~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 22, 2009

**H. 3199**

Introduced by Reps. Harrison, Allison and G.M. Smith

S. Printed 4/22/09--H.

Read the first time January 13, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3199) to amend Section 1‑30‑10, Code of Laws of South Carolina, 1976, relating to the departments in the executive branch of state government, to enact the, etc., respectfully

**REPORT:**

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

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/SECTION 1. This act may be cited as the “Behavioral Health Services Act”.

SECTION 2. Section 1‑30‑10(A) of the 1976 Code is amended to read:

“(A) There are hereby created, within the executive branch of the state government, the following departments:

1. Department of Agriculture

2. Department of ~~Alcohol and Other Drug Abuse~~ Behavioral Health Services

3. Department of Commerce

4. Department of Corrections

5. Department of Disabilities and Special Needs

6. Department of Education

7. Department of Health and Environmental Control

8. Department of Health and Human Services

9. Department of Insurance

10. Department of Juvenile Justice

11. Department of Labor, Licensing~~,~~ and Regulation

12. ~~Department of Mental Health~~ Reserved

13. Department of Natural Resources

14. Department of Parks, Recreation and Tourism

15. Department of Probation, Parole~~,~~ and Pardon Services

16. Department of Public Safety

17. Department of Revenue

18. Department of Social Services

19. Department of Transportation.”

SECTION 3. Section 1‑30‑20 of the 1976 Code is amended to read:

“Section 1‑30‑20. (A) Effective on July 1, 1993, the following agencies, boards, and commissions, including all of the allied, advisory, affiliated, or related entities as well as the employees, funds, property and all contractual rights and obligations associated with any such agency, except for those subdivisions specifically included under another department, are hereby transferred to and incorporated in and shall be administered as part of the Department of Alcohol and Other Drug Abuse Services:

~~(A)~~(1) South Carolina Commission on Alcohol and Drug Abuse, formerly provided for at Section 44‑49‑10, et seq.;

~~(B)~~(2) Drug free Schools and Communities Program in the Governor’s Office, provided for under grant programs.

(B) Effective on January 1, 2011, the Department of Alcohol and Other Drug Abuse Services, as contained in subsection (A), including all allied, advisory, affiliated, or related entities as well as the employees, funds, property and all contractual rights and obligations associated with the department and these entities, except for those subdivisions specifically included or transferred to another department, is transferred to the Department of Behavioral Health Services, Division of Alcohol and Other Drug Abuse Services, and all powers, duties, obligations, and responsibilities of the Department of Alcohol and Other Drug Abuse Services are devolved upon the Department of Behavioral Health Services, Division of Alcohol and Other Drug Abuse Services.”

SECTION 4. Section 1‑30‑70 of the 1976 Code is amended to read:

“Section 1‑30‑70. (A) Effective on July 1, 1993, the following agencies, boards, and commissions, including all of the allied, advisory, affiliated, or related entities as well as the employees, funds, property and all contractual rights and obligations associated with any such agency, except for those subdivisions specifically included under another department, are hereby transferred to and incorporated in and shall be administered as part of the Department of Mental Health to include a Children’s Services Division and shall include:

Department of Mental Health, provided for at Section 44‑9‑10, et seq.

(B) Effective on January 1, 2011, the Department of Mental Health, as contained in subsection (A), including all allied, advisory, affiliated, or related entities as well as the employees, funds, property and all contractual rights and obligations associated with the department and these entities, except for those subdivisions specifically included or transferred to another department, is transferred to and incorporated in and shall be administered as part of the Department of Behavioral Health Services, Division of Mental Health, and all powers, duties, obligations, and responsibilities of the Department of Mental Health are devolved upon the Department of Behavioral Health Services, Division of Mental Health.”

SECTION 5. Chapter 30, Title 1 of the 1976 Code is amended by adding:

“Section 1‑30‑72. Effective on January 1, 2011, the following agencies, boards, and commissions, including all of the allied, advisory, affiliated, or related entities as well as the employees, funds, property and all contractual rights and obligations associated with any such agency, except for those subdivisions specifically included under another department, are transferred to and incorporated in and must be administered as part of the Department of Behavioral Health Services:

(1) Department of Alcohol and Other Drug Abuse Services, formerly provided for at Section 44-49-10, et seq.

(2) Department of Mental Health, formerly provided for at Section 44-9-10, et seq.; and

(3) Continuum of Care for Emotionally Disturbed Children, formerly provided for at Section 20-7-5610, et seq.”

SECTION 6. Section 1‑30‑110 of the 1976 Code is amended to read:

“Section 1‑30‑110. Effective ~~July 1, 1993~~ January 1, 2011, the following agencies, boards, and commissions, including all of the allied, advisory, affiliated, or related entities as well as the employees, funds, property and all contractual rights and obligations associated with any such agency, except for those subdivisions specifically included under another department, are hereby transferred to and incorporated in and shall be administered as part of the Office of the Governor:

(1) ~~Continuum of Care for Emotionally Disturbed Children provided for at Section 20‑7‑5610, et seq.;~~ Reserved

(2) Guardian Ad Litem Program, formerly provided for at Section 20‑7‑121, et seq.;

(3) State Office of Victim’s Assistance, formerly provided for at Section 16‑3‑1110, et seq.;

(4) Department of Veterans Affairs, formerly provided for at Section 25‑11‑10, et seq.;

(5) Commission on Women, formerly provided for at Section 1‑15‑10, et seq.;

(6) Commission on Aging, formerly provided for at Section 43‑21‑10, et seq.;

(7) Foster Care Review Board, formerly provided for at Section 20‑7‑2376, et seq.~~;~~”

SECTION 7. Title 44 of the 1976 Code is amended by adding:

“CHAPTER 8

Department of Behavioral Health Services

Section 44‑8‑10.(A) There is created the Department of Behavioral Health Services comprised of the Division of Mental Health, the Division of Alcohol and Other Drug Abuse Services, and the Division of Continuum of Care for Emotionally Disturbed Children.

(B) The department shall:

(1) develop the State Plan for Behavioral Health Services which must provide for a unified system for the delivery of coordinated, client centered behavioral health services;

(2) oversee the administration and delivery of behavioral health services.

Section 44‑8‑20. The Governor shall appoint and remove the Director of the Department of Behavioral Health Services, who is the chief executive of the Department of Behavioral Health Services. Subject to the supervision and control of the Governor, the director shall administer the policies and regulations established by the department. The director must be a person of proven executive and administrative ability with appropriate education and substantial experience.

Section 44‑8‑30. (A)(1) There is established the Department of Behavioral Health Services Advisory Committee to study the organizational structure of the department to evaluate the effectiveness, efficiency, and accountability of the department and to make recommendations for organizational and service delivery changes.

(2) The advisory committee must be composed of:

(a) the director, or a designee, of the Department of Behavioral Health Services, who shall serve as the chairperson of the advisory committee;

(b) two representatives of the Division of Mental Health appointed by the director of the division, one of whom may be the director of the division;

(c) two representatives of the Division of Alcohol and Other Drug Abuse Services appointed by the director of the division, one of whom may be the director of the division;

(d) two representatives of the Division of Continuum of Care for Emotionally Disturbed Children;

(e) two professionals with expertise in the field of mental health services appointed by the Governor;

(f) two professionals with expertise in the field of alcohol and other drug abuse services appointed by the Governor;

(g) two professional with expertise in the field of children’s mental health services appointed by the Governor;

(h) two recipients of services of the Division of Mental Health, or a family member of a recipient of these services, appointed by the Governor;

(i) two recipients of services of the Division of Alcohol and Other Drug Abuse Services, or a family member of a recipient of these services, appointed by the Governor;

(j) two recipients of services of the Division of Continuum of Care for Emotionally Disturbed Children.

In appointing members to the advisory committee, the appointing authority shall select members who are representative of the ethnic, gender, rural, and urban diversity of the State.

(3) Members shall serve terms of five years and until their successors are appointed and qualify. However, of the initial appointees, four must be appointed for five years, four must be appointed for four years, four must be appointed for three years, and two must be appointed for two years. Members other than initial appointees may not be reappointed unless they are filling a vacancy for an unexpired portion of a term. 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. Members representing divisions shall serve ex officio at the pleasure of the division director.

(B) The director has the authority to create and appoint other standing or ad hoc advisory committees in his discretion to assist the department in particular areas of public concern or professional expertise as the director considers appropriate. These committees, including the advisory committee created pursuant to subsection (A), shall serve at the pleasure of the director, and committee members may not receive salary or per diem but are entitled to reimbursement for actual and necessary expenses incurred pursuant to the discharge of official duties, not to exceed the per diem, mileage, and subsistence amounts allowed by law for members of boards, commissions, and committees.

Section 44‑8‑40. (A) The department shall promulgate regulations, which must include, but are not limited to, criteria and definitions for eligibility determination, standards for the delivery of services, content and development and revision of individual client plans, including participation by the client and family in the development and revision of the plan, fee structures for services rendered and charges that may be incurred, client safety and protection, security procedures, and procedures to appeal agency decisions. These regulations must require statewide consistency and uniformity of rights and services for all client populations served by the department. The regulations must require the department to provide each client an individualized service delivery plan addressing the particular needs of each client. To ensure uniformity statewide and across client populations, regulations promulgated by the department pursuant to this section apply to local entities that are operated by or contract with the department or its divisions, services, or programs or local boards created pursuant to state law to provide services to department clients.

(B) The department also shall promulgate regulations for the licensure and regulation of facilities operated by or under contract with the department, including, but not limited to, standards of care, staff client ratios, client and staff safety and security, operational procedures, applicable fees, facility and record inspections, notification procedures for program deficiencies, grounds for suspension or revocation of licenses, and procedures for licensure application and renewal, and procedures for appeal of department decisions.

Section 44‑8‑50. The department may accept gifts, bequests, devises, grants, donations of money or real and personal property of whatever kind for its use in furthering the purposes of the department. However, no such gift or grant may be accepted upon the condition that it shall diminish an obligation due the department. The department 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, program, or service must be used for that facility, program, or service only, or to its successor. The department may promulgate rules governing the disposition of such gifts and grants.

Section 44‑8‑60. (A) The department may enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on behavioral health services and the needs, problems, and services for clients of the department.

(B) The department may enter into contracts for educational and research activities without performance bonds.

Section 44‑8‑70. The department may acquire motor vehicle liability insurance for employees operating vehicles or private vehicles in connection with their official departmental duties to protect against liability.

Section 44‑8‑80. 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 44‑8‑90. The director of the department shall submit an annual report to the Governor setting forth its activities, the financial affairs, and the state and condition of the state mental health facilities and alcohol and drug abuse facilities and other information as the Governor may request to be kept apprised of the operations of the department. The report shall include recommendations that, in the opinion of the director of the department, will improve the mental health programs and alcohol and other drug abuse programs of the State.

Section 44‑8‑100. All departments, officers, agencies, and employees of the State shall cooperate with the Department of Behavioral Health Services in carrying out the department’s functions, duties, and responsibilities. The Attorney General shall furnish such legal services as are necessary to the department.”

SECTION 8. Chapter 9, Title 44 of the 1976 Code is amended to read:

“CHAPTER 9

~~State Department of~~ Division of Mental Health, Department of Behavioral Health Services

Section 44‑9‑10. There is ~~hereby~~ created the ~~State Department~~ Division of Mental Health within the Department of Behavioral Health Services which ~~shall have~~ has 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.

Section 44‑9‑20. All the powers and duties vested in the South Carolina Mental Health Commission immediately ~~prior to~~ before March 26, 1964, are ~~hereby~~ transferred to and vested in the Division of Mental Health, Department ~~of Mental Health~~ Behavioral Health Services. All records, files, and other papers belonging to the South Carolina Mental Health Commission ~~shall~~ must be continued as part of the records and files of the Division of Mental Health, Department ~~of Mental Health~~ Behavioral Health Services.

~~Section 44‑9‑30.~~ ~~(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 consists of seven members appointed by the Governor, upon the advice and consent of the Senate, as follows:~~

~~(a)~~ ~~one member from each of the six congressional districts;~~

~~(b)~~ ~~one member from the State at large.~~

~~(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.~~

Section 44‑9‑40. The ~~Mental Health Commission~~ The Director of the Department of Behavioral Health Services shall appoint and remove ~~a state director of Mental Health, who is chief executive of the State Department of~~ The Director of the Mental Health Division. ~~Subject to the supervision and control of the Mental Health Commission,~~ The ~~state~~ division director shall administer the policies and regulations established by the ~~commission~~ department. The division 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 division director ~~must~~ shall appoint and remove all other officers and employees of the ~~department~~ Division of Mental Health, subject to the approval of the ~~Mental Health Commission~~ Director of the Department of Behavioral Health Services.

Section 44‑9‑50. The ~~Department~~ Division of Mental Health may be divided into such ~~divisions~~ subdivisions as may be authorized by the Director of ~~Mental Health~~ the Department of Behavioral Health Services ~~and approved by the commission~~. These ~~divisions~~ subdivisions may be headed by deputy ~~commissioners~~ directors, but any deputy ~~commissioner~~ director heading a medical ~~division~~ subdivision must be a medical doctor ~~duly~~ licensed in South Carolina. One of the ~~divisions shall~~ subdivisions must be ~~a Division~~ the Office on Alcohol and Drug Addiction which shall have primary responsibility in the State for treatment of alcohol and drug addicts. One of the ~~divisions shall~~ subdivisions must be ~~a Division~~ the Office for Long Term Care which shall have primary responsibility for care and treatment of elderly persons who are mentally and physically handicapped to the extent that their needs are not met in other facilities either public or private.

Section 44‑9‑60. The ~~director of the Department of~~ Mental Health Division Director 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~~ Division of Mental Health is responsible for the employment of all personnel at the hospital, subject to the approval of the director of the ~~department~~ division. The director of the ~~department~~ division may serve as director of one or more hospitals or other mental health facilities.

Section 44‑9‑70. The ~~State department~~ Division of Mental Health, Department of Behavioral Health Services 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~~ division 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~~ may be construed to prohibit the operation of outpatient mental health clinics by the Medical University of South Carolina ~~Medical College Hospital~~ in Charleston. Provided, further, that nothing ~~herein shall~~ in this chapter may 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~~ to it.

Section 44‑9‑80. 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~~ are not ~~be~~ considered fees from paying patients under the terms of Act No. 1100 of 1964 but may be utilized by the ~~State~~ ~~department~~ Division of Mental Health to improve South Carolina’s comprehensive mental health program.

Section 44‑9‑90. The ~~commission~~ Division of Mental Health 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)~~(2) inaugurate and maintain an appropriate mental health education and public relations program;

~~(4)~~(3)collect statistics bearing on mental illness, drug addiction, and alcoholism;

~~(5)~~(4) 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)~~(5) 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)~~(6) 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.

Section 44‑9‑100. The ~~commission~~ Division of Mental Health 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~~ recommend to the Director of the Department of Behavioral Health Services 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) subject to the approval of the Director of the Department of Behavioral Health Services, 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.

Section 44‑9‑110. The ~~Mental Health Commission~~ Director of the Department of Behavioral Health Services may accept on behalf of the ~~department~~ Division 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~~ a gift or grant ~~shall~~ may not be accepted upon the condition that it shall diminish an obligation due the ~~department~~ division. The ~~Commission~~ director may refuse to accept ~~any such~~ a gift or grant and the acceptance of ~~any such~~ a gift or grant ~~shall~~ may not incur ~~any~~ an obligation on the part of the State. ~~Any~~ A gift or grant given to a specific facility or service ~~shall~~ must be used for that facility or service only, or to its successor. The ~~Commission~~ department may promulgate ~~rules and~~ regulations governing the disposition of ~~such~~ these gifts and grants.

Section 44‑9‑120. The ~~Commission~~ director of the division shall submit an annual report to the ~~Governor before~~ ~~the eleventh day of January of~~ director of the department 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~~ that, in the opinion of the ~~Commission~~ director of the division, will improve the mental health program of the State. ~~A copy of the report shall also be submitted to the General Assembly~~.

Section 44‑9‑160. Wherever in the 1976 Code reference is made to the State Hospital, it ~~shall mean~~ means a state hospital; wherever reference is made requiring the signature of the superintendent of any mental health facility, it ~~shall mean~~ means the ~~superintendent~~ director of the facility or his designee; and wherever reference is made to the State Commissioner of Mental Health, it ~~shall mean~~ means the ~~State~~ Director of the ~~Department~~ Division of Mental Health, Department of Behavioral Health Services.”

SECTION 9. Chapter 11, Title 44 of the 1976 Code is amended to read:

“CHAPTER 11

Organization and Control of State Mental Health Facilities

Section 44‑11‑10. The following facilities shall continue in existence and ~~shall~~ must be maintained for the following purposes:

(1) those inpatient facilities as authorized by the Division of Mental Health, Department of ~~Mental Health~~ Behavioral Health Services and funded by legislative appropriations, including facilities for the evaluation and treatment of mentally ill persons, facilities for the evaluation and treatment of chemically dependent persons, and long term care facilities; and

(2) the mental health clinics for the diagnosis, treatment, and prevention of mental illness.

Section 44‑11‑30. The ~~South Carolina~~ Division of Mental Health ~~Commission~~, Department of Behavioral Health Services, in mutual agreement with the authorities of the United States Veterans Administration, may establish South Carolina veterans homes to be located on grounds owned by the Department of ~~Mental Health~~ Behavioral Health Services. The purpose of these homes is to provide treatment for South Carolina veterans who are mentally ill or whose physical condition requires long term nursing care. Admission requirements to these homes are the same as any other facility operated by the ~~department~~ division except that the patients at these facilities must be South Carolina veterans. The ~~South Carolina~~ Division of Mental Health ~~Commission~~, Department of Behavioral Health Services is designated as the agency of the State to apply for and to accept gifts, grants, and other contributions from the federal government or from any other governmental unit for the operation and construction of South Carolina veterans homes. The ~~South Carolina~~ Division of Mental Health ~~Commission~~ shall consult with the Division of Veterans Affairs, Office of the Governor, concerning the policies, management, and operation of the South Carolina veterans homes.

Section 44‑11‑40. For the purpose of Section 4‑11‑30 ‘South Carolina veterans’ means any ex service South Carolina citizen who was discharged under other than dishonorable conditions and who served in any branch of the military or naval service of the United States.

Section 44‑11‑60. The Division of Mental Health ~~Commission~~, Department of Behavioral Health Services shall establish mental health clinics throughout the State and shall supervise them.

Section 44‑11‑70. The Director of the Division of Mental Health ~~Commission~~ may employ or may authorize the ~~superintendents~~ directors of mental health facilities to employ suitable persons to act as marshals to keep intruders off and prevent trespass upon State mental health facilities. The marshals employed, in so far as State mental health facilities are concerned, shall be vested with all the powers and charged with all the duties of police officers generally. They may eject trespassers. They may without warrant arrest persons guilty of disorderly conduct or of trespass on State mental health facilities and have them tried in any court of competent jurisdiction.

Section 44‑11‑75. (A) It is unlawful for a person without legal cause or good excuse to enter on the premises of a state mental health facility after having been warned by the facility director or, in his absence, by the director’s representative, in writing, within the six months preceding not to enter on the premises.

(B) It is unlawful for a person without legal cause or good excuse to fail or refuse immediately to leave the premises of a state mental health facility upon being ordered or requested to leave by the facility director or, in his absence, by the facility director’s representative.

(C) A person violating subsection (A) or (B), upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

(D) A municipal court or magistrate’s court has jurisdiction over violations of this section occurring within the respective limits of the municipality or magisterial district.

Section 44‑11‑110. The ~~Mental Health Commission~~ Director of the Department of Behavioral Health Services may~~, by resolution recorded on the minutes of its meetings,~~ grant easements, permits or rights of way on, over or under the grounds of the facilities, but none may be granted unless approved in writing by the Attorney General before delivery.”

SECTION 10. Chapter 13, Title 44 of the 1976 Code is amended to read:

“CHAPTER 13

Admission, Detention and Removal of Patients at State Mental Health Facilities

Section 44‑13‑05. (A) Except as provided for in Sections 56‑5‑2930 and 56‑5‑2950, if a law enforcement officer observes a person conducting himself in a manner that causes the law enforcement officer to reasonably believe that the person is mentally ill or is suffering from chemical dependency and because of that condition poses a likelihood of serious harm to himself or others or if a criminal offense that carries a penalty of less than one year and that does not involve a victim who could seek a warrant for the person’s arrest has occurred, the law enforcement officer may take the person into protective custody and transport the person to the local mental health center or a crisis stabilization program, if available in their jurisdictions, for examination and pre admission screening and evaluation of psychiatric and chemical dependency emergencies.

(B) Upon arrival at the mental health center or a crisis stabilization program, if available in their jurisdictions, the law enforcement officer who took the person into protective custody pursuant to this section shall complete a written affidavit under oath pursuant to Section 44‑17‑410(1). If the person is subsequently the subject of a hearing, and if the law enforcement officer who completed the affidavit is given notice of the hearing pursuant to Section 44‑17‑550, the officer may, but is not required to, appear at the hearing.

(C) The local mental health center or a crisis stabilization program, if available in their jurisdictions, shall arrange for an examination of the person in protective custody by a licensed physician. The center or crisis stabilization program, if available in their jurisdictions, may detain the person for up to twenty four hours for the purpose of psychiatric evaluation and examination by a licensed physician. If within twenty four hours of being taken into protective custody the person is not examined by a licensed physician, or if upon examination the physician does not execute the certification provided for in Section 44‑17‑410(2), the person in protective custody must be released. If the physician examining the person completes the certification provided for in Section 44‑17‑410(2), the center or crisis stabilization program, if available in their jurisdictions, may continue to detain the person pending transportation by a law enforcement officer to the hospital designated by the certification, as provided for in Section 44‑17‑440.

(D) The taking of a person into protective custody pursuant to this section is not an arrest. The officer shall inform the person that he or she is being held in protective custody and is not under arrest. However, a law enforcement officer taking an individual into protective custody may use that kind and degree of force necessary, including reasonable precautions for self protection.

(E) Except when a person is injured as a result of intentional injury, gross negligence, or a wanton disregard for their personal safety, a law enforcement officer, examining physician, or staff person of a mental health center or a designated facility who acts in accordance with this section is immune from civil liability.

(F) For purposes of this section, ‘crisis stabilization program’ means a community based psychiatric program providing short term, intensive, mental health treatment in a nonhospital setting for persons who are experiencing a psychiatric crisis and who are either unable to safely function in their daily lives or are a potential threat to themselves or the community, with treatment available twenty four hours a day, seven days a week.

(G) A law enforcement officer may transport a person as provided in this section to a local mental health center or a crisis stabilization program beyond the officer’s jurisdiction if the law enforcement agency employing the officer has a written memo of understanding with the local mental health center or crisis stabilization program receiving the person taken into custody.

(H) For purposes of this section, ‘local mental health center or crisis stabilization program’ includes such center or program in an adjoining county or if there is not such a center or program in an adjoining county, then such a center or program in the nearest location.

Section 44‑13‑10. Pending his removal to a State mental health facility an individual taken into custody or ordered to be admitted may be temporarily detained in his home, a licensed foster home or any other suitable facility under such reasonable conditions as the county governing body, supervisor, or manager may fix, but he ~~shall~~ must not, except because of and during an extreme emergency, be detained in a nonmedical establishment used for the detention of individuals charged with or convicted of penal offenses. The county governing body, supervisor or manager shall take such reasonable measures, including provision of medical care, as may be necessary to assure proper care of an individual temporarily detained under this section.

Section 44‑13‑20. Any individual, legally a resident of this State, ordered to be admitted to any mental health facility under the laws of any other state, may be admitted, upon satisfactory proof of residence, to care and treatment in any State mental health facility of this State. The orders of any court of competent jurisdiction of another state or of the District of Columbia authorizing admittance of such individual to a mental health facility shall have the same force and effect upon his transfer to this State as a lawful order of any court of competent jurisdiction in this State. A certified copy of such order ~~shall~~ must be furnished the ~~Department~~ Division of Mental Health prior to the issuance by the ~~Department~~ Division of Mental Health of any authorization of transfer of such patient. Jurisdiction in all further matters relating to such mentally ill person shall vest in the judge of probate of the county in which the mental health facility, to which such person is admitted, is located, during his confinement therein, or the judge of probate of the county in which he is legally resident.

Section 44‑13‑30. Unless he was admitted pursuant to the Interstate Compact on Mental Health as set out in Section 44‑25‑20 or a supplementary agreement thereto, if any person admitted to a State mental health facility is not a citizen of this State, the ~~superintendent~~ director of the facility concerned shall immediately notify the ~~Department~~ Division of Mental Health, and the ~~Department~~ Division of Mental Health shall notify the mental health commission or other appropriate agency of the state of which the patient or trainee is a citizen. If the state of his citizenship fails to provide for his removal within a reasonable time, the ~~Department~~ Division of Mental Health shall cause him to be delivered to the officials authorized by law to care for similar persons pending their commitment to state institutions of the state of his citizenship. The cost of these proceedings and conveyance from this State ~~shall~~ must be borne by this State under reciprocity agreements made by the ~~Department~~ Division of Mental Health with the mental health authorities of other states. In entering upon such reciprocal agreements with other states, the ~~Department~~ Division of Mental Health shall provide that the requirements necessary to gain residence in this State ~~shall~~ must not be less than those required for the acquisition of residence in the other contracting state. The ~~Department~~ Division of Mental Health may, however, in cases of undue hardship waive the requirements of residence, for cause.

Section 44‑13‑40. If any person admitted to a State mental health facility is not a citizen of the United States, the ~~superintendent~~ director of the facility concerned shall immediately notify the ~~Department~~ Division of Mental Health of the name of the person and all ascertainable information as to race, nativity, date of last arrival in the United States, the name of the vessel on which he arrived, the port at which he landed and the name of the transporting company. The ~~Department~~ Division of Mental Health shall transmit this information to the appropriate United States authorities and shall continue to provide care and treatment for the patient or trainee pending arrangements for his deportation.

Section 44‑13‑50. If a mentally ill patient from an out of State mental health facility is found to be in this State without permission and upon satisfactory identification of the patient and the request of such facility that the patient be returned, he may be taken into custody by proper public officials and transported directly to the out of State facility or may be detained in a State mental health facility until such time as transportation arrangements can be made or the patient’s health will permit his return. The state requesting the return of the patient shall pay all costs of, and incidental to, the transportation and detention of the patient.

Section 44‑13‑60. The ~~Department~~ Division of Mental Health shall investigate the case of each patient or trainee in a State mental health facility who is simply mentally or physically infirm or who is a harmless mental defective or harmless epileptic. When, in the opinion of the ~~Department~~ Division of Mental Health, the family, guardian, trustee, committee or other person legally responsible for the person is financially able to provide for his care, ~~it~~ the division shall, when in the opinion of the ~~Department~~ Director of the Division of Mental Health this is advisable, transfer the patient or trainee to the custody of that person. If all persons legally responsible for the patient or trainee are financially unable to provide for his care, the ~~Department~~ Division of Mental Health shall, when practicable, transfer the custody of the person to the county health authorities of the county of which the patient or trainee was a resident prior to admittance.

Section 44‑13‑70. The judge of probate in each county shall keep an adequate supply of forms necessary for the admission or commitment of persons under this chapter, Chapter 9, Chapter 11, Article 1 of Chapter 15, Chapter 17, Chapter 23, Chapter 24, Chapter 27, and Chapter 52.”

SECTION 11. Chapter 15, Title 44 of the 1976 Code is amended to read:

“CHAPTER 15

Local Mental Health Programs, Boards and Centers

Section 44‑15‑10. Any county, city, town, political subdivision, or any combination ~~thereof~~ of them, of over one hundred thousand population, and upon consent of the ~~South Carolina Department~~ Division of Mental Health, Department of Behavioral Health Services, any city, county, town, or political subdivision, or combination ~~thereof~~ of them, with less than one hundred thousand population, may establish a community mental health services program and may establish clinics and staff them with persons specially trained in psychiatry and related fields. Such programs and clinics may be administered by a county, city, town, political subdivision or nonprofit corporation or a community mental health board established pursuant to this ~~article~~ chapter.

Section 44‑15‑20. The ~~Department~~ Division of Mental Health may, when funds are available for such purposes, make grants to assist counties, cities, towns, political subdivisions or any combinations ~~thereof~~ of them, or any nonprofit corporation, in the establishment and operation of local mental health programs to provide the following services:

(1) collaborative and cooperative services with public health, education, welfare and other groups for programs of prevention of mental illness, mental retardation and other psychiatric disabilities;

(2) informational and educational services to the general public and lay and professional groups;

(3) consultative services to schools, courts and health and welfare agencies, both public and private;

(4) diagnostic and treatment services; and

(5) after care services for patients suffering from mental or emotional disorders~~, mental retardation~~ and other psychiatric conditions, particularly those who have received prior treatment in an inpatient facility.

Section 44‑15‑30. Any county, city, town, political subdivision, nonprofit corporation, or community mental health board administering a mental health services program may apply for the assistance provided by this ~~article~~ chapter by submitting annually to the ~~Department~~ Division of Mental Health its plan and budget for the next fiscal year together with the recommendations of the community mental health board. ~~No~~ A program ~~shall be~~ is not eligible for such assistance unless its plan and budget have been approved by the ~~Department~~ division.

Section 44‑15‑40. At the beginning of each fiscal year the ~~Department~~ division shall allocate available funds to the mental health programs for disbursement during the fiscal year in accordance with such approved plans and budgets. The ~~Department~~ division shall, from time to time during the fiscal year, review the budgets and expenditures of the various programs, and if funds are not needed for a program to which they were allocated, it may, after reasonable notice and opportunity for hearing, withdraw such funds as are unencumbered and reallocate them to other programs. It may withdraw funds from any program which is not being administered in accordance with its approved plan and budget.

Section 44‑15‑50. Grants may be made for expenditures for mental health services whether provided by operation of a local facility or through contract with other public or private agencies or individual persons.

Section 44‑15‑60. Every county, city, town, or political subdivision, or combination of them, establishing a community mental health services program, before it may come within this ~~article~~ chapter, shall establish a community mental health board to be made up of not less than seven nor more than fifteen members. Membership of the boards, so far as may be practicable, must be representatives of local health departments, medical societies, county welfare boards, hospital boards, and lay associations concerned with mental health as well as labor, business, and civic groups, and the general public. At least one member of the board must be a medical doctor licensed to practice medicine in this State. The members must be appointed by the Governor upon the recommendation of a majority of the members of the legislative delegations of the counties participating. The legislative delegations and the Governor shall consider consumer and family representation, including parents of emotionally disturbed children and adolescents, when recommending and appointing members to the board. By resolution a county legislative delegation may delegate to the governing body of the county they represent the authority to recommend board members to the Governor. The resolution is not revocable, and copies of the resolution must be sent to the Governor, the ~~Department~~ Division of Mental Health, and the governing bodies of the counties concerned. The number of members representing each county must be proportional to its population. The term of office of each member of the community mental health board is four years and until the member’s successor is appointed. Vacancies must be filled for the unexpired term in the same manner as original appointments. A member of a board may be removed by the Governor pursuant to the provisions of Section 1‑3‑240. A person may serve consecutive terms.

In Berkeley County, appointments made pursuant to this section are governed by the provisions of Act 159 of 1995.

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

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

Section 44‑15‑70. Subject to the provisions of this ~~article~~ chapter and the rules and regulations of the ~~Department~~ Division of Mental Health, Department of Behavioral Health Services, each community mental health board shall:

(1) ~~Be~~ serve as the administrative agency for the community mental health services program; and it shall be a body corporate in deed and in law with all the powers incident to corporation, including the power to purchase, lease or sell real and personal property;

(2) employ personnel necessary to carry out the community mental health services program, who shall meet the job specifications as prescribed by the ~~Department~~ division and its merit system;

(3) review and evaluate community mental health services provided pursuant to this ~~article~~ chapter and report its findings and recommendations to the ~~Department~~ division, the administrator of the local program and, when indicated, the public;

(4) recruit and promote local financial support for the program from private sources such as community chests, business, industrial and private foundations, voluntary agencies and other lawful sources, and promote public support for municipal and county appropriations;

(5) promote, arrange and implement working agreements with other social service agencies, both public and private, and with other educational and judicial agencies;

(6) advise the administrator of the local program on the adoption and implementation of policies to stimulate effective community relations; and

(7) review the annual plan and budget of the local program and make recommendations ~~thereon~~ on them.

Section 44‑15‑80. In addition to the powers and duties already conferred by law, the ~~Department~~ Division of Mental Health shall:

(1) ~~Promulgate rules and~~ recommend regulations to the Director of the Department of Behavioral Health Services governing the eligibility of community mental health programs to receive State grants~~,~~ and prescribing standards for qualification of personnel and quality of professional service and for in service training and educational leave programs for personnel;

(2) govern eligibility for service so that no person will be denied service on the basis of inability to pay and so that anyone who cannot afford to pay for necessary treatment at the rate customarily charged in available private practice ~~shall~~ will be eligible to receive services from the community mental health clinic;

(3) provide for establishment of fee schedules and reduction of balance due which ~~shall~~ must be based upon ability to pay;

(4) regulate fees for consultation and diagnostic services, which services may be provided to anyone without regard to his financial status when ~~such~~ the person is referred by the courts, schools, or health or welfare agencies;

(5) ~~promulgate such~~ adopt other rules and promulgate regulations as ~~it deems~~ necessary to carry out the purposes of this ~~article~~ chapter;

(6) review and evaluate local programs and the performance of all personnel and make recommendations ~~thereon~~ on them to community mental health boards and program administrators;

(7) provide consultative staff service to communities to assist in ascertaining local needs and in planning and establishing community mental health programs; ~~and~~

(8) employ personnel, certified by the merit system as classified according to existing job classifications, including a State Director of Community Mental Health Services, to be under the supervision of the Director of the ~~Department~~ Division of Mental Health, to implement the provisions of this ~~article.~~ chapter;

(9) require reports from the directors of community mental health programs relating to the intake, examination, diagnosis, and file closing of any patient or client.

Section 44‑15‑90. If any balances of appropriations for the program authorized by this ~~article~~ chapter are unexpended during any fiscal year, the ~~Department~~ Division of Mental Health, Department of Behavioral Health Services may carry ~~such~~ these balances forward to the next fiscal year; provided, that not more than five per cent of the amount appropriated during any fiscal year ~~shall~~ may be carried forward.”

SECTION 12. Chapter 49, Title 44 of the 1976 Code is amended to read:

“CHAPTER 49

~~Department~~ Division of Alcohol and Other Drug Abuse Services, Department of Behavioral Health Services

Section 44‑49‑10. (A) There is established the ~~Department~~ Division of Alcohol and Other Drug Abuse Services within the Department of Behavioral Health Services. The ~~Department shall be~~ Division of Alcohol and Other Drug Abuse Services is vested with all the functions, powers, and duties, of the ~~South Carolina Commission on Alcoholism and the South Carolina Commission on Alcohol and Drug Abuse~~ Department of Alcohol and Other Drug Abuse Services and shall have full authority for formulating, coordinating, and administering the state plans for controlling narcotics and controlled substances and alcohol abuse.

(B) All functions, powers, and duties of the former commissioner of the narcotics and controlled substances section of the former State Planning and Grants Division (Division of Administration in the Office of the Governor) are ~~hereby~~ transferred to the ~~department~~ division, except those powers and duties related to the traffic of narcotics and controlled substances as defined in Section 44‑53‑130 which ~~shall~~ must be vested in the State Law Enforcement Division.

(C) All ~~rules and~~ regulations promulgated by the ~~commissioner of narcotics and controlled substances~~ Department of Alcohol and Other Drug Abuse Services shall remain in effect until changed by the ~~department~~ division.

(D) The ~~department~~ division is authorized to establish a state block grant mechanism to provide such monies as may be ~~appropriated by the Legislature~~ disbursed to the division for this purpose to each of the agencies designated under Section 61‑12‑20(a). The distribution of these monies must be on a per capita basis according to the most recent United States Census. The agencies designated under Section 61‑12‑20(a) must expend any funds received through this mechanism in accordance with the county plans required under Section 61‑12‑20(b).

(E) The ~~department is authorized to develop such rules and~~ division may recommend to the Director of the Department of Behavioral Health Services regulations not inconsistent with the provisions of this chapter as it may find to be reasonably appropriate for the government of the county plans called for in Section 61‑12‑20(b), and the financial and programmatic accountability of funds provided under this section and all other funds provided by the department to agencies designated under Section 61‑12‑20(a).

Section 44‑49‑20. The ~~Department~~ Division of Alcohol and Other Drug Abuse Services ~~shall~~ must be headed by a director appointed by the ~~Governor, upon the advice and consent of the Senate. The director is subject to removal by the Governor pursuant to the provisions of Section 1 3 240~~ Director of the Department of Behavioral Health Services.

Section 44‑49‑40. (A) The ~~department~~ division shall arrange for the exchange of information between governmental officials concerning the use and abuse of alcohol and controlled substances.

(B) Results, information, and evidence received from the Department of Health and Environmental Control relating to the regulatory functions of this chapter and Article 3 of Chapter 53, including results of inspections conducted by ~~such~~ the Department of Health and Environmental Control, may be relied upon and acted upon by the ~~department~~ division in conformance with its administration and coordinating duties under this chapter and Article 3 of Chapter 53.

(C)~~(1)~~ The ~~department~~ division shall:

(1) plan, coordinate, and cooperate in educational programs for schools, communities, and general public designed to prevent and deter misuse and abuse of alcohol and controlled substances;

(2) promote better recognition of the problems of misuse and abuse of alcohol and controlled substances within the regulated industry and among interested groups and organizations;

(3) assist the regulated industry~~,~~ and interested groups and organizations in contributing to the reduction of misuse and abuse of alcohol and controlled substances;

(4) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(5) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of alcohol and controlled substances;

(6) disseminate the results of research on misuse and abuse of alcohol and controlled substances to promote a better public understanding of what problems exist and what can be done to combat them;

(7) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of alcohol and controlled substances;

(8) encourage research on misuse and abuse of alcohol and controlled substances;

(9) cooperate in establishing methods to assess accurately the effects of controlled substances and to identify and characterize controlled substances with potential for abuse;

(10) cooperate in making studies and in undertaking programs of research to:

(a) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this section and Sections 44‑49‑10, ~~44‑49‑40~~ and 44‑49‑50, and Article 3 of Chapter 53;

(b) determine patterns of misuse and abuse of alcohol and controlled substances and the social effects ~~thereof~~ of them; and

(c) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of alcohol and controlled substances.

~~(D)~~ ~~The department may enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.~~

~~(E)~~ ~~The department may enter into contracts for educational and research activities without performance bonds.~~

~~(F)~~ ~~The Department is authorized to accept gifts, bequests, devises, contributions, and grants, public or private, including federal funds, or funds from any other source for use in furthering the purpose of the department. The department is authorized to administer the grants and contracts arising from the federal program entitled the Drug Free Schools and Communities Act of 1986, P.L. 99 570.~~

(11) provide a statewide system for the delivery of alcohol and controlled substance abuse services to treat, reduce, and prevent alcohol and controlled substance abuse for the citizens of this State.

Section 44‑49‑50. ~~It shall be the duty of~~ All departments, officers, agencies, and employees of the State ~~to~~ shall cooperate with the ~~Department~~ Division of Alcohol and Other Drug Abuse Services in carrying out its functions. The Attorney General shall furnish such legal services as are necessary to the department.

~~Section 44‑49‑60.~~ ~~The department shall appoint a supervisor of adult education for the prevention of alcoholism, who shall be responsible for activating and implementing an adequate alcoholic education program for the citizens of this State above high school age. The program shall be designed to prevent or reduce alcoholism in this State and to create a recognition and understanding of the problem.~~

~~In carrying out the provisions of this section the department and the supervisor of adult education for the prevention of alcoholism may consult and work in conjunction with groups such as Alcoholics Anonymous, the Yale Center of Alcohol Studies of Yale University, the Research Council on Problems of Alcohol of the American Association for the Advancement of Science, the South Carolina Medical Association, the department of Mental Health, the Christian Action Council, the Committee on Alcoholism of the South Carolina Conference of Social Work and other groups or agencies that are able to assist in the study, prevention, treatment and rehabilitation of alcoholics and in a scientific educational program on the problems of alcohol.~~

~~Section 44‑49‑70.~~ ~~The department shall furnish the supervisor of adult education for the prevention of alcoholism adequate ways and means to accomplish an effective educational program for the prevention of alcoholism in this State.~~

~~Section 44‑49‑80.~~ ~~The department shall establish a program to provide alcohol and drug abuse intervention, prevention, and treatment services for the public schools of the State. The department shall provide staff and support necessary to administer the program. Funds for this program must be annually appropriated by the General Assembly from the Education Improvement Act of 1984 Fund as it determines appropriate. The appropriated funds must be forwarded to the South Carolina Department of Alcohol and Other Drug Abuse Services from the Education Improvement Act of 1984 Fund in the manner the State Treasurer shall direct.~~”

SECTION 13. Section 44‑52‑10(4) and (9) of the 1976 Code is amended to read:

“(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~~ Division of Mental Health, Department of Behavioral Health Services, and any other treatment facility approved by the Director of the ~~Department~~ Division of Mental Health.

(9) ‘Division’ means the Division of Alcohol and Drug Addiction Services of the ~~South Carolina Department~~ Division of Mental Health, Department of Behavioral Health Services.”

SECTION 14. Section 44‑52‑165(A) of the 1976 Code is amended to read:

“(A) It is unlawful for a patient receiving inpatient services in a program under the jurisdiction of the Division of Mental Health in a treatment facility operated by the ~~South Carolina Department~~ Division 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.”

SECTION 15. Section 44‑52‑200 of the 1976 Code is amended to read:

“Section 44‑52‑200. The ~~State Department~~ Division 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 16. Section 44‑52‑210 of the 1976 Code is amended to read:

“Section 44‑52‑210. 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~~ Behavioral Health Services, considers this to be an effective and economical course to follow.”

SECTION 17. Section 63‑11‑1140(5), (8), and (9) of the 1976 Code, as added by Act 361 of 2008, are amended to read:

“(5) when unanimous consent is not obtained as required in item (4), a panel must be convened composed of the following persons:

(a) one public agency board member and one agency head appointed by the ~~Governor~~ Director of the Department of Behavioral Health Services. Recommendations for appointments may be submitted by the Human Services Coordinating Council. No member may be appointed who represents any agency involved in the resolution of the case;

(b) one legislator appointed by the ~~Governor~~ Director of the Department of Behavioral Health Services upon the recommendation of the ~~Joint Legislative Committee on Children~~ Division of Continuum of Care for Emotionally Disturbed Children; and

(c) two members appointed by the ~~Governor~~ Director of the Department of Behavioral Health Services, drawn from a list of qualified individuals not employed by a child serving public agency, established in advance by the System, who have knowledge of public services for children in South Carolina.

The chairman must be appointed by the ~~Governor~~ Director of the Department of Behavioral Health Services from members appointed as provided in subitem (c) of this item. A decision ~~is~~ must be made by a majority of the panel members present and voting, but in no case may a decision be rendered by less than three members. The panel shall review a case at the earliest possible date after sufficient staff review and evaluation pursuant to items (3) and (4) and shall make a decision by the next scheduled panel meeting. When private services are necessary, financial responsibility must be apportioned among the appropriate public agencies based on the reasons for the private services. Agencies designated by the panel shall carry out the decisions of the panel, but the decisions may not substantially affect the funds appropriated for the designated agency to such a degree that the intent of the General Assembly is changed. Substantial impact of the decisions must be defined by regulations promulgated by the State Budget and Control Board. When the panel identifies similar cases that illustrate a break in the delivery of service to children, either because of restrictions by law or substantial lack of funding, the panel shall report the situation to the General Assembly and subsequently may not accept any similar cases for decision until the General Assembly takes appropriate action, however, the System may continue to perform the functions provided in items (3) and (4).

Each member of the panel is entitled to subsistence, per diem, and mileage authorized for members of state boards, committees, and commissions. The respective agency is responsible for the compensation of the members appointed in subitems (a) and (b) of this item, and the System is responsible for the compensation of the members appointed in subitem (c) of this item;

(8) submit an annual report on the activities of the System to the ~~Governor, the Joint Legislative Committee on Children,~~ Director of the Department of Behavioral Health Services and agencies designated by the System as relevant to the cases; and

(9) compile and transmit additional reports on the activities of the System, and recommendations for service delivery improvements, as necessary, to the ~~Governor and the Joint Legislative Committee on Children~~ Director of the Department of Behavioral Health Services.”

SECTION 18. Article 13, Chapter 11, Title 63 of the 1976 Code, as added by Act 361 of 2008, is amended to read:

“Article 13

Division of Continuum of Care for Emotionally Disturbed Children

Section 63‑11‑1310. (A) It is the purpose of this article to develop and enhance the delivery of services to severely emotionally disturbed children and youth and to ensure that the special needs of this population are met appropriately to the extent possible within this State. To achieve this objective, the Division of Continuum of Care for Emotionally Disturbed Children is established as a division in the ~~office of the Governor~~ Department of Behavioral Health Services. The division is vested with all of the functions, powers, and duties of the Office of the Governor Continuum of Care for Emotionally Disturbed Children and shall have full authority to formulate, coordinate, and administer total service plans for severe emotionally disturbed children in this State. This article supplements and does not supplant existing services provided to this population.

Section 63‑11‑1320. (A)(1) The ~~Continuum of Care~~ division serves children:

(a) who have been diagnosed as severely emotionally disturbed;

(b) who have exhausted existing available treatment resources or services;

(c) whose severity of emotional, mental, or behavioral disturbance requires a comprehensive and organized system of care.

(2) Priority in the selection of clients must be based on criteria to be established by the ~~Continuum of Care~~ division.

(B) Before a court refers a child to the ~~Continuum of Care~~ division, it must be given the opportunity to evaluate the child and make a recommendation to the court regarding:

(1) the child’s suitability for placement with the ~~Continuum of Care~~ division pursuant to the provisions of this article, related regulations, and policies and procedures of administration and operation;

(2) the agencies which offer services most appropriate to meet the child’s needs and the proportionate share of the costs among the agencies to meet those needs;

(3) the necessity of obtaining other services for the child if the services provided in item (2) are not available through the existing service delivery system.

Section 63‑11‑1330. The ~~Continuum of Care~~ division shall perform the following duties and functions:

(1) identify needs and develop plans to address the needs of severely emotionally disturbed children and youth;

(2) coordinate planning, training, and service delivery among public and private organizations which provide services to severely emotionally disturbed children and youth;

(3)(a) augment existing resources by providing or procuring services to complete the range of services needed to serve this population in the least restrictive, most appropriate setting. The scope of services includes, but is not limited to:

1. in home treatment programs;

2. residential treatment programs;

3. education services;

4. counseling services;

5. outreach services;

6. volunteer and community services;

(b) provide needed services until they can be procured;

(4) provide case management services directly;

(5) supervise and administer the development and operation of its activities and services on a statewide regional basis.

Section 63‑11‑1340. The ~~Governor~~ Director of the Department of Behavioral Health Services may employ a state director of the Division of Continuum of Care for Emotionally Disturbed Children to serve at his pleasure ~~who is subject to removal pursuant to the provisions of Section 1‑3‑240~~. The state director shall employ staff necessary to carry out the provisions of this article. The funds for the state director, staff, and other purposes of the Continuum of Care ~~Division~~ must be provided in the annual general appropriations act. The ~~division~~ Department of Behavioral Health Services in conjunction with the division shall promulgate regulations in accordance with this article and the provisions of the Administrative Procedures Act and formulate necessary policies and procedures of administration and operation to carry out effectively the objectives of this article.

Section 63‑11‑1350. (A) Records, reports, applications, and files kept on any client or potential client of the ~~Continuum of Care~~ division are confidential and only may be disclosed in order to develop or provide appropriate services for the client or potential client unless:

(1) the client or potential client or his guardian consents;

(2) a court orders the disclosure for conduct of proceedings before it upon a showing that disclosure is in the public interest;

(3) disclosure is necessary for research conducted or authorized by the ~~Continuum of Care~~ division; or

(4) disclosure is necessary to any entity or state agency providing or potentially providing services to the client or potential client.

(B) Nothing in this section:

(1) precludes disclosure, upon proper inquiry, of information as to a client’s or potential client’s current condition to members of his family; or

(2) requires the release of records of which disclosure is prohibited or regulated by federal law.

(C) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than one year, or both.

Section 63‑11‑1360. The Division of Continuum of Care for Emotionally Disturbed Children shall submit an annual report to the Governor and General Assembly on its activities and recommendations for changes and improvements in the delivery of services by public agencies serving children.”

SECTION 19. Section 63‑11‑1510 of the 1976 Code, as added by Act 361 of 2008, is amended to read:

“Section 63‑11‑1510. There is established the Interagency System for Caring for Emotionally Disturbed Children, an integrated system of care to be developed by the Division of Continuum of Care for Emotionally Disturbed Children ~~of the Governor’s Office~~ and the Division of Mental Health, both in the Department of Behavioral Health Services, the Department of Disabilities and Special Needs, the ~~State~~ Department of Health and Human Services ~~Finance Commission, the Department of Mental Health~~, and the Department of Social Services ~~to be implemented by November 1, 1994~~. The goal of the system is to implement South Carolina’s Families First Policy and to support children in a manner that enables them to function in a community setting. The system shall provide assessment and evaluation procedures to insure a proper service plan and placement for each child. This system must have as a key component the clear identification of the agency accountable for monitoring on a regular basis each child’s care plan and procedures to evaluate and certify the programs offered by providers.”

SECTION 20. (A) Where the provisions of this act transfer particular state agencies, departments, boards, commissions, committees or entities, or sections, divisions or portions thereof (transferring departments), to another state agency, department, division or entity or make them a part of another department or division (receiving departments), the employees, authorized appropriations, bonded indebtedness if applicable, and real and personal property of the transferring department are also transferred to and become part of the receiving department or division unless otherwise specifically provided. All classified or unclassified personnel of the affected agency, department, board, commission, committee, entity, section, division or position employed by these transferring departments on the effective date of this act, either by contract or by employment at will, shall become employees of the receiving department or division, with the same compensation, classification, and grade level, as applicable. The Budget and Control Board shall cause all necessary actions to be taken to accomplish this transfer and shall in consultation with the agency head of the transferring and receiving agencies prescribe the manner in which the transfer provided for in this section shall be accomplished. The boards’ action in facilitating the provisions of this section are ministerial in nature and shall not be construed as an approval process over any of the transfers.

(B) Where an agency, department, entity or official is transferred to or consolidated with another agency, department, division, entity or official, regulations promulgated by that transferred agency, department, entity or official under the authority of former provisions of law pertaining to it are continued and are considered to be promulgated under the authority of present provisions of law pertaining to it.

(C) References to the names of agencies, departments, entities or public officials changed by this act, to their duties or functions herein devolved upon other agencies, departments, entities or officials, or to provisions of law consolidated with or transferred to other parts of the 1976 Code are considered to be and must be construed to mean appropriate references.

(D) Employees or personnel of agencies, departments, entities or public officials, or sections, divisions or portions thereof, transferred to or made a part of another agency, department, division, or official pursuant to the terms of this act shall continue to occupy the same office locations and facilities which they now occupy unless or until otherwise changed by appropriate action and authorization. The rent and physical plant operating costs of these offices and facilities, if any, shall continue to be paid by the transferring agency, department, entity or official formerly employing these personnel until otherwise provided by the General Assembly. The records and files of the agencies that formerly employed these personnel shall continue to remain the property of these transferring agencies, except that these personnel shall have complete access to these records and files in the performance of their duties as new employees of the receiving agency.

(E) Unless otherwise provided herein or by law, all fines, fees, forfeitures, or revenues imposed or levied by agencies, personnel, or portions thereof, so transferred to other agencies or departments must continue to be used and expended for those purposes provided prior to the effective date of this act. If a portion of these fines, fees, forfeitures, or revenues were required to be used for the support, benefit, or expense of personnel transferred, such funds must continue to be used for these purposes.

(F) The Budget and Control Board, in consultation with the appropriate standing committees of the General Assembly as designated by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and the other affected agencies, shall prescribe the manner in which the provisions of subsections (A), (D), and (E) must be implemented where agreement between the affected agencies cannot be obtained.

(G) Regulations of the Department of Mental Health, the Department of Alcohol and Other Drug Abuse Services, and the Governor’s Office Continuum of Care for Emotionally Disturbed Children in effect on this act’s effective date continue in force and effect as the regulations of the Department of Behavioral Health Services, Division of Mental Health, Division of Alcohol and Other Drug Abuse Services, and the Division of Continuum of Care for Emotionally Disturbed Children until such time as the department amends or repeals these regulations or promulgates new regulations.

(H) The membership of the Legislative Council shall cause the changes to the 1976 Code as contained in this act to be printed in replacement volumes or in cumulative supplements as they consider practical and economical.

SECTION 21. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 22. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 23. This act takes effect January 1, 2011./

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND SECTION 1‑30‑10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEPARTMENTS IN THE EXECUTIVE BRANCH OF STATE GOVERNMENT, TO ENACT THE BEHAVIORAL HEALTH SERVICES ACT OF 2009, SO AS TO ADD THE DEPARTMENT OF BEHAVIORAL HEALTH SERVICES AND TO DELETE THE DEPARTMENT OF ALCOHOL AND OTHER DRUG ABUSE SERVICES AND THE DEPARTMENT OF MENTAL HEALTH; TO AMEND SECTION 1‑30‑20, RELATING TO AGENCIES PREVIOUSLY TRANSFERRED TO THE DEPARTMENT OF ALCOHOL AND OTHER DRUG ABUSE SERVICES, SO AS TO PROVIDE THAT THE POWER AND DUTIES OF THE DEPARTMENT OF ALCOHOL AND OTHER DRUG ABUSE SERVICES ARE TRANSFERRED TO AND DEVOLVED UPON THE DEPARTMENT OF BEHAVIORAL HEALTH SERVICES, DIVISION OF ALCOHOL AND OTHER DRUG ABUSE SERVICES; TO AMEND SECTION 1‑30‑70, RELATING TO AGENCIES PREVIOUSLY TRANSFERRED TO THE DEPARTMENT OF MENTAL HEALTH, SO AS TO PROVIDE THAT THE POWERS AND DUTIES OF THE DEPARTMENT OF MENTAL HEALTH ARE TRANSFERRED TO AND DEVOLVED UPON THE DEPARTMENT OF BEHAVIORAL HEALTH SERVICES, DIVISION OF MENTAL HEALTH; BY ADDING SECTION 1‑30‑72 SO AS TO PLACE THE DEPARTMENT OF MENTAL HEALTH AND THE DEPARTMENT OF ALCOHOL AND OTHER DRUG ABUSE SERVICES UNDER THE DEPARTMENT OF BEHAVIORAL HEALTH SERVICES; BY ADDING CHAPTER 8 TO TITLE 44 SO AS TO CREATE THE DEPARTMENT OF BEHAVIORAL HEALTH SERVICES COMPRISED OF THE DIVISION OF ALCOHOL AND OTHER DRUG ABUSE SERVICES AND THE DIVISION OF MENTAL HEALTH AND TO PROVIDE FOR THE DEPARTMENT’S POWERS AND DUTIES, INCLUDING DEVELOPING AND IMPLEMENTING A STATE PLAN FOR THE COORDINATED CARE AND UNIFIED DELIVERY OF BEHAVIORAL HEALTH SERVICES AND OVERSEEING THE ADMINISTRATION AND DELIVERY OF BEHAVIORAL HEALTH SERVICES; TO AMEND CHAPTERS 9, 11, 13, and 15 OF TITLE 44, RELATING, AMONG OTHER THINGS, TO THE ORGANIZATION AND OPERATION OF THE DEPARTMENT OF MENTAL HEALTH AND ITS FACILITIES, THE SOUTH CAROLINA MENTAL HEALTH COMMISSION, AND LOCAL MENTAL HEALTH PROGRAMS AND BOARDS, SO AS TO CONFORM THESE CHAPTERS TO THE PROVISIONS OF THIS ACT AND TO PROVIDE THAT THE MENTAL HEALTH COMMISSION IS AN ADVISORY BOARD TO THE DIVISION OF MENTAL HEALTH; TO AMEND CHAPTER 49, TITLE 44, RELATING TO THE DEPARTMENT OF ALCOHOL AND OTHER DRUG ABUSE SERVICES, SO AS TO CONFORM THIS CHAPTER TO THE PROVISIONS OF THIS ACT AND TO CREATE AN ADVISORY BOARD TO THE DIVISION; AND TO AMEND SECTIONS 44‑52‑10, 44‑52‑165, 44‑52‑200, AND 44‑52‑210, RELATING, AMONG OTHER THINGS, TO ALCOHOL AND DRUG ABUSE COMMITMENTS AND PROGRAMS FOR CHEMICALLY DEPENDENT PERSONS, SO AS TO CONFORM THESE SECTIONS TO THE PROVISIONS OF THIS ACT.

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

SECTION 1. This act may be cited as the “Behavioral Health Services Act of 2009”.

SECTION 2. Section 1‑30‑10(A) of the 1976 Code is amended to read:

“(A) There are hereby created, within the executive branch of the state government, the following departments:

1. Department of Agriculture

2. Department of ~~Alcohol and Other Drug Abuse~~ Behavioral Health Services

3. Department of Commerce

4. Department of Corrections

5. Department of Disabilities and Special Needs

6. Department of Education

7. Department of Health and Environmental Control

8. Department of Health and Human Services

9. Department of Insurance

10. Department of Juvenile Justice

11. Department of Labor, Licensing~~,~~ and Regulation

12. ~~Department of Mental Health~~ Reserved

13. Department of Natural Resources

14. Department of Parks, Recreation and Tourism

15. Department of Probation, Parole~~,~~ and Pardon Services

16. Department of Public Safety

17. Department of Revenue

18. Department of Social Services

19. Department of Transportation.”

SECTION 3. Section 1‑30‑20 of the 1976 Code is amended to read:

“Section 1‑30‑20. (A) Effective on July 1, 1993, the following agencies, boards, and commissions, including all of the allied, advisory, affiliated, or related entities as well as the employees, funds, property and all contractual rights and obligations associated with any such agency, except for those subdivisions specifically included under another department, are hereby transferred to and incorporated in and shall be administered as part of the Department of Alcohol and Other Drug Abuse Services:

~~(A)~~ (1) South Carolina Commission on Alcohol and Drug Abuse, formerly provided for at Section 44‑49‑10, et seq.;

~~(B)~~ (2) Drug‑free Schools and Communities Program in the Governor’s Office, provided for under grant programs.

(B) Effective on July 1, 2009, the Department of Alcohol and Other Drug Abuse Services, as contained in subsection (A), including all allied, advisory, affiliated, or related entities as well as the employees, funds, property and all contractual rights and obligations associated with the department and these entities, except for those subdivisions specifically included or transferred to another department, is transferred to the Department of Behavioral Health Services, Division of Alcohol and Other Drug Abuse Services, and all powers, duties, obligations, and responsibilities of the Department of Alcohol and Other Drug Abuse Services are devolved upon the Department of Behavioral Health Services, Division of Alcohol and Other Drug Abuse Services.”

SECTION 4. Section 1‑30‑70 of the 1976 Code is amended to read:

“Section 1‑30‑70. (A) Effective on July 1, 1993, the following agencies, boards, and commissions, including all of the allied, advisory, affiliated, or related entities as well as the employees, funds, property and all contractual rights and obligations associated with any such agency, except for those subdivisions specifically included under another department, are hereby transferred to and incorporated in and shall be administered as part of the Department of Mental Health to include a Children’s Services Division and shall include:

Department of Mental Health, provided for at Section 44‑9‑10, et seq.

(B) Effective on July 1, 2009, the Department of Mental Health, as contained in subsection (A), including all allied, advisory, affiliated, or related entities as well as the employees, funds, property and all contractual rights and obligations associated with the department and these entities, except for those subdivisions specifically included or transferred to another department, is transferred to and incorporated in and shall be administered as part of the Department of Behavioral Health Services, Division of Mental Health, and all powers, duties, obligations, and responsibilities of the Department of Mental Health are devolved upon the Department of Behavioral Health Services, Division of Mental Health.”

SECTION 5. Chapter 30, Title 1 of the 1976 Code is amended by adding:

“Section 1‑30‑72. Effective on July 1, 2009, the following agencies, boards, and commissions, including all of the allied, advisory, affiliated, or related entities as well as the employees, funds, property and all contractual rights and obligations associated with any such agency, except for those subdivisions specifically included under another department, are transferred to and incorporated in and must be administered as part of the Department of Behavioral Health Services:

(1) Department of Alcohol and Other Drug Abuse Services, formerly provided for at Section 44‑49‑10, et seq.; and

(2) Department of Mental Health, formerly provided for at Section 44‑9‑10, et seq.”

SECTION 6. Title 44 of the 1976 Code is amended by adding:

“CHAPTER 8

Department of Behavioral Health Services

Section 44‑8‑10.(A) There is created the Department of Behavioral Health Services comprised of the Division Mental Health and the Division of Alcohol and Other Drug Abuse Services.

(B) The department shall:

(1) develop the State Plan for Behavioral Health Services which must provide for a unified system for the delivery of coordinated, client‑centered behavioral health services;

(2) oversee the administration and delivery of behavioral health services.

Section 44‑8‑20. The Governor shall appoint and remove the Director of the Department of Behavioral Health Services, who is the chief executive of the Department of Behavioral Health Services. Subject to the supervision and control of the Governor, the director shall administer the policies and regulations established by the department. The director must be a person of proven executive and administrative ability with appropriate education and substantial experience.

Section 44‑8‑30. (A)(1) There is established the Department of Behavioral Health Services Advisory Committee to study the organizational structure of the department to evaluate the effectiveness, efficiency, and accountability of the department and to make recommendations for organizational and service delivery changes.

(2) The advisory committee must be composed of:

(a) the director, or a designee, of the Department of Behavioral Health Services, who shall serve as the chairperson of the advisory committee;

(b) two representatives of the Division of Mental Health appointed by the director of the division, one of whom may be the director of the division;

(c) two representatives of the Division of Alcohol and Other Drug Abuse Services appointed by the director of the division, one of whom may be the director of the division;

(d) two professionals with expertise in the field of mental health services appointed by the Governor;

(e) two professionals with expertise in the field of alcohol and other drug abuse services appointed by the Governor;

(f) one professional with expertise in the field of children’s mental health services appointed by the Governor;

(g) two recipients of services of the Division of Mental Health, or a family member of a recipient of these services, appointed by the Governor;

(h) two recipients of services of the Division of Alcohol and Other Drug Abuse Services, or a family member of a recipient of these services, appointed by the Governor.

In appointing members to the advisory committee, the appointing authority shall select members who are representative of the ethnic, gender, rural, and urban diversity of the State.

(3) Members shall serve terms of five years and until their successors are appointed and qualify. However, of the initial appointees, four must be appointed for five years, four must be appointed for four years, four must be appointed for three years, and two must be appointed for two years. Members other than initial appointees may not be reappointed unless they are filling a vacancy for an unexpired portion of a term. 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. Members representing divisions shall serve ex officio at the pleasure of the division director.

(B) The director has the authority to create and appoint other standing or ad hoc advisory committees in his discretion to assist the department in particular areas of public concern or professional expertise as the director considers appropriate. These committees, including the advisory committee created pursuant to subsection (A), shall serve at the pleasure of the director, and committee members may not receive salary or per diem but are entitled to reimbursement for actual and necessary expenses incurred pursuant to the discharge of official duties, not to exceed the per diem, mileage, and subsistence amounts allowed by law for members of boards, commissions, and committees.

Section 44‑8‑40. (A) The department shall promulgate regulations, which must include, but are not limited to, criteria and definitions for eligibility determination, standards for the delivery of services, content and development and revision of individual client plans, including participation by the client and family in the development and revision of the plan, fee structures for services rendered and charges that may be incurred, client safety and protection, security procedures, and procedures to appeal agency decisions. These regulations must require statewide consistency and uniformity of rights and services for all client populations served by the department. The regulations must require the department to provide each client an individualized service delivery plan addressing the particular needs of each client. To ensure uniformity statewide and across client populations, regulations promulgated by the department pursuant to this section apply to local entities that are operated by or contract with the department or its divisions, services, or programs or local boards created pursuant to state law to provide services to department clients.

(B) The department also shall promulgate regulations for the licensure and regulation of facilities operated by or under contract with the department, including, but not limited to, standards of care, staff client ratios, client and staff safety and security, operational procedures, applicable fees, facility and record inspections, notification procedures for program deficiencies, grounds for suspension or revocation of licenses, and procedures for licensure application and renewal, and procedures for appeal of department decisions.

Section 44‑8‑50. The department may accept gifts, bequests, devises, grants, donations of money or real and personal property of whatever kind for its use in furthering the purposes of the department. However, no such gift or grant may be accepted upon the condition that it shall diminish an obligation due the department. The department 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, program, or service must be used for that facility, program, or service only, or to its successor. The department may promulgate rules governing the disposition of such gifts and grants.

Section 44‑8‑60. (A) The department may enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on behavioral health services and the needs, problems, and services for clients of the department.

(B) The department may enter into contracts for educational and research activities without performance bonds.

Section 44‑8‑70. The department may acquire motor vehicle liability insurance for employees operating vehicles or private vehicles in connection with their official departmental duties to protect against liability.

Section 44‑8‑80. 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 44‑8‑90. The director of the department shall submit an annual report to the Governor setting forth its activities, the financial affairs, and the state and condition of the state mental health facilities and alcohol and drug abuse facilities and other information as the Governor may request to be kept apprised of the operations of the department. The report shall include recommendations that, in the opinion of the director of the department, will improve the mental health programs and alcohol and other drug abuse programs of the State.

Section 44‑8‑100. All departments, officers, agencies, and employees of the State shall cooperate with the Department of Behavioral Health Services in carrying out the department’s functions, duties, and responsibilities. The Attorney General shall furnish such legal services as are necessary to the department.”

SECTION 7. Chapter 9, Title 44 of the 1976 Code is amended to read:

“CHAPTER 9

~~State Department of~~ Division of Mental Health, Department of Behavioral Health Services

Section 44‑9‑10. There is ~~hereby~~ created the ~~State Department~~ Division of Mental Health within the Department of Behavioral Health Services which ~~shall have~~ has 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.

Section 44‑9‑20. All the powers and duties vested in the South Carolina Mental Health Commission immediately ~~prior to~~ before March 26, 1964, are ~~hereby~~ transferred to and vested in the Division of Mental Health Department ~~of Mental Health~~ Behavioral Health Services. All records, files, and other papers belonging to the South Carolina Mental Health Commission ~~shall~~ must be continued as part of the records and files of the Division of Mental Health, Department ~~of Mental Health~~ Behavioral Health Services.

Section 44‑9‑30. (A)(1) There is created the ~~governing board for the State department of Mental Health known as the South Carolina~~ Division of Mental Health ~~Commission~~ Advisory Board. The ~~commission~~ advisory board consists of seven members appointed by the Governor, upon the advice and consent of the Senate, as follows:

(a) one member from each of the six congressional districts;

(b) one member from the State at large.

(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~~ advisory board shall ~~determine~~ advise the director regarding policies and ~~promulgate~~ regulations governing the operation of the ~~department and the employment of professional and staff personnel~~ division.

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

Section 44‑9‑40. The ~~Mental Health Commission~~ The Director of the Department of Behavioral Health Services shall appoint and remove ~~a state director of Mental Health, who is chief executive of the State Department of~~ The Director of the Mental Health Division. ~~Subject to the supervision and control of the Mental Health Commission,~~ The ~~state~~ division director shall administer the policies and regulations established by the ~~commission~~ department. The division 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 division director ~~must~~ shall appoint and remove all other officers and employees of the ~~department~~ Division of Mental Health, subject to the approval of the ~~Mental Health Commission~~ Director of the Department of Behavioral Health Services.

Section 44‑9‑60. The ~~director of the Department of~~ Mental Health Division Director 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~~ Division of Mental Health is responsible for the employment of all personnel at the hospital, subject to the approval of the director of the ~~department~~ division. The director of the ~~department~~ division may serve as director of one or more hospitals or other mental health facilities.

Section 44‑9‑70. The ~~State department~~ Division of Mental Health, Department of Behavioral Health Services 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~~ division 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~~ may be construed to prohibit the operation of outpatient mental health clinics by the Medical University of South Carolina ~~Medical College Hospital~~ in Charleston. Provided, further, that nothing ~~herein shall~~ in this chapter may 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~~ to it.

Section 44‑9‑80. 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~~ are not ~~be~~ considered fees from paying patients under the terms of Act No. 1100 of 1964 but may be utilized by the ~~State~~ ~~department~~ Division of Mental Health to improve South Carolina’s comprehensive mental health program.

Section 44‑9‑90. The ~~commission~~ Division of Mental Health 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)~~ (2) inaugurate and maintain an appropriate mental health education and public relations program;

~~(4)~~ (3)collect statistics bearing on mental illness, drug addiction, and alcoholism;

~~(5)~~ (4) 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)~~(5) 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)(6)~~ 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.

Section 44‑9‑100. The ~~commission~~ Division of Mental Health 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~~ recommend to the Director of the Department of Behavioral Health Services 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) subject to the approval of the Director of the Department of Behavioral Health Services, 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.

Section 44‑9‑110. The ~~Mental Health Commission~~ Director of the Department of Behavioral Health Services may accept on behalf of the ~~department~~ Division 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~~ a gift or grant ~~shall~~ may not be accepted upon the condition that it shall diminish an obligation due the ~~department~~ division. The ~~Commission~~ director may refuse to accept ~~any such~~ a gift or grant and the acceptance of ~~any such~~ a gift or grant ~~shall~~ may not incur ~~any~~ an obligation on the part of the State. ~~Any~~ A gift or grant given to a specific facility or service ~~shall~~ must be used for that facility or service only, or to its successor. The ~~Commission~~ department may promulgate ~~rules and~~ regulations governing the disposition of ~~such~~ these gifts and grants.

Section 44‑9‑120. The ~~Commission~~ director of the division shall submit an annual report to the ~~Governor before~~ ~~the eleventh day of January of~~ director of the department 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~~ that, in the opinion of the ~~Commission~~ director of the division, will improve the mental health program of the State. ~~A copy of the report shall also be submitted to the General Assembly~~.

Section 44‑9‑160. Wherever in the 1976 Code reference is made to the State Hospital, it ~~shall mean~~ means a state hospital; wherever reference is made requiring the signature of the superintendent of any mental health facility, it ~~shall mean~~ means the ~~superintendent~~ director of the facility or his designee; and wherever reference is made to the State Commissioner of Mental Health, it ~~shall mean~~ means the ~~State~~ Director of the ~~Department~~ Division of Mental Health, Department of Behavioral Health Services.”

SECTION 8. Chapter 11, Title 44 of the 1976 Code is amended to read:

“CHAPTER 11

Organization and Control of State Mental Health Facilities

Section 44‑11‑10. The following facilities shall continue in existence and ~~shall~~ must be maintained for the following purposes:

(1) those inpatient facilities as authorized by the Division of Mental Health, Department of ~~Mental Health~~ Behavioral Health Services and funded by legislative appropriations, including facilities for the evaluation and treatment of mentally ill persons, facilities for the evaluation and treatment of chemically dependent persons, and long‑term care facilities; and

(2) the mental health clinics for the diagnosis, treatment, and prevention of mental illness.

Section 44‑11‑30. The ~~South Carolina~~ Division of Mental Health ~~Commission~~, Department of Behavioral Health Services in mutual agreement with the authorities of the United States Veterans Administration, may establish South Carolina veterans homes to be located on grounds owned by the Department of ~~Mental Health~~ Behavioral Health Services. The purpose of these homes is to provide treatment for South Carolina veterans who are mentally ill or whose physical condition requires long‑term nursing care. Admission requirements to these homes are the same as any other facility operated by the ~~department~~ division except that the patients at these facilities must be South Carolina veterans. The ~~South Carolina~~ Division of Mental Health ~~Commission~~, Department of Behavioral Health Services is designated as the agency of the State to apply for and to accept gifts, grants, and other contributions from the federal government or from any other governmental unit for the operation and construction of South Carolina veterans homes. The ~~South Carolina~~ Division of Mental Health ~~Commission~~ shall consult with the Division of Veterans Affairs, Office of the Governor, concerning the policies, management, and operation of the South Carolina veterans homes.

Section 44‑11‑40. For the purpose of Section 4‑11‑30 “South Carolina veterans” means any ex‑service South Carolina citizen who was discharged under other than dishonorable conditions and who served in any branch of the military or naval service of the United States.

Section 44‑11‑60. The Division of Mental Health ~~Commission~~, Department of Behavioral Health Services shall establish mental health clinics throughout the State and shall supervise them.

Section 44‑11‑70. The Director of the Division of Mental Health ~~Commission~~ may employ or may authorize the ~~superintendents~~ directors of mental health facilities to employ suitable persons to act as marshals to keep intruders off and prevent trespass upon State mental health facilities. The marshals employed, in so far as State mental health facilities are concerned, shall be vested with all the powers and charged with all the duties of police officers generally. They may eject trespassers. They may without warrant arrest persons guilty of disorderly conduct or of trespass on State mental health facilities and have them tried in any court of competent jurisdiction.

Section 44‑11‑75. (A) It is unlawful for a person without legal cause or good excuse to enter on the premises of a state mental health facility after having been warned by the facility director or, in his absence, by the director’s representative, in writing, within the six months preceding not to enter on the premises.

(B) It is unlawful for a person without legal cause or good excuse to fail or refuse immediately to leave the premises of a state mental health facility upon being ordered or requested to leave by the facility director or, in his absence, by the facility director’s representative.

(C) A person violating subsection (A) or (B), upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

(D) A municipal court or magistrate’s court has jurisdiction over violations of this section occurring within the respective limits of the municipality or magisterial district.

Section 44‑11‑110. The ~~Mental Health Commission~~ Director of the Department of Behavioral Health Services may~~, by resolution recorded on the minutes of its meetings,~~ grant easements, permits or rights of way on, over or under the grounds of the facilities, but none may be granted unless approved in writing by the Attorney General before delivery.”

SECTION 9. Chapter 13, Title 44 of the 1976 Code is amended to read:

“CHAPTER 13

Admission, Detention and Removal of Patients at State Mental Health Facilities

Section 44‑13‑05. (A) Except as provided for in Sections 56‑5‑2930 and 56‑5‑2950, if a law enforcement officer observes a person conducting himself in a manner that causes the law enforcement officer to reasonably believe that the person is mentally ill or is suffering from chemical dependency and because of that condition poses a likelihood of serious harm to himself or others or if a criminal offense that carries a penalty of less than one year and that does not involve a victim who could seek a warrant for the person’s arrest has occurred, the law enforcement officer may take the person into protective custody and transport the person to the local mental health center or a crisis stabilization program, if available in their jurisdictions, for examination and pre‑admission screening and evaluation of psychiatric and chemical dependency emergencies.

(B) Upon arrival at the mental health center or a crisis stabilization program, if available in their jurisdictions, the law enforcement officer who took the person into protective custody pursuant to this section shall complete a written affidavit under oath pursuant to Section 44‑17‑410(1). If the person is subsequently the subject of a hearing, and if the law enforcement officer who completed the affidavit is given notice of the hearing pursuant to Section 44‑17‑550, the officer may, but is not required to, appear at the hearing.

(C) The local mental health center or a crisis stabilization program, if available in their jurisdictions, shall arrange for an examination of the person in protective custody by a licensed physician. The center or crisis stabilization program, if available in their jurisdictions, may detain the person for up to twenty‑four hours for the purpose of psychiatric evaluation and examination by a licensed physician. If within twenty‑four hours of being taken into protective custody the person is not examined by a licensed physician, or if upon examination the physician does not execute the certification provided for in Section 44‑17‑410(2), the person in protective custody must be released. If the physician examining the person completes the certification provided for in Section 44‑17‑410(2), the center or crisis stabilization program, if available in their jurisdictions, may continue to detain the person pending transportation by a law enforcement officer to the hospital designated by the certification, as provided for in Section 44‑17‑440.

(D) The taking of a person into protective custody pursuant to this section is not an arrest. The officer shall inform the person that he or she is being held in protective custody and is not under arrest. However, a law enforcement officer taking an individual into protective custody may use that kind and degree of force necessary, including reasonable precautions for self‑protection.

(E) Except when a person is injured as a result of intentional injury, gross negligence, or a wanton disregard for their personal safety, a law enforcement officer, examining physician, or staff person of a mental health center or a designated facility who acts in accordance with this section is immune from civil liability.

(F) For purposes of this section, “crisis stabilization program” means a community‑based psychiatric program providing short‑term, intensive, mental health treatment in a nonhospital setting for persons who are experiencing a psychiatric crisis and who are either unable to safely function in their daily lives or are a potential threat to themselves or the community, with treatment available twenty‑four hours a day, seven days a week.

(G) A law enforcement officer may transport a person as provided in this section to a local mental health center or a crisis stabilization program beyond the officer’s jurisdiction if the law enforcement agency employing the officer has a written memo of understanding with the local mental health center or crisis stabilization program receiving the person taken into custody.

(H) For purposes of this section, “local mental health center or crisis stabilization program” includes such center or program in an adjoining county or if there is not such a center or program in an adjoining county, then such a center or program in the nearest location.

Section 44‑13‑10. Pending his removal to a State mental health facility an individual taken into custody or ordered to be admitted may be temporarily detained in his home, a licensed foster home or any other suitable facility under such reasonable conditions as the county governing body, supervisor, or manager may fix, but he ~~shall~~ must not, except because of and during an extreme emergency, be detained in a nonmedical establishment used for the detention of individuals charged with or convicted of penal offenses. The county governing body, supervisor or manager shall take such reasonable measures, including provision of medical care, as may be necessary to assure proper care of an individual temporarily detained under this section.

Section 44‑13‑20. Any individual, legally a resident of this State, ordered to be admitted to any mental health facility under the laws of any other state, may be admitted, upon satisfactory proof of residence, to care and treatment in any State mental health facility of this State. The orders of any court of competent jurisdiction of another state or of the District of Columbia authorizing admittance of such individual to a mental health facility shall have the same force and effect upon his transfer to this State as a lawful order of any court of competent jurisdiction in this State. A certified copy of such order ~~shall~~ must be furnished the ~~Department~~ Division of Mental Health prior to the issuance by the ~~Department~~ Division of Mental Health of any authorization of transfer of such patient. Jurisdiction in all further matters relating to such mentally ill person shall vest in the judge of probate of the county in which the mental health facility, to which such person is admitted, is located, during his confinement therein, or the judge of probate of the county in which he is legally resident.

Section 44‑13‑30. Unless he was admitted pursuant to the Interstate Compact on Mental Health as set out in Section 44‑25‑20 or a supplementary agreement thereto, if any person admitted to a State mental health facility is not a citizen of this State, the ~~superintendent~~ director of the facility concerned shall immediately notify the ~~Department~~ Division of Mental Health, and the ~~Department~~ Division of Mental Health shall notify the mental health commission or other appropriate agency of the state of which the patient or trainee is a citizen. If the state of his citizenship fails to provide for his removal within a reasonable time, the ~~Department~~ Division of Mental Health shall cause him to be delivered to the officials authorized by law to care for similar persons pending their commitment to state institutions of the state of his citizenship. The cost of these proceedings and conveyance from this State ~~shall~~ must be borne by this State under reciprocity agreements made by the ~~Department~~ Division of Mental Health with the mental health authorities of other states. In entering upon such reciprocal agreements with other states, the ~~Department~~ Division of Mental Health shall provide that the requirements necessary to gain residence in this State ~~shall~~ must not be less than those required for the acquisition of residence in the other contracting state. The ~~Department~~ Division of Mental Health may, however, in cases of undue hardship waive the requirements of residence, for cause.

Section 44‑13‑40. If any person admitted to a State mental health facility is not a citizen of the United States, the ~~superintendent~~ director of the facility concerned shall immediately notify the ~~Department~~ Division of Mental Health of the name of the person and all ascertainable information as to race, nativity, date of last arrival in the United States, the name of the vessel on which he arrived, the port at which he landed and the name of the transporting company. The ~~Department~~ Division of Mental Health shall transmit this information to the appropriate United States authorities and shall continue to provide care and treatment for the patient or trainee pending arrangements for his deportation.

Section 44‑13‑50. If a mentally ill patient from an out‑of‑State mental health facility is found to be in this State without permission and upon satisfactory identification of the patient and the request of such facility that the patient be returned, he may be taken into custody by proper public officials and transported directly to the out‑of‑State facility or may be detained in a State mental health facility until such time as transportation arrangements can be made or the patient’s health will permit his return. The state requesting the return of the patient shall pay all costs of, and incidental to, the transportation and detention of the patient.

Section 44‑13‑60. The ~~Department~~ Division of Mental Health shall investigate the case of each patient or trainee in a State mental health facility who is simply mentally or physically infirm or who is a harmless mental defective or harmless epileptic. When, in the opinion of the ~~Department~~ Division of Mental Health, the family, guardian, trustee, committee or other person legally responsible for the person is financially able to provide for his care, ~~it~~ the division shall, when in the opinion of the ~~Department~~ Director of the Division of Mental Health this is advisable, transfer the patient or trainee to the custody of that person. If all persons legally responsible for the patient or trainee are financially unable to provide for his care, the ~~Department~~ Division of Mental Health shall, when practicable, transfer the custody of the person to the county health authorities of the county of which the patient or trainee was a resident prior to admittance.

Section 44‑13‑70. The judge of probate in each county shall keep an adequate supply of forms necessary for the admission or commitment of persons under this chapter, Chapter 9, Chapter 11, Article 1 of Chapter 15, Chapter 17, Chapter 23, Chapter 24, Chapter 27, and Chapter 52.”

SECTION 10. Chapter 15, Title 44 of the 1976 Code is amended to read:

“CHAPTER 15

Local Mental Health Programs, Boards and Centers

Section 44‑15‑10. Any county, city, town, political subdivision, or any combination thereof, of over one hundred thousand population, and upon consent of the ~~South Carolina Department~~ Division of Mental Health, Department of Behavioral Health Services any city, county, town, or political subdivision, or combination ~~thereof~~ of them, with less than one hundred thousand population, may establish a community mental health services program and may establish clinics and staff them with persons specially trained in psychiatry and related fields. Such programs and clinics may be administered by a county, city, town, political subdivision or nonprofit corporation or a community mental health board established pursuant to this ~~article~~ chapter.

Section 44‑15‑20. The ~~Department~~ Division of Mental Health may, when funds are available for such purposes, make grants to assist counties, cities, towns, political subdivisions or any combinations ~~thereof~~ of them, or any nonprofit corporation, in the establishment and operation of local mental health programs to provide the following services:

(1) collaborative and cooperative services with public health, education, welfare and other groups for programs of prevention of mental illness, mental retardation and other psychiatric disabilities;

(2) informational and educational services to the general public and lay and professional groups;

(3) consultative services to schools, courts and health and welfare agencies, both public and private;

(4) diagnostic and treatment services; and

(5) after care services for patients suffering from mental or emotional disorders, mental retardation and other psychiatric conditions, particularly those who have received prior treatment in an in‑patient facility.

Section 44‑15‑30. Any county, city, town, political subdivision, nonprofit corporation or community mental health board administering a mental health services program may apply for the assistance provided by this ~~article~~ chapter by submitting annually to the ~~Department~~ Division of Mental Health its plan and budget for the next fiscal year together with the recommendations of the community mental health board. ~~No~~ A program ~~shall be~~ is not eligible for such assistance unless its plan and budget have been approved by the ~~Department~~ division.

Section 44‑15‑40. At the beginning of each fiscal year the ~~Department~~ division shall allocate available funds to the mental health programs for disbursement during the fiscal year in accordance with such approved plans and budgets. The ~~Department~~ division shall, from time to time during the fiscal year, review the budgets and expenditures of the various programs, and if funds are not needed for a program to which they were allocated, it may, after reasonable notice and opportunity for hearing, withdraw such funds as are unencumbered and reallocate them to other programs. It may withdraw funds from any program which is not being administered in accordance with its approved plan and budget.

Section 44‑15‑50. Grants may be made for expenditures for mental health services whether provided by operation of a local facility or through contract with other public or private agencies or individual persons.

Section 44‑15‑60. Every county, city, town, or political subdivision, or combination of them, establishing a community mental health services program, before it may come within this ~~article~~ chapter, shall establish a community mental health board to be made up of not less than seven nor more than fifteen members. Membership of the boards, so far as may be practicable, must be representatives of local health departments, medical societies, county welfare boards, hospital boards, and lay associations concerned with mental health as well as labor, business, and civic groups, and the general public. At least one member of the board must be a medical doctor licensed to practice medicine in this State. The members must be appointed by the Governor upon the recommendation of a majority of the members of the legislative delegations of the counties participating. The legislative delegations and the Governor shall consider consumer and family representation, including parents of emotionally disturbed children and adolescents, when recommending and appointing members to the board. By resolution a county legislative delegation may delegate to the governing body of the county they represent the authority to recommend board members to the Governor. The resolution is not revocable, and copies of the resolution must be sent to the Governor, the ~~Department~~ Division of Mental Health, and the governing bodies of the counties concerned. The number of members representing each county must be proportional to its population. The term of office of each member of the community mental health board is four years and until the member’s successor is appointed. Vacancies must be filled for the unexpired term in the same manner as original appointments. A member of a board may be removed by the Governor pursuant to the provisions of Section 1‑3‑240. A person may serve consecutive terms.

In Berkeley County, appointments made pursuant to this section are governed by the provisions of Act 159 of 1995.

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

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

Section 44‑15‑70. Subject to the provisions of this ~~article~~ chapter and the rules and regulations of the ~~Department~~ Division of Mental Health, Department of Behavioral Health Services each community mental health board shall:

(1) ~~Be~~ serve as the administrative agency for the community mental health services program; and it shall be a body corporate in deed and in law with all the powers incident to corporation, including the power to purchase, lease or sell real and personal property;

(2) employ personnel necessary to carry out the community mental health services program, who shall meet the job specifications as prescribed by the ~~Department~~ division and its merit system;

(3) review and evaluate community mental health services provided pursuant to this ~~article~~ chapter and report its findings and recommendations to the ~~Department~~ division, the administrator of the local program and, when indicated, the public;

(4) recruit and promote local financial support for the program from private sources such as community chests, business, industrial and private foundations, voluntary agencies and other lawful sources, and promote public support for municipal and county appropriations;

(5) promote, arrange and implement working agreements with other social service agencies, both public and private, and with other educational and judicial agencies;

(6) advise the administrator of the local program on the adoption and implementation of policies to stimulate effective community relations; and

(7) review the annual plan and budget of the local program and make recommendations ~~thereon~~ on them.

Section 44‑15‑80. In addition to the powers and duties already conferred by law, the ~~Department~~ Division of Mental Health shall:

(1) ~~Promulgate rules and~~ recommend regulations to the Director of the Department of Behavioral Health Services governing the eligibility of community mental health programs to receive State grants~~,~~ and prescribing standards for qualification of personnel and quality of professional service and for in‑service training and educational leave programs for personnel;

(2) govern eligibility for service so that no person will be denied service on the basis of inability to pay and so that anyone who cannot afford to pay for necessary treatment at the rate customarily charged in available private practice ~~shall~~ will be eligible to receive services from the community mental health clinic;

(3) provide for establishment of fee schedules and reduction of balance due which ~~shall~~ must be based upon ability to pay;

(4) regulate fees for consultation and diagnostic services, which services may be provided to anyone without regard to his financial status when ~~such~~ the person is referred by the courts, schools, or health or welfare agencies;

(5) ~~promulgate such~~ adopt other rules and promulgate regulations as ~~it deems~~ necessary to carry out the purposes of this ~~article~~ chapter;

(6) review and evaluate local programs and the performance of all personnel and make recommendations ~~thereon~~ on them to community mental health boards and program administrators;

(7) provide consultative staff service to communities to assist in ascertaining local needs and in planning and establishing community mental health programs; ~~and~~

(8) employ personnel, certified by the merit system as classified according to existing job classifications, including a State Director of Community Mental Health Services, to be under the supervision of the Director of the ~~Department~~ Division of Mental Health, to implement the provisions of this ~~article.~~ chapter;

(9) require reports from the directors of community mental health programs relating to the intake, examination, diagnosis, and file closing of any patient or client.

Section 44‑15‑90. If any balances of appropriations for the program authorized by this ~~article~~ chapter are unexpended during any fiscal year, the ~~Department~~ Division of Mental Health, Department of Behavioral Health Services may carry ~~such~~ these balances forward to the next fiscal year; provided, that not more than five per cent of the amount appropriated during any fiscal year ~~shall~~ may be carried forward.

SECTION 11. Chapter 49, Title 44 of the 1976 Code is amended to read:

“CHAPTER 49

~~Department~~ Division of Alcohol and Other Drug Abuse Services, Department of Behavioral Health Services

Section 44‑49‑10. (A) There is established the ~~Department~~ Division of Alcohol and Other Drug Abuse Services within the Department of Behavioral Health Services. The ~~Department shall be~~ Division of Alcohol and Other Drug Abuse Services is vested with all the functions, powers, and duties, of the ~~South Carolina Commission on Alcoholism and the South Carolina Commission on Alcohol and Drug Abuse~~ Department of Alcohol and Other Drug Abuse Services and shall have full authority for formulating, coordinating, and administering the state plans for controlling narcotics and controlled substances and alcohol abuse.

(B) All functions, powers, and duties of the former commissioner of the narcotics and controlled substances section of the former State Planning and Grants Division (Division of Administration in the Office of the Governor) are ~~hereby~~ transferred to the ~~department~~ division, except those powers and duties related to the traffic of narcotics and controlled substances as defined in Section 44‑53‑130 which ~~shall~~ must be vested in the State Law Enforcement Division.

(C) All ~~rules and~~ regulations promulgated by the ~~commissioner of narcotics and controlled substances~~ Department of Alcohol and Other Drug Abuse Services shall remain in effect until changed by the ~~department~~ division.

(D) The ~~department~~ division is authorized to establish a block grant mechanism to provide such monies as may be ~~appropriated by the Legislature~~ disbursed to the division for this purpose to each of the agencies designated under Section 61‑12‑20(a). The distribution of these monies must be on a per capita basis according to the most recent United States Census. The agencies designated under Section 61‑12‑20(a) must expend any funds received through this mechanism in accordance with the county plans required under Section 61‑12‑20(b).

(E) The ~~department is authorized to develop such rules and~~ division may recommend to the Director of the Department of Behavioral Health Services regulations not inconsistent with the provisions of this chapter as it may find to be reasonably appropriate for the government of the county plans called for in Section 61‑12‑20(b), and the financial and programmatic accountability of funds provided under this section and all other funds provided by the department to agencies designated under Section 61‑12‑20(a).

Section 44‑49‑15. (A) There is created an advisory board for the Division of Alcohol and Other Drug Abuse Services, which consists of nine members appointed by the Governor. One member must be from each of the six congressional districts and three members must be from the State at large. Of the nine members, three must be recipients of services provided by the division, or family members of recipients of these services. In appointing members to the advisory board, the governor shall select members who are representative of the ethnic, gender, rural, and urban diversity of the State.

(B) Members serve for terms of five years and until their successors are appointed and qualify. However, of the initial appointees, three must be appointed for five years, three must be appointed for four years, and three must be appointed for three years. Members may not be reappointed unless serving as an initial appointee or filling a vacancy for an unexpired portion of a term. 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 advisory board shall advise the division on policies and regulations governing the operation of the division and shall make recommendations to the Department of Behavioral Health Services.

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

Section 44‑49‑20. The ~~Department~~ Division of Alcohol and Other Drug Abuse Services ~~shall be~~ is headed by a director appointed by the ~~Governor, upon the advice and consent of the Senate. The director is subject to removal by the Governor pursuant to the provisions of Section 1‑3‑240~~ Director of the Department of Behavioral Health Services.

Section 44‑49‑40. (A) The ~~department~~ division shall arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances.

(B) Results, information, and evidence received from the Department of Health and Environmental Control relating to the regulatory functions of this chapter and Article 3 of Chapter 53, including results of inspections conducted by ~~such~~ the Department of Health and Environmental Control, may be relied upon and acted upon by the ~~department~~ division in conformance with its administration and coordinating duties under this chapter and Article 3 of Chapter 53.

(C)~~(1)~~ The ~~department~~ division shall:

(1) plan, coordinate, and cooperate in educational programs for schools, communities, and general public designed to prevent and deter misuse and abuse of controlled substances;

(2) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(3) assist the regulated industry~~,~~ and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(4) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(5) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(6) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them;

(7) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances;

(8) encourage research on misuse and abuse of controlled substances;

(9) cooperate in establishing methods to assess accurately the effects of controlled substances and to identify and characterize controlled substances with potential for abuse;

(10) cooperate in making studies and in undertaking programs of research to:

(a) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of Sections 44‑49‑10, 44‑49‑40, ~~and~~ 44‑49‑50, and Article 3 of Chapter 53;

(b) determine patterns of misuse and abuse of controlled substances and the social effects ~~thereof~~ of them; and

(c) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances.

~~(D)~~ ~~The department may enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.~~

~~(E)~~ ~~The department may enter into contracts for educational and research activities without performance bonds.~~

~~(F)~~ ~~The Department is authorized to accept gifts, bequests, devises, contributions, and grants, public or private, including federal funds, or funds from any other source for use in furthering the purpose of the department. The department is authorized to administer the grants and contracts arising from the federal program entitled the Drug‑Free Schools and Communities Act of 1986, P.L. 99‑570.~~

Section 44‑49‑50. ~~It shall be the duty of~~ All departments, officers, agencies, and employees of the State ~~to~~ shall cooperate with the ~~Department~~ Division of Alcohol and Other Drug Abuse Services in carrying out its functions. The Attorney General shall furnish such legal services as are necessary to the department.

Section 44‑49‑60. The ~~department~~ division shall appoint a supervisor of adult education for the prevention of alcoholism, who ~~shall be~~ is responsible for activating and implementing an adequate alcoholic education program for the citizens of this State above high school age. The program ~~shall~~ must be designed to prevent or reduce alcoholism in this State and to create a recognition and understanding of the problem.

~~In carrying out the provisions of this section the department and the supervisor of adult education for the prevention of alcoholism may consult and work in conjunction with groups such as Alcoholics Anonymous, the Yale Center of Alcohol Studies of Yale University, the Research Council on Problems of Alcohol of the American Association for the Advancement of Science, the South Carolina Medical Association, the department of Mental Health, the Christian Action Council, the Committee on Alcoholism of the South Carolina Conference of Social Work and other groups or agencies that are able to assist in the study, prevention, treatment and rehabilitation of alcoholics and in a scientific educational program on the problems of alcohol.~~

Section 44‑49‑70. The ~~department~~ division shall furnish the supervisor of adult education for the prevention of alcoholism adequate ways and means to accomplish an effective educational program for the prevention of alcoholism in this State.

Section 44‑49‑80. The ~~department~~ division shall establish a program to provide alcohol and drug abuse intervention, prevention, and treatment services for the public schools of the State. The ~~department~~ division shall provide staff and support necessary to administer the program. Funds for this program must be annually appropriated by the General Assembly from the Education Improvement Act of 1984 Fund as it determines appropriate. The appropriated funds must be forwarded to the ~~South Carolina~~ Department of Health and Human Services for disbursal to the Department of Behavioral Health Services for the Division of Alcohol and Other Drug Abuse Services from the Education Improvement Act of 1984 Fund in the manner the State Treasurer shall direct.

Section 44‑49‑90. In carrying out its responsibilities under Sections 44‑49‑60 through 44‑49‑80, the department shall appoint an ad hoc committee to assist, among other things, in determining the most effective methods to use in educating the public about substance abuse.”

SECTION 12. Section 44‑52‑10(4) and (9) of the 1976 Code is amended to read:

“(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~~ Division of Mental Health, Department of Behavioral Health Services and any other treatment facility approved by the Director of the ~~Department~~ Division of Mental Health.

(9) ‘Division’ means the Division of Alcohol and Drug Addiction Services of the ~~South Carolina Department~~ Division of Mental Health, Department of Behavioral Health Services.”

SECTION 13. Section 44‑52‑165(A) of the 1976 Code is amended to read:

“(A) It is unlawful for a patient receiving inpatient services in a program under the jurisdiction of the Division of Mental Health in a treatment facility operated by the ~~South Carolina Department~~ Division 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.”

SECTION 14. Section 44‑52‑200 of the 1976 Code is amended to read:

“Section 44‑52‑200. The ~~State Department~~ Division 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 15. Section 44‑52‑210 of the 1976 Code is amended to read:

“Section 44‑52‑210. 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~~ Behavioral Health Services, considers this to be an effective and economical course to follow.”

SECTION 16. (A) Where the provisions of this act transfer particular state agencies, departments, boards, commissions, committees or entities, or sections, divisions or portions thereof (transferring departments), to another state agency, department, division or entity or make them a part of another department or division (receiving departments), the employees, authorized appropriations, bonded indebtedness if applicable, and real and personal property of the transferring department are also transferred to and become part of the receiving department or division unless otherwise specifically provided. All classified or unclassified personnel of the affected agency, department, board, commission, committee, entity, section, division or position employed by these transferring departments on the effective date of this act, either by contract or by employment at will, shall become employees of the receiving department or division, with the same compensation, classification, and grade level, as applicable. The Budget and Control Board shall cause all necessary actions to be taken to accomplish this transfer and shall in consultation with the agency head of the transferring and receiving agencies prescribe the manner in which the transfer provided for in this section shall be accomplished. The boards’ action in facilitating the provisions of this section are ministerial in nature and shall not be construed as an approval process over any of the transfers.

(B) Where an agency, department, entity or official is transferred to or consolidated with another agency, department, division, entity or official, regulations promulgated by that transferred agency, department, entity or official under the authority of former provisions of law pertaining to it are continued and are considered to be promulgated under the authority of present provisions of law pertaining to it.

(C) References to the names of agencies, departments, entities or public officials changed by this act, to their duties or functions herein devolved upon other agencies, departments, entities or officials, or to provisions of law consolidated with or transferred to other parts of the 1976 Code are considered to be and must be construed to mean appropriate references.

(D) Employees or personnel of agencies, departments, entities or public officials, or sections, divisions or portions thereof, transferred to or made a part of another agency, department, division, or official pursuant to the terms of this act shall continue to occupy the same office locations and facilities which they now occupy unless or until otherwise changed by appropriate action and authorization. The rent and physical plant operating costs of these offices and facilities, if any, shall continue to be paid by the transferring agency, department, entity or official formerly employing these personnel until otherwise provided by the General Assembly. The records and files of the agencies that formerly employed these personnel shall continue to remain the property of these transferring agencies, except that these personnel shall have complete access to these records and files in the performance of their duties as new employees of the receiving agency.

(E) Unless otherwise provided herein or by law, all fines, fees, forfeitures, or revenues imposed or levied by agencies, personnel, or portions thereof, so transferred to other agencies or departments must continue to be used and expended for those purposes provided prior to the effective date of this act. If a portion of these fines, fees, forfeitures, or revenues were required to be used for the support, benefit, or expense of personnel transferred, such funds must continue to be used for these purposes.

(F) The Budget and Control Board, in consultation with the appropriate standing committees of the General Assembly as designated by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and the other affected agencies, shall prescribe the manner in which the provisions of subsections (A), (D), and (E) must be implemented where agreement between the affected agencies cannot be obtained.

(G) Regulations of the Department of Mental Health and of the Department of Alcohol and Other Drug Abuse Services in effect on this act’s effective date continue in force and effect as the regulations of the Department of Behavioral Health Services, Division of Mental Health and Division of Alcohol and Other Drug Abuse Services, until such time as the department amends or repeals these regulations or promulgates new regulations.

(H) The membership of the Legislative Council shall cause the changes to the 1976 Code as contained in this act to be printed in replacement volumes or in cumulative supplements as they consider practical and economical.

SECTION 17. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 18. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 19. This act takes effect July 1, 2009.

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