

[Passed Both Houses]

[Third Reprint]

ASSEMBLY SUBSTITUTE FOR
ASSEMBLY, No. 2368

STATE OF NEW JERSEY

ADOPTED MAY 22, 1997

Sponsored by Assemblywoman VANDERVALK,
Assemblyman COHEN, Assemblywoman Gill,
Senators Sinagra and Baer

1 AN ACT concerning nonprofit hospitals ³[and health service
2 corporations]³ and supplementing Title 15A of the New Jersey
3 Statutes and ³[Titles] Title³ 26 ³[and 17]³ of the Revised Statutes.

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

7
8 1. This act shall be known and may be cited as the "Community
9 Health Care Assets Protection Act."

10
11 2. In addition to the requirements of P.L.1971, c.136 (C.26:2H-1
12 et seq.) concerning certificate of need and licensure requirements, a
13 nonprofit hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et
14 seq.) shall apply to the Attorney General for approval prior to entering
15 into a transaction that results in the acquisition of the hospital by a
16 person or entity other than a corporation organized in this State for
17 charitable purposes under Title 15A of the New Jersey Statutes. The
18 proposed acquisition shall be subject to the written approval of the
19 Attorney General, in consultation with the Commissioner of Health
20 and Senior Services, pursuant to the provisions of this section.

21 For the purposes of sections 2 and 3 of this act, "acquisition"
22 means any acquisition by a person of an ownership or controlling

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly floor amendments adopted June 5, 1997.

² Assembly floor amendments adopted December 4, 1997.

³ Assembly floor amendments adopted December 18, 1997.

1 interest in a nonprofit hospital, whether by purchase, merger, lease,
2 joint venture, transfer, gift or otherwise.

3 a. Within five working days of submitting an application pursuant
4 to this section, the nonprofit hospital shall publish notice of the
5 proposed acquisition, in a form approved by the Attorney General, in
6 a newspaper of general circulation in the service area of the hospital
7 once per week for three weeks. The notice shall state the names of
8 the parties to the agreement, describe the contents of the application
9 to the Attorney General and state the date by which a person may
10 submit written comments about the application to the Attorney
11 General.

12 b. The Attorney General, in consultation with the Commissioner
13 of Health and Senior Services, shall review the application and
14 approve the proposed acquisition, with or without any specific
15 modifications, or, if he finds that it is not in the public interest,
16 disapprove the proposed acquisition.

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

25 In determining whether the acquisition meets the criteria of this
26 subsection, the Attorney General shall consider:

27 (1) Whether the acquisition is permitted under the "New Jersey
28 Nonprofit Corporation Act," Title 15A of the New Jersey Statutes,
29 and other applicable State statutes governing nonprofit entities, trusts
30 or charities;

31 (2) Whether the nonprofit hospital exercised due diligence in
32 deciding to sell, selecting the purchaser and negotiating the terms and
33 conditions of the sale;

34 (3) The procedures used by the seller in making its decision,
35 including whether appropriate expert assistance was used;

36 (4) Whether conflict of interest was disclosed, including, but not
37 limited to, conflicts of interest related to board members of, executives
38 of and experts retained by the seller, purchaser or other parties to the
39 acquisition;

40 (5) Whether the seller will receive full and fair market value for its
41 assets. The Attorney General may employ, at the seller's expense,
42 reasonably necessary expert assistance in making this determination;

43 (6) Whether charitable funds are placed at unreasonable risk, if the
44 acquisition is financed in part by the seller;

45 (7) Whether any management contract under the acquisition is for
46 reasonable fair value;

1 (8) Whether the sale proceeds will be used for appropriate
2 charitable health care purposes consistent with the seller's original
3 purpose or for the support and promotion of health care ²[in the
4 affected community]² and whether the proceeds will be controlled as
5 charitable funds independently of the purchaser or parties to the
6 acquisition; and

7 (9) Whether a right of first refusal to repurchase the assets by a
8 successor nonprofit corporation or foundation if the hospital is
9 subsequently sold to, acquired by or merged with another entity has
10 been retained.

11 c. In his review of the proposed acquisition, the Attorney General
12 may assess the entity proposing to acquire the nonprofit hospital for
13 reasonable costs related to the review, as determined by the Attorney
14 General to be necessary. Reasonable costs may include expert review
15 of the acquisition and a process for educating the public about the
16 acquisition and obtaining public input.

17 d. The Attorney General and the Commissioner of Health and
18 Senior Services shall, during the course of the review pursuant to this
19 section, hold at least one public hearing in which any person may file
20 written comments and exhibits or appear and make a statement. The
21 Attorney General or the commissioner may subpoena additional
22 information or witnesses, including, but not limited to, information
23 about any transaction that is collateral to the proposed acquisition and
24 any related documents, require and administer oaths, require sworn
25 statements, take depositions and use related discovery procedures for
26 purposes of the hearing and at any time prior to completing the review
27 of the proposed acquisition.

28 The Attorney General shall make the information received pursuant
29 to this section, and the Department of Health and Senior Services shall
30 make any information in its records relating to the proposed
31 acquisition, available at no cost to the public.

32 The public hearing shall be held no later than 60 days after receipt
33 of an application from a nonprofit hospital that is deemed complete by
34 the Attorney General. Public notice of the hearing shall be provided
35 at least two weeks in advance of the date of the hearing.

36 e. The Attorney General shall make a determination as to the
37 amount of assets which the nonprofit hospital shall set aside as a
38 charitable obligation, based on the full and fair market value of the
39 hospital as determined by the Attorney General at the time of the
40 proposed acquisition.

41 f. The amount determined by the Attorney General to be set aside
42 as a charitable obligation shall be placed in a nonprofit charitable
43 trust, and the monies in that trust shall be expended for health-related
44 purposes in accordance with such requirements as shall be ²enacted
45 into law, or as shall be² established by the Attorney General, in
46 consultation with the Commissioner of Health and Senior Services. An

1 appropriate portion of the charitable obligation, if determined to be
2 necessary by the Attorney General, shall be used for assistance in the
3 development of a ²[community-based]² plan for the use of the
4 charitable trust ²which shall take into consideration the needs of the
5 community historically served by the predecessor nonprofit hospital².

6 (1) The governance of the charitable trust that results from the
7 acquisition shall be subject to review and approval by the Attorney
8 General, in consultation with the commissioner. The governance of
9 the charitable trust shall be broadly based ²[in the community
10 historically served by the predecessor nonprofit hospital]², and neither
11 the trust nor any officer, director or senior manager of the trust shall
12 be affiliated with the for-profit entity and no officer, director or senior
13 manager of the trust shall be ²[or]² a fulltime employee of State
14 government. No officer, director or senior manager of the trust shall
15 have been a director, officer, agent, trustee or employee of the
16 nonprofit hospital during the three years immediately preceding the
17 effective date of the acquisition.

18 (2) The governing body of the charitable trust shall establish a
19 mechanism to avoid conflicts of interest and to prohibit grants that
20 benefit the board of directors and management of the for-profit entity.

21 (3) The governing body of the charitable trust shall provide the
22 Attorney General with an annual report of its grant-making and other
23 charitable activities related to its use of the charitable assets received
24 pursuant to this act. The annual report shall be made available to the
25 public at both the Attorney General's office and the office of the
26 charitable trust.

27 g. (1) The entity acquiring the nonprofit hospital, if determined
28 to be necessary by the Attorney General, in consultation with the
29 Commissioner of Health and Senior Services, shall provide funds, in
30 an amount determined by the Commissioner of Health and Senior
31 Services, for the hiring by the Department of Health and Senior
32 Services of an independent health care access monitor to monitor and
33 report quarterly to the Attorney General and the Department of Health
34 and Senior Services on community health care access by the entity,
35 including levels of uncompensated care for indigent persons provided
36 by the entity. The funding shall be provided for three years after the
37 date of the acquisition. The entity acquiring the hospital shall provide
38 the monitor with appropriate access to the entity's records in order to
39 enable the monitor to fulfill this function.

40 To prevent the duplication of any information already reported by
41 the entity, the monitor shall, to the extent possible, utilize data already
42 provided by the entity to the Department of Health and Senior
43 Services.

44 No personal identifiers shall be attached to any of the records
45 obtained by the monitor, and all such records shall be subject to the
46 privacy and confidentiality provisions of medical records provided by

1 law.

2 (2) Following the monitoring period, or in the event that no
3 monitoring period is established, if the Attorney General receives
4 information indicating that the for-profit entity is not fulfilling its
5 commitment to the affected service area pursuant to this act, the
6 Attorney General, or his designee, shall hold a public hearing upon
7 10 days notice to the affected parties. If, after the hearing, the
8 Attorney General determines that the information is true, he shall
9 institute proceedings to require a corrective action plan from the for-
10 profit entity. The Attorney General shall retain oversight of the for-
11 profit's obligations under the corrective action plan for as long as
12 necessary to ensure compliance with this act.

13 h. The trustees and senior managers of the nonprofit hospital are
14 prohibited from investing in the acquiring for-profit entity for a period
15 of three years following the acquisition.

16 i. No director, officer, agent, trustee or employee of the nonprofit
17 hospital shall benefit directly or indirectly from the acquisition,
18 including the receipt of any compensation directly related to the
19 proposed acquisition.

20 j. Any final action by the Attorney General pursuant to this act
21 shall be subject to judicial review by the Superior Court at the
22 initiation of the nonprofit hospital or any person that was a party to
23 the proceeding. Any person adversely affected by the final decision of
24 the Attorney General shall be considered a party to the proceeding,
25 including consumers or community groups representing the citizens of
26 the State.

27 k. The Attorney General, in consultation with the Commissioner
28 of Health and Senior Services, shall adopt regulations pursuant to the
29 "Administrative Procedure Act," P.L.1968, c.410, (C.52:14B-1 et
30 seq.) to carry out the purposes of this section.

31

32 3. Notwithstanding the provisions of any law to the contrary, the
33 Commissioner of Health and Senior Services shall not issue a
34 certificate of need or license to operate a hospital to the resulting
35 entity of an acquisition, unless:

36 a. There is a determination by the commissioner of the suitability
37 and responsibility of the prospective licensee, as determined by
38 regulations adopted by the commissioner. For the purposes of this
39 section, the determination of suitability and responsibility shall include,
40 but not be limited to, the following factors:

41 (1) The financial capacity of the prospective licensee to operate
42 the hospital in accordance with applicable laws;

43 (2) The history of the prospective licensee in providing acute care,
44 or other health care services as appropriate, including in states other
45 than New Jersey, if any, measured by compliance with the applicable
46 statutes and regulations governing the operation of hospitals in those

1 states;

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

4 (4) Whether the acquisition will have a significant effect on the
5 quality, availability or accessibility of health care services in the
6 affected communities.

7 b. The applicant agrees to maintain or increase the percentage of
8 income from operations allocated to care for indigent persons, as
9 compared to the average of the annual percentage reported in the
10 previous three years by the predecessor nonprofit hospital; except that
11 the commissioner may permit the applicant to reduce the percentage
12 if the commissioner determines that demographic or other changes in
13 the hospital's service area justify a reduction in the percentage. The
14 commissioner shall, by regulation, provide for the enforcement of this
15 subsection and any agreement made by an applicant concerning care
16 for indigent persons; and

17 c. The applicant submits a plan, for approval by the commissioner,
18 for the provision of community benefits. In determining whether to
19 approve the plan, and not to the exclusion of other factors, the
20 commissioner may take into account the applicant's existing
21 commitment to primary and preventive health care services and
22 community contributions, as well as the primary and preventive health
23 care services and community contributions of the predecessor
24 nonprofit hospital. The commissioner may waive the plan requirement
25 of this subsection, in whole or in part, at the request of the applicant,
26 if the applicant demonstrates to the commissioner's satisfaction that its
27 service area will not be deprived of health care services as a result of
28 the acquisition.

29 d. The Commissioner of Health and Senior Services shall,
30 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
31 (C.52:14B-1 et seq.), adopt regulations to carry out the purposes of
32 this section.

33

34 ¹4. A hospital owned and operated by a county is exempt from the
35 provisions of this act, except that a transaction that results in the
36 acquisition of the hospital by a person or entity other than a
37 corporation organized in this State for charitable purposes under Title
38 15A of the New Jersey Statutes shall be subject to review and
39 approval by the Attorney General based upon his finding that the
40 transaction would not adversely affect the quality, availability or
41 accessibility of health care services in the affected communities and
42 would otherwise be in the public interest.¹

43

44 ³[¹4.] 5.¹ A health service corporation that intends to enter into
45 a transaction to transfer, restructure or convert its activities in
46 conjunction with for-profit activities shall apply to the Attorney

1 General for approval prior to entering into the transaction. The
2 proposed transaction shall be subject to the written approval of the
3 Attorney General, in consultation with the Commissioner of Banking
4 and Insurance, pursuant to the provisions of this section.

5 a. Within five working days of submitting an application pursuant
6 to this section, the health service corporation shall publish notice of
7 the proposed transaction, in a form approved by the Attorney General,
8 in a newspaper of general circulation in the State once per week for
9 three weeks. The notice shall state the names of the parties to the
10 agreement, describe the contents of the application to the Attorney
11 General and state the date by which a person may submit written
12 comments about the application to the Attorney General.

13 b. The Attorney General, in consultation with the Commissioner
14 of Banking and Insurance, shall review the application and approve the
15 proposed transaction, with or without any specific modifications, or,
16 if he finds that it is not in the public interest, disapprove the proposed
17 transaction.

18 The proposed transaction shall not be considered to be in the
19 public interest unless the Attorney General determines that appropriate
20 steps have been taken to safeguard the value of the charitable assets
21 of the health service corporation and to ensure that any proceeds from
22 the proposed transaction are irrevocably dedicated for appropriate
23 charitable health care purposes, and that the proposed transaction is
24 permitted under the "New Jersey Nonprofit Corporation Act," Title
25 15A of the New Jersey Statutes, and other applicable State statutes
26 governing nonprofit entities, trusts or charities.

27 c. In his review of the proposed transaction, the Attorney General
28 may assess the entity proposing to receive the business operations of
29 the health service corporation for reasonable costs related to the
30 review, as determined by the Attorney General to be necessary.
31 Reasonable costs may include expert review of the transaction and a
32 process for educating the public about the transaction and obtaining
33 public input.

34 d. The Attorney General and the Commissioner of Banking and
35 Insurance shall, during the course of the review pursuant to this
36 section, hold at least one public hearing in which any person may file
37 written comments and exhibits or appear and make a statement. The
38 Attorney General or the commissioner may subpoena additional
39 information or witnesses, including, but not limited to, information
40 about any transaction that is collateral to the proposed transaction and
41 any related documents, require and administer oaths, require sworn
42 statements, take depositions and use related discovery procedures for
43 purposes of the hearing and at any time prior to completing the review
44 of the proposed transaction.

45 The Attorney General shall make the information received pursuant
46 to this section, and the Department of Banking and Insurance shall

1 make any information in its records relating to the proposed
2 transaction, available at no cost to the public.

3 The public hearing shall be held no later than 60 days after receipt
4 of an application from a health service corporation that is deemed
5 complete by the Attorney General. Public notice of the hearing shall
6 be provided at least two weeks in advance of the date of the hearing.

7 e. The Attorney General shall make a determination as to the
8 amount of assets which the health service corporation shall set aside
9 as a charitable obligation, based on the full and fair market value of the
10 health service corporation as determined by the Attorney General at
11 the time of the proposed transaction.

12 f. The amount determined by the Attorney General to be set aside
13 as a charitable obligation shall be placed in a nonprofit charitable
14 trust, and the monies in that trust shall be expended for health-related
15 purposes in accordance with such requirements as shall be ²enacted
16 into law, or as shall be² established by the Attorney General, in
17 consultation with the Commissioners of Banking and Insurance and
18 Health and Senior Services. An appropriate portion of the charitable
19 obligation, if determined to be necessary by the Attorney General, shall
20 be used for assistance in the development of a ²[community-based]²
21 plan for the use of the charitable trust.

22 (1) The governance of the charitable trust that results from the
23 transaction shall be subject to review and approval by the Attorney
24 General, in consultation with the Commissioner of Banking and
25 Insurance. The governance of the charitable trust shall be broadly
26 based, and neither the trust nor any officer, director or senior manager
27 of the trust shall be affiliated with the for-profit entity and no officer,
28 director or senior manager of the trust shall be or a fulltime employee
29 of State government. No officer, director or senior manager of the
30 trust shall have been a director, officer, agent, trustee or employee of
31 the health service corporation during the three years immediately
32 preceding the effective date of the transaction.

33 (2) The governing body of the charitable trust shall establish a
34 mechanism to avoid conflicts of interest and to prohibit grants that
35 benefit the board of directors and management of the for-profit entity.

36 (3) The governing body of the charitable trust shall provide the
37 Attorney General with an annual report of its grant-making and other
38 charitable activities related to its use of the charitable assets received
39 pursuant to this act. The annual report shall be made available to the
40 public at both the Attorney General's office and the office of the
41 charitable trust.

42 g. The trustees and senior managers of the health service
43 corporation are prohibited from investing in the acquiring for-profit
44 entity for a period of three years following the transaction.

45 h. No director, officer, agent, trustee or employee of the health
46 service corporation shall benefit directly or indirectly from the

1 transaction, including the receipt of any compensation directly related
2 to the proposed transaction.

3 i. Any final action by the Attorney General pursuant to this act
4 shall be subject to judicial review by the Superior Court at the
5 initiation of the health service corporation or any person that was a
6 party to the proceeding. Any person adversely affected by the final
7 decision of the Attorney General shall be considered a party to the
8 proceeding, including consumers or community groups representing
9 the citizens of the State.

10 j. The Attorney General, in consultation with the Commissioner
11 of Banking and Insurance, shall adopt regulations pursuant to the
12 "Administrative Procedure Act," P.L.1968, c.410, (C.52:14B-1 et
13 seq.) to carry out the purposes of this section.]³

14

15 ³[¹[5.] 6.¹ Notwithstanding any provisions of P.L.1995, c.196
16 (C.17:48E-45 et seq.) to the contrary, a health service corporation
17 which converts to a domestic mutual insurer shall retain charitable
18 trust obligations to preserve its assets for charitable purposes. This
19 obligation shall be paid at such time as the domestic mutual insurer
20 enters into a transaction with a for-profit corporation or otherwise
21 generates sufficient funds to fulfill its charitable trust obligation,
22 whichever occurs first. The fair market value of the health service
23 corporation on the date of conversion to a domestic mutual insurer,
24 augmented by any increase in the value of the domestic mutual insurer
25 attributable to the use of the charitable trust assets or to its prior
26 status as a health service corporation, shall be the basis for the
27 valuation of the trust obligation, as determined by the Attorney
28 General.]³

29

30 ¹[6.] ³[7.¹] 5.³ Nothing in this act shall be construed to limit the
31 existing authority of the Attorney General, ³[the Commissioner of
32 Banking and Insurance,]³ the Commissioner of Health and Senior
33 Services or any other government official or entity or the court to
34 review, approve or disapprove conditions related to an acquisition,
35 transaction or disposition under current law.

36

37 ¹[7.] ³[8.¹] 6.³ This act shall take effect immediately.

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41

42 Designated the "Community Health Care Assets Protection Act."