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COMMITTEE REPORT

April 20, 2011

**S. 687**

Introduced by Senators Scott and Knotts

S. Printed 4/20/11--S.

Read the first time March 10, 2011.

**THE COMMITTEE ON MEDICAL AFFAIRS**

To whom was referred a Bill (S. 687) to amend Section 44‑7‑130, as amended, Code of Laws of South Carolina, 1976, relating to the definition of terms used in the State Certification of Need, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by adding appropriately numbered SECTIONS to read:

/SECTION \_\_. Section 43-7-460(A)(1) and (G)(1) of the 9176 Code, as last amended by Act 348 of 2008, are further amended to read:

“(1) at the time of death was an inpatient in a nursing facility, intermediate care facility for ~~the mentally retarded~~ persons with intellectual disability, or other medical institution, if the individual is required, as a condition of receiving a service in the facility under the state plan, to spend for the cost of medical care all but a minimal amount of the person’s income required for personal needs; or

(1) at the time of death was an inpatient in a nursing facility, intermediate care facility for ~~the mentally retarded~~ persons with intellectual disability, or other medical institution if the individual is required, as a condition of receiving services in the facility under the state plan, to spend for costs of medical care all but a minimal amount of the person’s income required for personal needs; or”

SECTION \_\_. Section 44‑7‑130 (9) of the 1976 Code is amended to read:

“(9) ‘The federal act’ means Title VI of the United States Public Health Service Act (the Hill‑Burton Construction Program); Title XVI of the United States Public Health Service Act (National Health Planning and Resources Development Act of 1974‑‑Public Law 93‑641); grants for all center and facility construction under Public Law 91‑211 (community mental health centers’ amendments to Title II, Public Law 88‑164, Community Mental Health Centers Act); grants for all facility construction under Public Law 91‑517 (developmental disabilities services and facilities construction amendments of 1970 to Part C, Title I, grants for construction of facilities for ~~the mentally retarded~~ persons with intellectual disability‑‑Public Law 88‑164); and other federal programs as may exist or be enacted which provide for the construction of hospitals or related health facilities.”

SECTION \_\_\_. Section 44-7-130 (10) of the 1976 Code, as last amended by Act 278 of 2010, is amended to read:

“(10) ‘Health care facility’ means acute care hospitals, psychiatric hospitals, alcohol and substance abuse hospitals, nursing homes, ambulatory surgical facilities, hospice facilities, radiation therapy facilities, rehabilitation facilities, residential treatment facilities for children and adolescents, intermediate care facilities for ~~the mentally retarded~~ persons with intellectual disability, and any other facility for which Certificate of Need review is required by federal law.”

SECTION \_\_. Section 44‑7‑260(A)(11) of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

“(11) intermediate care facilities for ~~the mentally retarded~~ persons with intellectual disability;”

SECTION \_\_. Section 44‑7‑315 of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

“Section 44‑7‑315. (A) Information received by the Division of Health Licensing of the department, through inspection or otherwise, in regard to a facility or activity licensed by the department pursuant to this article or subject to inspection by the department, including a nursing home, a community residential care facility, or an intermediate care facility for ~~the mentally retarded~~ persons with intellectual disability, must be disclosed publicly upon written request to the department. The request must be specific as to the facility or activity, dates, documents, and particular information requested. The department may not disclose the identity of individuals present in a facility licensed by the department pursuant to this article or subject to inspection by the department, including a nursing home, a community residential care facility, or an intermediate care facility for ~~the mentally retarded~~ persons with intellectual disability. When a report of deficiencies or violations regarding a facility licensed by the department pursuant to this article or subject to inspection by the department, including a nursing home, a community residential care facility, or an intermediate care facility for ~~the mentally retarded~~ persons with intellectual disability, is present in the department’s files when a request for information is received, the department shall inform the applicant that it has stipulated corrective action and the time it determines for completion of the action. The department also shall inform the applicant that information on the resolution of the corrective action order is expected to be available upon written request within fifteen calendar days or less of the termination of time it determines for completion of the action. However, if information on the resolution is present in the files, it must be furnished to the applicant.

(B) Subsection (A) does not apply to information considered confidential pursuant to Section 40‑71‑20 and Section 44‑30‑60.”

SECTION \_\_. Section 44-7-320(A)(1)(d) of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

“(d) refusing to admit and treat alcoholic and substance abusers, the mentally ill, or ~~the mentally retarded~~ persons with intellectual disability, whose admission or treatment has been prescribed by a physician who is a member of the facility’s medical staff; or discriminating against alcoholics, the mentally ill, or ~~the mentally retarded~~ persons with intellectual disability solely because of the alcoholism, mental illness, or ~~mental retardation~~ intellectual disability;” /

Renumber sections to conform.

Amend bill further by amending the title to read:

/TO AMEND SECTION 43‑7‑460, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE RECOVERY OF FUNDS FROM ESTATES OF PERSONS WHO RECEIVED MEDICAID, SO AS TO SUBSTITUTE “PERSONS WITH INTELLECTUAL DISABILITY” FOR “THE MENTALLY RETARDED”; TO AMENDED SECTION 44-7-130, AS AMENDED, RELATING TO THE DEFINITION OF TERMS USED IN THE STATE CERTIFICATION OF NEED AND HEALTH FACILITY LICENSURE ACT, SO AS TO SUBSTITUTE, IN RELEVANT DEFINITIONS, “PERSONS WITH INTELLECTUAL DISABILITY” FOR “THE MENTALLY RETARDED”; TO AMEND SECTION 44-7-260, AS AMENDED, RELATING TO HEALTH FACILITY LICENSURE REQUIREMENTS, SO AS TO SUBSTITUTE “PERSONS WITH INTELLECTUAL DISABILITY” FOR “ MENTALLY RETARDED”; TO AMEND SECTION 44-7-315, AS AMENDED, RELATING TO DISCLOSURE OF INFORMATION OBTAINED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL REGARDING HEALTH CARE FACILITIES, SO AS TO SUBSTITUTE “PERSONS WITH INTELLECTUAL DISABILITY” FOR “THE MENTALLY RETARDED” TO AMEND SECTION 44-7-320, AS AMENDED, RELATING TO THE DENIAL, REVOCATION, OR SUSPENSION OF A HEALTH FACILITY LICENSE, SO AS TO SUBSTITUTE “PERSONS WITH INTELLECTUAL DISABILITY” FOR “THE MENTALLY RETARDED”; TO AMEND CHAPTER 20, TITLE 44, RELATING TO THE SOUTH CAROLINA MENTAL RETARDATION, RELATED DISABILITIES, HEAD INJURIES, AND SPINAL CORD INJURIES ACT, INCLUDING THE CREATION, GOVERNANCE, AND OPERATION OF THE SOUTH CAROLINA DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, CHAPTER 21, TITLE 44, RELATING TO THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS FAMILY SUPPORT SERVICES, SECTION 44‑23‑10, AND ARTICLES 3 AND 5 OF CHAPTER 23, TITLE 44, RELATING TO PROVISIONS APPLICABLE TO BOTH MENTALLY ILL AND MENTALLY RETARDED PERSONS, CHAPTER 26, TITLE 44, RELATING TO THE RIGHTS OF MENTAL RETARDATION CLIENTS, ALL SO AS TO CHANGE THE TERM “MENTAL RETARDATION” TO “INTELLECTUAL DISABILITY” AND THE TERM “MENTALLY RETARDED” TO “PERSON WITH INTELLECTUAL DISABILITY”; TO PROVIDE THAT THE TERMS “INTELLECTUAL DISABILITY” AND “PERSON WITH INTELLECTUAL DISABILITY” HAVE REPLACED AND HAVE THE SAME MEANINGS AS THE FORMER TERMS “MENTAL RETARDATION” AND “MENTALLY RETARDED”; AND TO DIRECT STATE AGENCIES, BOARDS, COMMITTEES, AND COMMISSIONS AND POLITICAL SUBDIVISIONS OF THE STATE AND THE CODE COMMISSIONER TO SUBSTITUTE THE TERM “INTELLECTUAL DISABILITY” FOR “MENTAL RETARDATION” AND THE TERM “PERSON WITH INTELLECTUAL DISABILITY” FOR “MENTALLY RETARDED” IN RULES, REGULATIONS, POLICIES, PROCEDURES, STATUTES, ORDINANCES, AND PUBLICATIONS WHEN THESE RULES, REGULATIONS, POLICIES, PROCEDURES, STATUTES, ORDINANCES, OR PUBLICATIONS ARE AMENDED, REVISED, OR REPUBLISHED. /

HARVEY S. PEELER, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 44‑7‑130, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITION OF TERMS USED IN THE STATE CERTIFICATION OF NEED AND HEALTH FACILITY LICENSURE ACT, INCLUDING THE DEFINITION OF “INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED”, SO AS TO SUBSTITUTE “PERSONS WITH INTELLECTUAL DISABILITY” FOR “THE MENTALLY RETARDED”; TO AMEND CHAPTER 20, TITLE 44, RELATING TO THE SOUTH CAROLINA MENTAL RETARDATION, RELATED DISABILITIES, HEAD INJURIES, AND SPINAL CORD INJURIES ACT, INCLUDING THE CREATION, GOVERNANCE, AND OPERATION OF THE SOUTH CAROLINA DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, CHAPTER 21, TITLE 44, RELATING TO THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS FAMILY SUPPORT SERVICES, SECTION 44‑23‑10, AND ARTICLES 3 AND 5 OF CHAPTER 23, TITLE 44, RELATING TO PROVISIONS APPLICABLE TO BOTH MENTALLY ILL AND MENTALLY RETARDED PERSONS, CHAPTER 26, TITLE 44, RELATING TO THE RIGHTS OF MENTAL RETARDATION CLIENTS, ALL SO AS TO CHANGE THE TERM” MENTAL RETARDATION” TO “INTELLECTUAL DISABILITY” AND THE TERM “MENTALLY RETARDED” TO “PERSON WITH INTELLECTUAL DISABILITY”; TO PROVIDE THAT THE TERMS “INTELLECTUAL DISABILITY” AND “PERSON WITH INTELLECTUAL DISABILITY” HAVE REPLACED AND HAVE THE SAME MEANINGS AS THE FORMER TERMS “MENTAL RETARDATION” AND “MENTALLY RETARDED”; AND TO DIRECT STATE AGENCIES, BOARDS, COMMITTEES, AND COMMISSIONS AND POLITICAL SUBDIVISIONS OF THE STATE AND THE CODE COMMISSIONER TO SUBSTITUTE THE TERM “INTELLECTUAL DISABILITY” FOR “MENTAL RETARDATION” AND THE TERM “PERSON WITH INTELLECTUAL DISABILITY” FOR “MENTALLY RETARDED” IN RULES, REGULATIONS, POLICIES, PROCEDURES, STATUTES, ORDINANCES, AND PUBLICATIONS WHEN THESE RULES, REGULATIONS, POLICIES, PROCEDURES, STATUTES, ORDINANCES, OR PUBLICATIONS ARE AMENDED, REVISED, OR REPUBLISHED.

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

SECTION 1. Section 44‑7‑130(19) of the 1976 Code is amended to read:

“(19) ‘Intermediate care facility for ~~the mentally retarded~~ persons with intellectual disability’ means a facility that serves four or more ~~mentally retarded~~ persons with intellectual disability or persons with related conditions and provides health or rehabilitative services on a regular basis to individuals whose mental and physical conditions require services including room, board, and active treatment for their mental retardation or related conditions.”

SECTION 2. Chapter 20, Title 44 of the 1976 Code is amended to read:

“CHAPTER 20

South Carolina ~~Mental Retardation~~ Intellectual Disability, Related Disabilities, Head Injuries, and Spinal Cord Injuries Act

Article 1

General Provisions

Section 44‑20‑10. This chapter may be cited as the ‘South Carolina ~~Mental Retardation~~ Intellectual Disability, Related Disabilities, Head Injuries, and Spinal Cord Injuries Act’.

Section 44‑20‑20. The State of South Carolina recognizes that a person with ~~mental retardation~~ intellectual disability, a related disability, head injury, or spinal cord injury is a person who experiences the benefits of family, education, employment, and community as do all citizens. It is the purpose of this chapter to assist persons with ~~mental retardation~~ intellectual disability, related disabilities, head injuries, or spinal cord injuries by providing services to enable them to participate as valued members of their communities to the maximum extent practical and to live with their families or in family settings in the community in the least restrictive environment available.

When persons with ~~mental retardation~~ intellectual disability, related disabilities, head injuries, or spinal cord injuries cannot live in communities or with their families, the State shall provide quality care and treatment in the least restrictive environment practical.

In order to plan and coordinate state and locally funded services for persons with ~~mental retardation~~ intellectual disability, related disabilities, head injuries, or spinal cord injuries, a statewide network of local boards of disabilities and special needs is established. Services will be delivered to clients in their homes or communities through these boards and other local providers.

It is recognized that persons with ~~mental retardation~~ intellectual disability, related disabilities, head injuries, or spinal cord injuries have the right to receive services from public and other agencies that provide services to South Carolina citizens and to have those services coordinated with the services needed because of their disabilities.

South Carolina recognizes the value of preventing ~~mental retardation~~ intellectual disability, related disabilities, head injuries, and spinal cord injuries through education and research and supports efforts to this end.

The State recognizes the importance of the role of parents and families in shaping services for persons with ~~mental retardation~~ intellectual disability, related disabilities, head injuries, or spinal cord injuries as well as the importance of providing services to families to enable them to care for a family member with these disabilities.

Admission to services of the South Carolina Department of Disabilities and Special Needs does not terminate or reduce the rights and responsibilities of parents. Parental involvement and participation in mutual planning with the department to meet the needs of the client facilitates decisions and treatment plans that serve the best interest and welfare of the client.

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

(1) ‘Applicant’ means a person who is believed to have ~~mental retardation~~ intellectual disability, 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~~ intellectual disability, 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 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~~ intellectual disability, related disabilities, head injuries, or spinal cord injuries and recognized by the department.

(5) ‘Day programs’ are programs provided to persons with ~~mental retardation~~ intellectual disability, 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.

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

(9) ‘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 the general population.

~~(9)~~(10) ‘Least restrictive environment’ means the surrounding circumstances that provide as little intrusion and disruption from the normal pattern of living as possible.

~~(10)~~(11) ‘Improvements’ means the construction, 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)~~(12) ‘~~Mental retardation~~ Intellectual disability’ 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 activities designed to achieve the results specified in an individual 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 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 a twenty‑four hour residential facility serving a multi‑county area and designated by the department.

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

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

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

(c) It is likely to continue indefinitely.

(d) 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 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’ shall mean the State Budget and Control Board as constituted pursuant to Chapter 11, Title 1.

Article 3

Organization and System for Delivery of Services

Section 44‑20‑210. (A) There is created the South Carolina Commission on Disabilities and Special Needs. The commission 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 shall serve for four years and until their successors are appointed and qualify. 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.

Section 44‑20‑220. The commission 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 may appoint advisory committees it considers necessary to assist in the effective conduct of its responsibilities. The commission 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~~ intellectual disability, related disabilities, head injuries, and spinal cord injuries and promote the best interest of persons with ~~mental retardation~~ intellectual disability, related disabilities, head injuries, and spinal cord injuries. The commission is authorized to promulgate regulations to carry out the provisions of this chapter and other laws related to ~~mental retardation~~ intellectual disability, related disabilities, head injuries, or spinal cord injuries. In promulgating these regulations, the commission must consult with the advisory committee of the division for which the regulations shall apply.

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~~ Intellectual Disability 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 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 be for four years and until their successors are appointed and qualify, except that of the original appointees, two shall be appointed for a period of two years, two shall be appointed for a period of three years, and three shall be appointed for a period of four years.

Section 44‑20‑230. Subject to the supervision, direction, and control of the commission, the director shall administer the policies and regulations established by the commission. The director may appoint and in his discretion remove all other officers and employees of the department subject to the approval of the commission.

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~~ intellectual disability, 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~~ an Intellectual Disability Division, an Autism Division, and a Head and Spinal Cord Injuries Division. The department may be divided into additional divisions 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 44‑20‑250. The department shall coordinate services and programs with other state and local agencies for persons with ~~mental retardation~~ intellectual disability, related disabilities, head injuries, and spinal cord injuries. The department may negotiate and contract with local agencies, county boards of disabilities and special needs, private organizations, and foundations in order to implement the planning and development of a full range of services and programs for persons with ~~mental retardation~~ intellectual disability, related disabilities, head injuries, and spinal cord injuries subject to law and the availability of fiscal resources. The department has the same right to be reimbursed for expenses in providing disabilities and special needs services through a contractual arrangement as it has to be reimbursed for expenses provided through direct departmental services. The department shall develop service standards for programs of the department and for programs for which the department may contract and shall review and evaluate these programs on a periodic basis.

Section 44‑20‑255. (A) Upon execution of the deed as provided in subsection (B) of this section, ownership of the tract of real property in Richland County described in Section 1 of Act 1645 of 1972 is confirmed in the South Carolina Department of Disabilities and Special Needs as the successor agency to the South Carolina Department of Mental Retardation.

(B) The State Budget and Control Board shall cause to be executed and recorded an appropriate deed conveying the tract to the South Carolina Department of Disabilities and Special Needs.

(C) Proceeds of a subsequent sale of the tract that is the subject of this section may be retained by the South Carolina Department of Disabilities and Special Needs.

Section 44‑20‑260. The department, with funds available for these purposes, may conduct research to determine the causes, proper treatment, and diagnosis of ~~mental retardation~~ intellectual disability, related disabilities, head injuries, and spinal cord injuries and may use facilities and personnel under its control and management for carrying out the research so long as the rights of the client are preserved and prior consent is obtained pursuant to Section 44‑26‑180.

Section 44‑20‑270. The department is designated as the state’s ~~mental retardation~~ intellectual disability, related disabilities, head injuries, and spinal cord injuries authority for the purpose of administering federal funds allocated to South Carolina for ~~mental retardation~~ intellectual disability programs, related disability programs, head injury programs, and spinal cord injury programs. This authority does not include the functions and responsibilities granted to the South Carolina Department of Health and Environmental Control or to the South Carolina Department of Vocational Rehabilitation or the administration of the ‘State Hospital Construction and Franchising Act’.

Section 44‑20‑280. The department may negotiate and contract with an agency of the United States or a state or private agency to obtain grants to assist in the expansion and improvement of services to persons with ~~mental retardation~~ intellectual disability, related disabilities, head injuries, or spinal cord injuries and may expend the grants under the terms and conditions of the award.

Section 44‑20‑290. The director or his designee may employ at regional centers security guards who are vested and charged with the powers and the duties of peace officers. They may arrest felons and misdemeanants, eject trespassers, and, without warrant, arrest persons for disorderly conduct who are trespassers on the grounds of the regional center and have them tried in a court of competent jurisdiction. Officers so employed must be bonded and under the direct supervision of the South Carolina Law Enforcement Division and shall report directly to the director or his designee.

Section 44‑20‑300. The department may acquire motor vehicle liability insurance for employees operating department vehicles or private vehicles in connection with their official departmental duties to protect against liability.

Section 44‑20‑310. The department may sell timber from its forest lands with the proceeds from the sales to be deposited in the general fund of the State. Before a sale, the State Budget and Control Board shall consult with the State Forester to determine the economic feasibility of the sale, and a sale must not be made without the approval of the board.

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~~ intellectual disability, 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 due the department for services rendered. The commission 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 44‑20‑330. The department may grant easements, permits, or rights‑of‑way on terms and conditions it considers to be in the best interest of the State, across, over, or under land held by the department for the construction of water, sewer, drainage, natural gas, telephone, telegraph, and electric power lines.

Section 44‑20‑340. (A) A person, hospital, or other organization may provide information, interviews, reports, statements, written memoranda, documents, or other data related to the condition and treatment of a client or applicant to the department, and no liability for damages or other relief arises against the person, hospital, or organization for providing the information or material.

(B) All records pertaining to the identity of a person whose condition or treatment has been studied by the department are confidential and privileged information. However, upon the written request of the client, the client’s or applicant’s parent with legal custody, legal guardian, or spouse with the written permission of the client or applicant or under subpoena by a court of law, the department may furnish pertinent records in its possession to appropriate parties.

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~~ intellectual disability, 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 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 44‑20‑355. The department shall assess and collect a fee on all Intermediate Care Facilities for the ~~mentally retarded~~ persons with intellectual disability, as defined in Section 44‑7‑130(19). Providers holding licenses on these facilities shall pay to the department a fee equal to eight dollars and fifty cents a patient day in these facilities. The department shall pay all proceeds from the fee into the general fund of the State.

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 operates as the board of trustees for these districts for administrative purposes, including the receipt and expenditure of funds granted to these districts for any purpose.

Section 44‑20‑365. No regional center of the department may be closed except as authorized by the General Assembly by law in an enactment that specifies by name the regional center to be closed.

Section 44‑20‑370. (A) The department shall:

(1) notify applicants when they have qualified under the provisions of this chapter;

(2) establish standards of operation and service for county disabilities and special needs programs funded in part or in whole by state appropriations to the department or through other fiscal resources under its control;

(3) review service plans submitted by county boards of disabilities and special needs and determine priorities for funding plans or portions of the plans subject to available funds;

(4) review county programs covered in this chapter;

(5) offer consultation and direction to county boards;

(6) take other action not inconsistent with the law to promote a high quality of services to persons with ~~mental retardation~~ intellectual disability, related disabilities, head injuries, or spinal cord injuries and their families.

(B) The department shall seek to develop and utilize the most current and promising methods for the training of persons with ~~mental retardation~~ intellectual disability, related disabilities, head injuries, and spinal cord injuries. It shall utilize the assistance, services, and findings of other state and federal agencies. The department shall disseminate these methods to county boards and programs providing related services.

Section 44‑20‑375. (A) Before July 1, 1992, county boards of disabilities and special needs must be created within a county or within a combination of counties by ordinance of the governing bodies of the counties concerned. The ordinance must establish the number, terms, appointment, and removal of board members and provide for their powers and duties in compliance with state law and the process for appointing board members which existed on January 1, 1991, must be preserved in the ordinance. However, where the county legislative delegation or county council recommends board members to the appointing authority, the delegation may transfer its authority to recommend to the council or the council may transfer its authority to the delegation. If there is a transfer, preservation of the authority to recommend existing on January 1, 1991, is not required, and the new recommending authority must be contained in the ordinance.

(B) County boards of disabilities and special needs established before January 1, 1991, shall continue to exist, operate, and function as they existed on January 1, 1991, until created by ordinance pursuant to subsection (A).

(C) After June 30, 1992, the department shall recognize only county boards of disabilities and special needs that plan, administer, or provide services to persons with ~~mental retardation~~ intellectual disability, related disabilities, head injuries, spinal cord injuries within a county or combination of counties which are created or established pursuant to this section, including those whose members are appointed by the Governor. A county board of disabilities and special needs created by ordinance before January 1, 1991, is considered created pursuant to this section, provided the ordinance includes and complies with the provisions of subsection (A).

(D) A county board of disabilities and special needs is a public entity.

(E) In Dorchester County, appointments made pursuant to this section are governed by the provisions of Act 512 of 1996.

(F) In Georgetown County, appointments made pursuant to this section are governed by the provisions of Act 515 of 1996.

Section 44‑20‑378. A county board of disabilities and special needs established pursuant to Section 44‑20‑375 must consist of not less than five members. If the board is created within a combination of counties, the number of members representing each county must be proportional to the county’s population in relation to the total population of the counties served by the board. However, a county participating in a multicounty board must not have less than two members. The term of the members is four years and until their successors are appointed and qualify. Vacancies for unexpired terms must be filled in the same manner as the original appointments. A member may be removed by the appointing authority for neglect of duty, misconduct, or malfeasance in office after being given a written statement of reasons and an opportunity to be heard.

Section 44‑20‑380. (A) County disabilities and special needs boards are encouraged to utilize lawful sources of funding to further the development of appropriate community services to meet the needs of persons with ~~mental retardation~~ intellectual disability, related disabilities, head injuries, or spinal cord injuries and their families.

(B) County boards may apply to the department for funds for community services development under the terms and conditions as may be prescribed by the department. The department shall review the applications and, subject to state appropriations to the department or to other funds under the department’s control, may fund the programs it considers in the best interest of service delivery to the citizens of the State with ~~mental retardation~~ intellectual disability, related disabilities, head injuries, or spinal cord injuries.

(C) Subject to the approval of the department, county boards may seek state or federal funds administered by state agencies other than the department, funds from local governments or from private sources, or funds available from agencies of the federal government. The county boards may not apply directly to the General Assembly for funding or receive funds directly from the General Assembly.

Section 44‑20‑385. Subject to the provisions of this chapter and the regulations of the department each county disabilities and special needs board:

(1) is the administrative, planning, coordinating, and service delivery body for county disabilities and special needs services funded in whole or in part by state appropriations to the department or funded from other sources under the department’s control. It is a body corporate in deed and in law with all the powers incident to corporation including the power to incur debt insofar as that debt is payable from contract, grant, or other revenues and is not the debt of the State or its other political subdivisions. A county board may purchase and hold real and mortgage property and erect and maintain buildings. The department shall approve all debt of a county board to be paid in whole or in part from contract, grant, or other revenues provided by the State. However, the department has no responsibility for the debt so approved;

(2) shall submit an annual plan and projected budget to the department for approval and consideration of funding;

(3) shall review and evaluate on at least an annual basis the county disabilities and special needs services provided pursuant to this chapter and report its findings and recommendations to the department;

(4) shall promote and accept local financial support for the county program from private and other lawful sources and promote public support from municipal and county sources;

(5) shall employ personnel and expend its budget for the direct delivery of services or contract with those service vendors necessary to carry out the county ~~mental retardation~~ intellectual disability, related disabilities, head injuries, and spinal cord injuries services program who meet specifications prescribed by the department;

(6) shall plan, arrange, implement, and monitor working agreements with other human service agencies, public and private, and with other educational and judicial agencies;

(7) shall provide the department records, reports, and access to its sponsored services and facilities the department may require and submit its sponsored services and facilities to licensing requirements of the department or to the licensing requirements of other state or local agencies having this legal authority;

(8) shall represent the best interest of persons with ~~mental retardation~~ intellectual disability, related disabilities, head injuries, or spinal cord injuries to the public, public officials, and other public or private organizations.

Section 44‑20‑390. (A) In order to provide assistance to families and individuals the department shall provide an initial intake and assessment service to a person believed to be in need of services and who makes application for them. An assessment must be provided through diagnostic centers approved by the department. If upon completion of the assessment the applicant is determined to have ~~mental retardation~~ intellectual disability, a related disability, head injury, or spinal cord injury and be in need of services, he may become a client of the department and eligible for services. A service plan must be designated for each person assessed. A person determined to have ~~mental retardation~~ intellectual disability, a related disability, head injury, or spinal cord injury and who chooses to become a client of the department, must be provided with the delivery or coordination of services by the department. A person determined not to have ~~mental retardation~~ intellectual disability, a related disability, head injury, or spinal cord injury may be provided by the department with referral and assistance in obtaining appropriate services or further evaluation.

(B) Service plans must recommend the services to assist the individual in developing to the fullest potential in the least restrictive environment available. The department shall determine the ‘least restrictive environment’ and may contract with individuals or organizations for a reasonable sum as determined by the department to provide the services. The department shall review service plans of its clients at least periodically according to standards prescribing the frequency to ensure that appropriate services are being provided in the least restrictive environment available. The parents, the legal guardian, the client, and other appropriate parties must be included in the review. The department shall develop standards prescribing the service plan review.

(C) No individual believed to have ~~mental retardation~~ intellectual disability, a related disability, head injury, or spinal cord injury may be admitted to the services of the department until he has been examined at a diagnostic center of the department or a diagnostic center approved by the department and certified by the department on the basis of acceptable data to have ~~mental retardation~~ intellectual disability, a related disability, head injury, or spinal cord injury or unless he is an infant at risk of a developmental disability and in need of the department’s services.

(D) The applicant shall meet residency requirements in at least one of the following categories:

(1) The applicant or his spouse, parent, with or without legal custody, or legal guardian is domiciled in South Carolina.

(2) The applicant or his spouse, parent, with or without legal custody, or legal guardian lives outside South Carolina but retains legal residency in this State and demonstrates to the department’s satisfaction his intent to return to South Carolina.

(3) The applicant or his spouse or parent, with or without legal custody, or legal guardian is a legal resident of a state which is an active member of the Interstate Compact on Mental Health and qualifies for services under it.

Section 44‑20‑400. Upon the written request of the person, the person’s parents, parent with legal custody, or lawful custodian or legal guardian and subject to the availability of suitable accommodations and services, a person with ~~mental retardation~~ intellectual disability, a related disability, head injury, or spinal cord injury may be admitted to the services of the department for evaluation and diagnosis and shall remain in the residential services of the department for that period required to complete the diagnostic study. However, this period may not exceed thirty days except upon approval of the director or his designee. Individuals admitted under the provisions of this section are subject to the same regulations and departmental policies as regular admissions. The department may prescribe the form of the written application for diagnostic services.

Section 44‑20‑410. A person who is determined to be eligible for services is subject to the following considerations regarding his order of admission to services and programs:

(1) relative need of the person for special training, supervision, treatment, or care;

(2) availability of services suitable to the needs of the applicant.

Section 44‑20‑420. The director or his designee may designate the service or program in which a client is placed. The appropriate services and programs must be determined by the evaluation and assessment of the needs, interests, and goals of the client.

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 44‑20‑440. Subject to the availability of suitable services and programs and subject to the provisions of ‘Requirement for Admission to Services’, ‘Order in which Person May be Admitted’, and ‘Final Authority over Eligibility’, the director or his designee may admit a client to the services of the department upon the written request of the parents of the person with ~~mental retardation~~ intellectual disability, a related disability, head injury or spinal cord injury, a parent with legal custody, spouse, lawful custodian or legal guardian, or the person with ~~mental retardation~~ intellectual disability, a related disability, head injury, or spinal cord injury seeking to be admitted to the department’s services if the person is twenty‑one years of age or over and competent to make the decision. The department shall prescribe the form of the application for services.

Section 44‑20‑450. (A) Proceedings for the involuntary admission of a person with ~~mental retardation~~ intellectual disability or a related disability to the services of the department may be initiated by the filing of a verified petition with the probate or the family court by:

(1) the spouse;

(2) a relative;

(3) the parents;

(4) a parent with legal custody;

(5) the legal guardian of the person;

(6) the person in charge of a public or private institution in which the individual is residing at the time;

(7) the director of the county department of social services of the county in which the person resides; or

(8) a solicitor or an assistant solicitor responsible for the criminal prosecution pursuant to Section 44‑23‑430(2).

Upon filing of the petition, the judge shall set a date for a hearing on it and ensure that the client has an attorney who represents him. The parents, parent with legal custody, spouse, guardian, or nearest known relative of the person alleged to have ~~mental retardation~~ intellectual disability or a related disability and in whose behalf the petition has been made and in the discretion of the court, the individual alleged to have ~~mental retardation~~ intellectual disability or a related disability and the department must be served by the court with a written notice of the time and place of the hearing, together with a written statement of the matters stated in the petition. If no parent, spouse, legal guardian, or known relative of the person alleged to have ~~mental retardation~~ intellectual disability or a related disability is found, the court shall appoint a guardian ad litem to represent the person alleged to have ~~mental retardation~~ intellectual disability or a related disability, and the notice must be served upon the guardian. If the parent, spouse, guardian, or known relative of the person alleged to have ~~mental retardation~~ intellectual disability or a related disability is found, he must be notified of the right to an attorney at the hearing.

(B) The hearing on the petition may be in the courthouse or at the place of residence of the person alleged to have ~~mental retardation~~ intellectual disability or a related disability or at another place considered appropriate by the court. The person alleged to have ~~mental retardation~~ intellectual disability or a related disability does not need to be present if the court determines that the hearing would be injurious or detrimental to the person alleged to have ~~mental retardation~~ intellectual disability or a related disability or if the person’s mental or physical condition prevents his participation in the hearing. However, his attorney must be present.

(C) A report of the person in charge of the examination of the person alleged to have ~~mental retardation~~ intellectual disability or a related disability at the diagnostic center referred to in ‘Requirement for Admission’ must be submitted to the court at the hearing. The court may not render judgment in the hearing unless this report is available and introduced.

(D) If the court determines that the evidence presented by the examiners at the diagnostic center, along with other evidence presented to the court, is to the effect that the person does not in fact have ~~mental retardation~~ intellectual disability or a related disability to an extent which would require commitment, it shall terminate the proceeding and dismiss the petition.

(E) If the person is found by the court to have ~~mental retardation~~ intellectual disability or a related disability and be in need of placement in a facility or service program of the department, the court shall order that he be admitted to the jurisdiction of the department as soon as necessary services are available and include in the order a summary of the evidence presented and order of the court.

(F) The department shall inform the court as soon after the date of the order as practical that suitable accommodations and services are available to meet the needs of the person with ~~mental retardation~~ intellectual disability or a related disability. Upon notification, the court shall direct the petitioner in these proceedings to transport the person with ~~mental retardation~~ intellectual disability or a related disability to a program the department designates.

(G) A party to these proceedings may appeal from the order of the court to the court of common pleas, and a trial de novo with a jury must be held in the same manner as in civil actions unless the petitioner through his attorney waives his right to a jury trial. Pending a final determination of the appeal, the person with ~~mental retardation~~ intellectual disability or a related disability must be placed in protective custody in either a facility of the department or in some other suitable place designated by the court. No person with ~~mental retardation~~ intellectual disability or a related disability must be confined in jail unless there is a criminal charge pending against him.

Section 44‑20‑460. (A) A person admitted or committed to the services of the department remains a client and is eligible for services until discharged. When the department determines that a client admitted to services is no longer in need of them, the director or his designee may discharge him. When the only basis of the department’s provision of services to a client is that he is a person with ~~mental retardation~~ intellectual disability or a related disability and it is determined that he is no longer in that condition, the director or his designee shall discharge him as soon as practical. A client of the department who is receiving residential services may be released to his spouse, parent, guardian, or relative or another suitable person for a time and under conditions the director or his designee may prescribe.

(B) When a client voluntarily admitted requests discharge or the person upon whose application the client was admitted to the department’s services requests discharge in writing, the client may be detained by the department for no more than ninety‑six hours. However, if the condition of the person is considered by the director or his designee to be such that he cannot be discharged with safety to himself or with safety to the general public, the director or his designee may postpone the requested discharge for not more than fifteen days and cause to be filed an application for judicial admission. For the purpose of this section, the Probate Court or Family Court of the county in which the facility where the person with ~~mental retardation~~ intellectual disability or a related disability resides is located is the venue for judicial admission. Pending a final determination on the application, the court shall order the person with ~~mental retardation~~ intellectual disability or a related disability placed in protective custody in either a facility of the department or in some other suitable place designated by the court.

Section 44‑20‑470. (A) The department may return a nonresident person with ~~mental retardation~~ intellectual disability or a related disability admitted to a service or program in this State to the proper agency of the state of his residence.

(B) The department is authorized to enter into reciprocal agreements with the proper agencies of other states to facilitate the return to the state of their residence persons admitted or committed to services for persons with ~~mental retardation~~ intellectual disability or a related disability in this State or other states.

(C) The department may detain a person with ~~mental retardation~~ intellectual disability or a related disability returned to this State from the state of his commitment for not more than ninety‑six hours pending order of the court in commitment proceedings in this State.

(D) The expense of returning persons with ~~mental retardation~~ intellectual disability or a related disability to other states must be paid by this State, and the expense of returning residents of this State with ~~mental retardation~~ intellectual disability or a related disability must be paid by the state making the return when interstate agreements to that effect have been negotiated.

Section 44‑20‑480. When the department determines that the welfare of a client would be facilitated by his placement out of the home, the client must be evaluated by the department, and the least restrictive level of care possible for the client must be recommended and provided when available. The department shall determine which levels of care are more restrictive and is responsible for providing a range of placements offering various levels of supervision. The department may pay an individual or organization furnishing residential alternatives to clients under this section a reasonable sum for services rendered, as determined by the department.

Section 44‑20‑490. (A) When the department determines that a client may benefit from being placed in an employment situation, the department shall regulate the terms and conditions of employment, shall supervise persons with ~~mental retardation~~ intellectual disability, a related disability, head injury, or spinal cord injury so employed, and may assist the client in the management of monies earned through employment to the end that the best interests of the client are served.

(B) The department may operate sheltered employment and training programs at its various facilities and in communities and may pay clients employed in these settings from earnings of the program or from other funds available for this purpose.

(C) Clients who receive job training and employment services from the department must be compensated in accordance with applicable state and federal laws and regulations.

Section 44‑20‑500. When a client is absent from a facility or program and there is probable cause the client may be in danger, the director or his designee may issue an order of confinement for the client. This order, when endorsed by the judge of the probate, family, or Circuit Court of the county in which the client is present or residing, authorizes a peace officer to take the client into custody for not more than twenty‑four hours and to return him or cause him to be returned to the place designated by the director or his designee.

Section 44‑20‑510. Placement of a person with ~~mental retardation~~ intellectual disability, a related disability, head injury, or spinal cord injury in a program of the department does not preclude his attendance in community‑based public school classes when the individual qualifies for the classes.

Article 5

Licensure and Regulation of Facilities and Programs

Section 44‑20‑710. No day program in part or in full for the care, training, or treatment of a person with ~~mental retardation~~ intellectual disability, a related disability, head injury, or spinal cord injury may deliver services unless a license first is obtained from the department. For the purpose of this article ‘in part’ means a program operating for ten hours a week or more. Educational and training services offered under the sponsorship and direction of school districts and other state agencies are not required to be licensed under this article.

Section 44‑20‑720. The department shall establish minimum standards of operation and license programs provided for in ‘Facilities and Programs must be Licensed’.

Section 44‑20‑730. In determining whether a license may be issued the department shall consider if the program for which the license is applied conforms with the local and state service plans and if the proposed location conforms to use.

Section 44‑20‑740. No day program may accept a person ~~who has mental retardation~~ with intellectual disability, a related disability, head injury, or spinal cord injury for services other than those for which it is licensed. No program may serve more than the number of clients as provided on the license. An applicant for a license shall file an application with the department in a form and under conditions the department may prescribe. The license must be issued for up to three years unless sooner suspended, revoked, or surrendered. The license is not transferable and must not be assigned.

Section 44‑20‑750. The department shall make day program inspections as it may prescribe by regulation. The day programs subject to this article may be visited and inspected by the director or his designees no less than annually and before the issuance of a license. Upon request, each program shall file with the department a copy of its bylaws, regulations, and rates of charges. The records of each licensed program are open to the inspection of the director or his designees.

Section 44‑20‑760. Information received by the department through licensing inspections or as otherwise authorized may be disclosed publicly upon written request to the department. The reports may not identify individuals receiving services from the department.

Section 44‑20‑770. The department shall deny, suspend, or revoke a license on any of the following grounds:

(1) failure to establish or maintain proper standards of care and service as prescribed by the department;

(2) conduct or practices detrimental to the health or safety of residents or employees of the day program. This item does not apply to healing practices authorized by law;

(3) violation of the provisions of this article or regulations promulgated under it.

Section 44‑20‑780. (A) The department shall give written notification to the governing board or if none, the operator of a program of deficiencies, and the applicant or licensee must be given a specified time in which to correct the deficiencies. If the department determines to deny, suspend, or revoke a license, it shall send to the applicant or licensee by certified mail a notice setting forth the reason for the determination. The denial, suspension, or revocation becomes final fifteen calendar days after the mailing of the notice, unless the applicant or licensee within that time gives written notice of his desire for a hearing. If the applicant or licensee gives that notice, he must be given a hearing before the department and may present evidence. On the basis of the evidence, the determination must be affirmed or set aside by the director, and a copy of the decision, setting forth the findings of fact and the reasons upon which it is based must be sent by registered mail to the applicant.

(B) If an existing program has conditions or practices which, in the department’s judgment, provide an immediate threat to the safety and welfare of the person with ~~mental retardation~~ intellectual disability, a related disability, head injury, or spinal cord injury served, the department may immediately suspend or revoke the license of the program. Notification of the program board or operator by certified mail of the license suspension or revocation also must include the reasons or conditions. A person operating a program which has had its license suspended or revoked must be punished as provided in ‘Injunctions; Penalties’.

Section 44‑20‑790. The procedures governing hearings authorized by ‘Notice of Deficiencies . . .’ must be in accordance with regulations promulgated by the department. The director may appoint a review team, including consumers, to assist in the collection of information pertinent to the hearing.

Section 44‑20‑800. An applicant or licensee who is dissatisfied with the decision of the department as a result of the hearing provided for by ‘Procedures Governing Disciplinary Hearings . . .’ may appeal to a South Carolina administrative law judge as provided in Article 5 of Chapter 23 of Title 1.

Section 44‑20‑900. (A) The department, in accordance with the laws of the State governing injunctions and other processes, may maintain an action in the name of the State against a person for establishing, conducting, managing, or operating a day program for the care, training, and treatment of a person with ~~mental retardation~~ intellectual disability, a related disability, head injury, or spinal cord injury without obtaining a license as provided in this article. In charging a defendant in a complaint in the action, it is sufficient to charge that the defendant, upon a certain day and in a certain county, provided day program services without a license, without averring more particular facts concerning the charge.

(B) A person violating the provisions of this article is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars for a first offense and two thousand dollars for a subsequent offense. Each day the day program operates after a first conviction is considered a subsequent offense.

Section 44‑20‑1000. Licensing by the department must be done in conjunction with and not in place of licensing by an agency having responsibilities outside the department’s jurisdiction. However, nothing in this section prevents the department from entering into cooperative agreements or contracts with an agency which has or may have licensing responsibilities in order to accomplish the licensing of programs.

Article 7

Capital Improvements for Disabilities and Special Needs

Section 44‑20‑1110. The department has authority for all of the state’s disabilities and special needs services and programs.

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

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

Section 44‑20‑1140. If the commission determines that improvements are required for a residential regional center or community facility, it 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 to be made available to the commission for state capital improvement bonds;

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

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. If it finds that a need for the improvements sought by the commission exists, it may contract to make available to the commission 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 to be made available to the commission, 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.

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

Section 44‑20‑1170. (A) Following the execution and delivery of its obligations, the commission 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 under its obligations. These monies 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 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 to withdraw the excess and apply it to improvements that have received the approval of the 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 3. Chapter 21, Title 44 of the 1976 Code is amended to read:

“CHAPTER 21

Department of Disabilities and Special Needs Family Support Services

Section 44‑21‑10. (A) It is the intent of the General Assembly that individuals with ~~mental retardation~~ intellectual disability or related disabilities or head injuries, spinal cord injuries, or similar disabilities and their families be afforded supports that emphasize community living and enable them to enjoy typical lifestyles. One way to do this is to recognize that families are the greatest resource available to individuals ~~who have mental retardation~~ with intellectual disability or related disabilities or head injuries, spinal cord injuries, or similar disabilities and that families must be supported in their role as primary caregivers. The General Assembly finds that supporting individuals and families in their effort to care for themselves or their family members at home is more efficient, cost‑effective, and sensitive than maintaining people with ~~mental retardation~~ intellectual disability or related disabilities in out‑of‑home residential settings.

(B) The intent of the Family Support Services Program provided for in this chapter is to assist individuals with disabilities and their families who desire or choose to support a family member with ~~mental retardation~~ intellectual disability or a related disability or head injury, spinal cord injury, or similar disability in their home. The program is not meant to create a hardship on a family by supplanting or diverting access from other appropriate or necessary services. It is recognized that persons with ~~mental retardation~~ intellectual disability or related disabilities or head injuries, spinal cord injuries, or similar disabilities have the right to receive services from public and other agencies that provide services to South Carolina citizens and to have those services coordinated with the services needed because of their disabilities. It is the position of this State that children and adults have the right to live with their families. The individual’s and family’s circumstances and desires must be taken into account when considering the appropriate types of services or supports which can best meet the needs of the individual and family.

(C) In recognition of the importance of families, the following principles must be used as guidelines in developing services to support families:

(1) Families and individuals with ~~mental retardation~~ intellectual disability or related disabilities or head injuries, spinal cord injuries, or similar disabilities are best able to determine their own needs and should be able to make decisions concerning necessary, desirable, and appropriate services.

(2) Individuals and families should receive the support necessary to care for themselves or their family member at home.

(3) Family support is needed throughout the lifespan of an individual ~~who has mental retardation~~ with intellectual disability or related disabilities or head injuries, spinal cord injuries, or similar disabilities.

(4) Family support services should be sensitive to the unique needs, strengths, and values of the individuals and the family and should be responsive to the needs of the entire family.

(5) Family support should build on existing social networks and natural sources of support and should encourage community integration.

(6) Family support services should be provided in a manner that develop comprehensive, responsive, and flexible support to individuals and families as their needs evolve over time.

(7) Family support services should be coordinated across the numerous agencies likely to provide resources and services to individuals and families and should be provided equitably across the State.

(8) Family, individual, and community‑based services should be based on the principles of sharing ordinary places, developing meaningful relationships, learning things that are useful, making choices, as well as promoting an individual’s self‑esteem.

(9) Family support services should be sufficient to enable families to keep their family members with ~~mental retardation~~ intellectual disability or related disabilities or head injuries, spinal cord injuries, or similar disabilities at home or be sufficient to enable the individual with a disability to remain at home.

(10) Services provided through the Family Support Program must be coordinated closely with services received from public and other agencies and shall foster collaboration and cooperation with all agencies providing services to individuals with ~~mental retardation~~ intellectual disability or related disabilities or head injuries, spinal cord injuries, or similar disabilities.

(D) The General Assembly recognizes that the South Carolina Department of Disabilities and Special Needs for several years has developed and maintained a family support program that provides support services to some families with members ~~who have mental retardation~~ with intellectual disability. The success of this program demonstrates the need and value of family support services. More families in the State should be able to receive appropriate services and assistance needed to stabilize the family unit.

Section 44‑21‑20. As used in this chapter:

(1) ‘Department’ means the Department of Disabilities and Special Needs.

(2) ‘Family support’ means goods and services needed by individuals or families to care for themselves or their family members with ~~mental retardation~~ intellectual disability or related disabilities or head injuries, spinal cord injuries, or similar disabilities and to enjoy a quality of life comparable to other community members.

(3) ‘Family Support Program’ means a coordinated system of family support services administered by the department directly or through contracts with private nonprofit or governmental agencies across the State, or both.

Section 44‑21‑30. The department may contract with or make grants to agencies or individuals to provide for a Family Support Program in accordance with this chapter. Services and supports developed must be flexible to address individual and family needs.

Section 44‑21‑40. The focus of the Family Support Program is supporting:

(1) families with children with ~~mental retardation~~ intellectual disability or related disabilities or head injuries, spinal cord injuries, or similar disabilities, twenty‑one years of age and younger;

(2) persons older than twenty‑one years of age with ~~mental retardation~~ intellectual disability or related disabilities or head injuries, spinal cord injuries, or similar disabilities who choose to live with their families;

(3) persons older than twenty‑one years of age with ~~mental retardation~~ intellectual disability or related disabilities or head injuries, spinal cord injuries, or similar disabilities who are residing in the community in an unsupported setting, not a state or federally‑funded program.

Section 44‑21‑50. The contracted agency shall assist each individual or family for whom services will be provided in assessing its needs and shall prepare a written plan with the person and family. The needs and preferences of the individual and family will be the basis for determining what goods and services will be provided within the resources available.

Section 44‑21‑60. The services in the Family Support Program include, but are not limited to, family support services coordination, information, referral, advocacy, educational materials, emergency and outreach services, and other individual and family‑centered assistance services such as:

(1) respite care;

(2) personal assistance services;

(3) child care;

(4) homemaker services;

(5) minor home and work site modifications and vehicular modifications;

(6) specialized equipment and maintenance and repair;

(7) specialized nutrition and clothing and supplies;

(8) transportation services;

(9) health‑related costs not otherwise covered;

(10) licensed nursing and nurses’ aid services;

(11) family counseling, training, and support groups;

(12) financial assistance;

(13) emergency services;

(14) recreation and leisure needs.

Section 44‑21‑70. Implementation of this chapter and the Family Support Program is contingent upon annual appropriation of sufficient funding for the program and benefits. This chapter does not establish or authorize creation of an entitlement program or benefit.

Section 44‑21‑80. (A) The Department of Pediatrics of the Medical University of South Carolina, the University Pediatrics of the University Affiliated Program of the University of South Carolina, and the Children’s Hospital of the Greenville Hospital System, are each hereby authorized, as agents of the State of South Carolina, to fulfill the role of Regional Tertiary Level Developmental Evaluation Centers providing comprehensive developmental assessment and treatment services for children with developmental disabilities, significant developmental delays, or behavioral or learning disorders.

(B) As developmental evaluation centers, the above named institutions shall provide a seamless continuum of developmental services, including medically necessary diagnostic and treatment services for the purpose of correcting or ameliorating physical or mental illnesses and conditions which, left untreated, would negatively impact the health and quality of life of South Carolina’s children. Further, these centers shall work collectively with the teaching, training, and research entities of each institution, extending the state’s efforts to prepare professionals to work in the field of developmental medicine, while lending expertise to the research efforts in this field.

(C) The developmental evaluation centers shall be involved in research, planning, and needs assessment of issues related to developmental disabilities and shall be committed to develop a regionalized system of community‑based, family‑centered care for children with developmental and behavioral disabilities. In so doing, the centers shall serve as primary points of entry for developmental evaluation services and as regional coordinators for the delivery of the services and are encouraged to affiliate with other providers thus enhancing the availability of high quality services for the children of South Carolina.”

SECTION 4. Section 44‑23‑10(21) of the 1976 Code, as last amended by Act 266 of 2008, is amended to read:

“(21) ‘Person with ~~mental retardation~~ intellectual disability’ means a person, other than a person with a mental illness primarily in need of mental health services, whose inadequately developed or impaired intelligence and adaptive level of behavior require for the person’s benefit, or that of the public, special training, education, supervision, treatment, care, or control in the person’s home or community or in a service facility or program under the control and management of the Department of Disabilities and Special Needs.”

SECTION 5. Articles 3 and 5 of Chapter 23, Title 44 of the 1976 Code are amended to read:

“Article 3

Detention, Confinement and Transfer of Confined Persons

Section 44‑23‑210. A person confined in a state institution or a person confined in a state or private mental health or ~~mental retardation~~ intellectual disability facility may be transferred to another mental health or ~~mental retardation~~ intellectual disability facility if:

(1) the director of a state institution not under the jurisdiction of the Department of Mental Health requests the admission of a person confined there to a state mental health facility if the person is suspected of having a mental illness. If after full examination by two designated examiners, one of whom must be a licensed physician, the director of the mental health facility is of the opinion that the person has a mental illness, the director shall notify the director of the institution or the facility to which the person was admitted who shall commence proceedings pursuant to Sections 44‑17‑510 through 44‑17‑610;

(2) the director of a facility in which the patient resides determines that it would be consistent with the medical needs of the person, the Department of Mental Health may transfer or authorize the transfer of the patient from one facility to another. If the transfer is from a less restricted facility to a substantially more secure facility and the patient objects to the transfer, a hearing to give the patient a reasonable opportunity to contest the transfer must be held pursuant to Sections 44‑17‑540 through 44‑17‑570. When a patient is transferred, written notice must be given to the patient’s legal guardian, attorney, parents, or spouse or, if none be known, to the patient’s nearest known relative or friend. This section may not be construed to apply to transfers of a patient within a mental health facility; or

(3) the legal guardian, parent, spouse, relative, or friend of an involuntary patient submits a request for the transfer of the patient from one Department of Mental Health facility to another and the reasons for desiring the transfer and unless the Department of Mental Health reasonably determines that it would be inconsistent with the medical needs of the person, the transfer must be made. If the transfer is from a less restricted to a substantially more secure facility, item (2) governs.

Section 44‑23‑220. No person who is mentally ill or ~~mentally retarded~~ who has intellectual disability shall be confined for safekeeping in any jail. If it appears to the officer in charge of the jail that such a person is in prison, he shall immediately cause the person to be examined by two examiners designated by the Department of Mental Health or the Department of Disabilities and Special Needs or both, and if in their opinion admission to a mental health or retardation facility is warranted, the officer in charge of the jail shall commence proceedings pursuant to Sections 44‑17‑510 through 44‑17‑610, or Section 44‑21‑90. If hospitalization is ordered the person shall be discharged from the custody of the officer in charge of the jail and shall be admitted to an appropriate mental health or retardation facility.

Section 44‑23‑240. Any person who wilfully causes, or conspires with or assists another to cause the unwarranted confinement of any individual under the provisions of this chapter, Chapter 9, Chapter 11, Chapter 13, Article 1 of Chapter 15, Chapter 17 or Chapter 27, shall be fined not exceeding one thousand dollars or imprisoned for not exceeding one year, or both.

Section 44‑23‑250. Whenever reference is made requiring the signature of the director of any state mental health facility, the reference means the director of the facility or the director’s designee.

Article 5

Fitness to Stand Trial

Section 44‑23‑410. (A) Whenever a judge of the circuit court or family court has reason to believe that a person on trial before him, charged with the commission of a criminal offense or civil contempt, is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity, the judge shall:

(1) order examination of the person by two examiners designated by the Department of Mental Health if the person is suspected of having a mental illness or designated by the Department of Disabilities and Special Needs if the person is suspected of ~~being mentally retarded~~ having intellectual disability or having a related disability or by both sets of examiners if the person is suspected of having both mental illness and ~~mental retardation~~ intellectual disability or a related disability. The examination must be made within thirty days after the receipt of the court’s order and may be conducted in any suitable place unless otherwise designated by the court; or

(2) order the person committed for examination and observation to an appropriate facility of the Department of Mental Health or the Department of Disabilities and Special Needs for a period not to exceed fifteen days.

(B) Before the expiration of the examination period or the examination and observation period, the Department of Mental Health or the Department of Disabilities and Special Needs, as appropriate, may apply to a judge designated by the Chief Justice of the South Carolina Supreme Court for an extension of time up to fifteen days to complete the examination or the examination and observation.

(C) If the person or the person’s counsel requests, the court may authorize the person to be examined additionally by a designated examiner of the person’s choice. However, the court may prescribe the time and conditions under which the independent examination is conducted.

(D) If the examiners designated by the Department of Mental Health find indications of ~~mental retardation~~ intellectual disability or a related disability but not mental illness, the department shall not render an evaluation on the person’s mental capacity, but shall inform the court that the person is ‘not mentally ill’ and recommend that the person should be evaluated for competency to stand trial by the Department of Disabilities and Special Needs. If the examiners designated by the Department of Disabilities and Special Needs find indications of mental illness but not ~~mental retardation~~ intellectual disability or a related disability, the department shall not render an evaluation on the person’s mental capacity, but shall inform the court that the person does ‘not have ~~mental retardation~~ intellectual disability or a related disability’ and recommend that the person should be evaluated for competency to stand trial by the Department of Mental Health. If either the Department of Mental Health or the Department of Disabilities and Special Needs finds a preliminary indication of a dual diagnosis of mental illness and ~~mental retardation~~ intellectual disability or a related disability, this preliminary finding must be reported to the court with the recommendation that one examiner from the Department of Mental Health and one examiner from the Department of Disabilities and Special Needs be designated to further evaluate the person and render a final report on the person’s mental capacity.

Section 44‑23‑420. (A) Within ten days of examination under Section 44‑23‑410(A)(1) or at the conclusion of the observation period under Section 44‑23‑410(A)(2), the designated examiners shall make a written report to the court which shall include:

(1) a diagnosis of the person’s mental condition; and

(2) clinical findings bearing on the issues of whether or not the person is capable of understanding the proceedings against him and assisting in his own defense, and if there is a substantial probability that he will attain that capacity in the foreseeable future.

(B) The report of the designated examiners shall not contain any findings nor shall the examiners testify on the question of insanity should it be raised as a defense unless further examination on the question of insanity is ordered by the court.

(C) The report is admissible as evidence in subsequent hearings pursuant to Section 44‑23‑430.

Section 44‑23‑430. Upon receiving the report of the designated examiners the court shall set a date for and notify the person and his counsel of a hearing on the issue of his fitness to stand trial. If, in the judgment of the designated examiners or the superintendent of the facility if the person has been detained, the person is in need of hospitalization, the court with criminal jurisdiction over the person may authorize his detention in a suitable facility until the hearing. The person shall be entitled to be present at the hearings and to be represented by counsel. If upon completion of the hearing and consideration of the evidence the court finds that:

(1) the person is fit to stand trial, it shall order the criminal proceedings resumed; or

(2) the person is unfit to stand trial for the reasons set forth in Section 44‑23‑410 and is unlikely to become fit to stand trial in the foreseeable future, the solicitor responsible for the criminal prosecution shall initiate judicial admission proceedings pursuant to Sections 44‑17‑510 through 44‑17‑610 or Section 44‑20‑450 within fourteen days, excluding Saturdays, Sundays, and holidays, during which time the court may order the person hospitalized, may order the person to continue in detention if detained, or, if on bond, may permit the person to remain on bond; or

(3) the person is unfit to stand trial but likely to become fit in the foreseeable future, the court shall order him hospitalized up to an additional sixty days. If the person is found to be unfit at the conclusion of the additional period of treatment the solicitor responsible for the criminal prosecution shall initiate judicial admission proceedings pursuant to Sections 44‑17‑510 through 44‑17‑610 or Section 44‑20‑450 within fourteen days, excluding Saturdays, Sundays, and holidays, during which time the person shall remain hospitalized.

Subject to the provisions of Section 44‑23‑460, persons against whom criminal charges are pending shall have all the rights and privileges of other involuntarily hospitalized persons.

Persons against whom criminal charges are pending but who are not involuntarily committed following judicial admission proceedings shall be released.

Section 44‑23‑440. A finding of unfitness to stand trial under Section 44‑23‑430 does not preclude any legal objection to the prosecution of the individual which is susceptible of fair determination prior to trial and without the personal participation of the defendant.

If either the person found unfit to stand trial or his counsel believes he can establish a defense of not guilty to the charges other than the defense of insanity, he may request an opportunity to offer a defense on the merits to the court. The court may require affidavits and evidence in support of such request. If the court grants such request, the evidence of the State and the defendant shall be heard before the court sitting without a jury. If after hearing such petition the court finds the evidence is such as would entitle the defendant to a directed verdict of acquittal, it shall dismiss the indictment or other charges.

Section 44‑23‑450. A finding of unfitness to stand trial under Section 44‑23‑430 may be reexamined by the court upon its own motion, or that of the prosecuting attorney, the person found unfit to stand trial, his legal guardian, or his counsel. Upon receipt of the petition, the court shall order an examination by two designated examiners whose report shall be submitted to the court and shall include underlying facts and conclusions. The court shall notify the individual, his legal guardian, and his counsel of a hearing at least ten days prior to such hearing. The court shall conduct the proceedings in accordance with Section 44‑23‑430, except that any petition that is filed within six months after the initial finding of unfitness or within six months after the filing of a previous petition under this section shall be dismissed by the court without a hearing.

Section 44‑23‑460. When the superintendent of a hospital or ~~mental retardation~~ intellectual disability facility believes that a person against whom criminal charges are pending no longer requires hospitalization, the court in which criminal charges are pending shall be notified and shall set a date for and notify the person of a hearing on the issue of fitness pursuant to Section 44‑23‑430. At such time, the person shall be entitled to assistance of counsel.

(1) if upon the completion of the hearing, the court finds the person unfit to stand trial, it shall order his release from the hospital; and

(2) if such a person has been hospitalized for a period of time exceeding the maximum possible period of imprisonment to which the person could have been sentenced if convicted as charged, the court shall order the charges dismissed and the person released; or

(3) the court may order that criminal proceedings against a person who has been found fit to stand trial be resumed, or the court may dismiss criminal charges and order the person released if so much time has elapsed that prosecution would not be in the interest of justice.”

SECTION 6. Chapter 26, Title 44 of the 1976 Code is amended to read:

“CHAPTER 26

Rights of ~~Mental Retardation~~ Clients with Intellectual Disability

Section 44‑26‑10. As used in this chapter:

(1) ‘Aversive stimuli’ means a clinical procedure which staff apply, contingent upon the exhibition of maladapted behavior, startling, unpleasant, or painful stimuli or stimuli that have a potentially noxious effect.

(2) ‘Client’ means a person who is determined by the South Carolina Department of Disabilities and Special Needs to have ~~mental retardation~~ intellectual disability or a related disability and is receiving services or is an infant at risk of having ~~mental retardation~~ intellectual disability or a related disability and is receiving services.

(3) ‘Client’s representative’ means the client’s parent, guardian, legal counsel, or other person who acts on behalf or in the best interest of a person with ~~mental retardation~~ intellectual disability or a related disability.

(4) ‘Director’ means the South Carolina Director of Disabilities and Special Needs.

(5) ‘Court’ means a probate court of appropriate jurisdiction unless specified otherwise.

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

(7) ‘Facility’ means a residential setting operated, assisted, or contracted out by the department that provides twenty‑four hour care and supervision.

(8) ‘Habilitation’ means the attempt to remedy the delayed learning process to develop maximum growth potential by the acquisition of self‑help, language, personal, social, educational, vocational, and recreational skills.

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

(10) ‘Intellectual disability professional’ means a person responsible for supervising a client’s plan of care, integrating various aspects of the program, recording progress, and initiating periodic review of each individual plan of habilitation.

~~(9)~~(11) ‘Interdisciplinary team’ means persons drawn from or representing the professional disciplines or service areas included in the individual habilitation plan.

~~(10)~~(12) ‘Major medical treatment’ means a medical, surgical, or diagnostic intervention or procedure proposed for a person with ~~mental retardation~~ intellectual disability or a related disability, where a general anesthetic is used or which involves a significant invasion of bodily integrity requiring an incision, producing substantial pain, discomfort, debilitation, or having a significant recovery period. It does not include routine diagnosis or treatment such as the administration of medications or nutrition or the extractions of bodily fluids for analysis or dental care performed with a local anesthetic or a nonpermanent procedure designed for the prevention of pregnancy.

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

~~(12)~~ ~~‘Mental retardation professional’ means a person responsible for supervising a client’s plan of care, integrating various aspects of the program, recording progress, and initiating periodic review of each individual plan of habilitation.~~

(13) ‘Plan of habilitation’ means a written plan setting forth measurable goals or behaviorally stated objectives in prescribing an integrated program of individually designed activities or therapies necessary to achieve the goals and objectives.

(14) ‘Planned exclusionary time‑out’ means the technique of behavior modification in which a client is removed from the immediate environment to a physically safe, lighted, and normal temperature room for a specific period of time not to exceed one hour under the direct continued observation of staff.

Section 44‑26‑20. Clients have the right to a writ of habeas corpus.

Section 44‑26‑30. A ~~mentally retarded~~ person with intellectual disability has the right to be represented by counsel when involuntarily committed to the department pursuant to Section 44‑20‑450.

Section 44‑26‑40. If a client resides in a facility operated by or contracted to by the department, the determination of that client’s competency to consent to or refuse major medical treatment must be made pursuant to Section 44‑66‑20(6) of the Adult Health Care Consent Act. The department shall abide by the decision of a client found competent to consent.

Section 44‑26‑50. If the client is found incompetent to consent to or refuse major medical treatment, the decisions concerning his health care must be made pursuant to Section 44‑66‑30 of the Adult Health Care Consent Act. An authorized designee of the department may make a health care decision pursuant to Section 44‑66‑30(8) of the Adult Health Care Consent Act. The person making the decision must be informed of the need for major medical treatment, alternative treatments, and the nature and implications of the proposed health care and shall consult the attending physician before making decisions. When feasible, the person making the decision shall observe or consult with the client found to be incompetent.

Section 44‑26‑60. (A) If the client is a minor, the decisions concerning his health care must be made by the following persons in the following order of priority:

(1) legal guardian;

(2) parent;

(3) grandparent or adult sibling;

(4) other relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the client;

(5) other person who reasonably is believed by the health care professional to have a close personal relationship with the client;

(6) authorized designee of the department.

(B) If persons of equal priority disagree on whether certain health care must be provided to a client who is a minor, a person authorized in subsection (A), a health care provider involved in the care of the client, or another person interested in the welfare of the client may petition the probate court for an order determining what care is to be provided or for appointment of a temporary or permanent guardian.

(C) Priority under this section must not be given to a person if a health care provider, responsible for the care of a client who is unable to consent, determines that the person is not reasonably available, is not willing to make health care decisions for the client, or is unable to consent as defined in Section 44‑66‑20(6) of the Adult Health Care Consent Act.

(D) In an emergency health care may be provided without consent pursuant to Section 44‑66‑40 of the Adult Health Care Consent Act to a person found incompetent to consent to or refuse major medical treatment or who is incapacitated solely by virtue of minority.

Section 44‑26‑70. (A) Human rights committees must be established for each regional center and for each county/multi‑county program to:

(1) review and advise the regional center or the county/multi‑county board on the policies pertaining to clients’ rights policies;

(2) hear and make recommendations to the regional center or county/multi‑county board on research proposals which involve individuals receiving services as research participants pursuant to Section 44‑20‑260;

(3) review and advise the regional center or county/multi‑county board on program plans for behavior management which may restrict personal freedoms or rights of clients;

(4) advise the regional center or county/multi‑county board on other matters as requested pertaining to the rights of clients.

(B) Human rights committees must be appointed by the director or his designee. Each committee consists of not less than the following five persons, except employees or former employees of the regional center or county/multi‑county board must not be appointed:

(1) a family member of a person with ~~mental retardation~~ intellectual disability or a related disability;

(2) a client of the department, if appropriate;

(3) a representative of the community at large with expertise or a demonstrated interest in the care and treatment of persons with ~~mental retardation~~ intellectual disability or related disabilities.

(C) The department shall establish policy and procedures for the operations of the committees.

(D) Members of the committees serve in an advisory capacity only and are exempt from liability.

Section 44‑26‑80. A client or his representative has the right to appeal decisions concerning the services or treatment provided by the department, county/multi‑county board, or contracted service provider. A human rights committee established in Section 44‑26‑70 shall review and advise on grievances concerning applicants or clients receiving services. The department shall establish policies and procedures for the review of grievances and the appeal of decisions. The director has final authority.

Section 44‑26‑90. Unless a client has been adjudicated incompetent, he must not be denied the right to:

(1) dispose of property, real and personal;

(2) execute instruments;

(3) make purchases;

(4) enter into contractual relationships;

(5) hold a driver’s license;

(6) marry or divorce;

(7) be a qualified elector if otherwise qualified. The county board of voter registration in counties with department facilities reasonably shall assist clients who express a desire to vote to:

(a) obtain voter registration forms, applications for absentee ballots, and absentee ballots;

(b) comply with other requirements which are prerequisite for voting;

(c) vote by absentee ballot if necessary;

(8) exercise rights of citizenship in the same manner as a person without ~~mental retardation~~ intellectual disability or a related disability.

Section 44‑26‑100. (A) Except to the extent an interdisciplinary team of a residential program determines that it is required by the medical needs, safety, or habilitative goals of the client to impose restrictions, a client may:

(1) communicate by sealed mail, telephone, or otherwise with persons, including official agencies, inside or outside the institution. Reasonable access to writing materials, stamps, envelopes, and telephones, including reasonable funds or means by which to use telephones, must be provided;

(2) receive visitors. A facility must have a designated area where clients and visitors may speak privately;

(3) wear his clothes, have access to personal hygiene articles, keep and spend a reasonable sum of his money, and keep and use his personal possessions, including articles for personal grooming not provided for by the facility unless the clothes or personal possessions are determined by ~~a mental retardation~~ an intellectual disability professional or physician to be dangerous or otherwise inappropriate to the habilitation regimen. If clothing is provided by the facility, clients must have the opportunity to select from neat, clean, seasonal clothing that allows the client to appear normal in the community. The clothing must be considered to be the client’s throughout his stay in the facility;

(4) have access to individual storage space for private use. Personal property of a client brought into the facility and placed in storage by the facility must be inventoried. Receipts must be given to the client and at least one other interested person. The personal property may be reclaimed only by the client or his guardian as long as he is living unless otherwise ordered by the court;

(5) follow or abstain from religious practices. Religious practices may be prohibited by the facility supervisor if they lead to physical harm to the client or to others, harassment of other clients, or damage to property.

(B) The department shall determine what constitutes reasonable access for the rights provided in this section. Limitations imposed on the exercise of the rights by the client and the reasons for the limitations must be made part of the client’s record. The limitations are valid for no more than thirty days. The time may be extended an additional thirty days if, upon review, it is determined the client’s safety or habilitation warrants limitations of the rights. If the department restricts rights, the reasons for the restriction and why the condition cannot be resolved in a less restrictive manner must be recorded in the client’s record.

Section 44‑26‑110. Clients have the right to daily physical exercise. Operators of a facility shall provide indoor and outdoor areas and equipment for this purpose. Clients determined able to be outdoors on a daily basis pursuant to Section 44‑26‑150 must be allowed this privilege in the absence of contrary medical considerations or during periods of inclement weather.

Section 44‑26‑120. (A) A client or his representative with the appropriate permission may have reasonable access to the client’s medical and habilitative records. The requests must be made in writing.

(B) A client or his representative may be refused access to information in the medical and habilitative records if:

(1) provided by a third party under assurance that the information remains confidential;

(2) the attending physician has determined in writing that the information would be detrimental to the client’s habilitation regimen. The determination must be placed in the client’s records and is considered part of restricted information.

(C) A client or his representative refused access to medical or habilitative records may appeal the refusal to the department director. The director of the residential program shall notify the client or his representative of the right to appeal.

(D) Persons granted access to client records shall sign a disclosure form. Disclosure forms are considered part of a client’s confidential record.

Section 44‑26‑130. (A) Communications between clients and ~~mental retardation~~ intellectual disability professionals, including general physicians, psychiatrists, psychologists, nurses, social workers, members of interdisciplinary teams, or other staff members employed in a client‑therapist capacity or an employee under supervision of them are considered confidential. Certificates, applications, records, and reports made for the purpose of this chapter that directly or indirectly identify a client, as well as privileged communications, must be kept confidential and must not be disclosed by a person unless:

(1) the identified client or his representative consents;

(2) a court directs disclosure upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make the disclosure is contrary to the public interest;

(3) disclosure is required for research conducted or authorized by the department;

(4) disclosure is necessary to cooperate with law enforcement, health, welfare, and other state agencies, schools, and county entities;

(5) disclosure is necessary to carry out this chapter.

(B) Nothing in this section precludes disclosure:

(1) upon proper inquiry, of information as to a client’s current medical condition, to appropriate next of kin;

(2) if the information is used in an educational or informational capacity if the identity of the client is concealed;

(3) of information to the Governor’s ombudsman office or the South Carolina Protection and Advocacy System for the Handicapped, Inc., as consistent with state law.

Section 44‑26‑140. (A) Clients receiving services for ~~mental retardation~~ intellectual disability shall receive care and habilitation suited to their needs and in the least restrictive appropriate care and habilitation available. The care and habilitation must be administered skillfully, safely, and humanely with full respect for the client’s dignity and personal integrity. The department shall make every effort, based on available resources, to develop services necessary to meet the needs of its clients.

(B) In emergency admissions when the least restrictive setting is not available a client must be admitted to the nearest proper facility until he may be moved to the least restrictive setting.

(C) In judicial or emergency admissions to the department every attempt must be made by the court to ensure a client’s placement in the least restrictive alternative of services available.

(D) No client may remain at a level of care that is more restrictive than is warranted to meet his needs if alternative care is available. A residential program must attempt to move clients from:

(1) more to less structured living;

(2) larger to smaller facilities;

(3) larger to smaller living units;

(4) group to individual residence;

(5) segregated from the community to integrated into the community;

(6) dependent to independent living.

Section 44‑26‑150. (A) Before or at the time of admission to ~~a Mental Retardation~~ an intellectual disability residential program, a client or his representative must be provided with an explanation in terms and language appropriate to his ability to understand the client’s rights while under the care of the facility.

(B) Within thirty days of admission a client or his representative must be provided with a written individualized plan of habilitation formulated by an interdisciplinary team and the client’s attending physician. A client or his representative may participate in an appropriate manner in the planning of services. An interim habilitation program based on the preadmission evaluation of the client may be implemented promptly upon admission. The service plan must be developed with the active participation of the individual receiving the services to the extent he is able to participate meaningfully. Each individualized habilitation plan must contain:

(1) a statement of the nature and degree of the client’s ~~mental retardation~~ intellectual disability and the needs of the client;

(2) if a physical examination has been conducted, the client’s physical condition;

(3) a description of intermediate and long‑range habilitative goals and, if possible, future available services;

(4) a statement as to whether or not the client may be permitted outdoors on a daily basis and, if not, the reasons why.

(C) ~~A mental retardation~~ An intellectual disability professional shall review each client’s individual records quarterly in relation to goals and objectives established in the habilitation plan. This review must be documented and entered into the client’s record. The interdisciplinary team shall conduct a full review of the client’s records and habilitation program annually.

(D) Included in a review must be a reassessment of the client’s plan of habilitation. If the reassessment indicates a need for revisions in the client’s plan of habilitation, the revisions must be implemented.

(E) A client or his representative shall receive an updated plan of habilitation, upon request, pursuant to Section 44‑26‑120.

(F) A client or his representative may request a change in the plan of habilitation. If a request for a change in the plan of habilitation is denied, a grievance may be filed by the client or his representative on his behalf. The request must be reviewed according to the grievance procedure pursuant to Section 44‑26‑80.

Section 44‑26‑160. (A) No client residing in ~~a mental retardation~~ an intellectual disability facility may be subjected to chemical or mechanical restraint or a form of physical coercion or restraint unless the action is authorized in writing by ~~a mental retardation~~ an intellectual disability professional or attending physician as being required by the habilitation or medical needs of the client and it is the least restrictive alternative possible to meet the needs of the client. Emergency restraints require the written authorization of the attending physician or designated staff member and must be noted in the client’s record.

(B) Each use of a restraint and justification for it must be entered into the client’s record. The authorization is not valid for more than twelve hours during which the client’s condition must be charted at thirty‑minute intervals. If the orders are extended beyond the twelve hours, the extension must have written authorization by ~~a mental retardation~~ an intellectual disability professional or attending physician. Within twenty‑four hours a copy of the authorization must be forwarded to the facility supervisor for review. Clients under a form of restraint must be allowed no less than ten minutes every two hours for motion and exercise. Mechanical restraint must be employed in a manner that lessens the possibility of physical injury and ensures the least possible discomfort.

(C) No form of restraint may be used for the convenience of staff, as punishment, as a substitute for a habilitation program or in a manner that interferes with the client’s habilitation program.

(D) In an emergency such as a serious threat of extreme violence, injury to others, personal injury, or attempted suicide, if the attending physician or ~~a mental retardation~~ an intellectual disability professional is not available, staff may authorize mechanical restraint or physical restraint, in conjunction with state and federal regulations, when these means are necessary for as long as the behavior that warrants restraint persists. The use must be reported immediately to the attending physician or ~~mental retardation~~ an intellectual disability professional who shall authorize its continuance or cessation and make a written record of the reasons for its use and his review. The records and review must be entered into the client’s record. The facility must have written policies and procedures governing the use of mechanical and physical restraints.

(E) The client’s family or his representative, or both, must be notified immediately of the use of restraints.

(F) The appropriate human rights committees must be notified of the use of emergency restraints.

(G) Documentation of less restrictive methods that have failed must be entered into the client’s record when applicable.

Section 44‑26‑170. (A) Behavior modification programs involving the use of aversive stimuli are discouraged and may be used only in extraordinary cases where all other efforts have proven ineffective. Clients must not be subjected to aversive stimuli in the absence of:

(1) prior written approval for the technique by the director;

(2) the informed consent of the client on whom the aversive stimuli is to be used or his representative. Each use of aversive stimuli and justification for it must be entered into the client’s record;

(3) documentation of less restrictive methods that have failed must be entered into the client’s record.

(B) Seclusion must not be used on ~~mentally retarded~~ clients with intellectual disability.

(C) Planned exclusionary time‑out procedures may be utilized under close and direct professional supervision as a technique in behavior shaping.

(D) Behavior modification plans must be reviewed by the interdisciplinary team periodically for continued appropriateness.

Section 44‑26‑180. A client or his representative shall give informed consent in every case before participation in research conducted by, for, or in cooperation with the department. The department shall promulgate regulations to obtain informed consent and to protect the dignity of the individual.

Section 44‑26‑190. (A) The State Department of Education shall seek to develop and utilize the most current and promising methods for the education and training of people with ~~mental retardation~~ intellectual disability. It shall utilize the assistance, service, and findings of other state and federal agencies.

(B) School‑aged ~~mentally retarded~~ clients with intellectual disability have the right to an appropriate education regardless of the degree of retardation or accompanying disabilities as provided in Public Law 94‑142, the Education of Handicapped Children Act. Placement of a school‑aged ~~mentally retarded~~ person with intellectual disability in a facility of the department does not preclude his attendance in community‑based public schools. It is the goal of each ~~mental retardation~~ intellectual disability facility to effect a move of each resident client from facility‑based educational programs to community‑based public schools.

Section 44‑26‑200. The South Carolina State Employment Service Division of the South Carolina Department of Employment and Workforce and the State Agency of Vocational Rehabilitation shall work together to find employment for citizens with ~~mental retardation~~ intellectual disability. Services must include, but are not limited to, counseling, referral, timely notification of job listings, and other services of the division and the agency.

Section 44‑26‑210. A person who wilfully causes, or conspires with or assists another to cause, the denial to a client of rights accorded to him under this chapter, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both. A person acting in good faith, upon actual knowledge or information thought by him to be reliable, is exempt from criminal liability.

Section 44‑26‑220. (A) A person who in good faith makes a health care decision as provided in this chapter is not subjected to civil or criminal liability on account of the substance of the decision.

(B) A person who consents to major medical treatment as provided in this chapter does not by virtue of that consent become liable for the costs of care provided to the client found incompetent to consent to or refuse treatment.

(C) A health care provider who in good faith relies on a health care decision made by a client or as authorized by this chapter is not subject to civil or criminal liability or disciplinary penalty on account of his reliance on the decision.

(D) This section does not affect a health care provider’s liability arising from provision of care in a negligent manner.”

SECTION 7. In Sections 1 through 6 of this act, the terms “intellectual disability” and “person with intellectual disability” have replaced and have the same meanings as the former terms “mental retardation” and “mentally retarded”.

SECTION 8. (A) If the term “mental retardation” or “mentally retarded” currently is used by any state agency, board, committee, or commission or any political subdivision of the State in their rules, regulations, policies, procedures, publications, statutes, or ordinances, the state agency, board, committee, and commission and the political subdivision of the State shall substitute the term “intellectual disability” for “mental retardation” and “person with intellectual disability” for “mentally retarded” when they are amending, revising, or republishing their rules, regulations, policies, procedures, publications, statutes, and ordinances.

(B) The Code Commissioner shall substitute the term “intellectual disability” for “mental retardation” and “person with intellectual disability” for “mentally retarded” in the 1976 Code of Laws at such times as regulations and statutes containing these terms are amended, revised, or republished.

SECTION 9. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 10. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 11. This act takes effect upon approval by the Governor.

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