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CHAPTER 20.

 SOUTH CAROLINA MENTAL RETARDATION, RELATED DISABILITIES, HEAD INJURIES, AND SPINAL CORD INJURIES ACT

ARTICLE 1.

 GENERAL PROVISIONS

**SECTION 44‑20‑10.** Short title.

This chapter may be cited as the “South Carolina Mental Retardation, Related Disabilities, Head Injuries, and Spinal Cord Injuries Act”.

**SECTION 44‑20‑20.** Purpose of chapter.

The State of South Carolina recognizes that a person with mental retardation, 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, 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, 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, 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, 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, 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, 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.** Definitions.

As used in this chapter:

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

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

(3) “Commission” means the South Carolina Commission on Disabilities and Special Needs, the policy‑making and governing body of the Department of Disabilities and Special Needs.

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

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

(6) “Department” means the South Carolina Department of Disabilities and Special Needs.

(7) “Director” means the South Carolina Director of the Department of Disabilities and Special Needs, the chief executive director appointed by the commission.

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

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

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

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

(12) “Disabilities and special needs services” are 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 or to require treatment similar to that required for persons with mental retardation 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 because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation and requires treatment or services similar to those required for these persons.

(b) It 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.** Creation of South Carolina Commission on Disabilities and Special Needs; membership; terms of office; removal; vacancies.

(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.** Duties of Commission; per diem; appointment of Director of Disabilities and Special Needs; advisory committees.

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, related disabilities, head injuries, and spinal cord injuries and promote the best interest of persons with mental retardation, related disabilities, head injuries, and spinal cord injuries. The commission is authorized to promulgate regulations to carry out the provisions of this chapter and other laws related to mental retardation, related disabilities, head injuries, or spinal cord injuries. In promulgating these regulations, the commission must consult with the advisory committee of the division for which the regulations shall apply.

**SECTION 44‑20‑225.** Consumer advisory boards; membership; per diem; terms of office.

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

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

The members of the commission 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.** Powers and duties of director.

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.** Creation of Department of Disabilities and Special Needs; divisions.

There is created the South Carolina Department of Disabilities and Special Needs which has authority over all of the state’s services and programs for the treatment and training of persons with mental retardation, related disabilities, head injuries, and spinal cord injuries. This authority does not include services delivered by other agencies of the State as prescribed by statute. The department must be comprised of a Mental Retardation Division, an Autism Division, and a Head and Spinal Cord Injuries Division. The department may be divided into additional divisions 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.** Powers and duties of Department.

The department shall coordinate services and programs with other state and local agencies for persons with mental retardation, 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, 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.** Ownership of property confirmed in Department of Disabilities and Special Needs; retention of subsequent sales proceeds.

(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.** Research programs.

The department, with funds available for these purposes, may conduct research to determine the causes, proper treatment, and diagnosis of mental retardation, 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.** Administration of federal funds.

The department is designated as the state’s mental retardation, related disabilities, head injuries, and spinal cord injuries authority for the purpose of administering federal funds allocated to South Carolina for mental retardation 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.** Contracts for expansion of service.

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, 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.** Security guards; powers; bonds.

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.** Motor vehicle liability insurance for employees of Department.

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.** Sale of timber from forest lands; disposition of funds.

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.** Acceptance of gifts, etc. by Department; policies and regulations.

The department or any of its programs may accept gifts, bequests, devises, grants, and donations of money, real property, and personal property for use in expanding and improving services to persons with mental retardation, related disabilities, head injuries, and spinal cord injuries available to the people of this State. However, nothing may be accepted by the department with the understanding that it diminishes an obligation for paying care and maintenance charges or other monies 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.** Granting of easements, permits, or rights‑of‑way by Department.

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.** Records and reports pertaining to client; confidentiality of information; waiver.

(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.** Reimbursement to State for its fiscal outlay on behalf of Department; charge for services; hearing and review procedures; collection of claims.

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

(B) The department or an agency authorized by the department to offer services to clients may charge for its services. However, no service may be denied a client or his parent or guardian because of inability to pay part or all of the department’s or other agency’s expenses in providing that service. Where federal reimbursement is authorized for services provided, the department initially shall seek federal reimbursement. No charge or combination of charges may exceed the actual cost of services rendered. The commission 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.** Fee for Intermediate Care Facilities for Mentally Retarded; proceeds to general fund.

The department shall assess and collect a fee on all Intermediate Care Facilities for the Mentally Retarded, 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.** Midlands Center, Coastal Center, Pee Dee Center, and Whitten Center designated as independent school districts.

(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.** Closing regional centers to be authorized by law.

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.** Notification of applicant qualifying for services; county mental retardation programs; training programs.

(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, 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, 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.** County boards of disabilities and special needs; establishment; recognition.

(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, 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.** Composition of board; tenure.

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.** Funds for county boards of disabilities and special needs.

(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, 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, 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.** Additional powers and duties of county boards of disabilities and special needs.

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, 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, related disabilities, head injuries, or spinal cord injuries to the public, public officials, and other public or private organizations.

**SECTION 44‑20‑390.** Initial intake and assessment service for person believed to be in need of services; service plans; residency requirements.

(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, 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, 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, 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, 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, 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.** Admission of person to services of Department for evaluation and diagnosis; form for application.

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, 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.** Requirement for admission to services.

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.** Designation of service or program in which client is placed.

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.** Final authority over applicant eligibility, etc.

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.** Admission of client upon request of parent, spouse, lawful custodian or legal guardian, or upon request of applicant.

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, 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, 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.** Proceedings for involuntary admission; petition; hearing; service of notice; guardian ad litem; right to counsel; report; termination of proceedings; order of admission; appeal; confinement in jail prohibited.

(A) Proceedings for the involuntary admission of a person with mental retardation 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 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 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 or a related disability is found, the court shall appoint a guardian ad litem to represent the person alleged to have mental retardation 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 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 or a related disability or at another place considered appropriate by the court. The person alleged to have mental retardation 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 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 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 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 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 or a related disability. Upon notification, the court shall direct the petitioner in these proceedings to transport the person with mental retardation 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 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 or a related disability must be confined in jail unless there is a criminal charge pending against him.

**SECTION 44‑20‑460.** Discharge of client; detention of voluntarily admitted client; venue for judicial admission; protective custody for client.

(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 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 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 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.** Return of nonresident person with mental retardation or related disability to agency of state of his residency; reciprocal agreements with other states; detention of person returned by out‑of‑state agency; expenses.

(A) The department may return a nonresident person with mental retardation 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 or a related disability in this State or other states.

(C) The department may detain a person with mental retardation 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 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 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.** Placement of client out of home; payment for services.

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.** Placement of client in employment situation; sheltered employment and training programs; compensation of clients.

(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, 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.** Order of confinement for client.

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.** Attendance of client in community based public school classes.

Placement of a person with mental retardation, 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.** Licensing of facilities and programs.

No day program in part or in full for the care, training, or treatment of a person with mental retardation, 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.** Minimum standards of operation and license programs.

The department shall establish minimum standards of operation and license programs provided for in “Facilities and Programs must be Licensed”.

**SECTION 44‑20‑730.** Criteria for issuance of license.

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.** Restrictions as to services; number of clients; form of application for license; term of license; license as not transferrable.

No day program may accept a person who has mental retardation, 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.** Inspection of facilities; filing copy of bylaws, regulations, and rates of charges; inspection of records.

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.** Disclosure of inspections; protection of names of clients.

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.** Denial, suspension or revocation of license; grounds.

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.** Notifying operator of program of deficiencies; time for correction; notice of impending denial, suspension or revocation of license.

(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, 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.** Promulgation of regulations governing hearings.

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.** Appeal of decision concerning deficiencies, licenses, etc.

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.** Injunctions; sufficiency of complaint; fines and penalties.

(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, 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 department to be done in conjunction with licensing by agency having responsibility outside the department’s jurisdiction; cooperative agreements.

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.** Department’s authority as to State’s disabilities and special needs services and programs.

The department has authority for all of the state’s disabilities and special needs services and programs.

**SECTION 44‑20‑1120.** Raising of money for construction of improvements.

The commission may raise monies for the construction of improvements under the terms and conditions of this article.

**SECTION 44‑20‑1130.** Limitation on amount of state capital improvement bonds.

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.** Improvements for residential regional center or community facility; application.

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.** Budget and Control Board’s powers and duties concerning application for improvements.

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.** Use of monies derived from revenues.

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.** Special funds; disposition of revenues; withdrawal of funds.

(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.