**South Carolina General Assembly**

119th Session, 2011-2012

**H. 3563**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Crawford, Bedingfield, Brannon, Horne, Lowe and McCoy

Document Path: l:\council\bills\nbd\11153ac11.docx

Introduced in the House on February 2, 2011

Currently residing in the House Committee on **Judiciary**

Summary: Department of Alcohol and Other Drug Abuse Services

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/2/2011 House Introduced and read first time ([House Journal‑page 54](file:///h:\hj%20archive\2011\02-02-11.docx))

2/2/2011 House Referred to Committee on **Judiciary** ([House Journal‑page 54](file:///h:\hj%20archive\2011\02-02-11.docx))

2/8/2011 House Member(s) request name added as sponsor: McCoy

**VERSIONS OF THIS BILL**

[2/2/2011](file:///p:\pprever\2011-12\3563_20110202.docx)

**A** **BILL**

TO AMEND SECTION 1‑30‑10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEPARTMENTS IN THE EXECUTIVE BRANCH OF STATE GOVERNMENT, SO AS TO ADD THE DEPARTMENT OF HEALTH AND WELLNESS AND TO REMOVE THE DEPARTMENT OF ALCOHOL AND OTHER DRUG ABUSE SERVICES, THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, THE DEPARTMENT OF HEALTH AND HUMAN 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 TRANSFER THIS DEPARTMENT, ITS POWERS, DUTIES, AND PROGRAMS, TO THE DEPARTMENT OF HEALTH AND WELLNESS, DIVISION OF ALCOHOL AND OTHER DRUG ABUSE SERVICES; TO AMEND SECTION 1‑30‑35, RELATING TO AGENCIES PREVIOUSLY TRANSFERRED TO THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, SO AS TO TRANSFER THIS DEPARTMENT, ITS POWERS, DUTIES, AND PROGRAMS, TO THE DEPARTMENT OF HEALTH AND WELLNESS, DIVISION OF DISABILITIES AND SPECIAL NEEDS; TO AMEND SECTION 1‑30‑50, RELATING TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, SO AS TO TRANSFER THIS DEPARTMENT, ITS POWERS, DUTIES, AND PROGRAMS, TO THE DEPARTMENT OF HEALTH AND WELLNESS, DIVISION OF HEALTH AND HUMAN SERVICES; TO AMEND SECTION 1‑30‑70, RELATING TO AGENCIES PREVIOUSLY TRANSFERRED TO THE DEPARTMENT OF MENTAL HEALTH, SO AS TO TRANSFER THIS DEPARTMENT, ITS POWERS, DUTIES, AND PROGRAMS, TO THE DEPARTMENT OF HEALTH AND WELLNESS, DIVISION OF MENTAL HEALTH; BY ADDING SECTION 1‑30‑72 SO AS TO PLACE THE COMMISSION FOR THE BLIND, THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, THE DEPARTMENT OF MENTAL HEALTH, THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, AND THE DEPARTMENT OF ALCOHOL AND OTHER DRUG ABUSE SERVICES UNDER THE DEPARTMENT OF HEALTH AND WELLNESS; BY ADDING CHAPTER 8 TO TITLE 44 SO AS TO CREATE THE DEPARTMENT OF HEALTH AND WELLNESS COMPRISED OF THE DIVISION FOR THE BLIND, THE DIVISION OF HEALTH AND HUMAN SERVICES, THE DIVISION OF MENTAL HEALTH, THE DIVISION OF DISABILITIES AND SPECIAL NEEDS, AND THE DIVISION OF ALCOHOL AND OTHER DRUG ABUSE SERVICES AND TO PROVIDE FOR THE DEPARTMENT’S POWERS AND DUTIES, INCLUDING, AMONG OTHER THINGS, DEVELOPING AND IMPLEMENTING A STATE PLAN FOR THE COORDINATED CARE AND UNIFIED DELIVERY OF HEALTH AND WELLNESS SERVICES AND OVERSEEING THE ADMINISTRATION AND DELIVERY OF HEALTH AND WELLNESS SERVICES; TO AMEND CHAPTER 25, TITLE 43, RELATING, AMONG OTHER THINGS, TO THE GOVERNANCE, POWERS, DUTIES, AND PROGRAMS, OF THE COMMISSION FOR THE BLIND, SO AS TO PROVIDE THAT THE COMMISSION FOR THE BLIND BECOMES AN ADVISORY BOARD TO THE DIVISION FOR THE BLIND AND TO CONFORM THIS CHAPTER TO THE PROVISIONS OF THIS ACT; TO AMEND CHAPTER 6, TITLE 44, RELATING TO, AMONG OTHER THINGS, THE GOVERNANCE, POWERS, DUTIES, AND PROGRAMS, OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, SO AS TO CONFORM THIS CHAPTER TO THE PROVISIONS OF THIS ACT; TO AMEND CHAPTERS 9, 13, AND 15 OF TITLE 44, RELATING, AMONG OTHER THINGS, TO THE GOVERNANCE, POWERS, DUTIES, AND PROGRAMS, OF THE DEPARTMENT OF MENTAL HEALTH, SO AS TO PROVIDE THAT THE SOUTH CAROLINA MENTAL HEALTH COMMISSION BECOMES AN ADVISORY BOARD TO THE DIVISION OF MENTAL HEALTH AND TO CONFORM THESE CHAPTERS TO THE PROVISIONS OF THIS ACT; TO AMEND CHAPTERS 20 AND 21, TITLE 44, RELATING TO, AMONG OTHER THINGS, THE GOVERNANCE, POWERS, DUTIES, AND PROGRAMS, OF THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, SO AS TO PROVIDE THAT THE BOARD OF THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS BECOMES AN ADVISORY BOARD TO THE DIVISION OF DISABILITIES AND SPECIAL NEEDS AND TO CONFORM THESE CHAPTERS TO THE PROVISIONS OF THIS ACT; TO AMEND CHAPTER 49, TITLE 44, RELATING TO, AMONG OTHER THINGS, THE GOVERNANCE, POWERS, DUTIES, AND PROGRAMS, OF THE DEPARTMENT OF ALCOHOL AND OTHER DRUG ABUSE SERVICES, SO AS TO CONFORM THIS CHAPTER TO THE PROVISIONS OF THIS ACT; TO PROVIDE TRANSFER AND TRANSITION PROVISIONS, AND TO PROVIDE THAT THIS ACT TAKES EFFECT JULY 1, 2011.

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

SECTION 1. Section 1‑30‑10(A) of the 1976 Code, as last amended by Act 146 of 2010, is further 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~~ Health and Wellness ~~Services~~

3. Department of Commerce

4. Department of Corrections

5. ~~Department of Disabilities and Special Needs~~ Reserved

6. Department of Education

7. Department of Health and Environmental Control

8. ~~Department of Health and Human Services~~ Reserved

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

20. Department of Employment and Workforce”

SECTION 2. 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, 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 Health and Wellness, 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 Health and Wellness, Division of Alcohol and Other Drug Abuse Services.”

SECTION 3. Section 1‑30‑35 of the 1976 Code is amended to read:

“Section 1‑30‑35. (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 Disabilities and Special Needs to be initially divided into divisions for Mental Retardation, Head and Spinal Cord Injury, and Autism; provided, however, that the board of the former Department of Mental Retardation as constituted on June 30, 1993, and thereafter, under the provisions of Section 44‑19‑10, et seq., shall be the governing authority for the department.

~~(A)~~(1) Department of Mental Health Autism programs, formerly provided for at Section 44‑9‑10, et seq.;

~~(B)~~(2) Head and Spinal Cord Injury Information System, formerly provided for at Section 44‑38‑10, et seq.;

~~(C)~~(3) Department of Mental Retardation, formerly provided for at Section 44‑19‑10, et seq.

(B) Effective on July 1, 2011, the Division of Disabilities and Special Needs, 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 Health and Wellness, Division Disabilities and Special Needs, and all powers, duties, obligations, and responsibilities of the Department of Disabilities and Special Needs are devolved upon the Department of Health and Wellness, Division of Disabilities and Special Needs.”

SECTION 4. Section 1‑30‑50 of the 1976 Code is amended to read:

“Section 1‑30‑50. (A) Effective on July 1, 1995, 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 Health and Human Services:

Department of Health and Human Services Finance Commission, formerly provided for at Section 44‑6‑10, et seq.

(B) Effective on July 1, 2011, the Department of Health and Human 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 Health and Wellness, Division of Health and Human Services, and all powers, duties, obligations, and responsibilities of the Department of Health and Human Services are devolved upon the Department of Health and Wellness, Division of Health and Human Services.”

SECTION 5. 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, 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 Health and Wellness, Division of Mental Health, and all powers, duties, obligations, and responsibilities of the Department of Mental Health are devolved upon the Department of Health and Wellness, Division of Mental Health.”

SECTION 6. Chapter 30, Title 1 of the 1976 Code is amended by adding:

“Section 1‑30‑72. Effective on July 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 Health and Wellness:

(1) Commission for the Blind, formerly provided for at Section 43‑25‑10, et seq.;

(2) Department of Health and Human Services, formerly provided for at Section 44‑6‑5, et seq.;

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

(4) Department of Disabilities and Special Needs, formerly provided for at Section 44‑20‑10, et seq.; and

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

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

“CHAPTER 58

Department of Health and Wellness

Section 44‑58‑10.(A) There is created the Department of Health and Wellness comprised of the Division for the Blind, the Division of Health and Human Services, the Division of Mental Health, the Division of Disabilities and Special Needs, and the Division of Alcohol and Other Drug Abuse Services.

(B) The department shall:

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

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

Section 44‑58‑20. The Governor shall appoint and remove the Secretary of the Department of Health and Wellness, who is the chief executive of the department. Subject to the supervision and control of the Governor, the secretary shall administer the policies and regulations established by the department. The secretary must be a person of proven executive and administrative ability with appropriate education and substantial experience.

Section 44‑58‑30. The secretary has the authority to create and appoint advisory, standing, or ad hoc committees in his discretion to assist the department in particular areas of public concern or professional expertise as the secretary considers appropriate. These committees shall serve at the pleasure of the secretary, 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 44‑58‑35. The Department of Health and Wellness shall provide a central care management system for health and wellness services for the residents of this State.

Section 44‑58‑40. (A) The department, in consultation with division directors, 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.

Section 44‑58‑50. The secretary 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 secretary 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 44‑58‑60. (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 health and wellness 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 44‑58‑90. The secretary of the department shall submit an annual report to the Governor and members of the General Assembly setting forth its activities, the financial affairs, and the state and condition of the facilities used by the divisions in the department, or by entities with whom a division contracts to provide services to clients of the department, and other information as the Governor and members of the General Assembly may request to be kept apprised of the operations of the department. The report shall include recommendations that, in the opinion of the secretary of the department, will improve programs for the blind, programs for persons with disabilities and special needs, mental health programs, and alcohol and other drug abuse programs.

Section 44‑58‑100. All departments, officers, agencies, and employees of the State shall cooperate with the Department of Health And Wellness 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 25, Title 43 of the 1976 Code is amended to read:

“CHAPTER 25

~~Commission~~ Division for the Blind,

Department of Health and Wellness

Section 43‑25‑10. (A) There is ~~hereby~~ created in the Department of Health and Wellness, and under the administration and supervision of the department, the ~~South Carolina Commission~~ Division for the Blind.

(B) The ~~Commission~~ Division for the Blind must be supported by an advisory board ~~shall consist~~ consisting of seven members, one from each of the six Congressional Districts and one from the State at large, of whom three shall have a visual acuity not to exceed 20/200. The Governor shall~~, with the advice and consent of the Senate,~~ appoint the members of the ~~Commission~~ advisory board for terms of four years and until their successors are appointed and qualify. All vacancies shall be filled in the manner of the original appointment for the unexpired portion of the term only. The members of the ~~Commission~~ advisory board shall elect one of its members as chairman for a term of two years or until his successor has been elected. The chairman shall preside at the regular meetings of the ~~Commission~~ advisory board to be held at least once each month. The chairman may call a meeting when he deems it necessary to be held at a time to be determined by the ~~Commission~~ advisory board. The ~~Commission~~ secretary of the department shall ~~appoint a commissioner~~ ~~and such other officers as it deems necessary, none of whom shall be a member of the Commission,~~ employ a director of the division and shall fix the compensation and prescribe the duties of ~~such appointees~~ the director. The members of the ~~Commission~~ advisory board shall receive no salary but shall be allowed the usual mileage, subsistence and per diem as authorized by law for commissions, committees and boards.

On July 1, 2011, the Commission for the Blind becomes the Advisory Board to the Division for the Blind, Department of Health and Wellness. Commissioners serving on July 1, 2011, continue to serve as members of the advisory board until their terms expire and their successors are appointed and qualify.

Section 43‑25‑20. For purposes of this chapter, ‘blindness’ and ‘severe visual disability’ are the criteria for acceptance for services for persons who qualify.

(1) ‘Blindness’ is defined as that level of central visual acuity, 20/200 or less in the better eye with correcting glasses, or a disqualifying field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than twenty degrees and which is sufficient to incapacitate him for self‑support, or an eighty per cent loss of visual efficiency resulting from visual impairment in more than one function of the eye, including visual acuity for distance and near, visual fields, ocular, mobility, and other ocular functions and disturbances.

(2) ‘Severe visual disability’ is defined as any progressive pathological condition of the eye or eyes supported by acceptable eye examination, which in the opinion of the examiner may or will result in legal blindness within twenty‑four months.

Section 43‑25‑30. The ~~Commission~~ division, under the overall administration of the department, shall:

(1) Promulgate rules and regulations as may be necessary to carry out the provisions of this chapter.

(2) Apply for, receive and expend moneys from all governmental agencies, both State and Federal; and accept gifts, grants, donations, devises and bequests made for providing aid to the visually handicapped, including expenses of administration. All such funds shall be paid into the State Treasury.

(3) Submit to the ~~Governor~~ secretary of the department and publish an annual report showing the total amount of money disbursed, the total number of blind and visually handicapped persons who received services, and such other information as may be deemed advisable.

(4) Maintain a complete register of persons whose vision, with correcting lenses, does not exceed 20/200 which shall also include the conditions, cause of loss of sight, capacity for educational and industrial training of each, and other pertinent facts.

(5) Maintain bureaus of information and industrial aid to assist the visually handicapped in finding employment and to teach them industries which may be followed in their homes, and to assist them in whatever manner may seem advisable ~~to the Commission~~ in disposing of the products of their home industry.

(6) Make inquiries concerning the cause of loss of sight, learn what proportion of these cases are preventable and inaugurate and cooperate with the State in any measure as may seem wise.

(7) Cooperate with the State Department of Health and Environmental Control in the adoption and enforcement of proper preventive measures.

(8) Establish, equip and maintain a center for vocational, industrial and other training and employ qualified instructors. The center shall provide for orientation and adjustment for the visually handicapped. Training in such centers shall be limited to persons deemed eligible by the ~~Commission~~ division.

(9) Supervise and control all concession stands established and operated formerly by the State Department of Social Services and all concession stands established by the ~~Commission~~ division.

(10) Have the authority to enter into contracts with owners of private property for the purpose of installing concession stands which shall be under the control of the ~~Commission~~ division.

(11) Establish, supervise and render totally operative and effective prevention of loss of sight programs using such facilities in the State as the ~~Commission~~ division may deem necessary including a mobile ophthalmological laboratory and office.

(12) Assist in the furtherance of the purposes of Sections 44‑43‑110 to 44‑43‑160 and 44‑7‑10.

Section 43‑25‑40. The ~~Commission~~ division shall designate the procedure to be followed and shall establish a register of ophthalmologists from which the applicant may select one to conduct a competent medical examination for determining the extent of his visual handicap. The ~~Commission~~ division shall pay for such examination.

Section 43‑25‑50. The ~~Commission~~ division may arrange for the examination of the eyes of visually handicapped persons and may secure and pay for medical and surgical treatment for such persons whenever in the judgment of an ophthalmologist the eyes of such person may be benefited thereby. Whenever, upon examination by an ophthalmologist any person is found to have no vision or vision with glasses which is so defective as to prevent the performance of ordinary activities for which eyesight is essential, such examining ophthalmologist shall, within thirty days, report the results of the examination to the ~~Commission~~ division.

Section 43‑25‑60. The ~~Commission~~ division may employ qualified itinerant teachers to assist teachers in public or private schools who are responsible for the teaching of visually handicapped students. The itinerant teacher shall assist the public or private school teacher by providing methods and materials for teaching such student. The State Department of Education shall report to the ~~Commission~~ division the schools having visually handicapped students. All principals or heads of private schools shall report to the ~~Commission~~ division the names of visually handicapped students in attendance.

Section 43‑25‑70. The ~~Commission~~ division is empowered to operate concession stands in any State, county or municipal building and in any State park and shall negotiate with the proper agency or governing body regarding the establishment of a concession on such property. In buildings where a stand existed on May 25, 1940, the person who was then operating such a stand shall not be removed, but when such operator ceases to operate such stand the concession for further operation shall be granted to the ~~Commission~~ division. No rental or other charge shall be required by the ~~Commission~~ division for the granting of an operation permit. Any rental payment or commission charged by the owner of private property for the location of such a stand shall be collected from the operator of the stand by the ~~Commission~~ division. No charge shall be made for the installation or operation of a concession stand or for the maintenance of equipment of a concession stand regardless of location.

Section 43‑25‑80. Any sums appropriated by the General Assembly for treatment and training of the visually handicapped shall be kept by the State Treasurer in a fund for the treatment and training of the visually handicapped and shall be used to carry out the particular purpose assigned to it.

Section 43‑25‑90. A person aggrieved by an action of the ~~commission~~ division must be granted, upon request, a hearing before a hearing officer assigned by the ~~commission~~ division. The hearing officer may not be a member of the ~~commission~~ division. The hearing officer has the authority to conduct hearings, to issue subpoenas requiring the attendance of witnesses and the production of records and other documents, to administer oaths and to take testimony. An appeal may be taken from the decision of the hearing officer to the ~~Commission for the Blind. The commission shall hold a hearing on the matter which must be attended by at least three members~~ director of the division. An appeal may be taken from the decision of the ~~commission~~ director to the Administrative Law Court ~~as provided in Sections 1‑23‑380(B) and 1‑23‑600(D)~~ pursuant to the Administrative Procedures Act. The appellant, within thirty days after notice of the decision of the ~~commission~~ director, shall serve notice of appeal upon the ~~chairman of the commission~~ director, stating grounds upon which the appeal is founded and file the notice with the Administrative Law Court in accordance with its rules of procedure. The appeal acts as a supersedeas until it is finally determined.

Section 43‑25‑100. The powers and duties of the Division for the Blind of the State Department of Social Services including, but not limited to, the distribution of talking book machines, vocational rehabilitation and other special services for the visually handicapped except those duties and responsibilities surrounding the administration of the State Federal Program of Aid to the Needy Blind shall be devolved upon the S~~outh Carolina Commission~~ Division for the Blind, Department of Health and Wellness.”

SECTION 9. Chapter 6, Title 44 of the 1976 Code is amended to read:

“CHAPTER 6

~~Department~~ Division of Health and Human Services,

Department of Health and Wellness

Article 1

General Provisions

Section 44‑6‑5. As used in this chapter:

(1) ‘Department’ means the ~~State~~ Department of Health and ~~Human Services~~ Wellness.

(2) ‘Division’ means the Division of Health and Human Services, Department of Health and Wellness.

~~(2)~~(3) ‘Division of Research and Statistical Services’ means the Division of Research and Statistical Services of the State Budget and Control Board.

~~(3)~~(4) ‘Costs of medical education’ means the direct and indirect teaching costs as defined under Medicare.

~~(4)~~(5) ‘Market basket index’ means the index used by the federal government on January 1, 1986, to measure the inflation in hospital input prices for Medicare reimbursement. If that measure ceases to be calculated in the same manner, the market basket index must be developed and regulations must be promulgated by the ~~commission~~ division using substantially the same methodology as the federal market basket uses on January 1, 1986. Prior to submitting the regulations concerning the index to the General Assembly for approval pursuant to the Administrative Procedures Act, the ~~department~~ division shall submit them to the Health Care Planning and Oversight Committee for review.

~~(5)~~(6) ‘Medically indigent’ means:

(a) all persons whose gross family income and size falls at or below the federal Community Service Administration guidelines and who meet certain qualifying criteria regarding real property allowance, qualifying services, residency requirements, and other sponsorship, and migrant or seasonal farm workers who have no established domicile in any state; and

(b) all persons whose gross family income and size falls between one hundred percent and two hundred percent of the Community Service Administration guidelines who meet certain other qualifying criteria regarding real property allowance, qualifying services, residency requirements, and other sponsorship and whose medical bill is sufficiently large in relation to their income and resources to preclude full payment. For the purposes of this definition, the qualifying criteria for real property allowance shall permit ownership of up to fifty acres of farmland upon which the family has resided for at least twenty‑five years.

~~(6)~~(7) ‘Net inpatient charges’ means the total gross inpatient charges, minus the unreimbursed cost of medical education and the unreimbursed cost of providing medical care to medically indigent persons. The cost of care provided by a hospital to meet its Hill‑Burton obligation is not considered an unreimbursed cost of providing medical care to medically indigent persons.

~~(7)~~(8) ‘South Carolina growth index’ means the percentage points added to the market basket index to adjust for the South Carolina specific experience. The Health Care Planning and Oversight Committee shall complete a study which identifies and quantifies those elements which should be included in the growth index. The elements may include, but are not limited to: population increases, aging of the population, changes in the type and intensity of hospital services, technological advances, the cost of hospital care in South Carolina relative to the rest of the nation, and needed improvements in the health status of state residents. Based on the study, the ~~department~~ division shall develop and promulgate regulations for the annual computation of the growth index. Prior to submitting the regulations concerning the index to the General Assembly for approval pursuant to the Administrative Procedures Act, the ~~department~~ division shall submit them to the Health Care Planning and Oversight Committee for review. Until a formula for computing the South Carolina growth index is promulgated, the annual index must be six and six‑tenths percent which is equal to the average percentage difference between South Carolina hospital expenditures and the federal market basket index for the previous ten years.

~~(8)~~(9) ‘State resident’ means a person who is domiciled in South Carolina. A domicile once established is lost or changes only when one moves to a new locality with the intention of abandoning his old domicile and intends to live permanently or indefinitely in the new locale.

~~(9)~~(10) ‘Target rate of increase’ means the federal market basket index as modified by the South Carolina growth index.

~~(10)~~(11) ‘General hospital’ means any hospital licensed as a general hospital by the Department of Health and Environmental Control.

Section 44‑6‑10. There is created in the Department of Health and Wellness, and under the administration and supervision of the department, the ~~State Department~~ Division of Health and Human Services which shall be headed by a director ~~appointed~~ employed by the ~~Governor, upon the advice and consent of the Senate~~ secretary of the department. The director serves at the will of the secretary and is subject to removal by the ~~Governor pursuant to the provisions of Section 1‑3‑240~~ secretary.

Section 44‑6‑30. The ~~department~~ division, under the overall administration of the department, shall:

(1) administer Title XIX of the Social Security Act (Medicaid), including the Early Periodic Screening, Diagnostic and Treatment Program, and the Community Long‑Term Care System;

(2) be designated as the South Carolina Center for Health Statistics to operate the Cooperative Health Statistics Program pursuant to the Public Health Services Act;

(3) be prohibited from engaging in the delivery of services.

Section 44‑6‑40. For all health and human services interagency programs provided for in this chapter, the ~~department~~ division, under the overall administration of the department, shall have the following duties:

(1) Prepare and approve state and federal plans prior to submission to the appropriate authority as required by law for final approval or for state or federal funding, or both.

Such plans shall be guided by the goal of delivering services to citizens and administering plans in the most effective and efficient ways possible.

(2) Compile and maintain in a unified, concise, and orderly form information concerning programs provided for in this chapter.

(3) Continuously review and evaluate programs to determine the extent to which they:

(a) meet fiscal, administrative, and program objectives; and

(b) are being operated cost effectively.

(4) Evaluate plans and programs in terms of their compatibility with state objectives and priorities giving specific attention to areas outlined in Section 44‑6‑70.

(5) Formulate for consideration and promulgation criteria, standards, and procedures that ensure assigned programs are administered effectively, equitably, and economically and in accordance with statewide policies and priorities.

(6) Inform the Governor and the General Assembly as to the effectiveness of the criteria, standards, and procedures promulgated pursuant to item (5) of this section.

(7) Develop in conjunction with other state agencies an information system to provide data on comparative client and fiscal information needed for programs.

(8) Develop a mechanism for local planning.

(9) Obtain from participating state agencies information considered necessary by the ~~department~~ division to perform duties assigned to the ~~department~~ division.

Section 44‑6‑45. The ~~State Department of Health and Human Services~~ division may collect administrative fees associated with accounts receivable for those individuals or entities which negotiate repayment to the agency. The administrative fee may not exceed one and one‑half percent of the amounts negotiated and must be remitted to the State Treasurer and deposited to the credit of the general fund of the State.

Section 44‑6‑50. In carrying out the duties provided for in Section 44‑6‑30 the ~~department~~ division shall:

(1) Contract for health and human services eligibility determination with performance standards regarding quality control as required by law or regulation.

(2) Contract for operation of certified Medicaid management information claims processing system. For the first year of its operation it shall contract for such system with the Department of Social Services.

(3) Contract for other operational components of programs administered under this chapter as considered appropriate.

(4) Monitor and evaluate all contractual services authorized pursuant to this chapter to assure effective performance. Any contract entered into under the provisions of this chapter must be in accordance with the provisions of the South Carolina Consolidated Procurement Code.

(5) Establish a procedure whereby inquiries from members of the General Assembly concerning the department’s work and responsibility shall be answered as expeditiously and definitely as possible.

Section 44‑6‑70. A state plan must be prepared by the ~~department~~ division for each program assigned to it and the ~~department~~ division ~~must~~ also must prepare resource allocation recommendations based on such plans. The resource allocation recommendations must be approved pursuant to state and federal law. The state plans must address state policy and priority areas of service with specific attention to the following objectives:

(a) Prevention measures as addressed in health and human services programs.

(b) Achievement of a balanced health care delivery system assuring that regulations, coverage, and reimbursement policies assure that while the most appropriate care is given, tailored to the client’s needs, it is delivered in the most cost‑effective manner.

(c) Simplification of paperwork requirements.

(d) Achievement of optimum cost effectiveness in administration and delivery of services provided quality of care is assured.

(e) Improvement of effectiveness of third party reimbursement efforts.

(f) Assurance of maximum utilization of private and nonprofit providers in administration and service delivery systems, provided quality of care is assured.

(g) Encouragement of structured volunteer programs in administration and service delivery.

Section 44‑6‑80. The ~~department~~ division must submit to the Governor, the State Budget and Control Board, and the General Assembly an annual report concerning the work of the ~~department~~ division including details on improvements in the cost effectiveness achieved since the enactment of this chapter and must recommend changes for further improvements.

Interim reports must be submitted as needed to advise the ~~Governor and the General Assembly~~ secretary of substantive issues.

Section 44‑6‑90. The ~~department~~ division may promulgate regulations to carry out its duties.

All state and local agencies whose responsibilities include administration or delivery of services which are covered by this chapter shall cooperate with the ~~department~~ division and comply with its regulations.

Section 44‑6‑100. ~~The department~~ Division employees shall have such general duties and receive such compensation as determined by the director. The director shall be responsible for administration of state personnel policies and general ~~department~~ division personnel policies. The director shall have sole authority to employ and discharge employees subject to such personnel policies and funding available for that purpose.

In all instances, the director shall serve as the chief administrative officer of the ~~department~~ division and shall have the responsibility of executing policies, directives, and actions of the ~~department~~ division either personally or by issuing appropriate directives to the employees.

The goal of the provisions of this section is to ensure that the ~~department’s~~ division’s business is conducted according to sound administrative practice, without unnecessary interference with its internal affairs. Public officers and employees shall be guided by this goal and comply with these provisions.

Article 2

Medically Indigent Assistance Act

Section 44‑6‑132. The General Assembly finds that:

(1) There are citizens who cannot afford to pay for hospital care because of inadequate financial resources or catastrophic medical expenses.

(2) Rising health care costs and the growth of the medically indigent population have increased the strains on the health care system with a growing burden on the hospital industry, health insurance companies, and paying patients.

(3) This burden has affected businesses, which are large purchasers of health care services through employee insurance benefits, and taxpayers in counties which support public hospitals, and it causes the cost of services provided to paying patients to increase in a manner unrelated to the actual cost of services delivered to them.

(4) Hospitals which provide the bulk of unreimbursed services cannot compete economically with hospitals which provide relatively little care to indigent persons.

(5) Because of the complexity of the health care system, any effort to resolve the problem of paying for care for medically indigent persons must be multifaceted and shall include at least four general principles:

(a) Funds must be made available to assure continued access to quality health care for medically indigent patients.

(b) Cost containment measures and competitive incentives must be placed into the health care system along with the additional funds.

(c) The cost of providing indigent care must be equitably borne by the State, the counties, and the providers of care.

(d) State residents must be guaranteed access to emergency medical care regardless of their ability to pay or county of residence.

It is the intent of the General Assembly to:

(1) assure care for the largest possible number of its medically indigent citizens within funds available by:

(a) expanding the number of persons eligible for Medicaid services, using additional state and county funds to take advantage of matching federal funds;

(b) creating a fund based on provider and local government contributions to provide medical assistance to those citizens who do not qualify for Medicaid or any other government assistance and who do not have the means to pay for hospital care; and

(c) mandating access to emergency medical care for all state residents in need of the care;

(2) Provide incentives for cost containment to providers of care to indigent patients by implementing a prospective payment system in the Medicaid and Medically Indigent Assistance Fund programs;

(3) monitor efforts to foster competition in the health care market place while being prepared to make adjustments in the system through regulatory intervention if needed;

(4) promote market reforms, as the single largest employer in the State, by structuring its health insurance program to encourage healthy lifestyles and prudent use of medical services; and

(5) reduce where possible or maintain the current rate schedules of hospitals to keep costs from escalating.

Section 44‑6‑135. The following sections shall be known and may be cited as the ‘South Carolina Medically Indigent Assistance Act’.

Section 44‑6‑140. (A) To provide cost containment incentives for providers of care to Medicaid recipients, the ~~department~~ division shall convert the Medicaid hospital reimbursement system from a retrospective payment system to a prospective payment system by October 1, 1985. The prospective payment system includes, at a minimum, the following elements:

(1) a maximum allowable payment amount established for individual hospital products, services, patient diagnoses, patient day, patient admission, or per patient, or any combination thereof. This payment must be based on hospital costs rather than hospital charges and must be adjusted at least every two years to reflect the most recent audited cost data available. The ~~department~~ division shall set by regulation those circumstances under which a hospital may seek an exception. The maximum allowable payment amount must be weighted to allow for the costs of medical education and primary, secondary, or tertiary care considerations;

(2) payment on a timely basis to the hospital by the ~~commission~~ division or patient or both, of the maximum allowable payment amount determined by the ~~commission~~ division; and

(3) acceptance by the hospital of the maximum payment amount as payment in full, which includes any deductible or copayment provided for in the state Medicaid program.

(B) The ~~department~~ division shall at the same time implement other cost containment measures which include, but are not limited to:

(1) utilization reviews for appropriateness of treatment and length of stay;

(2) preadmission certification of nonemergency admissions;

(3) mandatory outpatient surgery in appropriate cases;

(4) a second surgical opinion pilot study; and

(5) procedures for encouraging the use of outpatient services.

The ~~department~~ division, to the fullest extent possible, shall utilize information required in this subsection in the form hospitals are presently submitting the information to other governmental agencies or in the form hospitals are presently utilizing the information within the hospital.

Section 44‑6‑146. (A) Every fiscal year the State Treasurer shall withhold from the portion of the Local Government Fund allotted to the counties a sum equal to fifty cents per capita based on the population of the several counties as shown by the latest official census of the United States. The money withheld by the State Treasurer must be placed to the credit of the ~~commission~~ division and used to provide Title XIX (Medicaid) services.

(B) County governments are assessed an additional thirteen million dollars annually for use as matching funds for Medicaid services. Of these funds, seven and a half million dollars must be deposited into the Medicaid Expansion Fund created by Section 44‑6‑155.

The ~~department~~ division shall assess each county its share of the thirteen million dollars based on a formula which equally weighs the following factors in each county: property value, personal income, net taxable sales, and the previous two years of claims against the medically indigent assistance fund or program against county residents. If a trust fund has been established in a county to fund indigent care in the county, contributions on behalf of the county must be credited against the county assessment.

(C) Within thirty days of the first day of the state’s fiscal year, and on the first day of the other three quarters, each county shall remit one‑fourth of its total assessment to the ~~department~~ division. The ~~department~~ division shall allow a brief grace period during which late payments are not subject to interest or penalty.

Any county which fails to pay its assessment within the time allotted must pay, in addition to the assessment, a penalty of five percent of the assessment and interest at one and one‑half percent per month from the date the assessment was originally due to the date of the payment of the assessment and penalty. The ~~department~~ division may in its discretion waive or reduce the penalty or interest or any part thereof.

Section 44‑6‑150. (A) There is created the South Carolina Medically Indigent Assistance Program administered by the ~~department~~ division. The program is authorized to sponsor inpatient hospital care for which hospitals shall receive no reimbursement. A general hospital equipped to provide the necessary treatment shall:

(1) admit a patient sponsored by the program; and

(2) accept the transfer of a patient sponsored by the program from a hospital which is not equipped to provide the necessary treatment.

In addition to or in lieu of an action taken affecting the license of the hospital, when it is established that an officer, employee, or member of the hospital medical staff has violated this section, the South Carolina Department of Health and Environmental Control shall require the hospital to pay a civil penalty of up to ten thousand dollars.

(B) Hospital charges for patients sponsored by the Medically Indigent Assistance Program must be reported to the Division of Research and Statistical Services pursuant to Section 44‑6‑170.

(C) In administering the Medically Indigent Assistance Program, the ~~department~~ Division of Health and Human Services shall determine:

(1) the method of administration including the specific procedures and materials to be used statewide in determining eligibility for the program;

(a) In a nonemergency, the patient shall submit the necessary documentation to the patient’s county of residence or its designee to determine eligibility before admission to the hospital.

(b) In an emergency, the hospital shall admit the patient pursuant to Section 44‑7‑260. If a hospital holds the patient financially responsible for all or a portion of the inpatient hospital bill, and if the hospital determines that the patient could be eligible for the program, it shall forward the necessary documentation along with the patient’s bill and other supporting information to the patient’s county of residence or its designee for processing. A county may request that all hospital bills incurred by its residents sponsored by the program be submitted to the county or its designee for review.

(2) the population to be served, including eligibility criteria based on family income and resources. Eligibility is determined on an episodic basis for a given spell of illness. Eligibility criteria must be uniform statewide and may include only those persons who meet the program’s definition of medically indigent;

(3) the health care services covered;

(4) a process by which an eligibility determination can be contested and appealed; and

(5) the program may not sponsor a patient until all other means of paying for or providing services have been exhausted. This includes Medicaid, Medicare, health insurance, employee benefit plans, or other persons or agencies required by law to provide medical care for the person. Hospitals may require eligible patients whose gross family income is between one hundred percent and two hundred percent of the federal poverty guidelines, to make a copayment based on a sliding payment scale developed by the ~~department~~ division based on income and family size.

(D) Nothing in this section may be construed as relieving hospitals of their Hill‑Burton obligation to provide unreimbursed medical care to indigent persons.

Section 44‑6‑155. (A) There is created the Medicaid Expansion Fund into which must be deposited funds:

(1) collected pursuant to Section 44‑6‑146;

(2) collected pursuant to Section 12‑23‑810; and

(3) appropriated pursuant to subsection (B).

This fund must be separate and distinct from the general fund. These funds are supplementary and may not be used to replace general funds appropriated by the General Assembly or other funds used to support Medicaid. These funds and the programs specified in subsection (C) are exempt from any budgetary cuts, reductions, or eliminations caused by the lack of general fund revenues. Earnings on investments from this fund must remain part of the separate fund and must not be deposited in the general fund.

(B) The ~~department~~ division shall estimate the amount of federal matching funds which will be spent in the State during the next fiscal year due to the changes in Medicaid authorized by subsection (C). Based on this estimate, the General Assembly shall appropriate to the Medicaid Expansion Fund state funds equal to the additional state revenue generated by the expenditure of these federal funds.

(C) Monies in the fund must be used to:

(1) provide Medicaid coverage to pregnant women and infants with family incomes above one hundred percent but below one hundred eighty‑five percent of the federal poverty guidelines;

(2) provide Medicaid coverage to children aged one through six with family income below federal poverty guidelines;

(3) provide Medicaid coverage to aged and disabled persons with family income below federal poverty guidelines;

(4) [reserved];

(5) [reserved];

(6) [reserved];

(7) provide up to two hundred forty thousand dollars to reimburse the Office of Research and Statistics of the State Budget and Control Board and hospitals for the cost of collecting and reporting data pursuant to Section 44‑6‑170;

(8) [reserved].

(D) Any funds not expended for the purposes specified in subsection (C) during a given year are carried forward to the succeeding year for the same purposes.

Section 44‑6‑160. (A) By August first of each year, the ~~department~~ division shall compute and publish the annual target rate of increase for net inpatient charges for all general hospitals in the State. The target rate of increase will be established for a twelve‑month period from October first through September thirtieth of the following year. Once established, the target rate of increase must not be amended during the year except as provided in subsection (B) of this section. The ~~department~~ division shall monitor the performance of the hospital industry to contain costs, specifically as evidenced by the annual rate of growth of net inpatient charges. If the ~~department~~ division determines that the annual rate of increase in net inpatient charges for the hospital industry has exceeded the target rate of increase established for that year, the ~~department~~ division shall appoint an expert panel for the purpose of analyzing the financial reports of each hospital whose net inpatient charges exceeded the target rate of increase. The panel’s review shall take into consideration service volume, intensity of care, and new services or facilities. The panel shall consist of at least three members who have broad experience, training, and education in the field of health economics or health care finance. The panel shall report its findings and recommendations, including recommended penalties or sanctions, to the ~~department~~ division. The ~~department~~ division shall decide what, if any, penalty it will impose within three months of receiving all necessary data.

(B) The ~~department~~ division may impose penalties or sanctions it considers appropriate. Penalties must be prospective. Financial penalties are limited to a reduction in a hospital’s target rate of increase for the following year. Any reduction in a hospital’s target rate of increase for the next year must not be greater than the amount the hospital exceeded the industry’s target rate of increase for the previous year. Once a hospital is sanctioned, it must be reviewed annually until it succeeds in remaining below its target rate of increase.

Section 44‑6‑170. (A) As used in this section:

(1) ‘Office’ means the Office of Research and Statistics of the State Budget and Control Board.

(2) ‘Council’ means the Data Oversight Council.

(3) ‘Committee’ means the Joint Legislative Health Care Planning and Oversight Committee.

(B) There is established the Data Oversight Council comprised of:

(1) one hospital administrator;

(2) the chief executive officer or designee of the South Carolina Hospital Association;

(3) one physician;

(4) the chief executive officer or designee of the South Carolina Medical Association;

(5) one representative of major third party health care payers;

(6) one representative of the managed health care industry;

(7) one nursing home administrator;

(8) three representatives of nonhealth care‑related businesses;

(9) one representative of a nonhealth care‑related business of less than one hundred employees;

(10) the executive vice president or designee of the South Carolina Chamber of Commerce;

(11) a member of the Governor’s office staff;

(12) a representative from the Human Services Coordinating Council;

(13) the director or his designee of the South Carolina Department of Health and Environmental Control;

(14) the ~~executive~~ director or his designee of the ~~State Department~~ Division of Health and Human Services, Department of Health and Wellness;

(15) the chairman or his designee of the State Health Planning Committee created pursuant to Section 44‑7‑180.

The members enumerated in items (1) through (10) must be appointed by the Governor for three‑year terms and until their successors are appointed and qualify; the remaining members serve ex officio. The Governor shall appoint one of the members to serve as chairman. The office shall provide staff assistance to the council.

(C) The duties of the council are to:

(1) make periodic recommendations to the committee and the General Assembly concerning the collection and release of health care‑related data by the State which the council considers necessary to assist in the formation of health care policy in the State;

(2) convene expert panels as necessary to assist in developing recommendations for the collection and release of health care‑related data;

(3) approve all regulations for the collection and release of health care‑related data to be promulgated by the office;

(4) approve release of health care‑related data consistent with regulations promulgated by the office;

(5) recommend to the office appropriate dissemination of health care‑related data reports, training of personnel, and use of health care‑related data.

(D) The office, with the approval of the council, shall promulgate regulations in accordance with the Administrative Procedures Act regarding the collection of inpatient and outpatient information. No data may be released by the office except in a format recommended by the council and consistent with regulations. Before the office releases provider identifiable data the office must determine that the data to be released is for purposes consistent with the regulations as promulgated by the office and the release must be approved by the council and the committee. Provided, however, committee approval of the release is not necessary if the data elements and format in the release are substantially similar to releases or standardized reports previously approved by the committee. The council shall make periodic recommendations to the committee and the General Assembly concerning the collection and release of health care‑related data by the State. Regulations promulgated by the office mandating the collection of inpatient or outpatient data apply to every provider or insurer affected by the regulation regardless of how the data is collected by the provider or insurer. Every effort must be made to utilize existing data sources.

(E) Information may be required to be produced only with respect to admissions of and treatment to patients after the effective date of the regulations implementing this section, except that data with respect to the medical history of the patient reasonably necessary to evaluation of the admission of and treatment to the patient may be required.

(F) The office shall convene a Health Data Analysis Task Force composed of technical representatives of universities and other private sector and public agencies including, but not limited to, health care providers and insurers to make recommendations to the council concerning types of analyses needed to carry out this section.

(G) All general acute care hospitals and specialized hospitals including, but not limited to, psychiatric hospitals, alcohol and substance abuse hospitals, and rehabilitation hospitals shall provide inpatient and financial information to the office as set forth in regulations.

All hospital‑based and freestanding ambulatory surgical facilities as defined in Section 44‑7‑130, hospital emergency rooms licensed under Chapter 7, Article 3, and any health care setting which provides on an outpatient basis radiation therapy, cardiac catherizations, lithotripsy, magnetic resonance imaging, and positron emission therapy shall provide outpatient information to the office as set forth in the regulation. Other providers offering services with equipment requiring a Certificate of Need shall provide outpatient information to the office. Additionally, licensed home health agencies shall provide outpatient information to the office as set forth in the regulation.

Release must be made no less than semiannually of the patient medical record information specified in regulation to the submitting hospital and other information specified in regulation to the hospital’s designee. However, the hospital’s designee must not have access to patient identifiable data.

(H) If a provider fails to submit the health care data as required by this section or Section 44‑6‑175 or regulations promulgated pursuant to those sections, the Office of Research and Statistics may assess a civil fine of up to five thousand dollars for each violation, but the total fine may not exceed ten thousand dollars.

(I) A person, as defined in Section 44‑7‑130, seeking to collect health care data or information for a registry shall coordinate with the office to utilize existing data collection formats as provided for by the office and consistent with regulations promulgated by the office. With the exception of information that may be obtained from the Office of Vital Records, Department of Health and Environmental Control, in accordance with Section 44‑63‑20 and Regulation 61‑19 and disease information required to be reported to the Department of Health and Environmental Control under Sections 44‑29‑10, 44‑29‑70, and 44‑31‑10 and Regulations 61‑20 and 61‑21 and notwithstanding any other provision of law, no hospital or health care facility or health care professional required by this section to submit health care data is required to submit data to a registry which has not complied with this section.

Section 44‑6‑175. (A) Annually, when a hospital submits its Medicare Cost Report to the Health Care Financing Administration, the hospital shall file a copy of the report with the Division of Research and Statistical Services of the State Budget and Control Board including the following information:

(1) information detailing its assets and liabilities; and

(2) a statement of income, expenses, profits, and losses.

(B) The Division of Research and Statistical Services shall promulgate regulations to carry out this section.

Section 44‑6‑180. (A) Patient records received by counties, the ~~department~~ Division of Health and Human Services, or other entities involved in the administration of the program created pursuant to Section 44‑6‑150 are confidential. Patient records gathered pursuant to Section 44‑6‑170 are also confidential. The Division of Research and Statistical Services shall use patient‑identifiable data collected pursuant to Section 44‑6‑170 for the purpose of linking various data bases to carry out the purposes of Section 44‑6‑170. Linked data files must be made available to those agencies providing data files for linkage. No agency receiving patient‑identifiable data collected pursuant to Section 44‑6‑170 may release this data in a manner such that an individual patient or provider may be identified except as provided in Section 44‑6‑170. Nothing in this section may be construed to limit access by a submitting provider or its designee to that provider’s information.

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

Section 44‑6‑190. The ~~department~~ division may promulgate regulations pursuant to the Administrative Procedures Act. Appeals from decisions by the ~~department~~ division are heard pursuant to the Administrative Procedures Act, Administrative Law Judge, Article 5, Chapter 23 ~~of~~, Title 1 of the 1976 Code.

The ~~department~~ division shall promulgate regulations to comply with federal requirements to limit the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the Medicaid program.

Section 44‑6‑200. (A) A person who commits a material falsification of information required to determine eligibility for the Medically Indigent Assistance Program is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than one year, or both.

(B) Unless otherwise specified in this chapter, an individual or facility violating this chapter or a regulation under this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars for the first offense and not more than five thousand dollars for a subsequent offense.

Section 44‑6‑220. All applications for admission to a nursing home must contain a notice, to be signed by the applicant, stating:

‘Eligibility for Medicaid‑sponsored long‑term care services is based on income and medical necessity. To qualify for assistance through the Medicaid program, a nursing home patient must need intermediate or skilled nursing care as determined through an assessment conducted by Medicaid program staff. The fact that a patient has already been admitted to a nursing home is not considered in this determination. It is possible that a patient could exhaust all other means of paying for nursing home care and meet Medicaid income criteria but still be denied assistance due to the lack of medical necessity.

‘It is recommended that all persons seeking admission to a nursing home be assessed by the Medicaid program prior to admission. This assessment will provide information about the level of care needed and the viability of community services as an alternative to admission. The ~~department~~ Division of Health and Human Services, Department of Health and Wellness may charge a fee, not to exceed the cost of the assessment, to persons not eligible for Medicaid‑sponsored long‑term care services.’

Article 3

Child Development Services

Section 44‑6‑300. The ~~Department~~ Division of Health and Human Services shall establish child development services in the following counties: Allendale, Bamberg, Barnwell, Calhoun, Cherokee, Chester, Chesterfield, Fairfield, Jasper, Lexington, Newberry, and Orangeburg. The services established in each county must provide at least thirty slots for the children of that county.

Section 44‑6‑310. The ~~Department of Health and Human Services~~ division shall expand existing child development services in the following counties: Beaufort, Charleston, Florence, Greenville, Hampton, and Richland. The services in each county must be expanded to provide at least twenty new slots but no more than sixty new slots for the children of each county.

Section 44‑6‑320. The establishment and expansion of the child development services mandated by Sections 44‑6‑300 and 44‑6‑310 must be accomplished within the limits of the appropriations provided by the General Assembly in the annual General Appropriations Act for this purpose and in accordance with the ~~Department of Health and Human Services~~ division’s policies for child development services funded through Title XX.

Article 4

Intermediate Sanctions for Medicaid Certified Nursing Home Act

Section 44‑6‑400. As used in this article:

(1) ~~‘Department’~~ ‘Division’ means the ~~Department~~ Division of Health and Human Services, Department of Health and Wellness.

(2) ‘Nursing home’ means a facility subject to licensure as a nursing home by the Department of Health and Environmental Control and subject to the permit provisions of Article 2, Chapter 7 of Title 44 and which has been certified for participation in the Medicaid program or has been dually certified for participation in the Medicaid and Medicare programs.

(3) ‘Resident’ means a person who resides or resided in a nursing home during a period of an alleged violation.

(4) ‘Survey agency’ means the South Carolina Department of Health and Environmental Control or any other agency designated to conduct compliance surveys of nursing facilities participating in the Title XIX (Medicaid) program.

Section 44‑6‑420. When the ~~department~~ division is notified by the survey agency that a nursing home is in violation of one or more of the requirements for participation in the Medicaid program, it may take enforcement action as follows:

(1) if the nursing home is dually certified for participation in both the Medicare and Medicaid programs, the ~~department~~ division shall coordinate any enforcement action with federal authorities and shall defer to the actions of these federal authorities to the extent required by federal statute or regulation;

(2) if the nursing home is only certified for participation in the Medicaid program and is not certified for participation in the Medicare program, the ~~department~~ division may take any enforcement action authorized under federal statute or regulation that would have been available for use by federal authorities if the nursing home had been dually certified~~;~~.

Any enforcement actions taken solely by the ~~department~~ division under item (2) must be proportionate to the scope and severity of the violations and also shall take into account the factors considered by federal authorities in similar enforcement actions. Dually certified nursing homes and nursing homes only certified for participation in the Medicaid program must be subjected to comparable enforcement actions for comparable violations.

Section 44‑6‑470. Any use of funds collected by the ~~department~~ division as a result of the imposition of civil monetary penalties or other enforcement actions must be for a purpose related to the protection of the health and property of residents of nursing homes that participate in the Medicaid program. These funds may be used for the cost of relocating residents to other nursing homes, if necessary, and also may be used to reimburse residents for personal funds lost as a result of violations of the requirements for participation in the Medicaid program by the nursing home. In addition, these funds may be used for other costs directly associated with enforcement or corrective measures at facilities found to be out of compliance with the requirements for participation in the Medicaid program or for any other purpose that enhances or improves the health and quality of life for residents. These requirements for the use of funds collected also apply to funds received by the ~~department~~ division that are collected as the result of enforcement actions directed by federal authorities.

Section 44‑6‑530. Before instituting an action under this article, the ~~Department of Health and Human Services~~ division shall determine if the Secretary of the United States Department of Health and Human Services has jurisdiction under federal law. In such cases, it shall coordinate its efforts with the secretary of the federal department to maintain an action against the nursing home. In an action against a nursing home owned and operated by the State of South Carolina, the secretary of the federal department has exclusive jurisdiction.

Section 44‑6‑540. The ~~department~~ division is authorized to promulgate regulations, pursuant to the Administrative Procedures Act, to administer this article, and to ensure compliance with the requirements for participation in the Medicaid program.

Article 5

Gap Assistance Pharmacy Program for Seniors Act

Section 44‑6‑610. This article may be cited as the ‘Gap Assistance Pharmacy Program for Seniors (GAPS) Act’.

Section 44‑6‑620. For purposes of this article:

(1) ~~‘Department’~~ ‘Division’ means the ~~South Carolina Department~~ Division of Health and Human Services, Department of Health and Wellness.

(2) ‘Prescription drugs’ means outpatient prescription drugs that have been approved by the United States Food and Drug Administration. ‘Prescription drugs’ do not include experimental drugs and over‑the‑counter pharmaceutical products.

(3) ‘Program’ means the Gap Assistance Pharmacy Program for Seniors (GAPS) created pursuant to this article.

(4) ‘Medicare Part D Prescription Drug Plan’ means a Prescription Drug Plan that has been approved by the Centers for Medicare and Medicaid Services (CMS) to provide Medicare Part D prescription drugs to Medicare beneficiaries in South Carolina.

(5) ‘GAPS Participating Medicare Part D Prescription Drug Plan’ means Prescription Drug Plans that have executed a contract with the ~~department~~ division to provide prescription drug coverage to eligible individuals during the annual Medicare Part D coverage gap.

Section 44‑6‑630. (A) There is created within the ~~Department~~ Division of Health and Human Services the Gap Assistance Pharmacy Program for Seniors (GAPS) program. The purpose of this program is to coordinate, beginning January 1, 2006, with Medicare Part D Prescription Drug Plans to provide to low‑income seniors in this State assistance with costs for prescription drugs during the annual Medicare Part D coverage gap.

(B) The program must provide assistance with prescription drugs that:

(1) have been approved by the United States Food and Drug Administration; and

(2) are included in the enrollee’s selected GAPS participating Medicare Part D Plan formulary.

Section 44‑6‑640. (A) This program must be administered by the ~~Department of Health and Human Services~~ division. The ~~department~~ division may designate, or enter into contracts with, other entities including, but not limited to, other states, other governmental purchasing pools, and nonprofit organizations to assist in the administration of this program.

(B) The ~~department~~ division may establish an enrollment fee that must be used to fund the administration of this program.

(C) When requested by the ~~department~~ division, other state agencies shall provide assistance or information necessary for the administration of this program.

Section 44‑6‑650. (A) To be eligible to enroll in this program a person must:

(1) have attained the age of sixty‑five years;

(2) be a resident of this State;

(3) be enrolled in a GAPS participating Medicare Part D Drug Plan;

(4) satisfy annual income, resources, and other criteria established by the department;

(5) pay the enrollment fee, if any, as established by the department.

(B) An enrollee is entitled to benefits under this program during the coverage gap when the enrollee’s annual prescription drug costs have reached the point that standard Medicare Part D benefits are no longer available. The GAPS benefits terminate when the enrollee’s annual out‑of‑pocket prescription drug expenses have reached the point that catastrophic Medicare Part D benefits become available.

Section 44‑6‑660. (A) The ~~department~~ division shall maintain data to allow evaluation of the cost effectiveness of the program.

(B) Beginning with fiscal year 2006‑2007, the ~~department~~ division shall include in its annual report, a report on the GAPS program.

Article 6

Trusts and Medicaid Eligibility

Section 44‑6‑710. If an applicant for Medicaid for nursing home care would be ineligible because a trust established for the applicant was deemed a Medicaid qualifying trust or resources in the trust were deemed an improper transfer of resources, the person’s application must be treated as a case of undue hardship under federal law if all of the criteria in Section 44‑6‑720 are met. For the purposes of this section, ‘Medicaid qualifying trust’ has the same meaning as set forth in 42 U.S.C. Section 1396a(k).

Section 44‑6‑720. (A) To be considered for a waiver due to undue hardship, the applicant must meet all other applicable eligibility criteria for assistance. If the federal ‘transfer of resources’ rule set forth in 42 U.S.C. Section 1396p(c), as amended, applies to the applicant, then no undue hardship waiver may be granted until the period of ineligibility has expired. For the purposes of this subsection, the maximum length of ineligibility is extended to sixty months from the date of any improper transfer.

(B) The trust established for the applicant must meet the following criteria:

(1) the applicant’s monthly gross income from all sources, without reference to the trust, exceeds the income eligibility standard for Medicaid then in effect but is less than the average private pay rate for nursing home care for the State;

(2) the property used to fund the trust is limited to monthly unearned income owned by the applicant, including any pension payment;

(3) the applicant and the state Medicaid program are the sole beneficiaries of the trust;

(4) the entire income and corpus of the trust, or as much as may be distributed each month without violating federal requirements for federal financial participation, must be distributed each month for expenses related to the applicant’s nursing home care that are approved under the Medicaid program, except that:

(a) an amount reasonably necessary to maintain the existence of the trust, as approved by the Medicaid program, may be retained in the trust; and

(b) deductions may be distributed from the trust to the same extent deductions from the income of a nursing home resident who is not a trust beneficiary are allowed under the Medicaid program, which shall include:

(i) monthly personal needs allowance;

(ii) payments to the beneficiary’s community spouse or dependent family members as provided and in accordance with state and federal law;

(iii) specified health insurance costs and special medical services provided under Title XIX of the federal ‘Social Security Act’, 42 U.S.C. Section 1396a(r), as amended; and

(iv) other deductions provided in regulations of the ~~State~~ Division of Health and Human Services ~~Finance Commission~~;

(5) upon the death of the beneficiary, a remainder interest in the corpus of the trust passes to the ~~State~~ Division of Health and Human Services ~~Finance Commission~~, Department of Health and Wellness. The ~~commission~~ division shall remit the state share of the trust to the general fund; and

(6) the trust is not subject to modification by the beneficiary or the trustee without the approval of the state Medicaid program.

Section 44‑6‑725. Any promissory note received by a Medicaid applicant or recipient or the spouse of a Medicaid applicant or recipient in exchange for assets which if retained by the applicant or recipient or his spouse would cause the applicant or recipient to be ineligible for Medicaid benefits, shall, for Medicaid eligibility purposes, be deemed to be fully negotiable under the laws of this State unless it contains language plainly stating that it is not transferable under any circumstances. A promissory note will be considered valid for Medicaid purposes only if it is actuarially sound, requires monthly installments that fully amortize it over the life of the loan, and is free of any conditional or self‑canceling clauses.

Section 44‑6‑730. The ~~State Health and Human Services Finance Commission~~ division shall promulgate regulations as are necessary for the implementation of this article and as are necessary to comply with federal law. In addition, the ~~commission~~ division shall amend the state Medicaid plan in a manner that is consistent with this article.

Article 7

Recognition and Designation of Federally Qualified Health Centers, Rural Health Clinics, and Rural Hospitals

Section 44‑6‑910. (A) Federally Qualified Health Centers (FQHC’s), Rural Health Clinics (RHC’s), and Rural Hospitals are recognized and designated as essential community providers for underserved patients which include Medicaid and Medicare recipients, the underinsured, and the uninsured. These populations require more extensive services by community‑based providers, and the FQHC’s, RHC’s, and Rural Hospitals have extensive experience and knowledge in providing quality, cost‑effective care for these populations. The State shall include these essential community providers as contracted entities in any formulation of the state health care system. The inclusion of FQHC’s, RHC’s, and Rural Hospitals as contracted entities in the state health care system recognizes the importance of these providers to South Carolina and assures that the reimbursement to these essential community providers will be funded through cost‑based reimbursement or a capitated fee based on reasonable costs.

(B) A hospital located in an urban area (MSA County), can be considered ‘rural’ for the purposes of the Medicare Rural Hospital Flexibility Program if it meets the following criteria:

(1) enrolled as both a Medicaid and Medicare provider and accepts assignment for all Medicaid and Medicare patients;

(2) provides emergency health care services to indigent patients;

(3) maintains a twenty‑four hour emergency room;

(4) staffs fifty or less acute care beds; and

(5) located in a county with twenty‑five percent or more rural residents, as defined by the most recent United States decennial census.

Article 8

Medicaid Pharmacy and Therapeutics Committee

Section 44‑6‑1010. There is created within the ~~Department~~ Division of Health and Human Services the Pharmacy and Therapeutics Committee. The committee must consist of fifteen members appointed by the director and serving at the pleasure of the director of the ~~department~~ division. The members must include eleven physicians and four pharmacists licensed to practice in South Carolina and actively engaged in providing services to the South Carolina Medicaid population. The physicians may include, but are not limited to, doctors who have experience in treating diabetes, cancer, HIV/AIDS, mental illness, and hemophilia and who practice in internal medicine, primary care, and pediatrics.

Section 44‑6‑1020. The committee shall adopt bylaws that include, at a minimum, the length of membership. A chairman and a vice chairman shall be elected on an annual basis from the committee membership. Committee members must not be compensated for service to the committee. However, committee members may be reimbursed for actual and necessary expenses incurred by discharging committee duties in an amount not to exceed the mileage and subsistence amounts allowed by law for members of boards, commissions, and committees. The committee must meet at least quarterly and may meet at other times in the chairman’s or the director’s discretion. Committee meetings are subject to the provisions of the Freedom of Information Act. The ~~department~~ division shall publish notice of regular business meetings of the committee at least thirty days before the meeting. However, the director or chairman may call special meetings of the committee and provide notice as soon as practical. The committee must provide for public comment, including comment on clinical and patient care data from Medicaid providers, representatives of the pharmaceutical industry, and patient advocacy groups. Proprietary information as defined in the trade secret law shall not be discussed. Trade secrets as defined in Section 30‑4‑40(a)(1) and relevant federal law must not be publicly disclosed.

Section 44‑6‑1030. The committee must recommend to the ~~department~~ division therapeutic classes of drugs that should be included on a preferred drug list. For those recommended classes, the committee shall recommend the drug or drugs considered preferred within that class based on safety and efficacy. In determining safety and efficacy, the committee may consider all submitted public comment or clinical information including, but not limited to, scientific evidence, standards of practice, peer‑reviewed medical literature, randomized clinical trials, pharmacoeconomic studies, and outcomes research data. The committee also shall recommend prior authorization criteria for nonpreferred drugs in the recommended therapeutic classes.

Section 44‑6‑1040. Any preferred drug list program implemented by the ~~department~~ division must include:

(1) procedures to ensure that a request for prior authorization that has no material defect or impropriety can be processed within twenty‑four hours of receipt;

(2) procedures to allow the prescribing physician to request and receive notice of any delays or negative decision in regard to a prior authorization;

(3) procedures to allow the prescribing physician to request and receive a second review of any denial of a prior authorization request; and

(4) procedures to allow a pharmacist to dispense an emergency, seventy‑two hour supply of a drug requiring prior authorization without prior authorization if the pharmacist:

(a) has made a reasonable attempt to contact the physician and request that the prescribing physician secure prior authorization; and

(b) reasonably believes that refusing to dispense a seventy‑two‑hour supply would unduly burden the Medicaid recipient and produce undesirable health consequences.

Section 44‑6‑1050. A grant of prior authorization for a drug is specific to the drug, rather than the actual prescription, and extends to all refills allowed pursuant to the original prescription and to subsequent prescriptions for the same drug at the same dosage provided the time allowed by the prior authorization has not expired. A Medicaid recipient who has been denied prior authorization for a prescribed drug is entitled to appeal this decision through the department’s appeals process.”

SECTION 10. Chapter 9, Title 44 of the 1976 Code is amended to read:

“CHAPTER 9

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

Department of Health and Wellness Services

Section 44‑9‑10. There is ~~hereby~~ created in the Department of Health and Wellness, and under the administration and supervision of the department, the ~~State Department~~ Division of Mental Health 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~~ which were transferred to and vested in the Department of Mental Health are transferred to the Division of Mental Health, Department of Health and Wellness. All records, files, and other papers belonging to the South Carolina Mental Health Commission ~~shall be~~ that were continued as part of the records and files of the Department of Mental Health must be continued as part of the records and files of the Division of Mental Health, Department of Health and Wellness.

~~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 Secretary of the Department of Health and Wellness shall ~~appoint~~ employ 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~~ division. 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 appoint~~ shall employ and remove all ~~other officers and~~ employees of the ~~department~~ Division of Mental Health~~, subject to the approval of the Mental Health Commission~~.

Section 44‑9‑50. The ~~Department~~ Division of Mental Health may be divided into such ~~divisions~~ subdivisions as may be authorized by the ~~Director~~ Secretary of ~~Mental Health~~ the Department of Health and Wellness ~~and approved by the commission~~. ~~One of the divisions shall be a Division on Alcohol and Drug Addiction Services which shall have primary responsibility in the State for treatment of alcohol and drug addicts.~~ One of the ~~divisions~~ subdivisions must be ~~a Division~~ the Office for Long Term Care which shall have primary responsibility for care and treatment of elderly persons with mental and physical disabilities to the extent that their needs are not met in other facilities either public or private.

Section 44‑9‑60. The Director of the ~~Department~~ Division of Mental Health may ~~appoint~~ employ a director ~~of~~ for 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 Health and Wellness 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, under the overall administration of the department, 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~~ promulgate regulations not inconsistent with this chapter, ~~Chapter 11,~~ Chapter 13, Article 1 of Chapter 15, Chapter 17, Chapter 22, Chapter 23, Chapter 24, Chapter 27, Chapter 48, and Chapter 52 as it may find to be reasonably necessary for the government of all institutions over which it has authority and of state mental health facilities and the proper and efficient treatment of persons with a mental illness ~~or substance abuse disorder~~;

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

Section 44‑9‑110. The Division of Mental Health ~~Commission~~ may accept on behalf of the ~~department of Mental Health~~ division, 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~~ division may refuse to accept ~~any~~ such 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~~ division 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 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~~ the State Director of the Department of Mental Health it means the Director of the Division of Mental Health, Department of Health and Wellness.”

SECTION 11. 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 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 in the Department of Health and Wellness 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 in this State 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 in this State 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 in this State 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~~ has harmless mental ~~defective~~ retardation or harmless ~~epileptic~~ epilepsy. 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 12. 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 Health and Wellness, 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~~ The division 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 Health and Wellness, 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, under the overall administration of the deptment, shall:

(1) promulgate ~~rules and~~ regulations 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 Health and Wellness 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 13. Chapter 20, Title 44 of the 1976 Code is amended to read:

“CHAPTER 20

South Carolina Mental Retardation, Related Disabilities, Head Injuries, And Spinal Cord Injuries Act

Article 1

General Provisions

Section 44‑20‑10. This chapter may be cited as the “South Carolina Mental Retardation, Related Disabilities, Head Injuries, and Spinal Cord Injuries Act”.

Section 44‑20‑20. The State of South Carolina recognizes that a person with mental retardation, a related disability, head injury, or spinal cord injury is a person who experiences the benefits of family, education, employment, and community as do all citizens. It is the purpose of this chapter to assist persons with mental retardation, related disabilities, head injuries, or spinal cord injuries by providing services to enable them to participate as valued members of their communities to the maximum extent practical and to live with their families or in family settings in the community in the least restrictive environment available.

When persons with mental retardation, related disabilities, head injuries, or spinal cord injuries cannot live in communities or with their families, the State shall provide quality care and treatment in the least restrictive environment practical.

In order to plan and coordinate state and locally funded services for persons with mental retardation, related disabilities, head injuries, or spinal cord injuries, a statewide network of local boards of disabilities and special needs is established. Services will be delivered to clients in their homes or communities through these boards and other local providers.

It is recognized that persons with mental retardation, related disabilities, head injuries, or spinal cord injuries have the right to receive services from public and other agencies that provide services to South Carolina citizens and to have those services coordinated with the services needed because of their disabilities.

South Carolina recognizes the value of preventing mental retardation, related disabilities, head injuries, and spinal cord injuries through education and research and supports efforts to this end.

The State recognizes the importance of the role of parents and families in shaping services for persons with mental retardation, related disabilities, head injuries, or spinal cord injuries as well as the importance of providing services to families to enable them to care for a family member with these disabilities.

Admission to services of the ~~South Carolina Department~~ Division of Disabilities and Special Needs in the Department of Health and Wellness does not terminate or reduce the rights and responsibilities of parents. Parental involvement and participation in mutual planning with the department to meet the needs of the client facilitates decisions and treatment plans that serve the best interest and welfare of the client.

Section 44‑20‑30. As used in this chapter:

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

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

(3) ~~‘Commission’ means the South Carolina Commission on Disabilities and Special Needs, the policy‑making and governing body of the Department of Disabilities and Special Needs.~~ Reserved

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

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

(6) ‘Department’ means the ~~South Carolina~~ Department of ~~Disabilities and Special Needs~~ Health and Wellness.

(7) ‘Director’ means the ~~South Carolina~~ Director of the ~~Department~~ Division of Disabilities and Special Needs, Department of Health and Wellness, the chief executive director ~~appointed~~ employed by the ~~commission~~ Secretary of the Department of Health and Wellness.

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

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

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

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

(12) ‘Disabilities and special needs services’ are activities designed to achieve the results specified in an individual client’s plan.

(13) ‘Obligations’ means the obligations in the form of notes or bonds or contractual agreements issued or entered into by the ~~commission~~ division pursuant to the authorization of this chapter and of Act 1377 of 1968 to provide funds with which to repay the proceeds of capital improvement bonds allocated by the State Budget and Control Board.

(14) ‘Regional residential center’ is a twenty‑four hour residential facility serving a ~~multi‑county~~ multicounty area and designated by the ~~department~~ division.

(15) ‘Related disability’ is a severe, chronic condition found to be closely related to mental retardation or to require treatment similar to that required for persons with mental retardation and must meet the following conditions:

(a) It is attributable to cerebral palsy, epilepsy, autism, or any other condition other than mental illness found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation and requires treatment or services similar to those required for these persons.

(b) It is manifested before twenty‑two years of age.

(c) It is likely to continue indefinitely.

(d) It results in substantial functional limitations in three or more of the following areas of major life activity: self‑care, understanding and use of language, learning, mobility, self‑direction, and capacity for independent living.

(16) ‘Residential programs’ are services providing dwelling places to clients for an extended period of time with assistance for activities of daily living ranging from constant to intermittent supervision as required by the individual client’s needs.

(17) ‘Revenues’ or ‘its revenues’ means revenue derived from paying clients at regional residential centers and community residences but does not include Medicaid, Medicare, or other federal funds received with the stipulation that they be used to provide services to clients.

(18) ‘State capital improvement bonds’ means bonds issued pursuant to Act 1377 of 1968.

(19) ‘State board’ shall mean the State Budget and Control Board as constituted pursuant to Chapter 11, Title 1.

Article 3

Organization and System For Delivery of Services

Section 44‑20‑210. (A) There is created in the ~~South Carolina Commission on~~ Department of Health and Wellness, and under the administration and supervision of the department, the Division of Disabilities and Special Needs. The ~~commission~~ division must be supported by an advisory board that 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~~ advisory board 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)(1) 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.

(2) On July 1, 2011 the Commission on Disabilities and Special Needs becomes the Advisory Board to the Division of Disabilities and Special Needs in the Department of Health and Wellness. Commissioners serving on July 1, 2011, continue to serve as members of the advisory board until their terms expire and their successors are appointed and qualify.

Section 44‑20‑220. The ~~commission~~ director of the division shall determine the policy and promulgate regulations governing the operation of the ~~department~~ division and the employment of professional staff and personnel. The members of the ~~commission~~ advisory board shall receive subsistence, mileage, and per diem as may be provided by law for members of state boards, committees, and commissions. The c~~ommission~~ secretary of the department shall ~~appoint~~ employ and in ~~its~~ his discretion remove a ~~South Carolina~~ Director of the Division of Disabilities and Special Needs who is the chief executive officer of the ~~department~~ division. ~~The commission may appoint advisory committees it considers necessary to assist in the effective conduct of its responsibilities.~~ The ~~commission~~ advisory board, with the approval of the director of the division, 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~~ division 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~~ division must consult with the consumer advisory committee of the ~~division for~~ office to which the regulations ~~shall~~ apply.

Section 44‑20‑225. (A) The Governor shall appoint a seven‑member consumer advisory ~~board with the advice and consent of the Senate~~ committee for each of the following ~~divisions~~ offices within the division: the Office of Mental Retardation ~~Division~~, the Office of Autism ~~Division~~, and the Office of Head and Spinal Cord Injury ~~Division~~. One member must be a resident of each congressional district, and one must be from the State at large.

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

(C) The members of the ~~commission~~ consumer advisory boards shall receive subsistence, mileage, and per diem as may be provided by law for members of state boards, committees, and commissions.

(D) Terms of the members of the consumer advisory boards shall be for four years and until their successors are appointed and qualify~~, except that of the original appointees, two shall be appointed for a period of two years, two shall be appointed for a period of three years, and three shall be appointed for a period of four years~~.

(E) On July 1, 2011, the consumer advisory boards become the consumer advisory committees to the respective offices within the division. Members serving on the consumer advisory boards on July 1, 2011, continue to serve as members of their respective consumer advisory committees until their terms expire and their successors are appointed and qualify.

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

Section 44‑20‑240. ~~There is created the South Carolina Department~~ The Division 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~~ division must be comprised of ~~a~~ the Office of Mental Retardation ~~Division~~, ~~an~~ the Office of Autism ~~Division~~, and ~~a~~ the Office of Head and Spinal Cord Injuries ~~Division~~. The ~~department~~ division may be divided into additional ~~divisions~~ bureaus as may be determined by the director and approved ~~and named~~ by the ~~commission~~ secretary of the department. ~~Responsibility for all autistic services is transferred from the Department of Mental Health to the Department of Disabilities and Special Needs.~~

Section 44‑20‑250. The ~~department~~ division shall coordinate services and programs with other state and local agencies for persons with mental retardation, related disabilities, head injuries, and spinal cord injuries. The ~~department~~ division may negotiate and contract with local agencies, county boards of disabilities and special needs, private organizations, and foundations in order to implement the planning and development of a full range of services and programs for persons with mental retardation, related disabilities, head injuries, and spinal cord injuries subject to law and the availability of fiscal resources. The ~~department~~ division has the same right to be reimbursed for expenses in providing disabilities and special needs services through a contractual arrangement as it has to be reimbursed for expenses provided through direct ~~departmental~~ division services. The ~~department~~ division shall develop service standards for programs of the ~~department~~ division and for programs for which the ~~department~~ division may contract and shall review and evaluate these programs on a periodic basis.

Section 44‑20 255. (A) Upon execution of the deed as provided in subsection (B) of this section, ownership of the tract of real property in Richland County described in Section 1 ~~of~~, Act 1645 of 1972 is confirmed in the ~~South Carolin~~a Division of Disabilities and Special Needs, Department of Health and Wellness ~~Disabilities and Special Needs~~ as the successor agency to the South Carolina Department of ~~Mental Retardation~~ Disabilities and Special Needs.

(B) The State Budget and Control Board shall cause to be executed and recorded an appropriate deed conveying the tract to the ~~South Carolina~~ Department of Health and Wellness, Division of Disabilities and Special Needs.

(C) Proceeds of a subsequent sale of the tract that is the subject of this section may be retained by the ~~South Carolina~~ Division of Disabilities and Special Needs, Department of Health and Wellness ~~Disabilities and Special Needs~~.

Section 44‑20‑260. The ~~department~~ division, with funds available for these purposes, may conduct research to determine the causes, proper treatment, and diagnosis of mental retardation, related disabilities, head injuries, and spinal cord injuries and may use facilities and personnel under its control and management for carrying out the research so long as the rights of the client are preserved and prior consent is obtained pursuant to Section 44‑26‑180.

Section 44‑20‑270. The ~~department~~ Division of Disabilities and Special Needs is designated as the state’s mental retardation, related disabilities, head injuries, and spinal cord injuries authority for the purpose of administering federal funds allocated to South Carolina for mental retardation programs, related disability programs, head injury programs, and spinal cord injury programs. This authority does not include the functions and responsibilities granted to the South Carolina Department of Health and Environmental Control or to the South Carolina Department of Vocational Rehabilitation or the administration of the ‘State Hospital Construction and Franchising Act’.

Section 44‑20‑280. The ~~department~~ division may negotiate and contract with an agency of the United States or a state or private agency to obtain grants to assist in the expansion and improvement of services to persons with mental retardation, related disabilities, head injuries, or spinal cord injuries and may expend the grants under the terms and conditions of the award.

Section 44‑20‑290. The director ~~or his designee~~ may employ at regional centers security guards who are vested and charged with the powers and the duties of peace officers. They may arrest felons and misdemeanants, eject trespassers, and, without warrant, arrest persons for disorderly conduct who are trespassers on the grounds of the regional center and have them tried in a court of competent jurisdiction. Officers so employed must be bonded and under the direct supervision of the South Carolina Law Enforcement Division and shall report directly to the director ~~or his designee~~.

Section 44‑20‑300. The ~~department~~ division may acquire motor vehicle liability insurance for employees of the division operating ~~department~~ state vehicles or private vehicles in connection with their official ~~departmental~~ duties to protect against liability.

Section 44‑20‑310. The ~~department~~ division may sell timber from its forest lands with the proceeds from the sales to be deposited in the general fund of the State. Before a sale, the State Budget and Control Board shall consult with the State Forester to determine the economic feasibility of the sale, and a sale must not be made without the approval of the board.

Section 44‑20‑320. The ~~department~~ division, or any of its programs may accept gifts, bequests, devises, grants, and donations of money, real property, and personal property for use in expanding and improving services to persons with mental retardation, related disabilities, head injuries, and spinal cord injuries available to the people of this State. However, nothing may be accepted by the ~~department~~ division with the understanding that it diminishes an obligation for paying care and maintenance charges or other monies due the ~~department~~ division for services rendered. The ~~commission~~ division may formulate policies and promulgate regulations governing the disposition of gifts, bequests, devises, grants, and donations. If they are given to a specific service program of the ~~department~~ division they must remain and be used for that program only or to its successor program.

Section 44‑20‑330. The ~~department~~ division may grant easements, permits, or rights‑of‑way on terms and conditions it considers to be in the best interest of the State, across, over, or under land held by the ~~department~~ division for the construction of water, sewer, drainage, natural gas, telephone, telegraph, and electric power lines.

Section 44‑20‑340. (A) A person, hospital, or other organization may provide information, interviews, reports, statements, written memoranda, documents, or other data related to the condition and treatment of a client or applicant to the ~~department~~ division, and no liability for damages or other relief arises against the person, hospital, or organization for providing the information or material.

(B) All records pertaining to the identity of a person whose condition or treatment has been studied by the ~~department~~ division are confidential and privileged information. However, upon the written request of the client, the client’s or applicant’s parent with legal custody, legal guardian, or spouse with the written permission of the client or applicant or under subpoena by a court of law, the ~~department~~ division may furnish pertinent records in its possession to appropriate parties.

Section 44‑20‑350. (A) Reasonable reimbursement to the State for its fiscal outlay on behalf of services rendered by the ~~department~~ division or any other agency authorized by the ~~department~~ division to offer services to clients is a just obligation of the person with mental retardation, a related disability, head injury, or spinal cord injury, his estate, or his parent or guardian under the conditions and terms provided in this section.

(B) The ~~department~~ division or an agency authorized by the ~~department~~ division to offer services to clients may charge for its services. However, no service may be denied a client or his parent or guardian because of inability to pay part or all of the ~~department’s~~ division’s or other agency’s expenses in providing that service. Where federal reimbursement is authorized for services provided, the ~~department~~ division initially shall seek federal reimbursement. No charge or combination of charges may exceed the actual cost of services rendered. The ~~commission~~ division shall approve the procedures established to determine ability to pay and may authorize its designees to reduce or waive charges based upon its findings.

(C) Parents, guardians, or other responsible relatives must not be charged for regional center or community residential services provided by the ~~department~~ division for their child or ward. However, a person receiving nonresidential services or his parent or guardian may be assessed a charge for services received, not to exceed cost. The ~~department with the approval of the commission~~ division, may determine for which services it charges.

(D) The ~~department~~ division shall establish a hearing and review procedure so that a client or his parent or guardian may appeal charges made for services or may present to officials of the ~~department~~ division information or evidence to be considered in establishing charges. The ~~department~~ division may utilize legal procedures to collect lawful claims.

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

Section 44‑20‑355. The ~~department~~ division shall assess and collect a fee on all Intermediate Care Facilities for the Mentally Retarded, as defined in Section 44‑7‑130(19). Providers holding licenses on these facilities shall pay to the ~~department~~ division a fee equal to eight dollars and fifty cents a patient day in these facilities. The ~~department~~ division shall pay all proceeds from the fee into the general fund of the State.

Section 44‑20‑360. (A) The physical boundaries of Midlands Center, Coastal Center, Pee Dee Center, and Whitten Center are designated as independent school districts. These facilities may elect to participate in the usual activities of the districts, to receive state and federal aid, and to utilize other benefits enjoyed by independent school districts in general.

(B) The ~~commission~~ division operates as the board of trustees for these districts for administrative purposes, including the receipt and expenditure of funds granted to these districts for any purpose.

Section 44‑20‑365. No regional center of the ~~department~~ division may be closed except as authorized by the General Assembly by law in an enactment that specifies by name the regional center to be closed.

Section 44‑20‑370. (A) The ~~department~~ division, under the overall administration of the department, shall:

(1) notify applicants when they have qualified under the provisions of this chapter;

(2) establish standards of operation and service for county disabilities and special needs programs funded in part or in whole by state appropriations to the ~~department~~ division or through other fiscal resources under its control;

(3) review service plans submitted by county boards of disabilities and special needs and determine priorities for funding plans or portions of the plans subject to available funds;

(4) review county programs covered in this chapter;

(5) offer consultation and direction to county boards;

(6) take other action not inconsistent with the law to promote a high quality of services to persons with mental retardation, related disabilities, head injuries, or spinal cord injuries and their families.

(B) The ~~department~~ division shall seek to develop and utilize the most current and promising methods for the training of persons with mental retardation, related disabilities, head injuries, and spinal cord injuries. It shall utilize the assistance, services, and findings of other state and federal agencies. The ~~department~~ division shall disseminate these methods to county boards and programs providing related services.

Section 44‑20‑375. (A) Before July 1, 1992, county boards of disabilities and special needs must be created within a county or within a combination of counties by ordinance of the governing bodies of the counties concerned. The ordinance must establish the number, terms, appointment, and removal of board members and provide for their powers and duties in compliance with state law and the process for appointing board members which existed on January 1, 1991, must be preserved in the ordinance. However, where the county legislative delegation or county council recommends board members to the appointing authority, the delegation may transfer its authority to recommend to the council or the council may transfer its authority to the delegation. If there is a transfer, preservation of the authority to recommend existing on January 1, 1991, is not required, and the new recommending authority must be contained in the ordinance.

(B) County boards of disabilities and special needs established before January 1, 1991, shall continue to exist, operate, and function as they existed on January 1, 1991, until created by ordinance pursuant to subsection (A).

(C) After June 30, 1992, the ~~department~~ division shall recognize only county boards of disabilities and special needs that plan, administer, or provide services to persons with mental retardation, related disabilities, head injuries, spinal cord injuries within a county or combination of counties which are created or established pursuant to this section, including those whose members are appointed by the Governor. A county board of disabilities and special needs created by ordinance before January 1, 1991, is considered created pursuant to this section, provided the ordinance includes and complies with the provisions of subsection (A).

(D) A county board of disabilities and special needs is a public entity.

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

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

Section 44‑20‑378. A county board of disabilities and special needs established pursuant to Section 44‑20‑375 must consist of not less than five members. If the board is created within a combination of counties, the number of members representing each county must be proportional to the county’s population in relation to the total population of the counties served by the board. However, a county participating in a multicounty board must not have less than two members. The term of the members is four years and until their successors are appointed and qualify. Vacancies for unexpired terms must be filled in the same manner as the original appointments. A member may be removed by the appointing authority for neglect of duty, misconduct, or malfeasance in office after being given a written statement of reasons and an opportunity to be heard.

Section 44‑20‑380. (A) County disabilities and special needs boards are encouraged to utilize lawful sources of funding to further the development of appropriate community services to meet the needs of persons with mental retardation, related disabilities, head injuries, or spinal cord injuries and their families.

(B) County boards may apply to the ~~department~~ division for funds for community services development under the terms and conditions as may be prescribed by the ~~department~~ division. The ~~department~~ division shall review the applications and, subject to state appropriations to the ~~department~~ division or to other funds under the ~~department’s~~ division’s control, may fund the programs it considers in the best interest of service delivery to the citizens of the State with mental retardation, related disabilities, head injuries, or spinal cord injuries.

(C) Subject to the approval of the ~~department~~ division, county boards may seek state or federal funds administered by state agencies other than the ~~department~~ division, funds from local governments or from private sources, or funds available from agencies of the federal government. The county boards may not apply directly to the General Assembly for funding or receive funds directly from the General Assembly.

Section 44‑20‑385. Subject to the provisions of this chapter and the regulations of the ~~department~~ division each county disabilities and special needs board:

(1) is the administrative, planning, coordinating, and service delivery body for county disabilities and special needs services funded in whole or in part by state appropriations to the ~~department~~ division or funded from other sources under the ~~department’s~~ division’s control. It is a body corporate in deed and in law with all the powers incident to corporation including the power to incur debt insofar as that debt is payable from contract, grant, or other revenues and is not the debt of the State or its other political subdivisions. A county board may purchase and hold real and mortgage property and erect and maintain buildings. The ~~department~~ division shall approve all debt of a county board to be paid in whole or in part from contract, grant, or other revenues provided by the State. However, the ~~department~~ division has no responsibility for the debt so approved;

(2) shall submit an annual plan and projected budget to the ~~department~~ division for approval and consideration of funding;

(3) shall review and evaluate on at least an annual basis the county disabilities and special needs services provided pursuant to this chapter and report its findings and recommendations to the ~~department~~ division;

(4) shall promote and accept local financial support for the county program from private and other lawful sources and promote public support from municipal and county sources;

(5) shall employ personnel and expend its budget for the direct delivery of services or contract with those service vendors necessary to carry out the county mental retardation, related disabilities, head injuries, and spinal cord injuries services program who meet specifications prescribed by the ~~department~~ division;

(6) shall plan, arrange, implement, and monitor working agreements with other human service agencies, public and private, and with other educational and judicial agencies;

(7) shall provide the ~~department~~ division records, reports, and access to its sponsored services and facilities the ~~department~~ division may require and submit its sponsored services and facilities to licensing requirements of the ~~department~~ division or to the licensing requirements of other state or local agencies having this legal authority;

(8) shall represent the best interest of persons with mental retardation, related disabilities, head injuries, or spinal cord injuries to the public, public officials, and other public or private organizations.

Section 44‑20‑390. (A) In order to provide assistance to families and individuals the ~~department~~ division shall provide an initial intake and assessment service to a person believed to be in need of services and who makes application for them. An assessment must be provided through diagnostic centers approved by the ~~department~~ division. If upon completion of the assessment the applicant is determined to have mental retardation, a related disability, head injury, or spinal cord injury and be in need of services, he may become a client of the ~~department~~ division and eligible for services. A service plan must be designated for each person assessed. A person determined to have mental retardation, a related disability, head injury, or spinal cord injury and who chooses to become a client of the ~~department~~ division, must be provided with the delivery or coordination of services by the ~~department~~ division. A person determined not to have mental retardation, a related disability, head injury, or spinal cord injury may be provided by the ~~department~~ division with referral and assistance in obtaining appropriate services or further evaluation.

(B) Service plans must recommend the services to assist the individual in developing to the fullest potential in the least restrictive environment available. The ~~department~~ division shall determine the ‘least restrictive environment’ and may contract with individuals or organizations for a reasonable sum as determined by the ~~department~~ division to provide the services. The ~~department~~ division shall review service plans of its clients at least periodically according to standards prescribing the frequency to ensure that appropriate services are being provided in the least restrictive environment available. The parents, the legal guardian, the client, and other appropriate parties must be included in the review. The ~~department~~ division shall develop standards prescribing the service plan review.

(C) No individual believed to have mental retardation, a related disability, head injury, or spinal cord injury may be admitted to the services of the ~~department~~ division until he has been examined at a diagnostic center of the ~~department~~ division or a diagnostic center approved by the ~~department~~ division and certified by the ~~department~~ division on the basis of acceptable data to have mental retardation, a related disability, head injury, or spinal cord injury or unless he is an infant at risk of a developmental disability and in need of the ~~department’s~~ division’s services.

(D) The applicant shall meet residency requirements in at least one of the following categories:

(1) The applicant or his spouse, parent, with or without legal custody, or legal guardian is domiciled in South Carolina.

(2) The applicant or his spouse, parent, with or without legal custody, or legal guardian lives outside South Carolina but retains legal residency in this State and demonstrates to the ~~department’s~~ division’s satisfaction his intent to return to South Carolina.

(3) The applicant or his spouse or parent, with or without legal custody, or legal guardian is a legal resident of a state which is an active member of the Interstate Compact on Mental Health and qualifies for services under it.

Section 44‑20‑400. Upon the written request of the person, the person’s parents, parent with legal custody, or lawful custodian or legal guardian and subject to the availability of suitable accommodations and services, a person with mental retardation, a related disability, head injury, or spinal cord injury may be admitted to the services of the ~~department~~ division for evaluation and diagnosis and shall remain in the residential services of the ~~department~~ division for that period required to complete the diagnostic study. However, this period may not exceed thirty days except upon approval of the director or his designee. Individuals admitted under the provisions of this section are subject to the same regulations and ~~departmental~~ division policies as regular admissions. The department may prescribe the form of the written application for diagnostic services.

Section 44‑20‑410. A person who is determined to be eligible for services is subject to the following considerations regarding his order of admission to services and programs:

(1) relative need of the person for special training, supervision, treatment, or care;

(2) availability of services suitable to the needs of the applicant.

Section 44‑20‑420. The director or his designee may designate the service or program in which a client is placed. The appropriate services and programs must be determined by the evaluation and assessment of the needs, interests, and goals of the client.

Section 44‑20‑430. 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~~ division.

Section 44‑20‑440. Subject to the availability of suitable services and programs and subject to the provisions of ‘Requirement for Admission to Services’, ‘Order in which Person May be Admitted’, and ‘Final Authority over Eligibility’, the director or his designee may admit a client to the services of the ~~department~~ division upon the written request of the parents of the person with mental retardation, a related disability, head injury or spinal cord injury, a parent with legal custody, spouse, lawful custodian or legal guardian, or the person with mental retardation, a related disability, head injury, or spinal cord injury seeking to be admitted to the ~~department’s~~ division’s services if the person is twenty‑one years of age or over and competent to make the decision. The ~~department~~ division shall prescribe the form of the application for services.

Section 44‑20‑450. (A) Proceedings for the involuntary admission of a person with mental retardation or a related disability to the services of the ~~department~~ division may be initiated by the filing of a verified petition with the probate or the family court by:

(1) the spouse;

(2) a relative;

(3) the parents;

(4) a parent with legal custody;

(5) the legal guardian of the person;

(6) the person in charge of a public or private institution in which the individual is residing at the time;

(7) the director of the county department of social services of the county in which the person resides; or

(8) a solicitor or an assistant solicitor responsible for the criminal prosecution pursuant to Section 44‑23‑430(2).

Upon filing of the petition, the judge shall set a date for a hearing on it and ensure that the client has an attorney who represents him. The parents, parent with legal custody, spouse, guardian, or nearest known relative of the person alleged to have mental retardation or a related disability and in whose behalf the petition has been made and in the discretion of the court, the individual alleged to have mental retardation or a related disability and the ~~department~~ division must be served by the court with a written notice of the time and place of the hearing, together with a written statement of the matters stated in the petition. If no parent, spouse, legal guardian, or known relative of the person alleged to have mental retardation or a related disability is found, the court shall appoint a guardian ad litem to represent the person alleged to have mental retardation or a related disability, and the notice must be served upon the guardian. If the parent, spouse, guardian, or known relative of the person alleged to have mental retardation or a related disability is found, he must be notified of the right to an attorney at the hearing.

(B) The hearing on the petition may be in the courthouse or at the place of residence of the person alleged to have mental retardation or a related disability or at another place considered appropriate by the court. The person alleged to have mental retardation or a related disability does not need to be present if the court determines that the hearing would be injurious or detrimental to the person alleged to have mental retardation or a related disability or if the person’s mental or physical condition prevents his participation in the hearing. However, his attorney must be present.

(C) A report of the person in charge of the examination of the person alleged to have mental retardation or a related disability at the diagnostic center referred to in ‘Requirement for Admission’ must be submitted to the court at the hearing. The court may not render judgment in the hearing unless this report is available and introduced.

(D) If the court determines that the evidence presented by the examiners at the diagnostic center, along with other evidence presented to the court, is to the effect that the person does not in fact have mental retardation or a related disability to an extent which would require commitment, it shall terminate the proceeding and dismiss the petition.

(E) If the person is found by the court to have mental retardation or a related disability and be in need of placement in a facility or service program of the ~~department~~ division, the court shall order that he be admitted to the jurisdiction of the ~~department~~ division as soon as necessary services are available and include in the order a summary of the evidence presented and order of the court.

(F) The ~~department~~ division shall inform the court as soon after the date of the order as practical that suitable accommodations and services are available to meet the needs of the person with mental retardation or a related disability. Upon notification, the court shall direct the petitioner in these proceedings to transport the person with mental retardation or a related disability to a program the ~~department~~ division designates.

(G) A party to these proceedings may appeal from the order of the court to the court of common pleas, and a trial de novo with a jury must be held in the same manner as in civil actions unless the petitioner through his attorney waives his right to a jury trial. Pending a final determination of the appeal, the person with mental retardation or a related disability must be placed in protective custody in either a facility of the ~~department~~ division or in some other suitable place designated by the court. No person with mental retardation or a related disability must be confined in jail unless there is a criminal charge pending against him.

Section 44‑20‑460. (A) A person admitted or committed to the services of the ~~department~~ division remains a client and is eligible for services until discharged. When the ~~department~~ division determines that a client admitted to services is no longer in need of them, the director or his designee may discharge him. When the only basis of the ~~department’s~~ division’s provision of services to a client is that he is a person with mental retardation or a related disability and it is determined that he is no longer in that condition, the director or his designee shall discharge him as soon as practical. A client of the ~~department~~ division who is receiving residential services may be released to his spouse, parent, guardian, or relative or another suitable person for a time and under conditions the director or his designee may prescribe.

(B) When a client voluntarily admitted requests discharge or the person upon whose application the client was admitted to the ~~department’s~~ division’s services requests discharge in writing, the client may be detained by the ~~department~~ division for no more than ninety‑six hours. However, if the condition of the person is considered by the director or his designee to be such that he cannot be discharged with safety to himself or with safety to the general public, the director or his designee may postpone the requested discharge for not more than fifteen days and cause to be filed an application for judicial admission. For the purpose of this section, the Probate Court or Family Court of the county in which the facility where the person with mental retardation or a related disability resides is located is the venue for judicial admission. Pending a final determination on the application, the court shall order the person with mental retardation or a related disability placed in protective custody in either a facility of the ~~department~~ division or in some other suitable place designated by the court.

Section 44‑20‑470. (A) The ~~department~~ division may return a nonresident person with mental retardation or a related disability admitted to a service or program in this State to the proper agency of the state of his residence.

(B) The ~~department~~ division is authorized to enter into reciprocal agreements with the proper agencies of other states to facilitate the return to the state of their residence persons admitted or committed to services for persons with mental retardation or a related disability in this State or other states.

(C) The ~~department~~ division may detain a person with mental retardation or a related disability returned to this State from the state of his commitment for not more than ninety‑six hours pending order of the court in commitment proceedings in this State.

(D) The expense of returning persons with mental retardation or a related disability to other states must be paid by this State, and the expense of returning residents of this State with mental retardation or a related disability must be paid by the state making the return when interstate agreements to that effect have been negotiated.

Section 44‑20‑480. When the ~~department~~ division determines that the welfare of a client would be facilitated by his placement out of the home, the client must be evaluated by the ~~department~~ division, and the least restrictive level of care possible for the client must be recommended and provided when available. The ~~department~~ division shall determine which levels of care are more restrictive and is responsible for providing a range of placements offering various levels of supervision. The ~~department~~ division may pay an individual or organization furnishing residential alternatives to clients under this section a reasonable sum for services rendered, as determined by the ~~department~~ division.

Section 44‑20‑490. (A) When the ~~department~~ division determines that a client may benefit from being placed in an employment situation, the ~~department~~ division shall regulate the terms and conditions of employment, shall supervise persons with mental retardation, a related disability, head injury, or spinal cord injury so employed, and may assist the client in the management of monies earned through employment to the end that the best interests of the client are served.

(B) The ~~department~~ division may operate sheltered employment and training programs at its various facilities and in communities and may pay clients employed in these settings from earnings of the program or from other funds available for this purpose.

(C) Clients who receive job training and employment services from the ~~department~~ division must be compensated in accordance with applicable state and federal laws and regulations.

Section 44‑20‑500. When a client is absent from a facility or program and there is probable cause the client may be in danger, the director or his designee may issue an order of confinement for the client. This order, when endorsed by the judge of the probate, family, or Circuit Court of the county in which the client is present or residing, authorizes a peace officer to take the client into custody for not more than twenty‑four hours and to return him or cause him to be returned to the place designated by the director or his designee.

Section 44‑20‑510. Placement of a person with mental retardation, a related disability, head injury, or spinal cord injury in a program of the ~~department~~ division does not preclude his attendance in community‑based public school classes when the individual qualifies for the classes.

Article 5

Licensure and Regulation

of Facilities and Programs

Section 44‑20‑710. No day program in part or in full for the care, training, or treatment of a person with mental retardation, a related disability, head injury, or spinal cord injury may deliver services unless a license first is obtained from the ~~department~~ division. For the purpose of this article ‘in part’ means a program operating for ten hours a week or more. Educational and training services offered under the sponsorship and direction of school districts and other state agencies are not required to be licensed under this article.

Section 44‑20‑720. The ~~department~~ division shall establish minimum standards of operation and license programs provided for in ‘Facilities and Programs must be Licensed’.

Section 44‑20‑730. In determining whether a license may be issued the ~~department~~ division shall consider if the program for which the license is applied conforms with the local and state service plans and if the proposed location conforms to use.

Section 44‑20‑740. No day program may accept a person who has mental retardation, a related disability, head injury, or spinal cord injury for services other than those for which it is licensed. No program may serve more than the number of clients as provided on the license. An applicant for a license shall file an application with the ~~department~~ division in a form and under conditions the ~~department~~ division may prescribe. The license must be issued for up to three years unless sooner suspended, revoked, or surrendered. The license is not transferable and must not be assigned.

Section 44‑20‑750. The ~~department~~ division shall make day program inspections as it may prescribe by regulation. The day programs subject to this article may be visited and inspected by the director or his designees no less than annually and before the issuance of a license. Upon request, each program shall file with the ~~department~~ division a copy of its bylaws, regulations, and rates of charges. The records of each licensed program are open to the inspection of the director or his designees.

Section 44‑20‑760. Information received by the ~~department~~ division through licensing inspections or as otherwise authorized may be disclosed publicly upon written request to the ~~department~~ division. The reports may not identify individuals receiving services from the ~~department~~ division.

Section 44‑20‑770. The ~~department~~ division shall deny, suspend, or revoke a license on any of the following grounds:

(1) failure to establish or maintain proper standards of care and service as prescribed by the ~~department~~ division;

(2) conduct or practices detrimental to the health or safety of residents or employees of the day program. This item does not apply to healing practices authorized by law;

(3) violation of the provisions of this article or regulations promulgated under ~~it~~ this article.

Section 44‑20‑780. (A) The ~~department~~ division shall give written notification to the governing board or if none, the operator of a program of deficiencies, and the applicant or licensee must be given a specified time in which to correct the deficiencies. If the ~~department~~ division determines to deny, suspend, or revoke a license, it shall send to the applicant or licensee by certified mail a notice setting forth the reason for the determination. The denial, suspension, or revocation becomes final fifteen calendar days after the mailing of the notice, unless the applicant or licensee within that time gives written notice of his desire for a hearing. If the applicant or licensee gives that notice, he must be given a hearing before the ~~department~~ division and may present evidence. On the basis of the evidence, the determination must be affirmed or set aside by the director, and a copy of the decision, setting forth the findings of fact and the reasons upon which it is based must be sent by registered mail to the applicant.

(B) If an existing program has conditions or practices which, in the ~~department’s~~ division’s judgment, provide an immediate threat to the safety and welfare of the person with mental retardation, a related disability, head injury, or spinal cord injury served, the ~~department~~ division may immediately suspend or revoke the license of the program. Notification of the program board or operator by certified mail of the license suspension or revocation also must include the reasons or conditions. A person operating a program which has had its license suspended or revoked must be punished as provided in ‘Injunctions; Penalties’.

Section 44‑20‑790. The procedures governing hearings authorized by ‘Notice of Deficiencies . . .’ must be in accordance with regulations promulgated by the ~~department~~ division. The director may appoint a review team, including consumers, to assist in the collection of information pertinent to the hearing.

Section 44‑20‑800. An applicant or licensee who is dissatisfied with the decision of the ~~department~~ division as a result of the hearing provided for by ‘Procedures Governing Disciplinary Hearings . . .’ may appeal to a South Carolina administrative law judge as provided in Article 5 ~~of~~, Chapter 23 ~~of~~, Title 1.

Section 44‑20‑900. (A) The ~~department~~ division, in accordance with the laws of the State governing injunctions and other processes, may maintain an action in the name of the State against a person for establishing, conducting, managing, or operating a day program for the care, training, and treatment of a person with mental retardation, a related disability, head injury, or spinal cord injury without obtaining a license as provided in this article. In charging a defendant in a complaint in the action, it is sufficient to charge that the defendant, upon a certain day and in a certain county, provided day program services without a license, without averring more particular facts concerning the charge.

(B) A person violating the provisions of this article is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars for a first offense and two thousand dollars for a subsequent offense. Each day the day program operates after a first conviction is considered a subsequent offense.

Section 44‑20‑1000. Licensing by the ~~department~~ division must be done in conjunction with and not in place of licensing by an agency having responsibilities outside the ~~department’s~~ division’s jurisdiction. However, nothing in this section prevents the ~~department~~ division from entering into cooperative agreements or contracts with an agency which has or may have licensing responsibilities in order to accomplish the licensing of programs.

Article 7

Capital Improvements For Disabilities

and Special Needs

Section 44‑20‑1110. The Division of Disabilities and Special Needs, Department of Health and Wellness, and under the overall administration of the department, has authority for all of the state’s disabilities and special needs services and programs.

Section 44‑20‑1120. The ~~commission~~ division may raise monies for the construction of improvements under the terms and conditions of this article.

Section 44‑20‑1130. The aggregate of the outstanding principal amounts of state capital improvement bonds issued for the ~~commission~~ division may not exceed twenty million dollars.

Section 44‑20‑1140. If the ~~commission~~ division determines that improvements are required for a residential regional center or community facility, it may make application for them to the State Budget and Control Board. The application must contain:

(1) a description of the improvements sought and their estimated cost;

(2) the number of paying clients receiving services from the ~~department~~ division, the amount of fees received from the clients during the preceding fiscal year, and the estimated amount to be received from them during the next succeeding fiscal year;

(3) the revenues derived from the paying clients during the preceding three fiscal years;

(4) a suggested maturity schedule, which may not exceed twenty years, for the repayment of monies to be made available to the ~~commission~~ division for state capital improvement bonds;

(5) a statement showing the debt service requirements of other outstanding obligations.

Section 44‑20‑1150. The State Budget and Control Board may approve, in whole or in part, or may modify an application received from the ~~commission~~ division. If it finds that a need for the improvements sought by the ~~commission~~ division exists, it may contract to make available to the ~~commission~~ division funds to be realized from the sale of state capital improvements bonds if it finds that the revenues for the preceding fiscal year, if multiplied by the number of years, which may not exceed twenty, contemplated by the suggested or revised maturity schedule for the repayment of the monies to be made available to the ~~commission~~ division, result in the production of a sum equal to not less than one hundred twenty‑five percent of the aggregate principal and interest requirement of all outstanding obligations and all obligations to be incurred by the ~~commission~~ division.

Section 44‑20‑1160. Upon receiving the approval of the State Budget and Control Board the ~~commission~~ division shall obligate itself to apply all monies derived from its revenues to the payment of the principal and interest of its outstanding obligations and those to be issued and to deliver to the board its obligations.

Section 44‑20‑1170. (A) Following the execution and delivery of its obligations, the ~~commission~~ division shall remit to the State Treasurer all its revenues, including accumulated revenues not applicable to prior obligations, for credit to a special fund. The special fund must be applied to meet the sums due by the ~~commission~~ division under its obligations. These monies from the special fund must be applied by the State Treasurer to the payment of the principal of and interest on outstanding state capital improvement bonds.

(B) If the accumulation of revenues of the ~~commission~~ division in the special fund exceeds the payment due or to become due during the then current fiscal year and an additional sum equal to the maximum annual debt service requirement of the obligations for a succeeding fiscal year, the State Budget and Control Board may permit the ~~commission~~ division to withdraw the excess and apply it to improvements that have received the approval of the board or to transfer the excess out of the special fund for contract awards to local disabilities and special needs boards for needed improvements at the local level and for nonrecurring prevention, assistive technology, and quality initiatives at the regional centers and local boards.”

SECTION 14. Chapter 21, Title 44 of the 1976 Code is amended to read:

“CHAPTER 21

~~Department~~ Division of Disabilities and Special Needs

Family Support Services

Section 44‑21‑10. (A) It is the intent of the General Assembly that individuals with mental retardation or related disabilities or head injuries, spinal cord injuries, or similar disabilities and their families be afforded supports that emphasize community living and enable them to enjoy typical lifestyles. One way to do this is to recognize that families are the greatest resource available to individuals who have mental retardation or related disabilities or head injuries, spinal cord injuries, or similar disabilities and that families must be supported in their role as primary caregivers. The General Assembly finds that supporting individuals and families in their effort to care for themselves or their family members at home is more efficient, cost‑effective, and sensitive than maintaining people with mental retardation or related disabilities in out‑of‑home residential settings.

(B) The intent of the Family Support Services Program provided for in this chapter is to assist individuals with disabilities and their families who desire or choose to support a family member with mental retardation or a related disability or head injury, spinal cord injury, or similar disability in their home. The program is not meant to create a hardship on a family by supplanting or diverting access from other appropriate or necessary services. It is recognized that persons with mental retardation or related disabilities or head injuries, spinal cord injuries, or similar disabilities have the right to receive services from public and other agencies that provide services to South Carolina citizens and to have those services coordinated with the services needed because of their disabilities. It is the position of this State that children and adults have the right to live with their families. The individual’s and family’s circumstances and desires must be taken into account when considering the appropriate types of services or supports which can best meet the needs of the individual and family.

(C) In recognition of the importance of families, the following principles must be used as guidelines in developing services to support families:

(1) Families and individuals with mental retardation or related disabilities or head injuries, spinal cord injuries, or similar disabilities are best able to determine their own needs and should be able to make decisions concerning necessary, desirable, and appropriate services.

(2) Individuals and families should receive the support necessary to care for themselves or their family member at home.

(3) Family support is needed throughout the lifespan of an individual who has mental retardation or related disabilities or head injuries, spinal cord injuries, or similar disabilities.

(4) Family support services should be sensitive to the unique needs, strengths, and values of the individuals and the family and should be responsive to the needs of the entire family.

(5) Family support should build on existing social networks and natural sources of support and should encourage community integration.

(6) Family support services should be provided in a manner that develop comprehensive, responsive, and flexible support to individuals and families as their needs evolve over time.

(7) Family support services should be coordinated across the numerous agencies likely to provide resources and services to individuals and families and should be provided equitably across the State.

(8) Family, individual, and community‑based services should be based on the principles of sharing ordinary places, developing meaningful relationships, learning things that are useful, making choices, as well as promoting an individual’s self‑esteem.

(9) Family support services should be sufficient to enable families to keep their family members with mental retardation or related disabilities or head injuries, spinal cord injuries, or similar disabilities at home or be sufficient to enable the individual with a disability to remain at home.

(10) Services provided through the Family Support Program must be coordinated closely with services received from public and other agencies and shall foster collaboration and cooperation with all agencies providing services to individuals with mental retardation or related disabilities or head injuries, spinal cord injuries, or similar disabilities.

(D) The General Assembly recognizes that the ~~South Carolina Department~~ Division of Disabilities and Special Needs, Department of Health and Wellness for several years has developed and maintained a family support program that provides support services to some families with members who have mental retardation. The success of this program demonstrates the need and value of family support services. More families in the State should be able to receive appropriate services and assistance needed to stabilize the family unit.

Section 44‑21‑20. As used in this chapter:

(1) ~~‘Department’~~ ‘Division means the ~~Department~~ Division of Disabilities and Special Needs, Department of Health and Wellness.

(2) ‘Family support’ means goods and services needed by individuals or families to care for themselves or their family members with mental retardation or related disabilities or head injuries, spinal cord injuries, or similar disabilities and to enjoy a quality of life comparable to other community members.

(3) ‘Family Support Program’ means a coordinated system of family support services administered by the ~~department~~ division directly or through contracts with private nonprofit or governmental agencies across the State, or both.

Section 44‑21‑30. The ~~department~~ division may contract with or make grants to agencies or individuals to provide for a Family Support Program in accordance with this chapter. Services and supports developed must be flexible to address individual and family needs.

Section 44‑21‑40. The focus of the Family Support Program is supporting:

(1) families with children with mental retardation or related disabilities or head injuries, spinal cord injuries, or similar disabilities, twenty‑one years of age and younger;

(2) persons older than twenty‑one years of age with mental retardation or related disabilities or head injuries, spinal cord injuries, or similar disabilities who choose to live with their families;

(3) persons older than twenty‑one years of age with mental retardation or related disabilities or head injuries, spinal cord injuries, or similar disabilities who are residing in the community in an unsupported setting, not a state or federally‑funded program.

Section 44‑21‑50. The contracted agency shall assist each individual or family for whom services will be provided in assessing its needs and shall prepare a written plan with the person and family. The needs and preferences of the individual and family will be the basis for determining what goods and services will be provided within the resources available.

Section 44‑21‑60. The services in the Family Support Program include, but are not limited to, family support services coordination, information, referral, advocacy, educational materials, emergency and outreach services, and other individual and family‑centered assistance services such as:

(1) respite care;

(2) personal assistance services;

(3) child care;

(4) homemaker services;

(5) minor home and work site modifications and vehicular modifications;

(6) specialized equipment and maintenance and repair;

(7) specialized nutrition and clothing and supplies;

(8) transportation services;

(9) health‑related costs not otherwise covered;

(10) licensed nursing and nurses’ aid services;

(11) family counseling, training, and support groups;

(12) financial assistance;

(13) emergency services;

(14) recreation and leisure needs.

Section 44‑21‑70. Implementation of this chapter and the Family Support Program is contingent upon annual ~~appropriation~~ appropriations of sufficient funding for the program and benefits. This chapter does not establish or authorize creation of an entitlement program or benefit.

Section 44‑21‑80. (A) The Department of Pediatrics of the Medical University of South Carolina, the University Pediatrics of the University Affiliated Program of the University of South Carolina, and the Children’s Hospital of the Greenville Hospital System, are each hereby authorized, as agents of the State of South Carolina, to fulfill the role of Regional Tertiary Level Developmental Evaluation Centers providing comprehensive developmental assessment and treatment services for children with developmental disabilities, significant developmental delays, or behavioral or learning disorders.

(B) As developmental evaluation centers, the above named institutions shall provide a seamless continuum of developmental services, including medically necessary diagnostic and treatment services for the purpose of correcting or ameliorating physical or mental illnesses and conditions which, left untreated, would negatively impact the health and quality of life of South Carolina’s children. Further, these centers shall work collectively with the teaching, training, and research entities of each institution, extending the state’s efforts to prepare professionals to work in the field of developmental medicine, while lending expertise to the research efforts in this field.

(C) The developmental evaluation centers shall be involved in research, planning, and needs assessment of issues related to developmental disabilities and shall be committed to develop a regionalized system of community‑based, family‑centered care for children with developmental and behavioral disabilities. In so doing, the centers shall serve as primary points of entry for developmental evaluation services and as regional coordinators for the delivery of the services and are encouraged to affiliate with other providers thus enhancing the availability of high quality services for the children of South Carolina.”

SECTION 15. 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 Health and Wellness

Section 44‑49‑10. (A) There is established in the Department of Health and Wellness, and under the administration and supervision of the department, the Division of Alcohol and Other Drug Abuse 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, as provided for in Section 1‑30‑20(A) 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~~ for this purpose ~~to each of the agencies designated under Section 61‑12‑20(a)~~ in accordance with Chapter 12, Title 61. 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 must be expended in accordance with ~~the county plans required under Section 61‑12‑20(b)~~ Chapter 12, Title 61.

(E) The ~~department is authorized to develop such rules and~~ division may promulgate regulations not inconsistent with the provisions of this chapter as ~~it may find~~ the division finds 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)~~ to carry out the relevant provisions of Chapter 12, Title 61.

Section 44‑49‑20. The ~~Department~~ Division of Alcohol and Other Drug Abuse Services ~~shall~~ must be headed by a director ~~appointed~~ employed 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~~ Secretary of the Department of Health and Wellness.

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, under the overall administration of the department, 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 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 controlled substances and the social effects ~~thereof~~ of controlled substances; and

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

(D) The ~~department~~ division may:

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

~~(F)~~(3) ~~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.~~ division;

(4) ~~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. (A) The ~~department~~ director of the division shall ~~appoint~~ employ 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.

(B) In carrying out the provisions of this section the ~~department~~ division 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~~ Division 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.

(C) The 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 44‑49‑70.~~ ~~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~~ 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~~ 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 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 State 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 State 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 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, 2011.

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