

Legislative News

South Carolina Department of Mental Health

2005-2006

This publication is prepared by the South Carolina Department of Mental Health's Office of Public and Legislative Affairs.

February 14, 2005

The Legislative News is published bi-weekly to keep you informed of bills that are introduced in the General Assembly which may affect DMH, mental health, health care issues, or employee issues. In addition, we will provide budget information and general news from the General Assembly. You can also access the complete bills online by clicking the link at the end of each description, OR by visiting www.scstatehouse.net.

This publication is also available on the DMH Internet and Intranet sites. However, if you do not have access to the site and wish to receive a copy of the update, call us, and we will send you one in the mail. If at any time you have questions or need more information about bills/budgets or other legislative issues, you can call the Office of Public and Legislative Affairs at 898-8585, or e-mail us at acm83@scdmh.org.

Budget Update

The Governor's budget plan reduces DMH's bottom line by almost \$12 million (Maybank money + additional base cut) in state funds alone.

- Almost \$6.3 million cut in anticipation of restructuring;
- \$600,000 cut from the new accounting system from three years ago; and
- \$840,000 cut in anticipation of raising collections 10% per Legislative Audit Council audit; increased collections have not materialized.

The Governor's budget also adds the additional burden of the Interagency Staffing for Emotionally Disturbed Children (ISED) payment to DSS [close to \$6.4 million]

DMH's request:

- \$10,482,452 to restore existing state funding
- \$2.1 million for 150+ more people in the community rather than hospitals (Toward Local Care TLC/Housing)
- \$900,000 for Assertive Community Treatment team, (ACT) (reduces inpatient and ER use)
- \$3 million to begin operation of the Colleton Co. Veterans' Home, a 220-bed facility scheduled to be completed in January 2006.

The budget is under debate in the House Ways and Means Committee. On February 15, DMH will be presenting its budget request to the Senate Finance Committee. On February 21, the Full Committee will begin to hear budget reports, and on February 24, the Ways and Means Committee will recommend the budget bill for FY05-06. On March 14, floor debate on the budget begins and is anticipated to conclude on March 17.

House Bills

H 3009 South Carolina Restructuring Act of 2005, by Wilkins, Harrell, W.D. Smith, Harrison, G. R. Smith, Davenport, Barfield, Young, Kirsh, Leach, E. H. Pitts, Battle, Viers, Clyburn, Littlejohn, Taylor, Brady, Hinson, Clark, Walker, Simrill, Toole, Chalk, Duncan and Bailey. A bill to enact the "South Carolina Restructuring Act of 2005." A provision of this bill makes the Lieutenant Governor's Office, Division on Aging, not the SCDMH, responsible for oversight of the Veterans' Administration

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Nursing Homes. This bill also includes provisions relating to the agencies of the executive branch of state government; so as to establish the Department of Administration, and to transfer to this newly created department certain offices and divisions of the state Budget and Control Board, Office of the Governor, and other agencies; to establish the division of the Office of state chief information officer.

[view full text](#)

Referred to Committee on Ways and Means. Debate adjourned until February 17.

H 3013 Medical Malpractice and Patient Safety Reform Act, by W. D. Smith, Wilkins, Harrison, G. R. Smith, Vaughn, Davenport, Sandifer, Barfield, Young, Owens, Kirsh, Leach, Battle, Viers, Littlejohn, Taylor, Rice, Hinson, Clark, Walker, Bales, Mahaffey, Toole and Brady

A bill to enact the "medical malpractice and patient safety reform act," so as to establish the medical claims review office within the Department of Insurance to review claims for damages allegedly resulting from medical malpractice and to establish the powers, duties, and procedures of this office; to require a review of a claim for such damages by a panel of the medical claims review office as a prerequisite to filing a lawsuit; to require a healthcare provider's medical malpractice insurance carrier to fairly evaluate and diligently adjust each claim for damages allegedly resulting from medical malpractice; to require the department of health and demographics to develop procedures for providing healthcare provider outcome data and hospital outcome data to governmental entities and to the public, with certain restrictions regarding the identity of healthcare providers, and to provide that such information is privileged;

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Referred to Committee on Judiciary

H 3022 Establishing the South Carolina Sunset Commission, by Rice, Taylor, Vaughn, Harrison, Davenport, Young, Owens, Leach, Clyburn, Littlejohn, Mahaffey, Duncan and M.A. Pitts **Similar (s 0099, h 3150)**

A bill to amend title 1, code of laws of South Carolina, 1976, relating to the administration of government so as to establish the South Carolina Sunset Commission and a Sunset Review Division of the Legislative Audit Council, to establish criteria and procedures providing for the manner in which the programs of certain agencies and departments of state government must be evaluated to determine if they should be continued in existence, modified, or terminated, and to establish the procedures by which these programs must be continued, modified, or terminated.

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Referred to Committee on Ways and Means

H 3033 Criminal Sexual Conduct Penalties, by Huggins, Vaughn, Leach, E. H. Pitts, Viers, Clark, Simrill, Haley and Toole

A bill to amend section 16-3-652, code of laws of South

Carolina, 1976, relating to criminal sexual conduct in the first degree, so as to provide that a conviction of criminal sexual conduct in the first degree carries a minimum term of imprisonment of ten years, no part of which may be suspended or probation granted; to amend section 16-3-653, relating to criminal sexual conduct in the second degree, so as to provide that a conviction of criminal sexual conduct in the second degree carries a minimum term of imprisonment of five years, no part of which may be suspended or probation granted; to amend section 16-3-654, relating to criminal sexual conduct in the third degree, so as to provide that a conviction of criminal sexual conduct in the third degree carries a minimum term of imprisonment of three years, no part of which may be suspended or probation granted; to amend section 16-3-655, relating to criminal sexual conduct with a minor, so as to add that an actor who has at least one prior conviction for a crime for which the actor must register as a sex offender pursuant to section 23-3-430 and who engages in sexual battery with a victim who is less than sixteen years of age is guilty of criminal sexual conduct in the first degree.

[view full text](#)

Referred to Committee on Judiciary

H 3035 TERI Program and Unused Annual Leave Lump Sum Payment, by Kirsh, Littlejohn, Hinson, Walker and Mahaffey

A bill to amend section 8-11-620, as amended, code of laws of South Carolina, 1976, relating to annual leave and the lump-sum payment for unused leave for state employees upon termination of employment, so as to provide that a teacher and employee retention incentive employee program (TERI) participant is not eligible to receive a lump-sum payment for unused annual leave earned while participating in the TERI program and to give this provision prospective effect.

[view full text](#)

Referred to Committee on Ways and Means

H 3036 Terminating the TERI Program to New Participants, by Kirsh, Witherspoon, Mahaffey, M. A. Pitts and Duncan **Similar (s 0059)**

A bill to close the teacher and employee retention incentive (TERI) program to new participants effective July 1, 2005, and to repeal effective July 1, 2010, article 17, chapter 1, title 9, code of laws of South Carolina, 1976, relating to the establishment of the TERI program.

[view full text](#)

Referred to Committee on Ways and Means

H 3052 Sex Offender Registry, by Harrison, Vaughn, Leach, E. H. Pitts, Hinson, Mahaffey and Toole

A bill to amend section 23-3-430, as amended, code of laws of South Carolina, 1976, relating to persons who must be referred to as sex offenders, so as to provide that a sex offender whose name is contained on the sex offender registry, and who has been granted a pardon, must remain on the registry and must register annually.

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Referred to Committee on Judiciary

H 3059 Training Program for Patient Assistants in Nursing Homes, by Kirsh

A bill to amend the code of laws of South Carolina, 1976, by adding section 44-7-67 so as to authorize a patient assistant to provide feeding and hydration services to patients in nursing homes under the onsite supervision of a licensed healthcare professional if the assistant has successfully completed a training program and competency evaluation conducted by the nursing home.

[view full text](#)

Referred to Committee on Medical, Military, Public and Municipal Affairs

H 3089 Definition of Governmental Health Care Facility, by White and Sandifer

A bill to amend section 15-78-30, as amended, code of laws of South Carolina, 1976, relating to definitions of terms in the tort claims act, so as to include in the definition of "governmental health care facility" a nursing home that provides services through Medicaid, Medicare, or by contract with the veterans administration and those services constitute at least twenty-five percent of the gross revenue.

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Referred to Committee on Medical, Military, Public and Municipal Affairs

H 3090, Civil Lawsuit Protection for Those Who Prescribe FDA Approved Drugs, by White, Davenport and Sandifer

A bill to amend the code of laws of South Carolina, 1976, by adding section 15-5-47 so as to provide civil lawsuit protection for physicians, optometrists, nurse practitioners, and physician assistants who prescribe FDA approved drugs; to amend title 15 of the 1976 code by adding chapters 32 and 40 so as to provide for certain limits on the amount and types of damage awards in personal injury actions, to provide for findings which must be made with regard to such damage awards, to provide that in tort actions evidence of collateral source payments which have been paid or may be due the claimant may be introduced in evidence, to provide that the trier of fact must consider the collateral source payments when determining the amount of damages, and to provide that the trier of fact must make certain factual findings with regard to its damage award; to amend section 15-7-20, relating to actions which must be tried where the cause of action arose, so as to require that an action against certain health care professionals be brought in the county where the alleged act or omission occurred; and to amend section 15-38-20, relating to the right of contribution, so as to revise the limitation of joint and several liability for damages caused by two or more medical defendants.

[view full text](#)

Referred to Committee on Judiciary

H 3099 To Include Magistrate's Court in Determination

of Capacity to Stand Trial, by Kirsh

A bill to amend section 44-23-410, as amended, code of laws of South Carolina, 1976, relating to the determination of capacity to stand trial of persons charged with a crime or civil contempt, so as to provide that this provision applies to magistrates' court, to provide a procedure to suspend and reinstate a person's driver's license or privilege to drive who is unable to stand trial because of a mental condition, and to provide a procedure to suspend and reinstate a person's driver's license or privilege to drive who has suffered a relapse of a mental condition before his trial date.

[view full text](#)

Referred to Committee on Judiciary

H 3121 Review of Medicaid Reimbursement Rates by Department of Health and Human Services, by J. Brown

A bill to amend the code of laws of South Carolina, 1976, by adding section 44-6-110 so as to require the Department of Health and Human Services to review Medicaid reimbursement rates annually and adjust these rates to equal at least ninety percent of Medicare reimbursement rates for like services.

[view full text](#)

Referred to Committee on Ways and Means

H 3135 State of Emergency Absences by State Employees, by Cobb-Hunter

A bill to amend the code of laws of South Carolina, 1976, by adding section 8-11-665 so as to provide that an absence from work by a state employee solely due to a workplace closing or staffing reduction ordered by the Governor in the declaration of a state of emergency is not considered an absence for purposes of annual or other categories of leave allowed state employees.

[view full text](#)

Referred to Committee on Ways and Means

H 3150 South Carolina Sunset Commission, by Rice, Clyburn, Littlejohn, E. H. Pitts, Simrill, Loftis, Chellis, Martin, Herbkersman, J. R. Smith, Taylor, G. R. Smith, Vaughn, Harrison, Davenport, Young, Owens, Kirsh, Leach, Brady, Walker, Haley, Toole, Duncan and Mahaffey

similar (s 0099, h 3022)

A bill to amend title 1, code of laws of South Carolina, 1976, relating to the administration of government, by adding chapter 24 so as to establish the South Carolina Sunset Commission and a Sunset Review Division of the Legislative Audit Council, to establish procedures providing for the manner in which the programs of certain agencies and departments of state government must be evaluated to determine if they should be continued in existence, modified, or terminated, and to establish the procedures by which these Programs must be continued, modified, or terminated, DMH: 7/30/2012.

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Read third time and sent to Senate

H 3194 Increase Cigarette Tax, by Rice and E. H. Pitts

A bill to amend the code of laws of South Carolina, 1976, by adding section 12-21-625 so as to impose an additional license tax on each cigarette subject to the license tax on cigarettes in an amount equal to 1.5 cents on each cigarette, to establish the health care and prevention fund to receive the revenue of this tax and provide for the use of this fund for public health purposes, designating certain agencies and programs as recipients, including the Medicaid expansion fund to receive funding to replace hospital tax, and to provide for the collection and enforcement of this additional tax.

[view full text](#)

Referred to Committee on Ways and Means

H 3214 Establishing the Joint Legislative Oversight Committee on Medicaid and Health Care, by Davenport, Rice, Hinson, G. R. Smith and Toole

A bill to amend the code of laws of South Carolina, 1976, by adding chapter 64, title 2 so as to establish the joint legislative oversight Committee on Medicaid and Health Care and to provide for its membership, functions, duties, and responsibilities including, among other things, to approve reorganization plans and to review the state Medicaid plan.

[view full text](#)

Referred to Committee on Ways and Means

H 3218 Establishing the State Office of Medicaid and Health Care Audits, by Davenport, Rice and G. R. Smith

A bill to amend the code of laws of South Carolina, 1976, by adding article 8, chapter 6, title 44 so as to establish the state Office of Medicaid and health care audits for the Department of Health and Human Services, to provide that the Audit Director must be appointed by the Governor, and to further provide for the powers and duties of the Audit Director, including conducting audits, preventing waste, and promoting accountability.

[view full text](#)

Referred to Committee on Ways and Means

H 3219 Establishing the Department of Information Technology for Health and Human Services Agencies, including SCDMH, by Davenport and Rice

A bill to amend the code of law of South Carolina, 1976, by adding article 5, chapter 30, title 1 so as to establish the Department of Information Technology for Health and Human Services agencies and to provide for its powers and duties, including the management and administration of all information technologies associated with these agencies and the approval of information technologies expenditures.

[view full text](#)

Referred to Committee on Ways and Means

H 3287 Enacting the Medicaid Accountability and Improvement Act, by Wilkins, Kirsh, Edge, Rice,

Davenport, Barfield, Taylor, Young and Clyburn

A bill to enact the "Medicaid accountability and improvement act" to add section 44-6-110 so as to specify Medicaid eligibility determination criteria that the department must develop and to further provide certain procedures for administration of the Medicaid program; to add section 38-71-270 so as to require health insurers to provide identifying information on its insureds so that the department of health and human services can determine if Medicaid recipients have other health coverage; to add articles 8 and 9, chapter 6, title 44 so as to provide procedures for Medicaid utilization control and care management, including the establishment of the pharmacy and therapeutics committee to make recommendations, among other things, to the department concerning medications to be on a preferred drug list and to provide for Medicaid fraud and abuse controls, including contracting with the attorney general's office for assistance with investigations, monitoring benefit use, and conducting audits and investigations of Medicaid providers

[view full text](#)

Referred to Committee on Ways and Means

H 3412 Emergency Admissions to Mental Health Facilities, by Harrison, Bales, Cotty, Brady, Whipper, Vaughn, Branham, Toole and Taylor.

A bill to amend the code of laws of South Carolina, 1976, relating to emergency admissions to mental health facilities, so as to provide that if a patient does not require involuntary treatment, the court, upon proper notice, shall dismiss the petition for commitment; to amend section 44-17-430, relating to taking persons who are believed to be a danger to themselves or others into custody, so as to provide that an order authorizing such custody is valid only for seventy-two hours; to add section 44-13-05 so as to establish procedures for a law enforcement officer to take a person who the officer believes to be mentally ill into protective custody and to provide immunity from liability; to amend section 44-17-580, relating to procedures for judicial commitment to a mental health facility, so as to clarify these procedures and to authorize the court to order out-patient treatment following in-patient commitment; to amend section 44-24-150, relating to the authority of the family court to commit certain children for psychiatric evaluation, so as to provide that the court may order that such an evaluation be conducted by a community mental health center and that if an in-patient evaluation is recommended, the court may commit the child to a designated hospital for up to fifteen years for such an evaluation; and to amend section 44-52-50, relating to procedures for emergency admissions for alcohol and drug treatment, so as to clarify that if a court issues an order to take a person in need of such treatment into protective custody, the order is valid only for seventy-two hours.

[view full text](#)

Referred to committee on Medical, Military, Public and Municipal Affairs

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Senate Bills

S 14 Punishment for Sexual Contact with Patients , by McConnell, Moore, Campsen, Bryant, Elliott, Fair and Grooms

A bill to amend the code of laws of South Carolina, 1976, so as to punish psychotherapists, alcohol and drug abuse counselors, and other confidants who have sexual contact with a patient; to punish psychotherapists, alcohol and drug abuse counselors, and other confidants who have sexual contact with a former patient by means of therapeutic deception; to punish psychotherapists, alcohol and drug abuse counselors, and other confidants who engage in sexual battery with a patient; and to punish psychotherapists, alcohol and drug abuse counselors, and other confidants who engage in sexual battery with a former patient by means of therapeutic deception.

[view full text](#)

Referred to Committee on Judiciary

S 15 Victim Notification to DMH and DDSN, by McConnell, Elliott, Ritchie, Fair, Ford and Leventis

A bill to amend the code of laws of South Carolina, 1976, relating to victim notification, so as to require the victim to provide his name and other pertinent information to the Department of Mental Health and the Department of Disabilities and Special Needs for notification purposes; to amend section 16-3-1525, relating to victim notification by an agency who has physical custody of a perpetrator, so as to require that a law enforcement agency must provide a victim's contact information to a mental health facility having custody of the perpetrator; to amend section 16-3-1530, relating to notification of a victim, so as to provide that a victim must be notified of a transfer or escape of a perpetrator who was found not guilty by reason of insanity; to amend section 16-3-1555, relating to a victim's responsibility to provide specific agencies with the victim's contact information, so as to provide that the Department of Mental Health and the Department of Disabilities and Special Needs must notify a victim of any hearings involving the perpetrator; to amend section 16-3-1560, relating to notification to a victim about a post-conviction proceeding, so as to require a victim to update his current contact information with the Department of Mental Health and the Department of Disabilities and Special Needs; to amend section 17-24-40, relating to the commitment of persons found not guilty by reason of insanity, so as to provide notification to the victim of the fact that the perpetrator is no longer in need of hospitalization; and to amend section 17-24-80, relating to the release of a person from a mental health facility, so as to include notification of the release to the victim. **Impact on DMH: DMH anticipates a cost to the General Fund of the state with the passage of the proposed legislation. It is expected that the extra duties involved in notifying victims would create a full workload for at least two administrative coordinators at a minimum salary of \$26,378 per coordinator. Fringe**

benefits for each coordinator are estimated at \$9,153. Total cost for two additional coordinators is estimated at \$71,062. It is unlikely that there would be any significant increase in other operating expenses based on the work generated.

[view full text](#)

Read third time and sent to House Judiciary

S 47 Criminal Sexual Conduct Penalties, by Cromer, Elliott, Fair and Ford

A bill to amend section 16-3-652, code of laws of South Carolina, 1976, relating to criminal sexual conduct in the first degree, so as to provide that a conviction of criminal sexual conduct in the first degree carries a minimum term of imprisonment of ten years, no part of which may be suspended or probation granted; to amend section 16-3-653, relating to criminal sexual conduct in the second degree, so as to provide that a conviction of criminal sexual conduct in the second degree carries a minimum term of imprisonment of five years, no part of which may be suspended or probation granted; and to amend section 16-3-655, relating to criminal sexual conduct with a minor, so as to provide that an actor who has at least one prior conviction for a crime for which the actor must register as a sex offender pursuant to section 23-3-430 and who engages in sexual battery with a victim who is less than sixteen years of age is guilty of criminal sexual conduct in the first degree.

[view full text](#)

Referred to Committee on Judiciary

S 49 Health Insurance Plans to Provide Coverage for Treatment of Mental Illness or Alcohol or Substance Abuse, by Hayes, Elliott, Hutto, Leventis, Rankin, Patterson, Land, Short, Richardson, Lourie, Courson and McConnell

A bill to amend the code of laws of South Carolina, 1976, by adding section 38-71-290 so as to require health insurance plans to provide coverage for treatment of mental illness or alcohol or substance abuse, to allow a plan that does not provide for management of care or the same degree of management of care for all health conditions to provide coverage for such treatment through a managed care organization, to establish treatment conditions to qualify for coverage, and to require the Department of Insurance to report to the General Assembly on the fiscal impact.

[view full text](#)

Referred to Committee on Banking and Insurance

S 59 Termination of TERI Plan to New Participants, by Ryberg, Thomas, Gregory, Fair, Mescher, Richardson, Ritchie and Bryant **Similar ([h 3036](#))**

A bill to close the Teacher and Employee Retention Incentive (TERI) program to new participants effective July 1, 2005, to repeal effective July 1, 2010, article 17, chapter 1, title 9, code of laws of South Carolina, 1976, relating to the establishment of the TERI program, and to provide that the

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provisions of this act may not be amended or repealed except in separate legislation receiving an affirmative two-thirds recorded vote in each House of the General Assembly.

[view full text](#)

Referred to Committee on finance

S 80 Restructuring Bill of 2005, by McConnell, Moore, Campsen, Ryberg, Verdin, Alexander, Gregory, Grooms and Richardson

A bill to amend 2-13-240, code of laws of South Carolina, 1976, so as to provide that the power to organize and reorganize a department into divisions lies with the General Assembly, to create the departments of Administration and Behavioral Health Services, to rename the Department of Health and Human Services to the Department of Health Oversight and Finance, and to provide for the organization, governance, duties, functions, and procedures of various departments and divisions, and for the manner of selection and removal of governing authorities; to establish the Department of Behavioral Health Services and to establish within this department the divisions of Alcohol and Other Drug Abuse Services, Continuum of Care, and Mental Health by transferring to the Department of Behavioral Health Services the operations of the Department of Alcohol and Other Drug Abuse Services, the operations of the Continuum of Care for Emotionally Disturbed Children from the Governor's office, and the operations of the Department of Mental Health and to transfer to the Department of Disabilities and Special Needs the operations of the Babynet services program from the Department of Health and Environmental Control.

[view full text](#)

Referred to Committee on Judiciary

S 85 Central Registry for Child Abuse and Neglect, by McConnell, Moore, Elliott, Alexander, Fair, Richardson, Ford and Campsen

A bill to amend section 20-7-650, code of laws of South Carolina, 1976, relating to the central registry for child abuse and neglect, so as to provide that a court must order a person's name to be entered in the central registry if there is a finding by a preponderance of evidence that the person abused or neglected a child pursuant to section 20-7-490 and to provide that placement on the registry cannot be waived by any party or by the court.

[view full text](#)

Referred to Committee on Judiciary

S 93 Stalking and Harassment, by McConnell, Moore, Knotts, Fair and Richardson

A bill to amend article 17, chapter 3 of title 16, code of laws of South Carolina, 1976, relating to stalking and harassment, so as to redefine stalking and harassment; to clarify penalties for stalking and harassment; to require that a mental evaluation must be made before bail is set on a stalking or harassment charge; and to require that the evaluation be scheduled within ten days of the order's issuance, that the

report be issued within forty-eight hours of evaluation, and that the solicitor arrange for a bond hearing upon receipt of the report before a circuit court judge.

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Referred to Committee on Judiciary

S 99 Establishing the South Carolina Sunset Commission and Sunset Review Division of the Legislative Audit Council, by Richardson, Knotts and Gregory Similar (h 3022, h 3150)

A bill to amend title 1, code of laws of South Carolina, 1976, relating to the administration of government, by adding chapter 24 so as to establish the South Carolina Sunset Commission and a Sunset Review Division of the Legislative Audit Council, to establish procedures providing for the manner in which the programs of certain agencies and departments of state government must be evaluated to determine if they should be continued in existence, modified, or terminated, and to establish the procedures by which these Programs must be continued, modified, or terminated.

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Referred to Committee on Judiciary

S 174 Purchase of Retirement Service Credit for Eligible Employees, by Leventis and Ford

A bill to amend the code of laws of South Carolina, 1976, by adding section 9-1-1520 so as to require agencies to purchase retirement service credit of up to three years for employees that would have been eligible, under normal circumstances, to retire within three years after being terminated as a result of an agency reduction in force caused by a mandated reduction in the agency budget and by adding section 8-11-76 so as to provide that employees terminated as a result of a mandated reduction in the agency budget are eligible for state health and dental insurance and require that the employee and employer share of state health and dental insurance be provided to terminated employees for up to one year, to require that terminated employees returning to service within a two-year period have their benefits calculated as if there had been no break in service, and to permit these employees to purchase back retirement and leave benefits.

[view full text](#)

Introduced and read first time

S 357 General Bill, By Ryberg, Mescher, Bryant, Fair, Verdin, Campsen, Richardson, Ritchie, O'Dell and Gregory

A bill to amend the code of laws of South Carolina, 1976, relating to retirement and early retirement, calculation of retirement benefits, survivors' annuities, death benefits, and service purchase for purposes of the South Carolina retirement system, so as to increase from twenty-eight to thirty years the service credit required for a member of that system to retire at any age without a reduction in benefits and to make the appropriate conforming amendments.

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Referred to Committee on Finance

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DMH Proposed Technical Changes and Amendments

There are a number of DMH proposed technical changes for 2005. These changes merely update language and delete antiquated provisions.

Summary of proposed 2005 amendment to §44-17-900 (Clarifying types of persons covered by release decision immunity)

This proposed amendment would clarify that the civil and criminal immunity currently afforded to “any other person” participating in the decision to release or discharge a patient includes those persons in the community who have authority under the law to detain a patient for a community evaluation, including the authority to release the patient when the evaluation indicates the individual is not in need of emergency hospitalization.

“Patient” is currently defined in another section of the Code [§44-23-10 (3)] as including “any person for whom hospitalization or treatment is sought.” Therefore, the immunity afforded to persons participating in the “release” of a “patient” by current §44-17-900 encompasses law enforcement officers, emergency room and other community physicians, mental health center personnel and other officials in the community whose jobs require them to detain, evaluate or participate in decisions about the possible involuntary hospitalization of a patient.

This proposed change should be of assistance in the Department’s efforts to increase the use of crisis stabilization/diversion programs by making it clear that community physicians and other community officials involved in responding to persons in a behavioral crisis are included in the grant of statutory immunity. By clarifying the scope of the immunity afforded by §44-17-900, it is anticipated that emergency room physicians and other community physicians will be more willing to refer patients to such programs as an alternative to involuntary emergency hospitalization, when such programs are available and appear appropriate for the patient.

Summary of Proposed 2005 Amendment to §44-23-410 through §44-23-430

The proposed amendments would principally modify the time frames specified for several of the stages of completing capacity to stand trial evaluations to reflect time frames which are necessary for completing accurate and reliable reports.

The time frame for outpatient evaluations would be increased from 15 to 60 days in recognition that in addition to the time required for an actual face-to-face evaluation, adequate time is

needed prior to the face-to-face evaluation to gather relevant records pertaining to the defendant from law enforcement and prior treatment providers, conduct necessary medical or psychological testing, as well as to gather past educational records and interview family or acquaintances of the defendant. The time frame for completing and sending the written evaluation report would be increased from 5 to 10 days following the evaluation, owing to both the increased volume of court ordered evaluations and the increased volume of information which is summarized in the written reports. The time frame for initiating civil commitment proceedings for defendants found to lack the capacity to stand trial and to be unlikely to regain such capacity is shortened from 60 days to 14 days, in recognition of the fact that 14 days is adequate and will result in a timelier disposition.

It should also be noted that the Departments of Mental Health and Disabilities and Special Needs have been working closely with the Judicial Department to improve the efficiency of the process for ordering, conducting and reporting the results from capacity to stand trial evaluations of criminal defendants. One goal of this effort is to ensure that all statutory time frames are generally met by the agencies. Therefore it is important that the statutory time frames be amended to permit sufficient time for the agencies to provide the courts with accurate and reliable reports.

Summary of Proposed 2005 Amendment to §44-7-260

The proposed amendment to health licensing law (§44-7-260) would permit DMH Homeshare Enhanced Respite providers to temporarily house up to two (2) persons without requiring health licensure of the home by DHEC. [Current law requires any such residence to seek licensure as a Community Residential Care Facility (CRCF).] DHEC licensing staff has no objections to the proposed amendment.

Summary of Legislation Proposed by Partners in Crisis (Introduced as H.3412)

44-17-410 – “Best Practices”: This bill allows probate judges to release an individual prior to the scheduled commitment hearing, if in the opinion of two examiners the individual is no longer in need of emergency involuntary treatment. The benefit of this bill is that it provides appropriate care while freeing up a much needed bed sooner.

44-17-430 – “Time-limited Detention Orders”: This bill would require that upon the issuance of a detention order, that law enforcement take a person into custody for a mental health evaluation within 72 hours. Currently there is no time

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limit on such orders. Because such orders are issued only in response to an emergency situation which may be of a temporary nature, they should be time limited. This change was requested by the Mental Health Committee of the Probate Judges Association.

44-13-15 – “Diversion”: This bill allows a police officer to divert someone who appears to be mentally ill or chemically dependent and could cause harm to themselves or to others to an appropriate mental health facility for evaluation; it also applies when a victimless crime has occurred regarding such a person. If the person has not been examined within 24 hours, the individual must be released. If certified as provided by law, the person is to be transported by law enforcement personnel to the appropriate facility. This bill also provides limited immunity for law enforcement and medical personnel acting in accordance with these provisions.

44-17-580 – “Out-patient Adherence”: This bill allows the court to order out-patient treatment following in-patient status. If the patient fails to adhere to the court-ordered treatment plan, the treatment facility must report the failure to the court, which may order further in-patient treatment.

44-24-150 – “Alternatives to In-patient Evaluations”: The main goal of this bill is to give new options and alternatives to in-patient evaluations, thereby reducing the number of children and adolescents hospitalized at William S. Hall Institute for psychiatric evaluation. The bill would provide more flexibility and allow court-ordered evaluations to be done at community mental health centers when possible. It also says the center must schedule a psychiatric evaluation of the child as soon as possible and shall provide the family court with a written report within five days following the evaluation. If in-patient treatment is indicated, the family court can commit the child for such treatment.

44-52-50 – “Time-limited Pick-up Orders”: This bill requires a person ordered to be picked up for chemical dependency evaluation to be picked up within 72 hours of the issuance of the order. If the pick-up does not occur within the designated time period, the order expires.