CHAPTER 38

Head and Spinal Cord Injuries

ARTICLE 1

Head and Spinal Cord Injury Information System

**SECTION 44‑38‑10.** Head and Spinal Cord Injury Information System created; purpose.

There is created the South Carolina Head and Spinal Cord Injury Information System to provide a central information surveillance system and registry for head and spinal cord injuries.

HISTORY: 1992 Act No. 457, Section 1.

CROSS REFERENCES

Head and Spinal Cord Injury Information System incorporated into Head and Spinal Cord Injury division of Department of Disabilities and Special Needs, see Section 1‑30‑35.

Library References

Health 361.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10, 18 to 27, 41 to 42, 61 to 68, 73 to 80.

**SECTION 44‑38‑20.** Definitions.

As used in this article:

(1) “Council” means the South Carolina Head and Spinal Cord Injury Information System Council established pursuant to this article.

(2) “Head injury” means an insult to the skull or brain, not of a degenerative or congenital nature, but one caused by an external physical force that may produce a diminished or altered state of consciousness which results in impairment of cognitive abilities or physical functioning and possibly in behavioral or emotional functioning. It does not include cerebral vascular accidents and aneurysms.

(3) “Spinal cord injury” means an acute, traumatic lesion of neural elements in the spinal canal resulting in any degree of sensory deficit, motor deficit, or major life functions. The deficit or dysfunction may be temporary or permanent.

(4) “System” means the South Carolina Head and Spinal Cord Injury Information System established pursuant to this article.

HISTORY: 1992 Act No. 457, Section 1; 1993 Act No. 159, Section 4.

**SECTION 44‑38‑30.** Head and Spinal Cord Injury Information System Council; establishment and purpose; composition; election of chairman; appointment of advisors; compensation and expenses.

(A) There is the South Carolina Head and Spinal Cord Injury Information System Council established for the purpose of overseeing the daily activities of the system which shall be under the Head and Spinal Cord Injury Division of the Department of Disabilities and Special Needs. The council is composed of the following ex officio members or their designees: the chairman, Developmental Disabilities Council, Office of the Governor, the chairman of the Joint Committee to Study the Problems of Persons with Disabilities, the State Director of the State Department of Mental Health, the Commissioner of the Department of Vocational Rehabilitation, the Director of the State Department of Disabilities and Special Needs, the Director of the South Carolina Department of Health and Environmental Control, the Director of the South Carolina Department of Health and Human Services, Dean of the University of South Carolina School of Medicine, the Dean of the Medical University of South Carolina, the Executive Director of the South Carolina Hospital Association, one representative from each of the head injury advocacy organizations, and one individual with a spinal cord injury. The council shall elect a chairman who may appoint such other nonvoting members who may serve in an advisory capacity to the council, including representatives from the private service delivery sector.

(B) Members of the council shall receive no compensation, including subsistence, per diem, or mileage for service on the council.

HISTORY: 1992 Act No. 457, Section 1; 1993 Act No. 181, Section 1102.

Library References

Health 361.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10, 18 to 27, 41 to 42, 61 to 68, 73 to 80.

**SECTION 44‑38‑40.** Duties of council.

In carrying out the purposes of this article the council shall:

(1) determine and implement the most cost effective method:

(a) to collect, record, analyze, and disseminate data on the incidence and causes of head and spinal cord injuries;

(b) to gather such other data as needed from existing sources of the South Carolina Statewide Hospital Data System and the Trauma Registry of the Division of Emergency Medical Services;

(2) provide information for initiation of case management services and preventive programs for head and spinal cord injured persons in this State;

(3) develop and promote primary prevention programs related to preventing head and spinal cord injuries;

(4) perform other duties and functions as determined by the council to be necessary for implementation of this article.

HISTORY: 1992 Act No. 457, Section 1; 1993 Act No. 159, Section 4.

Library References

Health 361.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10, 18 to 27, 41 to 42, 61 to 68, 73 to 80.

**SECTION 44‑38‑50.** Reporting of required information; follow up to persons entered in registry; gathering information from other states; approval of and participation in research activities.

The council shall develop:

(1) reporting forms and procedures for reporting the information required by this article;

(2) a system to provide follow up to individuals entered in the registry;

(3) procedures for gathering information from other states in which a South Carolina resident may be admitted for a head or spinal cord injury, or both; and

(4) procedures for approving research projects or participation in research activities.

HISTORY: 1992 Act No. 457, Section 1; 1993 Act No. 159, Section 4.

Library References

Health 395.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 24, 28, 30, 69 to 70.

**SECTION 44‑38‑60.** Confidentiality of reports and records; nondisclosure under Freedom of Information Act.

(A) All reports and records made pursuant to this article and maintained by the system, any agency, hospital, institution, other facility, or person pursuant to this article are confidential and may not be disclosed under the Freedom of Information Act. Information must not be released except to:

(1) appropriate staff of the system;

(2) submitting hospitals or their designees;

(3) a person engaged in a research project approved pursuant to Section 44‑38‑50 except that no information identifying a subject of a report or a reporter may be made available to a researcher unless consent is obtained pursuant to this section;

(4) a member of the council except that no information identifying a subject of a report or a reporter may be made to the council unless consent is obtained pursuant to this section.

(B) The identity of a patient, physician, or hospital is confidential and may not be released, except that the identity of a patient may be released upon informed written consent of the patient, or the patient’s legal guardian or legal representative; the identity of a physician may be released upon written consent of the physician; and the identity of a hospital may be released upon written consent of the hospital.

HISTORY: 1992 Act No. 457, Section 1; 1993 Act No. 159, Section 4.

CROSS REFERENCES

State Freedom of Information Act, see Sections 30‑4‑10 et seq.

Library References

Health 395.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 24, 28, 30, 69 to 70.

**SECTION 44‑38‑70.** Council to submit annual report.

The council shall submit an annual report to the Joint Committee to Study Problems of Persons with Disabilities including, but not limited to, the incidence and status of head and spinal cord injuries in South Carolina, the administration of the system and recommendations for modifications in the system, and for improving the delivery of services to persons with these injuries.

HISTORY: 1992 Act No. 457, Section 1.

Library References

Health 395.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 24, 28, 30, 69 to 70.

**SECTION 44‑38‑80.** Qualified immunity from liability for release of information in accordance with article.

No person, medical facility, or other organization providing or releasing information in accordance with this article may be held liable in a civil or criminal action for divulging confidential information unless the individual or organization acted in bad faith or with malicious purpose.

HISTORY: 1992 Act No. 457, Section 1; 1993 Act No. 159, Section 4.

Library References

Health 361.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10, 18 to 27, 41 to 42, 61 to 68, 73 to 80.

**SECTION 44‑38‑90.** Penalty for intentional noncompliance with article.

A person subject to this article who intentionally fails to comply with reporting or confidentiality and disclosure requirements of this article is subject to a civil penalty of not more than one hundred dollars for a violation the first time a person fails to comply and not more than five thousand dollars for a subsequent violation.

HISTORY: 1992 Act No. 457, Section 1; 1993 Act No. 159, Section 4.

Library References

Health 361.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10, 18 to 27, 41 to 42, 61 to 68, 73 to 80.

ARTICLE 3

Head and Spinal Cord Injury Service Delivery System

**SECTION 44‑38‑310.** Service Delivery System established.

There is established within the Department of Disabilities and Special Needs the South Carolina Head and Spinal Cord Injury Service Delivery System. The system shall operate as a division of the department to be known as the Head and Spinal Cord Injury Division. The department must develop, coordinate, and enhance the delivery of services to persons with head and spinal cord injuries. The department must coordinate case management services provided pursuant to this article with the Department of Vocational Rehabilitation. Services provided pursuant to this article supplement and do not supplant existing services or the development of new services.

HISTORY: 1993 Act No. 159, Section 1; 1993 Act No. 181, Section 1103.

Library References

Health 361.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10, 18 to 27, 41 to 42, 61 to 68, 73 to 80.

**SECTION 44‑38‑320.** Definitions.

As used in this article:

(1) “System” means the South Carolina Head and Spinal Cord Injury Service Delivery System as established in this article;

(2) “State plan” means the plan developed by the State Department of Disabilities and Special Needs pursuant to this article for a comprehensive system of services for persons with head and spinal cord injuries.

(3) “Department” means the Department of Disabilities and Special Needs.

HISTORY: 1993 Act No. 159, Section 1; 1993 Act No. 181, Section 1103.

CROSS REFERENCES

State Department of Disabilities and Special Needs, see Sections 44‑20‑240 et seq.

**SECTION 44‑38‑330.** Primary functions of system.

The primary functions of the system are planning, intake and referral, case management, and education and prevention. The department is responsible for these functions.

HISTORY: 1993 Act No. 159, Section 1; 1993 Act No. 181, Section 1103.

CROSS REFERENCES

State Department of Disabilities and Special Needs, see Sections 44‑20‑240 et seq.

State Department of Vocational Rehabilitation, see Sections 43‑31‑10 et seq.

University of South Carolina, see Sections 59‑117‑10 et seq.

Library References

Health 361.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10, 18 to 27, 41 to 42, 61 to 68, 73 to 80.

**SECTION 44‑38‑340.** Duties of department.

The department shall:

(1) develop a state plan for a comprehensive system of services for persons with head and spinal cord injuries, including short‑term and long‑term goals and objectives for implementing the plan;

(2) receive surveillance data from the South Carolina Head and Spinal Cord Injury Information System to use in developing and revising the state plan to meet the changing needs of this population;

(3) identify gaps in services for head and spinal cord injured persons and spearhead development of those services needed for the comprehensive system of service delivery;

(4) develop licensing, program, and contract guidelines to be used by case managers in working with service delivery agencies;

(5) in conjunction with other state agencies, prepare, coordinate, and advocate for state appropriations needed to fund and to develop services needed to implement the state plan;

(6) seek funding from other sources, private and federal, including, but not limited to, medicaid waivers and expansion of the medicaid program, to provide services outlined in the state plan;

(7) evaluate the state plan including, but not limited to, how well head and spinal cord injured persons are identified, referred, and served by the system and its impact on their quality of life, including reintegration and productivity in the community;

(8) promote public awareness through programs relating to head and spinal cord injury prevention, treatment, and rehabilitation;

(9) promote research on the causes, effects, prevention, treatment, and rehabilitation of head and spinal cord injuries;

(10) serve as the central and initial point for receiving referrals for case management services from the South Carolina Head and Spinal Cord Injury Information System and all other sources;

(11) determine a person’s eligibility for case management services based on criteria provided in Section 44‑38‑370, conduct an assessment of services needed, and provide appropriate case management based on an individualized treatment plan designed to meet the specific needs of the person;

(12) develop policies and procedures to be used by the case managers to ensure, among other things, that a person with a head or spinal cord injury receives equal access to available services and that case management services maximize the person’s self‑determination and self‑advocacy;

(13) develop training programs for case managers and other professionals to prepare and assist them in working with persons with head and spinal cord injuries;

(14) coordinate the delivery of services and ensure that services are appropriate and delivered in a timely manner;

(15) advocate for persons with head and spinal cord injuries to assist them in receiving equal access to services and services which promote independence and productivity.

HISTORY: 1993 Act No. 159, Section 1; 1993 Act No. 181, Section 1103.

CROSS REFERENCES

State Department of Disabilities and Special Needs, see Sections 44‑20‑240 et seq.

Library References

Health 361.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10, 18 to 27, 41 to 42, 61 to 68, 73 to 80.

**SECTION 44‑38‑370.** Eligibility criteria for case management services.

A person is eligible for case management services under this article when at the time of determining eligibility the person has a severe chronic limitation that:

(1) is attributed to a physical impairment, including head injury, spinal cord injury, or both, or a similar disability, regardless of the age of onset but not associated with the process of a progressive degenerative illness or disease, dementia, or a neurological disorder related to aging;

(2) is likely to continue indefinitely without intervention;

(3) results in substantial functional limitations in at least two of these life activities:

(a) self‑care;

(b) receptive and expressive communication;

(c) learning;

(d) mobility;

(e) self‑direction;

(f) capacity for independent living;

(g) economic self‑sufficiency; and

(4) reflects the person’s need for a combination and sequence of special interdisciplinary or generic care or treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.

HISTORY: 1993 Act No. 159, Section 1; 1993 Act No. 181, Section 1103.

Library References

Health 361.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10, 18 to 27, 41 to 42, 61 to 68, 73 to 80.

Attorney General’s Opinions

The definition of the term “similar disability” is based on the interpretation of the Department of Disabilities and Special Needs and deference will be granted to that agency’s definition. S.C. Op.Atty.Gen. (September 17, 1998) 1998 WL 747081.

**SECTION 44‑38‑380.** Advisory Council to System.

(A) There is created an Advisory Council to the South Carolina Head and Spinal Cord Service Delivery System composed of:

(1) the following members or a designee, who shall serve ex officio:

(a) Chairperson for the Joint Legislative Committee for the Disabled;

(b) Director of the State Department of Disabilities and Special Needs;

(c) Commissioner of the State Agency for Vocational Rehabilitation;

(d) Director of the University Affiliated Program of the University of South Carolina;

(e) Director of the South Carolina Developmental Disabilities Council;

(f) Director of Special Education of the State Department of Education;

(g) Director of the Interagency Office of Disability Prevention;

(h) Director of the Continuum of Care for Emotionally Disturbed Children;

(i) Executive Director of the South Carolina Health and Human Services Finance Commission;

(j) Director of the State Department of Mental Health;

(k) Commissioner of the South Carolina Department of Health and Environmental Control;

(l) Commissioner of the South Carolina Commission for the Blind;

(2) the following members or a designee:

(a) President of the South Carolina Head Injury Association;

(b) President of the South Carolina Association of Independent Head Injury Groups;

(c) President of the South Carolina Spinal Cord Injury Association;

(d) Director of the South Carolina Disabilities Research Commission;

(3) the following members to be appointed by the Governor for four‑year terms and until their successors are appointed and qualified:

(a) three health care providers knowledgeable in head injuries and spinal cord injuries;

(b) three consumers of case management services or family members or legal guardians of consumers of case management services;

(c) of those members first appointed, two of the health care providers and two of the consumers or family members of consumers shall serve four‑year terms and one health care provider and one consumer or family member of a consumer shall serve two‑year terms.

(B) The Governor, with recommendation from the Chairperson of the Joint Legislative Committee for the Disabled, shall appoint a primary or secondary consumer of services of the system as chairperson of the council for a two‑year term; no person may serve more than one term as chairperson.

(C) Members of the Advisory Council shall serve at no expense to the State.

(D) The Advisory Council shall work with the State Department of Disabilities and Special Needs and the State Agency of Vocational Rehabilitation in carrying out their responsibilities under this article. In working with these agencies the council shall, but is not limited to:

(1) provide oversight for the implementation of the state plan and operation of the system;

(2) review budget matters related to the system and the responsibilities of the agencies within the system;

(3) monitor effectiveness of the state plan.

HISTORY: 1993 Act No. 159, Section 1; 1993 Act No. 181, Section 1103; 2014 Act No. 121 (S.22), Pt V, Section 7.MM.1, eff July 1, 2015.

CROSS REFERENCES

Chairman of State Agency for Vocational Rehabilitation, see Section 43‑31‑50.

Commissioner of Commission for the Blind, see Section 43‑25‑10.

Commissioner of Department of Health and Environmental Control, see Section 44‑1‑20.

Commissioner of State Agency for Vocational Rehabilitation, duties and powers, see Section 43‑31‑60.

Director of Continuum of Care for Emotionally Disturbed Children Division, see Section 63‑11‑1340.

Director of Department of Health and Human Services, see Section 44‑6‑10.

Director of Developmental Disabilities Council, see Protective Services for Developmentally Disabled and Senile Persons, see Sections 43‑29‑10 et seq.

Director of State Department of Disabilities and Special Needs, see Section 44‑20‑220.

Director of State Department of Mental Health, see Section 44‑9‑40.

Special Education, within State Department of Education, see Sections 59‑33‑10 et seq.

University of South Carolina, see Sections 59‑117‑10 et seq.

Library References

Health 361.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10, 18 to 27, 41 to 42, 61 to 68, 73 to 80.

**SECTION 44‑38‑390.** Article does not establish entitlement program or benefit.

Nothing contained in this article may be construed to establish or authorize creation of an entitlement program or benefit.

HISTORY: 1993 Act No. 159, Section 1; 1993 Act No. 181, Section 1103.

Library References

Health 361.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10, 18 to 27, 41 to 42, 61 to 68, 73 to 80.

ARTICLE 5

Spinal Cord Injury Research Board

**SECTION 44‑38‑510.** Spinal Cord Injury Research Board.

(A) The South Carolina Spinal Cord Injury Research Board is created for the purpose of administering the spinal cord injury research fund created pursuant to Section 14‑1‑211. The board is composed of seven members who must be residents of this State and appointed by the Governor upon recommendation of the President of the Medical University of South Carolina, as follows: two members who are medical doctors from the staff or faculty of the Medical University of South Carolina; two members who are medical doctors specializing or significantly engaged in treatment of spinal cord injuries in South Carolina; two members who have a spinal cord injury or who have a family member with a spinal cord injury; and one at‑large member who is a medical doctor and a member of the South Carolina Medical Association.

(B) The terms of board members shall be four years, except that the Governor must stagger the initial appointments to the board so that one of the two members who are medical doctors from the staff or faculty of the Medical University of South Carolina shall be appointed for a two‑year term; one of the two members who are medical doctors specializing or significantly engaged in treatment of spinal cord injuries in South Carolina shall be appointed for a two‑year term; one of the two members who have a spinal cord injury or who have a family member with a spinal cord or head injury shall be appointed for a two‑year term; and the at‑large member who is a medical doctor and a member of the South Carolina Medical Association shall serve a three‑year term. All subsequent appointments shall be for four‑year terms.

(C) At the end of a term, a member shall continue to serve until a successor is appointed and qualifies. A member who is appointed after a term has begun shall serve the rest of the term and until a successor is appointed and qualifies. A member who serves two consecutive four‑year terms shall not be reappointed for two years after completion of those terms.

(D) A majority of the membership of the board shall constitute a quorum.

(E) The board shall elect, by a majority vote, a chairman who shall be the presiding officer of the board, preside at all meetings, and coordinate the functions and activities of the board. The chairman shall be elected or reelected for each calendar year. The board shall have such other organization as deemed necessary and approved by the board.

(F) Meetings of the board shall be held at least twice a year but may be held more frequently as deemed necessary, subject to call by the chairman or by request of a majority of the board members. Board meetings shall concern, among other things, policy matters relating to spinal cord injury research projects and programs, research progress reports, authorization of projects and financial plans, and other matters necessary to carry out the intent of this section.

(G) No member of the board shall be subject to any personal liability or accountability for any loss sustained or damage suffered on account of any action or inaction of the board.

(H) Board members shall be reimbursed for ordinary travel expenses, including meals and lodging, incurred in the performance of duties.

(I) The board shall be attached to the Medical University of South Carolina for meetings, staff, and administrative purposes.

(J) The board shall set forth guidelines and standards for allocation of these funds.

(K) Nothing in this article prohibits the board from allocating funds for spinal cord research projects at other institutions other than MUSC as long as the receiving institution shares the research statistics with each medical institution in this State.

HISTORY: 2000 Act No. 390, Section 2.

Library References

Health 361.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10, 18 to 27, 41 to 42, 61 to 68, 73 to 80.

ARTICLE 6

South Carolina Brain Injury Leadership Council

**SECTION 44‑38‑610.** South Carolina Brain Injury Leadership Council.

There is created the South Carolina Brain Injury Leadership Council, within the Department of Disabilities and Special Needs, to provide statewide coordination in promoting support services to persons with brain injuries, their families, and caregivers, and to identify emerging issues and innovations, foster education and advocacy, and build consensus to support necessary policies and programs.

HISTORY: 2013 Act No. 63, Section 1, eff June 13, 2013.

Library References

Health 361.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10, 18 to 27, 41 to 42, 61 to 68, 73 to 80.

**SECTION 44‑38‑620.** Duties of the council.

The South Carolina Brain Injury Leadership Council shall:

(1) advise and make recommendations to the State on ways to improve services coordination regarding traumatic brain injury;

(2) encourage citizen participation through the establishment of public hearings and other types of community outreach programs;

(3) identify emerging issues and expand methods and resources to enhance statewide services;

(4) serve as a resource for education, research, and training and provide information and referral services;

(5) provide technical assistance for the development of support groups and other local initiatives to serve individuals, families, and caregivers;

(6) consult with federal, state, and local government agencies and with citizens’ groups and other private entities to recommend public policy concerning brain injuries to state policymakers; and

(7) serve as the statewide advisory board for implementing the federal Traumatic Brain Injury Act and applying for federal traumatic brain injury funding.

HISTORY: 2013 Act No. 63, Section 1, eff June 13, 2013.

Library References

Health 361.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10, 18 to 27, 41 to 42, 61 to 68, 73 to 80.

**SECTION 44‑38‑630.** Membership of council; officers of council; compensation.

(A) The members of the South Carolina Brain Injury Leadership Council should have knowledge or expertise in the area of brain injury or related services. The council shall be comprised of representatives of the following agencies and organizations, shall be appointed by the director of the agency or organization and shall serve ex officio:

(1) South Carolina Department of Education;

(2) South Carolina Department of Health and Human Services;

(3) South Carolina Department of Mental Health;

(4) South Carolina Department of Social Services;

(5) South Carolina Department of Health and Environmental Control;

(6) South Carolina Vocational Rehabilitation Department;

(7) South Carolina Department of Disabilities and Special Needs;

(8) Head and Spinal Cord Injury Division within the South Carolina Department of Disabilities and Special Needs;

(9) Medical University of South Carolina;

(10) University Center for Excellence in Developmental Disabilities within the University of South Carolina School of Medicine;

(11) South Carolina Statewide Independent Living Council;

(12) South Carolina Developmental Disabilities Council;

(13) Protection and Advocacy for People with Disabilities, Inc.; and

(14) Brain Injury Association of South Carolina.

(B) Council members shall include persons who are survivors of traumatic brain injury, family members or legal guardians of these persons, health care professionals, representatives of service provider entities, or other interested parties knowledgeable about brain injuries. Membership shall meet requirements of the State Advisory Board designated by the federal Traumatic Brain Injury Act.

(C) Officers of the council shall be as follows: chairperson, vice chairperson, and secretary. Council officers are to be elected at the final quarterly council meeting of the year, and shall serve a two year term starting the next calendar year.

(D) Council members shall be appointed with consideration given to statewide geographic and demographic representation. When an appointed vacancy on the council exists, nominations to fill the vacancy may be received from members of the council by the secretary.

(E) Members and officers of the council are not entitled to mileage, per diem, subsistence, or any other form of compensation.

HISTORY: 2013 Act No. 63, Section 1, eff June 13, 2013.

Library References

Health 361.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10, 18 to 27, 41 to 42, 61 to 68, 73 to 80.

**SECTION 44‑38‑640.** Authority to apply for grants.

The South Carolina Brain Injury Leadership Council shall have the authority to apply for grants for the purposes of carrying out the responsibilities and duties of the council.

HISTORY: 2013 Act No. 63, Section 1, eff June 13, 2013.

Library References

Health 361.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10, 18 to 27, 41 to 42, 61 to 68, 73 to 80.