

# SENATE, No. 2247

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MARCH 5, 2018

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Assemblyman JOHN J. BURZICHELLI**

**District 3 (Cumberland, Gloucester and Salem)**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**Assemblywoman CAROL A. MURPHY**

**District 7 (Burlington)**

**Co-Sponsored by:**

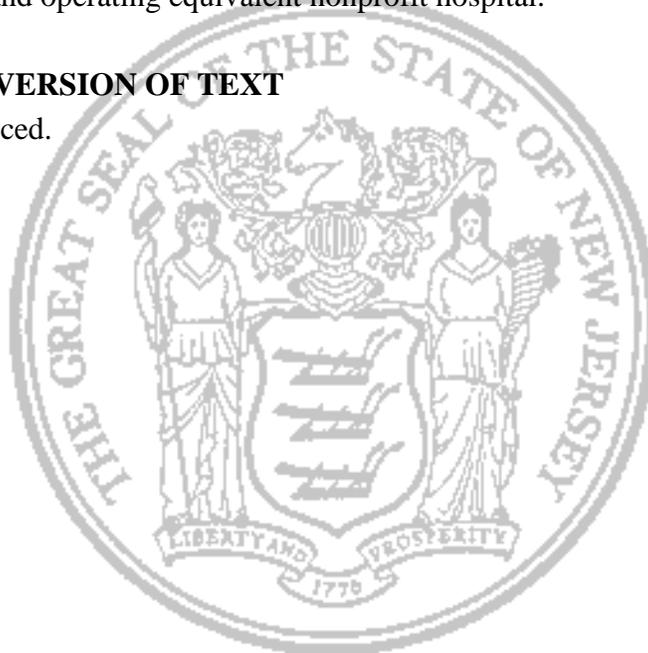
**Assemblyman Taliaferro**

**SYNOPSIS**

Allows charitable assets set aside from the sale of nonprofit hospital to for-profit entity to be allocated to successor nonprofit charitable entity that is establishing and operating equivalent nonprofit hospital.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 4/13/2018)**

1 AN ACT concerning hospital transactions and amending P.L.2000,  
2 c.143.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. Section 2 of P.L.2000, c.143 (C.26:2H-7.11) is amended to  
8 read as follows:

9 2. In addition to the requirements of P.L.1971, c.136 (C.26:2H-  
10 1 et seq.) concerning certificate of need and licensure requirements,  
11 a nonprofit hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-  
12 1 et seq.) shall satisfy the requirements of P.L.2000, c.143  
13 (C.26:2H-7.10 et seq.) before applying to the Superior Court of  
14 New Jersey for approval prior to entering into a transaction that  
15 results in the acquisition of the hospital as defined in P.L.2000,  
16 c.143 (C.26:2H-7.10 et seq.). The proposed acquisition shall be  
17 subject to the prior review of the Attorney General, in consultation  
18 with the Commissioner of Health, pursuant to the provisions of this  
19 section. The Attorney General shall review the application in  
20 furtherance of his common law responsibilities as protector,  
21 supervisor, and enforcer of charitable trusts and charitable  
22 corporations.

23 For the purposes of P.L.2000, c.143 (C.26:2H-7.10 et seq.),  
24 "acquisition" means the purchase, lease, exchange, conversion,  
25 restructuring, merger, division, consolidation, transfer of control, or  
26 other disposition of a substantial amount of assets or operations,  
27 whether through a single transaction or series of transactions, with  
28 one or more persons or entities.

29 P.L.2000, c.143 (C.26:2H-7.10 et seq.) shall not apply to a  
30 nonprofit hospital if the proposed acquisition is in the usual and  
31 regular course of its activities and the Attorney General has given  
32 the nonprofit hospital a written waiver as to the proposed  
33 acquisition. As used in this section, a proposed acquisition is not in  
34 the usual and regular course of a nonprofit hospital's activities if it  
35 effects a fundamental corporate change that involves transfer of  
36 ownership or control of charitable assets or a change of the  
37 nonprofit hospital's mission or purpose.

38 a. (1) Within five working days of submitting an application  
39 pursuant to this section, the nonprofit hospital shall publish a notice  
40 of the proposed acquisition, in a form approved by the Attorney  
41 General, in a newspaper of general circulation in the service area of  
42 the hospital once per week for three weeks. The notice shall state  
43 the names of the parties to the agreement, describe the contents of  
44 the application to the Attorney General, and state the date by which

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 a person may submit written comments about the application to the  
2 Attorney General.

3 (2) Within 30 days after receipt of an initial application, the  
4 Attorney General shall advise the applicant in writing whether the  
5 application is complete, and, if not, shall specify what additional  
6 information is required.

7 (3) The Attorney General shall, upon receipt of the information  
8 requested, notify the applicant in writing of the date of completion  
9 of the application.

10 b. Within 90 days of the date of completion of the application,  
11 the Attorney General, in consultation with the Commissioner of  
12 Health, shall review the application and support the proposed  
13 acquisition, with or without any specific modifications, or, if the  
14 Attorney General finds that it is not in the public interest, oppose  
15 the proposed acquisition. The Attorney General or commissioner  
16 may, for good cause, extend the time for review of an application  
17 submitted pursuant to this section.

18 The proposed acquisition shall not be considered to be in the  
19 public interest unless the Attorney General determines that  
20 appropriate steps have been taken to safeguard the value of the  
21 charitable assets of the hospital and to ensure that any proceeds  
22 from the proposed acquisition are irrevocably dedicated for  
23 appropriate charitable health care purposes; and the Commissioner  
24 of Health determines that the proposed transaction is not likely to  
25 result in the deterioration of the quality, availability, or accessibility  
26 of health care services in the affected communities.

27 c. In determining whether the acquisition meets the criteria of  
28 subsection b. of this section, the Attorney General shall consider:

29 (1) Whether the acquisition is permitted under the "New Jersey  
30 Nonprofit Corporation Act," Title 15A of the New Jersey Statutes,  
31 and other applicable State statutes governing nonprofit  
32 corporations;

33 (2) Whether the nonprofit hospital exercised due diligence in  
34 deciding to effectuate the acquisition, selecting the other party to  
35 the acquisition and negotiating the terms and conditions of the  
36 acquisition;

37 (3) The procedures used by the nonprofit hospital in making its  
38 decision, including whether appropriate expert assistance was used;

39 (4) Whether conflicts of interest were disclosed, including, but  
40 not limited to, conflicts of interest related to board members of,  
41 executives of, and experts retained by, the nonprofit hospital,  
42 purchaser, or other parties to the acquisition;

43 (5) Whether any management contract under the acquisition is  
44 for reasonable fair value;

45 (6) Whether the acquisition proceeds will be used for  
46 appropriate charitable health care purposes consistent with the  
47 nonprofit hospital's original purpose or for the support and  
48 promotion of health care, and whether the proceeds will be

1 controlled as charitable funds independently of the purchaser or  
2 parties to the acquisition; and

3 (7) Any other criteria the Attorney General establishes by  
4 regulation to determine whether the proposed acquisition is in the  
5 public interest.

6 d. In determining whether an acquisition by any person or  
7 entity other than a corporation organized in this State for charitable  
8 purposes under Title 15A of the New Jersey Statutes meets the  
9 criteria of subsection b. of this section, the Attorney General shall  
10 consider, in addition to the criteria set forth in subsection c., the  
11 following criteria:

12 (1) Whether the nonprofit hospital will receive full and fair  
13 market value for its assets. The Attorney General may employ, at  
14 the nonprofit hospital's expense, reasonably necessary expert  
15 assistance in making this determination;

16 (2) Whether charitable funds are placed at unreasonable risk, if  
17 the acquisition is financed in part by the nonprofit hospital;

18 (3) Whether a right of first refusal has been retained to  
19 repurchase the assets by a successor nonprofit corporation or  
20 foundation if, following the acquisition, the hospital is subsequently  
21 sold to, acquired by, or merged with another entity;

22 (4) Whether the nonprofit hospital established appropriate  
23 criteria in deciding to pursue a conversion in relation to carrying out  
24 its mission and purposes;

25 (5) Whether the nonprofit hospital considered the proposed  
26 conversion as the only alternative or as the best alternative in  
27 carrying out its mission and purposes;

28 (6) Whether the nonprofit hospital exercised due care in  
29 assigning a value to the existing hospital and its charitable assets in  
30 proceeding to negotiate the proposed conversion;

31 (7) Whether officers, directors, board members, or senior  
32 management will receive future contracts in existing, new, or  
33 affiliated hospitals or foundations; and

34 (8) Any other criteria the Attorney General establishes by  
35 regulation to determine whether a proposed acquisition by any  
36 person or entity other than a corporation organized in this State for  
37 charitable purposes under Title 15A of the New Jersey Statutes is in  
38 the public interest.

39 e. In the Attorney General's review of the proposed acquisition,  
40 the Attorney General may assess the entity proposing to acquire the  
41 nonprofit hospital for reasonable costs related to the review, as  
42 determined by the Attorney General to be necessary. Reasonable  
43 costs may include expert review of the acquisition and a process for  
44 educating the public about the acquisition and obtaining public  
45 input.

46 f. The Attorney General and the Commissioner of Health shall,  
47 during the course of the review pursuant to this section, hold at least  
48 one public hearing in which any person may file written comments

1 and exhibits or appear and make a statement. The public hearing  
2 may, if the Attorney General and commissioner so agree, be  
3 conducted jointly. The commissioner may satisfy the requirements  
4 of this subsection by conducting a public hearing in conjunction  
5 with the certificate of need review process pursuant to P.L.1971,  
6 c.136 (C.26:2H-1 et seq.). The Attorney General or the  
7 commissioner may subpoena additional information or witnesses,  
8 including, but not limited to, information about any transaction that  
9 is collateral to the proposed acquisition and any related documents,  
10 require and administer oaths, require sworn statements, take  
11 depositions, and use related discovery procedures for purposes of  
12 the hearing and at any time prior to completing the review of the  
13 proposed acquisition.

14 The Attorney General shall make the information received  
15 pursuant to this section, and the Department of Health shall make  
16 any information in its records relating to the proposed acquisition,  
17 available for inspection at no cost to the public.

18 The public hearing shall be held no later than 60 days after the  
19 date that an application from a nonprofit hospital is deemed  
20 complete by the Attorney General. Public notice of the hearing  
21 shall be provided at least two weeks in advance of the date of the  
22 hearing.

23 g. In a proposed acquisition subject to review under subsection  
24 d. of this section, the Attorney General, after consultation with the  
25 principal parties to the transaction, shall make a determination as to  
26 the amount of assets which the nonprofit hospital shall set aside as a  
27 charitable obligation, based on the full and fair market value of the  
28 hospital at the time of the proposed acquisition as determined by the  
29 Attorney General.

30 h. Upon execution of a proposed acquisition subject to review  
31 under subsection d. of this section, the amount determined by the  
32 Attorney General to be set aside as a charitable obligation shall be  
33 placed in a nonprofit charitable trust or one or more existing or  
34 newly established tax-exempt charitable organizations operating  
35 pursuant to 26 U.S.C. s.501(c)(3). The charitable mission and  
36 grant-making functions of any charitable entity that receives assets  
37 pursuant to subsection g. of this section shall be dedicated to  
38 serving the health care needs of the community historically served  
39 by the predecessor nonprofit hospital. Any charitable entity that  
40 receives assets pursuant to subsection g. of this section, the  
41 directors, officers, and trustees of any such charitable entity, and the  
42 assets of any such charitable entity, including any stock involved in  
43 the acquisition, shall be independent of any influence or control by  
44 the acquiring entity, its directors, officers, trustees, subsidiaries, or  
45 affiliates.

46 (1) The governance of the charitable trust that results from the  
47 acquisition or of any newly established charitable organization that  
48 is to receive charitable assets pursuant to subsection g. of this

1 section shall be subject to review and approval by the Attorney  
2 General. The governance of any existing charitable organization  
3 that is to receive charitable assets pursuant to subsection g. of this  
4 section shall be subject to review by the Attorney General. The  
5 governance of the charitable trust or the charitable organization  
6 shall be broadly based, and neither the trust or organization nor any  
7 officer, director, or senior manager of the trust or organization shall  
8 be affiliated with the acquiring entity and no officer, director, or  
9 senior manager of the trust or organization shall be a full-time  
10 employee of State government. No officer, director, or senior  
11 manager of the trust or organization shall have been a director,  
12 officer, agent, trustee, or employee of the nonprofit hospital during  
13 the three years immediately preceding the effective date of the  
14 acquisition, unless that person can demonstrate to the satisfaction of  
15 the Attorney General that the person's assumption of the position of  
16 officer, director, or senior manager of the trust or organization  
17 would not constitute a breach of fiduciary duty or other conflict of  
18 interest.

19 (2) The governing body of the charitable trust or organization  
20 shall establish or demonstrate that it has in place, as the case may  
21 be, a mechanism to avoid conflicts of interest and to prohibit grants  
22 that benefit the board of directors and management of the acquiring  
23 entity or its affiliates or subsidiaries.

24 (3) The governing body of the charitable trust or organization  
25 shall provide the Attorney General with an annual report which  
26 shall include an audited financial statement and a detailed  
27 description of its grant-making and other charitable activities  
28 related to its use of the charitable assets received pursuant to  
29 P.L.2000, c.143 (C.26:2H-7.10 et seq.). The annual report shall be  
30 made available to the public at both the Attorney General's office  
31 and the office of the charitable trust or organization. Nothing  
32 contained in P.L.2000, c.143 (C.26:2H-7.10 et seq.) shall affect the  
33 obligations of an entity possessing endowment funds under  
34 P.L.1975, c.26 (C.15:18-15 et seq.).

35 (4) (a) Upon notice to **█**, and upon the recommendation of **█** the  
36 Attorney General, and the nonprofit charitable entity or entities into  
37 which charitable assets were placed pursuant to this subsection, in  
38 the case of a nonprofit hospital previously acquired at any time after  
39 November 2, 2000 by any person or entity other than a corporation  
40 organized in this State for charitable purposes under Title 15A of  
41 the New Jersey Statutes in accordance with P.L.2000, c.143  
42 (C.26:2H-7.10 et seq.), which is subsequently acquired by a  
43 charitable entity that operates a nonprofit hospital that in purpose,  
44 form and function is equivalent to the previously acquired nonprofit  
45 hospital and serves the same population served by the previously  
46 acquired nonprofit hospital, any remaining charitable assets that  
47 were placed in a nonprofit charitable entity pursuant to subsection  
48 h. of this section shall be subject to review by the Superior Court to

1 determine whether allocating such assets to the nonprofit charitable  
2 entity acquiring the previously acquired nonprofit hospital would be  
3 more consistent with the previously acquired nonprofit hospital's  
4 original purpose. The Attorney General may submit to the court a  
5 recommendation concerning an application for allocation of assets  
6 authorized pursuant to this subparagraph.

7 (b) Upon notice to the Attorney General and the nonprofit  
8 charitable entity or entities into which charitable assets were placed  
9 pursuant to this subsection, in the case of establishment or operation  
10 by a charitable entity of a nonprofit hospital that in purpose, form  
11 and function is equivalent to and serves the same population served  
12 by a nonprofit hospital previously acquired at any time after  
13 November 2, 2000 by any person or entity other than a corporation  
14 organized in this State for charitable purposes under Title 15A of  
15 the New Jersey Statutes in accordance with P.L.2000, c.143  
16 (C.26:2H-7.10 et seq.), which resulted in the placement of  
17 charitable assets in a nonprofit charitable entity pursuant to  
18 subsection h. of this section, any remaining charitable assets from  
19 such placement shall be subject to review by the Superior Court to  
20 determine whether allocating such assets to the nonprofit charitable  
21 entity establishing or operating the equivalent nonprofit hospital  
22 would be more consistent with the previously acquired nonprofit  
23 hospital's original purpose. The Attorney General may submit to the  
24 court a recommendation concerning an application for allocation of  
25 assets authorized pursuant to this subparagraph.

26 (c) For purposes of this subsection, "remaining charitable  
27 assets" means charitable assets that were placed in a nonprofit  
28 charitable entity pursuant to this subsection that:

29 (i) remain in the possession of the charitable entity and have not  
30 been disbursed by that entity and already used for the purpose of  
31 servicing the health care needs of the community historically served  
32 by the predecessor nonprofit hospital; or

33 (ii) have at any time before, on or after the effective date of  
34 P.L.2014, c.82 been transferred by the nonprofit charitable entity to  
35 a donor-advised fund, or to any other entity, to use as recommended  
36 or as required by the nonprofit charitable entity, and have not been  
37 disbursed by that fund or entity and already used for the purpose of  
38 servicing the health care needs of the community historically served  
39 by the predecessor nonprofit hospital.

40 i. (1) The entity acquiring the nonprofit hospital, if determined  
41 to be necessary by the Commissioner of Health, shall provide funds,  
42 in an amount determined by the Commissioner of Health, for the  
43 hiring by the Department of Health of an independent health care  
44 access monitor to monitor and report quarterly to the Department of  
45 Health on community health care access by the entity, including  
46 levels of uncompensated care for indigent persons provided by the  
47 entity. The funding shall be provided for three years after the date  
48 of the acquisition. The entity acquiring the hospital shall provide

1 the monitor with appropriate access to the entity's records in order  
2 to enable the monitor to fulfill this function.

3 To prevent the duplication of any information already reported  
4 by the entity, the monitor shall, to the extent possible, utilize data  
5 already provided by the entity to the Department of Health.

6 No personal identifiers shall be attached to any of the records  
7 obtained by the monitor, and all such records shall be subject to the  
8 privacy and confidentiality provisions of medical records provided  
9 by law.

10 (2) Following the monitoring period, or in the event that no  
11 monitoring period is established, if the Commissioner of Health  
12 receives information indicating that the acquiring entity is not  
13 fulfilling its commitment to the affected service area pursuant to  
14 P.L.2000, c.143 (C.26:2H-7.10 et seq.) and determines that the  
15 information is true, the commissioner shall order the acquiring  
16 entity to comply with a corrective action plan. The commissioner  
17 shall retain oversight of the acquiring entity's obligations under the  
18 corrective action plan for as long as necessary to ensure compliance  
19 with P.L.2000, c.143 (C.26:2H-7.10 et seq.).

20 j. The trustees and senior managers of the nonprofit hospital are  
21 prohibited from investing in the acquiring entity for a period of  
22 three years following the acquisition.

23 k. No director, officer, agent, trustee, or employee of the  
24 nonprofit hospital shall benefit directly or indirectly from the  
25 acquisition, including the receipt of any compensation directly  
26 related to the proposed acquisition.

27 l. Upon completion by the Attorney General of the review of  
28 the application required by P.L.2000, c.143 (C.26:2H-7.10 et seq.),  
29 the nonprofit hospital shall apply to the Superior Court for approval  
30 of the proposed acquisition. In that proceeding, the Attorney  
31 General shall advise the court as to whether the Attorney General  
32 supports or opposes the proposed acquisition, with or without any  
33 specific modifications, and the basis for that position. Any person  
34 who filed a written comment or exhibit or appeared and made a  
35 statement in the public hearing held by the Attorney General  
36 pursuant to subsection f. of this section shall be considered a party  
37 to the proceeding, including consumers or community groups  
38 representing the citizens of the State.

39 m. Notwithstanding the provisions of subsections a. and f. of  
40 this section to the contrary, in the event that the Attorney General or  
41 the Commissioner of Health determines that a proposed acquisition  
42 should be considered on an expedited basis in order to preserve the  
43 quality of health care provided to the community, the Attorney  
44 General and the commissioner may combine the public notice about  
45 the acquisition with the notice for a public hearing as required in  
46 subsections a. and f., respectively, and may reduce the period of  
47 time required for notice, as necessary. In considering a proposed  
48 acquisition on an expedited basis, the Attorney General and

1 commissioner may agree to reduce the period of time for review of  
2 a completed application to less than 90 days.

3 n. The Attorney General, in consultation with the  
4 Commissioner of Health, shall adopt regulations pursuant to the  
5 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
6 seq.) to carry out the purposes of P.L.2000, c.143 (C.26:2H-7.10 et  
7 seq.).

8 (cf: P.L.2014, c.82, s.1)

9

10 2. This act shall take effect immediately.

11

12

13

### STATEMENT

14

15 This bill would allow the charitable assets set aside from the sale  
16 of a nonprofit hospital to a for-profit entity to be allocated to a  
17 successor nonprofit charitable entity establishing or operating an  
18 equivalent nonprofit hospital.

19 Under the "Community Health Care Assets Protection Act," the  
20 Attorney General must determine an amount of assets to be set  
21 aside as a charitable obligation when a for-profit corporation or out-  
22 of-State nonprofit corporation acquires a nonprofit hospital, based  
23 on the full and fair market value of the hospital at the time of the  
24 acquisition. This charitable obligation must be placed in a  
25 nonprofit charitable trust whose mission is to serve the health care  
26 needs of the community historically served by the predecessor  
27 nonprofit hospital.

28 The purpose of the bill is to allow charitable assets that are set  
29 aside as a charitable obligation in this manner to be returned to  
30 another nonprofit charitable entity that is establishing and operating  
31 an equivalent nonprofit hospital. The reversion of assets to the  
32 nonprofit charitable entity would occur upon the determination by  
33 the Superior Court that the allocation of the assets to the acquiring  
34 nonprofit charitable entity would be more consistent with the  
35 original nonprofit hospital's purpose.