

"THE BELOW CONSTITUTED SUMMARY IS PREPARED BY THE STAFF OF THE SOUTH CAROLINA HOUSE OF REPRESENTATIVES AND IS NOT THE EXPRESSION OF THE LEGISLATION'S SPONSOR(S) OR THE HOUSE OF REPRESENTATIVES. IT IS STRICTLY FOR THE INTERNAL USE AND BENEFIT OF MEMBERS OF THE HOUSE OF REPRESENTATIVES AND IS NOT TO BE CONSTRUED BY A COURT OF LAW AS AN EXPRESSION OF LEGISLATIVE INTENT".

## REPORT OF THE CERTIFICATE OF NEED AD HOC SUBCOMMITTEE

(Simrill, Clyburn, Herbkerman, Hosey, Rutherford, Crawford & Willis - Staff Contact: Sarah Hearn/Meredith Ross)

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### SENATE BILL 290

S. 290 -- Senators Climer, Senn, Campsen, Loftis, Rice, Peeler, Turner, Davis, Gustafson, Grooms, M. Johnson, Garrett, Kimbrell, Adams and Fanning: A BILL TO AMEND SECTIONS 44-7-110, 44-7-120, 44-7-130, 44-7-140, 44-7-150, AND 44-7-320 OF THE 1976 CODE, ALL RELATING TO THE REGULATION OF HEALTH CARE FACILITIES IN THE STATE, TO ELIMINATE REFERENCES TO CERTIFICATE OF NEED REQUIREMENTS; TO REPEAL SECTIONS 44-7-160, 44-7-170, 44-7-180, 44-7-190, 44-7-200, 44-7-210, 44-7-220, 44-7-225, 44-7-230, AND 44-7-240 OF THE 1976 CODE, ALL RELATING TO THE CERTIFICATE OF NEED PROGRAM; AND TO RENAME ARTICLE 3, CHAPTER 7, TITLE 44 OF THE 1976 CODE AS THE "STATE HEALTH FACILITY LICENSURE ACT".

***Received by Ways and Means:***

January 26, 2022

***Summary of Bill:***

This bill provides for a revised State Health Facility Licensure Act that repeals the certification program under which hospitals and certain other health facilities are required to obtain a Certificate of Need from the Department of Health and Environmental Control in order to construct certain facilities, obtain certain major pieces of equipment, or undertake certain other projects. A Certificate of Need Study Committee is created to examine the effect of the repeal of the CON Program on the quality and quantity of access to healthcare in rural portions of South Carolina.

***Estimated Revenue Impact:***

This bill eliminates the Certificate of Need (CON) program. The bill will have no expenditure impact on the Department of Health and Environmental Control (DHEC) because the agency plans to utilize current employees in this program to support any increase in workloads that result from additional licensure applications from facilities. Based upon a preliminary analysis, repealing CON and removing the limitation on the number of nursing home beds in the state may potentially increase Medicaid costs for nursing home services. The Department of Health and Human Services (DHHS) is reviewing the bill, and we will update this impact if additional information is available. The bill will decrease General Fund revenue by approximately \$633,000 each year beginning in FY 2022-23 due to the elimination of the CON program and the corresponding filing fees.

***Other Notes:***

Reported out of subcommittee Favorable as Amended on 5/3/2022.

HOUSE  
AMENDMENT

THIS AMENDMENT  
ADOPTED

RAVENEL/DOWNEY  
MAY 3, 2022

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CLERK OF THE HOUSE

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THE AD HOC COMMITTEE ON CERTIFICATE OF NEED  
PROPOSES THE FOLLOWING AMENDMENT No. TO S. 290  
(COUNCIL\VR\290C003.NBD.VR22):

REFERENCE IS TO PRINTER'S DATE 1/25/22-S.

**AMEND THE BILL, AS AND IF AMENDED, BY  
STRIKING ALL AFTER THE ENACTING WORDS AND  
INSERTING:**

**/ SECTION 1. ARTICLE 3, CHAPTER 7, TITLE  
44 OF THE 1976 CODE IS AMENDED BY ADDING:**

**“SECTION 44-7-266. (A) IN ORDER TO BE  
LICENSED BY THE DEPARTMENT, AN  
AMBULATORY SURGICAL FACILITY MUST:**

**(1) PROVIDE CARE TO MEDICAID AND MEDICARE BENEFICIARIES;**

**(2) PROVIDE UNCOMPENSATED INDIGENT AND CHARITY CARE IN AN AMOUNT NO LESS THAN THREE PERCENT OF ITS ADJUSTED GROSS REVENUE; AND**

**(3) SUBMIT ANNUAL REPORTS TO THE DEPARTMENT, THE HOUSE WAYS AND MEANS COMMITTEE, HOUSE MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS COMMITTEE, SENATE FINANCE COMMITTEE, SENATE MEDICAL AFFAIRS COMMITTEE, AND THE GOVERNOR'S OFFICE DEMONSTRATING ITS COMPLIANCE WITH THIS PROVISION.**

**NONCOMPLIANCE WITH THE PROVISIONS OF THIS SUBSECTION, INCLUDING THE FAILURE TO SUBMIT TIMELY AND COMPLETE REPORTS, SHALL RESULT IN THE FACILITY BEING FINED IN AN AMOUNT THAT REPRESENTS THE DIFFERENCE BETWEEN THE SERVICES WHICH THE FACILITY IS REQUIRED TO PROVIDE AND THE AMOUNT ACTUALLY PROVIDED.**

**(B) THE SAME PHYSICIAN GROUP MAY OWN TWO OR FEWER AMBULATORY SURGICAL FACILITIES AS LONG AS THE PHYSICIAN GROUP COMPLIES WITH ANY APPLICABLE CAPITAL EXPENDITURE THRESHOLDS.**

**SECTION 44-7-267. IN ORDER TO BE LICENSED BY THE DEPARTMENT, A HOSPITAL IS PROHIBITED FROM USING NON-COMPETE CLAUSES IN ANY EMPLOYMENT AGREEMENTS. FOR ANY SUCH AGREEMENTS PREVIOUSLY SIGNED BY PERSONNEL BEFORE THE EFFECTIVE DATE OF THIS SECTION, A LICENSED HOSPITAL IS PROHIBITED FROM ENFORCING ANY TERMS OF THE NON-COMPETE CLAUSE.”**

**SECTION 2. SECTION 44-7-130(26) OF THE 1976 CODE IS AMENDED TO READ:**

**“(26) ‘CRISIS STABILIZATION UNIT FACILITY’ MEANS A FACILITY, OTHER THAN A HEALTH CARE FACILITY, ~~OPERATED BY THE DEPARTMENT OF MENTAL HEALTH OR OPERATED IN PARTNERSHIP WITH THE DEPARTMENT OF MENTAL HEALTH~~ THAT PROVIDES A SHORT-TERM RESIDENTIAL PROGRAM, OFFERING PSYCHIATRIC**

STABILIZATION SERVICES AND BRIEF, INTENSIVE CRISIS SERVICES TO INDIVIDUALS EIGHTEEN AND OLDER, TWENTY-FOUR HOURS A DAY, SEVEN DAYS A WEEK.”

SECTION 3. SECTION 44-7-160 (4) AND (6) OF THE 1976 CODE IS AMENDED TO READ:

“(4) A CAPITAL EXPENDITURE IN EXCESS OF SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS 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. STARTING JULY 1, 2025, AND EVERY FIFTH YEAR THEREAFTER, THE DEPARTMENT MUST DETERMINE THE INCREASE OR DECREASE IN THE RATIO OF THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS (CPI-U), MEDICAL CARE COMMODITIES IN THE U.S. CITY AVERAGE, FOR THE PRIOR FIVE-YEAR PERIOD PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, AND THE DOLLAR THRESHOLD FOR EXPENDITURES BY OR ON BEHALF OF A HEALTH CARE FACILITY PURSUANT TO THIS ITEM SHALL BE ADJUSTED ACCORDINGLY, EXCEPT THAT THE DOLLAR AMOUNT SHALL NEVER BE ADJUSTED BELOW SEVEN MILLION DOLLARS. AS SOON AS PRACTICABLE AFTER THIS ADJUSTMENT IS CALCULATED, THE DIRECTOR OF THE DEPARTMENT SHALL SUBMIT THE REVISED AMOUNT TO THE STATE REGISTER FOR PUBLICATION PURSUANT TO SECTION 1-23-40(2). THE REVISED AMOUNT BECOMES EFFECTIVE ON JULY FIRST OF EVERY FIFTH YEAR, STARTING JULY 1, 2025;

(6) THE ACQUISITION OF MEDICAL EQUIPMENT WHICH IS TO BE USED FOR DIAGNOSIS OR TREATMENT IF THE TOTAL PROJECT EQUIPMENT COST IS IN EXCESS OF THAT PRESCRIBED BY REGULATION THREE MILLION FIVE HUNDRED THOUSAND DOLLARS. STARTING JULY 1,

**2025, AND EVERY FIFTH YEAR THEREAFTER, THE DEPARTMENT MUST DETERMINE THE INCREASE OR DECREASE IN THE RATIO OF THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS (CPI-U), MEDICAL CARE COMMODITIES IN THE U.S. CITY AVERAGE, FOR THE PRIOR FIVE-YEAR PERIOD PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, AND THE DOLLAR THRESHOLD FOR THE TOTAL EQUIPMENT COST FOR THE ACQUISITION OF MEDICAL EQUIPMENT TO BE USED FOR DIAGNOSIS OR TREATMENT PURSUANT TO THIS ITEM SHALL BE ADJUSTED ACCORDINGLY, EXCEPT THAT THE DOLLAR AMOUNT SHALL NEVER BE ADJUSTED BELOW THREE MILLION FIVE HUNDRED THOUSAND DOLLARS. AS SOON AS PRACTICABLE AFTER THIS ADJUSTMENT IS CALCULATED, THE DIRECTOR OF THE DEPARTMENT SHALL SUBMIT THE REVISED AMOUNT TO THE STATE REGISTER FOR PUBLICATION PURSUANT TO SECTION 1-23-40(2). THE REVISED AMOUNT BECOMES EFFECTIVE ON JULY FIRST OF EVERY FIFTH YEAR, STARTING JULY 1, 2025.”**

**SECTION 4. A. SECTION 44-7-170(A) OF THE 1976 CODE IS AMENDED BY ADDING AN APPROPRIATELY NUMBERED ITEM AT THE END TO READ:**

**“( ) THE RELOCATION OF A LICENSED HOSPITAL IN THE SAME COUNTY IN WHICH THE HOSPITAL IS CURRENTLY LOCATED, AS LONG AS:**

**(A) ANY CERTIFICATE OF NEED ISSUED TO THE HOSPITAL FOR A PROJECT TO BE LOCATED AT THE HOSPITAL’S EXISTING LOCATION HAS BEEN FULFILLED, WITHDRAWN, OR HAS EXPIRED IN ACCORDANCE WITH SECTION 44-7-230 AND THE DEPARTMENT’S IMPLEMENTING REGULATIONS; AND**

**(B) THE CURRENT LOCATION IS UTILIZED IN A MANNER THAT FURTHERS HEALTH CARE DELIVERY AND INNOVATION FOR THE CITIZENS OF THE STATE OF SOUTH CAROLINA.”**

**B. SECTION 44-7-170(A)(3) OF THE 1976 CODE IS AMENDED TO READ:**

**“(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. NOTWITHSTANDING SUBSECTION (C), REPLACEMENT OF LIKE EQUIPMENT PURSUANT TO THIS SUBSECTION DOES NOT REQUIRE A WRITTEN EXEMPTION FROM THE DEPARTMENT;”**

**SECTION 5. SECTION 44-7-170(B) OF THE 1976 CODE IS AMENDED BY ADDING APPROPRIATELY NUMBERED ITEMS AT THE END TO READ:**

**“( ) THE CONSTRUCTION OF A NEW HOSPITAL WITH UP TO FIFTY BEDS IN ANY COUNTY CURRENTLY WITHOUT A HOSPITAL;**

**( ) THE ACQUISITION OF BEDS FOR AN EXISTING HOSPITAL AS LONG AS THE FACILITY HAS MAINTAINED AT LEAST A SEVENTY-FIVE PERCENT CAPACITY IN THE PREVIOUS YEAR; PROVIDED, HOWEVER, FOR ACUTE CARE BEDS, THE INCREASE CANNOT EXCEED THE GREATER OF TEN PERCENT OF CURRENT CAPACITY OF CURRENT ACUTE CARE BEDS OR FIFTY BEDS, AND FOR ALL OTHER BEDS, THE INCREASE IS RESTRICTED TO TEN PERCENT OF CURRENT CAPACITY OF THE LICENSED BED TYPE;**

**( ) THE CONSTRUCTION OF AN AMBULATORY SURGICAL FACILITY WITH NO MORE THAN THREE OPERATING ROOMS AT A COST OF NOT MORE THAN SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS; PROVIDED, HOWEVER, TO QUALIFY, AT LEAST FIFTY-ONE PERCENT OF THE FACILITY MUST BE OWNED BY RESIDENTS OF SOUTH CAROLINA OR BY A SOUTH CAROLINA CORPORATION, AND A MEMBER OF THE OWNERSHIP GROUP MUST BE PRESENT ONSITE AT THE FACILITY AT LEAST SEVENTY-FIVE PERCENT OF THE TIME.”**

**SECTION 6. SECTION 44-7-180 OF THE 1976 CODE IS AMENDED BY ADDING AN APPROPRIATELY LETTERED SUBSECTION AT THE END TO READ:**

**“( ) THE DEPARTMENT SHALL ADD CMS QUALITY METRICS TO THE STATE HEALTH PLAN AND USE THEM WHEN REVIEWING APPLICATIONS.”**

**SECTION 7. SECTION 44-4-210(G) OF THE 1976 CODE IS AMENDED TO READ:**

**“(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~~ NINE MONTHS AFTER THE CONTESTED CASE IS FILED WITH THE CLERK OF THE ADMINISTRATIVE LAW COURT, ~~UNLESS ALL CONSENT TO AN EXTENSION OR THE COURT FINDS SUBSTANTIAL CAUSE OTHERWISE.~~ THE COURT IS PROHIBITED FROM GRANTING AN EXTENSION BEYOND NINE MONTHS, REGARDLESS OF THE CONSENT OF THE PARTIES.”**

**SECTION 8. SECTION 44-7-220 OF THE 1976 CODE IS AMENDED TO READ:**

**“SECTION 44-7-220. (A) A PARTY WHO IS AGGRIEVED BY THE ADMINISTRATIVE LAW COURT'S FINAL DECISION MAY SEEK JUDICIAL REVIEW OF THE FINAL DECISION IN ACCORDANCE WITH SECTION 1-23-380.**

**(B)(1) IF A PARTY DOES NOT PREVAIL IN A CONTESTED CASE AT THE ADMINISTRATIVE LAW COURT WHEN REQUESTING THE REVERSAL**



**OF THE DEPARTMENT'S DECISION TO APPROVE A CERTIFICATE OF NEED APPLICATION, WHEN CLAIMING AN EXEMPTION UNDER SECTION 44-7-170, OR WHEN CLAIMING THAT THE ARTICLE IS NOT APPLICABLE PURSUANT TO SECTION 44-7-160, THE ADMINISTRATIVE LAW COURT SHALL AWARD THE PARTY WHOSE PROJECT IS THE SUBJECT OF THE APPEAL REASONABLE ATTORNEY'S FEES AND COSTS INCURRED IN THE CONTESTED CASE.**

**(2) IF A PARTY DOES NOT PREVAIL IN AN APPEAL TO THE COURT OF APPEALS WHEN REQUESTING THE REVERSAL OF THE ADMINISTRATIVE LAW COURT'S DECISION TO APPROVE A CERTIFICATE OF NEED APPLICATION, WHEN CLAIMING AN EXEMPTION UNDER SECTION 44-7-170, OR WHEN CLAIMING THAT THE ARTICLE IS NOT APPLICABLE PURSUANT TO SECTION 44-7-160, THE COURT OF APPEALS SHALL AWARD THE PARTY WHOSE PROJECT IS THE SUBJECT OF THE CONTESTED CASE REASONABLE ATTORNEY'S FEES AND COSTS INCURRED IN THE APPEAL.**

**(C) IF THE RELIEF REQUESTED IN THE AN 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, THE DENIAL OF AN EXEMPTION REQUEST UNDER SECTION 44-7-170, OR APPEALS THE A 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)(D)(1) FURTHERMORE,~~ IF AT THE CONCLUSION OF THE CONTESTED CASE OR JUDICIAL REVIEW THE ADMINISTRATIVE LAW COURT OR THE COURT OF APPEALS FINDS THAT THE CONTESTED CASE OR A SUBSEQUENT APPEAL WAS FRIVOLOUS, THE ADMINISTRATIVE LAW COURT OR THE COURT OF APPEALS ~~MAY~~ SHALL AWARD DAMAGES INCURRED AS A RESULT OF THE DELAY, AS WELL AS REASONABLE ATTORNEY'S FEES AND COSTS, TO THE PARTY WHOSE PROJECT IS THE SUBJECT OF THE CONTESTED CASE OR JUDICIAL REVIEW.

(2) AS USED IN THIS SUBSECTION, 'FRIVOLOUS APPEAL' MEANS ~~ANY ONE OF THE FOLLOWING~~ A REASONABLE PERSON IN THE SAME CIRCUMSTANCES WOULD BELIEVE THAT:

~~(A) TAKEN SOLELY FOR PURPOSES OF DELAY OR HARASSMENT~~ HE CONTESTED CASE OR SUBSEQUENT APPEAL WAS CLEARLY NOT WARRANTED UNDER EXISTING LAW AND THAT A GOOD FAITH OR REASONABLE ARGUMENT DID NOT EXIST FOR THE EXTENSION, MODIFICATION, OR REVERSAL OF EXISTING LAW;

~~(B) WHERE NO QUESTION OF LAW IS INVOLVED~~ THE PROCUREMENT, INITIATION, OR CONTINUATION OF THE CONTESTED CASE OR SUBSEQUENT APPEAL WAS INTENDED MERELY TO HARASS OR INJURE THE OTHER PARTY; OR ;

~~(C) WHERE THE CONTESTED CASE OR JUDICIAL REVIEW IS WITHOUT MERIT~~ THE CONTESTED CASE OR SUBSEQUENT APPEAL WAS NOT REASONABLY FOUNDED IN FACT OR WAS INTERPOSED MERELY FOR DELAY OR WAS MERELY BROUGHT FOR A PURPOSE OTHER THAN

SECURING PROPER DISCOVERY OR ADJUDICATION OF THE CLAIM UPON WHICH THE PROCEEDINGS ARE BASED.

THIS SUBSECTION MUST NOT BE CONSTRUED TO PROHIBIT ANY PARTY FROM SEEKING SANCTIONS PURSUANT TO THE SOUTH CAROLINA FRIVOLOUS CIVIL PROCEEDINGS SANCTIONS ACT PURSUANT TO SECTION 15-36-10, ET SEQ.

(E) THE COURT MUST NOT ASSESS ATTORNEY'S FEES OR COSTS AWARDED AGAINST OR TO THE DEPARTMENT IN ANY CONTESTED CASE OR APPEAL INVOLVING A CERTIFICATE OF NEED APPLICATION OR AN EXEMPTION REQUEST PURSUANT TO SECTION 44-7-170 OR A REQUEST FOR A DETERMINATION AS TO THE APPLICABILITY OF SECTION 44-7-160.

(F)(1) ANY PARTY MAY, AT ANY TIME MORE THAN TWENTY DAYS BEFORE THE ACTUAL CONTESTED CASE HEARING DATE, FILE WITH THE CLERK OF THE ADMINISTRATIVE LAW COURT A WRITTEN OFFER OF JUDGMENT SIGNED BY THE OFFEROR OR HIS ATTORNEY, DIRECTED TO THE OPPOSING PARTY, OFFERING TO TAKE JUDGMENT IN THE OFFEROR'S FAVOR, OR AS THE CASE MAY BE, TO ALLOW JUDGMENT TO BE TAKEN AGAINST THE OFFEROR AS SPECIFIED IN THE OFFER. THE OFFEROR SHALL GIVE NOTICE OF THE OFFER OF JUDGMENT TO THE OFFEREE'S ATTORNEY, OR IF THE OFFEREE IS NOT REPRESENTED BY AN ATTORNEY, TO THE OFFEREE HIMSELF, IN ACCORDANCE WITH THE SERVICE RULES FOR MOTIONS AND OTHER PLEADINGS SET FORTH IN THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT RULES OF PROCEDURE. WITHIN TWENTY DAYS AFTER NOTIFICATION, OR AT LEAST TEN DAYS PRIOR TO THE HEARING DATE, WHICHEVER DATE IS EARLIER, THE OFFEREE OR HIS ATTORNEY MAY FILE WITH THE CLERK OF THE COURT A WRITTEN ACCEPTANCE OF THE OFFER OF JUDGMENT. UPON THE FILING, THE CLERK SHALL ENTER IMMEDIATELY JUDGMENT OF THE STIPULATION. IF THE OFFER OF JUDGMENT IS NOT ACCEPTED WITHIN TWENTY DAYS AFTER NOTIFICATION OR PRIOR TO OR ON THE TENTH DAY BEFORE THE ACTUAL HEARING DATE, WHICHEVER DATE OCCURS FIRST, THE OFFER SHALL BE CONSIDERED REJECTED AND EVIDENCE THEREOF

IS NOT TO BE ADMISSIBLE EXCEPT IN A PROCEEDING AFTER THE HEARING TO FIX COSTS, INTERESTS, ATTORNEY'S FEES, AND OTHER RECOVERABLE MONIES. ANY OFFEROR MAY WITHDRAW AN OFFER OF JUDGMENT PRIOR TO ITS ACCEPTANCE OR PRIOR TO THE DATE ON WHICH IT WOULD BE CONSIDERED REJECTED BY GIVING NOTICE TO THE OFFEREE OR HIS ATTORNEY IN ACCORDANCE WITH THE SERVICE RULES FOR MOTIONS AND OTHER PLEADINGS OUTLINED IN THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT RULES OF PROCEDURE. ANY OFFEROR MAY FILE A SUBSEQUENT OFFER OF JUDGMENT IN ANY AMOUNT PROVIDED THAT THE SUBSEQUENT OFFER SUPERSEDES ANY EARLIER OFFER THAT WAS REJECTED BY THE OFFEREE OR WITHDRAWN BY THE OFFEROR, AND, ON FILING, TERMINATES ANY RIGHTS OF INTEREST OR COSTS THAT MAY HAVE BEEN APPLICABLE TO THE SUPERSEDED OFFER. NOTWITHSTANDING THIS PROVISION, AN OFFER IS NOT CONSIDERED REJECTED UPON THE MAKING OF A COUNTEROFFER BY THE OFFEREE, BUT SHALL REMAIN EFFECTIVE UNTIL ACCEPTED, REJECTED, OR WITHDRAWN AS PROVIDED IN THIS SUBSECTION. ANY AND ALL OFFERS OF JUDGMENT AND ANY ACCEPTANCE OF OFFERS OF JUDGMENT MUST BE INCLUDED BY THE CLERK IN THE RECORD OF THE CASE.

(2) IF AN OFFER OF JUDGMENT IS NOT ACCEPTED AND THE OFFEROR OBTAINS A DETERMINATION AT LEAST AS FAVORABLE AS THE REJECTED OFFER, THE OFFEROR IS ENTITLED TO RECOVER FROM THE OFFEREE ANY ADMINISTRATIVE, DISCOVERY COSTS, AND ATTORNEY'S FEES.

(3) THIS SUBSECTION MUST NOT BE INTERPRETED TO ABROGATE THE CONTRACTUAL RIGHTS OF ANY PARTY CONCERNING THE RECOVERY OF ATTORNEY'S FEES OR OTHER MONIES IN ACCORDANCE WITH THE PROVISIONS OF ANY WRITTEN CONTRACT BETWEEN THE PARTIES TO THE ACTION."

**SECTION 9. THE LEGISLATIVE AUDIT COUNCIL SHALL CONDUCT A PERFORMANCE REVIEW OF THE CERTIFICATE OF NEED PROGRAM TO**

**DETERMINE ITS EFFECTIVENESS AND ACHIEVEMENTS FOUR YEARS AFTER THE EFFECTIVE DATE OF THIS ACT.**

**SECTION 10. IF ANY SECTION, SUBSECTION, PARAGRAPH, SUBPARAGRAPH, SENTENCE, CLAUSE, PHRASE, OR WORD OF THIS ACT IS FOR ANY REASON HELD TO BE UNCONSTITUTIONAL OR INVALID, SUCH HOLDING SHALL NOT AFFECT THE CONSTITUTIONALITY OR VALIDITY OF THE REMAINING PORTIONS OF THIS ACT, THE GENERAL ASSEMBLY HEREBY DECLARING THAT IT WOULD HAVE PASSED THIS ACT, AND EACH AND EVERY SECTION, SUBSECTION, PARAGRAPH, SUBPARAGRAPH, SENTENCE, CLAUSE, PHRASE, AND WORD THEREOF, IRRESPECTIVE OF THE FACT THAT ANY ONE OR MORE OTHER SECTIONS, SUBSECTIONS, PARAGRAPHS, SUBPARAGRAPHS, SENTENCES, CLAUSES, PHRASES, OR WORDS HEREOF MAY BE DECLARED TO BE UNCONSTITUTIONAL, INVALID, OR OTHERWISE INEFFECTIVE.**

**SECTION 11. THE REPEAL OR AMENDMENT BY THIS ACT OF ANY LAW, WHETHER TEMPORARY OR PERMANENT OR CIVIL OR CRIMINAL, DOES NOT AFFECT PENDING ACTIONS, RIGHTS, DUTIES, OR LIABILITIES FOUNDED THEREON, OR ALTER, DISCHARGE, RELEASE OR EXTINGUISH ANY PENALTY, FORFEITURE, OR LIABILITY INCURRED UNDER THE REPEALED OR AMENDED LAW, UNLESS THE REPEALED OR AMENDED PROVISION SHALL SO EXPRESSLY PROVIDE. AFTER THE EFFECTIVE DATE OF THIS ACT, ALL LAWS REPEALED OR AMENDED BY THIS ACT MUST BE TAKEN AND TREATED AS REMAINING IN FULL FORCE AND EFFECT FOR THE PURPOSE OF SUSTAINING ANY PENDING OR VESTED RIGHT, CIVIL ACTION, SPECIAL PROCEEDING, CRIMINAL PROSECUTION, OR APPEAL EXISTING AS OF THE EFFECTIVE DATE OF THIS ACT, AND FOR THE ENFORCEMENT OF RIGHTS, DUTIES, PENALTIES, FORFEITURES, AND LIABILITIES AS THEY STOOD UNDER THE REPEALED OR AMENDED LAWS.**

**SECTION 12. THIS ACT TAKES EFFECTIVE UPON APPROVAL BY THE GOVERNOR. /**

**RENUMBER SECTIONS TO CONFORM.  
AMEND TITLE TO CONFORM.**



**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**  
**STATEMENT OF ESTIMATED FISCAL IMPACT**  
**(803)734-3780 • RFA.SC.GOV/IMPACTS**

*This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.*

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**Bill Number:** S. 0290    Introduced on January 12, 2021  
**Author:** Climer  
**Subject:** State Health Facility Licensure Act  
**Requestor:** Senate  
**RFA Analyst(s):** Wren  
**Impact Date:** January 13, 2022

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### **Fiscal Impact Summary**

This bill eliminates the Certificate of Need (CON) program. The bill will have no expenditure impact on the Department of Health and Environmental Control (DHEC) because the agency plans to utilize current employees in this program to support any increase in workloads that result from additional licensure applications from facilities. Based upon a preliminary analysis, repealing CON and removing the limitation on the number of nursing home beds in the state may potentially increase Medicaid costs for nursing home services. The Department of Health and Human Services (DHHS) is reviewing the bill, and we will update this impact if additional information is available.

The bill will decrease General Fund revenue by approximately \$633,000 each year beginning in FY 2022-23 due to the elimination of the CON program and the corresponding filing fees.

### **Explanation of Fiscal Impact**

#### **Introduced on January 12, 2021**

#### **State Expenditure**

This bill eliminates the CON program. In doing so, DHEC may not accept new applications or act on pending applications. The agency must notify existing facilities with a CON that they are no longer required to submit regular reports. In addition, the agency will discontinue the collection of CON-related fees.

**Department of Health and Environment Control.** DHEC indicates that based on past experience and estimates from other states, the elimination of the CON program will increase licensure applications from health care facilities, thereby increasing workload. In order to support the increased workload, DHEC will transition the 3.0 FTEs who mainly work on CON applications to assist with additional licensure responsibilities. Therefore, the bill will have no expenditure impact on DHEC.

**Department of Health and Human Services.** Based upon a preliminary analysis, repealing CON and removing the limitation on the number of nursing home beds in the state may potentially increase Medicaid costs for nursing home services. The agency is reviewing the bill, and we will update this impact if additional information is available.

**State Revenue**

This bill eliminates the CON program. In doing so, DHEC may not accept new applications or act on pending applications. Pursuant to Section 44-7-150, the first \$750,000 of the fees imposed under the CON program are deposited into the General Fund, and the remaining amount collected is retained by DHEC for administrative costs of the program. The agency collected approximately \$633,000 in FY 2020-21 under the CON program. Therefore, we anticipate that this bill will decrease General Fund revenue by approximately \$633,000 each year beginning in FY 2022-23.

**Local Expenditure**

N/A

**Local Revenue**

N/A



Frank A. Rainwater, Executive Director



**South Carolina General Assembly**  
124th Session, 2021-2022

**S. 290**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Climer, Senn, Campsen, Loftis, Rice, Peeler, Turner, Davis, Gustafson, Grooms, M. Johnson, Garrett, Kimbrell, Adams and Fanning  
Document Path: I:\s-res\wc\012stat.sp.wc.docx

Introduced in the Senate on January 12, 2021

Introduced in the House on January 26, 2022

Last Amended on January 25, 2022

Currently residing in the House Committee on **Ways and Means**

Summary: State Health Facility Licensure Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date	Body	Action Description with journal page number
12/9/2020	Senate	Prefiled
12/9/2020	Senate	Referred to Committee on <b>Medical Affairs</b>
1/12/2021	Senate	Introduced and read first time ( <a href="#">Senate Journal-page 251</a> )
1/12/2021	Senate	Referred to Committee on <b>Medical Affairs</b> ( <a href="#">Senate Journal-page 251</a> )
4/28/2021	Senate	Recalled from Committee on <b>Medical Affairs</b> ( <a href="#">Senate Journal-page 25</a> )
4/29/2021		Scrivener's error corrected
1/11/2022	Senate	Special order, set for January 11, 2022 ( <a href="#">Senate Journal-page 33</a> )
1/12/2022	Senate	Amended ( <a href="#">Senate Journal-page 17</a> )
1/12/2022	Senate	Debate interrupted ( <a href="#">Senate Journal-page 17</a> )
1/13/2022		Scrivener's error corrected
1/19/2022	Senate	Amended ( <a href="#">Senate Journal-page 10</a> )
1/19/2022	Senate	Read second time ( <a href="#">Senate Journal-page 10</a> )
1/19/2022	Senate	Roll call Ayes-xxx Nays-xxx ( <a href="#">Senate Journal-page 10</a> )
1/20/2022		Scrivener's error corrected
1/25/2022	Senate	Amended ( <a href="#">Senate Journal-page 17</a> )
1/25/2022	Senate	Read third time and sent to House ( <a href="#">Senate Journal-page 17</a> )
1/25/2022	Senate	Roll call Ayes-35 Nays-6 ( <a href="#">Senate Journal-page 17</a> )
1/26/2022		Scrivener's error corrected
1/26/2022	House	Introduced and read first time ( <a href="#">House Journal-page 34</a> )
1/26/2022	House	Referred to Committee on <b>Ways and Means</b> ( <a href="#">House Journal-page 34</a> )

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**VERSIONS OF THIS BILL**

[12/9/2020](#)  
[4/28/2021](#)  
[4/29/2021](#)  
[1/12/2022](#)  
[1/13/2022](#)

[1/19/2022](#)

[1/20/2022](#)

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[1/26/2022](#)

1 ~~Indicates Matter Stricken~~

2 Indicates New Matter

3

4 AS PASSED BY THE SENATE

5 January 25, 2022

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8

## S. 290

9

10 Introduced by Senators Climer, Senn, Campsen, Loftis, Rice,

11 Peeler, Turner, Davis, Gustafson, Grooms, M. Johnson, Garrett,

12 Kimbrell and Adams

13

14 S. Printed 1/25/22--S.

[SEC 1/26/22 12:38 PM]

15 Read the first time January 12, 2021.

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**A BILL**

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10

11 TO AMEND SECTIONS 44-7-110, 44-7-120, 44-7-130, 44-7-140,  
12 44-7-150, AND 44-7-320 OF THE 1976 CODE, ALL RELATING  
13 TO THE REGULATION OF HEALTH CARE FACILITIES IN  
14 THE STATE, TO ELIMINATE REFERENCES TO  
15 CERTIFICATE OF NEED REQUIREMENTS; TO REPEAL  
16 SECTIONS 44-7-160, 44-7-170, 44-7-180, 44-7-190, 44-7-200,  
17 44-7-210, 44-7-220, 44-7-225, 44-7-230, AND 44-7-240 OF THE  
18 1976 CODE, ALL RELATING TO THE CERTIFICATE OF  
19 NEED PROGRAM; AND TO RENAME ARTICLE 3, CHAPTER  
20 7, TITLE 44 OF THE 1976 CODE AS THE "STATE HEALTH  
21 FACILITY LICENSURE ACT".

22 Amend Title To Conform

23

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

26

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

29

30 B. Section 44-7-110 of the 1976 Code is amended to read:

31

32 "Section 44-7-110. This article may be cited as the 'State  
33 ~~Certification of Need and Health Facility Licensure Act~~'."

34

35 SECTION 2. Section 44-7-120 of the 1976 Code is amended to  
36 read:

37

38 "Section 44-7-120. The purpose of this article is to ~~promote cost~~  
39 ~~containment, prevent unnecessary duplication of health care~~  
40 ~~facilities and services, guide the establishment of health facilities~~  
41 ~~and services which will best serve public needs, and ensure that high~~

1 quality services are provided in health facilities in this State. To  
2 achieve these purposes, this article requires:

3 ~~(1) the issuance of a Certificate of Need before undertaking a~~  
4 ~~project prescribed by this article;~~

5 ~~(2) adoption of procedures and criteria for submittal of an~~  
6 ~~application and appropriate review before issuance of a Certificate~~  
7 ~~of Need;~~

8 ~~(3) preparation and publication of a State Health Plan;~~

9 ~~(4) the licensure of facilities rendering medical, nursing, and~~  
10 ~~other health care.”~~

11

12 SECTION 3. Section 44-7-130 of the 1976 Code is amended to  
13 read:

14

15 “Section 44-7-130. As used in this article:

16 (1) ~~‘Affected person’ means the applicant, a person residing~~  
17 ~~within the geographic area served or to be served by the applicant,~~  
18 ~~persons located in the health service area in which the project is to~~  
19 ~~be located and who provide similar services to the proposed project,~~  
20 ~~persons who before receipt by the department of the proposal being~~  
21 ~~reviewed have formally indicated an intention to provide similar~~  
22 ~~services in the future, persons who pay for health services in the~~  
23 ~~health service area in which the project is to be located and who~~  
24 ~~have notified the department of their interest in Certificate of Need~~  
25 ~~applications, the State Consumer Advocate, and the State~~  
26 ~~Ombudsman. Persons from another state who would otherwise be~~  
27 ~~considered ‘affected persons’ are not included unless that state~~  
28 ~~provides for similar involvement of persons from South Carolina in~~  
29 ~~its certificate of need process.~~

30 (2) ~~‘Ambulatory surgical facility’ means a facility organized~~  
31 ~~and administered for the purpose of performing surgical procedures~~  
32 ~~for which patients are scheduled to arrive, receive surgery, and be~~  
33 ~~discharged on the same day. The owner or operator makes the~~  
34 ~~facility available to other providers who comprise an organized~~  
35 ~~professional staff.~~

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

40 (3) ‘Board’ means the State Board of Health and  
41 Environmental Control.

42 (4) Reserved. ‘Children, adolescents, or young adults in need  
43 of mental health treatment’ in a residential treatment facility means

1 a child, adolescent, or young adult under the age of twenty-one who  
2 manifests a substantial disorder of cognitive or emotional process  
3 that lessens or impairs to a marked degree that child's, adolescent's,  
4 or young adult's capacity either to develop or to exercise  
5 age-appropriate or age-adequate behavior, including, but not limited  
6 to, marked disorders of mood or thought processes; severe  
7 difficulties with self-control or judgment, including behavior  
8 dangerous to himself or others; and serious disturbances in a child's,  
9 adolescent's, or young adult's ability to care for or relate to others.

10 ~~(5) 'Competing applicants' means two or more persons or~~  
11 ~~health care facilities as defined in this article who apply for~~  
12 ~~Certificates of Need to provide similar services or facilities in the~~  
13 ~~same service area within a time frame as established by~~  
14 ~~departmental regulations and whose applications, if approved,~~  
15 ~~would exceed the need for services or facilities.~~

16 (6) 'Community residential care facility' means a facility  
17 which offers room and board and provides a degree of personal  
18 assistance for two or more persons eighteen years old or older.

19 (7)(6) 'Day-care Daycare facility for adults' means a facility  
20 for adults eighteen years or older which that:

21 (a) offers in a group setting a program of individual and  
22 group activities and therapies; ~~The program~~

23 (b) is directed toward providing community-based care for  
24 those in need of a supportive setting for less than twenty-four hours  
25 a day, ~~thereby preventing in order to prevent unnecessary~~  
26 ~~institutionalization;~~ and

27 (c) ~~shall provide~~ provides a minimum of four and a  
28 maximum of fourteen hours of operation a day.

29 (8)(7) 'Department' means the Department of Health and  
30 Environmental Control.

31 (9)(8) 'The federal act' means Title VI of the United States  
32 Public Health Service Act (the Hill-Burton Construction Program);  
33 Title XVI of the United States Public Health Service Act (National  
34 Health Planning and Resources Development Act of 1974 - Public  
35 Law 93-641); grants for all center and facility construction under  
36 Public Law 91-211 (community mental health centers' amendments  
37 to Title II, Public Law 88-164, Community Mental Health Centers  
38 Act); grants for all facility construction under Public Law 91-517  
39 (developmental disabilities services and facilities construction  
40 amendments of 1970 to Part C, Title I, grants for construction of  
41 facilities for persons with intellectual disability - Public Law  
42 88-164); and other federal programs as may exist or be enacted  
43 which provide for the construction of hospitals or related health

1 facilities. 'Facility for chemically dependent or addicted persons'  
2 means a facility organized to provide outpatient or residential  
3 services to chemically dependent or addicted persons and their  
4 families based on an individual treatment plan including diagnostic  
5 treatment, individual and group counseling, family therapy,  
6 vocational and educational development counseling, and referral  
7 services.

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

11 (10) 'Freestanding emergency service' or 'off-campus  
12 emergency service' means an extension of an existing hospital  
13 emergency department that is intended to provide comprehensive  
14 emergency service but does not include a service that does not  
15 provide twenty-four hour, seven day per week operations or that is  
16 not capable of providing basic services as defined for hospital  
17 emergency departments. A service that does not qualify as a  
18 freestanding emergency service must not be classified as a  
19 freestanding emergency service and must not advertise, or display  
20 or exhibit any signs or symbols, that would identify the service as a  
21 freestanding emergency service.

22 ~~(10)(11)~~ (11) 'Health care facility' means, at a minimum, acute  
23 care hospitals, psychiatric hospitals, alcohol and substance abuse  
24 hospitals, nursing homes, ambulatory surgical facilities, hospice  
25 facilities, radiation therapy facilities, rehabilitation facilities,  
26 residential treatment facilities for children and adolescents,  
27 intermediate care facilities for persons with intellectual disability, or  
28 narcotic treatment programs, and any other facility for which  
29 Certificate of Need review is required by federal law.

30 ~~(11)(12)~~ (12) 'Health service' means clinically related, diagnostic,  
31 treatment, or rehabilitative services and includes alcohol, drug  
32 abuse, and mental health services for which specific standards or  
33 criteria are prescribed in the State Health Plan.

34 ~~(12)(13)~~ (13) 'Hospital' means a facility that is organized and  
35 administered to provide overnight medical or surgical care or  
36 nursing care of for an illness, injury, or infirmity and must provide  
37 on-campus emergency services; that and may provide obstetrical  
38 care; and in which all diagnoses, treatment, or care is administered  
39 by or under the direction of persons currently licensed to practice  
40 medicine, surgery, or osteopathy. Hospital 'Hospital' may include a  
41 residential treatment facilities facility for children, and adolescents,  
42 or young adults in need of mental health treatment which are that is  
43 physically a part of a licensed psychiatric hospital. This definition

1 does not include facilities ~~which~~ that are licensed by the Department  
2 of Social Services. A residential treatment facility for children,  
3 adolescents, or young adults in need of mental health treatment that  
4 is physically a part of a licensed psychiatric hospital is not required  
5 to provide on-campus emergency services.”

6 (14) ‘Intermediate care facility for persons with an intellectual  
7 disability’ means a facility that serves four or more persons with an  
8 intellectual disability or persons with related conditions and that  
9 provides health or rehabilitative services on a regular basis to  
10 individuals whose mental and physical conditions require services  
11 including room, board, and active treatment for their intellectual  
12 disability or related conditions.

13 ~~(13)~~(15) ‘Nursing home’ means a facility with an organized  
14 nursing staff to maintain and operate organized facilities and  
15 services to accommodate two or more unrelated persons over a  
16 period exceeding twenty-four hours which is operated either in  
17 connection with a hospital or as a freestanding facility for the  
18 express or implied purpose of providing intermediate or skilled  
19 nursing care for persons who are not in need of hospital care.

20 ~~(14)~~ ‘Facility for chemically dependent or addicted persons’  
21 means a facility organized to provide outpatient or residential  
22 services to chemically dependent or addicted persons and their  
23 families based on an individual treatment plan including diagnostic  
24 treatment, individual and group counseling, family therapy,  
25 vocational and educational development counseling, and referral  
26 services.

27 (15)(16) ‘Person’ means an individual, a trust or estate, a  
28 partnership, a corporation including an association, joint stock  
29 company, insurance company, and a health maintenance  
30 organization, a health care facility, a state, a political subdivision, or  
31 an instrumentality including a municipal corporation of a state, or  
32 any legal entity recognized by the State.

33 (17) ‘Radiation therapy facility’ means a person or a health  
34 care facility that provides or seeks to provide mega-voltage  
35 therapeutic services to patients through the use of high energy  
36 radiation.

37 ~~(16)~~(18) ‘Residential treatment facility for children and  
38 adolescents’ means a facility operated for the assessment, diagnosis,  
39 treatment, and care of two or more ‘children and adolescents in need  
40 of mental health treatment’ which provides:

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



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

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

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

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

23 ~~(19) 'Intermediate care facility for persons with intellectual~~  
24 ~~disability' means a facility that serves four or more persons with~~  
25 ~~intellectual disability or persons with related conditions and~~  
26 ~~provides health or rehabilitative services on a regular basis to~~  
27 ~~individuals whose mental and physical conditions require services~~  
28 ~~including room, board, and active treatment for their intellectual~~  
29 ~~disability or related conditions.~~

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

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

41 ~~(22) 'Facilities wherein abortions are performed' means a~~  
42 ~~facility, other than a hospital, in which any second trimester or five~~  
43 ~~or more first trimester abortions are performed in a month.~~

1       ~~(23) 'Radiation therapy facility' means a person or a health~~  
2 ~~care facility which provides or seeks to provide mega voltage~~  
3 ~~therapeutic services to patients through the use of high energy~~  
4 ~~radiation.~~

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

9       ~~(25) 'Freestanding emergency service' also referred to as an~~  
10 ~~off-campus emergency service, means an extension of an existing~~  
11 ~~hospital emergency department that is an off-campus emergency~~  
12 ~~service and that is intended to provide comprehensive emergency~~  
13 ~~service. The hospital shall have a valid license and be in operation~~  
14 ~~to support the off-campus emergency service. A service that does~~  
15 ~~not provide twenty four hour, seven day per week operation or that~~  
16 ~~is not capable of providing basic services as defined for hospital~~  
17 ~~emergency departments must not be classified as a freestanding~~  
18 ~~emergency service and must not advertise or display or exhibit any~~  
19 ~~signs or symbols that would identify the service as a freestanding~~  
20 ~~emergency service.~~

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

28  
29 SECTION 4. Section 44-7-140 of the 1976 Code is amended to  
30 read:

31  
32       "Section 44-7-140. The department is designated the sole state  
33 agency for control and administration of the ~~granting of Certificates~~  
34 ~~of Need~~ and licensure of health facilities and other activities  
35 necessary to be carried out under this article."  
36

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

39  
40       "Section 44-7-150. In carrying out the purposes of this article, the  
41 department shall:

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

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

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

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

13 (5) ~~The department may charge and collect fees to cover the  
14 cost of operating the Certificate of Need program, including  
15 application fees, filing fees, issuance fees, and  
16 nonapplicability/exemption determination fees. The department  
17 shall develop regulations which set fees as authorized by this article.  
18 The level of these fees must be determined after careful  
19 consideration of the direct and indirect costs incurred by the  
20 department in performing its various functions and services in the  
21 Certificate of Need program. All fees and procedures for collecting  
22 fees must be adopted pursuant to procedures set forth in the  
23 Administrative Procedures Act. Any fee collected pursuant to this  
24 section in excess of seven hundred fifty thousand dollars must be  
25 retained by the department and designated for the administrative  
26 costs of the Certificate of Need program. The first seven hundred  
27 fifty thousand dollars collected pursuant to this section must be  
28 deposited into the general fund of the State. Until fees are  
29 promulgated through regulation, all fees established as of January 1,  
30 2009, remain in effect promulgate regulations, in accordance with  
31 the Administrative Procedures Act, that establish fees as authorized  
32 by this article."~~

33  
34 B. Fees authorized by Article 3, Chapter 7, Title 44 that are  
35 promulgated as of January 1, 2009, shall remain in effect until  
36 further regulations are promulgated pursuant to Section  
37 44-7-150(5), as amended by this act.

38  
39 SECTION 6. Section 44-7-320 of the 1976 Code is amended to  
40 read:

41

1 "Section 44-7-320. (A)(1) The department may deny, suspend,  
2 or revoke licenses or assess a monetary penalty, or both, against a  
3 person or facility for:

4 (a) violating a provision of this article or departmental  
5 regulations;

6 ~~(b) permitting, aiding, or abetting the commission of an  
7 unlawful act relating to the securing of a Certificate of Need or the  
8 establishment, maintenance, or operation of a facility requiring  
9 certification of need or licensure under this article;~~

10 (e) engaging in conduct or practices detrimental to the  
11 health or safety of patients, residents, clients, or employees of a  
12 facility or service. This provision does not refer to health practices  
13 authorized by law;

14 ~~(d)(c)~~ refusing to admit and treat alcoholic and substance  
15 abusers, the mentally ill, or persons with intellectual disability,  
16 whose admission or treatment has been prescribed by a physician  
17 who is a member of the facility's medical staff, or discriminating  
18 against alcoholics, the mentally ill, or persons with intellectual  
19 disability solely because of the alcoholism, mental illness, or  
20 intellectual disability; or

21 ~~(e)(d)~~ failing to allow a team advocacy inspection of a  
22 community residential care facility by the South Carolina Protection  
23 and Advocacy System for the Handicapped, Inc., as allowed by law.

24 (2) Consideration to deny, suspend, or revoke licenses or  
25 assess monetary penalties, or both, is not limited to information  
26 relating to the current licensing period but includes consideration of  
27 all pertinent information regarding the facility and the applicant.

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

40 (B) Should the department determine to assess a penalty, deny,  
41 suspend, or revoke a license, it shall send to the appropriate person  
42 or facility, by certified mail, a notice setting forth the particular  
43 reasons for the determination. The determination becomes final

1 thirty days after the mailing of the notice, unless the person or  
2 facility, within such thirty-day period, requests in writing a  
3 contested case hearing before the board, or its designee, pursuant to  
4 the Administrative Procedures Act. On the basis of the contested  
5 case hearing, the determination involved must be affirmed,  
6 modified, or set aside. Judicial review may be sought in accordance  
7 with the Administrative Procedures Act.

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

13 (D) Failure to pay a penalty within thirty days is grounds for  
14 suspension, revocation, or denial of a renewal of a license. ~~No~~ A  
15 license ~~may~~ must not be issued, reissued, or renewed until all  
16 penalties finally assessed against a person or facility have been paid.

17 (E) ~~No Certificate of Need may be issued to any person or~~  
18 ~~facility until a final penalty assessed against a person or a facility~~  
19 ~~has been paid.~~

20 (F) All penalties collected pursuant to this article must be  
21 deposited in the state treasury and credited to the General Fund of  
22 the State.”

23  
24 SECTION 7. Section 44-7-160 of the 1976 Code is amended to  
25 read:

26  
27 “Section 44-7-160. A ~~person or health care facility~~ nursing home  
28 as defined in this article is required to obtain a Certificate of Need  
29 from the department before undertaking any of the following:

30 (1) the construction or other establishment of a new ~~health care~~  
31 ~~facility~~ nursing home;

32 (2) a change in the existing bed complement of a ~~health care~~  
33 ~~facility~~ nursing home through the addition of one or more beds or  
34 change in the classification of licensure of one or more beds;

35 (3) an expenditure by or on behalf of a ~~health care facility~~  
36 nursing home in excess of an amount to be prescribed by regulation  
37 which, under generally acceptable accounting principles  
38 consistently applied, is considered a capital expenditure except  
39 those expenditures exempted in Section 44-7-170(B)(1). The cost of  
40 any studies, surveys, designs, plans, working drawings,  
41 specifications, and other activities essential to the development,  
42 acquisition, improvement, expansion, or replacement of any plant or

1 equipment must be included in determining if the expenditure  
2 exceeds the prescribed amount;

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

7 (5) the offering of a health service by or on behalf of a ~~health~~  
8 ~~care facility~~ nursing home which has not been offered by the facility  
9 in the preceding twelve months and for which specific standards or  
10 criteria are prescribed in the South Carolina Health Plan;

11 (6) the acquisition of medical equipment which is to be used for  
12 diagnosis or treatment if the total project cost is in excess of that  
13 prescribed by regulation.”

14  
15 SECTION 8. Article 3, Chapter 7, Title 44 of the 1976 Code is  
16 amended by adding:

17  
18 “Section 44-7-161. (A) Notwithstanding any provision of law to  
19 the contrary and prior to obtaining a Certificate of Need or licensure  
20 pursuant to this article for acquiring a hospital facility, the Medical  
21 University of South Carolina shall:

22 (a) submit details of the proposed acquisition for review and  
23 comment of the Joint Bond Review Committee;

24 (b) receive approval of proposed acquisition by the Fiscal  
25 Accountability Authority; and

26 (c) apply for a Certificate of Need or licensure.

27 (B) For purposes of this section:

28 (1) ‘Medical University of South Carolina’ means the Medical  
29 University of South Carolina, the Medical University Hospital  
30 Authority, or any affiliate thereof.

31 (2) ‘Acquiring’ means purchasing, leasing, acceptance of a gift,  
32 or otherwise, whether by obtaining options for the acquisition of  
33 existing hospital facilities, by new construction, or by the  
34 acquisition of any property, real or personal, improved or  
35 unimproved, including interests in land in fee or less than fee for  
36 any hospital facility.”

37  
38 SECTION 9. (A) There is created the Certificate of Need Study  
39 Committee to examine the effect of the repeal of the Certificate of  
40 Need program on the quality and quantity of access to healthcare in  
41 rural portions of South Carolina. For the purposes of the study  
42 committee, “rural” means those areas considered “rural” by the

1 United States Census Bureau, using factors including, but not  
2 limited to, population and population density.

3 (B)(1) The study committee shall be composed of six members  
4 to include three members of the Senate, as appointed by the  
5 President of the Senate, and three members of the House of  
6 Representatives, as appointed by the Speaker of the House of  
7 Representatives.

8 (2) The study committee shall meet as soon as practicable to  
9 organize and elect a co-chairman from the Senate and the House of  
10 Representatives. The co-chairmen shall be elected by a majority  
11 vote of the study committee members.

12 (3) The study committee shall consult with a non-voting  
13 advisory board as needed. The non-voting advisory board shall  
14 include one representative from the South Carolina Hospital  
15 Association, the South Carolina Medical Association, the  
16 Department of Health and Environmental Control, and the  
17 Department of Health and Human Services.

18 (C)(1) The study committee shall:

19 (a) examine the effect that the repeal of the Certificate of  
20 Need program has on the quality and quantity of access to healthcare  
21 in rural portions of the State;

22 (b) prepare a report of its work and findings to the General  
23 Assembly that may include recommendations for action on any of  
24 the rural healthcare access measures studied. Recommendations  
25 may include legislative, regulatory, or policy changes to address any  
26 identified trends associated with the decrease in the quality and  
27 quantity of access to healthcare in the rural portions of the State. A  
28 recommendation for action shall be based upon a finding by a  
29 majority of the voting members that one or more measures would  
30 promote the quality and quantity of healthcare access to rural areas;  
31 and

32 (c) draft any recommended legislation.

33 (2) The study committee shall provide a report to the General  
34 Assembly of its findings and recommendations by January 1, 2024.  
35 The study committee shall dissolve upon providing its report to the  
36 General Assembly, or on January 1, 2024, whichever occurs first.

37 (D) The study committee may obtain data or other information it  
38 deems necessary from state agencies that is relevant to the purposes  
39 of the study committee, including from the Department of Health  
40 and Environmental Control, the Department of Health and Human  
41 Services, and the Department of Employment and Workforce.  
42 Agencies are required to respond promptly and provide requested  
43 information.

1 (E) The Senate Medical Affairs Committee and the House  
2 Medical, Military, Public and Municipal Committee shall provide  
3 staff for the study committee.

4  
5 SECTION 10. If any section, subsection, paragraph,  
6 subparagraph, sentence, clause, phrase, or word of this act is for any  
7 reason held to be unconstitutional or invalid, then such holding shall  
8 not affect the constitutionality or validity of the remaining portions  
9 of this act, the General Assembly hereby declaring that it would  
10 have passed this act, and each and every section, subsection,  
11 paragraph, subparagraph, sentence, clause, phrase, and word  
12 thereof, irrespective of the fact that any one or more other sections,  
13 subsections, paragraphs, subparagraphs, sentences, clauses, phrases,  
14 or words hereof may be declared to be unconstitutional, invalid, or  
15 otherwise ineffective.

16  
17 SECTION 11. This act takes effect upon approval by the  
18 Governor.

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