

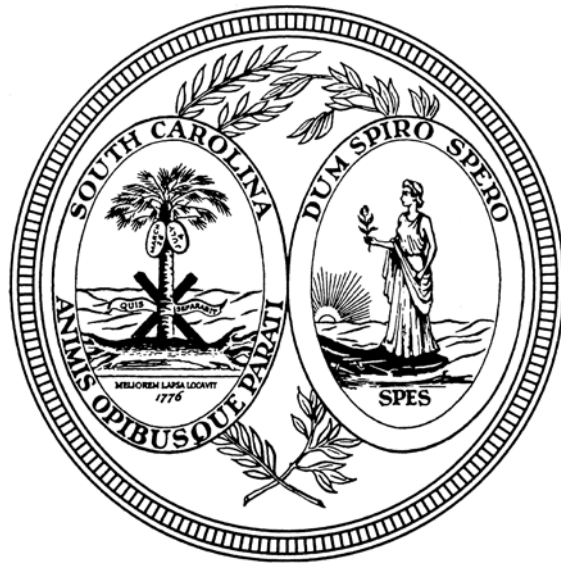


SOUTH CAROLINA GENERAL ASSEMBLY

Legislative Audit Council

June 2014

S.C. DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS' PROCESS TO PROTECT CONSUMERS FROM ABUSE, NEGLECT, AND EXPLOITATION, ADMINISTRATIVE ISSUES, AND A FOLLOW UP TO OUR 2008 AUDIT



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Introduction

Audit Objectives

Members of the General Assembly asked the Legislative Audit Council to conduct an audit of the South Carolina Department of Disabilities and Special Needs (DDSN). The requestors' concerns focused primarily on abuse, neglect, and exploitation of consumers, eligibility, procurement, and following up on the 63 recommendations from the 2008 audit. Our objectives are listed below.

- Determine how DDSN protects consumers from abuse, neglect, or exploitation.
- Examine the reporting process of abuse/neglect/exploitation to SLED, as required by state law, how SLED vets and delegates reports to other investigative entities, and how the investigative entities handle DDSN reports to final disposition.
- Determine if DDSN complies with state law regarding eligibility determinations for DDSN services and determine what role the Center for Disability Resources (CDR) plays in the eligibility process.
- Determine if procurements made by DDSN in the past three years were in compliance with the state procurement code and agency certifications.
- Determine if there is an issue with DDSN employees having criminal records, either before employment or while employed, and determine to what extent DDSN terminates employees because of abuse/neglect of consumers.
- Determine the implementation status of the 63 recommendations made in the 2008 LAC audit with specific emphasis on recommendations relating to abuse, neglect, and exploitation, such as those regarding background and reference checks, drug testing, and training of DDSN employees.
- Ascertain whether DDSN is submitting accurate and true diagnoses and recommendations to the courts for involuntary commitment hearings of adults and juveniles diagnosed with mental retardation to DDSN facilities.
- Determine the feasibility of consolidating regional centers.

Scope and Methodology

We reviewed the operations of the South Carolina Department of Disabilities and Special Needs including its quality assurance programs, procurement records, human resources files, and other areas relevant to our audit objectives. DDSN's budget for FY 13-14 was \$580,673,704, with \$186,628,087 in general funds. We did not review DDSN's funding or other aspects of the agency's management, except those specified in this report.

The period of our review was generally FY 08-09 through FY 12-13, with consideration of earlier and more recent periods when relevant. To conduct the audit, we used a variety of sources of evidence, including the following:

- DDSN directives/policies/guidelines.
- Interviews of DDSN employees, employees of other state agencies, employees of entities which interact with DDSN consumers on a regular basis, and private individuals.
- DDSN Commission meetings and minutes.
- Federal and state laws and regulations.
- DDSN contracts, financial records, human resources records, and agency reports.
- Audits, reports, and studies conducted by external entities regarding DDSN's operations.
- DDSN budget requests.
- DSN board/provider policies, human resources records, and procurement records.
- Consumer files.
- Involuntary admission files.

Criteria used to measure performance included state and federal laws, regulations, agency policies, the practices of other states, and principles of good business practices and financial management. We used several statistically-valid samples and nonstatistical samples, which are described in the audit report. We reviewed internal controls in several areas including DDSN's quality assurance process, consumer funds management, procurement, and human resources. Our findings are detailed in the report.

We interviewed staff regarding the various information systems used by DDSN. We determined how the data was maintained and what the various levels of control were. We reviewed internal controls of systems in several areas. The use of computerized data was not central to our audit objectives in that it was primarily used to identify files for review.

We conducted this performance audit in accordance with generally accepted government auditing standards from 2007. Those generally accepted government auditing standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Site Visits by LAC

Members of the General Assembly requested that the LAC determine how DDSN protects consumers from abuse, neglect, and exploitation; review agency purchasing policies and practices; and follow up on recommendations made in the 2008 audit. In order to complete the review, the audit team conducted site visits at DDSN facilities. The audit team notified each facility 1 to 12 hours prior to arrival.

DDSN serves approximately 13,000 consumers in its residential community settings, day programs, and residential institutions. We selected facilities of 11 providers, representing 1,883 consumers.

The team initially selected these 11 providers to visit, based on the following:

- Abuse, neglect, and exploitation reports and dispositions from the last two fiscal years.
- Interested party letters and calls.
- Survey interviews.
- Media coverage related to abuse/neglect/exploitation and consumer activities at day programs.
- Geography.

From the 11 providers, the team randomly selected 13 facilities to visit, while ensuring that the sample included a cross-section of facility types, such as regional centers, community training homes, and day programs.

During August, September, and November of 2013, the team visited ten of the selected facilities, representing nine different providers and 1,738 consumers. Due to time constraints and sufficiency of previously-collected data, the team chose not to visit three of the selected facilities. The team based some conclusions throughout this report on facility observations, file reviews, and staff interviews from these visits.

Chapter 1
Introduction

Protection of DDSN Consumers

Reports and Referrals of Abuse, Neglect, and Exploitation (ANE)

We were asked to investigate issues related to consumer abuse, neglect, and exploitation (ANE) including prevalence, severity, contributing factors, reporting and investigative processes, and the effectiveness of efforts made to reduce its occurrence. We found no substantive issues with DDSN’s investigative process; however, we found an inconsistency in what types of allegations the State Law Enforcement Division’s Vulnerable Adult Investigations Unit (SLED VAIU) receives and what it refers to various investigative agencies. We also found that state law does not identify day programs as a facility type, which leads to inconsistencies in where abuse, neglect, and exploitation incidents are reported at these facilities.

Additionally, we found that the referring protocol outlined for the VAIU and reporting protocol for mandated reporters differs. We also found that “how to report” posters are overly complicated.

Definitions

The Omnibus Adult Protection Act (S.C. Code §43-35-5 *et seq.*) and agency policies provide the following definitions:

PHYSICAL ABUSE — Intentionally inflicting or allowing to be inflicted physical injury on a vulnerable adult by an act or failure to act.

PSYCHOLOGICAL ABUSE — Deliberately subjecting a vulnerable adult to threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, or other forms of serious emotional distress.

NEGLECT — Failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including food, clothing, medicine, shelter, supervision, and medical services.

EXPLOITATION — Improper, unlawful, or unauthorized use of funds, assets, property, guardianship, conservatorship, or power of attorney of a vulnerable adult for profit or advantage.

VULNERABLE ADULT — Any person age 18 or above with a physical or mental condition that substantially limits his/her ability to provide for his/her own care or protection. A resident of a facility or a person age 18 and above receiving services from DDSN or its contract providers.

CRITICAL INCIDENT — An unusual, unfavorable occurrence that is not consistent with routine operations, having harmful effects on consumers, staff, or property that occurs in a DDSN-funded facility or during the commission of funded services. Abuse, neglect, and exploitation are not considered critical incidents.

Number of Cases

SLED's Vulnerable Adults Investigations Unit (VAIU) provided abuse, neglect, and exploitation reports on DDSN facilities for calendar years 2007 – 2013. Table 2.1 lists the number of reported cases by DDSN facility type. CTH-II (community training home) facilities and ICF/MR (intermediate care) facilities consistently had the most reported cases.

Table 2.1: Number of Reported Abuse, Neglect, and Exploitation (ANE) Cases by DDSN Facility Type

FACILITY TYPE	2007		2008		2009		2010		2011		2012		2013	
	CASES	DEATHS	CASES	DEATHS	CASES	DEATHS	CASES	DEATHS	CASES	DEATHS	CASES	DEATHS	CASES	DEATHS
CTH-II	258	28	252	23	229	35	213	38	200	19	194	26	225	26
ICF/MR	117	32	112	26	121	37	87	34	115	27	123	16	139	32
Community Residential Care	25	2	19	6	11	4	25	7	20	4	15	1	21	5
CTH-I	7	3	3	2	5	2	6	1	8	1	7	0	13	3
Day Services	30	0	39	0	29	1	43	1	30	0	30	0	29	0
Hospital	0	0	0	2	0	0	0	6	0	4	1	8	1	7
Nursing Care Facilities	0	0	3	1	0	3	0	6	0	0	1	1	1	1
Psychiatric Hospital	0	0	1	0	0	0	0	0	1	0	0	0	0	0
Public Place	0	0	0	0	0	0	6	0	1	0	2	0	1	0
Regional Residential Facility	31	6	28	2	20	3	9	3	7	2	7	0	1	0
Residential Program	4	0	2	0	2	0	3	0	0	0	3	0	3	0
Supervised Living Program-I	7	0	8	1	7	2	6	3	10	0	13	5	4	1
Supervised Living Program-II	24	2	13	1	10	1	10	1	13	1	19	3	12	2
Unknown	0	0	0	0	7	0	6	0	6	0	4	0	1	0
Work Activity	2	1	0	0	1	0	1	0	1	0	0	0	1	0
Total	505	74	480	64	442	88	415	100	412	58	419	60	452	77
ANNUAL TOTAL	579		544		530		515		470		479		529	

There were no cases of ANE or deaths reported in private facilities and residences for the years reviewed.

Source: SLED Vulnerable Adults Investigations Unit (figures based on calendar years).

We also obtained data on the number of cases provided by DDSN. DDSN reports abuse, neglect, and exploitation to its commissioners twice a year.

In 2012, DDSN reported there were 413 alleged abuse cases statewide in community residential programs. This excludes cases occurring in regional centers, at consumers' homes, in the community, and other places. There were 233 in 2013. There were 71 alleged abuse cases reported in day service programs in 2012 and 41 in 2013. From 2008 through 2013, CTH-II and ICF facilities had the highest number of deaths reported; 25 and 11 in 2012 and 17 and 5 in 2013, respectively.

According to DDSN data, DDSN had a rate of less than .06% of substantiated abuse allegations within the audit review period of FY 08-09 through FY 12-13. SLED and DDSN data do not match because all alleged ANE that occurs within the DDSN system is not required to be reported directly to SLED. Allegations are reported to other investigative agencies, such as the Department of Social Services (DSS) and the Long Term Care Ombudsman (LTCO).

Omnibus Adult Protection Act

The Omnibus Adult Protection Act (OAPA) was established in 1993 to provide a system of adult protection in South Carolina. In part, the legislation was intended to clarify the roles and responsibilities of agencies involved in the system, including SLED's VAIU, the Long Term Care Ombudsman (LTCO), Adult Protective Services of the Department of Social Services (DSS APS), and the Medicaid Fraud Control Unit of the Attorney General's Office. The investigative responsibilities of the Medicaid Fraud Control Unit are not, however, included in OAPA. The law also outlines the reporting procedures for mandated reporters, those with a duty to report allegations of vulnerable adult abuse, neglect, and exploitation because of their professions.

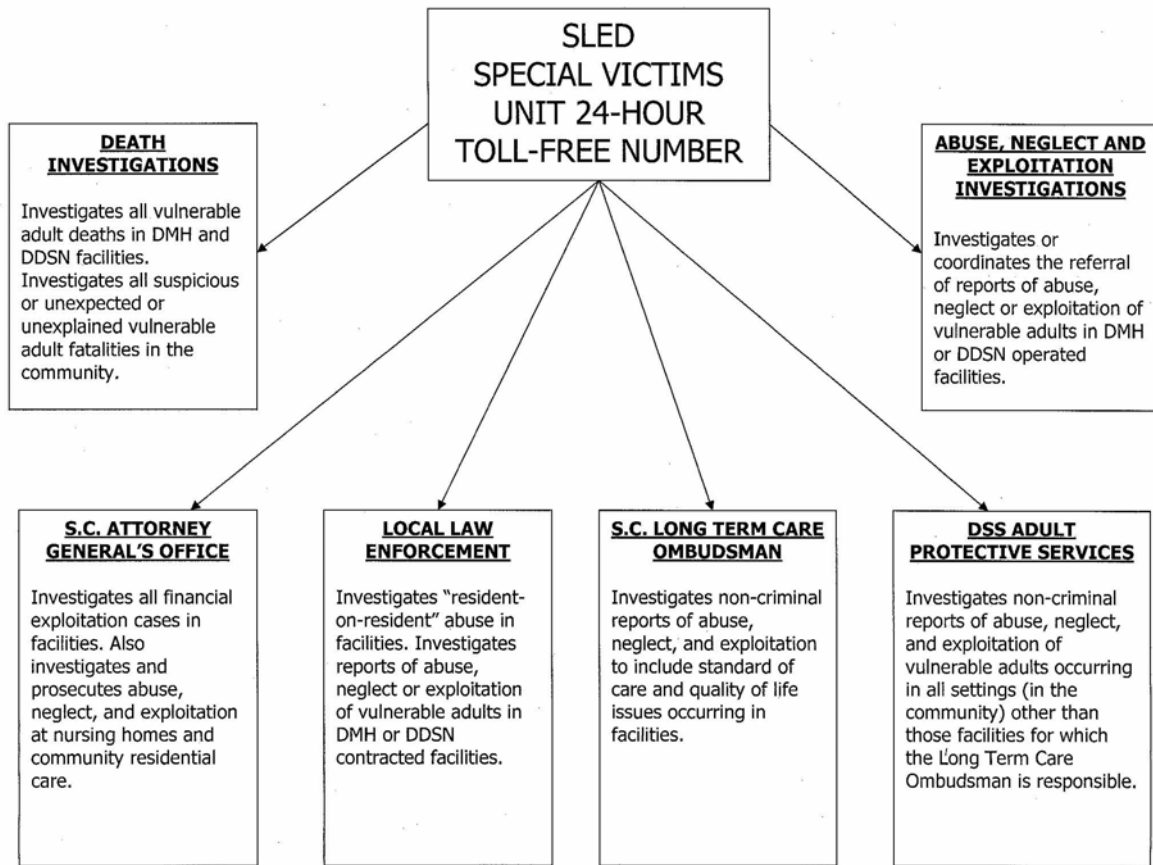
S.C. Code of Laws §43-35-25 requires the reporting of suspected abuse, neglect, or exploitation of a vulnerable adult. S.C. Code of Laws §43-35-15 authorizes the Vulnerable Adults Investigations Unit of SLED to receive and coordinate the referral of all such reports in facilities operated by the Department of Mental Health and the Department of Disabilities and Special Needs. However, there is no single investigative agency that has an overall count of the number of DDSN-related abuse, neglect, and exploitation incidents. Section 43-35-10(4) of the S.C. Code of Laws defines a facility as a nursing care facility, community residential care facility, a psychiatric hospital, or any residential program operated or contracted for operation by DDSN, and omits listing day programs as a facility type.

Amendments to state law implemented in 2006 required SLED's unit to establish a toll-free number to receive reports 24 hours a day, 7 days a week. This line was established in 2007. The unit either investigates or refers reports, in which there is a reasonable suspicion of criminal conduct, to the appropriate law enforcement agency. At the conclusion of a criminal investigation, the unit or investigative agency must refer the case to the appropriate prosecutor when further action is necessary. If there is no reasonable suspicion of criminal conduct, the case is forwarded to the appropriate investigative agencies, including the Long Term Care Ombudsman, Adult Protective Services within the Department of Social Services, or the Medicaid Fraud Control Unit.

All deaths involving a vulnerable adult in a facility operated or contracted for services by DDSN or its contracted service providers must be referred to SLED's VAIU.

Chart 2.2 illustrates how SLED determines where to refer each report for investigation. Table 2.3 shows where cases called into SLED's toll-free telephone line were referred. The location of the alleged incident, age of the victim, and suspected perpetrator determine to which investigative agency abuse is reported.

Chart 2.2: SLED VAIU Case Referrals



Source: SLED

Table 2.3: Number of Referrals by SLED

	2007	2008	2009	2010	2011	2012	2013
Attorney General	19	9	5	1	2	2	1
DSS APS	26	20	24	49	19	29	21
Local Law Enforcement	231	187	104	97	106	83	101
Not Referred	18	56	62	42	54	65	75
Other	0	1	10	15	3	0	3
SLED	157	120	116	120	81	79	98
Ombudsman	128	151	209	191	205	221	230
TOTAL	579	544	530	515	470	479	529

Source: SLED

The term “facility” is relevant in order to determine the jurisdiction of each of the investigative agencies listed above. OAPA defines the term as “a nursing care facility, community residential care facility, psychiatric hospital, or any other residential program operated or contracted for operation by DDSN.” As mentioned, this definition omits other settings vulnerable adults receive services funded by DDSN, including day programs and in-home services.

OAPA states that SLED’s VAIU shall receive and refer all allegations occurring in facilities; however, it also states that VAIU will refer allegations to the appropriate investigative agency including DSS APS, which investigates allegations occurring in other settings. If VAIU is expected to refer non-facility allegations to the appropriate investigative agency, it has to receive non-facility allegations.

Recommendations

1. The General Assembly should amend S.C. Code §43-35-15 to include the investigative responsibilities of the Medicaid Fraud Control Unit of the Attorney General’s Office.

2. The General Assembly should amend S.C. Code §43-35-15(A) to require that all allegations of vulnerable adult abuse, neglect, and exploitation are reported to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division's toll-free number for referral to the appropriate investigative agency, regardless of criminality and setting of an allegation.
3. The General Assembly should amend S.C. Code §43-35-10(4) to include day programs as a facility type.

Mandated Reporters

Section 43-35-25(D) of OAPA outlines the reporting requirements for mandated reporters, those required to report allegations of vulnerable adult abuse, neglect, and exploitation because of their professions. The law requires reporters to report to the appropriate investigative agency, dictated by the setting of the allegation, rather than report only to the VAIU hotline.

Section 43-35-25(D) of OAPA suggests the responsibilities assigned to each of the investigative agencies. However, these investigative responsibilities conflict with the stated investigative responsibilities assigned in §43-35-15(A) through §43-35-15(C). Specifically, in §43-35-25(D)(2) of OAPA, the law states that mandated reporters should report to LTCO allegations occurring in facilities, except those operated or contracted for operation by DDSN. According to the definition of "facility," LTCO would then only investigate allegations in nursing homes, community residential care facilities, and psychiatric hospitals.

However, in §43-35-15(B) of OAPA, the law assigns investigative responsibility to LTCO for allegations occurring in facilities, meaning, in addition to nursing homes, community residential care facilities, and psychiatric hospitals, LTCO would also investigate allegations in facilities operated or contracted for operation by DDSN. These requirements are inconsistent with each other.

Routing all allegations through VAIU shifts the burden of determining the appropriate investigative agency, based on setting and criminality, to the expertise of state law enforcement instead of the mandated reporter or anyone with reason to believe a vulnerable adult is suffering from abuse, neglect, or exploitation. Furthermore, orienting the focus on the vulnerable adult rather than any other variable establishes a clear reporting process for anyone.

Recommendation

4. The General Assembly should amend §43-35-25(D) of the S.C. Code of Laws by deleting the mandated reporter requirements to ensure all allegations of vulnerable adult abuse, neglect, and exploitation are reported to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division.
-

Reporting Allegations

Although a DDSN directive requires incidents of abuse be reported to investigative agencies immediately or within 24 hours, we found that there is some confusion about where allegations of ANE should be reported.

During the audit team's visits to facilities, we asked employees where allegations of ANE are reported; the answers varied among employees of the same facilities and there seemed to be confusion. One facility director said the policy is convoluted and the director refers to the policy each time an incident occurs (see *Controls to Ensure the Safety of Consumers*, p. 14). Although the policy may be confusing, it is consistent with state law. To simplify the process, all allegations of ANE should be made to SLED's VAIU.

Informing Staff, Consumers, Families, and Public of Reporting Rules

DDSN's posters on reporting abuse, neglect, and exploitation, created by SLED and the Ombudsman's Office, are neither consumer-friendly nor appropriately placed in some facilities. Nursing care and community residential care facilities, psychiatric hospitals, and any residential program operated or contracted for operation by DDSN are required to prominently display notices about how to report ANE. The posters are for the benefit of consumers, their families, and staff.

During the audit team's unannounced visits to sites throughout the state, the team took note of where posters on reporting allegations of abuse and Duty to Report notices were placed in facilities. At a number of facilities, we observed that posters were placed on boards with a number of other posters and papers and in staff offices. Consumers, their families, and some staff would not be able to see posters in their current placement in some facilities. The posters were primarily written documents in paragraph form explaining under what circumstances to report and where to report. The posters may be difficult to understand for the majority of consumers. Posters that contain fewer words, simple phrasing, and illustrations would be more consumer-friendly.

Recommendations

5. The S.C. Department of Disabilities and Special Needs should create consumer-friendly posters which are more aligned with consumer comprehension levels.
 6. The S.C. Department of Disabilities and Special Needs should ensure posters are placed where they are easy to distinguish for consumers, family, and visitors.
-

Investigating Abuse, Neglect, or Exploitation

We randomly-selected a sample of abuse, neglect, and exploitation case reports from DDSN for the period of July 1, 2011, to June 30, 2013. Based on the total number of reports, we reviewed 89 individual ANE reports to determine if DDSN and its contracted service providers adhered to its policies and procedures in addressing allegations and handling perpetrators, victims, and investigations. All alleged perpetrators in the sample that were DDSN employees and contracted service providers were placed on administrative leave without pay, as required by policy. All sample cases also had either an administrative or management review. Additional actions taken from the reviews included 4 resignations, 26 reinstatements, and 15 terminations.

Communication Between Investigative Agencies and DDSN

Section 43-35-60 of OAPA permits, but does not require, investigative agencies to share case information, unless prohibited by law. During our review, we found that several investigative agencies report case dispositions, and at times, additional case information to DDSN and/or the relevant DSN board/provider. Both VAIU and DSS APS maintain Memorandums of Agreement with DDSN, which allow the agencies to share case dispositions with DDSN or the relevant board/provider. It is the policy of the LTCO to share case dispositions with a DDSN point of contact. The Medicaid Fraud Control Unit also provides dispositions when requested.

DDSN also pursues case dispositions for all allegations of vulnerable adult abuse, neglect, and exploitation filed in the agency's internal reporting system. At the onset of an allegation, DDSN requires its regional centers and boards/providers to file a report into this system, providing allegation details including which investigative agency the facility referred the case. According to a DDSN official, DDSN monitors pending cases in this system and pursues outcomes through contact with the investigative agencies. However, according to DDSN officials, obtaining case dispositions from some state agencies has, at times, been difficult.

Recommendation

7. The General Assembly should amend S.C. Code §43-35-60 to require vulnerable adult investigative agencies to share specific case dispositions with the relevant facility.
-

Controls to Ensure the Safety of Consumers

DDSN has controls in place to minimize the risk of consumer safety issues and improve overall quality; however, the agency's implementation of these controls may not be sufficient. DDSN's controls include regular staff training, an internal audit department, risk management teams, quality assurance reviews, licensing process, and abuse and critical incidents reporting methods. We found that:

- Not all DDSN staff are trained annually on reporting incidents of abuse.
 - DDSN moved some indicators from licensing to quality assurance that should have remained as part of the initial licensing process.
 - A facility operating for over one year in violation of state law was not deemed serious.
 - There were no follow ups for deficiencies for our sample of the S.C. Department of Health and Environmental Control's (DHEC's) licensing reviews.
 - Providers do not report all critical incidents to the incident management system.
 - Provider risk management teams do not all focus on consumer safety.
-

Staff ANE Training

All DDSN staff are not trained annually on how to report incidents of abuse. Directive 534-02-DD requires that training be provided as a part of new employee orientation and at least annually thereafter. However, we found that the type of training is left to the discretion of each board/provider. We reviewed documentation of each sampled staff person's abuse, neglect, and exploitation training during our visits to facilities. Since our visits began in mid- to late-August 2013, any training prior to August 2012 was considered not up-to-date. We defined annual as within 12 months of the previous training. The sample consisted of 158 employees from 10 facilities.

Overall, 88 (56%) of the 158 employee training files either had no documentation of ANE training or the training was outdated. The largest sample from a single facility was 77 employees; of them, all were either outdated or not documented. In that sample, there were five employees whose most recent training documents were dated 1992. In addition, two employees in the sample had two or more counseling or written warnings during their tenure involving a lack of consumer accountability, not reporting abuse allegations, and other consumer-related risk citations. Of the other 81 sampled individuals, 11 (14%) were either not in the file or outdated. If “annual” is defined as within each calendar year, seven of these would not have been outdated.

During our facility visits, we interviewed various staff on reporting allegations and found that reporting protocols not only vary between boards/providers, but also varies between different employees of the same facility. The following are various responses from our sample to the question regarding the appropriate reporting protocol for allegations of abuse, neglect, and exploitation:

- Report directly to the SLED toll-free number.
- Report to SLED when the consumer is 18 years of age or older and report to DSS when the consumer is under 18 years of age.
- Report to local law enforcement.
- Report to supervisor who will then call the SLED toll-free number.
- Report to a supervisor to handle internally.
- Allow capable consumers to report allegations themselves.

Both the law and the directive state that the reporter is any person, employee, or volunteer, with actual or suspected knowledge of an allegation, not a supervisor with a second-person account of the events. Based on these responses, not only is how to report allegations of abuse, neglect, and exploitation of vulnerable adults unclear, but also who should report.

Recommendations

8. The S.C. Department of Disabilities and Special Needs should develop uniform abuse, neglect and exploitation training, to be completed annually, for regional centers and boards/providers outlining who should report, where the report should be made, and what should be reported.
 9. The S.C. Department of Disabilities and Special Needs should define the time frame for “annual” as a 12-month period for abuse, neglect, and exploitation training of staff.
-

Quality Assurance

The quality assurance program collects and reports information on how well DDSN’s service providers perform on various quality indicators, such as the health and safety of a person, his participation in the community, and his attainment of goals. DDSN contracts with a Quality Improvement Organization (QIO) to conduct quality assurance reviews.

The QIO conducts reviews on a 12- to 18-month cycle. The review process includes the following:

- Review consumer and staff records.
- Observe providers to ensure services are implemented as planned and based on the consumer’s need, that the consumer/family still wants and needs the services, and that the providers comply with contract and/or funding requirements and best practices.
- Review provider administrative practices to ensure compliance with DDSN’s standards, contracts, policies, and procedures.

A sample of quality assurance reviews of boards/providers between September 2009 and August 2013 included the following findings:

- An executive director did not receive required annual training on abuse.
- Providers did not have documentation showing consumers were trained on abuse.
- Providers did not report or document critical incidents.
- Management did not document that they conducted quarterly unannounced visits.
- There were no human rights committees and risk management teams.
- Providers did not inform service coordinators of critical incidents and abuse reports.

All reviews sampled had or will require follow-up reviews either onsite or by reviewing documentation as a desk review. Only desk reviews were done for our sample of the previous QIO's reviews.

Licensing

DDSN's reduction of its licensing inspection process could negatively affect the safety and well-being of its consumers. We found that DDSN transferred some licensing standards dealing with staff qualifications to the quality assurance process that should have remained as part of the initial licensing process.

The purpose of DDSN's licensing process is to ensure that facility environments promote consumers' health and safety by inspecting the building. In our 2008 audit, we recommended that "the General Assembly should amend state law to delegate DDSN's licensing function to another state agency, such as DHEC." DDSN entered into a contract with DHEC to license DDSN community homes in addition to ICFs. DHEC conducted all licensing reviews from August 2009 to June 2012. In a sample of DHEC licensing reviews, we noted repeat findings of issues with expired medications, Medical Administration Records (MARs) improperly followed and updated, background checks not completed prior to hiring dates, and incomplete MARs. None of DHEC's reviews had follow ups on deficiencies.

In October 2012, DDSN contracted licensing reviews to a QIO that is responsible for the initial, annual/bi-annual, and follow-up licensing reviews of community (residential services, respite, and all facility-based day supports) programs. State law grants DHEC authority to license Community Residential Care Facilities (CRCF) for adults and Intermediate Care Facilities for Persons with an Intellectual or Related Disability (ICF/ID). The QIO inspects facilities with children annually, and all others bi-annually. A sample of licensing reviews from July 2009 to July 2013 conducted by DHEC and then by the QIO included the following repeated findings:

- Incomplete MARs.
- Facilities in disrepair.
- Expired medications in first-aid kits.

All reviews had plans of correction and follow-up reviews; all but one was a desk review.

Deficiency Classification

DDSN provides little guidance to inspectors on the classification of deficiencies. QIO staff recently requested a “guide to use as a standard for identifying class citations for each indicator” from DDSN. Per an email dated May 9, 2014, DDSN recently created a chart that assigns a deficiency class number to residential licensing standards. Implementation of this chart should help address the issues we found.

Two different inspectors can come to two different conclusions on the seriousness and priority given to the same indicator. Conversely, DHEC’s regulations for licensing do not allow inspectors the same latitude. DHEC’s regulations include deficiency classifications beside each standard, providing concrete guidance of which standard the agency determines most affects consumer safety. During an April 2013 licensing review, inspectors discovered that a facility had been operating on an expired license since March 2012. The expired license was classified by QIO inspectors as a class III deficiency. However, much of the decision on the deficiency class, and, as a result, the immediacy of the provider’s response is left to DDSN’s contract QIO. A class III deficiency is considered the least dangerous to consumer safety, not requiring immediate or prompt correction. State law requires licensing of certain programs and facilities. Facilities should not operate on an expired license, because it could place consumers’ health, safety, environment, and welfare at risk. In addition, the potential impact of a facility operating on an expired license should be considered more serious than a class III deficiency.

The newly-created chart assigns a class II deficiency to a facility not having an initial or annual license. A class II deficiency is considered a failure of organizational standards which could put a consumer’s physical, emotional, and financial well-being in jeopardy, and requires corrections within 60 days of receiving the written licensing report.

Placement of Indicators

DDSN moved some indicators from licensing to quality assurance that should have remained a part of the initial licensing process. Indicators and standards help assess the safety features of facilities and services, such as fire marshal inspections, health, sanitation, and staff qualifications, used primarily for licensing and quality assurance reviews. During the course of DHEC’s contract, DDSN removed 14 CTH and SLP licensing standards and converted them to quality assurance indicators, including provider criminal background checks, age, and education requirements.

Initial licensing takes place prior to a facility serving consumers and prior to hiring staff, according to DDSN officials, whereas quality assurance reviews occur after consumers have been placed and served. It is imperative that boards/providers ensure employees are free of criminal convictions, are at least 18 years or older, and have a high school diploma or equivalent, elements that may deem them unemployable.

DDSN's current process does not account for this. Currently, newly-qualified providers are reviewed approximately three to six months after accepting their first consumer. DDSN's licensing QIO or DDSN, itself, could check this indicator by requesting employee documentation prior to a new provider serving any consumers. Ensuring employees meet the minimum qualifications should be completed prior to them working with consumers.

Recommendations

10. The S.C. Department of Disabilities and Special Needs should assign a specific deficiency class to each licensing indicator considering the associated risk to consumers.
11. The S.C. Department of Disabilities and Special Needs should include indicators regarding criminal background checks, educational attainment, and age requirements of staff in licensing standards to ensure they are adhered to during initial licensing, and checked annually during quality assurance reviews.

Unreported Critical Incidents

Boards/providers do not report all critical incidents to DDSN's critical incident management system. DDSN directive 100-09-DD requires that critical incidents, occurring at DDSN facilities or while a consumer is under the supervision of staff, be reported to the division of quality management director via the agency's incident management system. LAC staff requested critical incident reports and facility logs at some facilities, and compared them to DDSN's incident management system reports to determine if critical incidents are reported appropriately. At one of the facilities reviewed, we found that three incidents occurred within a three-week period which should have been considered critical incidents, but were not listed on DDSN's report of critical incidents. These incidents included a consumer falling, hitting his head, and needing five staples to close a gash; and a pregnant employee being hit in the stomach causing pain and requiring her to be referred to urgent care.

Though the incidents were reported internally to the provider, they were not reported to DDSN's incident management system. If DDSN's quality assurance staff are not made aware of all critical incidents, appropriate corrective and preventative actions may not be taken.

Recommendation

12. The S.C. Department of Disabilities and Special Needs' quality management division should compare facility incident logs/reports to its incident management system to ensure all critical incidents are reported as required by directive 100-09-DD.

Risk Management Teams

Each organizational unit of DDSN should have a risk management program that focuses on preventing and reporting abuse, neglect, and exploitation, critical incidents, medication errors, and deaths. We found that not all provider risk management teams focus on consumer safety issues, as required by directive 100-26-DD, and the agency's risk management structure.

Traditionally, risk management had been associated with the health and safety of employees and the safe use of equipment and buildings, and focused on workers' compensation claims, insurance coverage, and safety training. Within the context of the long-term disability field, the definition of risk management has evolved to focus on the consumer of services. DDSN allows facility safety committees to serve as risk management committees as long as risk management functions are being fulfilled.

We reviewed risk management agendas and meeting minutes from the DDSN central office and various facilities throughout the system. We observed that one facility's health/safety committee focused primarily on workers' compensation and employee safety. Conversely, another DSN board's risk management committee tracked consumer incidents monthly, took a vote on whether consumers should remain under 'monitorship' by the committee, and tracked staff injuries, vehicle accidents, critical incidents, cases of abuse, neglect, and exploitation, and deaths. A risk management or safety team that does not focus on consumer risks such as medication errors, critical incidents, and abuse, neglect, and exploitation is unable to appropriately track and trend data necessary for the central office to properly address concerns and direct technical assistance and training.

Recommendation

13. The S.C. Department of Disabilities and Special Needs should ensure all provider risk management teams focus on consumer safety issues such as abuse, neglect, and exploitation, critical incidents, and medication errors, in addition to other safety concerns. The risk management teams should actively track, trend, and monitor consumer incidents.

Consumer on Consumer Incidents

DDSN does not require boards/providers to re-evaluate consumer supervision levels following consumer on consumer incidents. Inappropriate supervision levels could lead to neglect. We also found that DDSN directive 533-02-DD could lead providers to believe that they should make a determination that a sexual assault occurred before conducting an investigation or involving law enforcement.

Background

DDSN directive 100-09-DD defines consumer on consumer incidents as critical incidents. The directive defines a critical incident as an unusual, unfavorable occurrence that is not consistent with routine operations, having harmful effects on consumers, staff, or property that occurs in a DDSN-funded facility or during the commission of funded services. This includes, but is not limited to, acts of aggression by a consumer against another consumer resulting in serious injury, fractured bones, and sexual assaults or threatened sexual assaults of one consumer to another. Allegations of abuse, neglect, and exploitation are not considered critical incidents. Reporting requirements in state law concerning abuse of children and vulnerable adults do not apply to critical incidents.

Critical incidents occurring at DDSN regional centers, DSN board facilities, other service provider locations, or while a consumer is under the supervision of staff or a contracted employee from any provider are required to be reported to the division of quality management director via the incident management system on the DDSN portal. According to agency directive 100-09-DD, the best guidance in determining if an incident should be reported is “when in doubt, report.” The critical incident reporting system is able to screen out incidents reported as critical incidents that are later judged to be non-critical.

Board/provider agency staff conduct an internal management review of all critical incidents. The review report indicates if rules or policies were violated, what disciplinary and management actions were taken, and if the incident was a repeated occurrence with the consumer.

Preventing Consumer on Consumer Incidents

DDSN does not require boards/providers to re-evaluate consumer accountability levels as a part of the critical incident internal management review to ensure that the current level of supervision continues to be sufficient and appropriate for behavioral concerns. Accountability and supervision means requiring staff to be responsible for consumers in their care and knowing where they are at all times. DDSN requires all consumers, supported in a residential or day program, be assigned a specific degree of supervision. Consumers must be supervised and accounted for according to their supervision plans and documentation must indicate the frequency of that supervision. The accountability levels assigned to consumers determine the amount of supervision given.

We reviewed a sample of 71 consumer on consumer incidents that occurred throughout the DDSN system from July 2012 to June 2013. All of the reported incidents underwent an internal management review. We found 25 incidents of consumer aggression occurred at a single facility. Within the sample's 12-month period, two female residents of the facility were frequently involved in incidents that presented harm to other consumers, staff, or themselves. The two had also been engaged in incidents between each other.

Based on this trend of incidents at the facility, we requested reports of all incidents that occurred within the period, along with the supervision and accountability reports of these consumers. Based on consumer supervision plans and DDSN's levels of accountability document, the consumers were supervised at the level two accountability level, which allows consumers to be left alone for brief periods in the residence, but they must be accompanied by staff in the community. We requested documentation of any changes that had been made to the consumers' supervision/accountability levels from January 2012 to August 2013, and received none. In reviewing the incident reports involving these consumers, there was no mention of reviewing supervision/accountability levels. It is noted in most of the reports that "staff took appropriate actions" in handling incidents. However, "appropriate actions" may not result in sufficient supervision, such as a change in accountability levels. When providers have evidence that supervision is not sufficient (like repeated consumer on consumer assaults), then a change should be made.

Recommendation

14. S.C. Department of Disabilities and Special Needs should amend directive 100-09-DD to require DDSN boards/providers to evaluate consumer supervision/accountability levels during the internal incident review, and adjust those levels, if they have been found to be inadequate.

Reporting Sexual Assault Between Consumers

DDSN directive 533-02-DD is not clear in its guidance to boards/providers concerning reporting sexual assaults. This can lead boards/providers to believe they should make a determination that an assault occurred before initiating proper procedures. All sexual assaults between consumers should be reported and investigated according to the directive. The policy applies to sexual assault of consumers occurring in residential or day program facilities. Sexual assault is defined by the directive as any sexual interaction:

- Against the victim's will.
- Without consent.
- In an aggressive, exploitative, manipulative, or threatening manner.

When a sexual assault occurs, individuals are to be separated and cannot remain in the same living environment until the case is closed. Local law enforcement is to be notified immediately to coordinate the collection of evidence and follow sexual assault procedures. The incident is to be reported to DDSN via the incident management system, in accordance with directive 100-09-DD. The assaulted consumer must be taken to the emergency room to be examined by trained personnel, specific to sexual assault.

As currently written, the directive requires staff to determine the criminal intent of sex between consumers. The directive uses the phrase, "when a sexual assault occurs" in the *Procedures in the Event of a Sexual Assault* section. The parenthetical that follows allows for allegations to be included in the definition of "occur." However, "suspected" would be a more accurate instruction.

We reviewed a sample of DDSN day program facility logs to determine how facilities handled and reported incidents. We found one incident where a consumer came to staff "calmly" saying "something had to be done." The consumer reported an inappropriate sexual act. The consumer was able to provide a name of the consumer perpetrating the act. The other consumer involved later came to the same employee to report the incident; from this consumer's perspective, he was told by the other consumer to perform the act. The incident was determined by staff to have been consensual.

The reasoning given for this determination was because both consumers are considered high functioning and the consumer who initially reported the incident did not stop the act. Staff should not have made this determination; that is the purpose of law enforcement and investigative agency procedures. Staff should have called local law enforcement, sought medical attention, and reported the incident to DDSN's incident management system as outlined in the directive. When LAC staff determined that the incident had not been reported externally to the provider, we contacted DDSN management and we were told that an investigation was initiated from the state level.

Recommendation

15. The S.C. Department of Disabilities and Special Needs should amend directive 533-02-DD, by replacing "when a sexual assault occurs, (alleged by the consumer or observed by staff)," with "when sexual assault is suspected or alleged" in the *Procedures in the Event of a Sexual Assault* section.

Inappropriate Supervision Level As Neglect

DDSN boards/providers have not adequately used existing tools to prevent the risk of sexual assault between consumers. Inadequate use of DDSN's consumer sexual aggression assessment can lead to a conclusion that would open providers up to accusations of consumer neglect. Neglect is the "failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including food, clothing, medicine, shelter, supervision, and medical services." DDSN policy requires, as a preventive measure, each individual who is scheduled for admission into a DDSN residential or day program setting be screened by staff to determine what, if any, sexual risk the person presents to others in that service setting. The screening should include a thorough review of the individual's history of any inappropriate sexual history. If the screening indicates a risk to others, a treatment plan should include specific training objectives, the assignment of the appropriate accountability level, and environmental adaptations, such as door alarms.

During our review of the above-mentioned incident of sex between two consumers at a facility, we learned that the perpetrating consumer's assessment, dated the day before the incident, indicated the perpetrating consumer had been a victim of and previously committed sexual assaults. Also his guardian signed an agreement to provide "constant visual" supervision at all times, when in that guardian's care. A question at the end of the assessment asked if any of these items indicated a problem; no response was given.

The consumer was left unsupervised, alone in the restroom with another consumer at the day facility. Sections of the assessment provide conflicting information on the consumer's level of understanding. The assessment does not appear to provide an appropriate depiction of the consumer's risk factors and treatment needs. A more careful assessment of the consumer's risks would have led to the conclusion that, like the guardian's level of supervision, the facility's supervision needed to be more "visually constant."

Failure to provide proper supervision to prevent consumers from assaulting each other could be a form of neglect if the employee fails to provide appropriate supervision resulting in risk to the safety of the person receiving services. If providers do not appropriately use all available tools to determine a proper level of supervision, employees could inadvertently neglect a consumer and place him in jeopardy.

Recommendation

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16. The S.C. Department of Disabilities and Special Needs should require boards/providers to include a history of sexual assault and sexual crime convictions as risks on sexual assessments, and consider these issues in determining accountability levels.
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Management of Consumer Funds

In our December 2008 audit, we found that DDSN should strengthen its controls to ensure that consumers' funds are handled appropriately. We recommended that DDSN conduct mandatory training for all board/provider staff handling consumer funds and inform board/provider staff to contact internal audit staff with questions regarding consumer funds. DDSN has not conducted mandatory training to address this issue.

In July 2009, DDSN developed a web-based training video available to all staff to review. However, the only mandatory training is the pre-service training, which has been required of all caregivers upon initial hiring. Our review of DDSN's internal audits and CPA audits of boards/providers indicate that there are ongoing, recurring issues regarding the handling of consumer funds and property. Our sample of consumer files also revealed some of the same findings as those identified by DDSN's Internal Audit.

We reviewed DDSN internal audit's annual compilation reports of internal audits and CPA findings for FY 09-10, FY 10-11, FY 11-12, and FY 12-13 and found recurring problems:

- Bank reconciliations were not performed timely.
- Consumers' bank accounts exceeded the Medicaid limits required for eligibility.
- Insufficient documentation of disbursements for consumers.
- Personal property records with inadequate descriptions of items, missing serial/model numbers, and untimely additions or deletions.

These findings are significant because they show that consumers' accounts and property are not being handled properly by staff and the same issues have occurred across the state over several years. For example, in the case of the Medicaid resource limits, consumers may lose Medicaid eligibility if their savings exceed \$2,000. According to DDSN staff, boards/providers are responsible for monitoring consumers' accounts. If the balance gets close to the Medicaid resource limit, the board/provider normally encourages the consumer to make purchases to reduce the amount in the account. Over the years reviewed, the auditors found that consumers' bank accounts exceeded the Medicaid limit in at least 33 instances.

Training

According to DDSN staff, the agency's internal auditors do not check training records, as part of their standard audit plan, to determine if the initial consumer funds training has been completed. Also, DDSN has left the method of training and checking competency of staff up to the boards/providers. The board/provider develops its own training materials/methods and can use a combination of written materials, oral instruction, or on-the-job training by more experienced staff. There is no required refresher course in handling consumer funds or property.

Over the last four years, DDSN internal audit staff has held 51 training sessions on consumer funds/property, either as a result of audit findings or at the request of the board/provider, to various providers across the state with 1,392 attendees.

A standard training course and competency test for all boards/providers to use upon initial hiring of staff may address these issues consistently noted by the auditors. Requiring a refresher course annually should also help ensure that caregivers handling consumers' funds and property understand agency directives and are implementing them properly. DDSN internal audit should include a check of these training records as part of its standard audit plan.

Recommendations

17. The S.C. Department of Disabilities and Special Needs should develop and require annual mandatory training for all board/provider staff handling consumer funds/property.
18. The S.C. Department of Disabilities and Special Needs Internal Audit division should include a check of annual training on consumers' funds/property in its standard audit plan.

Effectiveness of Day Programs

We reviewed day program activities at selected facilities across the state. We found that DDSN's day program assessment does not inform consumers of the options they may have for integrated work opportunities; consequently, the agency has not fully implemented the federally-mandated Olmstead decision.

Day Programs

DDSN has 84 licensed day programs statewide. Day programs may include work activity centers, sheltered workshops, adult activity centers, and development centers. Consumers in day programs receive the following services — career preparation, employment services, community service, day activity services, and support center services. Day programs partner with local businesses, local governments, non-profits, and national organizations to provide employment opportunities for DDSN consumers. Job opportunities include product assembly, janitorial, and lawn care services.

Section 14 (c) of the Fair Labor Standards Act allows employers, once certified by the U.S. Department of Labor Wage and Hours division, to pay special minimum wages, less than the federal minimum wage, to workers with disabilities. Special minimum wages must be based on the individual productivity of the worker with a disability in proportion to the productivity of experienced workers who do not have disabilities performing the same type, quality, and quantity of work, in the vicinity where the worker with the disability is employed. All special minimum wages must be reviewed and adjusted at periodic intervals.

Of the 47 day program boards/providers contacted, 34 responded to our day program survey. One of the respondents stated consumers are not paid because they provide volunteer services. DDSN requires its contracted providers to comply with the Fair Labor Standards Act, which provides criteria for people with disabilities to volunteer.

Olmstead Decision Implementation

Despite numerous initiatives, DDSN has not fully implemented the Olmstead decision and its goals of better integrating disabled individuals into community day settings. In 1999, the United States Supreme Court decided the unjustified segregation of individuals with disabilities was unlawful and that integration included where individuals lived, worked, and received services. “To comply with the ADA’s (Americans with Disabilities Act) integration mandate, public entities must reasonably modify their policies, procedures, or practices when necessary to avoid discrimination.” Segregated settings include, but are not limited to:

- Congregate settings populated exclusively or primarily with individuals with disabilities.
- Congregate settings characterized by regimentation in daily activities, limits on individuals’ ability to engage freely in community activities, and to manage their own activities of daily living.
- Settings that provide for daytime activities primarily with other individuals with disabilities.

A public entity is in violation of the ADA’s integration mandate when it, through its planning, service system design, funding choices, or service implementation practices, promotes, or relies upon the segregation of individuals with disabilities in private facilities or programs. In deciding the appropriate integration setting, an assessment is one of the tools used to determine the consumer’s needs, services, and supports necessary for his success. While DDSN’s annual assessments (day program and service coordination) determine the level of support consumers need in areas such as self-determination, personal responsibility, socialization, and job search, and ask what kinds of work the consumer is most interested in, it does not ask if the consumer is aware of other options/settings that may be available. The supervised/supported living environment section of the service coordination assessment asks if consumers are aware of other options/settings that may be available to them. The same question should be added to the vocational section of the assessment.

In 2000, the Governor established a task force to conduct a comprehensive review of all services and support systems for persons with disabilities within the state to identify barriers that would impede opportunities for community inclusion. The task force determined that “all agencies providing long-term care services should incorporate Olmstead/community integration issues into their routine evaluation and that all persons living in institutions be assessed for their desire for community placement on an annual basis.”

One of the barriers to employment opportunities the task force identified was the over-reliance on artificial work settings, such as sheltered workshops, and not enough development of more integrated employment opportunities. Data trends by the Institute for Community Inclusion show that while South Carolina's percentage of integrated employment has consistently been higher than the national average, it has decreased since the Olmstead decision. Even considering the impact of the economic recession, integrated employment rates of approximately 30% leaves room for improvement.

A June 2013 complaint filed by the United States against the State of Rhode Island and the City of Providence alleged that 90 individuals with intellectual and developmental disabilities were unnecessarily segregated in a sheltered workshop and day program. Rhode Island's day activity services include facility-based day programs, facility-based sheltered workshops, integrated day services, integrated supported employment, and group employment. South Carolina's day program system is similar to Rhode Island's in services offered. As a part of Rhode Island's settlement agreement, the state policy *Employment First* has been issued, which prioritizes integrated employment as a service planning option.

DDSN provided a summary of actions taken since 2001 to provide consumers with day opportunities in integrated environments. The summary listed pilot projects and programs at individual boards, but there was no evidence of a system-wide effort to decrease use of segregated settings.

Recommendations

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19. The S.C. Department of Disabilities and Special Needs should include, in its annual assessments of consumers' vocational status, the consumer's awareness of other options/settings that may be available to the consumer.
 20. The S.C. Department of Disabilities and Special Needs should further develop and implement system-wide policies and procedures that prioritize integrated employment for consumers.

Suggested Improvements to Curb ANE

We interviewed officials and staff from DDSN, SLED, the Adult Protection Coordinating Council, the S.C. Commission on Prosecution Coordination, Protection & Advocacy for People with Disabilities, DHEC, and the quality assurance contractor to obtain ideas about how abuse, neglect, and exploitation (ANE) of DDSN consumers can be curbed. The main ideas which emerged included the establishment of an adult abuse registry, better training for caregivers, more activities for the consumers, and placement of cameras in common areas of DDSN facilities. The adult abuse registry and cameras in common areas are discussed below.

Adult Abuse Registry

There is not a centralized place that employers can search to determine if a potential employee has committed abuse, neglect, or exploitation of a vulnerable adult. The development of such a list has been discussed by the Adult Protection Coordinating Council (APCC) over the years and was noted in our 2008 audit. The APCC determined there is a need for an adult abuse registry and produced two reviews, one in 2000 and another in 2008 regarding its establishment. The first review recommended:

- The registry could be a source of information for all potential employers of hands-on caregivers (including individuals privately employing a caregiver).
- Definitions established in the Omnibus Adult Protection Act (OAPA) could be used.
- Consistency among investigative entities in their criteria and processes for making determinations is needed.
- The individual's name would be placed on the registry after a substantiated finding of abuse.
- Since the nurse's aide registry, required by federal law, is housed at DHEC, that may be the best agency to house the adult abuse registry.
- There must be a right to appeal placement on the registry.

The 2008 review supported the recommendations of the 2000 review and added that there should be a complementary obligation on prospective health care employers, job applicants, and former employers to obtain/provide information about past job performance and/or misconduct in the applicant's previous jobs, in addition to checking the adult abuse registry. Although the APCC studied this issue, no legislative action was taken as a result of these discussions.

At least 20 other states have some form of adult abuse registry. We contacted two of those states. These registries include names of caregivers who have been found by an investigative entity to have abused, neglected, or exploited a vulnerable adult. Table 2.4 describes the attributes of these registries.

Table 2.4: Adult Abuse Registries in Delaware and Tennessee

	DELAWARE	TENNESSEE
AGENCY HOUSING REGISTRY	Dept. of Health & Social Services	Dept. of Health (registry combined with Nurse Aide registry)
AUTHORITY FOR REGISTRY	State Law	State Law
YEAR STARTED AND STARTUP COSTS	1999 Costs unknown	1987 Costs unknown
ONGOING COSTS	Two part-time employees plus contract attorneys for appeals	Two full-time employees plus attorneys for hearings
TYPE OF INFORMATION AVAILABLE TO PUBLIC	Name of employee and type of abuse	Name of employee, profession, type of abuse
HOW PLACED ON REGISTRY	Substantiated case of ANE	Substantiated case of ANE
LENGTH OF TIME ON REGISTRY	Depends on nature of misconduct (e.g. 2 – 5 years for causing minor injury)	Permanent, unless referring agency recommends removal
APPEAL PROCESS	YES	YES
REQUIREMENT FOR EMPLOYERS TO CHECK REGISTRY/FINES	YES Civil penalty of not less than \$1,000 nor more than \$5,000 for each violation	YES No fines
PROHIBITION FROM HIRING IF ON REGISTRY?	NO	YES Also, must terminate a current employee whose name is added to registry

Source: Delaware and Tennessee state laws and officials.

In our site visits, we found that, based on our statistically-valid sample, approximately 25% of all DDSN direct caregivers are hired without knowledge of their criminal background. In approximately 9% of the files reviewed in our sample of human resources files, we found no documentation of a criminal background check.

Maintaining an adult abuse registry, similar to the Central Registry of Child Abuse and Neglect housed by the S.C. Department of Social Services, would provide an additional safeguard for vulnerable adults. All agencies providing services to vulnerable adults should be required to check the registry. Also, families could check this registry before hiring caregivers to come into their homes.

Recommendation

21. The General Assembly should amend state law to require an adult abuse registry listing the names of all individuals who have been found to have abused, neglected, or exploited any vulnerable adult, including DDSN consumers.
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Cameras in Common Areas

Video cameras in common areas may help reduce ANE and would not be a violation of any individual's personal space. Cameras could be monitored or video tape could be recorded and reviewed, if an incident was reported or suspected. Monitoring of common areas would not only protect consumers, but also can provide protection for innocent caregivers accused of ANE.

In the 2013-14 legislative session, a bill was introduced in the Senate to authorize electronic monitoring of a resident's room in a long-term care facility, and to provide for penalties for any person or entity who hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a long-term care facility. The bill reads that electronic monitoring devices mean video surveillance cameras installed in the common areas or residents' rooms.

Placement of video cameras in residents' rooms, in which more than one resident may live, may be a violation of an individual's personal liberties. However, there is no expectation of privacy in common areas, such as dining rooms, day program work rooms, or hallways.

Recommendations

22. The General Assembly should amend Title 44 to authorize electronic monitoring of common areas of all facilities which provide services to DDSN consumers, including residences and day program facilities.
23. If the General Assembly fails to amend Title 44 to authorize electronic monitoring of common areas of all facilities which provide services to DDSN consumers, the S.C. Department of Disabilities and Special Needs should require all boards/providers to install such monitoring equipment.

Chapter 2
Protection of DDSN Consumers

Caregiver Background Checks

We were asked to review whether the Department of Disabilities and Special Needs (DDSN) has made sufficient efforts to protect consumers from employee abuse and neglect. We reviewed DDSN's background check directive to determine whether there are adequate controls to prevent these crimes against consumers. We also reviewed a sample of DDSN-funded direct caregiver personnel files to determine whether regional centers and boards/providers are fully implementing these requirements. We found:

- DDSN has inadequate controls to preempt consumer abuse and neglect, specifically by limiting background checks by residency status and frequency.
- Some facilities are not adequately conducting background checks, by neglectfully filing results that warrant further action; we found examples of facilities not conducting background checks at all.
- Determination that an employee was fired for substantiated ANE is not always documented in the employee's separation documents.

Criminal Record Checks

Section 44-7-2910(B)(2) of the S.C. Code of Laws defines a direct caregiver as an individual who is either directly employed or contracted for employment by a direct care entity, such as a DDSN regional center or board/provider, to provide licensed, professional health care services or unlicensed health care services to patients or clients, which includes DDSN consumers. State law requires these facilities to conduct a pre-hire, criminal record check of direct care applicants and stipulates the type of criminal check based on the following residential statuses:

- Applicants with at least 12 months South Carolina residency must undergo a state criminal record check.
- Applicants with less than 12 months residency in South Carolina, but can verify residency in another state for the preceding 12 months, may undergo a criminal record check for the applicant's state of residency.
- Applicants without 12 months residency in South Carolina or another state are required to undergo a pre-employment state, name-based check and commence a national, fingerprint-based check after employment.

On February 23, 2006, DDSN implemented directive 406-04-DD. In accordance with state law, the directive requires state criminal record checks prior to employment, however, the directive differs from state law in that, when residency status dictates a national, fingerprint-based check, it is also required pre-hire. Furthermore, the directive restricts regional centers and boards/providers from employing individuals with a substantiated history or record of abuse or neglect.

Pre-Hire Checks

To determine whether DDSN regional centers and boards/providers comply with the agency directive on background checks, we reviewed a statistically-valid sample of human resources files from a cross-section of ten DDSN direct care facilities throughout the state. Based on this review, all but one of these entities had not adequately conducted pre-hire, criminal record checks nor managed the results of these checks in accordance with state law and agency directive.

According to our file review of the direct care staff employed after the implementation of the DDSN directive:

- 75% of files contained pre-hire, criminal record checks.
- 16% contained post-hire, criminal histories.
- 9% of records did not contain any criminal check.

Based on this statistically-valid sample, approximately 25% of all of DDSN direct caregivers are hired without knowledge of their criminal histories.

In 2002, state law initially required criminal record checks for all direct caregivers and, in 2004, that these checks occur prior to the date of hire. However, neither state law nor agency directive requires regional centers or boards/providers to conduct retroactive criminal record checks on employees without one. Although not required by state law at that time, all sampled regional centers and boards/providers conducted either pre-hire, criminal record checks or retroactive criminal record checks for direct caregivers, with the exception of one, which was a DDSN-operated regional center.

Recommendations

24. The S.C. Department of Disabilities and Special Needs should comply with state law and enforce directive 406-04-DD that requires all regional centers and boards/providers to conduct pre-hire, criminal history checks for prospective direct caregivers.
25. The S.C. Department of Disabilities and Special Needs should require regional centers and boards/providers to conduct retroactive criminal record checks on all existing direct caregivers with no criminal record check on file.

Timeliness of Checks

We found that the facilities did not conduct criminal history checks in a timely manner. For employees under the 2006 directive, several criminal record checks were conducted pre-hire, but were conducted well in advance of the employee's date of hire. Conducting a criminal record check too early could prevent facilities from identifying recent and relevant criminal activity. While an occurrence in several facilities, at one facility in particular, we found criminal record checks conducted:

- One full year prior to the date of hire for one employee.
- Eight months prior to the date of hire for another employee.
- Four months prior to date of hire for two additional employees.

South Carolina provides public access to criminal histories through Citizen's Access to Criminal Histories (CATCH). Managed by the South Carolina Law Enforcement Division (SLED), CATCH is a name-based, criminal record search accessible online or on a limited basis, by mail. Because of technology, criminal record search results are instantaneous and therefore can be done at any time.

Recommendation

26. The S.C. Department of Disabilities and Special Needs should limit state criminal record checks of DDSN direct caregivers to a maximum period of 45 days prior to date of hire.

Name-Based Checks Based on S.C. Residency

State law and an agency directive require direct caregiver applicants with at least 12 months of residency in South Carolina to undergo a state criminal record check. If a direct care applicant provides verification of South Carolina residency, regional centers and boards/providers use the state, name-based criminal history check. The fee for this type of check is \$8 for a charitable organization and \$25 for all other organizations.

An analysis of our sample underscored the importance of reviewer accuracy while using CATCH. CATCH requires an exact match with a record subject's last name, first initial, and date of birth to retrieve a criminal history record, if any. CATCH can also conduct a search by social security number, if provided. However, errors in the data entry can diminish the accuracy of the results. Using the query input search for criminal records, the search is only as good as the individual conducting the search.

We noted that facilities made the following errors:

- Entered a prospective employee's first and last name and date of birth, plus the incorrect sex, and CATCH produced a clean criminal record. Four years later, the board/provider conducted a recheck with the correct sex, from which CATCH produced a record from 20 years before of forgery and fraudulent check draft.
- Conducted a criminal history recheck with a first and last name and date of birth, but the incorrect sex. The criminal history search indicated no arrest record, but the search was based on incorrect information.
- Screened an employee with the date of birth off by one day. CATCH produced a record for an individual with a similar, but different, name and also an arrest record.

Furthermore, the CATCH tool has the potential to produce inaccurate results. The website's information page warns users of the possibility of false positives and false negatives as names and birth dates are not always unique enough to distinguish between similarly-identified individuals as well as the concern for fraud or identity theft. The CATCH website states fingerprint-based searches are the most reliable way to conduct criminal record checks.

Residency Verification

For applicants without legal South Carolina residency status, state law requires a criminal record check in the applicant's former state, if 12 months of residency can be verified. One issue in verifying residency is if and how boards/providers are screening this information. An analysis of our sample identified several direct care staff without a clear South Carolina residential status, yet these records contained only a South Carolina CATCH criminal history, if any.

In 2004, Act 264 (codified in S.C. Code §44-7-2910) imposed the residency requirement that dictates the type of criminal history check required. A driver's license is one acceptable document to verify South Carolina residency. While we did not collect driver's licenses from each of our sample locations, a request from one facility revealed the following:

- Four employees with licenses issued within less than a year of their dates of hire.
- Five expired driver's licenses as of the employees' dates of hire.
- An applicant with a valid driver's license from another state.
- Four licenses illegibly documented.

None of these files contained additional statute-mandated residency verification documents, another state's criminal history check, or a national, fingerprint-based criminal history check. At this particular facility, approximately 20% of the sampled human resources files that contained state criminal record checks had insufficient evidence to warrant only a South Carolina record check.

At other facilities, we also found questionable state residency statuses based on information provided in an applicant's work history and/or driver's history, such as the following:

- An applicant's driving history indicated she returned her license to another state two days prior to her date of hire.
- An applicant's resume indicated employment in one state only eight months prior to date of hire in South Carolina.
- Another applicant's resume included the location of her most recent employer was a city in another state, two months prior to her date of hire.

The files did not contain any other legally-accepted state residency verification documents, notes from human resources staff regarding these missing details, a criminal history check from another state or a national, fingerprint-based check, as required by law when South Carolina residency cannot be verified. DDSN facilities in our sample are not following protocol and risking the safety of DDSN consumers.

No State Residency Status

State law requires regional centers and boards/providers to conduct national, fingerprint-based criminal history checks on applicants when residency in South Carolina or another state cannot be verified for the preceding 12 months. The fee to conduct a national, criminal history check is \$54.25.

It is important to note that the CATCH tool provides access only to South Carolina's criminal records; CATCH does not produce arrests and/or convictions that occurred in other states. The national, fingerprint-based criminal history search expands the scope beyond the state of South Carolina to a master list of criminal histories comprised of federal, state, local, tribal, and certain foreign criminal justice agencies. Furthermore, the search is conducted using fingerprints rather than name searches, which is more reliable.

As discussed, we found several examples of direct caregivers that fit the criteria for a criminal record check from another state, if not a national, fingerprint-based criminal history check. In our sample, we found documentation of seven mandated national, criminal history checks. Three of the seven met DDSN requirements for a national, fingerprint-based check based on residency status while the other four records originated from an entity which was already required by state law to conduct national, fingerprint-based checks. Regional centers and boards/providers are not consistently performing their due diligence, potentially placing consumers at risk of abuse and neglect.

An individual is not bound by residence when engaging in a criminal activity. Requiring boards/providers to conduct a national, fingerprint-based criminal history check serves as a better preventative measure as it captures a full record of arrests and/or convictions occurring within the United States rather than just crimes within a state. Furthermore, the results of a fingerprint-based check rather than a name-based check are more reliable and less subject to reviewer accuracy.

National, Fingerprint-Based Criminal Histories: An Unofficial Policy

According to a DDSN official, DDSN has unofficially begun conducting national, criminal history checks on direct care applicants for DDSN regional centers beginning as early as February 2012. Our sample included two DDSN regional centers, from which we analyzed data for direct care staff hired in February 2012 and thereafter to determine if regional centers are implementing this policy. From the sample of 99 personnel files reviewed at the regional centers, we found 21 direct care staff employed in this timeframe (including three of the seven mentioned above). Approximately half contained national, fingerprint-based criminal history checks; we also discovered two additional checks conducted retroactively. As an unofficial policy, DDSN regional centers are not consistently applying this practice.

Recommendations

27. The General Assembly should amend §44-7-2910 of the S.C. Code of Laws to require pre-hire national, fingerprint-based checks for all direct caregivers, regardless of state residency status.

28. The S.C. Department of Disabilities and Special Needs should require all DDSN direct care applicants to undergo a national, fingerprint-based criminal history check, regardless of state residency status.
29. The S.C. Department of Disabilities and Special Needs should require DDSN regional centers and boards/providers to conduct retroactive national, fingerprint-based checks on all existing direct care staff without one on file, by the end of calendar year 2015.

Criminal Convictions Precluding Employment

Section 44-7-2910(A)(1) of the S.C. Code of Laws states that a board/provider may consider all information revealed by a criminal record check as a factor in evaluating an applicant. DDSN directive 406-04-DD provides more stringent guidelines for its facilities, denying employment eligibility to applicants convicted of various crimes against children and serious crimes of violence. In our statistically-valid sample, we reviewed personnel records for any criminal convictions for which agency directive precludes employment and found one direct caregiver with a record of criminal domestic violence.

Frequency of Criminal Records Checks

S.C. Code of Laws §44-7-2920 states that criminal record checks are not required to be repeated as long as the employee remains employed with the direct care entity. While not a requirement, we found several facilities that rechecked the criminal records of employed direct caregivers. One facility with a high employee retention rate demonstrated the need for periodic rechecks. Of our sample from this facility:

- Nearly 30% of the direct care staff was employed for 20 or more years.
- The longest tenured employee was employed for 34 years and last fingerprinted in 1980.
- The average employment tenure of all of the sampled employees was 12 years.

According to SLED agents, crimes committed against vulnerable populations are often crimes of opportunity. A clean criminal history may only mean that a direct care employee had never encountered the opportunity to commit a crime against the intellectually disabled prior to working with DDSN consumers.

Other South Carolina agencies require at least self-reporting of employee misconduct, if not regular criminal history checks. The Department of Mental Health (DMH) does not conduct criminal history rechecks; however, agency directive requires employees to report off-duty misconduct to their supervisors for review and possible probation or termination. DSS Child Protective Services' (DSS CPS) policy requires pre-hire national, fingerprint-based checks and then annual name-based checks for foster care/adoptive parents. Both self-reporting and periodic criminal rechecks will likely ensure DDSN consumers are not served by individuals with criminal histories.

Recommendations

30. The S.C. Department of Disabilities and Special Needs should require regional centers and boards/providers to conduct national, fingerprint-based checks initially and every ten years, and state, name-based criminal history checks annually in the off years when a national, fingerprint-based check is not required.
31. The S.C. Department of Disabilities and Special Needs should create, or incorporate in an existing directive, a policy concerning off-duty misconduct and outline the ramifications of failing to comply.

Sex Offender Registry

Unless direct care staff is employed to work directly with children, neither state law nor agency directive requires regional centers and boards/providers to conduct a sex offender registry check. While this check is not required to work as a DDSN-funded direct caregiver, we found that facilities often conduct at least a South Carolina Sex Offender Registry search, if not a National Sex Offender Registry search.

The South Carolina Law Enforcement Division maintains the state registry which is accessible online without charge. Individuals can search for convicted sex offenders according to various criteria, including name and location. The state search also provides a link to the National Sex Offender Registry, which is also free and maintained by the U.S. Department of Justice linking state, territory, and tribal sex offender registries. While information reported by a sex offender search may overlap with sexual crimes reported by a criminal record search, conducting both of these searches provides greater assurance that the information is accurate.

Recommendation

Central Registry of Child Abuse and Neglect

32. The S.C. Department of Disabilities and Special Needs should require regional centers and boards/providers to conduct a National Sex Offender Registry check on all direct care applicants and existing direct caregivers by the end of calendar year 2014 and take appropriate action if the direct caregiver is on the registry.
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To further determine whether regional centers and boards/providers have implemented DDSN directive requirements, we reviewed the records of sampled employees for completed checks of the Central Registry of Child Abuse and Neglect. We also reviewed the requirements for prospective employees of other state agencies serving vulnerable populations to determine whether DDSN's existing internal controls are adequate. We found only one-third of the files reviewed were verified within the directive's timeframe and some were filed with inconclusive results and without follow up.

The Central Registry of Child Abuse and Neglect is a database of South Carolina perpetrators of child abuse and neglect that is managed by the state's Department of Social Services (DSS). The fee for a check of this database varies; however, for state agencies and non-profit entities, the cost is \$8.

S.C. Regulation 114-503K(1)(c) requires a clean DSS central registry check for employees of child care centers. DDSN directive 406-04-DD expands this requirement to all DDSN prospective direct care staff, regardless of the consumer's age. While the central registry is limited to crimes perpetrated against children, according to state law enforcement agents, it is the vulnerability of the target rather than the age or condition that motivates a criminal. Therefore, screening a direct care applicant against the central registry is a valuable tool that protects the disabled from potential abusive and neglectful perpetrators.

The agency directive also allows facilities a grace period of seven calendar days to receive the results of a central registry check allowing new hires to begin pre-service orientation, but strictly forbidding them from working alone with consumers. According to a DDSN official, this grace period provides enough time for DSS staff to complete a search of the registry, especially in the event of a backlog.

Timeliness

DDSN directive 406-04-DD was approved for implementation on February 23, 2006. In our sample, for employees hired after this date, we found:

- Only 35% of the records contained pre-hire (prior to or within seven days of hire) central registry checks.
- 51% were verified after the employee's date of hire and beyond the grace period.
- 14% of records did not contain a check altogether.

By allowing employees to work directly with consumers before receiving the results of the central registry check, DDSN regional centers and boards/providers are placing consumers in danger of predators.

Incomplete Central Registry Checks and Incomplete Personnel Files

In our sample, we found several examples in which direct care staff records contained incomplete registry searches. We found evidence that facilities file away central registry checks without regard to whether the results dictate further action. For example, some records contained central registry checks with a reply stating that DSS received the request and that the agency required an additional 30-60 days to process the inquiry; these records did not contain any other follow-up or human resources notes.

Neither state law nor agency directive require regional centers and boards/providers to conduct a retroactive central registry check for employed direct caregivers, only for prospective employees. We found that 74% of our sample of direct care staff, hired before the directive's effective date, did not have a central registry check on file. Employed direct care staff are just as likely to be placed on the central registry as direct care applicants.

We reviewed DSS CPS regulations regarding foster care licensing to determine alternative practices for agencies serving vulnerable populations. To become an eligible foster care provider, a check of any child abuse and neglect registry in each state the applicant has resided during the preceding five years of the date of application must be conducted.

Each state has some form of a child abuse and neglect registry; however, the content and maintenance of these registries vary from state to state. Since there is no national central registry for child abuse and neglect, a five-year background is a reasonable requirement.

Recommendations

33. The S.C. Department of Disabilities and Special Needs should eliminate the grace period and require all checks of the Central Registry of Child Abuse and Neglect to be completed and returned to the respective regional center or board/provider prior to hiring new direct caregivers.
34. The S.C. Department of Disabilities and Special Needs should require regional centers and boards/providers to conduct retroactive South Carolina Central Registry of Child Abuse and Neglect checks on all existing direct care staff without one on file, to be completed within one year of publication of this report.
35. The S.C. Department of Disabilities and Special Needs should, for prospective and existing direct caregivers with former legal residencies in other states, require regional centers and boards/providers to conduct a check of the respective state's equivalent to the South Carolina Central Registry of Child Abuse and Neglect in all states resided in by the individual in the last five years.

Medicaid Fraud List

The U.S. Department of Health and Human Services Office of Inspector General maintains the List of Excluded Individuals/Entities that identifies individuals and entities found to have defrauded a federal health care program. DDSN directive 406-04-DD requires direct care facilities to conduct these searches on prospective employees. There is no cost associated with conducting this background check.

While the purpose of this check is to protect the federal government, the check also serves to protect DDSN consumers from individuals with a background of fraudulent behavior. We found at least three of five facilities did not always conduct these checks preceding an offer of employment, if at all.

Recommendation

36. The S.C. Department of Disabilities and Special Needs should enforce directive 406-04-DD that requires regional centers and boards/providers to conduct Medicaid Fraud checks on all prospective direct caregivers.
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Reference Checks

DDSN directive 406-04-DD requires regional centers and boards/providers to also conduct pre-hire reference checks on prospective direct care employees. In a non-statistical sample, we found exceptions at two facilities where reference checks were not conducted.

DDSN maintains only a list of former direct care staff, employed directly by DDSN and terminated for misconduct; this list does not include direct care staff of DSN boards or other providers. This lack of information about terminated employees, coupled with inadequate reference checks, creates an opportunity for suspected predators to quit employment in one direct care entity, with a clean record, and obtain employment in another.

Recommendation

37. S.C. Department of Disabilities and Special Needs should enforce its directive requiring regional centers/boards/providers to conduct reference checks on all employees.

Rehire of Employees Terminated Within the DDSN Provider Network

DDSN does not have an adequate system to ensure employees terminated from DDSN or boards/providers for substantiated abuse, neglect, or exploitation allegations are not rehired within the system. If an individual has a substantiated abuse case involving a child under the age of 17, his/her name is added to the Central Registry of Child Abuse and Neglect. There currently is no similar registry of abusers of vulnerable adults. Employees can be terminated for not adhering to policies and procedural issues related to abuse; however, the substantiation of abuse by an investigative agency is not consistently documented as the ultimate reason for termination. A former employee found to have abused, neglected, or exploited a consumer may be hired by another DDSN facility.

DDSN does not maintain a database of DDSN and board/provider employees terminated for substantiated abuse. It relies on employees stating on job applications that they were formerly employed with DDSN and providers submitting a written request for service letters from previous employers within the agency system, which indicates if employees were involved with abuse cases while employed. Consequently, if a prospective employee does not indicate that he/she has worked in the DDSN system, it is possible no check would be conducted. A DDSN official stated that DDSN has a list of names and social security identifiers sent to the incident management system of employees terminated for abuse, but the person over the system was unable to validate that assertion other than the ability to run reports to compare substantiated cases with names of alleged perpetrators.

Of the abuse allegations from July 2011 to June 2013, 12 cases were substantiated with known perpetrators. We requested detailed reports from providers where the perpetrators were employed to determine if employees were placed on administrative leave, and terminated for substantiated abuse allegations. All of the perpetrators were placed on administrative leave without pay while law enforcement and investigative agencies investigated allegations.

Providers cannot substantiate abuse as law enforcement does, but they are able to verify non-compliance with policies and procedures. With internal administrative or management reviews, a provider can determine that an employee has violated policies such as the “Prohibition of Abuse, Neglect and Exploitation” policy, acted inappropriately towards a consumer, or violated any relatable policy, and terminate an employee before law enforcement has concluded its investigation.

Of the 12 substantiated cases with known perpetrators, 4 (33%) did not list substantiated abuse as a reason for termination. Those four people could be rehired within the system, because the required service letter would not reflect substantiated abuse as a reason for termination.

When a covered state employee (non-probationary employee occupying a full-time position) receives an agency's adverse employment action and final grievance decision, he can file an appeal. If the state human resources director determines the grievance is appealable, mediation is mandatory. The mediation process is to help the employee and agency reach a mutually-acceptable agreement. Terms of the mediation agreement are voluntary. Adding the final disposition of investigations, confidentiality of the reasons for termination, purging a personnel file, and allowing the employee to resign are options of the types of agreed-upon terms mediated and are not mandated by the State Office of Human Resources. Mediation terms that would, in effect, conceal the substantiation of an ANE allegation should not be negotiated.

We found an incident where a consumer's leg was broken while being changed by an employee in February 2012. The employee lifted the consumer's legs then heard a pop. The incident was initially reported as a critical incident, and then upgraded to a report of abuse. Staff at the facility use different methods to change consumers and there is no formal training regarding specific techniques to use when changing a person with physical disabilities. The employee and consumer believed the incident was an accident. The three parts of the incident report all listed the alleged perpetrator as "unknown." The assumed lack of intent of the employee should not have prevented his/her name from being reported as the alleged perpetrator prior to a thorough investigation. The investigation was labeled as "substantiated/non-criminal standard of care."

Recommendations

38. The S.C. Department of Disabilities and Special Needs should ensure all substantiated abuse, neglect, and exploitation determinations are added to state employee termination documents, even if the termination was prior to the substantiation.
39. The S.C. Department of Disabilities and Special Needs should add to its human resources policy that if a state employee is being investigated for allegations of consumer abuse, neglect, or exploitation, options that would conceal substantiation of the allegations' final investigative disposition will not be negotiated in the mediation process.

Procurement

DDSN Policies and Practices

We were asked to review the procurement practices of the Department of Disabilities and Special Needs (DDSN) to determine whether the agency complies with state law purchasing requirements. We reviewed the procurement practices of both DDSN and a sample of its boards/providers for compliance with procurement law and an agency directive. We found that:

- DDSN’s public purchasing practices were not always transparent.
- DDSN’s boards/providers violated emergency and sole source procurement exceptions.
- DDSN’s boards/providers did not always have procurement policies.
- DDSN’s boards/providers regularly circumvented DDSN procurement protocol.
- DDSN’s boards/providers did not always maintain accurate and complete procurement records.
- DDSN’s boards/providers are all not regularly audited for procurement compliance.

Consolidated Procurement Code and Internal Controls

Section 11-35-40(2) of the S.C. Consolidated Procurement Code applies to every procurement or expenditure of funds by the state under contract acting through a governmental body. DDSN is required to comply with requirements of the state’s procurement code and to establish and maintain a system of internal controls over procurement practices. To satisfy these requirements, DDSN maintains a procurement manual applicable to the central office and its four regional centers. The agency’s procurement manual charges the associate state director of administration with overall procurement responsibility, which is then delegated to various administrative directors. According to the Procurement Services Division of the Budget and Control Board, DDSN’s internal procurement manual is compliant with the state’s procurement code.

Procurement Evaluation Methodology

To evaluate DDSN’s compliance with the state procurement code, we reviewed a sample of the agency’s expenditures from FY 10-11, FY 11-12, and FY 12-13, including March 2013, January 2012, April 2012, July 2012, and October 2011. We reviewed the agency’s expenditure reports for each of these months for items exceeding \$2,500 (threshold for obtaining bids).

We then reviewed supporting documentation from the agency to determine whether the goods or services purchased were appropriate, purchased competitively and from the lowest bidder, and/or were appropriately exempted from the procurement code. The scope also included all sole source and emergency procurements for the past three fiscal years.

Procurement Practices

Based on our sample of expenditures, we found that DDSN's procurement records did not contain any questionable goods or services. As for the method of procurement, DDSN's records indicate compliance with the state procurement code. Out of all the expenditures in the five sample months reviewed, DDSN was required to seek quotes for only 11 expenditures. All other expenditures were either below the competition threshold, under state contract, exempt from the procurement code, managed by a cooperative purchasing agreement or the Materials Management Office (MMO), or were categorized as sole source or emergency procurements.

We also reviewed a recent history of DDSN's archived emergency and sole source procurements. In order to qualify for either type of procurement, the agency head or designee must authorize it and file a written justification. Sole source procurements are reported to MMO. According to a procurement audit conducted by the procurement services division, auditors reviewed all sole source and emergency procurements for the period between April 2008 through December 2011 and found no exceptions.

In our review, we extended the period of review to records from FY 10-11 through FY 12-13. According to the procurement services division's archived records, DDSN engaged in a total of 24 sole source procurements and 12 emergency procurements in this period. The majority of the sole source procurements were recurring and proprietary-based for services such as training and items such as software. Records for the agency's emergency procurements were legitimate and involved repairs at facilities that threatened the health, welfare, and/or safety of consumers.

During our review, we uncovered one questionable emergency procurement. In May 2013, DDSN signed a contract with a national auditing firm to assess the integrity of the agency's systems as an emergency, stating that the "health, safety, and well-being" of consumers was in jeopardy.

According to §11-35-1570 of the S.C. Consolidated Procurement Code, an emergency procurement is permissible “only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions as defined in regulations....”

Regulation 19-445.2110.B, promulgated by the Budget and Control Board, defines an emergency condition as:

...a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, fire loss...[T]he existence of such conditions must create an immediate and serious need....

An audit of the agency’s systems does not satisfy the legal criteria of an emergency procurement.

Procurement Transparency

We were also asked to review the transparency of DDSN’s procurement practices. We found that DDSN had a written policy outlining the degree of public transparency as it relates to DDSN’s procurement practices and how the agency conducts business. However, the policy has since been rescinded but remains a practice not communicated in written format.

Commission on Disabilities and Special Needs

The S.C. Commission on Disabilities and Special Needs is the policy-making and governing body of DDSN. The commission holds regularly-scheduled and publicly-announced, open meetings. In addition, commission minutes and directives are published on the agency’s website. The degree of information presented by DDSN’s administration to the commission is based on a practice stemming from a rescinded commission policy, 107-01-CP. Regarding procurement, this policy states that the administration is to seek commission approval for unanticipated items that exceed \$100,000, whereas all other expenditures are to be managed administratively. The current commission policy, 800-04-CP, refers to the practice, but does not actually state what it is. Despite regularly exercising this practice, the specific terms of this practice are not communicated in written format.

Another concern with this practice is the period of time associated with procurements exceeding \$100,000. We found that DDSN’s administration seeks approval for the annual amount of a contract rather than the total amount of the contract. Section 11-35-2030 of the S.C. Consolidated Procurement Code permits the use of multi-term contracts, which naturally increases the procured contract total.

As such, multi-year contracts can be viewed according to the full contractual amount or the annual amount, which possibly impacts which procurements DDSN's administration presents to the commission for approval. While it is the general practice to seek annual approval, disclosure of a full contract for commission approval is more appropriate because it provides greater transparency into the agency's expenses and programs.

Recommendations

40. The S.C. Department of Disabilities and Special Needs should formalize its practice of seeking commission approval for procurements exceeding \$100,000 into a written policy.
41. The S.C. Department of Disabilities and Special Needs should require commission approval for procurements when the full contractual amount exceeds \$100,000.

Pilot Programs

We found that DDSN could increase transparency by informing the public of all of its pilot programs. DDSN directive 700-05-DD states that pilot programs can be approved only by the state director, but is unclear if and how information will be disclosed to the public. While DDSN maintains a page on its website for pilot programs, DDSN states that only programs that prove successful will be publicized in this manner.

Based on the pilot programs we identified during our review, we found evidence that DDSN presented information regarding other pilot programs at commission meetings, however, this information was limited. While DDSN's administration is under no obligation to publicly disclose information regarding DDSN's most unique programs, greater transparency will better inform the public about use of funds.

Recommendation

42. The S.C. Department of Disabilities and Special Needs should publish information about all pilot programs on its website.

Interagency Contracts

Section 11-35-4840 of the S.C. Consolidated Procurement Code states that:

Any public procurement unit may enter into an agreement in accordance with the requirements of Articles 5 and 15 of this chapter with any other public procurement unit or external procurement activity for the cooperative use of supplies or services under the terms agreed upon between the parties; provided, that such cooperative use of supplies or services shall take place only when the public procurement units have good reason to expect the cooperative use to be more cost effective than utilizing their own supplies and services.

However, according to an MMO official, an exemption issued in 1994 by the Budget and Control Board technically supersedes this legal requirement. That exemption states that agreements between state government agencies are permissible for services authorized by that agency's enabling legislation as to its purpose, duty, and mission.

DDSN maintains several interagency agreements, including several with the University of South Carolina (USC) and two specifically with the Center for Disability Resources (CDR), a federally-designated center for excellence located at USC. According to USC's 2011-2012 Accountability Report, the mission of the university is to provide education to the state's diverse citizens through teaching, research, and creative activity and service. CDR's website states that the mission of the organization is to enhance the well-being and quality of life of persons with disabilities and their families. With such broad mission statements, coupled with the Budget and Control Board's core mission exemption, either of these entities could justifiably provide every DDSN service without obtaining competitive bids or proposals. This exemption allows all state agencies to contract based on preference rather than price without any assurance that the quality is better than that of other potential bidders.

Recommendation

43. The S.C. Department of Disabilities and Special Needs should request the Materials Management Office of the Budget and Control Board to review its interagency agreements with the University of South Carolina to determine if they meet the requirements set forth in the exemption to the S.C. Consolidated Procurement Code.

Board/Provider Procurement Policies and Practices

S.C. Code §44-20-250 allows DDSN to contract with local agencies, DSN boards, private organizations, and foundations to provide programs and services for DDSN consumers. With significant state and federal funds contracted out by DDSN to boards/providers, we expanded the procurement review to include these entities. Our focus included whether DDSN required its boards/providers to adhere to a purchasing code, and, if so, what it entailed; whether providers are compliant; and to what degree, if any, DDSN oversees providers' purchasing activities.

We found DDSN's contracts with boards/providers require them to adhere to all agency directives, including its procurement directive 250-08-DD. This directive outlines procurement policies consistent with both the agency's procurement standards and the S.C. Consolidated Procurement Code.

Based on our sample of procurement practices of boards/providers, we found several cases in which boards/providers circumvented the code. We also found that the agency's Internal Audit (IA) department has the authority to inspect the purchasing practices of DDSN's boards/providers and hold them accountable. However, despite these controls, IA rarely investigates the purchasing activities of its private providers. We conclude from our sample that the purchasing practices of DDSN's boards/providers generally have no oversight, potentially jeopardizing the availability of resources to DDSN's consumers.

Methodology

To determine whether DDSN's boards/providers have complied with the agency's procurement directive, we conducted unannounced visits to eight boards/providers (two of the original ten sites were DDSN-operated regional centers, whose procurement practices we reviewed as part of DDSN), in part, to collect procurement records. We analyzed the practices of the boards/providers by reviewing procurement policies, records of competitive price quotes, and justifications for sole source and/or emergency procurements.

Agency Procurement Directive

DDSN maintains contractual agreements with both local DSN boards as well as private providers. DDSN requires these boards/providers to follow all agency directives, which includes DDSN's procurement directive, 250-08-DD. The purpose of the directive is to establish a uniform, businesslike approach in the procurement of goods and services in order to maximize the use of funds allocated by DDSN, which aligns not only with the agency's procurement manual but also the state procurement code.

Providers' Procurement Policies

Directive 250-08-DD requires each provider to establish and adopt a set of purchasing policies at least as restrictive as those contained in the directive. Based on our provider sample, five of the eight providers had written procurement policies at least as restrictive. One board/provider stated it was unaware of DDSN's procurement directive and provided existing purchasing standards; however, these were not stringent enough to meet the directive's requirements. Of the two other boards/providers, one claimed to operate according to an unofficial, verbal policy while the other was unable to provide either verbal or written policies.

Providers' Procurement Histories

DDSN directive 250-08-DD instructs boards/providers to archive procurement documents, in the event of an audit, including documentation of written and verbal quotations, the vendor listings, tabulation sheets, award statements, and advertisements, when applicable. Based on our sample, we found several instances of insufficient procurement history documentation. The most common errors included documents that were either undated, dated after the effective date, did not have a price, or the sole source did not have a justification.

Without complete procurement documentation, boards/providers are not consistently adhering to DDSN's procurement directive. Therefore, it is unclear if these entities maximize state and federal funds to provide services to DDSN consumers.

Obtaining Quotes

We found several instances in which the procurement of a good/service required quotes, but providers did not obtain them. Of the five providers with archived procurement records, three contained at least one exception to the directive's solicitation requirements. One board/provider made several purchases from the same supplier, each over the \$2,500 competition threshold, and one approximately \$6,000, without obtaining quotes from competitors. These boards/providers are violating DDSN's directive and possibly overpaying.

Sole Source and Emergency Justifications

DDSN directive 250-08-DD authorizes several exceptions to standard procurement protocol, specifically in emergency situations or if there is only one supplier (sole source) available to meet the provider's needs. For both situations, the directive instructs boards/providers to make a written justification for each procurement, stating the grounds for the emergency or sole source.

Based on our sample, we found that boards/providers violated the sole source exception. One board/provider applied an insufficient sole source justification to 15 different procurements in a three-year period. That same board/provider also applied another sole source justification to 13 separate procurements over the same three-year period. DDSN directive requires a sole source justification for each procurement. By circumventing this requirement, boards/providers are not regularly assessing the market for available suppliers, which may result in higher costs.

We also found that some justifications of boards/providers stated that the nature of the consumers justified contracts in which there was an existing relationship rather than genuine sole availability. Preference in place of competition is likely to cost more and therefore limits funds for the disabled.

As for emergency procurements, we found that boards/providers violated this exception as well. One board/provider's record contained 74 emergency procurements for one fiscal year. None of these situations met the definition of an actual emergency. The records indicated that most of these procurements were described as a maintenance or repair issue.

According to the board/provider's procurement policy, all expenditures, regardless of the amount, require administrative approval prior to purchase. This stringent policy is not conducive to field repair work and requires employees to either operate inefficiently or sacrifice protocol to file an "emergency" justification.

We also found that the records of boards/providers regularly justified an emergency procurement as a result of time contingencies, rather than health, safety, and welfare. The following are some examples:

- Replace vehicle tires due to wear and tear.
- Lease expiration required immediate removal of items.
- Deteriorating computer system required immediate upgrades.

In these circumstances, had boards/providers procured services at the onset of the need, these situations would not have been emergencies. Delayed action does not justify an emergency procurement. In circumventing DDSN's procurement standards, it is unlikely that these boards/providers secured the lowest prices and they may have overspent funds that could have been used to better serve or serve more consumers.

External and Internal Audits of Boards/Providers

We reviewed state law and agency directives to determine whether DDSN boards/providers are subject to procurement audits. We found that boards/providers are not audited by the Materials Management Office (MMO). However, we found that DDSN requires annual procurement audits of only some of its boards/providers even though all receive state and federal funds.

We also found that DDSN maintains directives that subject boards/providers to either annual external audits, as-needed internal audits, or both. However, these directives do not require all boards/providers to participate in the external audits and the scope of the internal audit does not always include procurement policies and practices.

One DDSN directive authorizes independent certified public accountants to annually test the procurement policies and practices of DSN boards for compliance with the agency's procurement directive. However, the directive language is unclear as to whether it applies to contracted private providers. The other directive authorizes DDSN's IA division to ensure that all boards/providers comply with agency directives, including DDSN's procurement directive.

According to a DDSN official, audits are selected using a risk assessment matrix with various criteria, such as abuse and neglect incidents and external audit findings, all of which are assigned risk percentages. In FY 10-11 and FY 11-12, DDSN's IA division published a total of 26 board/provider-specific audits, only 3 of which reviewed private providers. Furthermore, none of the private providers' reports included a review of their procurement practices. With approximately 60 private providers receiving state and federal funding, in two recent years, none have been audited for compliance with DDSN's procurement directive. Private providers are bound by both contract and directive to adhere to the DDSN procurement policy; however, DDSN is not monitoring the procurement practices of these providers to whom it entrusts federal and state funds to provide services to DDSN consumers.

Recommendation

44. The S.C. Department of Disabilities and Special Needs should ensure that the procurement practices of all boards/providers are audited, either internally or externally, on a regular cycle to ensure compliance with agency directive 250-08-DD.

Eligibility, Involuntary Admissions, and Consolidation of Regional Centers

Our requestors had questions about eligibility and involuntary admissions to DDSN. We also determined that we should review the possibility of consolidating the regional centers. We found that DDSN needs to review and revise its directives on eligibility to be consistent with state law. We found, however, that DDSN is complying with state law and has qualified employees evaluating individuals for involuntary admissions. Lastly, we found that DDSN has reviewed the feasibility of consolidating regional centers; however, state law could hinder the agency from using its property most efficiently.

Process for Becoming Eligible for DDSN Services

Members of the General Assembly requested that the LAC review DDSN's process for determining a person's eligibility for services, including if the process complies with state law, if it is different for applicants with severe behavioral issues, and if any conflicts of interest exist. With two exceptions, the agency's eligibility process complies with state law, does not differ for people with severe behavioral issues, and presents no conflicts of interest. We found that DDSN's residency requirement for applicants for services is narrower than the statutory residency requirement and that the agency's current criteria for determining intellectual disability eligibility is inconsistent with the S.C. Supreme Court's interpretation of state law regarding a waiver for which consumers with an intellectual disability could qualify.

In order to become eligible for DDSN services, a person or his family member calls a central information and referral line. The exceptions to this are if the person is under 2 years 11 months of age or is already being served by the state's BabyNet program. The information and referral line is operated by the University of South Carolina's Center for Disability Resources.

The screeners that staff the information and referral phone line ask about the person's background, residency, previous diagnoses, and observed delays. If the screener determines that the person is likely to be eligible for DDSN services, the applicant chooses a service coordination provider to complete the next step of the eligibility process. Service coordinators are either DSN board employees or private providers. If the screener determines that the person is not likely to become eligible for services, the screener refers the person to other sources of help. According to a staff person, even if the screener believes that the person is not likely to become eligible, if he would like to continue with the eligibility process, the screener sends him through the process.

DDSN centralized the screening process because the agency found that, despite the use of the same standards and training, screening services were substantially inconsistent across the state. In addition, screening centrally removes the first step of the process from the organizations that provide most of the services, reducing the chance for conflicts of interest.

Within seven days, the chosen service coordinator should make contact with the applicant and begin collecting the documentation required to determine the applicant's disability and if he is eligible for DDSN services. According to an agency official, this function will be performed by DDSN employees in the future.

When the information is gathered, the service coordinator forwards the completed package to DDSN's Consumer Assessment Team (CAT). The consumer assessment team is a group of psychologists employed by the agency to review each applicant's packet and make a determination. They do not meet with applicants face-to-face, but, if more information is required to determine eligibility, they ask the service coordinator to assist the applicant with obtaining additional assessments. Following the determination, the consumer assessment team sends an eligibility determination letter to the service coordinator. If the person is found not to be eligible for services, there is an appeals process. During FY 10-11 through FY 12-13, the CAT received 9,690 requests for eligibility determination, and determined that 7,899 of those applicants were eligible for DDSN services.

Age of Onset

DDSN's eligibility directive is inconsistent with an S.C. Supreme Court ruling. Though DDSN was not a party to the case, the Medicaid waiver at issue in the case is administered by DDSN. S.C. Code §44-20-30(12) defines intellectual disability (ID) as "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period." DDSN's eligibility directive provides ID diagnostic criteria consistent with the American Psychiatric Association's fourth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM- 4). These criteria include a requirement that the deficits in functioning that define ID be present by the age of 18. While the agency's published directive states that these criteria are based on the fifth and current edition of the manual, the fifth edition does not include a specific age of onset; rather it states that the onset of intellectual and adaptive deficits must occur during the *developmental period*.

On December 28, 2011, the S.C. Supreme Court held that, when taken together, lack of additional criteria in the state’s Medicaid waiver application, the broad definition of ID in S.C. Code §44-20-30(12) and use of an onset cutoff age of 22 in a regulation promulgated by the agency indicate that the proper legal standard for ID includes an onset cutoff age of 22, not 18. The court also held that the agency’s policy conflicted with law and should be disregarded. In November 2013, the S.C. Department of Health and Human Services (SCDHHS — state Medicaid agency to which applicants must appeal waiver-related decisions) directed DDSN to continue the eligibility process for the petitioner, apply the age 22 standard, and issue a new notice of approval or denial.

In the current directive (last updated in October 2013), the standard for eligibility for a determination of ID remains an onset age of 18. In addition, the CAT applied the age 18 standard as recently as August 2013. While the case cited above was specific to a Medicaid waiver, the effect of the general age of onset directive is that all applicants who do not meet the age 18 cutoff will be denied eligibility for DDSN services. The applicant would never get to the point of examination for waiver eligibility.

In its opinion, the Supreme Court majority noted that DDSN’s commission has the authority to promulgate regulations that define ID in the context of waiver services, but it has not. DDSN is currently involved in litigation regarding whether it must promulgate regulations related to eligibility. While we do not assert that it must promulgate regulations, the commission has statutory authority to promulgate regulations, should it wish to further clarify agency operations.

If the DDSN commission deems the DSM criteria for ID to be the most appropriate for use in South Carolina, there are steps the commission can take, including promulgating a regulation specifically defining the age of onset and working with SCDHHS and the federal Centers for Medicare and Medicaid Services to amend affected waiver documents.

Recommendations

45. The S.C. Department of Disabilities and Special Needs commission should amend the ID age of onset criterion in the agency's eligibility directive to be consistent with state law.
46. If the Commission determines that the DSM criteria for ID are most appropriate, it should amend the agency's eligibility directive to be consistent with the most recent DSM, promulgate a regulation that specifically defines the ID definition in S.C. Code §44-20-30(12) as the definition in the DSM, and work with the S.C. Department of Health and Human Services to amend any affected Medicaid waiver documents.

Residency

DDSN's residency requirement is narrower than the requirement in the statute governing eligibility for DDSN services. S.C. Code §44-20-390 requires that in order for a person to be eligible for DDSN services, the applicant, spouse, parent (custodial or not), or legal guardian must fall into at least one of the following categories:

- Domiciled in South Carolina.
- Lives outside of South Carolina but retains legal residency in this state and demonstrates intent to return to South Carolina.
- Legal resident of a state which is an active member of the Interstate Compact on Mental Health and qualifies for services under it.

Though nothing in the statute requires the applicant be a U.S. citizen, DDSN's eligibility directive (100-30-DD) requires that an applicant be a U.S. citizen. In addition, the eligibility screening tool directs the screener to take an additional step if the applicant is not a U.S. citizen. According to an agency official, in the rare instance that there is a question regarding residency, agency staff consult the statute.

Recommendation

47. The S.C. Department of Disabilities and Special Needs should revise the residency requirements of directive 100-30-DD to be consistent with the residency requirements in S.C. Code §44-20-390.

Involuntary (Judicial) Admissions

We were asked to determine whether DDSN is submitting accurate and true diagnoses and recommendations to the courts for involuntary commitment hearings of adults and juveniles diagnosed with mental retardation to DDSN facilities. To best address this objective, we reviewed DDSN directives, state law, statistics for involuntary commitments, and interviewed staff. We also reviewed a limited sample of files to ensure the procedures were followed and that qualified staff participated in the process. We found that DDSN is complying with state law and has qualified staff evaluating individuals for involuntary commitments.

For years 2012 and 2013, there were 41 Petitions for Judicial Admission. Of those cases, 36 individuals were judicially (involuntarily) committed to DDSN. Of the six cases which did not result in a judicial admission, four individuals were found to not have an intellectual/related disability and two petitions were filed by unauthorized persons and were subsequently dismissed. Of the 36 cases resulting in judicial commitment, all were filed by a solicitor subsequent to the individual being adjudicated as not competent to stand trial.

If an individual with possible intellectual/related disability becomes involved with law enforcement, the appropriate court (Family Court for juveniles or Court of General Sessions for adults) can order DDSN to evaluate the individual to form an opinion as to whether the individual is capable of understanding the proceedings against him/her and assisting in his/her own defense. This opinion is to assist the court in its decision process regarding competency to stand trial.

State law requires DDSN to designate two examiners to conduct the examination to determine an individual's competency to stand trial. DDSN directive 508-01-DD states that the lead examiner must have experience in determination of competency to stand trial examinations and the secondary examiner is assigned from one of the regional centers. According to DDSN staff, all lead examiners are Ph.D. psychologists qualified in the area of competency evaluations and the secondary examiners are chosen based on their qualifications, which must be at least a Master's degree, their competence in the area, and their desire to participate in these evaluations.

If the individual is found to be incompetent to stand trial because of an intellectual/related disability, the General Sessions or Family Court can order that the solicitor file a petition for judicial admission to DDSN within 14 days of the date of the order. Along with the petition for judicial admission, an order for a diagnostic evaluation is filed and signed by the court.

The diagnostic evaluation is based upon a review of relevant records and sometimes an interview with the individual. Pursuant to the order for the diagnostic evaluation, DDSN files its evaluation which answers the two questions required by the statute:

- 1) Is the individual eligible for DDSN services (by virtue of having an intellectual/related disability)?
- 2) Is the individual in need of DDSN services?

If the answer to those two questions is “yes,” DDSN will prepare and present a plan of services report to the court at the hearing. While the court has the ability to judicially admit a consumer to the jurisdiction of DDSN, designation of services or placement in a program are determined by DDSN and shall be in the least restrictive environment.

Consolidating Regional Centers

We reviewed the feasibility of consolidating regional centers. We found that while DDSN can reduce the costs associated with operating these centers, S.C. Code §44-20-365 could hinder the agency from using agency property most efficiently.

DDSN provides residential services to 709 consumers in five regional centers across the state. This accounts for 14% of the agency’s residential consumers; the remainder live in community facilities. The current total capacity of those regional centers is 894, without overcrowding. If numbers were the only concern, DDSN could close any one of three regional centers and still have the capacity to serve current regional center residents, without overcrowding. Over the last decade, DDSN has reduced the number of consumers served in regional centers by 24%.

In an FY 09-10 cost savings analysis, DDSN staff reviewed savings associated with closing a regional center within 30 miles of another regional center. DDSN staff concluded that without affecting any consumers, the agency could save \$462,000 in state funds (1.2% of the agency’s appropriation for the regional center program in FY 09-10). The negative effect of the closure would be reduction of staff by 30 positions, and inconvenience to consumer families.

According to a national study performed by the University of Minnesota, in FY 10-11, South Carolina's average daily expenditures per resident in regional centers was well below the national average and amongst the lowest in the nation. The agency has taken steps to reduce costs by consolidating consumers into fewer dormitories, combining regional center administrative duties, razing buildings, closing buildings, and selling land. In addition, DDSN leases unused buildings to other agencies. During the FY 09-10 analysis, staff determined that consolidating four dorms at regional centers could save \$700,800 in state funds. However there are still costs associated with ensuring that off-line buildings do not fall into disrepair, as this could become dangerous to consumers, families, and staff in nearby buildings. Also, even with these measures, individual regional center occupancy rates range between 68% and 88% of each center's maximum capacity without overcrowding. While each center has a maximum capacity without overcrowding, there is a larger licensed capacity because DDSN's regional centers serve as the state's safety net for consumers in community ICF/IIDs.

While consumers and their families are able to choose whether to receive services in an institutional or community-based setting, the agency is increasing the services available to consumers in the community in an effort to increase the likelihood that a higher need consumer would choose to be served in the community. DDSN's efforts to reduce the number of people served in institutional settings are consistent with the U.S. Supreme Court's decision in *Olmstead v. LC* (see *Effectiveness of Day Programs*, p. 27).

S.C. Code §44-20-365 requires that no regional center be closed without authorization by the General Assembly. Since the population served in South Carolina's institutional settings has been trending down for the past 10 years and federal law encourages serving consumers in the community, it is unlikely that the state will need all of the regional centers in the future. However, even if the commission determined that the benefits outweighed the costs, it would be unable to approve closure of a regional center.

Recommendations

48. The General Assembly should amend S.C. Code §44-20-365 to require that the S.C. Department of Disabilities and Special Needs Commission recommend closure of a specific regional center if the agency has maximized opportunities for efficiencies.
49. The General Assembly should approve closure of a S.C. Department of Disabilities regional center upon recommendation of the S.C. Department of Disabilities and Special Needs Commission.

Follow Up on 2008 Report Recommendations

The Legislative Audit Council released *A Review of the Department of Disabilities and Special Needs* in December 2008, which included 63 recommendations. We followed up to determine the implementation status of these recommendations.

LAC RECOMMENDATIONS	
Implemented	31
Partially Implemented	17
Not Implemented	15
TOTAL	63

DDSN has not implemented 12 recommendations made to the agency. The General Assembly did not implement any of the three recommendations made to amend state law.

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- 1. The Department of Disabilities and Special Needs should ensure that information derived from its quality assurance processes is integrated and used to remediate problems identified.**

IMPLEMENTED

According to an agency official, all information derived from the quality assurance processes, such as QA, licensing, and incident management, is used to track trends. No standard reports are generated from this integrated system, but information is used for district offices to provide technical assistance, for bi-monthly provider quality management meetings, and quarterly risk management meetings.

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- 2. The Department of Disabilities and Special Needs should conduct follow-up reviews to ensure that providers implement their plans of correction and address risks that may endanger the health, safety, or welfare of DDSN consumers.**

IMPLEMENTED

The 2012 Request for Proposals (RFP) for a quality assurance contractor required that the contractor follow up on all citations. The contractor that won the bid and started providing services October 15, 2012, follows up on all citations; however, some are onsite and others are desk follow ups. The type of follow up is left to the contractor's discretion and DDSN does not take part in that determination. In FY 12-13, there were onsite follow-up visits required for four providers due to class II deficiencies.

If a provider scores below 75% on a follow up, a second follow up is completed. According to DDSN, in FY 12-13, 32 providers had a location that required a second follow up for licensing and 7 providers required a second follow up for QA. Also, the DDSN directive was amended to require that plans of corrective action are due 15 days, instead of 30, after licensing reviews.

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- 3. The Department of Disabilities and Special Needs should adequately document follow-up reviews with reports assessing provider progress toward completion of plans of correction.**

IMPLEMENTED

According to our sample of licensing and quality assurance files, the current contractor is adequately documenting follow-up reviews and assessing provider progress.

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- 4. The Department of Disabilities and Special Needs should revise its licensing directive to include specific criteria that defines when follow-up visits are warranted and the type of documentation that is sufficient to demonstrate implementation of the plan of correction.**

PARTIALLY IMPLEMENTED

DDSN revised its directive to require all deficiencies to have follow ups. The directive, however, states that “All citations identified on the reports will be individually reviewed to determine the type of follow up needed (i.e. documentation request or onsite review).” According to DDSN staff, the quality assurance contractor determines which type of follow up will occur and DDSN does not have input into that decision. In FY 12-13, four providers required onsite follow-up visits due to class II deficiencies.

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- 5. The Department of Disabilities and Special Needs should revise its licensing directive to include specific criteria for when sanctions are warranted and document instances when they occur.**

IMPLEMENTED

DDSN revised directive 104-01-DD to specify criteria for when sanctions are warranted. In addition, we reviewed documentation of all sanctions in FY 10-11 through FY 12-13. The documentation included specific deficiencies and issues, meetings between DDSN staff and the boards/providers, technical assistance offered, and actions taken. The information appropriately documented the sanctions taken.

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- 6. The General Assembly should amend state law to delegate the Department of Disabilities and Special Needs' licensing function to another state agency, such as the Department of Health and Environmental Control.**

NOT IMPLEMENTED

The General Assembly did not amend state law.

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- 7. If the licensing function remains within the Department of Disabilities and Special Needs, the agency should perform annual licensing reviews of each facility to ensure that providers are compliant with licensing requirements.**

PARTIALLY IMPLEMENTED

DHEC assumed the licensing function as of August 2009. In April 2012, DHEC informed DDSN that it would no longer provide this function. DDSN put out an RFP and awarded the new contract, which started October 15, 2012. Although the licensing function has been removed from DDSN, the contractor is required to perform licensing reviews of each facility every two years, not annually as we recommended.

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- 8. The Department of Disabilities and Special Needs should provide DHEC, SLED, the state long term-care ombudsman, and the Attorney General with updated lists of DDSN-operated and DDSN-contracted facilities on a quarterly basis.**

PARTIALLY IMPLEMENTED

Between March 2009 and April 2011, DDSN sporadically sent lists of DDSN-operated and DDSN-contracted facilities to various agencies. DDSN emailed facility lists quarterly to SLED, Protection and Advocacy for People with Disabilities, Inc., and the State Office on Aging, as recommended, from July 2012 through November 2013. DHEC does not currently receive the lists and the Attorney General's office never received the lists.

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- 9. The Department of Disabilities and Special Needs should verify and document that service providers are compliant with state law that requires them to notify local zoning boards before establishing a group home.**

NOT IMPLEMENTED

DDSN responded that notifying local municipalities about new residential facilities is potentially discriminatory; however, the agency encourages providers to get to know the local officials and inform them of the residence. We asked how DDSN documents this contact. DDSN responded that this is not required for licensing and provided no other information.

10. The General Assembly should amend §44-7-2910 to require Federal Bureau of Investigation criminal history checks for all direct caregivers without regard for the length of residency in South Carolina.

NOT IMPLEMENTED

Three bills that included this recommendation were introduced in the General Assembly between 2009 and 2012; however, none passed.

11. The Department of Disabilities and Special Needs should amend its licensing standards to require Federal Bureau of Investigation criminal history checks for all direct caregivers upon hire.

NOT IMPLEMENTED

DDSN has not amended the licensing standards to require FBI criminal history checks for all direct caregivers upon hire.

12. The Department of Disabilities and Special Needs should comply with S.C. Code §44-7-2920 and specify in the licensing standards that the required SLED criminal history check be obtained through a fingerprint search.

NOT IMPLEMENTED

The agency has not required fingerprint searches in its licensing standards (see *Criminal Record Checks*, p. 35).

13. The Department of Disabilities and Special Needs should enforce abuse and neglect directive 534-02-DD by reviewing provider reports and documenting the follow-up with providers if a required action is not taken.

IMPLEMENTED

DDSN's quality management division has a full-time incident management coordinator whose primary responsibility is to review all abuse, neglect, and exploitation, critical incidents, and death reports and ensure compliance with the applicable directives.

14. The Department of Disabilities and Special Needs should amend its contracts with the DSN boards and other providers to require that they formally record whether they would rehire a separating employee.

IMPLEMENTED

While DDSN did not amend the contracts as recommended, the contracts have a “catch all” provision that “the provider shall comply with all standards, policies, procedures, directives, and requirements for services covered by this Contract.” A service letter was added to agency directive 406-04-DD, revised October 2011. The service letter is to be sent by the provider if an applicant was a former employee of a DSN board, service provider, or regional center. The letter requires the responder to indicate whether it would or would not rehire the individual.

15. The Department of Disabilities and Special Needs should amend its contracts with the DSN boards and other providers to require that they make all requests for references in writing.

IMPLEMENTED

While DDSN did not amend the contracts with its boards and other providers to require that they make all requests for references in writing, DDSN’s contracts with its service providers require that the provider “comply with all standards, policies, procedures, directives, and requirements for services” covered by the contract. Directive 406-04-DD states that reference checks must be in writing.

16. The Department of Disabilities and Special Needs should amend its contracts with the DSN boards and other providers to require that they respond in writing to a written request from another system provider with the following information, documented in personnel records:

- **Written employee evaluations.**
- **Official personnel notices that formally record the reasons for separation.**
- **Whether the employee was voluntarily or involuntarily released from service and the reason for the separation.**
- **Information about job performance.**

PARTIALLY IMPLEMENTED

DDSN did not amend the contracts with its boards and other providers to include our 2008 recommendation. However, the contracts between DDSN and its service providers have a “catch all” provision that “the provider shall comply with all standards, policies, procedures, directives, and requirements for services covered by this Contract.” Directive 406-04-DD, *Criminal Record Checks and Reference Checks of Direct Caregivers*, states, upon written request by a prospective employer, the former employer is immune from civil liability to release the information on the four points in the recommendation. However, the service letter used for reference checks between DDSN system providers includes only the first two points but not the last two of the four points recommended.

17. The General Assembly should amend the Omnibus Adult Protection Act to add a misdemeanor level charge and penalty to the criminal acts directly against vulnerable adults.

NOT IMPLEMENTED

A bill was introduced to the General Assembly during the 2009-2010 session that added a misdemeanor level charge and penalty, but ultimately that language was not included in the law that passed.

18. The Department of Disabilities and Special Needs should conduct mandatory training for all board/provider staff handling consumer funds and inform board/provider staff to contact internal audit staff with questions regarding consumer funds.

PARTIALLY IMPLEMENTED

The agency has not conducted mandatory training as recommended; however, it developed a web-based training video which is available to staff. Internal Audit and CPA audits continue to find recurring problems with the handling of consumer funds (see *Management of Consumer Funds*, p. 25).

19. The Department of Disabilities and Special Needs should examine its methods for calculating rental charges and implement a statewide public directive specifying a single method for boards and other providers to use.

IMPLEMENTED

DDSN established a new directive to formalize room and board policies. According to DDSN officials, there must be various methods to calculate rental charges depending on whether the residence is HUD financed, financed through a mortgage, purchased by the DDSN/Housing Trust, or rented.

20. The Department of Disabilities and Special Needs should require each board and provider to have its room and board calculations approved annually by the agency.

NOT IMPLEMENTED

DDSN established a policy requiring each board/provider to have its room and board calculations approved annually by the agency; however, the policy was subsequently revised and this provision was deleted. The current policy requires that DDSN approve a provider's room and board policy initially, but does not require that DDSN review it annually. DDSN is to review it again only if changes have been made.

21. The Department of Disabilities and Special Needs should update its agency appeal directive (535 11-DD) to specifically include room and board calculations.

IMPLEMENTED

DDSN updated its agency directive to specifically include room and board calculations as an appealable item.

22. The Department of Disabilities and Special Needs should evaluate whether or not the statutory requirements for human rights committee composition could be effective, and if so, amend the directive to be consistent with the statute.

IMPLEMENTED

DDSN amended its directive to be more consistent with the statute. The Human Rights Committee (HRC) composition was changed from requiring at least six people to five people. Also, one of the HRC members now has to be a family member of a person who has an intellectual disability or related disability, autism, head and spinal cord injury, or similar disability, not a family member related to a DDSN consumer.

23. The Department of Disabilities and Special Needs should monitor whether facility/agency directors schedule human rights committee training at least once a year or more often as needed.

PARTIALLY IMPLEMENTED

DDSN did not change its directive to require annual training for HRC members. It requires training every three years or sooner, if there is a change in the majority of members. However, DDSN established a HRC training manual in May 2009 and revised it in August 2011 for HRC members to access online.

24. The Department of Disabilities and Special Needs should communicate training availability through its website.

IMPLEMENTED

There has been some training, including sessions on early intervention, functional falls prevention plans, and CS & ID/RD waiver training, on the calendar in 2013, but virtually no training is on the calendar in 2014. However, the calendar has been used consistently in the past few years.

25. The Department of Disabilities and Special Needs should require that a consumer's service coordination and service provision be performed by separate entities.

NOT IMPLEMENTED

Private providers of DDSN services are not permitted to provide both service coordination and service provision; however, DSN boards may provide both service coordination and service provision. As of February 2014, the Centers for Medicare and Medicaid Services is encouraging a separation between service coordination and service provision and is expected to issue official regulations in the future.

26. The Department of Disabilities and Special Needs should hold the DSN boards accountable for their fiscal management. If a board is not financially responsible, DDSN should implement its contractual controls, and, if needed, contract with other providers for services.

NOT IMPLEMENTED

DDSN has “worked with” DSN boards to hold them accountable for their fiscal management, however there is no evidence that DDSN has held them financially accountable, as stated in contractual terms.

For FY 10-11, FY 11-12, and FY 12-13, DDSN placed a freeze on services or programs for two DSN boards. The agency did not provide evidence that contractual controls, such as recoupment of funds or termination of contracts, were employed.

27. The Department of Disabilities and Special Needs should allocate funding for services to individuals and not to providers.

PARTIALLY IMPLEMENTED

According to a DDSN official, DDSN’s approach to providing services is, in part, a balance between funding expensive with less expensive services, between serving all disability types, and between services offered by DSN boards and private providers. However, the agency official also stated it does not matter who the service provider is that serves the individual consumer, as the funding for the service is the same. As such, DDSN retains some authority where funding is allocated.

28. The Department of Disabilities and Special Needs should allow DSN boards to provide services they provide in their own jurisdiction in other areas of the state without going through the provider qualification process.

NOT IMPLEMENTED

According to DDSN, state procurement objected to DSN boards bypassing the Request for Proposal process.

29. The Department of Disabilities and Special Needs should ensure that barriers to individuals desiring to provide services are minimized.

PARTIALLY IMPLEMENTED

Barriers cited in the 2008 LAC audit included low pay and training requirements for providers of respite, companion, and behavioral supports. DDSN has increased the number of companion and respite providers by 7 each, and behavioral support providers by 8 and a possible 12 more are expected to provide services in May 2014.

According to DDSN's quarterly records of unavailable services, DDSN was able to satisfy the demand, within each quarter, for companion services except for one consumer who has been seeking service since June 2013. As for respite providers, DDSN was successful in getting a \$1 per hour wage increase from the General Assembly effective August 2013. According to the quarterly reports, DDSN has met the need of consumer families requiring respite care with the exception of three consumers. Lastly, DDSN has offered free university-level coursework in behavioral analysis in exchange for two years of service of providing behavioral supports to DDSN consumers. According to the reports, DDSN has been able to meet the needs of consumers requiring behavioral supports.

However, DDSN still uses an oral interview for individuals not board certified in behavioral analysis, which due to the subjective nature of interviews, presents a barrier to providing services.

30. The Department of Disabilities and Special Needs should regularly evaluate the level of response to its solicitation for providers and amend the solicitation as indicated to encourage new providers to enter the system.

IMPLEMENTED

Since the 2008 LAC audit, DDSN issued a new solicitation in 2011 during which all existing providers were required to reapply. The level of response to the new solicitation was as follows:

- September 2011 — 47 providers.
- October 2011 — 3 providers.
- November 2011 — 12 providers.
- April 2012 — 10 providers.
- May 2012 — 3 providers.
- December 2012 — 3 providers.
- August 2013 — 3 providers.
- December 2013 — 6 providers.

Based on this information, there are 87 providers qualified through the Request for Proposal process, including private providers and DSN boards opting to provide services outside of their jurisdictions. Private interest in seeking qualifications to provide services remains consistent.

31. The Department of Disabilities and Special Needs should discontinue the use of an oral interview to qualify providers and ensure that its process is based on objective criteria and documented results.

PARTIALLY IMPLEMENTED

DDSN has discontinued the use of an oral interview for prospective providers who are board-certified behavioral analysts; however, an oral interview is used for those who are not board-certified prospective providers. According to a DDSN official, the interview is required for provider applicants to demonstrate the required knowledge and further explain their work samples. However, the nature of an interview is subjective.

As for objective criteria, applicants provide a work sample which is reviewed against 13 criteria. According to a DDSN official, the definitions of these criteria have recently been revised to more objectively define the criteria.

32. The Department of Disabilities and Special Needs should ensure that it enforces stated provider requirements for renewal and review.

PARTIALLY IMPLEMENTED

The 2008 LAC report specifically cites monitoring behavioral support services for renewal and review. For renewal, DDSN requires 20 hours of continuing education every two years for which it adequately encourages and monitors behavioral supports providers.

DDSN conducts quality assurance reviews by assessing the work product of existing behavioral supports providers. Between May 2011 and May 2012, DDSN conducted 12 reviews; however, these quality assurance reviews were halted in order to more specifically and objectively define the criteria. The criteria update was implemented in March 2014.

33. The Department of Disabilities and Special Needs should recruit new providers by ensuring that provider requirements are not unnecessarily restrictive.

IMPLEMENTED

According to a DDSN official, the solicitation requirements for private providers have been eased in the following ways:

- The solicitation was simplified to only the application process.
- Prospective providers are required to submit only three-year, rather than five-year, business plans and financial budgets.
- Prospective providers are no longer required to submit biographies on all employees to verify qualified staff. These are only required for executive staff while job descriptions provide enough information for direct care staff.
- Prospective providers are no longer required to submit internal policies. DDSN allows prospective providers to comply with all DDSN policies.
- New service providers are now also subject to a probationary period.

Changes to the solicitation were made with input from the Materials Management Office, DDSN staff, and providers.

34. The Department of Disabilities and Special Needs should provide regular and intensive training and assistance to new providers.

IMPLEMENTED

Since January 2009, DDSN has offered orientation training to all new providers, new providers requesting additional assistance, and new providers demonstrating weak performances; however, orientation training is not a requirement for all new providers. DDSN provided documentation that it provides regular and intensive training for providers.

35. The Department of Disabilities and Special Needs should pay all non-board providers of residential services on a bi-monthly schedule.

NOT IMPLEMENTED

DDSN proactively allocates funding to DSN boards a month in advance and retroactively reimburses non-DSN board providers on a monthly basis.

36. The Department of Disabilities and Special Needs should ensure that it provides the same benefits to all providers and that its policies are comprehensive and readily available to all providers.

PARTIALLY IMPLEMENTED

According to contractual agreements with private providers, DDSN does not allow these providers to offer both service coordination and service provision, as it does DSN boards. Also, private providers are reimbursed retroactively, rather than proactively as it pays DSN boards. Finally, DSN boards providing services within their own jurisdictions are not required to qualify through the Request for Proposals process but private providers are required. DSN boards are preferentially treated over private providers. DDSN's directives are readily available online.

37. The Department of Disabilities and Special Needs should develop a formal policy regarding the process for band funding and post the policy on its website.

IMPLEMENTED

DDSN directive 250-10-DD, effective May 2009, formalized the policy regarding band funding for services. The directive is available online on DDSN's website.

38. The Department of Disabilities and Special Needs should develop a plan to update band amounts for cost-of-living adjustments annually.

IMPLEMENTED

Each of DDSN's budget requests for FY 08-09 through FY 14-15 requested funding for the cost-of-living increases for gasoline, food, and electricity. According to DDSN officials, these requests have not been funded.

39. The Department of Disabilities and Special Needs should develop a policy requiring the agency to document pilot programs including their structure, purpose, scope, monitoring, and evaluation.

IMPLEMENTED

DDSN directive 700-05-DD, effective April 2009, established a process for approving or disapproving pilot programs. The directive requires proposals to include structure, scope, monitoring, and evaluation.

40. The Department of Disabilities and Special Needs should make information about pilot programs available on its website.

PARTIALLY IMPLEMENTED

According to the agency's response, once a pilot program proves successful, DDSN will provide information about the program using the agency's website. During our review, we identified ongoing pilot programs, still in trial phase, which were not communicated on the agency website.

41. The Department of Disabilities and Special Needs should develop a formal policy regarding outlier funding and post the policy on its website.

IMPLEMENTED

DDSN directive 250-11-DD, effective May 2009, formalized the policy detailing the outlier funding request system. The directive is available online on DDSN's website.

42. The Department of Disabilities and Special Needs should establish written criteria for outlier decisions.

IMPLEMENTED

DDSN directive 250-11-DD, effective May 2009, provides written criteria for outlier decisions for residential and in-home services. The directive also provides sample forms for requesting outlier funding.

43. The Department of Disabilities and Special Needs should arrange for independent audits of all of its most recent fiscal year Medicaid-filed cost reports.

PARTIALLY IMPLEMENTED

DDSN provided agreed-upon procedures Medicaid-filed cost reports for FY 05-06, FY 06-07, and FY 07-08 conducted by an independent accounting firm. However, a final note in each of these reports states: "...we were not engaged to, and did not, conduct an audit." DDSN also provided a report in which administrative costs were analyzed through a review of Medicaid-filed cost reports; however, this review was also not as stringent as an audit. The completion of these agreed-upon procedures and the review provide a lesser degree of assurance than an audit and, therefore, the agency has not fully implemented this recommendation.

44. The Department of Disabilities and Special Needs should arrange for independent audits of all of its Medicaid-filed cost reports periodically as is appropriate based upon initial audit results.

NOT IMPLEMENTED

DDSN's Medicaid cost reports were last reviewed during an agreed-upon procedures report for FY 07-08, approximately six years ago. Again, this was an agreed-upon procedures review, rather than a financial audit.

DDSN stated that it expects a review of the agency's business practices with a focus on funding and reimbursement of services to be released in the near future. The independent contractor conducting the review issued a statement of work in which it asserts that it will review related processes associated with Medicaid billing and cost reporting. It is unclear from these statements whether the scope is a limited review or an actual audit. However, since an initial audit of Medicaid cost reports has not been completed, periodic audits have not been conducted.

45. The Department of Disabilities and Special Needs should ensure that it develops and provides services for which it has received appropriations from the General Assembly.

PARTIALLY IMPLEMENTED

According to agency officials, through the years, the agency has instituted various initiatives to build service provider capacity for this program. In FY 12-13, approximately \$2.5 million for the Pervasive Development Disorder (PDD) funding was carried forward. In FY 13-14, DDSN anticipates approximately \$750,000 in PDD funding will be carried forward. DDSN has not fully funded the PDD waiver program as intended by the General Assembly.

46. The Department of Disabilities and Special Needs should develop funded residential services prior to requesting more funds for additional beds.

IMPLEMENTED

According to an agency official, the unused funds for residential services referenced in the 2008 LAC audit report were remitted back to the state budget office as part of the agency's required reduction plan. DDSN has since requested additional funding for residential expansion, but the General Assembly has not appropriated any new funding.

47. If the Department of Disabilities and Special Needs needs state appropriations to make capital grants to the DSN boards and other providers, it should specifically request these funds from the General Assembly.

PARTIALLY IMPLEMENTED

For FY 12-13 and FY 13-14, DDSN did not request capital funds to make these grants to boards/providers. DDSN regards capital projects as an integral component of service provision, as it is required by Medicaid requirements to ensure the health and safety of consumers through the maintenance of homes and buildings.

For FY 14-15, DDSN requested new state funds for one-time capital and start-up needs from the General Assembly to develop new residential and corresponding day supports for consumers. The request also stated that recurring funds are required to meet this need once one-time costs are covered.

According to an agency official, recurring funds are then used to pay for recurring costs of services including home and building maintenance. After the initial request for capital funding, DDSN does not make a separate request for capital funding for structural maintenance, but rather includes these costs with the cost of providing services.

48. The Department of Disabilities and Special Needs should implement appropriate controls over its aging caregiver list by establishing written policies for this list and for how service coordinators determine whom to designate as primary caregiver(s).

IMPLEMENTED

DDSN directive 502-05-DD, updated in November 2011, outlines how service coordinators determine whom to designate as primary caregiver of a consumer. However, DDSN has not established written policies for this list because its purpose is to demonstrate the growing concern of aging caregivers, not to prioritize the service needs of consumers with aging caregivers.

49. The Department of Disabilities and Special Needs should discontinue awarding grants for general operating expenses to private, non-profit advocacy organizations.

IMPLEMENTED

According to an agency official, DDSN does not award grants for general operating costs to private, non-profit advocacy organizations. Grant proposals from advocacy organizations suggest funding requests are earmarked for specific programs.

50. The Department of Disabilities and Special Needs should develop and implement a standard grant application for private, non-profit organizations.

IMPLEMENTED

DDSN has implemented a standard grant application for funding special projects.

51. The Department of Disabilities and Special Needs should establish a public directive for the review process of awarding and continuing grants to private, non-profit organizations.

IMPLEMENTED

DDSN directive 250-12-DD, effective December 2012, incorporated the grant application process for private, non-profit organizations into a directive.

52. The Department of Disabilities and Special Needs should post on its website all directives that contain information that would be of consumer or public interest.

IMPLEMENTED

All DDSN directives are available to the public on DDSN's website. Though the agency maintains an internal web-based system for certain agency functions, the system does not contain directives not available on the website.

53. The Department of Disabilities and Special Needs should comply with departmental directive 100-01-DD and document the annual review of its posted policies. DDSN should ensure that it corrects and updates policies as a part of this review.

IMPLEMENTED

DDSN amended directive 100-01-DD to require that directives be reviewed, at a minimum, every three years. We reviewed a random sample of currently posted directives and determined that the agency is in compliance with the directive.

54. The Department of Disabilities and Special Needs should maintain only one comprehensive and authoritative source of human resources policies.

NOT IMPLEMENTED

DDSN human resources policies remain in both an employee manual and in the agency's directives. Neither resource is comprehensive; a staff person must refer to both to obtain a complete understanding of agency human resources policies. In addition, the agency's *General Rules and Regulations: An Employee Handbook* and the directives contradict each other in certain areas. For instance, the manual and directives refer to different agency officials as the approving authority for drug testing of an employee suspected to be under the influence of alcohol, while on duty.

55. The Department of Disabilities and Special Needs should take action to improve the content and usability of its public website.

IMPLEMENTED

DDSN staff began the process of updating the website in December of 2008. The current website's content and usability is an improvement over the website available during the scope of the initial audit.

56. The South Carolina Commission on Disabilities and Special Needs should modify its directives to ensure that commission members' rights as citizens are not encumbered and that their fiduciary duties are not hindered.

NOT IMPLEMENTED

The Commission did not modify its directives to explicitly state that status as a Commissioner does not supersede a Commissioner's rights as a member of the public. However, agency officials maintain that commission members can request information and receive the information they need to perform their duties.

57. The Department of Disabilities and Special Needs should approve a finance/audit sub-committee charter which provides for members to participate in audit planning and review of audits before they are released.

IMPLEMENTED

The DDSN Commission approved an audit committee in 2009. The committee is charged with participating in audit planning by reviewing the annual risk assessment and audit plan. The charter also requires that they review results of internal audits.

58. The Department of Disabilities and Special Needs should update its internal audit risk assessment plan to include the central and district offices.

PARTIALLY IMPLEMENTED

The DDSN internal audit risk assessment plan does not include the operations of the central and district offices. However, DDSN obtained an external review of its agency-wide Medicaid-related financial procedures for three fiscal years during the course of our follow-up review.

59. The Department of Disabilities and Special Needs should ensure that the order of priority in its internal audit risk assessment plan is followed as closely as reasonably possible.

PARTIALLY IMPLEMENTED

While DDSN internal audit staff do not follow the risk assessment exactly, they follow it more closely than during the initial audit. During the scope of this follow up, they only performed one audit not included in the risk assessment process. However, staff did not audit the two facilities with the largest risk scores.

60. The Department of Disabilities and Special Needs should perform internal audits of its information technology systems.

IMPLEMENTED

DDSN's internal audit division performed an information technology audit in 2010.

61. The Department of Disabilities and Special Needs should revise its provider audit policy directive to include specific guidance on which consulting services should not be performed by the CPA firms conducting a DSN board's financial audit.

NOT IMPLEMENTED

DDSN's provider audit policy (directive 275-04-DD) does not contain specific guidance on which consulting services should not be performed by the CPA firms conducting a board's financial audit.

62. The Department of Disabilities and Special Needs should require DSN boards to annually report all services provided by any CPA firms.

IMPLEMENTED

DDSN's provider audit policy (directive 275-04-DD) requires DSN boards to submit a statement of all financial services provided by contractors, and the CPA firm providing the services.

63. The Department of Disabilities and Special Needs should provide adequate training and technical assistance to the DSN boards' executive directors.

IMPLEMENTED

DDSN district offices currently provide sufficient training and technical assistance opportunities to ensure that providers do not have to seek external assistance on complying with DDSN's standards.

Agency Comments

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State Director

David A. Goodell
*Associate State Director
Operations*

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SC Department of Disabilities and Special Needs Response to LAC Report

AGENCY COMMENTS

The South Carolina Department of Disabilities and Special Needs (DDSN) is pleased that the report affirms the quality of care being provided and that processes for protecting individuals receiving services are in place. The report confirms DDSN's quality assurance efforts to be well-designed, comprehensive, and effective. The LAC audit determined the policy of DDSN regarding criminal record checks, offender registry checks and other caregiver background checks comply with state law and, in some cases, go beyond state requirements.

The LAC found policies and practices of DDSN to be compliant with state statutes and the state procurement code. The LAC found that DDSN's procurement records did not contain any questionable goods or services. The report substantiates that DDSN's procurement directives for boards/providers are comprehensive and compliant with the SC Consolidated Procurement Code.

The LAC report also found that DDSN is complying with state law relating to involuntary judicial admissions. The agency has qualified staff evaluating individuals for involuntary commitments.

The LAC report makes recommendations for both DDSN and the State to make improvements. DDSN utilizes a continuous quality improvement process. The agency will use this report to strengthen areas and make additional improvements to its processes and procedures. The recommendations made to the General Assembly could improve not only DDSN's system of care, but other state systems as well to better protect and serve all vulnerable populations. This could include children in foster care, residential treatment or other out-of-home settings, children and adults in day care settings, children and adults in home health, mental health and psychiatric care settings and elderly and other residents in nursing homes or facilities.

Of the 49 recommendations, 10 are directed to the General Assembly. Of the remaining 39 recommendations, 15 are such that DDSN is compliant with current state law, leaving 24 remaining recommendations. The agency response reflects the sections as outlined in the LAC report.

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Whitten Center - Phone: 864/833-2733

9995 Miles Jamison Road
Summerville, SC 29485
Phone: 843/832-5576

DISTRICT II

Coastal Center - Phone: 843/873-5750
Pee Dee Center - Phone: 843/664-2600
Saleeby Center - Phone: 843/332-4104

PROTECTION OF DDSN CONSUMERS

Reports and Referrals of Abuse, Neglect, and Exploitation (ANE)

The LAC found no substantive issues with DDSN's investigative process. The report states the allegations of abuse substantiated by SLED or other investigative agencies across all facility types and locations is extremely low, ranging from 0.01 to 0.06 percent of people served across each of the 5 years of the audit period FY 2009 – FY 2013.

The audit found all alleged offenders in the LAC's sample that were DDSN employees and contracted service providers were placed on administrative leave without pay, as required by policy. All sample cases also had either an administrative or management review.

The LAC determined that DDSN also pursues case dispositions for all allegations of vulnerable adult abuse, neglect, and exploitation filed in the agency's internal reporting system. At the onset of an allegation, DDSN requires its regional centers and boards/providers to file a report into this system, providing allegation details including which investigative agency the facility referred the case. DDSN monitors pending cases in this system and pursues outcomes through contact with the investigative agencies.

Recommendation 1: DDSN will comply with any statutory amendments enacted by the S.C. General Assembly.

Recommendation 2: DDSN will comply with any statutory amendments enacted by the S.C. General Assembly.

Recommendation 3: DDSN will comply with any statutory amendments enacted by the S.C. General Assembly.

Recommendation 4: DDSN will comply with any statutory amendments enacted by the S.C. General Assembly.

Recommendation 5: DDSN is compliant with state statute. The text of the posters is provided by the State Long Term Care Ombudsman Program (SLTCOP) in consultation with the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division (SLED) not DDSN. This recommendation could be directed to the General Assembly to amend state statute or the recommendation could be directed to the SLTCOP to revise the content of the posters. DDSN does want consumers and families to be informed. DDSN standards require information be shared with consumers and families regarding reporting of Abuse, Neglect, and Exploitation (ANE). Consumers in residential services also receive training on Abuse, Neglect and Exploitation. Compliance with this expectation is independently measured for DDSN by a US Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) approved, Quality Improvement Organization (QIO). If a provider is found not compliant, a plan of correction is required and a follow-up visit by the QIO is performed to ensure corrective action has taken place.

Recommendation 6: DDSN is compliant with state statutes. When SLTCOP staff have visited the homes, they have not recommended alternative placement of the posters. DDSN will comply with SLTCOP recommendations.

Recommendation 7: DDSN will comply with any statutory amendments enacted by the S.C. General Assembly.

Controls to Ensure the Safety of Consumers

The LAC found that DDSN has controls in place to minimize the risk of consumer safety issues and improve overall quality. Those controls include regular staff training, an internal audit department, risk

management teams, quality assurance reviews, licensing process, and abuse and critical incidents reporting methods.

The report recognizes that DDSN's quality assurance program collects and reports information on how well DDSN's service providers perform on various quality indicators, such as the health and safety of a person, his participation in the community, and his attainment of goals. DDSN contracts with a US Department of Health and Human Services Centers for Medicare and Medicaid Services (CMS) approved, Quality Improvement Organization (QIO) to conduct quality assurance reviews.

The LAC report states that the purpose of DDSN's licensing process is to ensure facility environments promote consumers' health and safety by inspecting buildings. The QIO inspects facilities with children annually and all others bi-annually. All reviews had plans of correction and follow-up reviews.

DDSN recently (May 2014) created a schedule that assigned a deficiency class number to residential licensing standards. The LAC noted that implementation of this schedule should address issues found during the audit.

Recommendation 8: DDSN currently requires annual training of all regional center and provider staff on Abuse, Neglect and Exploitation and the reporting requirements contained in 534-02-DD. DDSN measures compliance with this directive. DDSN will further utilize the online training developed by the SC Adult Protection Coordinating Council and the USC Children's Law Center to require standardized training. DDSN will conform its policy and monitorship accordingly.

Recommendation 9: DDSN will further define its timeframe for "annual" as 12 calendar months from the prior training date for the required ongoing abuse, neglect and exploitation training of staff.

Recommendation 10: DDSN implemented this recommendation in May 2014.

Recommendation 11: These indicators are measured by DDSN's federally recognized CMS approved Quality Improvement Organization. This occurs already as part of every review for every provider agency every 12 – 18 months, not just at the time of licensure review. If a provider is found not compliant, a plan of correction is required and a follow up visit by the QIO is performed to ensure corrective action has taken place. It should be noted that most providers do not have staff already hired at the time of the initial licensing visit, so the licensing review staff would be unable to review this documentation.

Recommendation 12: DDSN will continue to measure compliance with its directive 100-09-DD that requires regional centers and providers to report events meeting the critical criteria to its incident management team. For community providers this activity is measured by DDSN's federally recognized, CMS approved, Quality Improvement Organization (QIO) and DHEC. If a provider is found not compliant, a plan of correction is required and a follow-up visit by the QIO is performed to ensure corrective action has taken place.

Recommendation 13: DDSN is compliant with this recommendation. DDSN will continue to measure compliance with its directive 100-26-DD to require all provider risk management teams to focus on consumer safety issues. This activity is measured by DDSN's federally recognized, CMS approved, Quality Improvement Organization (QIO). If a provider is found not compliant, a plan of correction is required and a follow-up visit by the QIO is performed to ensure corrective action has taken place.

Consumer on Consumer Incidents

The LAC acknowledges that state law concerning abuse, neglect or exploitation (ANE) of children and vulnerable adults does not apply to other critical incidents meeting a lower threshold for reporting and therefore does not require reporting of these types of incidents. The reporting requirements of DDSN go beyond the mandates of state law by requiring providers to

submit reports of critical incidents, such as falls, consumer on consumer incidents, or hospitalizations. This is DDSN's quality mechanism to ensure safeguards are in place, recurring events or patterns of events are detected and addressed, and both preventive and corrective measures are implemented. If during critical incident review, DDSN determines the incident might be related to ANE, it is promptly reported to the appropriate investigative authority. Critical incidents occurring at DDSN regional centers, DSN board facilities, other service provider locations, or while a consumer is under the supervision of staff or a contracted employee from any provider are required to be reported. The LAC notes that according to DDSN directive 100-09-DD, the best guidance in determining if an incident should be reported is "when in doubt, report."

The LAC found that DDSN's critical incident reporting system is able to screen out incidents reported as critical incidents that are later judged to be non-critical. Board/provider agency staff conduct an internal management review of all critical incidents. The critical incident review report indicates if rules or policies were violated, what disciplinary and management actions were taken, and if the incident was a repeated occurrence with the consumer.

Accountability and supervision means requiring staff to be responsible for consumers in their care and knowing where they are at all times. The LAC found that DDSN requires all consumers, supported in a residential or day program, be assigned a specific degree of supervision based on each individual's needs. Consumers must be supervised and accounted for according to their supervision plans and documentation must indicate the frequency of that supervision. The accountability levels assigned to consumers determine the amount of supervision given. In the LAC sample, all of the reported incidents underwent an internal management review.

The LAC determined that DDSN policy requires, as a preventive measure, each individual who is scheduled for admission into a DDSN residential or day program setting be screened by staff to determine what, if any, sexual risk the person presents to others in that service setting.

Recommendation 14: The practice of DDSN is compliant with this recommendation. DDSN Quality Management staff incorporate a review of consumer supervision/accountability levels as a standard practice. DDSN will formalize this practice by amending directive 100-09-DD to strengthen consumer accountability re-evaluation to ensure appropriate levels of supervision are provided.

Recommendation 15: DDSN will amend its directive 533-02-DD by replacing "occurs (alleged by the consumer or observed by staff)" with "is suspected or alleged."

Recommendation 16: DDSN will amend its directive 510-01-DD Supervision of People Receiving Services to require providers to include a history of sexual assault and sexual crime convictions as considerations when determining the level of supervision to be provided.

Management of Consumer Funds

DDSN mandates consumer funds training for all staff who handle consumer funds. The report acknowledged mandated training is part of pre-service orientation. An online web-based training developed by DDSN Internal Audit staff is available at any time for refresher training.

Recommendation 17: The 567-01-DD directive of DDSN mandates consumer funds training for all staff who handle consumer funds. DDSN has already developed standardized training and will amend its directive to require all staff handling consumer funds to be retrained annually.

Recommendation 18: DDSN will measure compliance with directive 567-01-DD requiring annual training for staff handling consumer funds.

Effectiveness of Day Programs

The LAC found that day programs may include work activity centers, adult activity centers, and support centers. Consumers in day programs receive the following services-career preparation, employment services, community service, day activity services, and support center services, all designed to promote independence. Day programs partner with local businesses, local governments, non-profits, and national organizations to provide employment opportunities for DDSN consumers. Job opportunities include product assembly, janitorial, and lawn care services. All special minimum wages must be reviewed and adjusted at periodic intervals. The audit found that DDSN requires its contracted providers to comply with the Fair Labor Standards Act, which provides criteria for people with disabilities to volunteer.

The LAC found that DDSN's annual consumer assessment for both day program and service coordination, determine the level of support needed in areas such as self-determination, personal responsibility, socialization and job search, and ask what kinds of work the consumer is most interested in. Further, the supervised/supportive living environment section asks if consumers are aware of other options/settings that may be available to them.

Recommendation 19: DDSN includes the consumer's desires to work in integrated community settings in their annual assessments. If the person is interested in working, the person may be referred to Vocational Rehabilitation or to Employment Services rather than other day services options (e.g., day activity, community services, etc.). DDSN will more clearly document that choice has been discussed and offered to the consumer.

Recommendation 20: DDSN will further develop and implement system-wide policies and procedures that prioritize integrated employment for consumers.

Suggested Improvements to Curb ANE

In order to enhance DDSN's effort to prevent incidents of ANE, DDSN works closely with officials of all entities having investigative authority to improve reporting processes and ensure compliance with state law and department policies.

DDSN is an active member of the Adult Protection Coordinating Council (APCC) and its committees. DDSN works collaboratively with other agencies to recommend state law changes, and to improve and increase training and consumer and public awareness. DDSN actively participated in both APCC reviews regarding the establishment of an Adult Abuse Registry.

Recommendation 21: DDSN will comply with any statutory amendment enacted by the S.C. General Assembly.

Recommendation 22: DDSN will comply with any statutory amendment enacted by the S.C. General Assembly.

Recommendation 23: DDSN is compliant with state statutes. DDSN will comply with any statutory amendments enacted by the S.C. General Assembly.

CAREGIVER BACKGROUND CHECKS

Criminal Record Checks

The policies of DDSN are compliant with state statutes regarding background checks. The LAC report contains numerous recommendations for the SC General Assembly to amend the law or for DDSN to extend its practice beyond current law. DDSN will comply with any statutory changes enacted by the S. C. General Assembly. DDSN will amend its policies and monitorship of compliance accordingly.

The LAC report found that DDSN implemented its pre-employment background check policy in accordance with state law. Further, the report notes the directive restricts regional centers and boards/providers from employing individuals with a substantiated history or record of abuse and neglect.

The LAC determined DDSN's policy provides more stringent guidelines than the law for its facilities, denying employment eligibility to applicants convicted of various crimes against children and serious crimes of violence.

The report acknowledges that S.C. Code of Laws §44-7-2920 states that criminal record checks are not required to be repeated as long as the employee remains employed with the direct care entity.

Recommendation 24: DDSN will comply with state statute and measure compliance with directive 406-04-DD that requires all regional centers and boards/providers to conduct pre-hire, criminal history checks for prospective direct caregivers.

Recommendation 25: DDSN is compliant with state statute. DDSN will comply with any statutory amendments enacted by the S.C. General Assembly.

Recommendation 26: DDSN is compliant with state statute. DDSN will comply with any statutory amendment enacted by the S.C. General Assembly.

Recommendation 27: DDSN will comply with any statutory amendment enacted by the S.C. General Assembly.

Recommendation 28: DDSN is compliant with state statute. DDSN will comply with any statutory amendment enacted by the S.C. General Assembly.

Recommendation 29: DDSN is compliant with state statute. DDSN will comply with any statutory amendment enacted by the S.C. General Assembly.

Recommendation 30: DDSN is compliant with state statute. DDSN will comply with any statutory amendment enacted by the S.C. General Assembly.

Recommendation 31: DDSN is compliant with state statute. DDSN will comply with any statutory amendment enacted by the S.C. General Assembly.

Sex Offender Registry

Unless direct care staff is employed to work directly with children, neither state law nor agency directive requires regional centers and boards/providers to conduct a sex offender registry check. The LAC found that facilities often conduct at least a SC Sex Offender registry search, if not a National Sex Offender Registry search.

Recommendation 32: DDSN is compliant with state statute. DDSN will comply with any statutory amendment enacted by the S.C. General Assembly.

Central Registry of Child Abuse and Neglect

State regulation requires a clean DSS central registry check for employees of child care centers. The LAC audit found DDSN policy expands this requirement to all DDSN prospective direct care staff, regardless of the consumer's age.

Recommendation 33: DDSN will require all checks of the Central Registry of Child Abuse and Neglect to be completed and returned to the respective regional center or board/provider prior to hiring new employees who will be working with minors.

Recommendation 34: DDSN is compliant with state statute. DDSN will comply with any statutory amendment enacted by the S.C. General Assembly.

Recommendation 35: DDSN is compliant with state statute. DDSN will comply with any statutory amendment enacted by the S.C. General Assembly.

Medicaid Fraud List

The LAC found DDSN policy requires direct care facilities to conduct Medicaid fraud searches on prospective employees.

Recommendation 36: DDSN is compliant with this recommendation. This activity is measured by DDSN's federally recognized, CMS approved, Quality Improvement Organization (QIO). If a provider is found not compliant, a plan of correction is required and a follow-up visit by the QIO is performed to ensure corrective action has taken place.

Reference Checks

The LAC found DDSN policy requires regional centers and boards/providers to also conduct pre-employment reference checks on prospective direct care employees.

Recommendation 37: DDSN is compliant with this recommendation. This activity is measured by DDSN's federally recognized, CMS approved, Quality Improvement Organization (QIO). If a provider is found not compliant, a plan of correction is required and a follow-up visit by the QIO is performed to ensure corrective action has taken place.

Rehire of Employees Terminated Within the DDSN Provider Network

The LAC determined all of the offenders were placed on administrative leave without pay while law enforcement and investigative agencies investigated allegations.

Recommendation 38: DDSN does not have the authority to substantiate abuse, neglect and exploitation and is bound by the disciplinary guidelines of the state, SC Code § 43-35-15. Many times the employee is terminated before the investigative agency completes their investigation and does not notify the agency of the final disposition. The agency cannot go back and change the reason for a termination after a person leaves the agency. Sharing this information would violate SC Reg. 19-720.03.

Recommendation 39: DDSN does not conceal substantiation of abuse, neglect or exploitation. DDSN will amend its Human Resource Directives to document this practice.

PROCUREMENT

DDSN Policies and Practices

The procurement policies of DDSN are available to the public.

The LAC recognized that the Internal Procurement Manual of DDSN is compliant with the state procurement code according to the Procurement Services Division of the Budget and Control Board.

The LAC found the procurement records of DDSN did not contain any questionable goods or services. As for the method of procurement, the LAC found DDSN's records indicate compliance with the state procurement code.

According to a procurement audit conducted by the Procurement Services Division of the Budget and Control Board, auditors reviewed all sole source and emergency procurements for the period between April 2008 through December 2011 and found no exceptions.

The LAC audit found records for the agency's emergency procurements were legitimate and involved repairs at facilities that threatened the health, welfare, and/or safety of consumers.

Procurement Transparency

The LAC audit found the SC Commission on Disabilities and Special Needs holds regularly scheduled and publicly announced, open meetings. In addition, Commission minutes and policies are published on the agency's website. Procurement matters are regularly on Commission agendas.

The degree of information provided by DDSN's administration to the Commission is based on its established practice. The LAC determined that DDSN regularly exercises this practice.

Recommendation 40: DDSN will work with the Commission to formalize approval process for procurements.

Recommendation 41: DDSN will work with the Commission to formalize approval process for procurements.

Recommendation 42: DDSN is compliant with its policy 700-05-DD regarding Pilot Services and Programs. Information about pilots of a new service or program in the field are published on the agency's website.

Recommendation 43: DDSN is compliant with the state procurement code as issued by MMO (SC Code 11-35-4840). DDSN was audited by MMO within the LAC audit time period. This audit specifically examined procurement practices and no exceptions were found with regard to interagency agreements.

Board/Provider Procurement Policies and Practices

The LAC found DDSN's contracts with boards/providers require them to adhere to all agency policies, including procurement directives. This directive outlines procurement policies consistent with both the agency's procurement standards and the SC Consolidated Procurement Code. The LAC also found that the agency's Internal Audit (IA) department has the authority to inspect the purchasing practices of DDSN's boards/providers and hold them accountable.

The LAC audit determined DDSN policy requires each provider to establish and adopt a set of purchasing policies at least as restrictive as those contained in the directive. The LAC audit further determined this policy instructs boards/providers to archive procurement documents, in the event of an audit, including documentation of written and verbal quotations, the vendor listings, tabulation sheets, award statements, and advertisements, when applicable. The policy authorizes exceptions specific to emergency situations and sole source procurement and requires written justification for each procurement.

External and Internal Audits of Boards/Providers

The LAC found that DDSN maintains policies that subject boards/providers to either annual external audits, as-needed internal audits, or both. DDSN's procurement policies are comprehensive and the LAC found them to be consistent with the S.C. Consolidated Procurement Code.

Recommendation 44: DDSN will continue to measure compliance with directive 250-08-DD, that requires all providers to be compliant with the state procurement code. DDSN Boards are annually audited. DDSN will consider adding this same audit requirement for private providers.

ELIGIBILITY, INVOLUNTARY ADMISSIONS, AND CONSOLIDATION OF REGIONAL CENTERS

Process for Becoming Eligible for DDSN Services

The eligibility requirements of DDSN comply with state law. DDSN eligibility is separate from Medicaid Waiver eligibility which is determined by the Department of Health and Human Services. The ruling of the SC Supreme Court applies only to Medicaid Waiver eligibility.

The LAC report notes that DDSN centralized the screening process because the agency found that, despite the use of the same standards and training, screening services were substantially inconsistent across the state. In addition, screening centrally removes the first step of the process from the organizations that provide most of the services, reducing the chance for conflicts of interest.

Recommendation 45: The SC Supreme Court opinion referred to by the LAC addressed DHHS and eligibility for Medicaid Waiver services, not DDSN eligibility. This was a Medicaid Level of Care and Waiver eligibility issue not a DDSN eligibility issue. DDSN requested DHHS to amend the Waiver and this was not done. DDSN does not have the authority to change the Medicaid Waivers.

Recommendation 46: DDSN will work with the Commission to determine if the DSM criteria for ID are most appropriate. DDSN will not promulgate regulations as this issue is in litigation. DDSN does not have the authority to amend Medicaid Waiver documents.

Recommendation 47: DDSN will revise the residency requirements in directive 100-30-DD.

Involuntary (Judicial) Admissions

The LAC audit found that DDSN is complying with state law and has qualified staff evaluating individuals for involuntary commitments.

Consolidating Regional Centers

The LAC report recognized DDSN has reviewed the feasibility of consolidating regional centers.

The LAC acknowledged that according to a national study performed by the University of Minnesota, in FY 10 – 11, South Carolina's average daily expenditures per resident in regional centers was well below the national average and amongst the lowest in the nation.

The audit determined that while consumers and their families are able to choose whether to receive services in an institutional or community-based setting, the agency is increasing the services available to consumers in the community in an effort to increase the likelihood that a consumer with a higher level of need would choose to be served in the community.

The audit report notes that over the last decade, DDSN has reduced the number of consumers served in regional centers by 24%, respecting individual choice. The LAC determined DDSN's efforts to reduce the number of people served in institutional settings are consistent with the U. S. Supreme Court's decision in *Olmstead v. LC*.

The LAC report acknowledges that SC Code § 44-20-365 requires that no regional center be closed without authorization by the General Assembly.

Recommendation 48: DDSN will comply with any statutory amendments enacted by the S.C. General Assembly.

Recommendation 49: DDSN will comply with any statutory amendments enacted by the S.C. General Assembly.

FOLLOW UP ON 2008 REPORT RECOMMENDATIONS

Recommendation 4: DDSN requires all deficiencies to have follow-ups. While DDSN's quality assurance contractor determines whether that follow-up is a site visit or a request for documentation, this contractor is federally recognized and CMS approved, thus demonstrating a high level of expertise and sound judgment. DDSN is able to provide direction to the QIO contractor.

Recommendation 9: The SC General Assembly did not amend state statute therefore DDSN remains compliant with current statute.

Recommendation 11: The SC General Assembly did not amend state statute therefore DDSN remains compliant with current statute.

Recommendation 12: The SC General Assembly did not amend state statute therefore DDSN remains compliant with current statute.

Recommendation 18: DDSN requires mandatory training as part of pre-service orientation and developed a web based video to facilitate compliance with this requirement. Consumer funds audits are conducted statewide and results published in public reports.

Recommendation 25: DDSN has partially implemented. CMS allows entities and/or individuals that have responsibility for service plan development to provide other direct Waiver services to the participant. The ID/RD, CS and HASCI Waivers are all approved by CMS using this model of service delivery.

Recommendation 26: DDSN has implemented. During the limited scope of the audit, providers implemented corrective plans of action therefore recoupment was not required. DDSN's efforts focus on implementation and monitorship of corrective action plans and contractual controls like freezing new admissions to avoid the overwhelming disruption or elimination of services that can result from terminating a contract.

Recommendation 28: The SC General Assembly did not amend state statute therefore DDSN remains compliant with current procurement code.

Recommendation 35: DDSN has implemented. DDSN offered non-Board providers a choice of billing bi-monthly and currently no providers are choosing to do this.

Recommendation 40: DDSN has implemented. DDSN is compliant with its directive on Pilot Services or Programs.

Recommendation 45: DDSN has implemented. In previous years appropriated funds were not fully expended due to limits in providers who offer this service. DDSN implemented major efforts to increase provider capacity which has resulted in full expenditure of recurring appropriated funds.

Recommendation 47: DDSN has implemented. Funds were not requested in FYs 12-13 and 13-14 as they were not required. Funds were requested in FY 14-15.

Recommendation 58: DDSN has implemented. DDSN internal audit does audit service functions and activities carried out by the central and district offices. Examples include HASCI attendant care and IT.

Recommendation 61: DDSN has implemented by referring potential conflict situations to LLR to make an independent determination. CPA licensing standards require CPAs to keep abreast of which consulting services they cannot perform if they are hired to conduct a financial audit.

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