

Added: Green underlined text

Deleted: ~~Dark red text with a strikethrough~~

Vetoed: Red text

**2023 SC S 164**

**Author:** Climer  
**Version:** Amended  
**Version Date:** 05/02/2023

**South Carolina General Assembly**

125th Session, 2023-2024

Indicates Matter Stricken

Indicates New Matter

Amended

May 2, 2023

**S. 164**

**A BILL**

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY RENAMING ARTICLE 3, CHAPTER 7, TITLE 44 AS THE "STATE HEALTH FACILITY LICENSURE ACT"; BY AMENDING SECTIONS 44-7-110, 44-7-120, 44-7-130, 44-7-140, 44-7-150, AND 44-7-320, ALL RELATING TO THE REGULATION OF HEALTH CARE FACILITIES IN THE STATE, SO AS TO ELIMINATE REFERENCES TO CERTIFICATE OF NEED REQUIREMENTS; BY AMENDING SECTION 44-7-160, SO AS TO PROVIDE THAT THE CERTIFICATE OF NEED PROGRAM ONLY APPLIES TO NURSING HOMES; BY ADDING SECTION 44-7-161, TO PROVIDE THAT MUSC MUST APPEAR BEFORE THE JBRC AND OBTAIN APPROVAL FROM THE SFAA PRIOR TO TAKING CERTAIN ACTIONS; AND TO ESTABLISH THE CERTIFICATE OF NEED STUDY COMMITTEE TO ASSESS HEALTH CARE IN RURAL SOUTH CAROLINA.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1.A. (A) Article 3, Chapter 7, Title 44 of the S.C. Code is renamed the "State Health Facility Licensure Act".

B. Section 44-7-110 of the S.C. Code is amended to read:

Section 44-7-110. This article may be cited as the "State ~~Certification of Need and~~ Health Facility Licensure Act".

SECTION 2. Section 44-7-120 of the S.C. Code is amended to read:

Section 44-7-120. The purpose of this article is to ~~promote cost containment, prevent unnecessary duplication of health care facilities and services, guide the establishment of health facilities and services which will best serve public needs, and~~ ensure that high quality services are provided in health facilities in this State. To achieve these purposes, this article requires:

~~(1) the issuance of a Certificate of Need before undertaking a project prescribed by this article;~~

~~(2) adoption of procedures and criteria for submittal of an application and appropriate review before issuance of a Certificate of Need;~~

~~(3) preparation and publication of a State Health Plan;~~

~~(4) the licensure of facilities rendering medical, nursing, and other health care.~~

SECTION 3. Section 44-7-130 of the S.C. Code is amended to read:

Section 44-7-130. As used in this article:

(1) "Affected person" means the applicant, a person residing within the geographic area served or to be served by the applicant, persons located in the health service area in which the project is to be located and who provide similar services to the proposed project, persons who before receipt by the department of the proposal being reviewed have formally indicated an intention to provide similar services in the future, persons who pay for health services in the health service area in which the project is to be located and who have notified the department of their interest in Certificate of Need applications, the State Consumer Advocate, and the State Ombudsman. Persons from another state who would otherwise be considered "affected persons" are not included unless that state provides for similar involvement of persons from South Carolina in its certificate of need process.

(2) "Ambulatory surgical facility" means a facility organized and administered for the purpose of performing surgical procedures for which patients are scheduled to arrive, receive surgery, and be discharged on the same day. The owner or operator makes the facility available to other providers who comprise an organized professional staff.

(3) "Birthing center" means a facility or other place where human births are planned to occur. This does not include the usual residence of the mother, any facility that is licensed as a hospital, or the private practice of a physician who attends the birth.

~~(4)~~ "Board" means the State Board of Health and Environmental Control.

~~(4)~~ (5) Reserved. "Children, adolescents, and young adults in need of mental health treatment in a residential treatment facility" means a child, adolescent, or young adult under age twenty-one who manifests a substantial disorder of cognitive or emotional process that lessens or impairs to a marked degree that child's, adolescent's, or young adult's capacity either to develop or to exercise age-appropriate or age-adequate behavior including, but not limited

to, marked disorders in a child's, adolescent's, or young adult's ability to care for and relate to others.

~~(5) "Competing applicants" means two or more persons or health care facilities as defined in this article who apply for Certificates of Need to provide similar services or facilities in the same service area within a time frame as established by departmental regulations and whose applications, if approved, would exceed the need for services or facilities.~~

(6) "Community residential care facility" means a facility which offers room and board and provides a degree of personal assistance for two or more persons eighteen years old or older.

~~(7) "Competing applicants" means two or more persons or health care facilities as defined in this article who apply for Certificates of Need to provide similar services or facilities in the same service area within a time frame as established by departmental regulations and whose applications, if approved, would exceed the need for services or facilities.~~

~~(8) "Crisis stabilization unit facility" means a facility, other than a health care facility, operated by the Department of Mental Health or operated in partnership with the Department of Mental Health that provides a short-term residential program, offering psychiatric stabilization services and brief, intensive crisis services to individuals eighteen and older, twenty-four hours a day, seven days a week.~~

~~(9) "Day-care Daycare facility for adults" means a facility for adults eighteen years or older which that:~~

~~(a) offers in a group setting a program of individual and group activities and therapies. The program;~~

~~(b) is directed toward providing community-based care for those in need of a supportive setting for less than twenty-four hours a day, thereby preventing in order to prevent unnecessary institutionalization; and~~

~~(c) shall provide provides a minimum of four and a maximum of fourteen hours of operation a day.~~

~~(8) (10) "Department" means the Department of Health and Environmental Control.~~

~~(9) (11) "The federal act" means Title VI of the United States Public Health Service Act (the Hill Burton Construction Program); Title XVI of the United States Public Health Service Act (National Health Planning and Resources Development Act of 1974 Public Law 93-641); grants for all center and facility construction under Public Law 91-211 (community mental health centers' amendments to Title II, Public Law 88-164, Community Mental Health Centers Act); grants for all facility construction under Public Law 91-517 (developmental disabilities services and facilities construction amendments of 1970 to Part C, Title I, grants for construction of facilities for persons with intellectual disability Public Law 88-164); and other federal programs as may exist or be enacted which provide for the construction of hospitals or related health facilities. "Facility for chemically dependent or addicted persons" means a facility organized to provide outpatient or residential services to chemically dependent or addicted persons and their families based on an individual treatment plan including diagnostic treatment, individual and group counseling, family therapy, vocational and educational development counseling, and referral services.~~

~~(12) "Facility wherein abortions are performed" means a facility, other than a hospital, in which any second trimester or five or more first trimester abortions are performed in a month.~~

~~(13) "Freestanding emergency service" or "off-campus emergency service" means an extension of an existing hospital emergency department that is intended to provide comprehensive emergency service but does not include a service that does not provide twenty-four hour, seven day per week operation or that is not capable of providing basic services as defined for hospital emergency departments. A service that does not qualify as a freestanding emergency service must not be classified as a freestanding emergency service and must not advertise, or display or exhibit any signs or symbols, that would identify the service as a freestanding emergency service.~~

~~(14) "Freestanding or mobile technology" means medical equipment owned or operated by a person other than a health care facility for which the total cost is in excess of that prescribed by regulation and for which specific standards or criteria are prescribed in the State Health Plan.~~

~~(10) (15) "Health care facility" means, at a minimum, acute care hospitals, psychiatric hospitals, alcohol and substance abuse hospitals, nursing homes, ambulatory surgical facilities, hospice facilities, radiation therapy facilities, rehabilitation facilities, residential treatment facilities for children and adolescents, intermediate care facilities for persons with intellectual disability, or narcotic treatment programs, and any other facility for which Certificate of Need review is required by federal law. (14) (16) "Health service" means clinically related, diagnostic, treatment, or rehabilitative services and includes alcohol, drug abuse, and mental health services for which specific standards or criteria are prescribed in the State Health Plan.~~

~~(12) (17) "Hospital" means a facility that is organized and administered to provide overnight medical or surgical care or nursing care of for an illness, injury, or infirmity and must provide on-campus emergency services; that may provide obstetrical care; and in which all diagnoses, treatment, or care is administered by or under the direction of persons currently licensed to practice medicine, surgery, or osteopathy.~~

~~Hospital "Hospital" may include a residential treatment facilities facility for children, and adolescents, or young adults in need of mental health treatment which are that is physically a part of a licensed psychiatric hospital. This definition does not include facilities which that are licensed by the Department of Social Services. A residential treatment facility for children, adolescents, or young adults in need of mental health treatment that is physically part of a licensed psychiatric hospital is not required to provide on-campus emergency services.~~

~~(18) "Intermediate care facility for persons with intellectual disability" means a facility that serves four or more persons with intellectual disability or persons with related conditions and provides health or rehabilitative services on a regular basis to individuals whose mental and physical conditions require services including room, board, and active treatment for their intellectual disability or related conditions.~~

~~(19) "Like equipment with similar capabilities" means medical equipment in which functional and technological capabilities are identical to the equipment to be replaced; and the replacement equipment is to be used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and does not constitute a material change in service or a new service.~~

~~(13) (20) "Nursing home" means a facility with an organized nursing staff to maintain and operate organized facilities and services to accommodate two or more unrelated persons over a period exceeding twenty-four hours which is operated either in connection with a hospital or as a freestanding facility for the express or implied purpose of providing intermediate or skilled nursing care for persons who are not in need of hospital care.~~

~~(14) "Facility for chemically dependent or addicted persons" means a facility organized to provide outpatient or residential services to chemically dependent or addicted persons and their families based on an individual treatment plan including diagnostic treatment, individual and group counseling, family therapy, vocational and educational development counseling, and referral services.~~

~~(15) (21) "Person" means an individual, a trust or estate, a partnership, a corporation including an association, joint stock company, insurance company, and a health maintenance organization, a health care facility, a state, a political subdivision, or an instrumentality including a municipal corporation of a state, or any legal entity recognized by the State.~~

~~(22) "Radiation therapy facility" means a person or a health care facility that provides or seeks to provide mega-voltage therapeutic services to patients through the use of high energy radiation.~~

~~(16) (23) "Residential treatment facility for children and adolescents" means a facility operated for the assessment, diagnosis, treatment, and care of two or more "children and adolescents in need of mental health treatment" which provides:~~

- ~~(a) a special education program with a minimum program defined by the South Carolina Department of Education;~~
- ~~(b) recreational facilities with an organized youth development program; and~~
- ~~(c) residential treatment for a child or adolescent in need of mental health treatment.~~

~~(17) (24) "Solely for research" means a service, procedure, or equipment which has not been approved by the Food and Drug Administration (FDA) but which is currently undergoing review by the FDA as an investigational device. FDA research protocol and any applicable Investigational Device Exemption (IDE) policies and regulations must be followed by a facility proposing a project "solely for research".~~

~~(18) "Children, adolescents, and young adults in need of mental health treatment" in a residential treatment facility means a child, adolescent, or young adult under age twenty one who manifests a substantial disorder of cognitive or emotional process, which lessens or impairs to a marked degree that child's, adolescent's, or young adult's capacity either to develop or to exercise age appropriate or age adequate behavior. The behavior includes, but is not limited to, marked disorders of mood or thought processes, severe difficulties with self-control and judgment including behavior dangerous to self or others, and serious disturbances in the ability to care for and relate to others.~~

~~(19) "Intermediate care facility for persons with intellectual disability" means a facility that serves four or more persons with intellectual disability or persons with related conditions and provides health or rehabilitative services on a regular basis to individuals whose mental and physical conditions require services including room, board, and active treatment for their intellectual disability or related conditions.~~

~~(20) "Freestanding or mobile technology" means medical equipment owned or operated by a person other than a health care facility for which the total cost is in excess of that prescribed by regulation and for which specific standards or criteria are prescribed in the State Health Plan.~~

~~(21) "Like equipment with similar capabilities" means medical equipment in which functional and technological capabilities are identical to the equipment to be replaced; and the replacement equipment is to be used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and does not constitute a material change in service or a new service.~~

~~(22) "Facilities wherein abortions are performed" means a facility, other than a hospital, in which any second trimester or five or more first trimester abortions are performed in a month.~~

~~(23) "Radiation therapy facility" means a person or a health care facility which provides or seeks to provide mega-voltage therapeutic services to patients through the use of high energy radiation.~~

~~(24) "Birthing center" means a facility or other place where human births are planned to occur. This does not include the usual residence of the mother or any facility that is licensed as a hospital or the private practice of a physician who attends the birth.~~

~~(25) "Freestanding emergency service" also referred to as an off-campus emergency service, means an extension of an existing hospital emergency department that is an off-campus emergency service and that is intended to provide comprehensive emergency service. The hospital shall have a valid license and be in operation to support the off-campus emergency service. A service that does not provide twenty-four hour, seven-day per week operation or that is not capable of providing basic services as defined for hospital emergency departments must not be classified as a freestanding emergency service and must not advertise or display or exhibit any signs or symbols that would identify the service as a freestanding emergency service.~~

~~(26) "Crisis stabilization unit facility" means a facility, other than a health care facility, operated by the Department of Mental Health or operated in partnership with the Department of Mental Health that provides a short-term residential program, offering psychiatric stabilization services and brief, intensive crisis services to individuals eighteen and older, twenty-four hours a day, seven days a week.~~

SECTION 4. Section 44-7-150 of the S.C. Code is amended to read:

Section 44-7-150. (A) In carrying out the purposes of this article, the department shall:

- (1) require reports and make inspections and investigations as considered necessary;
- (2) to the extent that is necessary to effectuate the purposes of this article, enter into agreements with other departments, commissions, agencies, and institutions, public or private;
- (3) adopt in accordance with Article I of the Administrative Procedures Act substantive and procedural regulations considered necessary by the department and approved by the board to carry out the department's licensure ~~and Certificate of Need duties under this article, including regulations to deal with competing applications;~~
- (4) accept on behalf of the State and deposit with the State Treasurer, any grant, gift, or contribution made to assist in meeting the cost of carrying out the purpose of this article and expend it for that purpose; and

~~(5) The department may charge and collect fees to cover the cost of operating the Certificate of Need program, including application fees, filing fees, issuance fees, and nonapplicability/exemption determination fees. The department shall develop regulations which set fees as authorized by this article. The level of these fees must be determined after careful consideration of the direct and indirect costs incurred by the department in performing its various functions and services in the Certificate of Need program. All fees and procedures for collecting fees must be adopted pursuant to procedures set forth in the Administrative Procedures Act. Any fee collected pursuant to this section in excess of seven hundred fifty thousand dollars must be retained by the department and designated for the administrative costs of the Certificate of Need program. The first seven hundred fifty thousand dollars collected pursuant to this section must be deposited into the general fund of the State. Until fees are promulgated through regulation, all fees established as of January 1, 2009, remain in effect promulgate regulations, in accordance with the Administrative Procedures Act, that establish fees as authorized by this article. promulgate regulations, in accordance with the Administrative Procedures Act, that establish fees as authorized by this article.~~

(B) Fee schedules authorized by Article 3, Chapter 7, Title 44 that are in effect as of January 1, 2023, shall remain in effect until further regulations are promulgated pursuant to Section 44-7-150(5), as amended by this act.

SECTION 5. Section 44-7-320 of the S.C. Code is amended to read:

Section 44-7-320. (A)(1) The department may deny, suspend, or revoke licenses or assess a monetary penalty, or both, against a person or facility for:

(a) violating a provision of this article or departmental regulations;

~~(b) permitting, aiding, or abetting the commission of an unlawful act relating to the securing of a Certificate of Need or the establishment, maintenance, or operation of a facility requiring certification of need or licensure under this article;~~

~~(c)~~ engaging in conduct or practices detrimental to the health or safety of patients, residents, clients, or employees of a facility or service. This provision does not refer to health practices authorized by law;

~~(d)~~ (c) refusing to admit and treat alcoholic and substance abusers, the mentally ill, or persons with intellectual disability, whose admission or treatment has been prescribed by a physician who is a member of the facility's medical staff, or discriminating against alcoholics, the mentally ill, or persons with intellectual disability solely because of the alcoholism, mental illness, or intellectual disability; or

~~(e)~~ (d) failing to allow a team advocacy inspection of a community residential care facility by the South Carolina Protection and Advocacy System for the Handicapped, Inc., as allowed by law.

(2) Consideration to deny, suspend, or revoke licenses or assess monetary penalties, or both, is not limited to information relating to the current licensing period but includes consideration of all pertinent information regarding the facility and the applicant.

(3) If in the department's judgment conditions or practices exist in a facility that pose an immediate threat to the health, safety, and welfare of the residents, the department immediately may suspend the facility's license and shall contact the appropriate agencies for placement of the residents. Within five calendar days of the suspension a preliminary hearing must be held to determine if the immediate threatening conditions or practices continue to exist. If they do not, the license must be immediately reinstated. Whether the license is reinstated or suspension remains due to the immediate threatening conditions or practices, the department may proceed with the process for permanent revocation pursuant to this section.

(B) Should the department determine to assess a penalty, deny, suspend, or revoke a license, it shall send to the appropriate person or facility, by certified mail, a notice setting forth the particular reasons for the determination. The determination becomes final thirty days after the mailing of the notice, unless the person or facility, within such thirty-day period, requests in writing a contested case hearing before the board, or its designee, pursuant to the Administrative Procedures Act. On the basis of the contested case hearing, the determination involved must be affirmed, modified, or set aside. Judicial review may be sought in accordance with the Administrative Procedures Act.

(C) The penalty imposed by the department for violation of this article or its regulations must be not less than one hundred nor more than five thousand dollars for each violation of any of the provisions of this article. Each day's violation is considered a subsequent offense.

(D) Failure to pay a penalty within thirty days is grounds for suspension, revocation, or denial of a renewal of a license. ~~No~~ A license ~~may~~ must not be issued, reissued, or renewed until all penalties finally assessed against a person or facility have been paid.

~~(E) No Certificate of Need may be issued to any person or facility until a final penalty assessed against a person or a facility has been paid.~~

~~(F)~~ All penalties collected pursuant to this article must be deposited in the state treasury and credited to the General Fund of the State.

SECTION 6. Section 44-7-160 of the S.C. Code is amended to read:

Section 44-7-160. (A) A person or ~~health care facility~~ nursing home as defined in this article is required to obtain a Certificate of Need from the department before undertaking any of the following:

(1) the construction or other establishment of a new ~~health care facility~~ nursing home;

(2) a change in the existing bed complement of a ~~health care facility~~ nursing home through the addition of one or more beds or change in the classification of licensure of one or more beds;

(3) an expenditure by or on behalf of a ~~health care facility~~ nursing home in excess of an amount to be prescribed by regulation which, under generally acceptable accounting principles consistently applied, is considered a capital expenditure except those expenditures exempted in Section 44-7-170(B) (1). The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the development, acquisition, improvement, expansion, or replacement of any plant or equipment must be included in determining if the expenditure exceeds the prescribed amount;

(4) a capital expenditure by or on behalf of a ~~health care facility~~ nursing home which is associated with the addition or substantial expansion of a health service for which specific standards or criteria are prescribed in the South Carolina Health Plan;

(5) the offering of a health service by or on behalf of a ~~health care facility~~ nursing home which has not been offered by the facility in the preceding twelve months and for which specific standards or criteria are prescribed in the South Carolina Health Plan;

(6) the acquisition of medical equipment by or on behalf of a nursing home which is to be used for diagnosis or treatment if the total project cost is in excess of that prescribed by regulation.

(B) A person or health care facility, as defined in this article, is required to obtain a Certificate of Need from the department before undertaking the following:

(1) the construction or other establishment of a hospital;

(2) a change in the existing bed complement of a hospital through the addition of one or more beds or change in the classification of licensure of one or more beds.

(C) Effective January 1, 2027, Section 44-7-160 (B) is repealed.

SECTION 7. Article 3, Chapter 7, Title 44 of the S.C. Code is amended by adding:

Section 44-7-161. (A) Notwithstanding any provision of law to the contrary and prior to obtaining a Certificate of Need or licensure pursuant to this article for acquiring a hospital facility, the Medical University of South Carolina shall:

(1) submit details of the proposed acquisition for review and comment of the Joint Bond Review Committee;

(2) receive approval of proposed acquisition by the Fiscal Accountability Authority; and

(3) apply for a Certificate of Need or licensure.

(B) For purposes of this section:

(1) "Medical University of South Carolina" means the Medical University of South Carolina, the Medical University Hospital Authority, or any affiliate thereof.

(2) "Acquiring" means purchasing, leasing, acceptance of a gift, or otherwise, whether by obtaining options for the acquisition of existing hospital facilities, by new construction, or by the acquisition of any property, real or personal, improved or unimproved, including interests in land in fee or less than fee for any hospital facility.

SECTION 8. (A) There is created the Certificate of Need study committee to examine the effect of the repeal of the Certificate of Need program on the quality and quantity of access to health care in rural portions of South Carolina. For the purposes of the study committee, "rural" means those areas considered "rural" by the United States Census Bureau, using factors including, but not limited to, population and population density.

(B)(1) The study committee shall be composed of six members to include three members of the Senate, as appointed by the President of the Senate, and three members of the House of Representatives, as appointed by the Speaker of the House of Representatives.

(2) The study committee shall meet as soon as practicable to organize and elect a co-chairman from the Senate and the House of Representatives. The co-chairmen shall be elected by a majority vote of the study committee members.

(3) The study committee shall consult with a non-voting advisory board as needed. The non-voting advisory board shall include one representative from the South Carolina Hospital Association, the South Carolina Medical Association, the Department of Health and Environmental Control, and the Department of Health and Human Services.

(C)(1) The study committee shall:

(a) examine the effect that the repeal of the Certificate of Need program has on the quality and quantity of access to health care in rural portions of the State;

(b) prepare a report of its work and findings to the General Assembly that may include recommendations for action on any of the rural health care access measures studied. Recommendations may include legislative, regulatory, or policy changes to address any identified trends associated with the decrease in the quality and quantity of access to health care in the rural portions of the State. A recommendation for action shall be based upon a finding by a majority of the voting members that one or more measures would promote the quality and quantity of health care access to rural areas; and

(c) draft any recommended legislation.

(2) The study committee shall provide a report to the General Assembly of its findings and recommendations by January 1, 2024. The study committee shall dissolve upon providing its report to the General Assembly, or on January 1, 2024, whichever occurs first.

(D) The study committee may obtain data or other information it deems necessary from state agencies that is relevant to the purposes of the study committee, including from the Department of Health and Environmental Control, the Department of Health and Human Services, and the Department of Employment and Workforce. Agencies are required to respond promptly and provide requested information.

(E) The Senate Medical Affairs Committee and the House Medical, Military, Public and Municipal Committee shall provide staff for the study committee.

SECTION 9. Article 3, Chapter 7, Title 44 of the S.C. Code is amended by adding:

Section 44-7-266. (A) In order to be licensed by the department, a hospital is prohibited from using economic criteria unrelated to quality of care or professional competency in determining an individual's qualifications for initial or continuing hospital medical staff membership or privileges.

(B) The requirements of this section shall apply to new contracts or renewals of contracts entered into on or after the effective date of this section.

(C) In order to be licensed by the department, any ambulatory surgical facility established or constructed after the effective date of this section and which does not require a Certificate of Need under this chapter, shall provide indigent/charity care in one of the amounts below after it has been in operation for two calendar years:

(1) If the ambulatory surgical facility provides care to Medicaid beneficiaries, it must provide uncompensated indigent/charity care to the underinsured or medically indigent in an amount equal to or greater than two percent of its adjusted gross revenue; or

(2) If the ambulatory surgical facility does not provide care to Medicaid beneficiaries, it must provide uncompensated indigent/charity care to the underinsured or medically indigent in an amount equal to or greater than three percent of its adjusted gross revenue.

(3) For purposes of this section, "medically indigent" is defined as in Section 44-6-5(5).

(4) An ambulatory surgical facility subject to this provision must provide annual reports to the department to demonstrate its compliance. Noncompliance of this provision shall result in a monetary penalty in the amount of the difference between the services which the facility is required to provide and the amount actually provided.

(D) The department shall promulgate regulations within one year of the effective date of this act setting forth the necessary duties to comply with this provision.

SECTION 10. Section 44-7-170 of the S.C. Code is amended to read:

Section 44-7-170. ~~(A) The following are exempt from Certificate of Need review:~~

~~(1) the acquisition by a person of medical equipment to be used solely for research, the offering of an institutional health service by a person solely for research, or the obligation of a capital expenditure by a person to be made solely for research if it does not:~~

~~(a) affect the charges imposed by the person for the provision of medical or other patient care services other than the services that are included in the research;~~

~~(b) change the bed capacity of a health care facility; or~~

~~(c) substantially change the medical or other patient care services provided by the person.~~

~~A written description of the proposed research project must be submitted to the department in order for the department to determine if these conditions are met. A Certificate of Need is required in order to continue use of the equipment or service after the equipment or service is no longer being used solely for research;~~

~~(2) the offices of a licensed private practitioner whether for individual or group practice except as provided for in Section 44-7-160(1) and (6);~~

~~(3) the replacement of like equipment for which a Certificate of Need has been issued which does not constitute a material change in service or a new service;~~

~~(4) crisis stabilization unit facilities. Notwithstanding subsection (C), crisis stabilization unit facilities will not require a written exemption from the department.~~

~~(B) This article does not apply to:~~

~~(1) an expenditure by or on behalf of a health care facility for nonmedical projects for services such as refinancing existing debt, parking garages, laundries, roof replacements, computer systems, telephone systems, heating and air conditioning systems, upgrading facilities which do not involve additional square feet or additional health services, replacement of like equipment with similar capabilities, or similar projects as described in regulations;~~

~~(2) facilities owned and operated by the South Carolina Department of Mental Health and the South Carolina Department of Disabilities and Special Needs, except an addition of one or more beds to the total number of beds of the departments' health care facilities existing on July 1, 1988;~~

~~(3) educational and penal institutions maintaining infirmaries for the exclusive use of student bodies and inmate populations;~~

~~(4) any federal health care facility sponsored and operated by this State;~~

~~(5) community-based housing designed to promote independent living for persons with mental or physical disabilities. This does not include a facility defined in this article as a "health care facility";~~

~~(6) kidney disease treatment centers including, but not limited to, free-standing hemodialysis centers and renal dialysis centers;~~

~~(7) health care facilities owned and operated by the federal government.~~

(A) The following are exempt from Certificate of Need review:

(1) the relocation of a licensed hospital in the same county in which the hospital is currently located, as long as:

(a) any Certificate of Need issued to the hospital for a project to be located at the hospital's existing location has been fulfilled, withdrawn, or has expired in accordance with Section 44-7-230 and the department's implementing regulations; and

(b) the proposed site of relocation is utilized in a manner that furthers health care delivery and innovation for the citizens of the State of South Carolina;

(2) the purchase, merger, or otherwise the acquisition of an existing hospital by another person or health care facility;

(3) crisis stabilization unit facilities. Notwithstanding subsection (C), crisis stabilization unit facilities will not require a written exemption from the department.

(B) This article does not apply to:

(1) construction of a new hospital with up to fifty beds in any county currently without a hospital;

(2) hospitals owned and operated by the South Carolina Department of Mental Health and the South Carolina Department of Disabilities and Special Needs, except an addition of one or more beds to the total number of beds of the departments' health care facilities existing on July 1, 1988;

(3) any federal hospital sponsored and operated by this State;

(4) hospitals owned and operated by the federal government.

(C) Before undertaking a project enumerated in subsection (A), a person shall obtain a written exemption from the department as may be more fully described in regulation.

SECTION 11. Section 44-7-190 of the S.C. Code is amended by adding:

(C) Project review criteria must prioritize timely access to health care services and seek a balance between competition in the marketplace and regulation in the provision of health care and must support reasonable patient choice in health care facilities and services. The department shall promulgate regulations within one year of the effective date of this act identifying how the department will incorporate these considerations in reviewing Certificate of Need applications.

SECTION 12. Section 44-7-200(D) of the S.C. Code is amended to read:

(D) After receipt of an application with proof of publication and payment of the initial application fee, the department shall publish in the State Register a notice that an application has been accepted for filing. Within ~~thirty~~ thirty fifteen days of acceptance of the application, the department may request additional information as may be necessary to complete the application. The applicant has ~~thirty fifteen~~ thirty fifteen days from the date of the request to submit the additional information. If the applicant fails to submit the requested information within the ~~thirty-day~~ fifteen-day period, the application is considered withdrawn.

SECTION 13. Section 44-7-210(A), (F), and (G) of the S.C. Code is amended to read:

Section 44-7-210. (A) After the department has determined that an application is complete, affected persons must be notified in accordance with departmental regulations. The notification to affected persons that the application is complete begins the review period; however, in the case of competing applications, the review period begins on the date of notice to affected persons that the last of the competing applications is complete and notice is published in the State Register. The staff shall issue its decision to approve or deny the application no earlier than thirty calendar days, but no later than ~~one hundred twenty~~ ninety calendar days, from the date affected persons are notified that the application is complete, unless a public hearing is timely requested as may be provided for by department regulation. If a public hearing is properly requested, the staff's decision must not be made until after the public hearing, but in no event shall the decision be issued more than ~~one hundred fifty~~ one hundred twenty calendar days from the date affected persons are notified that the application is complete. The staff may reorder the relative importance of the project review criteria no more than one time during the review period. The staff's reordering of the relative importance of the project review criteria does not extend the review period provided for in this section.

(F) Notwithstanding any other provision of law, including Section 1-23-650(C), in a contested case arising from the department's decision to grant or deny a Certificate of Need application, grant or deny a request for exemption under Section 44-7-170, or the issuance of a determination regarding the applicability of Section 44-7-160, the following apply:

(1) each party is permitted to name no more than ~~ten~~ five witnesses who may testify at the contested case hearing;

(2) each party is permitted to take only the deposition of a person listed by an opposing party as a witness who may testify at the contested case hearing, ~~unless otherwise provided for by the Administrative Law Court and one Federal Rules of Civil Procedure Rule 30(b)(6) deposition;~~

(3) each party is permitted to serve only ten interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure;

(4) each party is permitted to serve only ten requests for admission, including subparts; ~~and~~

(5) each party is permitted to serve only thirty fifteen requests for production, including subparts; and

(6) the parties shall complete discovery within one hundred twenty days after the assignment of the administrative law judge.

~~The limitations provided for in this subsection are intended to make the contested case process more efficient, less burdensome, and less costly to the parties in Certificate of Need cases. Therefore, the Administrative Law Court may, by court order, lift these limitations beyond the parameters set forth in this subsection only in exceptional circumstances when failure to do so would cause substantial prejudice to the party seeking additional discovery.~~

(G) Notwithstanding any other provision of law, in a contested case arising from the department's decision to grant or deny a Certificate of Need application, grant or deny a request for exemption under Section 44-7-170, or the issuance of a determination regarding the applicability of Section 44-7-160, the Administrative Law Court shall file a final decision no later than eighteen months after the contested case is filed with the Clerk of the Administrative Law Court, ~~unless all parties to the contested case consent to an extension or the court finds substantial cause otherwise. An affected person who was a party to the contested case has a right to appeal to the Supreme Court final decisions issued by the Administrative Law Court for a contested case arising from the department's decision to grant or deny a Certificate of Need application, grant or denial of a request for exemption under Section 44-7-170, or the issuance of a determination regarding the applicability of Section 44-7-160.~~

SECTION 14. Section 44-7-220 of the S.C. Code is amended to read:

Section 44-7-220. (A) A party who is aggrieved by the Administrative Law Court's final decision may seek judicial review of the final decision in accordance with Section 1-23-380.

(B)(1) If a party does not prevail in a contested case at the Administrative Law Court when requesting the reversal of the department's decision concerning a Certificate of Need application, when claiming an exemption under Section 44-7-170, or when claiming that the article is not applicable pursuant to Section 44-7-160, the Administrative Law Court shall award the party whose project is the subject of the appeal reasonable attorney's fees and costs incurred in the contested case.

(2) If a party does not prevail in an appeal to the Supreme Court when requesting the reversal of the Administrative Law Court's decision concerning a Certificate of Need application, when claiming an exemption under Section 44-7-170, or when claiming that the article is not applicable pursuant to Section 44-7-160, the Supreme Court shall award the party whose project is the subject of the contested case reasonable attorney's fees and costs incurred in the appeal.

(C) If the relief requested in the appeal is the reversal of the Administrative Law Court's decision to approve the Certificate of Need application or approve the request for exemption under Section 44-7-170 or approve the determination that Section 44-7-160 is not applicable, the party filing the appeal shall deposit a bond with the Clerk of the ~~Court of Appeals~~ Supreme Court within five calendar days after filing the petition to appeal. The bond must be secured by cash or a surety authorized to do business in this State in an amount equal to five percent of the total cost of the project or one hundred thousand dollars, whichever is greater, up to a maximum of one million five hundred thousand dollars. If the ~~Court of Appeals~~ Supreme Court affirms the Administrative Law Court's decision or dismisses the appeal, the ~~Court of Appeals~~ Supreme Court shall award to the party whose project is the subject of the appeal all of the bond ~~and also may award reasonable attorney's fees and costs incurred in the appeal.~~ If a party appeals the denial of its own Certificate of Need application or of an exemption request under Section 44-7-170 or appeals the determination that Section 44-7-160 is applicable and there is no competing application involved in the appeal, the party filing the appeal is not required to deposit a bond with the ~~Court of Appeals~~ Supreme Court.

~~(C)(1) Furthermore, if at the conclusion of the contested case or judicial review the Administrative Law Court or the Court of Appeals finds that the contested case or a subsequent appeal was frivolous, the Administrative Law Court or the Court of Appeals may award damages incurred as a result of the delay, as well as reasonable attorney's fees and costs, to the party whose project is the subject of the contested case or judicial review.~~

~~(2) As used in this subsection, "frivolous appeal" means any one of the following:~~

~~(a) taken solely for purposes of delay or harassment;~~

~~(b) where no question of law is involved;~~

~~(c) where the contested case or judicial review is without merit.~~

(D)(1) If at the conclusion of the contested case or judicial review the Administrative Law Court or the Supreme Court finds that the contested case or a subsequent appeal was frivolous, the Administrative Law Court or the Supreme Court shall award damages incurred as a result of the delay, as well as reasonable attorney's fees and costs, to the party whose project is the subject of the contested case or judicial review.

(2) As used in this subsection, "frivolous appeal" means a reasonable person in the same circumstances would believe that:

(a) the contested case or subsequent appeal was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(b) the procurement, initiation, or continuation of the contested case or subsequent appeal was intended merely to harass or injure the other party;

(c) the contested case or subsequent appeal was not reasonably founded in fact or was interposed merely for delay or was merely brought for a purpose other than securing proper discovery or adjudication of the claim upon which the proceedings are based.

(3) This subsection must not be construed to prohibit any party from seeking sanctions pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act pursuant to Section 15-36-10, et. seq.

(E)(1) The court must not assess attorney's fees or costs awarded against or to the department in any contested case or appeal involving a Certificate of Need application or an exemption request pursuant to Section 44-7-170 or a request for a determination as to the applicability of Section 44-7-160.

(2) This subsection must not be interpreted to abrogate the contractual rights of any party concerning the recovery of attorney's fees or other monies in accordance with the provisions of any written contract between the parties to the action.

SECTION 15. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, then such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective

SECTION 16. This act takes effect upon approval by the Governor.

---

Copyright 2023 State Net. All Rights Reserved.

---