SOUTH CAROLINA COMMISSION ON DISABILITIES AND SPECIAL NEEDS

MINUTES

January 21, 2021

The South Carolina Commission on Disabilities and Special Needs met on Thursday, January 21, 2021, at 10:00 a.m. at the Department of Disabilities and Special Needs Central Office, 3440 Harden Street Extension, Columbia, South Carolina.

The following were in attendance:

COMMISSION
Present In-Person
Eddie Miller

Present SKYPE
Gary Lemel – Chairman
Barry Malphrus – Vice Chairman
Robin Blackwood – Secretary
Stephanie Rawlinson

Present Telephone Conference Line
David Thomas

DDSN Administrative Staff

Mary Poole, State Director; Chris Clark, CFO; Rufus Britt, Associate State Director, Operations; Susan Beck, Associate State Director, Policy; Constance Holloway, General Counsel (via conference line); Kevin Yacobi, Director of Internal Audit; Kim McLeod, Legislative Liaison & Public Information Officer; Lori Manos, Director of Waiver Policy, Administration and Case Management and Christie Linguard, Administrative Coordinator.

Notice of Meeting Statement

Chairman Lemel called the meeting to order and Secretary Blackwood read a statement of announcement about the meeting that was distributed to the appropriate media, interested persons, and posted at the Central Office and on the website in accordance with the Freedom of Information Act.

Adoption of the Agenda

On a motion by Commissioner Thomas, seconded by Commissioner Blackwood, the Commission unanimously adopted the January 21, 2021 Meeting Agenda. (Attachment A)

Invocation

Commissioner Miller gave the invocation.

Approval of the Minutes from the December 17, 2020 Commission Meeting

Commissioner Malphrus made a motion to accept the December 17, 2020 Commission Meeting minutes as written, seconded by Commissioner Miller and unanimously approved by the Commission. (Attachment B)

Commissioners' Update

Commissioner Rawlinson congratulated Darrin Sisk, employee at the Colleton County Disabilities and Special Needs Board, on his 32 year tenure with the Board.

Public Input

There was one public input request from Jason Tavenner.

Commission Committee Business

A. Policy Committee

The Policy Committee met on January 12, 2021. The following topics were presented for review and/or approval by the Commission:

SC Commission on Disabilities and Special Needs (DSN) Bylaws – Commissioner Malphrus reported that there are two approved changes to the current DSN Bylaws coming out of the Policy Committee. The first change involved Article V, Section 3 and is consistent with notice requirements of the state in SC Code Section 30-4-80 of the Freedom of Information Act, wherein an Emergency meeting of the Commission can be held at any time with a two-thirds vote by its members. The second Bylaws change involved shortening the sentence in Article VII, Section 2 to include the commission members acting on "all" committee recommendations. Chairman Lemel asked for further discussion regarding the two Bylaws changes; hearing none, the Commission treated the Policy Committee's approval of the two Bylaws changes as a motion and second. The changes were approved unanimously by the Commission. (Attachment C)

800-07-CP: DSN Commission Committee Procedures – Chairman Lemel asked for further discussion regarding this directive as written. Hearing none, the Commission treated the Policy Committee's approval as a

motion and second. This directive was unanimously approved by the Commission. (Attachment D)

535-07-DD: Obtaining Consent for Individuals Regarding Health Care – Making Health Care Decisions – Ms. Beck noted that this directive was amended by the Policy Committee and placed on the agency's website for external review. Disabilities Rights of South Carolina had one set of comments to which Commissioner Rawlinson thanked them for their input. After review of the comments by the agency's legal counsel, the directive was revised and approved by the Policy Committee which is brought before the Commission today. Chairman Lemel asked for further discussion, hearing none, the Commission unanimously approved this directive. (Attachment E)

535-15-DD: Obtaining Health Care Consent for Minors and Adults with Head and Spinal Cord Injuries (HASCI); 535-14-DD: Authorization to Discuss Medical Condition and Medical Treatment Plan; and 535-12-DD: Advance Directives – Ms. Beck grouped these directives to mark each of them obsolete because they are no longer necessary. Chairman Lemel asked for further discussion regarding marking the three (3) aforementioned directives obsolete, hearing none, the Commission treated the Policy Committee's approval as a motion and second. These three (3) directives were unanimously approved by the Commission to mark obsolete. (Attachment F)

Ms. Beck announced that the 603-03-DD: Safety Precautions for Medical and Dental Treatment directive will be brought back to the Policy Committee. Two other directives have just completed the 10-day external review. The comments will be reviewed by staff and then back to the Finance and Audit Committee for review and approval. Ms. Beck gave an update on the Policy Committee's progress thus far.

B. Legislative Committee

Committee Chair Thomas stated the Committee met on January 14, 2021. He requested that elements of the 2018 Legislative Oversight Committee Recommendations Report be placed on the agenda for the next Commission meeting. The following Articles are being presented to the Commission for approval. Once approved, these Articles will be published in the February 26, 2021 State Register for a period of time and a Public Hearing will be scheduled thereafter.

Article 3: Recreational Camps for Persons with Intellectual Disability – Ms. McLeod asked that the Commission consider repealing this Article because the agency no longer provide these camps. Chairman Lemel asked if there was any further discussion on this Article; hearing none,

the Commission treated the Legislative Committee's approval as a motion and second. The repeal of Article 3 from the State Register was unanimously approved by the Commission. (Attachment G)

The following Articles are brand new regulations that are currently a part of the agency's directives.

Article 5: Eligibility Determination – The Commission treated the Legislative Committee's approval of this Article as a motion and second. Placement of Article 5 in the State Register was unanimously approved by the Commission. (Attachment H)

Article 7: Appeal Procedures - The Commission treated the Legislative Committee's approval of this Article as a motion and second. Placement of Article 7 in the State Register was unanimously approved by the Commission. (Attachment I)

Article 8: Research Involving Persons Eligible for Services - The Commission treated the Legislative Committee's approval of this Article as a motion and second. Placement of Article 8 in the State Register was unanimously approved by the Commission. (Attachment J)

Ms. McLeod requested a Public Hearing via a Special-Called Commission Meeting to take place on Monday, March 29, 2021 at 3:00 PM at the central office. After the Public Hearing, the Articles will be submitted for publication in the February State Register. Commissioner Thomas asked the public to email him or any other commission member if there are any questions to these Articles. Commissioner Miller made a motion to hold a Public Hearing on March 29, 2021 at 3:00 PM, seconded by Commissioner Malphrus and unanimously approved by the Commission.

Old Business

A. Case Management Updated

Ms. Manos began by discussing the December 2020 Billing Report for Market Rate Case Management. She also discussed case management contract terminations, Appendix K and conflict-free case management. The Average Case Management revenue bill from July 2020 – December 2020 was $106.70, which is slightly higher from that same time in 2019 ($104.00), indicating that case managers have worked hard to maintain services and increasing their revenue despite the pandemic. Ms. Manos said that they are evaluating errors that occur for two (2) consecutive months as that is a better indicator. Since May 2019, there have been six (6) providers who have terminated their case management contracts (four were boards and two were private providers); there are currently

two more who are in process of terminating their contracts in February and June. To date, there has not been a problem with providing case management services for everyone. DDSN has received nine (9) requests in the month of January from providers who would like to expand their case management services to other counties. Ms. Manos also reported that her division is looking at why some consumers, for whatever reason, have not had contact with a case manager in two (2) consecutive months, which is currently approximately 1.6% (207 out of 12,382). Ms. Manos went on to talk about DHHS' Appendix K (replacement services) in the midst of COVID-19, which has been extended to no later than six (6) months after the expiration of the public health emergency. Conflict-free case management in essence means that an agency cannot provide case management and direct services to the same person. DDSN has recently drafted a directive and are updating procedure manuals to address conflict-free case management, with an implementation date of June 1, 2021. Lastly, Ms. Manos addressed the morale of case managers due to the restrictions of social distancing and COVID-19. Case managers have been resilient and are being very creative with ways to interact with consumers (i.e., driveway visits, meeting in the front yard and some virtual meetings). (Attachment K)

B. Band B & I Switch to Fee for Service (FFS) Update

Mr. Clark updated the Commission on the smooth transition of the Band B & I conversion to Fee for Service thus far. Trainings and work group meetings have been provided to providers over a period of time. Director Poole discussed the acuity piece of the conversion. The agency's certified raters will use the Health Care Screening Tool, which has been used by the agency since July 2014, to assess the care needs of individuals.

C. Cost Reports Update

Mr. Clark announced that an internal transfer within the agency has been hired to assist with cost reports full-time. Discussion has been held with the Department of Health and Human Services to work on 2020 Cost Reports in order to obtain the most up-to-date rates. Provider trainings are ongoing. Mr. Clark discussed the need to impress upon providers the importance of submitting their cost reports so that we can complete our statewide cost report by the November deadline.

D. Internal Audit Monthly Report

Mr. Yacobi commenced with continued discussion on Agreed Upon Procedures Reports and the issues the agency is having with receiving them. The Supply and Service Division audit was discussed and questions, mainly related to procurement card transactions, were raised

and answered. Internal Audit is currently auditing case management and have issued a provider survey. Mr. Yacobi expressed transparency and communication concerns involving changes that are being made to the process of the Fee for Service conversion. He would like the Commission and the provider network to be informed of the change(s) prior to implementation.

E. Legislative Update

Ms. McLeod is following several Bills in the House of Representatives and the Senate. Commission members asked her to forward House Bill #3181 involving training for DDSN commission members to them as soon as possible.

F. COVID Update

Mr. Britt briefed the Commission on COVID policies, updated positive result numbers, hazard/hero pay for staff members and vaccinations.

New Business

A. Special Committee on Commission Communications

This Special Committee would like to address all public image issues for this commission. Pursuant to appointment by the Chairman, Commissioner Malphrus will serve as chair of this Special Committee and Commissioners Rawlinson and Blackwood will serve as committee members.

B. Financial Update

Mr. Clark gave the financial update as of December 2020. The agency is approximately 2.8% below budgeted expenditures. Adjusting for the timing of several items in our expenditures we are 5% below budgeted expenditures. DDSN, along with DHHS, has chosen to be the first agencies to implement the new virtual desktop project initiated by the state Office of Technology and Information Systems which means a large portion of the cost we anticipated incurring to implement this software will be paid by the State. Over the next five (5) years, this will save the agency at least $487,000 primarily related to the hardware and up front implementation costs. A discussion ensued related to how the savings were anticipated to be spent. Mr. Clark stated that the funds would remain in the capital projects budget as unexpended funds and other projects may be identified that these funds would need to be spent. If these funds are to be used on another purpose, the Commission would need to approve that spending since the Commission stated that each project within the Capital Budget

plan had to receive Commission approval individually before any purchases were made. On a motion by Commissioner Miller, seconded by Commissioner Malphrus, the Commission unanimously approved the financial update as presented. (Attachment L)

C. FY21 Second Quarter Amendment Summary

Mr. Clark presented the quarterly amendment report for October thru December 2020. He explained that the vast majority of the funding increases related to Bands B and I. He explained that these funds were added for the entire year, but a subsequent amendment would be reducing all of these funds as well as other Band B and I funding effective January 1, 2021 as part of the fee for service implementation. (Attachment M)

State Director's Report

Director Poole provided a State Director's Report. (Attachment N)

Executive Session

There was no Executive Session.

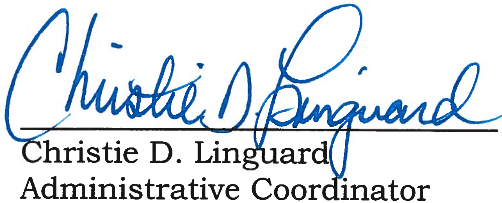
Next Regular Meeting

February 18, 2021

Adjournment

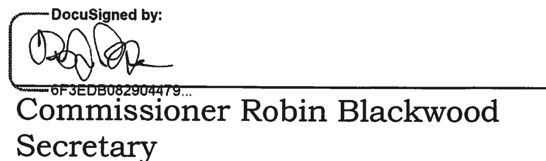
On a motion by Commissioner Thomas seconded by Commissioner Malphrus and unanimously approved by the Commission, the meeting was adjourned at 12:57 p.m.

Submitted by:



Christie D. Linguard
Administrative Coordinator

Approved by:



Commissioner Robin Blackwood
Secretary

SOUTH CAROLINA COMMISSION ON DISABILITIES AND SPECIAL NEEDS

A G E N D A

South Carolina Department of Disabilities and Special Needs
3440 Harden Street Extension
Conference Room 251 (SKYPE)
Columbia, South Carolina

January 21, 2021 **10:00 A.M.**

1. Call to Order — *Chairman Gary Lemel*
2. Notice of Meeting Statement — *Commissioner Robin Blackwood*
3. Welcome
4. Adoption of Agenda
5. Invocation — *Commissioner Ed Miller*
6. Approval of the December 17, 2020 Commission Meeting Minutes
7. Commissioners' Update — *Commissioners*
8. Public Input
9. Commission Committee Business

   A. Policy Committee — *Committee Chair Barry Malphrus*
      1. SC Commission on Disabilities and Special Needs (DSN) Bylaws
      2. 800-07-CP: DSN Commission Committee Procedures
      3. 535-07-DD: Obtaining Consent for Individuals Regarding Health Care – Making Health Care Decisions
      4. 535-15-DD: Obtaining Health Care Consent for Minors and Adults with Head and Spinal Cord Injuries (HASCI)
      5. 535-14-DD: Authorization to Discuss Medical Condition and Medical Treatment Plan
      6. 535-12-DD: Advance Directives

   B. Legislative Committee — *Committee Chair David Thomas*
      Regulations for Approval
      1. Article 3
      2. Article 5
      3. Article 7
      4. Article 8

10. Old Business:

   A. Case Management Update — *Ms. Lori Manos*
   B. Band B & I Switch to Fee for Service (FFS) Update — *Mr. Chris Clark*
   C. Cost Reports Update — *Mr. Chris Clark*
   D. Internal Audit Monthly Report — *Mr. Kevin Yacobi*
   E. Legislative Update — *Ms. Kim McLeod*
   F. COVID Update — *Mr. Rufus Britt*

11. New Business:

    A. Special Committee on Commission Communications — *Chairman Gary Lemel*
    B. Financial Update — *Mr. Chris Clark*
    C. FY21 Second Quarter Amendment Summary — *Mr. Chris Clark*

12. State Director's Report — *State Director Mary Poole*

13. Executive Session

14. Enter into Public Session

15. Next Regular Meeting (February 18, 2021)

16. Adjournment

SOUTH CAROLINA COMMISSION ON DISABILITIES AND SPECIAL NEEDS

MINUTES

December 17, 2020

The South Carolina Commission on Disabilities and Special Needs met on Thursday, December 17, 2020, at 10:00 a.m. at the Department of Disabilities and Special Needs Central Office, 3440 Harden Street Extension, Columbia, South Carolina.

The following were in attendance:

COMMISSION
Present In-Person
Gary Lemel – Chairman
Barry Malphrus – Vice Chairman
Robin Blackwood – Secretary
Eddie Miller
David Thomas
Stephanie Rawlinson

DDSN Administrative Staff

Mary Poole, State Director; Pat Maley, Deputy Director; Chris Clark, CFO; Kevin Yacobi, Director of Internal Audit; Kim McLeod, Legislative Liaison & Public Information Officer; and Christie Linguard, Administrative Coordinator.

Notice of Meeting Statement

Chairman Lemel called the meeting to order and Secretary Blackwood read a statement of announcement about the meeting that was distributed to the appropriate media, interested persons, and posted at the Central Office and on the website in accordance with the Freedom of Information Act.

Adoption of the Agenda

On motion of Commissioner Thomas, seconded by Commissioner Blackwood, the Commission unanimously adopted the December 17, 2020 Meeting Agenda. (Attachment A)

Invocation

Commissioner Blackwood gave the invocation.

Approval of the Minutes from the November 19, 2020 Commission Meeting

Commissioner Malphrus made a motion to accept the November 19, 2020 Commission Meeting minutes as written, seconded by Commissioner Blackwood and unanimously approved by the Commission. (Attachment B)

Commissioners' Update

Commissioner Malphrus requested a case management update at the January meeting. He also announced that the Policy Committee will be presenting a list of communication items at the January Commission Meeting. Commissioner Blackwood thanked the DDSN network, providers, caregivers, boards, staff and others who help to care and assist individuals with disabilities across the state.

Public Input

There was one public input request; however, the Commission was unsuccessful in their three (3) attempts to contact Ms. Sandra Loy at the telephone number left on the website.

Commission Committee Business

A. Legislative Committee – Notice of Drafting Submission

Committee Chairman Thomas stated the Committee met on December 10, 2020 to review and approve the Notices of Drafting documents for the agency Regulations to be submitted to the Legislative Council and published in the State Register. The Committee will meet again in January to review the specifics of the Regulations and make any necessary changes. The Regulation amendments will be brought back to the full Commission for approval.

Old Business

A. Band B & I Switch to Fee for Service (FFS) Update

Mr. Clark updated the Commission on the progress being made on implementing at home services FRS. Two trainings were held with providers to discuss a variety of implementation considerations. The sessions were also recorded and one is available on the agency's website for anyone who was not able to listen in on the live broadcast. There will be another session tomorrow morning at 10:00 AM and a January training session as well. Mr. Clark thanked all staff members involved in the process. The Band rates were discussed in great detail. (Attachment C)

B. Cost Reports Update

Mr. Clark stated that there is not a lot to report on this subject since November's meeting. He and his team are still working on 2013-2015 Cost Reports. An update was given on the status of the cost reports and where the Agency stood with each year that was not filed. He explained in detail the steps being taken internally to begin preparation of 2018 and 2019 cost reports.

C. Internal Audit Monthly Report

Mr. Yacobi briefed the Commission on Internal Audit's monitoring of the Bands B and I conversion to Fee For Service. There was much decision about the three Phases. Mr. Yacobi addressed his concerns about the size of the internal team for Phase II of the process in regards to helping move the evaluations along quickly and thoroughly and to build in some double blind evaluations within the evaluation team to ensure fairness. Mary suggested that DDSN could identify internal staff to help with this Initial round of evaluation but stated that she thought a specific level of expertise was needed for the proceeding rounds. Mr. Yacobi reminded us that he would like to be invited to meetings and that materials would be shared with him regarding all Bands B and I conversion planning documents. Mary also stated that Phase 3 cannot be advanced until the waiver amendment is finalized with the Department of Health and Human Services (DHHS).

D. COVID Update

Mr. Maley briefed the Commission on COVID cases per month with residential and community staff as well as the regional centers. He also explained the vaccination plan, which included the three phases implemented by the SC Department of Health and Environmental Control. (Attachment D)

New Business

A. Financial Update

Mr. Clark gave the financial update as of November 2020. He provided a detailed discussion of the report and commented on changes to the format that we are working on. He explained the cash basis presentation of the information and how it proves unreliable information. He is seeking a way to adjust these figures outside of the accounting program so that information is more useful and an accurate reflection of our operations. The agency is operating 3% under the Spending Plan based on the cash basis, but is operating 5% under budget when you adjust for timing issues related to prospective payments to providers. On a motion

by Commissioner Miller, seconded by Commissioner Thomas, the Commission unanimously approved the financial update as presented. (Attachment E)

B. Contract Amendments over $200,000

Mr. Clark presented the four (4) contract amendments over $200,000 for the Commission to review and approve. On a motion by Commissioner Blackwood, seconded by Commissioner Malphrus, the Commission unanimously approved the amendments as presented. (Attachment F)

C. FY21 Strategic Objectives

State Director Mary Poole read aloud each strategic objective for all Commission members. Commissioner Miller made a motion to approve the FY21 Strategic Objectives; and the motion was seconded by Commissioner Malphrus and unanimously approved by the Commission. (Attachment G)

D. Electronic Visit Verification (EVV) Update

State Director Mary Poole explained that the agency is working with Department of Health and Human Services (DHHS) to find an acceptable solution to the software issue. Director Poole is working on a Memorandum of Understanding (MOU) with Director Joshua Baker prior to him leaving DHHS in January 2021.

State Director's Report

Director Poole provided a State Director's Report. (Attachment H)

Executive Session

At 2:13 p.m., Chairman Lemel requested a motion to go into Executive Session to discuss a contractual employment matter. On a motion by Commissioner Thomas, seconded by Commissioner Malphrus and unanimously approved by the Commission, executive session will began at 2:20 p.m.

Upon rising out of Executive Session at 2:30 p.m., Chairman Lemel announced that there were no motions made, no decisions rendered and no votes taken.

Next Regular Meeting

January 21, 2021

Adjournment

On a motion by Commissioner Miller, seconded by Commissioner Blackwood and unanimously approved by the Commission, the meeting was adjourned at 2:31 p.m.

Submitted by:	Approved by:
______________________________	______________________________
Christie D. Linguard Administrative Coordinator	Commissioner Robin Blackwood Secretary

SOUTH CAROLINA COMMISSION ON DISABILITIES AND SPECIAL NEEDS

BYLAWS

The Commission expects the South Carolina Department of Disabilities and Special Needs, as the Regulatory agency, to utilize all available federal and state funds, and encourages local leaders to develop additional sources of supplementary support recognizing that:

a. Resources may not be adequate for all needs and that funding priority must be based on severity of need and vulnerability;
b. Funding is a resource to individuals to meet identified needs;
c. Funding accountability will be maintained and enforced.

Article I - OFFICES

The principal office of the Commission shall be co-located with the Central Office of the State Department of Disabilities and Special Needs which is in Richland County at Columbia, South Carolina.

Article II - OFFICERS

1. Officers of the Commission shall consist of a Chairman, Vice Chairman, and Secretary. The Chairman shall preside at all meetings. The Vice Chairman shall preside in the absence of the Chairman, and if neither the Chairman nor Vice Chairman is present, the Secretary shall preside.

2. The Secretary or a designee shall record and keep minutes of all meetings for the permanent record; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; be custodian of any and all such records or designate a party to do this; and perform all other duties incident to the office of the Secretary and such duties as from time to time may be assigned by the Commission.

3. No Commission Policy, Department Directive, Procedure or Regulation shall be interpreted to limit Commission members' rights as citizens or limit in any way their authority given by the governor or this Commission.

Article III - ELECTION OF OFFICERS

1. The Chairman, Vice Chairman, and Secretary shall be elected for terms of one year at a time. Provided, however, that the Chairman may not serve more than three consecutive terms (i.e., three years). If the office of Chairman, Vice Chairman, or Secretary shall become vacant, the remaining members shall elect a successor for the unexpired term at the next regularly scheduled Commission meeting. Election of a member to the unexpired term of Chairman shall not preclude the person so elected from being elected to serve three additional full terms of one year each.

2. Election of offices will be held at the June meeting of the Commission each year, with terms beginning at the conclusion of the June meeting, and ending at the conclusion of the next June meeting. At the June meeting the Chairman of the Commission shall open the floor to nominations, starting with the Chairman position and proceeding to Vice Chairman and Secretary. Any party nominated shall agree to serve in the office if elected.

3. Voting shall be by written ballot and shall proceed in the order of Chairman to Vice chairman to Secretary. A simple majority vote shall elect officers. The Chairman shall be entitled to vote once on all ballots for all offices.

   In the event there is only one nominee for a given office, the Chairman may ask for a motion to elect by acclamation. In the event two or more nominees are presented for the same office, the following procedure shall apply. Voting shall continue and after each ballot the nominee with the fewest number of votes shall be dropped from the ballot for the next vote until there shall be only two candidates. Voting shall then continue until one nominee is elected by majority vote.

   The Chairman shall designate two persons, commission members and/or others, who are not nominees for office to count the votes and report the results to the body.

Article IV - VOTING

1. A majority of the members shall constitute a quorum for the transaction of business at any meeting of the Commission. Any action of the majority present at a meeting at which a quorum is present shall be an act of the Commission. If less than a majority is present at a meeting, then a majority of those present may adjourn the meeting.

2. A member who is present at a meeting of the Commission at which action on any matter is taken shall be presumed to have assented to the action unless the dissent shall be noted at the time, or unless the member files a written dissent to such action with the person acting as Secretary of the meeting before the adjournment of the meeting. Such right to dissent shall not apply to a member who voted in favor of such action.

3. A simple voice vote will be appropriate to transact business.

Article V - MEETINGS

1. The Commission shall normally meet at the Central Office of the Department of Disabilities and Special Needs in Columbia, South Carolina. Meetings may be monthly or at other times and/or locations the Chairman or a majority of the Commission may direct.

2. The Commission may meet in Executive Session in keeping with the reasons and principles set out in the Freedom of Information Act. A vote to enter executive session will be taken in public session. If the vote is favorable the presiding officer shall

announce the specific purpose of the executive session as stated in the Freedom of Information Act, S.C. Code An. Section 30-4-70 (1976. As amended). No action shall be taken in the executive session. All actions must take place in a public session.

3. Special meetings of the Commission may be held at any time upon call by the Chairman, or by request of any two members, provided not less than five days' notice of the time and place of said meetings and subject be given by the Chairman. Reasonable notice shall also be given to all Commission members for any regularly scheduled meeting.

   Emergency Meetings of the Commission may be held at any time upon call by two-thirds (2/3) of the Commission, as long as the parties make a reasonable effort to provide notice of the time, place, and subject of said meeting. This is consistent with notice requirements of the state Freedom of Information Act, Section 30-4-80.

4. Any member may waive notice of any meeting, and the attendance of a member at a meeting shall constitute the waiver of notice of such meeting, except where a member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

5. Regularly scheduled and special called meetings will be preceded by proper notice to the public and other interested persons in accordance with the state Freedom of Information Act, Section 30-4-80.

6. Robert's Rules of Order shall be the standard of procedure for the transaction of business at each meeting of the Commission. The Commission shall also comply with the Freedom of Information Act (FOIA) in the conduct of its meetings FOIA supersedes in situations where a conflict may exist with these By-Laws/Robert's Rules of Order.

Article VI - RECORD OF MEETINGS

Within a reasonable time, copies of the minutes of each Commission meeting will be sent to each member as an executive record of the meeting for their study and approval or recommendations for correction at the next meeting. The minutes will be official when approved and countersigned by the Commission Secretary at the next Commission meeting for entering the minutes book and countersigned by the Chairman.

Article VII - COMMITTEES

1. The Commission may create standing and special committees with such powers and duties as the Commission may determine. The Chair will assign members to committees and SCDDSN will provide staff assistance as needed. Committee recommendations will be presented to the Commission for discussion and action. 800-07-CP: The DSN Commission Committee Procedures, details the procedures for each committee.

2. The Executive Committee of the whole will include all Commission members and will serve to consider and act on all Committee recommendations.

Article VIII - ROLE OF THE STATE DIRECTOR

The State Director of Disabilities and Special Needs may meet with the Commission and act in the capacity of Secretary Ex-Officio. The State Director will not have a vote except in the instance of being given a vote by the Commission, nor may the State Director make a motion, but the State Director can discuss and make suggestions to the Commission for its information where indicated in its deliberations.

Article IX - AMENDMENTS

These Bylaws may be amended at special meetings of the Commission, provided that notice of the proposed amendments be given in writing to all the members of the Commission at least five (5) days before said meeting. An affirmative vote of two-thirds (2/3) of the full Commission (or 5 affirmative votes) is necessary to amend these Bylaws.

APPROVED AND ADOPTED by the South Carolina Disabilities and Special Needs Commission this the 21st day of January, 2021.

__________________________	__________________________
Chairman	Secretary

Mary Poole
State Director
Patrick Maley
Deputy Director
Rufus Britt
Associate State Director Operations
Susan Kreh Beck
Associate State Director Policy
W. Chris Clark
Chief Financial Officer

3440 Harden Street Extension
Columbia, South Carolina 29203
803/898-9600
Toll Free: 888/DSN-INFO
Home Page: www.ddsn.sc.gov

COMMISSION
Gary C. Lemel
Chairman
Barry D. Malphrus
Vice Chairman
Robin B. Blackwood
Secretary
Eddie L. Miller
Stephanie M. Rawlinson
David L. Thomas

Reference Number:	800-07-CP
Title of Document:	South Carolina Commission on Disabilities and Special Needs Committee Procedures
Date of Issue:	January 21, 2021
Effective Date:	January 21, 2021
Last Review Date:	January 21, 2021
Date of Last Revision:	January 21, 2021 (**NEW**)

PURPOSE:

The purpose of this Commission Policy is to provide a standing committee framework to include meeting frequency, committee scope and procedures. This policy pertains to the Finance and Audit Committee, Legislative Committee, Personnel Committee and Policy Committee.

COMMITTEE MEETING FREQUENCY:

The South Carolina Commission on Disabilities and Special Needs (DSN Commission) committees, in coordination with the respective committee chairpersons, will determine the meeting frequency as determined by the workflow volume of the standing committee.

COMMITTEE SCOPE:

Finance and Audit Committee:

The Committee provides assistance to the Commission in fulfilling its oversight responsibilities relating to budgeting, accounting and financial reporting processes, and the performance of the internal audit function. The Committee will oversee South Carolina Department of Disabilities and Special Needs (DDSN) management processes and activities relating to:

a. Maintaining the reliability and integrity of DDSN accounting policies, financial reporting practices, and internal controls;
b. Review significant accounting and reporting developments and issues;

c. The performance and work plan of the internal audit function in accordance with DDSN Directive 275-05-DD: General Duties of the DDSN Internal Audit Division;
d. Compliance with applicable laws, regulations, and DDSN directives;
e. Review and approval of the annual operating and capital budgets, as well as any amendments;
f. Analyzing financings and capital transactions being considered by DDSN and the adequacy of its capital structure;
g. Review of DDSN fiscal related directives; and
h. Review of DDSN fiscal regulatory and oversight reports.

The Committee also provides an open avenue of communication between DDSN management, Internal Audit, and the Commission.

Consistent with the annual audit plan, the Committee has the authority to conduct or authorize investigations into any matters within its scope of responsibility. Inquiry and briefings on all significant financial matters along with related presentations and motions for full Commission approval originate from the Committee.

Legislative Committee:

The DSN Commission Legislative Committee initiates, reviews and revises new and existing state statutes and regulations to bring to the full DSN Commission. Formal, prescribed state level promulgation procedures are followed. The Legislative Committee also reviews and approves for full Commission approval pertinent directives referred from the Policy Committee. Lastly, the Committee receives inquiries and briefings on all significant legislative issues and carries forward to the full Commission motions, approvals and presentations.

Personnel Committee:

The Personnel Committee appoints the State Director. It also serves to draft and complete the State Director’s annual evaluation.

Policy Committee:

Commission Policy 800-03-CP, “Executive Limitation Policy,” sets forth the retention of DSN Commission authority to revise and approve all existing and new Commission policies, Department Directives, and Service Standards. However, the DSN Commission delegates authority and responsibility to the Policy Committee to establish procedures to coordinate the review, revision, and recommendation to the full DSN Commission.

The Policy Committee will determine the proper review process for all existing, and newly proposed, Commission Policies, Department Directives and Service Standards using three options, which are:

1) The Policy Committee retains the Policy/Directive/Standard for exclusive review and makes a recommendation(s) to the DSN Commission;

2) The Policy Committee refers the Policy/Directive/Standard to another DSN Committee due to pertinent subject matter and then this other DSN Committee makes a recommendation(s) to the DSN Commission; and

3) The Policy Committee delegates lower risk directives/standards for review by the State Director and the State Director makes a recommendation(s) to the DSN Commission.

COMMITTEE PROCEDURES:

Committee procedures are developed by the individual committees, voted upon at the committee level and presented for approval of the full DSN Commission. Annual review and updating of these procedures is suggested each July or when a new Committee Chair is assigned. These procedures are attached to this directive.

______________________________	______________________________
Barry D. Malphrus Vice Chairman	Gary C. Lemel Chairman

To access the following attachments, please see the agency website page "Current Directives" at: https://ddsn.sc.gov/providers/ddsn-directives-standards-and-manuals/current-directives

Attachment A: Finance and Audit Committee Procedures
Attachment B: Legislative Committee Procedures
Attachment C: Personnel Committee Procedures
Attachment D: Policy Committee Procedures

DSN Commission Finance and Audit Committee Procedures
Commission Approved January 21, 2021

This document sets forth the procedure to be used by the Finance and Audit Committee (the Committee) of the South Carolina Commission on Disabilities and Special Needs (the Commission).

I. SCOPE:

The Committee provides assistance to the Commission in fulfilling its oversight responsibilities relating to budgeting, accounting and financial reporting processes, and the performance of the internal audit function. The Committee will oversee South Carolina Department of Disabilities and Special Needs (DDSN) management processes and activities relating to:

a. Maintaining the reliability and integrity of DDSN's accounting policies, financial reporting practices, and internal controls;

b. Review significant accounting and reporting developments and issues;

c. The performance and work plan of the internal audit function in accordance with DDSN Directive 275-05-DD: General Duties of the DDSN Internal Audit Division;

d. Compliance with applicable laws, regulations, and DDSN directives;

e. Review and approval of the annual operating and capital budgets, as well as any amendments;

f. Analyzing financings and capital transactions being considered by DDSN and the adequacy of its capital structure;

g. Review of DDSN fiscal related directives; and

h. Review of DDSN fiscal regulatory and oversight reports.

The Committee also provides an open avenue of communication between DDSN management, Internal Audit, and the Commission.

Consistent with the annual audit plan, the Committee has the authority to conduct or authorize investigations into any matters within its scope of responsibility. Inquiry and briefings on all significant financial matters along with related presentations and motions for full Commission approval originate from the Committee.

II. COMMITTEE MEMBERSHIP:

The Chair of the Commission will appoint members to the Committee. The Committee will consist of at least three (3) members of the Commission. Members will be sought that have relevant experience and/or fiscal expertise, but this is not a limiting factor related to Committee Membership. The members of the Committee will be appointed and may be removed by the Chair.

III. MEETING FREQUENCY:

The Committee will meet monthly or as determined by the Committee Chairperson based on the workflow of DDSN. Meetings of the Committee may be called by or at the request of the Commission, any member of the Committee, or the Chair of the Commission. Meetings will be held at the time and place designated in the meeting notice. The Chief Financial Officer, in coordination with other members of Executive Management, will prepare a suggested committee meeting agenda and share with the Committee Chair at least five days in advance of the scheduled meeting. Notice of the time, place, and agenda of the meetings will be posted as prescribed by the By-Laws and the South Carolina Freedom of Information Act. A majority of the appointed Committee members will represent a quorum and the actions of a quorum of the Committee shall be the act of the Committee. The Committee will retain minutes of each meeting.

IV. PROCEDURE:

A. Financial Reports/Budgets/Spending Plans

The Committee will consult with management concerning annual spending plans and budget processes, review budgets, projections of future financial performance, analysis of the financial effect of proposed transactions, borrowings, and capital structure. The Committee will review financial information with management in most cases before the information is presented to the Commission. The Committee will assist the Commission in analyzing financial information that is presented to them for review. The Committee will advise the Commission of finance matters that it believes require Commission attention.

Routine Committee business includes review and approval of staff prepared budgets, projects, and financial plans for general reasonableness of the underlying assumptions. The Committee will provide recommendations of approval or modification to the Commission.

B. Directives

The Committee shall receive fiscal-related directives for review and revision as referred by the DSN Commission Policy Committee or as referred by the Commission Chairman. Review and approval of directives follows Section III. A. of the Policy Committee Procedures: Committee Undertakes a Review of a Directive or Standards, listed below as adapted to conform to the Finance and Audit Committee.

"The Directive/Standard is reviewed by staff who will make revision recommendations regarding the document. A draft version, including staff recommendations, will be posted to the website and the public will have 10 business days to review and submit comments (see Directive 100-01-DD: Electronic Communications System)."

It is DDSN's intent to solicit feedback/input from all entities affected by the directives/standards; however, in rare cases the 10 business day period may not occur due to extenuating circumstances.

Committee members will be given a copy of the suggested staff changes prior to posting for public comment. This effort will provide the Committee members a chance to give their input prior to the Directive being posted so that changes can be made prior to posting for public comment.

After the 10 business day public review period, staff will consider and respond to each comment; make additional changes to the Directive or Standards; and present the Directive or Standards to the Finance and Audit Committee at a scheduled meeting. The Committee members may request additional changes and will determine which changes will be accepted based on the comments as well as staff recommendations.

When a consensus is reached by the Finance and Audit Committee, a version representing this consensus will be created for presentation to the DSN Commission for approval. Following approval, the document will be posted on the DDSN website under "Current DDSN Directives" or "Current DDSN Standards."

DSN Commission Legislative Committee Procedures
Commission Approved January 21, 2021

This document sets forth the procedure to be used by the Legislative Committee of the South Carolina Commission on Disabilities and Special Needs (DSN Commission).

I. SCOPE:

The DSN Commission Legislative Committee initiates, reviews and revises new and existing state statutes and regulations to bring to the full DSN Commission. Formal, prescribed state level promulgation procedures are followed. The Legislative Committee also reviews and approves for full Commission approval pertinent directives referred from the Policy Committee. Lastly, the Committee receives inquiries and briefings on all significant legislative issues and carries forward to the full Commission motions, approvals and presentations.

II. MEETING FREQUENCY:

The Committee meets as determined by the Committee Chairperson based on the workflow of the South Carolina Department of Disabilities and Special Needs (DDSN).

III. PROCEDURE

A. Statute and Regulation Review

Prior to initiating the state level promulgation procedures, the Legislative Committee drafts changes and reaches consensus on recommendations for new and existing state statutes and regulations. These drafts are brought to the DSN Commission for a full vote of approval prior to disseminating outside of DDSN.

B. Briefings on Significant Legislative Issues

DDSN staff communicate updates on significant legislative issues to include developments and the need for potential statutory or regulatory revisions based on the needs of the population served by DDSN.

C. Directives

The Committee shall receive pertinent directives for review and revision as referred by the DSN Commission Policy Committee. Review and Approval of directives follows Section III. A. of the Policy Committee Procedures: Committee Undertakes a Review of a Directive or Standards, listed below as adapted to conform to the Legislative Committee.

The directive is reviewed by staff who will make revision recommendations regarding the document. This draft revised version will be presented to the Legislative Committee at a scheduled meeting for consensus on changes. A draft version will be posted to the website and

the public will have 10 business days to review and submit comments (see Directive 100-01-DD: Electronic Communications System).

It is DDSN's intent to solicit feedback/input from all entities affected by the directives/standards; however, in rare cases the 10 business day period may not occur due to extenuating circumstances.

After the 10 business days public review period, staff will consider and respond to each comment; make additional changes to the Directive or Standards; and present the Directive to the Legislative Committee at a scheduled meeting. The Committee members may request additional changes and will determine which changes will be accepted based on the comments as well as staff recommendations.

When a consensus is reached by the Legislative Committee, a version representing this consensus will be created for presentation to the DSN Commission for approval. Following approval, the document will be posted on the DDSN website under "Current DDSN Directives" or "Current DDSN Standards."

DSN Commission Personnel Committee Procedures
Commission Approved January 21, 2021

This document sets forth the procedure to be used by the Personnel Committee (the Committee) of the South Carolina Commission on Disabilities and Special Needs (DSN Commission).

I. SCOPE:

The Committee appoints the South Carolina Department of Disabilities and Special Needs (DDSN) the State Director. It also serves to draft and complete the State Director's annual evaluation. The Chairman of the DSN Commission serves as the Chairman of the Committee which includes up to seven (7) members.

II. MEETING FREQUENCY:

The Committee meets as determined by the Committee Chairman based on the workflow of DDSN associated with the hiring of the State Director. The Committee Chairman also serves as the point of contact regarding the State Director's performance planning and evaluation process.

III. PROCEDURE:

The Committee conforms to the requirements of the DDSN Hiring Commission in hiring and annually evaluating the State Director. The DDSN Human Resource Director is engaged in this process to advise the Committee and DDSN Commission as necessary.

The State Director Salary Commission establishes and administers the State Director's performance process. Guidance regarding the State Director's development of a planning and evaluation stage are provided on the State Fiscal Accountability Authority website: https://www.sfaa.sc.gov/Agency-Head.

Planning Stage

According to the guidance provided, the State Director will meet with the Commission to propose the objectives and standards for success he/she will meet in the upcoming year. The Commission will accept, reject, modify, and discuss the State Director's proposed objectives and success criteria. Success criteria include a statement of conditions that will exist when a duty or responsibility has been satisfactorily met. The success criteria must include the expected actions, timeframes, frequency, costs, quantities or other appropriate and specific measures and business results that will enable the State Director and evaluators to agree on expected outcomes and recognize when these outcomes have been satisfactorily achieved.

When acceptable objectives are identified, the DSN Commission will complete the planned objectives on the evaluation document and review them with the State Director. Signatures are obtained and the original will be retained by the DSN Commission for completion at the end of the evaluation period. The planning process should be completed by October 15th of each calendar year.

The State Director will schedule interim performance conferences as needed to discuss performance or revise/modify objectives through communication with the Committee Chairperson.

Evaluation Stage

The State Director will schedule a meeting with the DSN Commission to present his/her job performance in relation to the objectives and success criteria agreed upon during the planning process. Each DSN Commission member will complete a State Director evaluation survey and return it to the Personnel Committee Chairman to compile. The Personnel Committee Chairman will complete the evaluation document based on the assessment of the State Director's performance as presented by the State Director, input from the DSN Commission and the survey. The final document will be approved by a majority vote of the DSN Commission and signed by the DSN Commission Chairman.

The approved document and survey results will be reviewed with the State Director. The State Director will sign the document to indicate he/she has seen the document and survey results. The completed document and the survey composite score sheet will be submitted to the DDSN Head Salary Commission by September 15th of each calendar year.

The Agency Head Planning Stage, Performance Evaluation Form and related files/links are located on State Fiscal Accountability Authority website.

DSN Commission Policy Committee
Procedure for Review of Policies, Directives and Standards
Commission Approved January 21, 2021

This document sets forth the procedure to be used by the Policy Committee of the South Carolina Commission on Disabilities and Special Needs (DSN Commission) for the review and approval of approximately 180 DSN Commission Policies, Departmental Directives and Standards governing services funded by the agency.

I. SCOPE:

Approved Commission Policies, Departmental Directives and Standards shall, at a minimum, be reviewed every four (4) years to ensure the content remains current and applicable. All policies, directives and standards are available on the DDSN website. The website, at all times, provides an avenue for public comment on the policies, directives and standards. Public comments regarding policies, directives and standards under external review will only be accepted in written form and during the defined public comment period. It is DDSN's intent to solicit feedback/input from all entities affected by the directives/standards; however, in rare cases the 10 business day period may not occur due to extenuating circumstances.

II. PROCEDURE FOR REVIEW OF COMMISSION POLICIES, DEPARTMENTAL DIRECTIVES AND SERVICE STANDARDS:

A. In accordance with Department Directive 100-01-DD: Electronic Communications System, when a policy, directive or standard is under external review, it will be posted on the website in a section entitled "External Review/Public Comment on Directives and Standards." A list of Department Directives and Standards due for external review during the fiscal year will be considered by the Policy Committee semi-annually (on or around July 1 and January 1) and adjusted as determined by the Committee. These directives and standards will then be placed on the website (External Review/Public Comment on Directives and Standards) to include a description as to the applicable groups (e.g., provider types).

B. All Commission Policies will remain within the Policy Committee for review and updating. When the Policy Committee review is completed, a version including all recommended changes will be presented to the DSN Commission for approval. Following approval, the Policy will be posted on the DDSN Website in the "Current DDSN Directives" section.

C. In coordination with the Policy Committee Chairperson, the Commission, DSN Committees or staff may request review and re-prioritization of a policy, directive or standard. Upon a vote of the full Commission, a policy, directive or standard may also be directed to another DSN Commission Committee. For each Directive or Standard the Committee will decide if they will:

- Undertake a review;
- Direct to other committees for review; or
- Delegate to staff. Directives and Standards delegated to staff will be presented to the full Commission for final approval.

III. REVIEW AND APPROVAL OF COMMISSION POLICIES, DEPARTMENTAL DIRECTIVES AND SERVICE STANDARDS:

A. Committee Undertakes a Review of a Directive or Standards:

The directive/standard is reviewed by staff who will make recommendations regarding the document. A draft version, including staff recommendations, will be posted to the website and the public will have 10 business days to review and submit comments (see Directive 100-01-DD: Electronic Communications System).

It is DDSN's intent to solicit feedback/input from all entities affected by the directives/standards; however, in rare cases the 10 business day period may not occur due to extenuating circumstances.

After the 10 business days public review period, staff will consider and respond to each comment; make additional changes to the Directive or Standards; and present the Directive or Standards to the Policy Committee. The committee members may request additional changes and will determine which changes will be accepted based on the comments as well as staff recommendations.

When a consensus is reached by the Policy Committee, a version representing this consensus will be created for presentation to the DSN Commission for approval. Following approval, the document will be posted on the DDSN website under "Current DDSN Directives" or "Current DDSN Standards."

B. Committee Directs to Another Committee for Review of Directive or Standards:

When the Policy Committee directs a Directive or Standards to another DSN Commission Committee for review, the procedures outlined in the section entitled, "Committee Undertakes a Review" (III. A) of this document will be followed by the directed Committee including reaching consensus and presenting to the DSN Commission for approval.

Following approval, the document will be posted on the DDSN website under "Current DDSN Directives" or "Current DDSN Standards."

C. Committee Delegates Review of a Directive or Standards to Staff:

When the Committee delegates to staff for revision, public comment and approval, staff will make recommendations regarding the document. A draft version including staff recommendations will be posted to the website and the public will have 10 business days

to review and submit comments (see Directive 100-01-DD: Electronic Communications System).

After the 10 business day public review period, staff will consider each comment and make additional changes to the Directive or Standards. When comments have been considered and changes made, the document will be presented to the full Commission for final approval.

IV. NEW DEPARTMENTAL DIRECTIVES OR SERVICE STANDARDS:

When a new Departmental Directive or Service Standard is created, the staff will advise the Policy Committee of the need for the document, seek approval to post as a draft for public comment, and ask for a decision regarding whether the Committee will:

- Undertake a review;
- Direct to another committee for review; or
- Delegate to staff. Directives and Standards delegated to staff will be presented to the full Commission for final approval.

Based on the decision by the Policy Committee, the document will follow the procedure outlined above for Directives or Standards being reviewed.

V. CHANGES TO OTHER DOCUMENTS HAVING THE EFFECT OF POLICY:

When substantive changes to other documents having the effect of policy (e.g., HCBS Waiver amendments, HCBS Waiver Manual) are needed, a summary of the needed changes will be presented to the Policy Committee for advisement. As a result of the advisement, the Committee will specify the additional actions, if any, to be taken.

Reference Number:	535-07-DD
Title Document:	Obtaining Consent for Individuals Regarding Health Care - Making Health Care Decisions
Date of Issue:	January 20, 1989
Effective Date:	January 20, 1989
Last Review Date:	~~XXXX~~ January 21, 2021
Date of Last Revision:	~~XXXX~~ January 21, 2021 **(REVISED)**
Applicability:	DDSN Operated Community Settings, DDSN Regional Centers, DSN Boards, and Contracted Service Providers

---

PHILOSOPHY

People who are served by South Carolina Department of Disabilities and Special Needs (DDSN) are fully entitled to all the human and legal rights available to other citizens. The presence of a disability is not, in and of itself, a reason to assume the person is unable to consent. ~~Because, however, a person's disability may adversely impact his/her decision-making ability, scrutiny may be given when health care consent from a person with a disability is required.~~

POLICY

It is the policy of DDSN that health care decisions and advance directives be honored according to federal and state law. An Advance Directive gives guidelines about how health care is to be provided if or when an individual is physically or mentally unable to make decisions. A written Advance Directive may be a Living Will, Health Care Power of Attorney or other clear writing of an individual's wishes. Unless adjudicated incompetent, an adult can execute an Advance Directive.

It is the policy of DDSN that the South Carolina Adult Health Care Consent Act (The Act) be followed if an individual has no advance directive or cannot execute an Advance Directive that covers the specifically proposed health care decision. See S.C. Code Ann. § 44-66-10.

Commented [HC1]: Disability Rights South Carolina - While the Directive recognizes that DDSN and providers should not presume individuals with disabilities are unable to consent based on a disability alone, the Directive does not explicitly state that providers must rely on the individual's right to make healthcare decisions absent other legal mechanisms. Stated differently, if DDSN proactively seeks to have other decision makers identified in the case of inability to consent, DDSN should also more explicitly state that providers must not consult individuals identified in the priority list unless two physicians certify the individual is unable to consent pursuant to the AHCA. Therefore, the directive should more comprehensively discuss the process for determining inability to consent pursuant to the AHCA (as does the current directive) and its implications on both DDSN's "supportive role" and when acting as the authorized person. As written, the directive only mentions this requirement in the context of DDSN acting as a healthcare provider. DRSC suggests adding additional language to the Directive itself and additional language to Attachment B to accomplish this (i.e., "The purpose of the form is to record priority list authorized persons…ONLY when a person has been certified unable to consent by two licensed physicians pursuant to the AHCA." or language similar to Attachment C). In addition to relying on an individual to consent, DDSN should also recognize an individual's right to consult family or friends about healthcare decisions through informal means or through models such as supported decision-making.

Commented [HC2R1]: DDSN has reviewed and considered this comment and does not believe it should be accepted as it is DDSN's position that the current draft policy is in compliance and accurately reflects the ACHA.

Commented [HC3]: Disability Rights South Carolina - Lastly, DRSC would recommend deleting the third sentence of the Philosophy section, because it is counterintuitive to a recognition that an individual with disabilities has the legal right to make decisions on his own behalf. Rather, it recommends additional "scrutiny" solely based on the presence of a disability, which no statute cited by the directive identifies as part of its process for determining incapacity or inability to consent. ("Because, however, a person's disability may adversely impact his/her decision-making ability, scrutiny may be given when health care consent from a person with a disability is required.")

Commented [HC4R3]: DDSN accepts this comment and agrees that the sentence should be removed.

The Act provides a process for making health care decisions for a patient who is unable to consent for their health care including those patients who are eligible for DDSN services under the categories of Intellectual Disability/Related Disabilities (ID/RD), Head or Spinal Cord Injury (HASCI), Similar Disability, and Autism Spectrum Disorder (ASD).

IMPLEMENTATION OF POLICY

The following information is provided for implementation of the aforementioned policy. An attachment is included to provide information for individuals and their families regarding Advance Directives and the Act. (Attachment A: Your Right to Make Decisions About Your Health Care: Information for Individuals and Their Families)

I. Advance Directives

DDSN, a Disabilities and Special Needs (DSN) Board, or a DSN qualified provider who delivers residential services should take the following steps in regard to Advance Directives:

1. Provide Information

Each service provider delivering residential services shall develop policies and procedures to ensure that upon admission the adult being admitted will be provided with a written statement of the agency's policy regarding the implementation of Advance Directives, and also be provided with a written explanation of the law concerning Advance Directives. South Carolina provides by statute for two types of Advance Directives:

- **Living Will** - The Death with Dignity Act authorizes competent adults to express their wishes regarding the use or withholding of life-sustaining procedures, including artificial nutrition and hydration, in the event they are diagnosed with a terminal condition or are in a state of permanent unconsciousness and in the further event that they are incapacitated or otherwise unable to express their desires. The statute creates a form for this purpose entitled "Declaration of a Desire for a Natural Death." This document and those similar in purpose are commonly referred to as a "Living Will." See S.C. Code Ann. § 44-77-50.

- **Health Care Power of Attorney** - The South Carolina Probate Code authorizes competent adults to designate another person to make decisions on their behalf about their medical care in the event they become incapacitated. The statutory form created for this purpose is entitled "Health Care Power of Attorney" See S.C. Code Ann. § 62-5-504.

The individual's medical record maintained by the residential service provider shall be documented to reflect that the required information was provided.

2. Request Information

    - Residential service providers' policies shall state that upon admission of an individual, staff will inquire into the existence of Advance Directives previously executed by the individual. The individual's medical record maintained by the residential service provider shall be documented as to the response to the inquiry.

- In the event staff are aware that an individual has executed an Advance Directive, they shall request a copy and maintain it in the individual's record. In the event of admission to a hospital or nursing facility, staff shall contact the hospital/nursing facility to make them aware of, and supply, a copy of the individual's Advance Directive if the individual's family does not do so.

Staff shall not serve as a witness to the declarant's signature if they are or have been directly involved in the individual's care. Staff shall not accept appointment as an agent in a Living Will or Health Care Power of Attorney.

II. Adult Health Care Consent

1. Steps To Take When In A Supportive Role

DDSN, Disability and Special Needs (DSN) Boards, and DDSN qualified providers are often not the health care provider, but have an important role in supporting individuals to access needed health care. To appropriately support individuals when obtaining health care, accurate information about who can give consent on behalf of the individual must be available.

In advance of an individual receiving health care, DDSN, DSN Boards, and DSN qualified residential service providers should complete the attached form (See Attachment B: Identification of Authorized Person Form) to identify for each individual the person in priority order to serve as the "authorized person" per The Act. See S.C. Code Ann. § 44-66-30. This form should be kept current at all times and at a minimum should be reviewed annually. Efforts to locate persons falling within the priority order must be documented. The order of priority is as follows:

(1) A guardian appointed by the court;
(2) An attorney-in-fact appointed by the patient in a durable power of attorney, if the decision is within the scope of his authority;
(3) A spouse of the patient unless the spouse and the patient are separated pursuant to the statute; one;
(4) An adult child or a majority of the adult children who are available for consultation;
(5) A parent;
(6) An adult sibling or a majority of the adult siblings who are available for consultation;
(7) A grandparent of the patient or a majority of the grandparents who are reasonably available for consultation;
(8) Any other adult relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient, or a majority of those other adult relatives who are reasonably available for consultation;
(9) A person given authority to make health care decisions by another statutory provision; or
(10) If, after good faith efforts, the hospital or other health care facility determines that the persons listed in items (1) through (9) are unavailable to consent on behalf of the patient, a person who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes, but who is not a paid caregiver or a provider of health care services to the patient.

A copy of the completed form should be placed in the individual's record and taken to each health care appointment.

2. Steps To Take As the Authorized Person

When an individual is unable to consent, The Act provides an order of priority for authorized persons. ~~If no authorized person can be identified in priorities 1-8, S.C. Code Ann. § 44-26-50 gives the State Director of DDSN the statutory authority to consent for an individual with ID/RD including ASD that the health care provider has deemed unable to consent.~~ DDSN is authorized to consent to or refuse major medical treatment "if a client resides in a facility operated by or contracted to by the department" (emphasis added). "Facility" is defined as "a residential setting operated, assisted, or contracted out by the department that provides twenty-four hour care and supervision". S.C. Code Ann. § 44-26-10(7). DDSN can only act as the authorized person for individuals residing in settings meeting the definition of "facility." S.C Code Ann. § 44-26-50, DOES NOT give the State Director of DDSN the authority to consent to health care treatment for those individuals with Head or Spinal Cord Injuries or Similar Disability. The State of Director of DDSN, designates the following individuals to act on his/her behalf:

- DDSN Regional Center Facility Administrators;
- Executive Directors of DSN Boards;
- Executive Director/Chief Executive Officer (CEO) of DDSN Contracted Service Providers.

State Director or designee shall take the following steps before providing health care consent:

1. Confirm that the individual has an Intellectual Disability/Related Disability to include Autism Spectrum Disorder.

2. Confirm that the individual with ID/RD was determined to have an inability to consent for a specific major medical treatment as defined as "a medical, surgical, or diagnostic intervention or procedure proposed for a person with an Intellectual Disability or a Related Disability, where a general anesthetic is used or which involves a significant invasion of bodily integrity requiring incision, producing substantial pain, discomfort, debilitation, or having a significant recovery period. It does not include routine diagnosis or treatment such as the administration of medications or nutrition or the extractions of bodily fluids for analysis or dental care performed with a local anesthetic or a nonpermanent procedure designed for the prevention of pregnancy. ~~Major medical treatment does not include routine diagnosis or treatment such as administration of medications or nutrition or the extraction of bodily fluids.~~" (See S.C. Code Ann. § 44-26-10 - Rights of Clients With Intellectual Disability.

3. Confirm that the physician has certified with one other physician that the individual has the inability to consent for the specific major medical treatment.

Each previous step should be documented in the individual's record to include the date of the request to consent, names of the two licensed physicians who certified the individual's inability to consent, specific major medical treatment for which consent was given.

Commented [HC5]: Disability Rights South Carolina - The draft directive contains a definition of the "major medical treatment" that DDSN may consent to on behalf of an individual, which includes any procedure where "general anesthetic is used." DRSC noted that the draft directive did not include an important exclusion of the statutory definition, namely that "dental care performed by local anesthetic" is excluded from the definition. DRSC recommends revising the directive to include this exclusion. Additionally, in this context, DRSC reviewed Directive 603-03 "Safety Precautions for Medical and Dental Treatment" and noted that it includes an instruction to proceed according to the AHCA in instances of "planned medical or dental restraints". It also defines three levels of sedation, only one of which involves the use of a general anesthetic. Based on this information, has DDSN considered revising this directive or others to clarify it can act as the authorized person only in instances of 'major medical treatment' (to the exclusion of minimal sedation and conscious sedation)?

Commented [HC6]: Disability Rights South Carolina - The draft directive does not include information about the scope of individuals for whom DDSN is authorized to provide consent. Under S.C. Code Ann. § 44-26-40, DDSN is authorized to consent to or refuse major medical treatment "if a client resides in a facility operated by or contracted to by the department" (emphasis added). "Facility" is defined as "a residential setting operated, assisted, or contracted out by the department that provides twenty-four hour care and supervision". S.C. Code Ann. § 44-26-10(7) (emphasis added.) Under that definition, DRSC recommends DDSN clarify that it can only act as the authorized person for individuals residing in settings meeting this definition, rather than relying on the directives' broad applicability to DSN boards and contracted service providers. Additionally, particularly in ICF/IIDs, would DDSN require the two licensed physicians referenced in step #3 be completely independent?

Commented [HC7]: DDSN has reviewed and considered this comment. The section has been updated.

Commented [HC8]: DDSN has reviewed this comment and determined that clarification is necessary.

3. Steps To Take As the Health Care Provider

DDSN and DDSN providers render health care when they deliver Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) services including admissions, placement, and discharge.

As a health care provider, when an ICF/IID resident is suspected to be unable to consent for admission to, placement in, or discharge from the ICF/IID then the health care provider must adhere to the requirements of the Adult Health Care Consent Act. Consent must be obtained at the time of admission to/placement in the ICF/IID and at the time of discharge from the ICF/IID.

When DDSN and DDSN providers are delivering ICF/IID services, the entity should take the following steps:

1. Have two licensed physicians certify that that the individual is unable to consent by completing the attached form (Attachment C: Physician Certification/Efforts to Location Form);

2. Identify the person who will act as at the "authorized person." The "authorized person" must be selected from the statutory list of priorities as outlined by S.C. Code Ann. § 44-66-10 (**the authorized person can be identified by referring to the individual's "Identification of Authorized Person" Form**);

3. Document efforts to locate persons falling within the priority order (See Attachment C: Physician Certification/Efforts to Locate Authorized Person Form); and

4. Authorized Person shall consent to the services to be delivered in the ICF/IID.

PLEASE NOTE THAT ALL EXECUTED FORMS SHOULD BE PLACED IN THE INDIVIDUAL'S RECORD

Barry D. Malphrus Vice Chairman	Gary C. Lemel Chairman

To access the following attachments, please see the agency website page "Current Directives" at https://ddsn.sc.gov/providers/ddsn-directives-standards-and-manuals/current-directives

Attachment A: Your Right to Make Decisions About Your Health Care: Information for Individuals and Their Families
Attachment B: Identification of Authorized Person Form
Attachment C: Physician Certification/Efforts to Locate Authorized Person Form

Commented [HC9]: Disability Rights South Carolina - In certain instances, an individual in an ICF/IID may not have access to an authorized person in priority categories 1-8, due to a lack of familial support or for other reasons. DRSC recommends that DDSN clarify that it cannot act as an authorized person to consent to ICF/IID services because these services do not comprise 'major medical treatment' and because of the direct conflict between consenting for these services and then providing these services. However, in addition, has DDSN considered whether it would exercise its authority to make decisions regarding outside major medical treatment, given the inherent conflict between an ICF/IID acting as both a day-to-day healthcare provider and then as a healthcare decision maker? In these instances, would DDSN require the two licensed physicians referenced in step #1 be completely independent of the ICF/IID?

Commented [HC10R9]: DDSN considered and does not recommend this comment be considered as it is DDSN's position that the current draft of the policy is in compliance with the ACT. There is no requirement in the Act that the licensed physicians be completely independent of the ICF/IID.

YOUR RIGHT TO MAKE DECISIONS ABOUT YOUR HEALTH CARE: INFORMATION FOR INDIVIDUALS AND THEIR FAMILIES

YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS THAT AFFECT YOU.

You have the right to make all decisions about the health care you receive. If you do not want certain treatments, you can tell your doctor, either in person or in writing, that you do not want them.

Most individuals can express their wishes to their doctor, but some who are badly injured, unconscious, or very ill cannot. People need to know your wishes about health care in case you become unable to speak effectively for yourself.

You can express your wishes in an Advance Directive which is either a Health Care Power of Attorney or a Living Will. These are both written documents. In a Living Will you tell your doctor that you do not want to receive certain treatment. In a Health Care Power of Attorney you name a representative who will tell the doctor what treatment should or should not be provided.

The decision to sign a Health Care Power of Attorney or Living Will is very personal and very important. This handout answers some frequently asked questions about Health Care Power of Attorneys and Living Wills.

These documents will be followed only if you are unable, due to illness or injury, to make decisions for yourself. If you do not have a Living Will or Health Care Power of Attorney that tells what you want done, you do not know what decisions will be made or who will make them. Decisions may be made by someone else such as certain relatives designated by South Carolina law, by a person appointed by the court, or by the court itself.

If you have questions about signing a Health Care Power of Attorney or Living Will, you should talk to your family, doctor, your minister, priest, rabbi, or other religious counselor or your attorney.

Are there forms for Living Wills and Health Care Power of Attorneys in South Carolina?

Yes. The South Carolina legislature has approved forms for both a Living Will and a Health Care Power of Attorney. The Living Will that the legislature approved is called a "Declaration of a Desire for Natural Death." You may obtain more information from these contacts:

- The Lieutenant Governor's Office on Aging at 1-800-868-9095 or www.aging.sc.gov.
- Governor's Office**,** Ombudsman Division (803) 734-5049 or http://ombudsman.sc.gov/index.html.
- ABLE SC at 1-800-681-6805 or www.able-sc.org.
- TennCare-Division of Health Care Finance & Administration provides general educational information about living wills.

How are a Health Care Power of Attorney and a Living Will different?

- The representative named in a Health Care Power of Attorney form can make all of the decisions about your health care that need to be made. On a Health Care Power of

Attorney form you can say what treatment you do want as well as what you do not want. With a Health Care Power of Attorney form, the representative can make decisions when the need arises, and will know what the circumstances are.

- A Living Will affects life support only in certain circumstances. A Living Will only tells the doctor what to do if you are permanently unconscious or if you are terminally ill and close to death. "Permanently unconscious" means that you are in a persistent vegetative state in which your body functions but your mind does not.

    - A Living Will can only say what treatment you don't want.
    - With a Living Will you must decide what should be done in the future, without knowing exactly what the circumstances will be when the decision is put into effect.

Which document should I sign if I want to be treated with all available life-sustaining procedures?

You should sign a Health Care Power of Attorney, and not a Living Will. The South Carolina Health Care Power of Attorney form allows you to say either that you do or that you do not want life-sustaining treatment. A Living Will only allows you to say that you do not want life-sustaining procedures.

How is a Health Care Power of Attorney different from a Durable Power of Attorney?

A Health Care Power of Attorney is a specific type of Durable Power of Attorney that names a representative only to make health care decisions. A Durable Power of Attorney may or may not allow the representative to make health care decisions. It depends on what the document says. The representative may only be able to make decisions about property and financial matters.

There are certain people who cannot witness your Living Will. The Living Will form says who cannot be a witness. You should read the Living Will form carefully to be sure your witnesses are qualified.

Whom should I appoint as my representative? What if my representative cannot serve?

You should appoint a person you trust and who knows how you feel about health care. You also should name at least one alternate, who will make decisions if your representative is unable or unwilling to make these decisions. You should talk to the people you choose as your representative and alternate representatives to be sure they are willing to serve. Also, they should know how you feel about health care.

What if I change my mind after I have signed a Living Will or Health Care Power of Attorney?

~~You may revoke (cancel) your Living Will or Health Care Power of Attorney any time. The forms contain instructions for doing so. You must tell your doctor and anyone else who has a copy that you have changed your mind and you want to revoke your Living Will or Health Care Power of Attorney.~~ You have the right to revoke a Living Will or Health Care Power of Attorney and terminate your agent's authority, by informing either your agent or your health care provider orally or in writing.

Identification of Authorized Person

Name:____ DOB:_________________________

I. Identification of Authorized Persons

The purpose of the form is to record priority list authorized persons pursuant to the Adult Health Care Consent Act (S.C. Code Ann. § 44-66-10). For each priority category listed below, enter the names(s) of each person identified by the priority category and, as appropriate, the person's relationship to the person who is potentially unable to provide consent for health care. If the priority category does not identify anyone, enter "not applicable" or "n/a." All efforts to locate those identified by the priority category must be documented in the person's record.

Priority Category	Name(s)/Relationship
1. Guardian appointed by the court, pursuant to Article 5, Part 3 of the South Carolina Probate Code, if health care decisions are within the scope of guardianship.*	
2. An attorney-in-fact appointed by the person in a durable Power of Attorney executed pursuant to S.C. Code Ann. § 62-5-501 (Supp. 2017), if the decision is within the scope of his authority.*	
3. The spouse of the person, unless the spouse and the person are separated pursuant to one of the following: a) Entry of a pendente lite order in a divorce or separate maintenance action; b) Formal signing of a written property or marital settlement agreement; or c) Entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties.	
4. Adult child or children of the person.	
5. Parent(s) of the person.	
6. Adult sibling(s) of the person.	
7. Grandparent (s) of the person.	
8. Adult relative(s) by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the person.	
9. Authorized Designee of DDSN if the person is served under the DDSN eligibility categories of ID/RD including Autism. Not applicable to those served under the DDSN eligibility category of HASCI/SD.	
10. A person who has an established relationship with the person, who is acting in good faith on behalf of the person, and who can reliably convey the person's wishes, but who is **<u>not</u>** a paid caregiver or a provider of health care services to the person. The person with an established relationship shall sign and date a notarized acknowledgement form, provided by the hospital or other health care facility in which the patient is located.	

**The person's record must contain legal documents supporting the authority of the person named in the priority category*

____ ____________________________________

Name of Person Completing This Form Date of Completion

Physician Certification/Efforts to Locate Person Form

These forms are to be used only by ICF/IID health care providers pursuant to the Adult Health Care Consent Act (S.C. Code Ann. § 44-66-10)

Patient's Name:____ DOB:___________________

Section I. Proposed Health Care and Timeframe for Initiation

____

____

Section II. Certification by Physician

A. Based on examination, it is my professional opinion that the person named above (*choose one*):

☐ **Is** able to give valid consent for the proposed health care.

☐ **Is temporarily not** able to consent for the proposed health care.

☐ **Is not** able to give valid consent for the proposed health care.

B. This person is noted to be: ☐ **temporarily not** able or ☐ **not** able to give valid consent *(indicate why)* He/she: (*check all that apply*):

☐ Is unable to appreciate the nature and implications of his/her conditions and the proposed health care;

☐ Is unable to make a reasoned decision concerning the proposed health care; or

☐ Is unable to communicate a decision concerning the proposed health care in an unambiguous manner.

C. This person is noted to be: ☐ **temporarily not** able or ☐ **not** able to give valid consent and the following facts and observation that support this medical opinion and conclusion include:

1. The **cause** of the person's inability to consent is:_______________________________

2. The n**ature** of the person's inability to consent is:______________________________

3. The **extent** of the person's inability to consent is:______________________________

4. The **probable duration** of the person's inability to consent is:___________________

D. **If noted to be temporarily unable to consent, will a delay in rendering** the proposed health care beyond the time noted present a substantial risk of death, impairment of functioning of a bodily organ or other serious threat to the health and safety of the person named?: ☐ Yes ☐ No ☐ N/A

I, the undersigned, hereby state than I am a licensed physician and have personally examined the above named person and my opinion and conclusions are stated above.

_______________________________ _______________________________

Signature of Physician Printed Name of Physician

Date:_______________________________

Efforts to Locate Authorized Person

When an adult is certified by two (2) physicians to be unable to consent to health care, an authorized person must be selected from the statutory list of priorities established by S.C. Code Ann. § 44-66-10, et. seq. (2018) and DDSN Directive 535-07-DD: ***Obtaining Consent for Individuals Regarding Health Care.*** *The Priority Categories in this document are listed in priority order, 1-10. When the person has been certified by two (2) physicians to be unable to consent to the proposed health care, the person, among all who are listed, who is identified in the highest priority category and who is reasonably available, willing to make the health care decision for the person and is him/herself able to consent, will be considered the authorized person who can make the decision regarding the proposed health care.*

The selected **Authorized Person**(s):

Name(s):____

Relationship (priority category) to the person: ______________________________

Address *(include zip code)*:____

Phone Number *(include area code)*: ____

If someone from any higher priority category was not selected as the authorized person, enter the person's name, the priority category, and the reason he/she was not selected *(e.g., not reasonably available, not willing, unable to consent).*

Priority Category	Name	Reason Not Selected

_______________________________ _______________________________

Printed Name of Health Care Provider — Title of the Health Care Provider

_______________________________ _______________________________

Signature of the Health Care Provider — Date of Completion

Mary Poole
State Director
Patrick Maley
Deputy Director
Rufus Britt
Associate State Director
Operations
Susan Kreh Beck
Associate State Director
Policy
W. Chris Clark
Chief Financial Officer

3440 Harden Street Extension
Columbia, South Carolina 29203
803/898-9600
Toll Free: 888/DSN-INFO
Home Page: www.ddsn.sc.gov

COMMISSION
Gary C. Lemel
Chairman
Barry D. Malphrus
Vice Chairman
Robin B. Blackwood
Secretary
Eddie L. Miller
Stephanie M. Rawlinson
David L. Thomas

Reference Number:	535-07-DD
Title Document:	Obtaining Consent for Individuals Regarding Health Care - Making Health Care Decisions
Date of Issue:	January 20, 1989
Effective Date:	January 20, 1989
Last Review Date:	January 21, 2021
Date of Last Revision:	January 21, 2021 **(REVISED)**
Applicability:	DDSN Operated Community Settings, DDSN Regional Centers, DSN Boards, and Contracted Service Providers

---

PHILOSOPHY

People who are served by South Carolina Department of Disabilities and Special Needs (DDSN) are fully entitled to all the human and legal rights available to other citizens. The presence of a disability is not, in and of itself, a reason to assume the person is unable to consent.

POLICY

It is the policy of DDSN that health care decisions and advance directives be honored according to federal and state law. An Advance Directive gives guidelines about how health care is to be provided if or when an individual is physically or mentally unable to make decisions. A written Advance Directive may be a Living Will, Health Care Power of Attorney or other clear writing of an individual's wishes. Unless adjudicated incompetent, an adult can execute an Advance Directive.

It is the policy of DDSN that the South Carolina Adult Health Care Consent Act (The Act) be followed if an individual has no advance directive or cannot execute an Advance Directive that covers the specifically proposed health care decision. See S.C. Code Ann. § 44-66-10.
The Act provides a process for making health care decisions for a patient who is unable to consent for their health care including those patients who are eligible for DDSN services under

the categories of Intellectual Disability/Related Disabilities (ID/RD), Head or Spinal Cord Injury (HASCI), Similar Disability, and Autism Spectrum Disorder (ASD).

IMPLEMENTATION OF POLICY

The following information is provided for implementation of the aforementioned policy. An attachment is included to provide information for individuals and their families regarding Advance Directives and the Act. (Attachment A: Your Right to Make Decisions About Your Health Care: Information for Individuals and Their Families)

I. Advance Directives

DDSN, a Disabilities and Special Needs (DSN) Board, or a DSN qualified provider who delivers residential services should take the following steps in regard to Advance Directives:

1. Provide Information

Each service provider delivering residential services shall develop policies and procedures to ensure that upon admission the adult being admitted will be provided with a written statement of the agency's policy regarding the implementation of Advance Directives, and also be provided with a written explanation of the law concerning Advance Directives. South Carolina provides by statute for two types of Advance Directives:

- **Living Will** - The Death with Dignity Act authorizes competent adults to express their wishes regarding the use or withholding of life-sustaining procedures, including artificial nutrition and hydration, in the event they are diagnosed with a terminal condition or are in a state of permanent unconsciousness and in the further event that they are incapacitated or otherwise unable to express their desires. The statute creates a form for this purpose entitled "Declaration of a Desire for a Natural Death." This document and those similar in purpose are commonly referred to as a "Living Will." See S.C. Code Ann. § 44-77-50.

- **Health Care Power of Attorney** - The South Carolina Probate Code authorizes competent adults to designate another person to make decisions on their behalf about their medical care in the event they become incapacitated. The statutory form created for this purpose is entitled "Health Care Power of Attorney" See S.C. Code Ann. § 62-5-504.

The individual's medical record maintained by the residential service provider shall be documented to reflect that the required information was provided.

2. Request Information

    - Residential service providers' policies shall state that upon admission of an individual, staff will inquire into the existence of Advance Directives previously executed by the individual. The individual's medical record maintained by the residential service provider shall be documented as to the response to the inquiry.

- In the event staff are aware that an individual has executed an Advance Directive, they shall request a copy and maintain it in the individual's record. In the event of admission to a hospital or nursing facility, staff shall contact the hospital/nursing facility to make them aware of, and supply, a copy of the individual's Advance Directive if the individual's family does not do so.

Staff shall not serve as a witness to the declarant's signature if they are or have been directly involved in the individual's care. Staff shall not accept appointment as an agent in a Living Will or Health Care Power of Attorney.

II. Adult Health Care Consent

1. Steps To Take When In A Supportive Role

DDSN, Disability and Special Needs (DSN) Boards, and DDSN qualified providers are often not the health care provider, but have an important role in supporting individuals to access needed health care. To appropriately support individuals when obtaining health care, accurate information about who can give consent on behalf of the individual must be available.

In advance of an individual receiving health care, DDSN, DSN Boards, and DSN qualified residential service providers should complete the attached form (See Attachment B: Identification of Authorized Person Form) to identify for each individual the person in priority order to serve as the "authorized person" per The Act. See S.C. Code Ann. § 44-66-30. This form should be kept current at all times and at a minimum should be reviewed annually. Efforts to locate persons falling within the priority order must be documented. The order of priority is as follows:

(1) A guardian appointed by the court;
(2) An attorney-in-fact appointed by the patient in a durable power of attorney, if the decision is within the scope of his authority;
(3) A spouse of the patient unless the spouse and the patient are separated pursuant to the statute; one;
(4) An adult child or a majority of the adult children who are available for consultation;
(5) A parent;
(6) An adult sibling or a majority of the adult siblings who are available for consultation;
(7) A grandparent of the patient or a majority of the grandparents who are reasonably available for consultation;
(8) Any other adult relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient, or a majority of those other adult relatives who are reasonably available for consultation;
(9) A person given authority to make health care decisions by another statutory provision; or
(10) If, after good faith efforts, the hospital or other health care facility determines that the persons listed in items (1) through (9) are unavailable to consent on behalf of the patient, a person who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes, but who is not a paid caregiver or a provider of health care services to the patient.

A copy of the completed form should be placed in the individual's record and taken to each health care appointment.

2. Steps To Take As the Authorized Person

When an individual is unable to consent, The Act provides an order of priority for authorized persons. DDSN is authorized to consent to or refuse major medical treatment "if a client resides in a facility operated by or contracted to by the department" (emphasis added). "Facility" is defined as "a residential setting operated, assisted, or contracted out by the department that provides twenty-four hour care and supervision". S.C. Code Ann. § 44-26-10(7). DDSN can only act as the authorized person for individuals residing in settings meeting the definition of "facility." S.C Code Ann. § 44-26-50, DOES NOT give the State Director of DDSN the authority to consent to health care treatment for those individuals with Head or Spinal Cord Injuries or Similar Disability. The State of Director of DDSN, designates the following individuals to act on his/her behalf:

- DDSN Regional Center Facility Administrators;
- Executive Directors of DSN Boards;
- Executive Director/Chief Executive Officer (CEO) of DDSN Contracted Service Providers.

State Director or designee shall take the following steps before providing health care consent:

1. Confirm that the individual has an Intellectual Disability/Related Disability to include Autism Spectrum Disorder.

2. Confirm that the individual with ID/RD was determined to have an inability to consent for a specific major medical treatment as defined as "a medical, surgical, or diagnostic intervention or procedure proposed for a person with an Intellectual Disability or a Related Disability, where a general anesthetic is used or which involves a significant invasion of bodily integrity requiring incision, producing substantial pain, discomfort, debilitation, or having a significant recovery period. It does not include routine diagnosis or treatment such as the administration of medications or nutrition or the extractions of bodily fluids for analysis or dental care performed with a local anesthetic or a nonpermanent procedure designed for the prevention of pregnancy. " (See S.C. Code Ann. § 44-26-10 - Rights of Clients With Intellectual Disability.

3. Confirm that the physician has certified with one other physician that the individual has the inability to consent for the specific major medical treatment.

Each previous step should be documented in the individual's record to include the date of the request to consent, names of the two licensed physicians who certified the individual's inability to consent, specific major medical treatment for which consent was given.

3. Steps To Take As the Health Care Provider

DDSN and DDSN providers render health care when they deliver Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) services including admissions, placement, and discharge.

As a health care provider, when an ICF/IID resident is suspected to be unable to consent for admission to, placement in, or discharge from the ICF/IID then the health care provider must adhere to the requirements of the Adult Health Care Consent Act. Consent must be obtained at the time of admission to/placement in the ICF/IID and at the time of discharge from the ICF/IID.

When DDSN and DDSN providers are delivering ICF/IID services, the entity should take the following steps:

1. Have two licensed physicians certify that that the individual is unable to consent by completing the attached form (Attachment C: Physician Certification/Efforts to Location Form);

2. Identify the person who will act as at the "authorized person." The "authorized person" must be selected from the statutory list of priorities as outlined by S.C. Code Ann. § 44-66-10 (**the authorized person can be identified by referring to the individual's "Identification of Authorized Person" Form)**;

3. Document efforts to locate persons falling within the priority order (See Attachment C: Physician Certification/Efforts to Locate Authorized Person Form); and

4. Authorized Person shall consent to the services to be delivered in the ICF/IID.

PLEASE NOTE THAT ALL EXECUTED FORMS SHOULD BE PLACED IN THE INDIVIDUAL'S RECORD

________________________	________________________
Barry D. Malphrus Vice Chairman	Gary C. Lemel Chairman

To access the following attachments, please see the agency website page "Current Directives" at https://ddsn.sc.gov/providers/ddsn-directives-standards-and-manuals/current-directives

Attachment A: Your Right to Make Decisions About Your Health Care: Information for Individuals and Their Families
Attachment B: Identification of Authorized Person Form
Attachment C: Physician Certification/Efforts to Locate Authorized Person Form

**YOUR RIGHT TO MAKE DECISIONS ABOUT YOUR HEALTH CARE:
INFORMATION FOR INDIVIDUALS AND THEIR FAMILIES**

YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS THAT AFFECT YOU.

You have the right to make all decisions about the health care you receive. If you do not want certain treatments, you can tell your doctor, either in person or in writing, that you do not want them.

Most individuals can express their wishes to their doctor, but some who are badly injured, unconscious, or very ill cannot. People need to know your wishes about health care in case you become unable to speak effectively for yourself.

You can express your wishes in an Advance Directive which is either a Health Care Power of Attorney or a Living Will. These are both written documents. In a Living Will you tell your doctor that you do not want to receive certain treatment. In a Health Care Power of Attorney you name a representative who will tell the doctor what treatment should or should not be provided.

The decision to sign a Health Care Power of Attorney or Living Will is very personal and very important. This handout answers some frequently asked questions about Health Care Power of Attorneys and Living Wills.

These documents will be followed only if you are unable, due to illness or injury, to make decisions for yourself. If you do not have a Living Will or Health Care Power of Attorney that tells what you want done, you do not know what decisions will be made or who will make them. Decisions may be made by someone else such as certain relatives designated by South Carolina law, by a person appointed by the court, or by the court itself.

If you have questions about signing a Health Care Power of Attorney or Living Will, you should talk to your family, doctor, your minister, priest, rabbi, or other religious counselor or your attorney.

Are there forms for Living Wills and Health Care Power of Attorneys in South Carolina?

Yes. The South Carolina legislature has approved forms for both a Living Will and a Health Care Power of Attorney. The Living Will that the legislature approved is called a "Declaration of a Desire for Natural Death." You may obtain more information from these contacts:

- The Lieutenant Governor's Office on Aging at 1-800-868-9095 or www.aging.sc.gov.
- Governor's Office**,** Ombudsman Division (803) 734-5049 or http://ombudsman.sc.gov/index.html.
- ABLE SC at 1-800-681-6805 or www.able-sc.org.
- TennCare-Division of Health Care Finance & Administration provides general educational information about living wills.

How are a Health Care Power of Attorney and a Living Will different?

- The representative named in a Health Care Power of Attorney form can make all of the decisions about your health care that need to be made. On a Health Care Power of

Attorney form you can say what treatment you do want as well as what you do not want. With a Health Care Power of Attorney form, the representative can make decisions when the need arises, and will know what the circumstances are.

- A Living Will affects life support only in certain circumstances. A Living Will only tells the doctor what to do if you are permanently unconscious or if you are terminally ill and close to death. "Permanently unconscious" means that you are in a persistent vegetative state in which your body functions but your mind does not.

  - A Living Will can only say what treatment you don't want.
  - With a Living Will you must decide what should be done in the future, without knowing exactly what the circumstances will be when the decision is put into effect.

Which document should I sign if I want to be treated with all available life-sustaining procedures?

You should sign a Health Care Power of Attorney, and not a Living Will. The South Carolina Health Care Power of Attorney form allows you to say either that you do or that you do not want life-sustaining treatment. A Living Will only allows you to say that you do not want life-sustaining procedures.

How is a Health Care Power of Attorney different from a Durable Power of Attorney?

A Health Care Power of Attorney is a specific type of Durable Power of Attorney that names a representative only to make health care decisions. A Durable Power of Attorney may or may not allow the representative to make health care decisions. It depends on what the document says. The representative may only be able to make decisions about property and financial matters.

There are certain people who cannot witness your Living Will. The Living Will form says who cannot be a witness. You should read the Living Will form carefully to be sure your witnesses are qualified.

Whom should I appoint as my representative? What if my representative cannot serve?

You should appoint a person you trust and who knows how you feel about health care. You also should name at least one alternate, who will make decisions if your representative is unable or unwilling to make these decisions. You should talk to the people you choose as your representative and alternate representatives to be sure they are willing to serve. Also, they should know how you feel about health care.

What if I change my mind after I have signed a Living Will or Health Care Power of Attorney?

You have the right to revoke a Living Will or Health Care Power of Attorney and terminate your agent's authority by informing either your agent or your health care provider orally or in writing.

Identification of Authorized Person

Name:____ DOB:_________________________

I. Identification of Authorized Persons

The purpose of the form is to record priority list authorized persons pursuant to the Adult Health Care Consent Act (S.C. Code Ann. § 44-66-10). For each priority category listed below, enter the names(s) of each person identified by the priority category and, as appropriate, the person's relationship to the person who is potentially unable to provide consent for health care. If the priority category does not identify anyone, enter "not applicable" or "n/a." All efforts to locate those identified by the priority category must be documented in the person's record.

Priority Category	Name(s)/Relationship
1. Guardian appointed by the court, pursuant to Article 5, Part 3 of the South Carolina Probate Code, if health care decisions are within the scope of guardianship.*	
2. An attorney-in-fact appointed by the person in a durable Power of Attorney executed pursuant to S.C. Code Ann. § 62-5-501 (Supp. 2017), if the decision is within the scope of his authority.*	
3. The spouse of the person, unless the spouse and the person are separated pursuant to one of the following: a) Entry of a pendente lite order in a divorce or separate maintenance action; b) Formal signing of a written property or marital settlement agreement; or c) Entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties.	
4. Adult child or children of the person.	
5. Parent(s) of the person.	
6. Adult sibling(s) of the person.	
7. Grandparent (s) of the person.	
8. Adult relative(s) by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the person.	
9. Authorized Designee of DDSN if the person is served under the DDSN eligibility categories of ID/RD including Autism. Not applicable to those served under the DDSN eligibility category of HASCI/SD.	
10. A person who has an established relationship with the person, who is acting in good faith on behalf of the person, and who can reliably convey the person's wishes, but who is **not** a paid caregiver or a provider of health care services to the person. The person with an established relationship shall sign and date a notarized acknowledgement form, provided by the hospital or other health care facility in which the patient is located.	

**The person's record must contain legal documents supporting the authority of the person named in the priority category*

____ ____

Name of Person Completing This Form Date of Completion

Physician Certification/Efforts to Locate Person Form

These forms are to be used only by ICF/IID health care providers pursuant to the Adult Health Care Consent Act (S.C. Code Ann. § 44-66-10)

Patient's Name:____ DOB:____________________

Section I. Proposed Health Care and Timeframe for Initiation

____

____

Section II. Certification by Physician

A. Based on examination, it is my professional opinion that the person named above (*choose one*):

☐**Is** able to give valid consent for the proposed health care.

☐**Is temporarily not** able to consent for the proposed health care.

☐**Is not** able to give valid consent for the proposed health care.

B. This person is noted to be: ☐**temporarily not** able or ☐**not** able to give valid consent *(indicate why)* He/she: (*check all that apply*):

☐Is unable to appreciate the nature and implications of his/her conditions and the proposed health care;

☐Is unable to make a reasoned decision concerning the proposed health care; or

☐Is unable to communicate a decision concerning the proposed health care in an unambiguous manner.

C. This person is noted to be: ☐**temporarily not** able or ☐**not** able to give valid consent and the following facts and observation that support this medical opinion and conclusion include:

1. The **cause** of the person's inability to consent is:_______________________________________

2. The n**ature** of the person's inability to consent is:_____________________________________

3. The **extent** of the person's inability to consent is:_____________________________________

4. The **probable duration** of the person's inability to consent is:__________________________

D. **If noted to be temporarily unable to consent, will a delay in rendering** the proposed health care beyond the time noted present a substantial risk of death, impairment of functioning of a bodily organ or other serious threat to the health and safety of the person named?: ☐Yes ☐No ☐N/A

I, the undersigned, hereby state than I am a licensed physician and have personally examined the above named person and my opinion and conclusions are stated above.

_______________________________ _______________________________

Signature of Physician Printed Name of Physician

Date:_______________________________

Efforts to Locate Authorized Person

*When an adult is certified by two (2) physicians to be unable to consent to health care, an authorized person must be selected from the statutory list of priorities established by S.C. Code Ann. § 44-66-10, et. seq. (2018) and DDSN Directive 535-07-DD: **Obtaining Consent for Individuals Regarding Health Care.** The Priority Categories in this document are listed in priority order, 1-10. When the person has been certified by two (2) physicians to be unable to consent to the proposed health care, the person, among all who are listed, who is identified in the highest priority category and who is reasonably available, willing to make the health care decision for the person and is him/herself able to consent, will be considered the authorized person who can make the decision regarding the proposed health care.*

The selected **Authorized Person**(s):

Name(s):____

Relationship (priority category) to the person: ______________________________

Address *(include zip code)*:____

Phone Number *(include area code)*: ____

If someone from any higher priority category was not selected as the authorized person, enter the person's name, the priority category, and the reason he/she was not selected *(e.g., not reasonably available, not willing, unable to consent).*

Priority Category	Name	Reason Not Selected

____

Printed Name of Health Care Provider

____

Title of the Health Care Provider

____

Signature of the Health Care Provider

____

Date of Completion

PROPOSED TO MARK OBSOLETE

Attachment F

Mary Poole
State Director
Rufus Britt
Interim Associate State Director
Operations
Susan Kreh Beck
Associate State Director
Policy
Lisa Weeks
Interim Associate State Director
Administration

COMMISSION
Eva R. Ravenel
Chairman
Gary C. Lemel
Vice Chairman
Vicki A. Thompson
Secretary
Sam F. Broughton, Ph.D.
Chris G. Neeley
Lorri S. Unumb

3440 Harden Street Ext (29203)
PO Box 4706, Columbia, South Carolina 29240
803/898-9600
Toll Free: 888/DSN-INFO
Website: www.ddsn.sc.gov

Reference Number: 535-15-DD

Title Document: Obtaining Health Care Consent for Minors and Adults with Head And Spinal Cord Injuries (HASCI)

Date of Issue: January 17, 2019
Effective Date: January 17, 2019
Last Review Date: January 17, 2019
Date of Last Revision: January 17, 2019 **(NEW)**

Applicability: Providers Rendering Health Care to Those Receiving DDSN Services under the Category of Head Injury and Spinal Cord Injury (HASCI)

PURPOSE

This directive establishes procedures to identify persons required to give legally valid consent for health care for people receiving residential services from the South Carolina Department of Disabilities and Special Needs (DDSN) under the categories of Head and Spinal Cord Injury. These procedures are based on the definition of health care as defined in the Adult Health Care Consent Act (AHCA) found at S.C. Code Ann. § 44-66-20 (2018). DDSN, Disabilities and Special Needs (DSN) Boards and qualified providers may render health care to those served under these categories in the following ways:

1) Medical/diagnostic care;

2) Medical/diagnostic procedures; and

3) Administration of medication.

NOTE: The authority of DDSN to consent to health care for persons receiving services through DDSN or a contracted provider only applies to persons determined to have an Intellectual

Disability or Related Disability and have been deemed unable to provide consent pursuant to statute.

PHILOSOPHY

People who are eligible for DDSN services under the category of Head and Spinal Cord Injury are fully entitled to all the human and legal rights available to other citizens. The presence of a disability is not, in and of itself, a reason to assume the person is unable to consent. However, a person's disability may adversely impact his/her decision-making ability, scrutiny must be given when health care consent from a person with a disability is required.

The level of scrutiny to be given to someone's ability to consent to health care must be balanced by the risks associated with the proposed health care, the person's ability to understand his/her condition, and the health care proposed. In all cases where consent for health care is required, the person with a disability must give the consent, unless:

1) A legal guardian has been appointed and authority to give health care consent is within the scope of the guardianship;

2) A durable power of attorney has been executed;

3) The person is a minor under age 16;

4) The person's inability to consent has been certified by two (2) physicians; or

5) The person is a minor 16 or 17 years of age being asked to consent to an operation.

DEFINITIONS

The following definitions are consistent with definitions included in the Adult Health Care Consent Act, S.C. Code Ann. § 44-66-20 (2018):

Adult: In South Carolina, a person 18 years of age or older is an adult. For health care consent, an adult is anyone over 16 years of age who is proposed any health care, except an operation. Adults must be 18 years of age or older to consent to an operation.

Adult Health Care Consent Act: This statute provides a legally recognized method of obtaining valid consent from an authorized person when the person is unable to consent on his/her own behalf. The Act is found at S.C. Code Ann. § 44-66-10 (2018).

Authorized Person: An "authorized person" is a person listed in the priority of consent givers for minors and adults pursuant to S.C. Code Ann. § 44-66-30 (2018).

Consent: As used in this directive, "consent" means the voluntary agreement to proposed health care by a person or authorized person with sufficient mental ability to make an informed choice.

Emergency: In context of the Adult Health Care Consent Act, an "emergency" is a situation where a person is in immediate need of specific health care to prevent death, permanent disfigurement, loss or impairment of the functioning of a bodily member/organ, or other serious threat to the health of the person. The immediate need for such care would override any delay caused by attempting to locate an authorized person to give consent for the proposed health care and/or in locating two physicians to certify the person as unable to consent.

Guardian: A "guardian" is a person appointed by a court to act and make decisions on behalf of another (ward). The court order appointing the guardian should be read carefully to determine if any limitations have been placed on the guardian as to making decisions about health care. It should be noted that a "conservator" is not the same as a "guardian." A "conservator" is a person appointed solely to conserve and protect the ward's estate and property. A conservator does not have authority to make health care decisions for the ward.

Health Care: As described in the Adult Heath Care Consent Act, "health care" means a procedure to diagnose or treat a disease, ailment, defect, abnormality or complaint, whether of physical or mental origin. It includes the provision of intermediate or skilled nursing care; services for the rehabilitation of injured, disabled, or sick persons; and includes if indicated by this directive the placement in or removal from a facility that provides these forms of care.

For the purpose of this directive, health care is grouped into three (3) categories:

1) Medical/diagnostic care;

2) Medical/diagnostic procedures; and

3) Administration of medication.

Health Care Power of Attorney: A person designated by another person to make health care decisions on their behalf. The Healthcare Power of Attorney must be on a form as authorized by S.C. Code Ann. § 62-5-504 (2018).

Health Care Professional: A person who is licensed, certified or otherwise authorized by the laws of this State to provide health care to members of the public. For DDSN, DSN Boards and DDSN qualified providers, the following staff members fall within the definition:

- Physicians;
- Physician's Assistants (PAs);
- Nurse Practitioners;
- Registered Nurses (RNs);
- Licensed Practical Nurses (LPNs);
- Board Certified Behavior Analysts;
- Licensed Psychologists, Licensed Professional Counselors;
- Licensed Physical Therapists;
- Licensed Occupational Therapists; and
- Licensed Speech Therapists.

Health Care Provider: A person, health care facility, organization, or corporation licensed, certified or otherwise authorized or permitted by the laws of this State to administer health care. For DDSN, DSN Boards and DDSN qualified providers, the following are considered health care providers:

- Physicians;
- Physician's Assistants (PAs);
- Nurse Practitioners;
- Registered Nurses (RNs); and
- Licensed Practical Nurses (LPNs).

Minor: A person under the age of 18 is considered a "minor" in South Carolina, excluding a person who has been legally married or emancipated as decreed by the family court, S.C. Code Ann. § 63-1-40 (1) (2010). A minor under the age of 16 is deemed unable to give consent for health care by virtue of the status of his/her age. A minor who has reached the age of 16 may consent to any health service except operations, unless the operation is essential to the health or life of the minor in the opinion of the attending physician and a consultant physician, if one is available, S.C. Code Ann. § 63-5-340 (Supp. 2018) and § 63-5-350 (2010).

Patient: An individual 16 years of age or older who presents or is presented to a health care provider for treatment. In this Directive, "person" "minor" and "patient" may be used interchangeably to describe the person with a Head and Spinal Cord Injury receiving services from DDSN, a DSN Board or a DDSN qualified provider.

Physician: An individual who is licensed to practice medicine or osteopathy pursuant to S.C. Code Ann. § 40-47-5 et seq. (2011).

Reasonable Accommodations: Will include, but not be limited to, using technology and devices, receiving assistance with communication; having additional time and focused discussion to process information; providing tailored information oriented to the comprehension level of the alleged incapacitated individual; and accessing services from community organizations and governmental agencies." (As defined in S.C. Code § 62-5-101 (23)(b) (Supp. 2018)

Supported Decision Making: The process by which an individual with a disability, with capacity, uses designated "Supporters" to assist in explaining information, weighing various options and communicating decisions, to the extent needed by the individual. The Supporter does not have any decision-making authority and services only to assist the individual in making informed decisions.

Treatment: The broad range of emergency, outpatient, intermediate, and inpatient services and care that may be extended to a patient to diagnose and treat a human disease, ailment, defect, abnormality or complaint, whether of physical or mental origin. Treatment includes, but is not limited to psychiatric, psychological, substance abuse, and counseling services.

Unable to Consent: The inability of someone to appreciate the nature and implications of his/her health condition and proposed-health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner.

INITIAL PROCESS

Typically, the staff person who is responsible for developing the service/support plan or the heath care provider for each individual event will initially raise the question of a person's ability to give valid consent for health care. The issue would not arise in isolation, but in connection with an identified health care need for which specific health care services are proposed, such as the following:

1. Medical/diagnostic care (e.g., physical examinations, prescribing medications, x-rays, swallowing studies, etc.);

2. Medical/diagnostic procedures (e.g., surgery/operation, colonoscopy, etc.); or

3. Medication administration.

When health care is proposed, valid written, informed consent must be obtained prior to initiation and implementation of the health care.

The staff person responsible for developing the service/support plan or the health care provider who is employed by DDSN, a DSN Board or contracted provider must ensure that the requirements of this directive are met. If the proposed health care is based on traditional medical activities such as treatment/diagnostic care and/or procedures, then the health care provider is responsible for the obtaining valid consent. However, if proposed health care involves the administering of medications, then the staff person responsible for developing the service/support plan must ensure compliance with this directive. This does not negate a person's right to privacy under the Health Insurance Portability and Accountability Act (HIPAA).

ASSESSMENT OF ABILITY TO CONSENT

The process of obtaining consent involves a verbal dialogue that is reduced to a written consent form. The dialogue will focus on the following topics:

1) The person's current health condition or problem;

2) The intended or proposed health care;

3) The anticipated benefits of the health care;

4) The potential risks, adverse outcomes or side effects;

5) Possible alternative approaches and their risks and benefits; and

6) Risks/benefits of not having the proposed health care.

If the person cannot appreciate the nature and implications of his/her condition and the proposed health care, make a reasoned decision concerning the proposed health care, or communicate

his/her decision in an unambiguous manner, even with reasonable accommodations and support, then the person is suspected to be unable to give valid consent. The person must be provided any needed augmentative or alternative communication devices/technology to assist in that dialogue.

If suspected to be unable to give valid consent, the person shall be referred to two (2) physicians, one of whom is not employed by DDSN and not a DDSN contracted provider. Each physician must examine the person and make a judgement about ability to consent. An individual may designate supporters to assist them in understanding information related to their healthcare, consistent with the Supported Decision Making Model.

If the two (2) physicians, based on their examination and knowledge of accommodations and support available to the individual, determine that the person can give consent, then the person shall give consent for him/herself. This determination must be documented (see Attachment 3).

If the two (2) physicians determine that the person cannot give consent, an authorized person will be selected by the health care provider from the statutory list of priorities. The physicians must document their determinations and include their opinions regarding the cause and nature of the person's inability to consent, its extent, and probable duration.

If, in the opinion of the two (2) physicians, the person is unable to consent, but the person's inability to consent is temporary, and the health care professional responsible for the care of the person determines that the delay occasioned by postponing treatment until the person regains the ability to consent will not result in significant detriment to the person's health, then no authorized person will be selected and the proposed health care will be postponed until the person is able to provide consent.

AUTHORIZED PERSONS

I. Minors

In accordance with S. C. Code Ann. § 44-26-60 (2018), if a person is a minor under the age of 16 or is 16-17 years of age and in need of an operation, consent for his/her health care must be given by an authorized person selected by the health care provider based on the following order of priority:

1. Legal guardian with court order;

2. Parent;

3. Grandparent or adult sibling;

4. Other relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the minor;

5. Other person who reasonably is believed by the health care professional to have a close relationship with the minor; or

6. Authorized designee of DDSN. "Authorized designees" include the State Director of DDSN, DDSN Regional Center Facility Administrators, DDSN Autism Division Director, Executive Directors of Boards of Disabilities and Special Needs, and Executive Directors/Chief Executive Officers of DDSN Qualified Provider Agencies (see Attachment 4).

Documentation of efforts to locate an authorized person identified in the priority listing shall be recorded in the minor's medical record (see Attachment 2).

Should persons of equal priority disagree on whether certain health care should be provided, the health care provider or any person interested in the welfare of the minor may petition the probate court for an order to determine what care is to be provided or for the appointment of a temporary or permanent guardian.

Priority should not be given to someone the health care provider determines is not reasonably available, or is not willing or unable to make health care decisions for the minor.

In an emergency, health care may be provided to a minor without consent under the same emergency provision applicable to adults, even where the inability of the minor to consent is based solely on his/her minority.

II. Adults

The Adult Health Care Consent Act, S.C. Code Ann. § 44-66-10 (2018), sets forth a process for obtaining consent when an adult is unable to consent for health care.

In accordance with S.C. Code Ann. § 44-66-30 (2018), when an adult has been determined by two (2) physicians to be unable to consent to proposed health care, then consent for his/her proposed health care must be given by an authorized person selected by the health care provider based on the following order of priority:

1. A guardian appointed by the court, pursuant to Article 5, Part 3 of the South Carolina Probate Code, if the decision is within the scope of guardianship;

2. An attorney-in-fact appointed by the patient in a durable power of attorney executed pursuant to S.C. Code § 62-5-501 (Supp. 2017), if the decision is within the scope of his authority;

3. A person given priority to make health care decisions for the patient by another statutory provision;

4. A spouse of the patient unless the spouse and the patient are separated pursuant to one of the following:

    a) Entry of a pendente lite order in a divorce or separate maintenance action;

b) Formal signing of a written property or marital settlement agreement; or

c) Entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

5. An adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;

6. A parent of the patient;

7. An adult sibling of the patient, or if the patient has more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation;

8. A grandparent of the patient, or if the patient has more than one grandparent, a majority of the grandparents who are reasonably available for consultation;

9. Any other adult relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient, or if the patient has more than one other adult relative, a majority of those other adult relatives who are reasonably available for consultation.

Documentation of efforts to locate an authorized person identified in the priority listing must be recorded in the person's medical record (see Attachment 2).

Priority must not be given to an authorized person who the health care provider determines is not reasonably available, is not willing to make health care decisions for the patient, or is unable to consent.

EXCEPTIONS

For those unable to consent, health care for the relief of pain and suffering may be provided without consent at any time an authorized person in the priority list is unavailable.
In an emergency, the person's inability to consent may be certified by a health care professional responsible for the care of the person if the heath care professional states in writing in the person's record that the delay occasioned by obtaining certification from two (2) physicians would be detrimental to the person's health. The health care professional shall give an opinion regarding the cause and nature of the inability to consent, its extent and its probable duration. This opinion must be documented.

For those unable to consent, in emergency situations, health care may be provided without consent if no person on the priority list is immediately available, and in the reasonable medical judgment of the health care professional responsible for the care of the person, the delay occasioned by attempting to locate an authorized person to make the health care decision would present a substantial risk of death, permanent disfigurement, impairment of a bodily member/organ, or other serious threat to the health of the person.

Health care decisions on behalf of a person who is unable to consent may be made by an authorized person identified by the priority list if no other authorized person having a higher priority is available immediately, and in the reasonable medical judgment of the health care professional responsible for the care of the person, a delay occasioned by attempting to locate an authorized person having a higher priority presents a substantial risk or serious threat to the health of the person.

For those unable to consent, health care may be provided without consent where there is no authorized person who is reasonably available and willing to make the decision, and in the reasonable medical judgment of the health care professional responsible for the care of the person, the health care is necessary for the relief of suffering, restoration of bodily function or to preserve the life, health or bodily integrity of the person.

ADDITIONAL NOTES

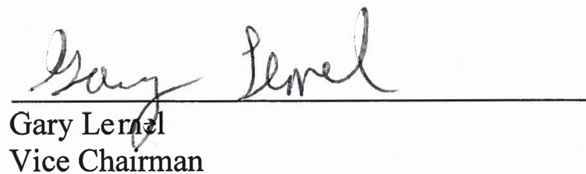
The Adult Health Care Consent Act does not authorize the provision of health care where the attending physician or other responsible health care professional has actual knowledge that the health care is contrary to the religious beliefs of the person, unless the person, while able to consent, stated contrary intent to the physician or health care professional.

The Adult Health Care Consent Act does not authorize health care to a person unable to consent if the attending physician or responsible health care professional has actual knowledge that the proposed health care is contrary to the person's unambiguous and un-contradicted instructions expressed at the time when the person was able to consent.

A person who in good faith makes a health care decision as provided in the Adult Health Care Consent Act is not subject to civil or criminal liability on account of the substance of the decision.

A person who consents on behalf of a person unable to consent does not by virtue of that consent become liable for the costs of the health care provided to the person.

A health care provider, who in good faith relies on a health care decision made by an authorized person, is not subject to civil and criminal liability or disciplinary penalty on account of reliance on the decision.



Gary Lemel
Vice Chairman

Eva Ravenel
Chairman

To access the following attachments, please see the agency website page "Current Directives" at https://www.ddsn.sc.gov/about-us/directives/current-directives

Attachment 1	Health Care Consent Instructions
Attachment 2	Health Care Consent - Identification and Selection of Authorized Person
Attachment 3	Health Care Consent - Physician Certification
Attachment 4	Establishment of Authorized Designees of DDSN for Health Care Decisions and Responsibilities

Health Care Consent Instructions

Thoroughly read DDSN Directive 535-15-DD: Obtaining Health Care Consent for Minors and Adults (the Directive)

If someone who, by virtue of their age and competency status, would be able to consent for their health care is suspected to be unable to give valid consent for the health care proposed, the person shall be referred to two (2) physicians who will determine the person's ability to do so. **NOTE**: Exceptions to this requirement are explained in the "Exceptions" section of the directive.

When referred, each licensed physician should be provided an **Adult Health Care Consent Certification** Form (535-15-DD Attachment 3) with the person's name and date of birth (DOB) entered. Additionally, Section I must be completed on each form. **NOTE**: Examination and certification by two (2) physicians is required; therefore, two (2) **Adult Health Care Consent Certification** Forms shall be completed.

Section II of the **Adult Health Care Consent Certification** Form is completed by the physician. The physician's determination of the person's ability to consent should be documented in Section II.A.

If the two (2) physicians agree that the person "is able" to consent, no further action is needed. The person will make his/her own health care decision.

If the physician determines the person "is temporarily not able" or "is not able," then questions B, C, and D in Section II must be answered by the physician. The form must be signed and dated by the physician.

If the two (2) physicians agree that the person "is temporarily not able," then the health care professional responsible for the care of the person must determine if the delay occasioned by postponing the proposed treatment will result in significant detriment to the person.

If the two (2) physicians agree that the person "is not able" to consent, then the health care provider proposing the health care must identify and select an authorized person to consent or refuse the proposed health care. The **Health Care Consent Identification and Selection of an Authorized Person** Form (Identification and Selection, 535-15-DD Attachment 2) should be used for this purpose.

If the two (2) physicians disagree, the person is considered able to give valid consent.

Section I of the **"Identification and Selection"** Form (535-15-DD Attachment 2) requires that the name(s) and, as appropriate, relationship(s) of those identified by the "Priority Category" be entered. When no one is identified, "not applicable" or "n/a" should be entered. The person's record must reflect all efforts to locate anyone identified by a priority category on the **"Identification and Selection"** Form (535-15-DD Attachment 2).

Once all authorized persons have been identified, then the authorized person who will make the health care decision must be selected/contacted by the health care provider proposing the health care.

The Priority Categories are listed in priority order with "1. Guardian appointed by the court…" having the highest priority and "9. Adult relative…having lowest priority."

The authorized person(s) who may consent to or refuse the proposed health care is/are the one(s) who, among all listed, is:

- Identified in the highest priority category;
- Reasonably available;
- Willing to make the health care decision; and
- Him/herself able to consent.

If more than one authorized person is identified in the highest priority category, the health care decision will be made by the majority of those identified.

The name(s) of the selected authorized person(s) must be entered into Section II of the **"Identification and Selection"** Form (535-15-DD Attachment 2) along with the priority category in which he/she was identified and his/her address and phone number.

If an authorized person identified by a higher priority category than the selected authorized person's category was not selected (i.e., if #5 is selected before #4), his/her priority category, name and the reason he/she was not selected (e.g., not reasonably available, not willing, unable to consent) must be noted.

The health care provider making the selection must enter his/her name and title, then sign and date the completed form.

Health Care Consent
Identification and Selection of Authorized Person

Name:____ DOB:________________________

I. Identification of Authorized Persons

For each priority category listed below, enter the names(s) of each person identified by the priority category and, as appropriate, the person's relationship to the person who is unable to consent to the proposed health care. If the priority category does not identify anyone, enter "not applicable" or "n/a." All efforts to locate those identified by the priority category must be documented in the person's record.

Priority Category	Name(s)/Relationship
1. Guardian appointed by the court, pursuant to Article 5, Part 3 of the South Carolina Probate Code, if health care decisions are within the scope of guardianship.*	
2. An attorney-in-fact appointed by the person in a durable Power of Attorney executed pursuant to S.C. Code Ann. § 62-5-501 (Supp. 2017), if the decision is within the scope of his authority.*	
3. Person given priority to make health care decisions for the patient by another statutory provision.	
4. The spouse of the person, unless the spouse and the person are separated pursuant to one of the following: a) Entry of a pendente lite order in a divorce or separate maintenance action; b) Formal signing of a written property or marital settlement agreement; or c) Entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties.	
5. Adult child or children of the person.	
6. Parent(s) of the person.	
7. Adult sibling(s) of the person.	
8. Grandparent (s) of the person.	
9. Adult relative(s) by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the person.	

**The person's record must contain legal documents supporting the authority of the person named in the priority category*

II. Selection of the Authorized Person

When an adult is certified by two (2) physicians to be unable to consent to health care, an authorized person must be selected from the statutory list of priorities established by S.C. Code Ann. § 44-66-10, et. seq. (2018) and DDSN Directive 535-15-DD: Obtaining Consent for Minors and Adults. The Priority Categories in Section I of this document are listed in priority order, 1- 9. When the person has been certified by two (2) physicians to be unable to consent to the proposed health care, the person, among all who are listed, who is identified in the highest priority category and who is reasonably available, willing to make the health care decision for the person and is him/herself able to consent, will be considered the authorized person who can make the decision regarding the proposed health care.

The selected **Authorized Person**(s):

Name(s): ____

Relationship (priority category) to the person: ______________________________________

Addresss: ____

Phone Number: ____

If someone from any higher priority category was not selected as the authorized person, enter the person's name, the priority category, and the reason he/she was not selected *(e.g., not reasonably available, not willing, unable to consent).*

Priority Category	Name	Reason Not Selected

_______________________________ _______________________________
Printed Name of Health Care Provider | Title of the Health Care Provider

_______________________________ _______________________________
Signature of the Health Care Provider | Date of Completion

ADULT HEALTH CARE CONSENT

Physician Certification

Patient's Name:____ DOB:___________________

Section I. Proposed Health Care and Timeframe for Initiation

____

____

Section II. Certification by Physician

A. Based on examination, it is my professional opinion that the person named above (*choose one*):

☐ **Is** able to give valid consent for the proposed health care.

☐ **Is temporarily not** able to consent for the proposed health care.

☐ **Is not** able to give valid consent for the proposed health care.

B. This person is noted to be: ☐ **temporarily not** able or ☐ **not** able to give valid consent *(indicate why)* He/she: (*check all that apply*):

☐ Is unable to appreciate the nature and implications of his/her conditions and the proposed health care;

☐ Is unable to make a reasoned decision concerning the proposed health care; or

☐ Is unable to communicate a decision concerning the proposed health care in an unambiguous manner.

C. This person is noted to be: ☐ **temporarily not** able or ☐ **not** able to give valid consent and the following facts and observation that support this medical opinion and conclusion include:

1. The **cause** of the person's inability to consent is:_________________________________

2. The **nature** of the person's inability to consent is:________________________________

3. The **extent** of the person's inability to consent is:________________________________

4. The **probable duration** of the person's inability to consent is:_____________________

D. **If noted to be temporarily unable to consent, will a delay in rendering** the proposed health care beyond the time noted present a substantial risk of death, impairment of functioning of a bodily organ or other serious threat to the health and safety of the person named?: ☐ Yes ☐ No ☐ N/A

I, the undersigned, hereby state than I am a licensed physician and have personally examined the above named person and my opinion and conclusions are stated above.

_________________________________ _________________________________

Signature of Physician Printed Name of Physician

Date:_______________________________

Establishment of Authorized Designees of DDSN
for Health Care Decisions and Responsibilities

When a person who is eligible for DDSN services under the categories of Intellectual Disability/Related Disability (ID/RD) and is receiving DDSN-sponsored residential services is, in accordance with the Adult Health Care Consent Act, certified to be unable to consent to or refuse health care and when no other authorized person identified by the statutory list of priorities is reasonably available, willing, or able to make the health care decision, an authorized designee of DDSN may do so.

Authorized designees of DDSN include:

- DDSN State Director,
- DDSN Regional Center Facility Administrators,
- Executive Directors of DSN Boards
- Executive Director/CEO of DDSN Qualified Provider Agencies

In keeping with S.C. Code Ann. § 44-26-50 (2018), when making a health care decision, the authorized designee of DDSN shall be informed of:

- The need for the health care,
- The alternative treatments, and
- The nature and implications of the proposed health care.

The authorized designee of DDSN shall consult with the attending physician or the health care professional proposing the health care before making the decision and, when feasible, shall observe or consult with the person who has been certified to be unable to consent to or refuse the proposed health care.

The authorized designee of DDSN shall document their compliance with the requirements noted herein and shall include the name of the attending physician or health care professional proposing the health care with whom the authorized designee of DDSN consulted and the date of the consultation. Documentation of the consultation shall be in the person's record.

PROPOSED TO MARK OBSOLETE

Attachment F

Mary Poole
State Director
Rufus Britt
Interim Associate State Director
Operations
Susan Kreh Beck
Associate State Director
Policy
Lisa Weeks
Interim Associate State Director
Administration

COMMISSION
Eva R. Ravenel
Chairman
Gary C. Lemel
Vice Chairman
Vicki A. Thompson
Secretary
Sam F. Broughton, Ph.D.
Chris G. Neeley
Lorri S. Unumb

3440 Harden Street Ext (29203)
PO Box 4706, Columbia, South Carolina 29240
803/898-9600
Toll Free: 888/DSN-INFO
Website: www.ddsn.sc.gov

Reference Number:	535-14-DD
Title Document:	Authorization to Discuss Medical Condition and Medical Treatment Plan
Date of Issue:	January 17, 2019
Effective Date:	January 17, 2019
Last Review Date:	January 17, 2019
Date of Last Revision:	January 17, 2019 **(NEW)**
Applicability:	Providers Rendering Health Care to Those Who Reside in a Facility Operated by or Contracted with DDSN

PURPOSE

The Adult Health Care Consent Act (the Act), S.C. Code Ann. § 44-66-75 (2018), requires health care providers or the provider's agent to provide each patient or client representative of a person with an Intellectual Disability/Related Disability the opportunity to designate a family member or other individual they choose as a person with whom the health care provider may discuss the patient's medical condition and medical treatment plan. The purpose of this directive is to implement this requirement.

DEFINITIONS

The following definitions are consistent with definitions included in the Act:

Health Care: As described in the Adult Heath Care Consent Act, "health care" means a procedure to diagnose or treat a disease, ailment, defect, abnormality or complaint, whether of physical or mental origin. It includes the provision of intermediate or skilled nursing care; services for the rehabilitation of injured, disabled, or sick persons; and includes if indicated by this directive the placement in or removal from a facility that provides these forms of care.

For the purpose of this directive, health care is grouped into four (4) categories:

1) Medical/diagnostic care;

2) Medical/diagnostic procedures;

3) Administration of medication; and,

4) Admissions/placement/programming/discharge to or from an ICF/IID.

Health Care Power of Attorney: A person designated by another person to make health care decisions on their behalf. The Healthcare Power of Attorney must be on a form as authorized by S.C. Code Ann. § 62-5-504 (2018).

Health Care Professional: A person who is licensed, certified or otherwise authorized by the laws of this State to provide health care to members of the public. For DDSN, DSN Boards and DDSN qualified providers, the following staff members fall within the definition:

- Physicians;
- Physician Assistants;
- Nurse Practitioners;
- Registered Nurses (RNs);
- Licensed Practical Nurses (LPNs);
- Board Certified Behavior Analysts;
- Licensed Psychologists, Licensed Professional Counselors;
- Licensed Physical Therapists;
- Licensed Occupational Therapists; and
- Licensed Speech Therapists.

Health Care Provider: A person, health care facility, organization, or corporation licensed, certified or otherwise authorized or permitted by the laws of this State to administer health care. For DDSN, DSN Boards and DDSN qualified providers, the following are considered health care providers:

- Physicians;
- Physician Assistants;
- Nurse Practitioners;
- Registered Nurses (RNs);
- Licensed Practical Nurses (LPNs); and
- ICFs/IID.

Patient: Is defined as an individual 16 years of age or older who presents to a health care provider for treatment. In this document "person" will be used in lieu of "patient."

Reasonable Accommodations: Will include, but not be limited to, using technology and devices, receiving assistance with communication; having additional time and focused discussion to process information; providing tailored information oriented to the comprehension level of the alleged incapacitated individual; and accessing services from community organizations and governmental agencies." (As defined in S.C. Code § 62-5-101 (23)(b) (Supp. 2018)

IMPLEMENTATION

As indicated in the Act, a health care provider shall offer the person or client representative of an person with an Intellectual Disability/Related Disability the opportunity to designate a family member or other individual they choose as someone with whom the health care provider may discuss the person's medical condition and medical treatment plan. This opportunity, in accordance with the Act, must be offered when the person presents for treatment/services.

For DDSN, DSN Boards and DDSN contracted service providers who directly render health care services, the person is considered to be presenting for treatment/services, in some situations, daily or multiple times daily. For this reason, the opportunity to designate a family member or other with whom the person's medical condition or medical treatment plan may be discussed will be offered in the following manner:

- Prior to or at the time of the first presentation to a physician, or nurse practitioner for medical/diagnostic care or procedure and at least annually thereafter;
- Prior to or at the time of the first administration of medication by a nurse and annually thereafter;
- Prior to or at the time of admission to an ICF/IID and annually thereafter.

When the opportunity to designate is offered, it must be presented as a written question. The question must be in bold print and capitalized or by electronic means. The question must read **"DO YOU WANT TO DESIGNATE A FAMILY MEMBER OR OTHER INDIVIDUAL WITH WHOM THE PROVIDER MAY DISCUSS YOUR MEDICAL CONDITION? IF YES, WHOM?"** Along with the written question, the person or client representative of a person with an Intellectual Disability/Related Disability must be notified that he/she may revoke or modify their authorization with regard to any family member or individual designated and that any revocation or modification must be in writing.

Reasonable accommodations and support must be provided so the person can understand and respond.

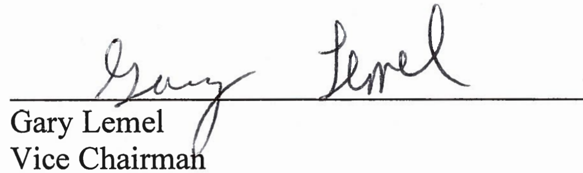
The Authorization to Discuss Medical Condition and Medical Treatment Plan form (attached) may be used to:

- Document that the person was afforded the opportunity to designate;
-
- Document the individual(s) designated; and

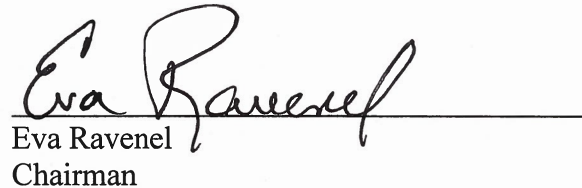
- Inform of the ability to revoke or modify the designation.

The completed form must be in the person's record.

Any questions related to your organization's responsibility for obtaining authorization to discuss the medical condition and treatment plan of a person or client representative of a person with an Intellectual Disability/Related Disability served by your organization should be referred to your organization's legal counsel.



Gary Lemel
Vice Chairman



Eva Ravenel
Chairman

To access the following attachments, please see the agency website page "Current Directives" at https://www.ddsn.sc.gov/about-us/directives/current-directives.

Attachment: Authorization to Discuss Medical Condition and Treatment Plan

AUTHORIZATION TO DISCUSS MEDICAL CONDITION AND TREATMENT PLAN

Name:_______________________________________ DOB:___________________

Name of Health Care Provider:____

DO YOU WANT TO DESIGNATE A FAMILY MEMBER OR OTHER INDIVIDUAL WITH WHOM THE PROVIDER MAY DISCUSS YOUR MEDICAL CONDITION?

☐ Yes **IF, YES WHOM**:

____
Name

____
Relationship

____
Name

____
Relationship

☐ No

You may revoke or modify this authorization at any time, but you must do so in writing.

Signature of Person
Or Legal Guardian:_______________________________ Date:___________________

Witness:_______________________________________ Date:___________________

This authorization satisfies the requirements of Title 42 of the Code of Federal Regulations relating to public health and the privacy rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

PROPOSED TO MARK OBSOLETE

Attachment F

Beverly A. H. Buscemi, Ph.D.
State Director
David A. Goodell
Associate State Director Operations
Susan Kreh Beck
Associate State Director Policy
Thomas P. Waring
Associate State Director Administration

3440 Harden Street Ext (29203)
PO Box 4706, Columbia, South Carolina 29240
803/898-9600
Toll Free: 888/DSN-INFO
Website: www.ddsn.sc.gov

COMMISSION
William O. Danielson
Chairman
Eva R. Ravenel
Vice Chairman
Gary C. Lemel
Secretary
Mary Ellen Barnwell
Sam F. Broughton, Ph.D.
Catherine O. Fayssoux
Vicki A. Thompson

Reference Number:	535-12-DD
Title of Document:	Advance Directives
Date of Issue:	July 15, 2007
Effective Date:	July 15, 2007
Last Review Date:	October 28, 2016
Date of Last Revision:	October 28, 2016 **(REVISED)**
Applicability:	DSN Boards, Contracted Service Providers, DDSN Regional Centers

---

PURPOSE

The purpose of this directive is to implement the federal "Patient Self Determination Act" (PSDA) and encourage the execution of advance health care directives. The PSDA requires that each hospital and nursing agency receiving federal Medicare or Medicaid funds provide information to every consumer/resident, about the agency's policies concerning implementation of Advance Directives, and distribute a written description of State law concerning Advance Directives to the consumer/resident. It is also the declared policy of the State of South Carolina to promote the use of Advance Directives as a means of encouraging consumer self-determination and avoiding uncertainty in a health care crisis.

POLICY

Many South Carolina Department of Disabilities and Special Needs (DDSN) consumers are currently competent and capable of making health care decisions for themselves. However, some may experience incapacity at some point in their lives which has an adverse impact on their ability to make appropriate decisions regarding health care. The completion of an Advance Directive stating their desires regarding the provision or withholding of medical care in anticipation of such an event is recommended. However, no board/provider serving DDSN

consumers will condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance health care directive.

Individuals with an intellectual disability or related disability, autism, head and spinal cord injuries, or other related disabilities are fully entitled to all the human and legal rights available to other citizens. Because the individual's disability may adversely impact his/her decision-making process, close scrutiny must be given when consent from a person with a disability is required for a proposed activity or procedure. Assessment for competency related to health care decisions must be determined in accordance with DDSN Directive 535-07-DD: Obtaining Consent for Minors and Adults, and the South Carolina Adult Health Care Consent Act (S.C. Code Ann. § 44-66-10 [Supp. 2012]). This Directive only applies to those consumers who are capable to make decisions regarding their health care as defined in DDSN Directive 535-07-DD: Obtaining Consent for Minors and Adults.

DEFINITION

Advance Directives:

For purposes of the Patient Self Determination Act and this Directive, "Advance Directive" means a written instruction such as a Living Will or Health Care Power of Attorney, recognized under State law (whether by statute or by a court of competent jurisdiction) and relating to the provision of health care when the individual is incapacitated.

South Carolina provides by statute for two types of Advance Directives:

A. **Living Will** - The Death with Dignity Act authorizes competent adults to express their wishes regarding the use or withholding of life-sustaining procedures, including artificial nutrition and hydration, in the event they are diagnosed with a terminal condition or are in a state of permanent unconsciousness and in the further event that they are incapacitated or otherwise unable to express their desires. The statute creates a form for this purpose entitled "Declaration of a Desire for a Natural Death" (see Appendix A). This document and those similar in purpose are commonly referred to as a "Living Will." Found at S.C. Code Ann. § 44-77-50.

B. **Health Care Power of Attorney** - The South Carolina Probate Code authorizes competent adults to designate another person to make decisions on their behalf about their medical care in the event they become incapacitated. The statutory form created for this purpose is entitled "Health Care Power of Attorney" (see Appendix B). Found at S.C. Code Ann. § 62-5-504 (Supp. 2015).

Consumers may also have prepared other forms of Advance Directives or put into writing their desires concerning certain types of medical care. State statutes however, require that alternative forms of Advanced Directives must substantially correspond to the forms referenced above. They must also be signed by the consumer and two (2) witnesses.

PROCEDURE

A. **Providing Information**

1. Each service provider delivering residential services shall develop policies and procedures to ensure that upon admission, adult consumers will be provided with a written statement of the agency's policy regarding the implementation of Advance Directives, and also be provided with a written explanation of the South Carolina law concerning Advance Directives (see Appendix C).

2. The consumer's medical record maintained by the residential service provider shall be documented to reflect that the required information was provided.

B. **Requesting Information**

1. Residential service providers' policies shall state that upon admission of adult consumers, staff will inquire into the existence of Advance Directives previously executed by the consumer. The consumer's medical record maintained by the residential service provider shall be documented as to the response to the inquiry.

2. In the event staff are aware that a consumer has executed an Advance Directive, they shall request a copy and maintain it in the consumer's record. In the event of admission to a hospital or nursing home, staff shall contact the hospital/nursing home to make them aware of, and supply, a copy of the consumer's Advance Directive if the consumer's family does not do so.

3. If the consumer is transferred to any other DDSN facility or service provider, the Advance Directive(s) shall be sent to the receiving service provider for inclusion in the individual's chart at such service provider along with other consumer records.

C. **Providing Assistance**

Residential facilities shall assist apparently competent consumers and consumers who desire to prepare an Advance Directive. Assistance shall include the following:

1. **Information**: Staff will refer consumers to sources of guidance to facilitate informed decision-making. Examples of such guidance can be found at the following internet sites.

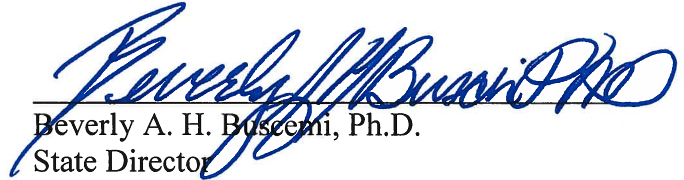
   a. http://www.re-quest.net/g2g/legal-forms/medical-directives/
   b. http://www.agingwithdignity.org/five-wishes.php

2. **Provision of approved forms**: Staff shall make available to those interested individuals copies of the approved State forms for Advance Directives (see Appendix A and B).

3. Staff shall not serve as a witness to the declarant's signature if they are or have been directly involved in the consumer's care. Staff shall not accept appointment as an agent in a Health Care Power of Attorney or Declaration of a Desire for a Natural Death.

Staff need not provide assistance to a consumer in circumstances in which staff believe the consumer is unable to make an informed decision regarding the execution of an Advance Directive.

Susan Kreh Beck, Ed.S., NCSP
Associate State Director-Policy
(Originator)



Beverly A. H. Buscemi, Ph.D.
State Director
(Approved)

To access the following attachments, please see the agency website page "Attachments to Directives" under this directive number at http://www.ddsn.sc.gov/about/directives-standards/Pages/AttachmentstoDirectives.aspx.

Appendix A: Declaration of a Desire for a Natural Death
Appendix B: Health Care Power Of Attorney
Appendix C: Your Right To Make Decisions About Your Health Care

DECLARATION OF A DESIRE FOR A NATURAL DEATH

STATE OF SOUTH CAROLINA)
)
COUNTY OF)

I, _______________________, Declarant, being at least eighteen years of age and a resident of and domiciled in the City of _____________, County of ______________, State of South Carolina, make this Declaration this _______ day of ____________, 20___.

I willfully and voluntarily make known my desire that no life-sustaining procedures be used to prolong my dying if my condition is terminal or if I am in a state of permanent unconsciousness, and I declare:

If at any time I have a condition certified to be a terminal condition by two physicians who have personally examined me, one of whom is my attending physician, and the physicians have determined that my death could occur within a reasonably short period of time without the use of life-sustaining procedures or if the physicians certify that I am in a state of permanent unconsciousness and where the application of life-sustaining procedures would serve only to prolong the dying process, I direct that the procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure necessary to provide me with comfort care.

INSTRUCTIONS CONCERNING ARTIFICIAL NUTRITION AND HYDRATION

INITIAL ONE OF THE FOLLOWING STATEMENTS

If my condition is terminal and could result in death within a reasonably short time,

__________ I direct that nutrition and hydration BE PROVIDED through any medically indicated means, including medically or surgically implanted tubes.

__________ I direct that nutrition and hydration NOT BE PROVIDED through any medically indicated means, including medically or surgically implanted tubes.

INITIAL ONE OF THE FOLLOWING STATEMENTS

If I am in a persistent vegetative state or other condition of permanent unconsciousness,

__________ I direct that nutrition and hydration BE PROVIDED through any medically indicated means, including medically or surgically implanted tubes.

__________ I direct that nutrition and hydration NOT BE PROVIDED through any medically indicated means, including medically or surgically implanted tubes.

In the absence of my ability to give directions regarding the use of life-sustaining procedures, it is my intention that this Declaration be honored by my family and physicians and any health facility in which I may be a patient as the final expression of my legal right to refuse medical or surgical treatment, and I accept the consequences from the refusal.

I am aware that this Declaration authorizes a physician to withhold or withdraw life-sustaining procedures. I am emotionally and mentally competent to make this Declaration.

APPOINTMENT OF AN AGENT (OPTIONAL)

1. You may give another person authority to revoke this declaration on your behalf. If you wish to do so, please enter that person's name in the space below.

Name of Agent with Power to Revoke: ___________________________________

Address: ____

____

Telephone Number: __________________________

2. You may give another person authority to enforce this declaration on your behalf. If you wish to do so, please enter that person's name in the space below.

Name of Agent with Power to Enforce: ___________________________________

Address: ______________________________________

____

Telephone Number: __________________________

REVOCATION PROCEDURES

THIS DECLARATION MAY BE REVOKED BY ANY ONE OF THE FOLLOWING METHODS. HOWEVER, A REVOCATION IS NOT EFFECTIVE UNTIL IT IS COMMUNICATED TO THE ATTENDING PHYSICIAN.

(1) BY BEING DEFACED, TORN, OBLITERATED, OR OTHERWISE DESTROYED, IN EXPRESSION OF YOUR INTENT TO REVOKE, BY YOU OR BY SOME PERSON IN YOUR PRESENCE AND BY YOUR DIRECTION. REVOCATION BY DESTRUCTION OF ONE OR MORE OF MULTIPLE ORIGINAL DECLARATIONS REVOKES ALL OF THE ORIGINAL DECLARATIONS;

(2) BY A WRITTEN REVOCATION SIGNED AND DATED BY YOU EXPRESSING YOUR INTENT TO REVOKE;

(3) BY YOUR ORAL EXPRESSION OF YOUR INTENT TO REVOKE THE DECLARATION. AN ORAL REVOCATION COMMUNICATED TO THE ATTENDING PHYSICIAN BY A PERSON OTHER THAN YOU IS EFFECTIVE ONLY IF:

(a) THE PERSON WAS PRESENT WHEN THE ORAL REVOCATION WAS MADE;

(b) THE REVOCATION WAS COMMUNICATED TO THE PHYSICIAN WITHIN A REASONABLE TIME;

(c) YOUR PHYSICAL OR MENTAL CONDITION MAKES IT IMPOSSIBLE FOR THE PHYSICIAN TO CONFIRM THROUGH SUBSEQUENT CONVERSATION WITH YOU THAT THE REVOCATION HAS OCCURRED.

TO BE EFFECTIVE AS A REVOCATION, THE ORAL EXPRESSION CLEARLY MUST INDICATE YOUR DESIRE THAT THE DECLARATION NOT BE GIVEN EFFECT OR THAT LIFE-SUSTAINING PROCEDURES BE ADMINISTERED;

(4) IF YOU, IN THE SPACE ABOVE, HAVE AUTHORIZED AN AGENT TO REVOKE THE DECLARATION, THE AGENT MAY REVOKE ORALLY OR BY A WRITTEN, SIGNED, AND DATED INSTRUMENT. AN AGENT MAY REVOKE ONLY IF YOU ARE INCOMPETENT TO DO SO. AN AGENT MAY REVOKE THE DECLARATION PERMANENTLY OR TEMPORARILY.

(5) BY YOUR EXECUTING ANOTHER DECLARATION AT A LATER TIME.

____
Signature of Declarant

AFFIDAVIT

STATE OF SOUTH CAROLINA)
)
COUNTY OF)

We, __________ and __________, the undersigned witnesses to the foregoing Declaration, dated the ___ day of __________, 20___, at least one of us being first duly sworn, declare to the undersigned authority, on the basis of our best information and belief, that the Declaration was on that date signed by the declarant as and for his/her DECLARATION OF A DESIRE FOR A NATURAL DEATH in our presence and we, at his/her request and in his/her presence, and in the presence of each other, subscribe our names as witnesses on that date. The declarant is personally known to us, and we believe him/her to be of sound mind. Each of us affirms that he/she is qualified as a witness to this Declaration under the provisions of the South Carolina

Death With Dignity Act in that he/she is not related to the declarant by blood, marriage, or adoption, either as a spouse, lineal ancestor, descendant of the parents of the declarant, or spouse of any of them; nor directly financially responsible for the declarant's medical care; nor entitled to any portion of the declarant's estate upon his/her decease, whether under any will or as an heir by intestate succession; nor the beneficiary of a life insurance policy of the declarant; nor the declarant's attending physician; nor an employee of the attending physician; nor a person who has a claim against the declarant's decedent's estate as of this time. No more than one of us is an employee of a health facility in which the declarant is a patient. If the declarant is a resident in a hospital or nursing care facility at the date of execution of this Declaration, at least one of us is an ombudsman designated by the State Ombudsman, Office of the Governor.

____________________Witness

____________________Witness

Subscribed before me by ______________________, the declarant, and subscribed and sworn to before me by ___________________ and ____________________, the witnesses, this ________ day of __________________, 20___.

____
Signature

Notary Public for ____________________
My commission expires: ____________

HEALTH CARE POWER OF ATTORNEY

(South Carolina Statutory Form, S.C. Code Ann. § 62-5-504)

INFORMATION ABOUT THIS DOCUMENT

INFORMATION ABOUT THIS DOCUMENT

THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

1. THIS DOCUMENT GIVES THE PERSON YOU NAME AS YOUR AGENT THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOU CANNOT MAKE THE DECISION FOR YOURSELF. THIS POWER INCLUDES THE POWER TO MAKE DECISIONS ABOUT LIFE-SUSTAINING TREATMENT. UNLESS YOU STATE OTHERWISE, YOUR AGENT WILL HAVE THE SAME AUTHORITY TO MAKE DECISIONS ABOUT YOUR HEALTH CARE AS YOU WOULD HAVE.

2. THIS POWER IS SUBJECT TO ANY LIMITATIONS OR STATEMENTS OF YOUR DESIRES THAT YOU INCLUDE IN THIS DOCUMENT. YOU MAY STATE IN THIS DOCUMENT ANY TREATMENT YOU DO NOT DESIRE OR TREATMENT YOU WANT TO BE SURE YOU RECEIVE. YOUR AGENT WILL BE OBLIGATED TO FOLLOW YOUR INSTRUCTIONS WHEN MAKING DECISIONS ON YOUR BEHALF. YOU MAY ATTACH ADDITIONAL PAGES IF YOU NEED MORE SPACE TO COMPLETE THE STATEMENT.

3. AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS FOR YOURSELF IF YOU ARE MENTALLY COMPETENT TO DO SO. AFTER YOU HAVE SIGNED THIS DOCUMENT, NO TREATMENT MAY BE GIVEN TO YOU OR STOPPED OVER YOUR OBJECTION IF YOU ARE MENTALLY COMPETENT TO MAKE THAT DECISION.

4. YOU HAVE THE RIGHT TO REVOKE THIS DOCUMENT, AND TERMINATE YOUR AGENT'S AUTHORITY, BY INFORMING EITHER YOUR AGENT OR YOUR HEALTH CARE PROVIDER ORALLY OR IN WRITING.

5. IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A SOCIAL WORKER, LAWYER, OR OTHER PERSON TO EXPLAIN IT TO YOU.

6. THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS TWO PERSONS SIGN AS WITNESSES. EACH OF THESE PERSONS MUST EITHER WITNESS YOUR SIGNING OF THE POWER OF ATTORNEY OR WITNESS YOUR ACKNOWLEDGMENT THAT THE SIGNATURE ON THE POWER OF ATTORNEY IS YOURS.

THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:

A. YOUR SPOUSE, YOUR CHILDREN, GRANDCHILDREN, AND OTHER LINEAL DESCENDANTS; YOUR PARENTS, GRANDPARENTS, AND OTHER LINEAL ANCESTORS; YOUR SIBLINGS AND THEIR LINEAL DESCENDANTS; OR A SPOUSE OF ANY OF THESE PERSONS.

B. A PERSON WHO IS DIRECTLY FINANCIALLY RESPONSIBLE FOR YOUR MEDICAL CARE.

C. A PERSON WHO IS NAMED IN YOUR WILL, OR, IF YOU HAVE NO WILL, WHO WOULD INHERIT YOUR PROPERTY BY INTESTATE SUCCESSION.

D. A BENEFICIARY OF A LIFE INSURANCE POLICY ON YOUR LIFE.

E. THE PERSONS NAMED IN THE HEALTH CARE POWER OF ATTORNEY AS YOUR AGENT OR SUCCESSOR AGENT.

F. YOUR PHYSICIAN OR AN EMPLOYEE OF YOUR PHYSICIAN.

G. ANY PERSON WHO WOULD HAVE A CLAIM AGAINST ANY PORTION OF YOUR ESTATE (PERSONS TO WHOM YOU OWE MONEY).

IF YOU ARE A PATIENT IN A HEALTH FACILITY, NO MORE THAN ONE WITNESS MAY BE AN EMPLOYEE OF THAT FACILITY.

7. YOUR AGENT MUST BE A PERSON WHO IS 18 YEARS OLD OR OLDER AND OF SOUND MIND. IT MAY NOT BE YOUR DOCTOR OR ANY OTHER HEALTH CARE PROVIDER THAT IS NOW PROVIDING YOU WITH TREATMENT; OR AN EMPLOYEE OF YOUR DOCTOR OR PROVIDER; OR A SPOUSE OF THE DOCTOR, PROVIDER, OR EMPLOYEE; UNLESS THE PERSON IS A RELATIVE OF YOURS.

8. YOU SHOULD INFORM THE PERSON THAT YOU WANT HIM OR HER TO BE YOUR HEALTH CARE AGENT. YOU SHOULD DISCUSS THIS DOCUMENT WITH YOUR AGENT AND YOUR PHYSICIAN AND GIVE EACH A SIGNED COPY. IF YOU ARE IN A HEALTH CARE FACILITY OR A NURSING CARE FACILITY, A COPY OF THIS DOCUMENT SHOULD BE INCLUDED IN YOUR MEDICAL RECORD.

HEALTH CARE POWER OF ATTORNEY

(S.C. STATUTORY FORM)

1. DESIGNATION OF HEALTH CARE AGENT

I, ______________________________, hereby appoint:

(Principal) ___________________________________

(Agent's Name) ________________________________

(Agent's Address) ________________________________

____

Telephone: (h) __________________ (w): ____________________ (c): ______________as my agent to make health care decisions for me as authorized in this document.

Successor Agent: If an agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an agent who is my spouse is divorced or separated from me, I name the following as successors to my agent, each to act alone and successively, in the order named:

(a.) First Alternate Agent: _______________________________

Address: ________________________________

____

Telephone: (h): _________________ (w): _____________ (c): ______________

(b.) Second Alternate Agent: _____________________________

Address: ________________________________

____

Telephone: (h) __________________ (w): _____________ (c): _______________

Unavailability of Agent(s): If at any relevant time the agent or successor agents named here are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence, except as provided in Paragraph 3 below.

3. HIPAA AUTHORIZATION

When considering or making health care decisions for me, all individually identifiable health information and medical records shall be released without restriction to my health care agent(s) and/or my alternate health care agent(s) named above including, but not limited to:

(i) diagnostic, treatment, other health care, and related insurance and financial records and information associated with any past, present, or future physical or mental health condition including, but not limited to, diagnosis or treatment of HIV/AIDS, sexually transmitted disease(s), mental illness, and/or drug or alcohol abuse and

(ii) any written opinion relating to my health that such health care agent(s) and/or alternate health care agent(s) may have requested. Without limiting the generality of the foregoing, this release authority applies to all health information and medical records governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 USC 1320d and 45 CFR 160-164; is effective whether or not I am mentally competent; has no expiration date; and shall terminate only in the event that I revoke the authority in writing and deliver it to my health care provider.

4. AGENT'S POWERS

I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desires is intended to be as broad as possible, except for any limitations I may state below.

Accordingly, unless specifically limited by the provisions specified below, my agent is authorized as follows:

A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation.

B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death.

C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service.

D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or

other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

E. The powers granted above do not include the following powers or are subject to the following rules or limitations:

5. ORGAN DONATION (INITIAL ONLY ONE)

My agent may ___; may not ___ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

6. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.

7. STATEMENT OF DESIRES CONCERNING LIFE-SUSTAINING TREATMENT With respect to any Life-Sustaining Treatment, I direct the following:

(INITIAL ONLY ONE OF THE FOLLOWING 3 PARAGRAPHS)

(1) ___ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

OR

(2) ___ DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:

a. if I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, expected to result in death within a relatively short period of time; or

b. if I am in a state of permanent unconsciousness.

OR

(3) ___ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.

8. STATEMENT OF DESIRES REGARDING TUBE FEEDING

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that in situations where life-sustaining treatment is being withheld or withdrawn pursuant to Item 7, (INITIAL ONLY ONE OF THE FOLLOWING THREE PARAGRAPHS):

(a) ___ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged by tube feeding if my agent believes the burdens of tube feeding outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved, and the quality as well as the possible extension of my life in making this decision.

OR

(b) ___ DIRECTIVE TO WITHHOLD OR WITHDRAW TUBE FEEDING. I do not want my life prolonged by tube feeding.

OR

(c) ___ DIRECTIVE FOR PROVISION OF TUBE FEEDING. I want tube feeding to be provided within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedure, and without regard to whether other forms of life-sustaining treatment are being withheld or withdrawn.

IF YOU DO NOT INITIAL ANY OF THE STATEMENTS IN ITEM 8, YOUR AGENT WILL NOT HAVE AUTHORITY TO DIRECT THAT NUTRITION AND HYDRATION NECESSARY FOR COMFORT CARE OR ALLEVIATION OF PAIN BE WITHDRAWN.

9. ADMINISTRATIVE PROVISIONS

A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.

B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Health Care Power of Attorney on this ___ day of ___, 20 __. My current home address is: ____

Principal's Signature: ________________________________

Print Name of Principal: ______________________________

I declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that he/she signed or acknowledged this Health Care Power of Attorney in my presence, and that he/she appears to be of sound mind and under no duress, fraud, or undue influence. I am not related to the principal by blood, marriage,

or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. I am not directly financially responsible for the principal's medical care. I am not entitled to any portion of the principal's estate upon his decease, whether under any will or as an heir by intestate succession, nor am I the beneficiary of an insurance policy on the principal's life, nor do I have a claim against the principal's estate as of this time. I am not the principal's attending physician, nor an employee of the attending physician. No more than one witness is an employee of a health facility in which the principal is a patient. I am not appointed as Health Care Agent or Successor Health Care Agent by this document.

Witness No. 1

Signature: ______________________________ Date: ____________________

Print Name: ____________________________ Telephone: _____________________

Address: _______________________________________

____

Witness No. 2

Signature: ______________________________ Date: ____________________

Print Name: ____________________________ Telephone: _____________________

Address: _______________________________________

____

(This portion of the document is optional and is not required to create a valid Health Care Power of Attorney.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF)

The foregoing instrument was acknowledged before me by Principal on ________, 20___.

Notary Public for South Carolina

____

Signature

My Commission Expires: _______________

YOUR RIGHT TO MAKE DECISIONS ABOUT YOUR HEALTH CARE

YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS THAT AFFECT YOU.

You have the right to make all decisions about the health care you receive. If you do not want certain treatments, you can tell your doctor, either in person or in writing, that you do not want them. If you want to refuse treatment, but you do not have someone to name as your agent, you can sign a Living Will.

Most patients can express their wishes to their doctor, but some who are badly injured, unconscious, or very ill cannot. People need to know your wishes about health care in case you become unable to speak effectively for yourself. You can express your wishes in a Health Care Power of Attorney or a Living Will.

In a Living Will you tell your doctor that you do not want to receive certain treatment. In a Health Care Power of Attorney you name an agent who will tell the doctor what treatment should or should not be provided.

The decision to sign a Health Care Power of Attorney or Living Will is very personal and very important. This pamphlet answers some frequently asked questions about Health Care Power of Attorneys and Living Wills.

These documents will be followed only if you are unable, due to illness or injury, to make decisions for yourself. While you are pregnant, however, these documents will not cause life support to be withheld**.**

If you do not have a Living Will or Health Care Power of Attorney that tells what you want done, you do not know what decisions will be made or who will make them. Decisions may be made by certain relatives designated by South Carolina law, by a person appointed by the court, or by the court itself. The best way to make sure your wishes are followed is to state your wishes in a Health Care Power of Attorney, or sometimes, a Living Will. If you want to refuse treatment, but you do not have someone to name as your agent, you can sign a Living Will.

If you have questions about signing a Health Care Power of Attorney or Living Will, you should talk to your doctor, your minister, priest, rabbi, or other religious counselor or your attorney. Finally, it is very important that you discuss your feelings about life support with your family. A Health Care Power of Attorney also should be discussed with the people you intend to name as your agent and alternate agents to make sure that they are willing to serve. It is also important to make sure that your agents know your wishes.

Are there forms for Living Wills and Health Care Power of Attorneys in South Carolina?

Yes. The South Carolina legislature has approved forms for both a Living Will and a Health Care Power of Attorney. The Living Will form that the legislature approved is called a

"Declaration of a Desire for Natural Death." You may be able to get these forms from the person who gave you this brochure. If not, you may call:

Your local Council or The Lieutenant Governor's Office on Aging at 1-800-868-9095
Joint legislative Committee on Aging (803) 734-2995
Governor's Office**,** Ombudsman Division (803) 734-0457

How are a Health Care Power of Attorney and a Living Will different?

* The agent named in a Health Care Power of Attorney can make all of the decisions about your health care that need to be made. A Living Will affects only life support.

* A Living Will affects life support only in certain circumstances. A Living Will only tells the doctor what to do if you are permanently unconscious or if you are terminally ill and close to death. A Health Care Power of Attorney is not limited to these situations**.**

"Permanently unconscious" means that you are in a persistent vegetative state in which your body functions but your mind does not. This is different from a coma, because a person in a coma usually wakes up, but a permanently unconscious person does not.

* A Living Will can only say what treatment you don't want. In a Health Care Power of Attorney you can say what treatment you do want as well as what you do not want.

* With a Living Will you must decide what should be done in the future, without knowing exactly what the circumstances will be when the decision is put into effect. With a Health Care Power of Attorney, the agent can make decisions when the need arises, and will know what the circumstances are.

* An Ombudsman from the Governor's Office must be a witness if you sign a Living Will when you are in a hospital or nursing home. An Ombudsman does not have to be a witness if you sign a Health Care Power of Attorney in a hospital or nursing home.

I want to be allowed to die a natural death and not be kept alive by medical treatment, heroic measures, or artificial means. How can I make sure this happens?

The best way to be sure you are allowed to die a natural death is to sign a Health Care Power of Attorney that states the circumstances in which you would not want treatment. In the South Carolina form, you should specify your wishes in Items 6 and 7.

You may not have a person that you can trust to carry out your desire for a natural death. If not, a Living Will can ensure that you are allowed to die a natural death. However**,** it will only do so if you are permanently unconscious or terminally ill and close to death.

Which document should I sign if I want to be treated with all available life-sustaining procedures?

You should sign a Health Care Power of Attorney, and not a Living Will. The South Carolina Health Care Power of Attorney form allows you to say either that you do or that you do not want life-sustaining treatment. A Living Will only allows you to say that you do not want life-sustaining procedures.

What if I have an old Health Care Power of Attorney or Living Will, or signed one in another state?

If you previously signed a Living Will or Health Care Power of Attorney, even in another state, it is probably valid. However, it may be a good idea to sign the most current forms. For example, the current South Carolina Living Will form covers artificial nutrition and hydration whereas older forms did not.

How is a Health Care Power of Attorney different from a Durable Power of Attorney?

A Health Care Power of Attorney is a specific type of Durable Power of Attorney that names an agent only to make health care decisions. A Durable Power of Attorney may or may not allow the agent to make health care decisions. It depends on what the document says. The agent may only be able to make decisions about property and financial matters.

What are the requirements for signing a Living Will?

You must be 18 years old to sign a Living Will. Two persons must witness your signing the Living Will form. A notary public must also sign the Living Will. If you sign a Living Will while you are a patient in a hospital or a resident in a nursing home, a representative from the Governor's Office (the Ombudsman) must witness your signing.

There are certain people who cannot witness your Living Will. The Living Will form says who cannot be a witness. You should read the Living Will form carefully to be sure your witnesses are qualified.

What are the requirements for signing a Health Care Power of Attorney?

You must have two witnesses sign "the document." The form tells you who cannot be witnesses (these are the same people who cannot witness a Living Will). Unlike a Living Will, the Health Care Power of Attorney may be signed in a hospital or in a nursing home without having someone from the Ombudsman's office present. It is not necessary to have a Notary sign your Health Care Power of Attorney.

Whom should I appoint as my agent? What if my agent cannot serve?

You should appoint a person you trust and who knows how you feel about health care. You also should name at least one alternate, who will make decisions if your agent is unable or unwilling

to make these decisions. You should talk to the people you choose as your agent and alternate agents to be sure they are willing to serve. Also, they should know how you feel about health care.

Is there anything I need to know about completing the Living Will or Health Care Power of Attorney form?

Each form contains spaces for you to state your wishes about things like whether you want life support and tube feeding. If you do not put your initials in either space, tube feeding may be provided, depending upon your condition. Be sure to read the forms carefully and follow the instructions.

Where should I keep my Health Care Power of Attorney or Living Will?

Keep the original in a safe place where your family members can get it. You also should give a copy to as many of the following people as you are comfortable with: family members, doctor, lawyer, minister or priest, or your agent. Do not put your only copy of these documents in your safe deposit box.

What if I change my mind after I have signed a Living Will or Health Care Power of Attorney?

You may revoke (cancel) your Living Will or Health Care Power of Attorney any time. The forms contain instructions for doing so. You must tell your doctor and anyone else who has a copy that you have changed your mind and you want to revoke your Living Will or Health Care Power of Attorney.

~~ARTICLE 3~~

~~RECREATIONAL CAMPS FOR PERSONS WITH INTELLECTUAL DISABILITY~~

88-310. ~~Definitions.~~

~~A. Activity Specialist An individual who has skills in and is responsible for conducting camper-participation activities such as arts and crafts, swimming, sports, camping, etc.~~

~~B. Aquatic Guard A waterfront staff member who is responsible to the aquatic supervisor for the supervision of campers during any aquatic activities.~~

~~C. Aquatic Supervisor Is in charge at a waterfront for supervising the entire swimming program including, but not limited to, free swim, swim lessons, swimming ability tests, boating, waterfront play and who is also responsible for the supervision of the aquatic guards.~~

~~D. Camper A person with intellectual disability who is attending either a licensed Recreation Residential Camp or a Recreation Day Camp.~~

~~E. Campsite The land, including the natural and man-made features, where the camp program is being offered.~~

~~F. Comprehensive Plan The plan of operation that sets forth all aspects of the camp program including the major program emphasis and the range of participants to be served.~~

~~G. Counselor An individual who directly supervises the campers and who is responsible to the camp director.~~

~~H. Counselor-in-Training An individual who participates in a specific camper-leadership-development program, but has no direct supervision or responsibility for campers.~~

~~I. Recreation Day Camp A program of recreation activities for the camper with intellectual disability with an emphasis on outdoor and camping activities that utilize trained leadership and the natural or man-made outdoor surroundings to contribute to the camper's mental, physical, and social growth and which provides services for less than twenty-four hours a day.~~

~~J. Recreation Residential Camp A program of recreation activities for the camper with intellectual disability with an emphasis on outdoor and camping activities that utilize trained leadership and the natural or man-made outdoor surroundings to contribute to the camper's mental, physical and social growth and which provides four or more consecutive twenty-four hour periods of camp programming at one or more campsites.~~Repealed.

88-315. ~~Campsite.~~

~~The Campsite will meet the appropriate requirements of the Rules and Regulations Governing Camps as published by the South Carolina Department of Health and Environmental Control.~~Repealed.

Article 5

Eligibility Determination

88-505. General

Individuals domiciled in the state and determined by the Department, using the diagnostic criteria specified in this Article, to have an Intellectual Disability, Related Disability, Autism Spectrum Disorder, Head Injury, Spinal Cord Injury, Similar Disability, or be a child at greater risk for a developmental disability than that for the general population, will be eligible for services from the Department.

88-510. Definitions Used in this Article.

Commented [SKB1]: Should these be in alpha order considering the formatting requirements?

A. Intellectual Disability: S.C. Code Ann. § 44-20-30 (12) defines Intellectual Disability as significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

B. Related Disability: S.C. Code Ann. § 44-20-30 (15) defines Related Disability as a severe, chronic condition found to be closely related to Intellectual Disability or to require treatment similar to that required for persons with Intellectual Disability

C. High-Risk Infant: S.C. Code Ann.§ 44-20-30 (9) defines high-risk infant as a child less than 36 months of age whose genetic, medical or environmental history is predictive of a substantially greater risk for a developmental disability than that for the general population.

D. At Risk Child: Defined as a child 36 of age up to but less than 72 months of age whose genetic, medical or environmental history is predictive of a substantially greater risk for a developmental disability than that of the general population.

E. Autism Spectrum Disorder: The Department defines Autism Spectrum Disorder (ASD) as included in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders-Fifth Edition (DSM-5) or most current edition.

F. Head Injury: S.C. Code Ann. § 44-38-20, which relates to the South Carolina Head and Spinal Cord Information System, defines head injury. Head Injury means an insult to the skull or brain, not of a degenerative or congenital nature, but one caused by an external physical force that may produce a diminished or altered state of consciousness, which results in impairment of cognitive abilities or physical functioning and possibly in behavioral or emotional functioning. It does not include cerebral vascular accidents or aneurysms.

G. Developmental Period: The period of time between conception and the twenty-second birthday.

H. Spinal Cord Injury: S.C. Code Ann. § 44-38-20, which relates to the South Carolina Head and Spinal Cord Information System, defines and spinal cord injury. Spinal Cord Injury means an acute traumatic lesion of neural elements in the spinal canal resulting in any degree of sensory deficit, motor deficit, or major life functions. The deficit or dysfunction may be temporary or permanent.

I. Similar Disability: Similar Disability is not specifically defined within South Carolina Codes of Law; however, S.C. Code Ann. § 44-38-370 states that Similar Disability is not associated with the process of a progressive degenerative illness or dementia, or a neurological disorder related to aging. Similar Disability is similar to head injury or spinal cord injury as defined herein.

88-515. Diagnostic Criteria for Department Eligibility

A. Intellectual Disability

(1) The Department defines Intellectual Disability as outlined in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders-Fifth Edition (DSM-5) or most current edition.

(2) Diagnosis of Intellectual Disability based on the DSM-5 or most current edition definition requires the following three (3) criteria be met:

(a) Significantly sub-average intellectual functioning; an IQ of approximately 70 or below on an individually administered intelligence test (for infants, a clinical judgment of significantly sub-average intellectual functioning); and,

(b) Concurrent deficits in present overall adaptive functioning (i.e., the person's effectiveness in meeting the standards expected for his/her age by his/her cultural group) with deficits in at least two (2) of the following adaptive skills areas: Communication, Self-care, Home living, Social/interpersonal skills,

Use of community resources, Self-direction, Functional academic skills, Work, Leisure, Health, and safety; and,

(c) The onset of Intellectual Disability is prior to age 22.

(3) Only scores derived from nationally normed standardized tests conducted by qualified examiners shall be used in eligibility determinations. A score of 70, alone, on any intelligence and/or adaptive test shall not equate to a diagnosis of Intellectual Disability.

B. Related Disability

(1) Diagnosis of Related Disability requires all four (4) of the following conditions:

(a) It is attributable to cerebral palsy, epilepsy, or any other condition other than mental illness found to be closely related to Intellectual Disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with Intellectual Disability and requires treatment or services similar to those required for these persons; and

(b) It is likely to continue indefinitely; and,

(c) It results in substantial functional limitations in three (3) or more of the following areas of major life activity: Self-care, Understanding and use of language, Learning, Mobility, Self-direction, Capacity for Independent Living; and

(d) The onset is before age 22 years.

(2) Only scores derived from nationally normed standardized tests administered by qualified examiners shall be used in eligibility determinations. Substantial functional limitations shall be defined as the results from administration of a standardized, norm-referenced test yielding a composite score of two standard deviations or more below the mean.

C. High-Risk Infant/At Risk Child

(1) Diagnosis of High Risk Infant/At Risk Child requires that a child younger than 72 months of age meet one of the following:

(a) Exhibits significant documented delays in three or more areas of development; or

(b) Have a diagnosis, as recognized by the Department of Health and Human Services BabyNet Established Risk Condition List, confirmed by a medical professional and exhibit significant documented delays in two areas of development.

D. Autism Spectrum Disorder

(1) Diagnosis of ASD based on the (DSM-5) requires that the results from a battery of ASD specific assessments confirm:

(a) Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following three (3) criteria, currently or by history:

   (i) Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.
   (ii) Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.
   (iii) Deficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

(b) Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history:

   (i) Stereo-typed or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypes, lining up toys or flipping objects, echolalia, idiosyncratic phrases).
   (ii) Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).
   (iii) Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests).
   (iv) Hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement).

(c) Symptoms are present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life).

(d) Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.

(e) These disturbances are not better explained by Intellectual Disability (Intellectual Developmental Disorder) or global developmental delay. Intellectual Disability and Autism Spectrum Disorder frequently co-occur; to make comorbid diagnoses of Autism Spectrum Disorder and Intellectual Disability, social communication should be below that expected for general developmental level.

E. Head and Spinal Cord Injury and Similar Disability

(1) Diagnosis of Head or Spinal Cord Injury or Similar Disability requires:

(a) Medical documentation and functional/adaptive assessments to substantiate that Traumatic Brain Injury, Spinal Cord Injury or Similar Disability occurred and produced ongoing substantial functional limitations. Including documentation of pre-existing/concurrent conditions, which impact functioning.

(b) The person has a severe chronic limitation that:

(i) Is attributed to a physical impairment, including head injury, spinal cord injury or both, or a similar disability, regardless of the age of onset, but not associated with the process of a progressive degenerative illness or disease, dementia, or a neurological disorder related to aging;
(ii) Is likely to continue indefinitely without intervention;
(iii) Results in substantial functional limitation in at least two (2) of these life activities: Self-care;
(iv) Receptive and expressive communication; Learning; Mobility; Self-direction; Capacity for independent living; Economic self-sufficiency; and,
(v) Reflects the person's need for a combination and sequence of special interdisciplinary or generic care or treatment or other services, which are of lifelong or extended duration.

88 – 520. Time Limitations

(A) Department eligibility may be established in a time-limited fashion as determined by the circumstances of the individual applying for eligibility. All information received by the Department will be reviewed for reliability and validity in the determination of eligibility.

Article 7

Appeal Procedures

88-705. Definitions Used in this Article:

Commented [SKB1]: Should these be in alpha order according to the formatting requirements?

A. Appeal: A procedure by which a person seeks review of the denial of a determination of eligibility. A procedure by which a person seeks review of a decision to deny, suspend, reduce or terminate a service solely funded by the Department.

B. Applicant: A person about whom the Department has been contacted in order for a determination of eligibility for services of the Department.

C. Person Eligible for Services from the Department: An individual who has been determined by The Department to meet the criteria for eligibility for the Department services.

D. State Funded Case Management: Activities, provided by qualified professionals, which will assist those eligible for the Department services in gaining access to needed medical, social, educational, and other services which are solely funded by the Department.

E. Family Support Services: A coordinated system of family support services administered by the Department directly or through contracts with private nonprofit or governmental agencies across the State, or both. This system is solely funded by the Department.

F. State Funded Community Supports: An array of services offered by the Department to those who are eligible for the Department services, but are not eligible for the Department operated Medicaid Home and Community Based Services Waiver which are solely funded by the Department.

G. State Funded Follow Along: Employment focused services offered by The Department to those who are eligible for the Department services, who have secured individual integrated employment in the community in collaboration with the South Carolina Vocational Rehabilitation Department which are solely funded by the Department.

H. State Funded Residential Habilitation: Services which includes the care, skills training, supervision and support provided to a person eligible for services in a noninstitutionalized setting. The degree and type of care, supervision, skills training and support will be based on the person's needs and preferences which are solely funded by the Department.

I. State Funded Respite: Services provided to participants unable to care for themselves; furnished on a short-term basis because of the absence or need for relief of those individuals normally providing the care which are solely funded by the Department.

88-710. Appeals

A. Decisions that may be appealed to the Department include, but are not limited to:

(1) Eligibility for the Department services.

(2) Denial, suspension, reduction or termination of a service solely funded by the Department to include but not limited to:

(a) State Funded Community Supports.

(b) State Funded Follow-Along.

(c) State Funded Case Management.

(d) State Funded Respite.

(e) State Funded Residential Habilitation.

(f) Family Support Services.

88-715. Appeal Procedures

A. Applicants Seeking Eligibility for the Department Services

(1) Step 1: Written Appeal: When an appeal is desired by the applicant, a signed and dated written appeal of the denial must be made within 30 business days of the date of the eligibility decision. The appeal must state the reason(s) the denial was in error, and include any additional supporting information. The appeal shall be made by letter: South Carolina Department of Disabilities and Special Needs-Appeals, 3440 Harden Street Extension, Columbia, South Carolina 29203 or email: appeals@ddsn.sc.gov sent to the State Director of The Department. Reasonable accommodations to assist with communication will be provided upon request.

(2) Step 2: Review: Upon receipt of the appeal, all information shall be reviewed by the State Director using the eligibility criteria as set forth in the Department's regulation addressing "Eligibility". If the State Director determines new evaluation data is needed, no decision shall be made until this data is received.

The applicant shall be notified that the new evaluation is needed within 30 business days of receipt of the written appeal.

(3) Step 3: Decision: A written decision shall be provided to the applicant within 30 business days of receipt of the written appeal or receipt of the new evaluation data. In accordance with S.C. Code Ann. § 44-20 430, the decision of the State Director is final.

B. Denial, Suspension, Reduction or Termination of a service solely funded by the Department.

(1) Step 1: Written Appeal: When an appeal is desired by the person eligible for services from the Department, a signed and dated written appeal of a decision to deny, suspend, reduce or terminate a service solely funded by The Department shall be made within 30 business days of the notification of the decision. The appeal shall state the reason(s) the denial/suspension/reduction/termination was in error including any additional supporting information. The appeal shall be made by letter: South Carolina Department of Disabilities and Special Needs-Appeals, 3440 Harden Street Extension, Columbia, South Carolina 29203 or email: appeals@ddsn.sc.gov sent to the State Director of the Department. Reasonable accommodations to assist with communication will be provided upon request.

(2) Step 2: Review: Upon receipt of the appeal, all available information shall be reviewed by the State Director.

(3) Step 3: Decision: A written decision shall be provided to the person eligible for services within 30 business days of receipt of the written appeal. The decision of the State Director shall be final.

Article 8

Research Involving Persons Eligible for Services

88-805. Definitions Used in this Article

A. Minimal risk - means the risk of harm anticipated in the proposed research is not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

B. Research - is defined as a special observation, or data collection usually made under conditions determined by the investigator, which aims to test a hypothesis or to discover some previously unknown principle, effect, or relationship. Research is further defined as a systematic investigation designed to contribute to generalized knowledge.

C. Activities which use experiments, tests, and/or observations designed to elicit information which is not publicly available are considered types of research.

D. Research participant - is defined as persons eligible for services from The Department about whom an investigator conducting the research obtains:

(1) Data through intervention or interaction with the participant, or
(2) Identifiable private information.

E. County Disabilities and Special Needs Boards (DSN Boards): the local public body administering, planning, coordinating, or providing services within a county or combination of counties for persons with Intellectual Disability, Related Disabilities, Head Injuries, or spinal Cord Injuries and recognized by the Department.

F. Qualified Provider - A provider of services to persons eligible for services from The Department, other than a county DSN Board, that is qualified by the state to provide such services.

Commented [SKB1]: Should these be alphabetized according to the formatting requirements?

88-810. Review and Approval of Research Proposals

A. The Department Research Review Committee

(1) The Department Research Review Committee (the Committee) shall be designated and chaired by the State Director or a designee. The Committee shall include executive staff and others as appointed by the chairperson. The Committee retains authority for final approval for research involving persons eligible for services from the Department.

(2) The Committee will have at least three (3) members with varying backgrounds to promote the complete and appropriate review of proposed activities.

(3) The Committee shall review all research proposals to ascertain the acceptability of the proposed research in terms of departmental commitments and regulations, applicable laws, research participant protections and standards of professional conduct and practice.

88-815. Protection of Rights and Welfare Of Research Participants

A. Any research conducted must conform to the scientific, legal, and ethical principles which justify all research and should emerge from a sound theoretical basis or follow previously accepted research design.

B. Any research involving routine medical examinations or behavioral intervention techniques shall be conducted only by qualified professionals in adequately equipped settings and with the appropriate liaison or supervision during which a suitably qualified clinician is used.

Where body integrity may be violated or when otherwise appropriate, medical liaison or supervision shall be included.

C. All caution in exercise of research is limited not only to physical harm, but also includes unwarranted psychological or emotional impairment to the research participant or his/her family or legal guardian.

D. All experimentation shall be planned in such a way as to avoid pain, suffering, or inconvenience to the research participant and his/her family or legal guardian.

E. A copy of the signed informed consent form, for each research participant, shall be maintained by the Department.

F. All investigators who are not employees of the Department, a DSN Board or a Qualified Provider and who are allowed access to information about individuals served shall sign a confidentiality statement which shall be maintained in a file containing the research proposal and approval at the Department.

G. Facilities and programs are required to meet provisions of the federal regulations 45CRF46 Protection of Human Subjects.

H. Any concerns or complaints regarding the research may be addressed directly to the chairperson of the Committee and shall be investigated.

88-820. Publications

A. The investigator shall provide a copy of the final research report to the participating programs, facilities, and the chair of the Committee.

B. A copy shall also be forwarded to the State Director (if the chair is the designee of the State Director) prior to submission for publication.

C. All manuscripts submitted for publication which bear the facility or the Department name and sponsorship must be approved by the State Director prior to submission to a professional journal or publishing company.

D. Any published material or lectures on the particular project or study shall contain the following statement: "Research involving persons eligible for services from the South Carolina Department of Disabilities and Special Needs is acknowledged, but it is not to be construed as implying official approval of the South Carolina Department of Disabilities and Special Needs of the conclusions presented."

Attachment K

DDSN Executive Memo

TO: **EXECUTIVE DIRECTORS, DSN BOARDS**
CEOS, CONTRACTED SERVICE PROVIDERS

FROM: **SUSAN KREH BECK, ED.S., LPES, NCSP, ASSOCIATE STATE DIRECTOR-POLICY**

DATE: **JANUARY 14, 2021**

RE: **Market Rate Case Management Issue – December 2020 Billing Report**

Attached is the "Case Management Revenue by Provider" report for December 2020. The reports include: (1) the average monthly revenue per waiver individuals, (2) the average revenue per non-waiver individuals (MTCM/SFCM) and (3) a total average revenue per individual. The statewide average revenue per individual is outlined in the chart for December. The average revenue per individual decreased from $99.99 in November to $98.81 in December.

Statewide Average Revenue Per Individual by Category			
	WCM	MTCM/SFCM	TOTAL
December 2020	$ 102.15	$ 77.73	$ 98.81

Average Revenue per Individual by Category

Of the individuals enrolled in the waiver on December 31, 2020, 529 did not have a reportable note submitted during the month of December despite the WCM requirement to do so. This represents 4.3 % of the waiver individuals in the system. This represents an increase of 0.2 % from the prior month of November. Neglecting to act to meet requirements may lead to compliance issues. DDSN will continue to reach out to providers who have excessive numbers of individuals who did not have a reportable note submitted to assist with identifying strategies to reduce this percentage. DDSN will begin to look for trends of individuals who have not been contacted for consecutive months. Providers will then be notified.

Invoices

In addition to payment for Medicaid ineligibles, there are units not paid this month that can possibly be corrected and resubmitted next month. Please see the memo sent on September 9, 2019, regarding Invoice Report Analysis Guidance for instructions to take action on the invoice issues. A review of the December 2020 invoices for Medicaid Ineligible and Not Paid are reflected in the charts below:

Description	WCM	MTCM
% of units that were paid but Medicaid Ineligible	0.17%	0.16%
% of units not paid due to wrong template	0.20%	6.90%
% of units not paid - other	0.00%	0.00%

If you have questions, please contact Ben Orner at borner@ddsn.sc.gov or (803) 898-3520 or Lori Manos at lmanos@ddsn.sc.gov or (803) 898-9715.

December 2020 Case Management Revenue by Provider					
Provider Name	Provider Size	Average Waiver Revenue per Waiver Enrolled Individual	Average MTCM/SFCM Revenue per Individual	**TOTAL Average Revenue per Individual**	25% Quartiles
Provider 13	Very Small	$ 179.58	$ 93.33	**$ 167.68**	Top Quartile $123.06 - $167.68
Provider 35	Very Small	$ 156.51	$ -	**$ 156.51**	
Provider 15	Very Small	$ 147.60	$ 70.71	**$ 143.00**	
Provider 3	Large	$ 132.44	$ 98.78	**$ 130.16**	
Provider 18	Medium	$ 122.82	$ 148.61	**$ 125.61**	
Provider 6	Medium	$ 125.36	$ 104.00	**$ 123.54**	
Provider 10	Large	$ 126.75	$ 103.33	**$ 123.06**	
Provider 34	Very Small	$ 121.55	$ 132.50	**$ 122.22**	Upper Middle Quartile $97.24 - $122.22
Provider 16	Large	$ 122.14	$ 48.66	**$ 118.26**	
Provider 14	Small	$ 115.04	$ 64.17	**$ 112.08**	
Provider 4	Large	$ 130.63	$ 74.73	**$ 111.36**	
Provider 25	Very Small	$ 131.47	$ 28.75	**$ 110.63**	
Provider 42	Small	$ 107.10	$ 118.13	**$ 107.60**	
Provider 41	Medium	$ 107.03	$ 55.29	**$ 104.60**	
Provider 8	Small	$ 105.15	$ 50.00	**$ 100.52**	
Provider 1	Large	$ 100.22	$ 87.19	**$ 97.24**	
Provider 32	Medium	$ 98.39	$ 66.18	**$ 96.65**	Lower Middle Quartile $74.59 - $96.65
Provider 20	Medium	$ 97.03	$ 75.32	**$ 95.55**	
Provider 23	Small	$ 92.43	$ 88.00	**$ 92.18**	
Provider 22	Large	$ 90.00	$ 39.23	**$ 86.50**	
Provider 11	Very Small	$ 87.28	$ 41.25	**$ 86.19**	
Provider 29	Small	$ 89.04	$ 49.23	**$ 85.89**	
Provider 17	Small	$ 89.69	$ 63.17	**$ 84.88**	
Provider 31	Very Small	$ 99.64	$ 39.38	**$ 84.57**	
Provider 24	Small	$ 83.13	$ 93.70	**$ 84.42**	
Provider 54	Very Small	$ 84.54	$ 83.85	**$ 84.17**	
Provider 2	Very Small	$ 102.88	$ 40.34	**$ 83.17**	
Provider 39	Very Small	$ 82.46	$ 88.46	**$ 83.01**	
Provider 33	Small	$ 87.14	$ 67.43	**$ 82.64**	
Provider 26	Very Small	$ 73.97	$ 87.50	**$ 74.59**	
Provider 19	Large	$ 72.16	$ 81.39	**$ 72.79**	Bottom Quartile $15.75 - $72.79
Provider 21	Small	$ 74.46	$ 48.82	**$ 72.66**	
Provider 38	Small	$ 73.46	$ 8.57	**$ 71.94**	
Provider 46	Very Small	$ 67.80	$ -	**$ 71.52**	
Provider 7	Very Small	$ 88.37	$ 44.70	**$ 71.00**	
Provider 9	Very Small	$ 68.81	$ 70.00	**$ 69.09**	
Provider 5	Large	$ 72.53	$ 50.67	**$ 66.43**	
Provider 12	Very Small	$ 64.12	$ 134.29	**$ 66.08**	
Provider 36	Very Small	$ 52.67	$ 7.50	**$ 51.78**	
Provider 45	Very Small	$ 45.47	$ 23.33	**$ 44.91**	
Provider 30	Very Small	$ 32.68	$ 30.00	**$ 32.64**	
Provider 44	Very Small	$ 15.78	$ 15.00	**$ 15.75**	
Total		**$ 102.15**	**$ 77.73**	**$ 98.81**	

Size	Number
Large	500+
Medium	300-499
Small	150-299
Very Small	0-149

FM Budget vs Actual

Status of Data 1/7/2020 05:46:58

All State Agencies are Operating Under a Continuing Resolution Appropriations

FY 20/21 Legislative Authorized & Spending Plan Budget VS Actual Expenditures (as of 12/31/2020)

Funded Program - Bud	Continuing Resolution Appropriations	Adjustments	Adjusted Budget	YTD Actual Expense	Remaining Budget	Percent Expended - Target % 50.00%
ADMINISTRATION	$ 8,386,999	$ 18,500	$ 8,405,499	$ 3,533,112	$ 4,872,387	42.03%
PREVENTION PROGRAM	$ 157,098	$ -	$ 157,098	$ 12,500	$ 144,598	7.96%
GREENWOOD GENETIC CENTER	$ 15,185,571	$ -	$ 15,185,571	$ 6,648,600	$ 8,536,971	43.78%
CHILDREN'S SERVICES	$ 12,291,594	$ (24,000)	$ 12,267,594	$ 5,227,007	$ 7,040,587	42.61%
IN-HOME FAMILY SUPP	$ 86,302,031	$ (11,594,000)	$ 74,708,031	$ 27,763,309	$ 46,944,722	37.16%
ADULT DEV&SUPP EMPLO	$ 83,358,338	$ 6,100,000	$ 89,458,338	$ 41,763,882	$ 47,694,456	46.69%
SERVICE COORDINATION	$ 15,166,140	$ (1,500,000)	$ 13,666,140	$ 5,858,542	$ 7,807,598	42.87%
AUTISM SUPP PRG	$ 26,368,826	$ -	$ 26,368,826	$ 9,783,155	$ 16,585,671	37.10%
HD&SPINL CRD INJ COM	$ 5,040,532	$ -	$ 5,040,532	$ 2,586,303	$ 2,454,229	51.31%
REG CTR RESIDENT PGM	$ 77,137,897	$ 763,417	$ 77,901,314	$ 36,248,332	$ 41,652,981	46.53%
HD&SPIN CRD INJ FAM	$ 18,965,193	$ 2,000,000	$ 20,965,193	$ 10,421,825	$ 10,543,368	49.71%
AUTISM COMM RES PRO	$ 29,749,084	$ 5,000,000	$ 34,749,084	$ 18,691,942	$ 16,057,142	53.79%
INTELL DISA COMM RES	$ 340,593,466	$ (55,766)	$ 340,537,701	$ 171,254,835	$ 169,282,866	50.29%
STATEWIDE CF APPRO	$ -	$ 49,799	$ 49,799		$ 49,799	0.00%
STATE EMPLOYER CONTR	$ 29,862,643	$ 126,653	$ 29,989,296	$ 14,060,310	$ 15,928,986	46.88%
Earmarked Authorization over DDSN Spending Plan	$ 56,235,857	$ -	$ 56,235,857		$ 56,235,857	
Legislative Authorized Total	**$ 804,801,269**	**$ 884,603**	**$ 805,685,872**	**$ 353,853,655**	**$ 451,832,216**	**43.92%**
Legislative authorization capacity above actual spending plan budget			**$ (56,235,857)**		**$ (56,235,857)**	
DDSN spending plan budget			**$ 749,450,015**	**$ 353,853,655**	**$ 395,596,360**	**47.22%**
Percent of total spending plan budget			100.00%	47.22%	52.78%	REASONABLE
% of FY completed (expenditures) & % of FY remaining (available funds)			100.00%	50.00%	50.00%	
Difference % - over (under) budgeted expenditures			0.00%	-2.78%	2.78%	
Difference $ - over (under) budgeted expenditures				$ (20,871,352)		

Carry Forward + Cash Flow Analysis Indicates Sufficient Cash to Meet FY 21 Estimated Expenditure Commitments: YES_X__ ; At-Risk___ ; NO___

Expenditures categorized to provide insight into direct service consumers costs vs. non-direct service costs:

Expenditure	FY 20 - % of total	FY 19 - % of total
Central Office Admin & Program	2.24%	2.35%
Indirect Delivery System Costs	1.03%	1.22%
Board & QPL Capital	0.04%	0.07%
Greenwood Autism Research	0.03%	0.03%
Direct Service to Consumers	96.67%	96.33%
Total	**100.00%**	**100.00%**

NOTE: Prior FY data will be calculated and presented to provide assurance as to the consistent pattern of direct service & non-direct service expenditures and explanation for increases/decreases

Methodology & Report Owner: DDSN Budget Division

Provider	Band B	CIRS	CRCF	CSW	CTH I	CTH I	CTH II	Family Support
Aldersgate			$ 125,894					
Allendale/Barnwell	$ 13,994		$ (89,841)	$ 41,219				
Anderson	$ (11,553)			$ 133,922			$ (15,439)	
Arc of the Midlands								
Babcock Center	$ 182,192			$ 169,202		$ (34,250)	$ 48,138	
Bamberg	$ 11,617			$ 2,267				
Beaufort	$ 94,869			$ (73,946)	$ (73,683)		$ (11,676)	
Becket								
Berkeley	$ (11,157)			$ 42,704	$ (65,373)		$ 230,092	
Brain Injury Association								$ 64,954
Burton Center	$ 110,074			$ (43,404)			$ 60,142	
Calhoun				$ (413)				
Care Focus							$ (83,935)	
Charles Lea Center	$ 23,633	$ 5,251		$ 213,763			$ (129,456)	
Charleston	$ 56,377		$ (69,755)	$ 10,636				
Cherokee	$ 13,227			$ 34,500				
CHESCO	$ 16,524		$ (78,712)	$ 57,418	$ (71,615)		$ 52,032	
Chester/Lancaster	$ 29,138			$ (4,905)				
CHS Group							$ 393,090	
Clarendon	$ 10,543			$ (24,690)	$ (70,947)		$ 98,798	
Colleton	$ (1,266)		$ 71,113	$ 3,998				
Community Options							$ (47,095)	
Darlington	$ 38,647			$ (19,414)				
Dorchester	$ 28,658			$ 7,462			$ 79,468	
Everlasting Arms Home Care							$ 13,687	
Excalibur							$ (31,857)	
Fairfield	$ (8,665)							
Family Connection of SC								$ 65,000
Florence	$ 43,055		$ (78,712)	$ (8,037)			$ (135,043)	
Georgetown				$ 7,337			$ 4,854	
Growing Home								
Hampton	$ (10,198)							

Provider	Band B	CIRS	CRCF	CSW	CTH I	CTH I	CTH II	Family Support
Horry	$ 60,578			$ 91,711				
Jasper	$ 9,048			$ 10,428				
Kershaw	$ 27,796			$ (41,302)				
Laurens	$ (82,768)			$ (14,838)			$ (14,402)	
Lee				$ 14,674			$ (17,279)	
Lutheran Family Services							$ (573,466)	
Marion-Dillon	$ 767		$ 9,353	$ 45,876			$ 63,887	
MaxAbilities of York	$ 100,872			$ 117,311				
MIRCI			$ (68,520)					
Newberry	$ (2,555)			$ 23,924			$ (27,375)	
Oconee	$ (12,460)			$ 83,262			$ (193,524)	
Orangeburg	$ 72,959			$ 28,523				
Pickens	$ 14,415			$ (22,670)			$ (80,409)	
SAFY								
Spinal Cord Injury Association								$ 47,490
Sumter	$ 9,086			$ (5,729)			$ 83,536	
Thrive Upstate	$ 103,210			$ 259,845			$ 71,156	
Tri-Development Center	$ 75,146			$ 19,004	$ (39,143)		$ 250,913	
UCP							$ 62,726	
Williamsburg	$ 4,562			$ (15,045)				
Willowglen Academy							$ 176,294	
Grand Total	**$ 1,010,365**	**$ 5,251**	**$ (179,180)**	**$ 1,144,593**	**$ (320,760)**	**$ (34,250)**	**$ 327,857**	**$ 177,444**

Provider	HASCI Res	ICF	Medical Model	SFH	SLP I	SLP II	Grand Total
Aldersgate							**$ 125,894**
Allendale/Barnwell		$ 90,453					**$ 55,825**
Anderson					$ (22,017)	$ (34,611)	**$ 50,302**
Arc of the Midlands					$ 87,304		**$ 87,304**
Babcock Center	$ 75,727	$ 204,413				$ 67,009	**$ 712,431**
Bamberg					$ (21,418)		**$ (7,534)**
Beaufort							**$ (64,436)**
Becket				$ 135,990			**$ 135,990**
Berkeley					$ (19,251)		**$ 177,015**
Brain Injury Association							**$ 64,954**
Burton Center		$ (84,444)				$ (29,700)	**$ 12,668**
Calhoun							**$ (413)**
Care Focus							**$ (83,935)**
Charles Lea Center			$ 157,723			$ 35,090	**$ 306,004**
Charleston					$ (19,747)	$ (30,862)	**$ (53,351)**
Cherokee							**$ 47,727**
CHESCO						$ 4,121	**$ (20,232)**
Chester/Lancaster							**$ 24,233**
CHS Group							**$ 393,090**
Clarendon							**$ 13,704**
Colleton							**$ 73,845**
Community Options							**$ (47,095)**
Darlington							**$ 19,233**
Dorchester							**$ 115,588**
Everlasting Arms Home Care							**$ 13,687**
Excalibur							**$ (31,857)**
Fairfield							**$ (8,665)**
Family Connection of SC							**$ 65,000**
Florence		$ (195,677)				$ (36,777)	**$ (411,191)**
Georgetown							**$ 12,191**
Growing Home				$ 49,357			**$ 49,357**
Hampton							**$ (10,198)**

Provider	HASCI Res	ICF	Medical Model	SFH	SLP I	SLP II	Grand Total
Horry							**$ 152,289**
Jasper							**$ 19,476**
Kershaw							**$ (13,506)**
Laurens							**$ (112,008)**
Lee		$ 93,762			$ 19,251		**$ 110,408**
Lutheran Family Services				$ (159,488)			**$ (732,954)**
Marion-Dillon							**$ 119,883**
MaxAbilities of York							**$ 218,183**
MIRCI							**$ (68,520)**
Newberry						$ (111,763)	**$ (117,769)**
Oconee							**$ (122,722)**
Orangeburg							**$ 101,482**
Pickens						$ 30,968	**$ (57,696)**
SAFY				$ 30,765			**$ 30,765**
Spinal Cord Injury Associatio							**$ 47,490**
Sumter		$ (13,103)					**$ 73,790**
Thrive Upstate					$ (22,037)		**$ 412,174**
Tri-Development Center		$ (4,660)					**$ 301,260**
UCP							**$ 62,726**
Williamsburg							**$ (10,483)**
Willowglen Academy							**$ 176,294**
Grand Total	**$ 75,727**	**$ 90,744**	**$ 157,723**	**$ 56,624**	**$ 2,085**	**$ (106,525)**	**$ 2,407,698**

Director's Report – January 2021

1. **EVV news** – on January 4th we received a letter from DHHS interim Director Clark Phillip regarding the efforts of our two agencies to comply with the Electronic Visit Verification (EVV) requirements set forth in the 21st Century Cures Act.
    a. SCDHHS calculated the estimate of the 2021 calendar year .5% FMAP (Federal Medicaid Assistance Percentage) reduction to be $425,000
    b. They have transferred that amount to SCDDSN
    c. HHs stated that they intend to incorporate DDSN into its exiting EVV implementation plans to reduce provider abrasion, use existing agreements and infrastructure to expedite implementation and better align our billing practices.
    d. This effort requires time and will be complete over the course of the next year. DHHS has provided a single year of bridge financing to ensure the good-faith efforts underway between our agencies.

2. DDSN staff continue to work with providers and DHHS to ensure compliance with the **Home and Community Based Settings Regulation** (HCBS Settings Regulation). Throughout the impact of COVID-19, DDSN has offered flexibility and extensions to providers for completion and submission of plans and packages of evidence.
    a. Just as a reminder Federal guidance was issued back in July of this year allowing states an additional year, through March 17, 2023, to complete implementation of activities required to demonstrate compliance with the settings criteria, and
    b. As a result other timelines have been extended:
        i. If a state determines that a setting that isolates individuals from the broader community has implemented remediation strategies that brought the setting into compliance with the settings criteria by July 1, 2021, then that setting will not need to be submitted to CMS for a heightened scrutiny review.

ii. States may submit to CMS isolating settings that have not completed necessary remediation for a heightened scrutiny review no later than October 31, 2021, which is an additional year from the original timeline.
iii. Information on settings located in the same building as a public or private institution or on the grounds of or adjacent to a public institution be submitted for heightened scrutiny no later than March 31, 2021.

c. As of today 100% of providers have submitted Compliance Action Plans (CAPS). With 89% (48/54) of the CAPS being thorough and complete and DDSN staff is working with 6 providers to get all pertinent documentation corrected and completed.
d. We have 115 settings which require evidence packages showing how they are not isolating – we have received 108 out of the 115 thus far. Remember when we talk about these we are talking about individual settings – that is why there are more of these than the CAPS which are completed one for each provider.
e. 14 out of the 108 received have successfully completed the state level approval process (completed jointly by DHHS and DDSN team)
    i. With 14 out of 14 determined to be settings that had overcome the presumption that institutional qualities were present.
    ii. And 4 additional evidence packages are scheduled for review during the first week in February.
f. All (5) identified Category 2 (on ground of or adjacent to institutions) setting evidence packages have been reviewed and overcame the presumption of institutional qualities. The evidence packages will be submitted to CMS per requirements.
g. Next steps:
    i. Continued staff and provider collection, finalization and review of thorough and complete Compliance Action Plans from those remaining.

ii. Continued review, finalization and review by staff then the DHHS-DDSN State Level Review Team for all remaining evidence packages.
iii. Staff is confident that the work process is proceeding as it should and timeframes will be met as required.

3. State Budget request
   a. We know it is going to be a tough budget year.
   b. The House Budget hearing date was pushed to January 26th. All of the required information has already been submitted to Ways and Means Staff.
   c. Governor's Budget recommendations
      i. We did not get cut – that is good
      ii. Actually, we did not get any new money for any of our budget asks. We are being allocated first filled slots funds which is important, but is merely an appropriation transfer from HHS to DDSN (HHS Got $10,000,000 - $1,808,437 to us
      iii. The Governor did not fund the state match increase that we are going to get hit with on the nursing and attendant care rate increases. If utilization goes up, we could have a serious issue on our hands and I will hit this hard in our house and senate budget hearings.
      iv. So truly we did not receive any funding.
      v. The Governor did fund Greenwood Genetics request. We had this as the lowest priority on our budget request since they are not our funds and DDSN does not advocate for these funds – we simply request what GGC asks us to request. These funds are not reoccurring but I do want to make sure that everyone understands that these funds are not part of our operating budget we are simply a pass-through for these funds.

4. We continue to work with DHHS on:
   a. Revamping the waiver enrollment process
   b. ID/RD Waiver renewal

5. I want to thank the regional centers and all of the community providers as we inch closer to a year battling COVID for steadfastly

providing care. No one thought that we would still be having this conversation – but we are and I continue to be grateful for everything you do!

a. I am ever so grateful for the vaccine that has been developed and that our folks have had the opportunity to begin receiving those vaccinations
b. For those of you front line staff who are declining the vaccine because of something you may have read on social media – I just want to say that we have vaccinated quite a few folks thus far and we have not lost one of them but I can say we have lost friends, co-workers and family to this virus – that is not made up internet stuff- that is real!