

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2120

STATE OF NEW JERSEY

ADOPTED JANUARY 8, 1998

Sponsored by Senators SINAGRA and BASSANO

1 AN ACT concerning nonprofit hospitals and supplementing Title 15A
2 of the New Jersey Statutes and 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. This act shall be known and may be cited as the "Community
8 Health Care Assets Protection Act."

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

20 For the purposes of sections 2 and 3 of this act, "acquisition"
21 means any acquisition by a person of an ownership or controlling
22 interest in a nonprofit hospital, whether by purchase, merger, lease,
23 joint venture, transfer, gift or otherwise.

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

33 b. The Attorney General, in consultation with the Commissioner
34 of Health and Senior Services, shall review the application and
35 approve the proposed acquisition, with or without any specific

1 modifications, or, if he finds that it is not in the public interest,
2 disapprove the proposed acquisition.

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

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

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

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

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

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

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

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

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

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

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

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

1 acquisition and obtaining public input.

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

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

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

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

26 f. The amount determined by the Attorney General to be set aside
27 as a charitable obligation shall be placed in a nonprofit charitable
28 trust, and the monies in that trust shall be expended for health-related
29 purposes in accordance with such requirements as shall be enacted
30 into law, or as shall be established by the Attorney General, in
31 consultation with the Commissioner of Health and Senior Services. An
32 appropriate portion of the charitable obligation, if determined to be
33 necessary by the Attorney General, shall be used for assistance in the
34 development of a plan for the use of the charitable trust which shall
35 take into consideration the needs of the community historically served
36 by the predecessor nonprofit hospital.

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

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

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

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

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

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

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

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

45 i. No director, officer, agent, trustee or employee of the nonprofit
46 hospital shall benefit directly or indirectly from the acquisition,

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

3 j. 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 nonprofit hospital or any person that was a party to
6 the proceeding. Any person adversely affected by the final decision of
7 the Attorney General shall be considered a party to the proceeding,
8 including consumers or community groups representing the citizens of
9 the State.

10 k. The Attorney General, in consultation with the Commissioner
11 of Health and Senior Services, 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.

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

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

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

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

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

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

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

46 c. The applicant submits a plan, for approval by the commissioner,

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

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

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17 4. A hospital owned and operated by a county is exempt from the
18 provisions of this act, except that a transaction that results in the
19 acquisition of the hospital by a person or entity other than a
20 corporation organized in this State for charitable purposes under Title
21 15A of the New Jersey Statutes shall be subject to review and
22 approval by the Attorney General based upon his finding that the
23 transaction would not adversely affect the quality, availability or
24 accessibility of health care services in the affected communities and
25 would otherwise be in the public interest.

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27 5. Nothing in this act shall be construed to limit the existing
28 authority of the Attorney General, the Commissioner of Health and
29 Senior Services or any other government official or entity or the court
30 to review, approve or disapprove conditions related to an acquisition,
31 transaction or disposition under current law.

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33 6. This act shall take effect immediately.

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