

CHAPTER 88

Department of Disabilities and Special Needs

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

ARTICLE 1 LICENSE REQUIREMENT FOR SETTINGS AND PROGRAMS

88–105. Definitions.

- A. Annual: Within a 12-month time period.
- B. Candidate: Any Qualified Provider who has applied for a License from the Department.
- C. Community Integrated Setting (CIS): A physical location based in the community that does not meet the definition of an FBS, at which DDSN sponsored Services are delivered to Participants in accordance with Department policies, excluding the locations of a licensed residential setting, the home of the Participant(s), or any other residential setting.
- D. Day Services Program: DDSN sponsored Services, defined by the standards of the Department that are operated in a licensed service setting.
- E. Direct Support Professional (DSP): Any employee or any person under contract whose job description indicates the duty of directly working with Participants.
- F. Department: The South Carolina Department of Disabilities and Special Needs (DDSN).
- G. Facility Based Setting (FBS): A physical location, owned by, operated by, or under the control of a Qualified Provider, at which DDSN sponsored Services are delivered to Participants in accordance with Department policies.
- H. License: A document issued by the Department to the Qualified Provider indicating that the Licensee is in compliance with the provisions set forth in accordance with these regulations and within the Department's policies.
- I. Licensee: The Qualified Provider who holds the primary responsibility for providing DDSN sponsored Services and maintaining compliance with these regulations and the Department's policies.
- J. Licensor: The Department.
- K. Participant: An individual, in the State, with an Intellectual Disability or a Related Disability (ID/RD), Autism Spectrum Disorder (ASD), Head Injury, Spinal Cord Injury (SCI), and Similar Disability (SD) who has been deemed eligible for Services by the Department and who is participating in or is on the waiting list for DDSN sponsored Service(s).
- L. Qualified Provider: An organization either public or private which is operated by a board of directors or other governing body and which offers DDSN sponsored Services, pursuant to a contract with the Department, to individuals with an Intellectual Disability or a Related Disability (ID/RD), Autism Spectrum Disorder (ASD), Head Injury, Spinal Cord Injury (SCI), and Similar Disability (SD) in accordance with Department policies.
- M. Residential Services: as defined by the DDSN Residential Habilitation Standards, is provided in each of models for residential support listed below:
 - (1) Community Training Home–I (CTH–I)
 - (2) Community Training Home–II (CTH–II)
 - (3) Supervised Living Program–II (SLP–II)
 - (4) Community Inclusive Residential Services (CIRS)

N. Service(s): Person-centered support(s) provided to increase independence, socialization, employment, community integration, prevent institutionalization, and maintain the Participants' health and safety in the least restrictive environment.

O. State Director: The head of the Department or their designee.

HISTORY: Added by SCSR 48-5 Doc. No. 5179, eff May 24, 2024.

88-110. Scope.

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

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

- (1) Operated by an agency of "the state";
- (2) An integral part of a public or private school or center which is licensed, certified, or accredited by the South Carolina Department of Education or is sponsored by a school district;
- (3) Licensed as a community residential care facility, skilled care facility, intermediate care facility, or hospital;
- (4) A day care center licensed by the Department of Social Services; or
- (5) Clinical programs operating under the guidance of a Licensed Practitioner of the Healing Arts with program activities designed to provide therapeutic benefits towards a physical or mental health diagnosis.

C. No setting or program shall accept Participants for care, maintenance, education, training, or treatment other than that for which it is licensed.

D. It is intended that the Department not duplicate other State agency programs or develop service modalities which normally would be considered to be the legal and programmatic mandate of another State agency.

E. All Licensees will meet the statutory standards prohibiting abuse, neglect, or exploitation of adult or child Participants and are expected to comply with State law concerning the reporting of known or suspected cases to the appropriate State authority and to the Department if the victim is a DDSN Participant.

HISTORY: Renumbered from 88-105 and amended by SCSR 48-5 Doc. No. 5179, eff May 24, 2024.

Code Commissioner's Note

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

88-115. Licenses Issued.

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

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

C. All settings are subject to inspection or investigation at any time without prior notice by entities authorized by the South Carolina Code of Laws and the Department. Entities authorized by the Department shall be granted access to all properties and areas, objects, and records at the time of the inspection. Photocopies, when required as a part of the inspection, shall be used for the purposes of regulation enforcement. Photocopies shall be confidentially maintained. The spaces and areas to be physically inspected shall be determined by the entity.

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

- (1) Developmental Intervention and Training Services Program;
- (2) Day Services – Adult Activity;
- (3) Day Services – Unclassified Setting;
- (4) Residential Services – CTH-I;
- (5) Residential Services – CTH-II;
- (6) Residential Services – SLP-II.

E. A Qualified Provider may request an opinion or an interpretation of the application of any regulation by making a written request to the Department.

HISTORY: Renumbered from 88-110 and amended by SCSR 48-5 Doc. No. 5179, eff May 24, 2024.

88-120. Effective Date and Term of License.

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

HISTORY: Renumbered from 88-115 and amended by SCSR 48-5 Doc. No. 5179, eff May 24, 2024.

88-125. Applications for License.

A. Applications for License shall be made to the Department at license@ddsn.sc.gov.

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

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

- (1) Documentation of a fire safety inspection conducted by the State Fire Marshall's Office;
- (2) Documentation of an electrical inspection conducted by a licensed electrician;
- (3) Documentation of a heating, ventilation, and air-conditioning (HVAC) inspection conducted by a licensed inspector;
- (4) If not on a public water line, documentation of a water quality inspection conducted by the South Carolina Department of Health and Environmental Control (DHEC).
- (5) When the setting is a Residential Services settings supporting children, documentation of a health and sanitation inspection conducted by an appropriate entity.
- (6) For settings supporting children under six (6) years of age, documentation of a lead-paint risk assessment conducted by DHEC.
- (7) Documentation of any Licenses held by the Qualified Provider for the setting or program and/or information about plans to acquire additional Licenses. The Department shall not issue a License to a setting or program that is licensed to another entity.
- (8) For Day Service settings involving food preparation, documentation of a current permit from DHEC.

D. Qualified Providers who plan to construct a new setting or current Licensees who plan extensive renovations shall submit complete plans for construction or changes for prior approval to the Office of the State Fire Marshal.

HISTORY: Renumbered from 88-120 and amended by SCSR 48-5 Doc. No. 5179, eff May 24, 2024.

Code Commissioner's Note

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

88–130. Exceptions.

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

B. To request an exception, the Licensee must make a written request to the State Director which includes the justification for the request for an exception and must first be reviewed by appropriate Department staff with the approval of the State Director.

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

D. An exception shall be effective for the duration specified in the approval from the State Director as long as the requirements are maintained.

HISTORY: Amended by SCSR 48–5 Doc. No. 5179, eff May 24, 2024.

88–135. Validity of License.

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

B. A License shall be considered invalid if any of the information provided to the Department in the Licensing Application for the setting or program is not accurate and current.

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

HISTORY: Amended by SCSR 48–5 Doc. No. 5179, eff May 24, 2024.

88–140. Separate Licenses.

A. A separate License is required for programs operated in an FBS even though they are operated by the same Licensee or agency.

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

HISTORY: Amended by SCSR 48–5 Doc. No. 5179, eff May 24, 2024.

88–145. Annual Licensing Inspections.

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

(1) Water measurement to ensure temperatures are:

(a) No less than 100°F; and

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

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

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

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

HISTORY: Added by SCSR 48–5 Doc. No. 5179, eff May 24, 2024.

88–150. License Types.

A. Day Services

(1) Day Services – Adult Activity; or

(2) Day Services – Unclassified Setting.

(a) Licensees may render Services in an FBS or in a CIS.

(3) A Day Service Program may not offer Services in a licensed residential setting, in the home of a Participant, or any other residential setting.

B. Facility Based Setting: FBS shall:

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

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

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

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

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

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

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

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

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

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

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

(6) Provide assurance of safety:

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

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

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

(d) Recreational equipment shall be firmly anchored.

(e) The use of tools and equipment by Participants shall be supervised by Direct Support Professionals (DSPs) in accordance with the Participant's abilities.

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

C. When a Licensee renders Services in a CIS, the Licensee shall ensure any:

(1) Provider-controlled setting that is used as a point of origination, or an alternate program space for a CIS has adequate seating and person space for each Participant, including restrooms.

D. Residential Services Settings

(1) Residential Services – CTH-I

(2) Residential Services – CTH-II

(3) Residential Services – SLP-II

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

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

(b) The bedrooms shall have operable lighting.

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

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

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

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

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

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

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

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

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

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

(k) The setting is physically accessible.

HISTORY: Added by SCSR 48-5 Doc. No. 5179, eff May 24, 2024.

88-155. Setting Closure.

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

B. In instances where a setting temporarily closes, the Licensee shall notify the Department in writing within fifteen (15) calendar days prior to temporary closure. In the event of temporary closure due to an emergency, the setting shall notify the Department in writing within twenty-four (24) hours of the closure. The notification shall include the manner in which records are being stored, the identity of those Participants displaced, the relocated setting, and the anticipated date of reopening. The Department shall consider, upon appropriate review, the necessity of inspecting and determining the applicability of current construction standards to the setting prior to its reopening.

HISTORY: Added by SCSR 48-5 Doc. No. 5179, eff May 24, 2024.

88-160. Violation Classifications.

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

(1) Class I violations are those that the Department determines to be an imminent danger to the health and safety of the Participants in the setting or a substantial probability that death or serious physical harm could result therefrom. A physical condition, one or more practices, means, methods, or operations in use in a setting may constitute such a violation. The condition or practice

constituting a Class I violation shall be abated or eliminated immediately unless a fixed period of time, as stipulated by the Department, is required for correction.

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

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

HISTORY: Added by SCSR 48-5 Doc. No. 5179, eff May 24, 2024.

88-165. Non-Compliance with Licensing Requirements.

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

- (1) The actions taken to correct each cited deficiency;
- (2) The actions taken to prevent recurrences both actual and similar; and
- (3) The intended completion date of those actions, which shall not exceed thirty (30) days from the date of the report of findings.

HISTORY: Added by SCSR 48-5 Doc. No. 5179, eff May 24, 2024.

88-170. Provisional License.

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

HISTORY: Added by SCSR 48-5 Doc. No. 5179, eff May 24, 2024.

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

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

- (1) Failure to establish or maintain proper standards of care and service as prescribed in DDSN directives and individual service standards;
- (2) Conduct or practices detrimental to the health or safety of residents, Participants, or employees of any such settings or programs;
- (3) Any violations of applicable laws and regulations.

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

C. Suspension or Revocation of License

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

(2) The Department shall notify the Licensee by registered mail, stating the reasons for the suspension or revocation of the License, and shall advise the Licensee of their rights to hearings and appeals.

(3) For any suspension or revocation of a License except as noted by R. 88-175C (1), the License shall be considered terminated at midnight on the fifteenth calendar day following the mailing of the written notification, unless the Licensee shall give written request of their desire for an appeal hearing. If such a request is received by the Department within ten (10) calendar days from the date

notification was sent to the Licensee, the Licensee may continue operation until a final decision is reached. If, at the hearing, the decision is made to suspend or revoke a License, the program will have fifteen (15) calendar days to cease operation.

HISTORY: Renumbered from 88-125 and amended by SCSR 48-5 Doc. No. 5179, eff May 24, 2024.

ARTICLE 2
DEFINITIONS [REPEALED]

88-210. Repealed.

HISTORY: Former Regulation, titled Definitions, repealed by SCSR 48-5 Doc. No. 5180, eff May 24, 2024.

ARTICLE 3
RECREATIONAL CAMPS FOR PERSONS WITH INTELLECTUAL DISABILITY [REPEALED]

88-310. Repealed.

HISTORY: Former Regulation, titled Definitions, repealed by SCSR 46-5 Doc. No. 5041, eff May 27, 2022.

88-315. Repealed.

HISTORY: Former Regulation, titled Campsite, repealed by SCSR 46-5 Doc. No. 5041, eff May 27, 2022.

88-320. Repealed.

HISTORY: Former Regulation, titled Supervision, repealed by SCSR 46-5 Doc. No. 5041, eff May 27, 2022.

88-325. Repealed.

HISTORY: Former Regulation, titled Personnel, repealed by SCSR 46-5 Doc. No. 5041, eff May 27, 2022.

88-330. Repealed.

HISTORY: Former Regulation, titled Size of Staff, repealed by SCSR 46-5 Doc. No. 5041, eff May 27, 2022.

88-335. Repealed.

HISTORY: Former Regulation, titled Personnel Records, repealed by SCSR 46-5 Doc. No. 5041, eff May 27, 2022.

88-340. Repealed.

HISTORY: Former Regulation, titled General Health, repealed by SCSR 46-5 Doc. No. 5041, eff May 27, 2022.

88-345. Repealed.

HISTORY: Former Regulation, titled General Safety, repealed by SCSR 46-5 Doc. No. 5041, eff May 27, 2022.

88-350. Repealed.

HISTORY: Former Regulation, titled Emergency Procedures, repealed by SCSR 46-5 Doc. No. 5041, eff May 27, 2022.

88-355. Repealed.

HISTORY: Former Regulation, titled General Sanitation Requirements, repealed by SCSR 46-5 Doc. No. 5041, eff May 27, 2022.

88-360. Repealed.

HISTORY: Former Regulation, titled Housing in Residential Camps, repealed by SCSR 46-5 Doc. No. 5041, eff May 27, 2022.

88-365. Repealed.

HISTORY: Former Regulation, titled Nutrition and Food Service, repealed by SCSR 46-5 Doc. No. 5041, eff May 27, 2022.

88-370. Repealed.

HISTORY: Former Regulation, titled Transportation, repealed by SCSR 46-5 Doc. No. 5041, eff May 27, 2022.

88-375. Repealed.

HISTORY: Former Regulation, titled Program, repealed by SCSR 46-5 Doc. No. 5041, eff May 27, 2022.

88-380. Repealed.

HISTORY: Former Regulation, titled Waterfront Activity, repealed by SCSR 46-5 Doc. No. 5041, eff May 27, 2022.

88-385. Repealed.

HISTORY: Former Regulation, titled General Care of Campers, repealed by SCSR 46-5 Doc. No. 5041, eff May 27, 2022.

88-390. Repealed.

HISTORY: Former Regulation, titled Confidentiality, repealed by SCSR 46-5 Doc. No. 5041, eff May 27, 2022.

88-395. Repealed.

HISTORY: Former Regulation, titled Reserve Clause, repealed by SCSR 46-5 Doc. No. 5041, eff May 27, 2022.

**ARTICLE 4
SETTING AND PROGRAM REQUIREMENTS**

Code Commissioner's Note

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

88-405. Definitions.

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

B. Critical Incident(s): An unusual or unfavorable occurrence that is not consistent with routine operations; has a harmful or negative effect on Participants, employees, or property; and occurs in a DDSN Regional Center, Facility Based Setting, or Community Integrated Setting during the direct administration of DDSN sponsored Services.

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

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

E. Program Director: A designated individual responsible for ensuring a Participant's health and safety, while receiving DDSN sponsored Services and supports.

HISTORY: Amended by SCSR 48-5 Doc. No. 5181, eff May 24, 2024.

Code Commissioner's Note

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

88-410. Personnel.

A. Qualifications of Staff

- (1) Program Director: The Program Directors shall meet the following minimum qualifications:
 - (a) Be at least twenty-one (21) years old; and
 - (b) Have a four (4) year degree from an accredited college or university in the human services field or related field and two (2) years' experience in administration or supervision in the human services field; or
 - (c) Have a master's degree from an accredited college or university in the human services field or related field and one (1) year's experience in administration or supervision in the human services; and
 - (d) Have references from past employment.
- (2) Direct Support Professional: DSPs will meet the following qualifications:
 - (a) Be at least eighteen (18) years old;
 - (b) Have a valid high school diploma or its certified equivalent; or have demonstrated competency for effective communication with Participants, the provision of appropriate care and supervision, and implementation of skills training; and
 - (c) Have references from past employment if the person has a work history.
- (3) All Staff: All staff shall meet the following qualifications:
 - (a) Meet requirements for criminal background checks, abuse registry checks, and Medicaid exclusion checks;
 - (b) Have Tuberculosis Screening and Testing in accordance with current recommendations from the Centers for Disease Control;
 - (c) Have a valid Driver's License if duties require transportation of Participants;
 - (d) Be capable of aiding in the activities of daily living and implementing the plan of each individual for whom they are responsible;
 - (e) Be able to effectively communicate, in English, verbal and written information; and
 - (f) Be trained and be deemed competent in accordance with Department policies.

B. Participant Supervision/Staff Ratios

- (1) Supervision of a Participant in the setting or program will be provided based on the type and amount of supervision required by the Participant which is determined by assessment and documented in the Participant's record.
- (2) Day Services-Adult Activity: There shall be at least the following minimum Participant supervision/staff ratios:
 - (a) Developmental Intervention and Training Services Program - 4:1;
 - (b) Community Integrated Setting - 5:1;
 - (c) Facility Based Setting - 8:1;
- (3) Residential Services: Sufficient staff shall be available 24 hours daily to render supports and respond to the needs of the Participants.
- (4) Each program shall have provisions for alternate coverage for staff who are unable to fulfill their job responsibilities.

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

HISTORY: Amended by SCSR 48-5 Doc. No. 5181, eff May 24, 2024.

88-415. Repealed.

HISTORY: Former Regulation, titled Facility, repealed by SCSR 48-5 Doc. No. 5181, eff May 24, 2024.

88-420. Transportation.

- A. If transportation is provided, vehicles used for the transportation of Participants shall be safe for the passengers.

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

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

D. Each vehicle shall have a First Aid Kit which is replenished after each use and checked monthly for completeness.

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

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

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

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

HISTORY: Amended by SCSR 48-5 Doc. No. 5181, eff May 24, 2024.

88-425. Medical Care.

A. Routine Medical Care

(1) Prior to and on the first day of service, the Participant's medical condition shall be known by the Qualified Provider, including but not limited to:

- (a) Diagnosis and conditions;
- (b) Allergies;
- (c) Medications/treatments to be given;
- (d) Medical equipment or assistive devices;
- (e) Diet consistency; and
- (f) Body positioning.

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

B. Medications/Treatments

(1) Medications/treatments shall be safely and accurately administered.

(2) Medications/treatments shall be administered by a licensed nurse; unlicensed staff, as allowed by law, with evidence of successful completion of an approved Medication Technician Curriculum; or the Participant for whom the medication is prescribed when he/she is assessed as independent.

(3) When medications are not under the control of Participants, the medication to be administered shall be stored in a locked cabinet container not accessible to unauthorized persons. Prescribed medication shall be kept in the original containers bearing the pharmacy label which shows drug name, the prescription number, date filled, physician's name, directions for use, and the patient's name.

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

- (a) A valid physician's order indicating the dosage, route, and time for the medication/treatment;
- (b) The name of medication/treatment;
- (c) The name of the individual administering the medication/treatment;
- (d) The time the medication/treatment was administered; and
- (e) The dosage and/or length of time the medication/treatment was administered.

(5) Medications/Treatments should be administered in accordance with Department policies.

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

D. First Aid

(1) A First Aid Kit shall be maintained at each service setting program site.

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

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

HISTORY: Amended by SCSR 48-5 Doc. No. 5181, eff May 24, 2024.

88-430. Repealed.

HISTORY: Former Regulation, titled Evaluations, repealed by SCSR 48-5 Doc. No. 5181, eff May 24, 2024.

88-435. Service Plans.

A. The Participant must be determined to require or likely benefit from the DDSN sponsored Services.

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

C. Plan: Each participant will have a written, person-centered plan developed, that outlines the Services, supports, and interventions to be provided. The plan shall be developed by the Participant and his/her Individual Support Team within thirty days (30) of the first date of service.

(1) The plan will document the date and signature of the Participant and the Individual Support team members in attendance during the development of the plan.

(2) The plan will identify and contain a description of the Participant's preferences and interests; the Participant's needs and goals; and the support and interventions to be provided.

(3) The plan will encourage the Participant's movement towards independence, including but not limited to, employment and community integration.

(4) At least monthly, the plan is monitored by the Program Director or the director's designee to determine the plan's effectiveness.

(5) The plan shall remain current at all times, but at a minimum, the plan will be reviewed and updated by the Participant with the Participant's Individual Support Team every 12 months.

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

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

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

HISTORY: Amended by SCSR 48-5 Doc. No. 5181, eff May 24, 2024.

88-440. Records.

A. Administrative: The following records will be maintained in accordance with Department policies and shall be readily available for review:

(1) Individual personnel records on each staff member or contracted employee which contain:

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

- (b) Signed application form or other statement of educational history and employment history;
- (c) Job description;
- (d) Criminal background checks in accordance with state and federal laws and per Department policies; and
- (e) References from past employment, if applicable.

(2) Written policies on:

- (a) Access to, duplication of, and dissemination of information from Participants records or about a Participant;
- (b) The Prohibition of the use of physical, mechanical, or chemical restraint unless used in accordance with Department policy;
- (c) The prohibition of corporal punishment;
- (d) The prohibition of isolation rooms;
- (e) Retention of records;
- (f) Use of volunteers;
- (g) Program evaluation;
- (h) Administration and discharge of Participants;
- (i) Admission and discharge of Participants;
- (j) Personnel practices;
- (k) Procedures to be followed when a Participant is discovered to be missing;
- (l) Prohibition of abuse, neglect, and exploitation which also includes reports of any and all abuse, neglect, and exploitation to appropriate state agencies and to the Department;
- (m) Reporting of Critical Incidents consistent with Department policy; and
- (n) The termination of Participants from a Service which includes:
 - (i) A list of reasons for dismissal; and
 - (ii) Methods of averting the termination.

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

- (a) Current Plan as required by R.88-435 A.;
- (b) Documentation and/or data to support the implementation of the Plan and reimbursement for Services rendered;
- (c) Record of unusual behavior incidents which are recorded at the time of occurrence;
- (d) Authorization for emergency medical services; and
- (e) Record of critical incidents.

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

- (5) Monthly summary notations of progress;

HISTORY: Amended by SCSR 48-5 Doc. No. 5181, eff May 24, 2024.

Code Commissioner's Note

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

ARTICLE 5
ELIGIBILITY DETERMINATION

88–505. General.

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

HISTORY: Added by SCSR 46–5 Doc. No. 5040, eff May 27, 2022.

88–510. Definitions Used in this Article.

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

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

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

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

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

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

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

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

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

J. Valid IQ Score: Based on 1) the psychometric properties of the selected test, and 2) the stipulation of the examiner in the Behavioral Observation section of the evaluation that describes the manner in which the examinee approached, participated, and completed the respective cognitive test.

HISTORY: Added by SCSR 46–5 Doc. No. 5040, eff May 27, 2022.

88–515. Diagnostic Criteria for Department Eligibility.

A. Intellectual Developmental Disorder

Pursuant to the DSM-5, or most current edition, a diagnosis of Intellectual Developmental Disorder requires consideration of both clinical assessment and standardized testing of intellectual and adaptive functions. Individual cognitive profiles based on neuropsychological testing as well as cross-battery

intellectual assessment using multiple IQ or cognitive tests to create a profile will also be considered when making a determination of eligibility. Specifically, an individual must meet the following three (3) criteria in order to receive a diagnosis:

(1) Criterion A requires deficits in mental abilities, referring to intellectual functions that involve reasoning, problem solving, planning, abstract thinking, judgment, learning from instruction and experience, and practical understanding.

To meet this criterion, individuals must have a valid IQ score of approximately 70 or below, including a margin of measurement error of +/- 5, establishing a range of eligibility from 65–75. Instruments must be normed for the individual's sociocultural background and native language. When multiple tests have been conducted for an individual, a clinical assessment of the validity of the results and other related factors (i.e., statistically significant splits between scores) of each singular test will occur as to provide the appropriate clinical judgment of an individual's score.

(2) Criterion B requires impairment in everyday adaptive functioning, in comparison to an individual's age, gender, and socioculturally matched peers.

To meet this criterion, individuals must have one domain in adaptive functioning—conceptual, social, or practical—sufficiently impaired as to necessitate ongoing support in order to have the individual perform adequately at school, at work, at home, or in the community. For the purposes of this Criterion B, the conceptual (academic) domain involves competence in memory, language, reading, writing, math reasoning, acquisition of practical knowledge, problem solving, and judgment in novel situations, among others. The social domain involves awareness of others' thoughts, feelings, and experiences; empathy; interpersonal communication skills; friendship abilities; and social judgment, among others. The practical domain involves learning and self-management across life settings, including personal care, job responsibilities; money management, recreation, self-management of behavior, and school and work task organization, among others.

Adaptive functioning is evaluated by using both clinical evaluation and individualized, culturally appropriate, psychometrically sound measures. Standardized measures are used with knowledgeable informants (e.g., parent or other family members; teacher; counselor; care provider) and the individual to the extent possible. Additional sources of information include educational, developmental, medical and mental health evaluations. In situations where standardized testing is difficult or impossible (e.g., sensory impairment, severe problem behavior), the individual may be diagnosed with unspecified intellectual development disorder. Intellectual capacity, education, motivation, socialization, personality features, vocational opportunity, cultural experience, and coexisting other medical conditions or mental disorders influence adaptive functioning.

(3) Criterion C requires onset to occur during the developmental period, referring to recognition of intellectual and adaptive deficits being present in childhood or adolescence.

To meet this criterion, a comprehensive evaluation is required. A comprehensive evaluation includes an assessment of intellectual capacity and adaptive functioning; identification of genetic and non-genetic etiologies; evaluation for associated medical conditions (e.g., cerebral palsy, seizure disorder); and evaluation for co-occurring mental, emotional, and behavioral disorders. Components of the evaluation may include basic pre- and perinatal medical history, three-generational family pedigree, physical examination, genetic evaluation, and metabolic screening and neuroimaging assessment.

B. Related Disability

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

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

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

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

(d) The onset is before age 22 years.

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

C. High-Risk Infant/At Risk Child

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

- (a) Exhibits significant documented delays in three or more areas of development; or
- (b) Have a diagnosis, as recognized by the Individuals with Disabilities Education Act (IDEA) Part C program (BabyNet) Established Risk Condition List, confirmed by a medical professional and exhibit significant documented delays in two areas of development.

D. Autism Spectrum Disorder

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

- (a) Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following three (3) criteria, currently or by history:
 - (i) Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.
 - (ii) Deficits in nonverbal communicative behaviors used for social interaction, ranging for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.
 - (iii) Deficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

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

- (a) Stereo-typed or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypes, lining up toys or flipping objects, echolalia, idiosyncratic phrases).
 - (b) Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).
 - (c) Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests).
 - (d) Hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement).
- (3) Symptoms are present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life).
- (4) Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.
- (5) These disturbances are not better explained by Intellectual Disability (Intellectual Developmental Disorder) or global developmental delay. Intellectual Disability and Autism Spectrum Disorder frequently co-occur; to make comorbid diagnoses of Autism Spectrum Disorder and Intellectual Disability, social communication should be below that expected for general developmental level.

E. Head and Spinal Cord Injury and Similar Disability

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

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

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

(i) Is attributed to a physical impairment, including head injury, spinal cord injury or both, or a similar disability, regardless of the age of onset, but not associated with the process of a progressive degenerative illness or disease, dementia, or a neurological disorder related to aging;

(ii) Is likely to continue indefinitely without intervention;

(iii) Results in substantial functional limitation in at least two (2) of these life activities: Cognitive; Self-care; Communication; Learning; Mobility; Self-direction; Capacity for independent living; Economic self-sufficiency; and,

(iv) Reflects the person's need for a combination and sequence of special interdisciplinary or generic care or treatment or other services, which are of lifelong or extended duration.

HISTORY: Added by SCSR 46-5 Doc. No. 5040, eff May 27, 2022.

88-520. Time Limitations.

A. Department eligibility may be established in a time-limited fashion as determined by the circumstances of the individual applying for eligibility. When an individual seeking eligibility presents with circumstances which could likely improve and thereby impact the eligibility determination, DDSN will establish Department eligibility in a time-limited fashion. All information received by the Department will be reviewed for reliability and validity in the determination of eligibility.

HISTORY: Added by SCSR 46-5 Doc. No. 5040, eff May 27, 2022.

ARTICLE 7 APPEAL PROCEDURES

88-705. Definitions.

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

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

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

D. Person Eligible for Services from the Department: An individual who has been determined by the Department to meet the criteria for eligibility for services solely state-funded by the Department.

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

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

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

H. Solely State-Funded Residential Habilitation: Solely state-funded services which include the care, skills training, supervision and support provided to a person eligible for services in a noninstitu-

tionalized setting. The degree and type of care, supervision, skills training and support will be based on the person's needs and preferences.

I. Solely State-Funded Respite: Solely state-funded services provided to participants unable to care for themselves; furnished on a short-term basis because of the absence or need for relief of those individuals normally providing the care.

HISTORY: Added by SCSR 46-5 Doc. No. 5038, eff May 27, 2022.

88-710. Appeals.

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

(1) Eligibility for the solely state-funded Department services.

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

(a) Solely State-Funded Community Supports

(b) Solely State-Funded Follow-Along

(c) Solely State-Funded Case Management

(d) Solely State-Funded Respite

(e) Solely State-Funded Residential Habilitation

(f) Family Support Services

HISTORY: Added by SCSR 46-5 Doc. No. 5038, eff May 27, 2022.

88-715. Appeal Procedures.

A. Applicants Seeking Eligibility for solely state-funded Department Services

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

(2) Step 2: Review: Upon receipt of the appeal, all information shall be reviewed by the State Director using the eligibility criteria as set forth in the Department's regulation addressing "Eligibility". If the State Director determines new evaluation data is needed, no decision shall be made until this data is received. The applicant shall be notified that the new evaluation is needed within 30 business days of receipt of the written appeal.

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

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

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

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

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

HISTORY: Added by SCSR 46-5 Doc. No. 5038, eff May 27, 2022.

ARTICLE 8

RESEARCH INVOLVING PERSONS ELIGIBLE FOR SERVICES

88-805. Definitions.

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

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

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

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

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

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

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

G. Informed Consent – The knowing and voluntary agreement by the research participant or an individual authorized by law to consent on behalf of an individual, without any element of coercion or undue influence. The research participant or the legally authorized representative must be given information that a reasonable person would want to have in order to make an informed decision about whether to participate, and an opportunity to discuss that information. The information that is given to the research participant or legally authorized representative shall be in language understandable to the participant or legally authorized representative.

HISTORY: Added by SCSR 46-5 Doc. No. 5039, eff May 27, 2022.

88-810. Review and Approval of Research Proposals.

A. Research Review Committee

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

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

(3) The Committee shall review all research proposals to ascertain the acceptability of the proposed research in terms of departmental commitments and regulations, applicable laws, research participant protections and standards of professional conduct and practice. A copy of the proposal approved by an Institutional Review Board (IRB) appropriate to the employer of the investigator is required for the proposal to be reviewed by the Committee to include procedures for obtaining informed consent, obtaining more information and exiting the study. A local Human Rights Committee shall review any research proposals that involve personal contact, observation, or interaction prior to submission to the Committee to ensure that the rights and welfare of the research participants are protected; that informed consent is obtained by adequate and appropriate

methods; that individuals served are not used as captive sources of research; that the research is in no way detrimental to their welfare, and are consistent with federal regulation 45 CFR 46 (6/18/91), Protection of Human Subjects.

(4) Only research proposals approved by the Committee shall be implemented and for the designated period included in the issued written approval.

HISTORY: Added by SCSR 46-5 Doc. No. 5039, eff May 27, 2022.

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

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

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

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

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

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

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

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

This shall be maintained in the file containing the research proposal and approval at the Department.

G. Facilities and programs are required to meet provisions of the federal regulations 45 CFR 46 Protection of Human Subjects.

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

HISTORY: Added by SCSR 46-5 Doc. No. 5039, eff May 27, 2022.

88-820. Publications.

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

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

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

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

HISTORY: Added by SCSR 46-5 Doc. No. 5039, eff May 27, 2022.

ARTICLE 9
UNCLASSIFIED SETTINGS AND PROGRAMS

88–910. Unclassified Settings and Programs.

- A. An unclassified setting or program is one which:
- (1) Under the provisions of Section 88–110 A. must be licensed, and
 - (2) Is substantially different from settings and programs classified and defined in these regulations.
- B. There shall be at least the following minimum Participant supervision/staff ratios – 10:1

HISTORY: Amended by SCSR 48–5 Doc. No. 5182, eff May 24, 2024.

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

- A. Application for license shall be made as required by R. 88–115. Such application shall contain specific and detailed information on the following:
- (1) Name, mailing address, and location of setting or program;
 - (2) Name and address of the Qualified Provider;
 - (3) Name and address of the owner or Chairman of the Board of Directors;
 - (4) Description of Services to be provided; and
 - (5) Number and general description of Participants to be served.

HISTORY: Amended by SCSR 48–5 Doc. No. 5182, eff May 24, 2024.

88–920. Determination by the Department.

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

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

- (1) Provides a beneficial Service to Participants;
- (2) Observes appropriate standards to safeguard the health and safety of Participants, staff, and public;
- (3) Documents that buildings involved have been approved for such use by the Office of State Fire Marshall;
- (4) Does not exploit the Participants, their families, or the public.

HISTORY: Amended by SCSR 48–5 Doc. No. 5182, eff May 24, 2024.