

SENATE HEALTH COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2120**

STATE OF NEW JERSEY

DATED: JANUARY 8, 1998

The Senate Health Committee reports favorably a Senate Committee Substitute for Senate Bill No. 2120.

This substitute, the "Community Health Care Assets Protection Act," provides for State oversight of the acquisition of a nonprofit hospital by a for-profit entity.

The substitute 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 substitute defines "acquisition" to mean any acquisition by a person of an ownership or controlling interest in a nonprofit hospital, whether by purchase, merger, lease, joint venture, transfer, gift or otherwise.

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 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 substitute sets forth specific criteria that the Attorney General shall consider in reviewing the application.

The substitute 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 at no cost to the public.

The substitute directs the Attorney General to 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. The amount determined by the Attorney General to be set aside as a charitable obligation shall be placed in a nonprofit charitable trust, and the monies in that trust shall be expended for health-related purposes in accordance with such requirements as shall be enacted into law or established by the Attorney General, in consultation with the Commissioner of Health and Senior Services.

The governance of the charitable trust shall be subject to review and approval by the Attorney General, in consultation with the commissioner and subject to strict conflict of interest requirements to ensure that employees of the trust, former hospital employees and others involved in the acquisition do not benefit financially from the acquisition. The governing body of the charitable trust shall provide the Attorney General with an annual report 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.

The substitute provides that if the Attorney General receives information indicating that the for-profit entity is not fulfilling its commitment to the affected service area, the Attorney General, or his designee, shall hold a public hearing upon 10 days notice to the affected parties. If, after the hearing, the Attorney General determines that the information is true, he shall institute proceedings to require a corrective action plan from the for-profit entity. The Attorney General shall retain oversight of the for-profit's obligations under the corrective action plan for as long as necessary to ensure compliance.

The substitute also provides that the Commissioner of Health and Senior Services shall not issue a certificate of need or license to

operate a hospital to the resulting entity of an acquisition, unless:

- a. there is a determination by the commissioner of the suitability and responsibility of the prospective licensee, as determined by regulations adopted by the commissioner;
- b. the applicant agrees to maintain or increase the percentage of income from operations allocated to care for indigent persons, as compared to the average of the annual percentage reported in the previous three years by the predecessor nonprofit hospital; and
- c. the applicant submits a plan, for approval by the commissioner, for the provision of community benefits.

The substitute provides that a county-owned hospital is exempt from the provisions of the substitute, but a transaction that results in the acquisition of the hospital by a for-profit entity shall be subject to review and approval by the Attorney General based upon his finding that the transaction would not adversely affect the quality, availability or accessibility of health care services in the affected communities and would otherwise be in the public interest.

Finally, the substitute 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.

This substitute is identical to Assembly Bill No. 2368 AS (3R) (Vandervalk/Cohen) which is pending before the General Assembly.