Office of the Inspector General

Patrick J. Maley

Review of Abuse, Neglect, and Exploitation Allegations Involving SC Mentor, a Private Provider for the South Carolina Department of Disabilities and Special Needs

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I. Executive Summary

This review was requested by the Department of Disabilities and Special Needs (DDSN) for an independent review of allegations of abuse, neglect, and exploitation (ANE) at SC Mentor (Mentor), a private provider of residential services for DDSN consumers. Factors predicating the State Inspector General (SIG) accepting this review included derogatory media reporting of ANE incidents at Mentor; concerns from Commissioners and vulnerable adult advocates; and an emerging atmosphere of distrust in DDSN's oversight of ANE allegations at Mentor in particular, as well as indirectly Mentor's standard of care provided to its consumers.

During the period under review (7/1/2013 – 3/31/2016), Mentor had proportionately higher ANE allegations (170) and sustained criminal incidents (5) than peer facilities, which could not be fully explained by Mentor's consumers having more challenging behaviors to manage. The 170 ANE incident allegations were alarming for a population of 200 consumers in 74 residential facilities over nearly a three year period. However, an analysis of these 170 incidents did not indicate systemic abuse towards consumers inasmuch as the majority of the ANE reporting system contained allegations more akin to staff/facility performance issues and the vast majority of all allegations were unsustained by independent investigations.

To facilitate stakeholders' ability to assess ANE allegations in the future, DDSN should expand the level of detail in its ANE reporting, which currently only reports total allegations and sustained criminal incidents. However, this first requires the ANE process's multi-agency participants to expand its ANE categorization system to better discern the degree of significance of the allegations. For example, the 170 Mentor allegations could be categorized by those with a potential criminal nexus (71 allegations; five substantiated) and staff/facility performance issues (99 allegations; 15 substantiated). When aggregated, Mentor's 170 alleged ANE incidents yielded 150 (88%) unsustained by independent investigations; 15 (9%) sustained staff/facility performance issues (9%); and five (3%) sustained criminal charges against staff.

Many factors can contribute to having a disproportional number of ANE allegations, many of which do not correlate with a provider's performance. However, there is no ambiguity applying the criminal legal standard of probable cause to every provider alleged incident. Despite only 3% of Mentor's alleged incidents resulted in criminal charges to staff, this 3% was six times greater than expected when compared to peer providers. Mentor served 5% of a residential community, yet had 29% of this population's criminally sustained incidents (5) over the audit period. Of the four incidents with sufficient documentation, three (75%) indicated staff used abuse (hitting, pushing, and verbal) as a premeditated tool to gain compliance, rather than losing their temper in response to a consumer's behavior. A single incident with staff showing up for their shift apparently intent on using abusive techniques to manage their consumers is a major failure.

The ANE process is overall effective with many well engineered process attributes. However, the ANE process's effectiveness is being undermined by deficient oversight procedures. Of the 170 incidents, 70 (41%) took in excess of 45 days to resolve and 19 (11%) incidents were without resolution after being open at least 90 days, often much longer, at the time of the audit. Mentor's follow-up on these 19 unresolved cases during the SIG review identified two additional incidents where Mentor staff was criminally charged.

The direction to reduce the probability of staff abusing consumers, whether reactionary or premeditated, is to examine the factors impacting this issue, such as staff training, hiring, supervision, and improving consumers' behaviors. In many ways, the ANE issue underpinning this review was likely a symptom of a broader issue—Mentor contract performance. Looking at Mentor's overall operations, both currently and over the past eight years, it is clear there was not an obvious single solution based on a pattern of performing below standards on a consistent basis as illustrated by:

- Mentor's annual quality assurance review scores over the past eight years were always below the statewide average by, on average, 16%;

- In 2010, DDSN placed Mentor in a freeze from adding new consumers based on performance deficiencies described as, *"this signifies significant systemic problems throughout your organization;"*

- In 2011, a second freeze was described as, *"Mentor has failed to ensure the stability of its improvements signifying that real systemic change did not take place;"* and

- In March 2016, a third freeze was placed on Mentor, which is still ongoing, best illustrated by its nearly complete failure to implement consumer behavioral support plans along with strong indications implementing consumer residential service plans were also weak. The third freeze analysis noted Mentor had positive attributes in terms of physical facilities, managing consumers' drugs, and even consumer appreciation for staff.

- In all three freezes, DDSN identified a pattern of Mentor consumers not being sufficiently challenged to engage the world outside of the home with employment, day service, or other interests.

Mentor's weaknesses seemed to be in the consumer training and development areas, which Mentor was contractually required to provide. Rather than looking for piecemeal solutions to the ANE issues, Mentor needs to address its systemic pattern of operational deficiencies, which then increases the probability of enhancing the residential home environment impacting the ANE issues in a positive manner.

From a DDSN oversight perspective, its management control systems have been sufficiently "blinking red" to identify Mentor as having problems, which did result in three performance related freezes to prevent Mentor from adding new consumers over the past six years. However, despite its quality assurance reviews noting Mentor constantly trailing its peer providers, it was really only measuring minimum contract compliance indicators correlating more with deficient administrative capabilities. These reviews were not able to truly get to the heart of Mentor's ineffectiveness issues in the quality of consumer training/development. DDSN needs to move away from its predictable compliance audits towards quality audits of front line services to consumers in a less predictable pattern to motivate providers to be audit ready "every day." These quality measures, along with corresponding audit measurement techniques, need to be explicitly set forth in upcoming contract renewals, along with incrementally rolling out the private sector concept of performance incentives and penalties, as well as a willingness to use these tools. DDSN can't micromanage a provider to put forth the right combination of leadership, management, and resources for a successful operation; however, it can hold providers accountable, as well as motivate providers, through measuring outcomes with basic audit sample testing of residential and behavioral support plans' effectiveness.

The ANE process's multi-agency participants should permit, if not require, DDSN to administratively review bad ANE outcomes, whether criminally charged or not, after law enforcement completes its criminal investigation. Law enforcement fixes individual criminal accountability; DDSN should be allowed to conduct a review to fix provider administrative contract accountability, if warranted. This provides an opportune time to assess providers' operational capabilities to reduce the risk of bad outcomes, with particular attention if pre-existing risks developed were being proactively addressed prior to the bad outcome.

The long-term solution is for DDSN to shift provider contract monitoring from a minimum contract compliance reviews towards a risk-based approach emphasizing outcome measures to hold a provider accountable. Weak contract expectations and contract monitoring more focused on administrative indicators rather than outcome performance, creates a fertile environment for complacent provider performance, or worse.

Table of Contents

II. Background

A. Predicate

This review was requested by the DDSN for an independent review of allegations of ANE at Mentor, a private provider of residential services for DDSN consumers. Factors predicating the SIG accepting this review included derogatory media reporting of ANE incidents at Mentor; concerns from Commissioners and vulnerable adult advocates; and an emerging atmosphere of distrust in DDSN's oversight of ANE allegations at Mentor in particular, as well as indirectly Mentor's standard of care provided to its consumers.

B. Scope & Objectives

This review's scope and objectives were:

- Determine if DDSN has adequate management controls to monitor ANE allegations and resolutions at Mentor facilities, as well as standard of consumer care;
- Determine the risk of Mentor under-reporting ANE allegations; and
- Determine if DDSN takes reasonable administrative steps based on monitoring results to ensure Mentor is compliant with its contract to provide a safe residential and training environment for consumers.

Reviews by the SIG are conducted in accordance with professional standards set forth by the Association of Inspectors General, often referred to as the "Green Book."

C. Department of Disabilities and Special Needs Overview

DDSN provides services and programs for the treatment and training of persons with intellectual disability, autism, head injuries, and spinal cord injuries. The agency coordinates with other state and local agencies, county DDSN boards, and private providers to serve approximately 36,000 individual consumers. Of these consumers, 87% live at home and 13% live in a variety of out-of-home residential care.

Consumers are placed in out-of-home residential care based on their assessed level of need. There are six models on the spectrum of care based on consumer needs, which are listed below from the most to the least intense level of care:

- Intermediate Care Facilities: These are residential centers with the highest regulated and structural environments for consumers.
- Community Residential Care Facilities (CRCF): These facilities provide supervised living arrangements in a residential setting, which are licensed by DHEC.
- Community Training Home-II (CTH-II): A home environment in the community where no more than four individuals live. Care, supervision, and skills training are provided by qualified and trained staff 24 hours/day in accordance with the resident's service plan. Within this model, 3% are designated "high management" consumers, which justify a higher daily contract rate to offset providers' additional costs to manage this population.

- Community Training Home-I (CTH-I): Personalized care, supervision, and individualized training provided, in accordance with the resident's service plan, with generally no more than two individuals living in a licensed support provider's home.

- Community Inclusive Residential Services (CIRS): Promotes the development and independence of individuals with disabilities in homes leased by the individuals. A customized plan is developed to transition the individual from a 24 hour setting to a semi-independent living arrangement.

- Supported Living Program-I & II: Supports are provided by qualified and trained staff to adults who need intermittent supervision and supports. Staff are available on-site or in a location from which they can be on-site within 15 minutes of being called 24 hours a day.

DDSN's goal is to place the consumer in the least intensive level of care required, followed by skills training to move them towards independence. More independence relates both to a higher quality of life for the consumer and lower expenses to the taxpayer as the cost for supervision is reduced as care is stepped down.

D. SC Mentor Overview

Mentor is a national private provider under contract with DDSN to provide CTH-I and CTH-II residences. At the time of this review, Mentor operated 74 residences serving 208 consumers in CTH Is (16) and CTH IIs (192). Additionally, 120 (58%) consumers were classified as "high management (HM)," which represented 81% of all HM consumers in the residential community setting. Interviewees consistently noted Mentor served a very difficult population, with a number of consumers having behavioral problems needing special behavior support plans to address their needs. Depending upon the needs of the consumers in CTH IIs, staff ratios range from 1:2 to 1:4.

Mentor's FY17 contract budget is $17.2 million, of which $16.4 million is to serve a population of approximately 200 consumers in CTH I & II residences. Of this $16.4 million, $10.1 million is budgeted for HM consumers and $6.3 million for QPL (qualified provider list) consumers. Mentor also receives $787,000 for therapeutic foster homes.

E. Previous Reviews of DDSN's Abuse, Neglect & Exploitation Program

The South Carolina Legislative Audit Council (LAC) audited DDSN in both 2008 and in 2014. The 2008 audit touched on the ANE process and the 2014 audit reviewed this process in-depth. The 2014 report noted, "We found no substantive issue with DDSN's investigative process; however, we found an inconsistency in what types of allegations the State Law Enforcement Division's Vulnerable Adult Investigative Unit receives and what it refers to various investigative agencies." Additionally, in 2014, DDSN hired the Public Consulting Group to review its business practices, which yielded minor recommendations to improve the ANE system.

III. DDSN's ANE Program

A. ANE Process Workflow

State law mandates reporting by caregivers within 24 hours of a suspected ANE incident, but an ANE allegation may also be reported by any witness or victim. All reports are funneled into the South Carolina Law Enforcement Division's Vulnerable Adult Investigations Unit (SLED-VAIU) through a 24 hour a day, toll-free number. Failure to report may subject a caregiver to a criminal charge. In addition to notifying SLED-VAIU,

reporting caregivers must also alert their supervisor and DDSN. When named as a subject of an ANE allegation, State law requires a caregiver be immediately placed on administrative leave without pay. Allegations are assessed by the SLED-VAIU, and then routed to the appropriate independent investigating entity based primarily on the allegation's potential nexus to criminal liability. SLED-VAIU then notifies DDSN and the provider of the investigative entity assigned the allegation for resolution. The independent investigative entities are:

- SLED-VAIU for allegations in DDSN Intermediate Care Facilities;
- Local law enforcement (LLE) for allegations with a potential criminal nexus primarily in residential settings;
- Long-Term Care Ombudsman's Office (LTCO) for allegations without a criminal nexus occurring within residential settings; and
- Department of Social Services-Adult Protective Services (DSS-APS) for allegations involving DDSN consumers occurring outside of the residential/facility settings.

It should be noted SLED-VAIU will record an allegation as "for information only" when it determines an allegation lacks a sufficient basis to warrant investigation or complainant has a known pattern of false allegations. After referring an allegation to the appropriate investigative entity, SLED-VAIU conducts no further follow up, absent unusual circumstances, nor does it receive results of referred investigations.

In addition to the external independent investigations, the caregiver provider conducts its own internal administrative review. In cases with a criminal nexus investigated by a LLE, the provider's actions are very limited to only reporting the facts from the initial allegation and copies of relevant records, such as log books, which are sent to DDSN. For all allegations without a criminal nexus investigated by the LTCO or DSS-APS, as well as "for information only" reports taken by SLED, the provider conducts a parallel, but separate, administrative review of the entire incident, to include witness interviews. A final report is submitted to DDSN within 10 business days.

Providers submit their administrative investigative reports to DDSN through a web portal. The independent investigators formally submit reports to the provider, which upload the reports through the web portal. DDSN reviews final reports for adequate and complete information before closing the allegation. During the audit period, DDSN rejected 31 of the 160 incident review reports initially submitted due to missing information; of the 31 rejected, six were rejected a second time before they were deemed adequate. DDSN tracks ANE allegations for its consumers and provides statistical data on statewide totals and creates a performance profile for each provider of services. DDSN had a more robust ability to capture audits and incidents in an electronic format for retrieval, analytical reporting, and generate automated reporting than other State agencies regulating providers previously reviewed by the SIG.

Providers are tasked with following up with the independent review to obtain final investigative reports regarding ANE allegations. In most cases, the named caregiver in an allegation cannot return to duty until the case is closed by the independent investigator.

It is critical to understand the ANE process is governed by State statute, and no one State agency "owns" this process. Rather, multiple State agencies cooperate to execute the ANE process as legislatively intended. As a result, any modifications to the ANE process must be agreed upon by the involved agencies if the latitude exists within the statute, or possibly requires legislative modifications to the statute.

B. Analysis of ANE Allegations for Period 7/1/2013 – 3/31/2016

1. Methodology of Analysis

The SIG reviewed all ANE allegations involving Mentor for FY14, FY15, and the first three quarters of FY16 (7/1/2013 - 3/31/16). Mentor had 233 ANE allegations. The 233 allegations pertained to 170 individual incidents. A single incident can generate multiple allegations due to a practice of opening a separate allegation for each consumer potentially involved.

In order to understand the characteristics of this 170 incident population, each incident was initially analyzed and placed into two main categories: an allegation with a potential criminal nexus; and an allegation with no criminal nexus and generally related to complaints about staff performance or a facility's physical condition. Within each of the two main categories, the population was further subcategorized as follows:

- Allegation with a potential criminal nexus:
    - physical assault;
    - non-physical neglect or exploitation; and
    - incident occurred outside of Mentor's residential setting and control, such as during a family home visit or attending another provider's day center.

- Allegation with no criminal nexus and related to complaints about staff performance or the facility's physical condition:
    - unknown bruises/injuries of a non-substantial nature;
    - facility physical condition;
    - lack of professional conduct by staff;
    - restraint/self-defense; and
    - incident occurred outside of Mentor's residential setting and control, such as during family home visit or attending another provider's day center.

The ANE process labels allegations with a criminal nexus resulting in a criminal charge as "substantiated," while using a different term, "verified," in non-criminal investigations. The SIG used "sustained," or "unsustained," rather than substantiated or verified to simplify the terminology, as well as due to "verified" being used in circumstances creating potential misleading results. Sometimes the "verified" meant the allegation occurred with sufficient evidence to fix accountability to a caregiver. Sometimes the "verified" only meant the allegation occurred without evidence to fix accountability, such as a nominal bruise from an unknown origin being verified as existing without developing any information as to how it occurred. This second type of "verified" caused a perception of wrongdoing by the provider and staff, when in fact there was no evidence to discern if the incident was staff poor performance or a consumer accident. As a result, the SIG determined these type of allegations to be unsustained. Additionally, when a non-criminal allegation was "verified" or "sustained" involving a Mentor consumer but the subject was another caregiver, such as an ambulance driver or daycare provider, these allegations were considered by this review as unsustained towards Mentor due to its complete lack of involvement.

2. ANE Incident Data Analysis

The 170 incidents were analyzed by reviewing DDSN incident files. Audit judgment was required to categorize each incident with data available. Inasmuch as a key factor in generating this SIG review was a level of mistrust of DDSN providing ANE incident data, the SIG's spreadsheet summarizing its review is being made

available for stakeholder detail review at the following Internet link: http://oig.sc.gov/Documents/SIG-ANE-Review-of-SC-Mentor-Incidents.pdf. This will allow interested stakeholders to independently categorize incidents in their own frameworks to understand the characteristics of this ANE incident population. A summary of the SIG's analysis of ANE incidents during the audit period is contained in the below table:

SIG Analysis of 170 ANE Incidents at Mentor for Period 7/01/2013 to 3/31/2016

Status	No Nexus to Criminal liability-performance of personnel/facility & customer allegation						Criminal nexus to allegation				
	Unknown Injury	Facility-Standard of Care	Lack of Professional Conduct	Self-Defense/ Restraint	Different Provider	Subtotal	Non Physical Asault, Neglect, Exploitation	Assault	Different Provider	Subtotal	Totals
Incidents	39	10	25	19	6	99	16	53	2	71	170
Sustained	0	4	9	2	0	15	1	4	0	5	20
Not sustained	36	6	14	17	5	78	15	46	2	63	141
Open Cases-significant	1	0	0	0	0	1	0	2	0	2	3
Open Cases-Not significant	2	0	2	0	1	5	0	1	0	1	6
Totals	39	10	25	19	6	99	16	53	2	71	170

Of the 170 incidents, there were 71 (41%) incidents with the initial allegation having a potential criminal nexus and 99 (59%) without a potential criminal nexus more akin to the performance of staff and facility conditions. Five incidents (3%) resulted in six Mentor staff members being criminally charged. Fifteen incidents (9%) resulted in non-criminal allegation being sustained by an independent investigation. At the time of the analysis, 19 incident cases (11%) were pending longer than 90 days, often much longer, without an investigative resolution. Mentor was requested to update the DDSN incident file, to include re-contacting the independent investigator. Ten of these cases were subsequently closed with an investigative update resolving the allegation, of which two identified new incidents of Mentor staff being criminally charged. Nine incident cases are still open, with three incidents with a criminal nexus having potential significant issues without resolution.

During the audit period, Mentor had 5% of the entire consumers in the community residential training home population, while having 20% of the allegations and 29% of the criminally sustained incidents. Many factors can contribute to having a disproportional number of allegations, such as a potential management emphasis to over-report; staff skill level in managing consumers; and degree of difficulty in consumers' behavior issues being managed. DDSN and Mentor both pointed out Mentor served a consumer population with more difficult behavior issues to manage, as illustrated by 58% of its consumers were designated as HM (42% QPL) and Mentor served 81% of all HM consumers in the community residential training home population. This certainly could be a contributing factor. However, examination of Mentor's 170 incidents during the audit period, 60% were in HM homes (40% QPL), which indicated a proportional distribution of these high number of allegations between Mentor's HM and QPL sub-populations.

To better understand the characteristics of the 170 incident population under review, case vignettes are presented below for the five incidents involving Mentor staff criminally charged; three incidents with a potential criminal nexus still pending; one significant event not recorded as an ANE allegation; and the 15 sustained incidents with no criminal nexus and generally performance related.

Incidents Involving Mentor Staff Criminally Charged (5)

- Case# 2014ANE 0194: Caller identified victim consumer with two black eyes, bruised nose, and a scar on his jaw allegedly caused by abusive staff, as well as staff allegedly falsified reports claiming the injuries were caused by a fall in the shower. Investigation determined a staff member hit multiple consumers on multiple occasions, to include the use of pepper spray, which led to criminally charging one staff member with three counts of abuse of a vulnerable adult. A second staff member was criminally charged with two counts of failing to report abuse.

- Case# 2016ANE 0004: An anonymous caller alleged a staff member pushed a consumer into a wall. Investigation determined a staff member had a pattern of yelling, intimidating, and pushing consumers leading to physical bruising, which resulted in two counts of abuse of a vulnerable adult.

- Case# 2014ANE 0322: A co-worker reported a staff member brought a taser to work, which he threatened to use on consumers to gain compliance. Investigation resulted in staff member being criminally charged with abuse.

- Case# 2016ANE0009: Victim consumer reported staff pushed him resulting in victim hitting the stove causing hot water to spill and burn his arm. Staff member charged with assault & battery, 3rd degree.

- Case# 2014ANE0394: Anonymous tip alleged staff members "jumped" a consumer causing a broken hip. One staff member arrested for unlawful neglect and abuse of a vulnerable adult; the file failed to denote details of incident.

Incidents with a Potential Criminal Nexus Still Pending (3)

- Case# 2015ANE0381: Staff reported consumer initiated physical altercation with another staff member. After the altercation ended and consumer was still on the floor, the staff member stomped on consumer's face and spit on her as the staff left the residence. Staff terminated on 9/25/2015. Only law enforcement report to date was welfare check shortly after incident.

- Case# 2015ANE0219: Staff reported redness and swelling to victim's scrotum and testicles on 5/09/15. Victim was transported to emergency room and a sexual abuse exam was performed. DDSN, nor provider, had results of exam, but file reports indicated victim had an infection, cellulitis, a potential cause of the redness. This incident is still an open ANE case because the victim in this case died several months later, 9/05/15, as the result of a food related choking incident, which was not opened as an ANE incident.

- Case#2015ANE0403: Staff reported victim had a swollen eye and scratches on his chest. There were no behaviors listed in the log for date of incident. There was a behavior incident listed the day before which resulted in victim being restrained by staff. Both of those staff were placed on administrative leave, on 9/24/15, pending the outcome of the still ongoing LLE investigation.

Significant Allegation with Criminal Nexus without Criminal Charge (1)

- Case# 2013ANE0542: Consumer left the home, on 12/08/13, during third shift and was hit by a car less than 100 yards from the residence. Victim later died from his injuries. Staff reported when they exited the bathroom they found the front door to the home open and consumer had eloped. Accountability log

shows improper documentation in that the log appeared to have been pre-filled. There were no criminal charges filed against the staff on duty.

Incidents Sustained with No Criminal Nexus and Performance Related (15)

Normally, a narrative of 15 cases would be placed in an appendix and summarized in the body of the report. However, these 15 cases, all sustained, are presented to illustrate the types of performance deficiencies sustained within the ANE system, which are distinctly different from sustained cases with criminal charges of abuse.

- Case# 2014ANE0258: Victim consumer had not been paid by subject caregiver for washing his car on two occasions. Subject denied statements about not having paid victim for dates in question. However, he did admit to taking victim to corner store and buying him treats in return for a previous car wash, which he also did the same for another consumer. Subject was terminated 7/18/14.

- Case# 2014ANE0408: Anonymous caller alleged there was no food at the facility, the oven door was a fire hazard in need of repair, and a subject caregiver was able to pass out medications without a supervising nurse. It was determined the subject caregiver was med-tech certified having the authority to dispense medication. However, the LTCO verified oven was broken and had been replaced and food service allegation.

- Case# 2014ANE0444: Family of victim consumer reported there was a snake in the home a week prior and the back porch was off limits to consumers due to needed repairs, which then caused residents only being able to walk in hallway of home. It was determined the residential logs showed victim had been actively using the back porch and walking in the yard. Standards of care violations were verified by LTCO and another violation for using a thickening agent incorrectly in one resident's liquids.

- Case# 2014ANE0446: LTCO reported the following safety issues in the home: a raccoon had entered through a doggie door; snakes had entered the home through a hole in the bathroom wall leading to the crawl space; there was a gap in a window preventing it from completely closing; black mold spores were on the outside vent cover; and an air return vent was detached. Mentor gave written warnings to the house manager and program director in regards to not reporting maintenance concerns in a timely manner. Standards of care violations were verified.

- Case# 2014ANE0517: Victim alleged a subject staff member was going to 'knock him *** out' if victim hugged him. It was determined subject staff claimed the victim came up from behind and caught him off guard with a hug. Subject staff asked victim to stop hugging him and keep his hands off of him because he was staff, but subject staff did not remember his exact words. Two of the victim's housemates witnessing the incident reported subject staff cursed. Subject terminated for violating the dignity & respect policy.

- Case# 2015ANE0018: Allegation consumer urinated in the front yard and trash from residence's trash can blows into the neighbor's yards. It was determined from staff numerous incidents of a consumer improperly urinating and putting trash in the street. This consumer also exposed himself to staff. LTCO verified allegation of lack of cleanliness; a toileting issue; consumer wandering; and failure to accommodate/monitor a consumer. Mentor provided written warnings to five staff members.

- Case# 2015ANE0117: Allegation from staff that after reviewing the residence's logs, it was noted another subject staff member pushed victim on several dates and failed to report suicidal comments. The consumer's behavior logs showed the victim being pushed by subject staff to avoid consumer hitting another consumer or to avoid getting subject's drinking cup. Victim said on two occasions he wanted to die and subject staff did not report suicide ideations. Subject staff terminated. LTCO verified allegations of standard of care of dignity and respect.

- Case# 2015ANE0251: Staff reported another subject staff member made statements about disliking victim consumer's sexuality loud enough that victim consumer heard, but not directly to the consumer. Victim consumer heard statement and had his feelings hurt. A second victim consumer reported this subject staff was also rude to him, used profanity, and made him go to bed earlier than usual. LTCO verified finding of subject staff using profanity. Employee terminated.

- Case# 2015ANE0255: Subject staff reported victim consumer for taking cigarettes from painters. Victim consumer yelled at the subject staff member pertaining to having to return the cigarettes. Subject staff yelled at victim for 3-5 minutes and threatened him with pressing charges and sending him to jail. Witness statements showed subject staff yelling only after victim yelled at staff. LTCO verified psychological abuse. Employee terminated.

- Case# 2015ANE0265: Victim consumer retrieved from corner store after eloping. Program Director was walking in the home when subject staff came back with victim. Program Director overheard subject staff curse at victim consumer for running off and reported ANE allegation. Subject staff stated he was on shift alone and called police repeatedly to assist with victim's actions without assistance. On his last return to home, victim threatened to stab subject staff, broke the freezer door handle, and grabbed a knife. Subject admitted using profanity due to severity of situation. LTCO verified standards of care violation. Employee terminated for violation of dignity and respect.

- Case# 2015ANE0361: Five Mentor staff reported this incident. Staff subject yelled at day program staff and victim consumer. Subject staff was angry the victim consumer was butting in, while the subject staff was trying to diffuse a situation between two other consumers who were about to fight. LTCO verified violation of standards of care of dignity & respect. Employee terminated.

- Case# 2015ANE0433: Staff reported another subject staff cursed at victim consumer. Victim consumer would stay in his room when subject staff was on duty. Victim also claimed subject staff took away his cigarettes. LTCO verified complaints of verbal abuse, mental confinement of facility against will, individual right to smoke, failure to report, failure to follow plan, and dignity and respect. Employee terminated.

- Case# 2015ANE0457: Staff reported that subject staff yelled at victim consumer to move her feet that were on the couch so another housemate could sit down. LTCO verified allegations of violation of the dignity and respect policy.

- Case# 2016ANE0060: Staff reported that consumer victim was left alone for an undetermined amount of time in a van while subject staff went inside another facility. Investigation determined the incident lasted five minutes. The subject staff told the victim consumer to stay in the van while she quickly ran inside to pick up a medical product because it was raining so hard. LTCO verified violation of standard of care for supervision.

- Case# 2016ANE0147: Staff reported subject staff provided victim consumer with cigarettes and allowed victim to smoke marijuana in the home. Victim consumer has COPD and was not allowed to smoke or be around smoke. Subject admitted to giving victim cigarettes, but not knowing her smoking status. Employee terminated. LTCO verified failure to follow plan of care for smoking.

3. Observations of ANE Allegations:

After reviewing the data, the SIG developed the following six observations:

a. DDSN Classification of Allegations

The ANE process intentionally and appropriately casts a wide net to collect any information on a possible ANE incident. As a result, a majority of allegations are more staff and facility performance related than have a criminal nexus to ANE. A problem emerges when these non-criminal, performance related allegations are force fitted into one of five classifications: sexual abuse, physical abuse, psychological abuse, neglect, or exploitation. Just because someone makes an allegation to the ANE process, it does not equate that each entry has to be classified in ANE terms. For example, a staff member inappropriately yells or uses a curse word is certainly a performance related lack of professional conduct, but an independent investigator could classify this conduct as "psychological abuse." A staff member unavoidably leaves a consumer unattended in a van for five minutes to chase after another consumer eloping may be a technical policy violation, but this conduct could be classified as "neglect." These type of findings using ANE terms can create distortions in interpreting ANE results data when aggregated.

In addition to the limited ANE classification issue, DDSN had other concerns with non-criminal reviews. First, DDSN observed non-criminal allegations sustained, yet in its opinion, there was insufficient evidence. Second, non-criminal allegations have been sustained when the actual issue sustained was different than the original allegation. Third, and the most significant issue, independent investigators' terminology creates an appearance of wrongdoing without any evidence even suggesting wrongdoing. Providers are required to report every unknown bruise, such as a small bruise on a consumer's shin, which independent investigator will "verify" the incident based solely on confirming the bruise exists, regardless if evidence is developed of staff inappropriate conduct. Despite DDSN having disagreement with some of the independent investigative findings, based on fact or terminology, DDSN had no "due process" appeal rights to question a disputed finding.

All these reasons combined resulted in DDSN's decision to report sustained ANE allegations externally only when confirmed through a criminal charge against staff. These criminally sustained allegations are small in number, such as Mentor's five sustained incidents from a population of 170 alleged incidents. This then triggers stakeholders' concern with the disproportionately low number of sustained incidents in comparison to the large number of ANE allegations.

The root cause of this reporting problem issue stems from the rigid ANE classification system inhibiting accurately describing the substance of many performance related allegations. The reality is the clear majority of allegations have no criminal nexus and are more akin to staff or facility performance deficiencies. If accurately classified in performance terms rather than exclusively in ANE terms, the data could easily be discerned by stakeholders as to the level of significance. This would facilitate both DDSN management and external stakeholders to focus on serious ANE criminal allegations and outcomes, as well as be aware, but not misinterpret, sustained performance related allegations.

b. Low Risk of Under-Reporting ANE Allegations

Of the 170 incidents reviewed, 103 were reported by Mentor staff. Other reporters of ANE incidents were: family members (22), victims (19), house mates (2), anonymous (7), investigators (5) and other sources (12). Mentor enforced ANE reporting as evidenced by many instances of Mentor administratively sanctioning staff for lack of timely ANE reporting to SLED or their immediate supervisor, to include terminations. A review of the types of allegations reported does not indicate complainants were constrained or limited in making allegations. Further, the ANE system has attributes to support and encourage reporting, to include a confidential 24 hour hotline; ANE training required for staff and consumers; criminal liability for not reporting; and independent investigations for all allegations. Between staff, consumers, families, and neighbors, every residential home has many "eyes" on the home's activities, as well as a simple and confidential mechanism to report suspected ANE incidents.

c. Elongated Reporting Timeframes by Independent Investigators

During the audit period, the investigations by the independent investigators were completed with a median of 32 days, ranging from one to 733 days; 70 (41%) required over 45 days to complete; and nine were in excess of a year. Of these 70 incidents, 33 were vetted to the LTCO, 30 were to LLE, and seven to DSS-APS. The impact of delayed investigations for non-criminal allegations by LTCO and DSS-APS is less due to the provider completing its parallel, but separate, administrative reviews in ten days. However, the delayed investigation by LLE has a much greater impact for several reasons. First, evidence in these cases relies heavily on statements from victim(s), subject(s), and third party witnesses, and delayed interviewing diminishes the accuracy of witnesses' recollections, particularly consumers with intellectual disabilities. Second, and most important, if there was a risk of ongoing abuse of a vulnerable adult, delayed investigation only allows the alleged conduct to potentially continue. If the allegation identifies specific staff, the staff are immediately place on administrative leave, which partially mitigates this risk. Third, it creates a "real world" undue burden on the caregiver placed on leave without pay pending a resolution, as well as unnecessary stress on providers to properly staff residential homes during these elongated suspension periods. At some point with delayed LLE investigation, the multiple agencies operating the ANE process need to consider additional procedures to weigh the risk of unaddressed abuse to consumers against these unnecessary investigative delays. The current ANE process does not have procedures to proactively address delayed investigations, which exposes the system to unnecessary risks due to inaction.

d. Unresolved Investigations for Elongated Periods of Time

At the beginning of the audit of the 170 ANE incidents, 19 (11%) were pending with no resolution despite being opened at least 90 days, often much longer. The SIG requested these incidents be updated and, if possible, closed with a resolution from the independent investigator. Mentor's follow-up resulted in closing 10 cases with two sustained based on Mentor staff being criminally charged with abuse. Both incidents lacked a final LLE report, but SC Mentor had constructive notice of each criminal charge against staff and failed to report to DDSN. This increased the total sustained criminal incidents to five during the review period, which was a 66% increase. Of the nine incidents still unresolved, three were considered potentially significant. These nine incidents had been opened from 11 to 29 months, and were vetted to LLE (6), LTCO (1), and DSS-APS (2).

e. A Few Victims Generate a Disproportional Number of Allegations

Of the 170 incidents, 69 (40.5%) involved the same victim/complainant in four or more allegations. Although many of these complaints from "frequent flyers" appear nominal or even intentionally false to retaliate against staff, each had to be vetted and investigated. For example, 10 allegations pertained to the same victim for bruises of unknown origin. Subsequently, SLED-VAIU noted this pattern and learned the victim had an

unsteady gait and may have sustained bruises while being helped on/off transportation van. However, one of these "frequent flyer" complaints did result in a sustained incident with a staff criminally charged, which only reinforces the need to thoroughly vet allegations from all sources. A pattern was also noted in this group of misusing the ANE system to threaten staff as leverage to get their way in a particular situation or retaliate against staff for a decision(s) made.

f. Mentor Takes Administrative Action for Policy Violations

Of the 170 incidents, a review of the available records identified Mentor citing its staff with policy violations in 63 incidents (37%). The most frequent policy violations pertained to violating the dignity and respect policy; not following the Behavior Support Plan guidelines; and delay in ANE reporting. Mentor's internal administrative reviews recommended re-training in 38 incidents (22%). Further, 39 incidents (23%) resulted in staff terminations. Mentor advised the specific policy violation for an incident may not have been the sole factor in terminations; often, after an incident Mentor determines, based on the totality of information, the staff member is just not a good fit for the caregiver duties.

C. SLED-VAIU Observations

SLED-VAIU identified an opportunity for the provider, the agency, or both, to do a deeper administrative review into serious incidents, even if the evidence did not rise to the level to support a sustained criminal charge. In many cases, review of facility logs revealed behavioral indicators potentially contributing to the actual incident being investigated, such as behavior escalations or refusal to take prescribed medication. Further, residential home logs could be improved by creating a shift report with more detail. Regional DDSN facilities excel on quality shift reports, while the current residential home tendency is to only document negative behaviors or incidents. A more robust shift report could identify leading indicators allowing subsequent shifts to be more aware of potential or brewing issues. These deeper administrative reviews also could be used to improve operations to mitigate the risk of future incidents.

SLED also noted many agencies support the creation of an adult abuse registry to prevent re-hiring care workers not suitable to work in this industry. However, there are issues to work out with such a registry who would manage the list and establishing legal and workable standards to warrant placement on the list.

D. Advocacy Groups' Observations

Staff from the LTCO and the Protection & Advocacy for People with Disabilities, Inc. (P&A), a non-profit, were interviewed. Both entities serve the vulnerable adult community consumers residing in facilities owned or contracted by DDSN. Six staff members participating in the two group interviews unanimously identified Mentor as providing services of a lower quality when compared to peer providers. Each group had difficulty articulating exact reasons for this difference, but Mentor seemed to lack an intangible quality of striving to improve consumer care.

E. Other DDSN Providers Comparative Data & Observations

DDSN has five providers serving HM consumers in CTH I & II facilities, to include Mentor. Within this provider community, Mentor had 50% of the consumers and incurred 77% of the ANE allegations. Mentor did serve 74% of the HM consumers in this community.

The below table sets out the provider community's ANE allegation and population data during the audit period:

ANE Incidents						Consumer Population			
Provider	FY 14	FY 15	FY 16	Total	% Total	Population	% Total	HM population	% Total HM pop.
CHESCO	9	4	9	22	**9%**	128	**31%**	11	**7%**
Excalibur	3	0	1	4	**2%**	17	**4%**	17	**11%**
Lutheran	3	6	9	18	**8%**	47	**11%**	9	**6%**
Mentor	43	76	57	176*	**77%**	208	**50%**	120	**74%**
Willowglen	6	1	1	8	**4%**	16	**4%**	4	**2%**
Total	**64**	**87**	**77**	**228**	**100%**	**416**	**100%**	**161**	**100%**

*Includes six duplicate incidents for Mentor

Common themes developed from interviews were:

- A key factor in managing consumers' behaviors was to motivate consumers to get out of the home and into the community on a regular basis. One provider worked to keep its HM population employed. A second provider focused on consumers volunteering for charitable organizations. A third provider spoke of the importance of developing schedules for out of home events with resident input and maintaining those schedules. Enhancing consumer behavior and activity was believed to indirectly reduce the risk of ANE allegations, particularly frivolous allegations motivated by consumer frustration or an unmet need.

- The majority of providers noted the consumer population had a tendency to make false allegations. This was done for many reasons, to include frustration, leverage against staff to get their way, or even retaliation against staff decisions.

- Two private providers used cameras in the common areas of the residences. The first provider used live-feeds only to allow staff to better monitor activities in other parts of the home while staff was busy in another part of the home, such as preparing meals. This provider also used recorded feeds in day program common areas. Cameras or audio monitors were used in bedrooms only if there were medical conditions needing more attention. The second provider used cameras with recorded feeds in common areas. Both providers stated cameras helped reduce ANE allegations and shortened investigative time periods addressing allegations. The use of cameras was approved by each provider's Human Rights Committee. It was noted the Protection & Advocacy group had no issues with using cameras in common areas.

IV. Other DDSN Management Controls Monitoring SC Mentor

A. DDSN "Freeze" on SC Mentor

On 3/24/2016, DDSN noticed Mentor, via letter, it was under a DDSN temporary "freeze" order to halt any plans to expand homes to add more consumers. This was done to allow Mentor to focus on enhancing service quality. The letter referenced a 3/15/2016 meeting where DDSN expressed concerns surrounding Mentor's performance serving consumers. Specifically, DDSN was concerned with Mentor's higher rate of sustained ANE cases.

It should be noted Mentor has been subjected to two prior temporary "freezes." The first freeze, documented via DDSN letter dated 7/7/2010, was based on the majority of its compliance/licensing measures being substantially below statewide averages with a declining trend line. Further, DDSN identified Mentor's rates of critical incidents and sustained abuse as requiring immediate attention. DDSN concluded, *"This signifies significant systemic problems throughout your organization."* A DDSN 3/4/2011 letter to Mentor identified

improvement, but DDSN still had concerns with the "*level and type of activity that Mentor consumers are engaged in during the day. Specifically, it appears that many consumers remain at their respective home during the day. During the DDSN visits noted above, several consumers expressed concern about being bored because they stayed in the home all the time. Such boredom can contribute to consumer behavioral challenges and the critical incidents that have caused concern in the past.*" On 5/17/2011, ten months later, DDSN lifted the first freeze.

The second freeze, documented via letter dated 9/7/2011, was based on the poor results in a recent audit of Mentor. DDSN concluded, *"SC Mentor has failed to ensure the stability of its improvements signifying that real systemic change did not take place."* On 2/28/2012, five months later, this second freeze was lifted. DDSN noted it was particularly pleased that *"meaningful activities outside of the residence for the individuals you support have significantly increased."* DDSN applauded Mentor's self-initiating a day service in Columbia as an effective strategy to address this lingering issue. However, this day service was never established as planned.

The third and currently ongoing freeze, effective 3/24/2016, was followed by DDSN deploying robust data collection techniques to fully assess Mentor's problems. DDSN initiated its reoccurring Quality Assurance Review (QAR) for Mentor several months ahead of its normal 18 month schedule. DDSN conducted unannounced home visits in March (23 homes) and June 2016 (23 homes). However, the most powerful data of a potential root cause was developed by two subject matter expert clinicians assessing 21 total consumers' behavioral support plans (BSP) implemented by front-line staff. These two experts operated independently, but reached similar conclusions. BSPs assess problematic consumer behavior, followed by designing a plan for front line workers to use to intervene and replace a problem behavior with a positive behavior to improve consumers' quality of life. It is well understood consumers' problem behaviors can be key drivers resulting in critical incidents, to include ANE allegations against staff.

Both experts had significant concerns with the quality of the written BSPs developed for consumers. However, the most critical finding was the failure of front-line staff to use, as well as even understand, the written plan to work with the consumer on a day-to-day basis to improve behaviors. One expert commented, *"In all cases the staff members were largely unaware of the procedures contained within the BSPs and these plans did not predict their interactions with the residents."* The second expert commented, *"Specifically, when questioned, staff rarely reported that they had not been shown how to implement the plans nor were they observed carrying out BSP procedures and provided feedback to the authors of the plans. This issue is directly related to the seemingly infrequent presence of Mentor behavioral personnel in the homes and face-to-face interactions with the home staff."*

Both experts also commented on consumers spending too much time at the residence. One expert commented, *"The one point of concern identified by consumers was boredom and the lack of activities during the day and that too much time was spent at the residence."* The second expert commented in a more diplomatic manner, *"There are also living situations in which consumer participation in common activities of daily living is much more prevalent."*

Both experts identified positive attributes with both experts commenting favorably on the physical homes as clean, in good repair, and in suitable neighborhoods. It also appeared consumers spoke favorably about the staffs.

The April 2016 QAR identified a deficiency pattern in consumers' residential service plans. A residential service plan sets forth consumer data and a plan to provide each consumer with the life skills to improve independence and quality of life. Ten consumer's residential service plans were reviewed on two key elements indicative of effectiveness:

- "The effectiveness of the residential plan is monitored and the plan is amended when a) no progress is noted on an intervention; b) new intervention strategy, training, or support is identified; or c) the person is not satisfied with the intervention." (60% failed)

- "A quarterly report of the status of the interventions in the (residential service) plan must be completed." (70% failed)

The 2016 DDSN special assessment after the freeze identified systemic problems with both "planning" documents for each consumer's residential services and behavioral health.

The 46 unannounced home visits (23 in April 2016: 23 in June 2016) measured the following categories: outdoor conditions; indoor conditions; staff to client ratio; medical care; structured programming; and interviews with on-site staff and consumers. A critical incident category was also on the review checklist, but often was not considered during the field review. All of the categories, with the exception of structured programming, were rated "satisfactory," the highest rating. Interviews appeared positive with nominal derogatory comments. There were only a very few items within the major categories rated "unsatisfactory," and even the detailed explanation of these unsatisfactory items seemed quite nominal. The only deficiency patterns identified were:

- the item titled, "a schedule, showing specific and planned activities is posted in a conspicuous place," was rated unsatisfactory in 13 (28%) homes;

- the item titled, "activities correspond with the posted schedule," was rated unsatisfactory in 18 (39%) homes; and

- the item titled, "the facility has an appropriate staff-to-client ration," was rated unsatisfactory in six (13%) homes; all six were observed in the June 2016 unannounced review phase.

Mentor currently recognized the need to improve. Mentor has hired a new expert to manage its behavioral support program, as well as increased the ratio of front-line supervisors to direct caregivers. It recognized its high turnover in direct caregivers and field supervisors, which according to Mentor was an industry problem, has had an impact on its operations. The industry turnover issue was supported by peer providers, as illustrated by one provider commenting, 'it is hard to find employees for this type of work at $10/hour where one mistake may result in a criminal charge.'

B. Quality Assurance Reviews (QAR)

DDSN outsourced its QARs to an independent third party vendor, the Alliant Corporation (Alliant). Many of the requirements for the reviews are mandated from Medicaid in waiver agreements with DDSN. Alliant reviewed all community residential providers every 12-18 months and measured compliance indicators in four areas:

- Administrative Indicators (AI): comply with reporting procedures for ANE, staff training, hiring, internal unannounced quarterly visits, and the existence of a risk management and Human Rights Committee functions;

- General Agency Indicators (GAI): operations, residential service delivery, and compliance with Medicaid requirements;

- Residential Habilitation Indicators (RHI): appropriate assessment and planning for consumers' residential needs and health/behavioral support needs.

- Residential Observations (RO): observations during a visit to a residential home emphasizing the staff's interaction with consumers, particularly to ensure the residential and health/behavioral plan is implemented as written.

The below chart depicts Mentor's QA scores, stratified by its high management (HM) population and its general population (QPL) over the past four fiscal years (FYs 2013 – 2016) in comparison to statewide averages:

	TOTALS			AI			GAI			RHI			RO		
FY	**HM**	**QPL**	**State**	**HM**	**QPL**	**State**	**HM**	**QPL**	**State**	**HM**	**QPL**	**State**	**HM**	**QPL**	**State**
13*	85.7	85.7	93.9	66.7	66.7	99.3	85.9	85.9	93.2	79.2	79.2	90.1	100	100	99.3
14	90.4	88.8	92.7	72.7	72.7	83.8	93.9	93.1	93.4	94.0	88.2	87.0	88.9	100	88.8
15	87.2	85.5	93.6	71.4	71.4	80.6	88.1	68.2	91.3	83.3	90.5	90.8	100	100	100
16	82.4	72.6	91.0	66.7	61.1	73.1	84.4	68.2	91.3	82.1	65.0	88.7	100	100	100
Avg.	**86.4**	**83.2**	**92.8**	**69.4**	**67.9**	**84.9**	**88.1**	**78.9**	**92.3**	**84.7**	**80.7**	**89.2**	**97.2**	**100**	**97.0**

Review of the past four FYs depicted Mentor's relative overall performance (total HM + total QPL/2) lower than the statewide average by the following percentages: 2013--9% lower; 2014--3% lower; 2015--7% lower; and 2016--16% lower. This overall lower performance pattern than the statewide average also persisted from FY 2008 through FY 2012 as follows: 2008 – 27% lower; 2009 – 14% lower; 2010 – 24% lower; and 2011/12 – 34% lower). In each of the past eight FY QA reports, Mentor trailed the statewide average by, on average, 16%.

Interpreting the QAR's scores requires a deeper examination of the review than just the total provider score. As an illustration of a QAR, the most recent FY 2016 QA examined 79 employee hiring/training records; five HM and five QPL consumer files for provider residential and health/behavioral services; and one observational site visit to a HM and QPL residence (2 of 74) where one consumer and available staff, normally two, were interviewed. For example, in the examination of 79 staff files for training, if only one staff file was non-compliant or all 79 staff files were non-compliant, both situations were scored the same as only one "unmet" requirement. The FY 2016 review denoted not meeting the requirement for reporting ANE allegations timely by identifying 30 errors, while the same element was not met in FY 2015 with only eight errors. Both FYs 2015 and 2016 had an unmet requirement in training, yet 2015 had 10 staff (18% of sample) not provided training while 2016 had 35 staff (44% of sample) with the same deficiency. This issue will be addressed by DDSN, effective 7/1/2016. A second significant limitation was no weighting of items as to significance in the approximately 100 items measured as "met" or "unmet" to yield an overall score. A deficiency for not maintaining a critical consumer plan of care had the same weight as not documenting refresher training.

The most significant limitation of the QAR was its focus on administrative compliance and not on quality of care. Certainly, documentation of compliance with key indicators (i.e., hiring; training; consumer care plans' documentation) adds weight the provider had the ingredients in place that contribute to successful quality of care. Yet, data to truly assess quality of care would come from direct interviews or surveying consumers and staff, yet the current QAR program limits to interviewing two consumers and generally two staff in two of SC Mentors 74 facilities (3%) by non-clinician auditors.

Even with the QAR focusing on minimum contract compliance review, the results indicative more of deficient administrative capabilities did have value in loosely correlating with deficient operational capabilities. If an organizational is deficiently administratively, it is certainly an indicator of operational risk to deliver complex human services.

During interview, the Alliant QA audit team noted, unanimously, Mentor's quality of care was below peer providers based on their holistic observations, which also included Alliant's observations inside of all 74 Mentor homes while conducting annual licensing inspections. A persuasive observation was Alliant's examination of consumers' residential and behavioral health plans of care during the most recent FY 2016 QAR, where it noticed a pattern of low quality documentation for many of the plans that were technically compliant based on just being filled out completely. To corroborate this observation, the April 2016 QAR tested 10 consumers without noting one exception for a BPS plan with a 100% score for health & behavioral support services; yet, the two clinician subject matter experts' review during the same timeframe determined the BSPs were ineffective primarily due to front line workers lack of skill to implement the written "paper" plan.

C. Licensing Reviews

Mentor facilities are licensed under South Carolina state law. DDSN has discretion on frequency of requiring licensing inspections, which current policy dictates annually based on prior external audit recommendations. The inspections focus on three areas:

- Safety: physical facility inspection, such as fire safety, electrical, heating/air-conditioning, water, and pet vaccinations;
- Home environment: physical facility inspection, such as first-aid kit, flashlight, bedroom requirements, support/consumer ratios, hot water temperature, and cleanliness; and
- Health services: primarily proper management of consumer medications.

The below chart depicts Mentor's licensing scores stratified by its high management (HM) population and its general population (QPL) over the past four fiscal years in comparison to statewide averages:

	CTH I			CTH II		
Fiscal Year	**HM**	**QPL**	**Statewide Avg.**	**HM**	**QPL**	**Statewide Avg.**
2013	95.4	100.0	95.2	94.2	93.4	93.2
2014	96.2	100.0	96.1	91.2	87.1	94.7
2015	95.8	100.0	94.5	91.7	88.3	87.6
2016	96.2	100.0	92.1	90.4	84.5	88.1
Average	**95.9**	**100.0**	**94.5**	**91.9**	**88.3**	**90.9**

The data suggests Mentor's physical facilities were satisfactory and consistent with peer statewide averages. This was also observed during DDSN's 46 unannounced home visits in March and June 2016. It was noted that DDSN's third party auditor, Alliant, was physically on-site in all 74 SC Mentor facilities each year, but their audit focus was purely on the facility not requiring interviews of staff or consumers pertaining to quality of care.

D. Critical Incident & Death Reporting

DDSN's Quality Management Division tracks critical incidents (CI), which occur at DDSN facilities, county DDSN Boards, and private providers. Many types of incidents are tracked, such as accidents, medical events (i.e., choking, hospital stays), consumer on consumer assaults, or property theft. DDSN uses the metric of CI incidents per 100 consumers, which allows comparability among all providers. During FYs 14-16, Mentor's CI frequency/100 consumers was 60, while its private provider peer group average was 42. This data is not determinative of a Mentor deficiency; it is just another indicator of activity within the Mentor consumer

population. The below chart sets out Mentor and its private provider peer group CI frequency /100 consumers for FYs 14 - 16:

Provider	Fiscal Year 2014	Fiscal Year 2015	Fiscal Year 2016	3 FY Average
CHESCO	18	18	15	**17**
Excalibur	127	85	19	**77**
Lutheran Family	12	27	41	**27**
Mentor	43	74	62	**60**
Willowglen	47	29	11	**29**
FY Average	**49**	**47**	**30**	**42**

DDSN's Quality Management Division tracks deaths occurring at DDSN facilities, county DDSN Boards, and private providers. SLED-VAIU investigates all deaths in DDSN facilities and contracted residential programs. During FYs 14-16, Mentor served approximately 5% of the consumers in community residential settings, and recorded six deaths (3.1%) of the 191 deaths within this community.

E. Other Issue—Financial Reimbursement for High Management Consumers

This SIG review did not examine the financial reimbursement methodology for QPL or HM consumers. However, due to anecdotal information obtained incident to the ANE focus of this review, this data is being presented to raise awareness at DDSN of these issues for contemplation in future procurement contracts.

Only one county board participated in the HM program with 11 HM consumers (7%) from a population of 148 HM customers, while private providers served 137 consumers (93%). There was a perception from several interviewees that DDSN boards' reimbursement methodology created a disincentive to develop HM homes. DDSN boards operate on essentially a capitated rate model where 95% of reimbursed funds had to be applied towards service or be subject to recoupment by DDSN. A private provider's only requirement was to meet the contract requirements/standards, which creates the risk of striving to only meet minimum standards leading to potential windfall profits. However, according to DDSN, its policy exempts DDSN boards from the 95% requirement for HM homes. Regardless of the financial nuances, having the state dependent upon private providers serving 93% of the HM population requires inquiry, and it certainly creates market leverage by these providers during contract negotiations. DDSN may want to explore using a "Medicaid Loss Ratio" factor, such as the 9.5% the South Carolina Department of Health & Human Services uses with its Medicaid managed care providers to cap administrative overhead and profits at a reasonable level.

Mentor's reimbursements for approximately 200 consumers was frequently mentioned by interviewees as appearing to be excessive. However, Mentor's rates were no different from other CTH I & II providers. QPL consumers were reimbursed, on average, $200/day and HM consumers at $250/day, as well as both QPL and HM received an additional estimated $20/day from consumers for room & board expenses. Providers were paid $336/day for "forensic" consumers from the criminal justice system. For the upcoming FY 2017, Mentor's projected reimbursed costs are $17,215,555. Mentor's perceived higher contract payments appeared to be a function of just serving more consumers.

DDSN management represented the service rates contained in the current RFP contract for QPL (2011) and HM (2012) were initially based on actual costs and input from existing providers, and these rates have been increased over the years based on inflation and other factors. Given the interviewees' concerns, the SIG's prior experience with DDSN incurring problems with accurately verifying provider cost data, and the length of time (2011-2012) since the original baseline cost analysis, it may be a good time to re-examine the contract rates. Given over a hundred million dollars of annual taxpayer funds are committed, it may be prudent to obtain

independent assurance for future rate setting from an external subject matter expert using comparative benchmarks from other states and independently verify cost data used to establish rates.

V. Way Forward

Clearly Mentor had proportionately higher ANE allegations (170) and sustained criminal incidents (5) than peer facilities. The 170 ANE incident allegations was alarming for a population of 200 consumers in 74 residential facilities over nearly a three year period. However, an analysis of these 170 incidents did not indicate systemic abuse towards consumers inasmuch as the majority of the ANE reporting system contained allegations more akin to staff/facility performance issues and the vast majority of all allegations were unsustained by independent investigations.

Many factors can contribute to having a disproportional number of ANE allegations, some of which do not relate to a provider's performance. However, there is no ambiguity applying the legal criminal standard of probable cause to every provider's allegations. Mentor served 5% of the residential community training homes, yet had 29% of the population's criminally sustained incidents (5) over nearly a three year period. Of the four incidents with sufficient documentation, three (75%) indicated staff used abuse (hitting, pushing, and verbal) as a premeditated tool to gain compliance, rather than losing their temper in response to a consumer's behavior. A single incident with staff showing up for their shift apparently intent on using abusive techniques to manage their consumers is a major failure.

In many ways, the ANE issue underpinning this review was a symptom of a broader issue—Mentor contract performance. Mentor's annual QA scores over the past eight years were always below the statewide average by, on average, 16%. Mentor's first freeze in 2010 was described as, *"this signifies significant systemic problems throughout your organization."* The second 2011 freeze was described as, *"Mentor has failed to ensure the stability of its improvements signifying that real systemic change did not take place."* The third freeze was best illustrated by its nearly complete behavior support plan failure with strong indications its residential service plans were also weak. In all three freezes, DDSN identified a pattern of Mentor consumers not being sufficiently challenged to engage the world outside of the home with employment, day service, or other interests.

It is easy to use these deficiencies to paint Mentor with a broad brush, which is not accurate. The data clearly shows Mentor has satisfactory facilities with an appropriate business model to provide care for consumers. However, its weaknesses seemed to be in the consumer training and development areas. The direction to address this problem is for DDSN to shift provider contract monitoring from a minimum contract compliance audit towards a risk-based approach emphasizing outcome measures. This shift will correspondingly require a greater planning investment in future contracts with increased level of specificity in specific outcomes, along with corresponding contract measuring mechanisms to hold a provider accountable. Examples of outcome expectations and measurements include:

- Address a high contract risk of residential and behavioral health service, which is also an important consumer requirement, would be addressed similar to how DDSN's two clinicians conducted their April 2016 review – interview staff and consumers while looking at documentation to assess the quality level of service delivery.

- Address getting consumers engaged into the community (i.e., employment; day service; education; or interests) could be a process where consumers' contraindicated for community engagement are approved by DDSN; those with documented engagement are lightly sample tested; and the thrust of the audit examines documentation on Mentor's contractual duty to document how it encourages interests from the consumers non-contraindicated and still unengaged with community.

This may require a higher level of audit expertise and time, which can be more than offset by less compliance testing with longer compliance audit cycles coupled with unpredictable audit patterns to motivate providers to be audit ready "every day." Right now, providers know DDSN's licensing and QA audit rhythms and providers cycle up their efforts just prior to audits. Further, compliance expectations need to be raised under the management principle if a provider can't get simple compliance right, then it certainly reflects on a provider's ability to execute more complex and difficult operational delivery of human services. Compliance sample sizes can be reduced; any deficiencies beyond an expected normal human error should result in monetary fines and the cost of additional compliance auditing testing is born by the provider.

In the big picture, DDSN's three freezes along with increased provider engagement could be perceived as over-accommodating a distressed provider. It is fully recognized DDSN is a challenging position needing Mentor's services for those consumers other DDSN providers appear to be unwilling to serve. DDSN should certainly support its providers, but it needs to shift towards higher contract expectations reinforced with financial incentives and penalties. If the State is going to outsource, we need to do it like a business transaction to properly motivate parties to get value from the contracts. Weak contract expectations and contract monitoring focused on administrative indicators, rather than outcome performance, creates a fertile environment for complacent provider performance, or worse.

VI. Findings & Recommendations

Finding #1: During the audit period, Mentor's ANE incident allegations (170) were proportionally higher than peer facilities but not indicative of a systemic pattern of ANE in its facilities; however, its disproportionately high criminally sustained incidents (5) were indicative of relative poor performance compared to peer facilities.

Finding #2: The ANE process was effective with a low risk of under-reporting; particularly noteworthy were its components of initial allegations assessed by a highly professional law enforcement agency, SLED; investigations conducted by an independent criminal or administrative investigator; ANE training required by staff and consumers; a confidential 24 hour hotline; and criminal liability for not reporting.

Finding #3: The ANE process was deficient in oversight procedures to ensure timely resolution of all allegations by the SLED designated investigative agency, as illustrated by 41% of investigations requiring in excess of 45 days to resolve and 11% of incidents pending in excess of 90 days still unresolved at the time of the audit.

> **Recommendation #3:** DDSN should consider taking a leadership role with agencies responsible for the ANE process to establish procedures fixing responsibility with providers to contact the SLED designated investigative agency (i.e., local law enforcement, DSS, or Ombudsman) at specific intervals after the initial allegation if there is a lack of a response, such as 10 days and 30 days; contact SLED for resolution if no investigative response, such as after 45 days; and after a non-response from the investigative agency after 60 days, elevate the issue to the DDSN State Director for resolution with ANE participating agencies.

Finding #4: The ANE process's limited classifications used for allegations and independent investigator terminology can create distortions in interpreting ANE results data when aggregated, which led to DDSN reporting ANE allegations without sufficient detail for external stakeholders to fully analyze and understand the ANE process's results.

> **Recommendation #4a:** DDSN should consider taking a leadership role with agencies responsible for the ANE process to expand the current ANE reporting of only total allegations and sustained criminal

incidents to include categorizing all allegations by significance, such as allegations with a criminal nexus and administrative staff/facility performance issues.

Recommendation #4b: DDSN should consider taking a leadership role with agencies responsible for the ANE process to provide terminology guidance to administrative investigators that "verified (sustained)" equates to verifying allegation based on a specific standard (preponderance or clear & convincing evidence) and fixing accountability to a staff member; "verify (sustain)" should not be used solely based on confirming alleged incident occurred without information fixing wrongdoing accountability to staff, which creates an inappropriate inference, particularly when aggregating ANE results data.

Recommendation #4c: DDSN should consider taking a leadership role with agencies responsible for the ANE process to develop a public reporting mechanism on its web page of recurring audit results and sustained allegations with a criminal nexus in a comparative framework to facilitate stakeholders, consumers, and advocacy groups understanding provider performance, as well as motivate providers to perform.

Recommendation #4d: DDSN should consider taking a leadership role with agencies responsible for the ANE process to consider a policy permitting the LTCO the professional discretion to completely delegate an investigation to the provider which is completely de minimis in nature without any risk of an adverse impact on consumer quality of care or having an ANE implication.

Finding #5: Mentor has satisfactory facilities with an appropriate business model to provide care for consumers, but it had a pattern of weaknesses in the consumer training and development areas.

Recommendation #5: The DDSN should consider shifting provider contract monitoring from a minimum contract compliance audit towards a risk-based approach emphasizing outcome measures, which will correspondingly require a greater planning investment in future contracts with increased level of specificity in specific outcomes, along with corresponding contract measuring mechanisms to hold a provider accountable.

Finding #6: DDSN had adequate management controls to identify Mentor QPL and HM contract compliance deficiencies, but these controls only loosely correlated in accurately measuring the quality of the delivery of human services to consumers, primarily in training and development.

Recommendation #6a: DDSN should consider enhancing its audit program to measure the quality of service provided to consumers, which can be cost/effective when combined with less compliance testing, longer compliance audit cycles, and establishing an unpredictable audit pattern to motivate providers to be audit ready "every day."

Recommendation #6b: DDSN should consider administratively investigating bad ANE outcomes, whether criminally charged or not, after law enforcement completes its criminal investigation to assess providers' operational capabilities to reduce the risk of the bad outcomes and, if appropriate, fix accountability to the provider for any due diligence failure contributing to a bad ANE outcome.

Finding #7: Interviews raised concerns with anecdotal information about the methodology for QPL and HM contract reimbursement rates as appearing excessive and the lack of non-profits servicing HM consumers.

> **Recommendation #7:** DDSN should consider re-examining its methodology in the next change in contract rates, such as using an external subject matter expert consultant who can use comparative benchmarks from other states and independently verify cost data used to establish rates.

ADMINISTRATIVE NOTE:

DDSN's comments on report located at link: http://oig.sc.gov/Documents/Review-of-Allegations-Involving-SC-Mentor.pdf.

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

SOUTH CAROLINA Department OF Disabilities AND Special Needs

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

COMMISSION
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Catherine O. Fayssoux
Vicki A. Thompson

September 12, 2016

Patrick J. Maley
Inspector General
Office of the State Inspector General
111 Executive Center Drive, Suite 204
Synergy Business Park, Enoree Building
Columbia SC 29210-8416

RE: Review of Abuse, Neglect, and Exploitation Allegations Involving SC Mentor, a Private Provider for The South Carolina Department of Disabilities and Special Needs

Dear Inspector General Maley,

The SC Department of Disabilities and Special Needs (DDSN) greatly appreciates the Office of the State Inspector General's (SIG) willingness to conduct an independent review of Abuse, Neglect, and Exploitation Allegations involving SC Mentor. The findings and recommendations will greatly assist the department in its continual efforts to improve processes for provider oversight and monitoring resulting in improved outcomes for individuals and quality of care they receive. The findings and recommendations can also improve collaboration among the agencies involved in carrying out the State's Abuse, Neglect, and Exploitation (ANE) reporting and investigative processes. DDSN believes improved collaboration can result in clearer reporting of data which will greatly benefit stakeholders.

The department is pleased to know that the SIG's review found no systemic pattern of Abuse, Neglect, and Exploitation with regards to SC Mentor. DDSN will continue to work closely with this provider to improve its performance overall and in relation to its peer providers. The agency is also pleased to know that the SIG found the current ANE process is effective with a low risk of under-reporting. This finding is consistent with DDSN's long held philosophy of "When in doubt, report."

The SIG's understanding of the multiple agencies involved with the State's Abuse, Neglect, and Exploitation investigation processes is essential to implement the recommendations. DDSN agrees that the State would benefit from the multiple agencies working together to improve the timely resolution of all ANE allegations. DDSN concurs with Recommendation #3 and will proceed by taking a leadership role

with the multiple agencies responsible for the State's ANE processes to help establish procedures assigning responsibility to ensure timely resolution of investigations. DDSN cannot dictate the speed with which outside investigative entities complete their investigations. The agency will take a leadership role in discussions with SLED, Local Law Enforcement, DSS and the Ombudsman's Office to develop better mechanisms to obtain ANE allegation investigation status updates and ultimate resolution of cases.

DDSN appreciates the SIG's understanding and description of the difficulty and complications in more clearly reporting data when restricted by current statutes to the limited classifications used for allegations and independent investigator terminology. DDSN has a robust reporting system to collect data and desires to report information with more accuracy and in greater detail to stakeholders. The department will implement Recommendation #4a by taking a leadership role with agencies responsible for the State ANE processes to discuss expansion of the current ANE reporting of only total allegations and sustained criminal incidents to include categorizing all allegations by significance. DDSN will work with the multiple applicable agencies to develop mutually agreed upon categorizations in order to facilitate more accurate reporting.

DDSN will also assume a leadership role to collaborate with other agencies involved in the State's ANE processes to work towards implementation of Recommendation #4b. While DDSN is unable to independently re-categorize or label the terminology used in the statutes or by investigative authorities', the agency will work with these independent entities to develop mutually agreed upon language and terms that will enable DDSN and other agencies to provide more detailed data reporting. DDSN will also work with the other entities involved in the State's ANE systems to implement SIG Recommendation #4c to develop a mutually agreed upon categorization for public reporting of recurring audit results and sustained ANE allegations with a criminal nexus. The agency agrees that if the multiple entities reach agreement in terminology and categorizations, it will assist DDSN in improving reporting to stakeholders, consumers, and advocacy groups. This could facilitate better understanding of provider performance and motivate providers to deliver better quality of care. DDSN will confer with the Long Term Care Ombudsman to consider the SIG's Recommendation #4d to delegate an investigation to the local provider in situations when those allegations have minimal risk of adverse impact. It is essential that the LTCO and other investigative entities agree with this delegation and the parameters under which an incident will be delegated in order to maintain the benefit of an external investigation that exists in the current ANE systems.

The SIG's Recommendation #5 to shift provider contract compliance to focus more on outcome based measures is consistent with national trends and the new expectations of the Centers for Medicare/Medicaid Compliance (CMS). DDSN also desires to move its quality assurance and oversight system to focus more on outcome based measures. Many of the components of the existing quality assurance system used today by DDSN are required as detailed within the current CMS approved waiver documents. While these can be modified, it must be done in conjunction with the assistance and approval of the SC Department of Health and Human Services and ultimately the approval of CMS. DDSN desires to make changes in this direction but does not have the authority to alter many of the requirements of the existing system and the approval process can be very lengthy.

DDSN is willing to seek approval through Medicaid for many of the components in Recommendation #6a to employ less compliance testing, longer compliance audit cycles, and establishing an unpredictable audit pattern to motivate providers to be audit ready "every day" in order to enhance DDSN's quality management program to better measure the quality of service provided to consumers. DDSN is open to

the recommended changes, however the frequency of reviews and designated sample size are dictated in the current CMS approved waiver documents. DDSN must go through SC DHHS and receive CMS approval before these practices can be changed and often this is not a quick process. An example is DDSN has been waiting on CMS approval of a waiver renewal for more than 20 months.
DDSN will determine the most appropriate method to implement Recommendation #6b to administratively investigate negative ANE outcomes after law enforcement completes its criminal investigation to assess providers' operational capabilities to reduce the risk of negative outcomes. The department is committed to continuous improvement of processes and systems to minimize the potential for ANE within the DDSN service delivery system. Increased oversight and support to individual providers related to negative ANE outcomes will benefit all individuals served within the statewide system.

The final SIG Recommendation #7 indicating DDSN should re-examine the methodology for contract rates and use an expert consultant to independently verify cost data used to establish rates will be considered. It would be beneficial to the agency for an independent subject matter expert to review rates for high management individuals using cost data and benchmark comparisons from other states. DDSN will utilize an independent entity to examine and verify cost structure.

Again, DDSN thanks the Inspector General for the time taken to conduct this important independent review and appreciates the opportunity to provide a response to the recommendations. The department agrees all recommendations will strengthen the quality of DDSN's oversight of providers and result in an increased focus on quality outcomes for individuals receiving supports and services from the department. DDSN is committed to working with other agency partners within the State's ANE systems to maintain the high level of reporting and to improve categorization of incidents, more consistent terminology, more timely case resolution and clearer public reporting.

Sincerely,

Beverly A. H. Buscemi PhD

Beverly A. H. Buscemi, Ph.D.
State Director