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SOUTH CAROLINA COMMISSION ON DISABILITIES AND SPECIAL NEEDS

EMERGENCY COMMISSION MEETING MINUTES

November 9, 2022

The South Carolina Commission on Disabilities and Special Needs met on Wednesday, November 9, 2022, at 4:15 p.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
Barry Malphrus – Vice Chairman
Robin Blackwood – Secretary
Gary Kocher, MD
Eddie Miller
Michelle Woodhead

Microsoft Teams
Stephanie Rawlinson – Chairman
David Thomas

DDSN Administrative Staff

Michelle Fry, State Director; Constance Holloway, General Counsel; Lori Manos, Interim Associate State Director of Policy; Janet Priest, Associate State Director of Operations; Courtney Crosby, Director of Internal Audit; Quincy Swygert, Chief Financial Officer; Harley Davis, Chief Administrative Officer; Ann Dalton, Director of Quality Management; Carolyn Benzon, Attorney; Preston Southern, Information Technology Division; and Christie Linguard, Administrative Coordinator.

Others Present

Attorney Micah Caskey, Counsel for Lutheran Services Carolinas; and Bethany Vause, Lutheran Services Carolinas.

Call to Order and Notice of Meeting Statement

Chairman Rawlinson 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.

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Adoption of the Agenda

On a motion by Commissioner Malphrus, seconded by Commissioner Kocher and unanimously approved by the Commission members, the agenda was unanimously approved as presented. (Attachment A)

Chairman Rawlinson read a statement and a disclaimer stating the following: According to South Carolina laws and the Commission Bylaws along with the Policies of the agency, the Commission is not required to allow public input; however, for the purposes of information and transparency, this Commission chooses to offer this opportunity for important matters. The rules set forth are as follows: You must refrain from using personal attacks on any Commission member, individual, DDSN employee or any other persons connected to DDSN. If your presentation involves discussing individuals who are served by DDSN, please refrain from using identifying information such as names, birthdays, and Social Security numbers, etc. Each presenter will be allowed a sufficient amount of time for their presentation; however, if the presentation becomes redundant or excessive, then the presenter will be required to conclude their presentation within a few seconds. Commissioners were asked to please hold their questions until both presentations have concluded. Lastly, the Commission does reserve the right to terminate any presentation which does not adhere to the guidelines set forth.

Presentation regarding Lutheran Services Carolinas (LSC)

Attorney Micah Caskey addressed the Commission briefly by stating that he is unclear as to the nature of this meeting. He noted there has been a lack of communication with the agency. He asked for an opportunity to respond prior to any definitive decisions being made.

Ms. Dalton then addressed the Commission by stating the problems and concerns the agency has had with Lutheran Services Carolinas, especially in the past few months. (Attachment B)

Ms. Priest made the staff recommendation that the licenses issued to Lutheran Services Carolinas be revoked, which includes twenty-seven (27) CTHI licenses and eight (8) CTHII licenses.

Attorney Caskey asked if he could have three (3) more minutes to readdress the Commission, which was granted by the Commission. Attorney Caskey asked the Commission to look at the responses outlined before each Commissioner in detail. He highlighted the timeline for the Corrective Action Plan (CAP) and the responses received from the agency.

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General Counsel, Ms. Holloway, addressed the Commission to briefly discuss the appeals rights outlined in the agency's Directive (167-01-DD), if the Commission takes an action today.

Dr. Fry clarified that this meeting is not an administrative hearing. That is an entirely different process. She also noted that after receiving the responses to the third CAP from LSC and the ability to reasonably design transition planning, staff brought their concerns to this Meeting out of concern for the health safety and well-being of those served.

Executive Session

At 5:05 PM, Commissioner Blackwood made a motion to enter into executive session to receive legal advice regarding a contractual matter: Lutheran Services Carolinas. The motion was seconded by Commissioner Woodhead and unanimously approved by the Commission.

Rise from Executive Session

At 5:52 PM, the Commission rose out of executive session. Chairman Rawlinson stated that no motions or actions taken during the executive session.

Commissioner David Thomas did not rejoin the meeting after the executive session.

Action Items Necessary from Executive Session

Commissioner Miller made a motion to accept staff's recommendation to revoke all licenses issued to Lutheran Services Carolinas, which includes eight (8) licenses for CTHIIs and twenty-seven (27) licenses for CTHIs. This motion was seconded by Commissioner Kocher and unanimously approved by the Commission.

A second motion was made by Commissioner Miller to terminate Lutheran Services Carolinas contract with the SC Department of Disabilities and Special Needs for the contract period of July 1, 2022 through June 30, 2023 based on Article 5, Sections B and C of the contract. This motion was seconded by Commissioner Woodhead and unanimously approved by the Commission.

Adjournment

On a motion by Commissioner Woodhead, seconded by Commissioner Miller and unanimously approved by the Commission, the meeting was adjourned at 5:55 PM.

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Submitted by:

Christie D. Linguard
Administrative Coordinator

Approved by:

Commissioner Robin Blackwood
Secretary

Attachment A

SOUTH CAROLINA COMMISSION ON DISABILITIES AND SPECIAL NEEDS

EMERGENCY COMMISSION MEETING

AMENDED AGENDA

South Carolina Department of Disabilities and Special Needs 3440 Harden Street Extension Columbia, SC

November 9, 2022 **4:15 P.M.**

1. Call to Order *Chairman Stephanie Rawlinson*
2. Notice of Meeting Statement *Commissioner Robin Blackwood*
3. Adoption of Agenda *Chairman Stephanie Rawlinson*
4. Presentation regarding Lutheran Services Carolinas (LSC)
   a) *Micah Caskey, Counsel for LSC*
   b) *Ann Dalton and Janet Brock Priest*
5. Executive Session *Chairman Stephanie Rawlinson*

   Legal advice regarding contractual matter: Lutheran Services Carolinas
6. Rise from Executive Session
7. Action Items Necessary from Executive Session

   Lutheran Services Carolinas
8. Adjournment

Remarks from Ann Dalton, DDSN Director of Quality Management
Emergency Commission Meeting: November 9, 2022

The Administrative Agency Standards provide a foundation for the DDSN Network of provider agencies. These standards articulate the basic expectations for all providers to ensure qualified, well-trained staff and appropriate policies and procedures are in place to ensure protections for people supported, including an environment that meets applicable laws, and a culture that promotes dignity and respect.

As a qualified provider entity, Lutheran Services Carolinas (LSC) submitted their credentials and provided evidentiary documentation to indicate they have the capacity to provide the designated services with qualified, well-trained staff and that those services will be delivered within the defined scope of their service area. In other words, LSC said they know how to provide Residential Habilitation when they were approved to be a provider. DDSN is available to provide technical assistance, but our agency does not expect to train a provider on how to do their job. When a provider submits their qualifications to deliver Residential Habilitation, they are attesting that they have what it takes to successfully deliver that service. Not only does that include an understanding of the Care, Skills Training, and Supervision, but also the nuances within the service delivery that requires appropriate assessment; development of a support plan including determining the need for a person's supervision, areas of training they need and desire; and opportunities to help the person to be supported in the least restrictive environment. Residential Habilitation is not assisted living and it is not custodial care. Residential Habilitation is an active service intended to continuously support the person and adapt to their needs.

DDSN's review of LSC over these past few months has revealed that staff are, in fact, not appropriately trained or supervised and they are not held accountable for violations of the agency's policies and procedures. The physical settings are cleaned up to get ready for an announced licensing inspection, but an impromptu "day-in-the-life" visit presents a much different picture.

Commissioners have received a packet of information that includes 5 attachments. They include the more formal correspondence with LSC related to our concerns over the past five months.

The unraveling that DDSN will present today began with a complaint a resident's mother made to their Case Manager on June 11. This person had increasingly difficult behaviors over a two-week period and ingested pieces of the vinyl flooring despite having a 1:1 staff assigned. Due to the increased behaviors, LSC began reaching out to DDSN in an effort to discharge the individual to a more restrictive placement. Through internal collaboration between DDSN Quality Management and Operations, we determined the situation required additional review and ad-hoc site visits were completed. Several discrepancies were then noted. Medication Administration Records (MARs) indicated vital psychotropic medications were not available for two of the residents for over 2 weeks. They were abruptly stopped when they were not delivered by the pharmacy. This is significant due to the likely impact on behavior, and also due to the need to titrate medications when there

is a medical need to reduce or increase dosages. In this case, the residents abruptly stopped, then later resumed their medications at the regular dosage. This included medications with clear warnings not to stop taking them, unless under the supervision of their physician.

Also noted:

- Medication Error Forms were completed, but there was no follow-up by LSC management to secure the medications.
- Further, there were discrepancies in the psychiatrist's orders and statement of Psychiatric Drug Review, versus the medications listed on the MAR.
- There was no documentation to support the very recognition of these concerns and their obvious policy violations by LSC staff.
- There was no acknowledgement by the physician's assistant or psychiatrist that the absence of prescribed medications could be the cause of the change in behavior.

DDSN has communicated their concerns about these issues multiple times to various levels of staff.

The observations and discrepancies in documentation discovered in June led to the initial Material Deficiencies letter on June 24. LSC responded to the concerns with general plans to address training and oversight which were to be completed by mid-August. LSC submitted an additional "improved" CAP on August 15, with a presumption that their freeze would be lifted at that time.

LSC effectively acknowledged their failure to review and remain current with DDSN Standards and Directives and train staff accordingly, but indicated their plan to take 45 days to complete their internal review and 90 days to inform and train staff on the DDSN requirements. Again, as a qualified provider, there was an expectation of compliance on Day 1.

<u>Generally speaking, the concerns related to LSC's service delivery was documented in site visits to multiple homes and can be summarized in three broad areas as follows:</u>

1. **Healthcare** – DDSN Residential Habilitation Standards ("Standards") require that each person receive coordinated and continuous health care services based on each person's health needs, condition, and desires. Additionally, the Standards require that the Residential Habilitation provider have procedures that specify the actions to be taken to assure that within 24 hours following a visit to a physician, Certified Nurse Practitioner, or Physician's Assistant all ordered treatments will be provided.
   The review revealed:
    - Failure to secure and/or administer ordered medications or treatments promptly or at all;
    - Failure to accurately and consistently document known health conditions or diagnoses; and
    - Failure to follow-up promptly or at all with physicians' recommendations to seek services from a specialist (e.g., Neurologist, Podiatrist) and failure to follow-up on recommendations made by medical professionals. For several people reviewed no evidence could be found to suggest that recommendations from a physician to seek services from a specialist occurred.
      For example:
        - Gastroenterologist for blood in stool
        - Gastroenterologist for PICA

- Pulmonologist for low oxygen saturation
- Neurologist following break through seizures and flat affect
- Podiatry following pitting edema
- Return to cardiologist following echocardiogram

- Failure to secure and/or administer ordered medications or treatments promptly or at all. No evidence could be found to suggest that medications were given as ordered.
  For example, medications were not given:
  - Approximately 119 times over 6 weeks (one person)
  - Approximately 50 times over 10 days (one person)
  - Approximately 48 times over 15 days (one person)
  - Approximately 82 times over 6 months (one person)
  - Medication for conjunctivitis (never given) (one person)
  - Supplemental oxygen that was never received (one person)

  *It should also be noted that no evidence was found to suggest that prescribers were contacted when medications were abruptly stopped and/or re-started, even when the drug label included warnings against abrupt stoppage.

- For several people reviewed no evidence could be found that recommendations from a physician following a visit were explored or implemented.
  For example:
  - Crowns recommended on teeth 18 and 19
  - Tooth 14 to be extracted due to decay when pain begins
  - Electric toothbrush to improve oral hygiene
  - Eyeglasses for full time wear
  - Prepared meals following complications of diabetes
  - Sample menus for diabetics

  *It should also be noted that on multiple occasions there was evidence of physician visits or Emergency Department visits but no written account of the visit or recommendations from it.

- Failure to accurately and consistently document known allergies and identify appropriate responses to an allergic reaction.
  For example:
  - <u>Outside of chart</u> = Ibuprofen **//** <u>Plan</u> = KNA **//** <u>physician notes</u> = Risperidal
  - <u>Outside of chart</u> = shellfish **//** <u>Face sheet in chart</u> = shrimp, cats, dogs **//** <u>MAR</u> = NKA
  - <u>Outside of chart</u> = aspirin, chocolate, white rice, sugar, Chinese food **//** <u>Face sheet in chart</u> = aspirin **//** <u>Plan</u> =aspirin, seasonal **//** <u>Dietary section of plan</u> = no food allergies **//** <u>physical exam</u> = NKA

LSC has arranged for the majority of their residents to receive healthcare from a physician's assistant that coordinates visits in a mobile unit that sets up in the parking lot of their administrative offices in Columbia. This arrangement does not promote community integration and is in conflict with the Home and Community Based Setting Regulation.

2. Medication Administration Errors - DDSN Residential Licensing Standards require that medications, including controlled substances and medical supplies, be managed in accordance with local, state and federal laws and regulations. The medications must be safely and accurately given. Orders for new medications and/or treatments be filled and given within 24 hours unless otherwise specified.
The review revealed the following:

- Documentation/listings of medications given/to be given were inaccurate or inconsistent. For example, the MAR did not list the same medications and dosage as the physician's orders. The primary care physician's listing of medications did not correspond to the psychiatrist's listing nor did either listing match the plan or the MAR.
- Prescriptions for medications and/ or treatments were not filled and given within 24 hours and when not completed, no reason was documented;
- Prescribed medications were not available, and therefore not given;
- Medication Administration Records (MARs) and controlled substance/drug records were inaccurately/inappropriately maintained;
- Documentation/listings of medications given/to be given were inaccurate or inconsistent.
- Medical supplies were not included on the MAR;
- General Event Reports were not created each time a medication administration error occurred; and
- Prescribers were not contacted when medications were abruptly stopped and/or re-started even when the drug label included warnings against abrupt stoppage.

DDSN raised serious concerns about the inaccuracies of the Psychotropic Medication Review documentation and failure of LSC staff to ensure consistency with the Medication Administration Record. Again, staff did not recognize problems created when a resident failed to receive medications for two weeks and staff did not recognize that different documents listed different medications for the same individual until DDSN brought the issue to their attention.

3. **Residential Support Plans** are the documents which are to delineate the specific care, supervision, and skills training to be provided to each person in order to ensure the person's health, safety and wellbeing. Residential Support Plans must be created based on the assessed needs of the person, be specific to the person, be current and accurate at all times, and be readily available to the staff who are expected to support the person.

   Residential Support Plans were not thorough, complete, accurate, and/or readily available, for example:

   - The name of some else appeared throughout the plan written for another person. For example, when reading "Jane's" plan, it states "Mary."
   - Multiple, specific, identical statements were included in two plans for two housemates, but were not accurate for both and possibly not either.
   - Residential Support Plans contained contradictory information or information that was contradictory to other information available about the person. For example:
     - Needs assistance with safe use of cleaning supplies and need no assistance.
     - Needs assistance to evacuate during emergency and needs no assistance

        - 30-minute supervision while awake and15-minute supervision is indicated as required
        - Line-of-sight supervision when dining and independent with dining
    - Information about the person for whom the plan was written was inaccurate or incomplete including, but not limited to, information about allergies, medications prescribed, medical diagnoses and conditions, and diets;
        - The supervision to be provided to those supported was often unclear, incomplete, or inconsistently reported;
    - Residential Support Plans were often not updated to reflect new interventions/supports needed by the person, not updated when interventions were not effective, and not monitored to ensure accuracy and effectiveness; and
    - The interventions in the Residential Support Plan or added to the Residential Support Plan were often not implemented.

When plans are not available for staff to review, it makes it difficult for staff to know how to interact with the person, what objectives they should be working on, of how to respond in certain situations. Basic details such as supervision needs and allergies were either inconsistent or missing from records available to staff on-site.

LSC submitted the second CAP response on August 15. Despite the efforts noted by LSC, DDSN has not found evidence that the CAP had been successfully implemented. A limited, on-site review on September 23, 2022, found many of the same critical issues from June and July continued in September. I can tell you that I have personally been on-site to a home and witnessed the deficiencies noted. While DDSN appreciates the review of service delivery LSC has completed thus far, it is still not clear how LSC has evaluated the processes in place that have led to the lapse in policy compliance. In total, LSC has submitted three Corrective Action Plan responses. Each has been thoroughly reviewed, but ultimately rejected by DDSN.

> *As Commissioners, imagine for a moment that you are in need of services. You are placed in a home with little to no stimulation. No artwork on the walls. There are only staff notices for chore lists, weekly menus, and a schedule for doctor's appointments and lab work. You do not have any place to go during the day. There are no work or volunteer opportunities. One of your roommates broke the TV a few weeks ago- you don't really know when and staff didn't make a report, so you have no TV to watch in your living room. You sit around all day. You are literally waiting for something to do. You have no toilet paper, soap, or paper towels in your bathroom and you have to ask staff to give you a snack because the food is locked in a cabinet. Your view of the outside world is mostly limited to van rides. Then, you are placed on a behavior support plan, or even prescribed medications because of your "behavior." This is the reality that I witnessed at two LSC homes.*

Based on the serious nature of these continued deficiencies, DDSN has lost confidence in LSC's abilities as a service provider.