CHAPTER 9

State Department of Mental Health

**SECTION 44‑9‑10.** Creation of Department of Mental Health; jurisdiction.

 There is hereby created the State Department of Mental Health which shall have jurisdiction over all of the State’s mental hospitals, clinics and centers, joint State and community sponsored mental health clinics and centers and facilities for the treatment and care of alcohol and drug addicts, including the authority to name each facility.

HISTORY: 1962 Code Section 32‑917; 1964 (53) 2078; 1969 (56) 653.

CROSS REFERENCES

Authority of the State Department of Mental Health with respect to drug and alcohol abuse commitment, see Section 44‑52‑200.

Commissioner of Department an ex officio member of State Child Fatality Advisory Committee, see Section 63‑11‑1930.

Department of Mental Health Autism programs incorporated into Autism division of Department of Disabilities and Special Needs, see Section 1‑30‑35.

Department of Mental Health reorganized, see Section 1‑30‑70.

Department of Mental Health’s responsibilities with respect to Preschool Programs for Children with Disabilities, see Section 59‑36‑20.

Department to promulgate regulations for implementation and administration of Disability Trust Fund, see Section 44‑28‑370.

Department to promulgate regulations for implementation and administration of Self‑Sufficiency Trust Fund, see Section 44‑28‑80.

Disclosure of confidential records of mentally ill or alcohol and drug abuse patients or former patients permitted to carry out provisions of this chapter, see Section 44‑22‑100.

Duties and responsibilities of department with respect to the Self‑Sufficiency Trust Fund and the Disability Trust Fund, to aid developmentally disabled, mentally ill, and physically handicapped persons, see Sections 44‑28‑10 et seq., 44‑28‑310 et seq.

Interstate Compact on Mental Health, see Sections 44‑25‑10 et seq.

Jurisdiction of persons mentally incompetent, generally, see SC Const Art. V, Section 12.

Local mental health programs, boards and centers, see Sections 44‑15‑10 et seq.

Library References

Mental Health 20.

Westlaw Topic No. 257A.

RESEARCH REFERENCES

ALR Library

6 ALR, Federal 615 , State Agencies, or Officers Thereof, as Citizens for Purpose of Federal Diversity Jurisdiction Under 28 U.S.C.A. Section 1332.

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 3, South Carolina Department of Mental Health.

S.C. Jur. Mental Health Section 5, Jurisdiction.

Attorney General’s Opinions

The Department of Mental Health and the Division of Community Mental Health Services are State agencies and departments and are thus limited to the Division of General Services in obtaining insurance. 1976‑77 Op Atty Gen, No 77‑390, p 319.

**SECTION 44‑9‑20.** Transfer of powers, duties, records, and files from former Mental Health Commission.

 All the powers and duties vested in the South Carolina Mental Health Commission immediately prior to March 26, 1964 are hereby transferred to and vested in the Department of Mental Health. All records, files and other papers belonging to the South Carolina Mental Health Commission shall be continued as part of the records and files of the Department of Mental Health.

HISTORY: 1962 Code Section 32‑918; 1964 (53) 2078; 1993 Act No. 181, Section 1070.

Library References

Mental Health 20.

Westlaw Topic No. 257A.

**SECTION 44‑9‑30.** Creation of South Carolina Mental Health Commission; appointment and terms of members; removal; duties; expenses.

 (A)(1) There is created the governing board for the State Department of Mental Health known as the South Carolina Mental Health Commission. The commission shall consist of seven members, one from each congressional district, appointed by the Governor, upon the advice and consent of the Senate.

 (2) The Governor shall consider consumer and family representation when appointing members.

 (B) The members serve for terms of five years and until their successors are appointed and qualify. The terms of no more than two members may expire in one year. The Governor may remove a member pursuant to the provisions of Section 1‑3‑240. A vacancy must be filled by the Governor for the unexpired portion of the term.

 (C) The commission shall determine policies and promulgate regulations governing the operation of the department and the employment of professional and staff personnel.

 (D) The members shall receive the same subsistence, mileage, and per diem provided by law for members of state boards, committees, and commissions.

HISTORY: 1962 Code Section 32‑919; 1964 (53) 2078; 1967 (55) 699; 1991 Act No. 33, Section 1; 1993 Act No. 181, Section 1071; 2012 Act No. 222, Section 12, eff June 7, 2012.

Editor’s Note

2012 Act No. 222, Section 15, provides as follows:

“SECTION 15. Notwithstanding any other provision of law to the contrary, any person elected or appointed to serve, or serving, as a member of any board, commission, or committee to represent a congressional district, whose residency is transferred to another district by a change in the composition of the district, may serve, or continue to serve, the term of office for which he was elected or appointed; however, the appointing or electing authority shall appoint or elect an additional member on that board, commission, or committee from the district which loses a resident member on it as a result of the transfer to serve until the term of the transferred member expires. When a vacancy occurs in the district to which a member has been transferred, the vacancy must not be filled until the full term of the transferred member expires.”

CROSS REFERENCES

Jurisdiction of persons mentally incompetent, generally, see SC Const, Art 5, Section 12.

Library References

Mental Health 20.

Westlaw Topic No. 257A.

RESEARCH REFERENCES

ALR Library

6 ALR, Federal 615 , State Agencies, or Officers Thereof, as Citizens for Purpose of Federal Diversity Jurisdiction Under 28 U.S.C.A. Section 1332.

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 3, South Carolina Department of Mental Health.

S.C. Jur. Mental Health Section 6, Governing Body‑ Generally.

S.C. Jur. Mental Health Section 7, Selection of Members of Mental Health Commission.

S.C. Jur. Mental Health Section 8, Powers and Duties of Mental Health Commission.

Attorney General’s Opinions

Serving on the Mental Health Commission and on the District 3 Berkeley County School Board qualifies as dual office holding and is therefore impermissible. S.C. Op.Atty.Gen. (December 12, 2007) 2007 WL 4686603.

**SECTION 44‑9‑40.** State Director of Mental Health; appointment and removal; powers and duties; qualifications.

 The Mental Health Commission shall appoint and remove a State Director of Mental Health, who is the chief executive of the State Department of Mental Health. Subject to the supervision and control of the Mental Health Commission, the state director shall administer the policies and regulations established by the commission. The director must be a person of proven executive and administrative ability with appropriate education and substantial experience in the field of mental illness treatment. The director must appoint and remove all other officers and employees of the Department of Mental Health, subject to the approval of the Mental Health Commission.

HISTORY: 1962 Code Section 32‑920; 1964 (53) 2078; 1967 (55) 699; 1985 Act No. 62; 1993 Act No. 181, Section 1072.

CROSS REFERENCES

Director of the Department of Mental Health as being a voting member of the Long Term Care Council, and the obligations with respect thereto, see Section 43‑21‑130.

Director of State Department of Mental Health, or designee, an ex officio member of Advisory Council to S.C. Head and Spinal Cord Service Delivery System, see Section 44‑38‑380.

State Department of Mental Health may act as conservator for patient of State Mental Health Facility, see Section 62‑5‑105.

Library References

Mental Health 20.

Westlaw Topic No. 257A.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mental Health Section 8, Powers and Duties of Mental Health Commission.

Attorney General’s Opinions

Serving on the Mental Health Commission and on the District 3 Berkeley County School Board qualifies as dual office holding and is therefore impermissible. S.C. Op.Atty.Gen. (December 12, 2007) 2007 WL 4686603.

**SECTION 44‑9‑50.** Divisions of department.

 The Department of Mental Health may be divided into such divisions as may be authorized by the director of Mental Health and approved by the commission. One of the divisions must be a Division on Alcohol and Drug Addiction which shall have primary responsibility in the State for treatment of alcohol and drug addicts. One of the divisions must be a Division for Long Term Care which shall have primary responsibility for care and treatment of elderly persons with mental and physical disabilities to the extent that their needs are not met in other facilities either public or private.

HISTORY: 1962 Code Section 32‑920.1; 1964 (53) 2078; 1969 (56) 653; 1976 Act No. 538; 1993 Act No. 181, Section 1073; 2008 Act No. 266, Section 2, eff June 4, 2008.

Library References

Mental Health 20.

Westlaw Topic No. 257A.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 3, South Carolina Department of Mental Health.

S.C. Jur. Mental Health Section 9, Organization of Department.

**SECTION 44‑9‑60.** Appointment of directors of hospitals; employment of personnel.

 The director of the Department of Mental Health may appoint a director of each hospital. Each director must be knowledgeable in the treatment of the mentally ill and in hospital administration. The director of each hospital under the jurisdiction of the Department of Mental Health is responsible for the employment of all personnel at the hospital, subject to the approval of the director of the department. The director of the department may serve as director of one or more hospitals or other mental health facilities.

HISTORY: 1962 Code Section 32‑920.2; 1964 (53) 2078; 1980 Act No. 479; 1993 Act No. 181, Section 1074; 2008 Act No. 266, Section 3, eff June 4, 2008.

Library References

Mental Health 20.

Westlaw Topic No. 257A.

**SECTION 44‑9‑70.** Administration of Federal funds; development of mental health clinics.

 The State Department of Mental Health is hereby designated as the State’s mental health authority for purposes of administering Federal funds allotted to South Carolina under the provisions of the National Mental Health Act, as amended. The State Department of Mental Health is further designated as the State agency authorized to administer minimum standards and requirements for mental health clinics as conditions for participation in Federal‑State grants‑in‑aid under the provisions of the National Mental Health Act, as amended, and is authorized to promote and develop community mental health outpatient clinics. Provided, that nothing in this article shall be construed to prohibit the operation of outpatient mental health clinics by the South Carolina Medical College Hospital in Charleston. Provided, further, that nothing herein shall be construed to include any of the functions or responsibilities now granted the Department of Health and Environmental Control, or the administration of the State Hospital Construction Act (Hill‑Burton Act), as provided in the 1976 Code of Laws and amendments thereto.

HISTORY: 1962 Code Section 32‑920.3; 1964 (53) 2078.

CROSS REFERENCES

Patients at Federal institutions, see Sections 44‑27‑10 et seq.

State Certification of Need and Health Facility Licensure Act, see Sections 44‑7‑110 et seq.

Library References

Mental Health 20.

Westlaw Topic No. 257A.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mental Health Section 5, Jurisdiction.

**SECTION 44‑9‑80.** Utilization of Federal funds provided to improve services to patients.

 Payments made to a mental health facility which are derived in whole or in part from Federal funds which become available after June 30, 1967, and which are provided with the stipulation that they be used to improve services to patients shall not be considered fees from paying patients under the terms of Act No. 1100 of 1964 but may be utilized by the State Department of Mental Health to improve South Carolina’s comprehensive mental health program.

HISTORY: 1962 Code Section 32‑920.3:1; 1967 (55) 719.

CROSS REFERENCES

Patients at Federal institutions, see Sections 44‑27‑10 et seq.

Library References

Mental Health 20.

Westlaw Topic No. 257A.

**SECTION 44‑9‑90.** Powers and duties of Mental Health Commission.

 The commission shall:

 (1) form a body corporate in deed and in law with all the powers incident to corporations;

 (2) cooperate with persons in charge of penal institutions in this State for the purpose of providing proper care and treatment for mental patients confined in penal institutions because of emergency;

 (3) inaugurate and maintain an appropriate mental health education and public relations program;

 (4) collect statistics bearing on mental illness, drug addiction, and alcoholism;

 (5) provide vocational training and medical treatment which must tend to the mental and physical betterment of patients and which is designed to lessen the increase of mental illness, drug addiction, and alcoholism;

 (6) encourage the directors of hospitals and their medical staffs in the investigation and study of these subjects and of mental health treatment in general; and

 (7) provide a statewide system for the delivery of mental health services to treat, care for, reduce, and prevent mental illness and provide mental health services for citizens of this State, whether or not in a hospital. The system must include services to prevent or postpone the commitment or recommitment of citizens to hospitals.

HISTORY: 1962 Code Section 32‑922; 1952 Code Section 32‑954; 1942 Code Section 6223; 1932 Code Section 6223; Civ. C. ‘22 Section 5074; Civ. C. ‘12 Section 3355; Civ. C. ‘02 Section 2248; G. S. 1585; R. S. 1780; 1827 (11) 322; 1871 (15) 672; 1915 (29) 147; 1920 (31) 704; 1938 (40) 1665; 1952 (47) 2042; 1979 Act No. 42 Section 1; 2000 Act No. 253, Section 1; 2008 Act No. 266, Section 4, eff June 4, 2008.

CROSS REFERENCES

Powers and duties of department with respect to local mental health programs, see Section 44‑15‑80.

Certificates, applications, records and reports made for purposes of this chapter to remain confidential, with certain exceptions, see Section 44‑22‑100.

Library References

Mental Health 20.

Westlaw Topic No. 257A.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 3, South Carolina Department of Mental Health.

S.C. Jur. Mental Health Section 8, Powers and Duties of Mental Health Commission.

LAW REVIEW AND JOURNAL COMMENTARIES

Compulsory Legal Measures and the Concept of Illness. 19 S.C. L. Rev. 372.

The Concept of Treatment in the Criminal Law. 21 S.C. L. Rev. 3.

The Disease Concept of Alcoholism and Traditional Criminal Law Theory. 19 S.C. L. Rev. 349.

Involuntary Commitment of the Mentally Ill: A Proposal For Change in South Carolina. 25 S.C. L. Rev. 765.

Marijuana ‑ The Right to Truth. 23 S.C. L. Rev. 361.

Modern Trends in Handling the Chronic Court Offender: The Challenge of the Courts. 19 S.C. L. Rev. 305.

Origins, Treatment and Destiny of Skid‑Row Alcoholic Men. 19 S.C. L. Rev. 332.

Treatment Concepts and Penology: A Sociologist’s View. 21 S.C. L. Rev. 40.

Attorney General’s Opinions

Department of Mental Health cannot assess fees without statutory authorization when personnel of Department are subpoenaed for court testimony or for depositions. S.C. Op.Atty.Gen. (May 20, 1985) 1985 WL 166022.

Department of Mental Health may contract with private agencies to provide care and treatment of psychiatric patients at such agencies. S.C. Op.Atty.Gen. (September 25, 1984) 1984 WL 159923.

The Department of Mental Health, by necessary implication, has the authority to contract with the State Department of Education in order to provide educational training for school age residential patients of the South Carolina Department of Mental Health. S.C. Op.Atty.Gen. (February 28, 1978) 1978 WL 22523.

NOTES OF DECISIONS

Waiver of sovereign immunity 1

1. Waiver of sovereign immunity

The Department of Mental Health, as a corporate body, possesses statutory authority to contract and, by entering into a contractual obligation, impliedly provides the necessary consent to be sued for any breach thereof. Kinsey Const. Co., Inc. v. South Carolina Dept. of Mental Health (S.C. 1978) 272 S.C. 168, 249 S.E.2d 900.

**SECTION 44‑9‑100.** Additional powers and duties of commission.

 The commission may:

 (1) prescribe the form of and information to be contained in applications, records, reports, and medical certificates provided for under this chapter, Chapter 11, Chapter 13, Article 1 of Chapter 15, Chapter 17, Chapter 22, Chapter 23, Chapter 24, Chapter 27, Chapter 48, and Chapter 52;

 (2) require reports from the director of a state hospital relating to the admission, examination, diagnosis, discharge, or conditional discharge of a patient;

 (3) investigate complaints made by a patient or by a person on behalf of a patient;

 (4) adopt regulations not inconsistent with this chapter, Chapter 11, Chapter 13, Article 1 of Chapter 15, Chapter 17, Chapter 22, Chapter 23, Chapter 24, Chapter 27, Chapter 48, and Chapter 52 as it may find to be reasonably necessary for the government of all institutions over which it has authority and of state mental health facilities and the proper and efficient treatment of persons with a mental illness or substance abuse disorder;

 (5) take appropriate action to initiate and develop relationships and agreements with state, local, federal, and private agencies, hospitals, and clinics as the commission considers necessary to increase and enhance the accessibility and delivery of emergency and all other types of mental health services.

HISTORY: 1962 Code Section 32‑924; 1952 Code Section 32‑954; 1942 Code Section 6223; 1932 Code Section 6223; Civ. C. ‘22 Section 5074; Civ. C. ‘12 Section 3355; Civ. C. ‘02 Section 2248; G. S. 1585; R. S. 1780; 1827 (11) 322; 1871 (15) 672; 1915 (29) 147; 1920 (31) 704; 1938 (40) 1665; 1952 (47) 2042; 1958 (50) 1634; 1979 Act No. 42 Section 2; 1993 Act No. 37, Section 1; 2000 Act No. 253, Section 2; 2008 Act No. 266, Section 5, eff June 4, 2008.

CROSS REFERENCES

Appeal to court from rules and regulations, see Section 44‑23‑40.

Certificates, applications, records and reports made for purposes of this chapter to remain confidential, with certain exceptions, see Section 44‑22‑100.

Department of Mental Health regulations, see S.C. Code of Regulations R. 87‑1 et seq.

Library References

Mental Health 20.

Westlaw Topic No. 257A.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 3, South Carolina Department of Mental Health.

S.C. Jur. Mental Health Section 8, Powers and Duties of Mental Health Commission.

Attorney General’s Opinions

Department of Mental Health may contract with private agencies to provide care and treatment of psychiatric patients at such agencies. S.C. Op.Atty.Gen. (September 25, 1984) 1984 WL 159923.

**SECTION 44‑9‑110.** Acceptance of gifts and grants by commission.

 The Mental Health Commission may accept on behalf of the Department of Mental Health or any of its facilities or services, gifts, bequests, devises, grants, donations of money or real and personal property of whatever kind, but no such gift or grant shall be accepted upon the condition that it shall diminish an obligation due the Department. The Commission may refuse to accept any such gift or grant and the acceptance of any such gift or grant shall not incur any obligation on the part of the State. Any gift or grant given to a specific facility or service shall be used for that facility or service only, or to its successor. The Commission may promulgate rules and regulations governing the disposition of such gifts and grants.

HISTORY: 1962 Code Section 32‑923; 1971 (57) 473.

Library References

Mental Health 20.

Westlaw Topic No. 257A.

**SECTION 44‑9‑120.** Annual report of commission.

 The Commission shall submit an annual report to the Governor before the eleventh day of January of each year setting forth its activities, the financial affairs and the state and condition of the State mental health facilities and any other statistical information which is usually required of facilities of the type over which it has charge. The report shall include any recommendations which in the opinion of the Commission will improve the mental health program of the State. A copy of the report shall also be submitted to the General Assembly.

HISTORY: 1962 Code Section 32‑927; 1952 Code Section 32‑988; 1951 (47) 734; 1952 (47) 2042.

CROSS REFERENCES

Certificates, applications, records and reports made for purposes of this chapter to remain confidential, with certain exceptions, see Section 44‑22‑100.

Library References

Mental Health 20.

Westlaw Topic No. 257A.

**SECTION 44‑9‑160.** Construction of certain references in Code.

 Wherever in the 1976 Code reference is made to the State Hospital, it shall mean a state hospital; wherever reference is made requiring the signature of the superintendent of any mental health facility, it shall mean the superintendent or his designee; and wherever reference is made to the State Commissioner of Mental Health, it shall mean the State Director of the Department of Mental Health.

HISTORY: 1962 Code Section 32‑920.4; 1964 (53) 2078; 1993 Act No. 181, Section 1075.

Library References

Mental Health 2.

Westlaw Topic No. 257A.

C.J.S. Mental Health Section 23.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mental Health Section 8, Powers and Duties of Mental Health Commission.