

## **S.C. Hospitals Wait For Court's Direction On Construction, Equipment**

Seanna Adcox, Associated Press

Officials at South Carolina's medical facilities are taking a wait-and-see approach to spending millions of dollars on construction and equipment after a budget veto from Gov. Nikki Haley put a bureaucratic permission process she's long opposed in limbo.

The state's public health agency suspended the Certificate of Need program after legislators upheld the line-item veto last week, giving health care providers the green light to proceed. Without the designated \$1.7 million, the agency can't review applications, director Catherine Templeton told providers in a letter. If the Legislature eventually restores the process, the agency won't punish projects undertaken in the interim unless forced to do so, she wrote.

However, state law still requires medical facilities to acquire a Certificate of Need before building, expanding, offering a new service or buying medical equipment costing more than \$600,000.

Thirty-two projects expected to cost more than \$100 million were under review last month by the Department of Health and Environmental Control. They range from adding four patient beds at a mental health and substance abuse center in Charleston, at a cost of just \$20,600, to spending \$12.3 million to build a fourth floor for patients at a Myrtle Beach hospital.

A Haley spokesman said she believes hospitals can proceed, saying DHEC's position is clear. But House Speaker Bobby Harrell said he's urging caution, noting state law remains intact.

No provider he's heard from plans to rush ahead, he said, though some are concerned about their competitors.

"What's likely is anybody who does will have a lawsuit filed by their competitor to keep from proceeding," said Harrell, R-Charleston.

Sen. Joel Lourie, D-Columbia, likens the situation to requiring developers to get a building permit, then shutting down the office that doles them out. He suggested that Haley call legislators back in session to clear up the confusion.

But that's highly unlikely. Haley has long wanted to dismantle the regulatory process in favor of direct competition.

Harrell and Senate President Pro Tem John Courson could jointly call the Legislature back. But neither plans to do so, with Harrell saying there's no need.

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"There shouldn't be any uncertainty because the law's still clear," he said. He contends DHEC can run the program with other money in its budget.

DHEC disagrees, citing a 2011 brief to the state Supreme Court and a 2010 attorney general's opinion regarding the suspension of programs if the budget doesn't fund them.

Providers are looking to the state's high court for clarity. Earlier this week, DHEC filed a lawsuit asking the justices to determine whether it can suspend the program.

"We're going to wait for the dust to settle, obviously," said Amy Faulkenberry, spokeswoman for Piedmont Medical Center in Rock Hill, which has been arguing with a Charlotte, N.C., competitor for 10 years over opening a hospital in Fort Mill. "It would be foolish for either party to proceed at this point."

Besides, she said, the battle over who gets to build in Fort Mill is before the Administrative Law Court. Projects under DHEC's review include Piedmont Medical's request to buy and install a robotic surgical system for \$2.6 million — equipment that hospitals in West Columbia and Greenville have also applied to buy. Piedmont's not going to risk wasting that money, Faulkenberry said.

Haley contends hospitals shouldn't need the state's permission.

South Carolina is among 35 states that require a similar regulatory review of major medical projects. A 1974 federal law required states to enact the process in an effort to control health care costs. But Congress repealed the law 13 years later following studies that showed it had little effect.

Since then, 15 states have repealed their Certificate of Need programs, most recently Wisconsin in 2011. Regulations vary widely among remaining states, according to the National Conference of State Legislatures.

An effort to reform South Carolina's system made little headway this year. A bill that awaits debate on the Senate floor just "tinkered around the edges," said Tony Keck, the state's Medicaid director.

What was intended to control costs has devolved into a politically driven process used to keep out competition, said Keck, a member of Haley's Cabinet.

Haley has firsthand knowledge of the politics. While a House member, she worked as a fundraiser for Lexington Medical Center, which went through a 10-year battle before receiving permission to conduct open heart surgery.

Supporters of reforming the system, including the state Hospital Association, point to separate studies that back up their contention that it prevents the overbuilding of costly medical services, helps ensure rural communities have access to medical care and safeguards quality.

The debate does not follow party lines.

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Democratic Rep. Bakari Sellers of Denmark helped uphold Haley's veto. He cites Bamberg County as an example of the certification process hindering access.

Bamberg County Hospital closed last year. Local officials are encouraging Hospital Corporation of America, which runs other hospitals in South Carolina, to open a free-standing emergency center in the rural county.

The company is moving forward with planning stages, said Bob Behanian, spokesman for HCA-owned Trident Health.

Sellers wants the company to build immediately, saying the CON process could add years to the time his constituents will lack emergency room care.

"I'm up here fighting for them and don't want anything standing in their way," he said.

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