
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 249 Session of
2005

INTRODUCED BY GORDNER, VANCE, WOZNIAK, WONDERLING, ORIE,
LEMMOND, RAFFERTY AND KITCHEN, FEBRUARY 11, 2005

REFERRED TO PUBLIC HEALTH AND WELFARE, FEBRUARY 11, 2005

AN ACT

1 Providing for approval by the Attorney General of the transfer,
2 restructuring or conversion of nonprofit hospitals.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Nonprofit
7 Hospital Conversion Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall
10 have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Hospital." An institution having an organized medical staff
13 established for the purpose of providing to inpatients, by or
14 under the supervision of physicians, diagnostic and therapeutic
15 services for the care of persons who are injured, disabled,
16 pregnant, diseased, sick or mentally ill or rehabilitation
17 services for the rehabilitation of persons who are injured,

1 disabled, pregnant, diseased, sick or mentally ill. The term
2 includes facilities for the diagnosis and treatment of disorders
3 within the scope of specific medical specialties, but not
4 facilities caring exclusively for the mentally ill.

5 "Nonprofit hospital." A hospital owned by a nonprofit
6 corporation organized under 15 Pa.C.S. Pt. II Subpt. C (relating
7 to nonprofit corporations).

8 Section 3. Transfer, restructure or conversion of nonprofit
9 hospitals.

10 (a) Approval of Attorney General.--

11 (1) A nonprofit hospital shall secure written approval
12 from the Attorney General and shall obtain court approval
13 under subsection (f) prior to entering into any agreement or
14 transaction to do any of the following:

15 (i) Sell, transfer, lease, exchange, option, convey,
16 give, enter a joint venture, merge, restructure, convert
17 or otherwise dispose of its assets to a corporation or
18 entity for profit or not-for-profit or to a mutual
19 benefit corporation or entity of the assets of the
20 hospital.

21 (ii) Transfer control, responsibility or governance
22 of the assets, operations or business of the hospital to
23 any corporation or entity for profit or not-for-profit or
24 to any mutual benefit corporation or entity.

25 (2) A nonprofit hospital shall give written notice to
26 the Attorney General and submit an application under
27 subsection (b) at least 90 days before commencing an action
28 under subsection (f), within that 90-day time period, the
29 hospital must certify to the Attorney General that its board
30 of directors voted in favor of the transaction and that each

1 member of its board of directors has been given a copy of the
2 application and supporting documents and a copy of this act
3 in its entirety.

4 (3) Within 90 days of the receipt of the written notice
5 required by paragraph (1), the Attorney General shall notify
6 the nonprofit hospital in writing of the decision to approve,
7 disapprove or conditionally approve of the agreement or
8 transaction. The Attorney General may extend this period for
9 an additional 60 days.

10 (b) Application.--An application shall be submitted to the
11 Attorney General on forms provided by the Attorney General and
12 shall, at a minimum, include the following information with
13 respect to each transacting party:

14 (1) Names, addresses and telephone numbers of the
15 transacting parties.

16 (2) A detailed summary of the proposed transaction.

17 (3) Name, address, telephone number and occupation of
18 all officers, members of the board of directors, trustees,
19 executive and senior level management including, for each
20 position, current persons and persons holding the position
21 during the past three years.

22 (4) Articles of incorporation and certificate of
23 incorporation.

24 (5) Bylaws and organizational charts.

25 (6) Copies of audited income statements, balance sheets
26 and other financial statements for the past three years and,
27 to the extent they have been made public, audited interim
28 financial statements and income statements together with
29 detailed description of the financing structure of the
30 proposed transaction, including equity contribution, debt

1 restructuring, stock issuance, partnership interests, stock
2 offerings and the like.

3 (7) Copies of all reports analyzing the proposed
4 transaction during the past three years, including, but not
5 limited to, reports by appraisers, accountants, investment
6 bankers, actuaries and other experts.

7 (8) A description of the manner in which the price was
8 determined, including which methods of valuation and data
9 were used.

10 (9) Patient statistics for the past three years and
11 patient projections for the next year, including patient
12 visits, admissions, emergency room visits, clinical visits
13 and visits to each department of the hospital, admissions to
14 nursing care or visits by affiliated home health care
15 entities.

16 (10) A list of uncompensated care provided over the past
17 three years by every facility owned by or controlled by the
18 acquiring entity.

19 (11) Copies of all documents related to:

20 (i) Identification of all charitable assets.

21 (ii) Accounting of all charitable assets for the
22 past three years.

23 (iii) Distribution of the charitable assets,
24 including, but not limited to, endowments, restricted,
25 unrestricted and specific purpose funds as each relates
26 to the proposed transaction.

27 (12) A description of the charity care and uncompensated
28 care provided by the existing hospital for the previous five-
29 year period, including a dollar amount and a description of
30 services provided to patients.

1 (13) A health impact plan that outlines how health
2 access, services and coverage will not be harmed by the
3 proposed transaction. At a minimum, the plan shall include
4 the following:

5 (i) An annual commitment to free care.

6 (ii) A detailed description of free care policies and
7 how they will be applied.

8 (iii) A preliminary plan describing the financial
9 commitment and process for identification and provision
10 of benefits to the community.

11 (iv) A description of the governance structure of
12 the new entity.

13 (14) The names of persons currently holding a position
14 as an officer, director, board member or senior level
15 management who will or will not maintain any position with
16 the new entity and whether any person listed will receive any
17 salary, severance stock offering or any financial gain,
18 current or deferred, as a result of or in relation to the
19 proposed transaction.

20 (15) A report from an independent expert on the fair
21 market value of the converting entity.

22 (16) Other information as determined by the Attorney
23 General.

24 (c) Publication by nonprofit hospital.--Within five working
25 days after presenting a plan of agreement or transaction to the
26 Attorney General for approval, the nonprofit hospital must
27 publish notice of the proposed plan in a form, approved by the
28 Attorney General, in at least three newspapers of general
29 circulation in the area served by the hospital. The notice shall
30 be published once per week for three consecutive weeks. The

1 applications and all related documents are considered public
2 records.

3 (d) Public meetings and access to records.--

4 (1) No later than 45 days after the Attorney General has
5 received notice from the nonprofit hospital of its intent to
6 enter an agreement or transaction, the Attorney General shall
7 hold no less than one public meeting in the service area of
8 the hospital. Any person may file written comments or
9 exhibits for the meeting or may appear and make a statement.
10 Each party to the transaction must assure that at least one
11 person representing the party is present at any public
12 meeting the Attorney General convenes. The number of public
13 meetings that shall be held shall correspond to the size of
14 the area served by the hospital and the nature and value of
15 the agreement or transaction. At least 21 days prior to the
16 public meeting, the Attorney General shall provide written
17 notice of the time and place of the meeting through
18 publication in at least three newspapers of general
19 circulation in the area served by the hospital. At the same
20 time, the Attorney General shall notify each member of the
21 General Assembly. The Attorney General shall have the power
22 to subpoena additional information or witnesses, require and
23 administer oaths and require sworn statements at any time
24 prior to making a decision on an application.

25 (2) The Attorney General shall provide access to the
26 records concerning the proposed agreement or transaction at
27 no cost to the public. The records shall be considered public
28 records and be made available to the public at both the
29 Office of Attorney General and the office of the nonprofit
30 hospital at least 30 days prior to a public meeting about the

1 proposed agreement or transaction.

2 (3) The Attorney General may charge the nonprofit
3 hospital for the costs of providing the public notice and
4 reasonable access to records relating to the proposed
5 agreement or transaction.

6 (e) Department of Health transition review.--The Attorney
7 General, upon receipt of the completed application, shall notify
8 the Department of Health of the proposed transaction. The
9 Department of Health shall review the quality and availability
10 of health care services being provided by the nonprofit hospital
11 while the application for approval is pending.

12 (f) Court approval.--

13 (1) After the nonprofit hospital has received notice of
14 decision from the Attorney General under subsection(a)(3),
15 the nonprofit hospital must commence an action under this
16 subsection and obtain court approval for the agreement or
17 transaction to be effective.

18 (2) The action must be commenced in the county in which
19 the registered office or principal office of the nonprofit
20 hospital is located and the nonprofit hospital must publish
21 notice of commencement of the action in at least two
22 newspapers of general circulation in the county.

23 (3) The nonprofit hospital must submit a petition to the
24 court that includes the Attorney General notice of decision
25 and all documents regarding the agreement or transaction. The
26 petition shall be available for public inspection, unless,
27 upon application by the nonprofit hospital and after notice
28 to the Attorney General and hearing on the application, the
29 court issues an order to seal the record pending final
30 disposition of the action. Any such order shall be

1 immediately dissolved upon court approval of the agreement or
2 transaction or other final disposition of the action.

3 Section 4. Requirements for Attorney General approval.

4 Prior to approving an agreement or transaction under section
5 3 (relating to transfer, restructure or conversion of nonprofit
6 hospitals), the Attorney General must find that the proposal
7 meets the following requirements:

8 (1) The terms and conditions of the agreement or
9 transaction are fair and reasonable to the residents of this
10 Commonwealth, and recipients and potential recipients of
11 services of the nonprofit hospital.

12 (2) The agreement or transaction is in the public
13 interest. An agreement or transaction shall not be in the
14 public interest unless appropriate steps have been taken to
15 safeguard the value of charitable assets and ensure that any
16 proceeds of the transaction are irrevocably dedicated to
17 charitable health care purposes.

18 (3) The agreement or transaction will not inure to any
19 private person or entity, including stock options, or to any
20 agreement not to compete or other private benefit.

21 (4) The fair market value of the converting entity, as
22 determined by an independent valuation satisfactory to the
23 Attorney General, has been maximized for charitable purposes,
24 and the fair market value of the converting entity has not
25 been manipulated in a manner that causes the fair market
26 value of the assets to decline.

27 Section 5. Additional requirements.

28 In addition to the requirements under section 4 (relating to
29 requirements for Attorney General approval), for a transaction
30 involving the transfer, restructuring or conversion of a

1 nonprofit hospital to a for-profit entity, prior to approving an
2 agreement or transaction under section 3 (relating to transfer,
3 restructure or conversion of nonprofit hospitals), the Attorney
4 General must find that the proposal meets the following
5 requirements:

6 (1) A charitable trust shall be set aside equal to the
7 fair market value of the nonprofit hospital. Fair market
8 value shall be determined at the time of conversion,
9 determined as if it had voting stock outstanding and 100% of
10 its stock were freely transferable and available for purchase
11 without restrictions. Consideration shall be given to market
12 value, investment or earnings value, net asset value and a
13 control premium, if any. The Attorney General may permit all
14 or a portion of the consideration conveyed to the charitable
15 organization to consist of stock of the corporation for
16 profit.

17 (2) The charitable trust distribution shall be dedicated
18 to an existing or new tax-exempt organization operating
19 pursuant to section 501(c)(3) or (4) of the Internal Revenue
20 Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3) and
21 (4)). In either instance the charitable foundation shall be
22 subject to the restrictions and limitations that apply to
23 private foundations found in sections 4941 through 4945 of
24 the Internal Revenue Code of 1986, whether or not the
25 charitable organization is classified as a private foundation
26 under section 509 of the Internal Revenue Code of 1986.

27 (3) Each nonprofit charitable corporation receiving the
28 charitable assets, its directors, officers and staff shall be
29 and remain independent of the for-profit hospital or mutual
30 benefit corporation and any of their affiliates. No more than

1 50% of the persons who are officers, directors or staff
2 members of the nonprofit hospital at the time the plan is
3 submitted or at the time of the agreement or transaction, or
4 thereafter, shall be qualified to be an officer or director
5 of the nonprofit charitable corporation receiving the
6 charitable assets. No director, officer, agent or employee of
7 the nonprofit hospital submitting the plan or the nonprofit
8 charitable corporation receiving the charitable assets shall
9 benefit directly or indirectly from the agreement or
10 transaction.

11 (4) The nonprofit charitable corporation receiving the
12 charitable assets must put mechanisms in place to avoid
13 conflicts of interest and to prohibit grants benefiting the
14 board of directors and management and grants benefiting the
15 nonprofit hospital or mutual benefit corporation or entity.

16 (5) The charitable mission and grant-making functions of
17 the charitable corporation receiving the charitable trust
18 assets shall be dedicated to serving the community's unmet
19 health care and wellness needs, particularly with regard to
20 medically uninsured and underserved populations, and shall
21 focus on improving health and wellness, including improving
22 access to services, enhancing quality of care and addressing
23 prevention and health promotion.

24 (6) The governing body of the entity receiving the
25 charitable assets is made up of an appropriate number of
26 individuals with experience in pertinent areas, such as
27 foundations, health care, business, labor, community
28 programs, financial management, legal, accounting, grant-
29 making and public members broadly representative of diverse
30 populations of the affected community.

1 (7) The transaction does not have the likelihood of
2 creating an adverse effect on the availability and
3 affordability of health care services to the affected
4 community and sufficient safeguards are included to assure
5 appropriate access to health care for traditionally
6 underserved populations in the affected community.

7 (8) The board of directors of the nonprofit hospital
8 exercised due diligence in deciding to dispose of the
9 hospital's assets, selecting the acquiring entity and
10 negotiating the terms and conditions of the transaction.

11 (9) The transacting parties have committed to assuring
12 the continuation of collective bargaining rights, if
13 applicable, and the continuation of existing employee
14 contracts pending negotiation of new contracts.

15 (10) Procedures are in place for addressing the needs of
16 any employees who may be displaced by the agreement or
17 transaction, including timely notice of the proposed
18 agreement or transaction and access to training and
19 employment resources.

20 (11) Procedures and safeguards are in place to insure
21 that ownership interests are not used as incentives for
22 decisions adversely affecting individuals seeking health
23 services.

24 (12) Management contracts made as part of the proposed
25 agreement or transaction are at fair market value.

26 (13) The Attorney General shall retain continuing
27 oversight authority over the charitable corporation receiving
28 the charitable assets. The charitable corporation receiving
29 the charitable assets shall provide the Attorney General with
30 an annual report of its grant-making and other charitable

activities related to its use of the charitable assets received. The annual report shall be made available to the public at both the Office of Attorney General and the office of the nonprofit charitable corporation.

Section 6. Duties of Attorney General.

(a) Contracts.--In connection with the duty to approve or disapprove agreements and transactions under section 3 (relating to transfer, restructure or conversion of nonprofit hospitals) the Attorney General shall, when appropriate:

(1) Contract with, consult and receive advice from any State agency.

(2) Contract with independent experts or consultants to assist in reviewing the proposed agreement or transaction.

(b) Amount of costs.--Contract costs shall not exceed an amount that is necessary to conduct the review and evaluation. The Attorney General may charge one or more transacting parties for the cost of experts or consultants engaged by the Attorney General to effectuate the purposes of this act.

Section 7. Judicial review.

The notice of decision by the Attorney General under section 4 (relating to requirements for Attorney General approval) shall be subject to judicial review by the court at the initiation of the nonprofit hospital or any person who may be party to the proceedings. Any person adversely affected by the notice of decision shall be considered a party to the proceeding, including consumers or community groups representing the citizens of this Commonwealth.

Section 8. Violations.

(a) Hearing.--If the Attorney General receives information of any violation of the notice, review or approval requirements

1 of this act, the Attorney General shall hold a hearing upon ten
2 days' notice to the affected parties. If after the hearing the
3 Attorney General determines that the information is true, the
4 Attorney General may withhold, revoke or suspend the hospital's
5 license issued or to be issued and take other appropriate action
6 as may be provided by law. The authorization to withhold, revoke
7 or suspend the hospital's license also applies to the failure to
8 uphold commitments made during the approval process.

9 (b) Civil penalty.--Transactions entered into in violation
10 of the notice, review or approval requirements of this act shall
11 be void and each member of the governing boards and the chief
12 financial officers of the parties to the transaction may be
13 subject to a civil penalty of up to \$1,000,000, the amount to be
14 determined by the court of common pleas in the county in which
15 the nonprofit hospital's assets to be transferred are located.
16 The Attorney General shall institute proceedings to impose such
17 a penalty. The authorization to impose civil penalties also
18 applies to failure of the parties to the transaction to uphold
19 commitments made during the approval process.

20 Section 9. Effective date.

21 This act shall take effect in 60 days.