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CONFERENCE COMMITTEE REPORT ADOPTED -- NOT PRINTED

June 2, 2010

**S. 337**

Introduced by Senators Cleary, Peeler and Elliott

S. Printed 5/28/10--S.

Read the first time January 28, 2009.

**A** **BILL**

TO AMEND SECTION 44‑1‑60, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO APPEALS FROM DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL DECISIONS GIVING RISE TO CONTESTED CASES, SO AS TO FURTHER PROVIDE PROCEDURES FOR REVIEW OF CERTIFICATE OF NEED DECISIONS AND CONTESTED CASE HEARINGS; TO AMEND SECTION 44‑7‑130, RELATING TO THE DEFINITION OF TERMS USED IN THE STATE CERTIFICATE OF NEED AND HEALTH FACILITY LICENSURE ACT, SO AS TO REVISE, DELETE, AND ADD CERTAIN DEFINITIONS; TO AMEND SECTION 44‑7‑150, RELATING TO DUTIES OF THE DEPARTMENT IN CARRYING OUT THE PURPOSES OF THE CERTIFICATE OF NEED PROGRAM, SO AS TO FURTHER SPECIFY THE ESTABLISHMENT AND COLLECTION OF FEES FOR THIS PROGRAM, INCLUDING THE DEPARTMENT RETAINING FEES IN EXCESS OF SEVEN HUNDRED FIFTY THOUSAND DOLLARS FOR THE ADMINISTRATION OF THIS PROGRAM; TO AMEND SECTION 44‑7‑160, RELATING TO ACTIVITIES AND SERVICES REQUIRED TO OBTAIN A CERTIFICATE OF NEED, SO AS TO REVISE AND ELIMINATE CERTAIN ACTIVITIES AND SERVICES; TO AMEND SECTION 44‑7‑170, AS AMENDED, RELATING TO EXEMPTIONS FROM THE CERTIFICATE OF NEED PROCESS, SO AS TO REVISE, ELIMINATE, AND ADD TO THESE EXEMPTIONS; TO AMEND SECTION 44‑7‑180, RELATING TO THE COMPOSITION OF THE HEALTH PLANNING COMMITTEE, SO AS TO ADD TWO MEMBERS TO THE COMMITTEE; TO AMEND SECTION 44‑7‑190, RELATING TO PROJECT REVIEW CRITERIA USED IN THE CERTIFICATE OF NEED PROCESS, SO AS TO PRESCRIBE THE USE OF WEIGHTED CRITERIA; TO AMEND SECTION 44‑7‑200, RELATING TO THE APPLICATION PROCESS FOR A CERTIFICATE OF NEED, SO AS TO CORRECT PROVISIONS INCONSISTENT WITH CURRENT STATE LAW AND TO PROHIBIT OFFICIALS FROM COMMUNICATING WITH THE DEPARTMENT ONCE A CERTIFICATE OF NEED APPLICATION HAS BEEN FILED; TO AMEND SECTION 44‑7‑210, RELATING TO CERTIFICATE OF NEED REVIEW PROCEDURES, SO AS TO REVISE THESE PROCEDURES AND TO FURTHER SPECIFY REVIEW AND CONTESTED CASE PROCEDURES FOR CERTIFICATE OF NEED CASES; TO AMEND SECTION 44‑7‑220, RELATING TO JUDICIAL REVIEW OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BOARD DECISIONS, SO AS TO CORRECT PROCEDURES INCONSISTENT WITH CURRENT LAW AND TO FURTHER PROVIDE FOR JUDICIAL REVIEW OF ADMINISTRATIVE LAW COURT CERTIFICATE OF NEED DECISIONS; TO AMEND SECTION 44‑7‑230, RELATING TO VARIOUS REQUIREMENTS FOR AND LIMITATIONS OF A CERTIFICATE OF NEED, SO AS TO PROVIDE THAT A CERTIFICATE OF NEED IS VALID FOR ONE YEAR FROM ISSUANCE, RATHER THAN FOR SIX MONTHS AND TO PROVIDE THAT EXTENSIONS MAY BE GRANTED FOR NINE MONTHS, RATHER THAN FOR SIX MONTHS; TO AMEND SECTION 44‑7‑260, AS AMENDED, RELATING TO CERTAIN FACILITIES AND SERVICES REQUIRED TO BE LICENSED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, SO AS TO DELETE CHIROPRACTIC INPATIENT FACILITIES AND TO ADD BIRTHING CENTERS; TO AMEND SECTION 44‑7‑270, RELATING TO ANNUAL HEALTH FACILITY LICENSURE, SO AS TO AUTHORIZE THE DEPARTMENT TO PRESCRIBE IN REGULATION PERIODS FOR LICENSURE AND RENEWAL AND TO AUTHORIZE IMPOSING AN ADDITIONAL FEE FOR FACILITY INSPECTIONS; TO AMEND SECTION 44‑7‑280, RELATING TO THE ISSUANCE OF HEALTH FACILITY LICENSES BY THE DEPARTMENT, SO AS TO AUTHORIZE THE DEPARTMENT TO PROVIDE IN REGULATION FOR PERIODS OF LICENSURE; TO AMEND SECTION 44‑7‑315, AS AMENDED, RELATING TO THE DISCLOSURE OF INFORMATION OBTAINED BY THE DEPARTMENT THROUGH HEALTH LICENSING, SO AS TO MAKE TECHNICAL CORRECTIONS; TO AMEND SECTION 44‑7‑320, RELATING TO GROUNDS FOR THE DENIAL, SUSPENSION, OR REVOCATION OF LICENSES AND THE IMPOSITION OF FINES, SO AS TO ALLOW BOTH SANCTIONS AGAINST A LICENSE AND THE IMPOSITION OF A FINE; BY ADDING SECTION 44‑7‑225 SO AS TO PROVIDE THAT THE ADMINISTRATIVE LAW COURT SHALL CONSIDER THE SOUTH CAROLINA HEALTH PLAN IN EFFECT WHEN A CERTIFICATE OF NEED APPLICATION WAS FILED AND MAY CONSIDER THE PLAN IN EFFECT WHEN MAKING ITS DECISION; BY ADDING SECTION 44‑7‑285 SO AS TO REQUIRE HEALTH CARE FACILITIES TO NOTIFY THE DEPARTMENT OF CHANGE IN FACILITY OWNERSHIP; BY ADDING SECTION 44‑7‑296 SO AS TO AUTHORIZE THE DEPARTMENT TO ENTER ALL LICENSED AND UNLICENSED HEALTH CARE FACILITIES TO INSPECT FOR COMPLIANCE WITH STATE LAW; AND TO REPEAL SECTION 44‑7‑185 RELATING TO A TASK FORCE UNDER THE HEALTH CARE PLANNING AND OVERSIGHT COMMITTEE, TO STUDY HEART SURGERY AND THERAPEUTIC HEART CATHETERIZATIONS.

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

SECTION 1. Section 44‑1‑60(E) through (I) of the 1976 Code, as added by Act 387 of 2006, is amended to read:

“(E)(1) Notice of ~~the~~ a department decision must be sent by certified mail, returned receipt requested to the applicant, permittee, licensee, and affected persons who have ~~asked~~ requested in writing to be notified ~~by certified mail, return receipt requested~~. Affected persons may request in writing to be notified by regular mail or electronic mail in lieu of certified mail. Notice of staff decisions for which a department decision is not required pursuant to subsection (D) must be provided by mail, delivery, or other appropriate means to the applicant, permittee, licensee, and affected persons who have requested in writing to be notified.

(2) The ~~department~~ staff decision becomes the final agency decision fifteen calendar days after notice of the ~~department~~ 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.

(3) The filing fee must be in the amount of one hundred dollars unless the department establishes a fee schedule by regulation after complying with the requirements of Article 1, Chapter 23, Title 1. This fee must be retained by the department in order to help defray the costs of the proceedings and legal expenses.

(F) No later than sixty calendar days after the date of receipt of a request for final review, a final review conference must be conducted by the board, its designee, or a committee of three members of the board appointed by the chair. If the board declines in writing to schedule a final review conference or if a final review conference is not conducted within sixty calendar days, the ~~department~~ staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person ~~may request~~ requests pursuant to subsection (G) a contested case hearing before the Administrative Law Court~~, in accordance with the Administrative Procedures Act, within thirty days after the deadline for the final review conference~~. The department shall set the place, date, and time for the conference; give the applicant and affected persons at least ten calendar days’ written notice of the conference; and advise the applicant that evidence may be presented at the conference. The final review conference must be held as follows:

(1) Final review conferences are open to the public; however, the officers conducting the conference may meet in closed session to deliberate on the evidence presented at the conference. The burden of proof in a conference is upon the moving party. During the course of the final review conference, the ~~department~~ staff must explain the ~~department~~ staff decision and the materials relied upon in the administrative record to support the ~~department~~ staff decision. The applicant or affected party shall state the reasons for protesting the ~~department~~ staff decision and may provide evidence to support amending, modifying, or rescinding the ~~department~~ staff decision. The ~~department~~ staff may rebut information and arguments presented by the applicant or affected party and the applicant or affected party may rebut information and arguments presented by the ~~department~~ staff. Any final review conference officer may request additional information and may question the applicant or affected party, the ~~department~~ staff, and anyone else providing information at the conference.

(2) After the ~~administrative~~ final review conference, the board, its designee, or a committee of three members of the board appointed by the chair shall issue a written final agency decision based upon the evidence presented. The decision may be announced orally at the conclusion of the ~~administrative~~ final review conference or it may be reserved for consideration. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court. In either event, the written decision must be mailed to the parties no later than thirty calendar days after the date of the ~~administrative~~ final review conference. Within thirty calendar days after the receipt of the decision an applicant, permittee, licensee, or affected person desiring to contest the final agency decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act. The court shall give consideration to the provisions of Section 1‑23‑330 regarding the department’s specialized knowledge.

(3) Prior to the initiation of the final review conference, an applicant, permittee, licensee, or affected person must be notified of their right to request a transcript of the proceedings of the final review conference. If a transcript is requested, the applicant, permittee, licensee, or affected person making the request ~~must be~~ is responsible for all costs.

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

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

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

(H) Applicants, permittees, licensees, and affected persons are encouraged to engage in mediation during the final ~~agency~~ review process.

~~(H)~~(I) The department may promulgate regulations providing for procedures for final ~~administrative~~ reviews.

~~(I)~~(J) Any statutory deadlines applicable to permitting and licensing programs administered by the department ~~shall~~ must be extended to all for this final review process. If any deadline provided for in this section falls on a Saturday, Sunday, or state holiday, the deadline must be extended until the next calendar day that is not a Saturday, Sunday, or state holiday.”

SECTION 2. Section 44‑7‑130(4), (10), (15), (16), and (21) of the 1976 Code is amended to read:

“(4) ~~‘Chiropractic inpatient facility’ means a facility organized and administered to provide overnight care for patients requiring chiropractic services, including vertebral sublaxation, analysis, and adjustment~~ Reserved.

(10) ‘Health care facility’ means acute care hospitals, psychiatric hospitals, alcohol and substance abuse hospitals, ~~methadone treatment facilities, tuberculosis hospitals,~~ nursing homes, ambulatory surgical facilities, hospice facilities, radiation therapy facilities, rehabilitation facilities, residential treatment facilities for children and adolescents, ~~habilitation centers for mentally retarded persons or persons with related conditions~~ intermediate care facilities for the mentally retarded, and any other facility for which Certificate of Need review is required by federal law.

(15) ‘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.

(16) ‘Residential treatment facility for children and adolescents’ means a facility operated for the assessment, diagnosis, treatment, and care ~~by~~ of two or more ~~persons of~~ ‘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.

(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 ~~increase the potential volume or type of procedures possible~~ constitute a material change in service or a new service.”

SECTION 3. Section 44‑7‑130 of the 1976 Code is amended by adding at the end:

“(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.”

SECTION 4. Section 44‑7‑150(5) of the 1976 Code is amended to read:

“(5) The department may ~~adopt a filing fee for Certificate of Need applications. The fee must be approved by the board~~ 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. ~~The fee must be collected prior to review of the application. A fee may not be increased beyond the cost of administration of the Certificate of Need Program.~~ Until fees are promulgated through regulation, all fees established as of January 1, 2009, remain in effect.”

SECTION 5. Section 44‑7‑160 of the 1976 Code is 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;

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

(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 which has an annual operating cost in excess of an amount to be prescribed by regulation~~ and for which specific standards or criteria are prescribed in the ~~State~~ 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;

~~(7)~~ ~~the acquisition or change in ownership or in controlling interest of a health care facility or entity owning a health care facility directly or indirectly by purchase, lease, gift, donation, sale of stock, or comparable arrangement if the acquisition or change in ownership or controlling interest may result in an increase in cost to the facility or increase in government‑sponsored reimbursement;~~

~~(8)~~ ~~the acquisition of an existing health care facility by a person who has failed to notify the department and seeks an exemption before entering into a contractual arrangement to acquire an existing facility;~~

~~(9)~~ ~~an expenditure or financial obligation made in preparation for the offering or developing of a project which requires certification of need pursuant to this section if the expenditure or financial obligation is in excess of an amount to be prescribed by regulation~~.”

SECTION 6. Section 44‑7‑170 of the 1976 Code, as amended by Act 27 of 2003, is further amended to read:

“Section 44‑7‑170. (A) The ~~provisions of this article do not apply to~~ following are exempt from Certificate of Need review:

(1) ~~health care facilities owned and operated by the federal government~~ 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~~the acquisition by a health care facility of medical equipment to be used solely for research, the offering of an institutional health service by a health care facility solely for research, or the obligation of a capital expenditure by a health care facility to be made solely for research if it does not (a) affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research; (b) change the bed capacity of the facility; or (c) substantially change the medical or other patient care services of the facility. A written description of the proposed research project must be submitted to the department in order for the department to determine if the above conditions are met. A Certificate of Need is required in order to continue use of the equipment or service after research restrictions are removed;~~

~~(4)~~ ~~purchases of or agreements to purchase real estate; however, the costs associated with the purchase of real estate must be included in determining the total project cost at the time the real estate is proposed to be developed~~.

(B) ~~The Certificate of Need provisions of~~ This article ~~do~~ 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 ~~State~~ South Carolina Department of Mental Health and the South Carolina Department of ~~Mental Retardation~~ 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.”

SECTION 7. Section 44‑7‑180 of the 1976 Code is 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 ~~equally~~ represented among the Governor’s appointees: health care consumers, health care financiers ~~to include~~, 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~~, and~~. 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 a ~~State~~ 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 ~~State~~ 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 ~~State~~ South Carolina Health Plan.

(C) Upon approval by the health planning committee, the ~~State~~ 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.

~~(D)~~ ~~The Department of Health and Environmental Control may charge and collect fees to cover the cost of operating the Certificate of Need program. Upon submission of a complete Certificate of Need application, the applicant must pay a fee of five hundred dollars plus five‑tenths of one percent of the project cost for review of the project, not to exceed seven thousand, five hundred dollars; however, for an applicant whose review fee would exceed seven thousand, five hundred dollars an additional fee of seven thousand, five hundred dollars is imposed if the applicant is awarded a Certificate of Need, which must be paid at the time of the award. Fees paid pursuant to this subsection must be deposited to the credit of the general fund of the State.~~”

SECTION 8. Section 44‑7‑190 of the 1976 Code is amended to read:

“Section 44‑7‑190. (A) The department shall adopt, upon approval of the board, Project Review Criteria which, at a minimum, must provide for the determination of need for health care facilities, beds, services and equipment, ~~to include~~ including demographic needs, appropriate distribution, and utilization; accessibility to underserved groups; availability of facilities and services without regard to ability to pay; absence of less costly and more effective alternatives; appropriate financial considerations ~~to include~~, 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.”

SECTION 9. Section 44‑7‑200(A) and (C) of the 1976 Code is amended to read:

“(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 ~~State~~ South Carolina Health Plan. ~~The application must include the payment of a nonrefundable initial application fee of five hundred dollars. The department shall deduct this fee from the Certificate of Need filing fee which is payable in accordance with departmental regulations when the application is determined to be complete.~~

(C) Upon publication of this notice and until a contested case hearing is requested pursuant to Section ~~44‑7‑210~~ 44‑1‑60(G):

(1) members of the board and persons appointed by the board to ~~hear appeals from department~~ 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 ~~hear appeals from~~ ~~department~~ 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.”

SECTION 10. Section 44‑7‑200 of the 1976 Code is amended by adding at the end:

“(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 is amended to read:

“Section 44‑7‑210. (A) After the department has determined that an application is complete, affected persons must be notified in accordance with departmental regulations. The notification ~~of~~ 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. ~~During the review process, the department shall determine~~ 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 ~~for this project and shall notify the applicant of this determination. The applicant has thirty days from the date of the receipt of this notice to submit any additional information. The review period for a completed application is sixty days from the date of notification of affected persons, or up to sixty days from the date that applicants are notified of the relative importance of project review criteria provided for in this section, whichever is longer. One extension of up to sixty days may be granted by the department in accordance with departmental regulations with the exception of an extension that is granted to comply with a request for a public hearing~~.

(B) ~~The department may hold a public hearing, if timely requested, to gather information and obtain public comment and opinion about the proposed project.~~

~~(C)~~ The department may not issue a Certificate of Need unless an application complies with the ~~State~~ South Carolina 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 ~~State~~ South Carolina 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 by the department.

~~(D)~~(C) On the basis of staff review of the application, the staff ~~of the department~~ shall make a ~~proposed~~ 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 ~~proposed department~~ decision must be sent to the applicant and affected persons who have asked to be notified. The ~~proposed department~~ decision becomes the final agency decision ~~within ten days after the receipt of a notice of the proposed decision by the applicant~~ 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.

~~(1)~~ ~~a reconsideration by the staff of the department is requested in writing within the ten‑day period by an affected person showing good cause for reconsideration of the proposed decision; or~~

~~(2)~~ ~~a contested case hearing before the board, or its designee, regarding the grant or denial of the Certificate of Need is requested in writing within the ten‑day period by the applicant or other affected person with standing to contest the grant or denial of the application.~~

~~Reconsideration by the staff must occur within thirty days from receipt of the request~~.

~~(E)~~(D) ~~The department’s proposed decision is not final until the completion of reconsideration or contested case proceedings. The burden of proof in a reconsideration or contested case hearing must be upon the moving party. The contested case hearing before the board or its designee is conducted as a contested case under the Administrative Procedures Act. The issues considered at the contested case hearing are limited to those presented or considered during the staff review and decision process.~~

~~(F)~~ ~~The department may not issue a Certificate of Need approval for a methadone treatment facility until licensure standards are promulgated by the department, in accordance with the Administrative Procedures Act, for these facilities. The department shall convene a study group to revise and propose licensure standards for methadone clinics. The study group shall consist of representatives of the department, the Department of Alcohol and Other Drug Abuse Services, methadone providers in South Carolina, and the Medical University of South Carolina. The licensure standards shall include standards for location of these facilities within the community. Methadone treatment facilities licensed as of January 1, 1997, must not be required to obtain a Certificate of Need pursuant to this section~~ 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) Notwithstanding any other provision of law, including Section 1‑23‑650(C), in a contested case arising from the department’s decision to grant or deny a Certificate of Need application, grant or deny a request for exemption under Section 44‑7‑170, or the issuance of a determination regarding the applicability of Section 44‑7‑160, the following apply:

(1) each party 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;

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

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

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

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

(G) Notwithstanding any other provision of law, in a contested case arising from the department’s decision to grant or deny a Certificate of Need application, grant or deny a request for exemption under Section 44‑7‑170, or the issuance of a determination regarding the applicability of Section 44‑7‑160, the Administrative Law Court shall file a final decision no later than eighteen months after the contested case is filed with the Clerk of the Administrative Law Court, unless all parties to the contested case consent to an extension or the court finds substantial cause otherwise.”

SECTION 12. Section 44‑7‑220 of the 1976 Code is amended to read:

“Section 44‑7‑220. (A) ~~After the contested case hearing is concluded and a final board decision is made, a party who participated in the contested case hearing and who is affected adversely by the board’s decision may obtain~~ A party who is aggrieved by the Administrative Law Court’s final decision may seek judicial review of the final decision in ~~the circuit court pursuant to the Administrative Procedures Act. An appeal taken to the circuit court from a decision of the board on a~~ 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 ~~has precedence on the court’s calendar and must be heard not later than forty‑five days from the date the petition is filed.~~

~~An applicant whose Certificate of Need application is denied by the board in favor of a competing application or a party adversely affected by the board’s decision~~ 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 ~~court for~~ the ~~circuit~~ Court of Appeals within five calendar days after ~~before the~~ filing ~~of a~~ the petition to appeal ~~a final decision of the board granting or denying a Certificate of Need~~. 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 ~~twenty~~ 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 ~~of the board~~ or dismisses the appeal, the Court of Appeals ~~may~~ shall award to the ~~applicant approved for the Certificate of Need who is a party to~~ party whose project is the subject of the appeal all ~~or a portion~~ of the bond and may also award reasonable attorney’s fees and costs incurred in the appeal. If ~~an applicant~~ a party appeals ~~only~~ the denial of ~~his~~ 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 ~~applicant~~ party filing the appeal is not required to deposit a bond with the ~~circuit~~ Court of Appeals.

(C)(1) ~~If, at any stage~~ Furthermore, if at the conclusion of the ~~appeal process involving the grant or denial of a Certificate of Need, 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 ~~to the applicant approved for the Certificate of Need in addition to awarding the approved applicant single or double costs incurred in the appeal. In the case of a frivolous appeal of a denial of a Certificate of Need which does not involve a competing application, the court may award costs incurred in the appeal to the department~~ 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 ~~section~~ subsection, ‘frivolous appeal’ means any one of the following:

(~~1~~a) ~~an appeal~~ taken solely for purposes of delay or harassment;

(~~2~~b) where no question of law is involved;

(~~3~~c) where the ~~appeal~~ contested case or judicial review is without merit.”

SECTION 13. Section 44‑7‑230(D) of the 1976 Code is amended to read:

“(D) A Certificate of Need is valid for ~~six months~~ one year from the date of issuance ~~except for projects involving construction or replacement of, or major renovations or additions to, an acute care hospital. For these projects the 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 ~~six~~ nine months each upon evidence that substantial progress has been made in accordance with procedures set forth in regulations. The board may grant further extensions of up to ~~six~~ 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 44‑7‑260(A)(5) and (11) of the 1976 Code is amended to read:

“(5) ~~chiropractic inpatient facilities~~ Reserved;

(11) ~~habilitation centers for the mentally retarded or persons with related conditions.~~ intermediate care facilities for the mentally retarded;”

SECTION 15. Section 44‑7‑260(A) is amended by adding at the end:

“(14) birthing centers.”

SECTION 16. Section 44‑7‑270 of the 1976 Code is amended to read:

“Section 44‑7‑270. Applicants for a license shall file annually, or as may be provided for in regulation, applications under oath with the department upon prescribed forms. An application must be signed by the owner, if an individual or a partnership, or in the case of a corporation by two of its officers, or in the case of a government unit by the head of the governmental department having jurisdiction over it. The application must set forth the full name and address of the facility for which the license is sought, as applicable, and the full name and address of the owner, the names of the persons in control, and additional information as the department may require, including affirmative evidence of ability to comply with standards and regulations adopted by the department. Each applicant shall pay ~~an annual~~ a license fee prior to issuance of a license as established by regulation. The department may charge an inspection fee.”

SECTION 17. Section 44‑7‑280 of the 1976 Code is amended to read:

“Section 44‑7‑280. Licenses issued pursuant to this article expire one year after date of issuance or annually upon uniform dates, or as otherwise prescribed by regulation. Licenses must be issued only for the premises and persons named in the application and are not transferable or assignable. Licenses must be posted in a conspicuous place on the licensed premises.”

SECTION 18. Section 44‑7‑315 of the 1976 Code, as amended by Act 372 of 2006, is further amended to read:

“Section 44‑7‑315. (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 the mentally retarded~~, or a group home operated by a county mental retardation board or the State Mental Retardation Department~~ must be disclosed publicly upon written request to the department. The request must be specific as to the facility or ~~home~~ 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 including a nursing home, a community residential care facility, or an intermediate care facility for the mentally retarded~~, or a group home~~. When a report of deficiencies or violations regarding a facility 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 the mentally retarded~~, or a group home~~ is present in the department’s files when a request for information is received, the department shall inform the applicant that it has stipulated corrective action and the time it determines for completion of the action. The department also shall inform the applicant that information on the resolution of the corrective action order is expected to be available upon written request within fifteen calendar days or less of the termination of time it determines for completion of the action. However, if information on the resolution is present in the files, it must be furnished to the applicant.

(B) ~~This section~~ Subsection (A) does not apply to information considered confidential pursuant to Section 40‑71‑20 and Section 44‑30‑60.”

SECTION 19. Section 44‑7‑320(A) of the 1976 Code is amended to read:

“(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) refusing to admit and treat alcoholic and substance abusers, the mentally ill, or the mentally retarded, 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 the mentally retarded solely because of the alcoholism, mental illness, or mental retardation;

(e) 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 ~~year~~ 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.”

SECTION 20. Article 3, Chapter 7, Title 44 of the 1976 Code is amended by adding:

“Section 44‑7‑225. 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.”

SECTION 21. Chapter 7, Title 44 of the 1976 Code is amended by adding:

“Section 44‑7‑285. A health care facility, as defined in this article, shall notify the department within thirty calendar days of a change in ownership or in controlling interest of the health care facility or entity owning a health care facility, directly or indirectly, by purchase, lease, gift, donation, sale of stock, or comparable arrangement. Failure to notify the department of such change within the thirty-day period may result in an administrative action under Section 44‑7‑320.”

SECTION 22. “Section 44‑7‑295. 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.”

SECTION 23. Section 1-23-600 of the 1976 Code, as last amended by Act 334 of 2008, is amended by adding an appropriately lettered subsection at the end to read:

“( ) If an attorney of record is called to appear in actions pending in other tribunals in this State, the action in the Administrative Law Court has priority as is appropriate. Courts and counsel have the obligation to adjust schedules to accord with the spirit of comity between the Administrative Law Court and other state courts.”

SECTION 24. Section 44‑7‑185 of the 1976 Code is repealed.

SECTION 25. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, 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 26. This act takes effect July 1, 2010; provided, the provisions of this act do not apply to any matter pending before a court of this state prior to June 1, 2010.

/s/Sen. Harvey S. Peeler, Jr. /s/Rep. James H. Harrison

/s/Sen. Raymond E. Cleary III /s/Rep. Cathy B. Harvin

/s/Sen. C. Bradley Hutto /s/Rep. Nathan Ballentine

On Part of the Senate. On Part of the House.

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