

ASSEMBLY, No. 2368

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 26, 1996

By Assemblywoman VANDERVALK

1 AN ACT concerning the sale of nonprofit hospitals and supplementing
2 Title 26 of the Revised Statutes.

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

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7 1. In addition to the requirements of P.L.1971, c.136 (C.26:2H-1
8 et seq.) concerning certificate of need and licensure requirements, a
9 nonprofit acute care hospital licensed pursuant to P.L.1971, c.136
10 (C.26:2H-1 et seq.) shall give at least 90-days written notice to the
11 Attorney General prior to entering into a sale, lease, exchange or
12 other disposition of a substantial amount of its assets or operations
13 with a person or entity other than a corporation organized in this State
14 for charitable purposes under Title 15A of the New Jersey Statutes.

15 a. The Attorney General shall conduct a review of the proposed
16 transaction and assess the entity proposing to receive the assets or
17 operations of the nonprofit hospital for reasonable costs related to the
18 review of the proposed transaction, as determined by the Attorney
19 General to be necessary. Reasonable costs may include expert review
20 of the transaction and a process for educating the public about the
21 transaction and obtaining public input.

22 b. If a charitable fund results from the transaction and if the
23 nonprofit entity making the disposition does not continue its operation
24 of the nonprofit hospital, the governance of the resulting charitable
25 fund shall be subject to review by the Attorney General, in
26 consultation with the Commissioner of Health and Senior Services,
27 and approval by a court of competent jurisdiction. The governance of
28 the resulting charitable fund shall be broadly based in the community
29 historically served by the predecessor nonprofit hospital. The
30 Attorney General shall conduct a public hearing in connection with his
31 review of the plan for the governance of the resulting charitable fund.
32 An appropriate portion of any resulting proceeds, if determined to be
33 necessary by the Attorney General, shall be used for assistance in the
34 development of a community-based plan for the use of the resulting
35 charitable fund.

36 c. The entity receiving the assets or operation of the nonprofit
37 hospital shall, if determined to be necessary by the Attorney General,

1 in consultation with the Commissioner of Health and Senior Services,
2 provide funds, in an amount determined by the Commissioner of
3 Health and Senior Services, for the hiring by the Department of
4 Health and Senior Services of an independent health care access
5 monitor to monitor and report quarterly to the Attorney General and
6 the Department of Health and Senior Services on community health
7 care access by the entity, including levels of uncompensated care for
8 indigent persons provided by the entity. The funding shall be provided
9 for three years after the date of the transaction. The entity receiving
10 the assets or operations shall provide the monitor with appropriate
11 access to the entity's records in order to enable the monitor to fulfill
12 this function.

13 To prevent the duplication of any information already reported by
14 the entity, the monitor shall, to the extent possible, utilize data already
15 provided by the entity to the Department of Health and Senior
16 Services.

17 No personal identifiers shall be attached to any of the records
18 obtained by the monitor, and all such records shall be subject to the
19 privacy and confidentiality provisions of medical records provided by
20 law.

21 d. The trustees and senior managers of the nonprofit hospital
22 making the disposition are prohibited from investing in the for profit
23 entity for a period of three years following the disposition of assets or
24 operations.

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26 2. Notwithstanding the provisions of any law to the contrary, the
27 Commissioner of Health and Senior Services shall not issue a
28 certificate of need or license to operate an acute care hospital to the
29 resulting entity of a disposition of assets or operations under section
30 1 of this act, unless:

31 a. there is a determination by the commissioner of the suitability
32 and responsibility of the prospective licensee, as determined by
33 regulations adopted by the commissioner. For the purposes of this
34 section, the determination of suitability and responsibility shall include,
35 but not be limited to, the following factors:

36 (1) the financial capacity of the prospective licensee to operate the
37 hospital in accordance with applicable laws;

38 (2) the history of the prospective licensee in providing acute care,
39 including in states other than New Jersey, if any, measured by
40 compliance with the applicable statutes and regulations governing the
41 operation of hospitals in those states;

42 (3) the participation of persons residing in the nonprofit entity's
43 primary service area in oversight of the resulting hospital; and

44 (4) whether the transaction will have a significant effect on the
45 availability or accessibility of health care services to the affected
46 communities;

1 from the transaction, the required broad-based community governance
2 of the charitable fund shall be subject to review by the Attorney
3 General, in consultation with the Commissioner of Health and Senior
4 Services.

5 The bill also requires the for profit purchaser of the hospital to pay
6 for an independent health care access monitor, to be hired by the
7 Commissioner of Health and Senior Services, to monitor and report
8 publicly for three years on community health care access, including the
9 level of uncompensated care for indigent persons, provided by the for
10 profit acute care hospital.

11 Also, under the provisions of the bill, the trustees and senior
12 managers of the nonprofit entity are prohibited from investing in the
13 for profit entity for a period of three years following the disposition of
14 assets or operations.

15 The bill further provides that an applicant for a certificate of need
16 or license to operate a for profit hospital that was formerly a
17 nonprofit hospital, will be required to undergo a determination by the
18 commissioner of the applicant's suitability and responsibility to operate
19 an acute care hospital in the State. The applicant also must agree to
20 maintain or increase the level of uncompensated care provided by the
21 predecessor nonprofit hospital and must develop a plan for providing
22 community benefits and obtain approval of the plan from the
23 commissioner.

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28 Provides for Attorney General and Department of Health and Senior
29 Services review of conversion of nonprofit hospitals to for profit
30 entities.