**South Carolina General Assembly**

124th Session, 2021-2022

**S. 370**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Talley and Kimbrell

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Introduced in the Senate on January 12, 2021

Currently residing in the Senate Committee on **Medical Affairs**

Summary: Certificate of need

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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12/9/2020 Senate Referred to Committee on **Medical Affairs**

1/12/2021 Senate Introduced and read first time ([Senate Journal‑page 287](file:///h:\sj\20210112.docx))

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**VERSIONS OF THIS BILL**

[12/9/2020](file:///p:\pprever\2021-22\370_20201209.docx)

**A** **BILL**

TO AMEND SECTION 44‑7‑160 OF THE 1976 CODE, RELATING TO CIRCUMSTANCES REQUIRING A CERTIFICATE OF NEED, TO PROVIDE THAT THE ADDITION OF BEDS IN CERTAIN SITUATIONS IS EXEMPT FROM CERTIFICATE OF NEED REQUIREMENTS, TO INCREASE THE DOLLAR THRESHOLD FOR CAPITAL EXPENDITURES AND MEDICAL EQUIPMENT, AND TO PROVIDE THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL MUST DETERMINE THE INCREASE OR DECREASE IN THE RATIO OF THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS, MEDICAL CARE COMMODITIES IN THE U.S. CITY AVERAGE, FOR THE PRIOR FIVE-YEAR PERIOD AND ADJUST EXPENDITURES AND COSTS ACCORDINGLY; TO AMEND SECTION 44‑7‑170(A) OF THE 1976 CODE, RELATING TO CERTIFICATE OF NEED EXEMPTIONS, TO EXEMPT CERTAIN MEDICAL EQUIPMENT AND TO PROVIDE CERTAIN THRESHOLD CRITERIA TO EXEMPT THE ADDITION OF BEDS; TO AMEND SECTION 44‑7‑210(G) OF THE 1976 CODE, RELATING TO CERTIFICATE OF NEED CONTESTED CASES IN THE ADMINISTRATIVE LAW COURT, TO PROVIDE THAT THERE SHALL BE NO JUDICIAL REVIEW BEYOND THE ADMINISTRATIVE LAW COURT; TO AMEND SECTION 1‑23‑380 OF THE 1976 CODE, RELATING TO THE APPEAL OF A FINAL AGENCY DECISION UNDER THE ADMINISTRATIVE PROCEDURES ACT, TO REMOVE THE JUDICIAL REVIEW OF ADMINISTRATIVE LAW COURT DECISIONS INVOLVING CERTAIN CERTIFICATE OF NEED CONTESTED CASES; AND TO REPEAL SECTION 44‑7‑220 OF THE 1976 CODE, RELATING TO THE JUDICIAL REVIEW OF ADMINISTRATIVE LAW COURT DECISIONS IN CERTIFICATE OF NEED CONTESTED CASES.

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

SECTION 1. Section 44‑7‑160 of the 1976 Code is amended to read:

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

(1) the construction or other establishment of a new health care facility;

(2) a change in the existing bed complement of a health care facility through the addition of one or more beds, except as provided for in Section 44‑7‑170(A)(5), 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~~ five million dollars, as adjusted pursuant to this item, 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. 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 shall be adjusted accordingly, except that the dollar amount shall never be adjusted below five 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;

(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~~ equipment cost is in excess of ~~that prescribed by regulation~~ two million dollars, as adjusted pursuant to this item. 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 shall be adjusted accordingly, except that the dollar amount shall never be adjusted below two 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.”

SECTION 2. Section 44-7-170(A) of the 1976 Code is amended to read:

“Section 44-7-170. (A) The following are exempt from Certificate of Need review:

(1)(a) 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)~~(i) 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)~~(ii) change the bed capacity of a health care facility; or

~~(c)~~(iii) substantially change the medical or other patient care services provided by the person.

(b) 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, including, but not limited to, computed tomography (CT) scanners, magnetic resonance imaging, positron emission tomography (PET), and PET-CT 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; and

(5) a change in the existing bed complement of a health care facility through the addition of one or more beds if:

(a) in the immediately preceding calendar year, the average occupancy of the total number of beds in the same license category at the health care facility where the beds will be added exceeded seventy‑five percent capacity, including beds considered as observational status;

(b) for licensed general acute care hospital beds, the number of beds exempt from review under this section does not exceed fifty beds or ten percent of the total number of licensed general acute care hospital beds, whichever is greater, at the health care facility where the beds will be added;

(c) for beds in license categories other than general acute care hospital beds, the number of beds exempt from review under this section does not exceed ten percent of the total number of beds in the same license category at the health care facility where the beds will be added.”

SECTION 3. Section 44‑7‑210(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 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~~. There shall be no judicial review of final decisions issued by the Administrative Law Court for a contested case arising from the department’s decision to grant or deny a Certificate of Need application, the department’s decision to grant or deny a request for exemption under Section 44‑7‑170, the department’s issuance of a determination regarding the applicability of Section 44‑7‑160, or any other department decisions relating to Article 3, Chapter 7, Title 44.”

SECTION 4. The first paragraph of Section 1‑23‑380 of the 1976 Code, preceding items (1) - (5), is amended to read:

“Section 1-23-380. A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1, except for a party aggrieved by a final decision in a contested case filed with the Administrative Law Court relating to subject matter contained in Article 3, Chapter 7, Title 44. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. Except as otherwise provided by law, an appeal is to the court of appeals.”

SECTION 5. Section 44-7-220 of the 1976 Code is repealed.

SECTION 6. The repeal or amendment by this act of any law, whether temporary, permanent, 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 7. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, then such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 8. This act takes effect upon approval by the Governor.

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