

From: [Linguard, Christie](#)
Subject: Meeting Notice - The Commission of the SCDDSN - Special Called Commission Meeting/Public Hearing on Regulations - April 20, 2023
Date: Tuesday, April 18, 2023 2:51:37 PM
Attachments: [Public Hearing Packet - 04 20 23.pdf](#)

Everyone,

The South Carolina Commission on Disabilities and Special Needs will hold a Special Called Commission Meeting/Public Hearing on Regulations on Thursday, April 20, 2023, in conference room 251 at the SC Department of Disabilities and Special Needs, Central Administrative Office, 3440 Harden Street Extension, Columbia, SC. To access the live audio stream for the 10:00 a.m. meeting, please visit <https://ddsn.sc.gov>.

This Public Hearing will take place thirty (30) minutes after the adjournment of the regularly scheduled Commission meeting. The Public Hearing will be held to discuss the proposed Regulations published in the South Carolina State Register. Disability Rights South Carolina is the only speaker that registered to comment. No responses to comments, questions or concerns will be provided during the Public Hearing. Commissioners will only receive this one (1) testimony to which they may ask questions if clarification is needed.

Attached is the Public Hearing Packet for this meeting.

For further information or assistance, contact (803) 898-9769 or (803) 898-9600.

Thank you.

SOUTH CAROLINA COMMISSION ON DISABILITIES AND SPECIAL NEEDS

SPECIAL CALLED COMMISSION MEETING:
PUBLIC HEARING ON REGULATIONS

A G E N D A

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

April 20, 2023
(30 Minutes After Adjournment of Commission Meeting)

1. Call to Order *Vice Chairman Barry Malphrus*
2. Notice of Meeting Statement *Commissioner Robin Blackwood*
3. Adoption of Agenda
4. Comments on Proposed Regulations by Disability Rights South Carolina
5. Adjournment

Document No. _____
DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS
CHAPTER 88
Statutory Authority: 1976 Code Section 44-20-220

Article 1. License Requirement for Facilities and Programs.

Preamble:

The Department of Disabilities and Special needs proposes to amend Article 1 to provide guidance on license requirements for settings and programs provided by the Department of Disabilities and Special Needs. All sections have been amended and new sections have been added to Article 1.

Section-by-Section Discussion:

88-105. Adding Definitions Section. Subsequent Sections are re-ordered.

88-110.

- A. Adding Disabilities Covered. Updating Name of Department.
- B. Adding (5).
- C. Amending.
- D. Amending.
- E. Updating Name of Department.

88-115.

- A. Technical Changes.
- B. Technical Changes.
- C. Amending.
- D. Technical Changes.
- E. Amending.

88-120.

- A. Amending.

88-125.

- A. Amending.
- B. Amending.
- C. Amending.
- D. Amending.
- E. Amending.

88-130. Amending.

88-135. Amending.

88-140. Amending.

88-145. Adding Annual Licensing Inspections Section.

88-150. Adding License Types Section.

88-155. Adding Setting Closure Section.

88-160. Adding Violations Classifications Section.

88-165. Adding Non-Compliance with Licensing Requirements Section.

88-170. Adding Provisional License Section.

88-175. Re-ordering 88-125 and Amending.

The Notice of Drafting was published in the *State Register* on August 26, 2022.

Notice of Public Hearing and Opportunity for Public Comment:

Should a hearing be requested pursuant to Section 1-23-110(A)(3) of the 1976 Code, as amended, such hearing will be conducted before the Department of Disabilities and Special Needs Commission, 3440 Harden Street Extension, Columbia, South Carolina 29203 on April 20, 2023, at 2:00 p.m. Written Comments may be directed to Constance Holloway, Interim State Director/General Counsel, 3440 Harden Street Extension, Columbia, South Carolina 29203. All comments must be received no later than 5:00 p.m. on March 27, 2023, the close of the drafting comment period. If a qualifying request pursuant to Section 1-23-110(A)(3) is not received, the hearing will be cancelled.

Preliminary Fiscal Impact Statement:

There will be no increased cost to the State or its political subdivisions.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION:

Purpose: This article is amended to provide guidance on the licensing requirements for settings and programs.

Legal Authority: 1976 Code Section 44-20-220.

Plan for Implementation: The amended regulations will take effect upon approval by the General Assembly and upon publication in the State Register. The Department will notify participants of the regulation by posting it on the agency's website.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION
BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The proposed regulations are needed to ensure that all participants are aware of the process and their rights.

DETERMINATION OF COSTS AND BENEFITS:

There will be no increased cost to the State or its political subdivisions.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates concerning those regulations.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

These regulations will have no effect on the environment of this State. The public health of the State will be enhanced by public awareness of Department procedures.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION
IS NOT IMPLEMENTED:

There will be no detrimental effects on the environment and public health if the regulations are not implemented in this State.

Statement of Rationale:

These regulations are added to clarify and state Department roles and procedures.

Text:

ARTICLE 1

License Requirement for ~~Facilities~~ Settings and Programs

88-105. Definitions.

A. Annual: Within a 12-month time period.

B. Candidate: Any Qualified Provider who has applied for a license from the Department.

C. Community Integrated Setting (CIS): A physical location based in the community that does not meet the definition of an FBS, at which DDSN sponsored services are delivered to participants in accordance with Department policies, excluding the locations of a licensed residential setting, the home of the participant(s), or any other residential setting.

D. Day Services Program: DDSN sponsored services, defined by standards of the Department that are operated in a licensed service setting.

E. Department: The South Carolina Department of Disabilities and Special Needs (DDSN).

F. Facility Based Setting (FBS): A physical location, owned by, operated by, or under the control of a Qualified Provider, at which DDSN sponsored services are delivered to participants in accordance with Department policies.

G. License: A document issued by the Department to the Qualified Provider indicating that the licensee is in compliance with the provisions set forth in accordance with these regulations and within the Department's policies.

H. Licensee: The Qualified Provider who holds the primary responsibility for providing DDSN sponsored services and maintaining compliance with these regulations and the Department's policies.

I. Licensor: The Department.

J. Participant: An individual, in the State, with an Intellectual Disability or a Related Disability (ID/RD), Autism Spectrum Disorder (ASD), Head Injury, Spinal Cord Injury (SCI), and Similar Disability (SD) who has been deemed eligible for services by the Department and who is participating in or is on the waiting list for a DDSN sponsored service.

K. Qualified Provider: An organization either public or private which is operated by a board of directors or other governing body and which offers DDSN sponsored services, pursuant to a contract with DDSN, to individuals with an Intellectual Disability or a Related Disability (ID/RD), Autism Spectrum Disorder (ASD), Head Injury, Spinal Cord Injury (SCI), and Similar Disability (SD) in accordance with Department policies.

L. Services: Person-centered supports provided to increase independence, socialization, employment, community integration, prevent institutionalization, and maintain the participants' health and safety in the least restrictive environment.

M. State Director: The head of DDSN or their designee.

88-105110. Scope.

A. No DDSN Sponsored program shall be operated in part or in full for the care, maintenance, education, training, or treatment of more than two persons with ~~Intellectual Disability or a Related Disability (ID/RD), Autism Spectrum Disorder (ASD), Head Injury, Spinal Cord Injury (SCI), and Similar Disability,~~ unless a license is first obtained from the South Carolina Department of ~~Mental Retardation Disabilities and Special Needs (DDSN).~~ “In part” shall mean a program operating for at least ten (10) hours a week.

B. Specifically excluded from this requirement is any program which is:

(1) Operated by an agency of “the state”;

(2) An integral part of a public or private school or center which is licensed, certified, or accredited by the South Carolina Department of Education or is sponsored by a school district;

(3) Licensed as a community residential care facility, skilled care facility, intermediate care facility, or hospital;

(4) A day care center licensed by the Department of Social Services; or

(5) Clinical programs operating under the guidance of a Licensed Practitioner of the Healing Arts with program activities designed to provide therapeutic benefits towards a physical or mental health diagnosis.

~~C. Programs which qualify for exclusion under this section may, upon voluntary application made by the operator of the program, be licensed, provided, however, that the programs meet all the other provisions for licensing as herein required. No setting or program shall accept participants for care, maintenance, education, training, or treatment other than that for which it is licensed.~~

~~D. No facility or program shall accept participants for care, maintenance, education, training or treatment other than that for which it is licensed. It is intended that the Department not duplicate other State agency programs or develop service modalities which normally would be considered to be the legal and programmatic mandate of another State agency.~~

E. All licensees will meet the statutory standards prohibiting abuse, neglect, or exploitation of adult or child participants and are expected to comply with state law concerning the reporting of known or suspected cases to the appropriate state authority and to ~~DMR DDSN~~ if the victim is a ~~DMR DDSN client participant~~.

88-110115. Licenses Issued.

A. A license is issued to settings and programs which are in compliance with these regulations.

B. A license may be issued for new settings and programs or those found to be out of compliance upon receipt of an acceptable plan of correction for eliminating deficiencies identified in the official licensing survey. The plan must show that the deficiency will be corrected within a thirty (30) day period. An extension may be granted for another 30 days when requested in writing and good cause shown.

~~C. The licensor may visit any licensee at any time during normal working hours of the program. All settings are subject to inspection or investigation at any time without prior notice by entities authorized by the South Carolina Code of Laws and the Department. Entities authorized by the Department shall be~~

granted access to all properties and areas, objects, and records at the time of the inspection. Photocopies when required as a part of the inspection, shall be used for the purposes of regulation enforcement. Photocopies shall be confidentially maintained. The spaces and areas to be physically inspected shall be determined by the entity.

D. The license will specify the name of the licensee, the maximum number of participants to be present at the facility setting at one time and the type of program it is determined to be. The setting or program type is designated as follows:

(1) ~~Recreation Camp~~ Developmental Intervention and Training Services Program;

(a) ~~Residential;~~

~~(b) Day.~~

(2) ~~Child Development Center~~ Day Services – Adult Activity;

(3) ~~Adult Activity Center~~ Day Services – Unclassified Setting;

(4) ~~Work Activity Center~~ Residential Services – Community Training Home-I (CTH-I);

(5) ~~Sheltered Workshop~~ Residential Services – Community Training Home-II (CTH-II);

(6) ~~Other.~~ Residential Services – Supervised Living Program-I (SLP-I)

(7) Residential Services – Supervised Living Program-II (SLP-II)

~~E. A program may request an opinion or an interpretation of the application of any regulation by making a written request to the regional office. If further interpretation is needed the request can be sent to the Standards Division of SCDMR by the regional office along with the region's response or recommendation. A Qualified Provider may request an opinion or an interpretation of the application of any regulation by making a written request to DDSN.~~

88-445120. Effective Date and Term of License.

~~A license will be effective for up to a twelve (12) month period, beginning with the date of issuance a period not to exceed twelve (12) months, beginning with the date of issuance.~~

88-420125. Applications for License.

~~A. Applications for license shall be made to the appropriate regional office of the South Carolina Department of Mental Retardation, Community Program Division: DDSN at license@ddsn.sc.gov.~~

~~(1) Coastal Region~~

~~Suite 907 – Summerall Center~~

~~19 Hagood Street~~

~~Charleston, South Carolina 29403~~

~~(2) Midlands Center~~

~~8301 Farrow Road.~~

~~Columbia, South Carolina 29203~~

~~(3) Pee Dee Center~~

~~Post Office Box 3209~~

~~Florence, South Carolina 29502~~

~~(4) Whitten Center~~

~~Post Office Drawer 239~~

~~Clinton, South Carolina 29325~~

B. Applicants will be provided the appropriate forms for licensing upon request from one of the above locations. The appropriate forms for licensing will be made available by the Department. Qualified Providers requesting a license shall file an application under oath on a form specified by the Department. An application shall be signed by the Chief Executive Officer. The application shall set forth the full name and address of the setting for which the license is sought and the owner(s); and such additional information as the Department may require, including affirmative evidence of ability to comply with reasonable standards, rules, and regulations as may be lawfully prescribed.

C. A licensing application shall include the following, which shall be reviewed by the Department prior to a DDSN licensing contractor inspecting the setting and/pr prior to the Department issuing a license to the setting:

(1) Documentation of a fire safety inspection conducted by the State Fire Marshall's Office;

(2) Documentation of an electrical inspection conducted by a licensed electrician;

(3) Documentation of a heating, ventilation, and air-conditioning (HVAC) inspection conducted by a licensed inspector;

(4) If not on a public water line, documentation of a water quality inspection conducted by the South Carolina Department of Health and Environmental Control (DHEC), prior to the setting being inspected by DHEC, including a bacteria and metal/mineral analysis.

(5) When the setting is a residential services settings supporting children, documentation of a health and sanitation inspection conducted by an appropriate entity.

(6) For settings supporting children under six (6) years of age, documentation of a lead-paint risk assessment conducted by DHEC.

(7) Documentation of any licenses held by the Qualified Provider for the setting or program and/or information about plans to acquire additional licenses. The Department shall not issue a license to a setting or program that is licensed to another entity.

(8) When a setting is a Day Services setting that will engage in food preparation, a permit from the DHEC.

~~C. Applicants~~ D. Qualified Providers who plan to construct a new facility setting or currently licensed ~~operators- licensees~~ who plan extensive renovations shall submit complete plans for construction or changes for prior approval to the Office of the State Fire Marshal.

~~D. E. If a facility involving food service or camping is constructed or extensively remodeled, properly prepared plans and specifications shall be submitted to the local health authority for review and approval prior to any construction. Upon completion of construction, an application for a S. C. Department of Health and Environmental Control permit for the operation of each facility shall be submitted to the local health authority. A permit must be issued prior to any operation. A Day Service setting involving food preparation shall have present a current permit from DHEC.~~

~~E. Where a swimming pool is to be constructed, properly prepared plans and specifications shall be submitted to the Division of Shellfish and Recreational Waters, S. C. Department of Health and Environmental Control. Permits must be issued in accordance with Regulations 61-50 and 61-51 prior to use of swimming pools and natural bathing areas.~~

88-130. ~~Waivers.~~ Exceptions.

A. The ~~Commissioner~~ State Director may ~~waive compliance~~ approve an exception to compliance with one or more of the requirements of these regulations if, in ~~his~~ the Department's judgment, the ~~waiver exception~~ would not endanger the safety of the participants, staff, or the public, and would not reduce significantly the quality or quantity of the services to be provided.

B. To request an ~~waiver exception~~, the ~~applicant or licensee~~ must make a written ~~application request~~ to the ~~Commissioner~~ State Director which includes the justification for the request for an ~~waiver exception~~ and must first be reviewed by the appropriate ~~regional superintendent~~ Department staff with the approval of the State Director.

C. The request for an ~~waiver exception~~ will also contain a plan for compliance with the regulation which will include a date when the regulation will be met.

~~D. A waiver will not be issued for longer than one year. An exception shall be effective for the duration specified in the approval from the State Director as long as the requirements are maintained.~~

88-135. Validity of License.

A. A license cannot be sold, assigned or transferred, nor shall it be valid for any premises other than those for which it was issued.

~~B. No program shall have present more participants than approved and so stated on the face of the license. A license shall be considered invalid if any of the information provided to the Department in the Licensing Application for the setting or program is not accurate and current.~~

C. No setting or program shall have present more participants than approved and so stated on the face of the license.

88-140. Separate Licenses.

A. A separate license is required for programs operated on separate premises even though they are operated by the same licensee or agency.

B. When two or more defined programs are operated on the same premises or building, a separate license is required and must be obtained for each program.

88-145. Annual Licensing Inspections.

A. On-site licensing inspections shall include, but not be limited to:

(1) Water measurement to ensure temperatures are:

(a) No less than 100°F; and

(b) No more than 120°F in a setting if a participant is unable to independently regulate the water temperature.

(2) Assurance of the presence of a standard first-aid kit that is readily accessible and well stocked for the number of participants who are intended to use it.

(3) Determination that the setting or program is free from obvious hazards, including a determination that the setting is clean, free of litter/rubbish, free of offensive odors, has equipment in a good working order, provides each participant with sufficient space for privacy, including but not limited to assurances of a toilet behind a lockable door and lockable storage.

(4) Assurance that household cleaning agents are kept in a secure location and away from food and medications.

88-150. License Types.

A. Day Services

(1) Day Services – Adult Activity; or

(2) Day Services – Adult Activity.

(a) Licensees may render services in a Facility Based Setting (FBS) or in a Community Integrated Setting (CIS).

(3) A Day Service program may not offer services in a licensed residential setting, in the home of a participant, or any other residential setting.

B. Facility Based Setting: FBS shall:

(1) Provide a minimum of fifty (50) square feet of program space per participant in attendance.

(2) Provide assurance of compliance with appropriate sanitation regulations of DHEC, which are current on the date of inspection. A current certificate of inspection shall be maintained in the FBS's records.

(3) Provide assurance with the regulations and appropriate standards for fire safety as set forth by the South Carolina Office of State Fire Marshall codes. Report of an approved fire safety inspection completed by the Office of State Fire Marshall shall be maintained in the FBS's records.

(a) Each FBS shall post, in a place clearly visible, a diagrammatic plan for evacuation of the building in case of disaster. All employees shall be instructed and kept informed regarding their duties under the plan.

(b) Each FBS shall hold fire/disaster drills at least once each quarter. Each drill conducted shall be recorded as to date of drill, start time, number of those participating, and the total time required for evacuation. The record shall be signed by the person conducting the drill.

(c) Passageways shall be free of obstructions at all times.

(d) All staff shall be instructed in the proper use of fire extinguishers as documented in reports.

(f) The use of electrical extension cords is prohibited.

(g) FBSs which have participants and/or staff who are hearing impaired shall develop a fire alarm system to ensure the participants and/or staff are alerted to the danger of fire.

(4) Provide assurance of a safety check on electrical systems by either a licensed or certified electrician or contractor and a written report shall be kept on file at the FBS at all times. A new inspection shall be made after any expansion, renovation, or addition of any major electrical appliances or equipment.

(5) Provide assurance of an annual inspection of the FBS by a licensed or certified HVAC contractor with the report maintained on file at the FBS. Floor furnaces shall have adequate protective coverings or guards to ensure that individuals coming into contact with them shall not be burned. If space heaters are used, they shall be vented properly and screens or other protective devices shall be provided to prevent individuals from coming into contact with the heaters.

(6) Provide assurance of safety:

(a) All staff shall be knowledgeable of utility cut-offs throughout the FBS.

(b) All cleaning equipment supplies, insecticides, etc. shall be in a locked cabinet or located in an area not accessible to unauthorized persons.

(c) Furniture, equipment, training, and support materials shall be age appropriate; shall not be covered with toxic paint; and shall present minimal hazards to participants.

(d) Recreational equipment shall be firmly anchored.

(e) The use of tools and equipment by participants shall be supervised by DSPs in accordance with the participant's abilities.

(f) In the presence of unusual hazards arising from certain work operations, appropriate safety precautions shall be taken to ensure the protection of those present.

C. When a licensee renders services in a Community Integrated Setting (CIS), the CIS shall:

~~(1) Obey all federal, state, and local ordinances as well as Department policies regarding maximum occupancy of community spaces.~~

~~(2) When a provider-controlled setting is used as an origination point, or for alternate program space, there must be adequate seating and person space for each participant, in include restrooms.~~

D. Residential Services Settings

(1) Each Residential Services Setting shall obey all federal, state, and local ordinances, including, but not limited to:

(a) An annual inspection must be completed by the Office of State Fire Marshal.

(b) The bedrooms shall have operable lighting.

(c) The bedrooms shall have operable window(s).

(d) Sufficient bedrooms such that no more than two participants occupy a single bedroom. Bedrooms shall have a least 100 square feet for a single occupancy, or 160 square feet for a double occupancy.

(e) Bedrooms shall have a clean, comfortable bed, including an appropriately sized bed frame and mattress; a pillow; and linen appropriate to the climate.

(f) The setting shall afford each participant sufficient space for privacy, including:

(i) an area to bathe and toilet behind a lockable door.

(ii) lockable doors on bedrooms/sleeping quarters and lockable storage.

(g) The setting shall have a flashlight available on each floor level.

(h) Pets at the setting shall be current with vaccinations.

(i) Participants shall be encouraged to eat a nourishing, well balanced diet which includes personal food preference; allows desirable substitutions; and meets dietary requirements of participants.

(j) Electrical and HVAC inspections are completed after renovations to the setting.

(k) The setting is physically accessible.

88-155. Setting Closure.

A. At least thirty (30) calendar days prior to the permanent closure of a residential setting, the licensee shall notify the Department in writing of the intent to close and the effective closure date. Within ten (10) calendar days of the closure, the setting shall notify the Department of the provisions and maintenance of the records as required by regulation, the identify of those participants displaced, and the relocated setting.

B. In instances where a setting temporarily closes, the licensee shall notify the Department in writing within fifteen (15) calendar days prior to temporary closure. In the event of temporary closure due to an emergency, the setting shall notify the Department in writing within twenty-four (24) hours of the closure, the manner in which the records are being stored, the identification of those participants displaced, the

relocated setting, and the anticipated date of reopening. The Department shall consider, upon appropriate review, the necessity of inspecting and determining the applicability of current construction standards to the setting prior to its reopening.

88-160. Violation Classifications.

A. Violations of standards in this regulation are classified as follows:

(1) Class I violations are those that the Department determines to be an imminent danger to the health and safety of the participants in the setting or a substantial probability that death or serious physical harm could result therefrom. A physical condition, one or more practices, means, methods, or operations in use in a setting may constitute such a violation. The condition or practice constituting a Class I violation shall be abated or eliminated immediately unless a fixed period of time, as stipulated by the Department, is required for correction.

(2) Class II violations are those, other than Class I violations, that the Department determines to be a negative impact on the health, safety, or well-being of participants in the setting.

(3) Class II violations are those that are not classified as Class I or II in this regulation or those that are against the best practices as interpreted by the Department.

88-165. Non-Compliance with Licensing Requirements.

A. A setting found to be in non-compliance with the standards of this regulation shall submit an acceptable written plan of correction to the Department or its contractor by the date specified by the Department. The written plan of correction shall describe:

(1) The actions taken to correct each cited deficiency;

(2) The actions taken to prevent recurrences both actual and similar; and

(3) The intended completion date of those actions, which shall not exceed thirty days from the date of the report of findings.

88-170. Provisional License.

A. At the Department's discretion, a Provisional License may be issued for settings with deficiencies affecting the health, safety, or welfare of participants. Provisional licenses are time-limited and location specific. Provisional Licenses may be granted for new settings or for existing settings while developing corrective action plans for deficiencies cited by the Department or its contractor.

88-175. Denial, Suspension, or Revocation of License.

A. The Department may deny, suspend, or revoke a license on any of the following grounds:

(1) Failure to establish or maintain proper standards of care and service as prescribed in these regulations;

(2) Conduct or practices detrimental to the health or safety of residents, ~~clients~~ participants, or employees of any such ~~facilities~~ settings or programs;

(3) Any violations of applicable laws and regulations.

B. Denial of a License—: In the case of denial of an application for license, the Department shall inform the ~~applicant~~ candidate by registered mail within thirty (30) days of the formal licensing survey of the justification for refusal to issue a license. This denial notification shall contain an explanation for the denial and shall advise the ~~applicant~~ candidate of ~~his~~ their rights to hearings and appeals.

C. Suspension or Revocation of License

(1) If an existing setting or program has conditions or practices which, in the Department's judgment, provide a threat to the safety and/or welfare of ~~the persons served~~ participants, the Department may immediately suspend or revoke the license of the setting or program. Upon receipt of notification from the Department, the licensee will cease operation immediately. The licensee will be notified by mail of the suspension or revocation. The notification shall contain the reason(s) for the revocation or the conditions of suspension. Any ~~agency or person~~ Qualified Provider operating a program which has had its license suspended or revoked shall be liable to the penalties provided by law. The licensee shall at the time of notification, be advised of the right to a fair hearing and the appeal process.

(2) ~~The Department may, suspend or revoke a license.~~ The Department shall notify the licensee by registered mail, stating the reasons for the suspension or revocation of the license, and shall advise the licensee of ~~his~~ their rights to hearings and appeals.

(3) For any suspension or revocation of a license except as noted by R. 88-~~425~~ 175C (1), the license shall be considered terminated at 12 midnight on the fifteenth calendar day following the mailing of the written notification, unless the licensee shall give written request of ~~his~~ their desire for an appeal hearing. If such a request is received by the Department within ten (10) calendar days from the date notification was sent to the licensee, the licensee may continue operation until a final decision is reached. If, at the hearing, the decision is made to suspend or revoke a license, the program will have fifteen (15) calendar days to cease operation.

Document No. _____
DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS
CHAPTER 88
Statutory Authority: 1976 Code Section 44-20-220

Article 2. Definitions.

Preamble:

The Department of Disabilities and Special Needs proposes to repeal Article 2 in its entirety, as it is no longer needed following the amendments made to the other articles adding a relevant definitions section. Therefore, the Department of Disabilities and Special Needs proposes to repeal Article 2 in its entirety.

Section-by-Section Discussion:

Repeal Article 2 in its entirety.

The Notice of Drafting was published in the *State Register* on August 26, 2022.

Notice of Public Hearing and Opportunity for Public Comment:

Should a hearing be requested pursuant to Section 1-23-110(A)(3) of the 1976 Code, as amended, such hearing will be conducted before the Department of Disabilities and Special Needs Commission, 3440 Harden Street Extension, Columbia, South Carolina 29203 on April 20, 2023, at 2:00 p.m. Written Comments may be directed to Constance Holloway, Interim State Director/General Counsel, 3440 Harden Street Extension, Columbia, South Carolina 29203. All comments must be received no later than 5:00 p.m. on March 27, 2023, the close of the drafting comment period. If a qualifying request pursuant to Section 1-23-110(A)(3) is not received, the hearing will be cancelled.

Preliminary Fiscal Impact Statement:

There will be no increased cost to the State or its political subdivisions.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION:

Purpose: This article is repealed in its entirety due to a definitions section being added to other articles in Chapter 88.

Legal Authority: 1976 Code Section 44-20-220.

Plan for Implementation: The repealed regulation will take effect upon approval by the General Assembly and upon publication in the State Register. The Department will notify participants of the regulation by posting it on the agency’s website.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION
BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The current regulation is unnecessary due to the proposed amendments to other regulations in Chapter 88. Therefore, the repeal of Article 2. Definitions. is needed and reasonable.

DETERMINATION OF COSTS AND BENEFITS:

There will be no increased cost to the State or its political subdivisions.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates concerning these regulations.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

These regulations will have no effect on the environment of this state.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

There will be no detrimental effects on the environment and public health.

Statement of Rationale:

This article is repealed to prevent redundancy in the proposed regulations, which are intended to clarify and state Department roles and procedures.

Text:

ARTICLE 2

Definitions

~~88-210. Definitions.~~

~~—For the purpose of these regulations the following definitions apply:~~

~~—A. Agency—An organization either public or private which is operated by a board of directors or other governing body and which offers programs to persons with intellectual disability.~~

~~—B. Applicant—Any agency who has applied for a license from the Department.~~

~~—C. Client—A person with intellectual disability who has been deemed eligible for services by the Department and who is participating in a program in the State or is on the waiting list for services from the Department.~~

~~—The Department is required to provide community and residential service programs similar to those provided to persons with intellectual disability to substantially handicapped epileptic, cerebral palsied, autistic, and other developmentally disabled individuals whose treatment and training needs approximate those of the persons with intellectual disability. Eligibility for services shall be determined by the Department. It is intended that the Department not duplicate other State agency programs or develop service modalities which normally would be considered to be the legal and programmatic mandate of another State agency.~~

~~—D. Commissioner—The chief administrator of the Department of Mental Retardation or his designee.~~

- ~~— E. Department — The South Carolina Department of Mental Retardation. (SCDMR)~~
- ~~— F. Developmental Period — The period of time between conception and the twenty-second birthday.~~
- ~~— G. Governing Board — The individuals or group that have legal responsibility for the agency or organization which operates the day program.~~
- ~~— H. License — A document issued by the Department to an agency operating a program indicating that the licensee is in compliance with the provisions set forth in these regulations and other standards as specified in these regulations.~~
- ~~— I. Licensee — The agency who holds the primary responsibility for providing services and compliance with these regulations.~~
- ~~— J. Licensor — The Department of Mental Retardation.~~
- ~~— K. Mental Retardation — Refers to significantly sub-average general intellectual functioning resulting in or associated with concurrent impairments in adaptive behavior and manifested during the developmental period.~~
- ~~— L. Participant — Any person with intellectual disability who is participating in a program licensed by the Department.~~
- ~~— M. Regional Office — The SCDMR office which performs the license survey and issues the license.~~
- ~~— N. Permit — a written permit, issued by the health authority permitting the food service, camp, swimming pool or natural bathing area to operate under S. C. Department of Health and Environmental Control regulations.~~

Code Commissioner's Note

~~Pursuant to 2011 Act No. 47, Section 14(B), the Code Commissioner substituted “intellectual disability” for “mental retardation” and “person with intellectual disability” or “persons with intellectual disability” for “mentally retarded.” At the Code Commissioner’s discretion, the substitution was not made for the formal reference to the South Carolina Department of Mental Retardation in this regulation. Repealed.~~

Document No. _____
DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS
CHAPTER 88
Statutory Authority: 1976 Code Section 44-20-220

Article 4. Day Programs for Persons with Intellectual Disability.

Preamble:

The Department of Disabilities and Special Needs proposes to amend Article 4 to provide the procedure for the administration of day programs provided by the Department of Disabilities and Special Needs. Specific sections amended are 88-405, Definitions; 88-410, Personnel; 88-415, Facility; 88-420, Transportation; 88-425, Medical Care; 88-430, Evaluations; 88-435, Program; and 88-440, Records.

Section-by-Section Discussion:

88-405. Technical Changes to Definitions and Removing Obsolete References.

88-410.

- A. Updating to Current Law and Procedures.
- B. Updating to Current Law and Procedures.
- C. Technical Changes.
- D. Deleted.

88-415. Deleted.

88-420.

- A. Updating to Current Law and Procedures.

88-425.

- A. Updating to Current Law and Procedures.
- B. Updating to Current Law and Procedures.
- C. Updating to Current Law and Procedures.
- D. Updating to Current Law and Procedures.

88-430. Deleted.

88-435.

- A. Updating to Current Law and Procedures.
- B. Updating to Current Law and Procedures.
- C. Updating to Current Law and Procedures.
- D. Added.
- E. Added.
- F. Added.

88-440.

- A. Updating to Current Law and Procedures.
- B. Deleted.
- C. Deleted.
- D. Deleted.

The Notice of Drafting was published in the *State Register* on August 26, 2022.

Notice of Public Hearing and Opportunity for Public Comment:

Should a hearing be requested pursuant to Section 1-23-110(A)(3) of the 1976 Code, as amended, such hearing will be conducted before the Department of Disabilities and Special Needs Commission, 3440 Harden Street Extension, Columbia, South Carolina 29203 on April 20, 2023, at 2:00 p.m. Written Comments may be directed to Constance Holloway, Interim State Director/General Counsel, 3440 Harden

Street Extension, Columbia, South Carolina 29203. All comments must be received no later than 5:00 p.m. on March 27, 2023, the close of the drafting comment period. If a qualifying request pursuant to Section 1-23-110(A)(3) is not received, the hearing will be cancelled.

Preliminary Fiscal Impact Statement:

There will be no increased cost to the State of its political subdivisions.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION:

Purpose: This article is amended to ensure that requirements for day programs for persons eligible for services through the Department of Disabilities and Special Needs are clearly defined and clarified.

Legal Authority: 1976 Code Section 44-20-220.

Plan for Implementation: The amended regulations will take effect upon approval by the General Assembly and upon publication in the State Register. The Department will notify participants of the regulation by posting it on the agency's website.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The proposed regulations are needed to ensure that all day programs are operated under a common set of regulations.

DETERMINATION OF COSTS AND BENEFITS:

There will be no increased cost to the State or political subdivisions.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates concerning these regulations.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

These regulations will have no effect on the environment of this State. The public health of the State will be enhanced by public awareness of Department procedures.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

There will be no detrimental effects on the environment and public health if the regulations are not implemented in this State.

Statement of Rationale:

These regulations are added to clarify and state Department roles and procedures.

Text:

ARTICLE 4

Day Programs for Persons with Intellectual Disability Setting and Program Requirements

88-405. Definitions.

A. Adult Activity Center—: A goal-oriented program of developmental, prevocational services designed to develop, maintain, increase or maximize ~~an individual's~~ participant's functioning in activities of daily living, physical growth, emotional stability, socialization, communication, ~~and~~ vocational skills, and/or community participation.

B. Child Development Center—A center-based day program for preschool age and school age children. The main purpose is to provide services which will encourage optimal growth and development.

C. ~~B.~~ Critical Incident—: ~~An event, involving clients, which has a harmful effect or otherwise special effect such as accidents, injuries, abuse, damage to property, theft, gross misbehavior, etc. An unusual or unfavorable occurrence that is not consistent with routine operations; has a harmful or negative effect on participants, employees, or property; and occurs in a DDSN Regional Center, Facility Based Setting, or Community Integrated Setting during the direct administration of DDSN sponsored services.~~

C. Developmental Intervention and Training Services Program: A service setting designed for youth, ages six (6) to twenty-one (21), who are eligible for DDSN sponsored services and are in need of individualized, intensive, multi-modal support for acquisition or improvement of social, vocational, and/or educational functioning to prevent hospitalization, institutionalization, or out-of-home placement.

D. ~~Direct Care Staff Support Professional (DSP)—: Those employees whose job descriptions indicate the duty of directly working with participants. That amount of time the job description indicates is directly devoted to client contact will be counted in the staff/participant ratio. Dietary, transportation, janitorial staff and other support staff who do not work directly with clients are not considered direct care staff unless their job description shows that time is spent with clients. Any employee or any person under contract whose job descriptions indicate the duty of directly working with participants.~~

E. First Aid Kit—: A collection of supplies which includes, but is not limited to: mild hand soap; cotton tipped applicators; gauze bandages, one and two inch widths; sterile gauze, three inch by three inch; band-aids; adhesive tape; scissors; disinfectant; and thermometer.

F. Program Site—Any location where at least three participants are working or playing in an area that is physically separate from the main program, such as separate workshops, work crews, isolated class rooms, and field trips

G. Program Director—: The staff person who determines the programmatic methods and client training procedures for an agency A designated individual responsible for ensuring a participant's health and safety, while receiving DDSN sponsored services and supports.

H. Program Space—Area which participants use for programs, training or work. Areas excluded in space calculations are offices, storage, bathrooms, kitchen, isolation area and hallways. If any program routinely and regularly uses an excluded area for scheduled client use this area can be included in the space calculations. The program will show a written justification for such consideration.

~~I. “Regular Work Program” is a type of certificate issued by the Department of Labor which allows a workshop to pay handicapped clients at 50% of minimum wage.~~

~~J. Sheltered Workshop—A work program whose purpose is to assist participants to achieve their potential through the use of individual work goals, remunerative employment, supportive services and a controlled environment. The workshop will maintain a certificate with the United States Department of Labor which designates it as a “regular work program”.~~

~~K. Work Activity Center—A workshop having an identifiable program designed to provide therapeutic activities for workers with intellectual disability whose physical or mental impairment is so severe as to interfere with normal productive capacity. Work or production is not the main purpose of the program, however, the development of work skills is its main purpose. The program will have a certificate from the United States Department of Labor designating it as a Work Activity Program when applicable.~~

88-410. Personnel.

A. Qualifications of Staff

(1) ~~Program Director—~~The ~~director~~ Program Directors will shall meet the following ~~minimal~~ minimum qualifications:

(a) Be at least twenty-one (21) years old; and

(b) Have a four- (4) year, ~~baccalaureate~~ degree from an accredited college or university in the human services field or related field and two (2) year-s’ experience in administration or supervision in the human services field; or

(c) Have a master’s degree from an accredited college or university in the human services field or related field and one (1) year’s experience in administration or supervision in the human services; and

(d) Have references from past employment.

(2) ~~Direct Care Staff—~~ Direct Support Professional: ~~The direct care staff~~ DSPs will meet the following qualifications:

(a) Be at least eighteen (18) years old; and

(b) Have a valid high school diploma or its certified equivalent; or have demonstrated competency for effective communication with participants, the provision of appropriate care and supervision, and implementation of skills training; and

(c) Have references from past employment if the person has a work history.

(3) All Staff—; All Staff will meet the following qualifications:

(a) ~~Have signed a statement that they have never been charged or convicted of a crime involving abuse, neglect or exploitation. Meet requirements for criminal background checks, abuse registry checks, and Medicaid exclusion checks;~~

(b) ~~Must be shown to be a non-reactor to the tuberculin skin test at the time of employment as evidenced by a tuberculin skin test dated within one month from the first day of employment. If the potential~~

~~employee is found to be a reactor to the skin test he will not be able to work until he has written certification by a licensed physician that he is non-contagious and must show evidence of the non-contagious status annually. Have Tuberculosis Screening and Testing in accordance with current recommendations from the Centers for Disease Control;~~

(c) Have a valid Driver's License if duties require transportation of participants;

(d) Be capable of aiding in the activities of daily living and implementing the plan of each individual for whom they are responsible;

(e) Be able to effectively communicate, in English, verbal and written information; and

(f) Be trained and be deemed competent in accordance with Department policies.

~~(4) Support Staff—Staff shall have adequate qualifications to perform the fiscal, clerical, food service, housekeeping and maintenance functions.~~

B. Participant Supervision/Staff Ratios

~~(1) There will be at least the following minimum participant/staff ratio for each program:~~

~~(a) Child Development Center—5:1;~~

~~(b) Adult Activity Center—7:1;~~

~~(c) Work Activity Center—7:1;~~

~~(d) Sheltered Workshop—10:1.~~

~~(2) Upon consideration of the ages, the severity of handicapping conditions, and the services needed by the participants, the Department may approve a different participant/ staff ratio.~~

(1) Supervision of a participant in the setting or program will be provided based on the type and amount of supervision required by the participant which is determined by assessment and documented in the participant's record.

(2) Day Services-Adult Activity: There shall be at least the following minimum participant supervision/staff ratios:

(a) Developmental Intervention and Training Services Program – 4:1;

(b) Community Integrated Setting – 5:1;

(c) Facility Based Setting – 8:1;

(d) Unclassified Program – 10:1.

(3) Residential Services: Sufficient staff shall be available 24 hours daily to render supports and respond to the needs of the participants.

(4) Each program shall have provisions for alternate coverage for staff who are unable to fulfill their job responsibilities.

C. There will be a staff development/in-service education program operable in by each agency Qualified Provider, in accordance with Department policies, which requires all staff to participate participation in new employee orientation, in-service education programs, and staff development opportunities from all staff and anyone contracted to provide direct supports to participants.

D. Supervision of Clients

~~(1) A designated responsible staff member must be present and in charge at all times a participant is present. The staff member left in charge must know how to contact the director at all times.~~

~~(2) At no time shall any participant be without supervision unless a specified activity which allows for an adult participant's independent functioning is planned and documented.~~

~~(3) A minimum participant/staff ratio of 10:1 must be maintained in each classroom, workshop, program area, etc. at all times.~~

~~(4) Each program shall have provisions for alternate coverage for staff members who are ill. Such policies shall require staff members with acute communicable disease, including respiratory infection, gastro-intestinal infection, and skin rash, to absent themselves during the acute phase of illness.~~

88-415. Facility.

~~—A. Size Each facility shall provide a minimum of fifty (50) square feet of program space per participant.~~

~~—B. Sanitation The facility shall meet the requirements of the appropriate sanitation regulations of the South Carolina Department of Health and Environmental Control (DHEC) which are current on the date of inspection. A current certificate of inspection shall be maintained in the facility's records.~~

~~—C. Fire Safety~~

~~—(1) The facility will meet the regulations of the appropriate standards for fire safety as set forth by the South Carolina Fire Marshal codes. Report of an approved fire safety inspection completed by a local Fire Marshal or the State Fire Marshal's shall be maintained in the facility's records.~~

~~—(2) The agency shall formulate and post in each room and work area, in a place clearly visible, a diagrammatic plan for evacuation of the building in case of disaster. All employees shall be instructed and kept informed regarding their duties under the plan.~~

~~—(3) The center shall hold fire/disaster drills at least once each quarter. Each drill conducted shall be recorded as to time, date of drill, number of those participating, and the total time required for evacuation. The record shall be signed by the person conducting the drill.~~

~~—(4) Passageways shall be free of obstructions at all times.~~

~~—(5) All staff shall be instructed in the proper use of fire extinguishers as documented in reports.~~

~~—(6) The use of electrical extension cords is prohibited.~~

~~—(7) Programs with deaf clients will develop a fire alarm system to assure the clients are alerted to the danger of fire.~~

~~—D. Electrical System Inspection—A safety check on electrical systems shall be made by a licensed/certified electrician/contractor and a written report kept on file at the facility at all times. A new inspection shall be made after any expansion, renovation, or the addition of any major electrical appliances or equipment.~~

~~—E. All staff shall be knowledgeable of utility cut-offs throughout the facility.~~

~~—F. The heating system shall be approved annually by a licensed/certified H.V.A.C. contractor and the report maintained on file at the facility. Floor furnaces shall have adequate protective coverings or guards to insure that individuals coming into contact with them shall not be burned. If space heaters are used, they shall be vented properly and screens or other protective devices shall be provided to prevent individuals from coming into contact with the heaters.~~

~~—G. Storage of Harmful Items—All cleaning equipment supplies, insecticides, etc. shall be in a locked cabinet or located in an area not accessible to unauthorized persons.~~

~~—H. Safety of Equipment~~

~~—(1) Furniture, equipment and training materials shall be appropriate to the ages of the individuals in the program; shall be sturdily constructed without sharp edges; shall not be covered with toxic paint; and shall present minimal hazards to individuals.~~

~~—(2) Stationary outdoor equipment shall be firmly anchored.~~

~~—(3) The use of tools and equipment shall be supervised by staff.~~

~~—(4) In the presence of unusual hazards arising from certain work operations, appropriate safety precautions shall be taken to insure the protection of those present.~~

~~—I. Equipment and Materials for Learning, Recreational Experiences—Indoor and outdoor equipment and materials shall be provided in sufficient quantity and variety to meet the developmental need of the participants. The equipment will be age appropriate for the clients who use it.~~

88-420. Transportation.

~~A. If the facility operates a transportation system~~ If transportation is provided, vehicles used for the transportation of participants shall ensure safety for the passengers be safe for the passengers.

~~(1) Vehicles shall be inspected daily, using a checklist. The driver shall sign a report which indicates that he has checked the lights, brakes, horn, wipers and tires.~~

~~(2) Maintenance of vehicles shall be recorded, updated, and signed every month.~~

~~(3) Each passenger shall have adequate seating space and shall use a seat belt or restraint system approved by the Highway Traffic Safety Administration Standards which is appropriate for his age while being transported.~~

~~(4) Each vehicle will have:~~

~~(a) first aid kit which is replenished after each use and checked monthly for completeness;~~

~~(b) fire extinguisher which is in good working order and securely fastened in a manner which is easily accessible to the driver.~~

~~(5) Vehicle operators and all staff who transport clients will be licensed drivers who are capable of handling road emergencies and hazards and will have a current defensive driving course certificate within one month of employment which is on file in the agency. If there was no course offered within first month this must be verified and the staff must take and pass the first course offered.~~

B. Vehicles shall be maintained in safe operable condition. Records of maintenance and repairs shall be documented and available upon request.

C. Each passenger shall have adequate seating space and shall use an age appropriate seat belt or restraint system approved by the Highway Traffic Safety Administration Standards.

D. Each vehicle shall have a first aid kit which is replenished after each use and checked monthly for completeness.

E. For vehicles that transport more than 4 participants at one time, a fire extinguisher which is in good working order and must be securely fastened in a manner which is easily accessible to the driver.

F. Vehicle operators and all staff including any person under contract who transports participants will be licensed drivers who are capable of handling road emergencies and hazards.

(1) There shall be a current defensive driving course certificate on file for all staff and any person under contract to provide services within one month of their start date; or

(2) If there was no defensive driving course offered within first month, this must be notated and the staff or person under contract must take and pass the first course offered following their start date.

88-425. Medical Care.

A. Routine Medical Care

~~(1) Every participant will be examined by a licensed physician within twelve 12 months prior to admission or within 30 days after admission. The results of the exam will be kept at the main program site. Prior to and on the first day of service, the participant's medical condition shall be known by the Qualified Provider, including but not limited to:~~

~~(a) Diagnosis and conditions;~~

~~(b) Allergies;~~

~~(c) Medications to be given;~~

~~(d) Medical equipment or assistive devices;~~

~~(e) Diet consistency; and~~

~~(f) Body positioning.~~

(2) Any evidence of illness or injury observed during service provision shall be documented in the participant's record and action shall be taken to obtain necessary medical treatment of the ~~individual participant~~ and to safeguard ~~others from contagion~~.

B. Medication

(1) ~~Medication to be administered shall be stored in a locked cabinet not accessible to unauthorized persons. Prescribed medication shall be kept in the original containers bearing the pharmacy label which shows drug name, the prescription number, date filled, physician's name, directions for use, and the patient's name.~~ Medications shall be safely and accurately administered.

(2) ~~Employees supervising the taking of medication will document that medication was taken by client as authorized by parents or guardian. Medications and/or treatments shall be administered by a licensed nurse, unlicensed staff as allowed by law and with evidence of successful completion of an approved Medication Technician Curriculum; or the participant for whom the medication is prescribed when he/she is assessed as independent.~~

(3) ~~Written authorization to administer any medication must be given by parents or guardian or community residence assuming that authority. When medications are not under the control of participants, the medication to be administered shall be stored in a locked cabinet container not accessible to unauthorized persons. Prescribed medication shall be kept in the original containers bearing the pharmacy label which shows drug name, the prescription number, date filled, physician's name, directions for use, and the patient's name.~~

(4) For participants not independent in taking their own medication/treatments, a log shall be maintained to denote:

(a) The name of medication or type of treatment given;

(b) The current physician's order and purpose for the medication and/or treatment;

(c) The name of the participant administering the medication;

(d) Time administered; and

(e) Dosage administered.

(5) Medication should be administered in accordance with Department policies.

C. Emergency Medical Care—: A written plan for emergency medical services shall be developed to meet participant's needs. ~~This shall include the name of the physician to be notified and means of transportation for emergency medical care. This shall include the name(s) of emergency contacts for each participant and a means of transportation for emergency medical care.~~ If a physician's services are not immediately available and the ~~client's~~ participant's condition requires immediate medical attention, ~~the director is responsible for securing transportation to the nearest medical emergency facility. Written permission from each parent/guardian authorizing such care shall be on file in the agency.~~ transportation to the nearest medical emergency facility shall be secured. Written permission from each participant or legal guardian, if applicable, authorizing such care shall be on file in the agency.

D. First Aid

(1) A first aid kit shall be maintained at each service setting program site.

(2) All ~~direct care~~ staff DSPs will be trained in American Red Cross first aid procedures (either basic or standard first aid) within the first month of employment for new employees.

(3) All staff will be trained in a Cardiopulmonary Resuscitation (“CPR”), approved through the American Red Cross or American Heart Association, within the first month of employment for new employees.

88-430. Evaluations.

~~— A. Psychological evaluations will be required according to the following schedule:~~

~~— (1) Children shall be evaluated by using a restrictive test of intelligence administered by a licensed or certified psychologist once upon entry into a day program and once more between ages three and five or prior to matriculation to Headstart or public school unless entry into the program occurs after the age of two years.~~

~~— (2) Adults shall be tested using a restrictive test of intelligence administered by a licensed or certified psychologist on program entry, re-entry or at age twenty two (22) whichever occurs first, unless there is a valid psychological evaluation completed within three years of admission on record.~~

~~— B. Social History A social history which includes basic information on participant’s personal history, family situation and specific problem areas will be completed on admission to the day program and updated annually thereafter. Information from the parents/guardian will be included in the history. The update shall indicate any change in the family situation or living environment that may affect participant’s progress and need for continued enrollment.~~

~~— C. Assessment of Skills Each participant in both adult and child programs will be assessed using an approved assessment tool(s) within thirty (30) calendar days of enrollment and annually thereafter. The assessment of needs will contain evaluations in the following areas:~~

~~— (1) Children:~~

~~— (a) Sensorimotor skills;~~

~~— 1. Gross motor;~~

~~— 2. Fine motor;~~

~~— (b) Communication and language;~~

~~— (c) Social interaction/play;~~

~~— (d) Self help skills;~~

~~— (e) Cognitive skills;~~

~~— (f) Behavior needs.~~

~~— (2) Adults:~~

~~— (a) Self care (e.g., hygiene, appearance, nutrition, eating habits, dressing, toileting, physical fitness, sex education etc.)~~

~~— (b) Community Living Skills (e.g., budgeting, shopping, cooking, laundry, telephone usage, transportation, appropriate use of leisure etc.)~~

~~— (c) Communication (e.g., speech, language, sign language, or other communication skills etc.)~~

~~— (d) Socialization (e.g., appropriate behaviors for successful interaction with others, recreation and leisure)~~

~~— (e) Vocational (e.g., physical capabilities, psychomotor skills, work habits, job seeking skills, knowledge of work practices, work related skills etc.)~~

~~— (f) Education (e.g., academic and cognitive skills etc.)~~

~~— (g) Behavioral needs (behavioral management plans)~~

~~— (h) Motor Development (e.g. gross motor, fine motor and perceptual motor needs)~~

88-435. Program: Service Plans.

A. The participant must be determined to require or likely benefit from the DDSN sponsored services.

B. Prior to or on the first day of service provision, a preliminary plan for the participant must be developed to outline the interventions and supports required by the participant until the initial plan is developed.

A. C. Plan-: Each participant will have a written, person-centered plan developed, and approved by the program team within thirty days of admission for adults and for children and annually thereafter. The plan will be based on the professional evaluations, regional recommendations, the assessment of skills, parent/guardian and/or community residence staff conferences, staff and client recommendations and discussed in a team meeting. The date and signature of all team members will be documented on the plan. that outlines the services, support, and interventions to be provided. The plan shall be developed by the participant and his/her Individual Support Team within thirty days (30) of the first date of service.

(1) The plan will contain written, individualized, long range and short range goals which are time limited and measurable. The plan will document the date and signature of the participant and the Individual Support team members in attendance during the development of the plan.

(2) The plan will contain written objectives which include a training schedule and the method of evaluation of progress. The plan will identify and contain a description of the participant's preferences and interests; the participant's needs and goals; and the support and interventions to be provided.

(3) The plan will contain documented evidence of parent/guardian involvement in the meeting. The plan will encourage the participant's movement towards independence, including but not limited to, employment and community integration.

~~(4) Summary notations of progress made toward goals are made monthly by staff involved in the training. The notes will be signed and dated. At least monthly, the plan is monitored by the Program Director or the director's designee to determine the plan's effectiveness.~~

~~(5) When a goal is reached a new goal will be set. The plan shall remain current at all times, but at a minimum, the plan will be reviewed and updated by the participant with the participant's Individual Support Team every 12 months.~~

~~(6) When the participant is observed to be making no progress in reaching a goal after three months of working on the same goal the methodology will be reviewed and evaluated by the team and a new goal will be set, the methodology changed or the recommendation may be made to continue the goal. If no progress has been made after one year the goal or methodology will be changed.~~

~~(7) The plan will be reviewed and updated by the program team at least annually.~~

~~(8) The plan will always have current goals and objectives.~~

~~(9) The plan will address the participant's movement toward a less restrictive program and include goals and objectives which will help him progress to a higher level program.~~

~~(10) The plan will be developed by a team which will consist of program staff, family, and any others who work with the client.~~

B. Services

~~—(1) The services offered at the program will be directed toward the identified needs of the participant. He will be involved in activities which will help him progress toward goals identified in the plan. Activities should be age appropriate and allow for choices by the participant.~~

~~—(2) The services for children will include the following:~~

~~—(a) Gross motor development;~~

~~—(b) Fine motor development;~~

~~—(c) Communication and language;~~

~~—(d) Socialization;~~

~~—(e) Self help skills;~~

~~—(f) Cognitive development;~~

~~—(g) Behavior management;~~

~~—(3) The services for adults will include but not be limited to the following:~~

~~—(a) Activities of daily living, AAC, WAC;~~

~~—(b) Independent living skills, AAC, WAC;~~

—(c) Socialization, AAC, WAC;

—(d) Recreation/Leisure Skills, AAC, WAC;

—(e) Habilitation/Vocational/Work Related, AAC, WAC,SW;

—(f) Behavior management, AAC, WAC,SW;

—(g) Physical development, AAC, WAC;

—(h) Communication/Language, AAC, WAC;

—(4) The program may offer the services at the home of the participant, in the community, in the center, or any other appropriate site which can be arranged by the program and which is deemed appropriate by the team.

—C. Hours of the Program

—(1) Each program will have a current activity schedule posted

—(2) The schedule will reflect the hours the facility is open and the hours the program offers supervised services.

—(3) The schedule must reflect the scheduled activities of the day.

D. When a service is provided, a detailed description of the service must be documented.

E. The services offered at the program will be based on participants' abilities/strengths, interests/preferences, and needs/supports. Activities should be age appropriate and allow for choice by each participant.

F. The service program may not offer services in a licensed residential setting, in the home of a participant, or any other residential setting.

88-440. Records.

A. Administrative-; The following records will be maintained ~~at least 5 years in the administrative office for the program and shall be readily available for review by the Department~~ in accordance with Department policies and shall be readily available for review:

(1) ~~Client register for enrollment;~~ Individual personnel records on each staff member or contracted employee which contain:

(a) Tuberculosis Screening and Testing in accordance with current recommendations from the Centers for Disease Control;

(b) Signed application form or other statement of educational history and employment history;

(c) Job description;

(d) Criminal background checks in accordance with state and federal and per Department policies;
and

(e) References from past employment, if applicable.

(2) ~~Daily attendance~~ Written policies on:

(a) Access to, duplication of, and dissemination of information from participants records or about a participant;

(b) The Prohibition of the use of physical, mechanical, or chemical restraint unless used in accordance with Department policy;

(c) The prohibition of corporal punishment;

(d) The prohibition of isolation rooms;

(e) Retention of records;

(f) Use of volunteers;

(g) Program evaluation;

(h) Administration and discharge of participants;

(i) Admission and discharge of participants;

(j) Personnel practices;

(k) Procedures to be followed when a participant is discovered to be missing;

(l) Prohibition of abuse, neglect, and exploitation which also includes reports of any and all abuse, neglect, and exploitation to appropriate state agencies and to the Department;

(m) Reporting of critical incidents consistent with Department policy; and

(n) The termination of participants from a service which includes:

(i) A list of reasons for dismissal; and

(ii) Methods of averting the termination.

(3) ~~Current (annual) certificate of sanitation inspection from DHEC~~ Participant: A record shall be maintained for each participant which contains, at a minimum, the items listed below. All documents and entries shall be legible, dated, and signed by the person making the entry. All records shall be securely maintained and in compliance with the US Health Insurance Portability Accountability Act (HIPAA).

(a) Current Plan as required by R88-435 A;

(b) Documentation and/or data to support the implementation of the Plan and reimbursement for services rendered;

(c) Record of unusual behavior incidents which are recorded at the time of occurrence;

(d) Authorization for emergency medical services; and

(e) Record of critical incidents.

(4) Current (annual) certificate of fire inspection from a fire marshal Maintenance of Records: After a participant's discharge or dismissal from a service program, or the participant's death, the participant's records shall be retained and disposed of in accordance with Department policy.

~~(5) Current (annual) heating, ventilation and air conditioning inspection report, dated and signed by a qualified technician;~~

~~(6) Electrical system report, signed and dated by a licensed/certified electrical/contractor with the certification number listed.~~

~~(7) Disaster plan and a record of fire drills;~~

~~(8) Individual personnel records on each staff member which contain:~~

~~(a) TB report at time of employment and annually if skin test indicates a reactor;~~

~~(b) Signed application form or other statement of staff member's age, educational history and employment history;~~

~~(c) Job description;~~

~~(d) Signed statement that indicates the employee has never been charged or convicted of a crime involving abuse or neglect.~~

~~(e) References from past employment when applicable~~

~~(9) Written policies on:~~

~~(a) Access to, duplication of, and dissemination of information from client records;~~

~~(b) Prohibition of the use of physical, mechanical or chemical restraint unless used for safety or therapeutic purposes as prescribed by a written plan and as approved by DMR;~~

~~(c) The prohibition of corporal punishment;~~

~~(d) Conditions for use of isolation rooms;~~

~~(e) Retention of records;~~

~~(f) Use of volunteers and substitutes;~~

~~(g) Program evaluation;~~

~~(h) Administration of medication;~~

~~(i) Admission and discharge of participants;~~

~~(j) Personnel practices~~

~~(k) Procedures to be followed when a participant is discovered to be missing.~~

~~(l) Prohibition of abuse and neglect which also includes staff report of any/all abuse to appropriate state agencies and to the Department of Mental Retardation.~~

~~(m) Conditions and policies on the termination of clients which include:~~

~~1. A list of reasons for dismissal;~~

~~2. Methods of averting the termination;~~

~~3. Consultation and concurrence with the Department prior to termination.~~

~~B. Participant A record shall be maintained for each participant which contains, as a minimum, the items listed below. All documents and entries shall be legible, dated, and signed by the person making the entry. If symbols are used, explanatory legends must be provided.~~

~~(1) Report of a medical examination which was performed not more than twelve (12) months prior to admission;~~

~~(2) Report of psychological evaluation(s) as required by R. 88-430A;~~

~~(3) Report of Social History which is updated annually;~~

~~(4) Current Individual Program Plan as required by R88-435 A;~~

~~(5) Monthly summary notations of progress;~~

~~(6) Record of unusual behavior incidents which are recorded at the time of occurrence;~~

~~(7) Record of illness and accidents;~~

~~(8) Authorization for emergency medical service;~~

~~(9) Record of critical incidents.~~

~~C. Confidentiality All information in a participant's record shall be considered privileged and confidential. Staff shall not disclose or knowingly permit the disclosure of any information concerning the client or his family directly to any unauthorized person.~~

~~D. Maintenance of Records After a participant's discharge or dismissal from a program, or his death, his records shall be retained for five years. Disposal of records must be performed in a confidential manner.~~

Document No. _____
DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS
CHAPTER 88
Statutory Authority: 1976 Code Section 44-20-220

Article 9. Unclassified Facilities and Programs.

Preamble:

The Department of Disabilities and Special Needs proposes to amend Article 9 to provide guidance on the application requirements and determination process regarding the licenses for unclassified settings and programs provided by the Department of Disabilities and Special Needs. Specific sections edited are Regulations 88-910, Unclassified Facilities and Programs; 88-915, Application for License of an Unclassified Program; and 88-920, Determination by the Department.

Section-by-Section Discussion:

- 88-910. Updating to Current Law and Procedure.
- 88-915. Updating to Current Law and Procedure.
- 88-920. Updating to Current Law and Procedure.

The Notice of Drafting was published in the *State Register* on August 26, 2022.

Notice of Public Hearing and Opportunity for Public Comment:

Should a hearing be requested pursuant to Section 1-23-110(A)(3) of the 1976 Code, as amended, such hearing will be conducted before the Department of Disabilities and Special Needs Commission, 3440 Harden Street Extension, Columbia, South Carolina 29203 on April 20, 2023, at 2:00 p.m. Written Comments may be directed to Constance Holloway, Interim State Director/General Counsel, 3440 Harden Street Extension, Columbia, South Carolina 29203. All comments must be received no later than 5:00 p.m. on March 27, 2023, the close of the drafting comment period. If a qualifying request pursuant to Section 1-23-110(A)(3) is not received, the hearing will be cancelled.

Preliminary Fiscal Impact Statement:

There will be no increased cost to the State or its political subdivisions.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION:

Purpose: This article is updated to ensure clarity of the definitions of unclassified settings and programs and to provide updated guidance on the licensing of unclassified settings and programs.

Legal Authority: 1976 Code Section 44-20-220.

Plan for Implementation: The amended regulations will take effect upon approval by the General Assembly and upon publication in the State Register. The Department will notify participants of the regulation by posting it on the agency’s website.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION
BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The proposed regulations are needed to ensure that all participants are aware of the process and their rights.

DETERMINATION OF COSTS AND BENEFITS:

There will be no increased cost to the State or its political subdivisions.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates concerning these regulations.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

These regulations will have no effect on the environment of this State. The public health of the State will be enhanced by public awareness of Department procedures.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

There will be no detrimental effects on the environment and public health if the regulations are not implemented in this State.

Statement of Rationale:

These regulations are added to clarify and state Department roles and procedures.

Text:

ARTICLE 9

Unclassified ~~Facilities~~ Settings and Programs

88-910. Unclassified ~~Facilities~~ Settings and Programs.

A. An unclassified ~~facility~~ setting or program is one which:

~~A. (1)~~ Under the provisions of Section 88-110 A₂, must be licensed, and

~~B. (2)~~ Is substantially different from settings and programs and ~~facilities~~ classified and defined in these regulations.

88-915. Application for License of an Unclassified Setting or Program.

A. Application for license shall be made as required by R. 88-115. Such application shall contain specific and detailed information on the following:

~~A. (1)~~ Name, mailing address, and location of ~~facility~~ setting or program;

~~B. (2)~~ Name and address of the ~~Administrator~~ Qualified Provider;

~~C. (3)~~ Name and address of the owner or Chairman of the Board of Directors;

~~D. (4) Narrative d~~ Description of services to be provided; and

~~E. (5) Number and general description of clients~~ participants to be served.

~~F. Number and general qualifications of staff persons who will provide service.~~

88-920. Determination by the Department.

A. In making a determination as to whether or not a ~~facility setting~~ or program should be licensed, the Department shall foster the health, safety, and welfare of ~~those developmentally disabled person~~ the participants being served. The Department shall consider the health and safety provisions required by the regulations for classified settings and/or programs, and such other factors as may be appropriate to the ~~applicant~~ Candidate ~~facility setting~~ or program.

B. The Department will grant a license to such unclassified ~~facility setting~~ or program if, in the judgment of the Department, such ~~facility setting~~ or program:

(1) Provides a beneficial service to ~~its developmentally disabled clients~~ participants;

(2) Observes appropriate standards to safeguard the health and safety of ~~clients~~ participants, staff, and public;

(3) Documents that buildings involved have been approved for such use by ~~a state or local fire marshal~~ the Office of State Fire Marshall;

(4) Does not exploit the ~~developmentally disabled~~ participants, their families, or the public.

CHAPTER 88

Department of Disabilities and Special Needs

(Statutory Authority: Article 3 of Chapter 20 of Title 44 of the 1976 Code and Act 1057 of 1976)

ARTICLE 1

License Requirement for Facilities and Programs

88-105. Scope.

A. No program shall be operated in part or in full for the care, maintenance, education, training or treatment of more than two persons with intellectual disability unless a license is first obtained from the South Carolina Department of Mental Retardation. "In part" shall mean a program operating for at least ten (10) hours a week.

B. Specifically excluded from this requirement is any program which is:

(1) Operated by an agency of "the state";

(2) An integral part of a public or private school or center which is licensed, certified, or accredited by the South Carolina Department of Education or is sponsored by a school district;

(3) Licensed as a community residential care facility, skilled care facility, intermediate care facility or hospital.

(4) A day care center licensed by the Department of Social Service.

C. Programs which qualify for exclusion under this section may, upon voluntary application made by the operator of the program, be licensed, provided, however, that the programs meet all the other provisions for licensing as herein required.

D. No facility or program shall accept participants for care, maintenance, education, training or treatment other than that for which it is licensed.

E. All licensees will meet the statutory standards prohibiting abuse, neglect or exploitation of adult or child participants and are expected to comply with state law concerning the reporting of known or suspected cases to the appropriate state authority and to DMR if the victim is a DMR client.

Code Commissioner's Note

Pursuant to 2011 Act No. 47, Section 14(B), the Code Commissioner substituted "intellectual disability" for "mental retardation" and "person with intellectual disability" or "persons with intellectual disability" for "mentally retarded." At the Code Commissioner's discretion, the substitution was not made for the formal reference to the South Carolina Department of Mental Retardation in this regulation.

88-110. Licenses Issued.

A. A license is issued to programs which are in compliance with these regulations.

B. A license may be issued for new programs or those found to be out of compliance upon receipt of an acceptable plan of correction for eliminating deficiencies identified in the official licensing survey. The plan must show that the deficiency will be corrected within a thirty (30) day period. An extension may be granted for another 30 days when requested in writing and good cause shown.

C. The licensor may visit any licensee at any time during normal working hours of the program.

D. The license will specify the name of the licensee, the maximum number of participants to be present at the facility at one time and the type of program it is determined to be. The program type is designated as follows:

- (1) Recreation Camp;
 - (a) Residential;
 - (b) Day.
- (2) Child Development Center;
- (3) Adult Activity Center;
- (4) Work Activity Center;
- (5) Sheltered Workshop;
- (6) Other.

E. A program may request an opinion or an interpretation of the application of any regulation by making a written request to the regional office. If further interpretation is needed the request can be sent to the Standards Division of SCDMR by the regional office along with the region's response or recommendation.

88-115. Effective Date and Term of License.

A license will be effective for up to a twelve (12) month period, beginning with the date of issuance.

88-120. Applications for License.

A. Applications for license shall be made to the appropriate regional office of the South Carolina Department of Mental Retardation, Community Program Division:

- (1) Coastal Region
Suite 907—Summerall Center
19 Hagood Street
Charleston, South Carolina 29403

(2) Midlands Center

8301 Farrow Road.

Columbia, South Carolina 29203

(3) Pee Dee Center

Post Office Box 3209

Florence, South Carolina 29502

(4) Whitten Center

Post Office Drawer 239

Clinton, South Carolina 29325

B. Applicants will be provided the appropriate forms for licensing upon request from one of the above locations.

C. Applicants who plan to construct a new facility or currently licensed operators who plan extensive renovations shall submit complete plans for construction or changes for prior approval to the Office of the State Fire Marshal.

D. If a facility involving food service or camping is constructed or extensively remodeled, properly prepared plans and specifications shall be submitted to the local health authority for review and approval prior to any construction. Upon completion of construction, an application for a S. C. Department of Health and Environmental Control permit for the operation of each facility shall be submitted to the local health authority. A permit must be issued prior to any operation.

E. Where a swimming pool is to be constructed, properly prepared plans and specifications shall be submitted to the Division of Shellfish and Recreational Waters, S. C. Department of Health and Environmental Control. Permits must be issued in accordance with Regulations 61-50 and 61-51 prior to use of swimming pools and natural bathing areas.

Code Commissioner's Note

Pursuant to 2011 Act No. 47, Section 14(B), the Code Commissioner substituted "intellectual disability" for "mental retardation" and "person with intellectual disability" or "persons with intellectual disability" for "mentally retarded." At the Code Commissioner's discretion, the substitution was not made for the formal reference to the South Carolina Department of Mental Retardation in this regulation.

88-125. Denial, Suspension, or Revocation of License.

A. The Department may deny, suspend, or revoke a license on any of the following grounds:

(1) Failure to establish or maintain proper standards of care and service as prescribed in these regulations;

(2) Conduct or practices detrimental to the health or safety of residents, clients, or employees of any such facilities or programs;

(3) Any violations of applicable laws and regulations.

B. Denial of a License—In the case of denial of an application for license, the Department shall inform the applicant by registered mail within thirty (30) days of the formal licensing survey of the justification for refusal to issue a license. This denial notification shall contain an explanation for the denial and shall advise the applicant of his rights to hearings and appeals.

C. Suspension or Revocation of License

(1) If an existing program has conditions or practices which, in the Department's judgment, provide a threat to the safety and/or welfare of the persons served, the Department may immediately suspend or revoke the license of the program. Upon receipt of notification from the Department the licensee will cease operation immediately. The licensee will be notified by mail of the suspension or revocation. The notification shall contain the reason(s) for the revocation or the conditions of suspension. Any agency or person operating a program which has had its license suspended or revoked shall be liable to the penalties provided by law. The licensee shall at the time of notification, be advised of the right to a fair hearing and the appeal process.

(2) The Department may, suspend or revoke a license. The Department shall notify the licensee by registered mail, stating the reasons for the suspension or revocation of the license, and shall advise the licensee of his rights to hearings and appeals.

(3) For any suspension or revocation of a license except as noted by R. 88-125C (1), the license shall be considered terminated at 12 midnight on the fifteenth calendar day following the mailing of the written notification, unless the licensee shall give written request of his desire for an appeal hearing. If such a request is received by the Department within ten calendar days from the date notification was sent to the licensee, the licensee may continue operation until a final decision is reached. If, at the hearing, the decision is made to suspend or revoke a license the program will have fifteen calendar days to cease operation.

88-130. Waivers.

A. The Commissioner may waive compliance with one or more of the requirements of these regulations if, in his judgment, the waiver would not endanger the safety of the participants, staff, or the public, and would not reduce significantly the quality or quantity of the services to be provided.

B. To request a waiver, the applicant or licensee must make a written application to the Commissioner which includes the justification for the request for a waiver and must first be reviewed by the appropriate regional superintendent.

C. The request for a waiver will also contain a plan for compliance with the regulation which will include a date when the regulation will be met.

D. A waiver will not be issued for longer than one year.

88-135. Validity of License.

A. A license cannot be sold, assigned or transferred, nor shall it be valid for any premises other than those for which it was issued.

B. No program shall have present more participants than approved and so stated on the face of the license.

88-140. Separate Licenses.

A. A separate license is required for programs operated on separate premises even though they are operated by the same licensee or agency.

B. When two or more defined programs are operated on the same premises or building, a separate license is required and must be obtained for each program.

ARTICLE 2

Definitions

88-210. Definitions.

For the purpose of these regulations the following definitions apply:

A. Agency—An organization either public or private which is operated by a board of directors or other governing body and which offers programs to persons with intellectual disability.

B. Applicant—Any agency who has applied for a license from the Department.

C. Client—A person with intellectual disability who has been deemed eligible for services by the Department and who is participating in a program in the State or is on the waiting list for services from the Department.

The Department is required to provide community and residential service programs similar to those provided to persons with intellectual disability to substantially handicapped epileptic, cerebral palsied, autistic, and other developmentally disabled individuals whose treatment and training needs approximate those of the persons with intellectual disability. Eligibility for services shall be determined by the Department. It is intended that the Department not duplicate other State agency programs or develop service modalities which normally would be considered to be the legal and programmatic mandate of another State agency.

D. Commissioner—The chief administrator of the Department of Mental Retardation or his designee.

E. Department—The South Carolina Department of Mental Retardation. (SCDMR)

F. Developmental Period—The period of time between conception and the twenty-second birthday.

G. Governing Board—The individuals or group that have legal responsibility for the agency or organization which operates the day program.

H. License—A document issued by the Department to an agency operating a program indicating that the licensee is in compliance with the provisions set forth in these regulations and other standards as specified in these regulations.

I. Licensee—The agency who holds the primary responsibility for providing services and compliance with these regulations.

J. Licensor—The Department of Mental Retardation.

K. Mental Retardation—Refers to significantly sub-average general intellectual functioning resulting in or associated with concurrent impairments in adaptive behavior and manifested during the developmental period.

L. Participant—Any person with intellectual disability who is participating in a program licensed by the Department.

M. Regional Office—The SCDMR office which performs the license survey and issues the license.

N. Permit—a written permit, issued by the health authority permitting the food service, camp, swimming pool or natural bathing area to operate under S. C. Department of Health and Environmental Control regulations.

Code Commissioner's Note

Pursuant to 2011 Act No. 47, Section 14(B), the Code Commissioner substituted “intellectual disability” for “mental retardation” and “person with intellectual disability” or “persons with intellectual disability” for “mentally retarded.” At the Code Commissioner’s discretion, the substitution was not made for the formal reference to the South Carolina Department of Mental Retardation in this regulation.

ARTICLE 4

Day Programs for Persons with Intellectual Disability

Code Commissioner's Note

Pursuant to 2011 Act No. 47, Section 14(B), the Code Commissioner substituted “intellectual disability” for “mental retardation” and “person with intellectual disability” or “persons with intellectual disability” for “mentally retarded”.

88-405. Definitions.

A. Adult Activity Center—A goal oriented program of developmental, prevocational services designed to develop, maintain, increase or maximize an individual’s functioning in activities of daily living, physical growth, emotional stability, socialization, communication and vocational skills

B. Child Development Center—A center-based day program for preschool age and school age children. The main purpose is to provide services which will encourage optimal growth and development.

C. Critical Incident—An event, involving clients, which has a harmful effect or otherwise special effect such as accidents, injuries, abuse, damage to property, theft, gross misbehavior, etc.

D. Direct Care Staff—Those employees whose job descriptions indicate the duty of directly working with participants. That amount of time the job description indicates is directly devoted to client contact will

be counted in the staff/participant ratio. Dietary, transportation, janitorial staff and other support staff who do not work directly with clients are not considered direct care staff unless their job description shows that time is spent with clients.

E. First Aid Kit—A collection of supplies which includes: mild hand soap; cotton tipped applicators; gauze bandages, one and two inch widths; sterile gauze, three inch by three inch; band-aids; adhesive tape; scissors; disinfectant; and thermometer

F. Program Site—Any location where at least three participants are working or playing in an area that is physically separate from the main program, such as separate workshops, work crews, isolated class rooms, and field trips

G. Program Director—The staff person who determines the programmatic methods and client training procedures for an agency

H. Program Space—Area which participants use for programs, training or work. Areas excluded in space calculations are offices, storage, bathrooms, kitchen, isolation area and hallways. If any program routinely and regularly uses an excluded area for scheduled client use this area can be included in the space calculations. The program will show a written justification for such consideration.

I. “Regular Work Program” is a type of certificate issued by the Department of Labor which allows a workshop to pay handicapped clients at 50% of minimum wage.

J. Sheltered Workshop—A work program whose purpose is to assist participants to achieve their potential through the use of individual work goals, remunerative employment, supportive services and a controlled environment. The workshop will maintain a certificate with the United States Department of Labor which designates it as a “regular work program”.

K. Work Activity Center—A workshop having an identifiable program designed to provide therapeutic activities for workers with intellectual disability whose physical or mental impairment is so severe as to interfere with normal productive capacity. Work or production is not the main purpose of the program, however, the development of work skills is its main purpose. The program will have a certificate from the United States Department of Labor designating it as a Work Activity Program when applicable.

Code Commissioner’s Note

Pursuant to 2011 Act No. 47, Section 14(B), the Code Commissioner substituted “intellectual disability” for “mental retardation” and “person with intellectual disability” or “persons with intellectual disability” for “mentally retarded.” At the Code Commissioner’s discretion, the substitution was not made for the formal reference to the South Carolina Department of Mental Retardation in this regulation.

88-410. Personnel.

A. Qualifications of Staff

(1) Program Director—The director will meet the following minimal qualifications:

(a) Be at least twenty-one years old.

(b) Have a four-year, baccalaureate degree from an accredited college or university in the human services or related field and two year's experience in administration or supervision in the human services field or

(c) Have a master's degree from an accredited college or university in the human services or related field and one year's experience in administration or supervision in the human services

(d) Have references from past employment.

(2) Direct Care Staff—The direct care staff will meet the following qualifications:

(a) Be at least eighteen years old.

(b) Have a valid high school diploma or its certified equivalent.

(c) Have references from past employment if the person has a work history.

(3) All Staff—All Staff will meet the following qualifications:

(a) Have signed a statement that they have never been charged or convicted of a crime involving abuse, neglect or exploitation.

(b) Must be shown to be a non-reactor to the tuberculin skin test at the time of employment as evidenced by a tuberculin skin test dated within one month from the first day of employment. If the potential employee is found to be a reactor to the skin test he will not be able to work until he has written certification by a licensed physician that he is non-contagious and must show evidence of the non-contagious status annually.

(4) Support Staff—Staff shall have adequate qualifications to perform the fiscal, clerical, food service, housekeeping and maintenance functions.

B. Participant/Staff Ratios

(1) There will be at least the following minimum participant/staff ratio for each program:

(a) Child Development Center - 5:1;

(b) Adult Activity Center - 7:1;

(c) Work Activity Center - 7:1;

(d) Sheltered Workshop - 10:1.

(2) Upon consideration of the ages, the severity of handicapping conditions, and the services needed by the participants, the Department may approve a different participant/ staff ratio.

C. There will be a staff development/in-service education program operable in each agency which requires all staff to participate in new employee orientation, in-service education programs and staff development opportunities.

D. Supervision of Clients

(1) A designated responsible staff member must be present and in charge at all times a participant is present. The staff member left in charge must know how to contact the director at all times.

(2) At no time shall any participant be without supervision unless a specified activity which allows for an adult participant's independent functioning is planned and documented.

(3) A minimum participant/staff ratio of 10:1 must be maintained in each classroom, workshop, program area, etc. at all times.

(4) Each program shall have provisions for alternate coverage for staff members who are ill. Such policies shall require staff members with acute communicable disease, including respiratory infection, gastro-intestinal infection, and skin rash, to absent themselves during the acute phase of illness.

88-415. Facility.

A. Size-Each facility shall provide a minimum of fifty (50) square feet of program space per participant.

B. Sanitation-The facility shall meet the requirements of the appropriate sanitation regulations of the South Carolina Department of Health and Environmental Control (DHEC) which are current on the date of inspection. A current certificate of inspection shall be maintained in the facility's records.

C. Fire Safety

(1) The facility will meet the regulations of the appropriate standards for fire safety as set forth by the South Carolina Fire Marshal codes. Report of an approved fire safety inspection completed by a local Fire Marshal or the State Fire Marshal's shall be maintained in the facility's records.

(2) The agency shall formulate and post in each room and work area, in a place clearly visible, a diagrammatic plan for evacuation of the building in case of disaster. All employees shall be instructed and kept informed regarding their duties under the plan.

(3) The center shall hold fire/disaster drills at least once each quarter. Each drill conducted shall be recorded as to time, date of drill, number of those participating, and the total time required for evacuation. The record shall be signed by the person conducting the drill.

(4) Passageways shall be free of obstructions at all times.

(5) All staff shall be instructed in the proper use of fire extinguishers as documented in reports.

(6) The use of electrical extension cords is prohibited.

(7) Programs with deaf clients will develop a fire alarm system to assure the clients are alerted to the danger of fire.

D. Electrical System Inspection—A safety check on electrical systems shall be made by a licensed/certified electrician/contractor and a written report kept on file at the facility at all times. A new inspection shall be made after any expansion, renovation, or the addition of any major electrical appliances or equipment.

E. All staff shall be knowledgeable of utility cut-offs throughout the facility.

F. The heating system shall be approved annually by a licensed/certified H.V.A.C. contractor and the report maintained on file at the facility. Floor furnaces shall have adequate protective coverings or guards to insure that individuals coming into contact with them shall not be burned. If space heaters are used, they shall be vented properly and screens or other protective devices shall be provided to prevent individuals from coming into contact with the heaters.

G. Storage of Harmful Items—All cleaning equipment supplies, insecticides, etc. shall be in a locked cabinet or located in an area not accessible to unauthorized persons.

H. Safety of Equipment

(1) Furniture, equipment and training materials shall be appropriate to the ages of the individuals in the program; shall be sturdily constructed without sharp edges; shall not be covered with toxic paint; and shall present minimal hazards to individuals.

(2) Stationary outdoor equipment shall be firmly anchored.

(3) The use of tools and equipment shall be supervised by staff.

(4) In the presence of unusual hazards arising from certain work operations, appropriate safety precautions shall be taken to insure the protection of those present.

I. Equipment and Materials for Learning, Recreational Experiences—Indoor and outdoor equipment and materials shall be provided in sufficient quantity and variety to meet the developmental need of the participants. The equipment will be age appropriate for the clients who use it.

88-420. Transportation.

A. If the facility operates a transportation system, vehicles used for the transportation of participants shall ensure safety for the passengers.

(1) Vehicles shall be inspected daily, using a checklist. The driver shall sign a report which indicates that he has checked the lights, brakes, horn, wipers and tires.

(2) Maintenance of vehicles shall be recorded, updated, and signed every month.

(3) Each passenger shall have adequate seating space and shall use a seat belt or restraint system approved by the Highway Traffic Safety Administration Standards which is appropriate for his age while being transported.

(4) Each vehicle will have:

(a) first aid kit which is replenished after each use and checked monthly for completeness;

(b) fire extinguisher which is in good working order and securely fastened in a manner which is easily accessible to the driver.

(5) Vehicle operators and all staff who transport clients will be licensed drivers who are capable of handling road emergencies and hazards and will have a current defensive driving course certificate within

one month of employment which is on file in the agency. If there was no course offered within first month this must be verified and the staff must take and pass the first course offered.

88-425. Medical Care.

A. Routine Medical Care

(1) Every participant will be examined by a licensed physician within twelve 12 months prior to admission or within 30 days after admission. The results of the exam will be kept at the main program site.

(2) Any evidence of illness or injury shall be documented in the participant's record and action shall be taken to obtain necessary medical treatment of the individual and to safeguard others from contagion.

B. Medication

(1) Medication to be administered shall be stored in a locked cabinet not accessible to unauthorized persons. Prescribed medication shall be kept in the original containers bearing the pharmacy label which shows drug name, the prescription number, date filled, physician's name, directions for use, and the patient's name.

(2) Employees supervising the taking of medication will document that medication was taken by client as authorized by parents or guardian.

(3) Written authorization to administer any medication must be given by parents or guardian or community residence assuming that authority.

C. Emergency Medical Care—A written plan for emergency medical services shall be developed to meet participant's needs. This shall include the name of the physician to be notified and means of transportation for emergency medical care. If a physician's services are not immediately available and the client's condition requires immediate medical attention, the director is responsible for securing transportation to the nearest medical emergency facility. Written permission from each parent/guardian authorizing such care shall be on file in the agency.

D. First Aid

(1) A first aid kit shall be maintained at each program site.

(2) All direct care staff will be trained in American Red Cross first aid procedures (either basic or standard first aid) within the first month of employment for new employees.

88-430. Evaluations.

A. Psychological evaluations will be required according to the following schedule:

(1) Children shall be evaluated by using a restrictive test of intelligence administered by a licensed or certified psychologist once upon entry into a day program and once more between ages three and five or prior to matriculation to Headstart or public school unless entry into the program occurs after the age of two years.

(2) Adults shall be tested using a restrictive test of intelligence administered by a licensed or certified psychologist on program entry, re-entry or at age twenty-two (22) whichever occurs first, unless there is a valid psychological evaluation completed within three years of admission on record.

B. Social History-A social history which includes basic information on participant's personal history, family situation and specific problem areas will be completed on admission to the day program and updated annually thereafter. Information from the parents/guardian will be included in the history. The update shall indicate any change in the family situation or living environment that may affect participant's progress and need for continued enrollment.

C. Assessment of Skills-Each participant in both adult and child programs will be assessed using an approved assessment tool(s) within thirty (30) calendar days of enrollment and annually thereafter. The assessment of needs will contain evaluations in the following areas:

(1) Children:

(a) Sensorimotor skills;

1. Gross motor;
2. Fine motor;

(b) Communication and language;

(c) Social interaction/play;

(d) Self-help skills;

(e) Cognitive skills;

(f) Behavior needs.

(2) Adults:

(a) Self-care (e.g., hygiene, appearance, nutrition, eating habits, dressing, toileting, physical fitness, sex education etc.)

(b) Community Living Skills (e.g., budgeting, shopping, cooking, laundry, telephone usage, transportation, appropriate use of leisure etc.)

(c) Communication (e.g., speech, language, sign language, or other communication skills etc.)

(d) Socialization (e.g., appropriate behaviors for successful interaction with others, recreation and leisure)

(e) Vocational (e.g., physical capabilities, psychomotor skills, work habits, job seeking skills, knowledge of work practices, work related skills etc.)

(f) Education (e.g., academic and cognitive skills etc.)

(g) Behavioral needs-(behavioral management plans)

(h) Motor Development-(e.g. gross motor, fine motor and perceptual motor needs)

88-435. Program.

A. Plan-Each participant will have a written plan developed and approved by the program team within thirty days of admission for adults and for children and annually thereafter. The plan will be based on the professional evaluations, regional recommendations, the assessment of skills, parent/guardian and/or community residence staff conferences, staff and client recommendations and discussed in a team meeting. The date and signature of all team members will be documented on the plan.

(1) The plan will contain written, individualized, long-range and short-range goals which are time limited and measurable.

(2) The plan will contain written objectives which include a training schedule and the method of evaluation of progress.

(3) The plan will contain documented evidence of parent/guardian involvement in the meeting.

(4) Summary notations of progress made toward goals are made monthly by staff involved in the training. The notes will be signed and dated.

(5) When a goal is reached a new goal will be set.

(6) When the participant is observed to be making no progress in reaching a goal after three months of working on the same goal the methodology will be reviewed and evaluated by the team and a new goal will be set, the methodology changed or the recommendation may be made to continue the goal. If no progress has been made after one year the goal or methodology will be changed.

(7) The plan will be reviewed and updated by the program team at least annually.

(8) The plan will always have current goals and objectives.

(9) The plan will address the participant's movement toward a less restrictive program and include goals and objectives which will help him progress to a higher level program.

(10) The plan will be developed by a team which will consist of program staff, family, and any others who work with the client.

B. Services

(1) The services offered at the program will be directed toward the identified needs of the participant. He will be involved in activities which will help him progress toward goals identified in the plan. Activities should be age appropriate and allow for choices by the participant.

(2) The services for children will include the following:

(a) Gross motor development;

(b) Fine motor development;

- (c) Communication and language;
 - (d) Socialization;
 - (e) Self-help skills;
 - (f) Cognitive development;
 - (g) Behavior management;
- (3) The services for adults will include but not be limited to the following:
- (a) Activities of daily living, AAC, WAC;
 - (b) Independent living skills, AAC, WAC;
 - (c) Socialization, AAC, WAC;
 - (d) Recreation/Leisure Skills, AAC, WAC;
 - (e) Habilitation/Vocational/Work Related, AAC, WAC,SW;
 - (f) Behavior management, AAC, WAC,SW;
 - (g) Physical development, AAC, WAC;
 - (h) Communication/Language, AAC, WAC;

(4) The program may offer the services at the home of the participant, in the community, in the center, or any other appropriate site which can be arranged by the program and which is deemed appropriate by the team.

C. Hours of the Program

- (1) Each program will have a current activity schedule posted
- (2) The schedule will reflect the hours the facility is open and the hours the program offers supervised services.
- (3) The schedule must reflect the scheduled activities of the day.

88-440. Records.

A. Administrative-The following records will be maintained at least 5 years in the administrative office for the program and shall be readily available for review by the Department:

- (1) Client register for enrollment;
- (2) Daily attendance;
- (3) Current (annual) certificate of sanitation inspection from DHEC;

- (4) Current (annual) certificate of fire inspection from a fire marshal;
- (5) Current (annual) heating, ventilation and air conditioning inspection report, dated and signed by a qualified technician;
- (6) Electrical system report, signed and dated by a licensed/certified electrical/contractor with the certification number listed.
- (7) Disaster plan and a record of fire drills;
- (8) Individual personnel records on each staff member which contain:
 - (a) TB report at time of employment and annually if skin test indicates a reactor;
 - (b) Signed application form or other statement of staff member's age, educational history and employment history;
 - (c) Job description;
 - (d) Signed statement that indicates the employee has never been charged or convicted of a crime involving abuse or neglect.
 - (e) References from past employment when applicable
- (9) Written policies on:
 - (a) Access to, duplication of, and dissemination of information from client records;
 - (b) Prohibition of the use of physical, mechanical or chemical restraint unless used for safety or therapeutic purposes as prescribed by a written plan and as approved by DMR;
 - (c) The prohibition of corporal punishment;
 - (d) Conditions for use of isolation rooms;
 - (e) Retention of records;
 - (f) Use of volunteers and substitutes;
 - (g) Program evaluation;
 - (h) Administration of medication;
 - (i) Admission and discharge of participants;
 - (j) Personnel practices
 - (k) Procedures to be followed when a participant is discovered to be missing.

(l) Prohibition of abuse and neglect which also includes staff report of any/all abuse to appropriate state agencies and to the Department of Mental Retardation.

(m) Conditions and policies on the termination of clients which include:

1. A list of reasons for dismissal;
2. Methods of averting the termination;
3. Consultation and concurrence with the Department prior to termination.

B. Participant-A record shall be maintained for each participant which contains, as a minimum, the items listed below. All documents and entries shall be legible, dated, and signed by the person making the entry. If symbols are used, explanatory legends must be provided.

(1) Report of a medical examination which was performed not more than twelve (12) months prior to admission;

(2) Report of psychological evaluation(s) as required by R. 88-430A;

(3) Report of Social History which is updated annually;

(4) Current Individual Program Plan as required by R88-435 A;

(5) Monthly summary notations of progress;

(6) Record of unusual behavior incidents which are recorded at the time of occurrence;

(7) Record of illness and accidents;

(8) Authorization for emergency medical service;

(9) Record of critical incidents.

C. Confidentiality-All information in a participant's record shall be considered privileged and confidential. Staff shall not disclose or knowingly permit the disclosure of any information concerning the client or his family directly to any unauthorized person.

D. Maintenance of Records-After a participant's discharge or dismissal from a program, or his death, his records shall be retained for five years. Disposal of records must be performed in a confidential manner.

Code Commissioner's Note

Pursuant to 2011 Act No. 47, Section 14(B), the Code Commissioner substituted "intellectual disability" for "mental retardation" and "person with intellectual disability" or "persons with intellectual disability" for "mentally retarded." At the Code Commissioner's discretion, the substitution was not made for the formal reference to the South Carolina Department of Mental Retardation in this regulation.

ARTICLE 9

Unclassified Facilities and Programs

88-910. Unclassified Facilities and Programs.

An unclassified facility or program is one which:

- A. Under the provisions of Section 88-110 A must be licensed, and
- B. Is substantially different from programs and facilities classified and defined in these regulations.

88-915. Application for License of an Unclassified Program.

Application for license shall be made as required by R. 88-115. Such application shall contain specific and detailed information on the following:

- A. Name, mailing address, and location of facility or program
- B. Name and address of the Administrator
- C. Name and address of the owner or Chairman of Board of Directors
- D. Narrative description of services to be provided
- E. Number and general description of clients to be served
- F. Number and general qualifications of staff persons who will provide service.

88-920. Determination by the Department.

A. In making a determination as to whether or not a facility or program should be licensed, the Department shall foster the health, safety, and welfare of those developmentally disabled person being served. The Department shall consider the health and safety provisions required by the regulations for classified programs, and such other factors as may be appropriate to the applicant facility or program.

B. The Department will grant a license to such unclassified facility or program if, in the judgment of the Department, such facility or program

- (1) Provides a beneficial service to its developmentally disabled clients.
- (2) Observes appropriate standards to safeguard the health and safety of clients, staff, and public.
- (3) Documents that buildings involved have been approved for such use by a state or local fire marshal.
- (4) Does not exploit the developmentally disabled, their families or the public.