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SOUTH CAROLINA CERTIFICATE OF NEED PROGRAM REPEALED (EXCEPT FOR NURSING HOMES)

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After four years' effort, the South Carolina House of Representatives unanimously passed S. 164 yesterday, eliminating Certificate of Need (CON) requirements for all health care facilities except nursing homes and the Medical University of South Carolina. Passed by the Senate in February, this legislation now heads to Governor McMaster's desk. The Governor is expected to sign this legislation into law.

Under this legislation, the current CON program requirements sunset in 2027. In the past, hospitals and other health care facilities were required to obtain permission from the South Carolina Department of Health and Environmental Control before opening new facilities, expanding or adding capacity to existing facilities, or making capital expenditures for certain medical equipment. These providers were required to undergo an expensive and drawn out quasi-judicial process, which allowed competitors to intervene and challenge intended new operations. Proponents of S. 164 contend that competition will lower costs statewide and improve the delivery of health care to rural communities.

In practical effect, S. 164 ends CON requirements for acute care hospitals, psychiatric hospitals, alcohol and substance abuse hospitals, ambulatory surgical facilities, hospice facilities, radiation therapy facilities, rehabilitation facilities, residential treatment facilities for children and adolescents, intermediate care facilities for persons with intellectual disabilities, and narcotic treatment programs. Existing hospitals are also exempted from obtaining a CON for relocation, mergers, or acquisitions within their current counties of operation, and crisis stabilization units no longer require a written exemption from S.C. DHEC. Skilled nursing facilities were specifically excluded from this legislation and will continue to be required to obtain a CON before opening or expanding or modifying existing services.

This legislation represents a tectonic shift in the landscape of health care regulation in South Carolina. Please contact Laura Evans or Kevin Horton in Shumaker's Health Law Service Line with any questions.

Specifics and Caveats:

- The exemption from CON requirements does not apply to: new construction of hospitals with up to 50 beds in a county currently without a hospital; hospitals owned or operated by the South Carolina Department of Mental Health or Department of Disabilities and Special Needs; federal hospitals or federally-sponsored hospitals operating within the state; and skilled nursing facilities.
- S. 164 creates a new section requiring the Medical University of South Carolina and Medical University Health Authority to submit any acquisition of an existing hospital facility for review to the Fiscal Accountability Authority and also requires it to obtain a CON as before.
- S. 164 establishes a program to study the effect of the legislation on the quality and quantity of access to health care in rural South Carolina.
- S. 164 requires Ambulatory Surgery Centers constructed under the new legislation to provide uncompensated indigent care to patients in an amount equal to 2 percent or 3 percent of their adjusted gross revenue, depending on whether they serve Medicaid patients.
- S. 164 establishes a remedy for frivolous contests of CON applications, including damages, attorney's fees, and costs to the prevailing party.

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