

## Mental Health

# 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.

April 11, 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](http://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](mailto:acm83@scdmh.org).

### Budget Update

The House of Representatives adopted its version of the FY2005-2006 Appropriations Bill on March 16. The House adopted the Ways and Means Committee's recommendations of \$1,444,173 for crisis stabilization; \$5,800,873 for operating expenses; \$1,000,000 for the Campbell Veterans Nursing Home; and \$3,000,000 in nonrecurring funds for the Colleton County Veterans Home. The Committee also recommended cuts to the Department's recurring state funds totaling \$2,233,008. The Committee's bill also required the Department to pay \$3,197,772 to ISCEDC, a program for emotionally disturbed children. The bill includes a 4 percent pay raise for state employees. In addition to adopting the recommendations above, the House added \$600,000 in non-recurring funds to DMH's budget.

If the House version of the budget is adopted, there will be a net loss to DMH's present level of service delivery in the amount of -\$8,068,186.

DMH presented its budget request to the Senate Finance

Committee on Thursday, Feb. 24. The Senate Finance Committee is expected to begin its debate of the FY2005-2006 budget beginning April 5 and is expected to conclude April 7.

The Senate is expected to begin its debate of the State budget beginning April 19 and should conclude by April 28.

After the Senate adopts a bill, a conference committee (a committee to resolve differences between the House and Senate versions of a bill) will be convened. Finally, the Governor gets an opportunity to veto line items, and the General Assembly may choose to override any veto by a 2/3 vote of both chambers.

**Note: Changes were made this week to the following bills: S49, S80**

### House Bills

#### **H 3009 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 Nursing Homes. This bill also includes provisions relating to the agencies of the executive branch of state government.

[view full text](#)

Referred to Committee on Ways and Means

#### **H 3013 Medical Malpractice and Patient Safety Reform Act**

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.

[view full text](#)

Referred to Committee on Judiciary

#### **H 3022 Establishing the South Carolina Sunset**

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## Commission

### Similar ([§ 0099](#), [h 3150](#))

A bill to establish the South Carolina Sunset Commission and a Sunset Review Division of the Legislative Audit Council.

[view full text](#)

Referred to Committee on Ways and Means

### H 3033 Criminal Sexual Conduct Penalties

A bill relating to criminal sexual conduct and the penalties imposed.

[view full text](#)

Referred to Committee on Judiciary

### H 3035 TERI Program and Unused Annual Leave Lump Sum Payment

A bill to say that a TERI participant is not eligible to receive a lump-sum payment for unused annual leave earned while participating in the TERI program.

[view full text](#)

Referred to Committee on Ways and Means

### H 3036 Terminating the TERI Program to New Participants

#### Similar ([§ 0059](#))

A bill to close the TERI program to new participants effective July 1, 2005.

[view full text](#)

Referred to Committee on Ways and Means

### H 3052 Sex Offender Registry

A bill 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.

[view full text](#)

Referred to Committee on Judiciary

### H 3059 Training Program for Patient Assistants in Nursing Homes

A bill 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

A bill relating to definitions of terms in the tort claims act, 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.

[view full text](#)

Referred to Committee on Medical, Military, Public and

## Municipal Affairs

### H 3090, Civil Lawsuit Protection for Those Who Prescribe FDA Approved Drugs

A bill to provide civil lawsuit protection for physicians, optometrists, nurse practitioners, and physician assistants who prescribe FDA approved drugs.

[view full text](#)

Referred to Committee on Judiciary

### H 3099 Inclusion of Magistrate's Court in Determination of Capacity to Stand Trial

A bill 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.

[view full text](#)

Referred to Committee on Judiciary

### H 3121 Review of Medicaid Reimbursement Rates

A bill 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

A bill 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

#### Similar ([§ 0099](#), [h 3022](#))

A bill to establish the South Carolina Sunset Commission and a Sunset Review Division of the Legislative Audit Council.

[view full text](#)

Senate Judiciary

### H 3194 Increase Cigarette Tax

A bill 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.

[view full text](#)

Referred to Committee on Ways and Means

### H 3214 Establishing the Joint Legislative Oversight Committee on Medicaid and Health Care

A bill to establish the joint legislative oversight Committee on

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Medicaid and Health Care 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**

A bill to establish the state Office of Medicaid and Health Care audits for the Department of Health and Human Services.

[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**

A bill to establish the Department of Information Technology for Health and Human Services.

[view full text](#)

Referred to Committee on Ways and Means

## **H 3287 Enacting the Medicaid Accountability and Improvement Act**

A bill to specify Medicaid eligibility determination criteria.

[view full text](#)

Referred to Committee on Ways and Means

## **H 3412 Emergency Admissions to Mental Health Facilities**

A bill to provide that if a patient does not require involuntary treatment, the court, upon proper notice, shall dismiss the petition for commitment; 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 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; as to clarify these procedures and to authorize the court to order out-patient treatment following in-patient commitment; 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 days for such an evaluation; 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](#)

Read third time Medical, Military, Public and Municipal Affairs, passed the House and sent to Senate Medical Affairs. The bill was amended to exclude DUI cases and include crisis stabilization facilities.

3543 General Bill, By G.M. Smith

A bill enacting "Mary Lynn's law"; so as to provide that a

person with a current charge or a prior conviction for a violent offense, a harassment or stalking offense, or a burglary offense or a person subject to a restraining order or valid order of protection may not be considered for a diversion program; so as to provide that victim notification may not be by electronic or other automated communication or recording and to provide a procedure for notification; so as to redefine stalking and harassment; to revise the penalties for stalking and harassment; to require that when a restraining order is issued as a condition of bond for harassment or stalking, a copy of the restraining order must be sent by the court to the victim; to provide that a temporary restraining order granted without notice must be entered of record with the magistrates court; to provide that the duration of a temporary restraining order is extended from six months to one year; to allow law enforcement or another person to sign a warrant for a person engaged in harassment or stalking in place of the victim; to allow service of a restraining order to be made by mail return receipt to the defendant's last known address; 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; so as to prohibit those offenders convicted of a violent offense, a harassment or stalking offense, or a burglary offense; to amend section 56-1-90, as amended, relating to required information necessary to obtain a driver's license and section 56-1-230, relating to notification of change of address, both so as to require proof of address and to provide examples of sufficient proof.

[view full text](#)

Referred to Committee on Judiciary HJ-8

## **H 3642 Parity Similar (s 0049)**

A bill 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 Labor, Commerce and Industry

## Senate Bills

### **S 14 Punishment for Sexual Contact with Patients**

A bill to punish psychotherapists, alcohol and drug abuse counselors, and other confidants who have sexual contact with a patient.

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[view full text](#)

Referred to Committee on Judiciary

## **S 15 Victim Notification to DMH and DDSN**

A bill 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. **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**

A bill to provide that a conviction of criminal sexual conduct in the first degree carries a minimum term of imprisonment of ten years.

[view full text](#)

Referred to Committee on Judiciary

## **S 49 Parity**

A bill to require health insurance plans to provide coverage for treatment of mental illness or alcohol or substance abuse.

**The wording of this bill has been amended to exclude alcohol and drug coverage and to include nine specific mental illnesses.**

[view full text](#)

Referred to Committee on Labor, Commerce and Industry.

## **S 59 Termination of TERI Plan to New Participants**

**Similar (h 3036)**

A bill to close the Teacher and Employee Retention Incentive (TERI) program to new participants effective July 1, 2005.

[view full text](#)

Referred to Committee on Finance

## **S 80 Restructuring Bill of 2005**

A bill to provide that the power to organize and reorganize a department into divisions lies with the General Assembly; 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.

[view full text](#)

Referred to the Senate and read second time.

## **S 85 Central Registry for Child Abuse and Neglect**

A bill 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.

[view full text](#)

Referred to Committee on Judiciary

## **S 93 Stalking and Harassment**

A bill 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.

[view full text](#)

Referred to Committee on Judiciary

## **S 99 Establishing the South Carolina Sunset Commission and Sunset Review Division of the Legislative Audit Council**

**Similar (h 3022, h 3150)**

A bill to establish the South Carolina Sunset Commission and a Sunset Review Division of the Legislative Audit Council.

[view full text](#)

Referred to Committee on Judiciary

## **S 174 Purchase of Retirement Service Credit for Eligible Employees**

A bill 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 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](#)

Referred to Committee on Finance

## **S 305 Medicaid Modernization Act**

A bill to provide that the Department of Health and Human Services shall implement effective and efficient Medicaid care management, including administering care management programs for routine care and implementing care management programs for chronic disease care; to provide for effective Medicaid pharmacy benefit management, including the establishment of the Pharmacy and Therapeutics Committee, which shall recommend classes of drugs that should be included on a preferred drug list and criteria for implementation of a preferred drug list program.

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Committee report: favorable with amendment Medical Affairs. Read second time and unanimous consent for third reading on next legislative day.

## **S 344 DSS, Education Department and Interagency System of Care for Emotionally Disturbed Children**

A bill to specify that the Department of Education and the Department of Juvenile Justice are among the agencies responsible for developing this system, to specify that the goal of the system is to support children who are at risk for placement in an out-of-home treatment setting, and to further clarify the responsibilities of the system; and to clarify the payment method for the Department of Education's share of costs for children in the system.

[view full text](#)

Referred to Committee on Judiciary

## **S 357 Retirement**

A bill 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 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.

[view full text](#)

Referred to Committee on Finance

## **S 467 Catawba Community Mental Health Center, Joint Resolution**

A joint resolution to provide that upon execution of an appropriate contract the South Carolina Department of Mental Health is authorized to transfer a certain sum of money from an account designated for the purchase or construction of a child and adolescent facility at the Catawba Community Mental Health Center to the Friends of the Family Center, a nonprofit organization, for the purpose of raising additional funding to purchase a suitable building to serve as a child and adolescent mental health facility to be named the Catawba Family Center.

[view full text](#)

Referred to Committee on Ways and Means

## **S 683 Seclusion and Restraint**

A bill relating to the use of restraints and seclusion on patients committed to the Department of Mental Health, so as to provide that a licensed independent practitioner is among the staff authorized to order the use of restraints or seclusion and to define "licensed independent practitioner".

[view full text](#)

Referred to Committee on Medical Affairs

## **S 684 Immunity from Civil and Criminal Actions**

A bill relating to persons immune from liability for lawfully releasing or discharging a patient from the Department of Mental Health, so as to also afford this immunity to licensed

physicians, healthcare providers, designated examiners, interested persons, and law enforcement officers.

[view full text](#)

Referred to Committee on Medical Affairs

## **S 685 DMH Technical Changes**

A bill relating to divisions within the Department of Mental Health, so as to provide that the director may establish divisions, rather than to specify certain divisions in law; to amend section 44-9-60, relating to the appointment of superintendents for mental health hospitals, so as to change the title of "superintendent" to "chief executive officer" and to delete the provision requiring approval of the Mental Health Commission for these appointments; relating to powers and duties of the Mental Health Commission so as to delete provisions relating to providing emergency care and treatment for mental patients confined in penal institutions, provisions relating to collecting data on the causes and prevention of mental illness, provisions relating to providing surgical treatment, and provisions relating to providing mental health services in the areas of mental defectiveness, epilepsy, drug addiction, and alcoholism; relating to discretionary powers and duties of the Mental Health Commission, so as to make technical corrections; relating to grievance procedures for mental health patients, to transfer of patients between state facilities, to the signature of the superintendent of a mental health facility, and to the acceptance of service of legal papers for patients by the superintendent of a mental health facility, so as to conform these sections to provisions of this act and to make technical corrections; and to repeal section 44-11-80, relating to the Mental Health Commission setting salaries of department employees; and to repeal section 44-23-30, relating to the authority of a nonresident physician to examine a resident of this state who is visiting or residing in another state.

[view full text](#)

Referred to Committee on Medical Affairs

## **S 686 DHEC, DMH, HER programs**

A bill relating to requirements for and exemptions from health facility licensure by the Department of Health and Environmental Control, so as to exempt Department of Mental Health Homeshare Enhanced Respite programs serving no more than two persons with a length of stay of no more than fourteen days, from Department of Health and Environmental Control license requirements for Community Residential Care Facilities.

[view full text](#)

Referred to Committee on Medical Affairs

## **DMH Proposed Technical Changes and Amendments**

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



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**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.