clients were identified as needing 1 on 1 staffing. She reported a determination	W 149			

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NAME OF PROVIDER OR SUPPLIER
LEXINGTON CLUSTERS B

STREET ADDRESS, CITY, STATE, ZIP CODE
P.O. BOX 3817
COLUMBIA, SC 29230

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
W 149	Continued From page 21 had been made to add one additional staff member to the staffing pattern of the home. Her plan was to assign the new staff member to the 12:00 a.m. to 8:00 a.m. shift. She identified the required staffing minimums by shift as; 4 staff for the 8 a.m. to 4:00 p.m. shift, 4 staff for the 4:00 p.m. to 12:00 a.m. shift, and 3 staff for the 12:00 a.m. to 8:00 a.m. shift. She reported she was aware that the Behavior Support Plans did not include and were not developed from functional analyses of maladaptive behaviors and no trends analysis on assaultive behaviors had been completed by facility staff. She said she was aware there were assaults between clients in the home and that the Behavior Support Plans needed improvement. (H.) On 11/5/03 at 9:00 a.m. a review was conducted of the staffing patterns in the residence for the time period from 10/2/03 through 11/1/03. On the day shift (8:00 a.m. to 4:00 p.m.) 20 of 31 shifts were under staffed by 1 person. On the evening shift (4:00 p.m. to 12:00 a.m.) 18 shifts were under staffed by 1 person. On the overnight shift (12:00 a.m. to 8:00 a.m.) 3 of 31 shifts were under staffed by one person. Based on the findings of the above incidents, the it was determined that actual harm had occurred to the Client #5 and based on the current interventions employed by the agency, including inadequate behavior support plans, there is a likelihood that potential harm will occur again. It was also determined that facility is aware of the impact of Client #1 and #7's behavior on the other clients, specifically Client #5, and has not taken aggressive actions to intervene in reducing or eliminating the behaviors. In addition, the facility failed to ensure that they provided the staffing ratios as identified to keep people safe. (I.) On 11/4/03 at 10:00 a.m. during a review of the "Accident/Injury Records" 3 injuries of unknown	W 149		

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W 149	Continued From page 22 origin were identified where no evidence existed of immediate notification of the Director. Those included: (1.) On 11/22/02, Client #7 was found to have a "swollen and blue" left big toe. No documentation existed as to how the toe was injured. The Director documented being notified of the injury on 11/25/02. (2.) On 12/23/02 Client #3 was found to have a laceration on the heel of his left foot. There was no documentation of the Director being notified of the injury. (3.) On 9/21/03 a nurse noted that Client #8 had "red scratch marks below ear about one inch long". No documentation as to how the scratches occurred was included. The Director documented being notified of the injury on 10/7/03. (J.) On 11/6/03 at 3:00 PM, an interview with the Assistant Director confirmed that all allegations of abuse, neglect and mistreatment and all reports of injuries of unknown origin are supposed to be reported to the Director immediately. She could offer no explanation for the absence of policy support for what she reported was standard practice within the agency or for the failure of facility staff to immediately report the incidents identified above. (K.) On 11/4/03 at 1:00 PM, the Consumer Advocate provided a copies of The Babcock Center policies on mistreatment reporting and investigation. The "Reporting of Critical Incidents" policy dated 8/26/03, identified for reference as "100-09-PD" defined critical incidents to include, "accidents that result in serious injury", and "significant acts of aggression by or against supported persons". The policy did not define "serious" injuries or "significant" acts of aggression. The policy further documented, "The first response person...will initiate and complete an initial	W 149			

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W 149	Continued From page 23 investigation within 24 hours. The results of the investigation will be reported immediately to the House Manager and the QMRP(Qualified Mental Retardation Professional)/Coordinator as well as the responsible Administrator or Residential Director." The policy did not include a requirement for all injuries of unknown origin to be reported immediately to the Director. The Consumer Advocate reported all injuries of unknown origin should be reported immediately to the Director, despite the failure of facility staff to report immediately in the three instances identified above and despite the absence of a requirement for immediate reporting of all injuries of unknown origin in the agency policy.	W 149			
Y 153	483.420(d)(2) STAFF TREATMENT OF CLIENTS The facility must ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator or to other officials in accordance with State law through established procedures. This Standard is not met as evidenced by: Based on interview and record review the facility failed to ensure that 1 of 8 allegations of abuse, neglect or mistreatment (Client #1) and 3 of 5 injuries of unknown origin were immediately reported to the administrator (Client #3, Client #7, and Client #8). Findings: On 11/4/03 at 11:00 a.m. a review was conducted of the investigations of abuse, neglect and mistreatment conducted by the facility between the period of 11/4/02 and 11/4/03. Of the eight investigations completed during that time frame, 1 did not include evidence of immediate reporting to the Director. This	W 153			

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W 153	Continued From page 24 case, labeled "[Client #1's name] 8/15/03" involved a staff member reporting that on 8/11/03 at 6:30 a.m. he observed the "charge", a lead staff member with seniority, become upset with Client #1 because "he was taking too long to eat his breakfast." The "charge" took Client #1's food away and Client #1 began crying and asking the "charge" to give him back his food. The "charge" escorted Client #1 down the hallway but Client #1 resisted. The "charge" said, "I know you didn't just hit me" and grabbed Client #1 "by the neck and put him against the wall." Client #1 continued to resist and the "charge" hit him on the arm with his fist, then proceeded to take Client #1 to his room where he was heard crying. The investigative file noted that the allegation was not reported until 11/14/03. The file documented that when questioned the reporting staff member said he did not report the incident immediately because he was scared due to the "charge's" position within the residence. On 11/4/03 at 10:00 a.m. during a review of the "Accident/Injury Records" 3 injuries of unknown origin were identified where no evidence existed of immediate notification of the Director. Those included: (1.) On 11/22/02, Client #7 was found to have a "swollen and blue" left big toe. No documentation existed as to how the toe was injured. The Director documented being notified of the injury on 11/25/02. (2.) On 12/23/02 Client #3 was found to have a laceration on the heel of his left foot. There was no documentation of the Director being notified of the injury. (3.) On 9/21/03 a nurse noted that Client #8 had "red scratch marks below ear about one inch long". No documentation as to how the scratches occurred was included. The Director documented being notified of the injury on 10/7/03.	W 153	The facility will ensure that all allegations of mistreatment, neglect, or abuse, as well as injuries of unknown source, are reported immediately to the Administrator or other officials for Clients # 1, 3, 7, and 8, as well as any other clients in the facility. All staff will be re-inserviced on reporting all allegations and accident/injuries to the Administrator immediately. There will be a placed added to the Accident/Injury Form for notification of the Administrator. The Administrator will monitor all allegations to ensure that the proper notification protocol has been followed. Person(s) Responsible: Administrator Projected Completion Date: 1/6/04	

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W 153	Continued From page 25 On 11/5/03 at 5:00 PM an interview with the Consumer Advocate (an agency employee responsible for investigations) confirmed that agency practice required that all allegations of abuse, neglect and mistreatment and all injuries of unknown origin are to be reported to the Director immediately upon discovery. On 11/6/03 at 1:00 PM, the Consumer Advocate provided a copy of The Babcock Center "Reporting of Critical Incidents" policy dated 8/26/03 that states, "The first response person...will initiate and complete an initial investigation within 24 hours. The results of the investigation will be reported immediately to the House Manager and the QMRP(Qualified Mental Retardation Professional)/Coordinator as well as the responsible Administrator or Residential Director." The policy did not include a requirement for all injuries of unknown origin to be reported immediately to the Director. On 11/6/03 at 3:00 PM, an interview with the Assistant Director confirmed that all allegations of abuse, neglect and mistreatment and all reports of injuries of unknown origin are supposed to be reported to the Director immediately. She could offer no explanation for the allegation and injuries of unknown origin, identified above, not to have been reported immediately.	W 153			
W 154	483.420(d)(3) STAFF TREATMENT OF CLIENTS The facility must have evidence that all alleged violations are thoroughly investigated. This Standard is not met as evidenced by: Based on interview and record review the facility	W 154			

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W 154	Continued From page 26 failed to assure 1 of 8 investigations of abuse, neglect or mistreatment and 5 of 7 injuries of unknown origin were thoroughly investigated affecting five of eight clients (Client #1, Client #3, Client #5, Client #7, and Client #8). Findings; (1.) On 11/5/03 at 9:00 a.m. a review was conducted of an abuse investigation file involving Client #1. The file documented that an employee who resigned her employment on 9/23/02, reported to the Assistant Director during an employment exit conference that she observed a staff member hit Client #1 with a wooden paper towel holder with force and heard the same staff member hit Client #1 again while giving him a bath. The dates of these incidents were unknown. When interviewed Client #1 confirmed that he had been hit by the staff member/alleged perpetrator. The investigation resulted in a determination, dated 9/30/02, that "The allegation of physical abuse against [the alleged perpetrator's name] is substantiated. [The alleged perpetrator's name] will be terminated based upon a substantiated case of abuse." On 10/1/02 another staff member reported that Client #1 told her he was "going to lie and get all the guys fired in the house." On the basis of this report the investigative case was re-opened and Client #1 was re-interviewed. An Addendum Report included with the investigation resulted in a determination that the substantiation of abuse against the alleged perpetrator was rescinded. This decision was based on a determination that Client #1 was unreliable and an absence of "bruises or marks to indicate abuse." The Addendum Report did not include documentation of recognition that this incident was initially reported	W 154	The facility will assure that investigations of abuse, neglect, or mistreatment, and injuries of unknown origin are thoroughly investigated for Clients 1, 3, 5, 7, and 8, and any other clients in the facility. The Consumer Advocate Department staff, as well as the Residential staff, to include the Administrator, the QMRP, the House Manager, the Nursing Staff, and the Direct Care Staff, will be re-inserviced on the proper documentation that is needed to investigate these cases thoroughly. The Directors of each department will monitor for compliance. Person(s) Responsible: Directors Projected Completion Date: 1/6/04	

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W 154	Continued From page 27 by another staff member, not by Client #1. There was no information regarding a re-interview with the reporting party or a determination that the initial report of this incident was not credible. (2.) On 11/4/03 at 10:00 AM, during a review of the "Accident/Injury Records", 5 incidents were identified for which a thorough investigation had not been completed. Those incidents included; (a.) On an 9/21/03 a scratch was discovered on Client #8's neck. Staff documented "a scratch mark on left side of the neck which appears to be old due to color. Don't know the date or time this mark could have occurred." On 9/22/03 the Qualified Mental Retardation Professional (QMRP) noted, "it appears that [Client #8] may have scratched himself as usual." On 10/7/03, the Director signed the "Administrative Review" portion of the report and also noted, "mark is old." There was no further documentation of additional investigation of how the scratches occurred. (b.) On 7/30/03, at 8:15 AM, facility staff found Client #7 with a cut over his left eye. The staff notified the facility nurse who treated the cut with soap and water, then covered it with a band-aid. The QMRP noted "[Client #7's name] may have accidentally fell and bump (sic) his head." On 8/1/03 the Director signed the "Administrative Review" portion of the report and documented, "client bumped his head." There was no further documentation of additional investigation of how the scratch to the eye area occurred. (c.) On 5/10/03, Client #5 was found to have a bruise on his right knee. A sentence written by an unknown person states "[Client #5's name] was pushed by another client and fell to the ground. There was no documentation of when, where, or how the incident occurred. (d.) On 12/23/02, Client #3 was found to have a laceration on the heel of his left foot. A nurse documented treating the laceration with soap and	W 154			

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DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVED
OMB NO. 0938-039

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 42G081	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____		(X3) DATE SURVEY COMPLETED C 11/06/2003
NAME OF PROVIDER OR SUPPLIER LEXINGTON CLUSTERS B			STREET ADDRESS, CITY, STATE, ZIP CODE P.O. BOX 3817 COLUMBIA, SC 29230		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)		(X5) COMPLETE DATE
W 154	Continued From page 28 water, applying a Steri-Strip and covering the laceration with a bandage. There was no further documentation of additional investigation of how the laceration occurred. (e.) On an 11/22/02, Client #7 was found to have a "swollen and blue" left big toe. The date of the injury is unknown. On 11/22/02, the QMRP noted, "[Client #7] accidentally bruised his toe." The Administrator documented that she was informed of the incident on 11/25/02 "Monday returning from weekend." There was no further documentation of additional investigation of how the toe was injured. (3.) On 11/6/03 at 1:00 PM, the Consumer Advocate provided a copy of The Babcock Center "Reporting of Critical Incidents" policy dated 8/26/03 that states, "The first response person... will initiate and complete an initial investigation within 24 hours." (4.) On 11/6/03 at 3:00 PM, an interview with the Assistant Director confirmed that all allegations of abuse, neglect, and mistreatment as well as all reports of injuries of unknown origin are required to be investigated thoroughly in order to establish the facts of the case and "to see what caused the injury." She could offer no explanation for the absence of a thorough investigation of the cases identified above.	W 154			
W 156	483.420(d)(4) STAFF TREATMENT OF CLIENTS The results of all investigations must be reported to the administrator or designated representative or to other officials in accordance with State law within five working days of the incident. This Standard is not met as evidenced by: Based on interview and record review the facility failed to ensure the results of 10 of 51 investigations	W 156			

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FJQM11

If continuation sheet 29 of 5

Mims 1189

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W 156	Continued From page 29 were reported to the Director within five working days affecting seven of eight clients living in the home. (Client #1, Client #2, Client #3, Client #5, Client #6, Client #7, and Client #8.) Findings: On 11/4/03 at 10:00 AM, during a review of the "Accident/Injury Records" 51 incidents were documented. Of those, there were 47 involved incidents which were investigated. Of the 47 investigations, 10 incidents did not include evidence that the results were reported to the Director within five working days. Those investigated incidents included; (1.) On 10/19/03 Client #2 kicked Client #1. There was no documentation that the Director was notified of the results of the investigation. (2.) On 9/29/03 Client #5 fell in the nurses office. The Director reviewed the results of the investigation on 10/8/03. (3.) On 9/22/03 a scratch mark was noted on Client #8. The Director reviewed the results of the investigation on 10/7/03. (4.) On 9/13/03 Client #8 was "attacked" by Client #7. The Director reviewed the results of the investigation on 9/26/03. (5.) On 9/7/03 Client #7 became self-injurious after an altercation with Client #1. The Director reviewed the results of the investigation on 9/26/03. (6.) On 9/6/03 Client #8 scratched Client #6. The Director reviewed the results of the investigation on 9/26/03. (7.) On 8/25/03 a consumer at the workshop stabbed Client #7 with a pen. The Director reviewed the results of the investigation on 9/20/03. (8.) On 8/22/03 Client #7 was found to have a scratch on his head. There was no documentation that the Director was notified of the results of the	W 156	The facility will ensure that the results of all investigations are reported to the Administrator, or designated representative, within five-working days for Clients 1, 2, 3, 5, 6, 7, 8, and any other clients in the facility. The facility staff will be inserviced on reporting of investigations as well as reporting the results of the investigations to the Director. The Director will sign off on all investigations as they are completed. The Director of Residential Services will monitor for compliance. Person(s) Responsible: Director of Residential Services Projected Completion Date: 1/6/04		

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W 156	Continued From page 30 investigation. (9.) On 1/29/03 a client in the day program hit Client #5 with a chair. There was no documentation that the Director was notified of the results of the investigation. (10.) On 12/23/02 Client #3 was found to have a laceration on his foot. There was no documentation that the Director was notified of the results of the investigation. On 11/5/03 at 9:00 AM, record review found that the Babcock Center "Abuse, Neglect or Exploitation: Prohibition of and Employee Reporting Responsibilities. Procedures for Reporting, Investigating and Preventing Abuse, Neglect, or Exploitation of People Receiving Services and Supports", stated that "ICF/MR regulations require that investigations be completed and results reported to the Director within five (5) working days excluding state and federal holidays." On 11/6/03 at 1:00 PM, an interview with the Consumer Advocate (an agency staff member identified as responsible for investigations) confirmed that the results of all investigations are to be reported to the Director, as delineated in The Babcock Center policy. She was unable to explain why the results of the investigations identified above were not reviewed by the Director within 5 working days.	W 156		
W 157	483.420(d)(4) STAFF TREATMENT OF CLIENTS If the alleged violation is verified, appropriate corrective action must be taken. This Standard is not met as evidenced by: Based on interview and record review the facility failed to take appropriate corrective action which	W 157		

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W 157	Continued From page 31 would be reasonably likely to prevent reoccurrence of mistreatment to one of four clients included in the core sample (Client #1) and ongoing client to client assaults affecting seven of eight of clients (Client #1, Client #2, Client #4, Client #5, Client #6, Client #7, and Client #8). Findings: (A.) On 11/4/03 at 1:00 p.m. a review was conducted of an Abuse Investigation involving Client #1 which was initiated on 7/6/03. The investigation documented that on 7/6/03 at 4:15 p.m. Client #1 was discovered with large abrasions/bruises on his chest. An assessment by the Director of Nursing documented the bruises appeared to have been caused by a belt or a wire looped object: as the bruises matched the shape of the handle of a fly swatter as evidenced by photographs of a fly swatter held over the bruises on Client #1's chest. Client #1 reportedly offered differing explanations of the cause of the bruises including, he did not know how the bruises occurred, he fell, he scratched himself, someone kicked him, someone punched him and being hit by an unknown person with a metal object while in the hallway. The investigation included recognition that Client #1 was assigned 1 on 1 staffing prior to, during, and following the discovery of the bruises. The staff members assigned to provide 1 on 1 staffing prior to the discovery of the bruises reported having no information about how the bruises might have been caused. The investigation resulted in a determination that abuse was substantiated with an unknown perpetrator. The administrative response to this investigation included statements that management would ensure staff are providing 1 on 1 accountability to Client #1 during waking hours and improved accountability of 1 on 1 assignments would be documented. The	W 157	Please see IJ Corrections.	

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W 157	Continued From page 32 administrative response included a plan to accomplish these actions included documenting when a change to the 1 on 1 assignment was made from one staff member to another and discontinuing the practice of pulling a staff member assigned as the 1 on 1 staff to other residences for shift coverage. The plan did not include training staff on how to provide 1 on 1 staffing, including specific staff directions on how close they should remain to Client #1 (i.e., within an arms reach, within the same room or location, within line of sight supervision, etc.) or any method of "ensuring staff are providing 1 on 1 accountability" such as enhanced management or supervisory reviews and observations of staff provision of 1 on 1. (B.) On 11/4/03 a review was conducted of the "Accident/Injury Reports" maintained by the facility for the time period from 11/1/02 through 11/4/03. This review revealed 29 incidents of client-to-client aggression. Each instance of client to client aggression was investigated. Client #1 was responsible for 9 incidents and Client #7 was responsible for 8 incidents. There were four incidents in which the perpetrator was not identified on the incident report. Five incidents identified five other clients living in the home as perpetrators: #2, #4, #5, #6, and #8. There were two other incidents in which the perpetrator was not a client living in the home. (C.) All 29 incidents resulted in injuries to the victim. Client #5 was identified as the victim of assault in 14 of the 29 incidents. The primary perpetrators of these assaults were Client #1 (5) and Client #7 (4). In three of these incidents to client #5 the perpetrator was unknown. In two the perpetrator was not a person living in his home. Examples of injuries sustained by Client #5 as a result of such assaults included: (1.) On 9/13/03, Client #5 was pushed down by Client #7 and received an abrasion on his left knee,	W 157		

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W 157	Continued From page 33 (2.) On 7/1/03 Client #5 was bitten by an unknown perpetrator, and required seven stitches, (3.) On 6/30/03, Client #5 was bitten by Client #7, (4.) On 4/30/03 Client #5 was bitten twice by peers, once by Client #1 and once by and unknown perpetrator, (5.) On 3/11/03 Client #5 was pushed by Client #1 receiving an abrasion. (D.) On 11/4/03, beginning at 10:45 a.m., a review was conducted of the record of Clients #5. The BSP for Client #5, the primary victim of assaults, focused on staff prompting him to avoid assaults by avoiding conflict with other clients. The Behavior Support Plan (BSP) for Client #5 did not include a functional analysis of maladaptive behavior. (E.) The BSP for Client #1, dated 9/17/02, identified the maladaptive behaviors to include; "physical aggression: defined as any action with the intent of causing harm to another person, including biting, kicking, hitting, etc., Verbal Aggression: any verbalization intended to cause harm to another person to include screaming, cursing, name-calling, etc.", "Self abuse", Hallucinations", "Non-cooperation", and "Inappropriate sexual behavior. The BSP did not include a functional analysis of the maladaptive behaviors. The intervention focus of the BSP relied primarily on 1 on 1 staff support that was to be in place during waking hours. The plan did not include a description of what the 1 on 1 staffing would entail or how it was to be implemented in the home. The BSP for Client #1 did not include a functional analysis of maladaptive behavior. The data for Client #1's aggression for the time period 11/02 to 9/03 revealed he had exhibited 249 physically aggressive incidents. Examples of the documentation of these incidents of physical aggression included: (1.) On 11/5/02 at 5:15 p.m.- Client #1 bit another	W 157			

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STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 42G081	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED C 11/06/2003

NAME OF PROVIDER OR SUPPLIER

LEXINGTON CLUSTERS B

STREET ADDRESS, CITY, STATE, ZIP CODE

P.O. BOX 3817
COLUMBIA, SC 29230

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W 157	Continued From page 34 client on the right arm causing bite marks, (2.) On 12/9/02 at 8:30 a.m.- Client #1 kicked another client causing an abrasion to the right knee, (3.) On 12/23/02 at 4:55 p.m.- Client #1 pushed another client to the floor resulting in a wound to the top of his head requiring 5 sutures to close, (4.) On 3/11/03 at 5:29 p.m.- Client #1 pushed another client causing an abrasion to the right elbow, (5.) On 5/26/03 at 7:30 p.m.- Client #1 pushed another client from his walker to the floor, resulting in a wound to his forehead requiring 8 sutures to close, (6.) On 8/9/03 at 12:35 p.m.- Client #1 bit another client on his right shoulder, bite marks noted, (7.) On 9/6/03 at 4:15 PM Client #1 pushed another client causing red marks and bruising. (F.) The BSP for Client #7 identified the maladaptive behaviors to include physical aggression defined as any action with the intent of causing harm to another person, including biting, kicking, hitting, etc. The BSP did not include a functional analysis of maladaptive behavior. Per the Interdisciplinary team meeting held on 10/31/03 Client #7 was placed on 1 on 1 staffing on that day for unrelated sexual behavior and not for his aggression. The data for Client #7's aggression for the time period 11/02 to 9/03 revealed he had exhibited 223 aggressive incidents. Examples of the documentation of these incidents of physical aggression included; (1.) On 12/13/02 at 4:55 p.m.- Client #7 hit another client resulting in a laceration to his head, (2.) On 6/30/03, time unknown, Client #7 bit another client on the calf of his leg, bite marks noted, (3.) On 7/26/03 at 9:30 a.m.- Client #7 scratched another client resulting in scratches noted on his back and chest, (4.) On 9/13/03 at 5:20 p.m.- Client #7 "attacked" another client with a shoe.	W 157		

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Mims 1195

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W 157	Continued From page 35 (H.) On 11/4/03 at 2:00 p.m. an interview was conducted with the Behavior Supervisor who served as the behavior specialist for clients of Cluster Building B. He reported the behavior plans were lacking in that functional analyses of behaviors were not included in psychological assessments or BSP's. He reported an awareness of the frequency of targeted behaviors for the Client's #1, #5, and #7 but said the data collection system used by the facility was not capable of trend analysis. The data collection system recorded the frequency of maladaptive behavior only. The Behavior Supervisor said he had not conducted an analysis of the client-to-client assaults to determine if a particular client was being victimized. He reported Client #5 frequently "was in the wrong place at the wrong time" in that he was sometime assaulted when he approached other clients when they were engaged in maladaptive behavior resulting in his being assaulted. When asked if he believed Client #5 was safe in his residence, the Behavior Supervisor said, "I won't go out on a limb and say nothing's going to happen to him." He added that in a meeting during the previous week regarding problems in the Clusters Building B the management team determined the need for additional staffing. He said the home had been "running on bare minimum" and the one on one requirement for two clients could not be always maintained. Based on the frequent and ongoing nature of client to client assaults within the home which were investigated, the frequency with which Client #5 is targeted for assault, and the failure of the facility to identify and take corrective action to prevent mistreatment and injury from recurring, this regulation is not met.	W 157		

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W 186 W 186	Continued From page 36 483.430(d)(1) DIRECT CARE RESIDENTIAL LIVING UNIT STA The facility must provide sufficient direct care staff to manage and supervise clients in accordance with their individual program plans. This Standard is not met as evidenced by: Based on interview and record review the facility failed to provide sufficient staff in order to meet their established staffing minimums and to prevent ongoing client to client assaults affecting eight of eight clients (Client #1, Client #2, Client #3, Client #4, Client #5, Client #6, Client #7, and Client #8.). Findings: On 11/4/03 a review was conducted of the "Accident/Injury Records" maintained by the facility for the period from 11/1/02 through 11/4/03. This review revealed 29 incidents reports of client-to-client aggression resulting in injury within the time frame of 11/1/02 through 11/4/03. On 11/4/03 at 2:00 p.m. an interview was conducted with the Behavior Supervisor who served as the behavior specialist for clients of Cluster Building B. He reported one of the challenges in preventing client-to-client assaults was having sufficient staff. He said maintaining sufficient staffing was a problem at the residence. He added that in a meeting during the previous week regarding problems in the Clusters Building B the management team determined the need existed for additional staffing in the home. He said the home had been "running on bare minimum" and the 1 on 1 staffing requirement for two clients could not be always maintained. On 11/5/03 at 8:30 a.m. an interview was conducted	W 186 W 186	Please see IJ Corrections.		

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DEPARTMENT OF HEALTH AND HUMAN SERVICES
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W 186	Continued From page 37 with the Director of Babcock Clusters B. She reported being aware of staffing problems in the home, particularly since two clients were identified as needing 1 on 1 staffing. She reported a determination had been made to add one additional staff member to the staffing pattern of the home. Her plan was to assign the new staff member to the 12:00 a.m. to 8:00 a.m. shift. She identified the required staffing minimums by shift as; 4 staff for the 8 a.m. to 4:00 p.m. shift, 4 staff for the 4:00 p.m. to 12:00 a.m. shift, and 3 staff for the 12:00 a.m. to 8:00 a.m. shift. She said she was aware there were assaults between clients in the home. On 11/5/03 at 9:00 a.m. a review was conducted of the staffing patterns in the residence for the time period from 10/2/03 through 11/1/03. On the day shift (8:00 a.m. to 4:00 p.m.) 20 of 31 shifts were under staffed by 1 person. On the evening shift (4:00 p.m. to 12:00 a.m.) 18 shifts were under staffed by 1 person. On the overnight shift (12:00 a.m. to 8:00 a.m.) 3 of 31 shifts were under staffed by one person. This failure of the facility to provide the staffing needed to protect clients placed them at risk of harm from others living in the home.	W 186			
W 189	483.430(e)(1) STAFF TRAINING PROGRAM The facility must provide each employee with initial and continuing training that enables the employee to perform his or her duties effectively, efficiently, and competently. This Standard is not met as evidenced by: Based on observation, interview and record review the facility failed to provide adequate training and instruction for 1 on 1 staffing assignments which	W 189			

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DEPARTMENT OF HEALTH AND HUMAN SERVICES
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W 189	Continued From page 38 would be reasonably likely to prevent reoccurrence of mistreatment to one of four clients included in the core sample (Client #1) and to enable employees to perform 1 on 1 staff assignments with sufficient competency to prevent ongoing client to client assaults affecting four of eight (Client #1, Client #4, Client #5, and Client #7). Findings: (A.) On 11/4/03 at 1:00 p.m. a review was conducted of an Abuse Investigation involving Client #1 which was initiated on 7/6/03. The investigation documented that on 7/6/03 at 4:15 p.m. Client #1 was discovered with large abrasions/bruises on his chest. An assessment by the Director of Nursing documented the bruises appeared to have been caused by a belt or a wire looped object: as the bruises matched the shape of the handle of a fly swatter as evidenced by photographs of a fly swatter held over the bruises on Client #1's chest. Client #1 reportedly offered differing explanations of the cause of the bruises including, he did not know how the bruises occurred, he fell, he scratched himself, someone kicked him, someone punched him and being hit by an unknown person with a metal object while in the hallway. The investigation included recognition that Client #1 was assigned 1 on 1 staffing prior to, during, and following the discovery of the bruises. The staff members assigned to provide 1 on 1 staffing prior to the discovery of the bruises reported having no information about how the bruises might have been caused. The investigation resulted in a determination that abuse was substantiated with an unknown perpetrator. The administrative response to this investigation included statements that management would ensure staff are providing 1 on 1 accountability to Client #1 during waking hours and improved accountability of 1	W 189	Please see IJ Corrections.		

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OF PROVIDER OR SUPPLIER LEXINGTON CLUSTERS B	STREET ADDRESS, CITY, STATE, ZIP CODE P.O. BOX 3817 COLUMBIA, SC 29230

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
W 189	Continued From page 39 on 1 assignments would be documented. The administrative response included a plan to accomplish these actions included documenting when a change to the 1 on 1 assignment was made from one staff member to another and discontinuing the practice of pulling a staff member assigned as the 1 on 1 staff to other residences for shift coverage. The plan did not include training staff on how to provide 1 on 1 staffing, including specific staff directions on how close they should remain to Client #1 (i.e., within an arms reach, within the same room or location, within line of sight supervision, etc.) or any method of "ensuring staff are providing 1 on 1 accountability" such as enhanced management or supervisory reviews and observations of staff provision of 1 on 1. (B.) A review of the incident reports on 11/4/03 revealed 29 incidents of client-to-client aggression within the time frame of 11/1/02 through 11/4/03. Client #1 was responsible for 9 incidents. On 11/4/03, beginning at 10:45 a.m., a review was conducted of Client #1's record. The Behavior Support Plan (BSP) for Client #1, dated 9/17/02, identified the maladaptive behaviors to include; "physical aggression: defined as any action with the intent of causing harm to another person, including biting, kicking, hitting, etc., Verbal Aggression: any verbalization intended to cause harm to another person to include screaming, cursing, name-calling, etc.", "Self abuse", Hallucinations", "Non-cooperation", and "Inappropriate sexual behavior. The BSP did not include a functional analysis of the maladaptive behaviors. The intervention focus of the BSP relied primarily on 1 on 1 staff support that was to be in place during waking hours. The plan did not include any description of what the 1 on 1 staffing would entail or how it was to be implemented in the home.	W 189		

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W 189	Continued From page 40 The data for Client #1's aggression for the time period 11/02 to 9/03 revealed he had exhibited 249 physically aggressive incidents. Examples of the documentation of these incidents of physical aggression included: (1.) On 10/5/03 at 2:45 PM Client #1 hit Client #4, (2.) On 12/9/02 at 8:30 AM Client #1 kicked Client #5, causing an abrasion to Client #5's right knee, (3.) On 12/19/02 at 6:40 PM Client #1 bit Client #7 causing bite marks on Client #7's left ankle. The record revealed that Client #1 had been prescribed 1 on 1 supervision during each of the incidents identified above. In all cases the assaults on other clients were described as "happening quickly" which prevented the 1 on 1 staff from preventing the assault. (C.) On 11/4/03 at 9:00 a.m. the staff member assigned to provide 1 on 1 for Client #1 was observed in his home. The staff member responded to four telephone calls between 9:00 and 10:00 a.m. that required him to leave the living room to answer the telephone in the entry hall. During each phone call Client #1 was unattended as he sat on the couch in the living room and beyond an arm's length of the assigned staff member. On 11/4/03 at 11:00 a.m. an interview was conducted with the same staff member assigned 1 on 1 to Client #1. Asked how he prevented Client #1 from assaulting others he said, "I try to keep him within an arm's length, pull him away by his back if he tries to attack anyone and redirect him." He said these interventions "work sometimes." He said Client #1 usually "picked on" Client #5. He was asked if the residence was a safe place for clients to live. He said, "Well, there are a lot of fights." He said he had been trained on providing 1 on 1 support for Client #1 by other staff who had worked there longer. On 11/5/03 at 10:00 a.m. an interview was conducted	W 189		

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W 189	Continued From page 41 with another staff member assigned 1 on 1 to Client #1. Asked how he prevented Client #1 from assaulting others he said, "I've known him for over three years and I can usually talk him down if he is upset." He said he kept Client #1 within an "arms length" and used redirection sometimes when Client #1 became upset. Asked if he could describe the behavior interventions prescribed in Client #1's BSP, the staff member said, "No, not exactly, it's been altered some." He also stated "Problems come up with Client #1 when staff are inconsistent in how they respond to him. Staff on the 3-11 shift do it a little different". On 11/5/03 at 9:00 a.m. an interview was conducted with a staff member who had recently been re-hired by the agency and who was engaged in a trainee assignment at the residence. Asked if he received training on physical management techniques during orientation he said that he had received such training. Asked if he received client specific training, such as 1 on 1 training for the men in the residence he said, "Well, I worked at Clusters before so I know most of these guys. I do need to read up on their books to see what's in their plans." He reported having received no training on the 1 on 1 requirements for any resident of the home. (D.) On 11/4/03 at 2:00 p.m. an interview was conducted with the Behavior Supervisor who served as the behavior specialist for clients of Cluster Building B. He reported the correct method of physical management to prevent Client #1 from assaulting others did not include pulling him away by his back. He said staff members receive initial and ongoing training on BSP's and physical intervention techniques approved by the agency. He said the staff expectations for providing 1 on 1 staffing were not described in the BSP's. He said residential staff received training on 1 on 1 supervision from supervisory staff on the	W 189		

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W 189	Continued From page 42 residence. He said the home had been "running on bare minimum" and the 1 on 1 requirement for two clients could not be always maintained. (E.) On 11/5/03 at 8:30 a.m. an interview was conducted with the Director of Babcock Clusters. She reported having reviewed the BSP for Client #1 and being aware of a lack of definition for the 1 on 1 staffing requirement. She said that issue would be remedied and staff would receive training on the requirements of 1 on 1 staffing for individual clients.	W 189			
W 214	483.440(c)(3)(iii) INDIVIDUAL PROGRAM PLAN The comprehensive functional assessment must identify the client's specific developmental and behavioral management needs. This Standard is not met as evidenced by: Based on interview and record review the facility failed to conduct functional analyses of maladaptive behavior for 3 of 8 clients (Client #1, Client #5 and Client #7). Findings: On 11/4/03 beginning at 10:00 a.m. a review was conducted of the "Accident/Injury Report" documented for the period from 11/1/02 through 11/4/03. This review revealed 29 incidents of client-to-client aggression. Client #1 was responsible for 10 incidents and Client #7 was responsible for 6 incidents. All 29 incidents resulted in injuries to the victim. Client #5 was identified as the victim of assault in 14 of the 29 incidents. The primary perpetrators of these assaults were Client #1 (5) and Client #7 (4).	W 214	Please see IJ Corrections.		

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W 214	Continued From page 43 On 11/4/03, beginning at 10:45 a.m., reviews were conducted of the records of Clients #1, #5 and #7. The BSP for Client #5, the primary victim of assaults, focused on staff prompting him to avoid assaults by avoiding conflict with other clients. The Behavior Support Plan (BSP) for Client #5 did not include a functional analysis of behavior. The BSP for Client #1, dated 9/17/02, identified the maladaptive behaviors to include; "physical aggression: defined as any action with the intent of causing harm to another person, including biting, kicking, hitting, etc., Verbal Aggression: any verbalization intended to cause harm to another person to include screaming, cursing, name-calling, etc.", "Self abuse", Hallucinations", "Non-cooperation", and "Inappropriate sexual behavior. The BSP did not include a functional analysis of the maladaptive behaviors. The BSP for Client #7 identified the maladaptive behaviors to include physical aggression defined as any action with the intent of causing harm to another person, including biting, kicking, hitting, etc. The BSP did not include a functional analysis of the maladaptive behavior. On 11/4/03 at 2:00 p.m. an interview was conducted with the Behavior Supervisor who served as the behavior specialist for clients of Cluster Building B. He reported the Behavior Support Plans were lacking in that functional analyses of behaviors were not included in psychological assessments or BSP's. He elaborated that this weakness had only been identified recently and the new Chief Psychologist had reported that such analyses would be completed for each client but that had not yet been accomplished. He reported an awareness of the frequency of targeted	W 214		

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W 214	Continued From page 44 behaviors for the Client's #1, #5, and #7 but said the data collection system used by the facility was not capable of trend analysis. The data collection system recorded the frequency of maladaptive behavior only. Based on the failure of the facility to identify Client #5 being frequently victimized from client to client assaults and the failure of the facility to conduct functional analyses of behavior for clients with assaultive maladaptive behaviors this regulation is not met.	W 214		
W 240	483.440(c)(6)(i) INDIVIDUAL PROGRAM PLAN The individual program plan must describe relevant interventions to support the individual toward independence. This Standard is not met as evidenced by: Based on observation, interview and record review the facility failed to assure a 1 on 1 staffing assignment was included in Individual Program Plan with specific implementation instructions for one of four clients included in the sample (Client #1). Findings: (A.) On 11/4/03, beginning at 10:45 a.m., a review was conducted of Client #1's record. The Behavior Support Plan (BSP) for Client #1, dated 9/17/02, identified his maladaptive behaviors to include; "physical aggression: defined as any action with the intent of causing harm to another person, including biting, kicking, hitting, etc., Verbal Aggression: any verbalization intended to cause harm to another person to include screaming, cursing, name-calling, etc.", "Self abuse", Hallucinations", "Non-cooperation", and "Inappropriate sexual behavior. The intervention	W 240	The facility will ensure that the Individual Program Plan describes relevant interventions to support Client # 1, as well as all other clients, towards independence. Client # 1's one-on-one staffing will be identified in his Individual Program Plan, with implementation instructions. Client #1's Behavior Support Plan was revised describing one-on-one as well as how to implement the one- on-one. Staff will be in-serviced on Client # 1's BSP. Staff and BIS will monitor for compliance. Person(s) Responsible: BIS and Director of Behavior Projected Completion Date: 1/6/04	

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W 240	Continued From page 45 focus of the BSP relied primarily on 1 on 1 staff support that was to be in place during waking hours. The plan did not include any description of what the 1 on 1 staffing would entail or how it was to be implemented in the home. (B.) The data for Client #1's aggression for the time period 11/02 to 9/03 revealed he had exhibited 249 physically aggressive incidents. Examples of the documentation of these incidents of physical aggression included: (1.) On 10/5/03 at 2:45 PM Client #1 hit Client #4, (2.) On 12/9/02 at 8:30 AM Client #1 kicked Client #5, causing an abrasion to Client #5's right knee, (3.) On 12/19/02 at 6:40 PM Client #1 bit Client #7 causing bite marks on Client #7's left ankle. The record revealed that Client #1 had been prescribed 1 on 1 supervision during each of the incidents identified above. In all cases the assaults on other clients were described as "happening quickly" which prevented the 1 on 1 staff from preventing the assault. (C.) On 11/4/03 at 9:00 a.m. the staff member assigned to provide 1 on 1 for Client #1 was observed in his home. The staff member responded to four telephone calls between 9:00 and 10:00 a.m. that required him to leave the living room to answer the telephone in the entry hall. During each phone call Client #1 was unattended as he sat on the couch in the living room and beyond an arm's length of the assigned staff member. On 11/4/03 at 11:00 a.m. an interview was conducted with the same staff member assigned 1 on 1 to Client #1. Asked how he prevented Client #1 from assaulting others he said, "I try to keep him within an arm's length, pull him away by his back if he tries to attack anyone and redirect him." He said these interventions "work sometimes." He said he had been trained on providing 1 on 1 support for Client #1 by other staff who had worked there longer.	W 240		

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W 240	Continued From page 46 On 11/5/03 at 10:00 a.m. an interview was conducted with another staff member assigned 1 on 1 to Client #1. Asked how he prevented Client #1 from assaulting others he said, "I've known him for over three years and I can usually talk him down if he is upset." He said he kept Client #1 within an "arms length" and used redirection sometimes when Client #1 became upset. Asked if he could describe the behavior interventions prescribed in Client #1's BSP, the staff member said, "No, not exactly, it's been altered some." He also stated "Problems come up with Client #1 when staff are inconsistent in how they respond to him. Staff on the 3-11 shift do it a little different". On 11/5/03 at 9:00 a.m. an interview was conducted with a staff member who had recently been re-hired by the agency and who was engaged in a trainee assignment at the residence. Asked if he received specific training, such as 1 on 1 training for the men in the residence he said, "Well, I worked at Clusters before so I know most of these guys. I do need to read up on their books to see what's in their plans." He reported having received no training on the 1 on 1 requirements for any resident of the home. (D.) On 11/4/03 at 2:00 p.m. an interview was conducted with the Behavior Supervisor who served as the behavior specialist for clients of Cluster Building B. He said the staff expectations for providing 1 on 1 staffing were not described in the BSP's. He said residential staff received training on 1 on 1 supervision from supervisory staff on the residence. He said the home had been "running on bare minimum" and the 1 on 1 requirement for two clients could not be always maintained. (E.) On 11/5/03 at 8:30 a.m. an interview was conducted with the Director of Babcock Clusters. She	W 240			

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W 240	Continued From page 47 reported having reviewed the BSP for Client #1 and being aware of a lack of definition for the 1 on 1 staffing requirement. She said that issue would be remedied and staff would receive training on the requirements of 1 on 1 staffing for individual clients.	W 240			
W 264	483.440(f)(3)(iii) PROGRAM MONITORING & CHANGE The committee should review, monitor and make suggestions to the facility about its practices and programs as they relate to drug usage, physical restraints, time-out rooms, application of painful or noxious stimuli, control of inappropriate behavior, protection of client rights and funds, and any other areas that the committee believes need to be addressed. This Standard is not met as evidenced by: Based on interview and record review the facility failed to assure the Specially Constituted Committee reviewed or approved a blanket restriction on movies containing profanity, nudity and or sexual activity for four of four clients included in the sample (Client #1, Client #2, Client #3 and Client #4) Findings: On 11/6/03 at 10:00 AM a staff instruction memorandum was observed posted on the bulletin board in the medication/record room. The memorandum, dated 9/14/00, was directed to "All Clusters Staff" from the Executive Director. It documented, "Movies that contain profanity, nudity, and or sexual activity are NOT to be viewed at the Lexington Clusters. Parents have voiced these concerns relative to the movies being shown to our residents. Any deviation from this requirement will be	W 264	The facility will ensure that the Committee reviews, monitors, and makes suggestions to the facility about its practices and programs as they relate to drug usage, physical restraints, timeout rooms, application of painful or noxious stimuli, control of inappropriate behavior, protection of client rights and funds, and any other areas that the Committee believe need to be addressed for Client # 1, # 2, # 3, # 4, as well as all other clients. The memorandum dated September 14, 2000 was removed from the bulletin board at the facility. House Manager will monitor. Person(s) Responsible: QMRP, Assistant Administrator Projected Completion Date: 1/6/04		

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W 264	Continued From page 48 addressed with the appropriate disciplinary action." On 11/6/03 at 10:45 a.m. a record review was conducted of the Specially Constituted Committee (Human Rights Committee) Meeting Minutes for the period from 11/4/02 through 11/4/03. No evidence existed that the committee had reviewed or approved the blanket restriction applied to the content of movies viewed by clients. On 11/6/03 at 11:00 p.m., an interview was conducted with the Assistant Director regarding the Specially Constituted Committee's review of the blanket restriction on movies. She said she, "thought that it had been reviewed" and agreed to locate evidence of that review. On 11/6/03 at 3:00 p.m. the Assistant Director reported she was unable to locate any evidence of the Specially Constituted Committee's review of the blanket restriction. information.	W 264			
W 436	483.470(g)(2) SPACE AND EQUIPMENT The facility must furnish, maintain in good repair, and teach clients to use and to make informed choices about the use of dentures, eyeglasses, hearing and other communications aids, braces, and other devices identified by the interdisciplinary team as needed by the client. This Standard is not met as evidenced by: Based on interview, observation and record review the facility failed to furnish an appropriate wheelchair that was desgined to fit one of one client in the sample who required a wheelchair for mobility (Client #4). Findings:	W 436			

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W 436	Continued From page 49 On 11/4/03 beginning at 11:00 a.m. Client #4 was observed in the Day Program. He sat in a wheelchair which appeared to be too large for him. His body was positioned leaning to the extreme left and when his wheelchair was moved his body was positioned leaning over midline in a hunched over fashion. The wheelchair appeared to have several broken parts, the breaks, the arm rests, and the covering on the upholstered surfaces and did not have a seatbelt or other supportive device to help Client #4 stay upright. There were gaps of approximately two inches on either side of Client #4's hips to the edge of the wheelchair. Client #4 was observed being wheeled to and from the day program area and in the home. The wheelchair had no footrests or leg supports and Client #4's feet often dragged beneath the chair as he was being propelled. Client #4 was not observed using his feet to propel himself, although he did occasionally move his wheelchair by using his hands to push the wheels. On 11/4/03 at 5:10 p.m. Client #4 was observed preparing for the evening meal. He was assisted by staff in transferring from his wheelchair to a dining room chair. The seat pad of Client #4's wheelchair was then visible. The seat pad construction was of a foam egg crate material covered in black vinyl. The portion of the seat usually occupied by Client #4's body was broken down to a completely flat and crushed surface. On 11/5/03 at 5:00 PM, a record review was conducted for Client #4. The "Medical" section recorded that he had "a history of pressure sores." A 7/10/03 Physical Therapy consultation documented a review of Client #4's wheelchair with a recommendation for purchase of a new wheelchair as the "present wheelchair is worn out. Mobility and comfort needs noted."	W 436	The facility will furnish and maintain in good repair, teach clients to use and to make informed choices about the use of dentures, eyeglasses, hearing and other communication aids, braces and other devices identified by the Team. Client # 4 was re-assessed by the Physical Therapist on November 20, 2003 for a new wheelchair. A new wheelchair will be ordered. The QMRP and Administrator will monitor for compliance. Person(s) Responsible: QMRP, Administrator Projected Completion Date: 1/6/03	

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STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 42G081	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____		(X3) DATE SURVEY COMPLETED C 11/06/2003
NAME OF PROVIDER OR SUPPLIER LEXINGTON CLUSTERS B			STREET ADDRESS, CITY, STATE, ZIP CODE P.O. BOX 3817 COLUMBIA, SC 29230		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)		(X5) COMPLETE DATE
W 436	Continued From page 50 On 11/5/03 at 5:30 PM, a Direct Care Staff was interviewed to determine if the wheelchair that was present was the wheelchair recommended for purchase by the physical therapist in July. The Direct Care Staff replied that the wheelchair being used by Client #4 was "really old and worn out" and hadn't been replaced "as long as I've been here" which was described as over one year. On 11/6/03 at 11:15 AM the Assistant Director/Acting Qualified Mental Retardation Professional was asked about the wheelchair and the Posey Gait Belt order status. The Assistant Director replied both the wheelchair and the gait belt were on order but had not been received. She further stated that she agreed that the condition of the wheelchair of Client #4 was "not too good."	W 436			
W 440	483.470(i)(1) EVACUATION DRILLS The facility must hold evacuation drills at least quarterly for each shift of personnel. This Standard is not met as evidenced by: Based on interview and record review the facility failed to conduct quarterly fire drills for the for the evening and night shifts during the quarter of the year from 10/02 through 12/02 affecting all clients (Client #1, Client #2, Client #3, Client #4, Client #5, Client #6, Client #7, and Client #8). Findings: On 11/4/03 at 10:00 a.m. a review was conducted of the facility records of evacuation drills. The drills were divided into annual quarters beginning with January. The drills were organized to occur once per	W 440			

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

Printed: 11/17/2003
FORM APPROVED
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 42G081	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED C 11/06/2003

NAME OF PROVIDER OR SUPPLIER LEXINGTON CLUSTERS B	STREET ADDRESS, CITY, STATE, ZIP CODE P.O. BOX 3817 COLUMBIA, SC 29230

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
W 440	Continued From page 51 month, on a different shift each month. The records did not include documentation of a fire drills during the months of 11/02 and 12/02 resulting in no evidence of an evacuation drill for the evening and night shifts during the quarter of the year between 10/02 and 12/02. On 11/4/03 at 10:15 AM an interview was conducted with the Assistant Director. She reported the facility practice was to conduct 1 evacuation drill per month on a different shift each month in order to maintain quarterly drills for each shift. The Assistant Director was unable to locate any additional evidence of evacuation drills for the months of 11/02 and 12/02 or any other evidence of evacuation drills of the evening and night shift during the quarter of the year between 10/02 and 12/02.	W 440	The facility will conduct evacuation drills at least quarterly for Clients #1, #2, #3, #4, #5, #6, #7, and #8. The House Manager will monitor for compliance. All staff will be in-serviced on evacuation drills ensuring they occur quarterly. QMRP will be responsible for compliance. Person(s) Responsible: QMRP, Projected Completion Date: 1/6/03	
W 454	483.470(1)(1) INFECTION CONTROL The facility must provide a sanitary environment to avoid sources and transmission of infections. This Standard is not met as evidenced by: Based on observation and interview the facility failed to maintain furniture and a bathroom commode in sanitary conditions to avoid sources of infection transmission affecting all clients (Client #1, Client #2, Client #3, Client #4, Client #5, Client #6, Client #7 and Client #8). Findings; On 11/4/03 at 9:30 a.m. the residence was observed. The following problems were noted: (1.) The bathroom on the right side of the home was dirty with fecal matter smeared on the toilet seat.	W 454		

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

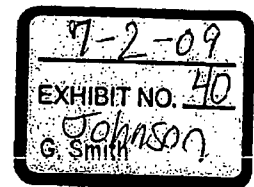
STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 42G081	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____		(X3) DATE SURVEY COMPLETED C 11/06/2003
NAME OF PROVIDER OR SUPPLIER LEXINGTON CLUSTERS B			STREET ADDRESS, CITY, STATE, ZIP CODE P.O. BOX 3817 COLUMBIA, SC 29230		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)		(X5) COMPLETE DATE
W 454	Continued From page 52 (2.) The two couches in the living room were vinyl covered with many holes torn in the upholstery exposing the interior stuffing. A strong urine smell was identified coming from both couches. On 11/5/03 at 5:00 p.m. the strong urine smell was identified again coming from the couches resulting in a close inspection to determine the source of the odor. Between the seat cushions and the seating base of both couches, pools of urine were observed. On 11/5/03 at 5:30 p.m. the House Manager was interviewed about the unsanitary conditions observed in the residence. He said the home was much cleaner than it was when the previous house manager was in charge. He said he was working to get the home cleaned to a higher standard but said it was a difficult task. On 11/6/03 at 2:20 p.m. the Assistant Director/Acting Qualified Mental Retardation Professional was interviewed about the unsanitary and poorly maintained condition of the home. She said the home needed additional attention but she added that the home was much cleaner than it had been under the previous House Manager. She reported the home was scheduled for a complete renovation. The original start date of the renovation had been delayed but the Assistant Director anticipated the renovations to begin within the month.	W 454	The facility will ensure that a sanitary environment to avoid sources and transmission of infection is provided for all clients. The furniture will be replaced. It has been ordered. The bathroom was cleaned. A staff has been assigned to ensure the bathrooms are cleaned. The House Manager will monitor for compliance. Staff will be in-serviced on cleaning the bathrooms. Person(s) Responsible: House Manager Projected Completion Date: 1/6/03		

Ref: 42G131.ijnot.12.09.03

**IMPORTANT NOTICE
PLEASE READ CAREFULLY**

December 9, 2003

Ms. Gilda Williams, Administrator
Wire Road II Community Residence
935 Wire Road
Gilbert, South Carolina 29054



Re: Wire Road II Community Residence – Immediate Jeopardy

Dear Ms. Williams:

A facility must meet the statutory requirements in Sections 1902(a)(31) and 1905(d) of the Act (42 U.S.C. sections 1396a(a)(31) and 1396(d), respectively) and be in compliance with each of the applicable regulatory Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded (ICF/MR), established by the Secretary of Health and Human Services at 42 CFR Part 483, Subpart 1 of the Social Security Act, in order to qualify to participate as a ICF/MR in the Medicaid program under Title XIX of the Act.

Survey Findings:

On December 3, 2003, a fundamental survey with a complaint investigation was conducted at your facility by the CMS Federal Survey Team, to determine if your facility was in compliance with Federal requirements for an ICF/MR participating in the Medicaid program. The survey findings revealed that the facility was not in substantial compliance with the participation requirements and found immediate jeopardy for the following:

- W120, failure of the facility to ensure that services were provided to prevent the risk of harm in all programming environments,
- W149, failure of the facility to provide services necessary to prevent physical harm for all clients,
- W159, failure of the facility to ensure that each active treatment program was integrated, coordinated and monitored by the QMRP,
- W189, failure of the facility to provide training that enabled staff to perform their duties effectively and competently,

Mims 1214

- W195, Condition of Participation: Active Treatment Services,
- W196, failure of the facility to provide a continuous active treatment program, implemented to meet the crucial support needs, including those related to the health and safety of all clients,
- W249, failure of the facility to ensure that active treatment services were implemented to meet the crucial support needs of all clients.

Pursuant to Section 1910(b)(1) of the Act (42 U.S.C.1396i (b)(1), the Centers for Medicare and Medicaid Services is canceling your facility's eligibility to participate in Medicaid, effective December 26, 2003.

Cancellation of Approval of Eligibility to Participate in Medicaid:

As a result of the survey findings, The Centers for Medicare and Medicaid Services is canceling the approval of your facility to participate in the Medicaid program effective on December 26, 2003.

Plan of Correction:

The facility must submit an acceptable, credible allegation to this office within five (5) days of receipt of this notice. The credible allegation must meet the following criteria:

- It must document that the remedial action taken by the facility has removed the deficient practice that constituted the immediate jeopardy to client health and safety; and
- It must demonstrate that the corrective actions have been accomplished between the survey date and the date of the credible allegation.

Please submit your credible allegation by fax to: Ms. Karen Powell, CMS, ICF/MR Enforcement, at 404-562-7540. Also, you may mail your credible allegation to:

Ms. Karen Powell, ICF/MR Enforcement
The Centers for Medicare and Medicaid Services
Sam Nunn Atlanta Federal Center
61 Forsyth Street, Suite 4T20
Atlanta, Georgia 30303-8909

If the credible allegation is timely and acceptable, an unannounced survey will be conducted to confirm removal of the jeopardy and correction of any other outstanding deficiencies. If compliance has been achieved on the revisit, CMS will rescind the cancellation of approval of eligibility for participation in the Medicaid program. If the jeopardy is removed but the facility remains out of compliance, the cancellation of approval may be extended to provide and opportunity to achieve compliance. If the jeopardy is not removed timely the cancellation of approval for eligibility for participation in the Medicaid program will be effective on December 26, 2003.

Reinstatement of Approval Following Cancellation:

When approval to participate in Medicaid is canceled by CMS, the facility's eligibility to participate in the program may not be reinstated unless CMS finds that the reason for cancellation has been removed and there is reasonable assurance that it will not recur. The facility must demonstrate through a reasonable assurance period that it can maintain compliance with all of the statutory and regulatory requirements for at least 90 consecutive days. Compliance with the requirements at 42 CFR Part 483, Subpart I will be verified by surveys conducted at the beginning and the end of this period. Before reinstatement, the facility must demonstrate its ability to comply with all pertinent

requirements of Title XIX of the Social Security Act. Medicaid eligibility will be reinstated following conclusion of the reasonable assurance period.

Appeal Rights:

If you disagree with this determination, you or your legal representative may request a hearing before an administrative law judge of the Department of Health and Human Services, Departmental Appeals Board, in accordance with 42 CFR Part 498. A written request for a hearing must be filed on later than sixty (60) calendar days from the date of this notice. Such a request, accompanied by a copy of this notice should be forwarded by certified mail directly to:

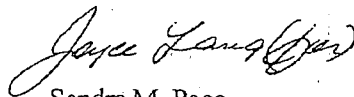
Jacqueline T. Williams, Chief
Civil Remedies Division
Department of Health & Human Services
Departmental Appeals Board, MS 6132
330 Independence Avenue, S.W.
Cohen Building – Room G-644
Washington, D.C. 20201

Please forward a copy of your request for an appeal hearing to the Centers for Medicare and Medicaid Services, ICF/MR Enforcement to the address on the letterhead.

Your request for a hearing must identify the specific issues as well as the findings of fact and conclusions of law with which you disagree and explain the basis for contending that the findings and conclusions are not correct. You may be represented at a hearing by counsel at your own expense.

If you have any questions or concerns regarding this notice, please contact Ms. Karen Powell at (404) 562-7472.

Sincerely,



Sandra M. Pace
Associate Regional Administrator
Division of Survey and Certification

Cc: SA
SMA
CO/ICF/MR

Mims 1216

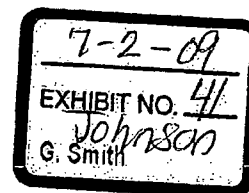
WIRE ROAD II
FEDERAL SURVEY TEAM

TO: Laverne Dixon

CC: Linda Joyce
Amanda Cade

From: { (b)(6) }

Date: December 3, 2003



A fundamental survey was initiated in conjunction with a complaint investigation on 12/2/03 at the Wire Road II home, a residential service program operated by the Babcock Center, Inc., in Gilbert, South Carolina. The Federal Survey was comprised of (b)(6), RN/QMRP and (b)(6) QMRP. During the course of the fundamental survey, a client in the core sample, Client #2, was determined to be at risk of potential serious harm. A situation of Immediate Jeopardy was declared.

The survey team first observed Client #2 during his vocational training program at the Clusters Day Program, an entity operated by the Babcock Center, Inc., on 12/2/03, from 10:30 AM to 12:30 PM. During an interview at 11:45 AM, direct support staff assigned to work with Client #2 said staff "feed" Client #2 because, "he chokes". She did not know of any specific instance when he had choked at the day program and was unaware of any assessments or training programs that dealt with eating or swallowing other than the fact that staff assist him in eating.

At noon, lunch was served at the day program. The staff took Client #2's lunch out of an insulated cooler. The lunch included two bologna sandwiches with lettuce (each sandwich was cut into four sections,) a container of potato salad, a container of fruit cocktail and several cookies that were the size of vanilla wafers. During most of the meal the staff asked Client #2 what he wanted to eat next. Client #2 would point to the food he wanted and the staff then fed him the food item selected. When he pointed to the first piece of sandwich, the staff broke one sandwich segment in half resulting in a piece the size of one-eighth of the sandwich. Staff handed him this piece; he put it all in his mouth and ate it. The client was observed to chew the sandwich very slowly and displayed some difficulty swallowing. Client #2 then picked up a 1/2-sized piece of the sandwich, put all of it in his mouth and ate it, and again had some difficulty

swallowing. Staff did not intervene. Later in the meal, the staff opened the wrapper of cookies and placed them on the table. Client #2 picked up one cookie, put the whole cookie in his mouth and ate it. As the Client continued to eat, he was observed to tilt his head up and back. Staff did not intervene. Staff then left the room for approximately two minutes, leaving one of the sandwiches cut into fourths and the remaining cookies on the table. During that time, Client #2 picked up a second cookie, put the whole cookie in his mouth, and ate it. At 12:30 PM, at the conclusion of the meal, Client #2 drank his beverage from a cup with a spout lid using both hands to hold the cup up and above his mouth. As the client drank his beverage, his head was tilted up and back.

At Client #2's home, 2:15 pm, the Health Care Services Supervisor stated that Client #2 had problems swallowing and that his food was pureed to prevent choking. The Supervisor stated that nursing staff had noticed some problems with Client #2 swallowing his medications and had requested a speech evaluation. The clinical record for Client #2 was provided and included the following documents:

- An evaluation conducted by a speech pathologist was completed on 1/15/03. It documented a "choking episode" that had occurred three months prior to the evaluation [October of 2002] which had required the use of the Heimlich maneuver. As a part of the evaluation, the speech pathologist observed him in eating a snack of applesauce and finely chopped salad. She reported that Client #2 "exhibited minimal to no chewing". The speech pathologist concluded, "This places him at risk for swallowing any food with texture that could be aspirated and would then create choking potential." The Summary/Recommendations section stated, "[Client #2] demonstrated insufficient chewing attempts to prepare regular food for safe swallowing. He is at risk for choking unless his food is presented to him in a consistency that would not necessitate any chewing for safe swallowing. It was discussed with staff and nursing that a ground diet is recommended. The nurse stated that she would get the diet ordered on 1/16/03. The following recommendations are made to maximize safe feeding/swallowing: 1. Change diet consistency for food to ground with regular liquids."
- Progress Notes and Orders dated 1/16/03 documented a voice order from the physician for Client #2. The note stated; "Change diet to regular, ground diet with regular liquids."
- An April 1, 2003, Dietician's report stated, "Continue regular diet".
- The Nurses Notes for 10/27/03 for Client #2 referred to the



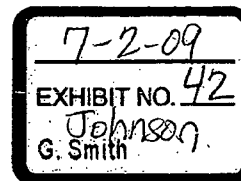
State of South Carolina
Department of Health and Human Services

Mark Sanford
Governor

Robert M. Kerr
Director

January 19, 2005

Dr. Judy Johnson
Executive Director
Babcock Center, Inc.
P.O. Box 3817
Columbia, South Carolina 29230



RE: Review of Babcock Center, Inc., Conducted By Carolina Medical Review

Dear Dr. Johnson:

As you are aware, I asked our Quality Improvement Organization (QIO), Carolina Medical Review (CMR) to perform an immediate review of Babcock facilities to determine whether these facilities are meeting the federal requirements for participation as an ICF/MR under the Medicaid program. CMR has completed its review of the Babcock facilities and has provided me a report of its findings. I have enclosed a copy of the preliminary report for your review. Based on the findings of this limited scope review, I am concerned that the deficiencies noted may be indicative of more pervasive problems at Babcock. Specifically, I am most concerned about the lack of evidence of ongoing active treatment for clients. Additionally, the report noted that two facilities had changed from an ICF/MR to a Community Training Home II. However, there was not documentation to indicate that the clients had been assessed and found to be appropriate for a different level of care. Failure to correct these deficiencies may place continued Medicaid funding for Babcock facilities in jeopardy.

A copy of the report has been forwarded to the Department of Disabilities and Special Needs (DDSN) and the Department of Health and Environmental Control (DHEC). DDSN is the designated agency with authority over all the state's services and programs for the treatment and training of persons with mental retardation and related disabilities. DDSN also provides the state matching funds for your facilities. Therefore, it is critical that you coordinate with DDSN to immediately develop a corrective action plan to address the conditions at Babcock.

Office of the Director
P.O. Box 8206 • Columbia, South Carolina 29202-8206
(803) 898-2504 • Fax (803) 898-4515

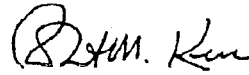
Mims 1219

Dr. Judy Johnson
January 19, 2005
Page 2

A meeting date is being set for representatives from CMR to be available to discuss these findings with you, DDSN, and DHEC. If you have any additional information that you feel will change the findings in this report, please provide that to me immediately.

If you have any questions, you may contact me at (803) 898-2504.

Sincerely,

A handwritten signature in dark ink, appearing to read "R.M. Kerr". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Robert M. Kerr
Director

RMK/sb

Enclosure

Mims 1220

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Nov. 23-24

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Lexington County Chronicle

& The Dispatch-News - Since 1870



"Congress shall make no law ... abridging the freedom of speech or of the press."

- From the First Amendment to the Constitution of the United States of America

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Agency loses appeal in rape case

High court rules judge erred

By Jerry Bellune

JerryBellune@yahoo.com

The state Supreme Court has rejected a state agency's appeal for a rehearing in a rape case.

The court reversed Circuit Court Judge Casey Manning's decision to grant the Department of Disabilities and Special Needs and the Babcock Center summary judgment.

The judge's order dismissed a lawsuit brought by Madison, a

fictitious name for a mentally disabled Lexington County woman who was a former Babcock resident.

The high court two months ago also rejected Babcock Center's appeal for rehearing.

Babcock has asked for mediation and Madison's attorney Orin Briggs said his client has agreed to mediation to avoid a court battle.

The lawsuit was filed against

DDSN and Babcock because the center receives more than \$40 million a year in state and federal money through DDSN to care for the mentally-retarded.

The court found that Judge Manning, a former Lexington attorney, was wrong in granting summary judgment because Madison, daughter of an Oak Grove resident, was not responsible for her own conduct as she has the emotional maturity of a 10-year-old child.

Madison was a Babcock resident 11 years ago when she and

another female left their group home with two male former residents. She believed the four of them were going to live elsewhere, according to Supreme Court documents.

She was taken to another building where she was coerced to have sex with one or both of the men, contracting herpes, a sexually-transmitted disease.

The Supreme Court ruled that Babcock and DDSN had legal responsibility for her welfare.

Babcock attorney Danny Crowe said he could not rule

out a financial settlement but Madison's mother said she was not interested in one.

DDSN attorney Andrew Lindemann said Richland County cases automatically go to mediation.

If the case later goes to court, Briggs said, the judge would have to instruct the jury that they could not find Madison negligent.

Briggs did not rule out his client accepting a settlement.

"A settlement would allow Madison to live at home, have nursing care as needed and live a normal life," he said.

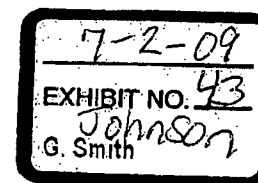
Cheers for the Wildcats

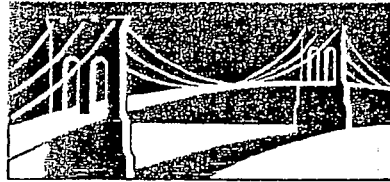


No more vehicle sticker shock

Treasurer ends extra drive for car tag update

By Vicki Shealy





BABCOCK CENTER

RECEIVED

JAN 12 2007

Internal Audit Office

January 12, 2007

Mr. Steven C. Jeffcoat, CFE
Director of Internal Audit
South Carolina Department of Disabilities and Special Needs
Post Office Box 4706
Columbia, SC 29240

Dear Mr. Jeffcoat:

Attached is the Corrective Action Plan that details the actions to be taken to correct the deficiencies noted by the auditors.

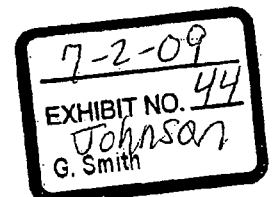
Should you have any questions during your review, please call me at (803) 799-1970 ext. 140.

Sincerely,

Lynda Tyler
Director of Finance
Babcock Center, Inc.

Attachment

cc: Dr. Judy Johnson
Sandra Ballington
Barbara Crawford



*Bridging the Gap
for People with Lifelong Disabilities*

Mims 1222

CORRECTIVE ACTION PLAN

Auditors' Finding: Audit Schedules

Repeat 2005, 2004

It is very important for the efficiency of the audit that all audit schedules be complete and all accounts thoroughly analyzed prior to the commencement of audit fieldwork. We found that many of the schedules were not prepared prior to commencement of the audit. In addition, many account balances on the trial balance had to be adjusted and we did not receive a final trial balance until after September 30. We recognize that a change in key personnel and accounting software occurring in the later part of the fiscal year was the root cause of these issues. It is better to have all of these items prior to the commencement of any audit work. This caused substantial overages in our audit time.

Thorough and accurate accounting schedules and reconciliations should be a routine part of every month's accounting closing procedures. We recommend that management create standard formats for these accounting schedules and reconciliations. We further recommend that someone other than the preparer review these schedules every month.

Corrective Action: A schedule of account balances will be established as of July 1, 2006 for each significant account. These schedules will be updated monthly to display the monthly activity and will be tied the general ledger. This will lead to timely discovery of discrepancies and the necessary correcting journal entries will be posted. This should preclude all but minor adjustments to the trial balance after the audit has begun. The Finance Director will review these schedules on a monthly basis.

Auditors' Finding: Restricted Net Assets

Repeat 2005, 2004

Management does not identify the assets and liabilities that comprise the restricted net assets of \$ 5,989,946. This amount is a progression of temporarily restricted net asset transactions from period to period. It is essential under generally accepted accounting principles that restricted assets and liabilities remain separate and distinct from unrestricted net assets and that management be able to identify these restricted assets and liabilities and all transactions affecting them in order to make certain that restricted net assets are not being utilized for unrestricted purposes. We recommend that management prepare a reconciliation of all the assets and liabilities that comprise the restricted net assets and reconcile them to the restricted net assets in the internal financial statements on at least a quarterly basis. In addition, management does not identify in the accounts revenue or expenses in the restricted fund. They are commingled with the unrestricted accounts. We recommend that these transactions and related assets and liabilities be identified in some fashion in the accounts either by an identifiable account code or other designation.

Corrective Action: Accounting personnel will prepare a reconciliation of the assets and liabilities, which comprise the restricted nets assets, balance and reconcile them to the restricted net assets in the internal financial statements on a quarterly basis. Restricted fund revenues and expenses will no longer be commingled with the unrestricted account.

Auditors' Finding: Babcock Foundation

Repeat

One of the precepts of good internal controls is proper reconciliation of accounts on a periodic basis (at least monthly in most cases), closing the books in a timely manner, knowledgeable accounting personnel and proper review and oversight of the accounting functions by management. We found that many of the accounts of the Foundation had not been reconciled during the year and monthly financial reports were not prepared nor reviewed by management. As a result many accounts had to be adjusted at the end of the year. We recommend that all of these procedures be done on a monthly basis without exception. If management feels they do not have the proper personnel resources to complete these tasks we recommend they consider alternatives for the accounting function for the Foundation.

Corrective Action: Management has approved the hiring of an accountant to reconcile the Foundation accounts and prepare the monthly financial reports. This accounting position is currently being advertised. Financial reports and variances will be reconciled and reviewed by management monthly.

Auditors' Finding: Reconciliation of Operating Cash Account *Repeat*

The accounting staff was several months behind in reconciling the operating cash accounts during the year. This required a significant amount of effort on the part of the responsible accounting personnel to attempt to reconcile past months and make the required adjustments to the accounting records. It is especially important that cash accounts be reconciled timely because it is an asset highly susceptible to fraud and other irregularities if not controlled properly and may also impact the accuracy of other accounts.

One of the problems we noted and discussed with management was that it is difficult to agree the receipts the bank has recorded for the Babcock Center to the amounts recorded on the general ledger, primarily because of the large volume of deposits. In previous correspondence with management we suggested that management request a meeting with BB&T to come up with a solution to this problem so that the bank and the Babcock Center are recording deposits on the same basis and the reconciliation can become easier to prepare and thus done on a more timely basis.

Corrective Action: Effective in May, 2006 the HUD operating accounts were separated from the Babcock Center operating account through the use of separate funds for each HUD project. This separation should enable the timely reconciliation of each operating account since there will be no commingling of the various accounts by the accounting software. Additionally, the new AccountMate software has a bank reconciliation feature which should reduce the time necessary to perform each month's reconciliation.

Auditors' Finding: Payroll Reconciliation

In testing payroll we noted that the payroll register, the GL accounts and the 941 report totals did not agree. Form 941 is the employer's report that is required to be filed quarterly to reconcile taxable wages in different taxable categories with tax deposits and actual liability. Totals on this report should tie directly to the payroll register. Form 941 line 2, should equal Federal Taxable wages and agree to totals reported on form W-2 box 1. Forms W-2 that we tested appeared to be correct, but did not agree to the payroll register or 941 totals. An imbalance in these amounts reported could cause unnecessary penalties or overpayments of payroll taxes. We recommend that payroll accounts and reports be reconciled after every pay period to ensure proper reporting in the future.

Corrective Action: Payroll accounts, reports and registers shall be reconciled monthly and the totals carried to a worksheet, which will then be utilized in the preparation of the quarterly Form 941. We anticipate having these procedures in place no later than March 31, 2007. These steps will ensure that the amounts reported on the 941 are consistent with the amounts shown in the financial records. Forms W-2 shall also be compared to quarterly 941's and financial records with any differences being accounted for as required.

Physical Inventory *Repeat P/F 2007*

A detailed perpetual list of inventory items is not being kept for Supplies, Maintenance or Transportation Departments. Good internal control over the purchase and requisition of inventory is important to guard against items being misappropriated. We recommend that the Maintenance and Transportation Departments take a physical inventory on June 30.

Corrective Action: A physical inventory of the Maintenance and Transportation Department supplies will be performed on June 30, 2007.

Mims 1224

Journal Entry Controls *Request*

In testing of journal entries, we found numerous journal entries without proper documentation and signatures of authority. Babcock Center accounting procedures require significant dollar value journal entries to have a routing sheet with at least two signatures authorizing the entry and proper documents attached supporting amounts and purpose of the entry.

Corrective Action: Journal entries are now being maintained with proper documentation and signatures. Significant dollar value, non-routine journal entries are now being approved by the Finance Director and the Executive Director. Back-up documentation will contain the reason for the entry and support the amount of the entry.

Accounting Software

Management has informed us that the accounting software does not have posting controls to prevent unauthorized personnel from making journal entries. It is difficult to make certain that only authorized personnel are making journal entries without system controls such as posting blocks on prior periods which would require personnel to gain specific approval to make changes to prior periods. We noted no evidence of this type of control in place.

Corrective Action: The Finance Director is now using posting blocks on prior periods. The Finance Director must approve and make any changes to prior periods. We are also working with the Software developer to determine if more restrictive controls are built into the software that can be utilized.

Property and Equipment

When we tested property and equipment additions, of the sample pulled for review, two invoices were not found, and one amount for an addition did not match the supporting invoice and did not contain any evidence as to the reason for the difference. Another addition was supported by two invoices to the same vendor that were incorrectly posted to one cost center rather than split between two cost centers. A system for ordering, paying and recording fixed assets while storing paid invoices with proper documentation as to authorization and proof of ownership is important in order to ensure proper monitoring and safeguarding of property and equipment.

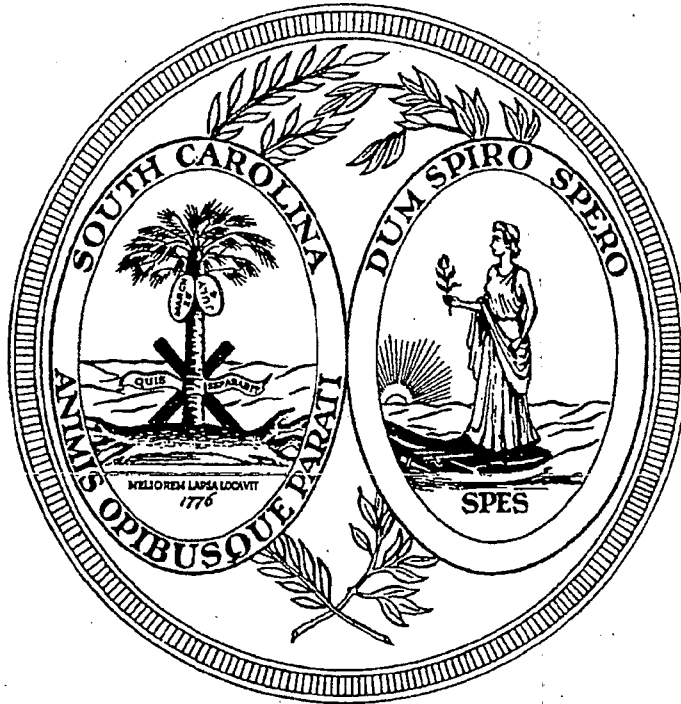
Corrective Action: Fixed assets must have management's approval prior to order or purchase. Paid invoices are being filed with back-up documentation including cost-center splits, authorization and approval.

Trial Balance *Request*

Accounting personnel were not able to produce a trial balance in summary general ledger account detail directly from the accounting system because of accounting software limitations. We recommend that management consult with its software vendor to modify the software so that it will be able to produce such a trial balance.

Corrective Action: Assistance will be requested from the software vendor to determine what additional reports can be printed, or what modifications can be made to the currently available reports, to resolve the trial balance issue.

Babcock
Case

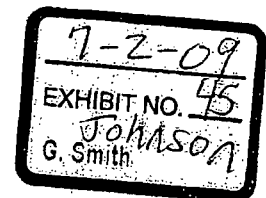


**A Limited Scope Review of Financial, Ombudsman, and
Programmatic Issues of Babcock Center, Inc.**

Submitted by

South Carolina Department of
Health and Human Services

October 2003



Mims 1226

**A Limited Scope Review of Financial, Ombudsman,
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EXECUTIVE SUMMARY

In December 2002, the Centers for Medicare and Medicaid Services required that the SC Department of Health and Human Services (DHHS) investigate allegations that had surfaced concerning neglect, abuse, and misuse of funds at the Babcock Center, Incorporated. Babcock is a private, non-profit organization providing services to people with mental retardation and related disabilities and head or spinal cord injuries. Many of the services Babcock provides are funded with Medicaid funds. DHHS has a contract with Babcock and also provides Medicaid funds to Babcock through the SC Department of Disabilities and Special Needs (DDSN), which oversees Babcock's programs. As the state Medicaid agency, DHHS is responsible for the provision of safeguards to ensure the health and welfare of persons receiving care from Babcock and other Medicaid-funded programs. In addition, the DHHS Long Term Care Ombudsman Program is charged with investigating allegations of abuse or neglect in some of the facilities operated by Babcock.

This is a limited scope review. We focused only on the specific allegations that were made concerning Babcock Center, and did not investigate or review the operations of other DDSN facilities for this report. Therefore, we cannot conclude as to whether our findings reflect isolated incidents or are indicative of more systemic problems. The allegations that were substantiated will require corrective actions from both DHHS and DDSN, and may require that new controls be established in the contracts between the two agencies and with Babcock. Due to the findings from this review, DHHS also plans future audits of operations of DDSN, as well as other state agencies that receive significant amounts of Medicaid funds.

A portion of DHHS' review of Babcock Center follows up on findings addressed in a DDSN internal audit of the center. We also limited to the scope of our review to allegations and issues under three categories, as follows:

Financial findings, including:

- Unallowable uses of Medicaid funds;
- Theft of consumer funds;
- Mismanagement of and failure to supervise consumers' personal needs funds; and
- Failure of Babcock Center to follow DDSN's procurement policy.

Abuse, Neglect, and Exploitation findings, including:

- A lack of policy to define and require the reporting of serious resident-on-resident abuse to external authorities;
- Out of 15 allegations investigated, failure to report three incidents of alleged abuse, neglect, and exploitation as required by state law;
- Problems with consumer supervision and a need to ensure adequate staffing;
- Need to improve notification of investigation results; and
- Failure in some instances to follow corrective action plans as originally agreed upon.

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Programmatic findings include:

- Lack of habilitation service provider options beyond local county DSN Board providers due to historical reasons and a very limited number of inquiries from private providers;
- Need to ensure compliance with staffing ratios and to monitor vulnerable clients on a more frequent basis for health and welfare assurances;
- Failure to consistently provide transportation services for one individual;
- Incomplete and untimely service planning provided by Richland/Lexington DSN Board staff for a client;
- Failure to inform one individual (or the legal representative) of the feasible alternatives available under the MR/RD waiver; and
- Failure in one instance to provide due process to inform a waiver applicant of Medicaid appeal rights, freedom of choice and fair hearings.

In addition to the allegations of abuse, neglect, and exploitation that were investigated by the Ombudsman, DHHS had the authority to examine approximately 30 other allegations, of which about half were substantiated or confirmed. In cases involving the unallowable use of Medicaid money, DHHS can order repayment of funds. A repayment schedule has been prepared and is on page 32 of this report.

For allegations involving abuse, neglect, and exploitation of Babcock residents, the results of the investigation have been forwarded to the responsible party of the alleged victim for information and to Babcock. All verified Ombudsman allegations have been referred to the proper regulatory agencies and/or to the Attorney General's Office for future investigation and prosecution.

Within 60 days of receipt of this report, Babcock and DDSN should prepare and submit a plan to DHHS for implementing all recommendations contained in this report. All recommendations must be implemented by March 31, 2004, with priority attention being given to those recommendations affecting health and safety of Babcock consumers. Any new policies, clarifications, plans or other documentation required by the recommendations must also be submitted to DHHS by this time. Failure to take corrective action may result in a withholding of Medicaid funding from Babcock and/or DDSN. Recoupments are due upon notice, which is the date of publication of this report.

A response to the recommendations from the Department of Disabilities and Special Needs, in conjunction with Babcock Center, is included in this report on page 33.

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I. BACKGROUND AND SCOPE

Babcock Center, Inc., is a private, non-profit organization founded in 1970 that serves people with mental retardation, autism, head and spinal cord injuries, and related lifelong disabilities. In order to receive services from the Babcock Center, individuals must be determined eligible for services from the SC Department of Disabilities and Special Needs (DDSN). Babcock Center provides Medicaid services both under a subcontract with the SC Department of Disabilities and Special Needs and directly through a contract with SC Department of Health and Human Services (DHHS). Babcock operates several types of facilities for clients (called residents or consumers):

- Intermediate Care Facility for the Mentally Retarded (ICF/MR) A health-related facility licensed by the state to provide care to persons with mental retardation who do not need care in a hospital or skilled nursing facility.
- Community Residential Care Facility (CRCF) A facility which offers room and board and which, unlike a boarding house, provides or coordinates a degree of personal care or supportive services for individuals who have mental illness or disabilities.
- Community Training Home I (CTH I) A residential placement similar to foster care in a private citizen's home which is licensed and where the caregiver is a contract agency employee. Up to three individuals live in the home and receive personalized care, supervision and training.
- Community Training Home II (CTH II) A home owned or rented by the agency where up to three individuals live. A caregiver may also live in the home or staffing may be provided in shifts.
- Supervised Living Program I and II (SLP I and SLP II) The least restrictive residential placement that still provides staff oversight. Individuals live in apartments, duplexes or other housing and receive staff support and intervention based on personal need. Staff can be on-site or available within three minutes if residents need more supervision

In addition, Babcock provides other services to DDSN consumers who are eligible under the Mental Retardation and Related Disabilities (MR/RD) Waiver. This is a 1915 (c) waiver which provides a broad range of special home and community-based services to Medicaid eligible individuals with mental retardation or related disabilities to help them live in the community rather than an institution. The allegations investigated for this report involved consumers in all types of Babcock facilities plus the waiver program.

Babcock is part of the network of providers which contract with the Department of Disabilities and Special Needs throughout the state. Babcock is the largest of these providers with a service area that includes Richland, Lexington, Fairfield, and Kershaw counties. In fiscal year 2002 (July 1, 2001, through June 30, 2002), Babcock had an operating budget of \$41,496,373, of which 84% was Medicaid funding.

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The directive for this investigation arose from numerous allegations filed with both the Centers for Medicare and Medicaid Services (CMS) and DHHS and newspaper publicity surrounding these allegations. The allegations included complaints concerning patient safety and quality of care; abuse, neglect, and exploitation; financial improprieties; and numerous other charges. Many of these allegations had initially been investigated by Babcock consumer advocates and by the Internal Audit Department of the Department of Disabilities and Special Needs, which is responsible for oversight of contractors, including Babcock. The following timeline shows the events leading up to DHHS' involvement in the Babcock investigations:

March 2002: The board of directors at Babcock Center, upon the recommendation of DDSN's state director, requested that the DDSN internal audit department review several areas of Babcock. Other substantive items had been brought to the attention of DDSN's internal audit department by Babcock staff, parents, board members, and DDSN staff and were also reviewed. The DDSN internal audit department reviewed Babcock operations for the period of January 1, 2000, through June 30, 2002.

October 2002: The DDSN internal audit report was completed and provided to Babcock's board. Both Babcock and DDSN agreed to a deadline of January 1, 2003, by which all of the corrective actions noted in DDSN's internal audit report would be completed.

November 2002: A letter from a Complainant was sent to then governor-elect Mark Sanford that detailed numerous allegations and problems at Babcock facilities, and alleged that Babcock and DDSN were not taking necessary corrective actions.

December 2002: The Atlanta Regional Office of CMS requested DHHS to conduct an investigation into allegations related to care provided to Medicaid clients served by the Babcock Center.

DHHS is the State Medicaid Agency as specified in 42 U.S.C. §1396 et. seq. and S.C. Code Ann. §44-6-10 et. seq. to administer the Medicaid program in South Carolina. As part of the administration of the program, the department also administers services under a Medicaid waiver for persons with mental retardation and related disabilities. In addition to DHHS' role as the State Medicaid Agency, it is also the designated State Unit on Aging. This latter designation carries with it the responsibility of the State Long Term Care Ombudsman program. The Ombudsman program, therefore, became involved in the ensuing investigation.

Several sections within DHHS were involved in this report, including the Division of Audits; the Bureau of Senior Services, which houses the Ombudsman program; the Bureau of Long Term Care Services, which administers the waiver program; the Division of Program Integrity; the Bureau of Reimbursement Methodology; and the Office of General Counsel. In addition, the Department of Health and Environmental Control, which serves as the state agency responsible for surveying Intermediate Care Facilities for the Mentally Retarded, reviewed issues related to

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its authority. Past survey reports of Babcock facilities were reviewed and a statistical analysis was performed. The statistical analysis revealed the number of deficiencies and violations from 2000 to the present. DHEC's findings are included in this report as an appendix.

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II. FINDINGS AND DETAILED RECOMMENDATIONS

A. FINANCIAL ISSUES

This section addresses the allegations of financial impropriety and mismanagement at Babcock Center, Inc., investigated by the Division of Audits at the South Carolina Department of Health and Human Services. Our review was based on allegations raised in the November 25, 2002, letter from a "Complainant" to then Governor-elect Sanford. Many of the allegations specified in this letter had previously been reviewed by the Internal Audit Department at the SC Department of Disabilities and Special Needs.

Based on the recommendation of DDSN's State Director, on March 28, 2002, the Board of Directors of the Babcock Center, Inc., requested DDSN's Internal Audit Department to perform a review of several areas of Babcock. The specific areas requested to be reviewed included:

- Compliance with DDSN directives regarding oversight of consumers' personal funds and personal property;
- Purchasing practices, including requirements for board oversight and approval;
- Consultant contracts to determine compliance with DDSN policies and prevailing practices;
- Adequacy and physical existence of computer equipment; and
- Use of credit cards, staff travel, and landline and cellular telephone expenses.

In addition, DDSN's Internal Audit Department also reviewed substantive items that were brought to their attention by Babcock staff, parents, board members, DDSN staff, or that were disclosed by the general tests performed during the audit. The scope of their review was January 1, 2000, through June 30, 2002.

The final DDSN internal audit report was provided to Babcock's board on October 29, 2002, and included 29 findings relating to consumers' health and safety, consumers' personal funds and property, personnel and payroll operations, and the Board of Directors. Included were responses from Babcock as to its corrective action plans and anticipated completion dates. Both Babcock and DDSN agreed to an overall deadline of January 1, 2003, by which all of the corrections would be completed. Babcock also was required to report to DDSN their progress on the implementation of corrections monthly, beginning in November 2002. However, Babcock did not complete the corrective actions required by the January 1, 2003, deadline. A number of specific completion dates were amended with DDSN approval. Final review of some of the financial data was on-going by DDSN's Internal Audit Department as of September 2003.

The following allegations were included in the November 25, 2002, letter from the Complainant, and most were initially reviewed by DDSN's Internal Audit Department. We reviewed DDSN's internal audit report and working papers, and also reviewed the corrective actions recommended to and/or taken by Babcock, in order to determine the following:

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- Whether reliance could be placed on work already performed to determine the nature and extent of the financial problems;
- Whether DDSN's internal auditors had recommended appropriate corrective actions; and
- Whether DDSN has been adequately monitoring the progress of Babcock's corrective actions to address the findings in the internal audit report.

Theft and Misuse of Consumers' Personal Funds

Documented Instances of Theft

DDSN internal auditors documented two instances of theft of Babcock consumers' personal funds, and we materially agreed with their findings.

- In early October 2001, Babcock Center determined that there was \$11,199 in consumer funds at the Lexington Clusters for which a House Supervisor could not account. The theft at the Clusters facility was revealed when a surprise cash count found several hundred dollars of the consumers' cash was missing. The House Supervisor admitted to requesting money to purchase items for consumers from Babcock's finance office and then depositing these funds into his/her own personal bank account.

Although the DDSN internal auditor directed Babcock to report this theft to local law enforcement on November 26, 2001, it was not reported until February 1, 2002. DDSN internal audit also found that Babcock failed to timely notify the parents/guardians and failed to immediately reimburse the consumers. Finally, Babcock did not terminate the House Supervisor for misappropriation of consumers' personal funds (but did terminate him/her for abandonment of position).

- A House Supervisor at the Wire Road ICF/MR misappropriated \$11,373 from the consumers' personal funds. The theft at the Wire Road facility was discovered after an anonymous phone call was received by Babcock's "CARE Hotline." This call reported that a staff member was stealing money from consumers at the Wire Road facility. DDSN internal audit found that residential and finance staff failed to adequately review and monitor the consumers' personal funds. For example, the Wire Road administrator failed to review receipts and reconcile consumers' personal needs funds and ledgers every three months as required. This could have timely detected or possibly prevented the theft. In addition, while the Personal Needs Supervisor from Babcock's finance office supposedly reviewed the receipts at this facility in July 2001, this supervisor too failed to detect the theft. At the time of the DDSN internal audit, unannounced audits were required to be performed at least once a year at all ICFs/MR.

It should also be noted that both cases were turned over to the Attorney General's Office (AG's office) for prosecution, and that Babcock has filed appropriate paperwork for both thefts with the

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insurance company that holds their fidelity bond. The fidelity bond is required by the contract between DHHS and Babcock.

Repayment of Consumers' Funds

We determined that Babcock has taken the steps required in its corrective action plan in this area, although some issues were not fully resolved until July 2003, almost two years after the thefts.

- Affected consumers in the Clusters facility were appropriately repaid before July 31, 2002; Medicaid funds were not used to repay the consumers. We also reviewed consumers' bank statements and determined that repaid funds were timely deposited into affected consumers' bank accounts. Most checks were deposited the same day they were received or within three or four days after receipt with the longest period being 12 days, which is not excessive.
- Babcock has repaid all affected Wire Road consumers except one. Babcock has repaid a total of \$9,710.37 beginning on August 16, 2002. According to Babcock, one consumer was paid only \$600 of the total \$2,309 owed him/her because a full repayment would have put the consumer over the Medicaid threshold of \$2,000. Based on the consumer's team meeting decision, Babcock will place the additional funds owed this consumer in a pooled trust account for his/her benefit.
- Babcock's corrective action plan also required that retraining of appropriate residential management as well as designated finance staff on proper procedures for monitoring consumers' personal funds be conducted by DDSN's internal audit staff prior to December 31, 2002. We determined that training sessions were held in December 2002.
- Babcock has revised its policies and procedures for managing personal needs in the ICF/MR facilities. These policies include additional procedures to strengthen controls over consumers' personal needs funds. Examples include: checks are no longer sent via inter-office mail; the Finance Director does subsequent reviews of checks written from the personal needs account; a Personal Needs Roamer will visit the ICFs/MR on a regular basis to ensure the House Managers are maintaining monthly paperwork; and a training guide for House Managers has been developed. It should be noted that these controls have not been tested by DHHS.

Missing Receipts for Purchases

Another allegation involving misuse of funds stated that \$87,083 in receipts for purchases made by consumers in ICFs/MR facilities were missing. This allegation was identified and verified in the DDSN internal audit report, which stated:

Consumers' personal funds at the ICF/MRs are not being maintained in accordance with DDSN directive 200-12-DD. It was found that receipts for consumers' purchases totaling \$87,083 were missing at 28 of the Center's ICF/MR facilities.

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In its response to the DDSN internal audit, Babcock indicated that the center would continue to search for and review all receipts for the ICF/MR programs and would meet a deadline established of November 30, 2002. Babcock then contracted with a number of temporary personnel to review documentation submitted by the ICF/MR facilities. However, DDSN internal audit staff subsequently determined that the work done by the temporary personnel was not reliable.

Because of the dollar amount of the missing receipts, it was determined that DDSN's internal audit department would audit a sample of Babcock consumers' financial records (receipts) at all of the ICFs/MR that had not been already reviewed during the initial audit, and the Attorney General's Office would review the work done by DDSN. Babcock was required to deliver the consumers' financial records to DDSN's Internal Audit Department on February 21, 2003, where they would remain until the audit was complete and the AG's office approved their release. As of the date of this report, DDSN's internal audit staff have completed their review and forwarded their results to the AG's office.

In addition to this review, Babcock formed a workgroup consisting of Babcock employees familiar with Medicaid regulations and reviewed receipts for the period May 1, 2002, through December 31, 2002. DHHS reviewed the workpapers compiled by Babcock's workgroup at three facilities to determine whether this information could be relied upon. After reviewing this work, we had serious concerns with relying on the compiled information. These concerns have been shared with Babcock's finance director and DDSN's internal audit director.

Consumers' Personal Funds Used for Inappropriate Purchases

This allegation was also reviewed by DDSN's internal audit staff, and based on our review we agreed with their finding. The DDSN internal audit report of Babcock stated:

There were a large number of inappropriate purchases being made with the consumers' personal funds that are funded by Medicaid and are the responsibility of the Babcock Center. Basic needed items such as beds, mattresses, washcloths, towels, bed linens, hygiene supplies, sanitary napkins and related supplies, etc. were purchased by the consumers. When asked, the residential and finance staff stated that the consumers have always paid for these type of items.

In its response to DDSN, Babcock indicated that all consumer expenditures during the past two years would be reviewed, items that were inappropriately purchased would be charged to the Babcock Center, and the consumers would be reimbursed. A target completion date of November 30, 2002, was set.

According to Babcock, a workgroup has completed a two-year look-back of all checks written from the consumers' personal needs bank accounts from December 2000 - December 2002 for inappropriate purchases. However, Babcock did not provide this documentation to us for review after repeated requests. Also, as of July 2003, Babcock has not repaid any consumers. Therefore, we requested that the review of inappropriate purchases be incorporated with the

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missing receipts review that had been undertaken by DDSN's internal audit department. DDSN's internal audit director sent us a memorandum dated July 2, 2003, that documented the methodology for reviewing inappropriate purchases. Babcock turned over appropriate information to DDSN in July so that this review may begin. DDSN internal audit department completed this review in October 2003; final repayment schedules for Babcock to reimburse consumers for the inappropriate purchases will be developed shortly after the publication of this report.

RECOMMENDATIONS

1. At the conclusion of the review by the DDSN Internal Audit Department, the Department Of Health and Human Services Division of Audits should review the documentation prepared by DDSN to ensure compliance with Medicaid regulations and with the methodology outlined in the memorandum. Once this is complete, Babcock should develop a repayment schedule to reimburse all affected consumers in a timely manner and should ensure that the consumers' Medicaid and/or SSI eligibility are not affected.
2. The Department of Disabilities and Special Needs should implement a policy to ensure that providers' employees responsible for handling consumer funds are properly trained in accounting of consumers' funds. Since there is significant staff turnover, this training should be included in the orientation for new hires whose duties include this job function.

Improper Use of Medicaid Funding.

Use of Medicaid Funds for Severance Pay

The former Babcock Chief Executive Officer (CEO) was paid \$120,000 for severance pay plus benefits using Medicaid funds. We found that the severance package paid to the former Babcock CEO was an unallowable use of Medicaid funds. The severance agreement was signed by Babcock's board chairperson in February 2002 and was subsequently ratified by the full Babcock board in October 2002. According to Babcock's current board chair, this agreement was approved by Babcock's board in February 2002, although this approval was not formally documented in the board minutes.

In Babcock's FYE 6/30/02 Medicaid cost report, Babcock claimed the severance pay costs as allowable costs. According to Medicaid policies, severance pay would be an allowable expenditure as long as it was a necessary and proper cost of operating patient care facilities. In addition, there must be an obligation for payment of severance pay, the severance pay

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arrangement must be an accepted business practice in the health care field, and the amount involved must be reasonable to be allowable. We determined that the former Babcock CEO's severance package was not an allowable cost for Medicaid reimbursement because (1) the Babcock Center did not have a severance policy at the time of the dismissal of the CEO, and (2) the severance payments were not properly developed as required under Medicaid cost principles.

Because the costs of severance pay, fringes and insurance premiums paid to the former CEO are not expenditures reimbursable for Medicaid, they must be removed from allowable costs. The amount to be removed from allowable costs for the period March 1, 2002, to June 30, 2002, is calculated as follows: \$42,791.54 severance pay, \$3,273.55 payroll tax fringes, and \$1,828.10 insurance premiums for a total of \$47,893.19. (See schedule on page 32).

Erroneous Payments

One allegation involved a \$1.3 million error in payments to Babcock. We determined that the \$1.3 million was an adjustment from DDSN to Babcock for changes in reimbursable costs as a result of the closing of the Pinelake ICF/MR facility. When the Pinelake ICF/MR closed, 44 consumers were moved to a different care service setting. Pinelake had been under a direct contract with DHHS for Medicaid reimbursement. However, these consumers were moved to settings where their costs would be reimbursed through DDSN. Transferring the consumers from Pinelake to other facilities took several months, and since Babcock did not timely report the change in residential placement, DDSN's payment system did not adjust from a direct DHHS reimbursement to reimbursement through DDSN. This resulted in an underpayment of \$1.3 million to Babcock Center, which was identified by DDSN and reconciled in the following quarter. (DHHS has no recommendations relating to this issue because it is unlikely that Babcock will in the future close another facility that serves a large number of consumers.)

Other Uses of Medicaid Funding

There were several other allegations made about improper uses of Medicaid funds that, upon review by DHHS, were determined to be allowable expenditures. These allegations included:

- Babcock uses Medicaid funds to pay approximately \$120,000 a year in salaries for three consumer advocates. We determined that the payment of consumer advocates salaries and fringe benefits are allowable Medicaid expenditures based upon our review of the position descriptions. Babcock's consumer advocates are responsible for following up on all consumer concerns and quality of care issues as they relate to the health, safety, and rights of consumers served by Babcock Center.
- Babcock uses Medicaid funding to pay a pharmacy consultant \$25,000 a year to provide professional advice related to administration, storage, etc. of medication. This is an allowable Medicaid expenditure. Babcock has a current contract with its pharmacy

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consultant who performs general supervision of pharmaceutical services for all consumers in Babcock's ICF/MR, CTH II, and CRCF facilities.

- Under this year's contract, Babcock is being paid more than \$1 million for empty beds. We were unable to substantiate this amount because more specific information was not provided by the complainant. However, we determined that bed reservation is an allowable expenditure for Medicaid payment and authorized by the SC State Plan. The ICF/MR bed hold policy is intended to promote frequent and informal leaves from the facility for family and community visits, trips, activities, or vacations, while also ensuring continuing availability of a client's bed. The leave must be prescribed by the attending physician, and cannot exceed eight days per month.

In addition, it was alleged that Medicaid funds were used to pay two staff members who worked almost entirely for the Babcock Foundation. However, DDSN internal auditors determined that state funds, not Medicaid, were used to pay the Babcock Foundation employees and included this finding in the Babcock internal audit report, as follows:

Babcock Center is incurring inappropriate costs and using State funding to pay the salaries and fringe benefits for Babcock Center Foundation's two employees. One employee works full-time and the other, the Executive Director (ED), works part-time (20-25 hours weekly).

Because state funding was used to pay the salaries of the two employees in question, DHHS does not have jurisdiction concerning this allegation.

RECOMMENDATIONS

3. The Department of Health and Human Services Bureau of Reimbursement Methodology should remove \$47,893.19 for severance pay from allowable Medicaid costs applicable to Babcock's FYE 6/30/02 cost report during its annual desk audit/cost settlement process (which is currently in process). Babcock should ensure that 100% of all severance pay, applicable payroll tax, and all health insurance premiums paid for previous employees receiving severance pay are removed from allowable costs on all 6/30/2003 Babcock Medicaid cost reports. This would apply to ICF/MR cost reports submitted to DHHS and applicable cost reports submitted to DDSN.
4. In addition, the Department of Disabilities and Special Needs should amend the applicable FYE 6/30/02 cost reports to remove the allocated portion of the related severance pay costs reported by Babcock. DDSN should also exclude the allocated portion of the related severance pay costs reported by Babcock during the preparation of its FYE 6/30/03 cost reports.

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5. If the Department of Disabilities and Special Needs wishes to provide for severance payments to subcontractor executives, then it should ensure that any severance payments are properly developed and allowable under Medicaid cost principles.
6. As part of the follow up audit of Babcock, Department of Disabilities and Special Needs internal audit staff should review and test a sample of Babcock's long-term care/mental retardation facilities to ensure that Babcock is in compliance with the state's bed hold policy and that leaves of absence are properly documented. If possible, DDSN should determine the annual cost to Medicaid of following the state's bed hold policy. A copy of DDSN's follow up audit report should be sent to DHHS Division of Audits.

Payment Methodology and Staffing Ratios

Pay Bands

The original complaint letter expressed numerous concerns over staffing ratios at Babcock facilities, and whether the Medicaid funds to provide for adequate staff were being used for that purpose. Inadequate staffing was alleged to be a factor in the lack of proper supervision of consumers, which was one of the causes of resident-to-resident abuse and negligence. (The allegations involving resident-to-resident abuse and negligence by Babcock staff were reviewed by the DHHS staff with the Long Term Care Ombudsman's program. Their findings and recommendations are in Section B of this report.)

Different facilities operated by Babcock have different staffing ratios. For example, in one supervised living residence, two staff members provided supervision/transportation for 12 residents (a one to six ratio), while the ratio at another supervised living residence was one to sixteen. Staffing ratios are based on the level of care needed by individual consumers. Funds to pay for consumers needs are provided by DDSN through "pay bands," or a capitated system, which provides a mechanism to identify the resources available on an annual basis for the consumer. The annual band payment is a daily rate multiplied by 365. This is in many ways the same as DHHS paying daily rates to various nursing homes or residential care providers that include services covered by the daily payment. The cash is provided to the DSN Boards a month in advance for almost all services so as to assure that there are sufficient resources available to meet consumers' needs in a timely manner.

For new consumers, band levels are supposed to be determined using a variety of need assessments which are incorporated into the consumer's service plan. The information collected determines the level of care needed for the individual consumer: the greater the level of care, the higher the staffing ratio and hence, the higher the band payment. The various payment levels are

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based on historical cost reports that identify the cost of services for the various levels of need. (A letter from DDSN's Deputy State Director, describing the band payment system, is in Appendix D.)

We determined that the band payment system is an allowable reimbursement method provided that:

- DDSN can ensure that this system meets consumers' individual needs;
- Levels of care and care plans are not based solely on where a consumer lives; and
- DDSN has adequate documentation to tie band levels to actual costs of services delivered.

While DDSN uses the band payment system to budget allocations to Babcock, it is reimbursed for Medicaid expenditures based on cost reports submitted to DHHS.

Accounting for the Use of Outlier Funding

In cases where consumers' circumstances and needs are substantially higher than the average, Babcock is given additional funding equal to the difference in the consumer's approved budget and the consumer's band amount (as defined above). This is called "outlier funding," and can be used when consumers need one-on-one care.

One concern was that, if some consumers were funded to receive one-on-one care, how were the alleged incidents of abuse and neglect able to occur? Were these consumers, in fact, receiving the one-on-one care? We reviewed Babcock's plans of care for two consumers referenced in the allegation. Although one-on-one care was prescribed for the two consumers, Babcock's documentation to show that both consumers received one-on-one care as required in their care plans was not 100% complete. For example, staff notations documenting supervision at five-minute intervals were not always complete.

Babcock received interim payments for FY 2002 from DDSN for \$27,254 and \$94,224 for outlier funding for each consumer, respectively. These amounts are in addition to the \$65,567 Babcock received from the band system for *each* consumer. Thus, Babcock received a total of \$92,821 and \$159,791, respectively, in Medicaid funds to care for these consumers.

In addition, DDSN should not pay extra funds for one-on-one care unless medical and/or behavioral need is documented by a physician or qualified professional, requested in writing from a provider, and approved by DDSN. In order to determine if DDSN followed internal funding methodology, we reviewed DDSN's Service Tracking System (STS) and outlier funding requests submitted by Babcock for these consumers. Babcock's outlier funding request supported that one consumer was medically approved for outlier funding for FY 2000 only, and that this funding would not automatically roll to FY 2001 or FY 2002. Babcock's outlier funding request supported that the other consumer was medically approved for outlier funding for FY 2000 and FY 2001 only, and that this funding would not automatically roll to FY 2002.

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However, the STS indicates that both consumers continue to receive outlier funding. The "End Date" on STS for both consumers is shown as "00000000," meaning that a termination date has not been established. This means that both consumers will continue receiving outlier funding until such time as an "end date" is keyed into STS.

We determined that DDSN has been obtaining verbal confirmation from providers that consumers who receive outlier funding continue to have the medical and/or behavioral conditions requiring the increased funding. Because of the significant dollar amounts of outlier funding, we believe that providers should justify annually a consumer's continued medical and/or behavioral need for greater services. This continued need should be documented in the consumer's file and signed by a physician or other qualified individual.

RECOMMENDATIONS

7. The Department of Disabilities and Special Needs should work with Babcock to develop and implement an adequate system of accountability to assure that consumers are receiving one-on-one care if this level of service is required in the consumer's plan of care. DDSN should ensure that Babcock's accountability system is capable of tracking Medicaid funding to show that Medicaid funds approved for one-on-one care for a particular consumer were actually utilized by Babcock for that purpose.
8. The DHHS Division of Audits should audit the pay band system to ensure that it follows all federal and state requirements; that funds allocated for consumers are used to meet their needs; and that cost reports submitted by DDSN continue to justify reimbursements claimed.
9. DDSN should expand its outlier status procedures to include steps that should be followed by providers to request continuing outlier funding for their consumers. Additionally, DDSN should expand outlier status procedures to include steps providers should follow if a Medicaid consumer's need changes (increase or decrease) before the annual outlier request has been submitted and approved.
10. DDSN should ensure that providers have appropriate documentation to support the consumers' need for outlier funding and one-on-one care. DHHS and DDSN should develop guidelines that outline retention requirements for one-on-one accountability records and other documentation and should share this information with their providers.

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Procurement Policy Not Followed & Other Contractual Issues

Purchase of Chairs

Babcock purchased \$100,000 worth of chairs for ICF/MR facilities in the spring of 2001 with state and Medicaid dollars. The Babcock board was not consulted or informed, and no bids were taken to comply with DDSN's procurement policy for DSN boards, which is similar to the SC Procurement Code. The DDSN internal auditors included this instance in their report, and based on our review we concur with their finding. According to DDSN auditors, Babcock Center had a single purchase order issued December 18, 2000, for 718 new chairs for the ICFs/MR priced at \$107.90 each plus sales tax. The total purchase cost was \$81,345.70. Only one vendor was contacted. Babcock Center's policy allowed each chair to be considered a single item purchase; since each chair cost less than \$1,500, competitive quotes were not required. However, Babcock Center's procurement policy was not in compliance with DDSN's procurement policy. Had DDSN's procurement policy been followed, the single purchase rule would have applied. Babcock would have had to solicit written quotes submitted as sealed bids from at least ten qualified sources since the purchase exceeded \$25,000. The procurement would have had to have been advertised at least once. Babcock has since changed its procurement policy to adhere to the single purchase rule.

Computer Consultant

A computer consultant was working with Babcock without a contract and was paid \$120,000 per year. DDSN internal audit also reviewed this allegation, and we agree with their finding that the allegation is correct. Babcock Center had an unwritten contract with an outside company at a cost of \$124,200 per year to provide technical support for its computer software and hardware. These services were procured without soliciting proposals from potential contractors. However, in early September of 2002, the former computer consultant was hired as the IT manager for Babcock.

Other Allegations

There were several other allegations involving contracts and other procurement issues. However, we determined that most of these allegations were unfounded or not substantiated. These included the following:

- DDSN improperly handled the award for a contract for a quality assurance review. We determined that this allegation is incorrect. Due to the estimated value of the contract, DDSN worked with the SC Budget and Control Board, Procurement Services Division, Materials Management Office (MMO) to award this contract and followed the requirements of the Procurement Code, including issuing a Request for Proposal (RFP).
- DDSN has a contractual relationship with a former DDSN State Director who is also involved with MENTOR and First Health. Based on our review it was determined that

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the former DDSN State Director is working as a temporary, part-time employee for DDSN and does not have a contractual relationship with DDSN. His/her role is to work with new DSN executive directors and boards who need technical assistance in the areas of management and operations.

- A current Babcock board member is benefiting financially by his/her relationship with DDSN. Based on our review it is concluded that this allegation is unsubstantiated. The board member is not a vendor of DDSN.
- Babcock did not properly follow DDSN procurement policy in hiring a new external auditor. Based on our review it was determined that Babcock appropriately followed DDSN procurement policy with respect to this transaction. Babcock placed an invitation to bid for audit services in May 2002 for a three-year contract, through FY 04-05. Six CPA firms submitted proposals, which were evaluated by the members of Babcock's finance committee. It was noted that Babcock's board minutes did not reflect the ratification of the awarding of the audit services contract. Although Babcock's board may have approved the contract award as recommended by the finance committee, this approval was not formally documented in the board minutes. Payment for auditing services is an allowable Medicaid expenditure.

RECOMMENDATIONS

11. The Babcock Center, Inc., Board of Directors should ensure that approval of all future contract awards is documented in the board minutes and should add this requirement to their procurement policy.
12. The Department of Disabilities and Special Needs should ensure that Babcock follows the requirements of DDSN's procurement policy and should consider imposing penalties if these policies are not followed.

Other Issues of Concern

Failure to Maintain Medicaid Eligibility

A consumer lost Medicaid eligibility in August 2001 due to the conservator refusing to provide income information. Based on our review it was determined that this allegation was correct. A consumer lost Medicaid eligibility from August 1, 2001, through December 1, 2001, because the conservator failed to provide income information to the Richland County Department of Social Services (DSS). Notices were sent to the conservator several months before the consumer's Medicaid eligibility was discontinued, and notices continued to be sent after eligibility was lost. Notices were sent by Richland County DSS, DDSN, and Babcock to the conservator, an attorney for the conservator, and to a Probate Judge requesting authority for Babcock to receive the

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income information on the consumer's behalf so that his/her Medicaid eligibility would not be discontinued. On April 5, 2002, the income information was received, and the consumer's Medicaid eligibility was reinstated as of December 1, 2001.

We concluded that Babcock and DDSN took appropriate action for the benefit of the consumer to obtain required income information in an effort to safeguard the consumer's Medicaid eligibility. These efforts resulted in the consumer losing only four months of Medicaid eligibility. We determined that Medicaid was not billed for the four months this consumer was ineligible.

DHHS also reviewed the personal needs account activity for the consumer for August-December 2001. No exceptions were noted from this review. The consumer is receiving \$30 in SSI monthly and is earning \$70 monthly in income.

Consumer's Checking Account Overdrawn

One consumer reported that his/her checking account was overdrawn; someone had been able to make an automatic withdrawal in the amount of \$300 from his/her account. We determined that the \$300 withdrawn out of this consumer's account was done with his/her knowledge. This consumer has a telephone in his/her room and supplied his/her checking account number to obtain a credit card with a fee of \$299. This was done without the knowledge of the consumer's guardian and staff at the CTHH where the consumer lives. The \$299 fee was charged to the consumer's bank account on October 4, 2002, causing the bank account to be overdrawn and an overdraft fee of \$27. The bank mailed notification of the overdraft to the CTHH, and another \$27 overdraft fee was posted to the consumer's bank account on October 7, 2002. The house manager contacted the credit card company, which cancelled the consumer's credit card, and the \$299 charge was reversed on October 15, 2002. The house manager also contacted the bank, which forgave one of the overdraft fees on October 18, 2002. We concluded that this matter was handled in a proper and timely manner.

Falsifying Time Records

One consumer reportedly watched staff falsify time records by clocking in and out for each other. We were unable to address this allegation, since more specific information was not provided by the complainant. Babcock's time card policy contained in their Employee Handbook was reviewed to determine whether sufficient controls were in place to prevent or deter employees for clocking in and out for each other. In addition, we spoke with a staff member of Babcock's human resources department to determine what supervisory review was done to employee time cards. Employees are required to use a time clock when clocking in and out for work and are responsible for the hours reported on their time cards. Supervisors record the hours worked by their employees from the time cards and submit this information and the employees' time cards to the Babcock administrative office for processing. Supervisors are reviewing the hours reported by their employees on their time cards to ensure the employees are being paid for the hours they worked.

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**B. ABUSE, NEGLECT, AND EXPLOITATION OF
BABCOCK RESIDENTS**

This section addresses the allegations of abuse, neglect, and exploitation of Babcock Center residents that were investigated by the Long Term Care Ombudsman Program with assistance from the Program Integrity Unit. The Ombudsman investigated allegations involving:

- Resident death as a result of neglect;
- Resident-to-resident abuse;
- Staff-to-resident abuse and inappropriate conduct by staff;
- Failure to report abuse, neglect, and exploitation;
- Medication errors;
- Restrictions on freedom of choice; and
- Failure to maintain adequate staffing.

The purpose of the Ombudsman's involvement in this review was threefold:

- Under both state law (The SC Omnibus Adult Protection Act) and federal law (the Older Americans Act), the Ombudsman is required to investigate complaints made by or on behalf of individuals who reside in facilities operated or contracted for operation by the Department of Disabilities and Special Needs (DDSN).
- Although the majority of the allegations involving Babcock Center had been investigated appropriately by the Consumer Advocate Unit and appropriate action had been recommended, there were concerns that in some instances Babcock Center did not follow up with corrective actions as recommended by the consumer advocates.
- Approximately 15 allegations of abuse, neglect, and/or exploitation were investigated in this report. It was determined that three of these incidents were not reported to the responsible party and/or to the Ombudsman Program as required.

Information related to Ombudsman investigations is exempt from disclosure under the SC Freedom of Information Act, and, unless consent is obtained, disclosure of individually identifiable information is prohibited under both state and federal laws. Therefore, we did not include many details as to the nature of the allegations but rather have focused this part of the review on recommending improvements for the future.

Findings and Recommendations

The Ombudsman Program investigated a total of 33 allegations that included physical abuse, medical neglect, financial exploitation, failure to report, medication errors, restrictions on freedom of choice, failure to maintain adequate staffing, resident-to-resident abuse, and

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inadequate supervision. Many of the cases involved more than one complaint. It was found that most of these allegations had already been investigated by the Babcock Center and appropriate action had been recommended. The investigations or re-investigations for this report included interviews with the resident's responsible party and with Babcock Center staff, as well as a review of the Babcock Center's internal investigations, appropriate hospital records, and all applicable facility documentation. It was then determined if appropriate reporting to and follow-up with law enforcement or other state agencies had been carried out. Our investigative findings were forwarded to the responsible party of the alleged victim and to Babcock Center. All verified allegations not previously reported have also been referred to the proper regulatory agencies for action, and/or to the Attorney General's office for investigation and prosecution. We also sent closing letters regarding any investigations or re-investigations to the responsible parties and the facility.

Because of the findings that involved the health, safety and welfare of Babcock Center consumers, attempts were made to determine the factors that contributed to these problems and recommend corrective actions. The problems that were identified generally fell into the categories of abuse, neglect and exploitation; resident-to-resident abuse; failure to report critical incidents; inadequate staffing and supervision; failure to follow up with the responsible parties; and failure to follow corrective action plans. We have suggested interventions that would help prevent these occurrences in the future. Failure to adequately address these problems could raise serious questions about Babcock Center's ability to provide for the day-to-day safety and welfare of its clients.

Resident-to-Resident Abuse

While DDSN has a policy that requires reporting of all critical incidents internally, there is not a policy that requires the reporting of serious instances of resident-to-resident abuse to the Ombudsman Program or to Adult Protective Services (at the Department of Social Services). There has been no policy in this area because the Omnibus Adult Protection Act (OAPA) does not include altercations or acts of assault between vulnerable adults as physical abuse. However, since the safety of these vulnerable individuals is at stake, serious incidents of resident-to-resident abuse should be reported to external parties. In addition, resident-to-resident abuse could be an indication of negligent supervision on the part of Babcock staff.

It should be noted that the system for reporting resident-to-resident abuse could be confusing to law enforcement, the public, and facility staff. Under the S.C. Omnibus Adult Protection Act, a resident of a facility is considered a vulnerable adult. However, under the same law, physical abuse does not include altercations or acts of assault between vulnerable adults. As a result, facility staff could sometimes be confused about reporting abuse or acts of violence when the perpetrator is another resident. Currently, the S.C. Attorney General's Office does not investigate resident-to-resident abuse as specified under the OAPA. Therefore, we recommend that the S.C. Adult Protection Coordinating Council conduct a thorough review of and

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recommend changes to South Carolina's system for reporting abuse, neglect, exploitation, and altercations and acts of assault between vulnerable adults.

In the interim, all serious allegations of resident-to-resident abuse or altercations between residents in DDSN facilities should be reported to the Ombudsman Program or to Adult Protective Services (according to the type of facility where the incident occurred). The Ombudsman Program and DSS should follow-up on the most serious incidents to determine if adequate supervision was being provided to these vulnerable individuals.

In addition, although DDSN has written procedures for transitioning new admissions, it lacked formal, written procedures to address issues of transition and training when a consumer is transferred from one Babcock Center facility to another. Consumer safety can be endangered when certain residents are transferred to a new facility where they do not know the staff, and the staff does not know the residents' previous history or problems. DDSN could use its admissions policy for transitioning new residents except in cases of emergency. In addition, relocation procedures should take into account freedom of choice for consumers whenever possible.

Failure to Report Abuse, Neglect, and Exploitation

Of 15 allegations of abuse, neglect, and/or exploitation investigated, one instance was identified where Babcock Center failed to report the allegation to the Ombudsman as required, and two instances were identified where Babcock failed to report to the clients' responsible party. Since the Ombudsman's Office plays such a critical role in the protection of vulnerable adults, even one failure to report an incident is a critical area which needs to be addressed by DDSN and Babcock.

The Omnibus Adult Protection Act defines the responsibilities for reporting abuse, neglect and exploitation of vulnerable adults. DDSN policy also specifies that all suspected abuse, neglect, or exploitation must be reported to state or local law enforcement agencies and to the Ombudsman Program or DSS within 24 hours. Serious cases of physical abuse with injury or severe neglect must be reported immediately.

DDSN Directive 534-02-PD, *Procedures for Reporting, Investigating, and Preventing Abuse, Neglect, or Exploitation of People Receiving Services from DDSN or a Contract Provider Agency*, has outlined this requirement in detail. The directive also states that local and state law enforcement agencies may investigate an allegation of abuse, neglect, or exploitation, but that a referral to law enforcement does not relieve DDSN or contract provider agencies from also reporting the allegation to the Ombudsman or DSS.

Finally, in several of the Babcock facilities visited by ombudsman investigators during the month of January 2003, notices were not properly displayed for reporting abuse, neglect, and exploitation. Under the Omnibus Adult Protective Act, DDSN and its contractors must prominently display notices about the mandates for reporting abuse, neglect and exploitation.

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The notices outline the penalties for not reporting and the penalties for intimidating or threatening a person cooperating with an investigation. The posters should contain the phone number and address of the State and Regional Long Term Care Ombudsman Program and local law enforcement. Posters may be requested from the Long Term Care Ombudsman Program. This directive has been in place since the Omnibus Adult Protective Act was enacted in 1993. However, it was found that the posters had not been properly displayed in all Babcock Center facilities.

Problems with Staffing and Consumer Supervision

Although policy directives state that DDSN's provider agencies will conduct quarterly visits, no directives were identified for conducting *periodic unannounced* visits to community residential locations during evening and nighttime hours. DDSN should ensure that sufficient staffing is being provided in accordance with agency standards and consumer needs. DDSN must also ensure that adequate supervision is being provided according to the resident's care plan. These unannounced visits should begin immediately and should also be made a part of DDSN's policies and procedures.

In one instance Babcock Center failed to provide one-on-one supervision for a high-needs individual. *(This finding was also discussed in part A: Financial Issues.)* Intensive supervision is needed by some DDSN consumers whose safety (or when the safety of others) would be at risk if not supervised appropriately. DDSN consumers who are funded to receive one-on-one supervision should be supervised as specified in their plans of service. Supervision is also needed when consumers are allowed to attend off-site activities.

Another contributing factor to concerns about consumer safety was the lack of written procedures for requesting medical assistance during emergency situations. In one emergency situation, the on-call nurse could not be reached by staff and did not return emergency messages in a timely manner. Staff should have been instructed to contact EMS or call 911 immediately when nursing staff are unavailable.

It should be noted that the SC Ombudsman asked the Attorney General's office to determine if there was neglect on the part of the on-call nurse who failed to respond to the emergency messages. In October 2003, the AG's office determined that neglect had not occurred.

Need to Improve Notification of Investigative Outcomes

DDSN did not have a policy directive in place that requires the consumer's responsible party to be notified *in writing* of the outcome of Babcock's internal investigations. Babcock's practice has been to notify responsible parties by telephone of the results of abuse or neglect investigations. A new policy directive should be implemented for all DDSN and Babcock

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Center facilities that requires closure letters when an internal investigation is conducted and the case has been resolved. The closure letter should state that the investigation was conducted in accordance with the Omnibus Adult Protection Act; state the reason for the investigation; explain what the investigation included; and state whether the allegation or complaint was verified. A copy of the closing letter should be sent to the family or responsible party for the resident. A copy of the letter should also be forwarded to the Ombudsman Program as part of the investigation documentation.

Failure to Follow Corrective Action Plans

When complaint investigations were conducted by the Babcock Center and allegations were substantiated, recommendations were made to provide for the safety and welfare of the consumer and to help prevent the future occurrence of another incident. However, Babcock Center staff failed in some instances to follow up or act on the recommendations. A new policy directive should be implemented by Babcock Center to assure that all recommendations outlined in the internal investigations are completed as specified. DDSN should also develop a procedure to follow up on all internal investigations to determine that recommendations were carried out and documentation was forwarded to the appropriate investigative entities for the record.

Also, in order to assure that investigations are properly conducted and that recommendations and corrective actions resulting from investigations are implemented, DHHS has re-assigned a State Office Ombudsman Investigator to oversee all complaints from facilities operated or contracted for operation by DDSN. Responsibilities will include reviewing all internal investigations and conducting any follow-up investigations when required. Investigations may also be conducted by the DHHS Ombudsman when requested by the resident and/or responsible party, or if it has been determined that an independent investigation is required.

RECOMMENDATIONS

13. The Ombudsman and the Department of Disabilities and Special Needs should define "serious resident-to-resident abuse." Then DDSN should implement a directive in all its facilities that requires all serious allegations of resident-to-resident abuse or altercations between residents be reported to the Long Term Care Ombudsman Program or to DSS Adult Protective Services (according to the type of facility where the incident occurred).
14. The S.C. Adult Protection Coordinating Council should conduct a thorough review of and recommend changes to South Carolina's system for reporting abuse, neglect, exploitation, and altercations and acts of assault between vulnerable adults.

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15. DDSN's admissions policy should be used for transitioning current residents between Babcock Center facilities, except in emergencies.
16. All suspected abuse, neglect, or exploitation allegations should be reported to state or local law enforcement agencies and to the Ombudsman Program or DSS within 24 hours. Serious cases of physical abuse with injury or severe neglect must be reported immediately. DDSN should review its procedures to ensure that state law and policy directives are followed.
17. DDSN should ensure that all its facilities prominently display notices about the mandates for reporting abuse, neglect and exploitation.
18. DDSN provider agencies should conduct periodic unannounced visits to community residential locations during evening and nighttime hours to ensure that sufficient staffing is being provided in accordance with agency standards and that supervision is being provided according to the resident's care plan. These unannounced visits should begin immediately and should also be made a part of DDSN's policies and procedures.
19. DDSN should take steps to ensure that consumers who are funded to receive one-on-one supervision are supervised as specified in their plans of service. DDSN should review staff time records and as well as consumers' care plans to ensure that the proper level of supervision is received.
20. In the event that an emergency situation occurs and the on-call nurse cannot be located by staff or does not return emergency messages in a timely manner, staff should be instructed to contact EMS or call 911 immediately.
21. DDSN should direct that all facilities operated or contracted for operation prepare closure letters when an internal investigation is conducted and the case has been resolved. The closure letter should state that the investigation was conducted in accordance with the Omnibus Adult Protection Act; state the reason for the investigation; explain what the investigation included; and state whether the allegation or complaint was verified or not verified. A copy of the closing letter should be sent to the family or responsible party of any resident residing in any facility operated or contracted for operation by DDSN. A copy of the letter should also be forwarded to the Ombudsman Program as part of the investigation documentation.

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22. DDSN should ensure that Babcock Center is required to follow-up on recommendations and/or corrective action plans on all internal investigations, and the action plan should be made a part of the consumer record. The Department of Health and Human Services should amend its contracts with DDSN to require that DDSN ensure contractor compliance with corrective actions in a timely manner. Failure to ensure contractor compliance should result in DHHS withholding future Medicaid reimbursements from DDSN.

**C. PROGRAMMATIC ISSUES: MEDICAID HOME
AND COMMUNITY BASED WAIVER**

This section addresses the allegations and complaints concerning Babcock Center's compliance with requirements of the Medicaid waiver program. The Mental Retardation and Related Disabilities (MR/RD) waiver provides a broad range of special home and community-based services to Medicaid eligible individuals with mental retardation or related disabilities to help them live in the community rather than an institution. DDSN subcontracts with Babcock Center to provide home and community-based waiver services. Under its memorandum of agreement with DDSN, DHHS is the final authority and makes all final decisions regarding all matters related to the administration of the MR/RD waiver.

The investigation included a review of case record information, interviews with recipients/responsible parties and appropriate DDSN staff, and the analysis of claims information. The complaints and issues addressed were centered around the health, safety, and welfare of consumers; provider standards, qualifications, and accessibility; quality assurance and outcomes; consumer rights related to due process, fair hearing, appeals and freedom of choice.

Specific allegations about problems with the waiver program came from Babcock consumers, their guardians or responsible parties, and other sources including the complaint letter of November 2002. DHHS Medicaid waiver program staff within the Bureau of Long Term Care Services reviewed these allegations. It should be noted that we reviewed only the specific allegations and complaints involving individuals in the waiver program, and did not evaluate DDSN or Babcock's other programs or compliance with Medicaid waiver requirements in general.

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Health, Safety and Welfare of Consumers

We investigated five cases involving allegations of abuse and neglect of consumers which occurred due to insufficient staffing levels and supervision of staff. Two out of these five allegations were substantiated.

State law requires that DDSN establish minimum standards of operation for the care, training, or treatment of the populations it serves. DDSN has established residential habilitation standards for Community Training Home Level II (CTH II) at a minimum of one caregiver to four clients. In addition, waiver services require adequate levels of staffing to meet consumer needs. In the two substantiated cases, both waiver recipients resided at CTH II facilities. This may indicate that current policies and procedures either were not followed or were not adequate to prevent incidence of abuse and/or neglect. Along with minimum standards of operation, DDSN through its oversight system needs to ensure that Babcock is following the standards developed by DDSN.

DDSN has established a minimum requirement of at least every three months (90 days) for Service Coordination staff to contact a waiver participant to monitor the usefulness and effectiveness of all waiver funded services, including an assessment of the quality of services provided. Due to the potential vulnerability of some waiver participants, however, the minimum time span of 90 days may not be sufficient to ensure residential or day habilitation staff are providing quality care and supervision.

Lack of Provider Choice

We reviewed issues surrounding a lack of service provider options other than the local Disabilities and Special Needs (DSN) Boards. There were five cases investigated for this allegation. The majority of MR/RD waiver services provided by the DSN Boards are habilitation services including Supported Employment, Prevocational Habilitation, Residential Habilitation and Day Habilitation. DDSN, by policy, offers waiver recipients a choice of other local county DSN boards for these habilitation services.

However, other than for MR special needs populations (i.e. dually diagnosed, conduct disorders, etc.), there are no other private provider options available at this time for residential habilitation waiver services in the Richland-Lexington county area. This may be due to the following reasons:

- Through subcontracts with DDSN, the county DSN boards have historically provided the vast majority of the waiver services. Based on state/federal reports, over 85% of waiver services have been provided by the county DSN boards and billed by DDSN.
- There is an identified lack of private providers for habilitation services.

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- Previously, DHHS has received a very limited number of inquiries from private providers seeking to provide respite and habilitation waiver services. While private providers have been given written information related to the waiver service qualifications, they have not applied to be Medicaid providers.

In addition, to increase available choices, DDSN has offered a Request for Proposal (RFP) to allow private providers to subcontract and provide services through the local county DSN boards, who would then become the private provider's fiscal intermediary for billing to DDSN.

However, CMS is reviewing the RFP to determine whether this arrangement would be appropriate as a means to recruit and reimburse private providers. Private providers should have the opportunity for independence from the DDSN organizational network. Under the terms of the current MR/RD waiver, all service providers have the option to bill the Medicaid state agency (DHHS) direct or use DDSN as a fiscal intermediary for their reimbursement. The waiver states:

The Medicaid agency will make payments directly to providers of waiver services. Providers may voluntarily reassign their right to direct payments to the ... South Carolina Department of Disabilities and Special Needs. Providers who chose not to voluntarily reassign their right to direct payments will not be required to do so. Direct payments will be made using the following method: The Medicaid agency will make payments to providers of waiver services through an approved MMIS.

Service Not Provided

In one case we investigated, it was alleged that DDSN subcontracted providers had not met the standard that required them to provide appropriate transportation to and from services. Under the terms of the waiver, appropriate transportation services must be provided as a component part of all the habilitation waiver services.

Transportation will be provided between the individual's place of residence and the site of the habilitation services, or between habilitation sites (in cases where the individual receives habilitation services in one place) as a component part of habilitation services. The cost of this transportation is included in the rate paid to providers of the appropriate type of habilitation services.

In the case we investigated, we found that DDSN did not ensure that a consumer was provided transportation to the job site on the days when the Job Coach provided the supported employment services. The waiver does not require recipients to be provided transportation to the work site other than the day the Job Coach is present. This case is currently the subject of an administrative appeal. DDSN will be required to refund the payments made for supported employment for this individual, or otherwise comply with the Hearing Officer's resolution of the matter. Also, a bigger issue is whether DDSN is adequately ensuring that consumers have regular transportation to job sites that are in the private sector. However, an analysis of this issue was beyond the scope of this report.

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Plan of Services

We investigated one allegation involving plans of service and confirmed that a Medicaid waiver participant was identified as having an incomplete and inadequate plan of service. Plans of service are a critical component of a consumer's care. Services are authorized and delivered based on the plan of care. If a service is not identified as a need in the plan, it cannot be funded with Medicaid. The waiver requires that plans of service be reviewed and completed on an annual basis.

In the incident we reviewed, a consumer's plan of service, dated November 26, 2001, was due for review. Staff from the Richland/Lexington DSN board (which provides case management to Babcock consumers) held a meeting in November 2002 to determine the new plan of service, but the consumer's legal guardian was not present at the meeting. There were several attempts to contact the guardian, but he did not attend the meeting to ensure the consumer was adequately represented. A final plan was not developed with the guardian and fully approved until January 7, 2003. Therefore, DDSN should be required to refund the federal share of \$4,646 for waiver services provided during the time the consumer did not have an up-to-date plan of service (11/26/02-1/7/03).

Also, the individual's plan of service from November 26, 2001, identified behavior support needs. The behavior support plan took seven months to develop (until June 6, 2002), was incomplete, and was also not signed by the responsible party or legal representative.

We also investigated two other related allegations that respite services were not provided due to budget constraints, and that behavior support services were terminated without notification. In the first case the individual was not enrolled in the Medicaid MR/RD waiver program; in the second case the individual was not receiving behavior support services through the Medicaid MR/RD waiver program. Both individuals were receiving services supported with state funds. Therefore DHHS had no jurisdictional authority over these allegations.

Consumer Rights

We reviewed several allegations related to due process, fair hearing, appeals and freedom of choice for consumers. These included:

- Applicants/recipients for Medicaid services were not properly informed of waiver options and appeal rights under the terms of the waiver. There was one case investigated for this allegation.
- Medicaid appeal rights were not provided upon waiver termination.

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- Residential staff had inappropriately revealed personal medical information, and there were no designated location(s) where staff and recipients could discuss privileged health information.

We found documentation to support that a waiver applicant was not provided appeal rights or timely determination of waiver eligibility. Under the terms of the waiver, individuals must be informed, offered choice, and provided appeal rights. The waiver states the following:

As part of the Service Coordinator's assessment and service planning visit, individuals and responsible parties are provided with adequate information to make an informed decision as to where the individual's care will be received. Service planning addresses problems and feasible solutions. It also includes as exploration of all resources utilized by the client, both formal and informal, as well as those waiver services which may be available to meet the individual's needs and those needs which cannot be met.

When an individual is determined to be likely to require a level of care, the individual or his or her legal representative will be informed of any feasible alternatives under the waiver; and given the choice of either institutional or home and community-based services.

The agency will provide an opportunity for a fair hearing under 42 CFR Part 431, subpart E, to individuals who are not given the choice of home or community-based services as an alternative to the institutional care or who are denied the service(s) of their choice, or the provider(s) of their choice.

According to DDSN, it is working to clarify its policy for how waiver recipients should be informed of waiver options, freedom of choice, and appeal rights, and also to provide service coordination staff with training on this policy. In the meantime DDSN has sent a letter to provide additional guidance to all waiver recipients.

Regarding the second allegation, DDSN did have documentation to support that Medicaid appeal rights were provided upon notification that waiver services were being terminated. There was one case investigated for this allegation. For the third allegation, we could not confirm that DDSN staff had inappropriately shared personal health information. There was not a designated administrative area to be used specifically for sharing privileged health information at the residence.

RECOMMENDATIONS

23. The Department of Disabilities and Special Needs should ensure that Babcock is meeting the current required residential standards. In addition, DDSN should review the current residential habilitation standards and minimum caregiver staffing levels to determine if supervision and oversight are sufficient and appropriate to ensure an individual's health and safety.

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24. DDSN should develop a plan to increase the frequency of Service Coordination staff contact (telephone/face-to-face) with vulnerable clients.
25. Both DDSN and DHHS should increase efforts to identify potential private providers, develop capacity among the private sector to deliver services to disabled individuals, and remove any barriers to competition. DDSN should inform private providers of their right to receive direct payment from the state Medicaid agency.
26. DDSN should ensure transportation services are provided by their subcontracted entities for all habilitation services as required under the terms of the waiver. DDSN should issue a policy clarification to subcontracted providers and service coordination staff confirming the extent to which transportation services are a required component part of supported employment.
27. DDSN should issue a policy clarification to waiver service coordination staff specifying that plans of service are not considered complete until the consumer's responsible party or legal guardian has participated in the planning meeting. The policy should require that their participation in the planning meeting be documented, possibly by having the responsible party or guardian sign the plan. DHHS should recoup the cost of waiver services provided when a plan of service is not completed within 12 months.
28. DDSN should provide training to service coordination staff on informing, choice, and Medicaid appeal and hearing rights for Medicaid waiver applicants and recipients.

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III. CONCLUSION

Most of the findings in this report involve failure to follow existing policies, ensure corrective actions, and adequately supervise consumers. Because we limited our review only to the specific allegations that had been made about Babcock Center, we cannot conclude as to whether our findings reflect isolated incidents or are indicative of more systemic problems. In any case, DDSN's ability to monitor and oversee Babcock Center (and other providers) is of critical importance to ensure consumer safety and compliance with rules and regulations. To this end, DDSN has created an external quality review and contract compliance process that is beginning its second year of operation. The contractor for this process is First Health. DDSN should ensure that First Health's quality assurance operations include:

- An analysis of trends and patterns among service providers;
- Identification of system-wide weaknesses;
- A determination of best practices worthy of replication;
- Areas where policy is weak or nonexistent;
- Identification of needed training; and
- Ability to levy sanctions for non-compliance.

Many of the recommendations in this report could be incorporated into a stronger quality assurance process. Also, in order to fulfill its administrative oversight responsibilities, DHHS needs greater information about subcontractors providing Medicaid services. This should include DDSN internal audits related to Medicaid, all quality assurance reports conducted by First Health and other external groups, and documentation of follow-up, corrective actions, and recoupments. Both agencies need to work together to ensure regular and improved communication. At a minimum, additional requirements for information and improved assurance could be put into DHHS contracts with DDSN and Babcock.

RECOMMENDATIONS

29. The Department of Disabilities and Special Needs should review quality assurance efforts and determine how they might be strengthened. When possible, the recommendations in this report should be incorporated into the quality assurance agreement with First Health.
30. DHHS should obtain and regularly review copies of internal audit, quality assurance, and follow-up reports related to DDSN's Medicaid subcontractors and services.
31. DHHS should review its contracts with DDSN and Babcock to ensure they contain appropriate provisions for quality assurance and that DDSN shares this information with DHHS.

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IV. REPAYMENT SCHEDULE

Based on the DHHS interagency task group reviews, DDSN is required to repay the federal share of the \$6,656.00 overpayment of Medicaid funds. Additionally, the Babcock Center and DDSN must amend the amount reported as allowable costs in their applicable cost reports for fiscal year ending June 30, 2002 (FY02). The following schedule outlines the amounts to be recouped or adjusted to allowable costs for FY02 by area. The second schedule reflects Babcock's liabilities to its' consumers. Report page numbers that correspond to each disallowed item are noted in parenthesis.

	Recoupment*	Adjustment to allowable costs (FY02)
Disallowed severance package paid to Babcock's former CEO (Page 11).....		<u>\$47,893.19**</u>
Disallowed for waiver services performed when the consumer did not have an up to date plan of service (Page 28).....		<u>\$ 6,656.00</u>
Totals.....	<u>\$ 6,656.00*</u>	<u>\$47,893.19</u>

* *Recoupments are due upon notice. FFP amount due from DDSN equals \$4,646.55.*

** *Babcock must also exclude the severance pay related costs during the preparation of its FYE 6/30/03 cost reports. DDSN must also exclude the allocated portion of the related severance pay reported by Babcock during the preparation of its applicable FYE 6/30/03 cost reports.*

SCHEDULE OF CONSUMER REPAYMENTS

Babcock Obligation/Liabilities to Consumer

Consumers Personal Funds theft at Wire Road – Liability due to the consumer (Pages 7-8) (\$11,373.00 - \$9,710.37).....	\$ 1,662.63
Consumers Personal Funds missing receipts at 28 ICF/MR facilities – Liability due to the consumer (Pages 8-9).....	<u>\$87,083.00</u>
Total Babcock Obligation/Liabilities to Consumer.....	<u>\$88,745.63</u>

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V. DDSN's and Babcock Center's Response to the Report Findings

As this report states, many of the findings that have been substantiated in the DHHS report were previously identified and substantiated in DDSN's Internal Audit Report of Babcock Center issued October 29, 2002. Babcock's corrective action plan to address these previously identified findings in the DDSN audit was approved and is being monitored by DDSN. There were 62 corrective actions required by DDSN's previous audit. Babcock has completed all corrective actions with one exception as of this date. The exception is due to the requirement that the Attorney General's Office must review and approve the plan of correction for that finding.

Many of the findings and recommendations raised in the DHHS report are issues identified previously by DDSN management and the Babcock Center's board of directors as a result of DDSN's audit of Babcock Center. Babcock Center staff have been and are still working to correct these issues. While corrective action has been taken, compliance through management reviews and oversight will continue.

Beyond the findings identified in the DDSN audit, there are additional findings which will require corrective action. Both DDSN and Babcock Center are committed to taking appropriate corrective steps.

The issue of resident-to-resident abuse for all vulnerable populations including persons with disabilities and special needs is a very serious issue. Even though the SC Code of Laws does not address this issue, DDSN has had a policy in place for years requiring reporting of these incidents from service providers to DDSN. DDSN is very willing to work with the DHHS Ombudsman to help determine what constitutes serious allegations of resident-to-resident abuse and add a new requirement of reporting to external authorities.

As identified in this report the practice of verbally reporting results of investigations to families/responsible parties will be strengthened by providing a written report. Similarly, in addition to the approval contained in the annual plan, individuals requiring additional supports will have those needs documented in writing. Also, information posters describing procedures for reporting abuse, neglect and exploitation will be moved from the office areas of the consumers' homes to a more prominent location in the general living areas.

Babcock has provided additional information to DDSN regarding findings related to 15 allegations of abuse, neglect, and/or exploitation. This report determined that 3 of the 15 were not reported appropriately; the information from Babcock supports that there were actually two, one where the family was not notified and one in which the DHHS Ombudsman was not notified. However due to the vulnerable nature of the consumers served, each failure to report, especially to the Ombudsman, is a critical incident that must be corrected.

As stated previously, both DDSN and the Babcock Center are committed to making any necessary corrections that are identified in this report. These corrections will be implemented as identified by our joint response to the recommendations below.

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DDSN's and Babcock Center's Response to the Recommendations:

1. DDSN's Internal Audit has completed its review and will coordinate with DHHS's Division of Audits regarding its work. DDSN will ensure that Babcock reimburses the affected consumers in a timely and appropriate manner.
2. Training for handling consumer funds will be a requirement to be incorporated in orientation for new hires whose duties include this job function.
3. Babcock will coordinate with the DHHS's Bureau of Reimbursement Methodology to remove the unallowed cost related to severance pay in the FYE 6/30/02 cost reports. Babcock will ensure the final cost reports for FYE 6/30/03 exclude these costs as well. It should be noted that while the report correctly states that the Babcock Center's Board of Directors approved the severance pay in February 2002 without documenting the board action, it does not note that formal action was taken by the board on October 22, 2002 to formally document this action in the board minutes.
4. DDSN will amend the FYE 6/30/02 cost reports to remove the allocated portion of the related severance pay cost reported by Babcock. DDSN will exclude this cost from the FYE 6/30/03 cost reports.
5. DDSN will instruct providers that if severance payments are made they must be properly developed and allowable under Medicaid cost principles.
6. Internal Audit at DDSN will review and test Babcock's facilities for compliance with the state's bed hold policy regarding proper documentation of leaves of absence and will forward a report to DHHS.
7. DDSN and Babcock will ensure there is a system of accountability to assure one-on-one care is provided per individuals' plans of care and that the expenditures for this care are properly documented in the Medicaid cost reports.
8. DDSN will work with DHHS in any review of the pay bands. DDSN developed this funding system to increase choice of services and providers for consumers and to assure needs are funded. All cost are documented in the Medicaid cost reports submitted to DHHS per federal and state requirements.
9. Future requests for continuing outlier funding will be justified in writing. Procedures will be submitted to DHHS's Division of Audits for review. The procedures will include requirements for requesting and changing outlier status.
10. Providers who receive outlier funding will be required to maintain documentation in support of this level of need and will maintain these records per Medicaid guidelines.

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11. Babcock Center's Board of Directors will ensure that board minutes reflect approval of contract awards approved by the board. Babcock will add this requirement to their procurement policy.
12. DDSN will monitor through compliance reviews and audits that DDSN's procurement policy is followed by Babcock and will disallow any documented additional cost from non-compliance of the policy in the Medicaid cost reports.
13. DDSN will work with the Ombudsman at DHHS to define serious allegations of resident-to-resident abuse or altercations and will ensure that this definition is used in determining the reporting of these incidences to the DHHS Ombudsman or to DSS's Adult Protective Services as appropriate. As noted previously, these incidents were reported internally only since state law does not address this issue at all.
14. DDSN agrees that the state law regarding reporting abuse, neglect, exploitation, and altercation and acts of assault between vulnerable adults needs clarifying. The agency will work with the S. C. Adult Protection Coordinating Council regarding this issue.
15. DDSN's admissions policy will be utilized for transitioning current residents between Babcock Center facilities except in an emergency.
16. DDSN procedures will be reviewed to ensure all suspected abuse, neglect, or exploitation allegations reported to law enforcement are also reported to the DHHS Ombudsman or DSS's APS as appropriate within time requirements of state law and policy directives.
17. DDSN will ensure that its facilities prominently display notices about the mandates for reporting abuse, neglect, and exploitation in the common areas of residences as opposed to the office areas which has been the practice for many years.
18. Providers will be instructed by DDSN to conduct periodic unannounced visits to all of their residential locations across all shifts, including weekends, to assure sufficient staffing and supervision per the residents' care plans. As of February 2003, Babcock initiated monthly unannounced accountability visits.
19. DDSN will instruct all providers to ensure that one-on-one supervision is provided according to approved care plans and that the supervision is documented in the plans. The First Health compliance review will include a sampling of staffing time records and care plans to ensure proper levels of supervision are being provided.
20. Babcock implemented a new emergency contact system effective January 21, 2003 that includes calling 911 and EMS. Training has been implemented and emergency numbers are provided to the staff of each residence. Babcock has provided documentation to DDSN that the nurse involved with the situation identified in this report received disciplinary action.

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21. All DDSN facilities and contract providers will be required to prepare written closure letters when an internal investigation covered by OAPA is completed and the case resolved. The letter will include the following: the investigation was conducted in accordance with the Omnibus Adult Protection Act; the reason for the investigation; an explanation of what the investigation included; and whether the allegation or complaint was verified or not verified. Copies of the closure letters will be sent to the family or responsible party for the resident involved in an investigation and to DHHS's Ombudsman. Previously, Babcock staff contacted families by telephone concerning investigations.

22. DDSN will ensure through compliance reviews and audits that Babcock follows-up on all recommendations and/or corrective action plans on all internal investigations. Any action plans will be part of the consumer record where appropriate.

23. DDSN will ensure through the compliance review process that Babcock is meeting the current required residential standards and consumers' needs per the consumers' plans. The MR/RD Medicaid Waiver requires adequate levels of staffing for the consumers in the waiver to meet the consumers' needs. For this reason most of the residential settings have more than the minimum caregiver staffing ratios. Regarding one of the report's findings, Babcock has provided DDSN information that one of the two incidents of insufficient staffing levels and supervision is not supported based on documentation that Babcock had 3 staff on duty on the third shift completing their accountability checks per the consumers' plans. The necessary corrective action regarding the incident that occurred per this report did not include adding additional staff. Consumer safety is and will continue to be of primary importance.

24. DDSN will require monitoring by service coordination staff more frequently than 90 days for the most vulnerable waiver recipients which will be identified in the individuals' service plans.

25. DDSN issued the Qualified Provider Request for Proposal through the Budget and Control Board to actively recruit additional providers. They will be paid the rate approved in their proposals. DDSN will continue to seek additional providers as recommended since it matches the agency's goal of consumers having additional choices of providers. All private providers will be informed of their right to receive direct payment from DHHS. There have always been many services billed directly to DHHS by private providers. In the last few years the number of private providers for all of DDSN services has expanded significantly. The largest increase has been in the case management and early intervention areas. However, as identified in this report, prior to the QPL there were not many private providers of habilitation services funded under the waiver even though private providers received information regarding providing services.

26. DDSN will ensure through policy clarification that transportation services are provided by Babcock and other providers of habilitation services, including supported employment, per the terms of the MR/RD Medicaid Waiver.

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27. DDSN will ensure through the compliance review process that the Richland/Lexington DSN Board complies with the current policy that plans of service are not complete until the consumer's responsible party or legal guardian has participated in the planning meeting. This participation should be documented.

28. DDSN staff previously addressed these issues by informing all consumers' responsible parties and all service coordinators statewide in writing regarding waiver choice and appeal and hearing rights due to concerns expressed by DHHS staff at monthly coordinating meetings. A brochure was also created to be handed out by the service coordinator to every person applying for services explaining these rights. DDSN disagrees with the report's determination that a waiver applicant was not provided appeal rights or timely determination of waiver eligibility. DDSN's information supports that when all information needed for eligibility determination was provided, a final determination of eligibility was made. When eligibility was previously denied based on the information provided, appeals of the decisions were made. However, as has been stated above, all individuals applying for services are now given a brochure detailing their rights at the time of application.

29. DDSN will continue to review its quality assurance efforts and make improvements that strengthen them. As identified in this report, beginning in July 2002 DDSN has taken a new approach to quality assurance by contracting with an independent organization separate from the agency in order to remove any conflict of interest in quality assessments. Now that it is in its second year, the process has been modified and bolstered by data and information gathered the first year. We intend to build on this success by continuing to improve the process each year.

30. DDSN staff will share information regarding audits and assurance reviews with DHHS staff at regularly scheduled meetings.

31. DDSN's commitment to quality assurance is demonstrated by the contracting of quality assurance reviews to an independent third party entity. DDSN will share the information provided with DHHS staff at regularly scheduled meetings.

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Appendix A – LETTER FROM CMS



Services
DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid

Region IV

Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW, Suite 4T20
Atlanta, Georgia 30303-8909

December 2, 2002

Mr. Bill Prince, Director
Department of Health and Human Services
1801 Main Street
P. O. Box 8206
Columbia, South Carolina 29202-8206

Dear Mr. Prince:

We have been made aware of allegations of abuse, neglect and misuse of Medicaid funds for individuals receiving services through the South Carolina Home and Community Based Waiver for Individuals with Mental Retardation or Related Disabilities. The allegations are specifically related to the Babcock Center. We understand that members of your Community Long Term Care staff have been discussing these issues and the recent audit with staff from the Department of Disabilities and Special Needs (DDSN).

In accordance with regulations at 42 CFR 441.302, as a condition of waiver approval, States must assure necessary safeguards have been taken to protect the health and welfare of persons receiving services under the waiver. While DDSN serves as the operating agency for the waiver, as the administering agency DHHS is ultimately responsible for the waiver as well as other services provided under the Medicaid program such as ICF/MR. Therefore, we are requesting that you investigate all allegations of neglect, abuse and misuse of funds. Your investigation should include direct interviews with clients, family members and/or legal guardians. Please provide us with a copy of findings and corrective action plans (including specific timelines) to address any problems cited. Further, please provide a description of the procedures you will employ to ensure corrective actions are completed.

We share your commitment for quality waiver services and are confident that your staff will succeed in working with DDSN to address these concerns. If we may be of assistance, please contact Tandra Hodges at (404) 562-7409.

Sincerely,

Rhonda Cottrell
Associate Regional Administrator
Division of Medicaid and Children's Health

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Appendix B: DEFINITIONS AND LEGAL AUTHORITY

Appeal/Fair Hearing: The administrative proceeding specified in SC Code R. 126-150 *et seq.* by which any entity aggrieved by a final action or determination regarding the SC Department of Health and Human Services may contest the action.

Assessment: A method of determining a consumer's current long term care needs through the use of a comprehensive standard instrument.

Babcock Center, Incorporated (Babcock or Babcock Center): A private, non-profit organization founded in 1970 serving people with mental retardation, autism, head and spinal cord injury, and related lifelong disabilities. In order to receive services from the Babcock Center, individuals must be determined eligible for services from the SC Department of Disabilities and Special Needs. Babcock Center provides Medicaid services either under a subcontract with the SC Department of Disabilities and Special Needs or directly through a contract with SC Department of Health and Human Services.

Centers for Medicare and Medicaid Services (CMS): A federal agency within the U.S. Department of Health and Human Services. CMS administers the Medicare program, Medicaid program, and State Children's Health Insurance Program.

Client Funds (also known as personal needs allowance/consumer funds): Funds received or retained by a resident for personal expenses and sometimes deposited and held in an account administered by a facility for the convenience of the individual.

Community Residential Care Facility (CRCF): 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 hours for two or more persons, 18 years old or older, not related to the licensee within the third degree of consanguinity. 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 a community residential care facility.

Community Training Home I (CTH I): A residential placement similar to foster care in that a private citizen's home which is licensed and where the caregiver is a contract agency employee. Up to three individuals live in the home and receive personalized care, supervision and training.

Community Training Home II (CTH II): A home owned or rented by the agency where up to three individuals live. A caregiver may also live in the home or staffing may be provided in shifts. This model differs from the Community Training Home I placement because, if the caregiver changes, residents will not have to move.

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Appendix B, cont.: **DEFINITIONS AND LEGAL AUTHORITY**

Consumer: A person with a disability who utilizes health and/or social services. Also referred to as a recipient or resident.

Cost Report: The report required from providers on an annual basis in order to make a proper determination of amounts payable under the Medicaid program.

Disabilities and Special Needs Board (DSN Board): A local Board which has been established pursuant to S.C. Code Ann. §44-21-810 et seq., the members of which are appointed by the Governor or through the County Council authority and which provides, under contract with the SC Department of Disabilities and Special Needs (DDSN) and SC Department of Health and Human Services (DHHS), comprehensive community services to eligible residents of a geographic service area designated by DDSN.

Federal Financial Participation (FFP): Any funds, either title or grant, from the Federal government.

Freedom of Choice: The right of a Medicaid recipient to receive services from any willing provider of those services who meet all applicable standards and qualifications.

Head and Spinal Cord Injury (HASCI) Waiver: A 1915 (c) Medicaid waiver that addresses the long term needs of persons with Head and/or Spinal Cord Injuries.

Home and Community-Based Waiver: A special Medicaid program operated under Section 1915 (c) which allows the provision of a special package of approved services to a defined target population with long term care needs.

Intermediate Care Facility for the Mentally Retarded (ICF/MR): A health related facility which meets the requirement for state licensure to provide care to persons with mental retardation who do not need care in a hospital or skilled nursing facility.

Long Term Care Ombudsman Program (LTCOP): Authorized by the federal Older Americans Act and the S.C. Omnibus Adult Protection Act, the Long Term Care Ombudsman Program investigates any problem or complaint on behalf of any interested party or any client, patient, or resident of defined facilities.

Memorandum of Agreement (MOA): A legal document that binds two or more parties outlining their scope of responsibilities one to the other.

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Appendix B, cont.: DEFINITIONS AND LEGAL AUTHORITY

Mental Retardation and Related Disabilities (MR/RD) Waiver: A 1915 (c) waiver which provides a broad range of special home and community-based services to Medicaid eligible individuals with mental retardation or related disabilities to help them live in the community rather than an institution.

Omnibus Adult Protection Act (OAPA) {S.C. Code Ann §43-35-5 et seq.}: Provides for a system of adult protection in South Carolina and clarifies the roles and responsibilities of the agencies involved. The Act provides a mechanism for problem resolution and interagency coordination to address continuing needs of vulnerable adults and uniformly defines abuse, neglect, and exploitation in all settings. The Act clarifies reporting procedures for allegations of abuse, neglect and exploitation and provides procedures for emergency protective custody. The Act also defines the role of the court in the adult protection system and provides for civil and criminal penalties for abuse, neglect, and exploitation.

Policies: The general principles by which the SC Department of Health and Human Services (DHHS) is guided in its management of the Title XIX program, as further identified by DHHS promulgations and by state and federal rules and regulations.

Provider: Any individual, group, institution, or state agency delivering services to Medicaid recipients and receiving payment for those services.

Recoupment: Funds previously paid to a provider of Medicaid services or sub-grantee of the State's Medicaid Program in error or determined, by post-payment review, to have been improperly paid and returned to the Department or withheld from payments owed to the provider or sub-grantee.

Request for Proposal (RFP): A written or published solicitation issued by an authorized procurement officer for proposals to provide supplies or services, which ordinarily result in the award of the contract to the responsible bidder making the proposal determined to be most advantageous to the State. The award of the contract must be made on the basis of evaluation factors which must be stated in the RFP. From SC Code Ann. §11-35-310(28).

Sanction: A penalty imposed in accordance with SC Code Ann. R 126-400 et seq. of the Department's regulations.

Service Coordinator: A professional who assists Medicaid clients in accessing appropriate and available services. Also known as a case manager.

Service Plan: A document which provides a comprehensive review of a consumer's problems and strengths. Goals are set based on the consumer's identified needs, and interventions are specified to meet those needs. Also referred to as a plan of care.

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Appendix B, cont.: **DEFINITIONS AND LEGAL AUTHORITY**

Service Tracking System (STS): The Service Tracking System is DDSN's system for tracking information about the individuals applying for and receiving services. STS collects intake, eligibility, waiting list, service assignment, and service delivery data for billing and reporting purposes. The STS is primarily maintained by the staff assigned to coordinate services for individuals requesting/receiving services from DDSN.

SC Department of Disabilities and Special Needs (DDSN): The State agency that plans, develops, coordinates and funds services for South Carolinians with the severe, lifelong disabilities of mental retardation and related disabilities, autism, traumatic brain injury, spinal cord injury and similar disabilities.

SC Department of Health and Environmental Control (DHEC): The State health agency. Section 1864(a) of the Social Security Act directs the Secretary of Health and Human Services to use the help of State health agencies when determining if health care institutions meet provider certification to receive Medicaid reimbursement. 42 CFR part 488 sets forth that the State health agency performs surveys to support its certifications.

SC Department of Health and Human Services (DHHS): The State Medicaid agency as specified in 42 U.S.C. §1396 et. seq. and S.C. Code Ann. §44-6-10 et. seq. to administer the Medicaid Program in South Carolina and also functions as the State Unit on Aging.

SC Department of Mental Health (DMH): The State Mental Health Agency which serves adults, children, and their families affected by serious mental illnesses and significant emotional disorders.

SC Department of Social Services (DSS): The State agency authorized by the Omnibus Adult Protection Act of the South Carolina Code of Laws, to investigate all reports of abuse, neglect and financial exploitation of children and adults living in the community (non-institutionalized) and provide services. Services are provided to meet the adults' basic needs and to ensure their safety.

SC State Budget and Control Board: The SC State Budget and Control Board plays a key role in the general management of state government. This institution is unique to South Carolina and provides a broad array of services to other parts of the public sector as well as administrative and regulatory functions. The State Procurement Office (SPO) is responsible for the procurement of all goods and services for South Carolina not provided by the Information Technology Management Office (ITMO) or the Office of the State Engineer (OSE). The SPO issues solicitations, maintains statewide term contracts, and assists agencies with their procurement of goods and services. The Materials Management Office (MMO) is part of the SPO and handles contract awards for goods and services not procured through the ITMO and OSE.

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Appendix B, cont.: **DEFINITIONS AND LEGAL AUTHORITY**

Supervised Living Program I (SLP I): The least restrictive residential placement which still provides staff oversight. Individuals live in apartments, duplexes or other housing and receive staff support and intervention based on personal need.

Supervised Living Program II (SLP II): Similar to the Supervised Living Program I, except residents need more supervision. Staff are on-site or available within three minutes (they usually live in another section of a duplex or apartment).

Title XIX: The Title of the Social Security Act dealing with Medicaid. Codified at Title 42 of the United States Code, Chapter 7, subchapter XIX (42 U.S.C. §1396 et seq.)

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**Appendix C: REVIEW CONDUCTED BY SC DEPARTMENT
OF HEALTH AND ENVIRONMENTAL CONTROL**

On December 20, 2002, representatives from the SC Department of Health and Human Services met with representatives of the South Carolina Department of Health and Environmental Control, Bureau of Certification. The purpose of the meeting was to share a letter to Governor Mark Sanford dated November 25, 2002, by an individual who had been associated with the Babcock Center. The Babcock Center is a non-profit organization providing residential/vocational/health services to individuals with developmental disabilities. Included with the letter was a 32-page narrative identifying 57 issues of concern with the rights and care of the individuals receiving services from the Babcock Center. The SC Department of Health and Human Services requested the Bureau of Certification to assist in investigation of those facilities that fall under its jurisdiction.

The information provided was copied and a preliminary review of the Babcock Center's Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) was done. It was identified that the Babcock Center provided ICFs/MR services within 30 homes. It became clear early in the investigative process that the Bureau of Certification had two tasks related to the documented concerns. They were to:

- 1) Investigate specific individuals/issues identified in the Babcock Center ICFs/MR and;
- 2) Investigate Babcock Center's ability to provide services, within certified ICFs/MR, in light of the 57 concerns identified by the complainant.

Identified deaths, abuse, neglect and/or mistreatment within ICFs/MR

The SC Department of Health and Environmental Control's Bureau of Certification review of the concerns identified within the narrative centered around three issues:

- 1) Death of clients while under Babcock Center's ICFs/MR level of care;
- 2) Abuse and/or neglect of identified individuals under the ICFs/MR level of care; and
- 3) Theft and misuse of consumers' personal funds.

Investigation of concern 1 and 2 fall within the authority of the SC Department of Health and Environmental Control's Bureau of Certification and will be addressed in the following summary. The financial concerns related to allegations centered in ICFs/MR were addressed in this report by the DHHS fiscal team.

**A Limited Scope Review of Financial, Ombudsman,
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Appendix C, cont.: REVIEW CONDUCTED BY SC DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL

On October 1, 1996, the Health Care Finance Administration introduced a new ICF/MR inspection (survey) protocol. This protocol identified/rearranged survey tasks to be completed while a state surveyor is onsite. Task 2 required the state surveyor to review the facility systems to prevent abuse, neglect and mistreatment and to resolve complaints. This would include any client deaths that may have occurred.

Identified client deaths within ICFs/MR

The complainant and additional documentation collected since December 2, 2002 identified 5 individuals who passed away while under the care of the Babcock Center. Review of facility survey information and interview with the state surveyors revealed all five deaths (using the 1996 protocol) were reviewed by state surveyors during annual or follow-up recertification surveys. Three of the clients died during a hospital stay with the remaining two passing away in their home. The ages of the individuals range from 50 to 76 years old. There were no citations or indications of facility misconduct in relation to the identified deaths based on available information.

Of the five facilities surveyed, a citation was identified in one facility in relation to one (of the five) clients. That citation was based on the individual's refusal of medication and the lack of facility response to assist the client in overcoming this difficulty.

New information was identified through this multi-agency investigation in relation to one of the deaths that occurred in 2001. Due to the impact this information may have on an accurate determination, it was decided to conduct onsite re-investigations of the five identified deaths. In addition, the scope of death investigation was expanded, based on available information, to include the total number of known deaths throughout the ICFs/MR in the Babcock system. A total of eleven deaths (in nine ICFs/MR) were identified since 7/1/01.

The investigation of ten of eleven deaths revealed there was no indications of facility misconduct in relation to the identified deaths. During the investigation of the one death that occurred on 5/4/03, citations were made in reference to facility compliance with the federal regulations for ICFs/MR. These citations did not substantiate neglect.

One death investigated (of the eleven) brought about citations of non-compliance with Federal Medicaid regulations for ICFs/MR. This death, which occurred in 2001, through re-investigation of the situation revealed neglect was substantiated. The citations identified are currently under review for facility accountability.

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Identified Client abuse, neglect and/or mistreatment within ICFs/MR

The thirty-two page narrative and additional documentation collected since December 2, 2002 identified eleven individuals who were injured or exploited while under Babcock Center care. From January 16, 2003 through May 16, 2003, nine concerns within nine ICFs/MR were investigated. Two additional situations for two clients had been reviewed during annual recertification surveys (11/19-21/02 and 1/13-16/03). Investigations revealed three substantiated concerns identified based on all available information. However, these did not rise to the level of a citation. All other concerns could not be substantiated at the time of the investigation.

Babcock Center's ability to provide ICFs/MR services due to the identified concerns

Facilities participating in the ICF/MR program are certified for up to a year at a time. These facilities have an Agreement Beginning Date (ABD) and an Agreement Ending Date (AED). Each facility is surveyed between 60 and 120 days before their AED in order to determine if their agreement will be renewed for another annual period of time. The facilities have Federal Regulations they must meet in order to continue to provide services. Citation intensity can be divided into Standard level citations and Condition level citations. The Condition level citations are more serious and the facility could be decertified due to non-corrected condition level citations in a shorter time than non-corrected standard level citations. With this in mind, a comparison was made of Babcock Center's standard/condition level citations average from the year 2000 through 2002.

Review of the data revealed the Babcock Center, though showing an increase in standard and condition averages between 2000 and 2001, was below the respective averages for non Babcock facilities. A second increase between 2001 and 2002 pushed Babcock past the other facilities within the state.

The following is the comparison:

Babcock Center 2000		2001		2002	
Standard Avg.	Condition Avg.	Standard Avg.	Condition Avg.	Standard Avg.	Condition Avg.
7.0	.06 (1 in 16.5)	10.29	.22 (1 in 4.42)	10.92	.25 (1 in 3.85)

All facilities of the state (excluding Babcock Center facilities)					
2000		2001		2002	
Standard Avg.	Condition Avg.	Standard Avg.	Condition Avg.	Standard Avg.	Condition Avg.
8.0	.12 (1 in 8.12)	10.37	.29 (1 in 3.43)	8.31	.09 (1 in 10.50)

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(In other words, Babcock Center in the year 2000 had an average of 7.0 standard citations per facility surveyed. An average of .06 condition level citations per facility was also identified or 1 condition cited per 16.5 facilities surveyed).

The percentage of the total number of facilities/standards cited/conditions cited of the state was compiled. It revealed that for the years 2000 and 2001, the percentage of standards and conditions cited were less than the percentage of facilities Babcock Center operates of the total facilities of the state. However, the percentage of standards and conditions cited during 2002 was greater than Babcock Center's facility percentage. The percentages are provided below:

2000			2001			2002		
Facility %	Standard %	Condition %	Facility %	Standard %	Condition %	Facility %	Standard %	Condition %
22.45	20.05	12.50	21.99	21.85	17.95	20.49	25.26	41.18

(In other words, Babcock Center in the year 2000 made up 22.45 % of the facilities surveyed, 20.05 % of all standards cited and 12.50 % of all condition level citations made during that year).

If a facility, through a recertification survey, has citations identified non-compliant, the facility is given an opportunity to present a plan of correction (POC) to the survey agency. Based on an acceptable POC, the survey agency may recommend the facility be recertified with the attachment of an Automatic Cancellation Clause (ACC) date. The state survey agency must follow-up, in some manner, on all citations. If evidence is identified that indicates a citation (one citation is all that is needed) is not corrected, then the state survey agency will recommend that the ACC date be invoked, or identified as the date the facility must show compliance or become decertified and lose funding. The percentage of Babcock facilities with an invoked ACC is greater than the facility percentage for the state. Review of data from the past three years revealed Babcock Center's percentage of state facilities with standards identified on a follow-up visit that were not corrected and had their ACC invoked.

2000		2001		2002	
Facility %	Invoked ACC %	Facility %	Invoked ACC %	Facility %	Invoked ACC %
22.45	42.42	21.99	54.84	18.33	54.55

(In other words, Babcock Center in the year 2000 made up 22.45 % of the facilities surveyed and 42.42 % of all invoked ACCs made during that year).

One strategy to increase facility accountability is to recommend a reduced contract period from 12 months to 6 months. The state survey agency uses this if a facility has condition level

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citations two years in a row. Over this past year, Babcock Center has had 2 of the 30 ICFs/MR to have a 6 month contract recommended due to Condition level citations over two consecutive recertification surveys.

Another strategy to increase accountability is to perform multiple certified ICFs/MR visits at the same time focused on an issue common to all facilities to be surveyed. In December 2002, while conducting an annual survey, a surveyor identified day program staff providing attention to individuals from the facility that the surveyor was observing. It seemed that other clients, who were not living at the facility the surveyor was surveying, were not getting the attention they needed. The surveyor generated a memo to file outlining the concerns he had. Because of this, the Bureau of Certification made simultaneous unannounced visits to 7 ICFs/MR that feed into this day program. Based on observation, interview and verified by record review, 5 ICFs/MR were not in compliance with federal standards. These citations were provided to the facilities for plans of correction. Future surveys will continue to evaluate compliance with the tags associated with care and services provided at day programs

DHEC Certification Recommendations

The Babcock Center must insure that each facility be able to timely access information and provide all documentation of abuse, neglect, mistreatment, or unusual occurrences that impact on client health/safety for the time frame identified. That would include information for individuals who no longer reside at the facility.

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Appendix D: LETTER FROM DDSN

June 24, 2003

William L. Wells, CPA
Deputy Director
Health and Human Services
P.O. Box 8206
Columbia, SC 29202-8206

Dear Mr. Wells:

At our meeting on June 17, 2003, you requested in writing several of the issues that were discussed concerning the way DDSN pays their local DSN boards versus the way DDSN is reimbursed from DHHS.

DDSN's payment system to the DSN boards was changed to accommodate our consumers in two important ways: (1) To respond to their needs as they are identified in their service plans and, (2) To facilitate flexibility in choice of service and service provider. The funding band approach provides a mechanism to identify the resources available on an annual basis for the consumer and his/her planning team. The cash is provided to boards a month in advance for almost all the services so as to assure that there are sufficient resources available to meet consumers' needs in a timely manner. This is only done for the DSN boards, and those grandfathered in as DSN boards such as Babcock Center. They act as the fiscal agent for the resources which are tied to individual consumers. The county DSN boards are created as public entities to plan, administer, provide or arrange services for DDSN eligible consumers per South Carolina Code 44-20-375. They are the single point of entry into DDSN's system and act just as a county office does at DSS or DHEC. Therefore, DDSN and state law treats them as an affiliated organization.

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Appendix D, cont.: LETTER FROM DDSN

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Having the band payment available as an annual rate paid monthly in advance improves cash flow and assures availability for reimbursing a private entity if the consumer chooses another provider. The band payment is simply a daily rate multiplied by 365 days to identify the total annual resources available to the consumer to meet his/her needs. This is in many ways the same as DHHS paying daily rates to various nursing home providers or residential care providers that include many services covered by the daily payment. In addition, the federal government required DDSN to bundle a number of services when the residential and day habilitation services were created for the MR/RD Waiver.

For new consumers, band levels are determined using a level of care instrument called ICAP or information gathered from a variety of needs assessments which are incorporated into the plan. The information collected determines the level of care needed for the individual consumer. The various payment levels are based on historical cost reports that identify the cost of services for the various levels of need. Using real cost information helps to ensure that sufficient funds are available to provide the needed services. In addition, DDSN's independent quality assurance contractor reviews the service plans and accompanying documentation and even performs consumer satisfaction surveys as an additional measure to assure needs are identified and the appropriate services are performed.

The process starts with DDSN making a month's advance payment to the DSN boards for consumers whether or not they are Medicaid eligible or the service is Medicaid reimbursable. For DDSN, Medicaid is a revenue source and DDSN up fronts the service delivery dollars using State dollars appropriated to DDSN by the General Assembly. These dollars pay for services rendered during the month. By the 5th working day of the next month, the DSN boards report the units of service provided as determined by the DHHS contract with DDSN. DDSN then bills DHHS for Medicaid eligible services delivered and DHHS reimburses DDSN usually by the end of that next month, almost two months after DDSN has already paid for the services. Since the DSN boards are affiliated organizations each is required to submit to DDSN Medicaid cost reports which are incorporated into Medicaid cost reports for DDSN services. See Attachments A and B which explain cash flow and timeframes.

When the services are billed to DHHS for Medicaid reimbursement the service matches DDSN's contract with DHHS in terms of units and rates of service. The cost reports either support the reimbursement or settlements occur.

Each private provider still bills the service and is reimbursed after the service is provided at a set rate as is normal for private providers. Their costs and units are included when appropriate within DDSN's cost reports if the DDSN system reimburses them.

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Appendix D, cont.: LETTER FROM DDSN

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This funding system is basically the same system regarding the DSN boards as existed when the various Medicaid contracts were created. Management at DHHS over the years has recognized that the DSN boards are DDSN's county entities. Changes have been incorporated to increase and encourage more choice for consumers, both for services needed and providers available to render services.

These changes have been discussed over several years. The KPMG Peat Marwick July 1998 audit of the South Carolina health and human services agencies discussed the change in payment methodologies on pages 7-8, introducing more consumer choice on pages 7-9, and more flexibility through the waiver on pages 7-10 (please see Attachment C). In addition, these changes have been discussed at meetings where the previous directors of DHHS were in attendance. They have been explained at many DDSN Commission Meetings with DHHS program staff attending. And they have been discussed at meetings between the two agencies' programmatic staff.

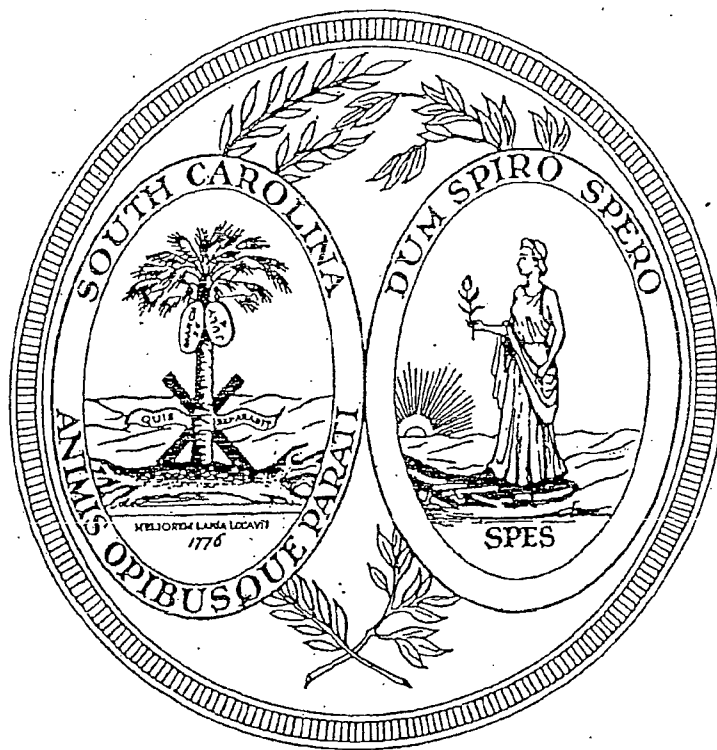
I believe this covers many of the issues we discussed at the meeting. If you need any further information, please call me.

Sincerely,

Bill Barfield
Deputy State Director

BB/sjd

Attachments

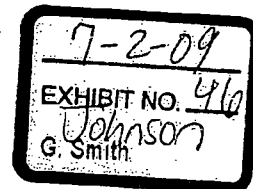


South Carolina Department of Health and Human Services
Director's Internal Audit Report

A REVIEW OF THE MR/RD WAIVER AS OPERATED BY
THE DEPARTMENT OF DISABILITIES AND
SPECIAL NEEDS

Performed by the Division of Audits

February 28, 2006



Mims 1279

EXECUTIVE SUMMARY

The Division of Audits in the SC Department of Health and Human Services (DHHS) has conducted a limited scope audit of the Medicaid Mental Retardation/Related Disabilities (MR/RD) Waiver program. Through this waiver program, individuals with mental retardation and related disabilities receive a broad range of services to assist them to live in the community instead of an institution. This program is a joint effort of DHHS and the SC Department of Disabilities and Special Needs (DDSN). DHHS provides administrative oversight and monitoring to ensure compliance with Medicaid requirements and the health, welfare and safety of the waiver beneficiaries. DDSN has the primary responsibility for the daily operation of the program.

DHHS has both a contract and a memorandum of agreement with DDSN for the management of the MR/RD waiver program. Waiver services are provided by a network of Disabilities and Special Needs (DSN) Boards and private providers. In federal fiscal year 2003, total MR/RD waiver expenditures were \$157,878,607 before cost settlement, with 69.7% federal Medicaid funds and 30.3% state and other funds provided by DDSN.

We reviewed the management and cost of the MR/RD waiver program in order to determine whether Medicaid funds are spent effectively, efficiently and in compliance with contractual, state, and federal Medicaid requirements, and also to determine whether there is an effective system of oversight to ensure clients are properly served. Concerns about DDSN allocation and expenditures of Medicaid funds, as well as issues that surfaced in FY 2003 during a review of a major DDSN provider, The Babcock Center, Inc., were the impetus for this review. While this audit focused on DDSN and DHHS management of the MR/RD waiver program, we tested certain program and financial aspects in-depth at two major providers: The Disabilities Board of Charleston County (Charleston) and The Babcock Center, Inc. (Babcock).

Overall, we identified several areas where both DDSN and DHHS need to improve the oversight of the MR/RD waiver program. Findings are listed below.

Quality Assurance, Sanctions, and Inspections

Three major programs review home and community-based waivers and other services provided to DDSN clients to ensure that quality of care and program standards are met: (1) First Health Services of South Carolina, Inc., reviews all DDSN home and community based programs, using national benchmarks and quality indicators, in order to determine client outcomes, consumer satisfaction, and adherence to policies and procedures; (2) the DDSN State Licensing Division inspects DSN Board programs and residential facilities; and (3) the University of South Carolina, under contract with DHHS, has conducted on-site quality reviews of DSN Boards for compliance to waiver program standards. We noted several issues and impediments to the effectiveness of these programs.

- According to DDSN management staff, the goal of the First Health reviews has been quality improvement, not necessarily compliance with Medicaid requirements. Because many of the standards used to determine service quality (quality indicators) are unique to DDSN, and were developed without input by DHHS, the First Health quality assurance system does not fully meet the needs of DHHS for waiver oversight.
- Some of the key quality indicators reviewed by First Health are also required Medicaid components. For example, all waiver clients are required to have a current single plan (plan of care) and level of care determination in place before waiver services can be billed to Medicaid. Failure to meet these standards results in an unallowable Medicaid payment, which must be refunded to DHHS.
- We found, however, the amount of sanctions applied to the DSN boards, and the money DDSN has refunded to DHHS for non-compliance with its standards, does not accurately reflect actual Medicaid costs and is not a full repayment.
- For example, for fiscal years 2003 and 2004, we determined that Medicaid payments to DDSN totaled \$796,530 for MR/RD waiver services provided to clients during the time their single plans or level of care determinations were either missing or invalid. Of this amount, we could verify only \$191,576 in refunds that DDSN made to DHHS as the result of sanctions identified by First Health reviews. DDSN should pay back the federal share for these unallowable Medicaid payments or \$422,077.
- Statistics reported by First Health show a steady improvement in DSN boards' adherence to quality indicators from FY 2003 to FY 2005. However, there are 265 quality indicators, and non-compliance with key indicators such as having a valid plan of care can be diluted by 100% compliance with less important indicators
- DDSN has the responsibility for licensure and certification of the residential and day program facilities for waiver consumers. DDSN has closed or de-certified a small number of community residential facilities in response to serious licensing and certification violations found during annual licensing reviews. DDSN recently added more staff to this process in order to conduct a follow-up review when there is a significant deficiency related to health, safety, or management of funds.
- DHHS does not receive DDSN state licensing inspection reports of waiver facilities and programs, even if serious deficiencies reflecting abuse or neglect of waiver consumers are discovered.
- DDSN licensing inspections found a number of deficiencies at Babcock, including homes that were unsanitary and in need of repair and maintenance; a lack of background checks on caregivers; and multiple medication errors. In response to this and other problems, DDSN has required Babcock Center to downsize by 50%.

Waiver Funding System

DDSN uses a band payment system to provide the DSN Boards with funds in advance in order to operate the waiver and other programs. For clients with special needs, DDSN also provides outlier funding. We concluded that the current method for funding the waiver program is similar to average, per diem payments made for other types of Medicaid services, although it is difficult to compare band payments with actual Medicaid reimbursements for services.

- We found that while some types of residential facilities were less expensive for the boards to operate, and thus the boards had revenues in excess of costs for these homes, this did not seem to be influencing where clients were placed.
- Average costs for a small number of individuals in the MR/RD waiver program exceeded the average cost of care for an ICF/MR. However, we found no indications that the waiver program does not meet required financial conditions.
- DDSN has improved its process to ensure that all residential outliers are re-justified in writing, and that the consumers' medical and/or behavioral conditions show the continued need for outlier funding.
- We reviewed a sample of MR/RD clients who were or had been receiving outlier funding. Although we found minor discrepancies in the clinical records, we concluded that the continued need for outlier funding was sufficiently documented.

Cost Reports And Administrative Expenditures

We reviewed regional cost reports, audited financial statements, and other documentation for FY 2003 to determine whether MR/RD waiver costs are properly settled in compliance with Medicaid reimbursement methodologies and whether appropriate fiscal oversight of the waiver is provided. These cost reports also are critical since they are the basis for cost settlements made by DHHS to DDSN, and for setting future rates for Medicaid reimbursement for waiver services. We concluded that there is a lack of fiscal oversight of the MR/RD waiver program by both DHHS and DDSN.

- DDSN's administrative costs are not separated from the direct service costs but rather are included in total waiver costs that become the Medicaid rate paid for waiver services. For the two boards reviewed, waiver allocated costs and central office administration amounted to approximately 14%-17% of direct service costs.
- In 2003 the DSN boards, including Charleston and Babcock, had costs higher than the band payments received from DDSN plus other revenues, but their accumulated fund balances provided a cushion. During the same year, total cost for waiver services was lower than the Medicaid funds reimbursed to DDSN, and therefore DDSN has made an interim settlement to DHHS of \$2,150,000. There is a wide variance in actual DSN Board costs for waiver services.

A Review of the MR/RD Waiver as Operated by the Department of Disabilities and Special Needs

- We identified some unallowable room and board-related expenditures in the waiver cost reports: \$182,450 for Babcock CTH II homes and \$54,446 for Charleston CTH II homes.
- There have been no reimbursement audits performed on the regional cost reports compiled by DDSN, and DHHS staff in the Division of Ancillary Reimbursements are not reviewing audited financial statements or DDSN reconciliation schedules that support costs reported in the waiver reports. There are no written audit procedures to guide the waiver report desk review process.

Chapter 1: INTRODUCTION

Background

The Division of Audits in the SC Department of Health and Human Services (DHHS) has conducted a limited scope audit of the Medicaid Mental Retardation/Related Disabilities (MR/RD) Waiver program. Through this waiver program, individuals with mental retardation and related disabilities receive a broad range of services to assist them to live in the community instead of an institution. This program is a joint effort of DHHS and the SC Department of Disabilities and Special Needs (DDSN). DHHS provides administrative oversight and monitoring to ensure compliance with Medicaid requirements and the health, welfare and safety of the waiver beneficiaries. DDSN has the primary responsibility for the daily operation of the program.

In federal fiscal year (FFY) 2003, 4,654 Medicaid-eligible clients with mental retardation and related disabilities received home and community-based services in South Carolina. Total MR/RD waiver expenditures before any cost settlement for FFY 2003 were \$157,878,607 — 69.7% federal Medicaid funds and 30.3% state matching funds. DDSN provides the matching funds from its state appropriation and other sources.

The MR/RD waiver program offers an array of services to Medicaid-eligible clients as an alternative to institutional care in an intermediate care facility for the mentally retarded (ICF/MR). These services include:

- Personal care services,
- Habilitation services designed to help individuals live in the community and achieve and maintain their maximum functioning level,
- Environmental modifications, such as ramps and widening of doorways,
- Respite care,
- Specialized medical equipment, supplies and technology,
- Adult companion services,
- Adult day health services,
- Nursing services,
- Private vehicle modifications, and
- Behavioral and psychological services.

In addition, waiver recipients receive extended state plan Medicaid services such as two extra prescription drugs each month; physical, speech, and occupational therapy; and adult dental and vision services.

Through a contract with DHHS for the *Purchase and Provision of Home and Community-Based Mental Retardation/Related Disability Waiver Services*, DDSN provides home and community-based services to Medicaid-eligible clients. In addition, a *Memorandum of Agreement between DHHS and DDSN for the Provision of Home and*

Community-Based Waiver Services establishes how the two agencies will coordinate program activities and conditions for reimbursement. Under the SC Code of Laws Section 44-20-240, DDSN was created with the authority over all of the state's services and programs for the treatment and training of persons with mental retardation and related disabilities. DDSN uses a network of 39 county Disabilities and Special Needs (DSN) Boards, plus other service organizations, which provide waiver services directly to clients or which sub-contract with private providers. County DSN Boards are authorized to plan for, administer, or provide services to people with mental retardation and related disabilities. (SC Code of Laws Section 44-20-375 [C]). For example, the Babcock Center, Inc., is considered a local DSN Board and serves a four county area.

The "entry point" for potential waiver recipients is the local DSN Board, which screens applicants and then links them with a service coordinator. The service coordinator determines eligibility for services, assesses the client's care needs, and creates a written plan of care, called the "single plan". Medicaid will pay only for those waiver services that are specified in this plan. The DSN Boards provide most (94% for FY 2003) of the services funded through the waiver as well as service coordination, although the consumer is required to be given a choice of providers whenever possible.

Audit Objectives and Scope

We have reviewed the management and costs of the MR/RD waiver program in order to determine whether Medicaid funds are spent effectively and efficiently and in compliance with applicable contractual, state, and federal Medicaid requirements, and also to determine whether there is an effective system of oversight to ensure funds are spent on client needs. Concerns about DDSN's allocation and expenditures of Medicaid funds, as well as issues that surfaced in FY 2003 during a limited-scope review of a major DDSN provider, The Babcock Center, Inc., were the impetus for this review. Our specific audit objectives are as follows:

- Determine whether quality assurance activities conducted by both DDSN and DHHS effectively ensure clients are properly served, and whether results of quality assurance activities are reported and deficiencies are appropriately addressed.
- Determine whether the capitated or "band" payment system implemented by DDSN ensures that adequate funding is provided to meet clients' needs.
- Determine whether additional or "outlier" funding is provided to clients whose single plans justify the need for extra services, and whether this funding is actually spent on these clients.
- Determine whether waiver program costs are properly settled in compliance with Medicaid reimbursement methodologies, and whether safeguards are in place to ensure that only allowable costs are born by the Medicaid program.

- Determine whether both DDSN and DHHS provide appropriate fiscal oversight of the MR/RD waiver.

We reviewed costs and services only for DDSN clients who are MR/RD waiver recipients, and did not review any intermediate care facilities for the mentally retarded (ICF/MR). Even though the level of care provided and clients' needs may be similar to that in a community-based setting, ICF/MRs are institutions and therefore different licensing and certification requirements apply. We did not review the Head and Spinal Cord Injury Waiver (HASCI) or other Medicaid services provided by DDSN, such as early intervention and service coordination. We also did not review some components of the waiver program, including level of care, plan of care, and freedom of choice, as these are reviewed by DHHS and DDSN through their quality assurance programs. The time period of our review ranged from FY 2002 through FY 2004. Appendix A contains definitions for terms and the legal authority.

In general, we identified several areas where both DDSN and DHHS need to improve oversight of the MR/RD waiver program. The following pages detail multiple findings and recommendations involving quality assurance, payment of sanctions, serious licensing discrepancies at residential facilities, unallowable waiver costs, and a lack of financial audits.

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Chapter 2: REVIEW OF QUALITY ASSURANCE EFFORTS

Background

One of our audit objectives was to verify that quality assurance efforts put forth by the SC Department of Disabilities and Special Needs (DDSN) and the SC Department of Health and Human Services (DHHS) are substantial and effective in ensuring that the requirements of the MR/RD waiver are being met. A second objective was to determine whether findings noted during the QA reviews are properly reported, corrective action plans are developed and implemented, and appropriate follow-up is conducted to ensure problems have been satisfactorily addressed. Both DHHS and DDSN are responsible for monitoring care provided to Medicaid MR/RD waiver clients.

There are three major programs that review home and community-based waivers and other services provided to DDSN clients to ensure they meet applicable quality of care and programmatic standards:

- First Health Services of South Carolina, Inc. (First Health), is under a five-year contract with DDSN to conduct a quality assurance review program in accordance with a request for proposal awarded in December 2001. First Health reviews all Disabilities and Special Needs Boards (DSN Boards) and qualified providers annually, and issues a report of findings to DDSN and the DSN Board reviewed. In addition, First Health is required by its contract to conduct consumer interviews, follow-up reviews, and special circumstance reviews. First Health reviews include DDSN home and community-based services and are not just limited to MR/RD waiver services or Medicaid clients.
- The DHHS Division of Waiver Management is contracting with the University of South Carolina to conduct on-site QA reviews of the 39 DSN Boards on a scheduled basis. Currently the division is restructuring its QA process to incorporate enhanced CMS quality oversight requirements for waiver programs.
- The DDSN State Licensing Division inspects all DSN Boards and qualified providers on an annual basis, as DDSN is responsible for the licensing and/or certification of home and community based facilities. The SC Department of Health and Environmental Control licenses "institutional" facilities such as intermediate care facilities for the mentally retarded (ICF/MR), and community residential care facilities.

Issues Involving First Health's QA Reviews

We have reviewed the quality assurance system administered by DDSN through its external contractor, First Health Services, and have determined that its effectiveness in ensuring compliance with Medicaid requirements could be improved. We reviewed the

First Health QA process in general as well as the outcomes of First Health reviews for multiple DSN Boards, and calculated the amount owed to Medicaid based on First Health findings of serious service deficiencies. We also reviewed specific First Health reports for the Disabilities Board of Charleston County and the Babcock Center, Inc.

According to DDSN management staff, the goal of the First Health reviews has been quality improvement, not necessarily compliance with Medicaid requirements, although compliance and quality improvement are obviously related. However, DDSN views the First Health QA process as its "own" system, and in fact DHHS has operated a separate monitoring process for waiver services through a contract with USC. We also found that the sanctions imposed as a result of DSN Boards' failure to comply with First Health's quality indicators do not result in a complete and accurate repayment to Medicaid for funds spent inappropriately.

Even though DDSN developed the First Health process to meet its own quality assurance goals, the costs for the First Health contract are allocated to the Medicaid services DDSN claims for reimbursement. About 70% of the costs for First Health are reimbursed by federal Medicaid funds. The five-year cost for the First Health contract is \$4,481,934. Therefore, both DHHS and DDSN should coordinate quality assurance reviews to make sure this process meets the goals and needs of both agencies.

FOCUS OF FIRST HEALTH REVIEWS

In the waiver submitted to CMS for approval, DHHS certifies that it "...will have in place a formal system by which it ensures the health and welfare of the individuals served on the waiver, through monitoring of the quality control procedures described in this document...Monitoring will ensure that all provider standards and health and welfare assurances are continuously met, and that plans of care are periodically reviewed to ensure that services furnished are consistent with the identified needs of individuals."

The First Health quality assurance system, as it has been developed and implemented by DDSN, does not fully meet the needs of DHHS for waiver oversight, for the following reasons:

- While core standards (quality indicators) for the waiver program and the First Health QA process are essentially the same, many of the quality indicators reviewed by First Health are unique to DDSN.
- First Health goes well beyond assessing compliance with program requirements because it also is geared toward measuring personal outcomes and consumer satisfaction and providing an assessment of consumer services. First Health reviews a sample of DDSN clients, not all of whom are Medicaid clients, and also reviews other services that are not part of the MR/RD waiver, including service coordination, early intervention, and head and spinal cord injury (HASCI) waiver services.

- Sanctions resulting from First Health reviews are not necessarily linked to Medicaid non-compliance, have been capped by DDSN, and have not been reported timely to DHHS.

First Health Standards

The quality indicators used to assess the MR/RD waiver and other DDSN programs were developed by DDSN in conjunction with First Health. DHHS had no input into the assessment standards, although we found no evidence that such input was either required or requested by DHHS. The First Health QA system utilizes National Core Indicators. These indicators or benchmarks are the result of collaboration among state agencies participating in the National Association of State Directors of Developmental Disabilities Services and the Human Services Research Institute, with the goal of developing a systematic approach to performance and outcome measurement. Through this collaboration, participating states pool their resources and knowledge to create performance monitoring systems, identify common performance indicators, work out data collection strategies, and share results.

First Health is required to attempt to interview approximately five percent of DDSN's consumers annually, as well as conduct provider surveys and satisfaction surveys. (Not all consumers consent to the interview.) The QA process utilizes quality review tools that incorporate the National Core Indicators to compare outcomes with nationally recognized benchmarks. The focus of the First Health QA reviews is not just the waiver program and Medicaid clients, but all DDSN community-based programs and clients. These review tools cover several areas:

- Administrative quality indicators – administrative and fiscal areas, based on DDSN policies.
- General agency quality indicators – the single plan, service operation, and waiver funded services.
- Early intervention quality indicators – referral intake, individualized family service plan, family training, service notes, other documentation, waiver funded services, and BabyNet services.

As of March 2005, there were 265 quality indicators – 44 administrative, 112 general agency, and 109 early intervention. Some of the key quality indicators reviewed by First Health are also required Medicaid components. For example, all waiver clients are required to have a current single plan (plan of care) and level of care determination in place before waiver services can be billed to Medicaid. These indicators are reviewed both by First Health and DHHS's own reviewers for compliance. However, many of the First Health standards go beyond minimum requirements in order to assess service quality and outcomes. At the same time, other components of MR/RD waiver services might not be reviewed and reported by First Health.

The Code of Federal Regulations states, "In order for an agency to qualify as the Medicaid agency—The agency must not delegate, to other than its own officials, authority to—Exercise administrative discretion in the administration or supervision of the plan, or issue policies, rules, and regulations on program matters." [42 CFR 431.10 (e) (1)] Under the Memorandum of Agreement, "SCDHHS is the final authority and shall make all final decisions regarding all matters related to the administration of the MR/RD and HASCI waivers." Therefore, DHHS should have final approval on the quality indicators used by DDSN and First Health to evaluate Medicaid services.

SANCTIONS FOR NON-COMPLIANCE WITH STANDARDS

DDSN sanctions the DSN Boards that fail to meet critical First Health quality indicators. If the DSN Boards and other providers fail to meet certain quality indicators, then they must repay DDSN the funds they received for services that did not meet the standard (sanctions). According to DDSN executive staff, they initiated a process of sanctioning the DSN Boards in order to improve compliance with the quality indicators considered by DDSN to be a priority. First Health QA reports identify these quality indicators. Examples of sanctionable quality indicators include the single plan was not reformulated or completed annually, or the intake process was not completed within required time frames. Because DHHS has paid DDSN for the services provided to Medicaid clients, once DDSN levies a sanction on a DSN board, it should refund the federal Medicaid share to DHHS.

However, we found that DDSN did not base these sanctions on the amount Medicaid should have been refunded for unallowable payments made for MR/RD waiver services. The money DDSN has refunded to DHHS for non-compliance with its standards does not accurately reflect actual Medicaid costs and is not a full repayment, for the following reasons.

First, DDSN bases the amount of the board sanctions on the "band payment" sent to the board prior to service delivery. DDSN uses the following calculation to determine the repayment amount for each sanctionable indicator:

- Full formula: $1/365^{\text{th}}$ of the payment (either the band payment or the payment for the individual service) for each day the file was out of compliance.
- Capped formula: Full formula limited to 30 days maximum. Additionally, cites related to training goals are calculated at one-half of $1/365^{\text{th}}$.

As discussed in Chapter 3, the band payment is not the same as the amount Medicaid reimbursed DDSN for the MR/RD waiver or other services. Since band payments are funds that DDSN advances to DSN Boards based on average, expected costs, the amount Medicaid reimbursed DDSN for a service could be more or less than the amount the board was given to provide it.

Second, not all the "sanctionable indicators" found in the First Health reviews are Medicaid discrepancies or improper payments. For example, DDSN might apply a sanction to a board for failing to provide new training goals to a client once he or she has

mastered the goals. This is not necessarily a discrepancy that DHHS Medicaid reviewers would sanction for, although it does indicate low quality of services.

Finally, DDSN caps the amount it would sanction a board to 30 days in order to shield the boards from large repayments. For example, if a consumer in the MR/RD waiver program lacked a valid plan of care for 150 days, DDSN would base the sanction on 30 days worth of band payments, rather than the waiver services actually paid during the 150 days.

We determined the amount DDSN should have refunded DHHS for Medicaid payments for instances when a DSN board was in clear violation of MR/RD waiver requirements. This determination was based on information provided by DDSN regarding the First Health sanctions applied to all the DSN Boards reviewed for two fiscal years, 2003 and 2004. We determined the amount of Medicaid reimbursement for those clients, where First Health found that:

- The single plan (plan of care) or family service plan was out of date or there was no plan;
- The services were not adequately documented on the plan; and
- The level of care determination was out-of-date or not made in a timely fashion.

The reason we focused on these three discrepancies is that these conditions *must* be met before DDSN can claim federal Medicaid reimbursement for the services rendered, and both First Health and DHHS review for compliance to these standards. In the waiver agreement, DHHS certifies that "FFP (federal financial participation) will not be claimed for waiver services furnished prior to the development of the plan of care (single plan). FFP will not be claimed for waiver services which are not included in the individual written plan of care." Furthermore, the waiver agreement specifies that:

The plan of care is the fundamental tool by which the State will ensure the health and welfare of the individuals served under this waiver. As such, it will be subject to periodic review and update. These reviews will take place to determine the appropriateness and adequacy of services, and to ensure that the services furnished are consistent with the nature and severity of the individual's disability. The minimum schedule under which these reviews will occur is every 12 months.

In a similar fashion, DDSN is required to ensure that a level of care (LOC) determination is performed and up-dated annually to ensure the individual is still eligible for services. Therefore, having a valid plan of care and meeting LOC eligibility requirements are key components of the waiver program, and failure to meet these requirements results in an unallowable Medicaid payment which should be refunded.

We used information from the First Health reviews for FY 2003 and FY 2004 to identify 71 clients receiving services under the MR/RD waiver program, and the amount that, according to DDSN, they sanctioned the DSN Boards for the discrepancies in the services to waiver clients. We then used Medicaid claims reports to determine what was actually

paid to DDSN for the dates of service when the waiver clients did not have a valid single plan or LOC determination. Table 1 shows the difference between these two amounts.

Table 1: Unallowable Medicaid Payments for MR/RD Waiver Services

First Health Review Year	Total Medicaid Paid for MR/RD Waiver Services	DDSN Sanctions Paid for Payment Discrepancies	Difference
FY 02-03	\$336,186	\$44,012	\$292,174
FY 03-04	\$460,344	\$44,308	\$416,036
TOTAL	\$796,530	\$88,320	\$708,210

Source: First Health reports for Contractual Compliance Review; DHHS SURS reports.

Notes: (1) Total Medicaid reimbursement for MR/RD waiver services furnished to Medicaid eligible clients during only those dates when the single plan or level of care determination was missing, invalid, or not timely.

(2) Amount DDSN has required the DSN Boards to pay back for these discrepancies and clients.

This does not take into account billing discrepancies or other overpayments which should be refunded to Medicaid, but which cannot be clearly distinguished in the reports furnished by First Health. Therefore, the sanctions assessed as a result of the First Health reviews are not an accurate reflection of the Medicaid funds that have been spent inappropriately by the DSN Boards.

The DHHS contract with DDSN for waiver services states, "SCDDSN...agrees that it shall be solely responsible for any costs that are not in accordance with the Medicaid State Plan, SCDHHS policies, Medicaid regulations and the terms of the waiver". The contract also states, "SCDDSN shall be solely responsible for the performance of any subcontractors". Therefore, DDSN is responsible for repaying DHHS the federal portion of unallowable costs, minus what it has already returned as a result of the First Health findings.

Tracking Sanctions a Problem

We then reviewed the amount of funds DDSN reports it paid back to DHHS for these discrepancies. DDSN reports that it has sanctioned the DSN Boards a total of \$606,135 for sanctionable discrepancies identified by First Health reviews during fiscal years 2003-2004, and has subsequently refunded the Medicaid share of \$423,987 to DHHS. Again, these sanctions were based on payments made by DDSN to the boards, and not on actual Medicaid payments to DDSN, and also covered all services, not just MR/RD waiver. In addition, we found it impossible to tie refunds to Medicaid with corresponding First Health sanctions because of the way this information is reported by DDSN.

Once sanctions against a DSN Board are determined, DDSN is responsible for informing DHHS of the Medicaid share so these funds can be taken out of the Medicaid payment to DDSN. DDSN writes a memorandum to appropriate DHHS program staff stating,

"DDSN has identified Medicaid reimbursement claims, where billing errors have occurred. Accordingly, we are requesting the Department of Health and Human Services to adjust future remittance advices for DDSN to refund these funds to the Medicaid program." DHHS staff are supposed to reduce the reimbursement to DDSN by posting the sanctioned amounts as a "gross debit adjustment" to the Medicaid Management Information System (MMIS).

The letters from DDSN do not indicate whether debit adjustments are the result of sanctions from First Health QA reviews nor do they specify what discrepancies were found and the DSN Boards involved. For example, in February 2005, DHHS staff received a debit adjustment request from DDSN in the total amount of \$278,630.77 for MR/RD and HASCI waiver recipients. DDSN did not provide supporting documentation to show that part of this debit request was the accumulated result of several First Health reviews of multiple DSN Boards that had occurred over the prior two years.

The debit adjustments reported by DDSN also include adjustments based on reasons other than First Health reviews. The funds repaid by DDSN appear to be a mixture of First Health sanctions and corrections for various billing errors, and we could not tie the debit request letters from DDSN back to the First Health sanction reports. Also, because of the process used to calculate and refund the Medicaid share of sanctions imposed from First Health reviews, it is possible that DDSN has repaid to DHHS funds that were not considered overpayments from a Medicaid standpoint.

However, the most we could verify that was actually paid back to DHHS, resulting from sanctions assessed to the DSN Boards because of discrepancies identified by First Health in reviews for FYs 2003 and 2004 and involving only MR/RD waiver clients, was \$191,576. This would include all First Health sanctions applied for any reason to the DSN Boards, not just those involving the timeliness of the single plan and level of care determinations. Therefore, allowing DDSN the \$191,576 in debit adjustments we could trace, DDSN is responsible for \$422,077 - the federal share of remaining unallowable Medicaid payments, as shown in Table 2.

Table 2: Required Pay Back for DDSN, FY 2003 and 2004 Combined

Total Medicaid Paid MR/RD Waiver Services (1)	DDSN Debits Waiver Services (2)	Difference	Combined FMR Rate (3)	Amount DDSN Pay Back
\$796,530	\$191,576	\$604,954	69.77%	\$422,077

Notes:

- (1) Total Medicaid reimbursement for MR/RD waiver services furnished to Medicaid eligible clients during only those dates when the single plan or level of care determination was missing, invalid, or not timely, based on First Health reviews for FY 2003 and FY 2004.
- (2) Debit Adjustments made to DDSN Medicaid reimbursement for MR/RD Waiver Services that could be traced to First Health sanctions applied for any MR/RD waiver services reviewed during FYs 2003 and 2004.
- (3) Average of the federal composite match rate of 69.69% applied in FY 02-03, and 69.85% applied in FY 03-04.

REVISIONS NEEDED IN QA PROCESS

Because the First Health reviews were not designed as a Medicaid compliance tool, DHHS has developed its own process of external reviews of clients' records. This process is currently being revised. Therefore, we find that the timing is right to re-design both processes in order to have a more unified and consistent approach to quality assurance that meets the goals of both agencies.

In order to conduct more focused waiver reviews, the Division of Waiver Management within DHHS has contracted since July 1, 2002, with the University of South Carolina, Centers for Disability Resources (USC) for quality assurance record reviews for the HASCI (Head and Spinal Cord Injury) and MR/RD waivers. The USC reviewer, in conjunction with DHHS program staff, has reviewed approximately 24 DSN Boards. DHHS recouped the federal portion of \$99,417.89 from these reviews in FY 2004 and identified approximately \$353,000 in potential recoupments in FY 2005. (DDSN has appealed part of this recoupment.) Most of the findings discovered during these QA reviews were related to level of care re-evaluations, timely plan of care re-evaluations, and incorrect billing to Medicaid for residential or day habilitation services. The results of these findings have led DHHS program staff to require DDSN to issue policy memorandums and hold special training sessions for DSN Board staff regarding identified findings.

In effect, the waiver program was being reviewed under two different programs that were developed separately and used different review tools and samples, although both reviews contained similar elements. The federal Centers for Medicare and Medicaid Services (CMS) conducted a review of South Carolina's MR/RD waiver. The CMS draft report, dated February 2004, was generally positive about waiver quality assurance. However, CMS offered two recommendations in its report relating to quality assurance. The first recommendation encouraged DHHS and DDSN to coordinate and collaborate on findings noted from their respective QA systems. CMS also recommended that DDSN "...develop a detailed reporting system of their QA activities and statistical sampling to be reported to DHHS and discussed at the quarterly meetings".

As noted, DHHS is currently revising its own QA process in order to better delineate its quality management oversight responsibilities for the two home and community based waivers operated by DDSN, and has retained the services of a CMS national quality contractor to strengthen its oversight of the waiver. This contractor has recommended that DHHS and DDSN identify any gaps in DDSN's quality management system for producing and using evidence for oversight purposes. According to this contractor, "It is only once DHHS has a firm understanding of DDSN's QM system and its ability to produce and use evidence (and to share this evidence with DHHS) that DHHS will be in a position to determine strategies appropriate to its oversight role." The contractor also recommended that DHHS request "DDSN produce evidence based on a representative sample of waiver participants" and that "DDSN increase case management contacts with participants". The contractor will also be reviewing First Health findings for accuracy and appropriateness, and according to DHHS program staff, they plan to incorporate

licensing and certification reports of community-based programs and critical incidents reports for MR/RD waiver clients into this review as well. According to DDSN, they also have obtained a contractor to evaluate the validity and reliability of its statewide quality assurance/quality improvement program.

DDSN and DHHS also had differing systems for assessing financial sanctions on DSN Boards for deficiencies identified under the two review systems, although many of the standards reviewed were similar. If DDSN wishes to continue using sanctions in order to enforce quality standards, the funds returned to DHHS should be in line with what Medicaid paid for the services. This will require staff from both agencies to jointly develop a reporting process that clearly shows the First Health findings, the resulting Medicaid discrepancy, and the amount of the improper payment that should be recouped (based on Medicaid reimbursement and not band payments). DDSN should provide supporting documentation to link the amount that Medicaid should be reimbursed with the applicable First Health sanctions. Also, as part of this process both agencies should explore the feasibility of using the "void and replace" claim-specific adjustment process, instead of using gross-level adjustments as it is currently done. This may help ensure that First Health findings are tracked in a timely manner, and that Medicaid funds are recouped shortly after the discrepancies are identified by First Health. Ultimately, it is DHHS' responsibility to oversee and monitor the quality assurance and sanction process.

Recommendations

1. The Department of Health and Human Services and the Department of Disabilities and Special Needs should revise the quality assurance process as it is currently being conducted by First Health to meet the goals and needs of both agencies. This should include all the Medicaid-funded services reviewed for quality assurance by DDSN. The quality assurance standards and QA review process should incorporate both quality indicators as well as Medicaid requirements. DHHS should have final approval on the quality indicators used to evaluate Medicaid services.
2. The Department of Health and Human Services should amend the Memorandum of Agreement with the Department of Disabilities and Special Needs to include provisions for the two agencies to jointly develop a quality assurance, Medicaid monitoring system.
3. The Department of Health and Human Services and the Department of Disabilities and Special Needs should jointly develop a reporting process that clearly shows the First Health findings, the resulting Medicaid discrepancy, the program and specific service, and the amount of the improper Medicaid payment that should be recouped. Once this process has been developed, DHHS should consider requiring DDSN to make adjustments directly to the specific claims involved.
4. The Department of Disabilities and Special Needs should refund \$422,077 to the Department of Health and Human Services as the federal share of funds

inappropriately spent by DSN Boards for fiscal years 2003 and 2004 for services provided when the client did not have a valid plan of care or level of care determination.

5. Department of Health and Human Services in conjunction with DDSN should develop a schedule of potential Medicaid recoupments for fiscal year 2005 (based on the process developed in response to recommendation #3), so that Medicaid recoupments can be linked with the applicable First Health findings. Since this information would involve services in addition to the MR/RD waiver, it should then be provided to the applicable DHHS division — Division of Preventive and Ancillary Health Services, Division of Family Services, and/or the Division of CLTC Waiver Management, in order to make adjustments on MMIS.

REPORTING BY FIRST HEALTH

Statistics reported by First Health show a steady improvement in DSN Boards' adherence to quality indicators. We reviewed the FY 2004 QA reports provided by First Health as well as aggregate data for three years. First Health provides DDSN with quarterly and annual reports for all the DSN Boards and qualified providers reviewed, based on the state fiscal year of July 1 through June 30. DHHS also receives copies of these reports.

First Health is required to review a 5% sample of records at each DSN Board annually, as well as to conduct follow-up reviews within 120 days after the annual review. First Health examines all services for each client selected for review, regardless of whether the client is a MR/RD waiver participant. In FY 2004, for example, First Health sampled records for 1,421 DDSN consumers (1,095 clients receiving MR/RD waiver and other DDSN services; 83 HASCI waiver clients, and 243 clients receiving early intervention services). Table 3 reflects average scores for the administrative, general agency and early intervention indicators for FY 2003 through 2005 for the Babcock Center, Inc., and Charleston DSN Boards, as well as statewide averages for those years.

Table 3: Average Scores by Indicator

Provider	Indicator	FY 2003	FY 2004	FY 2005
Babcock Center	Administrative	87.3%	81.4%	83.3%
	General Agency	77.3%	84.2%	90.5%
Charleston	Administrative	90.9%	93.2%	86.0%
	General Agency	86.5%	94.9%	97.6%
	Early Intervention	90.1%	95.3%	98.7%
Statewide Average	Administrative	92.1%	94.7%	93.9%
	General Agency	86.6%	90.9%	91.2%
	Early Intervention	87.8%	91.3%	94.1%

Source: CCR Tracking Comparison of First Health Reviews, DDSN.

Notes: While this audit focused on MR/RD waiver services, First Health reviews do not segregate this information; so findings relating to other services have been included.

Selected indicators where DSN Boards, on average, had less than 80% compliance for FY 2004 are shown in Table 4; performance on these indicators improved in 2005, as shown. "Sanctionable" indicators, as previously described, are situations where non-compliance results in recoupment of funds from the DSN Board. The following indicators would apply to both waiver and non-waiver services.

Table 4: Selected Indicators with less than 80% Compliance for FY 2004

Indicator	Compliance FY 2004	Compliance FY 2005
SANCTIONABLE Board/Provider follows DDSN procedures regarding the reporting and responding to critical incidents as outlined in DDSN policy.	46.2%	29.0%
SANCTIONABLE Service reporting to DDSN is appropriate, adequate, and does not reflect under or over reporting.	35.0%	26.9%
The Consumer/Legal Guardian received a copy of the Single Plan and facilitated Single Plan (when appropriate).	31.4%	12.0%
SANCTIONABLE Progress is made towards meeting identified needs and implementing supports, or revisions are made when satisfactory progress is not indicated.	25.8%	14.9%
SANCTIONABLE Services are monitored as often as needed, but at least quarterly, to assure they are implemented as prescribed.	25.5%	17.0%
SANCTIONABLE The nature, frequency, and intensity of service coordination activity is adequate to identify and address service needs and personal goals.	23.8%	14.9%
SANCTIONABLE The intake process is completed within the required time frames (for new consumers only).	22.5%	15.2%
All Consumers records contain the Behavior Support Plan, if applicable.	21.6%	15.6%

Source: First Health Annual Reports for FY 2004 and FY 2005.

While these statistics do show an improvement in quality of services provided by the DSN Boards based on First Health indicators, this information should be reviewed in conjunction with the DDSN certification and licensing process that is described in the following pages. For example, although Babcock Center showed a better than 80% compliance with administrative and general standards in 2004, DDSN's licensing reports tell a somewhat different story. Furthermore, with so many indicators (265) non-compliance with key indicators such as having a valid plan of care can be diluted by 100% compliance with less important indicators. For example, one quality indicator states that if a consumer is disenrolled from the MR/RD waiver, a Notice of Disenrollment form must be completed within two days. The DSN Boards achieved 100% compliance with this indicator in 2005. DDSN and DHHS staff should review all available information on the performance of DSN Boards in order to determine if the First Health quality assurance process is helping improve waiver service quality and achieve better compliance with program standards. As previously noted, DHHS is already planning to incorporate this in its revision of the QA process.

Issues Involving DDSN State Licensing Surveys

We reviewed the process used by DDSN to license and/or certify residential and day program facilities for MR/RD waiver clients. Under a Memorandum of Agreement with the SC Department of Social Services (DSS), DDSN is granted the authority to license community training homes for children. Since 1982, a proviso initiated by DHEC has granted DDSN the authority to certify community training homes for adults. (DHEC is mandated to license institutional facilities such as ICF/MRs and CRCFs.) DDSN's own state legislation grants it the authority to license day facilities, such as work activity centers or child development centers, for both children and adults.

The DDSN State Licensing division annually reviews community residential facilities for one-third of all adult consumers, all facilities for children, and all day programs. DDSN has developed its own licensing standards, which are approved by DHEC or by DSS if they pertain to children. The standards cover a wide range of requirements, including fire, health and safety, storage and administration of medicine, consumer programs, accountability for consumer funds, reporting of critical incidents, and staff certification. The surveyors physically inspect the facilities selected for review and examine client files as well as personnel records for current staff at the facilities, although personnel records for terminated employees are not reviewed. At the conclusion of the review, DDSN licensing division issues a report to the executive director of the DSN Board, with a plan of correction due one month after the report is issued. The DDSN licensing coordinators review corrective action plans to ensure findings are appropriately addressed.

Reviews conducted by the DDSN licensing division are completely separate from reviews conducted by First Health. Although First Health and DDSN licensing may review records for the same client, First Health's review focuses on reviewing all services that the client receives. DDSN licensing selects the residence or facility that will be inspected and also reviews records for all consumers in that facility.

We reviewed DDSN's policies and procedures for licensure and certification of home and community-based facilities for waiver clients, as well as the license and certification reports for Babcock Center, Inc., and The Charleston DSN board in order to determine how standards for health, safety, and programs for waiver clients are upheld. In general, we concluded that the licensing inspections carried out by the DDSN State Licensing Division were thorough and appropriate. However, DDSN should improve the way it reports and acts upon serious deficiencies identified by the survey teams.

LICENSING REPORTS NOT SHARED WITH DHHS

DHHS has not been receiving DDSN inspection reports of residential facilities and day programs serving waiver recipients, even if serious deficiencies that could harm waiver consumers are discovered. Although annual state licensing reports are normally provided to the executive directors of the DSN Boards, they are not provided to DHHS and

generally not provided to the DSN Boards of Directors. As far as we could determine, DHHS program staff had not ever received DDSN licensing reports for facilities that house MR/RD waiver clients.

While a large majority of the waiver funding is used for residential and day habilitation services and programs, DHHS has no authority over residential facilities themselves, and the room and board charged to consumers who live in the community residential facilities are not allowable Medicaid expenses.

However, the MR/RD waiver agreement requires DHHS to assure "...that necessary standards have been taken to protect the health and welfare of persons receiving services under this waiver", including assurances "...that the standards of any State licensure or certification requirements are met". The Code of Federal Regulations also requires, under 42 CFR 441.302, that the Medicaid agency must provide satisfactory assurance that "...the standards of any State licensure or certification requirements are met for services or for individuals furnishing the services under the waiver; and ...assurance that all facilities covered by section 1616 of the Act, in which home and community-based services will be provided are in compliance with applicable State standards that meet the requirements of 45 CFR Part 1397 for board and care facilities."

According to DHHS waiver program staff, because the waiver funding does not cover room and board, as long as a facility or program maintained its license, the waiver requirements would be satisfied. However, it is difficult for DHHS to provide the required assurances to CMS when agency staff do not receive the licensing reports and have no information regarding how the standards are enforced by DDSN. In contrast with the requirements for ICF/MR, which call for an independent licensing and certification reviews by DHEC, we must rely on DDSN to enforce its own standards for health and safety of consumers in the MR/RD waiver program. Therefore, DDSN needs to communicate serious deficiencies identified by its State Licensing Division to DHHS, and demonstrate what it has done to enforce these standards, so that DHHS can fulfill its responsibility of ensuring the health and safety of waiver clients and that providers are meeting waiver standards.

PENALTIES INFREQUENTLY ASSESSED FOR LICENSING VIOLATIONS

Only a small number of community residential facilities have been closed by DDSN as a result of serious licensing and certification violations found during annual licensing reviews. If a deficiency noted during a DDSN licensing review is so serious that it reflects neglect or abuse of a client, DDSN has the ability to require the provider to take immediate corrective action. According to DDSN, this means the inspectors will not leave a facility or residence until the problem is corrected. For example, a DDSN inspection of a Babcock residence in 2004 found sharp knives unsecured in a kitchen drawer. A lock was replaced on the drawer before the surveyors finished their inspection and exited the building.

We could not identify any provision in its enabling legislation that would allow or require DDSN to penalize DSN Boards for failure to meet minimum licensing standards for *residential* facilities. Section 44-20-770 of the SC Code of Laws requires DDSN to deny, suspend, or revoke a license for a *day* facility on any of the following grounds:

- (1) Failure to establish or maintain proper standards of care and service as prescribed by the department;
- (2) Conduct or practices detrimental to the health or safety of residents or employees of the day program. This item does not apply to healing practices authorized by law;
- (3) Violation of provisions of this article or regulations promulgated under it.

The standard DDSN contract with the DSN Boards also provides that in the event a provider loses its license from DHEC or DDSN to operate any of the facilities funded through the contract, that particular facility's participation in the contract will be terminated as of the date of decertification or loss of licensure.

In addition, DDSN's internal policy states that, if a re-visit to either a residential or day facility cited for discrepancies determines that the plan of correction has not been implemented, depending on the seriousness and duration of the violation, DDSN may administer the following sanctions:

- Issuing a provisional license with a shorter expiration date;
- Reducing the capacity of the program;
- Suspending or reducing financial payments; and
- Denying, suspending, or revoking the facility's license or certificate.

DDSN does not keep a database to show how often it has applied any of the above sanctions to DSN Boards or other providers for serious licensing or certification discrepancies. During the course of this audit, DDSN furnished us with documentation showing that since December 2001, five residential facilities at four different DSN Boards have either been closed or lost licensure/certification as a result of facility inspections, necessitating the re-location of a total of nine MR/RD waiver clients.

Also, until recently, DDSN had only three state licensing coordinators (surveyors) to perform inspections. Due to the small staff size, these surveyors were unable to conduct follow-up reviews and only performed annual reviews, but they did determine whether deficiencies noted in a prior review had been corrected. In August 2005, DDSN hired a fourth staff person to conduct follow-up inspections, re-directed three additional staff to perform license and certification inspections on a part-time basis, and developed a draft protocol. The protocol provides that DDSN may conduct a follow-up review when there is a significant deficiency related to health, safety, or management of funds or when there are a significant number of repeat deficiencies from the prior year(s). However, the protocol does not specify at what point, if a DSN board fails to improve conditions at its residential or day facilities, DDSN would begin applying the penalties according to its policy.

As described in the following pages, DDSN licensing inspections found that Babcock Center facilities had serious deficiencies that remained uncorrected for several years. We reviewed licensing and certification reports for only Babcock and Charleston DSN Boards, so we cannot conclude as to how widespread MR/RD waiver facility problems are. However, Babcock is the largest provider of MR/RD waiver services in the DDSN network.

The DHHS contract with DDSN for waiver services states that, "SCDDSN represents and warrants that all home and community-based mental retardation/related disability waiver services...meet applicable standards specified by Title XIX of the Social Security Act, federal regulations promulgated pursuant thereto, the laws of the State of South Carolina, any regulations promulgated thereto, and the South Carolina State Plan for Medical Assistance and the terms of the waiver". Therefore, it is incumbent upon DDSN to ensure that residential and day facilities with serious problems are closely monitored and closed if they fail to improve within reasonable time frames.

CONCERNS ABOUT BABCOCK IDENTIFIED BY DDSN STATE LICENSING

We reviewed DDSN's 2004 annual licensing survey reports for the day and residential programs at the Babcock Center, Inc., and also reviewed license reports for the previous two years (2002 and 2003), as well as a recently finished 2005 report, to note any trends and improvements. We have serious concerns with the following:

- The number of deficiencies cited by the DDSN State Licensing Division.
- Deficiencies found in multiple residential facilities, many of which were repeat issues from prior licensing surveys.
- Babcock did not adequately address or correct all the findings in its first corrective action plan.

It should be noted that Babcock is not the only DSN provider with licensing deficiencies. However, according to an internal DDSN report, Babcock has "significantly higher rates of abuse, neglect, and exploitation among people served in residences (like group homes) than similar programs across the state. There has been a substantial increase in both reports and substantiated incidents of abuse, neglect, and exploitation. In FY 2003 the rate of substantiated incidents of abuse was almost double the statewide average per 100 residential consumers and in FY 2004 it was four times the statewide average."

Findings from 2004 Residential Licensing/Certification Survey

DDSN's State Licensing Division reviewed a sample of 73 of Babcock's residential habilitation programs on September 1, 2004, through October 6, 2004 (8 CTH I, 25 CTH II, 8 SLP I and 32 SLP II). The results of the DDSN review of Babcock's residential surveys were provided to Babcock's Executive Director on December 13, 2004. Most of

the deficiencies were repeat findings from the 2003 review, and many were found in multiple facilities. A total of 409 residential deficiencies were cited by DDSN licensing and are categorized as follows:

Table 5: Licensing Deficiencies by Deficiency and Facility Type

Deficiency Type	Admin/Personnel	CTH II	CTH III	SLP II	SLP III	Totals / %
Admin/Personnel	4	0	0	0	0	4 (1%)
Behavior Supports	0	4	41	1	13	59 (15%)
Consumer Care	1	5	49	0	34	89 (22%)
Consumer Funds	0	10	45	1	19	75 (18%)
Consumer Programming	0	14	96	11	23	144 (35%)
Home & Safety	0	1	32	1	4	38 (9%)
Totals /% of Total	5/(1%)	34/(8%)	263/(64%)	14/(4%)	93/(23%)	409/(100%)

Source: Babcock's Annual Residential Licensing Survey Report dated December 13, 2004.

Some significant deficiencies noted by the surveyors included:

- Consents for psychotropic medication were falsified for one consumer, and training data was falsified for another client.
- Babcock did not report one critical incident, as required by DDSN Policy 533-02-PD, "Sexual Assault, and Incident Procedure Follow-up".
- Some homes were unsanitary "...to the point of being uninhabitable..." and in need of repairs and maintenance. Kitchens and bathrooms were "very dirty" with broken appliances, water damage, and rotten cabinets.
- Caregivers in all CTH IIs and SLPs failed to have DSS Child Abuse and Neglect Central Registry checks performed. Medication technician training had not occurred for 29 of 33 employees sampled.
- For many consumers, training goals and objectives assigned were not functional, based on a true need, and based on assessments. Some consumers continued to work on specific objectives after criteria for the objective had been met. (Repeat findings)
- Physical and dental exams were not completed annually or as ordered. (Repeat findings) Several consumers were classified as morbidly obese and had significant weight gains during the past year.
- Medications were not being kept under proper conditions. Medications at one SLP II were found to be unsecured without staff present. Consumers were not receiving medications as prescribed. The surveyors noted approximately five pages of medication errors.

Babcock's first corrective action plan in January 2005 did not address some deficiencies found by DDSN surveyors, including the falsification of multiple documents and the medication errors. Some deficiencies, such as issues involving consumers' personal funds, were not addressed at all. DDSN licensing coordinators refused to approve the first corrective action and required Babcock to submit a second corrective action plan, which addressed all the deficiencies but one (which Babcock disagreed with). This was finally addressed by the third corrective action plan.

Also, many of the deficiencies were corrected during the DDSN surveyors' visit or shortly thereafter, and the residential facility with the dirty living conditions cited above was closed January 2005. Babcock Center and DDSN also agreed to reduce Babcock's licensed bed capacity, for both institutional and community-based facilities, by 25% beginning March 2004. Babcock began closing one 48-bed ICF/MR facility in December 2003 after licensing inspections by the federal Centers for Medicare and Medicaid found immediate jeopardy; the remaining beds in this ICF/MR were closed by October 2004.

In December 2004, because of complaints from consumer advocates and families as well as findings of continuing problems by various audits and licensing/certification inspections, DDSN required Babcock through its contract to downsize by another 25%. According to DDSN, the reduction should be completed by June 30, 2006. As of December 2005, Babcock residential capacity had been reduced overall by 30%, based on information provided by DDSN. To date, most of this reduction has been in ICFs/MR. For community residential facilities for MR/RD waiver clients, reduction in capacity was only 15.6%. The reduction was accomplished by closing some facilities altogether, transferring "slots" to other DSN Boards, or moving consumers to other facilities.

In addition, the recently completed 2005 survey of Babcock's residential facilities found an overall reduction of discrepancies from 409 to 226, with improvements in the physical condition of many houses and apartments and fewer medication errors. However, the 2005 review still found many problems in how caregivers managed and accounted for consumer funds. This has been a recurring violation in all four years of inspection reports we reviewed.

Results of Day Program Survey

DDSN licensing conducted a separate review of nine Babcock work activity centers (day programs) on September 1, 2004, through September 30, 2004. The licensing review of Babcock's day programs also noted deficiencies, including:

- Background checks of the DSS Child and Abuse Neglect Central Registry had not been done for any of the personnel whose records were reviewed (a total of 21 records were reviewed). Required abuse checks for three records (14% reviewed) cited from a previous 2003 survey were also still not completed.
- An employee at one of the day programs (hired in 1988) was convicted in 1993 of Criminal Domestic Violence and an Unlawful Weapons charge. At the time of

the conviction it appears that she was employed at one of the residential programs as a caregiver.

- Multiple findings related to the development and documentation of the consumers' single plans. For example, one consumer's single plan did not identify day program services as a need, and therefore these were not authorized. (As noted on page 9, all waiver clients must have a valid single plan that authorizes services before DHHS can claim federal Medicaid funds for the waiver services.)

In a February 2005 letter, DDSN notified Babcock that their corrective action plan for the day programs had been reviewed and accepted, even though the issue relating to the employee had not been fully addressed. Babcock subsequently submitted a *Request for Waiver* from the licensing standard to DDSN for this employee, which DDSN approved on April 27, 2005. Babcock justified the continued employment of this individual on the basis that the convictions were misdemeanors that had occurred 11 years ago; the employee only had four disciplinary actions since 1988, and she has met or exceeded her annual performance expectations. Babcock also stated in its corrective action that it subsequently obtained the required background checks and also obtained an addendum to the consumer's single plan reflecting a need for the day program. Therefore, DDSN took no other action.

Recommendations

6. The Department of Health and Human Services should amend its contract with the Department of Disabilities and Special Needs to address issues involving licensure and certification of MR/RD waiver residential and day program facilities, to include the following provisions:
 - The two agencies should jointly establish the severity levels at which a deficiency would jeopardize the continuing licensure of the provider's facility. This could be patterned after the system used by DHEC in finding "immediate jeopardy" in ICFs/MR and the "class violation" system used for community residential care facilities (CRCF).
 - DDSN should notify DHHS whenever serious deficiencies in residential and day facilities are found by their state licensing division.
 - Once a serious deficiency has been identified, the two agencies should jointly establish a process by which DDSN could invoke a series of actions if the provider fails to immediately correct the serious deficiency, up to and including withholding band payments from the DSN board, revoking the licensure or certification of the facility in question, and terminating all waiver services contingent upon a valid license or certificate.

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7. The Department of Disabilities and Special Needs should add to its draft protocol a timeline by which a DSN board would be required to correct serious deficiencies involving the health and safety of clients.
8. The Department of Disabilities and Special Needs should establish a database showing whether serious licensing and certification violations have been corrected and whether any sanctions were applied to DSN Boards as a result of failure to correct them, and report this information to DHHS.
9. The Department of Disabilities and Special Needs should provide copies of annual DDSN licensing reports to each Disabilities and Special Needs Board member so they will be informed of deficiencies noted by the DDSN surveyors.
10. The Department of Disabilities and Special Needs should continue tracking the reduction in program capacity of Babcock Center, Inc., and report these results to DHHS.
11. The Department of Health and Human Services should require the Department of Disabilities and Special Needs to refund the Medicaid share of MR/RD waiver services provided when the licensing and certification inspections find that these services were not identified as a need or appropriately delivered as authorized in the consumers' single plans.

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Chapter 3: WAIVER FUNDING SYSTEM

One of our audit objectives was to review the method used to fund services for Medicaid-eligible clients in the Mental Retardation - Related Disabilities (MR/RD) waiver program. We have reviewed the capitated or "band" payment system implemented by DDSN as well as the system for providing extra funds for waiver clients with special needs ("outlier funding"). We did not find that band payments contravened any Federal regulations, and do not have any recommendations for dramatically altering this system.

Overall, we concluded that the current method for funding the waiver program is similar to average per diem payments made for other types of Medicaid services, and as such may be an effective method of channeling funds to direct care providers. However, we noted several areas of concern, including:

- The difficulty in comparing band payments with actual Medicaid reimbursement;
- Band payments for low-cost clients subsidize the care for high-cost clients;
- Minor discrepancies in the documentation for outlier funding.

We also noted that DDSN has improved its process to ensure that all residential outliers are re-justified in writing. We also found that while some types of residential facilities were less expensive for the boards to operate, and thus the boards had revenues in excess of costs for these homes, this did not seem to be influencing where clients were placed.

The Band Payment System

DDSN contracts with a network of DSN Boards to provide or arrange for an array of services to clients, most of who are eligible for Medicaid funding. The band payments from DDSN to the DSN Boards comprise an advance payment system for both ICF/MR services as well as for home and community-based services. At the beginning of each month, DDSN advances funding to each DSN Board based on the number of clients within each "band" at that particular board. There are five different bands and statewide rates. (See Table 6, p.26) The rate depends on the level of residential care and intensity of services that the clients in each band are expected to need.

The DSN Board provides the services required by the clients' individual plan of care ("single plan") and then sends service provision logs to the DDSN central office by the 5th day of the following month. DDSN processes the expenditures and mails the Medicaid-reimbursable portion to DHHS for payment. The Medicaid reimbursement for waiver services is based on average, statewide interim rates that are later settled to actual costs. Multiple services are bundled into a single rate, and there are individual rates for the residential program, adult day program, respite care, and personal care. DDSN is paid the same rate for each waiver client depending on the individual service and number of units provided. In other words, DDSN is *not* reimbursed the same amount it had forwarded to the DSN Boards but rather is reimbursed based on individual service rates.

Table 6: Statewide Band Rates, 2003

Band	Description	Identifier	Band Rate
At Home – Day Supports	Individuals who live at home and only receive day habilitation support	A	\$7,715
At Home – Enhanced Support	Individuals who live at home and receive day habilitation and enhanced waiver services	B	\$12,544
Residential Low Needs	Individuals in supervised living arrangements who do not need intensive supervision	C	\$19,434
Residential Low – To – Moderate Needs	Individuals in community residential care facilities and CTH II homes who need more care	D	\$45,076
Residential High Needs	Individuals also in CRCF and CTH II homes, as well as ICF/MRs, who need intensive services	E	\$65,567

Source: Request for Proposal, Services to Consumers with Mental Retardation, Related Disabilities or Autism and Services Specialized for Consumers with Traumatic Brain Injury, Spinal Cord Injury, or Similar Disability for SCODSN. See Appendix A for a more detailed description of these programs.

DDSN is required to furnish the state share out of its own state general fund appropriations and other sources of funds eligible for matching purposes. DHHS reimburses DDSN for the federal share (approximately 70%) of Medicaid costs incurred.

Not all the costs covered by the band payments are Medicaid-reimbursable. DDSN uses the band system regardless of whether the client and/or the service are Medicaid-eligible. Some clients are private-pay, and not all services provided by the DSN Boards can be covered by Medicaid.

The band payment is expected to cover all waiver program costs for clients, even though some waiver services, such as dental care and additional prescription drugs, are not provided by the DSN Board but by private providers who bill Medicaid directly. Each month, DDSN receives a tape from DHHS with information on the amount of services for waiver recipients billed directly to DHHS; DDSN then subtracts this amount from each DSN Board's next band payment.

Since the bands are *average* payments, there can be a variation of client needs within each band. For example, one client in Band C may not need \$19,434 worth of services and another client may need more. The board does not have to spend the band amount "generated" by a client on that client. Once the total budget is determined, DDSN allows the boards to spend the band funding within all of the programs, as long as individual client needs are met. Finally, some clients have costs so far above the average that DSN allows extra funding, called "outlier" funding, for these clients. This is discussed further on pages 29-30.

COMPARING BAND PAYMENTS TO MEDICAID REIMBURSEMENT

In our review of the band payments, we concluded that there are no Medicaid compliance issues involved because the band payment is not a Medicaid payment from DHHS to the DSN Boards. Medicaid funds are not an issue until DDSN bills DHHS and is reimbursed for Medicaid waiver services. However, the band payment system does make it almost impossible to connect allocated funds (the band payment) with actual expenditures for an individual client's care and Medicaid reimbursement for that cost. The following table for two waiver recipients compares their band and outlier payments and actual expenditures for their care with the Medicaid reimbursement recorded for them in FY 2003.

Table 7: Comparison of Band Payments with Costs and Reimbursements

	Band & Outlier Payments	Client Fees	Total Board Expenditures	Medicaid Allowable Costs	Medicaid Reimbursement
Client # 1	\$102,109	\$4,800	\$114,733	\$109,150	\$77,912
Client # 2	\$162,975	\$4,800	\$170,837	\$158,921	\$88,265

Source: "Band & Outlier Payments," plus the "Client Fees" were the revenues the DSN Board received for those clients in FY 2003; "Total Board Expenditures" includes room and board, which are not allowable Medicaid costs for reimbursement. "Medicaid Allowable Costs" are the costs remaining after room and board are subtracted. Both "Total Costs" and "Medicaid Allowable Costs" are based on the FY 2003 audited financial statement of the DSN Board that serves these individuals as well as DDSN waiver cost schedules. The "Medicaid Reimbursement" is based on the claims for FY 2003 adjudicated by the DHHS Medicaid Management Information System.

This table illustrates the fact that neither the Medicaid reimbursement nor the band payments are a reliable indicator of what is actually spent to care for an individual receiving MR/RD waiver services. According to DDSN, the DSN Boards are not able to track costs for each individual client. While the audited financial statements of the DSN Boards provide specific cost data, for most waiver clients this is only at the individual residential or program level. For example, both the Disabilities Board of Charleston County and Babcock Center, Inc.'s, audited financial statements contained a schedule of revenues and expenses for each CTH II and CRCF managed by the boards. Most of these residential facilities have three or four beds. We could review the individual costs for the two clients shown in Table 6 above because they lived in single-bed CTH IIs.

We conducted a limited test to ensure that, for clients in the residential bands, there were charges to Medicaid for MR/RD waiver services. DDSN also reviews a monthly report that shows the clients' residential placements and makes sure this is in line with the band payment levels as shown on Table 6.

BANDS NOT A DISINCENTIVE TO LEVEL OF PLACEMENTS

We also sought to determine whether the band payment system provided any disincentives to placing clients in the most appropriate residential facility. Again, we tested these issues with only two boards, Charleston and Babcock. The audited financial statements for each board show a statement of revenues and expenditures broken out by each residential facility. Revenues are primarily the band payments received from DDSN plus client fees; expenditures are all costs, not just Medicaid allowable costs. With Charleston, the majority of the CTH II homes (which house the largest share of clients), the four ICF/MR facilities managed by the board, and one of the two community residential care facilities had expenditures greater than the revenues in FY 2003. The supervised living residences (SLP I), which are also for those clients with the lowest level of need, had revenues exceeding expenditures by a total of \$293,512. With Babcock, the CTH II homes also experienced net losses as well as its SLP II homes in FY 2003. Babcock had excess revenue with its SLP I homes, CRCF, and CTH I homes.

One could conclude, therefore, that under a capitated funding system the DSN Boards made a "profit" from the clients in the SLP I homes. However, as noted, the DSN Boards are allowed to spend their revenues where needed, and the band payment associated with a particular client does not have to be spent on that client – a client can cost more or less than his or her band. For both Babcock and Charleston, the majority of the consumers were in CTH II homes, not in supervised living arrangements. Therefore, while the boards' expenses were less for the SLP I homes, this did not seem to be driving where clients were placed.

The imbalance between revenues and expenditures may also mean that DDSN should adjust the band payments to better reflect actual costs for the different levels of residential facilities. It also indicates that the band payments received for low cost clients are subsidizing the high cost clients. According to DDSN, it is seeking additional state funding in order to re-base the band payments so that actual cost of care can be covered.

Recommendation

12. The Department of Disabilities and Special Needs should review the adequacy of band payments compared to local Disabilities and Special Needs Boards' expenditures and adjust the band payments to better reflect actual costs for the different levels of residential facilities.

HIGH COST OF SOME WAIVER CLIENTS

The costs to care for a limited number of consumers in MR/RD waiver program are high, but we found no indications that the waiver program does not meet required financial conditions. In the waiver agreement with the federal Centers for Medicare and Medicaid Services, DHHS provides three financial assurances about waiver costs:

A Review of the MR/RD Waiver as Operated by the Department of Disabilities and Special Needs

- The average per capita expenditures under the waiver will not exceed 100 percent of the average per capital expenditures for institutional care (ICF/MR).
- Actual total expenditures will not exceed the cost of institutional care.
- The state will refuse to offer home and community-based services to any person for whom it can reasonably be expected that the cost of home or community-based services furnished to that individual would exceed the cost of a level of care in an ICF/MR.

DHHS provides an annual report to CMS showing all MR/RD waiver and other Medicaid expenditures versus the ICF/MR costs. For federal fiscal year 2003, DHHS reported that the average cost for a waiver recipient was \$42,263 versus \$75,042 for an individual in an ICF/MR. This cost includes waiver services as well as the cost of other Medicaid services, such as inpatient hospital.

However, some individuals in the waiver program exceeded the average cost of care in an ICF/MR. For example, the Medicaid reimbursement for the two individuals in Table 7 was \$88,265 and \$77,912. This understates the actual cost of their individual care because, as noted, the Medicaid reimbursement is based on an average rate for all waiver recipients in residential care plus any individual services directly billed to Medicaid. The allowable Medicaid cost for these individuals was actually \$158,921 and \$109,150, respectively. In addition, annual costs for waiver individuals do not include subsequent cost settlements to DDSN.

However, we found no evidence that serving these consumers in an institutional setting as opposed to a home and community-based setting would have been more cost-effective. The two consumers reviewed were high-cost because of enhanced staffing needs, and the cost to serve these individuals would be high regardless of where they were placed.

Even as some clients in the MR/RD waiver are very expensive to serve, there is a waiting list for waiver services. As of August 2005, there is a regular waiting list of 750 for the MR/RD waiver program plus a "critical" waiting list of another 20 individuals. According to DHHS program staff, consumers on the critical list are waiting on average one to two months, while consumers on the non-critical list may remain there indefinitely.

Review of Outlier Payments

In cases where a consumer's circumstances and needs are substantially higher than average, a DSN Board may receive additional funding from DDSN equal to the difference in the consumer's approved budget and the consumer's band amount. This additional funding is referred to as "outlier funding". The main triggers for outlier funding are the need for intensive nursing care for medically-fragile individuals, many of whom live at home, or for one-on-one staffing for individuals with severe medical, behavioral, and/or other problems. DDSN has established outlier thresholds where the costs for caring for a client must exceed a certain dollar amount before the DSN Board is

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eligible to request outlier funding from DDSN. Effective July 1, 2004, these thresholds are \$85,718 for consumers residing in a residential facility and \$28,560 for consumers living at home.

As of July 2004, a total of 8,239 DDSN clients were funded through the band payment system; 259 or 3% were "outlier" cases that required the increased funding. The two boards reviewed in detail - Charleston and Babcock - received the following band and outlier payments in FY 2003:

Table 8: Outlier Payments for Two DSN Boards, FY 2003

Board	Number of Band	Number of Outliers	Band Payments	Outlier Payments	Total Payments
Charleston	526	22	\$12,066,409	\$822,709	\$24,504
Babcock	1,134	76	\$36,695,279	\$2,786,726	\$34,817

Source: DDSN final totals as of November 2005. These figures include the waiver program and ICF/MR beds, and both Medicaid and non-Medicaid clients.

RE-JUSTIFICATION OF OUTLIER FUNDING

Prior to the *Limited Scope Review of Babcock Center, Inc.*, DDSN verbally obtained confirmation from waiver providers that consumers receiving outlier funding continued to have medical and/or behavioral conditions that would justify on-going need for outlier funding. DDSN assumed that providers would notify the agency whenever a consumer's needs changed and outlier funding would no longer be necessary. Due to the significant dollar amounts of outlier funding, we recommended in the *Limited Scope Review* that providers justify in writing to DDSN each year, waiver consumers continued medical and/or behavioral need for greater services.

In response, DDSN established a new policy requiring DSN Boards to re-justify in writing each consumer's medical and/or behavioral condition to show their continued need for outlier funding. The policy also requires that the DSN Board's executive director submit a signed "Certification Statement". DDSN set April 15, 2004, as the due date for providers to submit initial re-justification documentation to the agency, and also required all residential outliers to be re-justified in writing each year within 30 days following the annual plan date noted on DDSN's Service Tracking System. Failure by the DSN Board to submit re-justification within this time period would result in the discontinuance of outlier funding. Outlier funding for nursing services was not required to be re-justified, as this is adjusted quarterly by DDSN based on the level of services delivered.

The following schedule summarizes the results of the initial re-justification for Charleston and Babcock:

Table 9: Results from Initial Re-Justification

Description	Consumers	
	Charleston	Babcock
Continued outlier funding approved	3	25
New outlier funding approved	1	0
Paperwork not submitted to continue outlier funding	0	18
Outlier funding approved through 6/30/04, then funding transferred to another consumer	2	0
Outlier funding approved through 6/30/04, and not transferred to another consumer	0	4
Totals	6	47

Source: DDSN Schedule, Residential Outliers by DSN Board, as of April 9, 2004. Does not include nursing outliers.

USE OF OUTLIER FUNDING BY DSN BOARDS

We reviewed a sample of MR/RD waiver clients at Charleston and Babcock to determine whether the recipient's file adequately documents the need for enhanced services requiring outlier funding, and in general to verify compliance with other waiver requirements. Although the overall purpose of this audit is to review the MR/RD waiver as operated by DDSN, we conducted site visits to review MR/RD waiver client records in order to identify any problems with outlier funding that may necessitate further review.

Using outlier re-justification schedules prepared by DDSN, we selected eight waiver recipients at each DSN Board — including at least one recipient for each of the following criteria: continued outlier funding was not requested by the DSN Board; outlier funding was requested to be discontinued as of July 1, 2004, by the DSN Board; or continued outlier funding was requested by the DSN Board. We also selected several Medicaid recipients who received nursing outliers at these two DSN Boards. Using these criteria, the following sample was developed:

Table 10: Medicaid Recipients Reviewed

Criteria	Total Consumers Reviewed	
	Charleston	Babcock
Nursing outlier	5	2
Continued outlier requested	2	2
Outlier not requested	1	2
Discontinue outlier 7/1/04	*0	2
Total Consumers Reviewed	8	8

*Note: Charleston did not have any consumers that met this criterion.

Although we found some minor discrepancies, we do not believe systematic problems with justification for outlier funding were identified that would necessitate further review. In general, our review found that documentation was sufficient and complete at both boards for the consumers where continuation of the residential outlier funding was

requested. However, for two consumers at each DSN Board, where residential outlier funding was provided for the consumers to have one-on-one and/or enhanced staffing, accountability (monitoring) was not consistently documented, progress notes were not consistently completed for each shift, dates were incorrectly shown, and some required activities were not provided. The boards are supposed to maintain sufficient documentation showing that appropriate monitoring was provided to these clients. Also, the DDSN policy implemented in April 2004 for use of outlier funding requires that "Services provided to residential outliers must be properly documented and accounted for." Specific findings for each board are as follows:

Charleston Review Results

- A reasonable and justifiable explanation was provided for the consumer where outlier funding was not requested.
- Fifteen Single Plans were in effect during the audit scope (FY 2004). Of the 15 single plans reviewed, eight (53%) had various minor errors, including questions not being answered, services not being properly or consistently shown throughout the plan, and changes to the plan not being initialed and dated. One major deficiency noted was that Charleston was unable to produce a signed signature page for one single plan documenting the individuals attending the planning meeting.
- The most significant deficiency found concerned one consumer whose behavior was not being formally reviewed and assessed, due to lack of resources in the Charleston area relating to behavior support and because this client chose not to work with a certified staff member at the Disabilities Board of Charleston County.

Babcock Review Results

- Review of consumers where outlier funding was not requested or where outlier funding was requested to discontinue July 1, 2004, clearly showed that Babcock had in the past failed to notify DDSN when consumers' needs changed or they were moved to other facilities. This occurred prior to the re-justification policy implemented by DDSN.
- The Richland/Lexington DSN Board (Rich/Lex) provides service coordination for MR/RD waiver clients served by Babcock. Eleven single plans were in effect during the audit scope for the six consumers selected for review that were not nursing outliers. Of the 11 single plans, 100% had various errors that showed a lack of communication and coordination between Babcock and Rich/Lex. Specifically, we found that Babcock did not have all pages of one plan; another single plan was not updated for changes in the client's medication; and two consumers' plan were not updated for changes in their accountability levels.

A Review of the MR/RD Waiver as Operated by the Department of Disabilities and Special Needs

- Two consumers' files did not adequately document whether they received the medical and/or dental treatment identified in their single plans and when, and under what conditions, one-on-one staffing should be provided.

Because Babcock employees are involved in the consumers' day-to-day lives and are familiar with medical, physical, and other changes, it is important that Babcock keep Richland/Lexington DSN Board apprised of changes made as a result of called team meetings, medical appointments, etc.

Recommendations

13. The Department of Disabilities and Special Needs should work with the Richland/Lexington Disabilities and Special Needs Board and the Babcock Center, Inc., on developing better communication and coordination of care for consumers served by both boards.
14. Both the Babcock Center, Inc., and the Disabilities Board of Charleston County should ensure that they are following policy promulgated by the Department of Disabilities and Special Needs regarding proper documentation of one-to-one staffing and uses of residential outlier funding in consumer's single plans.

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Chapter 4: COST REPORTS AND ADMINISTRATIVE EXPENDITURES

Included in our audit objectives was to determine whether MR/RD waiver program costs are properly settled in compliance with Medicaid reimbursement methodologies, whether there are program safeguards to ensure that only allowable costs are born by the Medicaid program, and whether appropriate fiscal oversight of the waiver is provided. In this section we review the process used by DDSN and the DSN Boards to report costs attributable to the Medicaid MR/RD waiver and institutional care. These cost reports are critical in that they are the basis for cost settlements made by DHHS to DDSN, and also are the basis for setting future rates for Medicaid reimbursement for waiver services. Our review of the audited financial statements, cost reports, and reconciliations for FY 2003 identified some questions and concerns about the waiver program, including:

- Some unallowable costs are included in the cost reports which are used to establish rates and cost settlements;
- The wide variance in waiver program costs between DSN Boards; and
- There is a lack of fiscal oversight of the MR/RD waiver program on the part of both DHHS and DDSN.

We also determined the percentage of administrative and program operating costs compared to direct service costs for the MR/RD waiver.

The Cost Reporting Process

DHHS contracts with DDSN as the provider of Medicaid waiver services. The contract requires DDSN to submit cost reports that support the expenditures incurred, which will be used to settle interim reimbursement rates to actual costs. Two types of cost reports are used: regional cost reports and Medicaid MR/RD waiver specific cost reports.

There are four regional cost reports (Midlands, Piedmont, Coastal, and Pee Dee) that correspond with the four Medicaid provider identification numbers for the MR/RD waiver services. The regional cost reports include all DDSN program costs, not just Medicaid costs. In addition to expenditures for the waiver program, the regional cost reports also include other DDSN programs as well as ICF/MR costs for those facilities reimbursed through the DSN Boards. (The ICF/MR facilities, which contract directly with DHHS to provide institutional care, file individual cost reports with DHHS.)

The regional cost reports are also used as a mechanism to allocate DDSN's administrative costs for the central state office in Columbia, plus overhead and other general costs, to the four regions. The reports use a step-down methodology to allocate these costs to the various programs within each region. The various components of the waiver program are rolled into one "cost center" for the regional cost reports.

For the Medicaid MR/RD waiver specific cost reports, the DSN Boards compile waiver expenditures by type of program and facility (SLP I, SLP II, CTH I, etc.) at the end of each state fiscal year. DDSN also requires that each board submit an independent audit of its financial statements, as well as a reconciliation of the waiver cost reports to the audited financial statements. Costs attributable to Medicaid recipients are calculated based on the percent of Medicaid recipient attendance in the various programs.

The total waiver cost for each region is then reported in a combined report to DHHS. Staff in the DHHS Division of Ancillary Reimbursements perform a desk review of this report, which becomes that basis for rates paid for MR/RD waiver services. These rates are then used to calculate a final payment to DDSN. If the federal share of actual expenditures reported in the waiver cost reports exceeds what DDSN has received in monthly Medicaid reimbursements from DHHS, then DDSN receives an additional payment or cost settlement from DHHS. If costs are less, DDSN owes DHHS. The cost settlement completes the funding cycle begun by the band payment that DDSN forwards to the boards (see page 25).

COSTS OF WAIVER ADMINISTRATION

Use of Funds for Direct Care

One concern has been whether DSN Boards spent the majority of the band payments on client care. For waiver services plus ICF-MR facilities DDSN requires local boards to spend 98% of their revenues on client services. Funds remaining after the 98% are spent can be used for a two-month reserve for times when the band payments do not cover all of a board's costs. At the end of each year DDSN requires a reconciliation from the boards to show that 98% of revenues, based on the audited financial statements, were spent. If the boards spend less than 98%, they must refund the difference to DDSN.

The total costs for the boards' programs, with the exception of depreciation on buildings and assets, are included in the 98% calculation. This includes all salary and operating costs associated with direct client care and the DSN Boards' overhead and administration. (Allocated costs for central state office functions are not included in the 98% calculation.) Because of the method used by DDSN to account for program costs, administration and overhead are rolled up in the client cost. Therefore, while the boards are required to spend 98% of their revenues on client services, the boards' administrative costs are considered part of client service for this calculation and thus become part of the Medicaid waiver rate.

The audited financial statements are the main sources of information about how the DSN Boards spend their revenues, which include band payments and other sources of funds. As far as we could determine, there is not a waiver requirement for a Medicaid-specific audit.

Administrative Costs

We tried to determine what percent of waiver costs claimed for reimbursement in FY 2003 were administrative costs, including both administration by DSN Boards and by DDSN central state office. Administrative costs for the waiver program include DSN Board-level costs (such as for program supervisors, financial staff and the executive director) and central state office costs of DDSN itself. As noted above, allowable central state office costs are allocated based on a "step-down" in the four regional cost reports, and the waiver program gets its share based on total waiver expenditures versus the rest of the programs for DDSN clients. DDSN central state office administrative and other costs allocated to the MR/RD waiver program were \$10,087,085 in FY 2003, or 6.88% of the \$146,580,911 total waiver costs reported for the four regions. According to DDSN financial officials, slightly less than half of this amount, \$4,971,589, are program costs directly tied to operating the waiver program. For example, this figure would include the annual cost for the First Health quality assurance contract.

The following table illustrates the administrative costs reported for the MR/RD waiver program for FY 2003 for Babcock and Charleston, with a pro-rated share of DDSN's central office administration and other overhead costs from the regional cost reports.

Table 11: Administrative Costs for Charleston and Babcock's Waiver Programs

Expenditures	Charleston	Babcock
Board Waiver Cost	\$7,947,236	\$21,255,513
DSN Board Level Administration	\$759,403	\$1,595,336
Percent of Total Waiver Cost	9.6%	7.5%
Allocated Central State Office and Waiver Operational Costs	\$578,607	\$1,350,448
Percent of Total Waiver Cost	7.3%	6.4%
Total Administration & Allocated Costs	\$1,338,010	\$2,945,784
Percent of Total	16.8%	13.9%

Source: 2003 Audited Financial Statements and 2003 Coastal and Midlands Regional Cost Reports.

These waiver administrative expenses do not include the costs for the management functions performed by DHHS. We estimated this could add up to one percent. Therefore, waiver operating and central office overhead costs which look relatively minor from the regional cost reports could actually be close to 15% - 18% of direct service expenditures when administrative and allocated costs are added together.

As noted, DDSN's administrative costs illustrated in Table 11 are not separated from the direct service costs, but rather are included in total waiver costs that become the Medicaid rate paid for waiver services. Therefore, these costs are reimbursed with federal Medicaid funds on a 70-30 ratio that is used for direct Medicaid services. DDSN and the DSN Boards are an "organized health care delivery system" (OHCDS), and therefore all waiver allowable costs are eligible for the 70% federal Medicaid funds.

ADEQUACY OF FUNDING

One concern was whether the DSN Boards received adequate funding from DDSN in order to provide for client needs. The past three cost reporting cycles where a settlement has been finalized (FY 2000 through FY 2002) have resulted in a cost settlement to DDSN. This means that expenditures as shown in the cost reports were higher than what the Medicaid rate covered, so DHHS made another payment of federal Medicaid funds to DDSN for the difference. DDSN retained these funds; they were not passed on to the DSN Boards because DDSN had already advanced them funding through the band and outlier payments.

According to DHHS staff in the Division of Ancillary Reimbursements, the waiver rate was increased after several years of cost settlements to DDSN in order to more accurately reflect costs and thus avoid large cost settlements every year. However, for FY 2003, DDSN received more federal Medicaid revenues than allowable waiver cost. DDSN has already made an interim cost settlement of \$2,150,000 to DHHS, although the final amount is still under review.

When either DDSN or a DSN Board spends less than revenues, both must refund the excess – the board to DDSN, and DDSN to DHHS. If DDSN reports allowable waiver costs higher than the Medicaid reimbursement, then DHHS provides additional federal Medicaid funds toward the difference. However, if a DSN Board spends more than its band payment and other revenues, as did Charleston and Babcock in FY 2003, there is no cost settlement to the board. The boards are expected to cover any losses with their reserves. These reserves consist of unexpended band payments (up to 2% per year) plus other revenues.

DDSN does not automatically pass on increased waiver rates in the form of higher band payments to the DSN Boards. It should be noted that at the end of fiscal years 2004 and 2005, the band payments were increased to reflect insurance rates and state employees' pay increases mandated by the General Assembly. However, these band increases were not reflective of any general increases in the DSN Boards' costs.

Both boards that we reviewed had total expenditures greater than total revenues in FY 2003, as indicated in Table 12. (However, these operating losses also include depreciation of capital assets reported as an expense.) Also, both Babcock and Charleston had fund balances remaining, although in FY 2004 Babcock Center again experienced financial deterioration with a decrease in net assets of \$4,340,739. The external auditors also found weaknesses in internal controls that were reported in a management letter to the Babcock Board of Directors.

On a statewide basis, according to information provided by DDSN, total deficit experienced by the DSN Boards amounted to \$6,041,463 – this included all sources of funding and all program expenditures. Again, accounting for depreciation is part of the reason for the boards' deficits and not necessarily inadequate band payments. The accumulated fund balances for all boards amounted to \$16.9 million.

Table 12: Changes in Net Assets for FY 2003: Charleston and Babcock

	Charleston	Babcock
Total Program Revenues	\$16,409,525	\$41,247,224
Total Expenditures	16,525,599	43,269,434
Other Gain (Loss)	(14,152)	777,037
Changes in Net Assets	\$(130,227)	\$(1,245,172)
Remaining Fund Balance	\$529,127	\$3,265,041

Source: DDSN and the DSN Boards Audited Financial Reports, 2003. Includes all programs, not just the MR/RD waiver.

Variance in Waiver Residential Costs

There is a wide variation in the cost to provide Medicaid waiver services between the individual DSN Boards. The waiver cost reports submitted to DHHS provide a basis for determining the "unit" (per diem) cost for the different services. The largest cost is for residential services. This includes Medicaid allowable costs for the community training homes, the community residential care facilities, and the supervised living program II, as well as for enhanced waiver services such as physical, occupational, and speech therapy and psychological services. The variance in residential costs is illustrated below for boards in the Midlands (Babcock) and Coastal (Charleston) regions, with the highest and lowest board within both regions.

Table 13: Variance in Unit Costs for Residential Waiver Services, FY 2003

	Statewide Average	Babcock	Charleston	Lowest Board	Highest Board
Per Diem Cost	\$144.49	\$140.83	\$133.87	\$96.20	\$185.54
Variance		-2.5%	-7.4%	-33.4%	28.4%

Source: Home and Community Based Waiver Statement of Reimbursable Cost.

In conclusion, in 2003 the DSN Boards in general had costs higher than the band payments received from DDSN plus other revenues, but their accumulated fund balances provided a cushion. During the same year, total cost for waiver services was lower than the Medicaid funds reimbursed to DDSN, and DDSN was required to refund this excess to DHHS. Therefore, based on financial reports for FY 2003, we found no evidence that the band payments were inadequate that year, although some boards may have more difficult financial circumstances than others.

UNALLOWABLE EXPENDITURES

We also sought to identify what controls are in place to ensure that only actual waiver program costs, that are allowable and related to client care, are attributed the Medicaid program. Federal law does not allow the Medicaid program to pay for all costs incurred by DDSN clients in the waiver program. We reviewed audited financial statements for

both Babcock and Charleston in order to test, in a limited fashion, the appropriateness of costs claimed for reimbursement under the waiver program.

Unallowable expenditures for room and board are deducted from the waiver cost reports since Medicaid cannot pay for these kinds of expenditures; they are supposed to be paid by client fees. This would include costs for rent, repairs and maintenance, telephone, utilities, basic groceries, depreciation and insurance. However, we determined that some housing-related costs, including household and maintenance supplies, exterminating, and trash removal, are included in the waiver cost reports submitted for Medicaid reimbursement. The following table shows the FY 2003 expenditures reported by Charleston and Babcock in these categories for the CTH II homes managed by the boards.

Table 14: Housing-Related Costs Included in Waiver Rate

	Babcock CTH II Homes	Charleston CTH II Homes
Exterminating	\$28,005	\$8,505
Trash removal	11,138	Not specified
Household Supplies	99,393	35,922
Maintenance Supplies	43,914	10,019
TOTAL	\$182,450	\$54,446

Source: Audited financial statements for The Babcock Center, Inc, and the Disabilities Board of Charleston County, for FY 2003

Federal guidance on what should be included as room and board is not detailed. However, DDSN recently provided guidance to the DSN Boards which identifies specific room and board costs that should be included in client fees, including the cost categories of exterminating, trash removal, and maintenance and household supplies. In addition, DHHS waiver program staff told us that they did not intend for the waiver program to include these kinds of costs within its services. Although these costs would have been included in the 2003 waiver cost report, their inclusion did not have a material effect on the statewide waiver rates.

Recommendations

15. The Department of Health and Human Services Division of CLTC Waiver Management, in conjunction with Division of Ancillary Reimbursements, should review all costs currently charged to the MR/RD waiver program and determine which costs are appropriate and allowable. This review should incorporate DDSN waiver cost reports and schedules.
16. The Department of Disabilities and Special Needs should ensure that all room and board-related costs are deducted from waiver cost reports beginning with cost reports for FY 2005.

Audits And Fiscal Oversight

We concluded that there is a lack of fiscal oversight of the MR/RD waiver program on the part of both DHHS and DDSN, although DDSN staff conduct fiscal reviews of the DSN Boards in the process of compiling the Medicaid waiver cost reports. But DHHS performs only limited reviews of these reports, and DDSN's four regional cost reports are not subjected to any type of external audit.

REGIONAL COST REPORTS NOT AUDITED

As previously described, DDSN compiles four regional cost reports annually in order to report expenditures for the MR/RD waiver as well as other DDSN programs and services. These cost reports include all expenditures for the DDSN network of providers except for those ICF/MR and other programs that bill directly to DHHS. These statements establish the direct service costs, as well as the allocated costs for central administration and overhead, for reimbursement by Medicaid. Information from the regional cost reports is used in the MR/RD waiver specific cost reports, which in turn establish waiver per diem rates and cost settlements.

As far as we could determine, there have been no reimbursement audits performed on the regional cost reports in recent years. This holds true for costs for the ICF/MR facilities in addition to the MR/RD waiver program. While the State Auditor's Office (SAO) conducts agreed-upon procedures of DDSN, as it does for state agencies in general, the SAO does not audit DDSN's cost reports. For FY 2003, the four regional cost reports together accounted for \$340,492,717 in costs for DDSN programs.

DHHS has a contract with the State Auditor's Office to regularly audit nursing home cost reports at least once every four years. However, no such provision exists for audits of DDSN expenditures.

As a result, there has been no external oversight of DDSN's spending to provide assurances that:

- All costs attributed to the waiver program are allowable and appropriate;
- Medicaid and other federal financial criteria are followed;
- The State Medicaid Plan and contracts between DHHS and DDSN are followed;
- Rates for reimbursement are reflective of costs;
- The central administrative and other DDSN costs are appropriate, Medicaid-reimbursable, and allocated to direct service lines on a statistically valid basis.

The Code of Federal Regulations requires that: "The Medicaid agency must assure appropriate audit of records if payment is based on costs of services or on a fee plus cost of materials." (42 CFR 447.202) DHHS could fulfill this obligation by requiring DDSN to obtain periodic external audits of the regional cost reports.

WAIVER SPECIFIC COST REPORT NOT AUDITED

The waiver specific costs of the DSN Boards are not routinely subjected to an in-depth audit, although they are subjected to a desk audit review process by staff at DDSN and DHHS. In addition, the waiver cost reports can be tied to the DSN Boards' audited financial statements. The Medicaid allowable costs are derived from the audited financial statements via a reconciliation process, and DDSN then aggregates these costs and reports them to DHHS in order to develop average rates for various waiver services. We tested the reliability of the waiver costs reported for two DSN Boards (Charleston and Babcock) by tracing waiver costs reported to DHHS back to the audited financial statements and DDSN reconciliation. While there were some minor exceptions, in general the audited financial statements supported the waiver costs claimed by the DSN Boards.

However, we found that DHHS staff in the Division of Ancillary Reimbursements are not reviewing the DSN Boards' audited financial statements as part of the waiver report desk review process. DHHS staff perform some limited audit steps on the waiver cost reports. For example, they review the math accuracies of the step-down allocations and also verify the days of service reported by DDSN with the reimbursements recorded in the Medicaid Management Information System. DHHS staff do not have any written desk audit procedures to guide this review. In addition, DHHS does not review DDSN reconciliation schedules that support costs reported in the waiver reports.

The external financial statements could provide some assurances that waiver costs are appropriate. For example, DDSN promulgates a provider audit policy that the DSN Boards are to follow for their audited financial statements. Among other things, this policy requires that the external auditors perform the following audit procedures:

- Reconcile adjusted allowable cost for Medicaid programs in the provider's (DSN Board) cost report to total program cost in the audit report;
- Review the cost allocation plans submitted by the DSN Boards;
- Gain an understanding of the controls over consumers' personal funds managed by DSN Board staff;
- Select a representative sample of the Medicaid billable services and determine that documentation is on file to support billings and ensure that supervisory staff are monitoring provision of services; and
- As part of expenditure test work, include a sample of financial transactions made by or on behalf of the executive director and top administrative staff of the DSN Board.

If the boards' external auditors are following this policy, it would help provide assurances that Medicaid funds for the waiver program are being spent appropriately. However, without reviewing the workpapers of the boards' external auditors, it is difficult to tell if they followed these procedures because reporting is done on an exception basis. Also, in our review of the audited financial statements for Babcock Center for fiscal years 2003

and 2004, we could not find a reconciliation of allowable Medicaid costs to total program costs. (Charleston's financial report did provide the reconciliation.)

The Code of Federal Regulations also requires that "the agency will assure financial accountability for funds expended for home and community-based services [and] provide for an independent audit of its waiver program..." (42 CFR 441.302) Because the waiver cost reports are not reviewed in-depth, DHHS lacks the assurance that the waiver reimbursement rates are based on reliable cost information and that the waiver program is paying only for allowable costs.

We also identified a need for periodic on-site audits of the waiver adult day rehabilitation and other programs at DSN Boards in order to verify client attendance as recorded on the service provision logs. Currently, this is not regularly audited although the DDSN internal auditor or its First Health quality assurance provider may sometimes review service logs. The Medicaid per diem rates reimbursed to DDSN are contingent upon allowable Medicaid costs divided by the number of patient days or units of service provided, so this factor is a critical component of the cost.

Recommendations

17. The Department of Health and Human Services should require the Department of Disabilities and Special Needs to obtain an external audit of the four regional cost reports on a periodic basis.
18. The Department of Health and Human Services staff in the Division of Ancillary Reimbursement should develop written desk audit procedures for the review of the Medicaid MR/RD Waiver cost reports. As part of these audit procedures, the division should ensure that the audited financial statements of a sample of DSN Boards and other supporting documentation are reviewed, including results of the required audit procedures and tests of Medicaid billable costs.
19. The Department of Health and Human Services should require DDSN to provide on-site audits of service provision logs maintained by local boards and programs.

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Appendix A: DEFINITIONS AND LEGAL AUTHORITY

Assessment: A method of determining a consumer's current long term care needs through the use of a comprehensive standard instrument.

Babcock Center, Incorporated (Babcock or Babcock Center): A private, non-profit organization founded in 1970 serving people with mental retardation, autism, head and spinal cord injury, and related lifelong disabilities. In order to receive services from the Babcock Center, individuals must be determined eligible for services from the SC Department of Disabilities and Special Needs. Babcock Center provides Medicaid services either under a subcontract with the SC Department of Disabilities and Special Needs or directly through a contract with SC Department of Health and Human Services.

Centers for Medicare and Medicaid Services (CMS): A federal agency within the U.S. Department of Health and Human Services. CMS administers the Medicare program, Medicaid program, and State Children's Health Insurance Program.

Client Funds (also known as personal needs allowance/consumer funds): Funds received or retained by a resident for personal expenses and sometimes deposited and held in an account administered by a facility for the convenience of the individual.

Community Residential Care Facility (CRCF): 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 hours for two or more persons, 18 years old or older, not related to the licensee within the third degree of consanguinity. 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 a community residential care facility.

Community Training Home I (CTH I): A residential placement similar to foster care in that a private citizen's home which is licensed and where the caregiver is a contract agency employee. Up to three individuals live in the home and receive personalized care, supervision and training.

Community Training Home II (CTH II): A home owned or rented by the agency where up to four individuals live. A caregiver may also live in the home or staffing may be provided in shifts. This model differs from the Community Training Home I placement because, if the caregiver changes, residents will not have to move.

Cost Report: The report required from providers on an annual basis in order to make a proper determination of amounts payable under the Medicaid program.

Disabilities Board of Charleston County (Charleston): The Board was established as provided in Act 1127 of 1974 of the State of South Carolina, as amended to develop, provide and improve community services for mentally retarded persons and others with

Appendix A: DEFINITIONS AND LEGAL AUTHORITY

disabilities and special needs, including autism, head and spinal cord injuries and any other disability not covered by any other

state agency. The Board is qualified to receive funding through its various contacts with the SC Department of Disabilities and Special Needs. The Board also receives funding for its programs from Charleston County, fees charged to individuals served, and various other sources.

Disabilities and Special Needs Board (DSN Board): A local Board which has been established pursuant to S.C. Code Ann. §44-21-810 *et seq.*, the members of which are appointed by the Governor or through the County Council authority and which provides, under contract with the SC Department of Disabilities and Special Needs and SC Department of Health and Human Services, comprehensive community services to eligible residents of a geographic service area designated by DDSN.

Federal Financial Participation (FFP): Any funds, either title or grant, from the Federal government.

Head and Spinal Cord Injury (HASCI) Waiver: A 1915 (c) Medicaid waiver that addresses the long term needs of persons with Head and/or Spinal Cord Injuries.

Home and Community-Based Waiver: A special Medicaid program operated under Section 1915 (c) which allows the provision of a special package of approved services to a defined target population with long term care needs.

Intermediate Care Facility for the Mentally Retarded (ICF/MR): A health related facility which meets the requirement for state licensure to provide care to persons with mental retardation who do not need care in a hospital or skilled nursing facility.

Memorandum of Agreement (MOA): A legal document that binds two or more parties outlining their scope of responsibilities one to the other.

Mental Retardation and Related Disabilities (MR/RD) Waiver: A 1915 (c) waiver which provides a broad range of special home and community-based services to Medicaid eligible individuals with mental retardation or related disabilities to help them live in the community rather than an institution.

Recoupment: Funds previously paid to a provider of Medicaid services or sub-grantee of the state's Medicaid program in error or determined, by post-payment review, to have been improperly paid and returned to the department or withheld from payments owed to the provider or sub-grantee.

Sanction: A penalty imposed for failure to meet standards or improperly billing Medicaid.

Appendix A: DEFINITIONS AND LEGAL AUTHORITY

Service Coordinator: A professional who assists Medicaid clients in accessing appropriate and available services. Also known as a case manager.

Single Plan: A document which provides a comprehensive review of a consumer's problems and strengths. Goals are set based on the consumer's identified needs, and interventions are specified to meet those needs. Also referred to as a plan of care.

Service Tracking System (STS): The Service Tracking System is DDSN's system for tracking information about the individuals applying for and receiving services. STS collects intake, eligibility, waiting list, service assignment, and service delivery data for billing and reporting purposes. The STS is primarily maintained by the staff assigned to coordinate services for individuals requesting/receiving services from DDSN.

SC Department of Disabilities and Special Needs (DDSN): The State agency that plans, develops, coordinates and funds services for South Carolinians with the severe, lifelong disabilities of mental retardation and related disabilities, autism, traumatic brain injury, spinal cord injury and similar disabilities.

SC Department of Health and Environmental Control (DHEC): The State health agency. Section 1864(a) of the Social Security Act directs the Secretary of Health and Human Services to use the help of State health agencies when determining if health care institutions meet provider certification to receive Medicaid reimbursement. 42 CFR part 488 sets forth that the State health agency performs surveys to support its certifications.

SC Department of Health and Human Services (DHHS): The State Medicaid agency as specified in 42 U.S.C. § 1396 *et. seq.* and S.C. Code Ann. § 44-6-10 *et. seq.* to administer the Medicaid Program in South Carolina.

SC Department of Social Services (DSS): The State agency authorized by the Omnibus Adult Protection Act of the South Carolina Code of Laws, to investigate all reports of abuse, neglect and financial exploitation of children and adults living in the community (non-institutionalized) and provide services. Services are provided to meet the adults' basic needs and to ensure their safety.

Supervised Living Program I (SLP I): The least restrictive residential placement which still provides staff oversight. Individuals live in apartments, duplexes or other housing and receive staff support and intervention based on personal need.

Supervised Living Program II (SLP II): Similar to the Supervised Living Program I, except residents need more supervision. Staff are on-site or available within three minutes (they usually live in another section of a duplex or apartment).

Title XIX: The Title of the Social Security Act dealing with Medicaid. Codified at Title 42 of the United States Code, Chapter 7, subchapter XIX (42 U.S.C. § 1396 *et seq.*)

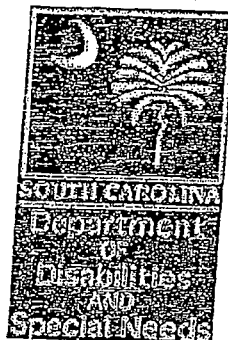
A Review of the MR/RD Waiver as Operated by the Department of Disabilities and Special Needs

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Appendix B: Response from Department of Disabilities and Special Needs

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DDSN's Response to the Recommendations

DDSN is appreciative of the manner in which this audit was conducted and the willingness of DHHS staff to take the time and effort to understand the complexities and difficulties inherent in providing care for individuals with disabilities and their families. DDSN is also pleased that for the most part, we are meeting the State Medicaid agency's expectations. Importantly, the audit identifies a number of areas of improvement where the two agencies can collaborate.

1. DDSN will work with DHHS staff to revise the quality assurance process so as to satisfy the goals and needs of both agencies. DDSN recognizes that DHHS, as the Medicaid agency within the state, has final authority over all Medicaid expenditures and requirements.
2. DDSN will work with DHHS on a joint quality assurance and monitoring system for Medicaid services provided by DDSN.
3. Staff at DDSN will be designated to work with DHHS staff on developing a reporting process related to First Health findings and Medicaid recoupments.
4. A refund of \$422,077 will be made for FY 2003 and FY 2004 before the end of the current fiscal year.

5. DDSN staff will coordinate with appropriate DHHS division staff on potential Medicaid recoupments for FY 2005 related to First Health findings.
6. DDSN will coordinate with DHHS staff to implement the recommendations.
7. Starting with next year's review cycle, a timeline will be added for correction of serious deficiencies involving the health and safety of clients.
8. By the start of next fiscal year, DDSN will collect and share data concerning correction of serious licensing and certification violations and any sanctions that were applied with DHHS staff.
9. Starting with next year's review cycle, DDSN will ensure that copies of the annual licensing reports will be shared with the board members.
10. As DDSN continues to track its mandated reduction in program capacity of Babcock Center, Inc., the agency will update the status to DHHS staff.
11. DDSN will refund the Medicaid share of MR/RD waiver services provided when the licensing and certification inspections find that these services were not identified as a need or appropriately delivered as authorized in the consumers' single plans.
12. As noted in this audit, and as DDSN previously recognized, there is a need to adjust the band payments and the agency has requested additional funding as part DDSN's budget request for next fiscal year. DDSN intends to realign the rates next fiscal year if at all possible.
13. DDSN will coordinate with the Richland/Lexington County Disabilities and Special Needs Board and the Babcock Center, Inc., concerning better communication and coordination of care for consumers served by both boards.
14. By March 31, 2006, DDSN will review with both Babcock Center, Inc., and the Disabilities Board of Charleston County the policy concerning proper documentation of one-to-one staffing and uses of residential outlier funding in consumer's plans.
15. DDSN staff will work with DHHS staff on any cost reviews.
16. DDSN has already excluded any room and board-related costs from the waiver cost reports being prepared for FY 2005.
17. DDSN will obtain an external audit of the regional cost reports on a periodic basis as determined by DHHS.

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18. DDSN staff will work with DHHS staff on any reviews.
19. Beginning next fiscal year, DDSN will provide for onsite audits of service provision logs maintained by local boards and programs.