CHAPTER 7

Hospitals, Tuberculosis Camps, and Health Services Districts

ARTICLE 1

General Provisions

**SECTION 44‑7‑10.** Public hospitals may maintain eye banks.

Any State, county, district or other public hospital may purchase and provide the necessary facilities and equipment to establish and maintain an eye bank for restoration‑of‑sight purposes.

HISTORY: 1962 Code Section 32‑750; 1956 (49) 1768.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑20.** Disturbing patients with radios or musical instruments.

It shall be unlawful for any person to operate any radio or other musical instrument in such a manner that it annoys or disturbs any patient confined to a hospital or sanitarium. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than one hundred dollars or imprisonment of not more than thirty days.

HISTORY: 1962 Code Section 32‑751; 1952 Code Section 32‑751; 1942 Code Section 1396‑1; 1939 (41) 410.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Death and Right to Die Section 27, Professional Negligence.

**SECTION 44‑7‑30.** Defrauding hospitals.

Any person who shall:

(1) At any hospital order and receive or cause to be furnished any food or accommodation based upon contract with intent to defraud the owner or proprietor of such hospital out of the value or price of such food or accommodation contract;

(2) Obtain credit at any hospital by the use of any false pretense or device or by fraudulently depositing at such hospital any baggage or property of less value than the amount of such credit or of the bill by such person incurred, unless credit be given by express agreement; or

(3) After obtaining creditor accommodation based upon contract at any hospital, surreptitiously remove his baggage or property therefrom;

Shall be guilty of a misdemeanor. Proof (a) that lodging, food or other accommodation based upon contract was obtained by false pretense or by false or fictitious show or pretense of baggage, (b) that a person absconded without paying or offering to pay for such food, lodging or other accommodation based upon contract or (c) that a person surreptitiously removed or attempted to remove his baggage shall be prima facie proof of the fraudulent intent mentioned in this section. Any person convicted of violating the provisions of this section shall pay a fine of not more than fifty dollars or be imprisoned for not more than thirty days, in the discretion of the magistrate.

The provisions of this section shall not include the fees of physicians and surgeons.

HISTORY: 1962 Code Section 32‑752; 1952 Code Section 32‑752; 1942 Code Section 1219; 1932 Code Section 1219; Cr. C. ‘22 Section 107; Cr. C. ‘12 Section 300; 1911 (27) 150; 1917 (30) 165; 1939 (41) 115; 1940 (41) 1885.

CROSS REFERENCES

Crimes of forgery, larceny, embezzlement, false pretenses, and cheats, generally, see Sections 16‑13‑10 et seq.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

Attorney General’s Opinions

There is no statutory prohibition against a public hospital in South Carolina directly hiring physicians and nurses and then billing the patient for the physician’s fees. 1976‑77 Op.Atty.Gen. No. 77‑335, p. 266 (October 27, 1977) 1977 WL 24674.

**SECTION 44‑7‑40.** Conveyance to Federal Government of lands for veterans’ hospital.

The governing body of any county in this State in which the United States Government decides to locate or build a hospital for veterans may, by resolution passed by a majority vote of such body, convey to the United States Government in fee simple, free of all encumbrances, any lands now owned or hereafter acquired by it for the use and benefit of such veterans’ hospital, such conveyance to be without consideration and as a gift to the United States Government. Such deed of conveyance if made under the provisions of this section shall be signed by such officer or officers of the county as the resolution duly passed by such governing body may prescribe or provide. A certified copy of such resolution shall be recorded with the deed of conveyance so made.

HISTORY: 1962 Code Section 32‑754; 1952 Code Section 32‑754; 1942 Code Section 5148; 1932 Code Section 5148; 1931 (37) 334.

CROSS REFERENCES

Consent to acquisition by United States of lands needed for general public purposes, see Sections 3‑1‑10 et seq.

Library References

States 89.

Westlaw Topic No. 360.

C.J.S. States Sections 279 to 281.

**SECTION 44‑7‑50.** Modification of doctrines of charitable and sovereign immunity as they relate to hospitals and other medical facilities.

The doctrines of charitable and sovereign immunity as they relate to hospitals and other medical facilities in this State are hereby modified to the extent that any person sustaining an injury or dying by reason of the tortious act of commission or omission of agents, servants, employees or officers of a charitable hospital or medical facility or of a hospital or other medical facility operated or funded by the State, its agencies, departments, institutions, commissions, boards or political subdivisions may recover in any action brought against such hospital or other medical facility for such actual damages as he may sustain a sum not exceeding one hundred thousand dollars. Except as to licensed physicians and dentists, the judgment in an action under this section shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the charitable or governmental entity whose act or omission gave rise to the claim; and a plaintiff, when bringing an action under the provisions of this section, shall only name as a party defendant the entity for which the employee was acting and shall not name the employee individually unless the entity for which the employee was acting cannot be determined at the time the action is instituted. In the event the employee is individually named under the conditions permitted above, the entity for which the employee was acting shall be substituted as the party defendant when it can be so reasonably determined. The provisions of this section shall in no way limit or modify the liability of a licensed physician or dentist.

HISTORY: 1977 Act No. 182 Section 3.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

RESEARCH REFERENCES

ALR Library

26 ALR 5th 245 , Validity, Construction, and Application of State Statutory Provisions Limiting Amount of Recovery in Medical Malpractice Claims.

Encyclopedias

S.C. Jur. Charities Section 5, Charitable Immunity.

S.C. Jur. Hospitals Section 24, Charitable Immunity.

S.C. Jur. Medical and Health Professionals Section 44, Charitable Hospitals.

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 402, Tort Liability of Charitable Corporation and of Trustees for Charity.

Restatement (2d) of Torts Section 895B, States.

Restatement (2d) of Torts Section 895E, Charities.

LAW REVIEW AND JOURNAL COMMENTARIES

Action arising before July 1, 1986 not barred by sovereign immunity. 39 S.C. L. Rev. 198 (Autumn 1987).

Annual Survey of South Carolina Law: Torts. 30 S.C. L. Rev. 164.

Statute limiting liability of charitable hospital overruled. 39 S.C. L. Rev. 181 (Autumn 1987).

Attorney General’s Opinions

In light of the fact that doctors and physicians are professional persons with a higher obligation to their patients than the ordinary employees of a medical facility, there is a strong factual basis for their exemption from the limitations of [1977] Act No. 182; the classification of the Act is not suspect, is not outside the scope of the legislature to regulate sovereign/charitable immunity, and therefore is not unconstitutional. 1978 Op.Atty.Gen. No. 78‑67, p. 94 (April 3, 1978) 1978 WL 22548.

A charitable organization since August 31, 1981, (Fitzer v. Greater Greenville YMCA) is subject to liability for its tortious conduct the same as any other person or corporation. 1982 Op.Atty.Gen. No. 82‑3, p. 7 (January 20, 1982) 1982 WL 154973.

NOTES OF DECISIONS

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Validity 1

1. Validity

Charitable immunity statute was void ab initio and, thus, was unconstitutional from date of its enactment. Bergstrom v. Palmetto Health Alliance (S.C. 2004) 358 S.C. 388, 596 S.E.2d 42, rehearing denied. Charities 3

A statute which attempted to limit the liability of charitable hospitals to $100,000 violated equal protection and thus was unconstitutional where another statute limited the liability of all other charitable organizations to $200,000, but there was no rational basis for distinguishing between charitable hospitals and other charitable providers of goods and services. Hanvey v. Oconee Memorial Hosp. (S.C. 1992) 308 S.C. 1, 416 S.E.2d 623, rehearing denied. Constitutional Law 3754; Health 606

Although Section 44‑7‑50 was not, by express terms or by specific reference, overruled by Fitzer v Greater Greenville South Carolina YMCA (1981) 277 SC 1, 282 SE2d 230, 25 ALR4th 513, the court in its opinion in that case, by a clear implication, overruled statute and, in effect, overruled prior case and statutory law contrary to its holding in that case. Hasell v. Medical Soc. of South Carolina, Inc. (S.C. 1986) 288 S.C. 318, 342 S.E.2d 594.

2. In general

Substantial documentation supported a finding that a hospital was a charitable institution for purposes of the liability cap provided by Section 44‑7‑50, where the hospital introduced (1) the affidavit of its president and CEO that the hospital was non‑profit; and (2) federal and state tax documents supporting the position that the hospital was a charitable organization, and the opposing party presented no evidence refuting the hospital’s contention that it was a charitable organization. Laughridge v. Parkinson (S.C. 1991) 304 S.C. 51, 403 S.E.2d 120.

The cap on the amount of a charitable hospital’s liability imposed by Section 44‑7‑50, modifying the doctrine of charitable immunity, was applicable in a medical malpractice action where, at the time of the alleged malpractice, the statute was in effect and the case abolishing the doctrine of charitable immunity had not yet been decided; such case was not retroactively applicable, either wholly or to the extent that the hospital had liability insurance. Laughridge v. Parkinson (S.C. 1991) 304 S.C. 51, 403 S.E.2d 120.

A charitable hospital was not entitled to raise charitable immunity as a defense, and to a motion to strike punitive damages and to reduce the prayer to $100,000, in a wrongful death action against it, seeking actual and punitive damages, since an earlier Supreme Court decision abolishing charitable immunity had eliminated the restrictions on the doctrine set forth in Section 44‑7‑50. Phillips v. Oconee Memorial Hosp., Inc. (S.C. 1986) 290 S.C. 192, 348 S.E.2d 836.

A divorced husband could not recover against governmental entities which had employed both his former wife and the doctor, since, even if plaintiff’s divorce was caused by the doctor’s adulterous acts with a former wife, the doctrine of respondeat superior was inapplicable to render the defendants liable, nor could recovery be had on the theory that the defendants had aided and abetted the doctor in the commission of adultery, nor because the defendants had been negligent in failing to supervise the doctor and the former wife to prevent their acts of adultery. Morris v. Mooney (S.C. 1986) 288 S.C. 447, 343 S.E.2d 442.

A day school center for mentally retarded children is a school, not a hospital or other medical facility within the terms of Section 44‑7‑50, since the students assigned to the center are enrolled as students and attend during regular school hours, and the physical services given to center students, while more extensive than are such services to the student population as a whole, are the same as that provided for physically disabled students at one of the district’s other schools. Miller by Miller v. Gertz (S.C. 1986) 288 S.C. 119, 341 S.E.2d 620.

Under Section 44‑7‑50, defendant physician in a medical malpractice action was a “licensed physician”, and thus was not covered by any immunity, notwithstanding his contention that, as a professor of anesthesiology employed by the Medical University, he was an employee of a state‑supported hospital and thus was immune from suit; additionally, plaintiff was entitled to a new trial on the basis that the jury charge failed to make clear that the limit of $100,000 damages found in Section 44‑7‑50 applied only to the Medical University, and not to the physician. Moultrie v. Medical University of South Carolina (S.C. 1984) 280 S.C. 159, 311 S.E.2d 730.

3. Construction with other laws

Enactment of Section 44‑7‑50 did not repeal Section 44‑17‑900, expressly or by implication. Sharpe v. South Carolina Dept. of Mental Health (S.C. 1984) 281 S.C. 242, 315 S.E.2d 112.

4. Effective date

Brown v Anderson County Hospital Asso. (1977) 268 SC 479, 234 SE2d 873 (ovrld on other grounds Fitzer v Greater Greenville South Carolina YMCA, 277 SC 1, 282 SE2d 230, 25 ALR4th 513), held that abrogation of charitable immunity applies only to causes of action arising after May 10, 1977, and since legislature, in enacting Code 1976 Section 44‑7‑50, chose not to make such abrogation retroactive, court would not do so. Peters v. McCalla (D.C.S.C. 1978) 461 F.Supp. 14.

The bar of governmental immunity is removed by this section from county hospitals, but only for personal injuries occurring after June 10, 1977. Teague v. Cherokee County Memorial Hospital (S.C. 1979) 272 S.C. 403, 252 S.E.2d 296.

5. Summary judgment

In a tort action for damages by a mentally retarded person against the State Department of Mental Retardation, alleging that he was injured while under the care of one of its facilities, the trial court erred in granting summary judgment to the Department on the basis of sovereign immunity, where the record was not clear as to whether the facility was a “medical facility” within the meaning of Section 44‑7‑50. Shea by Reynolds v. State Dept. of Mental Retardation (S.C.App. 1983) 279 S.C. 604, 310 S.E.2d 819.

**SECTION 44‑7‑60.** Borrowing money by nonprofit public hospitals.

Notwithstanding any other provision of law, the governing board of any nonprofit public hospital in this State with the approval of the governing body of the county wherein such hospital is located which has borrowed money may continue to borrow money in the name of the hospital for general hospital purposes. “Borrowing money” as used herein shall include the authority to make notes or other evidences of debt and to secure payment thereof by placing a mortgage on any or all of its property, both real and personal.

HISTORY: 1978 Act No. 558.

CROSS REFERENCES

Municipalities providing hospital, nursing home, or care facilities, mortgages, see Section 6‑21‑185.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑70.** Report to State Board of Medical Examiners concerning action resulting in limitation upon physician’s privilege to practice in health care facility.

(A) The medical staff chief or medical director of a health care facility, as defined in Section 44‑7‑130, shall report in writing to the State Board of Medical Examiners the results of and the circumstances concerning an action resulting in the revocation or suspension of or other limitation upon, a physician’s privileges to practice in that health care facility. This report is not required in the case of:

(1) a nondisciplinary resignation by the physician; however, a resignation occurring after an incident or occurrence which could result in the revocation or suspension of or other limitation upon the physician’s privileges must be reported;

(2) a minor disciplinary action regarding the physician’s privileges in that health care facility when the action taken does not involve the revocation or suspension of or other limitation upon the physician’s privileges to practice there;

(3) a disciplinary action resulting from the physician’s failure to meet recordkeeping standards;

(4) a disciplinary action resulting from the physician’s failure to attend meetings; or

(5) other disciplinary actions as defined by regulation promulgated by the State Board of Medical Examiners.

(B) The medical staff chief or medical director of a health care facility, as defined in Section 44‑7‑130, shall report in writing to the State Board of Medical Examiners and to the Board of Podiatry Examiners the results of and the circumstances concerning an action resulting in the revocation or suspension of or other limitation upon, a podiatrist’s privileges to practice in that health care facility. This report is not required in the case of:

(1) a nondisciplinary resignation by the podiatrist; however, a resignation occurring after an incident or occurrence which could result in the revocation or suspension of or other limitation upon the podiatrist’s privileges must be reported;

(2) a minor disciplinary action regarding the podiatrist’s privileges in that health care facility when the action taken does not involve the revocation or suspension of or other limitation upon the podiatrist’s privileges to practice there;

(3) a disciplinary action resulting from the podiatrist’s failure to meet recordkeeping standards;

(4) a disciplinary action resulting from the podiatrist’s failure to attend meetings; or

(5) other disciplinary actions as defined by regulation promulgated by the Board of Podiatry Examiners.

(C) A person making a report required by this section is immune from criminal and civil liability in making the report, if the report is made in good faith and without malice.

HISTORY: 1986 Act No. 317; 1996 Act No. 241, Section 9.

CROSS REFERENCES

Confidentiality of hospital proceedings, data, documents, and information, see Section 44‑7‑392.

State Board of Medical Examiners generally, see Sections 40‑47‑10 et seq.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑77.** Program to obtain voluntary acknowledgment of paternity of newborns.

The Department of Health and Environmental Control and the State Department of Social Services, in conjunction with the South Carolina Hospital Association, shall develop and implement a program to promote obtaining voluntary acknowledgments of paternity as soon after birth as possible and where possible before the release of the newborn from the hospital. A voluntary acknowledgment including those obtained through an in‑hospital program shall contain the requirements of Section 63‑17‑60(A)(4) and the social security number, or the alien identification number assigned to a resident alien who does not have a social security number, of both parents, and must be signed by both parents. The signatures must be notarized. As part of its in‑hospital voluntary acknowledgment of paternity program, a birthing hospital as part of the birth registration process, shall collect, where ascertainable, information which is or may be necessary for the establishment of the paternity of the child and for the establishment of child support. The information to be collected on the father or on the putative father if paternity has not been established includes, but is not limited to, the name of the father, his date of birth, home address, social security number, or the alien identification number assigned to a resident alien who does not have a social security number, and employer’s name, and additionally for the putative father, the names and addresses of the putative father’s parents.

HISTORY: 1994 Act No. 481, Section 11; 1994 Act No. 513, Section 4; 1995 Act No. 102, Part VI, Section 7; 1997 Act No. 71, Section 8; 1999 Act No. 100, Part II, Section 105.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑78.** Authority to establish facilities, programs, and services in other locations.

Notwithstanding any other provision of law, an entity that operates a health care facility as defined in Section 44‑7‑130(10) may develop and operate facilities, programs, and services in any location where such facilities, programs, or services support the entity or provide services to residents in the area, provided all other statutory and regulatory requirements are met, including the State Certification of Need and Health Facility Licensure Act, Article 3, Chapter 7, Title 44 and related regulations promulgated by the department.

HISTORY: 2000 Act No. 387, Part II, Section 48B.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

ARTICLE 2

Medicaid Nursing Home Permits

**SECTION 44‑7‑80.** Definitions.

For the purposes of this article:

(1) “Nursing home” means a facility with an organized nursing staff to maintain and operate organized facilities and services to accommodate two or more unrelated persons over a period exceeding twenty‑four hours, which is operated either in connection with a hospital or as a freestanding facility for the express or implied purpose of providing intermediate or skilled nursing care for persons who are not in need of hospital care. Rehabilitative therapies may be provided on an outpatient basis.

(2) “Medicaid nursing home permit” means a permit to serve Medicaid patients in an appropriately certified nursing home.

(3) “Medicaid patient” means a person who is eligible for Medicaid (Title XIX) sponsored long‑term care services.

(4) “Medicaid patient day” means a day of nursing home care for which a nursing home receives Medicaid reimbursement.

(5) “Medicaid permit day” means a day of service provided to a Medicaid patient in a Medicaid‑certified nursing home which holds a Medicaid days permit.

(6) “Department” means the Department of Health and Environmental Control.

HISTORY: 1987 Act No. 184 Section 1; 2014 Act No. 152 (H.3978), Section 1, eff April 7, 2014.

Library References

Health 276.

Westlaw Topic No. 198H.

C.J.S. Social Security and Public Welfare Section 234.

**SECTION 44‑7‑82.** Permit requirement.

No nursing home may provide care to Medicaid patients without first obtaining a permit in the manner provided in this article.

HISTORY: 1987 Act No. 184 Section 1; 2014 Act No. 152 (H.3978), Section 1, eff April 7, 2014.

Library References

Health 276.

Westlaw Topic No. 198H.

C.J.S. Social Security and Public Welfare Section 234.

**SECTION 44‑7‑84.** Determination and allocation of Medicaid nursing home patient days; application for permit; rules and regulations.

(A) In the annual appropriations act, the General Assembly shall establish the maximum number of Medicaid patient days for which the department is authorized to issue Medicaid nursing home permits. The State Department of Health and Human Services shall provide the number of Medicaid patient days available to the department within thirty days after the effective date of the annual appropriations act.

(B) Based on a method the department develops for determining the need for nursing home care for Medicaid patients in each area of the State, the department shall determine the distribution of Medicaid patient days for which Medicaid nursing home permits can be issued. Nursing homes holding a Medicaid nursing home permit must be allocated Medicaid days based on their current allocation and available funds. Requests for days must be submitted to the department no later than June fifteenth each year. The department shall issue permits to the facilities by August first of each year. The application must state the specific number of Medicaid patient days the nursing home will provide. If a nursing home requests fewer days than the previous year, or is permitted fewer days, those days first must be offered to the facilities within the same county currently holding a Medicaid nursing home permit. However, if Medicaid patient days remain available after being offered to those nursing homes currently holding a Medicaid patient days permit in that county, then existing nursing homes with a restricted Certificate of Need, within the same county, may apply for a Medicaid nursing home permit to receive the Medicaid permit days remaining available. Following the initial allocation of Medicaid patient days, any additional Medicaid permit days must be credited to a statewide pool and the days must be allocated to those counties showing the greatest need based on the average number of fully eligible Medicaid nursing facility applicants by county in the Community Long Term Care awaiting placement reports for the past twelve months. The Department of Health and Human Services shall provide this information to the department no later than July fifteenth of each year. The Medicaid permit days must be proportionately allocated to each facility within the county that currently holds a Medicaid permit and is currently in compliance with its Medicaid permit. A facility is deemed to be in compliance for allocation of these additional Medicaid permit days if it has not exceeded its stated Medicaid permit by more than seven percent. In addition, a nursing home that provides less than ninety percent of the stated Medicaid permit in any fiscal year may not apply for additional Medicaid permit days in the next fiscal year. If a nursing home fails to provide ninety percent of the stated Medicaid permit days for two consecutive fiscal years, the department may issue a Medicaid nursing home permit for fewer days than requested in order to ensure that the nursing home will serve the minimum number of Medicaid patients and that the State will optimize the available Medicaid days. If a nursing home has its Medicaid patient days reduced, the freed days first must be offered to other facilities in the same county before being offered to other nursing homes in the State. The department shall analyze the performance of nursing homes that are under the permit minimum or exceed the permit maximum for a fiscal year, including utilization data from the State Department of Health and Human Services, anticipated back days, delayed payments, CLTC waiting list, and other factors considered significant by the department. A nursing home which terminates its Medicaid contract must not be penalized for not meeting the requirements of this section if the nursing home was in compliance with its permit at the time of the cancellation. Facilities designated as Special Focus Facilities may not be issued additional Medicaid permit days while they remain on the Special Focus list.

(C) If the Department of Health and Human Services or the General Assembly decreases the number of Medicaid patient days available to the department, the department shall proportionately decrease the authorized Medicaid patient days for each nursing home. If additional Medicaid patient days are authorized in the following year, they must be restored proportionately to each nursing home in accordance with subsection (B).

HISTORY: 1987 Act No. 184 Section 1; 1990 Act No. 612, Part II, Section 45; 1991 Act No. 171, Part II, Section 7; 1992 Act No. 501, Part II Section 53A; 1995 Act No. 145, Part II, Section 73A; 2014 Act No. 152 (H.3978), Section 1, eff April 7, 2014.

Library References

Health 276.

Westlaw Topic No. 198H.

C.J.S. Social Security and Public Welfare Section 234.

**SECTION 44‑7‑88.** Involuntary discharge or transfer of Medicaid nursing home patients prohibited; request for waiver of permit requirements.

Nursing home patients may not be involuntarily discharged or transferred due to the Medicaid status. If no Medicaid patients are waiting for admission to the nursing home, or if for some other reason a nursing home anticipates the possibility that the home cannot satisfy the Medicaid nursing home permit requirements, the home may request a waiver of the Medicaid permit requirements from the department.

HISTORY: 1987 Act No. 184 Section 1; 2014 Act No. 152 (H.3978), Section 1, eff April 7, 2014.

CROSS REFERENCES

Violations of Article, penalties, relocation of patients, report of daily Medicaid resident census information, see Section 44‑7‑90.

Library References

Health 276.

Westlaw Topic No. 198H.

C.J.S. Social Security and Public Welfare Section 234.

**SECTION 44‑7‑90.** Violations of Article; penalties; relocation of patients; report of daily Medicaid resident census information.

(A) Based on reports from the State Department of Health and Human Services, the department shall determine each nursing home’s compliance with its Medicaid nursing home permit. Violations of this article include:

(1) a nursing home exceeding by more than five percent the number of Medicaid patient days stated in its permit;

(2) the provisions of any Medicaid patient days by a home without a Medicaid nursing home permit.

(B) A nursing home which exceeds its Medicaid patient days stated in its permit may be fined on the number of Medicaid patient days exceeding the permit days multiplied by its daily Medicaid per diem. Medicaid permit days provided to Complex Care residents, as certified by the Department of Health and Human Services, must not be counted against the facility’s Medicaid permit for the first six months of their care. Any complex care provided after six months must be counted toward the facility’s Medicaid patient days under the permit days times their daily Medicaid per diem rate less the statewide average patient per diem recurring income times thirty percent. Complex Care reimbursement must not be used in the fine calculation. A facility may be fined incrementally for exceeding its Medicaid permit. Violations above five and up to ten percent of the stated permit may be fined at thirty percent of its Medicaid per diem rate less the statewide average patient per diem recurring income times the number of excess Medicaid permit days. A facility may be fined fifty percent of its Medicaid per diem rate less the statewide average patient per diem recurring income for each day above ten and up to fifteen percent of its Medicaid permit. A facility may be fined seventy percent of its Medicaid per diem rate less the statewide average patient per diem recurring income for each day in excess of fifteen percent of its stated Medicaid permit. A facility may appeal to the department any fine for days over its permit based on the facility’s inability to discharge a resident based on the requirements of Section 44‑7‑88 if the facility can prove:

(1) the resident’s primary pay source upon admission was not Medicaid;

(2) the resident did not convert to Medicaid within twenty days of being admitted as a Medicare or Medicaid replacement policy resident; and

(3) the resident did not convert to Medicaid within thirty days of being admitted as a private pay resident.

(C) In the event of a voluntary or involuntary discontinuation of participation of a nursing facility in the Medicaid program, the State must ensure that the facility provides for patient safety and freedom of choice. The Department of Health and Environmental Control and the Department of Health and Human Services must determine the availability of existing patient days statewide for the purpose of relocating these patients. Based upon this determination, the department, at its discretion, may reallocate the patient days from a facility discontinuing its Medicaid participation to a facility that participates in the Medicaid program and agrees to accept the residents from the facility that is discontinuing Medicaid participation. The Medicaid permit day shall permanently remain with the facility accepting the resident. In the allocation of patient days from the facility discontinuing Medicaid participation, the department must give first priority to restoring a county’s allocation where a facility holding a permit closes, or discontinues participation in Medicaid. A nursing home receiving beds under the provisions of this subsection must not be a Special Focus Facility at the time of allocation.

(D) Effective July 1, 2014, all nursing facility providers holding a Medicaid permit must report their daily Medicaid resident census information to the South Carolina Department of Health and Human Services or its contractor for the purpose of maintaining a statewide bed locator and permit day tracking system.

(E) Each Medicaid day above the allowable range is considered a separate violation. A fine assessed against a nursing home must be deducted from the nursing home’s Medicaid reimbursement.

HISTORY: 1987 Act No. 184 Section 1; 1995 Act No. 145, Part II, Section 73B; 2014 Act No. 152 (H.3978), Section 1, eff April 7, 2014.

Library References

Health 247.

Westlaw Topic No. 198H.

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.

CROSS REFERENCES

Hospital, licensed under this chapter, which violates prohibition against health care providers referring patient to entity in which provider has investment interest, is subject to regulations promulgated by Department of Health and Environmental Control; and such hospital, which discriminates against or penalizes health care provider for compliance with Provider Self‑Referral Act, is subject to civil penalty, see Section 44‑113‑30.

Minimum standards for licensing hospitals and institutional general infirmaries, see S.C. Code of Regulations R. 61‑16.100 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 6, Certificate of Need.

S.C. Jur. Drug and Alcohol Dependence Section 8, Enforcement.

S.C. Jur. Hospitals Section 32, Governmental Regulation.

S.C. Jur. Implied Contracts Section 6, Unjust Enrichment and Restitution.

Attorney General’s Opinions

Eastern Star Home in Sumter County is subject to the legislation requiring licensing of community residential care facilities. S.C. Op.Atty.Gen. (January 15, 1991) 1991 WL 634918.

Eastern Star Home is subject to the licensing and regulatory provisions of this statute. S.C. Op.Atty.Gen. (January 15, 1991) 1991 WL 634919.

The Board of Health and Environmental Control, pursuant to its grant of authority in Sections 32‑761 [1976 Code Section 44‑7‑110] et seq., of the South Carolina Code of Laws, 1962, as amended, and by its concommittant exercise of the State’s police power, may prescribe a regulation which requires that a hospital licensee will operate and maintain the number of beds limited by the hospital’s license if such regulation is deemed necessary by the Board. S.C. Op.Atty.Gen. (April 6, 1977) 1977 WL 24440.

NOTES OF DECISIONS

In general 1

1. In general

Former patients suffered no injury, as result of receiving unauthorized therapeutic cardiac catheterizations (TCC) by hospital staff, as required to support claim against hospital for unjust enrichment; even if hospital had been unjustly enriched in the form of tremendous revenues and profits from performing such highly lucrative, yet unlawful, procedures, patients would have received the TCCs from another provider had hospital not administered them. Dema v. Tenet Physician Services‑Hilton Head, Inc. (S.C. 2009) 383 S.C. 115, 678 S.E.2d 430. Implied And Constructive Contracts 3

In enacting the State Certification of Need and Health Facility Licensure Act (CON Act), the Legislature intended to advance the quality of health care provided in State for all people receiving the care, not for a particular individual. Dema v. Tenet Physician Services‑Hilton Head, Inc. (S.C. 2009) 383 S.C. 115, 678 S.E.2d 430. Health 240

Trial court did not lack subject matter jurisdiction to hear claims brought against hospital by former patients, claiming violations of South Carolina Unfair Trade Practices Act (SCUTPA), and unjust enrichment, based on patients’ allegations that they received unauthorized therapeutic cardiac catheterizations (TCC), in violation of State Certification of Need and Health Facility Licensure Act (CON Act); while Department of Health and Environmental Control (DHEC) had exclusive subject matter jurisdiction to determine whether a violation had occurred, it did not have subject matter jurisdiction to hear civil claims for damages resulting from those violations. Dema v. Tenet Physician Services‑Hilton Head, Inc. (S.C. 2009) 383 S.C. 115, 678 S.E.2d 430. Antitrust And Trade Regulation 282; Implied And Constructive Contracts 120

**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.

CROSS REFERENCES

Department of Health and Environmental Control regulations pertaining to certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 101 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Action Section 14, Determination of Private Rights.

S.C. Jur. Hospitals Section 32, Governmental Regulation.

S.C. Jur. Public Health Section 36, Current CON Program.

Attorney General’s Opinions

In enacting the CON Act, the legislature intended to advance the quality of healthcare provided in this state for all people receiving care, not for a particular individual. S.C. Op.Atty.Gen. (May 19, 2016) 2016 WL 3097464.

NOTES OF DECISIONS

In general 1

Private right of action 3

Regulations 2

1. In general

In enacting the State Certification of Need and Health Facility Licensure Act (CON Act), the Legislature intended to advance the quality of health care provided in State for all people receiving the care, not for a particular individual. Dema v. Tenet Physician Services‑Hilton Head, Inc. (S.C. 2009) 383 S.C. 115, 678 S.E.2d 430. Health 240

Denial of application for certificate of need for proposed endoscopy center by Department of Health and Environmental Control (DHEC), on basis that no unmet need for colonoscopy center existed and center would unnecessarily duplicate existing services, was not supported by substantial evidence; DHEC found that endoscopic procedures at proposed facility would cost less, have no adverse impact on existing facilities, and were supported by practical reasons, but narrowly defined issue as one of “facilities” without considering issue of “services,” as required under Certification of Need and Health Facility Licensure Act. Lloyd v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1997) 328 S.C. 419, 491 S.E.2d 592, rehearing denied, certiorari granted, cause remanded for settlement, vacated 332 S.C. 421, 504 S.E.2d 605. Health 243

In making determination of need for new medical facility under Certification of Need and Health Facility Licensure Act, Department of Health and Environmental Control (DHEC) is required to make comprehensive evaluation of application for certificate of need in light of stated purposes of Act, which includes not only whether facility may duplicate existing facilities, but relative merit of allowing that duplication to promote cost containment and establishment of high quality health facilities and services. Lloyd v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1997) 328 S.C. 419, 491 S.E.2d 592, rehearing denied, certiorari granted, cause remanded for settlement, vacated 332 S.C. 421, 504 S.E.2d 605. Health 239

2. Regulations

Department of Health and Environmental Control’s (DHEC) interpretation of bed transfer provision of State Health Plan, that issuance by DHEC of Certificate of Need (CON) for transfer of beds from an existing hospital to a hospital that had not yet been constructed was permitted, was reasonable and consistent with plain language of provision, as well as stated purpose of State Certification of Need and Health Facility Licensure Act, and thus Administrative Law Court (ALC) properly deferred to DHEC’s interpretation; preamble of provision indicated purpose of building flexibility into Plan when dealing with provider networks, no language in eight criteria listed in provision with which a CON applicant had to comply expressly or impliedly required that the receiving facility had to be in existence when CON application was submitted, and purpose of Act included establishment of health facilities and services that would best serve public needs. Trident Medical Center v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2015) 412 S.C. 341, 772 S.E.2d 177, certiorari denied. Health 240; Health 245

In making determination of need for new medical facility under Certification of Need and Health Facility Licensure Act, Department of Health and Environmental Control (DHEC) may not adopt mechanical test which focuses only on capacity to determine need for new facilities, and must consider circumstances which may affect availability of services at those facilities and how they relate to services at existing facilities. Lloyd v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1997) 328 S.C. 419, 491 S.E.2d 592, rehearing denied, certiorari granted, cause remanded for settlement, vacated 332 S.C. 421, 504 S.E.2d 605. Health 239

3. Private right of action

No private right of action may be implied from the State Certification of Need and Health Facility Licensure Act (CON Act); the enforcement mechanism of the CON Act is Department of Health and Environmental Control’s (DHEC) authority to impose sanctions and not civil liability. Dema v. Tenet Physician Services‑Hilton Head, Inc. (S.C. 2009) 383 S.C. 115, 678 S.E.2d 430. Action 3; Health 240

**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.

(7) “Day‑care facility for adults” means a facility for adults eighteen years or older which offers in a group setting a program of individual and group activities and therapies. The program is directed toward providing community‑based care for those in need of a supportive setting for less than twenty‑four hours a day, thereby preventing unnecessary institutionalization, and shall provide a minimum of four and a maximum of fourteen hours of operation a day.

(8) “Department” means the Department of Health and Environmental Control.

(9) “The federal act” means Title VI of the United States Public Health Service Act (the Hill‑Burton Construction Program); Title XVI of the United States Public Health Service Act (National Health Planning and Resources Development Act of 1974—Public Law 93‑641); grants for all center and facility construction under Public Law 91‑211 (community mental health centers’ amendments to Title II, Public Law 88‑164, Community Mental Health Centers Act); grants for all facility construction under Public Law 91‑517 (developmental disabilities services and facilities construction amendments of 1970 to Part C, Title I, grants for construction of facilities for persons with intellectual disability—Public Law 88‑164); and other federal programs as may exist or be enacted which provide for the construction of hospitals or related health facilities.

(10) “Health care facility” means acute care hospitals, psychiatric hospitals, alcohol and substance abuse hospitals, nursing homes, ambulatory surgical facilities, hospice facilities, radiation therapy facilities, rehabilitation facilities, residential treatment facilities for children and adolescents, intermediate care facilities for persons with intellectual disability, narcotic treatment programs, and any other facility for which Certificate of Need review is required by federal law.

(11) “Health service” means clinically related, diagnostic, treatment, or rehabilitative services and includes alcohol, drug abuse, and mental health services for which specific standards or criteria are prescribed in the State Health Plan.

(12) “Hospital” means a facility organized and administered to provide overnight medical or surgical care or nursing care of illness, injury, or infirmity and may provide obstetrical care, and in which all diagnoses, treatment, or care is administered by or under the direction of persons currently licensed to practice medicine, surgery, or osteopathy.

Hospital may include residential treatment facilities for children and adolescents in need of mental health treatment which are physically a part of a licensed psychiatric hospital. This definition does not include facilities which are licensed by the Department of Social Services.

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

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

(15) “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 of two or more “children and adolescents in need of mental health treatment” which provides:

(a) a special education program with a minimum program defined by the South Carolina Department of Education;

(b) recreational facilities with an organized youth development program; and

(c) residential treatment for a child or adolescent in need of mental health treatment.

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

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

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

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

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

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

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

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

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

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

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; 2014 Act No. 173 (H.3567), Section 1, eff May 16, 2014; 2017 Act No. 10 (S.354), Section 1, eff April 24, 2017.

Effect of Amendment

2017 Act No. 10, Section 1, added (26), definition of “Crisis stabilization unit facility”.

CROSS REFERENCES

Department of Health and Environmental Control regulations, see S.C. Code of Regulations R. 61‑1 et seq.

Designating a family member with whom provider may discuss medical condition, exemptions, see Section 44‑66‑75.

Duty to notify coroner’s or medical examiner’s office of certain deaths and stillbirths, see Section 17‑5‑530.

Fee on all Intermediate Care Facilities for the Mentally Retarded, see Section 44‑20‑355.

Investigations of deaths in facilities operated by the Department of Mental Health or the Department of Disabilities and Special Needs, death by natural causes in a veterans’ nursing home, see Section 43‑35‑520.

Smoking prohibited in health care facilities, see Section 44‑95‑20.

Use of definition of “health care facility” in Provider Self‑Referral Act of 1993, see Section 44‑113‑20.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 6, Certificate of Need.

S.C. Jur. Hospitals Section 2, Definitions.

S.C. Jur. Public Health Section 40, Competing Applicants.

Attorney General’s Opinions

The term “health care facilities” includes various types of hospitals and hospital‑type facilities, but also areas beyond the main hospital itself, like parking. S.C. Op.Atty.Gen. (September 27, 2005) 2005 WL 2652377.

Discussion of “enclosed private offices” and whether a state agency can ban smoking within a building. S.C. Op.Atty.Gen. (February 15, 1991) 1991 WL 474743.

There is no statutory prohibition against a public hospital in South Carolina directly hiring physicians and nurses and then billing the patient for the physician’s fees. S.C. Op.Atty.Gen. (October 27, 1977) 1977 WL 24674.

Federal regulations require that if an intermediate care facility wishes to be eligible for federal medical assistance, unlicensed persons must complete the State‑approved training program in medication administration. S.C. Op.Atty.Gen. (September 1, 1976) 1976 WL 23053.

Licensing of intermediate care facilities and nursing homes distinguished. The care provided for patients in intermediate care facilities appears to be primarily domiciliary, and such facilities should be licensed by the Department of Public Welfare. More intensive care is required in skilled nursing homes, and such homes should continue to be licensed by the State Board of Health. S.C. Op.Atty.Gen. (November 4, 1969) 1969 WL 10753.

NOTES OF DECISIONS

Competing applicants 2

MRI facilities 1

1. MRI facilities

State Health Plan could differentiate between different types of medical providers, such as hospitals and mobile health service providers, even though no specific provision in the statutes on certificates of need (CON Act) authorized hospitals to be treated differently vis‑a‑vis standards of need for magnetic resonance imaging (MRI) services; first Plan standard, that every hospital should have at least one MRI unit available for diagnosis of emergency patients, inpatients, and outpatients, only satisfied requirements for hospitals to show need, while other health care facilities would have to document need separately, and ability of the Plan to differentiate between different types of medical providers was essential to CON Act process. MRI at Belfair, LLC v. South Carolina Dept. of Health and Environmental Control (S.C. 2008) 379 S.C. 1, 664 S.E.2d 471. Health 240

2. Competing applicants

Hospital, which applied to Department of Health and Environmental Control (DHEC) for Certificate of Need (CON) to transfer 50 hospital beds to new facility in service area, and medical center, which applied for CON to build new 50‑bed facility in same service area, were not “competing applicants” under State Certification of Need and Health Facility Licensure Act, and DHEC thus was not precluded from granting both applications, where hospital did not seek to add new beds to service area, but merely sought to transfer beds that were already available for use in the service area to a location in same service area that would be more convenient to existing patients, and medical center’s proposed addition of beds to the service area would fill a need already documented in the State Health Plan’s hospital inventory. Trident Medical Center v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2015) 412 S.C. 341, 772 S.E.2d 177, certiorari denied. Health 240

Administrative Law Court (ALC), in contested case hearing on two health care providers’ applications for certificates of need for two additional radiation treatment centers in three county service area, made sufficiently specific findings of fact, as required to support decision awarding both certificates of need; even if ALC failed to explicitly “choose” one provider’s set of data over the other and listed both providers’ sets of data projections, legal analysis outlined in the ALC order demonstrated an acceptance of one provider’s predictions by specifically taking into account service area’s aging population, since only one provider’s data projections had separated the data by age cohorts. Spartanburg Regional Medical Center v. Oncology and Hematology Associates of South Carolina, LLC (S.C. 2010) 387 S.C. 79, 690 S.E.2d 783. Health 242

Substantial evidence supported finding of Department of Health and Environmental Control (DHEC), that two health care providers’ applications for certificates of need for development of two additional radiation oncology centers in three‑county service area were not in competition with each other, and thus certificates of need could be awarded to both providers; population data for service area, age‑specific cancer incidence data from the National Cancer Institute’s Surveillance, Epidemiology, and End Results (SEER) program, and testimony of medical oncologist supported finding that development of two additional centers would not exceed the need for radiation treatment in area. Spartanburg Regional Medical Center v. Oncology and Hematology Associates of South Carolina, LLC (S.C. 2010) 387 S.C. 79, 690 S.E.2d 783. Health 240

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

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

HISTORY: 1962 Code Section 32‑762.1; 1952 Code Section 32‑762.1; 1951 (47) 132; 1971 (57) 376; 1979 Act No. 51 Section 1; 1988 Act No. 397, Section 4. 670, Section 1.

CROSS REFERENCES

Department of Health and Environmental Control regulations pertaining to certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 101 et seq.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 36, Current CON Program.

Attorney General’s Opinions

The recent amendment to section 44‑7‑140, which provides an exemption from the certificate of need process for “any federal health care facility sponsored and operated by this State,” would be deemed constitutional if challenged on the basis of equal protection. S.C. Op.Atty.Gen. (April 5, 1988) 1988 WL 383513.

**SECTION 44‑7‑150.** Duties of department.

In carrying out the purposes of this article, the department shall:

(1) require reports and make inspections and investigations as considered necessary;

(2) to the extent that is necessary to effectuate the purposes of this article, enter into agreements with other departments, commissions, agencies, and institutions, public or private;

(3) adopt in accordance with Article I of the Administrative Procedures Act substantive and procedural regulations considered necessary by the department and approved by the board to carry out the department’s licensure and Certificate of Need duties under this article, including regulations to deal with competing applications;

(4) accept on behalf of the State and deposit with the State Treasurer, any grant, gift, or contribution made to assist in meeting the cost of carrying out the purpose of this article and expend it for that purpose;

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

HISTORY: 1962 Code Section 32‑764; 1952 Code Section 32‑764; 1947 (45) 510; 1971 (57) 376; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1; 2010 Act No. 278, Section 4, eff July 1, 2010.

CROSS REFERENCES

Department of Health and Environmental Control regulations pertaining to certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 101 et seq.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

NOTES OF DECISIONS

Funding 2

MRI facilities 1

1. MRI facilities

State Health Plan could differentiate between different types of medical providers, such as hospitals and mobile health service providers, even though no specific provision in the statutes on certificates of need (CON Act) authorized hospitals to be treated differently vis‑a‑vis standards of need for magnetic resonance imaging (MRI) services; first Plan standard, that every hospital should have at least one MRI unit available for diagnosis of emergency patients, inpatients, and outpatients, only satisfied requirements for hospitals to show need, while other health care facilities would have to document need separately, and ability of the Plan to differentiate between different types of medical providers was essential to CON Act process. MRI at Belfair, LLC v. South Carolina Dept. of Health and Environmental Control (S.C. 2008) 379 S.C. 1, 664 S.E.2d 471. Health 240

2. Funding

Governor’s line item veto of appropriations bill provision providing funding for the certificate of need (CON) program nullified only the funding for the CON program and any other programs included in that line item; it did not nullify the program itself, which was mandated by permanent law enacted by the General Assembly years earlier. Amisub of South Carolina, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 2014) 407 S.C. 583, 757 S.E.2d 408, rehearing denied. Statutes 1045

Although Governor’s line item veto effectively struck the funding in appropriations act for the certificate of need (CON) program, in sustaining the veto, the General Assembly did not intend to suspend the CON program, and thus, the Department of Health and Human Services (DHEC) had a duty to administer the CON program, as contemplated by the State Certification of Need and Health Facility Licensure Act (CON Act). Amisub of South Carolina, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 2014) 407 S.C. 583, 757 S.E.2d 408, rehearing denied. Health 240

Department of Health and Human Services (DHEC) was obligated to fund certificate of need (CON) program despite the appropriations act’s failure to appropriate funding for the program; under the State Certification of Need and Health Facility Licensure Act (CON Act), DHEC’s responsibility to administer the CON Act was not discretionary and it encompassed funding the CON program, which could be achieved by either adopting a fee structure to support the program or by transferring appropriations within the DHEC. Amisub of South Carolina, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 2014) 407 S.C. 583, 757 S.E.2d 408, rehearing denied. States 132

**SECTION 44‑7‑160.** Certificate of Need required under certain circumstances.

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 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 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.

CROSS REFERENCES

Department of Health and Environmental Control regulations pertaining to certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 101 et seq.

Division of Consumer Advocacy to provide legal representation of consumer interest concerning certificates of need for health facilities and services as required under this section, see Section 37‑6‑604.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Death and Right to Die Section 27, Professional Negligence.

S.C. Jur. Drug and Alcohol Dependence Section 6, Certificate of Need.

S.C. Jur. Public Health Section 37, Projects Requiring CON Review.

Attorney General’s Opinions

The Board of Health and Environmental Control, pursuant to its grant of authority in Sections 32‑761 [1976 Code Section 44‑7‑110] et seq., of the South Carolina Code of Laws, 1962, as amended, and by its concommittant exercise of the State’s police power, may prescribe a regulation which requires that a hospital licensee will operate and maintain the number of beds limited by the hospital’s license if such regulation is deemed necessary by the Board. 1976‑77 Op.Atty.Gen. No. 77‑98, p. 87 (April 6, 1977) 1977 WL 24440.

State agencies and institutions subject to the requirements of the State Health Planning and Franchising System, under Public Law 93‑641, must offer to employees the option to subscribe to federally‑recognized health maintenance organizations in lieu of other health benefit and insurance programs offered to such employees; employees electing the HMO option are entitled to have premiums or subscription costs for membership in an authorized HMO deducted from their payroll and paid directly to the HMO; payroll deductions are available to eligible employees who select such option whether or not 500 or more employees subscribe to an HMO plan. 1982 Op.Atty.Gen. No. 82‑31, p. 35 (May 11, 1982) 1982 WL 155001.

A court considering an appeal as to the issuance of a certificate of need at such time as H.2101, as amended, is enacted, would likely conclude that a certificate of need is no longer necessary for health care facilities owned and operated by the federal government or any federal health care facility sponsored and operated by the State of South Carolina. 1988 Op.Atty.Gen. No. 88‑19, p. 66 (March 2, 1988) 1988 WL 383502.

NOTES OF DECISIONS

In general 1

Construction with other laws 2

Sufficiency of evidence 3

1. In general

Department of Health and Environmental Control’s (DHEC) method of allocating costs in determining that total project cost of health care facility’s purchase of magnetic resonance imaging (MRI) equipment in connection with facility’s new imaging center was less than $600,000, such that facility was not required to apply for a certificate of need (CON), by which DHEC allocated an equal portion of shared capital costs to each piece of equipment to be purchased by facility, failed to provide a reasonable estimate of project’s true cost, as required by State Certification of Need and Health Facility Licensure Act (CON Act); DHEC conceded that the MRI was the key financial producer and main expenditure for new imaging center, and, thus, treating the other lesser pieces of equipment equally did not reflect project’s true costs and resulted in an artificial reduction in total project cost. MRI at Belfair, LLC v. South Carolina Dept. of Health and Environmental Control (S.C. 2011) 392 S.C. 314, 709 S.E.2d 626. Health 240

In making determination of need for new medical facility under Certification of Need and Health Facility Licensure Act, Department of Health and Environmental Control (DHEC) is required to make comprehensive evaluation of application for certificate of need in light of stated purposes of Act, which includes not only whether facility may duplicate existing facilities, but relative merit of allowing that duplication to promote cost containment and establishment of high quality health facilities and services. Lloyd v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1997) 328 S.C. 419, 491 S.E.2d 592, rehearing denied, certiorari granted, cause remanded for settlement, vacated 332 S.C. 421, 504 S.E.2d 605. Health 239

2. Construction with other laws

Unfair Trade Practices Act (UTPA) did not apply, under UTPA regulatory exemption, to medical services provider’s application to and approval by Department of Health and Environmental Control (DHEC) for exemption from certification requirements to purchase magnetic resonance imaging (MRI) machines, in competitor’s suit alleging provider gave DHEC false information in order to avoid certification procedure in violation of UTPA; legislature designated DHEC as sole agency for control of Certificates of Need and licensure of health facilities, whether provider followed DHEC procedures was uniquely within agency’s expertise. InMed Diagnostic Services, L.L.C. v. MedQuest Associates, Inc. (S.C.App. 2004) 358 S.C. 270, 594 S.E.2d 552, rehearing denied, certiorari denied. Antitrust And Trade Regulation 152

3. Sufficiency of evidence

Evidence supported conclusion that it was unreasonable for Department of Health and Environmental Control to rely on appraisal valuing property on which health care facility was to open new magnetic resonance imaging (MRI) center at $500,000 in determining that total project cost of facility’s purchase of magnetic resonance imaging (MRI) equipment in connection with facility’s new imaging center was less than $600,000, such that facility was not required to apply for certificate of need (CON); there was evidence that building on property measured 5,083 square feet, yet the appraisal stated building was only 5,016 square feet, and appraisal deducted from value of building to account for cost of mold remediation estimated at $30,000, but there was evidence that actual cost of remediation was only $1,200. MRI at Belfair, LLC v. South Carolina Dept. of Health and Environmental Control (S.C. 2011) 392 S.C. 314, 709 S.E.2d 626. Health 243

Denial of application for certificate of need for proposed endoscopy center by Department of Health and Environmental Control (DHEC), on basis that no unmet need for colonoscopy center existed and center would unnecessarily duplicate existing services, was not supported by substantial evidence; DHEC found that endoscopic procedures at proposed facility would cost less, have no adverse impact on existing facilities, and were supported by practical reasons, but narrowly defined issue as one of “facilities” without considering issue of “services,” as required under Certification of Need and Health Facility Licensure Act. Lloyd v. South Carolina Dept. of Health and Environmental Control (S.C.App. 1997) 328 S.C. 419, 491 S.E.2d 592, rehearing denied, certiorari granted, cause remanded for settlement, vacated 332 S.C. 421, 504 S.E.2d 605. Health 243

Substantial evidence supported the denial by the Board of Health and Environmental Control of a hospital’s application for a certificate of need to construct a new general hospital where the board found that (1) the proposed hospital would result in an unnecessary duplication of services, creating added expense for patients, (2) the proposed hospital would have a negative impact on the occupancy rates of existing hospitals, and (3) 90 percent of the population could reach existing hospitals within 30 minutes. Roper Hosp. v. Board of South Carolina Dept. of Health and Environmental Control (S.C. 1991) 306 S.C. 138, 410 S.E.2d 558. Health 239; Health 243

**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;

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

(B) This article does not apply to:

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

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

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

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

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

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

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

(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 Act No. 27, Section 1, eff upon approval (became law without the Governor’s signature on May 15, 2003); 2010 Act No. 278, Section 6, eff July 1, 2010; 2017 Act No. 10 (S.354), Section 2, eff April 24, 2017.

Effect of Amendment

2017 Act No. 10, Section 2, in (A), in (3), substituted a semicolon for a period at the end, and added (4), relating to crisis stabilization unit facilities.

CROSS REFERENCES

“Crisis stabilization unit facilities” defined, see Section 44‑7‑130.

Department of Health and Environmental Control regulations pertaining to certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 101 et seq.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 6, Certificate of Need.

S.C. Jur. Public Health Section 38, Exemptions.

Attorney General’s Opinions

A court considering an appeal as to the issuance of a certificate of need at such time as H.2101, as amended, is enacted, would likely conclude that a certificate of need is no longer necessary for health care facilities owned and operated by the federal government or any federal health care facility sponsored and operated by the State of South Carolina. 1988 Op.Atty.Gen. No. 88‑19, p. 66 (March 2, 1988) 1988 WL 383502.

NOTES OF DECISIONS

Review 1

1. Review

Exemption of hospital’s competitor from process of obtaining a certificate of need (CON) or a Non‑Applicability Determination (NAD) for its urgent care center, based on status of urgent care center as the office of a licensed private practitioner, did not require a formal written, determination by Department of Health and Environmental Control (DHEC) and, therefore, did not give rise to jurisdiction of Administrative Law Court over contested case proceeding brought by hospital. Amisub of South Carolina, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 2013) 403 S.C. 576, 743 S.E.2d 786. Health 245

**SECTION 44‑7‑180.** Health planning committee; appointment, composition, terms, and allowances; State Health Plan; fees to cover costs of certificate of need program.

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

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

(1) an inventory of existing health care facilities, beds, specified health services, and equipment;

(2) projections of need for additional health care facilities, beds, health services, and equipment;

(3) standards for distribution of health care facilities, beds, specified health services, and equipment including scope of services to be provided, utilization, and occupancy rates, travel time, regionalization, other factors relating to proper placement of services, and proper planning of health care facilities; and

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

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

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

HISTORY: 1962 Code Section 32‑768; 1952 Code Section 32‑768; 1947 (45) 510; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1; 1992 Act No. 511, Section 8; 2010 Act No. 278, Section 7, eff July 1, 2010.

CROSS REFERENCES

Consumer Advocate, see Section 37‑6‑601.

Department of Health and Environmental Control regulations pertaining to certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 101 et seq.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 6, Certificate of Need.

S.C. Jur. Public Health Section 36, Current CON Program.

NOTES OF DECISIONS

State health plan 1

1. State health plan

The issue of whether the State Health Plan standards satisfy statutory requirements of legislation on certificates of need (CON Act) is a legal conclusion based on statutory interpretation principles, and, thus, no factual findings are necessary to determine compliance with statute that governs how the Plan is to be submitted, revised, and adopted. MRI at Belfair, LLC v. South Carolina Dept. of Health and Environmental Control (S.C. 2008) 379 S.C. 1, 664 S.E.2d 471. Health 242

**SECTION 44‑7‑190.** Project Review Criteria; weighing of criteria.

(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, 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, 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.

CROSS REFERENCES

Regulations pertaining to project review criteria, see S.C. Code of Regulations R. 61‑15 Section 801 and 61‑15 Section 802.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 6, Certificate of Need.

**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.

CROSS REFERENCES

Application procedures, certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 201 and 61‑15 Section 202.

Disposition of application, certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 301 to 61‑15 Section 312.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 6, Certificate of Need.

**SECTION 44‑7‑210.** Certificate of Need review procedures.

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

(B) The department may not issue a Certificate of Need unless an application complies with the 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 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.

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

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

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

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

(F) 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.

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.

CROSS REFERENCES

Department of Health and Environmental Control regulations governing certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 101 et seq.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 6, Certificate of Need.

S.C. Jur. Public Health Section 36, Current CON Program.

S.C. Jur. Public Health Section 40, Competing Applicants.

S.C. Jur. Public Health Section 43, Decision on CON Applications.

S.C. Jur. Public Health Section 47, Board Review.

NOTES OF DECISIONS

In general 1

Contested cases 3

MRI facilities 2

Sufficiency of evidence 4

1. In general

Under the State Certification of Need and Health Facility Licensure Act, when the Department of Health and Environmental Control (DHEC) considers competing applications, it must award a Certificate of Need (CON) for hospital construction on the basis of which applicant most fully complies with the Act, the State Health Plan, project review criteria, and applicable DHEC regulations. Trident Medical Center v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2015) 412 S.C. 341, 772 S.E.2d 177, certiorari denied. Health 240

2. MRI facilities

Hospital’s application for a certificate of need (CON) for fixed magnetic resonance imaging (MRI) services needed to comply with project review criteria, as well as the State Health Plan, although first Plan standard stated that every hospital should have at least one MRI unit available for diagnosis of emergency patients, inpatients, and outpatients; Plan and project review criteria were separate and distinct requirements that needed to be met as part of the CON application process. MRI at Belfair, LLC v. South Carolina Dept. of Health and Environmental Control (S.C. 2008) 379 S.C. 1, 664 S.E.2d 471. Health 240; Health 241

3. Contested cases

Letter from Department of Health and Environmental Control (DHEC), declining hospital’s request for final review conference on whether competitor was required to obtain certificate of need (CON) or Non‑Applicability Determination (NAD) to operate urgent care center, did not give rise to a final agency decision subject to a contested case proceeding, despite reference in letter to statute providing that a department decision became final if a final review conference was not timely conducted, as there was no original decision that could have become final; competitor neither sought nor received formal approval for a CON or a NAD, and there was no license, order, or decision issued. Amisub of South Carolina, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 2013) 403 S.C. 576, 743 S.E.2d 786. Health 245

In permitting case for outpatient surgical clinic, ALJ could consider evidence not introduced at staff review hearing; evidence went to issues considered at staff review hearing and, because ALJ was conducting a de novo hearing, he could consider the evidence in his pursuit to make sufficiently detailed findings of fact for subsequent review. Marlboro Park Hosp. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2004) 358 S.C. 573, 595 S.E.2d 851, rehearing denied. Health 243

When reviewing a contested permitting case on appeal, the ALJ, as the fact‑finder, must make sufficiently detailed findings supporting the denial or grant of a permit application; detailed findings enable an appellate court to determine whether such findings are supported by the evidence. Marlboro Park Hosp. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2004) 358 S.C. 573, 595 S.E.2d 851, rehearing denied. Administrative Law And Procedure 485

4. Sufficiency of evidence

Evidence supported ALJ’s finding that certificate of need for outpatient surgical clinic did not comply with State Health Plan, and thus was to be denied; evidence showed that clinic would have adverse impact on existing hospitals, and that there was no need for clinic. Marlboro Park Hosp. v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2004) 358 S.C. 573, 595 S.E.2d 851, rehearing denied. Health 243

**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.

CROSS REFERENCES

Department of Health and Environmental Control regulations governing certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 101 et seq.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 6, Certificate of Need.

S.C. Jur. Public Health Section 48, Judicial Review.

Attorney General’s Opinions

State agencies and institutions subject to the requirements of the State Health Planning and Franchising System, under Public Law 93‑641, must offer to employees the option to subscribe to federally‑recognized health maintenance organizations in lieu of other health benefit and insurance programs offered to such employees; employees electing the HMO option are entitled to have premiums or subscription costs for membership in an authorized HMO deducted from their payroll and paid directly to the HMO; payroll deductions are available to eligible employees who select such option whether or not 500 or more employees subscribe to an HMO plan. 1982 Op.Atty.Gen. No. 82‑31, p. 35 (May 11, 1982) 1982 WL 155001.

NOTES OF DECISIONS

In general 1

1. In general

Trial judge erred in failing to dismiss petition for judicial review of Health and Environmental Control Board’s decision to remand to the Health and Environmental Control Department hospital service suppliers’ application for certificate of need, since that decision was merely interlocutory, and not a final agency decision subject to judicial review. (Decided under former Section 44‑7‑375). South Carolina Baptist Hosp. v. South Carolina Dept. of Health and Environmental Control (S.C. 1987) 291 S.C. 267, 353 S.E.2d 277.

**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.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 53, Applications for License.

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

(A) The Certificate of Need, if issued, is valid only for the project described in the application including location, beds and services to be offered, physical plant, capital or operating costs, or other factors as set forth in the application, except as may be modified in accordance with regulations. The department shall require periodic reports and make inspections to determine compliance with the Certificate of Need. Implementation of the project or operation of the facility or medical equipment that is not in accordance with the Certificate of Need application or conditions subsequently agreed to by the applicant and the department may be considered a violation of this article.

(B) In issuing a Certificate of Need, the department shall specify the maximum capital expenditure obligated under the certificate. The department shall prescribe the method used to determine capital expenditure maximums, establish procedures to monitor capital expenditures obligated under certificates, and establish procedures to review projects for which the capital expenditure maximum is exceeded or expected to be exceeded.

(C) Prior to any construction authorized by a Certificate of Need, final drawings and specifications prepared by an architect or engineer legally registered under the laws of this State must be submitted to the department for approval. All construction must be completed in accordance with approved plans and specifications and prior approval must be obtained from the department for any changes that substantially alter the scope of work, function of construction, or major items of equipment, safety, or cost of the facility during construction.

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

(E) A Certificate of Need is nontransferable. A Certificate of Need or rights thereunder may not be sold, assigned, leased, transferred, mortgaged, pledged, or hypothecated, and any actual transfer or attempt to make a transfer of this sort results in the immediate voidance of the Certificate of Need. The sale or transfer of the controlling interest or majority ownership in a corporation, partnership, or other entity holding, either directly or indirectly, a Certificate of Need, results in the transfer and voidance of a Certificate of Need.

HISTORY: 1962 Code Section 32‑773; 1952 Code Section 32‑773; 1947 (45) 510; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1; 1990 Act No. 471, Section 5; 1992 Act No. 511, Sections 11, 12; 2010 Act No. 278, Section 13, eff July 1, 2010.

CROSS REFERENCES

Department of Health and Environmental Control regulations governing certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 101 et seq.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 6, Certificate of Need.

S.C. Jur. Hospitals Section 9, Establishment and Maintenance of Public Hospitals.

S.C. Jur. Public Health Section 49, Voidance and Extension Procedures.

S.C. Jur. Public Health Section 50, Nontransferability.

NOTES OF DECISIONS

In general 1

1. In general

Administrative Law Court (ALC) was not precluded under the Certification of Need and Health Facility Licensure Act from considering project review criteria prior to making its determination as to whether hospital’s modifications to its magnetic resonance imaging (MRI) project were substantial enough to void its certificate of need (CON); as a prerequisite to obtaining a CON, hospital was required to address how its project would comply with relevant project review criteria, and other factors set forth in hospital’s application would have been appropriate when determining whether CON was valid. MRI at Belfair, LLC v. South Carolina Dept. of Health and Environmental Control (S.C.App. 2011) 394 S.C. 567, 716 S.E.2d 111, rehearing denied. Health 240

**SECTION 44‑7‑240.** Construction program.

The department may establish a construction program providing for adequate facilities in this State and, insofar as possible, shall provide for the distribution of facilities and services throughout this State in such manner as to make all types of health services reasonably accessible to all persons in this State. The State Health Plan as required by this article may be used for purposes of establishing the relative need of projects for which applications are submitted under this construction program. Submittal of applications and review and approval of projects for which federal funds are requested must be in accordance with regulations adopted by the department and applicable federal act.

HISTORY: 1962 Code Section 32‑774; 1952 Code Section 32‑774; 1947 (45) 510; 1964 (53) 2117; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1; 1992 Act No. 511, Section 13.

CROSS REFERENCES

Department of Health and Environmental Control regulations governing certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 101 et seq.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 6, Certificate of Need.

**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.

CROSS REFERENCES

Department of Health and Environmental Control regulations pertaining to certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 101 et seq.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 7, Licensure.

S.C. Jur. Public Health Section 60, Statutory Authority to License.

**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) crisis stabilization unit facilities;

(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 another hospital without meeting the criteria for membership established by the governing body of the respective hospital. Patients of podiatrists and dentists who are members of the medical staff of a hospital must be coadmitted by a doctor of medicine or osteopathy who is a member of the medical staff of the hospital who is responsible for the general medical care of the patient. Oral surgeons who have successfully completed a postgraduate program in oral surgery accredited by a nationally recognized accredited body approved by the United States Office of Education may admit patients without the requirement of coadmission if permitted by the bylaws of the hospital and medical staff.

(E) No person, regardless of his ability to pay or county of residence, may be denied emergency care if a member of the admitting hospital’s medical staff or, in the case of a transfer, a member of the accepting hospital’s medical staff determines that the person is in need of emergency care. “Emergency care” means treatment which is usually and customarily available at the respective hospital and that must be provided immediately to sustain a person’s life, to prevent serious permanent disfigurement, or loss or impairment of the function of a bodily member or organ, or to provide for the care of a woman in active labor if the hospital is so equipped and, if the hospital is not so equipped, to provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm. In addition to or in lieu of any action taken by the South Carolina Department of Health and Environmental Control affecting the license of any hospital, when it is established that any officer, employee, or member of the hospital medical staff has recklessly violated the provisions of this section, the department may require the hospital to pay a civil penalty of up to ten thousand dollars.

HISTORY: 1962 Code Section 32‑776; 1952 Code Section 32‑776; 1947 (45) 510; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1; 1990 Act No. 501, Section 2; 1992 Act No. 511, Section 17; 1994 Act No. 359; 1995 Act No. 1, Section 6; 2008 Act No. 233, Section 1, eff May 21, 2008; 2010 Act No. 278, Sections 14, 15, eff July 1, 2010; 2011 Act No. 47, Section 10, eff June 7, 2011; 2017 Act No. 10 (S.354), Section 3, eff April 24, 2017.

Effect of Amendment

2017 Act No. 10, Section 3, in (A)(5), substituted “crisis stabilization unit facilities” for “Reserved”, and made other nonsubstantive changes in (A).

CROSS REFERENCES

“Crisis stabilization unit facilities” defined, see Section 44‑7‑130.

Department of Health and Environmental Control regulations pertaining to certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 101 et seq.

Exemption from provisions of chapter, see Section 44‑7‑263.

Hospital, licensed under this chapter, which violates prohibition against health care providers referring patient to entity in which provider has investment interest, is subject to regulations promulgated by Department of Health and Environmental Control, and such hospital, which discriminates against or penalizes health care provider for compliance with Provider Self‑Referral Act, is subject to civil penalty, see Section 44‑113‑30.

In‑home care providers, definitions, see Section 44‑70‑20.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 7, Licensure.

S.C. Jur. Hospitals Section 7, Medical Staff.

S.C. Jur. Public Health Section 52, Facilities Requiring Licensure.

S.C. Jur. Public Health Section 70, Statutory Authority to License/Minimum Standards for Licensure.

Attorney General’s Opinions

A hospital, particularly a public hospital, has a duty to provide emergency care to anyone, regardless of ability to pay or residence, including inmates or prisoners. S.C. Op.Atty.Gen. (August 28, 1995) 1995 WL 803730.

If the General Assembly has taken into account “marks of distinction” about the Eastern Star Home in Sumter County, then there is a presumption of constitutionality of the exemption legislation pertaining to it. S.C. Op.Atty.Gen. (April 25, 1991) 1991 WL 632957.

A court considering an appeal as to the issuance of a certificate of need at such time as H.2101, as amended, is enacted, would likely conclude that a certificate of need is no longer necessary for health care facilities owned and operated by the federal government or any federal health care facility sponsored and operated by the State of South Carolina. S.C. Op.Atty.Gen. (March 2, 1988) 1988 WL 383502.

**SECTION 44‑7‑261.** Privately‑owned education infirmaries.

Health care facilities licensed pursuant to Regulation 61‑16, Minimum Standards for Licensing Hospitals and Institutional General Infirmaries, and designated as “privately‑owned education infirmaries” may be established within the jurisdiction of a larger nonmedical institution which maintains and operates organized facilities and services to accommodate two or more nonrelated students, faculty, and staff with illness, injury, or infirmity for a period exceeding twenty‑four hours for the diagnosis, treatment, and care of such persons and which provides medical, surgical, and professional nursing care, and in which all diagnoses, treatment, and care are performed under the direction of persons currently licensed to practice medicine and surgery in South Carolina. However, privately‑owned education infirmaries also may care for patients who are not students, faculty, or staff when the privately‑owned education infirmary has agreed to provide such care to this class or patients prior to January 1, 2007.

HISTORY: 2007 Act No. 95, Section 2, eff January 1, 2008.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 52, Facilities Requiring Licensure.

**SECTION 44‑7‑262.** Minimum resident‑staff ratios for nursing homes.

(A) As a condition of licensure, in addition to the number of licensed nursing personnel required by R61‑17, or any other regulation, a nursing home must provide at a minimum these resident‑staff ratios for staff who provide nursing care:

(1) 9 to 1 for shift 1;

(2) 13 to 1 for shift 2;

(3) 22 to 1 for shift 3.

In those facilities utilizing two twelve‑hour shifts, the staffing ratios for shift one apply to the twelve‑hour shift occurring primarily during the day, and the staffing ratios for shift three apply to the twelve‑hour shift occurring primarily during the night.

(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.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Treatises and Practice Aids

57 Causes of Action 2d 383, Cause of Action Against Hospital or Nursing Home for Personal Injury Resulting from Corporate Negligence Associated With Understaffing.

**SECTION 44‑7‑263.** Exemption from provisions of chapter.

Notwithstanding the provisions of Section 44‑7‑260, the provisions of this chapter do not apply to any home or facility approved and annually reviewed by the United States Department of Veterans Affairs as a Medical Foster Home in which care is provided exclusively to three or fewer veterans.

HISTORY: 2016 Act No. 232 (H.4580), Section 1, eff June 3, 2016.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

**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.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 70, Statutory Authority to License/Minimum Standards for Licensure.

**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;

(2) a description of the professional qualifications necessary for personnel to operate the equipment and interpret the test results;

(3) minimum staffing requirements to ensure the safe operation of the equipment and interpret the test results; and

(4) that all freestanding or mobile technology must be in conformance with professional organizational standards.

HISTORY: 1992 Act No. 511, Section 18.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

**SECTION 44‑7‑270.** Applications for license.

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 a license fee prior to issuance of a license as established by regulation. The department may charge an inspection fee.

HISTORY: 1962 Code Section 32‑777; 1952 Code Section 32‑777; 1947 (45) 510; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1; 2010 Act No. 278, Section 16, eff July 1, 2010.

CROSS REFERENCES

Application procedures, certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 201 and 61‑15 Section 202.

Disposition of application, certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 301 to 61‑15 Section 312.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 7, Licensure.

S.C. Jur. Public Health Section 53, Applications for License.

**SECTION 44‑7‑280.** Issuance of license; expiration.

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.

HISTORY: 1962 Code Section 32‑778; 1952 Code Section 32‑778; 1947 (45) 510; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1; 2010 Act No. 278, Section 17, eff July 1, 2010.

CROSS REFERENCES

Department of Health and Environmental Control regulations pertaining to certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 101 et seq.

Hospital, licensed under this chapter, which violates prohibition against health care providers referring patient to entity in which provider has investment interest, is subject to regulations promulgated by Department of Health and Environmental Control; and such hospital, which discriminates against or penalizes health care provider for compliance with Provider Self‑Referral Act, is subject to civil penalty, see Section 44‑113‑30.

Requirement that license issued pursuant to Sections 44‑7‑250 through 44‑7‑340 be posted in conspicuous place, see S.C. Code of Regulations R. 61‑16, Section 102.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 54, Issuance of License; Expiration.

**SECTION 44‑7‑285.** Change of ownership and control.

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.

HISTORY: 2010 Act No. 278, Section 21, eff July 1, 2010.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 54, Issuance of License; Expiration.

**SECTION 44‑7‑290.** Necessity of complying with article and regulations of department.

The department may not issue licenses for the operation of facilities or services subject to this article unless the facility and persons named in the application are found to comply with the provisions of this article and the department’s regulations.

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.

CROSS REFERENCES

Department of Health and Environmental Control regulations pertaining to certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 101 et seq.

Hospital, licensed under this chapter, which violates prohibition against health care providers referring patient to entity in which provider has investment interest, is subject to regulations promulgated by Department of Health and Environmental Control; and such hospital, which discriminates against or penalizes health care provider for compliance with Provider Self‑Referral Act, is subject to civil penalty, see Section 44‑113‑30.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

**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.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 32, Governmental Regulation.

S.C. Jur. Public Health Section 54, Issuance of License; Expiration.

**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.

CROSS REFERENCES

Department of Health and Environmental Control regulations pertaining to certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 101 et seq.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 55, Plans and Specifications.

**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.

CROSS REFERENCES

Standards for licensing tattoo facilities, enforcing regulations, inspections, investigations, see S.C. Code of Regulations R. 61‑111.302.

Standards for permitting body piercing facilities, enforcing regulations, inspections, investigations, see S.C. Code of Regulations R. 61‑109.202.

Library References

Health 236.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 11.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abortion Section 12, Post‑Viability Abortions.

S.C. Jur. Drug and Alcohol Dependence Section 7, Licensure.

S.C. Jur. Hospitals Section 7, Medical Staff.

**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, including a nursing home, a community residential care facility, or an intermediate care facility for persons with intellectual disability. 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 persons with intellectual disability, 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) Subsection (A) does not apply to information considered confidential pursuant to Section 40‑71‑20 and Section 44‑30‑60.

HISTORY: 1990 Act No. 376, Section 1; 1991 Act No; 164, Section 1; 2006 Act No. 372, Section 3, eff June 9, 2006; 2010 Act No. 223, Section 10, eff June 7, 2010; 2010 Act No. 278, Section 18, eff July 1, 2010; 2011 Act No. 47, Section 11, eff June 7, 2011.

CROSS REFERENCES

Standards for licensing tattoo facilities, enforcing regulations, inspections, investigations, see S.C. Code of Regulations R. 61‑111‑302.

Standards for permitting body piercing facilities, enforcing regulations, inspections, investigations, see S.C. Code of Regulations R. 61‑109.202.

Library References

Health 247.

Westlaw Topic No. 198H.

**SECTION 44‑7‑320.** Denial, revocation, or suspension of license; penalties.

(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 persons with intellectual disability, whose admission or treatment has been prescribed by a physician who is a member of the facility’s medical staff; or discriminating against alcoholics, the mentally ill, or persons with intellectual disability solely because of the alcoholism, mental illness, or intellectual disability;

(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 period but includes consideration of all pertinent information regarding the facility and the applicant.

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

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

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

(D) Failure to pay a penalty within thirty days is grounds for suspension, revocation, or denial of a renewal of a license. No 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.

CROSS REFERENCES

Penalties for non‑compliance with regulations pertaining to certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 701.

Penalties for violations of this section, see S.C. Code of Regulations R. 61‑16.

Standards for licensing freestanding or mobile technology, enforcement actions, violation classifications, see S.C. Code of Regulations R. 61‑108.302.

Standards for licensing habilitation centers for persons with intellectual disability or persons with related conditions, see S.C. Code of Regulations R. 61‑13.

Library References

Health 247.

Westlaw Topic No. 198H.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 7, Licensure.

S.C. Jur. Public Health Section 51, Penalties for Noncompliance.

S.C. Jur. Public Health Section 56, Denial, Revocation, or Suspension of License; Penalties.

S.C. Jur. Public Health Section 120, Mandatory Reporting Requirements.

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

(A)(1) 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, whether in paper format or electronic format, but the fee may not exceed:

(a) for records requested to be produced in an electronic format, the total charge to the requestor may not exceed one hundred fifty dollars per request regardless of the number of records produced or number of times the patient has been admitted to the health care facility. The charge, not to exceed one hundred fifty dollars, shall be calculated as follows: sixty‑five cents per page for the first thirty pages provided in an electronic format and fifty cents per page for all other pages provided in an electronic format, plus a clerical fee not to exceed twenty‑five dollars for searching and handling, which combined with the per page costs may not exceed a total of one hundred fifty dollars per request, and to which may be added actual postage and applicable sales tax;

(b) for paper requests, sixty‑five cents per page for the first thirty printed pages and fifty cents per page for all other printed pages, plus a clerical fee not to exceed twenty‑five dollars for searching and handling, which combined with the per page print costs may not exceed two hundred dollars per admission to the health care facility, and to which may be added actual postage and applicable sales tax. The patient may have more than one admission on file when the record request is made. If multiple admissions exist, the print fee applies per admission, but only one clerical fee may be charged. Multiple emergency room records without an admission to the hospital are considered one admission;

(c) notwithstanding whether the records are requested in print or electronic format, the search and handling fees in subitems (a) and (b) are permitted even though no medical record is found as a result of the search, except where the request is made by the patient; and

(d) all of the fees allowed by this section, including the maximum, must be adjusted annually in accordance with the Consumer Price Index for all Urban Consumers, South Region (CPI‑U), published by the U.S. Department of Labor. The Department of Health and Environmental Control is responsible for calculating this annual adjustment, which is effective on July first of each year, starting July 1, 2015.

(2) Notwithstanding the provisions of subsection (A), 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.

(3) 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:

(a) no later than forty‑five days after the patient has been discharged or forty‑five days after the request is received, whichever is later; and

(b) in a printed format or in an electronic format if requested to be delivered in electronic format, but only if the record is stored in an electronic format at the time of the request and the health care facility has the ability to produce the medical record in an electronic format without incurring additional cost.

(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; 2014 Act No. 294 (H.4354), Section 1, eff June 23, 2014.

Library References

Health 247.

Westlaw Topic No. 198H.

RESEARCH REFERENCES

Encyclopedias

87 Am. Jur. Proof of Facts 3d 259, Confidentiality of Medical and Other Treatment Records.

Attorney General’s Opinions

In order for the no fee provision to apply, a request must be made for records by a health care provider or the patient must request that records be sent to a health care provider for the purpose of “continuing health care.” S.C. Op.Atty.Gen. (July 19, 1995) 1995 WL 803717.

**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.

CROSS REFERENCES

Penalties for non‑compliance with regulations pertaining to certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 701.

Library References

Health 247.

Westlaw Topic No. 198H.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 8, Enforcement.

S.C. Jur. Public Health Section 57, Power to Sue.

**SECTION 44‑7‑340.** Violation as misdemeanor; fines.

Any person or facility violating any of the provisions of this article or a regulation under this article is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars for the first offense and not more than five thousand dollars for a subsequent offense. Each day’s violation after a first conviction constitutes a subsequent offense.

HISTORY: 1962 Code Section 32‑783; 1952 Code Section 32‑783; 1947 (45) 510; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1.

CROSS REFERENCES

Penalties for non‑compliance with regulations pertaining to certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 701.

Library References

Health 247.

Westlaw Topic No. 198H.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 8, Enforcement.

S.C. Jur. Public Health Section 51, Penalties for Noncompliance.

S.C. Jur. Public Health Section 58, Violation as Misdemeanor; Fines.

**SECTION 44‑7‑345.** Discrimination prohibited in admission of individuals to residential care facilities.

Community residential care facilities licensed pursuant to this article which receive public funds, including funds appropriated in Part I of the appropriation act, directly or indirectly, including those instances where payment of an optional state supplement from the South Carolina Department of Social Services is made to a resident, their designated representative payee, or guardian, rather than directly to a facility, may not deny admission or services to an individual on the basis of race, color, national origin, qualified handicap, sex, or age.

HISTORY: 1990 Act No. 612, Part II, Section 56.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 59, Non‑Discrimination.

**SECTION 44‑7‑350.** Community residential care facility.

The agency placing a client in a community residential care facility shall develop an individual plan of care in cooperation with the provider. The placing agency shall monitor the plan to the extent considered appropriate by the placement agency.

Prior to a community residential care facility being licensed for operation in an area which is outside incorporated areas of a county, the following conditions must be met:

(1) The governing body for the area must be given notice of the proposed location.

(2) Where the governing body objects to the proposed site for the facility, the arbitration procedures set forth in Act 449 of 1978 must be employed.

HISTORY: 1962 Code Section 32‑784; 1952 Code Section 32‑784; 1947 (45) 510; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1.

CROSS REFERENCES

Department of Health and Environmental Control regulations pertaining to certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 101 et seq.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑360.** Itemized billing.

Community residential care facilities are required to furnish an item‑by‑item billing for all charges to the resident or the person paying the bill, upon request by the resident or person paying the bill. Items which remain unpaid are not required to be itemized again. A request for itemized billing remains in effect until further notification by the resident or person paying the bill. The provisions of this section do not apply to the contracted amount of a state agency. Any amount above the contract must be itemized accordingly. Residents receiving an optional supplement from the State Department of Social Services must not be charged an amount greater than that set by that department.

HISTORY: 1962 Code Section 32‑785; 1952 Code Section 32‑785; 1947 (45) 510; 1971 (57) 267; 1976 Act No. 620 Section 1; 1979 Act No. 51 Section 1; 1988 Act No. 670, Section 1.

CROSS REFERENCES

Department of Health and Environmental Control regulations pertaining to certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 101 et seq.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 89, General Policies.

**SECTION 44‑7‑370.** Residential Care Committee; Renal Dialysis Advisory Council.

(A) The South Carolina Department of Health and Environmental Control shall establish a Residential Care Committee to advise the department regarding licensing and inspection of community residential care facilities.

(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.

CROSS REFERENCES

Department of Health and Environmental Control regulations pertaining to certification of need for health facilities and services, see S.C. Code of Regulations R. 61‑15 Section 101 et seq.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 6, Certificate of Need.

S.C. Jur. Drug and Alcohol Dependence Section 8, Enforcement.

**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:

(a) has successfully completed an accredited educational program for surgical technologists and holds and maintains the Surgical Technologist Certification administered by the National Board of Surgical Technology and Surgical Assisting, or its successor; however, upon completion of an accredited education program for surgical technologists, graduates may practice for up to three months before completing certification by the National Board of Surgical Technology and Surgical Assisting, or its successor;

(b) has completed an appropriate training program for surgical technology in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard or in the United States Public Health Service;

(c) provides evidence that the person was employed to practice surgical technology in a health care facility in this State prior to January 1, 2008; or

(d) is in the service of the federal government, to the extent the person is performing duties related to that service.

(2) A person qualified to practice as a surgical technologist pursuant to subsection (B)(1) remains qualified to practice regardless of a break in practice provided the continuing education required in subsection (D) is current.

(C) A person who does not meet the requirements of this section, may practice surgical technology in a health care facility if:

(1) after a diligent and thorough effort has been made, the health care facility is unable to employ a sufficient number of persons who meet the requirements of this section; and

(2) the health care facility makes a written record of its efforts made pursuant to item (1) and retains the record at the health care facility.

(D) A person who qualifies to practice surgical technology in a health care facility pursuant to subsection (B)(1)(a), (b), or (c) annually must complete fifteen hours of continuing education to remain qualified for employment.

(E) A health care facility that employs a person to practice surgical technology shall verify that the person meets the continuing education requirements of subsection (D) or that the person has held and maintained the Surgical Technologist Certification as required in subsection (B)(1)(a).

(F) A health care facility shall supervise each person employed by the health care facility to practice surgical technology according to the health care facility’s policies and procedures to ensure that the person competently performs delegated tasks intraoperatively according to this section or other applicable provisions of law.

(G) This section does not prohibit a person licensed under another provision of law from performing surgical technology tasks or functions if the person is acting within the scope of his or her license.

HISTORY: 2007 Act No. 95, Section 1, eff January 1, 2008.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑385.** Requirements for serving as operating room circulator.

(A) As used in this section, an “operating room circulator” means a registered nurse trained, educated, or experienced in perioperative nursing who is responsible for coordinating the nursing care and safety needs of a patient in the operating room and who also meets the needs of the operating room team members during surgery.

(B) An operating room circulator in a health care facility must be a licensed registered nurse educated, trained, and experienced in perioperative nursing.

(C) A surgical technologist may not serve as the circulator in the operating room of a health care facility; however, a person who is employed to practice surgical technology in a health care facility may assist in the performance of circulating duties:

(1) consistent with the person’s education, training, and experience; and

(2) as assigned and supervised by a registered nurse circulator who must be present in the operating room for the duration of the surgical procedure.

HISTORY: 2007 Act No. 95, Section 1, eff January 1, 2008.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**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.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**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

(h) incident or occurrence reports and related investigations, unless the report is part of the medical record.

(2) The proceedings and data, documents, records, and information described in subsection (A)(1) may be shared with a parent corporation, subsidiaries, other hospitals in the health care system, directors, officers, employees, and agents of the hospital and if shared, remain confidential. These proceedings and data, documents, records, and information in subsection (A)(1) are not subject to discovery, subpoena, or introduction into evidence in any civil action unless the hospital and any affected person who is a party to such action waives the confidentiality in writing. Notwithstanding the foregoing, however, in the event an affected person asserts a claim in any civil action against a hospital, its parent, affiliates, directors, officers, agents, employees, or member of any committee of a licensed hospital, relating to any proceeding identified in subsection (A)(1), the hospital may, without consultation with the affected person, waive confidentiality in that civil action. Likewise, if a hospital asserts a claim in any civil action against an affected person relating to any proceeding identified in subsection (A)(1) in which the affected person was a party, the affected person may use information in the affected person’s possession that is otherwise confidential under this section in that civil action.

(3) Data, documents, records, or information which are otherwise available from original sources are not confidential and are not immune from discovery from the original source under this section or use in a civil action merely because they were acquired by the hospital.

(4) This subsection does not make confidential the outcome of a practitioner’s application for medical staff membership or clinical privileges, nor does it make confidential the list of clinical privileges requested by the practitioner or the list of clinical privileges that were approved. However, the practitioner’s application for medical staff membership or clinical privileges, and all supporting documentation submitted or requested for the application are confidential. Nevertheless, the application itself may be obtained from the physician requesting privileges or the practice where the physician works as an employee or an independent contractor.

(5) If a practitioner is the subject of a disciplinary proceeding or fair hearing, this subsection does not, subject to the provisions of the medical staff bylaws, prohibit the practitioner from receiving data, documents, records, and information relating to this practitioner that is relevant to the proceeding or fair hearing, even if the data, documents, records, and information are otherwise confidential under this section. Such a disclosure to a practitioner in a disciplinary proceeding or fair hearing must not be considered a waiver of any privilege or confidentiality provided for in subsection (A)(1). The practitioner must not, however, without the written consent of the hospital, publish to any third party, other than legal counsel or a person retained for the purposes of representing the practitioner in a disciplinary proceeding or fair hearing, the data, documents, records, or information that were disclosed to him as part of the disciplinary proceeding or fair hearing.

(6) There is nothing in this section which makes any part of a patient’s medical record confidential from the patient, including any redactions, corrections, supplements, or amendments to the patient’s record, whether electronic or written.

(B) The confidentiality provisions of subsection (A) do not prevent committees appointed by the Department of Health and Environmental Control from issuing reports containing solely nonidentifying data and information.

(C) Nothing in this section affects the duty of a hospital licensed by the Department of Health and Environmental Control to report accidents or incidents pursuant to the department’s regulations. However, anything reported pursuant to the department’s regulations must not be considered a waiver of any privilege or confidentiality provided in subsection (A).

(D) Any data, documents, records or information that is reported to or reviewed by the joint commission or other accrediting bodies must not be considered a waiver of any privilege or confidentiality provided for in subsection (A).

(E) Any data, documents, records, or information of an action by a hospital to suspend, revoke, or otherwise limit the medical staff membership or clinical privileges of a practitioner that is submitted to the South Carolina Board of Medical Examiners pursuant to a report required by Section 44‑7‑70, or the 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.

CROSS REFERENCES

Assertion and defense of confidentiality claims, see Section 44‑7‑394.

Library References

Health 257.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 20.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 27, Hospital Records.

NOTES OF DECISIONS

In general 1

1. In general

In breach of contract action brought by corporation that provided assets and support services to medical providers against professional association that specialized in reproductive endocrinology, and against association’s president, in which defendants brought claims against third‑party defendant, even if letter that third‑party defendant submitted to hospital peer review committee concerning a surgical procedure performed by association’s president that allegedly involved an adverse event initiated a peer review at the hospital and was part of the peer review record, the South Carolina statutory privilege for hospital peer review proceedings did not apply to copy of the letter that was in the possession of its original source, the third‑party defendant. IntegraMed America, Inc. v. Patton, 2014, 298 F.R.D. 326. Privileged Communications and Confidentiality 422(1)

**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.

Library References

Health 257.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 20.

ARTICLE 4

Health Care Cooperation Act

**SECTION 44‑7‑500.** Short title.

This article may be known and cited as the “Health Care Cooperation Act”.

HISTORY: 1994 Act No. 437, Section 1.

**SECTION 44‑7‑505.** Findings.

The General Assembly makes the following findings:

(1) that the cost of improved health technology and scientific methods contributes significantly to the increasing cost of health care;

(2) that cooperative agreements among hospitals health care purchasers, and other health care providers would foster improvements in the quality of health care for South Carolinians, moderate cost increases, improve access to needed services in rural areas, and enhance the likelihood that rural hospitals can remain open;

(3) that federal and state antitrust laws may prohibit or discourage cooperative agreements that are beneficial to South Carolinians and that such agreements should be encouraged; and

(4) that competition as currently mandated by federal and state antitrust laws should be supplanted by a regulatory program to permit and encourage cooperative agreements between hospitals, health care purchasers, or other health care providers when the benefits outweigh the disadvantages caused by their potential adverse effects on competition.

HISTORY: 1994 Act No. 437, Section 1.

**SECTION 44‑7‑510.** Definitions.

As used in this article:

(1) “Affected persons” means a health care provider or purchaser:

(a) who provides or purchases the same or similar health care services in the geographic area served or to be served by the applicants for a certificate of public advantage: or

(b) who has notified the department of his interest in applications for certificates of public advantage and has a direct economic interest in the decision. Other than health insurers licensed in South Carolina, persons from other states who would otherwise be considered “affected persons” are not included unless that state provides for similar involvement of persons from South Carolina in a similar process in that state.

(2) “Certificate of public advantage” means the formal approval, including any conditions or modifications, by the department of a contract, business or financial arrangement, or other activities or practices between two or more health providers, health provider networks, or health care purchasers that might be construed to be violations of state or federal antitrust laws.

(3) “Cooperative agreement” means an agreement between two health providers, health provider networks, or purchasers or among more than two health care providers, health provider networks, or purchasers for the sharing, allocation, or referral of patients or the sharing or allocation of personnel, instructional programs, support services and facilities, medical, diagnostic or laboratory facilities, procedures, equipment, or other health care services traditionally offered by health care facilities or other health care providers or the acquisition or merger of assets among or by two or more health providers, health provider networks, or health care purchasers, provided the agreement does not involve price‑fixing or predatory pricing or illegal tying arrangements.

(4) “Department” means the Department of Health and Environmental Control.

(5) “Health care provider” means a health care professional licensed, certified, or registered under the laws of this State, an organization licensed pursuant to Section 44‑69‑30 or Section 44‑71‑30, or a facility licensed pursuant to Section 44‑7‑260 or Section 44‑89‑40 to provide health care services or any other person as defined in Section 44‑7‑130(15) who provides health services in a freestanding or mobile facility.

(6) “Health care purchaser” means a person or organization that purchases health care services on behalf of an identified group of persons, regardless of whether the cost of coverage of services is paid for by the purchaser or by the person receiving coverage or services including, but not limited to:

(a) health insurers as defined by Section 38‑71‑920;

(b) employee health plans offered by self‑insured employers;

(c) group health coverage offered by fraternal organizations, professional associations, or other organizations;

(d) state and federal health care programs; and

(e) state and local public employee health plans.

(7) “Health provider networks” means an organization of health care providers which offers health services to residents of this State. An organization may be a partnership, corporation including an association, a joint stock company, or any other legal entity recognized by the State.

(8) “Federal or state antitrust laws” means a federal or state law prohibiting monopolies or agreements in restraint of trade, including the Federal Sherman Act and Clayton Act, the Federal Trade Commission Act, and Chapters 3 and 5 of Title 39 of the 1976 Code.

HISTORY: 1994 Act No. 437, Section 1.

Attorney General’s Opinions

A facility in an unincorporated area may not be licensed if it is within three‑quarters of a mile of another facility, even if the other facility is in an incorporated area. S.C. Op.Atty.Gen. (March 25, 1985) 1985 WL 165997.

**SECTION 44‑7‑520.** Intent.

(A) It is the intent of this article to require the State to provide direction, supervision, regulation, and control over approved cooperative agreements through the department and the Attorney General. This state direction, supervision, regulation, and control of cooperative agreements will provide immunity for health care providers, health provider networks, or purchasers who participate in discussions or negotiations authorized by this article from civil liability and criminal prosecution under federal or state antitrust laws.

(B) A health care provider, health provider network, or health care purchaser may negotiate, enter into, and conduct business pursuant to a cooperative agreement without being subject to damages, liability, or scrutiny under any state antitrust law. In addition, conduct in negotiating and entering into a cooperative agreement for which an application for a certificate of public advantage is filed in good faith is immune from challenge or scrutiny under state antitrust laws, regardless of whether a certificate is issued. It is the intention of the General Assembly that this article immunizes covered activities from challenge or scrutiny under federal antitrust laws. Nothing in this subsection creates immunity for a person for conduct in negotiating or entering into a cooperative agreement for which an application for a certificate of public advantage is not filed.

HISTORY: 1994 Act No. 437, Section 1.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑530.** Cooperative agreements.

A health care provider, health care purchaser, or health provider network may negotiate and enter into cooperative agreements with other health care providers or health provider networks or health care purchasers if the likely benefits resulting from the agreements outweigh any likely disadvantages resulting from the agreements. Parties to a cooperative agreement may apply to the department for a certificate of public advantage. The application must include an executed written copy of the cooperative agreement and describe the nature and scope of the cooperation in the agreement and any monetary or other consideration passing to a party under the agreement including change of ownership, merger, or other change in control of the assets of either party. Information obtained by the department under this section must be available to the public unless the department certifies the information as being proprietary. The department may make this certification where a person shows to the satisfaction of the department that the information should be proprietary. The department may require an application fee from the submitting parties sufficient to cover the cost of processing the application.

HISTORY: 1994 Act No. 437, Section 1.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑540.** Publish; notice of receipt of application.

Upon receipt of an application, the department shall publish in the State Register notice of receipt of the application. The department shall review the application in accordance with the standards set forth in Section 44‑7‑560 and if requested by an affected person within thirty days of the department’s receipt of a completed application, may hold a public hearing in accordance with regulations promulgated by the department. Within thirty days of receipt 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. However, the department may grant one fifteen‑day extension for the applicant to submit this information. The department shall grant or deny the application within sixty days after receipt of a completed application or from the date of the public hearing, if one is requested, and that decision must be in writing and must set forth the basis for the decision. The department shall furnish a copy of the decision to the applicants and any affected persons who have asked to be notified. The department shall publish its decisions in the State Register.

HISTORY: 1994 Act No. 437, Section 1.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

Attorney General’s Opinions

Financial benefit is involved in the transaction between a community care home and a placing agency, although indirectly. S.C. Op.Atty.Gen. (August 1, 1985) 1985 WL 166045.

**SECTION 44‑7‑550.** Review of application; advisement by the Attorney General to the department to approve or deny application.

(A) Upon receipt of a completed application the department shall forward a copy of the application to the Attorney General. The Attorney General shall review the request not later than thirty days after receiving the completed application. The Attorney General may advise the department, in writing, to approve or deny the application. Failure by the Attorney General to notify the department within thirty days of receiving a completed application constitutes a recommendation for approval of the request. Advisement by the Attorney General to the department to deny a request shall set forth the reasons for the denial.

(B) Upon receipt of the advice of the Attorney General or at the end of the review period outlined in Section 44‑7‑540, the department shall issue an order approving or denying the application for a certificate of public advantage. Upon request from the applicant or an affected person, the department’s order to approve or deny the application for the certificate is entitled to judicial review in accordance with the Administrative Procedures Act.

HISTORY: 1994 Act No. 437, Section 1.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑560.** Issuance of a certificate of public advantage for a cooperative agreement.

(A) The department shall issue a certificate of public advantage for a cooperative agreement if it determines that:

(1) the applicants have demonstrated that the likely benefits resulting from the agreement outweigh the likely disadvantages from the agreement;

(a) in evaluating the benefits likely to result from the cooperative agreement, the department shall consider, but is not limited to:

(i) enhancement of the quality of health and health related care provided to South Carolina citizens;

(ii) preservation of health care providers close to communities traditionally served by those providers;

(iii) gains in the cost‑efficiency of the services offered by the health care providers or purchasers involved;

(iv) improvements in the use of health care provider resources and equipment;

(v) avoidance or elimination or reduction of duplication of health care resources;

(vi) improvement in access to health care for citizens in the community;

(vii) support of the agreement by purchasers and payers in the health service area;

(viii) the extent of financial risk‑sharing by the parties as a result of the agreement;

(ix) the provision or enhancement of health care services to Medicaid, indigent, or charity care patients by the parties to the agreement.

(b) In evaluating the disadvantages likely to result from the agreement, the department shall consider, but is not limited to:

(i) the likely adverse impact, if any, on the ability of the health care purchasers to negotiate optimal payment and service arrangements with the health care providers or health provider networks;

(ii) the extent of any reduction in competition among health care providers, purchasers, or other persons furnishing goods or services to or in competition with health care providers or purchasers that is likely to result directly or indirectly from the health care cooperative agreement;

(iii) the likely adverse impact, if any, on patients in the quality, availability, and price of health care services;

(iv) the extent to which the agreement may increase the costs of prices of health care at a hospital or other health care provider which is a party to the agreement;

(v) the extent to which services to Medicaid, indigent, or charity care patients are adversely impacted by the agreement; and

(2) reduction in competition likely to result from the agreement is reasonably necessary to obtain the benefits likely to result. In evaluating whether the reduction in competition is necessary to obtain the likely benefits, the department shall consider, but is not limited to:

(a) the availability of arrangements that:

(i) are less restrictive to competition and achieve the same benefits;

(ii) offer a more favorable balance of benefits over disadvantages attributable to a reduction in competition likely to result from the agreement.

(b) the ease with which health care providers or health care purchasers may obtain contracts with other health plans;

(c) the difficulty in establishing new competing health plans in the relevant geographic market, including the ability to offer services requiring a certificate of need or purchasing these services from another health care provider or health provider network; and

(d) the sufficiency of the number or type of providers under contract with the health plan available to meet the needs of plan enrollees.

(B) The department also may establish conditions for approval that are reasonably necessary to ensure that the cooperative agreement and the activities engaged under it are consistent with this article and its purpose to promote cooperation and limit health care costs, protect against abuse of private economic power, and to ensure that the activity is appropriately supervised and regulated by the State.

HISTORY: 1994 Act No. 437, Section 1.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑570.** Monitoring and regulating agreements by the department.

(A) The department shall actively monitor and regulate agreements approved under this article and may request information whenever necessary to ensure that the agreements remain in compliance with the conditions of approval. The department shall charge an annual fee to cover the cost of monitoring and regulating these agreements, including certificates of public advantage. During the time the certificate is in effect, a report on the activities pursuant to the cooperative agreement must be filed with the department every two years so that the department shall determine that the cooperative agreement continues to comply with the terms of the certificate of public advantage. The department may revoke a certificate upon a finding that:

(1) the agreement is not in substantial compliance with the terms of the application or the conditions of approval; or

(2) the likely benefits resulting from the certified agreement no longer outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement; or

(3) the department’s certification was obtained as a result of intentional material misrepresentation to the department or as the result of coercion, threats, or intimidation toward any party to the cooperative agreement.

(B) A decision by the department to revoke a certificate of public advantage is entitled to judicial review in accordance with the Administrative Procedures Act.

(C) Nothing in this article limits the authority of the Attorney General to initiate civil enforcement action or criminal prosecution upon the determination that health care providers, health provider networks, or health care purchasers have exceeded the scope of the certificate of public advantage approved by the department. A review by the Attorney General must be conducted according to the standards set forth in this article.

(D) The department shall promulgate regulations to implement the provisions of this article including any fees and application costs associated with the monitoring and oversight of cooperative agreements approved under this article.

HISTORY: 1994 Act No. 437, Section 1; 2008 Act No. 353, Section 2, Pt 5.B, eff July 1, 2009.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑580.** Maintaining on file all cooperative agreements which certificates of public advantage remain in effect.

The department shall maintain on file all cooperative agreements for which certificates of public advantage remain in effect. A dispute among the parties to a cooperative agreement concerning its meaning or terms is governed by normal principles of contract or other applicable law. A party to a cooperative agreement who terminates the agreement shall notify the department within fifteen days of the termination. If all parties terminate their participation in the cooperative agreement, the department shall revoke the certificate of public advantage for the agreement.

HISTORY: 1994 Act No. 437, Section 1.

Library References

Health 257.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 20.

**SECTION 44‑7‑590.** Exemptions.

Nothing in this article exempts health care providers or purchasers from compliance with the provisions of Article 3 of this chapter concerning certificates of need.

HISTORY: 1994 Act No. 437, Section 1.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

ARTICLE 5

County, Township, or Municipal Hospitals or Tuberculosis Camps

**SECTION 44‑7‑610.** Petition for establishment of public hospital or tuberculosis camp.

A petition may be presented to the legislative delegation of any county in this State, signed by two hundred residents or freeholders of such county or two thirds of the freeholders of any township, city or town, requesting the establishment and maintenance of a public hospital or tuberculosis camp in such county, township, city or town and specifying the maximum amount of money proposed to be expended in purchasing or building such hospital or tuberculosis camp.

HISTORY: 1962 Code Section 32‑801; 1952 Code Section 32‑801; 1942 Code Section 5136; 1932 Code Section 5136; 1925 (34) 239.

CROSS REFERENCES

Special provisions for municipal elections, see Sections 7‑5‑610 et seq.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 9, Establishment and Maintenance of Public Hospitals.

**SECTION 44‑7‑620.** Election.

Upon the filing of such petition, the county legislative delegation shall submit the question to the qualified electors of the county, township, city or town at a special election called for that purpose, first giving ninety days’ notice thereof in one or more newspapers published in the county, township, city or town, if any be published therein, and by posting such notice, written or printed, in each township of the county in case of a county hospital or tuberculosis camp, or at three conspicuous places in the township, city or town in case of a township, city or town hospital or tuberculosis camp. Such election shall be held at the usual places in such county, township, city or town as provided for other elections, and the votes shall be canvassed in the same manner as in any election for officers for such county, township, city or town.

HISTORY: 1962 Code Section 32‑802; 1952 Code Section 32‑802; 1942 Code Section 5137; 1932 Code Section 5137; 1925 (34) 239.

CROSS REFERENCES

Special provisions for municipal elections, see Sections 7‑5‑610 et seq.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 9, Establishment and Maintenance of Public Hospitals.

**SECTION 44‑7‑630.** Filing results of elections and amount of bonds authorized.

The said legislative delegation shall file with the governing body of the county, if the election was for a county or township hospital or tuberculosis camp, or with the town council if the election was for a city or town hospital or tuberculosis camp, a detailed statement of the votes cast for the hospital or tuberculosis camp and, if a majority of the qualified voters at such election shall be in favor of building and maintaining such hospital or tuberculosis camp, the amount of bonds to be issued, and in such case such governing body or town council shall issue bonds of the county, township, city or town in the aggregate principal amount not to exceed the amount required for the purpose of building such hospital as voted for by the freeholders.

HISTORY: 1962 Code Section 32‑803; 1952 Code Section 32‑803; 1942 Code Sections 5137, 5138; 1932 Code Sections 5137, 5138; 1925 (34) 239.

CROSS REFERENCES

Declaration of results of election with respect to bond issue, see Section 4‑15‑60.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 9, Establishment and Maintenance of Public Hospitals.

**SECTION 44‑7‑640.** Sale, terms, and execution of bonds.

Such bonds shall be issued and sold from time to time after their date to the highest bidder for cash at not less than par and in such denominations as the officials shall determine. They shall bear interest at a rate not exceeding five per cent per annum, payable semiannually, and to each bond shall be attached coupons for the semiannual interest from date to maturity. Such bonds shall be signed by the chairman of the governing body of the county or mayor of any town or city, and the lithographed signature shall be a sufficient signing of the coupons on the bonds.

HISTORY: 1962 Code Section 32‑804; 1952 Code Section 32‑804; 1942 Code Section 5139; 1932 Code Section 5139; 1925 (34) 239.

CROSS REFERENCES

Execution of bonds under County Bond Act, see Section 4‑15‑120.

Interest rates on bonds under County Bond Act, see Section 4‑15‑110.

Maturity of bonds under County Bond Act, see Section 4‑15‑70.

Negotiability and registration of bonds, see Section 4‑15‑90.

Redemption provisions under County Bond Act, see Section 4‑15‑80.

Sale of bonds under County Bond Act, see Section 4‑15‑130.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑650.** Custody and disbursement of proceeds of bond sale.

The proceeds of the sale of such bonds shall be placed in the county, city, town or township treasury and shall be kept by the treasurer of such office and paid out upon the orders of the governing body of the county or the city or town council for the purposes herein mentioned.

HISTORY: 1962 Code Section 32‑805; 1952 Code Section 32‑805; 1942 Code Section 5140; 1932 Code Section 5140; 1925 (34) 239.

CROSS REFERENCES

Deposit and application of proceeds of sale of bonds under County Bond Act, see Section 4‑15‑180.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑660.** Annual tax.

In order to meet the principal and interest of such bonds as they mature, the auditor of the county or the clerk of the council of any town or city shall annually levy upon all of the property of such county, township, city or town taxes not exceeding two mills and for a period of time not exceeding twenty years, the proceeds from such levy to be paid out by the proper officers for the retirement of the principal and interest on any bonds sold.

HISTORY: 1962 Code Section 32‑806; 1952 Code Section 32‑806; 1942 Code Section 5141; 1932 Code Section 5141; 1925 (34) 239.

CROSS REFERENCES

Pledge of credit for payment and levy of tax therefor under County Bond Act, see Section 4‑15‑150.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑670.** Selection and terms of trustees.

Should the majority of the qualified electors voting upon the question be in favor of such county, township, city or town hospital or tuberculosis camp, the county legislative delegation of such county shall proceed to appoint not more than seven nor less than three trustees to be chosen from citizens at large with reference to their fitness for such office, part of whom may be women, and all residents of the county, township, city or town, who shall constitute the trustees for such hospital or tuberculosis camp. The trustees shall hold their offices for two years or until their successors shall be appointed. Provided, that in Allendale County there may be appointed not more than nine trustees.

HISTORY: 1962 Code Section 32‑807; 1952 Code Section 32‑807; 1942 Code Section 5142; 1932 Code Section 5142; 1925 (34) 239; 1967 (55) 382.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 9, Establishment and Maintenance of Public Hospitals.

**SECTION 44‑7‑680.** Oath of trustees; organization as board.

The trustees shall within ten days after their appointment qualify by taking the oath required of other officers of the State and organize as a board of hospital trustees by the election of one of their number as chairman and one as secretary and by the election of such other officers as they may deem necessary. But no bonds shall be required of them.

HISTORY: 1962 Code Section 32‑809; 1952 Code Section 32‑809; 1942 Code Section 5143; 1932 Code Section 5143; 1925 (34) 239.

CROSS REFERENCES

Commissions, oaths and bonds of public officers and employees, see Sections 8‑3‑10 et seq.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑690.** Treasurer.

The treasurer of the county, township, city or town in which the hospital or tuberculosis camp is located shall be the treasurer of the board of trustees. He shall receive and pay out all moneys under the control of the board as directed by it.

HISTORY: 1962 Code Section 32‑810; 1952 Code Section 32‑810; 1942 Code Section 5143; 1932 Code Section 5143; 1925 (34) 239.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑700.** Compensation of treasurer and trustees.

The treasurer shall receive no compensation for his services, and no trustee shall receive compensation for his services, but he may receive reimbursement for any cash expenditures actually made for personal expenses incurred as such trustee.

HISTORY: 1962 Code Section 32‑811; 1952 Code Section 32‑811; 1942 Code Section 5143; 1932 Code Section 5143; 1925 (34) 239.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑710.** Meetings of board; records.

The board of trustees shall hold meetings at least once each month and shall keep a complete record of all proceedings.

HISTORY: 1962 Code Section 32‑812; 1952 Code Section 32‑812; 1942 Code Section 5144; 1932 Code Section 5144; 1925 (34) 239.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑720.** Powers of board.

The board of trustees when so organized shall adopt and promulgate such rules, regulations and bylaws for the government of the hospital or tuberculosis camp as may be deemed expedient for the economic and equitable conduct thereof. It shall have control of the expenditure of all moneys collected to the credit of the hospital or tuberculosis camp, the construction of any building or buildings and the care of the grounds, rooms and buildings purchased. It may also appoint a superintendent, an assistant superintendent and a matron, fix their compensation and do all things necessary to carry out the establishment and maintenance of the hospital or tuberculosis camp.

HISTORY: 1962 Code Section 32‑813; 1952 Code Section 32‑813; 1942 Code Section 5144; 1932 Code Section 5144; 1925 (34) 239.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 9, Establishment and Maintenance of Public Hospitals.

Attorney General’s Opinions

The Board of Commissioners of Aiken County has the authority to alter the functions of the Hospital Board of Trustees and to approve the closing of the hospital. 1974‑75 Op.Atty.Gen. No. 4019, p. 91 (April 15, 1975) 1975 WL 22316.

**SECTION 44‑7‑730.** Prerequisites to construction of hospital.

No hospital building shall be erected or constructed until plans and specifications have been made therefor and adopted by the board of hospital trustees and bids advertised for according to the law and custom in regard to other county buildings.

HISTORY: 1962 Code Section 32‑814; 1952 Code Section 32‑814; 1942 Code Section 5144; 1932 Code Section 5144; 1925 (34) 239.

CROSS REFERENCES

Construction of public buildings for access by persons with disabilities, see Sections 10‑5‑210 et seq.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 9, Establishment and Maintenance of Public Hospitals.

**SECTION 44‑7‑740.** Municipal jurisdiction.

The jurisdiction of the city or town in or near which a public hospital or tuberculosis camp is located shall extend over all land used for hospital or tuberculosis camp purposes outside the corporate limits, and all ordinances of such city or town shall be in full force and effect in and over the territory occupied by such public hospital or tuberculosis camp.

HISTORY: 1962 Code Section 32‑815; 1952 Code Section 32‑815; 1942 Code Section 5147; 1932 Code Section 5147; 1925 (34) 239.

CROSS REFERENCES

General structure, organization, powers, duties, functions and responsibility of all municipalities, see Sections 5‑7‑10 et seq.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑750.** Beneficiaries of hospital.

Every hospital established under the provisions of this article shall be for the benefit of the inhabitants of such county, township, city or town and any persons falling sick or being injured or maimed within its limits. In order to render the hospital or tuberculosis camp of the greatest use to the greatest number, the board may exclude from the use of such hospital or tuberculosis camp any person who shall wilfully violate the rules and regulations made by the board of trustees. And the board may extend the privileges and use of such hospital to persons residing outside of such county, township, city or town upon such terms and conditions as may be prescribed from time to time by its rules and regulations.

HISTORY: 1962 Code Section 32‑816; 1952 Code Section 32‑816; 1942 Code Sections 5146, 5147; 1932 Code Sections 5146, 5147; 1925 (34) 239.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑760.** Payment for service.

Every person who is financially able shall pay to the board of hospital trustees or such officers as it shall designate for such county or public hospital or tuberculosis camp such reasonable compensation as he is able to pay for occupying a bed in such hospital or camp or being nursed, cared for or maintained therein according to the rules and regulations of the board.

HISTORY: 1962 Code Section 32‑817; 1952 Code Section 32‑817; 1942 Code Section 5146; 1932 Code Section 5146; 1925 (34) 239.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

Attorney General’s Opinions

There is no statutory prohibition against a public hospital in South Carolina directly hiring physicians and nurses and then billing the patient for the physician’s fees. 1976‑77 Op.Atty.Gen. No. 77‑335, p. 266 (October 27, 1977) 1977 WL 24674.

**SECTION 44‑7‑770.** No discrimination made between legal schools of medicine.

In the management of such hospital or tuberculosis camp no discrimination shall be made against any practitioner of any school of medicine recognized by the laws of this State, and all such legal practitioners shall have the privilege of treating patients in such hospital or tuberculosis camp.

HISTORY: 1962 Code Section 32‑818; 1952 Code Section 32‑818; 1942 Code Section 5147; 1932 Code Section 5147; 1925 (34) 239.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

Attorney General’s Opinions

By virtue of the provisions of 1962 Code Section 32‑818 [1976 Code Section 44‑7‑770], all duly licensed doctors of podiatric medicine are entitled to use the facilities of all county, township or municipal hospitals, clinics and tuberculosis camps. 1975‑76 Op.Atty.Gen. No. 4359, p. 192 (May 31, 1976) 1976 WL 22978.

A chiropractor is entitled to the use of public hospital facilities for the practice of his profession on the same basis as is a physician in the orthodox fields of medicine. 1966‑67 Op.Atty.Gen. No. 2308, p. 129 (August 24, 1967) 1967 WL 8618.

**SECTION 44‑7‑780.** Donations.

Any person desiring to make donations of money, personal property or real estate for the benefit of any such hospital or tuberculosis camp may vest title to the property so donated in any county, township, city or town, to be controlled when accepted by the board of hospital trustees according to the terms of the deed.

HISTORY: 1962 Code Section 32‑820; 1952 Code Section 32‑820; 1942 Code Section 5145; 1932 Code Section 5145; 1925 (34) 239.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

ARTICLE 7

Hospitals in Municipalities of 1,000 to 5,000

**SECTION 44‑7‑910.** Authority to establish and maintain hospital.

Any city or town in this State having a population of not less than one thousand inhabitants and not more than five thousand, according to the 1940 census of the United States, may establish, construct, operate and maintain a municipal hospital, either within or without its corporate limits, and issue bonds and levy taxes for that purpose.

HISTORY: 1962 Code Section 32‑841; 1952 Code Section 32‑841; 1945 (44) 284.

CROSS REFERENCES

General provisions with respect to municipal council’s issuing bonds and extent of issue, see Section 5‑21‑240.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑920.** Petition and election on establishment and maintenance of hospital.

Before any such city or town may establish and build a hospital under the terms of this article, a petition, signed by a majority of the freeholders of such municipality, shall be presented to the city council, setting forth the purpose thereof and the amount of the bonded indebtedness to be incurred, if any, with the request that the question of the establishment and maintenance of a municipal hospital be submitted to the qualified electors of such municipality, either in a special election called for that purpose or at the time of the regular election of city officials. Upon receipt of such petition, the city council may, by ordinance or resolution setting forth the purposes of the election, the amount of the proposed bonded indebtedness to be incurred, if any, and any other pertinent facts, order an election for that purpose, first giving at least thirty days’ notice of such election before the holding thereof, with the question or questions to be submitted, in one or more newspapers published in such city or town, if one be published therein and, if not, then in the newspaper published nearest to such city or town and having general circulation therein, and posting notices of the election in three conspicuous places in such city or town. Such election shall be held at the usual place or places in such city or town according to the law governing municipal elections therein, and the votes shall be canvassed and the results declared in the same manner as in the election of officers for such municipality.

HISTORY: 1962 Code Section 32‑842; 1952 Code Section 32‑842; 1945 (44) 284.

CROSS REFERENCES

Action on petition for election on issuance of municipal bonds, see Section 5‑21‑270.

Ballots for election on issuance of municipal bonds, see Section 5‑21‑310.

Declaration of result of election on issuance of municipal bonds, see Section 5‑21‑320.

Notice of election on issuance of municipal bonds, see Section 5‑21‑290.

Notice of filing of petition for election on issuance of bonds, see Section 5‑21‑260.

Petition for election on issuance of municipal bonds, see Section 5‑21‑250.

Voters qualified in election on issuance of municipal bonds, see Section 5‑21‑300.

When election on issuance of municipal bonds is to be held, see Section 5‑21‑280.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑930.** Election and membership of board of trustees.

If a majority of the qualified voters at such election shall vote in favor of the establishment, construction, operation and maintenance of a municipal hospital, the council of the city or town shall elect a board of trustees of such hospital, consisting of three members, one of whom shall be elected for a term of three years, another for a term of two years and the other for a term of one year. Thereafter each member’s successor shall be elected by the council for a term of three years. In the event of a vacancy by death, resignation or change of residence by any trustee from the limits of the city, the council shall immediately elect a trustee to fill the unexpired term.

HISTORY: 1962 Code Section 32‑843; 1952 Code Section 32‑843; 1945 (44) 284.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑940.** Oath, organization, and compensation of trustees.

The persons elected trustees of any such municipal hospital shall qualify by taking the oath of office required of other officials of the municipality and shall organize as a board of trustees of such hospital by the election of one of their number as chairman and one as secretary. The trustees of such hospital shall receive no compensation for their services as trustees, but may be reimbursed for any cash expenditures actually made for personal expenses incurred in the fulfillment of their duties of the office.

HISTORY: 1962 Code Section 32‑844; 1952 Code Section 32‑844; 1945 (44) 284.

CROSS REFERENCES

Commissions, oaths and bonds of public officers and employees, generally, see Sections 8‑3‑10 et seq.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑950.** Meetings and records of board of trustees.

The board of trustees of any such hospital shall meet once each month for the transaction of business and oftener if necessary. It shall keep a complete record of all contracts, rules and regulations and of all proceedings of the board and also a record of all moneys received and all expenditures and disbursements made and shall file a copy of such records at the end of every month with the city clerk for review and approval by the city council.

HISTORY: 1962 Code Section 32‑845; 1952 Code Section 32‑845; 1945 (44) 284.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑960.** Duties and compensation of treasurer.

The treasurer of the city or town in which the hospital is to be established shall serve as the treasurer of the hospital board of trustees, in addition to his regular duties, without additional compensation to himself unless the governing body of such city or town shall provide for and pay additional compensation. He shall receive and be responsible for all funds of the hospital delivered to him, and he shall pay out such funds as directed by the hospital board of trustees.

HISTORY: 1962 Code Section 32‑846; 1952 Code Section 32‑846; 1945 (44) 284.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑970.** Issuance of bonds.

If a majority of the qualified voters in the election held for the establishment of a hospital shall also vote for the issuance of bonds in a designated sum recited in the petition calling for an election and in the notices of such election and stated on the ballots, for the purposes of purchasing the required real estate and constructing and equipping the hospital building or buildings, the city or town council may proceed to issue and sell municipal coupon bonds, in the name of the municipality, in a sum not exceeding that voted for in the election.

HISTORY: 1962 Code Section 32‑847; 1952 Code Section 32‑847; 1945 (44) 284.

CROSS REFERENCES

When municipal bonds may be issued and as to one or more issues, see Section 5‑21‑330.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑980.** Terms, form, and execution of bonds.

Such bonds shall mature serially over a period not exceeding thirty years from the date of their issue, shall bear interest at a rate not exceeding four per cent per annum, payable annually, shall be payable to bearer within or without the State and shall be in such form and denominations as the city council of such municipality may determine. The said bonds shall be signed by the mayor and the treasurer, and the seal of the issuing municipality shall be impressed thereon, but the coupons attached may be authenticated by only the lithographed or the facsimile signatures of the mayor and treasurer of such municipality. The bonds so executed shall be valid notwithstanding any change in officials occurring before delivery thereof.

HISTORY: 1962 Code Section 32‑848; 1952 Code Section 32‑848; 1945 (44) 284.

CROSS REFERENCES

Execution of municipal bonds, see Section 5‑21‑390.

Interest rate on municipal bonds, see Section 5‑21‑380.

Maturity of bonds, see Section 5‑21‑340.

Negotiability and registration of municipal bonds, see Section 5‑21‑360.

Place of payment under Municipal Bond Act, see Section 5‑21‑370.

Redemption privilege under Municipal Bond Act, see Section 5‑21‑350.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑990.** Sale of bonds.

Such bonds shall be sold for not less than par and accrued interest, upon sealed bids, after notice of such sale by publication in some newspaper published in the city or town or having general circulation therein for at least fifteen days prior thereto. The award shall be given to the bidder offering the most advantageous terms for the purchase of such bonds, but the city or town council may reject any and all bids and reoffer the bonds for sale.

HISTORY: 1962 Code Section 32‑849; 1952 Code Section 32‑849; 1945 (44) 284.

CROSS REFERENCES

Sale of municipal bonds under Municipal Bond Act, see Section 5‑21‑330.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑1000.** Proceeds of bond issue.

The proceeds derived from the sale of such bonds shall be deposited with the city or town treasurer and shall be distributed by him upon direction of the hospital board of trustees for the purposes authorized herein.

HISTORY: 1962 Code Section 32‑850; 1952 Code Section 32‑850; 1945 (44) 284.

CROSS REFERENCES

Deposit and use of proceeds from sale of municipal bonds, see Section 5‑21‑450.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑1010.** Payment of bonds; annual tax.

The full faith, credit and taxing power of any city or town issuing bonds hereunder for the purposes outlined in this article are hereby irrevocably pledged for the prompt payment of such bonds, with accrued interest thereon, as and when they become due. And the city or town council of such municipality shall levy annually a sufficient tax on all the taxable property within the limits of such city or town sufficient to pay such bonds, with interest accruing thereon, as they respectively become due, and the city or town clerk and treasurer shall collect such tax and apply the proceeds thereof to the payment of the bonds.

HISTORY: 1962 Code Section 32‑851; 1952 Code Section 32‑851; 1945 (44) 284.

CROSS REFERENCES

Diversion of and payment of funds under Municipal Bond Act, see Section 5‑21‑500.

Provision that holder may require levying of taxes and enforce covenants under Municipal Bond Act, see Section 5‑21‑490.

Use of bonds in payment of taxes, see Section 5‑21‑480.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑1020.** Acquisition of property; memorials.

The board of trustees of any such hospital may acquire real estate by purchase or gift for hospital purposes in the name of the city or town and apply for and accept grants, gifts, contributions, trust funds or other property for and in the name of the hospital, may name the hospital in honor of any principal grantor or contributor to the same and may authorize and establish memorials in the hospital buildings or on the grounds in the name of any donor upon request.

HISTORY: 1962 Code Section 32‑852; 1952 Code Section 32‑852; 1945 (44) 284.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑1030.** Employment of architect; construction contract.

The board of trustees may also employ an architect to execute necessary plans for a hospital building or buildings and to supervise the construction thereof, if deemed necessary, and may contract for the construction of such building or buildings after receiving bids therefor according to the prevailing custom of receiving bids and letting contracts to the lowest responsible bidder, but may reject any and all bids until a satisfactory bid has been submitted.

HISTORY: 1962 Code Section 32‑853; 1952 Code Section 32‑853; 1945 (44) 284.

CROSS REFERENCES

Selection of architectural and engineering firms, see Sections 11‑35‑1560 and 11‑35‑3210 et seq.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑1040.** Furnishings, equipment, and supplies; maintenance.

The board of trustees of any such hospital may also purchase furnishings, equipment and supplies and may replace the same from time to time, and they shall be responsible for the maintenance, repairs and upkeep of the buildings and property.

HISTORY: 1962 Code Section 32‑854; 1952 Code Section 32‑854; 1945 (44) 284.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑1050.** Jurisdiction of municipality when hospital outside its limits.

Should any municipal hospital authorized under the provisions of this article be built outside the corporate limits of the city or town, the jurisdiction of the municipal corporation shall extend over all land and property used for the hospital, and all ordinances of such city or town shall be in full force and effect in and over the territory so occupied.

HISTORY: 1962 Code Section 32‑855; 1952 Code Section 32‑855; 1945 (44) 284.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑1060.** Promulgation of rules for operation of hospital; employment of staff.

The board of trustees shall adopt and promulgate such rules, regulations and bylaws for the operation and government of the hospital as may be deemed expedient and necessary for the economic and equitable conduct thereof and establish thereby procedure for receiving and discharging patients and the rates, fees and charges to be made and collected for beds in wards or in private rooms and for the use of facilities and classified services, and, if and when necessary, the trustees may bring court proceedings for the enforcement of rights and the collection of accounts. They may also employ a superintendent of the hospital and other employees, designate the approved staff of physicians and surgeons, nurses and technicians and generally do any and all things necessary to carry out the operation of an approved hospital.

HISTORY: 1962 Code Section 32‑856; 1952 Code Section 32‑856; 1945 (44) 284.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑1070.** Persons who may be patients.

Any hospital established under the provisions of this article shall be primarily for the use and benefit of the inhabitants of the municipality owning and operating it, but in no event shall this article be construed as compelling such hospital to admit charity patients, it being the intent hereof that payment shall be made to the hospital for all patients according to the established rates, in order to operate the hospital, as far as possible, on a self‑supporting basis. However, the board of trustees may admit nonresident patients from contributing districts, as hereinafter defined, upon the same rate basis as established for residents of the municipality, or they may admit nonresident patients from outside the municipality and outside contributing districts upon a higher rate basis than established and charged residents of the municipality and contributing districts, if such higher rates are deemed advisable and necessary to keep the hospital on a self‑supporting basis. The board of trustees may also enter into contracts with any hospital benefit association permitted under the laws of this State to insure for hospital care and accept insured patients from within the municipality or from contributing districts or from other outside areas, if the facilities permit and beds are available. It may further authorize the admission and care of charity patients upon payment of approved charity rates by county or municipal governments or by payment from any charitable organization or eleemosynary corporation.

HISTORY: 1962 Code Section 32‑857; 1952 Code Section 32‑857; 1945 (44) 284.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

NOTES OF DECISIONS

In general 1

1. In general

State has never traditionally guaranteed provision of medical services to its citizens, nor does state law require hospital to treat patients; therefore provision of such services to patients by a third party does not transform such party into a state actor, even where hospital is supported by public funds. Mitchell v. Chontos, 1990, 756 F.Supp. 243.

**SECTION 44‑7‑1080.** Agreements with contributing districts as to use of hospital.

The board of trustees of any municipal hospital established under the provisions of this article may enter into agreement with the residents of any adjoining or nearby school district, including any portion of a school district outside the limits in which such city or town is located, to permit the residents of such district to use the hospital upon the same conditions, terms and rates as extended and established for residents of the municipality. This shall be accomplished by fixing a levy of taxes upon all property in the school district, or any determined portion thereof, such levy to be commensurate with any levy made by the municipality for the purposes of payment of any bonded indebtedness incurred in the building of the hospital, the interest thereon and any costs of operation and maintenance.

HISTORY: 1962 Code Section 32‑858; 1952 Code Section 32‑858; 1945 (44) 284.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑1090.** Petition for agreement with adjoining district.

If the residents of any such school district, or portion thereof outside the city limits, desire to enter into such an agreement with the trustees of the hospital, they may petition the county legislative delegation of the county in which the district is located, setting forth the millage to be levied upon the property in the district and requesting the levy of such millage, such petition to be signed by a majority of the freeholders and also a majority of the qualified electors therein and to bear the approval of the board of trustees of the hospital.

HISTORY: 1962 Code Section 32‑859; 1952 Code Section 32‑859; 1945 (44) 284.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑1100.** Tax levy by adjoining county.

Upon presentation of such petition, the county legislative delegation of the county in which the district is located may, by resolution, direct the auditor of the county to levy annually the additional millage upon all the taxable property in the district for the benefit of the hospital named in the petition, in the same manner and at the same time as all other county taxes are levied, and further direct the treasurer of the county in which the district is located to collect such taxes for the benefit of the named hospital and to transfer the resulting fund to the treasurer of the city or town in which the hospital is located.

HISTORY: 1962 Code Section 32‑860; 1952 Code Section 32‑860; 1945 (44) 284.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑1110.** Cancellation of contributing agreement.

If at any time any such contributing agreement should become unsatisfactory, the hospital board of trustees may discontinue it at the end of any calendar year by giving prior notice to the county legislative delegation and the auditor of the county in which the school district is located, or a majority of the freeholders and a majority of the qualified electors in the district may petition the county legislative delegation to discontinue such agreement. In either such event the auditor of the county shall remove the special levy.

HISTORY: 1962 Code Section 32‑861; 1952 Code Section 32‑861; 1945 (44) 284.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑1120.** Annual audit.

The city or town council of any such municipality shall have an annual audit made of the records of the hospital, the moneys received and the expenditure thereof, such audit to be filed in the clerk’s office and to become a part of the permanent records of such city or town.

HISTORY: 1962 Code Section 32‑862; 1952 Code Section 32‑862; 1945 (44) 284.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑1130.** Taxes shall pay deficits of hospital.

The council of any municipality building and operating a hospital under the terms of this article may levy annually upon all of the taxable property within the limits thereof a sufficient tax to supplement the costs of operation and maintenance of the hospital, should the hospital during any annual period fail to be self‑supporting, such tax to be levied and collected in the same manner and at the same time as all other municipal taxes are levied and collected.

HISTORY: 1962 Code Section 32‑863; 1952 Code Section 32‑863; 1945 (44) 284.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑1140.** Cumulative effect of article.

The powers conferred in this article are cumulative and in addition to all existing laws authorizing the building, operation and maintenance of hospitals, and none of them are hereby amended or repealed, it being the intent hereof to provide additional authority and powers and alternative methods and procedure for the establishment, operation and maintenance of hospitals as herein directed.

HISTORY: 1962 Code Section 32‑864; 1952 Code Section 32‑864; 1945 (44) 284.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

ARTICLE 9

Hospital Commissions in Municipalities of 5,000 to 10,000

**SECTION 44‑7‑1310.** Authorization for and trustees of city hospital commission.

The city council of any municipal corporation in the State containing more than five thousand inhabitants and less than ten thousand inhabitants, which has acquired, constructed or caused to be constructed a hospital, may establish a city hospital commission to operate and manage such hospital, may appoint or elect the trustees thereof and may fix by the ordinance establishing the commission the number of trustees thereof to be elected or appointed by the city council and their respective terms of office. In so doing it shall so provide that the original trustees when appointed shall serve originally for varying terms in office so that the term or terms of office of the several members of the commission may not expire at the same time. And upon the expiration of the term or terms of office of the trustees originally appointed the city council may appoint or elect their successors. And in the event of any vacancy by death, resignation or otherwise in the membership of any such commission the vacancy or vacancies may be filled by election or appointed by the city council for the unexpired term.

HISTORY: 1962 Code Section 32‑871; 1952 Code Section 32‑871; 1942 Code Section 7528‑11; 1936 (39) 1358, 1375.

CROSS REFERENCES

General structure, organization, powers, duties, functions and responsibilities of all municipalities, see Sections 5‑7‑10 et seq.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑1320.** Officers, minutes, and annual reports.

Any such commission shall select its chairman and secretary. Minutes of all its meetings shall be kept and be subject to the inspection of the city council or its representatives, and it shall submit reports to the city council annually or oftener if desired.

HISTORY: 1962 Code Section 32‑872; 1952 Code Section 32‑872; 1942 Code Section 7528‑11; 1936 (39) 1358, 1375.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑1330.** Powers and duties.

Any such city hospital commission shall have the control and management of the hospital and may select the employees and officers of the hospital, including its medical and surgical staff, and may fix the charges and fees to be paid for the services of the hospital and adopt such rules and regulations concerning its management as it may see fit.

HISTORY: 1962 Code Section 32‑873; 1952 Code Section 32‑873; 1942 Code Section 7528‑11; 1936 (39) 1358, 1375.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑1340.** Financial affairs.

Any such commission may provide for such compensation as may be necessary or advisable for the payment of any of its employees and officers in the conduct and management of the hospital, together with the expenses of the hospital, with authority to make such repairs or alterations from time to time as may be necessary and to construct or cause to be constructed or erected such additional buildings as may be necessary or advisable, all of which shall be paid for solely from the income of the hospital, which the commission may use for such purposes. The commission may accept gifts or legacies for the benefit of the hospital. But the commission may not bind the city to any obligation for the payment of any expenses in connection with the management, operation or construction of the hospital or for repairs, new buildings, construction or otherwise without first obtaining the consent and approval of the city council and shall incur no obligations that shall bind the city or city council in any way without first obtaining the consent thereto of such city council.

HISTORY: 1962 Code Section 32‑874; 1952 Code Section 32‑874; 1942 Code Section 7528‑11; 1936 (39) 1358, 1375.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

ARTICLE 11

Hospital Revenue Bond Act

**SECTION 44‑7‑1410.** Short title.

This article may be referred to and cited as the “Hospital Revenue Bond Act.”

HISTORY: 1962 Code Section 32‑798.1; 1973 (58) 654.

CROSS REFERENCES

Authorization of an issue of bonds, the proceeds of which are loaned to more than one hospital agency or public agency to construct or acquire hospital facilities, to be governed by the provisions of this article, see Section 44‑7‑1640.

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

**SECTION 44‑7‑1420.** Declaration of purpose.

It is hereby declared to be the policy of the State of South Carolina to promote the public health and welfare by providing means for the financing, refinancing, acquiring, enlarging, improving, constructing, equipping, and providing of hospital facilities to serve the people of the State and to make accessible to them modern and efficient hospital facilities at the lowest possible expense to those utilizing such hospital facilities.

The General Assembly hereby finds and declares that:

(1) There is a need to overcome existing and anticipated physical and technical obsolescence of existing hospital facilities, to provide additional modern and efficient hospital facilities in the State and to provide assistance to the extent herein provided in order that such hospital facilities may be made available at the lowest possible expense.

(2) Unless measures are adopted to alleviate such need, the shortage of such facilities will become increasingly more urgent and serious; and

(3) In order to meet such shortage and thereby promote the public health and welfare of the people of the State, it is necessary that assistance be afforded in the providing of adequate, modern and efficient hospital facilities in the State so that health and hospital care and services may be expanded, improved and fostered to the fullest extent practicable at the lowest possible expense.

(4) It is the purpose of this article to empower the governing bodies of the several counties of the State under the terms and conditions of this article to finance the acquisition, enlargement, improvement, construction, equipping and providing of such hospital facilities to the end that the public health and welfare of the people of the State will be promoted at the least possible expense to those utilizing such hospital facilities so provided. In this connection, such governing bodies shall function under the guidance of the State Fiscal Accountability Authority of South Carolina and the Department of Health and Environmental Control and shall be vested with all powers necessary to enable them to accomplish the purposes of this article, which powers shall be in all respects exercised for the benefits of the inhabitants of the State and to promote the public health and welfare of its citizens.

It is specifically found and declared that all action taken by any county in carrying out the purposes of this article will perform an essential governmental function.

HISTORY: 1962 Code Section 32‑798; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

Counties 174.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349, 353.

NOTES OF DECISIONS

Bond issuance 1

1. Bond issuance

Since county was authorized to finance acquisition and improvement of hospital facilities and to enter into agreements with corporations necessary or incidental to issuance of bonds, county did not aid and abet the commission of a crime when it issued tax exempt bonds for purchase and renovation of medical care facility by non‑profit corporation functioning as billing and collection agent for clinical services by medical university faculty members, notwithstanding allegations that the corporation was illegally engaged in corporate practice of medicine. Baird v. Charleston County (S.C. 1999) 333 S.C. 519, 511 S.E.2d 69, rehearing denied. Counties 174

**SECTION 44‑7‑1430.** Definitions.

In this article, the following terms have the following meanings, unless the context otherwise requires:

(a) “Authorizing issuer” means the county issuing bonds pursuant to Section 44‑7‑1640.

(b) “Bonds” or “revenue bonds” include notes, bonds, refunding bonds, and other obligations authorized to be issued by this article.

(c) “Cost” as applied to hospital facilities means the cost of construction or acquisition; the cost of acquisition of property, including rights in land and other property, both real and personal and improved and unimproved; the cost of demolishing, removing, or relocating any buildings or structures on land so acquired, including the cost of acquiring any land to which the buildings or structures may be moved or relocated; the cost of all machinery, fixed and movable equipment and furnishings; financing charges, interest prior to and during construction and, if considered advisable by the State Board, for a period of not exceeding two years after the estimated date of completion of construction; the cost of engineering and architectural surveys, plans, and specifications; the cost of consulting and legal services and other expenses necessary or incidental to determining the feasibility or practicability of constructing or acquiring the hospital facilities; the cost of administrative and other expenses necessary or incidental to the construction or acquisition of the hospital facilities, and the financing of the construction or acquisition of the hospital facilities, including reasonable provision for working capital and a reserve for debt service; the cost of issuing bonds under this article, including legal fees and printing costs, and the cost of reimbursing any hospital agency any amounts expended for items that would have been proper costs of the hospital facilities within the meaning of this definition had the expenditure been made directly by the county board.

“Cost” also includes monies necessary to refinance or to refund any indebtedness of any “hospital agency” or any “public agency” incurred at any time for the purpose of providing hospital facilities.

(d) “County board” means each of the governing bodies of the counties of the State, and in the event any hospital facilities are located in more than one county, the term “county board” relates to the governing bodies of the counties in which the hospital facilities are located.

(e) “Hospital agency” means any person, firm, corporation, association, or partnership whether for profit or not for profit, existing or created at any time and empowered to acquire, by lease or otherwise, operate, and maintain hospital facilities.

(f) “Hospital facilities” means any one or more buildings, structures, additions, extensions, improvements, or other facilities, whether or not located on the same or contiguous site or sites (and including existing facilities), machinery, equipment, furnishings, or other real or personal property suitable for health care or medical care; and includes, without limitation, general hospitals, chronic diseases, maternity, mental, tuberculosis, and other specialized hospitals; facilities for emergency care, intensive care, and self‑care; clinics and outpatient facilities; clinical, pathological, and other laboratories, hospital research facilities; extended care facilities; skilled nursing home facilities; nursing home facilities; retirement home facilities; laundries; residences and training facilities for nurses, interns, physicians, and other staff members; food preparation and food service facilities; administration buildings, central service, and other administrative facilities; communication, computer, and other electronic facilities; fire‑fighting facilities; pharmaceutical and recreational facilities; storage space, X‑ray, laser, radiotherapy, and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for hospital staff members and physicians; and including, without limiting any of the foregoing, any other health and hospital facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient, or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping, and physical amenities.

(g) “Intergovernmental loan agreement” means a loan agreement made by and between the authorizing issuer, as one party, and the project county, as the other party, to which bond proceeds are loaned to finance hospital facilities located in the jurisdiction of the project county and whereby the project county agrees to pay to the authorizing issuer or any assignee the sums required to meet the payment of the principal, interest, and redemption premium, if any, on any bonds, the proceeds of which will be used to finance hospital facilities in the jurisdiction of the project county.

(h) “Loan agreement” means any agreement made by and between any county board as one party and any hospital agency or public agency as the other party or parties by which the hospital agency or public agency agrees to pay to a county or to any assignee of the county the sums required to meet the payment of the principal, interest, and redemption premium, if any, on any bonds. If the county is also the public agency and the hospital facilities are under the jurisdiction of the county board, the loan agreement may be in the form of a resolution adopted by the county board.

(i) “Project county” means the county, other than the authorizing issuer, to which proceeds of the bonds are loaned to finance hospital facilities.

(j) “Public agency” means any county, city, town, or hospital district of the State existing or created at any time pursuant to the laws of the State authorized to acquire, by lease or otherwise, operate, and maintain hospital facilities.

(k) “Authority” means the State Fiscal Accountability Authority of South Carolina.

(l) “Trust indenture” means any agreement pursuant to which any bonds are issued. A trust indenture may also create a mortgage lien or security interest, or a mortgage lien and security interest, to secure bonds issued under the indenture.

(m) “Subsidiary loan agreement” means a loan agreement between a county and any hospital agency or public agency and includes an agreement between the authorizing issuer and a hospital agency or public agency with respect to hospital facilities located in the jurisdiction of the authorizing issuer.

HISTORY: 1962 Code Section 32‑798.2; 1973 (58) 654; 1980 Act No. 430; 1984 Act No. 512, Part II, Section 35E; 1985 Act No. 78; 1987 Act No. 201 Section 2.

CROSS REFERENCES

County bonds, see Section 4‑15‑10 et seq.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Hospital districts, powers, see Section 6‑11‑101.

Meaning of “hospitals, nursing home and care facilities” as used in Section 6‑21‑50 as having the same meaning as “hospital facilities” as used in this section, see Section 6‑21‑45.

Provision that hospital facilities defined in subsection (d) constitute “health care facilities” for purposes of 1976 Act No. 490, see Section 44‑7‑2115.

Library References

Counties 174.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349, 353.

Attorney General’s Opinions

“Health care facility” for purposes of a smoking ban includes hospital owned and leased buildings, thoroughfares, parking lots, and vehicles parked on the property. S.C. Op.Atty.Gen. (September 27, 2005) 2005 WL 2652377.

**SECTION 44‑7‑1440.** Powers of counties.

Subject to obtaining approvals from the Authority required by Section 44‑7‑1590 and from the Department of Health and Environmental Control, required by Section 44‑7‑1490, the several counties of the State functioning through their respective county boards shall be empowered:

(1) To enter into agreements with any hospital agency or public agency necessary or incidental to the issuance of bonds.

(2) To acquire and in connection with such acquisition, to enlarge or expand, whether by purchase, gift or lease, hospital facilities and in the case of hospital facilities located in more than one county, the facilities may be acquired jointly by the county boards of the counties wherein such hospital facilities shall be located.

(3) To enter into loan agreements with any hospital agency or public agency, prescribing the payments to be made by the hospital agency or public agency to the county or its assignee to meet the payments that shall become due on bonds, including terms and conditions relative to the acquisition and use of hospital facilities and the issuance of bonds.

(4) To issue bonds for the purpose of defraying the cost of providing hospital facilities and to secure the payment of such bonds as hereafter provided.

(5) To receive and accept from any public agency loans or grants for or in aid of the construction of hospital facilities or any portion thereof, and to receive and accept loans, grants, aid or contributions from any source of either money, property, labor or other things of value to be held, used and applied only for the purposes for which such loans, grants, aid and contributions are made.

(6) To mortgage any hospital facilities and the site thereof for the benefits of the holders of bonds issued to finance such hospital facilities.

(7) To issue bonds to refinance or to refund outstanding obligations, mortgages or advances heretofore or hereafter issued, made or given by a hospital or public agency for the cost of hospital facilities.

(8) To charge to each hospital and public agency utilizing this article any administrative costs and expenses incurred in the exercise of the powers and duties conferred by this article.

(9) To do all things necessary or convenient to carry out the purposes of this article.

(10) To make and execute contracts and agreements necessary or incidental to the exercise of its powers and duties under this article, with persons, firms, corporations, governmental agencies and others.

(11) To make the proceeds of any bonds available by way of a loan to a hospital or public agency pursuant to a loan agreement.

(12) To acquire by purchase, lease, gift or otherwise, or to obtain options for the acquisition of, existing hospital facilities and any property, real or personal, improved or unimproved, including interests in land in fee or less than fee for any hospital facilities, upon such terms and at such cost as shall be agreed upon by the owner and the county board.

(13) To arrange or contract with any county, city, town or other political subdivision or instrumentality of the State for the opening or closing of streets or for the furnishing of utility or other services to any hospital facilities.

(14) To enter into lease agreements with any hospital or public agency whereby the county board leases hospital facilities to such hospital or public agency, including hospital facilities located in more than one county.

(15) To pledge or assign any money, rents, charges, fees or other revenues, including any proceeds of insurance or condemnation awards, pursuant to any loan agreement to the payment of the bonds issued pursuant to such loan agreement.

HISTORY: 1962 Code Section 32‑798.3; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

Counties 114.

Westlaw Topic No. 104.

**SECTION 44‑7‑1450.** Issuance, execution, and terms of bonds; bond anticipation notes.

All bonds issued by a county board under authority of this article shall be limited obligations of its county, the principal, interest and redemption premiums, if any, on which shall be payable solely out of the moneys to be derived by such county pursuant to the loan agreement relating to the hospital facilities which the bonds are issued to finance (or refinance). Bonds and interest coupons issued under authority of this article shall never constitute an indebtedness of such county within the meaning of any State constitutional provision or statutory limitation and shall never constitute nor give rise to a pecuniary liability of the county or a charge against its general credit or taxing powers, and such fact shall be plainly stated on the face of each bond. Such bonds may be executed and delivered at any time as a single issue or from time to time as several issues, may be in such form and denominations, may be of such tenor, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding forty years from their date, may be subject to such terms of redemption, may be payable at such place or places, may have such conversion provision, may bear interest at such rate or rates (without regard to the limitations of Section 11‑9‑350 which shall not apply to any bonds) as the county board shall provide without limitation, may be payable at such place or places and evidenced in such manner, and may contain such provisions not inconsistent herewith, all of which shall be provided in the proceedings of the county board authorizing the bonds.

Any bonds issued under the authority of this article may be sold at public or private sale at such price and in such manner and from time to time as may be determined by the county board to be most advantageous, and the county board may pay, as a part of the cost of financing (or refinancing) any hospital facilities and out of the bond proceeds, all expenses, premiums and commissions which the county board may deem necessary or advantageous in connection with the authorization, sale and issuance thereof. All bonds issued under the authority of this article, except registered bonds which are registered otherwise than to bearer, and all interest coupons appurtenant thereto shall be construed to be negotiable instruments, despite the fact that they are payable solely from a specified source. The proceedings authorizing the issuance of bonds may provide for the issuance, in the future, of further bonds on a parity with those initially issued.

Pending the issuance of bonds, bond anticipation notes may be issued, and to the end that a vehicle be provided therefor, the provisions of Sections 11‑17‑10 to 11‑17‑110, as now or hereafter amended, shall be applicable to such bond anticipatory borrowing.

HISTORY: 1962 Code Section 32‑798.4; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

Counties 172.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349 to 353.

**SECTION 44‑7‑1460.** Pledge of revenues to secure bonds; proceedings authorizing bonds.

The principal, interest and premium, if any, on any bonds shall be secured by a pledge of the revenues payable to the county pursuant to the loan agreement relating to the hospital facilities financed out of the bond proceeds and any bonds may be issued pursuant to a trust indenture, which may constitute a mortgage lien.

The proceedings under which bonds are authorized to be issued or any loan agreement or trust indenture may contain any agreements and provisions customarily contained in instruments providing for the issuance of, or securing bonds, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of the sums payable by the hospital agency or public agency to the county pursuant to the loan agreement, the maintenance and insurance of the hospital facilities, the creation and maintenance of special funds by the hospital agency or public agency, and the rights and remedies available in the event of default to the bondholders or to the trustee under such trust indenture, all as the county board shall deem advisable. Provided, however, that in making such agreement or provisions no county shall have the power to obligate itself except with respect to any security pledged, mortgaged or otherwise made available for the securing of the bonds, and the application of the revenues from the loan agreement, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

The proceedings authorizing any bonds hereunder and any trust indenture in connection therewith, may provide that in the event of default in payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or trust indenture, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with such powers as may be necessary to enforce the obligations thereof. No breach of any such agreement shall impose any pecuniary liability upon the county or any charge upon its general credit or against its taxing power.

The trustee or trustees under any trust indenture, or any depository specified by such trust indenture, may be such person or corporations as the county board shall designate, notwithstanding that they may be nonresidents of South Carolina or incorporated under the laws of the United States or the laws of other states of the United States.

HISTORY: 1962 Code Section 32‑798.5; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

Counties 176.

Westlaw Topic No. 104.

C.J.S. Counties Sections 354 to 356.

**SECTION 44‑7‑1470.** Contracts for construction of hospital facilities.

Contracts for the construction of any hospital facilities may be let on such terms and under such conditions as the county board and the hospital agency or public agency may agree upon and may be let with or without advertisement or call for bids.

HISTORY: 1962 Code Section 32‑798.6; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

Counties 114.

Westlaw Topic No. 104.

**SECTION 44‑7‑1480.** Criteria to be considered by county boards in undertaking hospital facilities.

In undertaking any hospital facilities pursuant to this article, the county board shall be guided by and shall observe the following criteria and requirements; provided, that the determination of the county board as to its compliance with such criteria and requirements shall be final and conclusive, subject only to challenge as provided in Section 44‑7‑1590:

(a) There is a need for the hospital facilities in the area in which the hospital facilities are to be located.

(b) No hospital facilities shall be provided for any hospital agency or public agency which is not financially responsible and capable of fulfilling its obligations under the loan agreement, including the obligations to make the payments required thereunder, to operate, repair and maintain at its own expense the hospital facilities and to discharge such other responsibilities as may be imposed under the loan agreement.

(c) Adequate provision shall be made for the payment of the principal of and the interest on the bonds and any necessary reserves therefor and for the operation, repair and maintenance of the hospital facilities at the expense of the hospital agency or public agency.

(d) The public facilities, including utilities, and public services necessary for the hospital facilities will be made available.

HISTORY: 1962 Code Section 32‑798.7; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑1490.** Approval of construction or other work on facilities required.

The county board shall not undertake the acquisition, construction, expansion, equipping or financing of any hospital facilities unless and until such approval of the Department of Health and Environmental Control for such undertaking as may be required under Article 3, Chapter 7, Title 44, shall have been obtained.

HISTORY: 1962 Code Section 32‑798.8; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

Counties 114.

Westlaw Topic No. 104.

**SECTION 44‑7‑1500.** Public agencies authorized to enter into loan agreements with county board.

For the purposes of this article, public agencies are authorized and empowered to enter into loan agreements (including agreements of lease) with any county board to facilitate the financing, acquiring, constructing, improving, enlarging, expanding, equipping, providing, operating and maintaining of hospital facilities and pursuant to any such loan agreement to operate, repair and maintain any hospital facilities and to pay the cost thereof from any funds available for such purpose and the payments required therefor.

HISTORY: 1962 Code Section 32‑798.9; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

Counties 172.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349 to 353.

**SECTION 44‑7‑1510.** Investigations, studies, and other reviews by county board.

The county board is authorized to make or cause to be made such investigations, surveys, studies, reports and reviews as in its judgment are necessary and desirable to determine the feasibility and desirability of the hospital facilities, the extent to which the hospital facilities will contribute to the health and welfare of the area in which they will be located, the powers, experience, background, financial condition, record of service and capability of the management of the hospital agency or public agency involved, the extent to which the hospital facilities otherwise conform to the criteria and requirements of this article, and such other factors as may be deemed relevant or convenient in carrying out the purposes of this article.

HISTORY: 1962 Code Section 32‑798.10; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

Counties 172.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349 to 353.

**SECTION 44‑7‑1520.** Provisions in loan agreement for completion of facilities, payments, and additional bonds.

Every loan agreement shall contain a covenant obligating the hospital agency or public agency to effect the completion of the hospital facilities if the proceeds of the bonds prove insufficient, and each such loan agreement shall obligate the hospital agency or public agency to make payments which shall be sufficient (a) to pay the principal of and interest on the bonds issued for such hospital facilities, (b) to build up and maintain any reserves deemed by the county board to be advisable in connection therewith, and (c) to pay the costs of maintaining the hospital facilities in good repair and the cost of keeping it properly insured. The loan agreement may provide for the issuance of additional parity bonds as required in order to complete the hospital facility.

HISTORY: 1962 Code Section 32‑798.11; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Requirement that subsidiary loan agreements contain the covenants stated in this section, see Section 44‑7‑1680.

Library References

Counties 172.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349 to 353.

**SECTION 44‑7‑1530.** Provision in loan agreement for payments in lieu of taxes.

Every loan agreement made with a hospital agency which shall be a corporation created for profit, pursuant to which a public agency shall have acquired title to any hospital facilities, shall contain a provision requiring such hospital agency to make payments to the county or counties, school district or school districts, and other political units wherein the hospital facilities shall be located, in lieu of taxes, in such amounts as would result from taxes levied on the hospital facilities by such county or counties, school district or school districts, and other political unit or units, if the hospital facilities were owned by the hospital agency which is a corporation for profit, but with appropriate reductions similar to the tax exemptions, if any, which would be afforded to the hospital agency if it were the owner of the hospital facilities.

HISTORY: 1962 Code Section 32‑798.12; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

Counties 172.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349 to 353.

**SECTION 44‑7‑1540.** Additional provisions in loan agreement; guarantee agreement.

Any loan agreement may provide that the hospital facilities will be owned by the county and leased to the hospital agency or public agency, may provide the hospital agency or public agency with an option to purchase the hospital facility upon such terms and conditions as the county board and the hospital agency or public agency shall agree upon at a price which may be a nominal amount or less than the true value at the time of purchase, or may provide that the hospital facilities shall become the property of the hospital agency or public agency upon the acquisition thereof. In connection with any loan agreement, any county board may obtain and enter into a guaranty agreement whereby a party other than the hospital agency or public agency guarantees in whole or in part the obligations of the hospital agency or public agency under the loan agreement upon such terms and conditions as the county board may deem appropriate.

HISTORY: 1962 Code Section 32‑798.13; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

Counties 172.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349 to 353.

**SECTION 44‑7‑1550.** Use of proceeds from sale of bonds.

The proceeds from the sale of any bonds issued under authority of this article shall be applied only for the purpose for which the bonds were issued; provided, however, that any premium and accrued interest received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; and provided, further, that if for any reason any portion of the proceeds shall not be needed for the purpose for which the bonds were issued, such unneeded portion of the proceeds shall be applied to the payment of the principal of or interest on the bonds.

HISTORY: 1962 Code Section 32‑798.14; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

Counties 172.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349 to 353.

NOTES OF DECISIONS

In general 1

Justiciability 2

1. In general

Since issuance of hospital revenue bonds by county did not constitute the issuance of state bonds, doctors seeking to enjoin the issuance of the bonds were not required to comply with statute setting forth the requirements for suits affecting obligations of the state. Baird v. Charleston County (S.C. 1999) 333 S.C. 519, 511 S.E.2d 69, rehearing denied. Counties 177

2. Justiciability

Doctors had standing to bring suit to enjoin county from issuing tax exempt bonds for purchase and renovation of medical care facility by non‑profit corporation functioning as billing and collection agent for clinical services by medical university faculty members, since issuance of hospital bonds clearly impacted the public health and welfare, a profound public interest. Baird v. Charleston County (S.C. 1999) 333 S.C. 519, 511 S.E.2d 69, rehearing denied. Counties 177

**SECTION 44‑7‑1560.** Refunding of bonds.

(1) Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by the county, but only with the approval of the Authority being first obtained, by the issuance of its refunding bonds in such amounts as the county board may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be refunded, together with any interest then or thereafter to become due (prior to the date when all outstanding bonds shall be paid) and any premium, expenses and commissions necessary to be paid in connection therewith.

(2) Any such refunding may be effected whether the bonds to be refunded have matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds for the payment of the bonds to be refunded, or by exchange of the refunding bonds for the bonds to be refunded thereby; provided, that the holders of any bonds to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable, or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption.

(3) Except as provided in paragraph (4) of this section, all refunding bonds issued under the authority of this article shall be payable in the same manner and under the same terms and conditions as are herein provided for the issuance of bonds. The power to issue refunding bonds herein granted includes the power to effect a refunding in advance of the maturity or earliest redemption date of the bonds being refunded; provided, that no refunding shall be effected more than eight years prior to the maturity or earliest redemption date of the bonds being refunded.

(4) Any loan agreement made for the purpose of securing refunding bonds may provide:

(a) That any leasehold estate granted thereby shall become effective as of the occasion of the termination of any existing leasehold estate;

(b) That prior to the time when lease rental payments become due, the then holder of any leasehold estate created by the loan agreement securing the outstanding bonds shall be unconditionally obligated to pay, as and when they become due and payable, amounts sufficient to pay the principal, interest and redemption premiums, if any, on the refunding bonds;

(c) For an irrevocable agreement on the part of the county to call for redemption on the earliest available redemption date all of the bonds to be refunded which do not mature prior to such date; and

(d) That the proceeds derived from the sale of the refunding bonds and any other funds that may be required shall be deposited forthwith in a trust account and invested in direct obligations of, or obligations guaranteed by, the United States of America, the corpus of which shall be applied to the payment of the principal, interest and redemption premium, if any, of the bonds being refunded. Any agreement between the county and the trustee of the trust account established pursuant to this paragraph may prescribe that income earned from investments of the corpus thereof be used or applied for any of the following purposes: (i) to the payment of the interest on the outstanding bonds; (ii) to the payment of interest on the refunding bonds until the redemption of the outstanding bonds; (iii) partially in accordance with (i) hereof and partially in accordance with (ii) hereof; and (iv) added in whole or in part to the corpus (and used in accordance with the provisions hereof relating to the use of corpus), with the balance of income, if any, being applied in accordance with any of (i), (ii) or (iii) hereof.

(5) In the exercise of the powers herein granted to effect advance refundings, any county board may, but shall not be required to, avail itself of any of the provisions of the Advanced Refunding Act [Sections 11‑21‑10 to 11‑21‑80].

HISTORY: 1962 Code Section 32‑798.15; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

Counties 175.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349, 351.

**SECTION 44‑7‑1570.** Bonds as legal investments.

It shall be lawful for all executors, administrators, guardians, committees and other fiduciaries to invest any moneys in their hands in bonds issued under the provisions of this article.

HISTORY: 1962 Code Section 32‑798.16; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

Counties 172.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349 to 353.

**SECTION 44‑7‑1580.** Exemption from taxation.

The bonds authorized by this article and the income therefrom, all trust indentures and mortgages executed as security therefor, all loan agreements (including agreements of lease) made pursuant to the provisions hereof, and the revenues derived from any loan agreement thereof shall be exempt from all taxation in the State of South Carolina except for inheritance, estate or transfer taxes; and all trust indentures, mortgages and loan agreements made pursuant to the provisions of this article shall be exempt from South Carolina stamp and transfer taxes.

HISTORY: 1962 Code Section 32‑798.17; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

Taxation 3519.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1879 to 1881.

**SECTION 44‑7‑1590.** Procedure for approval by Authority of issuance of bonds.

(A) No bonds may be issued pursuant to the provisions of this article until the proposal of the county board to issue the bonds receives the approval of the authority. Whenever a county board proposes to issue bonds pursuant to the provisions of this article, it shall file its petition with the authority setting forth:

(1) a brief description of the hospital facilities proposed to be undertaken and the refinancing or refunding proposed;

(2) a statement setting forth the action taken by the Department of Health and Environmental Control in connection with the hospital facilities;

(3) a reasonable estimate of the cost of hospital facilities;

(4) a general summary of the terms and conditions of the proposed loan agreement; and

(5) such other information as the authority requires.

(B) Upon the filing of the petition the authority, as soon as practicable, shall conduct the review as it considers advisable, and if it finds that the proposal of the governing board is intended to promote the purposes of this article, it is authorized to approve the proposal. At any time following the approval, the county board may proceed with the issuance of the bonds in accordance with the proposal as approved by the authority. Notice of the approval of the proposal by the authority must be published at least once by the authority in a newspaper having general circulation in the county where the hospital facilities are or are to be located. The notice must set forth the action taken by the county board pursuant to Section 44‑7‑1480 and the action taken by the Department of Health and Environmental Control pursuant to Section 44‑7‑1490.

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

HISTORY: 1962 Code Section 32‑798.18; 1973 (58) 654; 1994 Act No. 426, Section 2.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Approval procedure for hospital revenue bond proposals, see S.C. Code of Regulations R. 19‑102.01 et seq.

Library References

Counties 176.

Westlaw Topic No. 104.

C.J.S. Counties Sections 354 to 356.

**SECTION 44‑7‑1600.** Provisions which resolution and loan agreement may contain; liability on bonds.

Any resolution authorizing or trust indenture providing for any bonds or any issue of bonds and any loan agreement may contain provisions, which shall be part of the contract with the holders of the bonds to be authorized, as to:

(1) Pledging all or any part of the revenues of any hospital facilities financed in whole or in part out of the proceeds of such bonds including revenues to be derived from a leasing of such hospital facilities, to secure the payment of the bonds issued to defray the cost, or any portion of the cost, of such hospital facilities; (2) the rentals, fees and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues; (3) the setting aside of reserves or sinking funds, and the regulation and disposition thereof; (4) limitations on the right of the county board or its agent to restrict and regulate the use of the hospital facilities; (5) limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied; (6) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured and the refunding of outstanding bonds; (7) the procedure, if any, by which the terms of any resolution, loan agreement or trust indenture may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given; (8) defining the acts of omissions to act which shall constitute a default in the duties of the county board to holders of its obligations and providing the rights and remedies of such holders in the event of a default; and (9) the mortgaging of any hospital facilities and the site thereof for the purpose of securing the bondholders.

Neither the members of any county board nor any person executing any bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

HISTORY: 1962 Code Section 32‑798.19; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

Counties 176.

Westlaw Topic No. 104.

C.J.S. Counties Sections 354 to 356.

**SECTION 44‑7‑1610.** Revenues deemed trust funds.

All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this article and in any resolution or trust indenture pursuant hereto. Any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this article and the resolution authorizing the bonds of any issue or any trust indenture.

HISTORY: 1962 Code Section 32‑798.20; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

**SECTION 44‑7‑1620.** Enforcement of rights by bondholders and trustees.

Any holder of revenue bonds issued under the provisions of this article or any of the coupons appertaining thereto, and the trustee under any trust indenture, except to the extent the rights herein given may be restricted by any resolution authorizing the issuance of, or any such trust indenture securing, such bonds, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the State or granted hereunder or under such resolution or trust indenture, and may enforce and compel the performance of all duties required by this article or by such resolution or trust indenture to be performed by any county board or by any officer, employee or agent.

HISTORY: 1962 Code Section 32‑798.21; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

Counties 184.

Westlaw Topic No. 104.

C.J.S. Counties Sections 363 to 364.

**SECTION 44‑7‑1630.** Provision for daily charge on persons using hospital.

Any loan agreement may contain a provision whereby the hospital agency or public agency agrees to impose a daily charge upon persons using the hospital facilities financed out of the bond proceeds (or any other hospital facilities owned or operated by the hospital agency or public agency) in an amount sufficient to produce revenues adequate to discharge the obligation of the hospital agency or public agency under the loan agreement; and further, that in the event the hospital agency or public agency shall fail to impose such daily room charge at the request of the county or its assignee, then and in that event the county or its assignee may proceed to compel by specific performance the imposition and collection of such a daily room charge and the use of the revenues derived therefrom to discharge the obligations of the hospital agency or public agency under the loan agreement.

HISTORY: 1962 Code Section 32‑798.22; 1973 (58) 654.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

Health 940.

Westlaw Topic No. 198H.

**SECTION 44‑7‑1640.** Authorization to issue bonds with proceeds to be loaned to more than one hospital agency or public agency; procedures; bonds to be limited obligations.

(A) Notwithstanding any other provision of this article, the authorization of an issue of bonds the proceeds of which are loaned to more than one hospital agency or public agency to construct or acquire hospital facilities, whether or not the hospital facilities are located or will be located in the jurisdiction of one or more counties, may be governed by Sections 44‑7‑1640 through 44‑7‑1720 of this article. The governing body of the authorizing issuer may authorize an issue of bonds for hospital facilities located outside the jurisdiction of the authorizing issuer, provided, hospital facilities will be simultaneously financed under this article in the jurisdiction of the authorizing issuer pursuant to a subsidiary loan agreement. However, no proceeds may be used to acquire or construct hospital facilities in any project county unless an intergovernmental loan agreement is executed between the authorizing issuer and the project county and unless the county board of the project county consents to the intergovernmental loan agreement.

(B) All bonds issued by an authorizing issuer under authority of this article are limited obligations of the authorizing issuer and the project county. The principal, interest, and redemption premiums, if any, on the bonds are payable solely out of the monies to be derived by the authorizing issuer pursuant to one or more intergovernmental loan agreements between the authorizing issuer and the project county or subsidiary loan agreements between the authorizing issuer and a hospital agency or public agency relating to the hospital facilities in the jurisdiction of the authorizing issuer which the bonds are issued to finance or refinance or a subsidiary loan agreement between the project county and the hospital agency or public agency within the jurisdiction of the project county. Bonds and interest coupons issued under authority of this article do not constitute an indebtedness of the authorizing issuer or project county within the meaning of any state constitutional provision or statutory limitation and do not constitute nor give rise to a pecuniary liability of the authorizing issuer or project county or a charge against their general credit or taxing powers, and this fact must be plainly stated on the face of each bond.

HISTORY: 1962 Code Section 32‑798.23; 1973 (58) 654; 1987 Act No. 201 Section 3.

CROSS REFERENCES

County bonds, see Chapter 15 of Title 4.

Definition of “authorizing issuer” as meaning the county issuing bonds pursuant to this section, see Section 44‑7‑1430.

General obligation bonds, see Sections 5‑21‑210 et seq.

General provisions relating to bonds of political subdivisions, see Sections 11‑15‑10 et seq.

Library References

Counties 172.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349 to 353.

**SECTION 44‑7‑1650.** Intergovernmental loan agreements.

The authorizing issuer and the project county are authorized and empowered to enter into an intergovernmental loan agreement to facilitate the financing of hospital facilities. An intergovernmental loan agreement obligates the project county to make payments to or on account of the authorizing issuer from payments received under one or more subsidiary loan agreements. The intergovernmental loan agreement is a limited obligation of the project county payable solely from the revenues derived under one or more subsidiary loan agreements. The intergovernmental loan agreement does not constitute an indebtedness of the project county within the meaning of any state constitutional provision or statutory limitation and does not constitute nor give rise to a pecuniary liability of the project county or a charge against its general credit or taxing powers, and this fact must be plainly stated in the intergovernmental loan agreement.

HISTORY: 1987 Act No. 201 Section 4.

Library References

Counties 172.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349 to 353.

**SECTION 44‑7‑1660.** Subsidiary loan agreements.

(A) Public agencies and hospital agencies are empowered and authorized to enter into subsidiary loan agreements. Prior to entering into a subsidiary loan agreement pursuant to this article, the county board of the project county or of the authorizing issuer, if the subsidiary loan agreement is between the authorizing issuer and a public agency or hospital agency located in its jurisdiction, shall comply with the following criteria and requirements with respect to hospital facilities located in its jurisdiction; however, the determination of the county board as to its compliance with the criteria and requirements is final and conclusive, subject only to challenge as provided in Section 44‑7‑1690:

(1) There is a need for the hospital facilities in the area in which the hospital facilities are to be located.

(2) No hospital facilities may be provided for any hospital agency or public agency which is not financially responsible and capable of fulfilling its obligations under the subsidiary loan agreement, including the obligations to make the payments required under the agreement, to operate, repair, and maintain at its own expense the hospital facilities, and to discharge other responsibilities as may be imposed under the subsidiary loan agreement.

(3) Adequate provision must be made for the payment of the principal of and the interest on the bonds and any necessary reserves for the payment and for the operation, repair, and maintenance of the hospital facilities at the expense of the hospital agency or public agency.

(4) The public facilities, including utilities, and public services necessary for the hospital facilities must be made available.

(5) The county board has given due consideration, upon the advice of counsel, to the impact, if any, of the bonds on the county’s present or future financings.

(B) The county board may not enter into a subsidiary loan agreement to finance the acquisition, construction, expansion, equipping, or financing of any hospital facilities until approval of the agreement by the South Carolina Department of Health and Environmental Control as may be required under Article 3 of Chapter 7 of Title 44.

HISTORY: 1987 Act No. 201 Section 4.

Library References

Counties 172.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349 to 353.

**SECTION 44‑7‑1670.** Authorization for public agencies to enter into subsidiary loan agreements with county board; county not to obligate itself.

For the purposes of this article, public agencies may enter into one or more subsidiary loan agreements with a county board to facilitate the financing, acquiring, constructing, improving, enlarging, expanding, equipping, providing, operating, and maintaining of hospital facilities located within the jurisdiction of the county board and pursuant to the subsidiary loan agreement may operate, repair, and maintain hospital facilities and pay the costs of the operation, repair, and maintenance from any funds available for the purpose and the payments required for the operation, repair, and maintenance. However, in making the agreement no county may obligate itself except with respect to any security pledged, mortgaged, or otherwise made available for the securing of the bonds and the application of the revenues from the subsidiary loan agreement nor incur a pecuniary liability or a charge against its general credit or its taxing powers.

HISTORY: 1987 Act No. 201 Section 4.

Library References

Counties 172.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349 to 353.

**SECTION 44‑7‑1680.** Contents of subsidiary loan agreements.

The subsidiary loan agreement must contain the covenants stated in Section 44‑7‑1520 and may contain other terms and conditions permitted under this article for loan agreements.

HISTORY: 1987 Act No. 201 Section 4.

Library References

Counties 172.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349 to 353.

**SECTION 44‑7‑1690.** Notice of approval of loan agreement; filing requirements; challenge of approval of loan agreements.

Notice of the approval by a county board of any intergovernmental loan agreement or subsidiary loan agreement must be published at least once in a newspaper having general circulation in each county by the respective county board prior to the execution of such agreements. With respect to a subsidiary loan agreement, the notice must set forth the action taken by the county board and the South Carolina Department of Health and Environmental Control pursuant to Section 44‑7‑1660. The intergovernmental loan agreement and subsidiary loan agreement must be filed with the clerk of court of the authorizing issuer and the clerk of court of the project county prior to the issuance of the bonds authorized thereby.

Any interested party may, within twenty days after the date of the publication of the notice, challenge the action taken by the county board of the authorizing issuer or the project county in approving the intergovernmental loan agreement by action de novo in the court of common pleas of the project county or the authorizing issuer.

Any interested party may, within twenty days after the date of the publication of the notice, challenge the action taken by the county board in approving the subsidiary loan agreement or the Department of Health and Environmental Control with respect to the hospital facilities by action de novo in the court of common pleas in any county where the hospital facilities are to be located.

HISTORY: 1987 Act No. 201 Section 4.

Library References

Counties 172.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349 to 353.

**SECTION 44‑7‑1700.** Personal liability or accountability with respect to issuance of bonds.

Neither the members of the county board of the authorizing issuer or the project county nor any person executing any bonds, the intergovernmental loan agreement, or the subsidiary loan agreement is liable personally on the bonds nor subject to any personal liability or accountability by reason of the issuance of the bonds.

HISTORY: 1987 Act No. 201 Section 4.

Library References

Counties 172.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349 to 353.

**SECTION 44‑7‑1710.** Application of provisions of article to bonds whose proceeds are to be loaned to more than one hospital agency or public agency; authority of county board of authorizing issuer.

All of the provisions of this article, except item (b) of Section 44‑7‑1590, are applicable to the bonds authorized by Section 44‑7‑1640. The county board of the authorizing issuer may, on behalf of any project county which may subsequently be a party to an intergovernmental loan agreement, undertake all actions required by the county board under this article with respect to the issuance of the bonds and adoption of the petition to the Authority required by Section 44‑7‑1590.

HISTORY: 1987 Act No. 201 Section 4.

Library References

Counties 172.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349 to 353.

**SECTION 44‑7‑1720.** Cumulative effect of article; procedure for county board to carry out authorization granted by article.

This article must not be construed as a restriction or limitation upon any powers which a county might otherwise have under any laws of this State but must be construed as cumulative. The authorization granted in this article may be carried out by a county board acting at a regular or special meeting and without publication of the proceedings by a resolution to become effective upon its adoption at the meeting at which it is presented, notwithstanding any restriction, limitation, or other procedure, imposed upon the county board by any laws of this State.

HISTORY: 1987 Act No. 201 Section 4.

Library References

Counties 172.

Westlaw Topic No. 104.

C.J.S. Counties Sections 349 to 353.

ARTICLE 13

Pee Dee Regional Health Services District

**SECTION 44‑7‑1810.** Creation of Pee Dee Regional Health Services District.

There is hereby created a body politic and corporate to be known as the Pee Dee Regional Health Services District composed of the counties of Chesterfield, Darlington, Dillon, Florence, Marion and Marlboro (hereinafter called the district) with an office in or near the city of Florence in Florence County as determined by the board.

HISTORY: 1962 Code Section 32‑904.11; 1973 (58) 109.

CROSS REFERENCES

The reconstitution of this district under Article 15 of this chapter, see Section 44‑7‑2110.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

The Pee Dee Regional Health Services District had authority to participate in project whereby it received county, state, and federal funds for construction of hospital which it leased to private nonprofit institution. Gilbert v. Bath (S.C. 1976) 267 S.C. 171, 227 S.E.2d 177.

2. Constitutional issues

Neither Code 1962 Section 32‑904.11 [Code 1976 Section 44‑7‑1810], creating the Pee Dee Regional Health Services District, nor any other legislation relative thereto, violates the prohibition on special legislation contained in South Carolina Constitution Article III Section 34. Gilbert v. Bath (S.C. 1976) 267 S.C. 171, 227 S.E.2d 177.

**SECTION 44‑7‑1820.** Membership of board of directors.

The corporate powers and duties of the district shall be exercised and performed by a board of directors (hereinafter called the board) to be composed of four members from Florence County, three members from Darlington County, two members each from Chesterfield, Dillon, Marion and Marlboro Counties appointed by the Governor upon recommendation of the legislative delegations of the respective counties, including resident Senators if any.

HISTORY: 1962 Code Section 32‑904.12; 1973 (58) 109.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑1830.** Terms of office of members of board.

The term of office of the members of the board shall be six years. The initial terms however shall be adjusted in the following manner:

At the first meeting of the board, the initial terms of the eighteen representatives from the six counties shall be determined by lot with six of the members to serve a term of six years, six of the members to serve a term of four years, and six of the members to serve a term of two years. The Secretary of State shall be notified as to the terms established by lot.

The term of each member shall expire on the January first nearest to the end of the term of years for which he is appointed or as otherwise provided in the foregoing provisions; provided, that each member shall serve until his successor is appointed and qualified.

HISTORY: 1962 Code Section 32‑904.13; 1973 (58) 109.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑1840.** Meetings of board.

The board shall meet upon the call of its chairman, but not less frequently than one time in each three calendar month period.

HISTORY: 1962 Code Section 32‑904.14; 1973 (58) 109.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑1850.** Officers of board; compensation of members.

The board, at its initial meeting, shall elect one of its members as chairman, one as vice‑chairman, and one as secretary.

The officers shall serve for a term of two years and until their successors are elected and qualify. Members of the board shall serve without compensation, but shall be reimbursed for actual expenses incurred while in the performance of authorized duties.

HISTORY: 1962 Code Section 32‑904.15; 1973 (58) 109.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑1860.** Powers and duties of board.

The board shall have the following powers and duties:

(1) Have perpetual succession.

(2) Adopt, use and alter a corporate seal.

(3) Make bylaws for the management and regulation of its affairs, and define a quorum for its meetings.

(4)(a) To acquire, by purchase or otherwise, any real property for any authorized use;

(b) To acquire by purchase or otherwise personal property deemed by it to be necessary and to dispose of such property when in its judgment, it is in the best interest of the district.

(5) Deposit and withdraw moneys realized from the sale of revenue bonds issued pursuant to provisions herein, and to expend the moneys in the manner prescribed by the proceedings authorizing the issuance of the revenue bonds.

(6) Deposit moneys derived from revenue producing facilities or services in any bank or trust company having an office within the district and withdraw the moneys for district purposes.

(7) Build, maintain and equip and operate regional health care facilities or any other hospital or health care related facility in its charge under such rules and regulations as the board may from time to time promulgate.

(8) Provide for the operation of its regional health care facilities or any other hospital or health care related facility in its charge.

(9) Exercise the power of eminent domain in accordance with Chapter 5, Title 28.

(10) Appoint personnel and prescribe the duties of such, fix their compensation and determine if and to what extent they shall be bonded for the faithful performance of their duties.

(11) Employ technical or professional services as may be desirable to the performance of the duties in the district.

(12) Apply for moneys from any source, public or private, made available by grant or loan or both for the purposes of the district. All Federal moneys accepted under such terms and conditions as are prescribed by the United States and as are consistent with State law, and all other moneys accepted under this section shall be accepted and expended by the board upon such terms and conditions as are prescribed by the State or other sources thereof.

(13) To take such action as may be necessary to carry out the purposes of this article.

HISTORY: 1962 Code Section 32‑904.16; 1973 (58) 109.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑1870.** Board may borrow money and make and issue bonds and notes.

The board may borrow money and make and issue negotiable bonds, notes and other evidences of indebtedness payable solely from the revenue derived from the operation or lease of any revenue‑producing facility in its charge. The sums borrowed shall be used to pay costs incident to the purposes of this article. Neither the faith nor credit of the district shall be pledged to the payment of the principal and interest of the obligations, and there shall be on the face of such obligation a statement, plainly worded, to that effect. Neither the members of the board nor any person signing the obligation shall be personally liable thereon. The board may:

(1) Provide that such bonds, notes or other evidence of indebtedness be payable, both as to principal and interest, from the net revenues derived from the district of any revenue‑producing facility, as such net revenues may be defined by the board;

(2) Covenant and agree that, upon its being adjudged in default as to the payment of any installment of principal and interest upon any obligation issued by it or in default as to the performance of any covenant or undertaking made by it, in such event the principal of all obligations of such issue may be declared forthwith due and payable, notwithstanding that any of them may not have then matured.

(3) Confer upon a corporate trustee the power to make disposition of the proceeds from all borrowing and also all revenues derived from the operation of the revenue‑producing facility whose revenues are pledged for the payment of such obligations, in accordance with and in the order of priority prescribed by resolutions adopted by the board as an incident to the issuance of any notes, bonds or other evidences of indebtedness;

(4) Dispose of its obligations at public or private sale and upon such terms and conditions as it shall approve;

(5) Covenant and agree that any cushion fund established to further secure the payment of principal and interest of any obligation shall be a fixed amount;

(6) Covenant and agree that it will not enter into any agreements with any person or with the State, the United States or any of their political subdivisions for the furnishing of free services where such services are ordinarily charged for;

(7) Prescribe the procedure, if any, by which the terms of the contract with the holders of its obligations may be amended, the number of obligations whose holders must consent thereto, and the manner in which such consent shall be given; and

(8) Prescribe the evidences of default and conditions upon which all or any obligation shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

HISTORY: 1962 Code Section 32‑904.17; 1973 (58) 109.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑1880.** Disposition of revenues.

All revenues derived by the district from the operation of any revenue‑producing facility which may not be required to discharge covenants made by it in issuing bonds, notes or other obligations as authorized herein shall be held, disposed of or expended by the board for purposes germane to the functions and purposes of the district.

HISTORY: 1962 Code Section 32‑904.18; 1973 (58) 109.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑1890.** Property and income of district shall be exempt from taxes.

Property and income of the district shall be exempt from all taxes levied by the State, county or any municipality, political subdivision or agency thereof, direct or indirect.

HISTORY: 1962 Code Section 32‑904.19; 1973 (58) 109.

Library References

Taxation 2311, 3519.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 293 to 295, 297 to 299, 310, 314, 397, 1879 to 1881.

**SECTION 44‑7‑1900.** Powers granted not diminished while district is indebted.

So long as the district shall be indebted to any person on any bonds, notes or other obligations issued pursuant to the authority of this article, provisions of this article and the powers granted to the district shall not be in any way diminished, and the provisions of this article shall be deemed a part of the contract between the district and the holders of such obligations.

HISTORY: 1962 Code Section 32‑904.20; 1973 (58) 109.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑1910.** Cooperation with other agencies; appointment of ex officio directors.

In carrying out its committed function of planning, establishing, financing, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, protecting, policing or in other ways assisting in the development of nonprofit hospitals and health care related facilities, the district board will work closely with individual hospitals and other health care institutions. Where the district is assisting an individual hospital or institution in any of the ways identified herein, the chairman or president of the board of trustees of the hospital or institution and one other member of the board of trustees designated by the respective board shall be named ex officio members of the board of directors of the district. These ex officio members shall serve without vote for the duration of the contractual relationships of the respective institutions with the district, or until a successor is named and qualifies.

The board of directors of the district shall have the right and privilege of appointing other ex officio directors for the purpose of availing itself of specialized talents, knowledge or counsel. The term of appointment shall be as determined by the board of directors at its discretion.

HISTORY: 1962 Code Section 32‑904.21; 1973 (58) 109.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

ARTICLE 15

Regional Health Services Districts

**SECTION 44‑7‑2010.** Authority for counties to form regional health services districts.

Any county or group of contiguous counties, any municipality or group of contiguous municipalities located within their boundaries, or any county or group thereof, and any municipalities located within their boundaries, may form a health services district by enactment of the governing body of the county or municipality or by joint enactment of the governing bodies of the counties and municipalities desiring to create a health services district pursuant to the provisions of the South Carolina Education Improvement Act of 1984. The enactment shall designate the name of the health services district and shall declare it to be a body politic and corporate within the counties and municipalities so designated.

HISTORY: 1976 Act No. 490 Section 1; 1984 Act No. 512, Part II, Section 35B Section 1.

CROSS REFERENCES

Agreements by public service districts furnishing clinical medical services, see Section 44‑7‑2310.

The incorporation of health services districts as a public corporation, see Section 44‑7‑2150.

Transfer of property from hospital public service districts, see Section 4‑9‑82.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 10, Health Service Districts.

Attorney General’s Opinions

Funds donated to the Good Samaritan Clinic by the Lexington Medical Center will be used for a valid public purpose. S.C. Op.Atty.Gen. (February 12, 2016) 2016 WL 963695.

A health service district incorporated pursuant to Section 44‑7‑2150, et seq. of the Code may create not‑for‑profit and for‑profit subsidiary corporations as the District may deem necessary to carry out the purposes of health care delivery to the public. S.C. Op.Atty.Gen. (September 14, 1987) 1987 WL 245488.

**SECTION 44‑7‑2020.** Board of directors; appointment of members.

The corporate powers and duties of the district shall be exercised by a board of directors (board) of that number of members as the enactment directs to be filled by residents of the respective authorizing political subdivisions in the district, as provided in the enactment, so as to provide for reasonable representation from each county or municipality in the district. Board members shall be appointed by the governing body of the authorizing political subdivision as to the respective seats provided for the subdivision.

HISTORY: 1976 Act No. 490 Section 2; 1984 Act No. 512, Part II, Section 35B Section 2.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 10, Health Service Districts.

**SECTION 44‑7‑2030.** Members of board of directors; terms and vacancies.

The terms of office of the members of the board are for the length of time set forth in the enactment of the health services district but not to exceed six years. Initial terms must be established so that the terms of members of the board must expire on a staggered basis. Terms of board members must expire on a uniform date set forth in the enactment creating the health services district, provided, that each member shall serve until his successor is appointed and qualifies. Any vacancy shall be filled in the same manner as the original appointment for the unexpired portion of the term. A copy of the enactments of the respective counties or municipalities creating a health services district must be filed with the Secretary of State. The Secretary of State must be notified of the method established for staggering the terms of members of the board.

HISTORY: 1976 Act No. 490 Section 3; 1984 Act No. 512, Part II, Section 35B Section 3.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 10, Health Service Districts.

**SECTION 44‑7‑2040.** Meetings of board of directors.

The board shall meet upon the call of its chairman, but not less frequently than one time in each three calendar month period.

HISTORY: 1976 Act No. 490 Section 4.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑2050.** Officers of board of directors; compensation; term of office.

The board, at its initial meeting, shall elect one of its members as chairman, one as vice‑chairman, and one as secretary.

The officers shall serve for a term of two years and until their successors are elected and qualify. Members of the board shall serve without compensation, but shall be reimbursed for actual expenses incurred while in the performance of authorized duties.

HISTORY: 1976 Act No. 490 Section 5.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑2060.** Powers and duties of board of directors.

The board shall have the following powers and duties:

(1) Have perpetual succession.

(2) Adopt, use and alter a corporate seal.

(3) Make bylaws for the management and regulation of its affairs, and define a quorum for its meetings.

(4)(a) To acquire, by purchase or otherwise, any real property for any authorized use;

(b) To acquire by purchase or otherwise personal property deemed by it to be necessary and to dispose of such property when in its judgment, it is in the best interest of the district.

(5) Deposit and withdraw moneys realized from the sale of revenue bonds issued pursuant to provisions herein, and to expend the moneys in the manner prescribed by the proceedings authorizing the issuance of the revenue bonds.

(6) Deposit moneys derived from revenue producing facilities or services in any bank or trust company having an office within the district and withdraw the moneys for district purposes.

(7) Build, maintain and equip and operate regional health care facilities or any other hospital or health care related facility in its charge under such rules and regulations as the board may from time to time promulgate.

(8) Provide for the operation of its regional health care facilities or any other hospital or health care related facility in its charge.

(9) Exercise the power of eminent domain in accordance with Chapter 5, Title 28 of the 1976 Code.

(10) Appoint personnel and prescribe the duties of such, fix their compensation and determine if and to what extent they shall be bonded for the faithful performance of their duties.

(11) Employ technical or professional services as may be desirable to the performance of the duties in the district.

(12) Apply for moneys from any source, public or private, made available by grant or loan or both for the purposes of the district. All federal moneys accepted under such terms and conditions as are prescribed by the United States and as are consistent with state law, and all other moneys accepted under this section shall be accepted and expended by the board upon such terms and conditions as are prescribed by the State or other sources thereof.

(13) To take such action as may be necessary to carry out the purposes of this article.

(14) Lease land or any hospital facility to any public or private hospital upon such terms, conditions and for such length of time as it may determine to be appropriate consistent with the purpose of providing health care services for the district.

(15) To exercise on behalf of the district all of the powers relating to the issuance of bonds granted to the governing bodies of counties under Article 11, Chapter 7, Title 44 of the 1976 Code (the Hospital Revenue Bond Act).

HISTORY: 1976 Act No. 490 Section 6; 1978 Act No. 519 Section 2.

CROSS REFERENCES

The incorporation of health services districts as a public corporation, see Section 44‑7‑2150.

Transfer of property from hospital public service districts, see Section 4‑9‑82.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 10, Health Service Districts.

**SECTION 44‑7‑2070.** Authority for board of directors to borrow money and issue bonds.

The board may borrow money and make and issue negotiable bonds, notes and other evidences of indebtedness payable solely from the revenue derived from the operation or lease of any revenue‑producing facility in its charge. The sums borrowed shall be used to pay costs incident to the purposes of this article. Neither the faith nor credit of the district shall be pledged to the payment of the principal and interest of the obligations, and there shall be on the face of such obligation a statement, plainly worded, to that effect. Neither the members of the board nor any person signing the obligation shall be personally liable thereon. The board may:

(1) Provide that such bonds, notes or other evidence of indebtedness be payable, both as to principal and interest, from the net revenues derived from the district of any revenue‑producing facility, as such net revenues may be defined by the board;

(2) Covenant and agree that, upon its being adjudged in default as to the payment of any installment of principal and interest upon any obligation issued by it or in default as to the performance of any covenant or undertaking made by it, in such event the principal of all obligations of such issue may be declared forthwith due and payable, notwithstanding that any of them may not have then matured.

(3) Confer upon a corporate trustee the power to make disposition of the proceeds from all borrowing and also all revenues derived from the operation of the revenue‑producing facility whose revenues are pledged for the payment of such obligations, in accordance with and in the order of priority prescribed by resolutions adopted by the board as an incident to the issuance of any notes, bonds or other evidences of indebtedness;

(4) Dispose of its obligations at public or private sale and upon such terms and conditions as it shall approve;

(5) Covenant and agree that any cushion fund established to further secure the payment of principal and interest of any obligation shall be a fixed amount;

(6) Covenant and agree that it will not enter into any agreements with any person or with the State, the United States or any of their political subdivisions for the furnishing of free services where such services are ordinarily charged for;

(7) Prescribe the procedure, if any, by which the terms of the contract with the holders of its obligations may be amended, the number of obligations whose holders must consent thereto, and the manner in which such consent shall be given; and

(8) Prescribe the evidences of default and conditions upon which all or any obligation shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

HISTORY: 1976 Act No. 490 Section 7.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑2080.** Disposition and expenditure of revenues.

All revenues derived by the district from the operation of any revenue‑producing facility other than revenues which may be required to discharge covenants made by it in issuing bonds, notes, or other obligations as authorized herein shall be held, disposed of, or expended by the board for purposes germane to the functions and purposes of the district. Any expenditure permitted by the provisions of this act pursuant to Section 44‑7‑2157 to be made by or on behalf of a district is considered an expenditure of operating and maintaining public hospitals and public facilities for a public purpose and no expenditure permitted by this act or any other provisions of law may be considered to be a lending of credit or a granting of public money or a thing of value or an aid of any individual, association, or corporation within the meaning of any constitution or statutory provision.

HISTORY: 1976 Act No. 490 Section 8; 1984 Act No. 512, Part II, Section 35B Section 8.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

Attorney General’s Opinions

Discussion of whether the Lexington County Health Services District may donate funds to the Good Samaritan Clinic when the funds are to be used solely to operate free clinics located in Lexington County and to provide for healthcare services at those clinics. S.C. Op.Atty.Gen. (February 12, 2016) 2016 WL 963695.

**SECTION 44‑7‑2090.** Obligations of districts not to be impaired.

So long as the district is indebted to any person on any bonds, notes, or other obligations issued pursuant to the authority of this act, the provisions of this act and the powers granted to the district are not in any way diminished, and the provisions of this act are considered a part of the contract between the district and the holders of these obligations.

All agreements and obligations undertaken and all securities issued by a district are exclusively an obligation of the district and do not create an obligation or debt of the State, any authorizing subdivision, or any other county or municipality within the meaning of any constitutional or statutory provision. The faith and credit of the State, any authorizing subdivision, or any other county or municipality must not be pledged for the payment of any securities issued by a district, nor is the State or any authorizing subdivision or any county or municipality liable in any manner for the payment of the principal of or interest on any securities of a district or for the performance of any pledge, mortgage, obligation, or agreement of any kind whatsoever, that may be undertaken by a district.

HISTORY: 1976 Act No. 490 Section 9; 1984 Act No. 512, Part II, Section 35B Section 9.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑2100.** Board of directors; further duties; ex officio members.

In carrying out its committed function of planning, establishing, financing, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, protecting, policing or in other ways assisting in the development of nonprofit hospitals and health care related facilities, the district board will work closely with individual hospitals and other health care institutions and be consistent with health plans developed under Public Law 93‑641. Where the district is assisting an individual hospital or institution in any of the ways identified herein, the chairman or president of the board of trustees of the hospital or institution and one other member of the board of trustees designated by the respective board shall be named ex officio members of the board of directors of the district. These ex officio members shall serve without vote for the duration of the contractual relationships of the respective institutions with the district, or until a successor is named and qualifies.

The board of directors of the district shall have the right and privilege of appointing other ex officio directors for the purpose of availing itself of specialized talents, knowledge or counsel. The term of appointment shall be as determined by the board of directors at its discretion.

HISTORY: 1976 Act No. 490 Section 10.

CROSS REFERENCES

The incorporation of health services districts as a public corporation, see Section 44‑7‑2150.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑2110.** Pee Dee Regional Health Services District continued.

The health services district created by Article 13 of Chapter 7 of Title 44 of the 1976 Code shall continue in existence under the provisions of such article, provided, however, that the county governing bodies of the counties named in such district shall, not later than January 1, 1977, reconstitute such district under the terms of this article and upon such reconstitution such health services districts shall exist under the terms of this article.

Each person serving on the board on March 2, 1976, shall continue to serve until his term expires unless the county he represents discontinues to be a part of the district in which case and at such time he shall cease to be a member of the board. The successor to a board member provided for in Article 13 of Chapter 7 of Title 44 shall be appointed as provided for in Section 44‑7‑2020 and have his initial term expire as provided for in Section 44‑7‑2030.

HISTORY: 1976 Act No. 490 Section 11.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑2115.** Meaning of “health care facility” and “public hospital corporation.”

For the purposes of the article:

(1) The term “health care facilities” means and includes those hospital facilities as defined in subsection (d) of Section 44‑7‑1430 of the 1976 Code;

(2) The term “public hospital corporation” means any public authority, corporation, or association or entity organized on a local or regional basis by or with the consent of any county or municipality (or any two or more counties or municipalities) and having the power to own or operate any health care facilities, including without limitation, any public corporation or authority heretofore or hereafter organized under the provisions of this article.

HISTORY: 1984 Act No. 512, Part II, Section 35C (11A).

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑2120.** Exemption of districts from state and local taxes.

All properties owned by a district, whether real, personal, or mixed, and the income from the properties, all securities issued by a district and the indentures and other instruments executed as security therefor, all leases made pursuant to the provisions of this article, and all revenues derived from these leases, and all deeds and other documents executed by or delivered to a district, are exempt from any and all taxation by the State or by any county, municipality, or other political subdivision of the State, including, but without limitation, license excise taxes imposed in respect of the privilege of engaging in any of the activities in which a district may engage. A district is not obligated to pay or allow any fees, taxes, or costs to the clerk of court, the Secretary of State, or the register of deeds in any county in respect of its incorporation, the amendment of its certificate of incorporation, or the recording of any document. The gross proceeds of the sale of any property owned by the district and used in the construction and equipment of any health care facilities for a district is exempt from all other and similar excise or sales taxes. It is the express intent of this section that any district authorized under this article incurs no tax liability to the State or any of its political subdivisions except to the extent that sales and use taxes may be payable on the purchases of goods or equipment by the district.

HISTORY: 1984 Act No. 512, Part II, Section 35C (11B); 1997 Act No. 34, Section 1.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

Attorney General’s Opinions

There is no exemption for the Lexington County Health Services District, Inc., for filing costs in magistrates’ or circuit courts. S.C. Op.Atty.Gen. (February 23, 1994) 1994 WL 84357.

**SECTION 44‑7‑2125.** Authority of public bodies to convey health care facilities and other property to districts.

Any municipality or county, any public hospital corporation, or any other public agency, authority, or body are authorized to transfer, convey to any district, with or without consideration any health care facilities or other properties, real or personal, and all funds and assets tangible or intangible, including ownership or operation of any health care facilities or properties and including funds presently held or to be held as a result of future appropriations, together with all liabilities relating to assets including hospital bonded indebtedness.

The transfer or conveyance must be authorized by an ordinance or resolution duly adopted by the governing body of the municipality or county or by the board of directors or other governing body of the public hospital corporation, or other public agency, authority, or body, as the case may be, and it is not necessary, any provision of law to the contrary notwithstanding, to obtain any certificate of need, assurance of need, or other similar permit for any transfer or conveyance. This exemption applies solely to the initial transfers following a reorganization and does in no event waive the requirement of a certificate of need after the initial transfers. In the event of the transfer of any health care facilities to the district, any hospital tax proceeds, other tax proceeds and other revenues apportioned or allocated to or for the benefit of the prior owner or operator of the health care facilities, or for the patient care at the health care facility must thereafter be paid to the district so long as the tax is levied or revenue is raised. Following the transfer, assets will not be revalued to alter public health care program reimbursement.

HISTORY: 1984 Act No. 512, Part II, Section 35C (11C).

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑2130.** Districts as county agencies for operation of health care facilities; receipt of proceeds of special hospital taxes levied by authorizing subdivisions.

A district constitutes an agency of the county to operate health care facilities and shall receive the proceeds from any special public hospital tax levied by the authorizing subdivisions. The reincorporation under Article 16, Chapter 7, Title 44 of the 1976 Code of any public hospital corporation that heretofore has been designated as the agency of a county to operate and maintain public hospital facilities in the counties in no way impairs or invalidates this designation and the reincorporated public hospital corporation shall continue as such just as if it had not been so reincorporated. Nothing in this section, however, limits any rights or powers otherwise conferred upon a district pursuant to any other provision of this article or of law.

HISTORY: 1984 Act No. 512, Part II, Section 35C (11D).

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

Attorney General’s Opinions

Discussion of the legislature’s intent regarding the corporate structure for health services districts. S.C. Op.Atty.Gen. (September 14, 1987) 1987 WL 245488.

ARTICLE 16

Incorporation of Health Services Districts

**SECTION 44‑7‑2150.** Incorporation of districts as public corporations.

Health Services Districts established pursuant to the provisions of Act 490 of 1976 may also incorporate as a public corporation in the manner provided by this article.

HISTORY: 1984 Act No. 512, Part II, Section 35D.

CROSS REFERENCES

Establishment of health services districts, see Sections 44‑7‑2010 et seq.

Provision that reincorporation of a public hospital corporation under this Article in no way impairs its prior designation as the agency of a county to operate and maintain public hospital facilities, see Section 44‑7‑2130.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 10, Health Service Districts.

Attorney General’s Opinions

Donating funds to the Good Samaritan Clinic by the Lexington Medical Center qualifies as a valid public purpose. S.C. Op.Atty.Gen. (February 12, 2016) 2016 WL 963695.

A health service district incorporated pursuant to Section 44‑7‑2150, et seq. of the Code may create not‑for‑profit and for‑profit subsidiary corporations as the District may deem necessary to carry out the purposes of health care delivery to the public. S.C. Op.Atty.Gen. (September 14, 1987) 1987 WL 245488.

**SECTION 44‑7‑2151.** Meaning of “health care facility” and “public hospital corporation.”

The terms “health care facilities” and “public hospital corporation” for purposes of this article have the same meanings as provided in Section 11A of Act 490 of 1976.

HISTORY: 1984 Act No. 512, Part II, Section 35D.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑2152.** Application for incorporation; review and determination.

(a) In order to incorporate a district, any number of natural persons, not less than three, shall first file a written application with the governing body of any county or municipality, or any two or more counties and municipalities eligible to form a district, which application shall:

(1) recite the name of each county or municipality in the district with the governing body to which the application is being filed;

(2) contain a statement that the applicants propose to incorporate a district pursuant to the provisions of this article;

(3) state that each of the applicants is a duly qualified elector of the authorizing subdivision, or, if there is more than one, at least one subdivision thereof; and

(4) request that the governing body of the authorizing subdivision adopt a resolution declaring that it is wise, expedient, and necessary that the district be incorporated, approving its certificate of incorporation, and authorizing the applicants to proceed to incorporate the district by filing for record a certificate of incorporation in accordance with the provisions of this article.

(b) Each application must be accompanied by the certificate of incorporation of the district and by those other supporting documents the applicants may consider appropriate.

(c) As promptly as may be practicable after the filing of the application, the governing body of each authorizing subdivision with which the application is filed shall review the contents of the application and the accompanying certificate of incorporation and shall adopt a resolution either denying the application or declaring that it is wise, expedient, and necessary and thereby approving the incorporation of the district.

(d) Any public hospital or corporation may incorporate or reincorporate under the provisions of this article in the same manner as other authorities or hospitals are authorized to incorporate.

HISTORY: 1984 Act No. 512, Part II, Section 35D.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 10, Health Service Districts.

**SECTION 44‑7‑2153.** Content, execution, and filing of certificate of incorporation.

(1) Within forty days following the adoption of the authorizing resolution, the applicant shall proceed to incorporate the district by filing for record in the office of the Secretary of State a certificate of incorporation which shall comply with the requirements of this article and must be in the form and executed in the manner provided in this article.

(2) In addition to any other provisions required by this article, the certificate of incorporation of the district shall state:

(a) all information ordinarily included in the application for incorporation of corporations incorporated in this State;

(b) the name of each authorizing subdivision together with the date on which the governing body of the subdivision adopted the authorizing resolutions;

(c) the method by which the district may be dissolved and provisions relating to the vesting of title to its assets and properties upon its dissolution;

(d) any matters relating to the district that the incorporators may choose to insert that are not inconsistent with this article or with the laws of this State.

(3) The certificate of incorporation must be signed and acknowledged by each of the incorporators before a notary public.

(4) When the certificate of incorporation is filed for record, there must be attached to it:

(a) a certified copy of each authorizing resolution;

(b) a certificate by the Secretary of State that the name of the district is not identical to that of any other corporation organized under the laws of the State or so nearly similar thereto as to lead to confusion or uncertainty.

(5) Upon filing for record the certificate of incorporation and, the documents required by subsection (4), the district is incorporated and constitutes a public corporation under the name set forth in its certificate of incorporation. The Secretary of State shall record the certificate of incorporation in an appropriate manner.

(6) The Secretary of State, subject to the requirements of this article, shall prescribe the exact form of the certificate of incorporation.

HISTORY: 1984 Act No. 512, Part II, Section 35D.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑2154.** Amendment of certificate of incorporation.

The certificate of incorporation of any district incorporated under the provisions of this article, as well as that of any public hospital or corporation reincorporated under the provisions of this article, may be amended only upon the board of the district adopting a resolution proposing an amendment which amendment is subject to approval of the governing body of each authorizing subdivision or may be amended upon the initiative of the governing body of each authorizing subdivision. All these duly approved amendments must be filed with the Secretary of State in the same manner as with the original certificate of incorporation.

HISTORY: 1984 Act No. 512, Part II, Section 35D.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑2155.** Board of directors and officers.

The board of directors and officers of the district as selected in the manner specified in Act 490 of 1976 also constitute the board of directors and officers of the district when incorporated.

HISTORY: 1984 Act No. 512, Part II, Section 35D.

CROSS REFERENCES

Selection of the board of directors and officers of the district, see Section 44‑7‑2020.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑2156.** Absence of outstanding obligations as prerequisite for dissolution.

At any time when the district does not have any securities outstanding and when there are no other obligations assumed by the district that are then outstanding, the district may be dissolved in accordance with its articles of incorporation.

HISTORY: 1984 Act No. 512, Part II, Section 35D.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑2157.** Additional powers of districts upon incorporation.

Upon incorporation, the district has the following powers which are in addition to those powers, duties, and authority conferred upon it by Act 490 of 1976:

(1) To lease or otherwise make available any health care facilities or other of its properties and assets under such terms and conditions as the board considers appropriate.

(2) To provide instruction and training for and to contract for the instruction and training of nurses, technicians, and other technical, professional, and paramedical personnel.

(3) To affiliate with and to contract to provide training and clinical experience for students of other institutions.

(4) To contract for the operation of any department, section, equipment, or holdings of the district and to enter into those contracts which, in its judgment, are in the best interest of the district.

(5) To assume any obligations of any entity that conveys and transfers to the district any health care facilities or other property or interests therein.

(6) To make any expenditure of any monies under its control that would be considered as ordinary and necessary expenses of the district within the meaning of state and federal taxation laws.

(7) To provide scholarships for students in training for work in the duties peculiar to health care.

(8) To enter into affiliation, cooperation, territorial management, or other similar agreements with other institutions for the sharing, division, allocation, or exclusive furnishing of services, referral of patients, management of facilities, and other similar activities.

Nothing contained in this article may be considered to affect or alter the existing laws as they relate to the rights, privileges, medical staff membership, or remedies of physician members of the medical staff of hospitals, hospital facilities, or health care facilities. No district has the power to levy taxes.

HISTORY: 1984 Act No. 512, Part II, Section 35D.

CROSS REFERENCES

Other powers of the district, see Sections 44‑7‑2060 et seq.

Provision that expenditures permitted under this section are to be considered expenditures for operation and maintenance of public hospitals and facilities for a public purpose, see Section 44‑7‑2080.

Transfer of property from hospital public service districts, see Section 4‑9‑82.

Library References

Health 235.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

Attorney General’s Opinions

Discussion of whether the Lexington County Health Services District may donate funds to the Good Samaritan Clinic when the funds are to be used solely to operate free clinics located in Lexington County and to provide for healthcare services at those clinics. S.C. Op.Atty.Gen. (February 12, 2016) 2016 WL 963695.

The Greenville County Legislative Delegation does not have the authority to instruct the GHS Board, or any other entity, to take an action or not. S.C. Op.Atty.Gen. (October 27, 2015) 2015 WL 7046006.

The Greenville County Legislative Delegation may employ legal counsel and the Attorney General possesses no role in the approval of such counsel. S.C. Op.Atty.Gen. (October 27, 2015) 2015 WL 7046006.

Discussion of whether a public entity, such as the Greenville Health System, may transfer ownership of itself to a private entity without public or legislative approval. S.C. Op.Atty.Gen. (September 28, 2015) 2015 WL 5896030; 2015 WL 5896029.

Discussion of the legislature’s intent regarding the corporate structure for health services districts. S.C. Op.Atty.Gen. (September 14, 1987) 1987 WL 245488.

ARTICLE 19

Agreements and Joint Programs Involving Health Services Districts

**SECTION 44‑7‑2310.** Agreements by public service districts furnishing clinical medical services.

The governing body of any public service district whose principal function is to furnish clinical medical services is authorized to enter into agreements with other political subdivisions, or with nonprofit providers of emergency health services or other health care, including specifically, but not limited to, emergency service agencies, rescue squads and sole provider health care facilities, to provide for joint programs and otherwise cooperate in the delivery of medical and medical related services and the more complete utilization of district property within the boundaries of the district. Such agreements may include provisions:

(1) To provide or assist in providing emergency ambulance service within the boundaries of the district.

(2) To provide emergency ambulance vehicles and emergency medical equipment and facilities to house such vehicles and equipment.

(3) To provide training for emergency medical technicians and facilities for the conduct of such training.

(4) To assist in delivery of medical care to indigent residents of the district or payment to other providers of medical care to indigent residents of the district not otherwise compensated for and within the limit of available funds.

(5) To the extent that lands or facilities of the district are not presently needed or utilized for the operation of a medical clinic or for providing other services authorized to be provided by the district, the district shall be authorized to make available to local governments, including counties, municipalities and other special service districts, those lands or facilities not currently required by the district, to be used by such local governments to provide public facilities and services considered desirable for and in the best interest of the area served by the district.

HISTORY: 1981 Act No. 14, Section 2.

CROSS REFERENCES

Regional health services districts, generally, see Sections 44‑7‑2010 et seq.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Hospitals Section 23, Duty to Provide Free Care.

ARTICLE 20

Hospital Infections Disclosure

**SECTION 44‑7‑2410.** Citation of article.

This article may be cited as the “Hospital Infections Disclosure Act”.

HISTORY: 2006 Act No. 293, Section 1, eff May 31, 2006.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 120, Mandatory Reporting Requirements.

**SECTION 44‑7‑2420.** Definitions.

As used in this article:

(1) “Department” means the Department of Health and Environmental Control.

(2) “Hospital” means a facility organized and administered to provide overnight medical or surgical care or nursing care of illness, injury, or infirmity and may provide obstetrical care, and in which all diagnoses, treatment, or care is administered by or under the direction of persons currently licensed to practice medicine, surgery, or osteopathy and is licensed by the department as a hospital.

“Hospital” may include residential treatment facilities for children and adolescents in need of mental health treatment which are physically a part of a licensed psychiatric hospital. This definition does not include facilities that are licensed by the Department of Social Services.

(3) “Hospital acquired infection” means a localized or systemic condition that:

(a) results from adverse reaction to the presence of an infectious agent or agents or its toxin or toxins; and

(b) was not present or incubating at the time of admission to the hospital.

HISTORY: 2006 Act No. 293, Section 1, eff May 31, 2006.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 120, Mandatory Reporting Requirements.

**SECTION 44‑7‑2430.** Collection of data; reporting by individual hospitals; appointment of advisory committee; adoption of methodology for collecting and analyzing data.

(A)(1) Individual hospitals shall collect data on hospital acquired infection rates for the specific clinical procedures as recommended by the advisory committee and defined by the department, including the following categories:

(a) surgical site infections;

(b) ventilator associated pneumonia;

(c) central line related bloodstream infections; and

(d) other categories as provided under subsection (D).

(2) Hospitals also shall report completeness of certain selected infection control processes, as recommended by the advisory committee and defined by the department, according to accepted standard definitions.

(B)(1) Hospitals shall submit reports at least every six months on their hospital acquired infection rates to the department. Reports must be submitted in a format and at a time as provided for by the department. Data in these reports must cover a period ending not earlier than one month prior to submission of the report. These reports must be made available to the public at each hospital and through the department. The first report must be submitted before February 1, 2008. Subsequent reports must be submitted at least every six months on dates determined by the department. When compiling its reports, the department may combine data from multiple reporting periods in order to better demonstrate hospital acquired infection rates.

(2) If the hospital is a division or subsidiary of another entity that owns or operates other hospitals, or related facilities, the report must be for the specific division or subsidiary and not for the other entity.

(C)(1) The Board of Health and Environmental Control shall appoint an advisory committee that must have an equal number of members representing all involved parties. The board shall seek recommendations for appointments to the advisory committee from organizations that represent the interests of hospitals, consumers, businesses, purchasers of health care services, physicians, and other professionals involved in the research and control of infections.

(2) The advisory committee shall assist the department in the development of all aspects of the department’s methodology for collecting, analyzing, and disclosing the information collected under this article, including collection methods, formatting, and methods and means for release and dissemination of this information.

(3) In developing the methodology for collecting and analyzing the infection rate data, the department and advisory committee shall consider existing methodologies and systems for data collection, such as the Centers for Disease Control and Prevention’s National Healthcare Safety Network; however, the department’s discretion to adopt a methodology is not limited or restricted to any existing methodology or system. The data collection and analysis methodology must be disclosed to the public prior to any public disclosure of hospital acquired infection rates.

(4) The department and the advisory committee shall evaluate on a regular basis the quality and accuracy of hospital information reported under this article and the data collection, analysis, and dissemination methodologies.

(D) The department may, after consultation with the advisory committee, require hospitals to collect data on hospital acquired infection rates in categories additional to those set forth in subsection (A).

HISTORY: 2006 Act No. 293, Section 1, eff May 31, 2006; 2010 Act No. 165, Section 1, eff May 11, 2010.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 120, Mandatory Reporting Requirements.

**SECTION 44‑7‑2440.** Annual reports and quarterly bulletins; contents; publicizing of reports.

(A) The department annually shall submit to the General Assembly a report summarizing the hospital reports submitted pursuant to Section 44‑7‑2430 and shall publish the annual report on its website. The first annual report must be submitted and published before February 1, 2009. Subsequent annual reports to the General Assembly must be submitted before April sixteenth of each year. The department may issue quarterly informational bulletins summarizing all or part of the information submitted in the hospital reports.

(B) All reports issued by the department must be risk adjusted.

(C) The annual report must compare the risk adjusted hospital acquired infection rates, collected under Section 44‑7‑2430, for each individual hospital in the State. The department, in consultation with the advisory committee, shall make this comparison as easy to comprehend as possible. The report also must include an executive summary, written in plain language, that must include, but is not limited to, a discussion of findings, conclusions, and trends concerning the overall state of hospital acquired infections in the State, including a comparison to prior years. The report may include policy recommendations, as appropriate.

(D) The department shall publicize the report and its availability as widely as practical to interested parties including, but not limited to, hospitals, health care providers, media organizations, health insurers, health maintenance organizations, purchasers of health insurance, consumer or patient advocacy groups, and individual consumers. The annual report must be made available to any person upon request and the department may charge a fee for such copies, not to exceed the actual cost of the copy of the report.

(E) No hospital report or department disclosure may contain information identifying a patient, employee, or licensed health care professional in connection with a specific infection incident.

(F) The department, after consultation with the advisory committee, may phase‑in the reporting requirements of this section.

HISTORY: 2006 Act No. 293, Section 1, eff May 31, 2006; 2008 Act No. 353, Section 2, Pt 5.E.1, eff July 1, 2008; 2010 Act No. 165, Section 2, eff May 11, 2010.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 120, Mandatory Reporting Requirements.

**SECTION 44‑7‑2450.** Protection of patient confidentiality; reporting accidents or incidents.

(A) It is the intent of the General Assembly that a patient’s right of privilege or confidentiality must not be violated in any manner. Patient social security numbers and any other information that could be used to identify an individual patient must not be released notwithstanding any other provision of law to the contrary.

(B) Nothing in this section affects the duty of a facility or activity licensed by the Department of Health and Environmental Control to report accidents or incidents pursuant to the department’s regulations. However, anything reported pursuant to the department’s regulations must not be considered to waive any privilege or confidentiality provided in subsection (A).

HISTORY: 2006 Act No. 293, Section 1, eff May 31, 2006.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑2460.** Ensuring compliance with article and regulations; civil monetary penalties; promulgation of regulations.

(A) The department shall ensure and enforce compliance with this article and regulations promulgated pursuant to this article by the imposition of civil monetary penalties and as a condition of licensure or permitting under this chapter pursuant to Section 44‑7‑320.

(B) The department may promulgate regulations as necessary to carry out its responsibilities under this article.

HISTORY: 2006 Act No. 293, Section 1, eff May 31, 2006; 2010 Act No. 165, Section 3, eff May 11, 2010.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 120, Mandatory Reporting Requirements.

ARTICLE 21

Infants and Toddlers With Disabilities

**SECTION 44‑7‑2510.** Short title.

This article may be cited as the “Infants and Toddlers with Disabilities Act”.

HISTORY: 1989 Act No. 114, Section 2; 1991 Act No. 41, Section 2.

CROSS REFERENCES

School districts to adhere to policies established by State Department of Education to implement transition from early intervention services provided under Sections 44‑7‑2510 et seq. to those provided under district preschool programs, see Section 59‑36‑30.

**SECTION 44‑7‑2515.** Purpose of article.

The purpose of this article is to provide early intervention services to infants and toddlers with disabilities in accordance with Subchapter IV, Chapter 33, Title 20, U.S. Code Annotated, contingent upon appropriation of federal funds for Subchapter IV.

HISTORY: 1991 Act No. 41, Section 2.

CROSS REFERENCES

State advisory council on the Education of Children with Disabilities to assist in developing formal interagency agreements for transition of services for children served under this chapter to services under Preschool Programs for Children with Disabilities, see Section 59‑36‑30.

Federal Aspects

Subchapter IV, Chapter 33, Title 20 is codified as 20 U.S.C.A. Sections 1471 et seq.

**SECTION 44‑7‑2520.** Definitions.

As used in this article unless the context otherwise requires:

(1) “Department” means the agency designated as lead agency by the Governor by Executive Order pursuant to Subchapter VIII, Chapter 33, Title 20, U. S. Code Annotated.

(2) “Infants and toddlers with disabilities” means children from birth through two years of age in need of early intervention services due to measurable delays in cognitive development, physical development, communication, psychosocial development, or self‑help skills, or due to a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(3) “Early intervention services” are services designed to meet the developmental needs of infants and toddlers with disabilities, provided in conformity with an individualized family service plan under public supervision by qualified personnel. They include, but are not limited to, family training, counseling and home visits, special instruction, speech pathology and audiology, occupational therapy, physical therapy, psychological services, service coordination, medical services only for diagnostic or evaluation purposes, early identification, screening and assessment services, health services necessary to enable the infant or toddler to benefit from the other early intervention services, and transportation services.

(4) “Council” means the State Interagency Coordinating Council which must be established in conformance with federal regulations.

HISTORY: 1989 Act No. 114, Section 2; 1991 Act No. 41, Section 2.

CROSS REFERENCES

BabyNet, definitions, compliance with federal law, see Section 63‑11‑1735.

Federal Aspects

VIII, Chapter 33, Title 20 is codified as 20 U.S.C.A. Sections 1471 et seq.

**SECTION 44‑7‑2530.** Duties of department; role of other publicly funded agencies.

(A) The department must:

(1) monitor programs and activities to ensure compliance with federal law and regulations;

(2) identify, facilitate, and coordinate all available resources within the State from federal, state, local, and private sources;

(3) develop procedures to ensure that services are provided to infants and toddlers with disabilities and their families in a timely manner pending the resolution of disputes among public agencies or service providers;

(4) develop procedures to ensure resolution of intraagency and interagency disputes;

(5) develop formal interagency agreements that, consistent with state law, define the financial responsibility of each agency for paying for early intervention services and procedures for resolving disputes.

(B) To ensure that all eligible infants and toddlers receive services, pending resolution of any dispute the department shall assign financial responsibility among agencies providing early intervention services.

(C) All publicly funded agencies shall continue to provide all services within their respective statutory responsibility to eligible infants and toddlers with disabilities.

HISTORY: 1989 Act No. 114, Section 2; 1991 Act No. 41, Section 2.

CROSS REFERENCES

School districts to adhere to policies established by State Department of Education to implement transition from early intervention services provided under Sections 44‑7‑2510 et seq. to those provided under district preschool programs, see Section 59‑36‑30.

State advisory council on the Education of Children with Disabilities to assist in developing formal interagency agreements for transition of services for children served under this chapter to services under Preschool Programs for Children with Disabilities, see Section 59‑36‑30.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑2540.** Interagency system to be developed.

(A) The State Interagency Coordinating Council shall advise and assist the department in developing a comprehensive interagency system to provide early intervention services for all eligible infants and toddlers with disabilities and their families.

(B) The comprehensive interagency system must implement:

(1) a timely, comprehensive, multidisciplinary assessment of the functioning of each infant and toddler with disabilities in the State, including the needs of their families relating to enhancing the child’s development;

(2) a written individualized family service plan for each eligible infant or toddler with a disability;

(3) a comprehensive method of identifying infants and toddlers with disabilities;

(4) a public awareness program focusing on early identification of infants and toddlers with disabilities;

(5) access to a central directory which includes early intervention services, resources, and experts available in the State;

(6) a comprehensive system of personnel development for those who serve eligible infants and toddlers with disabilities;

(7) formal interagency agreements which:

(a) define the responsibility of each agency for providing and paying for early intervention services;

(b) coordinate programs so as to permit children and their families to move easily among agencies in the system;

(c) adopt uniform program, health, and safety standards;

(d) contain procedures for resolving disputes;

(8) procedural safeguards as required by federal and state law;

(9) a method for compiling data on the number of infants and toddlers with disabilities in the State in need of early intervention services, the number served, the types of disabilities, the types of services provided, and other information required by the federal government or needed to deliver services effectively.

(C) Early intervention services must be available through the comprehensive interagency system and provided by appropriate state agencies in accordance with time requirements of Subchapter VIII, Chapter 33, Title 20, U.S. Code Annotated, to effectuate the individual family service plan for each eligible infant or toddler.

HISTORY: 1989 Act No. 114, Section 2; 1991 Act No. 41, Section 2.

CROSS REFERENCES

School districts to adhere to policies established by State Department of Education to implement transition from early intervention services provided under Sections 44‑7‑2510 et seq. to those provided under district preschool programs, see Section 59‑36‑30.

State advisory council on the Education of Children with Disabilities to assist in developing formal interagency agreements for transition of services for children served under this chapter to services under Preschool Programs for Children with Disabilities, see Section 59‑36‑30.

Federal Aspects

Subchapter VIII, Chapter 33 of Title 20 is codified as 20 U.S.C.A. Sections 1471 et seq.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑2550.** Regulations.

The department shall promulgate regulations necessary to carry out the purposes of this article. Through regulation or interagency agreement when appropriate the department may develop standards addressing the coordination and provision of early intervention services, including personnel qualifications and health, safety, and program standards for the facilities where the services are offered.

HISTORY: 1989 Act No. 114, Section 2; 1991 Act No. 41, Section 2.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑2560.** Individualized family service plans.

(A) Based on the assessment provided for in Section 44‑7‑2540 an individualized family service plan must be developed by a multidisciplinary team of appropriate qualified personnel which also must include the parent, guardian, or other adult responsible for the child. The family also may choose an advocate to be present during the development of the plan. The plan must be written and explained in easily understandable language and must contain:

(1) a statement of the present levels of physical, cognitive, psychosocial, communication, and self‑help skill development for the infant or toddler with disabilities;

(2) a statement of the health status and medical needs of the child and family to support the highest possible development of the child, including the names of the health care providers;

(3) with concurrence of the family, a statement of the family’s resources relating to enhancing the child’s development;

(4) a statement of the major outcomes expected to be achieved for the child and the family and the methods used to measure progress toward the outcomes;

(5) a statement of specific early intervention services necessary to meet the needs of the child and family, including the frequency, intensity, and method of delivering services and payment arrangement, if any;

(6) the projected dates for initiation of services and the anticipated duration of services;

(7) the name of the service coordinator. The service coordinator is responsible for the implementation of the plan and coordination with other agencies and persons;

(8) the steps necessary to support transition of the child to other programs, if appropriate.

(B) The individualized family service plan must be developed within the time established by the department after the child initially is referred and after the assessment is completed. With the parent’s consent early intervention services may begin before completion of the assessment or plan, provided an interim plan is developed. The plan serves as the comprehensive plan for all agencies involved in providing early intervention services to the child and family. Services must be provided in a timely manner, as established by the department, pending resolution of disputes among public agencies or service providers. The plan must be evaluated at least once a year and reviewed with the family at three‑month intervals or more frequently, if appropriate.

HISTORY: 1989 Act No. 114, Section 2; 1991 Act No. 41, Section 2.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑2570.** Fees for services; insurance.

(A) Families must not be charged for early intervention services provided pursuant to this article.

(B) Nothing in this section relieves public or private insurance programs, or other persons or agencies required by law to provide or pay for early intervention services, from their financial or legal responsibilities.

(C) Pursuant to Subchapter VIII, Chapter 33, Title 20, U.S. Code Annotated, all financial resources from federal, state, local, and private sources must be coordinated to fund early intervention services. A joint funding plan must be submitted by the department to the Joint Legislative Committee on Children on or before August first of each year. The individual components of the plan as they relate to individual agencies must be incorporated annually into each affected agency’s budget request.

HISTORY: 1989 Act No. 114, Section 2; 1991 Act No. 41, Section 2; 1996 Act No. 458, Part II, Section 53A; 1998 Act No. 419, Part II, Section 42.

Federal Aspects

Subchapter VIII, Chapter 33 of Title 20 is codified as 20 U.S.C.A. Sections 1471 et seq.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑2590.** Confidentiality of records and information; exceptions; penalties for unauthorized disclosure.

All information and reports related to children and families obtained pursuant to this article are confidential as provided in Subchapter VIII, Chapter 33, Title 20, U.S. Code Annotated. A person who disseminates or permits the unauthorized dissemination of the information or reports is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days, or both.

HISTORY: 1989 Act No. 114, Section 2; 1991 Act No. 41, Section 2.

Federal Aspects

Subchapter VIII, Chapter 33 of Title 20 is codified as 20 U.S.C.A. Sections 1471 et seq.

Library References

Health 237.

Westlaw Topic No. 198H.

C.J.S. Hospitals Sections 7 to 8.

**SECTION 44‑7‑2600.** Reports to Joint Legislative Committee on Children.

By August first of each year the department shall submit an annual report to the Joint Legislative Committee on Children regarding the status of the comprehensive interagency system, including new and existing resources and gaps in services.

HISTORY: 1989 Act No. 114, Section 2; 1991 Act No. 41, Section 2.

Federal Aspects

Public Law 99‑457, Education of the Handicapped Act, Handicapped Infants and Toddlers, see 20 U.S.C.A. Sections 1471 et seq.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑2610.** Local interagency coordinating councils.

(A) County or multicounty local interagency coordinating councils (ICC) representing each county in the State must be established. Membership on each council must consist of parents, providers, local agencies, and government agencies.

(B) The function of the local ICC will be to advise and assist the state council and the department in planning and implementing a system of early intervention services at the local community level.

(C) Each local ICC shall report to the state council on the status of early intervention services in its county.

(D) With prior approval by the department and the state council, local ICC’s may enter into local interagency agreements. Local ICC’s may give advice and assistance to local early intervention projects. No member of a local ICC may vote on a matter which directly would benefit the member financially or otherwise appear to be a conflict of interest under state law.

HISTORY: 1991 Act No. 41, Section 2.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

ARTICLE 23

Criminal Record Checks of Direct Care Staff

**SECTION 44‑7‑2910.** Criminal record check for direct caregivers; definitions.

(A)(1) A direct care entity employing or contracting with a direct caregiver shall conduct a criminal record check as provided in this section prior to employing or contracting with the direct caregiver. A direct care entity may consider all information revealed by a criminal record check as a factor in evaluating a direct caregiver’s application to be employed by or contract with the entity.

(2) An employment agency may not furnish employees to a direct care entity without conducting a criminal record check on each employee. An employee who works in multiple direct care settings must have a criminal record check on file at the location of the employment agency, the home office of his employer, or at the individual’s primary place of employment.

(B) For purposes of this article:

(1) “Direct care entity” means:

(a) a nursing home, as defined in Section 44‑7‑130;

(b) a daycare facility for adults, as defined in Section 44‑7‑130;

(c) a home health agency, as defined in Section 44‑69‑20;

(d) a community residential care facility, as defined in Section 44‑7‑130;

(e) a residential program operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs;

(f) residential treatment facilities for children and adolescents;

(g) hospice programs.

(h) an in‑home care provider, as defined in Section 44‑70‑20(3).

(2) “Direct caregiver” or “caregiver” means:

(a) a registered nurse, licensed practical nurse, or certified nurse assistant;

(b) any other licensed professional employed by or contracting with a direct care entity who provides to patients or clients direct care or services and includes, but is not limited to, a physical, speech, occupational, or respiratory care therapist;

(c) a person who is not licensed but provides physical assistance or care to a patient or client served by a direct care entity;

(d) a person employed by or under contract with a direct care entity who works within any building housing patients or clients;

(e) a person employed by or under contract with by a direct care entity whose duties include the possibility of patient or client contact.

For purposes of this article, a direct caregiver does not include a faculty member or student enrolled in an educational program, including clinical study in a direct care entity.

(C)(1) A direct caregiver applicant shall provide verification of residency for the twelve months preceding the date of the employment application. The direct care entity shall conduct a state criminal record check if the applicant has resided in South Carolina during that twelve‑month period and can verify residency through:

(a) a driver’s license or identification card issued by the State of South Carolina;

(b) rent, mortgage, or utility receipts in the applicant’s name for a home within South Carolina;

(c) pay stubs in the applicant’s name from a business located in South Carolina; or

(d) bank records in the applicant’s name showing a deposit or checking account held in a South Carolina branch office of a bank.

(2) A direct care entity unable to verify South Carolina residency for a direct care applicant for the preceding twelve months shall conduct a state criminal record check on the applicant prior to employment and shall commence a federal criminal record check after employment. However, if the direct care entity can verify residency in another state for the preceding twelve months, the direct care entity may conduct only a state criminal record check in the applicant’s resident state or jurisdiction where the applicant previously resided.

HISTORY: 2002 Act No. 242, Section 1, eff July 1, 2002; 2004 Act No. 264, Section 1, eff July 6, 2004; 2006 Act No. 301, Section 11, eff May 23, 2006; 2010 Act No. 207, Section 2, eff June 7, 2010; 2011 Act No. 18, Section 2, eff May 11, 2011.

CROSS REFERENCES

In‑home care providers, criminal record check, drug testing, see Section 44‑70‑60.

In‑home care providers, definitions, see Section 44‑70‑20.

Standards for licensing in‑home care providers, see S.C. Code of Regulations R. 61‑122.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑2920.** Criminal record check procedures.

Criminal record checks required pursuant to this article must be conducted by the State Law Enforcement Division or by a private business, organization, or association which conducts background checks if that entity utilizes current criminal records obtained from the State Law Enforcement Division or the Federal Bureau of Investigation to determine any criminal record. An applicant shall submit with the application one complete set of the applicant’s fingerprints on forms specified or furnished by the State Law Enforcement Division. Fingerprint cards submitted to the State Law Enforcement Division pursuant to this section must be used to facilitate a national criminal records check, as required by this section. The criminal record check is not required to be repeated as long as the person remains employed by or continues to contract with a direct care entity; however, if a person is not employed by or is not under contract for one year or longer with a direct care entity, the criminal record check must be repeated before resuming employment or contracting with a direct care entity. The fee charged by the Federal Bureau of Investigation, if any, for the fingerprint review must be paid by the individual direct caregiver or the direct care entity.

HISTORY: 2002 Act No. 242, Section 1, eff July 1, 2002; 2004 Act No. 264, Section 2, eff July 6, 2004.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑2930.** Personnel records.

A direct care entity may furnish copies of personnel records of current or former direct caregivers to another direct care entity requesting this information. Information contained in the records may include, but is not limited to, disciplinary matters and any reasons for termination. A direct care entity releasing these records pursuant to this section is presumed to be acting in good faith and is immune from civil and criminal liability which otherwise may result by reason of releasing this information. A direct care entity receiving records pursuant to this section shall conduct its own criminal record check pursuant to this article.

HISTORY: 2002 Act No. 242, Section 1, eff July 1, 2002.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑2940.** Department of Health and Environmental Control oversight of criminal record checks by direct care entities; license renewals.

The Department of Health and Environmental Control shall verify that a direct care entity is conducting criminal record checks as required in this article before the department issues a renewal license for the direct care entity. The department shall act as the channeling agency for any federal criminal record checks required by this article.

HISTORY: 2002 Act No. 242, Section 1, eff July 1, 2002.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑2950.** Civil fines for violation of criminal record check requirements.

An individual who violates this article, or a regulation promulgated pursuant to this article, is subject to a civil fine of one hundred dollars for the first violation and five hundred dollars for each subsequent violation. A fine imposed pursuant to this section must be paid before a direct care entity’s license is renewed. Fines collected pursuant to this section must be retained by the department to help offset the costs associated with carrying out the department’s responsibilities under this article.

HISTORY: 2002 Act No. 242, Section 1, eff July 1, 2002.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

ARTICLE 25

Medical University of South Carolina

**SECTION 44‑7‑3110.** Lease and sale of certain assets; terms and conditions.

The General Assembly authorizes and grants to the Board of Trustees of the Medical University of South Carolina authority to enter into reasonable agreements to transfer the management and operations of the Medical University Hospital to one or more private operators, including authority to:

(A) Lease certain Medical University Hospital land, together with all easements, rights, privileges, and appurtenances appertaining thereto, and all of the buildings, structures, fixtures, and other improvements existing and situated on that land, all as described in Section 44‑7‑3120; and

(B) Sell furniture, fixtures, equipment, accounts receivable, and other incidental assets associated with or employed in the operation of the Medical University Hospital on the land.

Provided, however, that the following terms and conditions must be observed and included and accepted in the agreements:

(1) The term of the lease and any extensions may not exceed a total aggregate period of thirty years.

(2) The leased premises may be used only for the operation of hospitals and clinics, and for other uses reasonably related to hospitals, clinics, and health care, provided that those operations and uses are consistent with all Joint Commission on Accreditation and Healthcare Organizations standards.

(3) Any private operator or operators chosen by the Medical University of South Carolina’s Board of Trustees to operate the Medical University Hospital shall not transfer, sell, lease, or assign control of the Medical University Hospital, or of the entity operating or controlling the Medical University Hospital or of any of its related real estate or other assets, to any other private operator without the prior express written approval of the Medical University of South Carolina Board of Trustees and without compliance with the same terms and conditions provided in this article. Prior to any such transfer, sale, lease, or assignment of control, the Medical University of South Carolina shall have the right of first refusal and be given sufficient time to consider and decide whether to exercise the right of first refusal.

(4) Any private operator or operators chosen by the Medical University of South Carolina’s Board of Trustees to operate the Medical University Hospital must provide indigent care in the same manner as is being provided by the Medical University of South Carolina through the operation of this Medical University Hospital and its clinical programs.

(5) The Medical University of South Carolina and the State of South Carolina must be protected from any tort liability arising from the private operation of the Medical University Hospital by the private operator, unless and except to the extent the tort liability is caused by or attributed to the Medical University of South Carolina or the State of South Carolina, or both. The agreement will require the operator of the Medical University Hospital to acquire and keep in effect sufficient insurance policies to provide a reasonable amount and type of coverage and naming the Medical University of South Carolina as an additional insured.

(6) The name and logo of the Medical University of South Carolina and its affiliates shall not be used by any private operator to market and promote health care services.

(7) The proceeds from this lease and from the sale of these assets must be used for the retirement of outstanding indebtedness incurred to finance Medical University Hospital facilities, and all other revenues and payments received from or in connection with this lease or sale must be dedicated solely for use of the Medical University of South Carolina’s business and operations as the Board of Trustees of the Medical University of South Carolina may direct, subject to review by the appropriate bodies of state governments.

(8) All agreements, the manner in which all agreements are made and the implementation of all agreements must comply with all applicable laws.

(9) Access for any person or group to use the services of the Medical University Hospital and clinical services shall not be limited, restricted, denied, or allowed in a discriminatory manner that is prohibited by law; nor shall such access be denied based on lack of participation or membership in a particular health plan or network.

(10) The Medical University of South Carolina shall have access at all times to all records of all patients treated at the Medical University Hospital, and all patients shall have access at all times to their own records.

Provided, further, that the lease and sale may not be finalized until the State Fiscal Accountability Authority or Department of Administration, as applicable, is satisfied that the consideration paid by the private operator or operators for the agreements authorized by this article reflects a fair and reasonable value to the State of South Carolina, based upon either the net book value of the hospital, capitalization of income from operation of the hospital over a period of years, the net present value of future cash flow of the hospital, a direct comparison to a comparable transaction, or some other financially sound and general practiced method of business evaluation.

The State Fiscal Accountability Authority or Department of Administration, as applicable, is directed to cause the lease and purchase agreements regarding the Medical University Hospital to contain provisions requiring and ensuring compliance with the terms and conditions stated above. To assist the board in performing this function, the Medical University of South Carolina is required to provide, at its expense, any information, studies, evaluations, agreements, reports, or other data requested by the State Fiscal Accountability Authority or Department of Administration, as applicable, including any such items with regard to University Medical Associates or any of its employees, officers, and affiliates. The approval requirement for the transaction authorized in this act shall be governed by the provisions of Section 1‑11‑65 of the 1976 Code, and compliance with the provisions of this act is exclusive and shall satisfy the approval requirements of any and all other statutory provisions requiring the review and/or approval of any agency, department, or division.

No lease or other agreement pursuant to this article shall be valid unless and until the provisions of this article have been complied with fully and the State Fiscal Accountability Authority or Department of Administration, as applicable, has certified that the provisions of this article have been complied with fully.

HISTORY: 1996 Act No. 390, Section 1.

Library References

Education 996.

Westlaw Topic No. 141E.

**SECTION 44‑7‑3120.** Legal description of land and improvements.

The legal description of the land and improvements thereon referenced in Section 44‑7‑3110(A) is as follows:

All that certain property and parcels of land in Charleston County together with improvements thereon lying on the north side of Albert B. Sabin Street, between Ashley Avenue and Jonathan Lucas Street consisting of the MUSC Teaching Hospital and the MUSC Children’s Hospital but saving and excepting the Clinical Sciences Building and the Storm Eye Institute;

Together with a rectangular parcel located on the south side of Albert B. Sabin Street containing certain fuel oil tanks;

Together with the Psychiatric Institute located on the west side of President Street and the playground area located to the rear of such institute but saving and excepting the auditorium, the lobby area, and the University Services Building.

The above referenced properties are as shown on a survey prepared by Forsburg Engineering & Surveying, Inc., to be recorded and reference is made thereto for a description of the metes and bounds thereof.

HISTORY: 1996 Act No. 390, Section 1.

Library References

Education 996.

Westlaw Topic No. 141E.

**SECTION 44‑7‑3130.** Nature of University Medical Associates (UMA).

Notwithstanding any other provision of law to the contrary, University Medical Associates (UMA) is a public body as defined by Chapter 4, Title 30 (the Freedom of Information Act) for purposes of the act and the provisions of the act apply to records maintained by UMA.

HISTORY: 1996 Act No. 390, Section 1.

Library References

Education 996.

Westlaw Topic No. 141E.

**SECTION 44‑7‑3140.** Employee grievances.

Upon approval of the proposed sale or lease of MUSC’s facilities and assets to HCA, HCA shall take the steps necessary to create an employee grievance committee for the review of all employee disciplinary actions and terminations by HCA. The grievance procedure must provide that the final decision in any grievance involving a former MUSC employee rests with the board of directors of MUSC and that the final decision in grievances involving HCA employees rests with the official designated by HCA.

HISTORY: 1996 Act No. 390, Section 2.

Library References

Education 996.

Westlaw Topic No. 141E.

**SECTION 44‑7‑3150.** Consultation required.

Notwithstanding any other provision of law, the State Fiscal Accountability Authority or Department of Administration, as applicable, must consult the South Carolina Commission on Higher Education prior to granting authorization to effectuate the transaction provided for in this article.

HISTORY: 1996 Act No. 390, Section 3.

Library References

Education 996.

Westlaw Topic No. 141E.

**SECTION 44‑7‑3160.** Personal profiting prohibited.

Notwithstanding any other provision of law to the contrary, upon approval of the proposed lease and sale of Medical University of South Carolina facilities and assets, no one who is currently an employee of MUSC or UMA may personally profit from the transaction by accepting compensation or other financial incentives from the purchasing and/or leasing company if that individual played a substantial role in the negotiation process. As used in this section “substantial role” means a role where one is providing direct advice to the members of a negotiating team or being a member of a negotiating team.

HISTORY: 1996 Act No. 390, Section 4.

Library References

Education 996.

Westlaw Topic No. 141E.

**SECTION 44‑7‑3170.** Shared participation permitted.

No condition of any lease or agreement shall restrict MUSC employees to shared participation with one company’s health care third party providers.

HISTORY: 1996 Act No. 390, Section 5.

Library References

Education 996.

Westlaw Topic No. 141E.

**SECTION 44‑7‑3180.** Valuation of purchase upon default or expiration of lease.

At the time of default by Columbia HCA or end of the lease, MUSC shall not be required to purchase the Medical Center as a going concern but rather at the appraised value of the tangible assets owned by the lessee as personal property inventory.

HISTORY: 1996 Act No. 390, Section 6.

Library References

Education 996.

Westlaw Topic No. 141E.

**SECTION 44‑7‑3190.** Written consent requirement for discontinuation or transfer of inpatient clinical service.

Any discontinuation or transfer of any inpatient clinical service offered at the Medical Center shall be with the prior written consent of the MUSC Board of Trustees.

HISTORY: 1996 Act No. 390, Section 7.

**SECTION 44‑7‑3200.** UMA agreements subject to review and approval; agreements must not conflict.

All agreements between University Medical Associates and any of its servants, agents, and subsidiaries and partners are subject to review and approval by the Board of Trustees of the Medical University of South Carolina and the terms of any such agreements shall not conflict with the terms and conditions of the lease authorized by this section.

HISTORY: 1996 Act No. 390, Section 8.

Library References

Education 996.

Westlaw Topic No. 141E.

**SECTION 44‑7‑3210.** Co‑payment for members of the General Assembly.

Notwithstanding any other provision of law to the contrary, including any provision of the Annual General Appropriations Act for FY 1996‑97, members of the General Assembly must pay any co‑payment or deductible as may be applicable for receiving services at a hospital facility in this State whether or not their services are provided by the MUSC hospital or its successor in interest.

HISTORY: 1996 Act No. 390, Section 9.

Library References

Education 996.

Westlaw Topic No. 141E.

**SECTION 44‑7‑3220.** Indigent patient services.

Notwithstanding any other provision of law to the contrary, upon approval of the proposed sale or lease of MUSC’s facilities and assets, MUSC must maintain the current level of services currently offered to indigent patients at Charleston Memorial Hospital unless the MUSC Board of Trustees approves otherwise.

HISTORY: 1996 Act No. 390, Section 10.

Library References

Education 996.

Westlaw Topic No. 141E.

**SECTION 44‑7‑3230.** Guarantee of financial obligations.

Notwithstanding any other provision of law to the contrary, any financial obligation under the agreements entered into by a subsidiary corporation must be unconditionally guaranteed by the ultimate parent corporation of the purchaser/tenant.

HISTORY: 1996 Act No. 390, Section 11.

Library References

Education 996.

Westlaw Topic No. 141E.

ARTICLE 27

Hospital Patient Safety Act

**SECTION 44‑7‑3410.** Citation of article.

This article may be cited as the “Lewis Blackman Hospital Patient Safety Act”.

HISTORY: 2005 Act No. 146, Section 1, eff upon approval (became law without the Governor’s signature on June 8, 2005).

**SECTION 44‑7‑3420.** Definitions.

For purposes of this article:

(1) “Clinical staff” means persons who work in a hospital whose duties include the personal care or medical treatment of patients. “Clinical staff” includes, but is not limited to, credentialed physicians, physicians’ assistants, nurses, nursing aides, medical technicians, therapists, and other individuals involved in the personal care or medical treatment of patients.

(2) “Clinical trainees” means persons who are receiving health care professional training in a hospital, either paid or unpaid, students or licensed professionals, whose training includes the personal care or medical treatment of patients. “Clinical trainees” includes, but is not limited to, resident physicians, medical students, nursing students, and other students and individuals in health care professional training in a hospital.

(3) “Credentialed caregiver” means a nurse practitioner or physician’s assistant who is licensed to care for patients within his or her scope of practice.

(4) “Credentialed physician” means a licensed physician who has completed his or her postgraduate medical training who has medical staff privileges at a hospital.

(5) “Attending physician” means a licensed physician who has completed his or her postgraduate medical training and who has medical staff privileges at a hospital and who has primary responsibility for a patient’s care while the patient is in the hospital.

(6) “Designee” means a credentialed physician or a credentialed caregiver whom a patient’s attending physician has designated to care for the patient in the absence of the attending physician.

(7) “Medical student” means an individual enrolled in a program culminating in a degree in medicine.

(8) “Patient” means an individual who is being treated by a physician in a hospital and includes a patient’s representative or an individual allowed by law to make health care decisions for a patient who is a minor or who is unable to consent to health care treatment for himself or herself, or both.

(9) “Resident physician” means an individual who is participating in any graduate medical education program and whose relationship to the patient is under the auspices of the medical education program.

(10) “Intern” means an individual who is an advanced student or graduate in medicine gaining supervised practical experience.

HISTORY: 2005 Act No. 146, Section 1, eff upon approval (became law without the Governor’s signature on June 8, 2005).

**SECTION 44‑7‑3430.** Identification badges.

All clinical staff, clinical trainees, medical students, interns, and resident physicians of a hospital shall wear badges clearly stating their names, using at a minimum either first or last names with appropriate initials, their departments, and their job or trainee titles. All clinical trainees, medical students, interns, and resident physicians must be explicitly identified as such on their badges. This information must be clearly visible and must be stated in terms or abbreviations reasonably understandable to the average person, as recognized by the Department of Health and Environmental Control.

HISTORY: 2005 Act No. 146, Section 1, eff upon approval (became law without the Governor’s signature on June 8, 2005); 2006 Act No. 364, Section 2, eff June 9, 2006.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑3440.** Written information to be provided to patient.

Except in emergency admissions, a hospital shall provide to each patient prior to, or at the time of the patient’s admission to the hospital for inpatient care or outpatient surgery, written information describing the general role of clinical trainees, medical students, interns, and resident physicians in patient care. The written information must also notify the patient that the attending physician is the person responsible for the patient’s care while the patient is in the hospital and that the patient’s attending physician may change during the patient’s hospitalization depending on the type of care or services required for the patient. The written information must also contain the information described in Section 44‑7‑3450. The written material must also state generally whether medical students, interns, or resident physicians may be participating in a patient’s care, may be making treatment decisions for the patient, or may be participating in or performing, in whole or in part, any surgery on the patient. This document must be separate from the general consent for treatment.

HISTORY: 2005 Act No. 146, Section 1, eff upon approval (became law without the Governor’s signature on June 8, 2005).

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑3450.** Right of patient to contact attending physician; nurse’s duty to assist; mechanism for resolution of patient’s personal medical care concerns.

(A) If at any time a patient requests that a nurse call his or her attending physician regarding the patient’s personal medical care, the nurse shall place a call to the attending physician or his or her designee to inform him or her of the patient’s concern. If the patient is able to communicate with and desires to call his or her attending physician or designee, upon the patient’s request, the nurse must provide the patient with the telephone number and assist the patient in placing the call. A nurse or other clinical staff to whom such a request is made or who receives multiple requests may notify his or her immediate supervisor for assistance.

(B) Each hospital must provide a mechanism, available at all times, through which a patient may access prompt assistance for the resolution of the patient’s personal medical care concerns.

For purposes of this section, “mechanism” means a telephone number, beeper number, or other means of allowing a patient to independently access the patient assistance system and must not be construed as requiring a patient to request information or assistance in order to access the system; however, a clinical staff member or clinical trainee must promptly access the system on behalf of a patient if a patient requests such assistance. A description of this mechanism and the method for accessing it must be included in the written material described in Section 44‑7‑3440.

(C) The hospital must establish procedures for the implementation of the mechanism, providing for initiation of contact with administrative or supervisory clinical staff who shall promptly assess, or cause to be assessed, the urgent patient care concern and cause the patient care concern to be addressed.

HISTORY: 2005 Act No. 146, Section 1, eff upon approval (became law without the Governor’s signature on June 8, 2005).

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑3455.** Mental and specialized alcohol or drug abuse treatment hospitals exemption.

The provisions of this article do not apply to hospitals owned or operated by the Department of Mental Health or by specialized hospitals licensed exclusively for treatment of alcohol or drug abuse and which are under contract with the Department of Alcohol and Other Drug Abuse Services.

HISTORY: 2005 Act No. 146, Section 1, eff upon approval (became law without the Governor’s signature on June 8, 2005); 2007 Act No. 29, Section 1, eff upon approval (became law without the Governor’s signature on May 16, 2007).

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑3460.** Administration and enforcement of article.

The Department of Health and Environmental Control shall administer and enforce the provisions of this article in accordance with procedures and penalties provided in law and regulation.

HISTORY: 2005 Act No. 146, Section 1, eff upon approval (became law without the Governor’s signature on June 8, 2005).

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑7‑3470.** Civil cause of action; other claim.

This article does not create a civil cause of action; however, this article must not be construed to preclude a claim that may have otherwise been asserted under common law or any other provision of law.

HISTORY: 2005 Act No. 146, Section 1, eff upon approval (became law without the Governor’s signature on June 8, 2005).

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.