

Case No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES  
October Term, 2025

MATTHEW THOMAS PARKINS, by and through Andrew Turner,  
his next of friend and Guardian ad Litem; MATT PARKINS, individually,  
Petitioner,

v.

HENRY DARGAN MCMASTER; MICHAEL LEACH; ROBERT KERR;  
SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, a/k/a SCDSS;  
TOMEKIA MEANS; CALVIN HILL; SOUTH CAROLINA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES, a/k/a DHHS; JOSHUA BAKER; ALTHEA  
MYERS; SOUTH CAROLINA DEPARTMENT OF DISABILITIES AND  
SPECIAL NEEDS, a/k/a DDSN; PATRICK J. MALEY; LAURENS COUNTY  
DISABILITIES AND SPECIAL NEEDS BOARD, a/k/a LCDSNB; UNION  
MEDICAL CENTER, a/k/a UMC; TONYA RENEE WASHINGTON, MD; JAN  
BRADLEY; JOHN ROE; JANE ROE; SOUTH CAROLINA; OFFICE OF THE  
GOVERNOR; MICHELLE GOUGH FRY; SPARTANBURG REGIONAL  
HEALTH CARE SYSTEM,

Respondents.

APPENDIX CONTAINING STATUTES

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## FEDERAL STATUTES

### Fourteenth Amendment

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

#### 42 USC § 1396n

...

(c) Waiver respecting medical assistance requirement in State plan; scope, etc.; “habilitation services” defined; imposition of certain regulatory limits prohibited; computation of expenditures for certain disabled patients; coordinated services; substitution of participants.

(1) The Secretary may by waiver provide that a State plan approved under this title [42 USCS §§ 1396 et seq.] may include as “medical assistance” under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan.

...

(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that—

(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services;

(B) the State will provide, with respect to individuals who—

(i) are entitled to medical assistance for inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded under the State plan,

(ii) may require such services, and

(iii) may be eligible for such home or community-based care under such waiver,

for an evaluation of the need for inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded;

(C) such individuals who are determined to be likely to require the level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded are informed of the feasible alternatives, if available under the waiver, *at the choice of such individuals*, to the provision of inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded;

(Emphasis added.)

## 42 USC § 1396r

(7) State requirements for preadmission screening and resident review.

(A) Preadmission screening.

(i) In general. Effective January 1, 1989, the State must have in effect a preadmission screening program, for making determinations (using any criteria developed under subsection (f)(8)) described in subsection (b)(3)(F) for mentally ill and mentally retarded individuals (as defined in subparagraph (G)) who are admitted to nursing facilities on or after January 1, 1989. The failure of the Secretary to develop minimum criteria under subsection (f)(8) shall not relieve any State of its responsibility to have a preadmission screening program under this subparagraph or to perform resident reviews under subparagraph (B).

...(B) State requirement for resident review.

...

(ii) For mentally retarded residents. As of April 1, 1990, in the case of each resident of a nursing facility who is mentally retarded, the State mental retardation or developmental disability authority must review and determine (using any criteria developed under subsection (f)(8))—

(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an intermediate care facility described under section 1905(d) [42 USCS § 1396d(d)]; and  
(II) whether or not the resident requires specialized services for mental retardation.

...

(f)(8)

...

(7) State requirements for preadmission screening and resident review.

(A) Preadmission screening.

(i) In general. Effective January 1, 1989, the State must have in effect a preadmission screening program, for making determinations (using any criteria developed under subsection (f)(8)) described in subsection (b)(3)(F) for mentally ill and mentally retarded individuals (as defined in subparagraph (G)) who are admitted to nursing facilities on or after January 1, 1989. The failure of the Secretary to develop minimum criteria under subsection (f)(8) shall not relieve any State of its responsibility to have a preadmission screening program under this subparagraph or to perform resident reviews under subparagraph (B).

(ii) Clarification with respect to certain readmissions. The preadmission screening program under clause (i) need not provide for determinations in the case of the readmission to a nursing facility of an individual who, after being admitted to the nursing facility, was transferred for care in a hospital.

(iii) Exception for certain hospital discharges. The preadmission screening program under clause (i) shall not apply to the admission to a nursing facility of an individual—

(I) who is admitted to the facility directly from a hospital after receiving acute inpatient care at the hospital,

(II) who requires nursing facility services for the condition for which the individual received care

in the hospital, and

(III) whose attending physician has certified, before admission to the facility, that the individual is likely to require less than 30 days of nursing facility services.

(B) State requirement for resident review.

(i) For mentally ill residents. As of April 1, 1990, in the case of each resident of a nursing facility who is mentally ill, the State mental health authority must review and determine (using any criteria developed under subsection (f)(8) and based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority)—

(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an inpatient psychiatric hospital for individuals under age 21 (as described in section 1905(h) [42 USCS § 1396d(h)]) or of an institution for mental diseases providing medical assistance to individuals 65 years of age or older; and

(II) whether or not the resident requires specialized services for mental illness.

(ii) For mentally retarded residents. As of April 1, 1990, in the case of each resident of a nursing facility who is mentally retarded, the State mental retardation or developmental disability authority must review and determine (using any criteria developed under subsection (f)(8))—

(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an intermediate care facility described under section 1905(d) [42 USCS § 1396d(d)]; and

(II) whether or not the resident requires specialized services for mental retardation.

...

(D) Denial of payment.

(i) For failure to conduct preadmission screening or review. No payment may be made under section 1903(a) [42 USCS § 1396b(a)] with respect to nursing facility services furnished to an individual for whom a determination is required under subsection (b)(3)(F) or subparagraph (B) but for whom the determination is not made.

(ii) For certain residents not requiring nursing facility level of services. No payment may be made under section 1903(a) [42 USCS § 1396b(a)] with respect to nursing facility services furnished to an individual (other than an individual described in subparagraph (C)(i)) who does not require the level of services provided by a nursing facility.

(E) Permitting alternative disposition plans. With respect to residents of a nursing facility who are mentally retarded or mentally ill and who are determined under subparagraph (B) not to require the level of services of such a facility, but who require specialized services for mental illness or mental retardation, a State and the nursing facility shall be considered to be in compliance with the requirements of subparagraphs (A) through (C) of this paragraph if, before April 1, 1989, the State and the Secretary have entered into an agreement relating to the disposition of such residents of the facility and the State is in compliance with such agreement. Such an agreement may provide for the disposition of the residents after the date specified in subparagraph (C). The State may revise such an agreement, subject to the approval of the Secretary, before October 1, 1991, but only if, under the revised agreement, all residents subject to the agreement who do not require the level of services of such a facility are discharged from the facility by not later than April 1, 1994.

## 42 U.S.C. 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

### **Americans with Disabilities Act**

#### § 12131. Definition

As used in this title:

(1) Public entity. The term "public entity" means—

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act [49 USCS § 24102(4)]).

(2) Qualified individual with a disability. The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

#### § 12132. Discrimination

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

#### § 12132. Discrimination

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

#### § 12134. Regulations

(a) In general. Not later than 1 year after the date of enactment of this Act [enacted July 26, 1990], the Attorney General shall promulgate regulations in an accessible format that implement this subtitle. Such regulations shall not include any matter within the scope of the authority of the

Secretary of Transportation under section 223, 229, or 244 [42 USCS § 12143, 12149, or 12164].

(b) Relationship to other regulations. Except for “program accessibility, existing facilities”, and “communications”, regulations under subsection (a) shall be consistent with this Act and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). With respect to “program accessibility, existing facilities”, and “communications”, such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under such section 504.

(c) Standards. Regulations under subsection (a) shall include standards applicable to facilities and vehicles covered by this subtitle, other than facilities, stations, rail passenger cars, and vehicles covered by subtitle B. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504(a) of this Act [42 USCS § 12204(a)].

#### § 12182. Prohibition of discrimination by public accommodations

(a) General rule. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction.

(1) General prohibition.

(A) Activities.

(i) Denial of participation. It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) Participation in unequal benefit. It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit. It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) Individual or class of individuals. For purposes of clauses (i) through (iii) of this subparagraph, the term “individual or class of individuals” refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other

arrangement.

(B) Integrated settings. Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) Opportunity to participate. Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) Administrative methods. An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) Association. It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) Specific prohibitions.

(A) Discrimination. For purposes of subsection (a), discrimination includes—

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

(B) Fixed route system.



(i) Accessibility. It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 304 [42 USCS § 12184] to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(ii) Equivalent service. If a private entity which operates a fixed route system and which is not subject to section 304 [42 USCS § 12184] purchases or leases a vehicle with a seating capacity of 16 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

(C) Demand responsive system. For purposes of subsection (a), discrimination includes—

(i) a failure of a private entity which operates a demand responsive system and which is not subject to section 304 [42 USCS § 12184] to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) Over-the-road buses.

(i) Limitation on applicability. Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) Accessibility requirements. For purposes of subsection (a), discrimination includes (I) the purchase or lease of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2) [42 USCS § 12186(a)(2)] by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and (II) any other failure of such entity to comply with such regulations.

(3) Specific construction. Nothing in this title [42 USCS §§ 12181 et seq.] shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term “direct threat” means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

## § 12188. Enforcement

(a) In general.

(1) Availability of remedies and procedures. The remedies and procedures set forth in section

204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a-3(a)) are the remedies and procedures this title [42 USCS §§ 12181 et seq.] provides to any person who is being subjected to discrimination on the basis of disability in violation of this title [42 USCS §§ 12181 et seq.] or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 303 [42 USCS § 12183]. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title [42 USCS §§ 12181 et seq.] does not intend to comply with its provisions.

(2) Injunctive relief. In the case of violations of sections 302(b)(2)(A)(iv) and [section] 303(a) [42 USCS §§ 12182(b)(2)(A)(iv) and 12183(a)], injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title [42 USCS §§ 12181 et seq.]. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title [42 USCS §§ 12181 et seq.].

(b) Enforcement by the Attorney General.

(1) Denial of rights.

(A) Duty to investigate.

(i) In general. The Attorney General shall investigate alleged violations of this title [42 USCS §§ 12181 et seq.], and shall undertake periodic reviews of compliance of covered entities under this title [42 USCS §§ 12181 et seq.].

(ii) Attorney General certification. On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this Act for the accessibility and usability of covered facilities under this title [42 USCS §§ 12181 et seq.]. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this Act.

(B) Potential violation. If the Attorney General has reasonable cause to believe that—

(i) any person or group of persons is engaged in a pattern or practice of discrimination under this title [42 USCS §§ 12181 et seq.]; or

(ii) any person or group of persons has been discriminated against under this title [42 USCS §§ 12181 et seq.] and such discrimination raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(2) Authority of court. In a civil action under paragraph (1)(B), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this title [42 USCS §§ 12181 et seq.]—

(i) granting temporary, preliminary, or permanent relief;

(ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) making facilities readily accessible to and usable by individuals with disabilities;  
(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and  
(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—  
(i) not exceeding \$50,000 for a first violation; and  
(ii) not exceeding \$100,000 for any subsequent violation.  
(3) Single violation. For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.  
(4) Punitive damages. For purposes of subsection (b)(2)(B), the term “monetary damages” and “such other relief” does not include punitive damages.  
(5) Judicial consideration. In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

**STATE STATUTES**  
**TITLE 43 CHAPTER 33**  
**Rights of Physically Disabled Persons**  
**ARTICLE 7**

**Bill of Rights for Handicapped Persons**

SECTION 43-33-510.Short title.

This article may be cited as the South Carolina Bill of Rights for Handicapped Persons.

SECTION 43-33-520.Guaranteed opportunities.

The opportunity to obtain housing, full and equal use of public accommodations, public services, and to make use of educational facilities without discrimination because of a handicap is guaranteed by this article and is a civil right.

SECTION 43-33-530.Discrimination prohibited without reasonable justification.

No person may discriminate against a handicapped person with respect to public accommodations, public services, or housing without reasonable justification. No protection or right of access provided by law for handicapped persons is reduced or eliminated by the provisions of this section.

...  
SECTION 43-33-570. Reasonable justification defined.

For purposes of this article, "reasonable justification" in the context of housing and public services must be determined in light of the following factors, among others: (1) safety; (2) efficiency; and (3) cost.

**CHAPTER 35**  
**Adult Protection**  
**ARTICLE 1**  
Duties and Procedures of Investigative Entities

SECTION 43-35-5. Short title.

This chapter may be cited as the Omnibus Adult Protection Act.

SECTION 43-35-10. Definitions.

As used in this chapter:

(1) "Abuse" means physical abuse or psychological abuse.

(2) "Caregiver" means a person who provides care to a vulnerable adult, with or without compensation, on a temporary or permanent or full or part-time basis and includes, but is not limited to, a relative, household member, day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility.

...  
(5) "Investigative entity" means the Long Term Care Ombudsman Program, the Adult Protective Services Program in the Department of Social Services, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division, or the Medicaid Fraud Control Unit of the Office of the Attorney General.

(6) "Neglect" means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services and the failure or omission has caused, or presents a substantial risk of causing, physical or mental injury to the vulnerable adult. Noncompliance with regulatory standards alone does not constitute neglect. Neglect includes the inability of a vulnerable adult, in the absence of a caretaker, to provide for his or her own health or safety which produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death.

...  
(8) "Physical abuse" means intentionally inflicting or allowing to be inflicted physical injury on a

vulnerable adult by an act or failure to act. Physical abuse includes, but is not limited to, slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery as defined in Section 16-3-651, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and unreasonable confinement. Physical abuse also includes the use of a restrictive or physically intrusive procedure to control behavior for the purpose of punishment except that a therapeutic procedure prescribed by a licensed physician or other qualified professional or that is part of a written plan of care by a licensed physician or other qualified professional is not considered physical abuse. Physical abuse does not include altercations or acts of assault between vulnerable adults.

(9) "Protective services" means those services whose objective is to protect a vulnerable adult from harm caused by the vulnerable adult or another. These services include, but are not limited to, evaluating the need for protective services, securing and coordinating existing services, arranging for living quarters, obtaining financial benefits to which a vulnerable adult is entitled, and securing medical services, supplies, and legal services.

...

(11) "Vulnerable adult" means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.

...

SECTION 43-35-15. Vulnerable Adults Investigations Unit; Long Term Care Ombudsman Program; Adult Protective Services Program; responsibilities; referral of reports.

(A) The Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division shall receive and coordinate the referral of all reports of alleged abuse, neglect, or exploitation of vulnerable adults in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs. The unit shall establish a toll free number, which must be operated twenty-four hours a day, seven days a week, to receive the reports. The unit shall investigate or refer to appropriate law enforcement those reports in which there is reasonable suspicion of criminal conduct. The unit also shall investigate vulnerable adult fatalities as provided for in Article 5, Chapter 35, Title 43. The unit shall refer those reports in which there is no reasonable suspicion of criminal conduct to the appropriate investigative entity for investigation. Upon conclusion of a criminal investigation of abuse, neglect, or exploitation of a vulnerable adult, the unit or other law enforcement shall refer the case to the appropriate prosecutor when further action is necessary. The South Carolina Law Enforcement Division may develop policies, procedures, and memorandum of agreement with other agencies to be used in fulfilling the requirements of this article. However, the South Carolina Law Enforcement Division must not delegate its responsibility to investigate criminal reports of alleged abuse, neglect, and exploitation to the agencies, facilities, or entities that operate or contract for the operation of the facilities. Nothing in this subsection precludes the Department of Mental Health,

the Department of Disabilities and Special Needs, or their contractors from performing administrative responsibilities in compliance with applicable state and federal requirements.

(B) Except as otherwise provided in subsection (D), the Long Term Care Ombudsman Program shall investigate or cause to be investigated noncriminal reports of alleged abuse, neglect, and exploitation of vulnerable adults occurring in facilities. The Long Term Care Ombudsman Program may develop policies, procedures, and memoranda of agreement to be used in reporting these incidents and in furthering its investigations. The Long Term Care Ombudsman Program must not delegate its responsibility to investigate noncriminal reports of alleged abuse, neglect, and exploitation to the facilities or to the entities that operate or contract for the operation of the facilities. Nothing in this subsection precludes the Department of Mental Health, the Department of Disabilities and Special Needs, or their contractors from performing administrative responsibilities in compliance with applicable state and federal requirements. The Long Term Care Ombudsman Program shall refer reports of abuse, neglect, and exploitation to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division if there is reasonable suspicion of criminal conduct.

(C) The Adult Protective Services Program in the Department of Social Services shall investigate or cause to be investigated noncriminal reports of alleged abuse, neglect, and exploitation of vulnerable adults occurring in all settings other than those facilities for which the Long Term Care Ombudsman Program is responsible for the investigation pursuant to this section. The Adult Protective Services Program may promulgate regulations and develop policies, procedures, and memoranda of agreement to be used in reporting these incidents, in furthering its investigations, and in providing protective services. The Adult Protective Services Program shall refer reports of abuse, neglect, and exploitation to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division if there is reasonable suspicion of criminal conduct.

(D) Notwithstanding another provision of law, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division shall refer reports of abuse, neglect, and exploitation involving residents committed to the Department of Mental Health pursuant to Chapter 48, Title 44 in which there is no reasonable suspicion of criminal conduct to the Department of Mental Health Client Advocacy Program for investigation.

#### SECTION 43-35-20. Additional powers of investigative entities.

In addition to all other powers and duties that an investigative entity is given in this article, the investigative entity may:

- (1) have access to facilities for the purpose of conducting investigations, as otherwise permitted by law;
- (2) request and receive written statements, documents, exhibits, and other items pertinent to an

investigation including, but not limited to, hospital records of a vulnerable adult which the hospital is authorized to release upon written request of the investigative entity without obtaining patient authorization;

(3) issue, through its director, administrative subpoenas for the purpose of gathering information and documents;

(4) institute proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;

(5) require all persons, including family members of a vulnerable adult and facility staff members, to cooperate with the investigative entity in carrying out its duties under this chapter including, but not limited to, conducting investigations and providing protective services;

(6) require all officials, agencies, departments, and political subdivisions of the State to assist and cooperate within their jurisdictional power with the court and the investigative entity in furthering the purposes of this chapter;

(7) conduct studies and compile data regarding abuse, neglect, and exploitation;

(8) issue reports and recommendations.

SECTION 43-35-25. Persons required to report abuse, neglect, or exploitation of adult; reporting methods.

(A) A physician, nurse, dentist, optometrist, medical examiner, coroner, other medical, mental health or allied health professional, Christian Science practitioner, religious healer, school teacher, counselor, psychologist, mental health or intellectual disability specialist, social or public assistance worker, caregiver, staff or volunteer of an adult day care center or of a facility, or law enforcement officer having reason to believe that a vulnerable adult has been or is likely to be abused, neglected, or exploited shall report the incident in accordance with this section. Any other person who has actual knowledge that a vulnerable adult has been abused, neglected, or exploited shall report the incident in accordance with this section.

(B) Except as provided in subsection (A), any other person who has reason to believe that a vulnerable adult has been or may be abused, neglected, or exploited may report the incident.

(C) A person required to report pursuant to this section is personally responsible for making the report; however, a state agency may make a report on behalf of an agency employee if the procedure the agency uses for reporting has been approved in writing by the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division or the investigative entity to which the report is to be made.

(D) A person required to report under this section must report the incident within twenty-four hours or the next working day. A report must be made in writing or orally by telephone or otherwise to:

(1) the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division for incidents occurring in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs;

(2) the Long Term Care Ombudsman Program for incidents occurring in facilities, except those facilities provided for in item (1); and

(3) the Adult Protective Services Program for incidents occurring in all other settings.

(E) If the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division or an investigative entity receives a report that is not within its investigative jurisdiction, the unit or investigative entity shall forward the report to the appropriate unit or investigative entity not later than the next working day.

(F) No facility may develop policies or procedures that interfere with the reporting requirements of this section.

(G) Provided the mandatory reporting requirements of this section are met, nothing in this section precludes a person also from reporting directly to law enforcement, and in cases of an emergency, serious injury, or suspected sexual assault law enforcement must be contacted immediately.

#### SECTION 43-35-30. Photographing of visible trauma on abused adult.

A person required to report pursuant to this article or a person investigating a report may take or cause to be taken color photographs of the trauma visible on the vulnerable adult who is the subject of a report. A person required to report under this chapter as a member of the staff of a medical facility, public or private institution, school, facility, or agency immediately shall notify the person in charge or the designated agent of the person in charge who shall take or cause to be taken color photographs of visible trauma. The investigative entity or law enforcement, if indicated, may cause to be performed a radiological examination or medical examination of the vulnerable adult without consent. All photographs, x-rays, and results of medical examinations and tests must be provided to law enforcement or to the investigative entity upon request.

#### SECTION 43-35-40. Responsibilities when a report is received; initiation of investigation; reports to local law enforcement or Vulnerable Adults Investigations Unit.

Upon receiving a report, the Long Term Care Ombudsman or Adult Protective Services promptly shall:



(1) initiate an investigation; or

(2) review the report within two working days for the purpose of reporting those cases that indicate reasonable suspicion of criminal conduct to local law enforcement or to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division (SLED). A report to local law enforcement or SLED must be made within one working day of completing the review.

SECTION 43-35-45. Warrant from family court to permit investigation of report; order for protective services; appointment of guardian and attorney; evaluation; hearing; review; semiannual reevaluation; payment for services.

(A) In investigating a report if consent cannot be obtained for access to the vulnerable adult or the premises, the investigative entity may seek a warrant from the family court to enter and inspect and photograph the premises and the condition of the vulnerable adult. The court shall issue a warrant upon a showing of probable cause that the vulnerable adult has been abused, neglected, or exploited or is at risk of abuse, neglect, or exploitation.

(B) At any time during or subsequent to an investigation where a vulnerable adult is at substantial risk to be or has been abused, neglected, or exploited and consent to provide services cannot be obtained, the Adult Protective Services Program may petition the family court for an order to provide protective services. In those cases requiring emergency protective services or emergency removal of the vulnerable adult from the place the adult is located or residing, the Adult Protective Services Program may seek ex parte relief. The court may expedite the ex parte proceeding to any extent necessary to protect the vulnerable adult. The family court may order ex parte that the vulnerable adult be taken into emergency protective custody without the consent of the vulnerable adult or the guardian or others exercising temporary or permanent control over the vulnerable adult, if the court determines there is probable cause to believe that by reason of abuse or neglect there exists an imminent danger to the vulnerable adult's life or physical safety. The court also may order emergency services or other relief as necessary to protect the vulnerable adult.

(C) Within ten days following the filing of a petition pursuant to this section, the court shall appoint a guardian ad litem and an attorney for the vulnerable adult and an attorney for a lay guardian ad litem. A party may move to have the guardian ad litem relieved of his or her services if the party demonstrates that the vulnerable adult has the capacity to assist counsel in the protective services case. Within forty days of the filing of a petition, the court shall hold a hearing on the merits.

(D) Before the hearing on the merits the Adult Protective Services Program must conduct a comprehensive evaluation of the vulnerable adult. The evaluation must include, but is not limited to:

(1) the vulnerable adult's current address and with whom the vulnerable adult is residing;

- (2) a list of all persons or agencies currently providing services to the vulnerable adult and the nature of these services;
- (3) a summary of services, if any, provided to the vulnerable adult by the Adult Protective Services Program;
- (4) if needed, a medical, psychological, social, vocational, or educational evaluation;
- (5) recommendations for protective services which would serve the best interests of the vulnerable adult; however, when these services are to be provided by another state agency, these recommendations must be developed in consultation with the other agency.

A copy of the evaluation must be provided to the court, the guardian ad litem, and the attorney at least five working days before the hearing on the merits. Reasonable expenses incurred for evaluations required by this subsection must be paid by the Adult Protective Services Program which must seek reimbursement for these evaluations, where possible.

(E) At the hearing on the merits, the court may order the Adult Protective Services Program to provide protective services if it finds that:

- (1) the vulnerable adult is at substantial risk of being or has been abused, neglected, or exploited and the vulnerable adult is unable to protect herself or himself; and
- (2) protective services are necessary to protect the vulnerable adult from the substantial risk of or from abuse, neglect, or exploitation.

(F) Protective services ordered pursuant to this section must be provided in the least restrictive setting available and appropriate for the vulnerable adult and noninstitutional placement must be used whenever possible. Subsequently, if commitment to a treatment facility is required, the Adult Protective Services Program may initiate commitment proceedings.

(G) Any interested person, on behalf of the vulnerable adult, may file a motion for review of the court order issued pursuant to this section.

(H) Following a court order from the merits hearing to provide protective services to a vulnerable adult, the Adult Protective Services Program, at least every six months, must evaluate the vulnerable adult and submit a written report to the court, and any other parties required by the court, regarding the vulnerable adult's need for continued protective services as defined in this chapter.

(I) If the court determines that the vulnerable adult is financially capable of paying for services ordered pursuant to this section, then payment by or from the financial resources of the vulnerable adult may be ordered.

(J) In an action for exploitation or in which payment for protective services is in issue, upon its own motion or a motion of any party, the court may order that the vulnerable adult's financial records be made available on a certain day and time for inspection by the parties.

(K) Expenses incurred by the Adult Protective Services Program on behalf of a vulnerable adult that have not been reimbursed at the time of the vulnerable adult's death become a claim against the estate of the vulnerable adult.

(L) Payments for which a vulnerable adult is responsible or for which the Adult Protective Services Program is to be reimbursed only include payments to third parties and do not include personnel or operating expenses of the Adult Protective Services Program.

SECTION 43-35-55. Protective custody by law enforcement officer; procedure; notification of protective services program; subsequent proceedings.

(A) A law enforcement officer may take a vulnerable adult in a life-threatening situation into protective custody if:

(1) there is probable cause to believe that by reason of abuse, neglect, or exploitation there exists an imminent danger to the vulnerable adult's life or physical safety;

(2) the vulnerable adult or caregiver does not consent to protective custody; and

(3) there is not time to apply for a court order.

(B) When a law enforcement officer takes protective custody of a vulnerable adult, the officer must transport the vulnerable adult to a place of safety which must not be a facility for the detention of criminal offenders or of persons accused of crimes. The Adult Protective Services Program has custody of the vulnerable adult pending the family court hearing to determine if there is probable cause for protective custody.

(C) A vulnerable adult who is taken into protective custody by a law enforcement officer, may not be considered to have been arrested.

(D) When a law enforcement officer takes protective custody of a vulnerable adult under this section, the law enforcement officer must immediately notify the Adult Protective Services Program and the Department of Social Services in the county where the vulnerable adult was situated at the time of being taken into protective custody. This notification must be made in writing or orally by telephone or otherwise and must include the following information:

(1) the name of the vulnerable adult, if known, or a physical description of the adult, if the name is unknown;

- (2) the address of the place from which the vulnerable adult was removed by the officer;
- (3) the name and the address, if known, of any person who was exercising temporary or permanent custody of or control over or who was the caregiver of the vulnerable adult at the time the adult was taken into protective custody;
- (4) the address of the place to which the vulnerable adult was transported by the officer;
- (5) a description of the facts and circumstances resulting in the officer taking the vulnerable adult into protective custody.

(E) The Department of Social Services is responsible for filing a petition for protective custody within one business day of receiving the notification required by subsection (D).

(F) The family court shall hold a hearing to determine whether there is probable cause for the protective custody within seventy-two hours of the Department of Social Services filing the petition, excluding Saturdays, Sundays, and legal holidays.

(G) Upon receiving notification that a vulnerable adult has been taken into protective custody the Adult Protective Services Program shall commence an investigation. After the hearing required by subsection (F), the Adult Protective Services Program may initiate or cause to be initiated a petition for services pursuant to Section 43-35-45.

SECTION 43-35-60. Sharing of report information by investigative entities; public confidentiality.

Unless otherwise prohibited by law, a state agency, an investigative entity, and law enforcement may share information related to an investigation conducted as a result of a report made under this chapter. Information in these investigative records must not be disclosed publicly.

SECTION 43-35-75. Immunity of person making report or participating in investigation in good faith.

(A) A person who, acting in good faith, reports pursuant to this chapter or who participates in an investigation or judicial proceeding resulting from a report is immune from civil and criminal liability which may otherwise result by reason of this action. In a civil or criminal proceeding good faith is a rebuttable presumption.

(B) It is against the public policy of South Carolina to change an employee's status solely because the employee reports or cooperates with an investigation or action taken under this chapter.

SECTION 43-35-85. Penalties.

(A) A person required to report under this chapter who knowingly and wilfully fails to report abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty-five hundred dollars or imprisoned not more than one year.

(B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully abuses a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully neglects a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(D) A person who knowingly and wilfully exploits a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and may be required by the court to make restitution.

(E) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

(F) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(G) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult subject of a report, a witness, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years.

(H) A person who wilfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to this chapter, upon conviction, is guilty of a misdemeanor and must be fined not more than five thousand dollars or imprisoned for not more than three years.

(I) As used in this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

SECTION 43-35-90. Article not to affect authority of agencies.

This article is not intended to affect in any way the authority of any agency to act under state or federal law.

Title 44 - Health

**CHAPTER 20**

**South Carolina Intellectual Disability, Related Disabilities, Head Injuries, and Spinal Cord Injuries Act**

ARTICLE 1

General Provisions

SECTION 44-20-10.Short title.

This chapter may be cited as the "South Carolina Intellectual Disability, Related Disabilities, Head Injuries, and Spinal Cord Injuries Act".

SECTION 44-20-20.Purpose of chapter.

The State of South Carolina recognizes that a person with intellectual disability, 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 intellectual disability, 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 intellectual disability, 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 intellectual disability, 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 intellectual disability, 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 intellectual disability, 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 intellectual disability, 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 of Disabilities and Special Needs 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. Definitions.

As used in this chapter:

- (1) "Applicant" means a person who is believed to have intellectual disability, 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 of Disabilities and Special Needs.
- (2) "Client" is a person who is determined by the Department of Disabilities and Special Needs to have intellectual disability, 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.
- (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 intellectual disability, related disabilities, head injuries, or spinal cord injuries and recognized by the department.
- (5) "Day programs" are programs provided to persons with intellectual disability, related disabilities, head injuries, or spinal cord injuries outside of their residences affording development, training, employment, or recreational opportunities as prescribed by the Department of Disabilities and Special Needs.
- (6) "Department" means the South Carolina Department of Disabilities and Special Needs.
- (7) "Director" means the South Carolina Director of the Department of Disabilities and Special Needs, the chief executive director appointed by the commission.
- (8) "Disabilities and special needs services" are activities designed to achieve the results specified in an individual client's plan.
- (9) "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.

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

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

(12) "Intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(13) "Obligations" means the obligations in the form of notes or bonds or contractual agreements issued or entered into by the commission 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 Fiscal Accountability Authority.

(14) "Regional residential center" is a twenty-four hour residential facility serving a multicounty area and designated by the department.

(15) "Related disability" is a severe, chronic condition found to be closely related to intellectual disability or to require treatment similar to that required for persons with intellectual disability 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 intellectual disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with intellectual disability 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) "Department" shall mean the State Department of Administration as constituted pursuant to Chapter 11, Title 1.

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#### SECTION 44-20-270. Administration of federal funds.

The department is designated as the state's intellectual disability, related disabilities, head injuries, and spinal cord injuries authority for the purpose of administering federal funds allocated to South Carolina for intellectual disability 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".

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#### SECTION 44-20-355. Fee for Intermediate Care Facilities for persons with intellectual disability; proceeds to general fund.

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

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#### SECTION 44-20-375. County boards of disabilities and special needs; establishment; recognition.

(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).

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#### SECTION 44-20-378. Composition of board; tenure.

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. Funds for county boards of disabilities and special needs.

(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 intellectual disability, related disabilities, head injuries, or spinal cord injuries and their families.

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

(C) Subject to the approval of the department, county boards may seek state or federal funds administered by state agencies other than the department, 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. Additional powers and duties of county boards of disabilities and special needs.

Subject to the provisions of this chapter and the regulations of the department 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 or funded from other sources under the department'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 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 has no responsibility for the debt so approved;
- (2) shall submit an annual plan and projected budget to the department 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;
- (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 intellectual disability, related disabilities, head injuries, and spinal cord injuries services program who meet specifications prescribed by the department;
- (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 records, reports, and access to its sponsored services and facilities the department may require and submit its sponsored services and facilities to licensing requirements of the department or to the licensing requirements of other state or local agencies having this legal authority;
- (8) shall represent the best interest of persons with intellectual disability, related disabilities, head injuries, or spinal cord injuries to the public, public officials, and other public or private organizations.

SECTION 44-20-390. Initial intake and assessment service for person believed to be in need of services; service plans; residency requirements.

(A) In order to provide assistance to families and individuals the department 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. If upon completion of the assessment, the applicant is determined to have intellectual disability, a related disability, head injury, or spinal cord injury and be in need of services, he may become a client of the department and eligible for services. A service plan must be designated for each person assessed. A person determined to have intellectual disability, a related disability, head injury, or spinal cord injury and who chooses to become a client of the department, must be provided with the delivery or coordination of services by the department. A person determined not to have intellectual disability, a related disability, head injury, or spinal cord injury may be provided by the department 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 shall determine the "least restrictive environment" and may contract with individuals or organizations for a reasonable sum as determined by the department to provide the services. The department 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 shall develop standards prescribing the service plan review.

(C) No individual believed to have intellectual disability, a related disability, head injury, or spinal cord injury may be admitted to the services of the department until he has been examined at a diagnostic center of the department or a diagnostic center approved by the department and certified by the department on the basis of acceptable data to have intellectual disability, 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 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 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. Admission of person to services of Department for evaluation and diagnosis; form for application.

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 intellectual disability, a related disability, head injury, or spinal cord injury may be admitted to the services of the department for evaluation and diagnosis and shall remain in the residential services of the department 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 policies as regular admissions. The department may prescribe the form of the written application for diagnostic services.

SECTION 44-20-410. Requirement for admission to services.

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 44-20-440. Admission of client upon request of parent, spouse, lawful custodian or legal guardian, or upon request of applicant.

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 upon the written request of the parents of the person with intellectual disability, a related disability, head injury, or spinal cord injury, a parent with legal custody, spouse, lawful custodian or legal guardian, or the person with intellectual disability, a related disability, head injury, or spinal cord injury seeking to be admitted to the department's services if the person is twenty-one years of age or over and competent to make the decision. The department shall prescribe the form of the application for services.

SECTION 44-20-450. Proceedings for involuntary admission; petition; hearing; service of notice; guardian ad litem; right to counsel; report; termination of proceedings; order of admission; appeal; confinement in jail prohibited.

(A) Proceedings for the involuntary admission of a person with intellectual disability or a related disability to the services of the department 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 intellectual disability 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 intellectual disability or a related disability and the department 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 intellectual disability or a related disability is found, the court shall appoint a guardian ad litem to represent the person alleged to have intellectual disability 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 intellectual disability 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 intellectual disability or a related disability or at another place considered appropriate by the court. The person alleged to have intellectual disability 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 intellectual disability 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 intellectual disability 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 intellectual disability 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 intellectual disability or a related disability and be in need of placement in a facility or service program of the department, the court shall order that he be admitted to the jurisdiction of the department 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 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 intellectual disability or a related disability. Upon notification, the court shall direct the petitioner in these proceedings to transport the person with intellectual disability or a related disability to a program the department 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 intellectual disability or a related disability must be placed in protective custody in either a facility of the department or in some other suitable place designated by the court. No person with intellectual disability or a related disability must be confined in jail unless there is a criminal charge pending against him.

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SECTION 44-20-480.Placement of client out of home; payment for services.

When the department 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, and the least restrictive level of care possible for the client must be recommended and provided when available. The department 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 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.

## **CHAPTER 23**

### **Provisions Applicable to Both Mentally Ill Persons and Persons With Intellectual Disability**

#### **ARTICLE 1**

##### **Definitions and General Matter**

SECTION 44-23-10.Definitions.

When used in this chapter, Chapter 9, Chapter 11, Chapter 13, Articles 3, 5, 7, and 9 of Chapter 17, Chapter 24, Chapter 27, Chapter 48, and Chapter 52, unless the context clearly indicates a different meaning:

(1) "Attending physician" means the staff physician charged with primary responsibility for the

treatment of a patient.

(2) "Conservator" means a person who legally has the care and management of the estate of one who is incapable of managing his own estate, whether or not he has been declared legally incompetent.

(3) "Department" means the South Carolina Department of Mental Health.

(4) "Designated examiner" means a physician licensed by the Board of Medical Examiners of this State or a person registered by the department as specially qualified, under standards established by the department, in the diagnosis of mental or related illnesses.

(5) "Director" means the Director of the South Carolina Department of Mental Health.

(6) "Discharge" means an absolute release or dismissal from an institution or a hospital.

(7) "Gravely disabled" means a person who, due to mental illness, lacks sufficient insight or capacity to make responsible decisions with respect to his treatment and because of this condition is likely to cause harm to himself through neglect, inability to care for himself, personal injury, or otherwise.

(8) "Guardian" or "legal guardian" means a person who legally has the care and management of the person of one who is not sui juris.

(9) "Hospital" means a public or private hospital.

(10) "Interested person" means a parent, guardian, spouse, adult next of kin, or nearest friend.

(11) "Leave of absence" means a qualified release from an institution or a hospital.

(12) "Licensed physician" means an individual licensed under the laws of this State to practice medicine or a medical officer of the government of the United States while in this State in the performance of official duties.

(13) "Likelihood of serious harm" means because of mental illness there is:

(a) a substantial risk of physical harm to the person himself as manifested by evidence of threats of, or attempts at, suicide or serious bodily harm;

(b) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior and serious harm to them; or

(c) a very substantial risk of physical impairment or injury to the person himself as manifested by



evidence that the person is gravely disabled and that reasonable provision for the person's protection is not available in the community.

(14) "Mental health clinic" means an institution, or part of an institution, maintained by the department for the treatment and care on an outpatient basis.

(15) "Nearest friend" means any responsible person who, in the absence of a parent, guardian, or spouse, undertakes to act for and on behalf of another individual who is incapable of acting for himself for that individual's benefit, whether or not the individual for whose benefit he acts is under legal disability.

(16) "Nonresident licensed physician" means an individual licensed under the laws of another state to practice medicine or a medical officer of the government of the United States while performing official duties in that state.

(17) "Observation" means diagnostic evaluation, medical, psychiatric and psychological examination, and care of a person for the purpose of determining his mental condition.

(18) "Officer of the peace" means any state, county, or city police officer, officer of the State Highway Patrol, sheriff, or deputy sheriff.

(19) "Parent" means natural parent, adoptive parent, stepparent, or person with legal custody.

(20) "Patient" means a person who seeks hospitalization or treatment under the provisions of this chapter, Chapter 9, Chapter 11, Chapter 13, Article I of Chapter 15, Chapter 17, Chapter 27, Chapter 48, and Chapter 52 or any person for whom such hospitalization or treatment is sought.

(21) "Person with a mental illness" means a person with a mental disease to such an extent that, for the person's own welfare or the welfare of others or of the community, the person requires care, treatment, or hospitalization.

(22) "Person with intellectual disability" means a person, other than a person with a mental illness primarily in need of mental health services, whose inadequately developed or impaired intelligence and adaptive level of behavior require for the person's benefit, or that of the public, special training, education, supervision, treatment, care, or control in the person's home or community or in a service facility or program under the control and management of the Department of Disabilities and Special Needs.

(23) "Restoration treatment" means treatment provided to a person who has been determined unfit to stand trial but likely to become fit in the foreseeable future, and which has as part of its goals assisting the person to gain the capacity to understand the proceedings against him and to assist in his own defense.

(24) "State hospital" means a hospital, or part of a hospital, equipped to provide inpatient care and treatment and maintained by the department.

(25) "State mental health facility" or "facility" means any hospital, clinic, or other institution maintained by the department.

(26) "State of citizenship" means the last state in which a person resided for one or more consecutive years, exclusive of time spent in public or private hospitals and penal institutions or on parole or unauthorized absence from such hospitals and institutions and of time spent in service in any of the Armed Forces of the United States; the residence of a person must be determined by the actual physical presence, not by the expressed intent of the person.

(27) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care that may be extended to a patient, including diagnostic evaluation and medical, psychiatric, psychological, and social service care and vocational rehabilitation and counseling.

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## **CHAPTER 26**

### **Rights of Clients With Intellectual Disability**

#### **SECTION 44-26-10. Definitions.**

As used in this chapter:

(1) "Aversive stimuli" means a clinical procedure which staff apply, contingent upon the exhibition of maladapted behavior, startling, unpleasant, or painful stimuli or stimuli that have a potentially noxious effect.

(2) "Client" means a person who is determined by the South Carolina Department of Disabilities and Special Needs to have intellectual disability or a related disability and is receiving services or is an infant at risk of having intellectual disability or a related disability and is receiving services.

(3) "Client's representative" means the client's parent, guardian, legal counsel, or other person who acts on behalf or in the best interest of a person with intellectual disability or a related disability.

(4) "Director" means the South Carolina Director of Disabilities and Special Needs.

(5) "Court" means a probate court of appropriate jurisdiction unless specified otherwise.

(6) "Department" means the South Carolina Department of Disabilities and Special Needs.

(7) "Facility" means a residential setting operated, assisted, or contracted out by the department that provides twenty-four hour care and supervision.

(8) "Habilitation" means the attempt to remedy the delayed learning process to develop maximum growth potential by the acquisition of self-help, language, personal, social, educational, vocational, and recreational skills.

(9) "Intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(10) "Intellectual disability professional" means a person responsible for supervising a client's plan of care, integrating various aspects of the program, recording progress, and initiating periodic review of each individual plan of habilitation.

(11) "Interdisciplinary team" means persons drawn from or representing the professional disciplines or service areas included in the individual habilitation plan.

(12) "Major medical treatment" means a medical, surgical, or diagnostic intervention or procedure proposed for a person with intellectual disability or a related disability, where a general anesthetic is used or which involves a significant invasion of bodily integrity requiring an incision, producing substantial pain, discomfort, debilitation, or having a significant recovery period. It does not include routine diagnosis or treatment such as the administration of medications or nutrition or the extractions of bodily fluids for analysis or dental care performed with a local anesthetic or a nonpermanent procedure designed for the prevention of pregnancy.

(13) "Plan of habilitation" means a written plan setting forth measurable goals or behaviorally stated objectives in prescribing an integrated program of individually designed activities or therapies necessary to achieve the goals and objectives.

(14) "Planned exclusionary time-out" means the technique of behavior modification in which a client is removed from the immediate environment to a physically safe, lighted, and normal temperature room for a specific period of time not to exceed one hour under the direct continued observation of staff.

#### SECTION 44-26-20.Right to writ of habeas corpus.

Clients have the right to a writ of habeas corpus.

#### SECTION 44-26-30.Right to representation by counsel.

A person with intellectual disability has the right to be represented by counsel when involuntarily committed to the department pursuant to Section 44-20-450.

#### SECTION 44-26-40.Determination of competency to consent to or refuse major medical treatment.

If a client resides in a facility operated by or contracted to by the department, the determination of that client's competency to consent to or refuse major medical treatment must be made pursuant to Section 44-66-20 of the Adult Health Care Consent Act. The department shall abide by the decision of a client found competent to consent.

#### Effect of Amendment

2019 Act No. 85, Section 2, in the first sentence, substituted "Section 44-66-20" for "Section 44-66-20(6)".

SECTION 44-26-50. Health care decisions of client found incompetent to consent to or refuse major medical treatment.

If the client is found incompetent to consent to or refuse major medical treatment, the decisions concerning his health care must be made pursuant to Section 44-66-30 of the Adult Health Care Consent Act. An authorized designee of the department may make a health care decision pursuant to Section 44-66-30(A)(9) of the Adult Health Care Consent Act. The person making the decision must be informed of the need for major medical treatment, alternative treatments, and the nature and implications of the proposed health care and shall consult the attending physician before making decisions. When feasible, the person making the decision shall observe or consult with the client found to be incompetent.

#### Effect of Amendment

2019 Act No. 85, Section 3, in the second sentence, substituted "Section 44-66-30(A)(9)" for "Section 44-66-30(8)".

...

SECTION 44-26-100. General rights of clients; limitations on rights.

(A) Except to the extent an interdisciplinary team of a residential program determines that it is required by the medical needs, safety, or rehabilitative goals of the client to impose restrictions, a client may:

- (1) communicate by sealed mail, telephone, or otherwise with persons, including official agencies, inside or outside the institution. Reasonable access to writing materials, stamps, envelopes, and telephones, including reasonable funds or means by which to use telephones, must be provided;
- (2) receive visitors. A facility must have a designated area where clients and visitors may speak privately;
- (3) wear his clothes, have access to personal hygiene articles, keep and spend a reasonable sum

of his money, and keep and use his personal possessions, including articles for personal grooming not provided for by the facility unless the clothes or personal possessions are determined by an intellectual disability professional or physician to be dangerous or otherwise inappropriate to the habilitation regimen. If clothing is provided by the facility, clients must have the opportunity to select from neat, clean, seasonal clothing that allows the client to appear normal in the community. The clothing must be considered to be the client's throughout his stay in the facility;

(4) have access to individual storage space for private use. Personal property of a client brought into the facility and placed in storage by the facility must be inventoried. Receipts must be given to the client and at least one other interested person. The personal property may be reclaimed only by the client or his guardian as long as he is living unless otherwise ordered by the court;

(5) follow or abstain from religious practices. Religious practices may be prohibited by the facility supervisor if they lead to physical harm to the client or to others, harassment of other clients, or damage to property.

(B) The department shall determine what constitutes reasonable access for the rights provided in this section. Limitations imposed on the exercise of the rights by the client and the reasons for the limitations must be made part of the client's record. The limitations are valid for no more than thirty days. The time may be extended an additional thirty days if, upon review, it is determined the client's safety or habilitation warrants limitations of the rights. If the department restricts rights, the reasons for the restriction and why the condition cannot be resolved in a less restrictive manner must be recorded in the client's record.

#### SECTION 44-26-110.Right to daily physical exercise.

Clients have the right to daily physical exercise. Operators of a facility shall provide indoor and outdoor areas and equipment for this purpose. Clients determined able to be outdoors on a daily basis pursuant to Section 44-26-150 must be allowed this privilege in the absence of contrary medical considerations or during periods of inclement weather.

#### SECTION 44-26-120.Access to medical and habilitative records; grounds for denial of access; appeal of denial of access; disclosure form.

(A) A client or his representative with the appropriate permission may have reasonable access to the client's medical and habilitative records. The requests must be made in writing.

(B) A client or his representative may be refused access to information in the medical and habilitative records if:

(1) provided by a third party under assurance that the information remains confidential;

(2) the attending physician has determined in writing that the information would be detrimental to the client's habilitation regimen. The determination must be placed in the client's records and is considered part of restricted information.

(C) A client or his representative refused access to medical or habilitative records may appeal the refusal to the department director. The director of the residential program shall notify the client or his representative of the right to appeal.

(D) Persons granted access to client records shall sign a disclosure form. Disclosure forms are considered part of a client's confidential record.

#### SECTION 44-26-130. Confidentiality of communications with, and records of clients; disclosure.

(A) Communications between clients and intellectual disability professionals, including general physicians, psychiatrists, psychologists, nurses, social workers, members of interdisciplinary teams, or other staff members employed in a client-therapist capacity or an employee under supervision of them are considered confidential. Certificates, applications, records, and reports made for the purpose of this chapter that directly or indirectly identify a client, as well as privileged communications, must be kept confidential and must not be disclosed by a person unless:

(1) the identified client or his representative consents;

(2) a court directs disclosure upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make the disclosure is contrary to the public interest;

(3) disclosure is required for research conducted or authorized by the department;

(4) disclosure is necessary to cooperate with law enforcement, health, welfare, and other state agencies, schools, and county entities;

(5) disclosure is necessary to carry out this chapter.

(B) Nothing in this section precludes disclosure:

(1) upon proper inquiry, of information as to a client's current medical condition, to appropriate next of kin;

(2) if the information is used in an educational or informational capacity if the identity of the client is concealed;

(3) of information to the Governor's ombudsman office or the South Carolina Protection and Advocacy System for the Handicapped, Inc., as consistent with state law.

SECTION 44-26-140. Clients to receive least restrictive appropriate care and habilitation available; exceptions.

(A) Clients receiving services for intellectual disability shall receive care and habilitation suited to their needs and in the least restrictive appropriate care and habilitation available. The care and habilitation must be administered skillfully, safely, and humanely with full respect for the client's dignity and personal integrity. The department shall make every effort, based on available resources, to develop services necessary to meet the needs of its clients.

(B) In emergency admissions when the least restrictive setting is not available a client must be admitted to the nearest proper facility until he may be moved to the least restrictive setting.

(C) In judicial or emergency admissions to the department every attempt must be made by the court to ensure a client's placement in the least restrictive alternative of services available.

(D) No client may remain at a level of care that is more restrictive than is warranted to meet his needs if alternative care is available. A residential program must attempt to move clients from:

- (1) more to less structured living;
- (2) larger to smaller facilities;
- (3) larger to smaller living units;
- (4) group to individual residence;
- (5) segregated from the community to integrated into the community;
- (6) dependent to independent living.

SECTION 44-26-150. Clients to be informed of rights upon admission; written individualized plan of habilitation; review of plan; revision of, or changes in, plan.

(A) Before or at the time of admission to an intellectual disability residential program, a client or his representative must be provided with an explanation in terms and language appropriate to his ability to understand the client's rights while under the care of the facility.

(B) Within thirty days of admission a client or his representative must be provided with a written individualized plan of habilitation formulated by an interdisciplinary team and the client's attending physician. A client or his representative may participate in an appropriate manner in the planning of services. An interim habilitation program based on the preadmission evaluation of the client may be implemented promptly upon admission. The service plan must be developed with the active participation of the individual receiving the services to the extent he is able to participate meaningfully. Each individualized habilitation plan must contain:

- (1) a statement of the nature and degree of the client's intellectual disability and the needs of the client;

- (2) if a physical examination has been conducted, the client's physical condition;
- (3) a description of intermediate and long-range habilitative goals and, if possible, future available services;
- (4) a statement as to whether or not the client may be permitted outdoors on a daily basis and, if not, the reasons why.

(C) An intellectual disability professional shall review each client's individual records quarterly in relation to goals and objectives established in the habilitation plan. This review must be documented and entered into the client's record. The interdisciplinary team shall conduct a full review of the client's records and habilitation program annually.

(D) Included in a review must be a reassessment of the client's plan of habilitation. If the reassessment indicates a need for revisions in the client's plan of habilitation, the revisions must be implemented.

(E) A client or his representative shall receive an updated plan of habilitation, upon request, pursuant to Section 44-26-120.

(F) A client or his representative may request a change in the plan of habilitation. If a request for a change in the plan of habilitation is denied, a grievance may be filed by the client or his representative on his behalf. The request must be reviewed according to the grievance procedure pursuant to Section 44-26-80.

#### SECTION 44-26-160. Mechanical, physical, or chemical restraint of clients.

(A) No client residing in an intellectual disability facility may be subjected to chemical or mechanical restraint or a form of physical coercion or restraint unless the action is authorized in writing by an intellectual disability professional or attending physician as being required by the habilitation or medical needs of the client and it is the least restrictive alternative possible to meet the needs of the client. Emergency restraints require the written authorization of the attending physician or designated staff member and must be noted in the client's record.

(B) Each use of a restraint and justification for it must be entered into the client's record. The authorization is not valid for more than twelve hours during which the client's condition must be charted at thirty-minute intervals. If the orders are extended beyond the twelve hours, the extension must have written authorization by an intellectual disability professional or attending physician. Within twenty-four hours a copy of the authorization must be forwarded to the facility supervisor for review. Clients under a form of restraint must be allowed no less than ten minutes every two hours for motion and exercise. Mechanical restraint must be employed in a manner that lessens the possibility of physical injury and ensures the least possible discomfort.



(C) No form of restraint may be used for the convenience of staff, as punishment, as a substitute for a habilitation program or in a manner that interferes with the client's habilitation program.

(D) In an emergency such as a serious threat of extreme violence, injury to others, personal injury, or attempted suicide, if the attending physician or an intellectual disability professional is not available, staff may authorize mechanical restraint or physical restraint, in conjunction with state and federal regulations, when these means are necessary for as long as the behavior that warrants restraint persists. The use must be reported immediately to the attending physician or an intellectual disability professional who shall authorize its continuance or cessation and make a written record of the reasons for its use and his review. The records and review must be entered into the client's record. The facility must have written policies and procedures governing the use of mechanical and physical restraints.

(E) The client's family or his representative, or both, must be notified immediately of the use of restraints.

(F) The appropriate human rights committees must be notified of the use of emergency restraints.

(G) Documentation of less restrictive methods that have failed must be entered into the client's record when applicable.

#### SECTION 44-26-170. Use of certain types of behavior modification.

(A) Behavior modification programs involving the use of aversive stimuli are discouraged and may be used only in extraordinary cases where all other efforts have proven ineffective. Clients must not be subjected to aversive stimuli in the absence of:

(1) prior written approval for the technique by the director;

(2) the informed consent of the client on whom the aversive stimuli is to be used or his representative. Each use of aversive stimuli and justification for it must be entered into the client's record;

(3) documentation of less restrictive methods that have failed must be entered into the client's record.

(B) Seclusion must not be used on clients with intellectual disability.

(C) Planned exclusionary time-out procedures may be utilized under close and direct professional supervision as a technique in behavior shaping.

(D) Behavior modification plans must be reviewed by the interdisciplinary team periodically for continued appropriateness.

...

SECTION 44-26-220. Person making health care decision not subject to civil or criminal liability, nor liable for cost of care; health care provider not subject to civil or criminal liability or disciplinary penalty for relying on decision.

(A) A person who in good faith makes a health care decision as provided in this chapter is not subjected to civil or criminal liability on account of the substance of the decision.

(B) A person who consents to major medical treatment as provided in this chapter does not by virtue of that consent become liable for the costs of care provided to the client found incompetent to consent to or refuse treatment.

(C) A health care provider who in good faith relies on a health care decision made by a client or as authorized by this chapter is not subject to civil or criminal liability or disciplinary penalty on account of his reliance on the decision.

(D) This section does not affect a health care provider's liability arising from provision of care in a negligent manner.

...

## **CHAPTER 66**

### **South Carolina Adult Health Care Consent Act**

SECTION 44-66-10. Short title.

This chapter may be cited as the "Adult Health Care Consent Act".

SECTION 44-66-20. Definitions.

As used in this chapter:

(1) "Health care" means a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. Health care also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of injured, disabled, or sick persons; and the placement in or removal from a facility that provides these forms of care.

(2) "Health care provider" or "provider" means a person, health care facility, organization, or corporation licensed, certified, or otherwise authorized or permitted by the laws of this State to administer health care.

(3) "Health care professional" means an individual who is licensed, certified, or otherwise authorized by the laws of this State to provide health care to members of the public.

(4) "Patient" means an individual sixteen years of age or older who presents or is presented to a health care provider for treatment.

(5) "Person" includes, but is not limited to, an individual, a state agency, or a representative of a state agency.

(6) "Physician" means an individual who is licensed to practice medicine or osteopathy pursuant to Chapter 47, Title 40.

(7) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care that may be extended to a patient to diagnose and treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. Treatment includes, but is not limited to, psychiatric, psychological, substance abuse, and counseling services.

(8) "Unable to consent" means unable to appreciate the nature and implications of the patient's condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner. This term does not apply to minors, and this chapter does not affect the delivery of health care to minors unless they are married or have been determined judicially to be emancipated. A patient's inability to consent must be certified by two licensed physicians, each of whom has examined the patient. However, in an emergency the patient's inability to consent may be certified by a health care professional responsible for the care of the patient if the health care professional states in writing in the patient's record that the delay occasioned by obtaining certification from two licensed physicians would be detrimental to the patient's health. A certifying physician or other health care professional shall give an opinion regarding the cause and nature of the inability to consent, its extent, and its probable duration. If a patient unable to consent is being admitted to hospice care pursuant to a physician certification of a terminal illness required by Medicare, that certification meets the certification requirements of this item.

### **Statute in Effect in 2018**

*SECTION 44-66-30. Persons who may make health care decisions for patient who is unable to consent; order of priority; exceptions.*

*(A) Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in the following order of priority:*

*(1) a guardian appointed by the court pursuant to Article 5, Part 3 of the South Carolina Probate Code, if the decision is within the scope of the guardianship;*

*(2) an attorney-in-fact appointed by the patient in a durable power of attorney executed pursuant to Section 62-5-501, if the decision is within the scope of his authority;*

*(3) a person given priority to make health care decisions for the patient by another statutory provision;*

*(4) a spouse of the patient unless the spouse and the patient are separated pursuant to one of the following:*

*(a) entry of a pendente lite order in a divorce or separate maintenance action;*

*(b) formal signing of a written property or marital settlement agreement; or*

*(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;*

*(5) an adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;*

*(6) a parent of the patient;*

*(7) an adult sibling of the patient, or if the patient has more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation;*

*(8) a grandparent of the patient, or if the patient has more than one grandparent, a majority of the grandparents who are reasonably available for consultation;*

*(9) any other adult relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient, or if the patient has more than one other adult relative, a majority of those other adult relatives who are reasonably available for consultation.*

*(B) Documentation of efforts to locate a decision maker who is a person identified in subsection (A) must be recorded in the patient's medical record.*

*(C) If persons of equal priority disagree on whether certain health care should be provided to a patient who is unable to consent, an authorized person, a health care provider involved in the care of the patient, or any other person interested in the welfare of the patient may petition the probate court for an order determining what care is to be provided or for appointment of a temporary or permanent guardian.*

*(D) Priority pursuant to this section must not be given to a person if a health care provider responsible for the care of a patient who is unable to consent determines that the person is not reasonably available, is not willing to make health care decisions for the patient, or is unable to consent as defined in Section 44-66-20(8).*

*(E) An attending physician or other health care professional responsible for the care of a patient who is unable to consent may not give priority or authority pursuant to subsections (A)(5) through (A)(10) to a person if the attending physician or health care professional has actual knowledge that, before becoming unable to consent, the patient did not want that person involved in decisions concerning his care.*

*(F) This section does not authorize a person to make health care decisions on behalf of a patient who is unable to consent if, in the opinion of the certifying physicians, the patient's inability to consent is temporary, and the attending physician or other health care professional responsible for the care of the patient determines that the delay occasioned by postponing treatment until the patient regains the ability to consent will not result in significant detriment to the patient's health.*

*(G) A person authorized to make health care decisions pursuant to subsection (A) shall base those decisions on the patient's wishes to the extent that the patient's wishes can be determined. Where the patient's wishes cannot be determined, the person shall base the decision on the patient's best interest.*

*(H) A person authorized to make health care decisions pursuant to subsection (A) either may consent or withhold consent to health care on behalf of the patient.*

#### **As Amended in 2019**

SECTION 44-66-30. Persons who may make health care decisions for patient who is unable to consent; order of priority; exceptions.

(A) Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in the following order of priority:

(1) a guardian appointed by the court pursuant to Article 5, Part 3 of the South Carolina Probate Code, if the decision is within the scope of the guardianship;

(2) an attorney-in-fact appointed by the patient in a durable power of attorney executed pursuant to Section 62-5-501, if the decision is within the scope of his authority;

(3) a spouse of the patient unless the spouse and the patient are separated pursuant to one of the following:

(a) entry of a pendente lite order in a divorce or separate maintenance action;

(b) formal signing of a written property or marital settlement agreement; or

(c) entry of a permanent order of separate maintenance and support or of a permanent order

approving a property or marital settlement agreement between the parties;

(4) an adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;

(5) a parent of the patient;

(6) an adult sibling of the patient, or if the patient has more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation;

(7) a grandparent of the patient, or if the patient has more than one grandparent, a majority of the grandparents who are reasonably available for consultation;

(8) any other adult relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient, or if the patient has more than one other adult relative, a majority of those other adult relatives who are reasonably available for consultation;

(9) a person given authority to make health care decisions for the patient by another statutory provision;

(10) if, after good faith efforts, the hospital or other health care facility determines that the persons listed in items (1) through (9) are unavailable to consent on behalf of the patient, a person who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes but who is not a paid caregiver or a provider of health care services to the patient. For the purposes of this item, a person with an established relationship is an adult who has exhibited special care and concern for the patient, who is generally familiar with the patient's health care views and desires, and who is willing and able to become involved in the patient's health care decisions and to act in the patient's best interest. The person with an established relationship shall sign and date a notarized acknowledgement form, provided by the hospital or other health care facility in which the patient is located, for placement in the patient's records, setting forth the nature and length of the relationship and certifying that he meets such criteria. Along with the notarized acknowledgment form, the hospital or other health care facility shall include in the patient's medical record documentation of its effort to locate persons with higher priority under this statute as required by subsection (B).

(B) Documentation of efforts to locate a decision maker who is a person identified in subsection (A) must be recorded in the patient's medical record.

(C) If persons of equal priority disagree on whether certain health care should be provided to a patient who is unable to consent, an authorized person, a health care provider involved in the care of the patient, or any other person interested in the welfare of the patient may petition the probate

court for an order determining what care is to be provided or for appointment of a temporary or permanent guardian.

(D) Priority pursuant to this section must not be given to a person if a health care provider responsible for the care of a patient who is unable to consent determines that the person is not reasonably available, is not willing to make health care decisions for the patient, or is unable to consent as defined in Section 44-66-20(8).

(E) An attending physician or other health care professional responsible for the care of a patient who is unable to consent may not give priority or authority pursuant to subsections (A)(5) through (A)(10) to a person if the attending physician or health care professional has actual knowledge that, before becoming unable to consent, the patient did not want that person involved in decisions concerning his care.

(F) This section does not authorize a person to make health care decisions on behalf of a patient who is unable to consent if, in the opinion of the certifying physicians, the patient's inability to consent is temporary, and the attending physician or other health care professional responsible for the care of the patient determines that the delay occasioned by postponing treatment until the patient regains the ability to consent will not result in significant detriment to the patient's health.

(G) A person authorized to make health care decisions pursuant to subsection (A) shall base those decisions on the patient's wishes to the extent that the patient's wishes can be determined. Where the patient's wishes cannot be determined, the person shall base the decision on the patient's best interest.

(H) A person authorized to make health care decisions pursuant to subsection (A) either may consent or withhold consent to health care on behalf of the patient.

HISTORY: 1990 Act No. 472, Section 1; 1992 Act No. 306, Section 4; 2016 Act No. 226 (H.3999), Section 1, eff June 3, 2016; 2019 Act No. 85 (H.3602), Section 1, eff May 24, 2019.

#### Effect of Amendment

2019 Act No. 85, Section 1, in (A), deleted (3), which related to a person given priority to make health care decisions for the patient by another statutory provision, redesignated (4) to (9) as (3) to (8), made a nonsubstantive change in (8), and added (9) and (10).

SECTION 44-66-40. Provision of health care without consent where there is serious threat to health of patient or to relieve suffering; person having highest priority to make health care decision.

(A) Health care may be provided without consent to a patient who is unable to consent if no person authorized by Section 44-66-30 to make health care decisions for the patient is available

immediately, and in the reasonable medical judgment of the attending physician or other health care professional responsible for the care of the patient, the delay occasioned by attempting to locate an authorized person, or by continuing to attempt to locate an authorized person, presents a substantial risk of death, serious permanent disfigurement, or loss or impairment of the functioning of a bodily member or organ, or other serious threat to the health of the patient. Health care for the relief of suffering may be provided without consent at any time that an authorized person is unavailable.

(B) Health care decisions on behalf of a patient who is unable to consent may be made by a person named in Section 44-66-30 if no person having higher priority under that section is available immediately, and in the reasonable medical judgment of the attending physician or other health care professional responsible for the care of the patient, the delay occasioned by attempting to locate a person having higher priority presents a substantial risk of death, serious permanent disfigurement, loss or impairment of the functioning of a bodily member or organ, or other serious threat to the health of the patient.

SECTION 44-66-50.Provision of health care without consent to relieve suffering, restore bodily function, or to preserve life, health, or bodily integrity of patient.

Health care may be provided without consent to a patient who is unable to consent if no person authorized by Section 44-66-30 to make health care decisions for the patient is reasonably available and willing to make the decisions, and, in the reasonable medical judgment of the attending physician or other health care professional responsible for the care of the patient, the health care is necessary for the relief of suffering or restoration of bodily function or to preserve the life, health, or bodily integrity of the patient.

SECTION 44-66-60.No authority to provide health care to patient who is unable to consent where health care is against religious beliefs of patient or patients prior instructions.

(A) Unless the patient, while able to consent, has stated a contrary intent to the attending physician or other health care professional responsible for the care of the patient, this chapter does not authorize the provision of health care to a patient who is unable to consent if the attending physician or other health care professional responsible for the care of the patient has actual knowledge that the health care is contrary to the religious beliefs of the patient.

(B) This chapter does not authorize the provision of health care to a patient who is unable to consent if the attending physician or other health care professional responsible for the care of the patient has actual knowledge that the health care is contrary to the patient's unambiguous and uncontradicted instructions expressed at a time when the patient was able to consent.

(C) This section does not limit the evidence on which a court may base a determination of a patient's intent in a judicial proceeding.



SECTION 44-66-70. Person who makes health care decision for another not subject to civil or criminal liability, nor liable for costs of care; health care provider not subject to civil or criminal liability.

(A) A person who in good faith makes a health care decision as provided in Section 44-66-30 is not subject to civil or criminal liability on account of the substance of the decision.

(B) A person who consents to health care as provided in Section 44-66-30 does not by virtue of that consent become liable for the costs of care provided to the patient.

(C) A health care provider who in good faith relies on a health care decision made by a person authorized under Section 44-66-30 is not subject to civil or criminal liability or disciplinary penalty on account of his reliance on the decision.

(D) A health care provider who in good faith provides health care pursuant to Sections 44-66-40 or 44-66-50 is not subject to civil or criminal liability or disciplinary penalty on account of the provision of care. However, this section does not affect a health care provider's liability arising from provision of care in a negligent manner.