~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT ADOPTED

March 25, 2009

**S. 486**

Introduced by Senators Peeler, Alexander and Rose

S. Printed 3/25/09--S.

Read the first time February 25, 2009.

**A** **BILL**

TO AMEND SECTION 44‑20‑210, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CREATION OF THE COMMISSION ON DISABILITIES AND SPECIAL NEEDS, SO AS TO DELETE OBSOLETE LANGUAGE; TO AMEND SECTION 44‑20‑220, RELATING TO THE PROMULGATION OF REGULATIONS BY THE COMMISSION ON DISABILITIES AND SPECIAL NEEDS, SO AS TO DELETE THE PROVISION REQUIRING THE COMMISSION TO CONSULT WITH THE ADVISORY COMMITTEE OF THE DIVISION TO WHICH THE REGULATIONS APPLY; TO AMEND SECTION 44‑20‑230, RELATING TO THE RESPONSIBILITIES OF THE DIRECTOR OF THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, SO AS TO DELETE THE PROVISION AUTHORIZING THE DIRECTOR TO APPOINT AND REMOVE EMPLOYEES OF THE DEPARTMENT; TO AMEND SECTION 44‑20‑240, RELATING TO THE CREATION AND RESPONSIBILITIES OF THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, SO AS TO DELETE THE PROVISION TRANSFERRING THE RESPONSIBILITY FOR AUTISTIC SERVICES FROM THE DEPARTMENT OF MENTAL HEALTH TO THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS; TO AMEND SECTION 44‑20‑350, RELATING TO AUTHORIZING THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS TO ESTABLISH CHARGES FOR SERVICES IN REGULATION, SO AS TO REQUIRE THESE CHARGES TO BE ESTABLISHED IN REGULATION; TO AMEND SECTION 44‑20‑430, RELATING TO THE DIRECTOR CARRYING OUT CERTAIN RESPONSIBILITIES SUBJECT TO POLICIES ADOPTED BY THE COMMISSION, SO AS TO PROVIDE THAT CARRYING OUT THESE RESPONSIBILITIES IS SUBJECT TO REGULATIONS PROMULGATED BY THE DEPARTMENT; TO AMEND SECTION 44‑7‑260, AS AMENDED, RELATING TO FACILITIES REQUIRED TO BE LICENSED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND FACILITIES THAT ARE EXEMPT FROM SUCH LICENSURE, SO AS TO REQUIRE LICENSURE FOR COMMUNITY‑BASED HOUSING AND DAY PROGRAMS OPERATED BY THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS AND TO REMOVE COMMUNITY‑BASED HOUSING SPONSORED, LICENSED, OR CERTIFIED BY THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS FROM THOSE FACILITIES THAT ARE EXEMPT FROM LICENSURE; TO AMEND ARTICLE 23, CHAPTER 7, TITLE 44, RELATING TO CRIMINAL RECORDS CHECKS OF DIRECT CARE STAFF, SO AS TO FURTHER SPECIFY THE CRIMINAL RECORDS CHECKS THAT MUST BE CONDUCTED ON DIRECT CARE STAFF, TO PROVIDE THAT A DIRECT CARE ENTITY INCLUDES A DAY PROGRAM OPERATED BY THE DEPARTMENT OF MENTAL HEALTH OR THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, TO DELETE PROVISIONS REQUIRING DIRECT CAREGIVERS TO VERIFY RESIDENCY FOR THE TWELVE MONTHS PRECEDING APPLYING FOR EMPLOYMENT, TO DELETE PROVISIONS AUTHORIZING PRIVATE BUSINESSES, ORGANIZATIONS, OR ASSOCIATIONS TO CONDUCT CRIMINAL HISTORY BACKGROUND CHECKS REQUIRED BY THIS ARTICLE, AND TO DELETE PROVISIONS RELATING TO CERTAIN FINGERPRINT FORMS AND PROCEDURES; AND TO REPEAL SECTION 44‑20‑225 RELATING TO CONSUMER ADVISORY BOARDS FOR THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS’ MENTAL RETARDATION, AUTISM, AND HEAD AND SPINAL CORD INJURY DIVISIONS AND ARTICLE 5, CHAPTER 20, TITLE 44 RELATING TO THE LICENSURE AND REGULATION OF FACILITIES AND PROGRAMS BY THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS.

Amend Title To Conform

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

SECTION 1. Sections 44‑20‑210 and 44‑20‑220 of the 1976 Code are amended to read:

“Section 44‑20‑210. ~~(A)~~ There is created the South Carolina Commission on Disabilities and Special Needs. The commission consists of seven members. One member must be a resident of each congressional district and one must be from the State at large to be appointed by the Governor upon the advice and consent of the Senate. They shall serve for four years and until their successors are appointed and qualify. Members of the commission are subject to removal by the Governor pursuant to the provisions of Section 1‑3‑240. A vacancy may be filled by the Governor for the unexpired portion of the term.

~~(B)~~ ~~On July 1, 1993 the Commission on Mental Retardation becomes the Commission on Disabilities and Special Needs. The commissioners continue to serve until their terms expire and their successors are appointed and qualify.~~

Section 44‑20‑220. The commission shall determine the policy and promulgate regulations governing the operation of the department and the employment of professional staff and personnel. The members of the commission shall receive subsistence, mileage, and per diem as may be provided by law for members of state boards, committees, and commissions. The commission shall appoint and in its discretion remove a South Carolina Director of Disabilities and Special Needs who is the chief executive officer of the department. The commission may appoint advisory committees it considers necessary to assist in the effective conduct of its responsibilities. The commission may educate the public and state and local officials as to the need for the funding, development, and coordination of services for persons with mental retardation, related disabilities, head injuries, and spinal cord injuries and promote the best interest of persons with mental retardation, related disabilities, head injuries, and spinal cord injuries. The commission is authorized to promulgate regulations to carry out the provisions of this chapter and other laws related to mental retardation, related disabilities, head injuries, or spinal cord injuries. ~~In promulgating these regulations, the commission must consult with the advisory committee of the division for which the regulations shall apply.~~”

SECTION 2. Sections 44‑20‑230 and 44‑20‑240 of the 1976 Code are amended to read:

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

Section 44‑20‑240. There is created the South Carolina Department of Disabilities and Special Needs which has authority over all of the state’s services and programs for the treatment and training of persons with mental retardation, related disabilities, head injuries, and spinal cord injuries. This authority does not include services delivered by other agencies of the State as prescribed by statute. The department must be comprised of a Mental Retardation Division, an Autism Division, and a Head and Spinal Cord Injuries Division. The department may be divided into additional divisions as may be determined by the director and approved and named by the commission. ~~Responsibility for all autistic services is transferred from the Department of Mental Health to the Department of Disabilities and Special Needs.~~”

SECTION 3. Section 44‑20‑350(E) of the 1976 Code is amended to read:

“(E) The department ~~may~~ shall establish by regulation charges for other services it renders.”

SECTION 4. Section 44‑20‑430 of the 1976 Code is amended to read:

“Section 44‑20‑430. The director or his designee has the final authority over applicant eligibility, determination, or services and admission order, subject to ~~policies adopted by the commission~~ regulations promulgated by the department.”

SECTION 5. Section 44‑7‑260(A) of the 1976 Code is amended to read:

“(A) If they provide care for two or more unrelated persons, the following facilities or services may not be established, operated, or maintained in this State without first obtaining a license in the manner provided by this article and regulations promulgated by the department:

(1) hospitals, including general and specialized hospitals;

(2) nursing homes;

(3) residential treatment facilities for children and adolescents;

(4) ambulatory surgical facilities;

(5) chiropractic inpatient facilities;

(6) community residential care facilities;

(7) facilities for chemically dependent or addicted persons;

(8) end‑stage renal dialysis units;

(9) day‑care facilities for adults;

(10) any other facility operating for the diagnosis, treatment, or care of persons suffering from illness, injury or other infirmity and for which the department has adopted standards of operation by regulation~~.~~;

(11) habilitation centers for the mentally retarded or persons with related conditions~~.~~;

(12) freestanding or mobile technology~~.~~;

(13) facilities wherein abortions are performed;

(14) community‑based housing operated or contracted for operation by the South Carolina Department of Disabilities and Special Needs. Community-based housing operated or contracted for operation by the South Carolina Department of Disabilities and Special Needs that serves children shall be licensed under this article rather than Article 1, Chapter 11 of Title 63;

(15) day programs, as defined in Section 44‑20‑30(5), operated by or contracted for operation by the South Carolina Department of Disabilities and Special Needs.”

SECTION 6. Section 44‑7‑260(B) of the 1976 Code, as last amended by Act 233 of 2008, is further amended to read:

“(B) The licensing provisions of this article do not apply to:

(1) infirmaries for the exclusive use of the student bodies of privately‑owned educational institutions which maintain infirmaries;

(2) ~~community‑based housing sponsored, licensed, or certified by the South Carolina Department of Disabilities and Special Needs. The Department of Disabilities and Special Needs shall provide to the Department of Health and Environmental Control the names and locations of these facilities on a continuing basis; or~~

~~(3)~~ homeshare programs designated by the Department of Mental Health, provided that these programs do not serve more than two persons at each program location, the length of stay does not exceed fourteen consecutive days for one of the two persons, and the temporarily displaced person must be directly transferred from a homeshare program location. The Department of Mental Health shall provide to the Department of Health and Environmental Control the names and locations of these programs on a continuing basis.”

SECTION 7. Article 23, Chapter 7, Title 44 of the 1976 Code is amended to read:

“Article 23

Criminal ~~Record~~ Records Checks of Direct Care Staff

Section 44‑7‑2910. (A)(1) ~~A direct care entity employing or contracting with a direct caregiver shall conduct a criminal record check as provided in this section prior to employing or contracting with the direct caregiver.~~ To be employed by a direct care entity, a person shall first undergo a state criminal records check, supported by fingerprints by the State Law Enforcement Division and a national criminal records check, supported by fingerprints by the Federal Bureau of Investigation. The results of these criminal history background checks must be reported to the department. The South Carolina Law Enforcement Division is authorized to retain the fingerprints for certification purposes and for notification of the department regarding criminal charges. A direct care entity may consider all information revealed by ~~a~~ criminal ~~record check~~ history background checks as a factor in evaluating a direct caregiver’s application to be employed by or contract with the entity.

(2) An employment agency may not furnish employees to a direct care entity without conducting ~~a~~ criminal ~~record check~~ history background checks on each employee. An employee who works in multiple direct care settings must have ~~a~~ criminal ~~record check~~ history background checks on file at the location of the employment agency, the home office of his employer, or at the individual’s primary place of employment.

(B) For purposes of this article:

(1) ‘Direct care entity’ means:

(a) a nursing home, as defined in Section 44‑7‑130;

(b) a daycare facility for adults, as defined in Section 44‑7‑130;

(c) a home health agency, as defined in Section 44‑69‑20;

(d) a community residential care facility, as defined in Section 44‑7‑130;

(e) a residential program or a day program operated by or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.

(2) ‘Direct caregiver’ or ‘caregiver’ means:

(a) a registered nurse, licensed practical nurse, or certified nurse assistant;

(b) any other licensed professional employed by or contracting with a direct care entity who provides to patients or clients direct care or services and includes, but is not limited to, a physical, speech, occupational, or respiratory care therapist;

(c) a person who is not licensed but provides physical assistance or care to a patient or client served by a direct care entity;

(d) a person employed by or under contract with a direct care entity who works within any building housing patients or clients;

(e) a person employed by or under contract with by a direct care entity whose duties include the possibility of patient or client contact.

For purposes of this article, a direct caregiver does not include a faculty member or student enrolled in an educational program, including clinical study in a direct care entity.

~~(C)(1)~~ ~~A direct caregiver applicant shall provide verification of residency for the twelve months preceding the date of the employment application. The direct care entity shall conduct a state criminal record check if the applicant has resided in South Carolina during that twelve‑month period and can verify residency through:~~

~~(a)~~ ~~a driver’s license or identification card issued by the State of South Carolina;~~

~~(b)~~ ~~rent, mortgage, or utility receipts in the applicant’s name for a home within South Carolina;~~

~~(c)~~ ~~pay stubs in the applicant’s name from a business located in South Carolina; or~~

~~(d)~~ ~~bank records in the applicant’s name showing a deposit or checking account held in a South Carolina branch office of a bank.~~

~~(2)~~ ~~A direct care entity unable to verify South Carolina residency for a direct care applicant for the preceding twelve months shall conduct a state criminal record check on the applicant prior to employment and shall commence a federal criminal record check after employment. However, if the direct care entity can verify residency in another state for the preceding twelve months, the direct care entity may conduct only a state criminal record check in the applicant’s resident state or jurisdiction where the applicant previously resided.~~

Section 44‑7‑2920. Criminal ~~record~~ records checks required pursuant to this article must be conducted by the State Law Enforcement Division ~~or by a private business, organization, or association which conducts background checks if that entity utilizes current criminal records obtained from the State Law Enforcement Division or the Federal Bureau of Investigation to determine any criminal record. An applicant shall submit with the application one complete set of the applicant’s fingerprints on forms specified or furnished by the State Law Enforcement Division. Fingerprint cards submitted to the State Law Enforcement Division pursuant to this section must be used to facilitate a national criminal records check, as required by this section~~. The criminal ~~record check is~~ history background checks are not required to be repeated as long as the person remains employed by or continues to contract with a direct care entity; however, if a person is not employed by or is not under contract for one year or longer with a direct care entity, the criminal ~~record check~~ history background checks must be repeated before resuming employment or contracting with a direct care entity. ~~The fee charged by the Federal Bureau of Investigation, if any, for the fingerprint review~~ Costs of conducting criminal history background checks must be paid by the individual direct caregiver or the direct care entity.

Section 44‑7‑2930. A direct care entity may furnish copies of personnel records of current or former direct caregivers to another direct care entity requesting this information. Information contained in the records may include, but is not limited to, disciplinary matters and any reasons for termination. A direct care entity releasing these records pursuant to this section is presumed to be acting in good faith and is immune from civil and criminal liability which otherwise may result by reason of releasing this information. A direct care entity receiving records pursuant to this section shall conduct its own criminal ~~record check~~ history background checks pursuant to this article.

Section 44‑7‑2940. The Department of Health and Environmental Control shall verify that a direct care entity is conducting criminal ~~record~~ history background checks as required in this article before the department issues a renewal license for the direct care entity. ~~The department shall act as the channeling agency for any federal criminal record checks required by this article.~~

Section 44‑7‑2950. An individual who violates this article, or a regulation promulgated pursuant to this article, is subject to a civil fine of one hundred dollars for the first violation and five hundred dollars for each subsequent violation. A fine imposed pursuant to this section must be paid before a direct care entity’s license is renewed. Fines collected pursuant to this section must be retained by the department to help offset the costs associated with carrying out the department’s responsibilities under this article.”

SECTION 8. Section 44‑20‑225 and Article 5, Chapter 20, Title 44 of the 1976 Code are repealed.

SECTION 9. This act takes effect upon approval by the Governor.

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