

1984 S.C. Op. Atty. Gen. 269 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-116, 1984 WL 159923

Office of the Attorney General

State of South Carolina

Opinion No. 84-116

September 25, 1984

*1 Dr. William S. Hall
Commissioner
S. C. Department of Mental Health
P. O. Box 485
Columbia, SC 29202

Dear Dr. Hall:

You have requested the opinion of this Office as to whether the Department of Mental Health can contract with a private facility to provide for care and treatment of psychiatric patients at such private facility.

[Section 44-9-90, South Carolina Code](#) of Laws, 1976, as amended, enumerates the rights, duties and powers of the Department of Mental Health. Section 7 provides that the Department shall provide a statewide system for the delivery of mental health services to treat, care for, reduce and prevent mental illness, and provide mental health services in the areas of mental defectiveness, epilepsy, drug addiction, and alcoholism for citizens of this State whether or not in an institution. The system shall include services to prevent or postpone the commitment or recommitment of citizens to mental health institutions.

In a prior opinion of this Office (Op. Atty. Gen. 1978, No. 78-39, p. 65), this Office opined that the Department of Mental Health, by necessary implication, has the authority to contract with the State Department of Education in order to provide educational training for school age residential patients of the South Carolina Department of Mental Health.

In addition, [§ 44-9-100\(5\) of the South Carolina Code](#) of Laws, 1976, as amended, provides that the Department may take appropriate action to initiate and develop relationships and agreements with State, local, federal and private agencies, hospitals and clinics as it deems necessary to increase and enhance the accessibility and delivery of emergency and all other types of mental health services. The above amendment added Section 5, effective April 10, 1979, after the above-referenced Attorney General opinion which stated that such authority to contract was by implication. This grant of authority is now specifically provided for by statute. Section 44-17-610 provides that while the Court may order the hospitalization of a patient in a private, county or other institution upon request by the individual, or his relatives, the State cannot be held liable for expenses incurred as a result of such an order. This statute, however, is not in conflict with [§ 44-9-100\(5\)](#) and does not prohibit the Department of Mental Health from entering into an agreement with a hospital or private facility as it deems necessary in its delivery of mental health services.

It is the opinion of this Office that the South Carolina Department of Mental Health may enter contractual agreements with private agencies which would provide greater accessibility and delivery of mental health services.¹

Very truly yours,

Ruby Brice McClain
Assistant Attorney General

Footnotes

¹ We only address herein the authority of the Department to contract, not the procedures necessary in so contracting.

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