The Assembly Health Committee reports favorably and with committee amendments Assembly Bill No. 1439.

As amended by the committee, this bill, which is designated the "Community Health Care Assets Protection Act," provides for State oversight of the acquisition of a nonprofit hospital by a for-profit entity.

The bill requires a nonprofit hospital to apply to the Attorney General for approval prior to entering into a transaction that results in the acquisition of the hospital by a person or entity other than a corporation organized in this State for charitable purposes under Title 15A of the New Jersey Statutes. The bill defines "acquisition" to mean the purchase, ease, exchange, conversion, restructuring, merger, division, consolidation, transfer of control or other disposition of a substantial amount of assets or operations, whether through a single transaction or series of transactions, with one or more persons or entities.

The proposed acquisition shall be subject to the written approval of the Attorney General, in consultation with the Commissioner of Health and Senior Services.

Within five working days after receipt of an application, the Attorney General shall require the nonprofit hospital to publish notice of the proposed acquisition in a newspaper of general circulation in the service area of the hospital, once per week for three weeks. The Attorney General, in consultation with the Commissioner of Health and Senior Services, shall review the application and approve the proposed acquisition, with or without any specific modifications, or, if he finds that it is not in the public interest, disapprove the proposed acquisition.

The proposed hospital acquisition shall not be considered to be in the public interest unless the Attorney General determines that appropriate steps have been taken to safeguard the value of the charitable assets of the hospital and to ensure that any proceeds from the proposed acquisition are irrevocably dedicated for appropriate charitable health care purposes; and the Commissioner of Health and
Senior Services determines that the proposed transaction is not likely to result in the deterioration of the quality, availability or accessibility of health care services in the affected communities. The bill sets forth specific criteria that the Attorney General shall consider in reviewing the application.

The bill authorizes the Attorney General to assess the entity proposing to acquire the nonprofit hospital for reasonable costs related to the review. The Attorney General and the Commissioner of Health and Senior Services are required, during the course of the review, to hold at least one public hearing in which any person may file written comments and exhibits or appear and make a statement. The Attorney General or the commissioner may subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions and use related discovery procedures for purposes of the hearing and at any time prior to completing the review of the proposed acquisition.

The Attorney General shall make the information received, and the Department of Health and Senior Services shall make any information in its records relating to the proposed acquisition available for inspection, at no cost to the public.

The bill provides that upon execution of the proposed acquisition, the amount determined by the Attorney General to be set aside as a charitable obligation shall be placed in a nonprofit charitable trust or one or more existing or newly established section 501(c)(3) tax exempt charitable organizations. The charitable mission and grant-making functions of a charitable entity that receives the assets shall be dedicated to serving the health care needs of the community historically served by the predecessor nonprofit hospital.

The governance of the charitable trust or organization shall be subject to review and approval by the Attorney General and subject to strict conflict of interest requirements to ensure that employees of the trust or organization, former hospital employees and others involved in the acquisition do not benefit financially from the acquisition. The governing body of the charitable trust or organization shall provide the Attorney General with an annual report which shall include an audited financial statement and detailed description of its grant-making and other charitable activities related to its use of the charitable assets. The annual report shall be made available to the public at both the Attorney General’s office and the office of the charitable trust or organization.

The bill provides that if the Commissioner of Health and Senior Services receives information indicating that the acquiring entity is not fulfilling its commitment to the affected service area, and determines that the information is true, he shall order the acquiring entity to comply with a corrective action plan. The commissioner shall retain oversight of the acquiring entity’s obligations under the corrective action plan for as long as necessary to ensure compliance.
The bill provides that a county-owned hospital is exempt from the provisions of the bill.

Finally, the bill provides that its provisions shall not be construed to limit the existing authority of the Attorney General, the Commissioner of Health and Senior Services or any other government official or entity or the court to review, approve or disapprove conditions related to an acquisition, transaction or disposition under current law.

The committee amended the bill to modify the provision (in paragraph (1) of subsection f. of section 2) that prohibited an officer, director or senior manager of the charitable trust or organization created as a result of the acquisition of the nonprofit hospital from having been a director, officer, agent, trustee or employee of the nonprofit hospital during the three years immediately preceding the effective date of the acquisition. Under the amendment, this prohibition would apply unless that person can demonstrate to the satisfaction of the Attorney General that the person’s assumption of the position of officer, director or senior manager of the trust or organization would not constitute a breach of fiduciary duty or other conflict of interest.

The other committee amendment, which is technical in nature, restores language comprising subsection e. of section 2, which was inadvertently deleted from the bill as prefiled for introduction. This subsection, which is referenced in subsection f. of section 2, provides that the Attorney General shall make a determination as to the amount of assets which the nonprofit hospital shall set aside as a charitable obligation, based on the full and fair market value of the hospital as determined by the Attorney General at the time of the proposed acquisition.

As reported by the committee, this bill is similar to the Assembly Committee Substitute for Assembly Bill Nos. 652 and 887 (2R) of 1998 (Vandervalk/Cohen/Caraballo), which this committee reported during the prior session and which passed the General Assembly 79-0-0 on June 11, 1998. The bill is also similar to Senate Bill No. 366 (Sinagra), which is currently pending in the Senate Health Committee.

This bill was prefiled for introduction in the 2000-2001 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.