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COMMITTEE REPORT

April 6, 2011

**H. 3229**

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

S. Printed 4/6/11--H.

Read the first time January 11, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3229) to amend the Code of Laws of South Carolina, 1976, so as to enact the “Behavioral Health Services Act of 2011” by adding Chapter 10 to Title 44 so as to create, etc., respectfully

**REPORT:**

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

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

/SECTION 1. This act may be cited as the “Behavioral Health Services Act of 2011”.

SECTION 2. Title 44 of the 1976 Code is amended by adding:

“CHAPTER 10

Department of Behavioral Health Services

Article 1

Department Established

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

(B) The department shall:

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

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

Section 44‑10‑20. (A) The Governor, with the advice and consent of the Senate, shall appoint the director of the department who shall serve at the pleasure of the Governor and who may be removed pursuant to Section 1‑3‑240.

(B) The director, who is the chief executive officer of the department, shall employ staff and administer policies and procedures necessary to carry out the provisions of this chapter.

Section 44‑10‑30. (A) The department shall promulgate regulations, which must include, but are not limited to, criteria and definitions for eligibility determination, standards for the delivery of services, content, 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, protection, and security procedures, and procedures to appeal agency decisions.

(B) The 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.

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

Article 3

Administrative Powers

Section 44‑10‑310. The department may accept gifts, bequests, devises, grants, donations of money or real and personal property of whatever kind for its use in furthering the purpose of the department. However, no gift or grant may be accepted upon the condition that it diminish an obligation due the department. The department may refuse to accept a gift or grant and the acceptance of a gift or grant may not incur an obligation on the part of the State. A 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 gifts and grants.

Section 44‑10‑320. (A) The department may enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on behavioral health services and the needs, problems, and services for clients of the department.

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

Section 44‑10‑330. The department may acquire motor vehicle liability insurance for employees operating vehicles or private vehicles in connection with their official departmental duties to protect against liability.

Section 44‑10‑340. The department may sell timber from its forest lands with the proceeds from the sales to be deposited in the general fund of the State. Before a sale, the State Budget and Control Board shall consult with the State Forester to determine the economic feasibility of the sale, and a sale must not be made without the approval of the board.

Section 44‑10‑350. All departments, officers, agencies, and employees of the State shall cooperate with the Department of Behavioral Health Services in carrying out the department’s functions, duties, and responsibilities. The Attorney General shall furnish legal services as are necessary to the department.”

SECTION 3. Section 1‑30‑10(A) of the 1976 Code, as last amended by Act 146 of 2010, is further is amended to read:

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

~~1.~~ (1) Department of Agriculture

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

~~3.~~ (3) Department of Commerce

~~4.~~ (4) Department of Corrections

~~5.~~ (5) Department of Disabilities and Special Needs

~~6.~~ (6) Department of Education

~~7.~~ (7) Department of Health and Environmental Control

~~8.~~ (8) Department of Health and Human Services

~~9.~~ (9) Department of Insurance

~~10.~~ (10) Department of Juvenile Justice

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

~~12.~~ ~~Department of Mental Health~~

~~13.~~ (12) Department of Natural Resources

~~14.~~ (13) Department of Parks, Recreation and Tourism

~~15.~~ (14) Department of Probation, Parole and Pardon Services

~~16.~~ (15) Department of Public Safety

~~17.~~ (16) Department of Revenue

~~18.~~ (17) Department of Social Services

~~19.~~ (18) Department of Transportation

~~20.~~ (19) Department of Employment and Workforce”

SECTION 4. 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, is transferred to the Department of Behavioral Health Services, Division of Alcohol and Other Drug Abuse Services, and all powers, duties, obligations, and responsibilities of the Department of Alcohol and Other Drug Abuse Services are devolved upon the Department of Behavioral Health Services, Division of Alcohol and Other Drug Abuse Services.”

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

“Section 1‑30‑68. 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, are transferred to and incorporated in and must be administered as part of the Department of Behavioral Health Services:

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

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

(3) Continuum of Care for Emotionally Disturbed Children, formerly provided for in Section 63‑11‑1310 et seq.”

SECTION 6. 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, is transferred to and incorporated in and shall be administered as part of the Department of Behavioral Health Services, Division of Mental Health, and all powers, duties, obligations, and responsibilities of the Department of Mental Health are devolved upon the Department of Behavioral Health Services, Division of Mental Health.”

SECTION 7. Section 1‑30‑110 of the 1976 Code is amended to read:

“Section 1‑30‑110. Effective 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 office of the Governor:

(1) ~~Continuum of Care for Emotionally Disturbed Children provided for at Section 63‑11‑1310, et seq.;~~

~~(2)~~ Guardian Ad Litem Program, formerly provided for at Section 63‑11‑500, et seq.;

~~(3)~~(2) State Office of Victim’s Assistance, formerly provided for at Section 16‑3‑1110, et seq.;

~~(4)~~(3) Department of Veterans Affairs, formerly provided for at Section 25‑11‑10, et seq.;

~~(5)~~(4) Commission on Women, formerly provided for at Section 1‑15‑10, et seq.;

~~(6)~~(5) Commission on Aging, formerly provided for at Section 43‑21‑10, et seq.;

~~(7)~~(6) Foster Care Review Board, formerly provided for at Section 63‑11‑720, et seq.~~;~~”

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

“CHAPTER 9

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

Behavioral Health Services

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

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

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

(b) one member from the State at large.

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

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

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

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

Section 44‑9‑40. The ~~Mental Health Commission~~ Director of the Department of Behavioral Health Services shall appoint and remove ~~a state director of Mental Health, who is chief executive of the State Department of Mental Health~~ the director of the Division of Mental Health. ~~Subject to the supervision and control of the Mental Health Commission,~~ The ~~state~~ division director shall administer the policies and regulations established by the ~~commission~~ department. The division director must be a person of proven executive and administrative ability with appropriate education and substantial experience in the field of mental illness treatment. The division director ~~must~~ shall appoint and remove all other officers and employees of the ~~department~~ Division of Mental Health, subject to the approval of the ~~Mental Health Commission~~ director of the department.

Section 44‑9‑50. The ~~Department~~ Division of Mental Health may be divided into ~~such divisions~~ offices as may be authorized by the Director of ~~Mental Health and approved by the commission~~ the Department of Behavioral Health Services. One of the ~~divisions~~ offices must be ~~a Division~~ the Office on Alcohol and Drug Addiction which ~~shall have~~ has primary responsibility in the State for treatment of alcohol and drug addicts. One of the ~~divisions~~ offices must be ~~a Division~~ the Office for Long Term Care which ~~shall have~~ has 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, Department of Behavioral Health Services may appoint a director of each hospital. Each director must be knowledgeable in the treatment of the mentally ill and in hospital administration. The director of each hospital under the jurisdiction of the ~~Department~~ Division of Mental Health is responsible for the employment of all personnel at the hospital, subject to the approval of the director of the ~~department~~ division. The director of the ~~department~~ division may serve as director of one or more hospitals or other mental health facilities.

Section 44‑9‑70. The ~~State department~~ Division of Mental Health 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~~ Division of Mental Health is further designated as the state agency authorized to administer minimum standards and requirements for mental health clinics as conditions for participation in federal‑state grants‑in‑aid under the provisions of the National Mental Health Act, as amended, and is authorized to promote and develop community mental health outpatient clinics. Provided, that nothing in this article ~~shall~~ may be construed to prohibit the operation of outpatient mental health clinics by the ~~South Carolina Medical College Hospital~~ Medical University of South Carolina 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~~.

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 of Behavioral Health Services, 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~~ correctional institutions in this State for the purpose of providing proper care and treatment for mental patients confined in ~~penal~~ these 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, under the overall administration of the Department of Behavioral Health Services, may:

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

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

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

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

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

Section 44‑9‑110. The ~~Mental Health Commission~~ director may accept on behalf of the ~~department~~ Division of Mental Health or any of its facilities or services, gifts, bequests, devises, grants, donations of money or real and personal property of whatever kind, but ~~no such~~ a gift or grant ~~shall~~ may not be accepted upon the condition that it ~~shall~~ diminish an obligation due the department. The ~~Commission~~ director may refuse to accept ~~any such~~ this gift or grant and the acceptance of ~~any such~~ this 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~~ director may ~~promulgate~~ make rules and promulgate regulations governing the disposition of ~~such~~ these gifts and grants.

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

Section 44‑9‑160. ~~Wherever~~ In the 1976 Code when 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 director or superintendent or his designee; and wherever reference is made to the State Commissioner of Mental Health, it ~~shall mean~~ means the ~~State~~ Director of the ~~Department~~ Division of Mental Health.”

SECTION 9. Chapter 49, Title 44 of the 1976 Code is amended to read:

“CHAPTER 49

~~Department~~ Division of Alcohol and Other Drug Abuse Services

Section 44‑49‑10. (A) There is established in, and under the administration of the Department of Behavioral Health Services, the Division of Alcohol and Other Drug Abuse Services. The ~~Department~~ Division of Alcohol and Other Drug Abuse Services ~~shall be~~ is vested with all the functions, powers, and duties, of the ~~South Carolina Commission on Alcoholism and the South Carolina Commission on Alcohol and Drug Abuse~~ Department of Alcohol and Other Drug Abuse Services and ~~shall have~~ has 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 be vested in the State Law Enforcement Division.

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

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

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

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

(B) Members serve for terms of five years and until their successors are appointed and qualify. However, of the initial appointees, three must be appointed for five years, three must be appointed for four years, and three must be appointed for three years. Members may not be reappointed unless serving as an initial appointee or filling a vacancy for an unexpired portion of a term. The Governor may remove a member pursuant to the provisions of Section 1‑3‑240. A vacancy must be filled by the Governor for the unexpired portion of the term.

(C) The advisory board shall advise the division on policies and regulations governing the operation of the division.

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

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

Section 44‑49‑40. (A) The ~~department~~ division shall arrange for the exchange of information between governmental officials concerning the use and abuse of 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 supervision 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, interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

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

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

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

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

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

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

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

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

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

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

(11) provide a statewide system made up of providers certified by the division to provide services for the delivery of alcohol and substance abuse services to treat, reduce, and prevent alcohol and substance abuse for the citizens of this State.

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

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

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

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

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

~~In carrying out the provisions of this section the department and the supervisor of adult education for the prevention of alcoholism may consult and work in conjunction with groups such as Alcoholics Anonymous, the Yale Center of Alcohol Studies of Yale University, the Research Council on Problems of Alcohol of the American Association for the Advancement of Science, the South Carolina Medical Association, the department of Mental Health, the Christian Action Council, the Committee on Alcoholism of the South Carolina Conference of Social Work and other groups or agencies that are able to assist in the study, prevention, treatment and rehabilitation of alcoholics and in a scientific educational program on the problems of alcohol.~~ The Division of Alcohol and Other Drug Abuse Services is designated as the State’s authority for purposes of administering federal funds allotted to South Carolina under the provisions of the Public Health Service Act, Title XIX, Part B, Subpart II, as amended, Public Law 106-310;42 U.S.C. 300x (CFDA No. 93.959). The Division of Alcohol and Other Drug Abuse Services is further designated as the state agency authorized to administer standards and requirements for providers of substance abuse services as conditions for participation in federal-state grants-in-aid under the provisions of all related federal statutes.

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

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

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

SECTION 10. Section 44‑38‑380(A)(1)(h) of the 1976 Code is amended to read:

“(h) Director of the Division of the Continuum of Care for Emotionally Disturbed Children ~~Division of the Governor’s Office~~, Department of Behavioral Health Services;”

SECTION 11. Section 63‑11‑1310 of the 1976 Code is amended to read:

“Section 63‑11‑1310. It is the purpose of this article to develop and enhance the delivery of services to severely emotionally disturbed children and youth and to ensure that the special needs of this population are met appropriately to the extent possible within this State. To achieve this objective, the Division of the Continuum of Care for Emotionally Disturbed Children Division is established in, and under the administration of, the ~~office of the Governor~~ Department of Behavioral Health Services. This article supplements and does not supplant existing services provided to this population.”

SECTION 12. Section 63‑11‑1340 of the 1976 Code is amended to read:

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

SECTION 13. Section 63‑11‑1360 of the 1976 Code is amended to read:

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

SECTION 14. (A) When the provisions of this act transfer the Department of Mental Health, Department of Alcohol and Other Drug Abuse Services, and the Continuum of Care for Emotionally Disturbed Children (transferring departments) to the Department of Behavioral Health Services (receiving department), the employees, authorized appropriations, bonded indebtedness if applicable, and real and personal property of the transferring departments are also transferred to and become part of the receiving department. All classified or unclassified personnel employed by these transferring departments on the effective date of this act, either by contract or by employment at will, become employees of the receiving department, with the same compensation, classification, and grade level, as applicable.

(B) The regulations promulgated by the transferring departments 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 transferring departments changed by this act, to their duties or functions devolved upon the receiving department, 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 the transferring departments transferred to the Department of Behavioral Health Services 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 departments 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 transferring departments transferred to the Department of Behavioral Health Services must continue to be used and expended for those purposes provided prior to July 1, 2011. If a portion of these fines, fees, forfeitures, or revenues were required to be used for the support, benefit, or expense of personnel transferred, these funds must continue to be used for these purposes.

(F) The Code Commissioner shall cause the changes to the 1976 Code as contained in this act to be printed in replacement volumes or in cumulative supplements as he considers practical and economical.

SECTION 15. 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 16. 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 17. This act takes effect July 1, 2011. /

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “BEHAVIORAL HEALTH SERVICES ACT OF 2011” BY ADDING CHAPTER 10 TO TITLE 44 SO AS TO CREATE THE DEPARTMENT OF BEHAVIORAL HEALTH SERVICES COMPRISED OF THE DIVISION OF ALCOHOL AND OTHER DRUG ABUSE SERVICES AND THE DIVISION OF MENTAL HEALTH AND TO MAKE CONFORMING CHANGES, TO PROVIDE FOR THE DEPARTMENT’S POWERS AND DUTIES, INCLUDING DEVELOPING AND IMPLEMENTING A STATE PLAN FOR THE COORDINATED CARE AND UNIFIED DELIVERY OF BEHAVIORAL HEALTH SERVICES AND OVERSEEING THE ADMINISTRATION AND DELIVERY OF BEHAVIORAL HEALTH SERVICES, TO CREATE THE DEPARTMENT OF BEHAVIORAL HEALTH SERVICES ADVISORY COMMITTEE, TO PROVIDE FOR THE POWERS AND DUTIES OF THE ADVISORY COMMITTEE AND FOR THE MEMBERSHIP OF THE ADVISORY COMMITTEE, TO AUTHORIZE THE NEWLY CREATED DEPARTMENT TO PROMULGATE REGULATIONS, AND TO PROVIDE FOR THE DEPARTMENT’S ADMINISTRATIVE POWERS; TO AMEND SECTION 1‑30‑10, AS AMENDED, RELATING TO DEPARTMENTS OF STATE GOVERNMENT, SO AS TO ADD THE DEPARTMENT OF BEHAVIORAL HEALTH SERVICES AND MAKE CONFORMING CHANGES; BY ADDING SECTION 1‑30‑68 SO AS TO TRANSFER ALL NECESSARY ENTITIES FROM THE DEPARTMENT OF ALCOHOL AND DRUG ABUSE SERVICES AND THE DEPARTMENT OF MENTAL HEALTH TO THE DEPARTMENT OF BEHAVIORAL HEALTH SERVICES; TO AMEND SECTION 1‑30‑20, RELATING TO AGENCIES PREVIOUSLY TRANSFERRED TO THE DEPARTMENT OF ALCOHOL AND OTHER DRUG ABUSE SERVICES, SO AS TO PROVIDE THAT THE POWERS AND DUTIES OF THE DEPARTMENT OF ALCOHOL AND OTHER DRUG ABUSE SERVICES ARE TRANSFERRED TO AND DEVOLVED UPON THE DEPARTMENT OF BEHAVIORAL HEALTH SERVICES, DIVISION OF ALCOHOL AND OTHER DRUG ABUSE SERVICES; TO AMEND SECTION 1‑30‑70, RELATING TO AGENCIES PREVIOUSLY TRANSFERRED TO THE DEPARTMENT OF MENTAL HEALTH, SO AS TO PROVIDE THAT THE POWERS AND DUTIES OF THE DEPARTMENT OF MENTAL HEALTH ARE TRANSFERRED TO AND DEVOLVED UPON THE DEPARTMENT OF BEHAVIORAL HEALTH SERVICES, DIVISION OF MENTAL HEALTH; TO AMEND CHAPTER 9, TITLE 44, RELATING TO THE ORGANIZATION AND OPERATION OF THE DEPARTMENT OF MENTAL HEALTH AND ITS FACILITIES AND TO THE SOUTH CAROLINA MENTAL HEALTH COMMISSION, SO AS TO CONFORM THE CHAPTER TO THE PROVISIONS OF THIS ACT AND TO RESTRUCTURE THE MENTAL HEALTH COMMISSION INTO AN ADVISORY BOARD; AND TO AMEND CHAPTER 49, TITLE 44, RELATING TO THE DEPARTMENT OF ALCOHOL AND OTHER DRUG ABUSE SERVICES, SO AS TO CONFORM THE CHAPTER TO THE PROVISIONS OF THIS ACT AND TO CREATE AN ADVISORY BOARD TO THE DIVISION.

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

SECTION 1. This act may be cited as the “Behavioral Health Services Act of 2011”.

SECTION 2. Title 44 of the 1976 Code is amended by adding:

“CHAPTER 10

Department of Behavioral Health Services

Article 1

Department Established

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

(B) The department shall:

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

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

Section 44‑10‑20. (A) There is established the Department of Behavioral Health Services Advisory Committee to study the organizational structure of the department to evaluate the effectiveness, efficiency, and accountability of the department and to make recommendations for organizational and service delivery changes. The advisory committee must be composed of:

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

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

(3) two representatives of the Division of Disabilities and Special Needs appointed by the director of the division, one of whom may be the director of the division;

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

(5) one representative of the Continuum of Care for Emotionally Disturbed Children appointed by the director of the continuum;

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

(7) two professionals with expertise in the area of services provided by the Division of Disabilities and Special Needs appointed by the Governor;

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

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

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

(11) two recipients of services of the Division of Disabilities and Special Needs, or a family member of a recipient of these services, appointed by the Governor;

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

(13) one family member of a recipient of services from the Continuum of Care for Emotionally Disturbed Children appointed by the Governor.

(B) In appointing members to the advisory committee, the director shall select members who are representative of the ethnic, gender, rural, and urban diversity of the State. Members shall serve terms of five years and until their successors are appointed and qualify. However, of the initial appointees, six must be appointed for five years, six must be appointed for four years, six must be appointed for three years, and four must be appointed for two years. Members other than initial appointees may not be reappointed unless they are filling a vacancy for an unexpired portion of a term. The Governor may remove a member pursuant to the provisions of Section 1‑3‑240. A vacancy must be filled by the Governor for the unexpired portion of the term. Members representing divisions shall serve ex officio at the pleasure of the division director.

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

Section 44‑10‑30. (A) The department shall promulgate regulations, which must include, but are not limited to, criteria and definitions for eligibility determination, standards for the delivery of services, content and development and revision of individual client plans, including participation by the client and family in the development and revision of the plan, fee structures for services rendered and charges that may be incurred, client safety, protection, and security procedures, and procedures to appeal agency decisions.

(B) The 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.

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

Article 3

Administrative Powers

Section 44‑10‑310. The department may accept gifts, bequests, devises, grants, donations of money or real and personal property of whatever kind for its use in furthering the purpose of the department. However, no gift or grant may be accepted upon the condition that it diminish an obligation due the department. The department may refuse to accept a gift or grant and the acceptance of a gift or grant may not incur an obligation on the part of the State. A 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 gifts and grants.

Section 44‑10‑320. (A) The department may enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on behavioral health services and the needs, problems, and services for clients of the department.

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

Section 44‑10‑330. The department may acquire motor vehicle liability insurance for employees operating vehicles or private vehicles in connection with their official departmental duties to protect against liability.

Section 44‑10‑340. The department may sell timber from its forest lands with the proceeds from the sales to be deposited in the general fund of the State. Before a sale, the State Budget and Control Board shall consult with the State Forester to determine the economic feasibility of the sale, and a sale must not be made without the approval of the board.

Section 44‑10‑350. All departments, officers, agencies, and employees of the State shall cooperate with the Department of Behavioral Health Services in carrying out the department’s functions, duties, and responsibilities. The Attorney General shall furnish legal services as are necessary to the department.”

SECTION 3. Section 1‑30‑10(A) of the 1976 Code, as last amended by Act 146 of 2010, is further is amended to read:

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

~~1.~~ (1) Department of Agriculture

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

~~3.~~ (3) Department of Commerce

~~4.~~ (4) Department of Corrections

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

~~6.~~ (5) Department of Education

~~7.~~ (6) Department of Health and Environmental Control

~~8.~~ (7) Department of Health and Human Services

~~9.~~ (8) Department of Insurance

~~10.~~ (9) Department of Juvenile Justice

~~11.~~ (10) Department of Labor, Licensing and Regulation

~~12.~~ ~~Department of Mental Health~~

~~13.~~ (11) Department of Natural Resources

~~14.~~ (12) Department of Parks, Recreation and Tourism

~~15.~~ (13) Department of Probation, Parole and Pardon Services

~~16.~~ (14) Department of Public Safety

~~17.~~ (15) Department of Revenue

~~18.~~ (16) Department of Social Services

~~19.~~ (17) Department of Transportation

~~20.~~ (18) Department of Employment and Workforce”

SECTION 4. Chapter 30, Title 1 of the 1976 Code is amended by adding:

“Section 1‑30‑68. 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 Behavioral Health Services:

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

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

SECTION 5. 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 Behavioral Health Services, Division of Alcohol and Other Drug Abuse Services, and all powers, duties, obligations, and responsibilities of the Department of Alcohol and Other Drug Abuse Services are devolved upon the Department of Behavioral Health Services, Division of Alcohol and Other Drug Abuse Services.”

SECTION 6. 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 Behavioral Health Services, Division of Mental Health, and all powers, duties, obligations, and responsibilities of the Department of Mental Health are devolved upon the Department of Behavioral Health Services, Division of Mental Health.”

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

“CHAPTER 9

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

Behavioral Health Services

Section 44‑9‑10. There is ~~hereby~~ created the ~~State Department~~ Division of Mental Health within the Department of Behavioral Health Services which ~~shall have~~ has jurisdiction over all of the state’s mental hospitals, clinics and centers, joint state and community sponsored mental health clinics and centers, and facilities for the treatment and care of alcohol and drug addicts, including the authority to name each facility.

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

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

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

(b) one member from the State at large.

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

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

(C) The ~~commission~~ advisory board shall ~~determine~~ advise the director regarding policies and ~~promulgate~~ regulations governing the operation of the ~~department~~ division 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~~ director of the Department of Behavioral Health Services shall appoint and remove ~~a state director of Mental Health, who is chief executive of the State Department of Mental Health~~ the director of Division of Mental Health. ~~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~~ Governor. The division director must be a person of proven executive and administrative ability with appropriate education and substantial experience in the field of mental illness treatment. The division director ~~must~~ shall appoint and remove all other officers and employees of the ~~department~~ Division of Mental Health, subject to the approval of the ~~Mental Health Commission~~ Governor.

Section 44‑9‑50. The ~~Department~~ Division of Mental Health may be divided into ~~such divisions~~ subdivisions as may be authorized by the director of ~~Mental Health and approved by the commission~~ the Department of Behavioral Health Services. One of the ~~divisions~~ subdivisions must be ~~a Division~~ the Office on Alcohol and Drug Addiction which ~~shall have~~ has 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~~ has 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, Department of Behavioral Health Services may appoint a director of each hospital. Each director must be knowledgeable in the treatment of the mentally ill and in hospital administration. The director of each hospital under the jurisdiction of the ~~Department~~ Division of Mental Health is responsible for the employment of all personnel at the hospital, subject to the approval of the director of the ~~department~~ division. The director of the ~~department~~ division may serve as director of one or more hospitals or other mental health facilities.

Section 44‑9‑70. The ~~State department~~ Division of Mental Health 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~~ Division of Mental Health is further designated as the state agency authorized to administer minimum standards and requirements for mental health clinics as conditions for participation in federal‑state grants‑in‑aid under the provisions of the National Mental Health Act, as amended, and is authorized to promote and develop community mental health outpatient clinics. Provided, that nothing in this article ~~shall~~ may be construed to prohibit the operation of outpatient mental health clinics by the South Carolina Medical College Hospital in Charleston. Provided, further, that nothing ~~herein shall~~ in this chapter may be construed to include any of the functions or responsibilities now granted the Department of Health and Environmental Control, or the administration of the State Hospital Construction Act (Hill‑Burton Act), as provided in the 1976 Code of Laws and amendments ~~thereto~~ to it.

Section 44‑9‑80. Payments made to a mental health facility which are derived in whole or in part from federal funds which become available after June 30, 1967, and which are provided with the stipulation that they be used to improve services to patients ~~shall~~ are not ~~be~~ considered fees from paying patients under the terms of Act No. 1100 of 1964 but may be utilized by the ~~State department~~ Division of Mental Health to improve South Carolina’s comprehensive mental health program.

Section 44‑9‑90. The ~~commission~~ Division of Mental Health shall:

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

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

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

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

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

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

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

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 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 ~~Mental Health Commission~~ director may accept on behalf of the ~~department~~ Division of Mental Health or any of its facilities or services, gifts, bequests, devises, grants, donations of money or real and personal property of whatever kind, but ~~no such~~ a gift or grant ~~shall~~ may not be accepted upon the condition that it ~~shall~~ diminish an obligation due the department. The ~~Commission~~ director may refuse to accept ~~any such~~ this gift or grant and the acceptance of ~~any such~~ this 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~~ director may ~~promulgate~~ make rules and promulgate regulations governing the disposition of ~~such~~ these gifts and grants.

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

Section 44‑9‑160. ~~Wherever~~ In the 1976 Code when 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 director or superintendent or his designee; and wherever reference is made to the State Commissioner of Mental Health, it ~~shall mean~~ means the ~~State~~ Director of the ~~Department~~ Division of Mental Health.”

SECTION 8. Chapter 49, Title 44 of the 1976 Code is amended to read:

“CHAPTER 49

~~Department~~ Division of Alcohol and Other Drug Abuse Services

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

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

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

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

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

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

(B) Members serve for terms of five years and until their successors are appointed and qualify. However, of the initial appointees, three must be appointed for five years, three must be appointed for four years, and three must be appointed for three years. Members may not be reappointed unless serving as an initial appointee or filling a vacancy for an unexpired portion of a term. The Governor may remove a member pursuant to the provisions of Section 1‑3‑240. A vacancy must be filled by the Governor for the unexpired portion of the term.

(C) The advisory board shall advise the division on policies and regulations governing the operation of the division and the employment of professional and staff personnel and shall make recommendations to the department’s advisory board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 9. (A) When 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 board’s 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) When 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, these 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 when agreement between the affected agencies cannot be obtained.

(G) When the functions of former agencies have been devolved on more than one department or departmental division, the general support services of the former agency must be transferred to the restructured departments or departmental divisions as provided by the General Assembly in the annual general appropriations act.

(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 10. 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 11. 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 12. This act takes effect July 1, 2011.

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