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CHAPTER 52.

 ALCOHOL AND DRUG ABUSE COMMITMENT

**SECTION 44‑52‑5.** Statement of policy.

It is the policy of the State to assist individuals with chemical dependency problems in ways consistent with the dignity, rights, and responsibilities of all South Carolina citizens. Within available resources, it is the duty of the State, in coordination with its local counterparts, to treat, reduce, eliminate, and prevent the abuse of alcohol and drugs through a service delivery system structured to meet the needs of the clients in the most appropriate therapeutic setting, and to maximize their quality of life.

The State shall develop a public service system designed to provide a continuum of services for clients at the state and local level while considering the availability of services in the private sector.

**SECTION 44‑52‑10.** Definitions.

(1) “Chemical dependency” means a chronic disorder manifested by repeated use of alcohol or other drugs to an extent that it interferes with a person’s health, social, or economic functioning; some degree of habituation, dependence, or addiction may be implied.

(2) “Chemically dependent person in need of emergency commitment” means a person who is suffering from chemical dependency and, as a result of this condition, poses a substantial risk of physical harm to himself or others if not immediately provided with emergency care and treatment.

(3) “Patient” means a person who is under the care and treatment of a treatment facility as a chemically dependent person.

(4) “Treatment facility” means any facility licensed or approved by the Department of Health and Environmental Control equipped to provide for the care and treatment of chemically dependent persons including the Division of Alcohol and Drug Addiction Services of the South Carolina Department of Mental Health, and any other treatment facility approved by the Director of the Department of Mental Health.

(5) “Licensed physician” means an individual licensed under the laws of this State to practice medicine or a medical officer of the Government of the United States while in this State in the performance of his official duties.

(6) “Head of a treatment facility” means the individual in charge of a treatment facility or his designee.

(7) “Treatment” means the broad range of emergency, outpatient, inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, or social service care, rehabilitation, and counseling which may be extended to a chemically dependent person.

(8) “Individualized treatment plan” means a plan developed during a patient’s period of treatment in a treatment facility and which is specifically tailored to the individual patient’s needs. Each plan shall clearly state:

(a) treatment goals and objectives based upon and related to a proper evaluation, which may be reasonably achieved within a designated time interval;

(b) treatment methods and procedures to be used to obtain these goals;

(c) identification of the types of professional personnel who shall carry out these procedures; and

(d) documentation of patient involvement.

(9) “Division” means the Division of Alcohol and Drug Addiction Services of the South Carolina Department of Mental Health.

(10) “Court” means the Probate Court.

(11) “Chemically dependent person in need of involuntary commitment” means a person who is suffering from chemical dependency as demonstrated by:

(a) recent overt acts or recent expressed acts of violence;

(b) episodes of recent serious physical problems related to the habitual and excessive use of drugs or alcohol, or both;

(c) incapacitation by drugs or alcohol, or both, on a habitual and excessive basis as evidenced by numerous appearances before the court within the preceding twelve months, repeated incidences involving law enforcement, multiple prior treatment episodes, or testimony by family or by members of the community known to the person relating to a lifestyle adversely affected by alcohol or drugs, or both.

**SECTION 44‑52‑20.** Voluntary admission.

Any person who is sixteen years or older, appears to be and believes himself to be chemically dependent, may make written application for voluntary admission to a treatment facility. Application may be made on behalf of any person under sixteen years of age by the parent or legal guardian. Upon receipt of the application, the head of the treatment facility may receive the patient for observation and diagnosis. If evidence of chemical dependency is found, the patient may be given care and treatment at the facility. An individualized treatment plan must be developed for the person as soon as possible after admittance.

Any person voluntarily admitted to a treatment facility must be given notice of his rights under this chapter at the time of his admission. A voluntary patient must be informed that, upon a written request for release, the head of the treatment facility may initiate judicial proceedings for involuntary commitment.

**SECTION 44‑52‑30.** Discharge of voluntary patient.

The head of the treatment facility may discharge a patient who has sufficiently improved so that the head of the treatment facility determines that hospitalization of the patient is no longer necessary.

The head of the treatment facility may also discharge any patient if to do so would, in his judgment, contribute to the most effective use of the facility in the care and treatment of chemically dependent persons.

**SECTION 44‑52‑40.** Release of voluntary patient.

A voluntary patient, including a minor under the age of sixteen, who has admitted himself to a treatment facility, or a voluntary patient’s personal representative, legal guardian, parent, spouse, or adult next of kin, or the parent or legal guardian of a minor on whose behalf admission to a treatment facility was requested, may request in writing release of the patient at any time after his admission. If the patient was admitted on his own application and the request for release is made by a person other than the patient, release may be conditional upon the consent of the patient.

The request for release may be submitted to the head of the treatment facility or to any staff person of the facility for transmittal to the head of the treatment facility. If the patient or another person on his behalf makes an oral request for release to any member of the staff, the patient must within twenty‑four hours be given assistance in preparing a written request. The person to whom a written request is submitted shall deliver the request to the head of the treatment facility within twenty‑four hours, Saturdays, Sundays, and legal holidays excluded.

Within forty‑eight hours of delivery of the request for release to the head of the treatment facility, the head of the treatment facility must:

(a) release the patient; or

(b) initiate proceedings for involuntary commitment by filing with the court of the county where the patient is a resident or of the county where the patient is hospitalized, a petition alleging that the patient is a chemically dependent person in need of involuntary commitment. Upon the filing of the petition with the court, release of the patient may be postponed for the commencement of judicial proceedings under Section 44‑52‑70.

**SECTION 44‑52‑50.** Procedure for emergency admission.

Any adult person who believes that a person is chemically dependent and in need of emergency care and treatment may complete a written affidavit under oath stating:

(1) that he believes the person is suffering from chemical dependency and, as a result of his condition, poses a substantial risk of physical harm to himself or others if not immediately provided with emergency care and treatment;

(2) the specific harm thought probable, and the factual basis for this belief;

(3) that he believes the person is incapable of exercising judgment concerning emergency care.

The affidavit must be accompanied by a written certificate of a licensed physician stating that he has examined the person within forty‑eight hours prior to his admission, and is of the opinion, for stated reasons, that the person is a chemically dependent person and that the immediacy of the situation and consideration of safety do not allow initiation of judicial proceedings for involuntary commitment under Section 44‑52‑70.

If a person refuses to submit to an examination, or may not be examined because his whereabouts are unknown or for any other reason, the person seeking emergency admission shall execute a written affidavit stating that he believes the person to be chemically dependent, and because of this condition, poses a substantial risk of harm to himself or others if not immediately hospitalized, the grounds for the belief, and that the usual procedure for examination may not be followed and the reason therefor. Upon presentation of the affidavit, the court may issue an order requiring any law enforcement officer to take a person into custody for a period not exceeding twenty‑four hours. The order expires seventy‑two hours after it was issued, and if the person is not taken into custody within those seventy‑two hours, the order is no longer valid. During the detention he must be examined by a licensed physician. If within the twenty‑four hours the person in custody is not examined by a licensed physician or, if upon examination, the physician does not execute the certificate required, the proceedings must be terminated and the individual in custody must be immediately released.

The written certificate and affidavit shall authorize and require any law enforcement officer to transport the person to a treatment facility if confirmation has been obtained from the treatment facility that a bed is available. A person taken into custody for emergency admission may not be placed in a jail or other correctional facility except for protective custody purposes and only while awaiting transportation to a treatment facility. Any friend or relative may transport the person to a treatment facility, provided such friend or relative has read and signed a statement on the certificate which clearly states that it is the responsibility of a law enforcement officer to provide timely transportation for the person and that the friend or relative freely chooses to assume such responsibility. A friend or relative who chooses to transport the person shall not be entitled to reimbursement from the State for the cost of such transportation. Any officer acting in accordance with the provisions of this article shall be immune from civil liability.

A copy of the written certificate and affidavit must be personally served upon the person upon admission to the facility, and a copy must be maintained in the person’s medical record at the facility. The person must be examined by a physician within twenty‑four hours of admission, and may be given emergency treatment as the examining physician considers necessary. The facility shall make every reasonable effort to notify the person’s next of kin regarding his admission to the facility.

**SECTION 44‑52‑60.** Preliminary judicial review of emergency admission; patient’s attorney’s access to documents.

(A) Within forty‑eight hours after admission, exclusive of Saturdays, Sundays, and legal holidays, the place of admission shall forward the certificate of the physician as required by Section 44‑52‑50, the affidavit, a designated examiner appointment form listing the names of two designated examiners at the treatment facility, and other information provided by the facility regarding the person’s admission, to the court of the county where the person resides or where the acts leading to admission occurred.

(B) Within forty‑eight hours of receipt of the documents and information from the treatment facility, the court shall conduct a preliminary review of all the evidence to determine if probable cause exists to continue the emergency detention of the patient. If the court finds that probable cause does not exist, it shall issue an order that the patient be discharged immediately from the facility. Upon a finding that probable cause exists to continue the emergency detention of the patient, the court shall make a written order detailing its findings and may order the continued detention of the patient.

(C) If continued detention of the patient is ordered, the court shall order the two designated examiners whose names were supplied by the treatment facility, or two independent examiners to examine the patient at the treatment facility. At least one of the examiners appointed by the court must be a licensed physician. The examiners must submit a report to the court within five days, exclusive of Saturdays, Sundays, and legal holidays.

(D) If the report of the examiners is that:

(1) the patient is not chemically dependent or is chemically dependent but no longer in need of emergency commitment and not likely to benefit from further treatment, the court shall dismiss the petition and the patient must be discharged immediately from the facility;

(2) the patient is chemically dependent, in need of involuntary hospitalization, and likely to benefit from further treatment, the court may order that the person be detained;

(3) the patient is not chemically dependent or is chemically dependent but no longer in need of emergency commitment and not likely to benefit from further treatment but that the patient is mentally ill and that procedures for emergency admission have been initiated pursuant to Section 44‑17‑410, then the court shall dismiss the petition and in compliance with emergency commitment procedures pursuant to Chapter 17, Article 5 the patient must be detained and the facility shall transfer the patient to an appropriate facility; transportation must be provided by the department;

(4) the two examiners conflict in their opinions, the court may designate a third examiner, who must be knowledgeable in the treatment of chemical dependency and charge the three examiners to render a majority opinion within forty‑eight hours or the court may terminate the proceedings and the patient must be discharged immediately from the treatment facility.

(E) If the report of the examiners is that the patient is chemically dependent and in need of involuntary hospitalization, the court may order the patient be detained at the treatment facility pending the court hearing pursuant to Section 44‑52‑110. The court shall then appoint counsel for the patient if counsel has not been retained, and must fix a date for a full hearing within twenty days of the date of admission. The full hearing must be conducted pursuant to Sections 44‑52‑80 through 44‑52‑110.

(F) The attorney for the patient shall have access to the affidavit, certificate of the physician as required by Section 44‑52‑50, report of the examiners, order of the court, and any other documents regarding the emergency admission.

**SECTION 44‑52‑65.** Transfer of patients under emergency commitment.

If any time during the period of emergency commitment as ordered by the court, the head of the treatment facility, with the responsible physician concurring, concludes that the patient is stabilized and no longer requires inpatient hospitalization, he may request that the court authorize transfer to a less restrictive setting pending the full court hearing conducted pursuant to Sections 44‑52‑80 through 44‑52‑110. Upon the consent of the court, the patient may be transferred to a community treatment program. The transfer must be conditioned upon the consent of the head of the receiving facility or program. Prior notice of transfer must be given to the patient and to those persons required to receive notice under Section 44‑52‑80.

**SECTION 44‑52‑70.** Involuntary commitment; examination; report; commencement of judicial proceedings.

Judicial proceedings for the involuntary commitment of an individual may be initiated as follows: An adult person or head of a treatment facility under Section 44‑52‑40 may file a petition with the court in the county where the person is present or where he is a resident or of the county where the person is hospitalized pursuant to Section 44‑52‑40, under penalty of perjury, alleging that the person is chemically dependent and in need of involuntary commitment.

The petition must be accompanied by the certificate of a licensed physician stating that he has examined the individual within forty‑eight hours before the filing of the petition, unless the individual has refused to submit to a medical exam in which case the fact of refusal must be alleged in the petition. The certificate of the physician shall state that in his opinion, based upon stated reasons, the person is chemically dependent and in need of involuntary commitment for care and treatment. If the person for whom involuntary commitment is sought is a patient of a treatment facility pursuant to Section 44‑52‑40, the petition shall so state.

The court shall order an examination of the individual for whom involuntary commitment is sought. At the direction of the court, the examination may be made by two designees, one of whom must be a licensed physician. The examination may be performed at a treatment facility or other suitable place, and a report must be submitted to the court within seven days of the date of the hearing.

On the report of the designees of refusal to submit to examination, the court shall order the person for whom involuntary commitment is sought to submit to an examination. If he refuses to obey the court order, the court may require a law enforcement officer to take him into custody for not exceeding twenty‑four hours during which time he must be examined by the two designees. A person taken into custody for the purpose of examination may not be placed in a jail or other correctional facility except for protective custody purposes. If within the twenty‑four hours the person in custody is not examined by a licensed physician, the proceedings must be terminated and the individual in custody must be immediately released. His attorney must be notified before his confinement. Upon completion of the examination by the designees, the person must be released.

If the reports of the designees are to the effect that the person for whom involuntary commitment is sought is not a chemically dependent person in need of involuntary commitment, the court shall terminate the proceedings. If the two examiners conflict in their opinions, the court shall terminate the proceedings or shall designate a third examiner, who must be knowledgeable in the treatment of chemical dependency and charge the three examiners to render a majority opinion before the date of the court hearing.

Upon the filing of the petition, the court shall fix a date for the hearing to be held not later than twenty days after the date of filing of the petition unless reasonable delay is sought for good cause shown.

The person for whom involuntary commitment is sought must be represented by counsel at all stages of the proceeding. If the individual cannot afford to hire an attorney, the court shall appoint an attorney to represent him.

**SECTION 44‑52‑80.** Involuntary commitment; notice of hearing.

After the filing of the petition with the court, the court shall give notice of the hearing to the following persons:

(a) the individual for whom involuntary commitment is sought;

(b) the parent, spouse, personal representative, or legal guardian, if any;

(c) the person filing the petition;

(d) the attorney representing the individual for whom involuntary commitment is sought;

(e) the head of the treatment facility if the individual is in a treatment facility; and

(f) any other person the court determines shall have notice of the proceedings.

The notice shall include the date, time, and place of hearing, a clear statement in plain and simple language of the purpose of the proceedings, and the possible consequences to the individual for whom involuntary commitment is sought; a copy of the petition or affidavit and supporting certificates of the examining physician; and the right to the assistance of an attorney, and the appointment of an attorney if the individual named in the petition is unable to afford one.

**SECTION 44‑52‑90.** Contents of report; background investigation; counsel to have access to reports.

The written reports filed with the court shall include, but not be limited to, questions relating to the chemical dependency alleged, whether or not the individual poses a substantial risk of physical harm to himself or others if allowed to remain at liberty, whether or not recent overt acts of the individual are indicative of his chemical dependency, whether or not a less restrictive placement is recommended and available, whether or not the individual is capable of understanding the need to accept treatment on a voluntary basis, and whether or not the individual is likely to benefit from the involuntary treatment.

The court may also order a background investigation by a county social worker or other competent investigator. The investigation shall cover the character, family relationships, past conduct, prior treatment episodes, prior episodes with law enforcement, and other relevant factors relating to the individual. The investigator shall submit a written report to the court within seven days of the hearing.

Counsel for the person for whom involuntary commitment is sought must have access to reports filed with the court before the hearing.

**SECTION 44‑52‑110.** Involuntary commitment; conduct of hearing and effect of findings.

The individual for whom involuntary commitment is sought and all other persons required to receive notice may be present at the hearing. The court shall hear all relevant testimony, including the results of an examination or investigation required by the court. Counsel for the individual for whom involuntary commitment is sought must be allowed to present evidence and cross‑examine witnesses. Opinions of court‑ordered investigators or examiners may not be admitted into evidence unless the examiner or investigator is present to testify, except by agreement of the parties.

If the court finds, after presentation of all the evidence, that the individual is not a chemically dependent person in need of involuntary commitment, the court shall order that he be discharged if he has been hospitalized before the hearing.

If the court finds by clear and convincing evidence that the individual is a chemically dependent person in need of involuntary commitment and, after careful consideration of reasonable alternative dispositions, including, but not limited to, dismissal of the petition, voluntary outpatient care, or voluntary admission to a treatment facility, finds that there is no suitable alternative to involuntary commitment, the court shall make an order of commitment to the division for inpatient treatment. If the individual, his relatives, spouse, or guardian requests, and the head of the licensed treatment facility consents, the court may order commitment to another licensed treatment facility for inpatient treatment. The court shall not order the commitment to the division unless it determines that the division has a bed available and is able to provide adequate and appropriate treatment for him, and the treatment is likely to be beneficial. Neither the State, a county, nor a municipality is liable for costs of or may be charged for sending an individual to a licensed private treatment facility.

The treatment facility may request that the court, as part of relief ordered in the commitment proceedings, order the petitioner, if a family member, to cooperate with and participate in the treatment process.

Upon order of the court, a law enforcement officer shall deliver the patient to the treatment facility or, if the individual is already at the facility, authorize the facility to retain the patient for the required treatment period. Every patient subject to involuntary commitment by court order must be evaluated and an individualized treatment plan developed by the treatment facility as soon as practicable after admission.

**SECTION 44‑52‑120.** Involuntary commitment; period of treatment.

A court ordered involuntary commitment for a chemically dependent person may not exceed a treatment period of ninety days’ inpatient care. Court ordered treatment on an outpatient basis following inpatient treatment may not exceed a treatment period of one year.

If, after clinical review, the head of the treatment facility determines that the grounds for commitment no longer exist, or that further treatment is not likely to bring about significant improvement of the patient’s condition, the head of the treatment facility shall file a notice of intent to discharge with the court, and serve a copy of the intent notice on those persons required to receive notice under Section 44‑52‑80. If no objection is received within five days of notification, the court shall issue an order of discharge. If a written objection is filed with the court, the court shall review the objection to determine whether a hearing must be conducted prior to issuing an order of discharge.

**SECTION 44‑52‑130.** Transfer of patient.

A patient at a treatment facility, including those committed under court order pursuant to Section 44‑52‑110, may be transferred to another facility providing care and treatment for chemically dependent persons when the head of the treatment facility determines that it is consistent with the medical and treatment needs or both of the patient. The transfer must be conditioned upon the consent of the treatment facilities concerned. Prior notice of the transfer must be given to the patient, to the court, and to those persons required to receive notice under Section 44‑52‑80.

The head of the treatment facility may move a patient to a less restrictive setting without court approval if the move is consistent with the individualized treatment plan’s goals and objectives. The head of the treatment facility may not move a patient to a more restrictive setting without court approval.

**SECTION 44‑52‑140.** Release of patient for temporary leave of absence.

When the head of a treatment facility or unit considers it in the best interest of a patient he may permit the patient to leave the facility on a temporary leave of absence, which may be for a period of time as the head of the treatment facility or unit determines.

The head of the treatment facility or unit upon releasing a patient on a temporary leave of absence may impose conditions in relation to the patient while he is absent from the facility as are proper and in the best interest of the patient and the public welfare.

**SECTION 44‑52‑150.** Reconfinement of involuntarily committed patient who has left treatment facility without permission.

If any patient involuntarily committed to a treatment facility is absent without permission a law enforcement officer may, upon written order of the head of the treatment facility and without the necessity of a warrant or court order, take the patient into custody and return him to the facility. No person may be reconfined pursuant to this section after being continuously absent from the jurisdiction of the Department for at least one year.

**SECTION 44‑52‑160.** Violation of conditions of release; supplemental proceedings and recommitment.

If a person who was involuntarily committed violates the conditions of his release including a failure to adhere to an outpatient treatment program as ordered by the court, the court may, upon a written affidavit of the head of the treatment facility or the director of a treatment program under whose supervision the person was released, and upon notice to the person and his counsel, order a supplemental hearing and further order inpatient treatment. The probate court issuing the order shall maintain jurisdiction over the person for the purpose of supplemental proceedings.

If a person who violates the conditions of his release is in such a condition that he poses a substantial risk of physical harm to himself or others, the court may, upon a written affidavit of the head of the treatment facility or the director of a treatment program under whose supervision the person was released, order the patient to be returned to the treatment facility from which he was released pending the conduct of a supplemental hearing which must be held within seventy‑two hours from the time of admission to the facility.

Any person with respect to whom further involuntary inpatient treatment is ordered as a result of the supplemental hearing, may be recommitted for a period of treatment not to exceed sixty days.

**SECTION 44‑52‑165.** Patients receiving alcohol and drug addiction services prohibited from possessing alcohol, firearms, weapons or drugs; penalties; unlawful to allow such activity.

(A) It is unlawful for a patient receiving inpatient services in a program under the jurisdiction of the division in a treatment facility operated by the South Carolina Department of Mental Health to possess alcoholic beverages, firearms, dangerous weapons, or controlled substances as defined by Section 44‑53‑110. A patient who violates the provisions of this section while in a treatment facility is guilty, in the case of:

(1) alcoholic beverages, of a misdemeanor and, upon conviction, must be fined not less than one hundred nor more than two hundred dollars or imprisoned for not more than thirty days;

(2) controlled substances, of a misdemeanor and, upon conviction, must be punished in accordance with Section 44‑53‑370;

(3) firearms or dangerous weapons, of a felony and, upon conviction, must be fined not less than one thousand nor more than ten thousand dollars or imprisoned for not less than one year nor more than ten years, or both.

(B) A person who intentionally or negligently allows a patient, as defined in subsection (A), access to or possession of items in violation of that subsection or who attempts to furnish:

(1) alcoholic beverages or controlled substances, is guilty of a felony and, upon conviction, must be fined not less than one hundred nor more than ten thousand dollars or imprisoned not more than ten years, or both;

(2) firearms or dangerous weapons, is guilty of a felony and, upon conviction, must be fined not less than one thousand nor more than ten thousand dollars or imprisoned not less than one nor more than ten years, or both.

**SECTION 44‑52‑200.** Authority of State Department of Mental Health.

The State Department of Mental Health may prescribe the form of applications, reports, records, and medical certificates provided for under this chapter, and the information required to be contained; require reports from the head of any treatment facility relating to the admission, examination, diagnosis, release, or discharge of any patient; visit each facility regularly; review the admission procedures of all new patients admitted between visits; provide care and treatment for involuntary admissions of chemically dependent persons; investigate by personal visit complaints made by any patient or by any person on behalf of a patient; and adopt regulations not inconsistent with the provisions of this chapter which it finds to be reasonably necessary for proper and efficient hospitalization and care of chemically dependent persons.

**SECTION 44‑52‑210.** Comprehensive program for chemically dependent persons.

The Division shall establish a comprehensive and coordinated program of treatment for chemically dependent persons utilizing, to the extent financial resources allow, services of other state agencies, local facilities, and private treatment facilities. The program may include:

(1) emergency treatment provided by a physician affiliated with or part of the medical service of a general hospital;

(2) inpatient treatment; and

(3) outpatient treatment and follow‑up treatment, or all of them.

The Division may contract for the use of any public or private facility as an approved treatment facility if the Division, subject to the approval of the Department of Mental Health, considers this to be an effective and economical course to follow.