

SENATE, No. 2120

STATE OF NEW JERSEY

INTRODUCED JUNE 5, 1997

By Senator SINAGRA

1 AN ACT concerning nonprofit hospitals and health service
2 corporations and supplementing Title 15A of the New Jersey
3 Statutes and Titles 26 and 17 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
23 interest in a nonprofit hospital, whether by purchase, merger, lease,
24 joint venture, transfer, gift or otherwise.

25 a. Within five working days of submitting an application pursuant
26 to this section, the nonprofit hospital shall publish notice of the
27 proposed acquisition, in a form approved by the Attorney General, in
28 a newspaper of general circulation in the service area of the hospital
29 once per week for three weeks. The notice shall state the names of
30 the parties to the agreement, describe the contents of the application
31 to the Attorney General and state the date by which a person may
32 submit written comments about the application to the Attorney
33 General.

34 b. The Attorney General, in consultation with the Commissioner
35 of Health and Senior Services, shall review the application and
36 approve the proposed acquisition, with or without any specific
37 modifications, or, if he finds that it is not in the public interest,

1 disapprove the proposed acquisition.

2 The proposed acquisition shall not be considered to be in the public
3 interest unless the Attorney General determines that appropriate steps
4 have been taken to safeguard the value of the charitable assets of the
5 hospital and to ensure that any proceeds from the proposed acquisition
6 are irrevocably dedicated for appropriate charitable health care
7 purposes; and that the proposed transaction is not likely to result in
8 the deterioration of the quality, availability or accessibility of health
9 care services in the affected communities.

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

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

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

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

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

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

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

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

32 (8) Whether the sale proceeds will be used for appropriate
33 charitable health care purposes consistent with the seller's original
34 purpose or for the support and promotion of health care in the affected
35 community and whether the proceeds will be controlled as charitable
36 funds independently of the purchaser or parties to the acquisition; and

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

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

1 d. The Attorney General and the Commissioner of Health and
2 Senior Services shall, during the course of the review pursuant to this
3 section, hold at least one public hearing in which any person may file
4 written comments and exhibits or appear and make a statement. The
5 Attorney General or the commissioner may subpoena additional
6 information or witnesses, including, but not limited to, information
7 about any transaction that is collateral to the proposed acquisition and
8 any related documents, require and administer oaths, require sworn
9 statements, take depositions and use related discovery procedures for
10 purposes of the hearing and at any time prior to completing the review
11 of the proposed acquisition.

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

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

20 e. The Attorney General shall make a determination as to the
21 amount of assets which the nonprofit hospital shall set aside as a
22 charitable obligation, based on the full and fair market value of the
23 hospital as determined by the Attorney General at the time of the
24 proposed acquisition.

25 f. The amount determined by the Attorney General to be set aside
26 as a charitable obligation shall be placed in a nonprofit charitable
27 trust, and the monies in that trust shall be expended for health-related
28 purposes in accordance with such requirements as shall be established
29 by the Attorney General, in consultation with the Commissioner of
30 Health and Senior Services. An appropriate portion of the charitable
31 obligation, if determined to be necessary by the Attorney General,
32 shall be used for assistance in the development of a community-based
33 plan for the use of the charitable trust.

34 (1) The governance of the charitable trust that results from the
35 acquisition shall be subject to review and approval by the Attorney
36 General, in consultation with the commissioner. The governance of
37 the charitable trust shall be broadly based in the community historically
38 served by the predecessor nonprofit hospital, and neither the trust nor
39 any officer, director or senior manager of the trust shall be affiliated
40 with the for-profit entity and no officer, director or senior manager of
41 the trust shall be or a fulltime employee of State government. No
42 officer, director or senior manager of the trust shall have been a
43 director, officer, agent, trustee or employee of the nonprofit hospital
44 during the three years immediately preceding the effective date of the
45 acquisition.

46 (2) The governing body of the charitable trust shall establish a

1 mechanism to avoid conflicts of interest and to prohibit grants that
2 benefit the board of directors and management of the for-profit entity.

3 (3) The governing body of the charitable trust shall provide the
4 Attorney General with an annual report of its grant-making and other
5 charitable activities related to its use of the charitable assets received
6 pursuant to this act. The annual report shall be made available to the
7 public at both the Attorney General's office and the office of the
8 charitable trust.

9 g. (1) The entity acquiring the nonprofit hospital, if determined to
10 be necessary by the Attorney General, in consultation with the
11 Commissioner of Health and Senior Services, shall provide funds, in
12 an amount determined by the Commissioner of Health and Senior
13 Services, for the hiring by the Department of Health and Senior
14 Services of an independent health care access monitor to monitor and
15 report quarterly to the Attorney General and the Department of Health
16 and Senior Services on community health care access by the entity,
17 including levels of uncompensated care for indigent persons provided
18 by the entity. The funding shall be provided for three years after the
19 date of the acquisition. The entity acquiring the hospital shall provide
20 the monitor with appropriate access to the entity's records in order to
21 enable the monitor to fulfill this function.

22 To prevent the duplication of any information already reported by
23 the entity, the monitor shall, to the extent possible, utilize data already
24 provided by the entity to the Department of Health and Senior
25 Services.

26 No personal identifiers shall be attached to any of the records
27 obtained by the monitor, and all such records shall be subject to the
28 privacy and confidentiality provisions of medical records provided by
29 law.

30 (2) Following the monitoring period, or in the event that no
31 monitoring period is established, if the Attorney General receives
32 information indicating that the for-profit entity is not fulfilling its
33 commitment to the affected service area pursuant to this act, the
34 Attorney General, or his designee, shall hold a public hearing upon 10
35 days notice to the affected parties. If, after the hearing, the Attorney
36 General determines that the information is true, he shall institute
37 proceedings to require a corrective action plan from the for-profit
38 entity. The Attorney General shall retain oversight of the for-profit's
39 obligations under the corrective action plan for as long as necessary to
40 ensure compliance with this act.

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

44 i. No director, officer, agent, trustee or employee of the nonprofit
45 hospital shall benefit directly or indirectly from the acquisition,
46 including the receipt of any compensation directly related to the

1 proposed acquisition.

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

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

13

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

18 a. There is a determination by the commissioner of the suitability
19 and responsibility of the prospective licensee, as determined by
20 regulations adopted by the commissioner. For the purposes of this
21 section, the determination of suitability and responsibility shall include,
22 but not be limited to, the following factors:

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

25 (2) The history of the prospective licensee in providing acute care,
26 or other health care services as appropriate, including in states other
27 than New Jersey, if any, measured by compliance with the applicable
28 statutes and regulations governing the operation of hospitals in those
29 states;

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

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

35 b. The applicant agrees to maintain or increase the percentage of
36 income from operations allocated to care for indigent persons, as
37 compared to the average of the annual percentage reported in the
38 previous three years by the predecessor nonprofit hospital; except that
39 the commissioner may permit the applicant to reduce the percentage
40 if the commissioner determines that demographic or other changes in
41 the hospital's service area justify a reduction in the percentage. The
42 commissioner shall, by regulation, provide for the enforcement of this
43 subsection and any agreement made by an applicant concerning care
44 for indigent persons; and

45 c. The applicant submits a plan, for approval by the commissioner,
46 for the provision of community benefits. In determining whether to

1 approve the plan, and not to the exclusion of other factors, the
2 commissioner may take into account the applicant's existing
3 commitment to primary and preventive health care services and
4 community contributions, as well as the primary and preventive health
5 care services and community contributions of the predecessor
6 nonprofit hospital. The commissioner may waive the plan requirement
7 of this subsection, in whole or in part, at the request of the applicant,
8 if the applicant demonstrates to the commissioner's satisfaction that its
9 service area will not be deprived of health care services as a result of
10 the acquisition.

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

15 4. A health service corporation that intends to enter into a
16 transaction to transfer, restructure or convert its activities in
17 conjunction with for-profit activities shall apply to the Attorney
18 General for approval prior to entering into the transaction. The
19 proposed transaction shall be subject to the written approval of the
20 Attorney General, in consultation with the Commissioner of Banking
21 and Insurance, pursuant to the provisions of this section.

22 a. Within five working days of submitting an application pursuant
23 to this section, the health service corporation shall publish notice of
24 the proposed transaction, in a form approved by the Attorney General,
25 in a newspaper of general circulation in the State once per week for
26 three weeks. The notice shall state the names of the parties to the
27 agreement, describe the contents of the application to the Attorney
28 General and state the date by which a person may submit written
29 comments about the application to the Attorney General.

30 b. The Attorney General, in consultation with the Commissioner
31 of Banking and Insurance, shall review the application and approve the
32 proposed transaction, with or without any specific modifications, or,
33 if he finds that it is not in the public interest, disapprove the proposed
34 transaction.

35 The proposed transaction shall not be considered to be in the public
36 interest unless the Attorney General determines that appropriate steps
37 have been taken to safeguard the value of the charitable assets of the
38 health service corporation and to ensure that any proceeds from the
39 proposed transaction are irrevocably dedicated for appropriate
40 charitable health care purposes, and that the proposed transaction is
41 permitted under the "New Jersey Nonprofit Corporation Act," Title
42 15A of the New Jersey Statutes, and other applicable State statutes
43 governing nonprofit entities, trusts or charities.

44 c. In his review of the proposed transaction, the Attorney General
45 may assess the entity proposing to receive the business operations of
46 the health service corporation for reasonable costs related to the

1 review, as determined by the Attorney General to be necessary.
2 Reasonable costs may include expert review of the transaction and a
3 process for educating the public about the transaction and obtaining
4 public input.

5 d. The Attorney General and the Commissioner of Banking and
6 Insurance shall, during the course of the review pursuant to this
7 section, hold at least one public hearing in which any person may file
8 written comments and exhibits or appear and make a statement. The
9 Attorney General or the commissioner may subpoena additional
10 information or witnesses, including, but not limited to, information
11 about any transaction that is collateral to the proposed transaction and
12 any related documents, require and administer oaths, require sworn
13 statements, take depositions and use related discovery procedures for
14 purposes of the hearing and at any time prior to completing the review
15 of the proposed transaction.

16 The Attorney General shall make the information received pursuant
17 to this section, and the Department of Banking and Insurance shall
18 make any information in its records relating to the proposed
19 transaction, available at no cost to the public.

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

24 e. The Attorney General shall make a determination as to the
25 amount of assets which the health service corporation shall set aside
26 as a charitable obligation, based on the full and fair market value of the
27 health service corporation as determined by the Attorney General at
28 the time of the proposed transaction.

29 f. The amount determined by the Attorney General to be set aside
30 as a charitable obligation shall be placed in a nonprofit charitable
31 trust, and the monies in that trust shall be expended for health-related
32 purposes in accordance with such requirements as shall be established
33 by the Attorney General, in consultation with the Commissioners of
34 Banking and Insurance and Health and Senior Services. An
35 appropriate portion of the charitable obligation, if determined to be
36 necessary by the Attorney General, shall be used for assistance in the
37 development of a community-based plan for the use of the charitable
38 trust.

39 (1) The governance of the charitable trust that results from the
40 transaction shall be subject to review and approval by the Attorney
41 General, in consultation with the Commissioner of Banking and
42 Insurance. The governance of the charitable trust shall be broadly
43 based, and neither the trust nor any officer, director or senior manager
44 of the trust shall be affiliated with the for-profit entity and no officer,
45 director or senior manager of the trust shall be or a fulltime employee
46 of State government. No officer, director or senior manager of the

1 trust shall have been a director, officer, agent, trustee or employee of
2 the health service corporation during the three years immediately
3 preceding the effective date of the transaction.

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

7 (3) The governing body of the charitable trust shall provide the
8 Attorney General with an annual report of its grant-making and other
9 charitable activities related to its use of the charitable assets received
10 pursuant to this act. The annual report shall be made available to the
11 public at both the Attorney General's office and the office of the
12 charitable trust.

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

16 h. No director, officer, agent, trustee or employee of the health
17 service corporation shall benefit directly or indirectly from the
18 transaction, including the receipt of any compensation directly related
19 to the proposed transaction.

20 i. 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 health service corporation or any person that was a
23 party to the proceeding. Any person adversely affected by the final
24 decision of the Attorney General shall be considered a party to the
25 proceeding, including consumers or community groups representing
26 the citizens of the State.

27 j. The Attorney General, in consultation with the Commissioner of
28 Banking and Insurance, 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 5. Notwithstanding any provisions of P.L.1995, c.196
33 (C.17:48E-45 et seq.) to the contrary, a health service corporation
34 which converts to a domestic mutual insurer shall retain charitable
35 trust obligations to preserve its assets for charitable purposes. This
36 obligation shall be paid at such time as the domestic mutual insurer
37 enters into a transaction with a for-profit corporation or otherwise
38 generates sufficient funds to fulfill its charitable trust obligation,
39 whichever occurs first. The fair market value of the health service
40 corporation on the date of conversion to a domestic mutual insurer,
41 augmented by any increase in the value of the domestic mutual insurer
42 attributable to the use of the charitable trust assets or to its prior
43 status as a health service corporation, shall be the basis for the
44 valuation of the trust obligation, as determined by the Attorney
45 General.

1 appropriate steps have been taken to safeguard the value of the
2 charitable assets of the hospital and to ensure that any proceeds from
3 the proposed acquisition are irrevocably dedicated for appropriate
4 charitable health care purposes; and that the proposed transaction is
5 not likely to result in the deterioration of the quality, availability or
6 accessibility of health care services in the affected communities. The
7 bill sets forth specific criteria the Attorney General shall consider in
8 reviewing the application.

9 With respect to a health service corporation, the proposed
10 transaction shall not be considered to be in the public interest unless
11 the Attorney General determines that appropriate steps have been
12 taken to safeguard the value of the charitable assets of the health
13 service corporation and to ensure that any proceeds from the proposed
14 transaction are irrevocably dedicated for appropriate charitable health
15 care purposes.

16 The bill authorizes the Attorney General to assess the entity
17 proposing to acquire the nonprofit hospital or receive the business
18 operations of the health service corporation for reasonable costs
19 related to the review. The Attorney General and the Commissioner of
20 Health and Senior Services or Banking and Insurance, as appropriate,
21 are required, during the course of the review, to hold at least one
22 public hearing in which any person may file written comments and
23 exhibits or appear and make a statement. The Attorney General or the
24 commissioners may subpoena additional information or witnesses,
25 require and administer oaths, require sworn statements, take
26 depositions and use related discovery procedures for purposes of the
27 hearing and at any time prior to completing the review of the proposed
28 acquisition.

29 The Attorney General shall make the information received, and the
30 departments shall make any information in their records relating to the
31 proposed acquisition or transaction, available at no cost to the public.

32 The bill directs the Attorney General to make a determination as to
33 the amount of assets which the nonprofit hospital or health service
34 corporation shall set aside as a charitable obligation, based on the full
35 and fair market value of the hospital or corporation as determined by
36 the Attorney General at the time of the proposed acquisition or
37 transaction. The amount determined by the Attorney General to be set
38 aside as a charitable obligation shall be placed in a nonprofit charitable
39 trust, and the monies in that trust shall be expended for health-related
40 purposes in accordance with such requirements as shall be established
41 by the Attorney General, in consultation with the Commissioners of
42 Health and Senior Services and Banking and Insurance.

43 The governance of the charitable trust shall be subject to review
44 and approval by the Attorney General, in consultation with the
45 commissioners and subject to strict conflict of interest requirements to
46 ensure that employees of the trust, former hospital or health service

1 corporation employees and others involved in the acquisition or
2 transaction do not benefit financially from the acquisition or
3 transaction. The governing body of the charitable trust shall provide
4 the Attorney General with an annual report of its grant-making and
5 other charitable activities related to its use of the charitable assets.
6 The annual report shall be made available to the public at both the
7 Attorney General's office and the office of the charitable trust.

8 The bill provides, in the case of a hospital, that if the Attorney
9 General receives information indicating that the for-profit entity is not
10 fulfilling its commitment to the affected service area pursuant to this
11 act, the Attorney General, or his designee, shall hold a public hearing
12 upon 10 days notice to the affected parties. If, after the hearing, the
13 Attorney General determines that the information is true, he shall
14 institute proceedings to require a corrective action plan from the for-
15 profit entity. The Attorney General shall retain oversight of the for-
16 profit's obligations under the corrective action plan for as long as
17 necessary to ensure compliance.

18 The bill also provides that the Commissioner of Health and Senior
19 Services shall not issue a certificate of need or license to operate a
20 hospital to the resulting entity of an acquisition, unless:

21 a. there is a determination by the commissioner of the suitability
22 and responsibility of the prospective licensee, as determined by
23 regulations adopted by the commissioner;

24 b. the applicant agrees to maintain or increase the percentage of
25 income from operations allocated to care for indigent persons, as
26 compared to the average of the annual percentage reported in the
27 previous three years by the predecessor nonprofit hospital; and

28 c. the applicant submits a plan, for approval by the commissioner,
29 for the provision of community benefits.

30 With respect to a health service corporation, the bill provides that
31 notwithstanding the provisions of N.J.S.A.17:48E-45 et seq. to the
32 contrary (governing the conversion of a health service corporation to
33 a domestic mutual insurer), a health service corporation which
34 converts to a domestic mutual insurer shall retain charitable trust
35 obligations to preserve its assets for charitable purposes. This
36 obligation shall be paid at such time as the mutual insurer enters into
37 a transaction with a for-profit corporation or otherwise generates
38 sufficient funds to fulfill its charitable trust obligation, whichever
39 occurs first. The fair market value of the health service corporation
40 on the date of conversion to a mutual insurer, augmented by any
41 increase in the value of the mutual insurer attributable to the use of the
42 charitable trust assets or to its prior status as a health service
43 corporation, shall be the basis for the valuation of the trust obligation,
44 as determined by the Attorney General.

45 Finally, the bill provides that its provisions shall not be construed
46 to limit the existing authority of the Attorney General, the

1 Commissioner of Banking and Insurance, the Commissioner of Health
2 and Senior Services or any other government official or entity or the
3 court to review, approve or disapprove conditions related to an
4 acquisition, transaction or disposition under current law.

5

6

7

8

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