

South Carolina General Assembly
124th Session, 2021-2022

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Bill 290

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AS PASSED BY THE SENATE

January 25, 2022

S. 290

Introduced by Senators Climer, Senn, Campsen, Loftis, Rice, Peeler, Turner, Davis, Gustafson, Grooms, M. Johnson, Garrett, Kimbrell and Adams

S. Printed 1/25/22--S. [SEC 1/26/22 12:38 PM]

Read the first time January 12, 2021.

A BILL

TO AMEND SECTIONS 44-7-110, 44-7-120, 44-7-130, 44-7-140, 44-7-150, AND 44-7-320 OF THE 1976 CODE, ALL RELATING TO THE REGULATION OF HEALTH CARE FACILITIES IN THE STATE, TO ELIMINATE REFERENCES TO CERTIFICATE OF NEED REQUIREMENTS; TO REPEAL SECTIONS 44-7-160, 44-7-170, 44-7-180, 44-7-190, 44-7-200, 44-7-210, 44-7-220, 44-7-225, 44-7-230, AND 44-7-240 OF THE 1976 CODE, ALL RELATING TO THE CERTIFICATE OF NEED PROGRAM; AND TO RENAME ARTICLE 3, CHAPTER 7, TITLE 44 OF THE 1976 CODE AS THE "STATE HEALTH FACILITY LICENSURE ACT".

Amend Title To Conform

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

SECTION 1. A. Article 3, Chapter 7, Title 44 of the 1976 Code is renamed the "State Health Facility Licensure Act".

B. Section 44-7-110 of the 1976 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 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."

SECTION 3. Section 44-7-130 of the 1976 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.

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

(3) 'Board' means the State Board of Health and Environmental Control.

(4) ~~Reserved.~~ 'Children, adolescents, or young adults in need of mental health treatment' in a residential treatment facility means a child, adolescent, or young adult under the age of 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 of mood or thought processes; severe difficulties with self-control or judgment, including behavior dangerous to himself or others; and serious disturbances in a child's, adolescent's, or young adult's ability to care for or 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)~~(6). '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)~~(7). 'Department' means the Department of Health and Environmental Control.

~~(9)~~(8). '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.

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

(10). '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 operations 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.

~~(10)~~(11). '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.~~

~~(11)~~(12). '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)~~(13). '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 and 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 a part of a licensed psychiatric hospital is not required to provide on-campus emergency services."

(14). 'Intermediate care facility for persons with an intellectual disability' means a facility that serves four or more persons with an intellectual disability or persons with related conditions and that 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.

~~(13)~~(15). '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)~~(16). '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.

(17). 'Radiation therapy facility' means a person or a health care facility that provides or seeks to provide megavoltage therapeutic services to patients through the use of high energy radiation.

~~(16)~~(18). '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) '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 44-7-140 of the 1976 Code is amended to read:

"Section 44-7-140. The department is designated the sole state agency for control and administration of the ~~granting of Certificates of Need and~~ licensure of health facilities and other activities necessary to be carried out under this article."

SECTION 5. A. Section 44-7-150 of the 1976 Code is amended to read:

"Section 44-7-150. 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."~~

B. Fees authorized by Article 3, Chapter 7, Title 44 that are promulgated as of January 1, 2009, shall remain in effect until further regulations are promulgated pursuant to Section 44-7-150(5), as amended by this act.

SECTION 6. Section 44-7-320 of the 1976 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 7. Section 44-7-160 of the 1976 Code is amended to read:

"Section 44-7-160. 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 which is to be used for diagnosis or treatment if the total project cost is in excess of that prescribed by regulation."

SECTION 8. Article 3, Chapter 7, Title 44 of the 1976 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:

- (a) submit details of the proposed acquisition for review and comment of the Joint Bond Review Committee;
- (b) receive approval of proposed acquisition by the Fiscal Accountability Authority; and
- (c) 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 9. (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 healthcare 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 healthcare 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 healthcare 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 healthcare 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 healthcare 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 10. 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 11. This act takes effect upon approval by the Governor.

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