**A** **BILL**

TO AMEND SECTIONS 1‑30‑35, 44‑20‑30, 44‑20‑210, 44‑20‑220, 44‑20‑225, 44‑20‑240, 44‑20‑320, 44‑20‑350, 44‑20‑360, 44‑20‑430, 44‑20‑1120, 44‑20‑1130, 44‑20‑1140, 44‑20‑1150, 44‑20‑1160, 44‑20‑1170, CODE OF LAWS OF SOUTH CAROLINA, 1976, ALL RELATING TO THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, SO AS TO PROVIDE THAT THE DEPARTMENT IS HEADED AND GOVERNED BY A DIRECTOR APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE, AND THAT THE SOUTH CAROLINA COMMISSION ON DISABILITIES AND SPECIAL NEEDS SERVES AS AN ADVISORY BOARD TO THE DIRECTOR; AND TO REPEAL SECTION 44‑20‑230 RELATING TO POWERS AND DUTIES OF THE DIRECTOR.

Be it enacted by the General Assembly of the State of South Carolina:

SSECTION 1. Section 1‑30‑35 of the 1976 Code is amended to read:

“Section 1‑30‑35. Effective ~~on~~ July 1, 1993, the following agencies, boards, and commissions, including all of the allied, advisory, affiliated, or related entities as well as the employees, funds, property, and all contractual rights and obligations associated with any such agency, except for those subdivisions specifically included under another department, are hereby transferred to and incorporated in and ~~shall~~ must be administered as part of the Department of Disabilities and Special Needs to be initially divided into divisions for Mental Retardation, Head and Spinal Cord Injury, and Autism~~; provided, however, that the board of the former Department of Mental Retardation as constituted on June 30, 1993, and thereafter, under the provisions of Section 44‑19‑10, et seq., shall be the governing authority for the department~~. Beginning July 1, 2008, the department must be headed and governed by a director appointed by the Governor in the manner provided by Section 1‑30‑10(b), and the South Carolina Commission on Disabilities and Special Needs shall become an advisory board to the department on this date in the manner provided by law.

(A) Department of Mental Health Autism programs, formerly provided for at Section 44‑9‑10, et seq.;

(B) Head and Spinal Cord Injury Information System, formerly provided for at Section 44‑38‑10, et seq.;

(C) Department of Mental Retardation, formerly provided for at Section 44‑19‑10, et seq.”

SECTION 2. Section 44‑20‑30 of the 1976 Code is amended to read:

“Section 44‑20‑30. As used in this chapter:

(1) ‘Applicant’ means a person who is believed to have mental retardation, one or more related disabilities, one or more head injuries, one or more spinal cord injuries, or an infant at high risk of a developmental disability who has applied for services of the South Carolina Department of Disabilities and Special Needs.

(2)’Client’ is a person who is determined by the Department of Disabilities and Special Needs to have mental retardation, a related disability, head injury, or spinal cord injury and is receiving services or is an infant at risk of having a developmental disability and is receiving services.

(3) ‘Commission’ means the South Carolina Commission on Disabilities and Special Needs, ~~the policy‑making and governing body~~ an advisory board of the Department of Disabilities and Special Needs.

(4) ‘County disabilities and special needs boards’ means the local public body administering, planning, coordinating, or providing services within a county or combination of counties for persons with mental retardation, related disabilities, head injuries, or spinal cord injuries and recognized by the department.

(5) ‘Day programs’ are programs provided to persons with mental retardation, related disabilities, head injuries, or spinal cord injuries outside of their residences affording development, training, employment, or recreational opportunities as prescribed by the Department of Disabilities and Special Needs.

(6) ‘Department’ means the South Carolina Department of Disabilities and Special Needs.

(7) ‘Director’ means the ~~South Carolina Director of the Department of Disabilities and Special Needs, the chief executive director appointed by the commission~~ administrative head of the department, appointed by the Governor with the advice and consent of the Senate. The director serves at the pleasure of the Governor and may be removed by the Governor pursuant to Section 1‑3‑240(b).

(8) ‘High risk infant’ means a child less than thirty‑six months of age whose genetic, medical, or environmental history is predictive of a substantially greater risk for a developmental disability than that ~~for~~ of the general population.

(9) ‘Least restrictive environment’ means the surrounding circumstances that provide as little intrusion and disruption from the normal pattern of living as possible.

(10) ‘Improvements’ means the construction~~,~~ and reconstruction of buildings~~,~~ and other permanent improvements for regional centers and other programs provided by the department directly or through contract with county boards of disabilities and special needs, including equipment and the cost of acquiring and improving lands for equipment.

(11) ‘Mental retardation’ means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(12) ‘Disabilities and special needs services’ ~~are~~ means activities designed to achieve the results specified in an individual ~~client”s~~ client’s plan.

(13) ‘Obligations’ means the obligations in the form of notes or bonds or contractual agreements issued or entered into by the ~~commission~~ director pursuant to the authorization of this chapter and of Act 1377 of 1968 to provide funds with which to repay the proceeds of capital improvement bonds allocated by the State Budget and Control Board.

(14) ‘Regional residential center’ ~~is~~ means a twenty‑four hour residential facility serving a multi‑county area and designated by the department.

(15) ‘Related disability’ ~~is~~ means a severe, chronic condition found to be closely related to mental retardation or ~~to require~~ a condition that requires treatment similar to that required for persons with mental retardation and must meet the following conditions:

(a) ~~It~~ it is attributable to cerebral palsy, epilepsy, autism, or any other condition other than mental illness found to be closely related to mental retardation because ~~this~~ the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation and requires treatment or services similar to those required for these persons~~.~~;

(b) ~~It~~ it is manifested before twenty‑two years of age~~.~~;

(c) ~~It~~ it is likely to continue indefinitely~~.~~; and

(d) ~~It~~ it results in substantial functional limitations in three or more of the following areas of major life activity: self‑care, understanding and use of language, learning, mobility, self‑direction, and capacity for independent living.

(16) ‘Residential programs’ ~~are~~ means services providing dwelling places to clients for an extended period of time with assistance for activities of daily living ranging from constant to intermittent supervision as required by the individual client’s needs.

(17) ‘Revenues’ or ‘its revenues’ means revenue derived from paying clients at regional residential centers and community residences but does not include Medicaid, Medicare, or other federal funds received with the stipulation that they be used to provide services to clients.

(18) ‘State capital improvement bonds’ means bonds issued pursuant to Act 1377 of 1968.

(19) ‘State board’ s~~hall mean~~ means the State Budget and Control Board as constituted pursuant to Chapter 11, Title 1.”

SECTION 3. Section 44‑20‑210 of the 1976 Code is amended to read:

“Section 44‑20‑210. (A) There is created the South Carolina Commission on Disabilities and Special Needs. The commission serves as an advisory board to the department and consists of seven members. One member must be a resident of each congressional district and one must be from the state at large to be appointed by the Governor upon the advice and consent of the Senate. ~~They~~ Members shall serve for four years and until their successors are appointed and ~~qualify~~ qualified. Members of the commission are subject to removal by the Governor pursuant to the provisions of Section 1‑3‑240. A vacancy may be filled by the Governor for the unexpired portion of the term.

(B) On July 1, 1993, the Commission on Mental Retardation becomes the Commission on Disabilities and Special Needs. The commissioners continue to serve until their terms expire and their successors are appointed and ~~qualify~~ qualified.”

SECTION 4. Section 44‑20‑220 of the 1976 Code is amended to read:

“Section 44‑20‑220. The ~~commission~~ director shall determine the policy and promulgate regulations governing the operation of the department and the employment of professional staff and personnel. The members of the commission shall receive subsistence, mileage, and per diem as may be provided by law for members of state boards, committees, and commissions. ~~The commission shall appoint and in its discretion remove a South Carolina Director of Disabilities and Special Needs who is the chief executive officer of the department.~~ The ~~commission~~ director may appoint additional advisory committees it considers necessary to assist in the effective conduct of its responsibilities. The director may appoint and remove other officers and employees of the department in his discretion. The ~~commission~~ director may educate the public and state and local officials as to the need for the funding, development, and coordination of services for persons with mental retardation, related disabilities, head injuries, and spinal cord injuries and promote the best interest of persons with mental retardation, related disabilities, head injuries, and spinal cord injuries. The ~~commission~~ director is authorized to promulgate regulations to carry out the provisions of this chapter and other laws related to mental retardation, related disabilities, head injuries, or spinal cord injuries. In promulgating these regulations, the ~~commission~~ director must consult with the advisory committee of the division for which the regulations ~~shall~~ apply.”

SECTION 5. Section 44‑20‑225 of the 1976 Code is amended to read:

“Section 44‑20‑225. The Governor shall appoint a seven‑member consumer advisory board with the advice and consent of the Senate for each of the following divisions: the Mental Retardation Division, the Autism Division, and the Head and Spinal Cord Injury Division. One member must be a resident of each congressional district, and one must be from the State at large.

The membership of each advisory board must consist of persons with knowledge and expertise in the subject area of that division. In making such appointments, race, gender, and other demographic factors should be considered to ensure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of the State; however, consideration of these factors in making an appointment in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed.

The members of the ~~commission~~ advisory board shall receive subsistence, mileage, and per diem as may be provided by law for members of state boards, committees, and commissions.

Terms of the members ~~shall~~ must be for four years and until their successors are appointed and ~~qualify~~ qualified, except that of the original appointees, two ~~shall~~ must be appointed for a period of two years, two ~~shall~~ must be appointed for a period of three years, and three ~~shall~~ must be appointed for a period of four years.”

SECTION 6. Section 44‑20‑240 of the 1976 Code is amended to read:

“Section 44‑20‑240. There is created the South Carolina Department of Disabilities and Special Needs which has authority over all of the state’s services and programs for the treatment and training of persons with mental retardation, related disabilities, head injuries, and spinal cord injuries. This authority does not include services delivered by other agencies of the State as prescribed by statute. The department must be comprised of a Mental Retardation Division, an Autism Division, and a Head and Spinal Cord Injuries Division. The department may be divided into additional divisions and named as may be determined by the director ~~and approved and named by the commission~~. Responsibility for all autistic services is transferred from the Department of Mental Health to the Department of Disabilities and Special Needs.”

SECTION 7. Section 44‑20‑320 of the 1976 Code is amended to read:

“Section 44‑20‑320. The department or any of its programs may accept gifts, bequests, devises, grants, and donations of money, real property, and personal property for use in expanding and improving services to persons with mental retardation, related disabilities, head injuries, and spinal cord injuries available to the people of this State. However, nothing may be accepted by the department with the understanding that it diminishes an obligation for paying care and maintenance charges or other ~~monies~~ funds due the department for services rendered. The ~~commission~~ director may formulate policies and promulgate regulations governing the disposition of gifts, bequests, devises, grants, and donations. If they are given to a specific service program of the department they must remain and be used for that program only or to its successor program.”

SECTION 8. Section 44‑20‑350 of the 1976 Code is amended to read:

“Section 44‑20‑350. (A) Reasonable reimbursement to the State for its fiscal outlay on behalf of services rendered by the department or any other agency authorized by the department to offer services to clients is a just obligation of the person with mental retardation, a related disability, head injury, or spinal cord injury, his estate, or his parent or guardian under the conditions and terms provided in this section.

(B) The department or an agency authorized by the department to offer services to clients may charge for its services. However, no service may be denied a client or his parent or guardian because of inability to pay part or all of the department’s or other agency’s expenses in providing that service. Where federal reimbursement is authorized for services provided, the department initially shall seek federal reimbursement. No charge or combination of charges may exceed the actual cost of services rendered. The ~~commission~~ director shall approve the procedures established to determine ability to pay and may authorize its designees to reduce or waive charges based upon its findings.

(C) Parents, guardians, or other responsible relatives must not be charged for regional center or community residential services provided by the department for their child or ward. However, a person receiving nonresidential services or his parent or guardian may be assessed a charge for services received, not to exceed cost. The department ~~with the approval of the commission~~ may determine for which services it charges.

(D) The department shall establish a hearing and review procedure so that a client or his parent or guardian may appeal charges made for services or may present to officials of the department information or evidence to be considered in establishing charges. The department may utilize legal procedures to collect lawful claims.

(E) The department may establish by regulation charges for other services it renders.”

SECTION 9. Section 44‑20‑360 of the 1976 Code is amended to read:

“Section 44‑20‑360. (A) The physical boundaries of Midlands Center, Coastal Center, Pee Dee Center, and Whitten Center are designated as independent school districts. These facilities may elect to participate in the usual activities of the districts, to receive state and federal aid, and to utilize other benefits enjoyed by independent school districts in general.

(B) The ~~commission~~ director operates as ~~the board of trustees~~ trustee for these districts for administrative purposes, including the receipt and expenditure of funds granted to these districts for any purpose.”

SECTION 10. Section 44‑20‑430 of the 1976 Code is amended to read:

“Section 44‑20‑430. The director or his designee has the final authority over applicant eligibility, determination, or services and admission order~~, subject to policies adopted by the commission~~.”

SECTION 11. Section 44‑20‑1120 of the 1976 Code is amended to read:

“Section 44‑20‑1120. The ~~commission~~ director may raise ~~monies~~ funds for the construction of improvements under the terms and conditions of this article.”

SECTION 12. Section 44‑20‑1130 of the 1976 Code is amended to read:

“Section 44‑20‑1130. The aggregate of the outstanding principal amounts of state capital improvement bonds issued for the ~~commission~~ director may not exceed twenty million dollars.”

SECTION 13. Section 44‑20‑1140 of the 1976 Code is amended to read:

“Section 44‑20‑1140. If the ~~commission~~ director determines that improvements are required for a residential regional center or community facility, ~~it~~ he may make application for them to the State Budget and Control Board. The application must contain:

(1) a description of the improvements sought and their estimated cost;

(2) the number of paying clients receiving services from the department, the amount of fees received from the clients during the preceding fiscal year, and the estimated amount to be received from them during the next succeeding fiscal year;

(3) the revenues derived from the paying clients during the preceding three fiscal years;

(4) a suggested maturity schedule, which may not exceed twenty years, for the repayment of ~~monies~~ funds to be made available to the ~~commission~~ director for state capital improvement bonds; and

(5) a statement showing the debt service requirements of other outstanding obligations.”

SECTION 14. Section 44‑20‑1150 of the 1976 Code is amended to read:

“Section 44‑20‑1150. The State Budget and Control Board may approve, in whole or in part, or may modify an application received from the ~~commission~~ director. If it finds that a need for the improvements sought by the ~~commission~~ director exists, it may contract to make available to the ~~commission~~ director funds to be realized from the sale of state capital improvements bonds if it finds that the revenues for the preceding fiscal year, if multiplied by the number of years, which may not exceed twenty, contemplated by the suggested or revised maturity schedule for the repayment of the ~~monies~~ funds to be made available to the ~~commission~~ director, result in the production of a sum equal to not less than one hundred twenty‑five percent of the aggregate principal and interest requirement of all outstanding obligations and all obligations to be incurred by the ~~commission~~ director.”

SECTION 15. Section 44‑20‑1160 of the 1976 Code is amended to read:

“Section 44‑20‑1160. Upon receiving the approval of the State Budget and Control Board the ~~commission~~ director shall obligate ~~itself~~ himself to apply all ~~monies~~ funds derived from ~~its~~ the revenues to the payment of the principal and interest of ~~its~~ the outstanding obligations and those to be issued and to deliver to the ~~board~~ State Budget and Control Board ~~its~~ the obligations.”

SECTION 16. Section 44‑20‑1170 of the 1976 Code is amended to read:

“Section 44‑20‑1170. (A) Following the execution and delivery of its obligations, the ~~commission~~ director shall remit to the State Treasurer all ~~its~~ revenues, including accumulated revenues not applicable to prior obligations, for credit to a special fund. The special fund must be applied to meet the sums due by the ~~commission~~ director ~~under its obligations~~. These ~~monies~~ funds from the special fund must be applied by the State Treasurer to the payment of the principal of and interest on outstanding state capital improvement bonds.

(B) If the accumulation of revenues of the ~~commission~~ director in the special fund exceeds the payment due or to become due during the then current fiscal year and an additional sum equal to the maximum annual debt service requirement of the obligations for a succeeding fiscal year, the State Budget and Control Board may permit the ~~commission~~ director to withdraw the excess and apply it to improvements that have received the approval of the ~~board~~ State Budget and Control Board or to transfer the excess out of the special fund for contract awards to local disabilities and special needs boards for needed improvements at the local level and for nonrecurring prevention, assistive technology, and quality initiatives at the regional centers and local boards.”

SECTION 17. Section 44‑20‑230 of the 1976 Code is repealed.

SECTION 18. This act takes effect upon approval by the Governor.

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