

South Carolina General Assembly
121st Session, 2015-2016

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H. 3250

STATUS INFORMATION

General Bill

Sponsors: Reps. G.M. Smith, Clyburn, Merrill and Anthony

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Introduced in the House on January 13, 2015

Introduced in the Senate on May 4, 2015

Last Amended on April 29, 2015

Currently residing in the Senate

Summary: Certificate of Need program

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
12/18/2014	House	Prefiled
12/18/2014	House	Referred to Committee on Ways and Means
1/13/2015	House	Introduced and read first time (House Journal-page 170)
1/13/2015	House	Referred to Committee on Ways and Means (House Journal-page 170)
4/23/2015	House	Committee report: Favorable with amendment Ways and Means (House Journal-page 115)
4/28/2015	House	Requests for debate-Rep(s). Merrill, White, JE Smith (House Journal-page 98)
4/29/2015	House	Amended (House Journal-page 69)
4/29/2015	House	Read second time (House Journal-page 103)
4/29/2015	House	Roll call Yeas-103 Nays-1 (House Journal-page 106)
4/30/2015	House	Read third time and sent to Senate (House Journal-page 8)
4/30/2015		Scrivener's error corrected
5/4/2015	Senate	Introduced and read first time (Senate Journal-page 7)
5/4/2015	Senate	Referred to Committee on Medical Affairs (Senate Journal-page 7)
6/4/2015	Senate	Committee report: Majority favorable, minority unfavorable Medical Affairs (Senate Journal-page 18)

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VERSIONS OF THIS BILL

[12/18/2014](#)

[4/23/2015](#)

[4/29/2015](#)

4/30/2015

6/4/2015

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COMMITTEE REPORT

June 4, 2015

H. 3250

Introduced by Reps. G.M. Smith, Clyburn, Merrill and Anthony

S. Printed 6/4/15--S.

Read the first time May 4, 2015.

THE COMMITTEE ON MEDICAL AFFAIRS

To whom was referred a Bill (H. 3250) to amend Section 44-7-130, as amended, Code of Laws of South Carolina, 1976, relating to terminology for the Certificate of Need program, so as to add, etc., respectfully

REPORT:

That they have duly and carefully considered the same and recommend that the same do pass:

Majority favorable. Minority unfavorable.

HARVEY S. PEELER, JR. C. BRADLEY HUTTO

For Majority. For Minority.

A BILL

TO AMEND SECTION 44-7-130, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TERMINOLOGY FOR THE CERTIFICATE OF NEED PROGRAM, SO AS TO ADD THE TERM "NEW AND EMERGING TECHNOLOGY"; BY ADDING SECTION 44-7-215 SO AS TO ENTITLE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO HAVE ACCESS TO CERTAIN DATA MAINTAINED BY THE REVENUE AND FISCAL AFFAIRS OFFICE; TO AMEND SECTION 13-7-10, AS AMENDED, RELATING TO THE DEFINITION OF "NONIONIZING RADIATION", SO AS TO CHANGE THE DEFINITION; TO AMEND SECTION 13-7-45, AS AMENDED, RELATING TO REGULATION OF SOURCES OF IONIZING AND NONIONIZING RADIATION, SO AS TO REQUIRE ACCREDITATION OR

CERTIFICATION FOR CERTAIN SOURCES OF RADIATION AND TO CHANGE ALLOWABLE FEES; TO AMEND SECTION 44-1-60, AS AMENDED, RELATING TO THE REVIEW OF CERTIFICATE OF NEED DECISIONS OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BY THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL AND REQUESTS FOR CONTESTED CARE HEARINGS IN CERTIFICATE OF NEED CASES, SO AS TO ELIMINATE BOARD REVIEW; TO AMEND SECTION 44-7-120, RELATING TO THE PURPOSE OF THE CERTIFICATE OF NEED PROGRAM, SO AS TO ELIMINATE THE USE OF A STATE HEALTH PLAN; TO AMEND SECTION 44-7-130, AS AMENDED, RELATING TO CERTIFICATE OF NEED PROGRAM DEFINITIONS, SO AS TO REVISE DEFINITIONS FOR "AFFECTED PERSON", "HEALTH SERVICE", "FREESTANDING OR MOBILE TECHNOLOGY", AND "LIKE NEW AND EMERGING TECHNOLOGY WITH SIMILAR CAPABILITIES"; TO AMEND SECTION 44-7-150, AS AMENDED, RELATING TO THE USE OF CERTIFICATE OF NEED FEES, SO AS TO ALLOW THE DEPARTMENT TO RETAIN ALL FEES COLLECTED FOR THE USE OF THE PROGRAM; TO AMEND SECTION 44-7-160, AS AMENDED, RELATING TO CIRCUMSTANCES UNDER WHICH A CERTIFICATE OF NEED IS REQUIRED, SO AS TO CHANGE CERTAIN REQUIREMENTS; TO AMEND SECTION 44-7-170, AS AMENDED, RELATING TO CERTIFICATE OF NEED EXCEPTIONS, SO AS TO ADD NEW EXCEPTIONS AND MAKE CHANGES TO EXISTING EXCEPTIONS; TO AMEND SECTION 44-7-200, AS AMENDED, RELATING TO NOTICE REQUIREMENTS ABOUT CERTIFICATE OF NEED APPLICATIONS, SO AS TO ELIMINATE THE REQUIREMENT FOR PUBLICATION OF NOTICE AND INSTEAD TO REQUIRE THE APPLICANT TO FILE A LETTER OF INTENT WITH THE DEPARTMENT AND TO ELIMINATE THE REFERENCE TO BOARD REVIEW OF DEPARTMENT DECISIONS; TO AMEND SECTION 44-7-210, AS AMENDED, RELATING TO CERTIFICATE OF NEED REVIEW PROCEDURES, SO AS TO ELIMINATE THE REQUIREMENT OF A PUBLIC HEARING, THE APPLICATION OF THE STATE HEALTH PLAN, AND BOARD REVIEW OF DEPARTMENT DECISIONS; TO AMEND SECTION 44-7-220, AS AMENDED, RELATING TO JUDICIAL REVIEW OF ADMINISTRATIVE LAW COURT DECISIONS ON CERTIFICATE OF NEED MATTERS, SO AS TO ADD CERTAIN REQUIREMENTS RELATED TO THE AWARD OF ATTORNEY FEES AND COSTS AND TO CHANGE THE DEFINITION OF FRIVOLOUS APPEAL; TO AMEND SECTION 44-7-230, AS AMENDED, RELATING TO LIMITATIONS ON CERTIFICATES OF NEED, SO AS TO SUBSTITUTE THE TERM "NEW AND EMERGING TECHNOLOGY" FOR "MEDICAL EQUIPMENT" AND TO ELIMINATE THE ROLE OF THE BOARD; TO AMEND SECTION 44-7-240, RELATING TO CONSTRUCTION PROGRAMS IN THE STATE, SO AS TO ELIMINATE REFERENCE TO THE STATE HEALTH PLAN; TO AMEND SECTION 44-7-1590, RELATING TO PROCEDURES FOR APPROVAL OF HOSPITAL BONDS, SO AS TO ELIMINATE THE RIGHT TO CHALLENGE AN ACTION BY THE DEPARTMENT; TO REPEAL SECTION 44-7-180 RELATING TO THE STATE HEALTH PLANNING COMMITTEE AND THE STATE HEALTH PLAN, AND SECTION 44-7-225 RELATING TO JUDICIAL CONSIDERATION OF THE STATE HEALTH PLAN IN MATTERS BEFORE THE COURT; AND TO REQUIRE THE BOARD TO REVIEW CERTAIN PROJECTS FOR WHICH A CERTIFICATE OF NEED WAS REQUIRED BUT NOT OBTAINED BETWEEN JULY 1, 2013, AND APRIL 14, 2014, TO DETERMINE WHETHER THE PROJECTS MEET THE REQUIREMENTS FOR ISSUANCE OF A CERTIFICATE OF NEED, AND TO ISSUE CERTIFICATES OF NEED IN APPROPRIATE CASES.

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

SECTION 1. Article 3, Chapter 7, Title 44 of the 1976 Code is amended by adding:

"Section 44-7-215. Notwithstanding another provision of law, the department shall have access to data maintained by the Revenue and Fiscal Affairs Office relevant to Certificates of Need, specifically including data that will assist the department in determining the need for additional health care facilities, beds, health services and equipment, all by health service area, and whether or to whom to award a Certificate of Need."

SECTION 2. Section 13-7-10(9) of the 1976 Code, as last amended by Act 552 of 1990, is further amended to read:

"(9) 'Nonionizing radiation' for the purpose of this section ~~shall mean only~~ means ultraviolet radiation used for the purpose of tanning the human body, ~~and shall include ultraviolet radiation with wavelengths in air between two hundred and four hundred nanometers or radiofrequency radiation within a magnetic resonance imaging device used for the purpose of obtaining images of the human body.~~"

SECTION 3. Section 13-7-45 of the 1976 Code, as last amended by Act 355 of 2006, is further amended to read:

"Section 13-7-45. (A)(1) The South Carolina Department of Health and Environmental Control shall promulgate regulations and establish a schedule for the collection of annual fees for the licensing, registration, and certification of users of the sources of ionizing radiation. The fees collected must be sufficient, in the judgment of the department, to protect the public health and safety and the environment and to recover the costs incurred by the department in regulating the use of ionizing radiation and in performing emergency corrective measures intended to protect the public health and safety or the environment pursuant to the provisions of law.

(2) Accreditation or certification is a requirement of application and registration of magnetic resonance imaging equipment and computed tomography equipment. The department shall determine the appropriate accreditation or certification agencies.

(3) The department shall promulgate regulations pursuant to the Administrative Procedures Act and establish a schedule for the collection of an annual fee for the registration of a source of nonionizing radiation ~~which that~~ is used in a commercial establishment for the tanning of human skin or radiofrequency radiation within a magnetic resonance imaging device used for the purpose of obtaining images of the human body. The registration fee must be sufficient in the judgment of the department to protect the public health and safety and the environment and to recover the costs incurred by the department in registering the source of nonionizing radiation and in performing emergency corrective measures intended to protect the public health and safety or the environment pursuant to ~~the provisions of~~ law.

~~(3)(4)~~ (4) The department ~~shall have~~ has no duty to inspect a source of nonionizing radiation unless it has received credible information indicating a violation of applicable statutes or regulations or the existence of a public health emergency. The department may retain up to ~~thirty~~ fifty thousand dollars from the fees collected to be used for the administration of this program.

(B) In determining the sufficiency of the fees to be charged and collected, the department shall consider an arrangement existing between South Carolina and a registrant, a licensee, a certificant, another state, or a federal agency under which costs incurred by the department in regulating the use of ionizing and nonionizing radiation and in performing emergency corrective measures intended to protect the public health and safety and the environment are recoverable by this State.

(C) A registrant, licensee, or certificant who fails to pay the fees required by ~~regulation~~ of the department within thirty days after payment is due also shall pay a penalty of fifty dollars. If failure to pay the required fees continues for more than sixty days after payment is due, the registrant, licensee, or certificant must be notified by the department by certified mail to be sent to his last known address that his registration, license, or certificate is revoked and that activities permitted under the authority of the registration, license, or certificate must end immediately. The registration, license, or certificate may be reinstated by the department upon payment of the required fees, the penalty of fifty dollars, and an additional penalty of one hundred dollars if the registrant, licensee, or certificant is otherwise in good standing, in the judgment of the department, and presents to the department a satisfactory explanation for his failure to pay the required fees.

SECTION 4. Section 44-1-60 (E)(2) and (G) of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

"(E)(2) The staff decision becomes the final agency decision fifteen calendar days after notice of the staff decision has been mailed to the applicant, unless a written request for final review accompanied by a filing fee is filed with the department by the applicant, permittee, licensee, or affected person. There is no right to a final review regarding a staff decision on an application or on a request of exemption or nonapplicability determination submitted pursuant to the Certificate of Need program.

(G)(1) Except as otherwise provided in item (2), an applicant, permittee, licensee, or affected person may file a request with the Administrative Law Court for a contested case hearing within thirty calendar days after:

~~(1)(a)~~ notice is mailed to the applicant, permittee, licensee, and affected persons that the board declined to hold a final review conference; or

~~(2)(b)~~ the sixty calendar day deadline to hold the final review conference lapses and no conference has been held; or

~~(3)(c)~~ the final agency decision resulting from the final review conference is received by the parties.

(2) In the case of a Certificate of Need decision, an applicant, a holder of a certificate, and an affected person, within thirty days after receipt of the department staff decision, may file a request with the Administrative Law Court for a contested case hearing. Except in contested cases involving a challenge to a staff decision by a competing applicant, an affected person may not file a request for a contested case pursuant to this section to review a decision on an application unless the person has provided written notice to the department during the staff review process that he is an affected person and specifically states his opposition to the application under review."

SECTION 5. A. Section 44-7-130(1), (5), (20), and (21) of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

"(1) 'Affected person' means the applicant, a person with standing 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 in the health service area in which the project is to be located, persons who before receipt by the department of the proposal being reviewed have formally indicated an intention to provide in the future similar services ~~in the future to the proposed project in the health service area in which the project is to be located~~, 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.~~ A person operating a health care facility or providing a health service in a state other than South Carolina who does not: (a) operate a health care facility in the proposed service area which provides similar services; or (b) provide a health service similar to that being sought by the applicant, and who is neither an applicant nor a competing applicant, is not considered an affected person.

(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~~ thirty days of the publication on the department's website of the notice of the filing of the first application and whose applications, if approved, would exceed the need for services or facilities.

(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~~ 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 that has substantially similar technology as the equipment current in use, although it may possess expanded capabilities due to technological improvements; 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."

B. Section 44-7-130 of the 1976 Code is amended by adding an appropriately numbered item to read:

"() 'Similar services' means services that are comparable to those contemplated in the application and for which there are standards in the State Health Plan."

SECTION 6. Section 44-7-150(5) of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

"(5) ~~The department may as it determines necessary~~ 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.~~"

SECTION 7. A. Section 44-7-160 of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

"Section 44-7-160. A person or health care facility, 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;
- (2) a change in the existing bed complement of a health care facility ~~through the addition of one or more beds~~ or change in the classification of licensure of ~~one or more beds~~ that is not otherwise exempt from review pursuant to Section 44-7-170;
- (3) an expenditure by or on behalf of a health care facility in excess of ~~an amount to be prescribed by regulation~~ five million dollars which, under generally acceptable accounting principles consistently applied, is considered a capital expenditure, except for those expenditures otherwise exempted in Section 44-7-170(B)(4). 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. The department shall make an annual adjustment to this capital expenditure amount to reflect changes in the Consumer Price Index for All Urban Consumers, Medical Care Services as published by the United States Department of Labor, Bureau of Labor Statistics;
- (4) a capital expenditure ~~by or on behalf of a health care facility~~ 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 that is not otherwise exempt from review pursuant to Section 44-7-170;
- (5) the offering of a health service ~~by or on behalf of a health care facility~~ 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~~ unless otherwise exempt pursuant to Section 44-7-170;
- (6) the acquisition of ~~medical equipment which is to be~~ new and emerging technology used for diagnosis or treatment ~~if the total project cost is in excess of that prescribed by regulation.~~"

B. This SECTION takes effect upon approval by the Governor, and the expenditure threshold set forth in Section 44-7-160(3) first applies to Certificate of Need applications submitted thereafter.

SECTION 8. Section 44-7-170(A) of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

"(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 (5);

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

- (4) the addition of one or more beds in the bed capacity of an existing freestanding licensed acute care hospital, nursing home, rehabilitation facility, or psychiatric hospital;

- (5) a capital expenditure by or on behalf of a health care facility to expand existing health services and associated equipment other than to expand beds or those services described in this Section 44-7-170(A) for which a Certificate of Need previously has been awarded within a one-mile radius for the same site where such services are located."

SECTION 9. Section 44-7-180 of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

~~"Section 44-7-180. (A) There is created a health planning committee comprised of fourteen members. The Governor shall appoint twelve members, which must include at least one member from each congressional district. In addition, each of the following groups must be represented among the Governor's appointees: health care consumers, health care financiers, including business and insurance, and health care providers, including an administrator of a licensed for profit nursing home. The chairman of the board shall appoint one member. The South Carolina Consumer Advocate or the Consumer Advocate's designee is an ex officio nonvoting member. Members appointed by the Governor are appointed for four year terms, and may serve only two consecutive terms. Members of the health planning committee are allowed the usual mileage and subsistence as provided for members of boards, committees, and commissions. The committee shall elect from among its members a chairman, vice chairman, and such other officers as the committee considers necessary to serve a two-year term in that office.~~

~~(B) With the advice of the health planning committee, The department shall prepare, and publish electronically, a South Carolina Health Plan for use in the administration of the Certificate of Need program provided in this article. The plan at a minimum must include:~~

- ~~(1) an inventory of existing health care facilities, beds, specified health services, and equipment;~~
- ~~(2) projections of need for additional health care facilities, beds, health services, and equipment;~~
- ~~(3) standards for distribution of health care facilities, beds, specified health services, and equipment including scope of services to be provided, utilization, and occupancy rates, travel time, regionalization, other factors relating to proper placement of services, and proper planning of health care facilities; and~~

(4) a general statement as to the project review criteria considered most important in evaluating Certificate of Need applications for each type of facility, service, and equipment, including a finding as to whether the benefits of improved accessibility to each such type of facility, service, and equipment may outweigh the adverse affects caused by the duplication of any existing facility, service, or equipment.

The South Carolina Health Plan must address and include projections and standards for specified health services and equipment which have a potential to substantially impact health care cost and accessibility. Nothing in this provision shall be construed as requiring the department to approve any project which is inconsistent with the South Carolina Health Plan.

~~(C) Upon approval by the health planning committee, the South Carolina Health Plan must be submitted at least once every two years to the board for final revision and adoption. Once adopted by the board, the plan may later be revised through the same planning and approval process. The department shall adopt by regulation a procedure to allow public review and comment, including regional public hearings, before adoption or revision of the plan.~~

(B)(1) The department must review and update the State Health Plan annually, including standards by which need is determined for health services and health care facilities. The updated State Health Plan must be submitted to the chairmen of the House Ways and Means Committee and the Senate Finance Committee before July 1 each year.

(2) No later than March 1, 2016, the General Assembly may require the department to resubmit the State Health Plan by the enactment of a joint resolution. The department has sixty days to resubmit the State Health Plan."

SECTION 10. Section 44-7-200 of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

"Section 44-7-200. (A) An application for a Certificate of Need must be submitted ~~to the department in a form established by regulation~~ utilizing a web-based application available on the department's website. The application must address all applicable standards and requirements set forth in departmental regulations; and project review criteria of the department, and the South Carolina Health Plan.

~~(B) Within twenty days before submission of an application, the applicant shall publish notification that an application is to be submitted to the department in a newspaper serving the area where the project is to be located for three consecutive days. The notification must contain a brief description of the scope and nature of the project. No application may be accepted for filing by the department unless accompanied by proof that publication has been made for three consecutive days within the prior twenty day period and payment of the initial application fee has been received.~~

Within twenty days before submission of an application, the applicant shall file a letter of intent to submit an application with the department. The letter of intent must contain a brief description of the scope and nature of the project. The department must not accept an application for a Certificate of Need unless the application is accompanied by a copy of the letter of intent filed by the applicant with the department within the prior twenty-day period and payment of the initial application fee has been received.

(C) Upon publication of this notice and until a contested case hearing is requested pursuant to Section 44-1-60(G):

(1) members of the board ~~and persons appointed by the board to hold a final review conference on staff decisions~~ may not communicate directly or indirectly with any person in connection with the application; and

(2) no person shall communicate, or cause another to communicate, as to the merits of the application with members of the board ~~and persons appointed by the board to hold a final review conference on staff decisions~~.

A person who violates this subsection is subject to the penalties provided in Section 1-23-360.

(D) After receipt of an application with ~~proof of publication~~ a copy of the letter of intent 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 days of acceptance of the application, the department may request additional information as may be necessary to complete the application. The applicant has thirty 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 period, the application is considered withdrawn.

(E) After a Certificate of Need application has been filed with the department, state and federal elected officials are prohibited from communicating with the department with regard to the Certificate of Need application at any time. This prohibition does not include written communication of support or opposition to an application. ~~Such~~ Written communication must be included in the administrative record."

SECTION 11. Section 44-7-210 of the 1976 Code, as last amended by Act 278 of 2010, is further 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 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 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. Other than in the review of competing applications, if the department fails to deny or approve an application within one hundred twenty days of the date notice was published on the department's website, the application is deemed to be approved and a Certificate of Need shall be issued within seven days. The executive director may grant the staff one thirty-day extension per certificate of need application to render a decision. If the department does not act within one hundred twenty days and the application is deemed approved, the department's administrative record is considered part of any request for contested case and must be furnished to the parties to any

contested case and the department staff will be made available to the parties for the purposes of depositions and testimony during any contested case hearing. If an affected person requests a contested case before the Administrative Law Court concerning an application deemed to have been approved under this section, the failure of the department to act on the application within the applicable review period shall not be used as a basis by the Administrative Law Court to remand the case to the department.

(B) The department may not issue a Certificate of Need unless an application complies with the ~~South Carolina State Health Plan~~, project review criteria, and other regulations. Based on project review criteria and other regulations, which must be identified by the department, the department may refuse to issue a Certificate of Need even if an application complies with the ~~South Carolina State Health Plan~~. In the case of competing applications, the department shall award a Certificate of Need, if appropriate, on the basis of which, if any, most fully complies with the requirements, goals, and purposes of this article and the ~~State Health Plan~~, project review criteria, and the regulations ~~adopted promulgated~~ by the department.

(C) On the basis of staff review of the application, the staff shall make a staff decision to grant or deny the Certificate of Need and ~~the staff shall issue a decision in accordance with Section 44-1-60~~
(D) Notice of the decision must be sent to the applicant and affected persons who have asked to be notified. The decision ~~becomes~~ is the final agency decision ~~unless a timely written request for a final review is filed with the department as provided for in Section 44-1-60(E).~~

~~However, a person may not file a request for final review in opposition to the staff decision on a Certificate of Need unless the person provided written notice to the department during the staff review that he is an affected person and specifically states his opposition to the application under review.~~

~~(D) The staff's decision is not the final agency decision until the completion of the final review process provided for in Section 44-1-60(F).~~

~~(E)~~ A contested case hearing of the final agency decision must be requested in accordance with Section 44-1-60(G). The issues considered at the contested case hearing considering a Certificate of Need are limited to those presented or considered during the staff review.

~~(F)(E)~~ 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, to grant or deny a request for exemption under Section 44-7-170, or the issuance of a determination regarding to determine the applicability of Section 44-7-160, the following apply each party:

- (1) ~~each party~~ may name no more than ten witnesses who may testify at the contested case hearing;
- (2) ~~each party~~ is permitted to take only the deposition of a person listed as a witness who may testify at the contested case hearing, unless otherwise provided for by the Administrative Law Court agreed to by the parties or ordered by the court. A deposition is limited to seven hours of questioning per party. The court may allow additional time if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination;
- (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) for the express purpose of limiting costly and unnecessary discovery regarding electronically stored information, each party is permitted to serve only thirty requests for production, including subparts which requests are limited to data, analyses, reports, projections, and such other information directly related to the criteria set forth in the State Health Plan and to the standards set forth in regulations that are relevant to the application, request or determination being contested. Unless ordered by the administrative law court upon a showing of extraordinary circumstances by the party seeking production, no party shall be required to preserve, search for, or produce electronic communications, in any format or medium, including emails, voicemails, or text messages, except to the extent that such communications contain responsive data, projections, reports or analyses or except to the extent that a party intends to rely upon its own such communications as part of its case before the administrative law court.

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~~ twelve 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 to extend the deadline."

SECTION 12. Section 44-7-220 of the 1976 Code, as last amended by Act 278 of 2010, is further 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 to approve 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 Court of Appeals when requesting the reversal of the Administrative Law Court's decision to approve 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 Court of Appeals 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 an~~ an appeal is the reversal of the Administrative Law Court's decision to approve the Certificate of Need application ~~or, approve~~ or the request for exemption under Section 44-7-170, or ~~approve~~ or 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 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 affirms the Administrative Law Court's decision or dismisses the appeal, the Court of Appeals 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, the denial of an exemption request under Section 44-7-170,~~ or appeals the a determination that the article applies under 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.

~~(C)(D)~~(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 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 any one of the following a reasonable person in the same circumstances would believe that:

(a) taken solely for purposes of delay or harassment 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) where no question of law is involved the procurement, initiation, or continuation of the contested case or subsequent appeal was intended merely to harass or injure the other party; or

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

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) 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.

(F)(1) Any party may, at any time more than twenty days before the actual contested case hearing date, file with the clerk of the Administrative Law Court a written offer of judgment signed by the offeror or his attorney, directed to the opposing party, offering to take judgment in the offeror's favor, or as the case may be, to allow judgment to be taken against the offeror as specified in the offer. The offeror shall give notice of the offer of judgment to the offeree's attorney, or if the offeree is not represented by an attorney, to the offeree himself, in accordance with the service rules for motions and other pleadings set forth in the South Carolina Administrative Law Court Rules of Procedure. Within twenty days after notification, or at least ten days prior to the hearing date, whichever date is earlier, the offeree or his attorney may file with the clerk of the court a written acceptance of the offer of judgment. Upon the filing, the clerk shall enter immediately judgment of the stipulation. If the offer of judgment is not accepted within twenty days after notification or prior to or on the tenth day before the actual hearing date, whichever date occurs first, the offer shall be considered rejected and evidence thereof is not to be admissible except in a proceeding after the hearing to fix costs, interests,

attorney's fees, and other recoverable monies. Any offeror may withdraw an offer of judgment prior to its acceptance or prior to the date on which it would be considered rejected by giving notice to the offeree or his attorney in accordance with the service rules for motions and other pleadings outlined in the South Carolina Administrative Law Court Rules of Procedure. Any offeror may file a subsequent offer of judgment in any amount provided that the subsequent offer supersedes any earlier offer that was rejected by the offeree or withdrawn by the offeror, and, on filing, terminates any rights of interest or costs that may have been applicable to the superseded offer. Notwithstanding this provision, an offer is not considered rejected upon the making of a counteroffer by the offeree, but shall remain effective until accepted, rejected, or withdrawn as provided in this subsection. Any and all offers of judgment and any acceptance of offers of judgment must be included by the clerk in the record of the case.

(2) If an offer of judgment is not accepted and the offeror obtains a determination at least as favorable as the rejected offer, the offeror is entitled to recover from the offeree any administrative, discovery costs, and attorney's fees.

(3) 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 13. Section 44-7-230(D) of the 1976 Code, as last amended by Act 278 of 2010, is further amended to read:

"(D) A Certificate of Need is valid for one year from the date of issuance. A Certificate of Need must be issued with a timetable submitted by the applicant and approved by the department to be followed for completion of the project. The holder of the Certificate of Need shall submit periodic progress reports on meeting the timetable as may be required by the department. Failure to meet the timetable results in the revocation of the Certificate of Need by the department unless the department determines that extenuating circumstances beyond the control of the holder of the Certificate of Need are the cause of the delay. The department may grant two extensions of up to nine months each upon evidence that substantial progress has been made in accordance with procedures set forth in regulations. ~~The board~~ department may grant further extensions of up to nine months each only if it determines that substantial progress has been made in accordance with the procedures set forth in regulations."

SECTION 14. Section 44-7-1590(C) of the 1976 Code is amended to read:

"(C) Any interested party, within twenty days after the date of the publication of the notice, ~~but not afterwards,~~ may challenge the action ~~so~~ taken by the state board, or the county board, ~~or the Department of Health and Environmental Control,~~ by action de novo in the court of common pleas in any county where the hospital facilities are to be located."

SECTION 15. Section 44-7-180 and Section 44-7-225 of the 1976 Code are repealed.

SECTION 16. A. Section 44-7-120 of the 1976 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."

B. Article 3, Chapter 7, Title 44 of the 1976 Code is amended by adding:

"Section 44-7-131. As used in this article:

- (1) '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 and which the owner or operator makes available to other providers who comprise an organized professional staff.
- (2) 'Board' means the State Board of Health and Environmental Control.
- (3) '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.
- (4) 'Daycare facility for adults' means a facility for adults eighteen years or older which:
 - (a) offers in a group setting a program of individual and group activities and therapies;
 - (b) is directed toward providing community-based care for those in need of a supportive setting for less than twenty-four hours a day to prevent unnecessary institutionalization; and
 - (c) provides a minimum of four and a maximum of fourteen hours of operation a day.
- (5) 'Department' means the Department of Health and Environmental Control.
- (6) '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, and narcotic treatment programs.
- (7) 'Health service' means clinically related, diagnostic, treatment, or rehabilitative services and includes alcohol, drug abuse, and mental health.
- (8) 'Hospital' means a facility organized and administered to provide overnight medical or surgical care or nursing care of illness, injury, or infirmity in which all diagnoses, treatment, or care is administered by or under the direction of persons currently licensed to practice medicine, surgery, or osteopathy and which may provide obstetrical care and include residential treatment facilities for children and adolescents in need of mental health treatment which are physically a part of a licensed psychiatric hospital, not including facilities which are licensed by the Department of Social Services.

- (9) '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.
- (10) '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.
- (11) '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.
- (12) '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.
- (13) '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 including, but 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.
- (14) '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.
- (15) '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.
- (16) '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.
- (17) 'Birthing center' means a facility or other place where human births are planned to occur but does not include the usual residence of the mother or a facility that is licensed as a hospital or the private practice of a physician who attends the birth.

(18) 'Freestanding emergency service', also referred to as an off-campus emergency service, means an extension to an existing emergency department of a licensed hospital that supports an off-campus emergency service, which 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."

C. Article 3, Chapter 7, Title 44 of the 1976 Code is amended by adding:

"Section 44-7-151. 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 duties under this article;
- (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;
- (5) promulgate regulations, in accordance with the Administrative Procedures Act, which establish fees as authorized by this article, leaving fees promulgated as of January 1, 2009, in effect until regulations are promulgated pursuant to this item."

D. Section 44-7-320 of the 1976 Code, as last amended by Act 278 of 2010, is further 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;~~
- ~~(e)(b)~~ 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; and

~~(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)~~(E) All penalties collected pursuant to this article must be deposited in the state treasury and credited to the general fund of the State."

E. Sections 44-7-130, 44-7-150, 44-7-160, 44-7-170, 44-7-190, 44-7-200, 44-7-210, 44-7-220, and 44-7-230 of the 1976 Code are repealed.

F. Article 3, Chapter 7, Title 44 of the 1976 Code is renamed the State Health Facility Licensure Act.

G. This SECTION takes effect January 1, 2018.

SECTION 17. (A) The South Carolina Board of Health and Environmental Control shall review the projects of persons and health care facilities whose total projects costs are less than seven million dollars and that were initiated between July 1, 2013, and April 14, 2014, for which a Certificate of Need is required pursuant to Article 3, Chapter 7, Title 44 of the Code of Laws of South Carolina, 1976. In its review, the board shall determine if the projects merit a Certificate of Need. If the board

determines a project merits a Certificate of Need, the board shall stand in the place of the Department of Health and Environmental Control and may issue the Certificate of Need nunc pro tunc. Any certificate issued by the board is deemed to have been issued by the Department of Health and Environmental Control. All requirements governing Certificates of Need apply to those persons or health care facilities issued a Certificate of Need pursuant to this section.

(B) The board shall establish procedures for the submission of an application, public notice of the filing of the application, and a process for notification of its decision to all affected persons, who during the board's review process, have notified the board of the person's desire to be an affected person. In order to participate in any contested case review, an affected person has to notify the board of the specific reasons it objects to an application.

SECTION 18. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 19. A. Section ~~44-7-260~~(A)(12) of the 1976 Code, is amended to read:

"(12) ~~freestanding or mobile technology~~ Reserved."

B. Section ~~44-7-265~~ of the 1976 Code is repealed.

SECTION 20. Except as otherwise provided, this act takes effect upon approval by the Governor.

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