



# State of South Carolina

## Office of the Governor

MARK SANFORD  
GOVERNOR

POST OFFICE BOX 12267  
COLUMBIA 29211

May 3, 2006

The Honorable Robert Harrell, Jr.  
Speaker of the House of Representatives  
Post Office Box 11867  
Columbia, South Carolina 29211

Dear Mr. Speaker and Members of the House:

I am hereby vetoing and returning without my approval H. 3184, R-285.

H. 3184 would make several changes in the procedures of our Administrative Law Court. The underlying legislation is a good piece of legislation and would have my support if it were sent to my desk without one particular provision that circumvents the Certificate of Need process in one particular instance.

I would say first that I have a high regard for the quality of care provided by the hundreds of health professionals who serve at Lexington Medical Center. Lexington is regarded by many as one of the finest facilities in the state.

We have heard a good deal about the case of Lexington Medical Center from both sides of the debate. The underlying issue for both sides is the belief in providing the best care possible to the people of the Midlands. The members of the Lexington County Delegation are working hard to represent their constituents when they bring an issue like this to Columbia. I agree that people should be strong advocates for their communities. My challenge is, however, to view legislation from the statewide perspective and how it will impact all corners of the state. I am vetoing this legislation because it falls short on three points.

First, I agree that the Certificate of Need process is ultimately flawed. All states have struggled with the notion of how tightly constricted the process should be in regards to the availability of major medical investments which can actually affect the cost of health care to all citizens. However, the process should not be so restrictive that health care decisions get bogged down in bureaucratic processes that can drag out for years. In this

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case, the debate surrounding the proposed heart center at Lexington Medical has carried on for over two years and counting.

Unfortunately, this legislation does not fix the process. Instead, this legislation pulls out one circumstance and provides a narrowly defined standard to be used to determine when a Certificate of Need can be issued for a heart center. The net effect in the short term is that only one hospital would qualify for a heart center and that is Lexington Medical. There has been discussion about reforming the Certificate of Need process, and even a legislative study committee was put together last year to address this very issue. I believe that we should have a debate about how confined the Certificate of Need process should be or whether we even need one at all. However, I do not believe we should start down the path of piecemeal legislation to address one hospital or circumstance at a time.

Second, I disagree with the notion that we should change the rules of engagement in the middle of the process. After the Department of Health and Environmental Control ("DHEC") made its decision denying the Certificate of Need, Lexington Medical appealed that decision to the Administrative Law Court. After sixteen days of exhaustive testimony, the judge promised that he would render a decision this summer. This process, with some changes, has been followed for decades. This bill actually tells the judge in the case how he should rule in this circumstance. While this may not be unprecedented, the proposed legislation does further blur the line between the branches of government.

Finally, there should be an objective standard when considering these types of policy changes. Under any Certificate of Need proposal, DHEC cites 33 different criteria that they must consider under state law. This legislation calls for 30 of them to be ignored and focuses on only three specific points: that no open heart surgery programs exist in the applicant's county; that the applicant offers diagnostic cardiac catheterizations; and that the applicant has performed 1,200 such catheterizations in the past year. The General Assembly enacted Section 44-7-200 of the State Certification of Need and Health Facility Licensure Act which requires an application "address all applicable standards and requirements set forth in departmental regulations, Project Review Criteria of the department, and the State Health Plan."

Simply put, the General Assembly could pass legislation to systemically change how DHEC determines Certificates of Need or once again whether a process should even exist at all. The bottom line is that it is this administration's view that we should either have a Certificate of Need process and adhere to it or not have one at all. But worst of all is to have a process that is subjectively administered based on a proponent's or an opponent's political strength in Columbia. The fact that proponents and opponents are regularly making their case in the local newspaper is a small indicator of how this problem has gotten out of hand. It is odd that in what is supposed to be a science-based decision, people are looking to impact the court of public opinion.

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It is worth noting that the sponsor and author of the underlying bill, House Judiciary Chairman Jim Harrison, and Representative James Smith signed an editorial calling for this bill to be vetoed. That this is being debated in the editorial pages shows how absurd the process has become.

It is my hope this veto sparks change in this burdensome and bureaucratic process and, as a result, helps people not only in Lexington, but people across our state. At the end of the day, quality health care is not decided in boardrooms, courtrooms, or even legislative processes, but rather between a doctor and a patient. This legislation, though well-intended, seems to only amplify and prolong the greater issue, which too often involves looking to local fixes for statewide problems.

For these reasons, I am returning H.3184 to you without my signature.

Sincerely,

A handwritten signature in black ink, appearing to be 'Mark Sanford', written in a cursive style.

Mark Sanford

cc: The Honorable James H. Harrison