

ARTICLE 3.

STATE CERTIFICATION OF NEED AND HEALTH FACILITY LICENSURE ACT

SECTION 44-7-110. Short title.

This article may be cited as the "State Certification of Need and Health Facility Licensure Act".

HISTORY: 1962 Code Section 32-761; 1952 Code Section 32-761; 1947 (45) 510; 1971 (57) 376; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1.

SECTION 44-7-120. Declaration of purpose.

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.

HISTORY: 1962 Code Section 32-763; 1952 Code Section 32-763; 1947 (45) 510; 1971 (57) 376; 1979 Act No. 51 Section 1; 1981 Act No. 16, Section 1; 1988 Act No. 670, Section 1; 1992 Act No. 511, Section 1.

SECTION 44-7-130. Definitions.

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

(4) Reserved.

(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.

(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 and adolescents in need of mental health treatment" in a residential treatment facility means a child or adolescent under age eighteen or a child or adolescent under age twenty-one who is a client of, committed to the custody of, or in the legal custody of an agency of the State of South Carolina who manifests a substantial disorder of cognitive or emotional process, which lessens or impairs to a marked degree that child's or adolescent'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.

HISTORY: 1962 Code Section 32-762; 1952 Code Section 32-762; 1947 (45) 510; 1952 (47) 2042; 1958 (50) 1634; 1959 (51) 356; 1961 (52) 550; 1964 (53) 2117; 1971 (57) 376; 1979 Act No. 51 Section 1; 1981 Act No. 16, Section 2; 1983 Act No. 68 Section 1; 1987 Act No. 184 Sections 2, 3; 1988 Act No. 527, Sections 1, 2; 1988 Act No. 670, Section 1; 1990 Act No. 501, Section 1; 1990 Act No. 612, Part II, Section 64; 1992 Act No. 511, Sections 2-5, 16; 1993 Act No. 164, Part II, Section 17A; 1995 Act No. 1, Section 5; 1998 Act No. 303, Section 1; 1998 Act No. 351, Section 1; 1999 Act No. 10, Section 1; 2000 Act No. 248, Section 3; 2010 Act No. 278, Sections 2, 3, eff July 1, 2010; 2011 Act No. 47, Sections 1, 8, 9, eff June 7, 2011; 2011 Act No. 61, Section 1, eff June 15, 2011.

SECTION 44-7-140. Department as sole agency for control of program.

(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;

(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.

HISTORY: 1962 Code Section 32-765; 1952 Code Section 32-765; 1947 (45) 510; 1971 (57) 376; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1; 1992 Act No. 511, Section 6; 2010 Act No. 278, Section 5, eff July 1, 2010.

SECTION 44-7-170. Institutions and transactions exempt from article.

(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.

(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.

(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.

HISTORY: 1962 Code Section 32-766; 1952 Code Section 32-766; 1947 (45) 510; 1964 (53) 2117; 1965 (54) 472; 1968 (55) 2815; 1971 (57) 376; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1; 1992 Act No. 322, Section 1; 1992 Act No. 511, Section 7; 1998 Act No; 303, Sections 2, 3; 2003

costly and more effective alternatives; appropriate financial considerations, including method of financing, financial feasibility, and cost containment; consideration of impact on health systems resources; site and building suitability; consideration of quality of care; and relevant special considerations as may be appropriate. The Project Review Criteria must be adopted as a regulation pursuant to the Administrative Procedures Act.

(B) The project review criteria promulgated in regulation must be used in reviewing all projects under the Certificate of Need process. When the criteria are weighted to determine the relative importance for the specific project, the department may reorder the relative importance of the criteria no more than one time after the project review meeting. When an application has been appealed, the department may not change the weighted formula.

HISTORY: 1962 Code Section 32-769; 1952 Code Section 32-769; 1947 (45) 510; 1951 (47) 506; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1; 2010 Act No. 278, Section 8, eff July 1, 2010.

SECTION 44-7-200. Application for Certificate of Need; notice; prohibited communications.

(A) An application for a Certificate of Need must be submitted to the department in a form established by regulation. The application must address all applicable standards and requirements set forth in departmental regulations, 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.

(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 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.

HISTORY: 1962 Code Section 32-770; 1952 Code Section 32-770; 1947 (45) 510; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1; 1990 Act No. 471, Section 1; 1992 Act No. 511, Section 9; 2010 Act No. 278, Sections 9, 10, eff July 1, 2010.

SECTION 44-7-210. Certificate of Need review procedures.

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.

HISTORY: 1962 Code Section 32-771; 1952 Code Section 32-771; 1947 (45) 510; 1971 (57) 376; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1; 1990 Act No. 471, Sections 2, 3; 1992 Act No. 511, Section 10; 1998 Act No. 303, Section 4; 2010 Act No. 278, Section 11, eff July 1, 2010.

SECTION 44-7-220. Administrative Law Court review of Certificate of Need decisions.

(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) 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 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 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.

(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.

HISTORY: 1962 Code Section 32-772; 1952 Code Section 32-772; 1947 (45) 510; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1; 1990 Act No. 471, Section 4; 2010 Act No. 278, Section 12, eff July 1, 2010.

SECTION 44-7-225. State Health Plan in effect at application and at decision.

The department, the Administrative Law Court, and the Court of Appeals shall consider the South Carolina Health Plan in place at the time the application was filed and may consider the current South Carolina Health Plan when making its decision.

HISTORY: 2010 Act No. 278, Section 20, eff July 1, 2010.

SECTION 44-7-230. Limitation on Certificate of Need; capital expenditure; architectural plans; time limitation; Certificate of Need as not transferable.

SECTION 44-7-250. Department to establish and enforce basic standards.

The department shall establish and enforce basic standards for the licensure, maintenance, and operation of health facilities and services to ensure the safe and adequate treatment of persons served in this State.

HISTORY: 1962 Code Section 32-775; 1952 Code Section 32-775; 1947 (45) 510; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1.

SECTION 44-7-260. Requirements for licensure.

(A) If they provide care for two or more unrelated persons, the following facilities or services may not be established, operated, or maintained in this State without first obtaining a license in the manner provided by this article and regulations promulgated by the department:

- (1) hospitals, including general and specialized hospitals;
- (2) nursing homes;
- (3) residential treatment facilities for children and adolescents;
- (4) ambulatory surgical facilities;
- (5) Reserved;
- (6) community residential care facilities;
- (7) facilities for chemically dependent or addicted persons;
- (8) end-stage renal dialysis units;
- (9) day-care facilities for adults;
- (10) any other facility operating for the diagnosis, treatment, or care of persons suffering from illness, injury or other infirmity and for which the department has adopted standards of operation by regulation.
- (11) intermediate care facilities for persons with intellectual disability;
- (12) freestanding or mobile technology.
- (13) facilities wherein abortions are performed.
- (14) birthing centers.

(B) The licensing provisions of this article do not apply to:

- (1) infirmaries for the exclusive use of the student bodies of privately-owned educational institutions which maintain infirmaries;
- (2) community-based housing sponsored, licensed, or certified by the South Carolina Department of Disabilities and Special Needs. The Department of Disabilities and Special Needs shall provide to the Department of Health and Environmental Control the names and locations of these facilities on a continuing basis; or
- (3) homeshare programs designated by the Department of Mental Health, provided that these programs do not serve more than two persons at each program location, the length of stay does not exceed fourteen consecutive days for one of the two persons, and the temporarily displaced person must be directly transferred from a homeshare program location. The Department of Mental Health shall provide to the Department of Health and Environmental Control the names and locations of these programs on a continuing basis.

(C) The department is authorized to investigate, by inspection or otherwise, any facility to determine if its operation is subject to licensure.

(D) Each hospital must have a single organized medical staff that has the overall responsibility for the quality of medical care provided to patients. Medical staff membership must be limited to doctors of medicine or osteopathy who are currently licensed to practice medicine or osteopathy by the State Board of Medical Examiners, dentists licensed to practice dentistry by the State Board of Dentistry and podiatrists licensed to practice podiatry by the State Board of Podiatry Examiners. No individual is automatically entitled to membership on the medical staff or to the exercise of any clinical privilege merely because he is licensed to practice in any state, because he is a member of any professional organization, because he is certified by any clinical examining board, or because he has clinical privileges or staff membership at

(B) For purposes of this section:

(1) "Shift 1" means a work shift that occurs primarily during the daytime hours including, but not limited to, a 7:00 a.m. to 3:00 p.m. shift;

(2) "Shift 2" means a work shift that generally includes both daytime and evening hours including, but not limited to, a 3:00 p.m. to 11:00 p.m. shift;

(3) "Shift 3" means a work shift that occurs primarily during the nighttime hours including, but not limited to, an 11:00 p.m. to 7:00 a.m. shift.

HISTORY: 1998 Act No. 419, Part II, Section 46A.

SECTION 44-7-264. Nursing home or community residential care facility licensure; fingerprint-based criminal records check; prohibition of issuance of license or requirement of revocation for certain crimes.

(A) To obtain a license to operate a nursing home or a community residential care facility the person, or persons, required to sign the application for licensure pursuant to Section 44-7-270 shall undergo a state and national fingerprint-based criminal records check.

(B)(1) A nursing home license or community residential care facility license must not be issued to the applicant, and if issued, may be revoked, if the person or any one of the persons required to undergo a criminal records check pursuant to subsection (A) is required to register under the sex offender registry pursuant to Section 23-3-430 or has been convicted of:

(a) abuse, neglect, or exploitation of a child or vulnerable adult, as defined in Section 43-35-10;

(b) any violent crime, as defined in Section 16-1-60;

(c) any other drug related felony;

(d) forgery, embezzlement, or breach of trust with fraudulent intent, as classified in Section 16-1-90(E); or

(e) a criminal offense similar in nature to the crimes listed in this subsection committed in another jurisdiction or under federal law.

(2) This section does not prohibit obtaining licensure when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this section has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the applicant is unfit or otherwise unsuited for licensure for a community residential care facility.

(C) Criminal records checks required pursuant to this section must consist of a fingerprint-based records check conducted by the South Carolina Law Enforcement Division (SLED) for the state check and a fingerprint-based records check conducted by the Federal Bureau of Investigation (FBI) for the national check. An applicant shall submit with the criminal records check application one complete set of the applicant's fingerprints in a manner specified by SLED. Fingerprints submitted to SLED pursuant to this section must be collected in a manner specified by SLED and must be used to conduct a state criminal records check by SLED and to facilitate a national criminal records check by the FBI. SLED is authorized to retain the fingerprints for licensing purposes and for notification of the department regarding criminal charges. The actual cost of obtaining state and national criminal records checks by SLED and the FBI must be paid by the licensure applicant directly to the required entity as specified by SLED.

HISTORY: 2010 Act No. 207, Section 1, eff June 7, 2010.

SECTION 44-7-265. Freestanding or mobile technology regulations to be promulgated.

The department shall promulgate regulations for licensing freestanding or mobile technology. At a minimum, the regulations must include:

(1) standards for the maintenance and operation of freestanding or mobile technology to ensure the safe and effective treatment of persons served;

HISTORY: 1962 Code Section 32-779; 1952 Code Section 32-779; 1947 (45) 510; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1.

SECTION 44-7-295. Authority to enter facilities to investigate violations.

The department is authorized to enter at all times in or on the property of any facility or service, whether public or private, licensed by the department or unlicensed, for the purpose of inspecting and investigating conditions relating to a violation of this article or regulations of the department. The department's authorized agents may examine and copy any records or memoranda pertaining to the operation of a licensed or unlicensed facility or service to determine compliance with this article. However, if such entry or inspection is denied or not consented to and no emergency exists, the department is empowered to obtain a warrant to enter and inspect the property and its records from the magistrate in the jurisdiction in which the property is located. The magistrate may issue these warrants upon a showing of probable cause for the need for entry and inspection. The department shall furnish a written copy of the results of the inspection or investigation to the owner or operator of the property.

HISTORY: 2010 Act No. 223, Section 9, eff June 7, 2010; 2010 Act No. 278, Section 22, eff July 1, 2010.

SECTION 44-7-300. Plans and specifications.

Prior to commencing the construction or alteration of facilities required to be licensed by this department, plans and specifications must be submitted to the department for review and approval in accordance with regulations of the department. If construction has commenced without submittal of plans and specifications, an applicant for a license is required to submit certified drawings for review and approval prior to action upon the application for a license.

HISTORY: 1962 Code Section 32-780; 1952 Code Section 32-780; 1947 (45) 510; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1.

SECTION 44-7-310. Certain information not to be disclosed publicly.

Information received by the Office of Health Licensing of the department through inspection or otherwise which does not appear on the face of the license may not be disclosed publicly in a manner as to identify individuals or facilities except in a proceeding involving the licensure or certification of need of the facility or licensing proceedings against an employee of the facility or as ordered by a court of competent jurisdiction.

HISTORY: 1962 Code Section 32-781; 1952 Code Section 32-781; 1947 (45) 510; 1964 (53) 2117; 1979 Act No. 51 Section 1; 1983 Act No. 68 Section 2; 1984 Act No. 300; 1984 Act No. 512, Part II, Section 19C; 1988 Act No. 670, Section 1.

SECTION 44-7-315. Disclosure of information regarding facility or home.

(A) Information received by the Division of Health Licensing of the department, through inspection or otherwise, in regard to a facility or activity licensed by the department pursuant to this article or subject to inspection by the department, including a nursing home, a community residential care facility, or an intermediate care facility for persons with intellectual disability, must be disclosed publicly upon written request to the department. The request must be specific as to the facility or activity, dates, documents, and particular information requested. The department may not disclose the identity of individuals present in a facility licensed by the department pursuant to this article or subject to inspection by the department,

(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 license may 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.

HISTORY: 1962 Code Section 32-781.1; 1971 (57) 376; 1979 Act No. 51 Section 1; 1981 Act No. 16, Section 3; 1987 Act No. 184 Section 4; 1988 Act No. 670, Section 1; 1990 Act No. 377, Section 1; 1992 Act No. 339, Section 1; 2010 Act No. 223, Section 11, eff June 7, 2010; 2010 Act No. 278, Section 19, eff July 1, 2010; 2011 Act No. 47, Section 12, eff June 7, 2011.

SECTION 44-7-325. Fee for search and duplication of medical record; time limits for compliance with request for record.

(A) A health care facility, as defined in Section 44-7-130, and a health care provider licensed pursuant to Title 40 may charge a fee for the search and duplication of a medical record, but the fee may not exceed sixty-five cents per page for the first thirty pages and fifty cents per page for all other pages, and a clerical fee for searching and handling not to exceed fifteen dollars per request plus actual postage and applicable sales tax. However, no fee may be charged for records copied at the request of a health care provider or for records sent to a health care provider at the request of the patient for the purpose of continuing medical care. The facility or provider may charge a patient or the patient's representative no more than the actual cost of reproduction of an X-ray. Actual cost means the cost of materials and supplies used to duplicate the X-ray and the labor and overhead costs associated with the duplication.

(B) Except for those requests for medical records pursuant to Section 42-15-95:

(1) A health care facility shall comply with a request for copies of a medical record no later than forty-five days after the patient has been discharged or forty-five days after the request is received, whichever is later.

(2) Nothing in this section may compel a health care facility to release a copy of a medical record prior to thirty days after discharge of the patient.

HISTORY: 1994 Act No. 468, Section 3.

SECTION 44-7-330. Power to sue.

The department, in accordance with the laws of this State governing injunctions and other processes, may maintain an action in the name of the State against any person or facility for violation of this article and regulations promulgated under this article. In charging any defendant in a complaint in an action, it is sufficient to charge that the defendant, upon a certain day and in a certain county, did violate any provision of this article or of the regulations promulgated without the necessity for showing irreparable harm.

HISTORY: 1962 Code Section 32-782; 1952 Code Section 32-782; 1947 (45) 510; 1950 (46) 2549; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1.

SECTION 44-7-340. Violation as misdemeanor; fines.

(1) The committee consists of the Long Term Care Ombudsman, three operators of homes with ten beds or less, four operators of homes with eleven beds or more, and three members to represent the department appointed by the commissioner for terms of four years.

(2) The terms must be staggered and no member may serve more than two consecutive terms. Any person may submit names to the commissioner for consideration. The advisory committee shall meet at least once annually with representatives of the department to evaluate current licensing regulations and inspection practices. Members shall serve without compensation.

(B) The Department of Health and Environmental Control shall appoint a Renal Dialysis Advisory Council to advise the department regarding licensing and inspection of renal dialysis centers. The council must be consulted and have the opportunity to review all regulations promulgated by the board affecting renal dialysis prior to submission of the proposed regulations to the General Assembly.

(1) The council is composed of a minimum of fourteen persons, one member recommended by the Palmetto Chapter of the American Nephrology Nurses Association; one member recommended by the South Carolina Chapter of the National Association of Patients on Hemodialysis and Transplants; three physicians specializing in nephrology recommended by the South Carolina Renal Physicians Association; two administrators of facilities certified for dialysis treatment or kidney transplant services; one member recommended by the South Carolina Kidney Foundation; one member recommended by the South Carolina Hospital Association; one member recommended by the South Carolina Medical Association; one member of the general public; one member representing technicians working in renal dialysis facilities; one member recommended by the Council of Nephrology Social Workers; and one member recommended by the Council of Renal Nutritionists. The directors of dialysis programs at the Medical School of the University of South Carolina and the Medical University of South Carolina, or their designees, are ex officio members of the council.

(2) Members shall serve four-year terms and until their successors are appointed and qualify. No member of council shall serve more than two consecutive terms. The council shall meet as frequently as the board considers necessary, but not less than twice each year. Members shall serve without compensation.

HISTORY: 1962 Code Section 32-786; 1952 Code Section 32-786; 1947 (45) 510; 1971 (57) 267, 376; 1976 Act No. 620 Section 2; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1; 1993 Act No. 110, Section 9.

SECTION 44-7-380. Surgical technology and operating room circulators; definitions; requirements to practice; exceptions.

(A) As used in this section, "surgical technology" means intraoperative surgical patient care that involves:

(1) preparing the operating room for surgical procedures by ensuring that surgical equipment is functioning properly and safely;

(2) preparing the operating room and the sterile field for surgical procedures by preparing sterile supplies, instruments, and equipment using sterile technique;

(3) anticipating the needs of the surgical team based on knowledge of human anatomy and pathophysiology and how they relate to the surgical patient and the patient's surgical procedure; and

(4) as directed within the sterile field in an operating room setting, performing tasks including:

(a) passing supplies, equipment, or instruments;

(b) sponging or suctioning an operative site;

(c) preparing and cutting suture materials;

(d) transferring fluids or drugs;

(e) holding retractors; and

(f) assisting in counting sponges, needles, supplies, and instruments.

(B)(1) A person may not practice surgical technology in a health care facility unless the person meets one of the following requirements:

SECTION 44-7-390. No liability or cause of action against a hospital for certain acts or proceedings.

There is no monetary liability on the part of, and no cause of action for damages arising against, a hospital licensed under this article, its parent, subsidiaries, health care system, physician practices owned by the hospital (its parent or subsidiaries), directors, officers, agents, employees, medical staff members, external reviewers, witnesses, or a member of any committee of a licensed hospital, whether permanent or ad hoc, including the hospital's governing body, for any act or proceeding undertaken or performed without malice, made after reasonable effort to obtain the facts, and the action taken was in the belief that it is warranted by the facts known, arising out of or relating to:

(1) sentinel event investigations or root cause analyses, or both, as prescribed by the joint commission or any other organization under whose accreditation a hospital is deemed to meet the Centers for Medicare and Medicaid Services' conditions of participation;

(2) investigations into the competence or conduct of hospital employees, agents, members of the hospital's medical staff or other practitioners, relating to the quality of patient care, and any disciplinary proceedings or fair hearings related thereto, provided the medical staff operates pursuant to written bylaws that have been approved by the governing body of the hospital;

(3) quality assurance reviews;

(4) the medical staff credentialing process, provided the medical staff operates pursuant to written bylaws that have been approved by the governing body of the hospital;

(5) reports by a hospital to its insurance carriers;

(6) reviews or investigations to evaluate the quality of care provided by hospital employees, agents, members of the hospital's medical staff, or other practitioners; or

(7) reports or statements, including, but not limited to, those reports or statements to the National Practitioner Data Bank and the South Carolina Board of Medical Examiners, that provide analysis or opinion (including external reviews) relating to the quality of care provided by hospital employees, agents, members of the hospital's medical staff, or other practitioners.

HISTORY: 2012 Act No. 275, Section 1, eff June 26, 2012.

SECTION 44-7-392. Confidentiality of hospital proceedings, data, documents, and information.

(A)(1) All proceedings of, and all data, documents, records, and information prepared or acquired by, a hospital licensed under this article, its parent, subsidiaries, health care system, committees, whether permanent or ad hoc, including the hospital's governing body, or physician practices owned by the hospital (its parent or subsidiaries), relating to the following are confidential:

(a) sentinel event investigations or root cause analyses, or both, as prescribed by the joint commission or any other organization under whose accreditation a hospital is deemed to meet the Centers for Medicare and Medicaid Services' conditions of participation;

(b) investigations into the competence or conduct of hospital employees, agents, members of the hospital's medical staff or other practitioners, relating to the quality of patient care, and any disciplinary proceedings or fair hearings related thereto;

(c) quality assurance reviews;

(d) the medical staff credentialing process;

(e) reports by a hospital to its insurance carriers;

(f) reviews or investigations to evaluate the quality of care provided by hospital employees, agents, members of the hospital's medical staff, or other practitioners; or

(g) reports or statements, including, but not limited to, those reports or statements to the National Practitioner Data Bank and the South Carolina Board of Medical Examiners, that provide analysis or opinion (including external reviews) relating to the quality of care provided by hospital employees, agents, members of the hospital's medical staff, or other practitioners; or

National Practitioner Data Bank must not be considered a waiver of any privilege or confidentiality provided for in subsection (A).

(F) An affected person may file a civil action to assert a claim of confidentiality before a court of competent jurisdiction and file a motion to request the court to issue an order to enjoin a hospital from releasing data, documents, records, or information to the department, the South Carolina Board of Medical Examiners, the National Practitioner Data Bank, and the joint commission or other accrediting bodies that are not required by law or regulation to be released by a hospital. The data, documents, records, or information in controversy must be filed under seal with the court having jurisdiction over the pending action and are subject to judicial review. If the court finds that a party acted unreasonably in unsuccessfully asserting the claim of confidentiality under this subsection, the court shall assess attorney's fees against that party.

(G) For purposes of this section, an "affected person" means a person, other than a patient, who is a subject of a proceeding enumerated in subsection (A)(1).

HISTORY: 2012 Act No. 275, Section 1, eff June 26, 2012.

SECTION 44-7-394. Assertion and defense of confidentiality claims.

(A) If a hospital or affected person asserts a claim of confidentiality over documents pursuant to Section 44-7-392, and the party seeking the documents objects, then upon motion to the court having jurisdiction over the pending action the court shall review the documents under seal to determine if any of the documents are subject to discovery. The court may order production of the documents to the requesting party. If the court finds that a hospital or affected person acted unreasonably in unsuccessfully asserting the claim of confidentiality, the court may assess attorney's fees against that party for any fees incurred by the requesting party in obtaining the documents.

Further, a party to a medical or hospital malpractice case shall not offer testimony of a person who was a witness to the medical or hospital care that is the subject of the medical or hospital malpractice case if their testimony would be inconsistent with a prior written, electronic, video, or audio statement of fact submitted by the person and that is confidential under Section 44-7-392, unless such prior inconsistent statement of fact is first produced to all parties in the medical or hospital malpractice case. Upon request by a party, a privilege log shall be provided by a hospital to all parties in the medical or hospital malpractice case identifying any prior written, electronic, video, or audio statements of fact relating to the medical or hospital care that is the subject of the medical or hospital malpractice case that were given by a witness who is identified in discovery and may testify at trial. Upon motion of any party, a prior statement of fact, whether written, electronic, video, or audio, that is confidential under Section 44-7-392, may be reviewed by the court in camera to determine whether the prior statement of fact is inconsistent with the trial testimony offered in the medical or hospital malpractice case. If the court concludes that the prior statement of fact is inconsistent, the court shall order that the prior written statement of fact be produced to the moving party.

(B) For purposes of this section an "affected person" means a person, other than a patient, who is a subject of a proceeding enumerated in Section 44-7-392(A)(1).

(C) If the court orders a hospital or affected person to produce documents to a third party under this section, the hospital or affected person shall have the right to immediately appeal that order, and the filing of the appeal shall stay the enforcement of the order compelling the production.

HISTORY: 2012 Act No. 275, Section 1, eff June 26, 2012.

