

SOUTH CAROLINA STATE REGISTER DISCLAIMER

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SOUTH CAROLINA STATE REGISTER

PUBLISHED BY
THE LEGISLATIVE COUNCIL
of the
GENERAL ASSEMBLY

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Published January 28, 2011

Volume 35 Issue No. 1

This issue contains notices, proposed regulations, emergency regulations, final form regulations, and other documents filed in the Office of the Legislative Council, pursuant to Article 1, Chapter 23, Title 1, Code of Laws of South Carolina, 1976.

SOUTH CAROLINA STATE REGISTER

An official state publication, the *South Carolina State Register* is a temporary update to South Carolina's official compilation of agency regulations--the *South Carolina Code of Regulations*. Changes in regulations, whether by adoption, amendment, repeal or emergency action must be published in the *State Register* pursuant to the provisions of the Administrative Procedures Act. The *State Register* also publishes the Governor's Executive Orders, notices or public hearings and meetings, and other documents issued by state agencies considered to be in the public interest. All documents published in the *State Register* are drafted by state agencies and are published as submitted. Publication of any material in the *State Register* is the official notice of such information.

STYLE AND FORMAT

Documents are arranged within each issue of the *State Register* according to the type of document filed:

Notices are documents considered by the agency to have general public interest.

Notices of Drafting Regulations give interested persons the opportunity to comment during the initial drafting period before regulations are submitted as proposed.

Proposed Regulations are those regulations pending permanent adoption by an agency.

Pending Regulations Submitted to the General Assembly are regulations adopted by the agency pending approval by the General Assembly.

Final Regulations have been permanently adopted by the agency and approved by the General Assembly.

Emergency Regulations have been adopted on an emergency basis by the agency.

Executive Orders are actions issued and taken by the Governor.

2011 PUBLICATION SCHEDULE

Documents will be accepted for filing on any normal business day from 8:30 A.M. until 5:00 P.M. All documents must be submitted in the format prescribed in the *Standards Manual for Drafting and Filing Regulations*.

To be included for publication in the next issue of the *State Register*, documents will be accepted no later than 5:00 P.M. on any closing date. The modification or withdrawal of documents filed for publication must be made by **5:00 P.M.** on the closing date for that issue.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Submission Deadline	1/14	2/11	3/11	4/8	5/13	6/10	7/8	8/12	9/9	10/14	11/11	12/9
Publishing Date	1/28	2/25	3/25	4/22	5/27	6/24	7/22	8/26	9/23	10/28	11/25	12/23

REPRODUCING OFFICIAL DOCUMENTS

Documents appearing in the *State Register* are prepared and printed at public expense. Media services are encouraged to give wide publicity to documents printed in the *State Register*.

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ADOPTION, AMENDMENT AND REPEAL OF REGULATIONS

To adopt, amend or repeal a regulation, an agency must publish in the *State Register* a Notice of Drafting; a Notice of the Proposed Regulation that contains an estimate of the proposed action's economic impact; and, a notice that gives the public an opportunity to comment on the proposal. If requested by twenty-five persons, a public hearing must be held at least thirty days after the date of publication of the notice in the *State Register*.

After the date of hearing, the regulation must be submitted to the General Assembly for approval. The General Assembly has one hundred twenty days to consider the regulation. If no legislation is introduced to disapprove or enacted to approve before the expiration of the one-hundred-twenty-day review period, the regulation is approved on the one hundred twentieth day and is effective upon publication in the *State Register*.

EMERGENCY REGULATIONS

An emergency regulation may be promulgated by an agency if the agency finds imminent peril to public health, safety or welfare. Emergency regulations are effective upon filing for a ninety-day period. If the original filing began and expired during the legislative interim, the regulation can be renewed once.

REGULATIONS PROMULGATED TO COMPLY WITH FEDERAL LAW

Regulations promulgated to comply with federal law are exempt from General Assembly review. Following the notice of proposed regulation and hearing, regulations are submitted to the *State Register* and are effective upon publication.

EFFECTIVE DATE OF REGULATIONS

Final Regulations take effect on the date of publication in the *State Register* unless otherwise noted within the text of the regulation.

Emergency Regulations take effect upon filing with the Legislative Council and remain effective for ninety days. If the original ninety-day period begins and expires during legislative interim, the regulation may be refiled for one additional ninety-day period.

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REGULATIONS SUBMITTED TO GENERAL ASSEMBLY 1

In order by General Assembly review expiration date
The history, status, and full text of these regulations are available on the
South Carolina General Assembly Home Page: <http://www.scstatehouse.gov/regnsrch.htm>

DOC. NO.	RAT. NO.	FINAL ISSUE	SUBJECT	EXP. DATE	AGENCY
4126			South Carolina Pesticide Control	5/11/11	Clemson University-State Crop Pest Comm.
4141			Seasons, Limits, Methods of Take and Special Use		
			Restrictions on WMA's; Turkey Hunting Rules and Seasons	5/11/11	Department of Natural Resources
4135			Rehabilitation of Designated Historic Buildings	5/11/11	Department of Archives and History
4154			Food and Cosmetics	5/11/11	Department of Agriculture
4130			Air Pollution Control Regulations and Standards: Standards		
			of Performance for Asbestos Projects	5/11/11	Department of Health and Envir Control
4139			Environmental Protection Fees (Drinking Water Fees)	5/11/11	Department of Health and Envir Control
4132			Environmental Protection Fees (Radioactive Material		
			Licenses Fees)	5/11/11	Department of Health and Envir Control
4153			SC Safe Home Program Wind Inspectors and Contractors	5/11/11	Department of Insurance

2 COMMITTEE LIST OF REGULATIONS SUBMITTED TO GENERAL ASSEMBLY

In order by General Assembly review expiration date
The history, status, and full text of these regulations are available on the
South Carolina General Assembly Home Page: <http://www.scstatehouse.gov/regnsrch.htm>

DOC. No.	SUBJECT	HOUSE COMMITTEE	SENATE COMMITTEE
4126	South Carolina Pesticide Control	Agriculture and Natural Resources	Agriculture and Natural Resources
4141	Seasons, Limits, Methods of Take and Special Use Restrictions on WMA's; Turkey Hunting Rules and Seasons	Agriculture and Natural Resources	Fish, Game and Forestry
4135	Rehabilitation of Designated Historic Buildings	Medical, Military, Pub & Mun Affairs	Judiciary
4154	Food and Cosmetics	Medical, Military, Pub & Mun Affairs	Agriculture and Natural Resources
4130	Air Pollution Control Regulations and Standards; Standards of Performance for Asbestos Projects	Agriculture and Natural Resources	Agriculture and Natural Resources
4139	Environmental Protection Fees (Drinking Water Fees)	Agriculture and Natural Resources	Agriculture and Natural Resources
4132	Environmental Protection Fees (Radioactive Material Licenses Fees)	Agriculture and Natural Resources	Agriculture and Natural Resources
4153	SC Safe Home Program Wind Inspectors and Contractors	Labor, Commerce and Industry	Banking and Insurance

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE

In accordance with Section 44-7-200(D), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication January 28, 2011, for the following project(s). After the application is deemed complete, affected persons will be notified that the review cycle has begun. For further information, please contact Mrs. Sarah "Sallie" C. Harrell, Division of Planning and Certification of Need, 2600 Bull St., Columbia, SC 29201 at (803) 545-4200.

Affecting Beaufort County

Renovation and expansion of 20,700 square feet of the existing Emergency Department (ED) to include upgrade of the HVAC and emergency generator systems; addition of 4,000 square feet of shelled space on the floor above the ED expansion; and expansion of basement space by 6,000 square feet to be used for dietary and educational purposes

Beaufort County Memorial Hospital d/b/a Beaufort Memorial Hospital

Beaufort, South Carolina

Project Cost: \$14,500,000

Affecting Charleston County

Renovation for the addition of two (2) Operating Rooms (ORs) for a total of four (4) ORs

Physicians' Eye Surgery Center, LLC

Charleston, South Carolina

Project Cost: \$1,557,709

In accordance with Section 44-7-210(A), Code of Laws of South Carolina, and S.C. DHEC Regulation 61-15, the public and affected persons are hereby notified that for the following projects, applications have been deemed complete, and the review cycle has begun. A proposed decision will be made as early as 30 days, but no later than 120 days, from January 28, 2011. "Affected persons" have 30 days from the above date to submit comments or requests for a public hearing to Mr. Les W. Shelton, Division of Planning and Certification of Need, 2600 Bull Street, Columbia, S.C. 29201. If a public hearing is timely requested, the Department's decision will be made after the public hearing, but no later than 150 days from the above date. For further information call (803) 545-4200.

[INTENTIONALLY LEFT BLANK – NO ITEMS FOR AFFECTED PERSONS]

4 DRAFTING NOTICES

DEPARTMENT OF INSURANCE CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-110 et seq., 38-3-110, 38-71-1760 and 38-71-2060

Notice of Drafting:

The South Carolina Department of Insurance proposes to promulgate a regulation that will set forth standards and procedures for the establishment and maintenance of external review procedures for health insurance claims. Interested persons may submit comments in writing to: Rachel Harper, South Carolina Department of Insurance, 1201 Main Street, Suite 1000, Columbia, South Carolina 29201 or P.O. Box 100105, Columbia, South Carolina 29202. To be considered, comments must be received no later than 5:00 p.m. on February 28, 2011, the close of the drafting comment period.

Synopsis:

The South Carolina Department of Insurance proposes to promulgate a regulation that will set forth uniform standards and procedures for the establishment and maintenance of external review procedures for health insurance claims. The regulation will assure that covered persons have the opportunity for an independent review of an adverse determination or final adverse determination by a health carrier and will meet federal requirements under the Affordable Care Act. The procedures and guidelines will ensure that consumers are protected when an adverse determination or final adverse determination is made by a health carrier and provide the Department with continued authority to regulate the external review process. This regulation shall be based upon the NAIC model on Health Carrier External Review and will comply with Federal Law.

The proposed regulation is being promulgated to comply with the Patient Protection and Affordable Care Act and the Health Care and Education Affordability Reconciliation Act. Collectively they are referred to as the "Affordable Care Act." The regulation will not require legislative review pursuant to S.C. Code Ann. Section 1-23-120(H)(1) which provides that General Assembly review is not required for regulations promulgated to maintain compliance with federal law. The regulation sets forth standards and procedures that must be followed when an external review of an adverse determination or final adverse determination is requested by a consumer and ensures that the state will continue to be able to regulate these processes.

DEPARTMENT OF INSURANCE CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-110 et seq., 38-3-110, 38-71-1760 and 38-71-2060

Notice of Drafting:

The South Carolina Department of Insurance proposes to promulgate a regulation that will set forth standards and procedures to be followed by health carriers to assure that covered persons have the opportunity for the appropriate resolution of grievances. Interested persons may submit comments in writing to: Rachel Harper, South Carolina Department of Insurance, 1201 Main Street, Suite 1000, Columbia, South Carolina 29201 or P.O. Box 100105, Columbia, South Carolina 29202. To be considered, comments must be received no later than 5:00 p.m. on February 28, 2011, the close of the drafting comment period.

Synopsis:

The South Carolina Department of Insurance proposes to promulgate a regulation that will set forth standards and procedures to be followed by health carriers relating to their internal grievance processes. The regulation will assure that covered persons have the opportunity for the appropriate resolution of grievances

and will meet federal requirements under the Affordable Care Act. The procedures and guidelines will ensure that consumers are protected when pursuing a grievance with a health carrier and give the Department the authority to regulate the internal grievance process. This regulation shall be based upon the NAIC model on Health Carrier Grievance Procedure and will comply with Federal Law.

The proposed regulation is being promulgated to comply with the Patient Protection and Affordable Care Act and the Health Care and Education Affordability Reconciliation Act. Collectively they are referred to as the "Affordable Care Act." The regulation will not require legislative review pursuant to S.C. Code Ann. Section 1-23-120(H)(1) which provides that General Assembly review is not required for regulations promulgated to maintain compliance with federal law. The regulation sets forth standards and procedures for carriers to follow when handling an internal grievance with a consumer and ensures that the state will be able to regulate these processes.

DEPARTMENT OF INSURANCE

CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-110 et seq., 38-3-110 and 38-70-60

Notice of Drafting:

The South Carolina Department of Insurance proposes to amend Regulation 69-47, Private Review Agents, that will set forth standards for utilization review and benefit determinations. Interested persons may submit comments in writing to: Rachel Harper, South Carolina Department of Insurance, 1201 Main Street, Suite 1000, Columbia, South Carolina 29201 or P.O. Box 100105, Columbia, South Carolina 29202. To be considered, comments must be received no later than 5:00 p.m. on February 28, 2011, the close of the drafting comment period.

Synopsis:

The South Carolina Department of Insurance proposes to amend Regulation 69-47, Private Review Agents. The amendments will set standards to be followed by utilization review agents and meet federal requirements under the Affordable Care Act. The procedures and guidelines will ensure that consumers are protected when utilization review and benefit determinations are conducted and allow the department to continue to regulate utilization review agents. This regulation shall be based upon the NAIC model on Utilization Review and Benefit Determination and will comply with Federal Law.

The proposed amendments to Regulation 69-47 are being promulgated to comply with the Patient Protection and Affordable Care Act and the Health Care and Education Affordability Reconciliation Act. Collectively they are referred to as the "Affordable Care Act." The regulation will not require legislative review pursuant to S.C. Code Ann. Section 1-23-120(H)(1) which provides that General Assembly review is not required for regulations promulgated to maintain compliance with federal law. The regulation sets forth standards and procedures for utilization review and benefit determinations and ensures that the state will be able to regulate these processes.

6 DRAFTING NOTICES

DEPARTMENT OF LABOR, LICENSING AND REGULATION BUILDING CODES COUNCIL

CHAPTER 8

Statutory Authority: 1976 Code Sections 10-5-220 et seq., 40-1-40, and 40-1-70

Notice of Drafting:

Notice is hereby given that; the South Carolina Building Codes Council intends to amend its regulations by adding Article 9, based upon the International Residential Code, 2009 Edition, in accordance with the statutory amendments to acts governing the Building Codes Council, including proposed modifications. The Council specifically requests comments concerning the proposed amendments. Written comments may be submitted to Gary F. Wiggins, Council Administrator, at P.O. Box 11329, Columbia, SC 29211 no later than 5:00 p.m. on February 9, 2011, the close of the drafting comment period.

Synopsis:

The purpose of the amendments is to update the International Residential Code.

DEPARTMENT OF LABOR, LICENSING AND REGULATION BUILDING CODES COUNCIL

CHAPTER 8

Statutory Authority: 1976 Code Sections 10-5-220 et seq., 40-1-40, and 40-1-70

Notice of Drafting:

Notice is hereby given that; the South Carolina Building Codes Council intends to amend regulations by adding Article 3, Modular Building Construction with no modifications; by adding Article 4, Building Accessibility with no modifications; by adding Article 5, based upon the National Electrical Code, 2008 Edition; by repealing and replacing Article 6, based upon the International Building Code, 2009 Edition; by repealing and replacing Article 7, based upon the International Fire Code, 2009 Edition; by adding Article 8, based upon the International Fuel Gas Code, 2009 Edition; in accordance with the statutory amendments to acts governing the Building Codes Council, including proposed modifications. The Council specifically requests comments concerning the proposed amendments. Written comments may be submitted to Gary F. Wiggins, Council Administrator, at P.O. Box 11329, Columbia, SC 29211 no later than 5:00 p.m. on February 9, 2011, the close of the drafting comment period.

Synopsis:

The purpose of the amendments is to update applicable international and national codes.

Document No. 4181
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
 CHAPTER 61
 Statutory Authority: 1976 Code Sections 44-7-110 et seq.

61-15. Certification of Need for Health Facilities and Services

Preamble:

The Department proposes to revise R.61-15, Certification of Need for Health Facilities and Services, to incorporate applicable amendments from Act 278 of 2010 which amended Section 44-7-110 et seq., S.C. Code of Laws, 1976, as amended, effective July 1, 2010, and to make other revisions. See the Discussion of Proposed Revisions below and the Statement of Need and Reasonableness herein. The proposed amendments include the following, in addition to incorporating provisions from Act 278: increase filing, application and issuance fees for certificate of need applications; clarify verbiage in Section 102.3, add provisions to submit information related to quality of patient care as part of Section 202.2.b; revise the Part A- Questionnaire; and, make other changes to R.61-15 to improve the overall quality of the regulation; such as deleting references to federal acts that are obsolete, revisions for clarity, language style, consistency, grammar, punctuation, codification and other stylistic changes.

A Notice of Drafting for the proposed revision was published in the State Register on September 24, 2010. Three comments were received during the Notice of Drafting period and were considered in formulating the proposed regulations herein.

Discussion of Proposed Revisions:

Revised Statutory authority under title

Table of Contents. The table was revised to reflect changes in the regulation

Section 102.1.c

Revised to write out monetary figure for consistency in regulation

Section 102.1.d

Revised wording to be consistent with Act 278 which deleted “State” and added “South Carolina” for the title of the South Carolina Health Plan

Section 102.1.e

Revised to delete cost component in accordance with Act 278. Revised wording to be consistent with Act 278 which deleted “State” and added “South Carolina” for the title of the South Carolina Health Plan

Section 102.1.f

Revised to write out monetary figure for consistency in regulation

Section 102.1.g, h, i

Subitems were deleted in entirety in accordance with Act 278

Section 102.2

Text is clarified regarding how an applicant must submit expenditures for review by the Department

Section 102.3

Clarified text by adding “Certificate of Need” and “(60) calendar” in conjunction with “sixty days”

8 PROPOSED REGULATIONS

Section 103.1

Revised to amend the definition of “affected person” to include provisions from Act 278

Section 103.2

Revised to be consistent with the South Carolina Health Plan and Regulation 61-91, Standards for Licensing Ambulatory Surgical Facilities

Section 103.6

Clarifies text to add “calendar” preceding “days”

Section 103.9

Subsection item is deleted to removed obsolete text

Section 103.10 is renumbered to 103.9

Revised to reflect increase of the initial filing fee, application fee and issuance fee. Revised to add collection of a fee for the review of exemption and non-applicability determinations

Section 103.11 is renumbered to 103.10

Revised to adjust wording to be consistent with Act 278 which deleted “State” and added “South Carolina” for the title of the South Carolina Health Plan

Section 103.12 is renumbered to 103.11

Revised to renumber and revised definition in accordance with changes in Act 278

Section 103.13 is renumbered to 103.12

Revised to adjust wording to be consistent with Act 278

Section 103.14 is renumbered to 103.13

Revised to adjust wording to be consistent with Act 278 which deleted “State” and added “South Carolina” for the title of the South Carolina Health Plan

Section 103.15 is renumbered to 103.14 - no text changes

Section 103.16 is renumbered to 103.15 - no text changes

Section 103.17 is renumbered to 103.16

Revised to be consistent with the definition of ‘Like equipment with similar capabilities’ in Act 278

Section 103.18 is renumbered to 103.17 - no text changes

Section 103.19 is renumbered to 103.18

Revised to be consistent with the definition of ‘person’ in Act 278

Section 103.20 is renumbered to 103.19 - no text changes

Section 103.21 is renumbered to 103.20

Revised to be consistent with the definition of ‘Residential treatment facility for children and adolescents’ in Act 278

Sections 22 through 25 are revised to 21-24 - no text changes

Sections 104 and Section 105

Titles amended and revised in entirety to delete all text and replace it with text consistent with changes in Act 278 in order to clarify what projects are exempt from Certificate of Need review, for which projects Certificate of Need review is not applicable, and to clarify and organize text. Revised text to reflect accurate names for the South Carolina Department of Mental Health and the South Carolina Department of Disabilities and Special Needs

Section 106

Title amended and revised wording to be consistent with Act 278 which deleted “State” and added “South Carolina” for the title of the South Carolina Health Plan. Corrects typographical error

Section 202.1

Corrects typographical error - corrected to add the word “inch” for clarity

Section 202.2.a.

Revised wording to include the proposal page and corrects typographical error by removing page numbers and inserting “Appendix”

Section 202.2.b(3)

Revised to clarify what type of estimate from a vendor is acceptable

Section 202.2.b(8)(l)

Revised to write out number 5 to “five”

Section 202.2.b(14)

Corrects typographical error - corrects the spelling of “effects” to “affects”

Section 202.2.b(15)

Revised to clarify that financing information must be identified

Section 202.2.b(16)

Clarifies by deletion of obsolete text and revised verbiage

Section 202.2.b(17)

Revised to clarify text regarding charges

Section 202.2.b(18)

Revised to clarify text

Section 202.2.b(21)

Revised to delete obsolete text

Section 202.2.b(22)

Revised to delete obsolete text

Section 202.2.b(27)

Adds subitem providing for submitted quality of patient care information

Section 202.2.b(27) is renumbered to 202.2.b(28)

Section 202.2.c(6)

Revised to clarify zoning for a proposed project.

10 PROPOSED REGULATIONS

Section 202.2.c(8)

Revised to correct grammatical error and to change “may” to “must” for emphasis. Revised to add “governmental elected officials” to this subitem

Section 202.2.d(9)

Revised to be consistent with Act 278 and to clarify provisions for an unfulfilled Certificate of Need

Section 202.2.d(10)

Revised by changing “should” to “must” to ensure consistency with existing provisions in this subpart

Section 202.2.d(11)

Corrects typographical error

Section 301

Corrects typographical error and revised to reflect the increase of the filing fee.

Section 302.1

Revised to add current policy of the Department to notify the applicant in writing when the application is not acceptable for filing. Revised to write out monetary figure for consistency in regulation

Section 302.2

Revised to add “thirty (30) calendar days” through out this subitem

Section 302.3

Revised to add “thirty (30) calendar days” through out this subitem

Section 302.4

Adds subitem for extension of deadline if it falls on a weekend or state holiday in accordance with Act 278

Section 303.1

Revised to add provision for payment of fees by credit card and to reflect the clarification of the phrase “fifteen (15) calendar days”

Section 303.2

Adds subitem for extension of deadline if it falls on a weekend or state holiday in accordance with Act 278

Section 304

Revised to reflect the clarification of the phrase “thirty (30) calendar days.”

Subitems added to reflect changes from Act 278 regarding reordering and changing of the project review criteria

Section 305

Revised to add changes from Act 278 regarding decision deadlines and project review criteria and to delete old text. Revised to clarify text

Section 306

Clarified text by adding “(30) calendar” in conjunction with “thirty days”

Section 307

Revised wording to be consistent with Act 278 which deleted “State” and added “South Carolina” for the title of the South Carolina Health Plan

Section 308.1

Revised to delete outdated references to appeals/reconsideration process

Section 308.2

Revised to delete text

Section 309

Revised to include the increase in the issuance fee and to clarify text

Section 310

Corrects typographical error

Section 312 title amended

Section 312.1

Revised to add prohibited contact provision from Act 278

Section 312.2

Revised to reflect accurate verbiage from 2006 revision of the appeals process. Revised to clarify text

Section 401 title amended

Section 401

Revised to add text to reference law regarding appeals process and for clarification and to delete unnecessary text

Section 402

Deleted obsolete text of Section 402 and reserved section.

Section 403

Deleted Section 403 to remove obsolete text

Section 404

Deleted Section 404 to remove obsolete text

Section 501

Typographical errors are corrected in the introductory paragraph and in 501.4

Section 504

Revised wording to be consistent with Act 278 which deleted "State" and added "South Carolina" for the title of the South Carolina Health Plan

Revised to add "calendar" after "days" for clarification

Section 601.1

Revised for further clarification and to reflect change of issuance period to twelve months in accordance with Act 278

Section 601.2

Revised verbiage for further clarification

Section 601.3

Revised to reflect change of extension period to nine months in accordance with Act 278. Revised to delete verbiage for further clarification

12 PROPOSED REGULATIONS

Section 601.4

Revised to reflect change of extension period to nine months in accordance with Act 278

Section 602.1

Revised for further clarification

Section 604

Revised to add and to delete text in accordance with Act 278 and to provide clarification regarding non-transferability

Section 605

Revised to correct typographical error

Section 606

Revised to clarify text and to correct typographical error

Section 607.1

Revised to clarify text

Section 701 – renumbered as Section 702

Section is deleted to remove text in accordance with Act 278. Section renumbered and reserved.

Section 702 – renumbered as Section 701

Title is struck and removed. Text of section was revised to correct and clarify text.

Section 801.3

Revised wording to be consistent with Act 278 which deleted “State” and added “South Carolina” for the title of the South Carolina Health Plan

Section 802.1

Revised wording to be consistent with Act 278 which deleted “State” and added “South Carolina” for the title of the South Carolina Health Plan

Section 802.2.c

Revised wording to be consistent with Act 278 which deleted “State” and added “South Carolina” for the title of the South Carolina Health Plan

Section 802.31.a

Revised wording to be consistent with Act 278 which deleted “State” and added “South Carolina” for the title of the South Carolina Health Plan

Section 802.33

Revised wording to be consistent with Act 278 which deleted “State” and added “South Carolina” for the title of the South Carolina Health Plan

Application for Certification of Need for a Health Facility or Service

Revised format, changed title, naming it the appendix to the regulation, and revised the text of Part A – Questionnaire for further clarification

Notice of Staff Informational Forum and Public Comment Period:

Staff of the Department of Health and Environmental Control invites interested members of the public and regulated community to attend a staff-conducted informational forum to be held on March 1, 2011, at 1:00 p.m. in the McNeely Conference Room, S. C. Department of Health and Environmental Control, Health Regulation Deputy Area, 1777 St. Julian Place, Heritage Building, Columbia, S.C. The purpose of the forum is to answer questions, clarify issues, and receive public comments from interested parties on the proposed amendments of R.61-15.

Interested parties are also provided an opportunity to submit written comments on the proposed amendments by writing to Beverly Brandt at the Bureau of Health Facilities and Services Development, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; Fax (803)545-4579. To be considered, written comments submitted must be received no later than 5:00 p.m. on March 1, 2011, the close of the public comment period.

Copies of the proposed regulation may be obtained by contacting Ms. Brandt at the above address. A copy may also be obtained on the Department's Regulatory Information homepage at <http://www.scdhec.gov/regulatory.htm> in the DHEC Regulation Development Update. Click on the Update, choose the category for Certification of Need for Health Facilities and Services, and scan down for the proposed amendments of R.61-15.

Comments received at the forum and/or submitted in writing by the close of the public comment period as noticed above shall be considered by staff in formulating the final text of the proposed regulation and shall be submitted in a Summary of Public Comments and Department Responses for consideration by the Board of Health and Environmental Control at the public hearing scheduled for April 14, 2011, as noticed below.

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public and regulated community are invited to make oral and written comments on the proposed amendments of R.61-15 at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly scheduled meeting on April 14, 2011. The public hearing will be held in the Board Room of the Commissioner's Suite, Third Floor, Aycock Building of the Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in order presented. The order of presentation for public hearings will be noticed in the Board's agenda to be published by the Department 24 hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentation for the record. Due to admittance procedures at the DHEC Building, all visitors should enter through the Bull Street Entrance and register at the front desk.

Preliminary Fiscal Impact Statement:

The Department estimates there will be no increased costs to the state or its political subdivisions by the revision of this regulation. See Statement of Need and Reasonableness below.

Statement of Need and Reasonableness:

The statement of Need and Reasonableness was determined by staff analysis pursuant to Sections 1-23-115(C)(1)-(3) and (9)-(11), S.C. Code of Laws, 1976, as amended.

DESCRIPTION OF REGULATION: Regulation 61-15, Certification of Need for Health Facilities and Services.

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Purpose: The Department proposes to revise R.61-15, Certification of Need for Health Facilities and Services, to incorporate applicable amendments from Act 278 of 2010 which amended Section 44-7-110 et seq., S.C. Code of Laws, 1976, as amended, effective July 1, 2010, and to make other revisions. See the Discussion of Proposed Revisions below and the Statement of Need and Reasonableness herein. The proposed amendments include the following, in addition to incorporating provisions from Act 278: Increase filing, application and issuance fees for certificate of need applications; add provisions to submit information related to quality of patient care as part of Section 202.2.b; revise the Part A- Questionnaire; and, make other changes to R.61-15 to improve the overall quality of the regulation; such as deleting references to federal acts that are obsolete, revisions for clarity, language style, consistency, grammar, punctuation, codification and other stylistic changes.

Legal Authority: Section 44-7-110 et seq., S.C. Code of Laws, 1976, as amended (2010 Act No. 278).

Plan for Implementation: The proposed amendments will make changes to and be incorporated into R.61-15 upon approval of the Board of Health and Environmental Control, the General Assembly, and publication in the State Register as a final regulation. The proposed amendments will be implemented in the same manner in which the existing regulations are implemented. The Department will also provide notice of this amendment on its Regulatory Information website.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

Act 278 of 2010 amended S.C. Code Ann. Section 44-7-110 et seq. and took effect July 1, 2010. The purpose of the amendments primarily was to clarify and streamline the Certificate of Need review process. The amendments will implement this streamlining initiative.

The amendments of Act 278 include the following: revise definitions; revise to establish and collect fees for exemption and non-applicability determinations; revise to delete the annual operating cost component requirement in Section 102.1.e; delete requirements for a certificate of need under conditions specified in Act 278; clarify projects for which certificate of need review is not applicable; clarify projects exempt from certificate of need review and which exempted projects require a written exemption; amend to add restrictions on reordering of project review criteria; amend to correct inconsistencies with current state law regarding prohibited contact; amend to add prohibited contact by elected officials; amend to revise review time periods; amend to further establish criteria to file a request for final review; amend to provide that all certificates of need are valid for one year from issuance; amend to grant extensions for nine months rather than for six months; amend to revise appeal procedures. The amendments may also include other changes to correct inconsistencies with state law as provided for in Act 278.

Other changes to the Regulations will involve modification of language to increase filing, application and issuance fees for certificate of need applications; clarify Section 604 regarding non-transferability and voidance of a certificate of need; add provisions to submit information related to quality of patient care as part of Section 202.2.b.; revise the Part A- Questionnaire; and, make other changes to R.61-15 to improve the overall quality of the regulation, such as deleting references to federal acts that are obsolete, revisions for clarity, language style, consistency, grammar, punctuation, codification and other stylistic changes.

DETERMINATION OF COSTS AND BENEFITS:

See Preliminary Fiscal Impact Statement above for cost to the state and its political subdivisions.

The regulated community will be impacted with the increased fees for Certificate of Need review and the implementation of fees for written exemption determination requests and requests for determination of non-applicability. Certificate of Need fees have not been increased since June 2003, but have been capped at \$7000 for the application fee and \$7500 for the issuance fee since these fees were implemented June 1989. The filing

fee has remained at \$500 since being implemented June 1989 as a component of the "Review Fee" initially and then the "Filing Fee." S.C. Code Ann. Section 44-7-180 (D) authorized the Department to charge and collect fees to cover the cost of operating the Certificate of Need program.

UNCERTAINTIES OF ESTIMATES:

The revision of Regulation 61-15 will not create a burden for the public, the State or its political subdivisions.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

There will be no effect on the environment or public health.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

There will be no detrimental effect on the environment and public health if the amendments are not implemented. However, there could be an adverse effect on the Department's ability to review applications and determinations in a timely manner if fees are not raised and implemented to ensure funding for adequate staffing.

Statement of Rationale:

Pursuant to the requirements of 2010 Act No. 278 the Department is promulgating these regulations to comply with the Act. The Department also intends to make other revisions since the last revision of R.61-15 was effective June 27, 2003. The proposed amendments will increase filing, application and issuance fees for certificate of need applications; add provisions requiring the submission of information related to quality of patient care and make other changes to improve the overall quality of the regulation, such as deleting references that are obsolete, revisions for clarity, language style, consistency, grammar, punctuation, codification and other stylistic changes.

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: <http://www.scstatehouse.gov/regnsrch.htm>. Full text may also be obtained from the promulgating agency.

Document No. 4179

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61**

Statutory Authority: 1976 Code Sections 48-60-05 et seq.

61-118. Electronic Equipment Collection and Recovery

Preamble:

The South Carolina Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act, Section 48-60-5 et seq., S.C. Code of Laws, 1976, as amended, establishes requirements for the sale, disposal and recovery of covered electronic devices, specifically for household computers, printers and televisions. The Act requires the Department of Health and Environmental Control to promulgate regulations to implement the provisions of the Act.

To satisfy the requirements of the Act, the Department is proposing new Regulation 61-118, Electronic Equipment Collection and Recovery. The proposed regulation establishes standards for labeling covered

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devices and for the registration of manufacturers and recoverers of covered devices. The proposed regulation establishes procedures for banning covered devices from solid waste landfills and specifies fees relative to sales of computers and market share of sales for televisions. The proposed regulation addresses responsibilities of manufacturers and retailers of covered electronic devices as defined by the Act, standards for the safe, environmentally responsible recovery, recycling or disposal of discarded devices and reporting requirements. The regulation will also establish fines for violations of the Act and the regulation.

The proposed regulation would not take effect prior to July 1, 2011.

A Notice of Drafting to promulgate this regulation was published in the *State Register* on October 22, 2010. This regulation will require legislative review.

Discussion of Proposed New Regulation:

61-118. ELECTRONIC EQUIPMENT COLLECTION AND RECOVERY

TABLE OF CONTENTS

- A. Purpose and Scope; Applicability.
- B. Definitions.
- C. Consumer Responsibilities.
- D. Responsibilities of Manufacturers of Covered Computer Devices.
- E. Responsibilities for the Manufacturers of Covered Television Devices.
- F. Retailer Requirements.
- G. South Carolina Recoverer Requirements.
- H. Landfill Owner or Operator Requirements.
- I. Confidentiality.
- J. Appeals.
- K. Severability.

Section A describes the purpose and scope of the regulation, lists the types of electronic devices that are subject to regulation and identifies the parties that are required to take action.

Section B defines the terms used throughout the regulation and presents the terms in alphabetical/numerical order.

Section C states the effective date for which consumers must cease placement of covered electronic devices into waste streams destined for landfills.

Section D establishes responsibilities of computer manufacturers.

Section D.1 establishes a ninety-day period from the effective date of the regulation for computer manufacturers to comply with labeling, collection and recovery program requirements, and registration. The standards for labeling and for collection and recovery programs are defined. The information required to register as a computer manufacturer is listed and the standards for a computer devices recovery plan is explained.

Section D.2 explains the annual requirement for fee payment and information updates that are required for registered computer manufacturers.

Section D.3 describes the fee payment required for initial registration as a computer manufacturer and how fee payment is calculated for annual renewal.

Section D.4 sets a maximum penalty of \$1,000 for each violation of a Section D requirement.

Section E establishes responsibilities of Television Manufacturers.

Section E.1 requires each television manufacturer to provide the Department with a designated contact person for obtaining and supplying compliance information to the Department within thirty days of the effective date of the regulation.

Section E.2 establishes a ninety-day period for television manufacturers to meet the labeling, collection and recovery program standards and registration requirements with initial fee payment. The labeling, collection program standards, and registration requirements for television manufacturers are explained. The requirements for a television devices recovery plan are listed.

Section E.3 specifies a ninety-day period for television manufactures to pay annual fees and to provide an annual report to the Department. The data and information updates required for the annual report are listed.

Section E.4 establishes the annual recycling obligation by weight of a television manufacturer as calculated according to market share. The section describes how the obligation is calculated and requires the Department to notify each television manufacturer of their market share recycling obligation.

Section E.5 establishes a fee schedule required for television manufacturers. Fees for initial registration, annual renewal, and shortfall fees for failing to meet recycling obligations are listed. The section establishes a fee exemption for manufacturers who sell 1,000 or less units per year.

Section E.6 establishes a maximum fine of \$1,000 for each violation of a Section E requirement.

Section F. establishes a ninety-day period from the effective date of the regulation for retailers to ensure that the covered devices they sell have labels as required by the regulation. The section also requires retailers to verify or provide recovery programs for the manufacturers of the covered devices they sell. This section does not apply to televisions that sell for less than one hundred dollars. A maximum fine of \$200 is established for each violation of a Section F requirement.

Section G establishes the requirements for recoverers of covered devices in South Carolina.

Section G.1 specifies that covered devices must be recovered in a manner that complies with all applicable federal, state, and local requirements

Section G.2 specifies the financial assurance amounts required for recoverers.

Section G.3 exempts local government collection operations from financial assurance requirements.

Section G.4 lists the information to be submitted to the Department for a recoverer to register, including documentation that the recoverer is compliant with the Recycling Industry Operating Standards (RIOS) and the Responsible Recycling (R2) Practices Program, or other comparable standard.

Section G.5 allows that a conditional registration may be requested by recoverers that are undergoing a process to verify that they meet the standards of section G.4 and that the Department may revoke the conditional registration of a recoverer that fails to gain compliance with the requirements of Section G.4.

Section G.6 explains that the Department will not register a recoverer that fails to provide complete registration information.

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Section G.7 establishes the allowable mechanisms that may be used by recoverers to demonstrate that they have met financial assurance requirements.

Section G.8 establishes a ninety-day period after the end of a fiscal year for a recoverer to submit annual reports to the Department. The report shall include the number or weight of devices by category, the sources of the devices, a description of how the devices are disassembled or processed, and the final disposition or destination of the devices or subassemblies.

Section G.9 establishes that the Department shall provide on its website and in an annual report, the list of South Carolina recoverers that have satisfied the requirements of Section G.

Section G.10 exempts entities that only repair or resell covered devices from the requirements of Section G provided they comply with all other federal, state and local requirements.

Section G.11 exempts entities that consolidate covered devices prior to transfer to a recoverer from the requirements of Section G, provided they do not disassemble covered devices for disposal or recycling and provided they comply with all other applicable federal, state, and local requirements.

Section H establishes requirements for the owners and operator of landfills.

Section H.1 requires that the owners or operators of a Class Three landfill reject from the gate of the landfill, loads of waste which they know to contain more than an incidental amount of covered devices.

Sections H.2 and H.3 establish that the owners or operators of a Class Three landfill shall post signs and notify solid waste haulers of the requirements of the regulation within 30 days of the effective date of this regulation. The section also establishes that for the purpose of this regulation, haulers do not include consumers who haul their own waste to the landfill.

Section H.4 establishes a maximum fine of one thousand dollars (\$1000.00) per violation for improper disposal in Class Three landfills and a maximum fine of two hundred dollars (\$200.00) for a landfill that fails to comply with signage or hauler notification requirements in Section H.

Section H.5 establishes that the owner or operator of a Class One or Class Two landfill may not accept for disposal, loads containing covered devices or subassemblies of those devices.

Section H.6 establishes a maximum fine of one thousand dollars (\$1,000.00) per violation for the owner or operator of a Class One or a Class Two landfill who violates the requirements of Section H.5.

Section I identifies information submitted to the Department that may be designated, by the manufacturer of a covered device, as proprietary.

Section J identifies S.C. Code Section 44-1-60 as the procedural model for a person to appeal a Department decision.

Section K protects the remaining portion of the regulation should any part or language be declared invalid.

Notice of Staff Informational Forum and Public Comment:

Staff of the Department of Health and Environmental Control (DHEC) invites interested members of the public and regulated community to attend a staff-conducted informational forum to be held on February 28, 2011, at 10:00 a.m. in Room 2102 at the Bureau of Land and Waste Management Building, at 8911 Farrow Road, Columbia, S.C. The purpose of the forum is to answer questions, clarify issues and receive comments by interested persons on the proposed regulation.

Interested persons are also provided an opportunity to submit written comments to the staff forum by writing to Jana White, Bureau of Land and Waste Management, S.C. DHEC, 2600 Bull St., Columbia, S.C. 29201 or by email to whitejm@dhec.sc.gov. Written comments must be received no later than 4:00 p.m. on February 28, 2011.

Comments received at the forum and by mail by the deadline noticed above shall be considered by the staff in formulating the final draft proposed regulation for submission to the Board for public hearing on April 14, 2011, as noticed below. Comments received from the forum and comment period shall be submitted to the Board in a Summary of Public Comments and Department Response for consideration at the public hearing.

Copies of the proposed regulation for public notice and comment are available by contacting Jana White at the above address, or from the Department's Regulation Development Update website: <http://www.scdhec.gov/regulatory.htm>; At this Internet site, click on Regulation Development Update, the Land and Waste Management category, then scroll down to this proposed regulation.

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public and regulated community are invited to make oral or written comments on the proposed regulation at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly-scheduled meeting on April 14, 2011. The public hearing will be held in the Board Room of the Commissioner's Suites, Third Floor, Aycock Building of the Department of Health and Environmental Control at 2600 Bull Street, Columbia, S.C. 29201. The Board meeting commences at 10:00 a.m., at which time the Board will consider items in the order presented on its agenda. The agenda is published by the Department 24 hours in advance of the meeting at <http://www.scdhec.gov/administration/board.htm>. Persons who wish to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentations for the record.

Preliminary Fiscal Impact Statement:

There will be no cost to the State General Fund. Staff anticipates that there will be a minimal cost to the Department for the one full-time equivalent staff position necessary to implement the provisions of the Act; however, these costs will be funded from the registration and annual renewal fees paid by the manufacturers of covered television and computer devices, in accordance with the regulation and as allowed by the Act. Additional costs to State government are not anticipated. Costs to local governments for the diversion of covered devices from the waste stream as required by the Act would be offset in part by grant funding made available by the Department from the registration and renewal fees implemented, as allowed by the regulation.

Statement of Need and Reasonableness:

This Statement of Need and Reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115:

DESCRIPTION OF THE REGULATION: New regulation, Electronic Equipment Collection and Recovery.

Purpose: The purpose of this regulation is to address and implement the applicable provisions of Act 178, known as the South Carolina Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act, codified at Section 48-60-05 et seq., S.C. Code of Laws, 1976, as amended.

The regulation will include, but not be limited to: responsibilities of manufacturers and retailers of covered electronic devices as defined by the Act; standards for the collection and use of fees as provided for in the Act; standards for the safe, environmentally responsible recovery, recycling or disposal of discarded devices; reporting requirements; and liability issues for information stored on discarded devices. The regulation will

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also establish fines for violations of the Act and the regulation. The proposed regulation will not take effect prior to July 1, 2011.

Legal Authority: Section 48-60-5 et seq., S.C. Code of Laws, 1976, as amended.

Plan for Implementation: Copies of the regulation will be available electronically on the South Carolina Legislature Online website, and the Department regulation development website (<http://www.scdhec.gov/regulatory.htm>). Printed copies will be available for a fee from the Department Freedom of Information Office. Staff will educate the regulated community on the provisions of the Act and the requirements of the regulation. The landfill ban on covered electronic devices will be implemented in the same fashion as other banned items. Staffing will consist of existing personnel and one new staff position as provided for in the regulation.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The need for this regulation is stated in the Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act of 2010. The General Assembly found that:

(1) Televisions, computing and printing devices are critical to the development of this state's economy and the promotion of the quality of life of the citizens of this State.

(2) Many of these televisions, computing and printing devices can be refurbished and reused or recycled.

(3) Developing and implementing a system for recovering televisions, computing and printing devices promotes resource conservation, public health, public safety and economic prosperity.

(4) In order to carry out these purposes, the State must establish a comprehensive and convenient recovery program for televisions, computing and printing devices based on individual manufacturer responsibility and shared responsibility among consumers, retailers and government, and that the program must ensure that end-of-life televisions, computing and printing devices are disposed of in a manner that promote resource conservation through the development of an effective and efficient system for collection and recycling, and to encourage manufacturers to offer convenient collection and recycling service to consumers at no charge.

This regulation is a reasonable way to comply with the Act because it can be implemented using staff allowed by the Act without impact to the general fund; provides clear procedures, standards and criteria for manufacturers, sellers and recyclers of covered electronic devices; promotes the development of a comprehensive system for end-of-life devices that promotes resource conservation, public health, public safety and economic prosperity; and establishes a recovery program based on shared responsibility among manufacturers, consumers, retailers and government.

DETERMINATION OF COSTS AND BENEFITS:

Internal Costs: Implementation of this regulation will not require additional resources beyond those allowed for in the Act. The Act states that the Department may propose by regulation, an initial registration fee or annual fee, or both, the proceeds of which is to be used solely for the purposes of implementing the provisions of the Act. See Preliminary Fiscal Impact Statement above.

External Costs: There will be a cost to the manufacturers of covered devices as allowable by the Act. Fees established by the regulation include initial registration fees, annual fees and shortfall fees. Fees are set out in the proposed regulation at Sections D.3 and E.5.

External benefits: There will be a benefit to the producers, users and recyclers of electronic devices as the responsibility associated with the proper management of the end-of-life devices will be shared among all parties. It will benefit the residents of South Carolina as the proper management of electronics will result in reducing the potential threats to the quality of ground water and to worker safety. It will benefit the economy by promoting the electronics recycling industry and promoting resource conservation.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

There will be no adverse effect on the environment. The proposed regulation will promote the public health by ensuring electronic devices are recycled in a safe, environmentally sound manner, and not placed in landfills.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

The Act established a ban on the placement of covered electronics in a landfill, but without clear standards for the proper management of covered devices as established in the proposed regulation, there would be limited options for properly managing used electronics. This could result in the improper and illegal disposal of the items in a manner that would be unsafe to workers and could result in harmful releases to the environment.

Statement of Rationale:

The South Carolina Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act, Section 48-60-150 et seq., S.C. Code of Laws, 1976, as amended, directs Department staff to promulgate regulations needed to implement the chapter's provisions, including reporting requirements and standards for operations of recovery facilities, and provides that staff may propose by regulation, fees on the manufacturers of covered computer and television devices.

A workgroup comprised of representatives of local government, electronics manufacturers, electronics recyclers, retailers, environmental groups, the Association of Counties, the South Carolina Municipal Association, the waste industry and Department staff developed the criteria on which the proposed regulation is based.

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: <http://www.scstatehouse.gov/regnsrch.htm>. Full text may also be obtained from the promulgating agency.

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Document No. 4180

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: 1976 Code Sections 44-56-10 et seq.

61-90. Minimum Standards for Licensing Chiropractic Facilities

Preamble:

R.61-90 was promulgated and published as a final regulation in State Register on April 27, 1984. Only a single facility was licensed under the regulation at any time. The facility's last license expired July 31, 2000. That facility subsequently closed. No other application to license an inpatient chiropractic facility has been received since that date.

South Carolina Act No. 278, July 1, 2010, amended the State Certification of Need and Health Facility Licensure Act, Section 44-7-110 et seq., SC Code of Laws, 1976, as amended. The amended Act at Section 44-7-260(A), deleted Chiropractic Inpatient Facilities from the list of facilities the Department is authorized to license, thus making R.61-90 null and void. In the interest of good government and efficiency, the Department is proposing to repeal R.61-90.

A Notice of Drafting for the proposed repeal was published in the State Register on October 22, 2010.

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public and regulated community are invited to make oral or written comments on the proposed repeal of R.61-90 at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly scheduled meeting on March 10, 2011. The public hearing will be held in the Board Room of the Commissioner's Suite, Third Floor, Aycock Building of the Department of Health and Environmental Control at 2600 Bull Street, Columbia, S.C. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The Board's agenda will be published by the Department 24 hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentations for the record.

Interested persons are also provided an opportunity to submit written comments on the proposed regulation repeal during a public comment period by writing to Nancy E. Maertens, Director, Health Licensing, 2600 Bull Street, Columbia, SC 29201. To be considered, written comments must be received no later than 5:00 p.m. on February 28, 2011, the close of the public comment period. Written comments received by the deadline date shall be considered by staff in formulating the final proposed regulation for public hearing before the Board. Written comments received by 5:00 p.m. February 28, 2011 shall be submitted to the Board of Health and Environmental Control in a Summary of Public Comments and Department Responses for the Board's consideration at the public hearing noticed above.

A copy of the text of the proposed repeal for public notice and comment may be obtained from the Department's website at <http://www.scdhec.gov/regulatory.htm>. Click on the DHEC Regulation Development Update, choose the Health Licensing category, and scan down for this proposed regulation repeal. A copy may also be obtained from the Department's Health Licensing website at: <http://www.scdhec.gov/health/hrreg.htm>, or by calling Christopher Stephens at (803) 545-4228.

Preliminary Fiscal Impact Statement:

The repeal of R.61-90 will have no substantial fiscal or economic impact on the State and its political subdivisions.

Statement of Need and Reasonableness:

This Statement of Need and Reasonableness complies with Section 1-23-115(c)(1)-(3) and (9)-(11), S.C. Code of Laws, 1976, as amended.

DESCRIPTION OF REGULATION: Proposed Repeal of Regulation 61-90, Minimum Standards for Licensing Chiropractic Facilities.

Purpose: Repeal of R.61-90, Minimum Standards for Licensing Chiropractic Facilities.

Legal Authority: Section 44-7-10 et seq., S.C. Code of Laws, 1976, as amended.

Plan for Implementation: Upon final approval by the Board of Health and Environmental Control, the S.C. General Assembly, and publication in the S.C. State Register as final, this regulation will be repealed.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

R.61-90 was promulgated and published as a final regulation in State Register on April 27, 1984. Only a single facility was licensed under the regulation at any time. The facility's last license expired July 31, 2000. That facility subsequently closed. No other application to license an inpatient chiropractic facility has been received since that date. Act No. 278 of 2010, effective July 1, 2010, amended the State Certification of Need and Health Facility Licensure Act at Section 44-7-110 et seq., and at Section 44-7-260(A) deleted chiropractic inpatient facilities from the list of facilities the Department is authorized to license, thus making R.61-90 null and void. In the interest of good government and efficiency, the Department is repealing this regulation.

DETERMINATION OF COSTS AND BENEFITS:

The repeal of R.61-90 will have no substantial fiscal or economic impact on the State and its political subdivisions or the regulated community.

UNCERTAINTIES OF ESTIMATES:

No known uncertainties.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

There will be no environmental or public health effect.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

There will not be a detrimental effect on the environment and public health. However, repeal of this regulation is necessary to clarify that it is no longer valid and enforceable.

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Statement of Rationale:

Upon review of Department regulations and the status of this regulation pursuant to Act 278 of 2010, it was determined that R.61-90 should be repealed because it is obsolete and no longer enforceable.

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: <http://www.scstatehouse.gov/regnsrch.htm>. Full text may also be obtained from the promulgating agency.

Document No. 4177
DEPARTMENT OF INSURANCE
CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-110, 38-3-110, and 38-57-10 et seq.

69-29. Suitability in Annuity Transactions

Preamble:

The South Carolina Department of Insurance proposes to promulgate a regulation that will set forth standards to be followed by insurers, agencies and producers in the sale and negotiation of annuity products. The regulation will set forth policies and procedures for the suitability of annuity recommendations and will require insurers to establish a system to supervise recommendations so that the insurance needs and financial objectives of consumers are appropriately addressed.

Notice of Drafting for the proposed regulation was published in the *South Carolina State Register* on September 24, 2010.

Section-by-Section Discussion

The proposed regulation shall include the following sections:

SECTION CITATION:	SECTION TITLE	EXPLANATION
69-29, Section I	Purpose and Scope	This section sets forth the purpose of the regulation. The regulation is designed to establish a system to supervise the recommendations and set standards for recommendations to consumers in transactions involving annuities.
69-29, Section II	Scope	This section provides that any recommendations to purchase, exchange or replace annuities by an insurer or producer are subject to the regulation.

69-29, Section III	Exemptions	This section provides that transactions involving employee pension plans, certain other retirement plans, settlements of liabilities associated with personal injury litigation and formal prepaid funeral contracts are exempt from the regulation.
69-29, Section IV	Definitions	This section sets forth definitions of terms used in the regulation.
69-29, Section V	Duties of Insurers and of Insurance Producers	This section provides that insurers and producers must have reasonable grounds for believing that the recommendation to purchase an annuity is suitable for the consumer and that the consumer has been informed of various features of the annuity.
69-29, Section VI	Insurance Producer Training	This section provides the requirement that producers may not sell or negotiate an annuity product unless the producer is an authorized producer for life insurance products and has completed a one-time training course as provided in the regulation.
69-29, Section VII	Compliance, Penalties	This section provides the penalties that may be imposed by the director for violations of the regulation
69-29, Section VIII	Recordkeeping	This provision requires that insurers, general agents, agencies and producers must maintain and make available to the director records of information collected from the consumer and any other information used in making the recommendations that formed the basis of the annuity transaction.
69-29, Section IX	Effective Date	This section provides that the regulation will become effective six months after final publication in the <i>State Register</i> and applies to contracts sold on or after the effective date of the regulation.

26 PROPOSED REGULATIONS

Notice of Public Hearing and Opportunity for Public Comment:

Should a hearing be requested pursuant to Section 1-23-110(A)(3) of the S. C. Code, as amended, such hearing will be held on March 3, 2011 at 10:00 A.M. in the Administrative Law Court, Columbia, South Carolina. Persons desiring to make oral comment at the hearing are asked to provide written copies of their presentation for the record. If a qualifying request pursuant to Section 1-23-110(A)(3) is not timely received, the hearing will be canceled.

Written comments, requests for the text of the proposed regulation or any other information, and any requests for a public hearing, should be submitted to Rachel Harper, South Carolina Department of Insurance, P. O. Box 100105, Columbia, S.C. 29202-2105, on or before 5:00 P.M. on February 28, 2011. Copies of the text of the proposed regulation for public notice and comment are available at www.doi.sc.gov.

Preliminary Fiscal Impact Statement:

There will be no increased costs to the state or its political subdivisions.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION: Suitability in Annuity Transactions

Purpose: The proposed regulation will provide guidance to insurers and producers when negotiating the sale of annuity products.

Legal Authority: 1976 Code Sections 1-23-110, 38-3-110, and 38-57-10 et seq.

Plan for Implementation: The proposed regulation will be implemented by the South Carolina Department of Insurance.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The proposed regulation is needed to provide direction to insurers and producers who sell annuity products.

DETERMINATION OF COSTS AND BENEFITS:

Promulgation of this regulation will not result in additional costs to the state or its political subdivisions. The proposed regulation will benefit our state by ensuring that insurers are responsible for ensuring that the annuity transactions are suitable; require that producers be trained on the provisions of annuities in general and the specific products they are selling; and where feasible and rational, to make these suitability standards consistent with the suitability standards imposed by the Financial Industry Regulatory Authority (FINRA).

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The proposed regulation will have no impact on the environment or public health. The anticipated public benefits of this proposed regulation include greater protections for consumers considering annuity transactions.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

Promulgation of this regulation is necessary to provide guidance and clarification of requirements for insurers and producers who sell annuity products.

Statement of Rationale:

Proposed Regulation 69-29 is being promulgated to comply with Public Law 111-203, the “Dodd-Frank Wall Street Reform and Consumer Protection Act.” The regulation clarifies the scope of the exemption for annuities and insurance contracts from federal regulation and ensures that the state will be able to regulate these annuity products.

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: <http://www.scstatehouse.gov/regnsrch.htm>. Full text may also be obtained from the promulgating agency.

28 FINAL REGULATIONS

Document No. 4178
DEPARTMENT OF LABOR, LICENSING AND REGULATION
OFFICE OF OCCUPATIONAL SAFETY AND HEALTH
CHAPTER 71
Statutory Authority: 1976 Code Section 41-15-210

Article I, Subarticle 7
Occupational Safety and Health Standards

The South Carolina Department of Labor, Licensing and Regulation, Division of Labor, Office of Occupational Safety and Health, hereby promulgates the following changes to South Carolina Regulations:

In Subarticle 7 (Construction):

Removal of 1926.31 – Incorporation by reference and the addition of 1926.6 – Incorporation by reference as amended in FEDERAL REGISTER, Volume 75, Number 152, pages 47905-48177, dated August 9, 2010.

Amendments to 1926.450, 1926.500, 1926.553, 1926.600, 1926.753, 1926.800, 1926.856, 1926.858, 1926.952, 1926.952, and 1926.1050 as amended in FEDERAL REGISTER, Volume 75, Number 152, pages 47905-48177, dated August 9, 2010.

Redesignation of 1926.550 – Cranes and Derricks shall be to 1926.1501 and section 1926.550 has been reserved as amended in FEDERAL REGISTER, Volume 75, Number 152, pages 47905-48177, dated August 9, 2010.

Minimum standard for Cranes and Derricks in Construction shall be 1926 Subpart CC and the minimum standard for Cranes and Derricks Used in Demolition and Underground Construction shall be 1926 Subpart DD as amended in FEDERAL REGISTER, Volume 75, Number 152, pages 47905-48177, dated August 9, 2010.

Copies of these final regulation changes can be obtained or reviewed at the South Carolina Department of Labor, Licensing and Regulation during normal business hours by contacting the OSHA Standards Office at (803) 896-7682.