
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1693 Session of
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STABACK, LAUGHLIN, MUNDY AND PISTELLA, JUNE 18, 1997

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES,
JUNE 18, 1997

AN ACT

1 Providing for approval by the Department of Health of
2 acquisitions of nonprofit hospitals, for hearings, for steps
3 to safeguard value of charitable assets and for
4 responsibilities of Secretary of the Commonwealth and
5 Attorney General.

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6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Nonprofit
10 Hospital Acquisition Law.

11 Section 2. Legislative findings.

12 The health of the people of this Commonwealth is a very
13 important public concern. The Commonwealth has an interest in
14 assuring the continued existence of accessible, affordable
15 health care facilities that are responsive to the needs of the
16 communities which they serve. The Commonwealth also has a
17 responsibility to protect the public interest in nonprofit
18 hospitals and to clarify the responsibilities of local public
19 hospital officials with respect to local public assets of those
20 hospitals by making certain that the charitable and public
21 assets are managed prudently and safeguarded consistent with
22 their mission under the laws governing nonprofit and municipal
23 corporations.

24 Section 3. Definitions.

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

28 "Acquisition." An acquisition by a person of an interest in
29 a nonprofit hospital, whether by purchase, merger, lease, gift,
30 joint venture or otherwise, which results in a change of

1 ownership or control of 20% or more of the assets of a hospital,
2 or which results in the acquiring person's holding or
3 controlling 50% or more of the assets of the hospital. The term
4 does not include an acquisition if the acquiring person:

5 (1) Is a nonprofit corporation having a substantially
6 similar charitable health care purpose as the nonprofit
7 corporation from whom the hospital is being acquired, or is a
8 government entity.

9 (2) Is exempt from Federal Income Tax under section
10 501(c)(3) of the Internal Revenue Code of 1986 (Public Law
11 99-514, 26 U.S.C. § 501(c)(3)), or is a government entity.

12 (3) Will maintain representation of the affected
13 community on the local board of the hospital.

14 "Department." The Department of Health of the Commonwealth.

15 "Hospital." An institution having an organized medical staff
16 established for the purpose of providing to inpatients, by or
17 under the supervision of physicians, diagnostic and therapeutic
18 services for the care of persons who are injured, disabled,
19 pregnant, diseased, sick or mentally ill or rehabilitation
20 services for the rehabilitation of persons who are injured,
21 disabled, pregnant, diseased, sick or mentally ill. The term
22 includes facilities for the diagnosis and treatment of disorders
23 within the scope of specific medical specialties, but not
24 facilities caring exclusively for the mentally ill.

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

28 "Person." An individual, trust or estate, partnership,
29 corporation, association, limited liability company, joint stock
30 company or insurance company.

1 Section 4. Department approval required.

2 (a) General rule.--A person may not engage in the
3 acquisition of a nonprofit hospital without first having applied
4 for and received approval of the department under this act.

5 (b) Application.--An application shall be submitted to the
6 department on forms provided by the department and at a minimum
7 must include:

8 (1) The name of the hospital being acquired.

9 (2) The name of the acquiring person or other parties to
10 the acquisition.

11 (3) The acquisition price.

12 (4) A copy of the acquisition agreement.

13 (5) A financial and economic analysis and report from an
14 independent expert or consultant of the effect of the
15 acquisition under the criteria in section 8.

16 (6) Copies of all other related documents.

17 The applications and all related documents are considered public
18 records.

19 (c) Fees.--The department shall charge an applicant fees
20 sufficient to cover the costs of implementing this act. The fees
21 shall include the cost of the Attorney General's opinion under
22 section 7. The department shall transfer this portion of the
23 fee, upon receipt, to the Attorney General.

24 Section 5. Review and notice.

25 (a) Review of application.--The department, in consultation
26 with the Attorney General, shall determine if the application is
27 complete for the purposes of review. The department may find
28 that an application is incomplete if a question on the
29 application form has not been answered in whole or in part, or
30 has been answered in a manner that does not fairly meet the

1 question addressed, or if the application does not include
2 attachments of supporting documents as required under section 4.
3 If the department determines that an application is incomplete,
4 it shall notify the applicant within 15 working days after the
5 date the application was received stating the reasons for its
6 determination of incompleteness, with reference to the
7 particular questions for which a deficiency is noted.

8 (b) Notice.--Within five working days after receipt of a
9 completed application, the department shall publish notice of
10 the application in a newspaper of general circulation in the
11 county or counties where the hospital is located and shall
12 notify by first class United States mail, electronic mail or
13 facsimile transmission any person who has requested notice of
14 the filing of such applications. The notice must state that an
15 application has been received, state the names of the parties to
16 the agreement, describe the contents of the application and
17 state the date by which a person may submit written comments
18 about the application to the department.

19 Section 6. Hearings.

20 (a) General rule.--During the course of review under this
21 act, the department shall conduct one or more public hearings,
22 at least one of which shall be in the county where the hospital
23 to be acquired is located. At the hearings, anyone may file
24 written comments and exhibits or appear and make a statement.
25 The department may subpoena additional information or witnesses,
26 require and administer oaths, require sworn statements, take
27 depositions and use related discovery procedures for purposes of
28 the hearing and at any time prior to making a decision on the
29 application.

30 (b) Time of hearings.--A hearing must be held not later than

1 45 days after receipt of a completed application. At least 10
2 days' public notice must be given before the holding of a
3 hearing.

4 Section 7. Procedure.

5 (a) Attorney General review.--The department shall provide
6 the Attorney General with a copy of a completed application. The
7 Attorney General shall review the completed application and
8 within 45 days of the first public hearing held under section 5
9 shall provide a written opinion to the department as to whether
10 or not the acquisition meets the requirements for approval under
11 section 8.

12 (b) Duties of department.--The department shall review the
13 completed application to determine whether or not the
14 acquisition meets the requirements for approval in sections 8
15 and 9. Within 30 days after receiving the written opinion of the
16 Attorney General under subsection (a), the department shall:

17 (1) approve the acquisition, with or without any
18 specific modifications or conditions; or

19 (2) disapprove the acquisition.

20 (c) Conditions.--The department may not make its decision
21 subject to any condition not directly related to requirements in
22 section 8 or 9, and any condition or modification must bear a
23 direct and rational relationship to the application under
24 review.

25 (d) Appeal.--A person engaged in an acquisition and affected
26 by a final decision of the department has the right to an appeal
27 under 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of
28 Commonwealth agency action). The opinion of the Attorney General
29 provided under subsection (a) does not constitute a final
30 decision for purposes of review.

1 (e) Extension of deadline.--The department or the Attorney
2 General may, for good cause, extend by not more than 30 days any
3 deadline established under this act one time during
4 consideration of any application.

5 Section 8. Steps to safeguard value of charitable assets.

6 The department shall approve an application only if the
7 parties to the acquisition have taken the proper steps to
8 safeguard the value of charitable assets and ensure that any
9 proceeds from the acquisition are used for appropriate
10 charitable health purposes. The department may not approve an
11 application unless, at a minimum, it determines that:

12 (1) The acquisition is permitted under 15 Pa.C.S. Pt. II
13 Subpt. C (relating to nonprofit corporations) and other laws
14 governing nonprofit entities, trusts or charities.

15 (2) The nonprofit corporation which owns the hospital
16 being acquired has exercised due diligence in authorizing the
17 acquisition, selecting the acquiring person and negotiating
18 the terms and conditions of the acquisition.

19 (3) The procedures used by the nonprofit corporation's
20 board of trustees and officers in making its decision
21 fulfilled their fiduciary duties, that the board and officers
22 were sufficiently informed about the proposed acquisition and
23 possible alternatives and that they used appropriate expert
24 assistance.

25 (4) No conflict of interest exists related to the
26 acquisition, including, but not limited to, conflicts of
27 interest related to board members and executives of and
28 experts retained by the nonprofit corporation, acquiring
29 person or other parties to the acquisition.

30 (5) The nonprofit corporation will receive fair market

1 value for its assets. The Attorney General or the department
2 may employ, at the expense of the acquiring person,
3 reasonably necessary expert assistance in making this
4 determination. This expense is in addition to the fees
5 charged under section 4.

6 (6) Charitable funds will not be placed at unreasonable
7 risk if the acquisition is financed in part by the nonprofit
8 corporation.

9 (7) Any management contract under the acquisition will
10 be for fair market value.

11 (8) The proceeds from the acquisition will be controlled
12 as charitable funds independently of the acquiring person or
13 parties to the acquisition and will be used for charitable
14 health purposes consistent with the nonprofit corporation's
15 original purpose, including providing health care to the
16 disadvantaged, the uninsured and the underinsured and
17 providing benefits to promote improved health in the affected
18 community.

19 (9) Any charitable entity established to hold the
20 proceeds of the acquisition will be broadly based in and
21 representative of the community where the hospital to be
22 acquired is located, taking into consideration the structure
23 and governance of the entity.

24 (10) A right of first refusal to repurchase the assets
25 by a successor nonprofit corporation or foundation has been
26 retained if in event the hospital is subsequently sold to,
27 acquired by or merged with another entity.

28 Section 9. Approval of application.

29 The department shall approve an application only if the
30 acquisition in question will not detrimentally affect the

1 continued existence of accessible, affordable health care
2 responsive to the needs of the community in which the hospital
3 to be acquired is located. To this end, the department shall not
4 approve an application unless, at a minimum, it determines that:

5 (1) Sufficient safeguards are included to assure the
6 affected community continued access to affordable care, and
7 alternative sources of care are available in the community
8 should the acquisition result in a reduction or elimination
9 of particular health services.

10 (2) The acquisition will not result in the revocation of
11 hospital privileges.

12 (3) Sufficient safeguards are included to maintain
13 appropriate capacity for health science research and health
14 care provider education.

15 (4) The acquiring person and parties to the acquisition
16 are committed to providing health care to the disadvantaged
17 and the uninsured and the underinsured and to providing
18 benefits to promote improved health in the affected
19 community. Activities and funding provided under section 8
20 may be considered in evaluating compliance with this
21 commitment.

22 (5) Sufficient safeguards are included to avoid conflict
23 of interest in patient referral.

24 Section 10. Responsibilities of Secretary of the Commonwealth
25 and Attorney General.

26 (a) Secretary of the Commonwealth.--The Secretary of the
27 Commonwealth may not accept any forms or documents in connection
28 with the acquisition of a nonprofit hospital until the
29 acquisition has been approved by the department under this act.

30 (b) Attorney General.--The Attorney General may seek an

1 injunction to prevent an acquisition not approved by the
2 department under this act.

3 Section 11. Reports.

4 (a) General rule.--The department shall require periodic
5 reports from the nonprofit corporation or its successor
6 nonprofit corporation or foundation and from the acquiring
7 person or other parties to the acquisition to ensure compliance
8 with commitments made. The department may subpoena information
9 and documents and may conduct onsite compliance audits at the
10 acquiring person's expense.

11 (b) Hearing.--If the department receives information
12 indicating that the acquiring person is not fulfilling
13 commitments to the affected community under section 9, the
14 department shall hold a hearing upon 10 days' notice to the
15 affected parties. If after the hearing the department determines
16 that the information is true, it may revoke or suspend the
17 hospital license issued to the acquiring person, refer the
18 matter to the Attorney General for appropriate action or both.
19 The Attorney General may seek a court order compelling the
20 acquiring person to fulfill its commitments under section 9.

21 Section 12. Authority of Attorney General.

22 (a) Compliance.--The Attorney General has the authority to
23 ensure compliance with commitments that inure to the public
24 interest.

25 (b) Existing authority.--No provision of this act derogates
26 from the common law or statutory authority of the Attorney
27 General.

28 Section 13. Rules and regulations.

29 The department may adopt rules and regulations necessary to
30 implement this act and may contract with and provide reasonable

1 reimbursement to qualified persons to assist in determining
2 whether the requirements of sections 8 and 9 have been met.
3 Section 14. Application.

4 An acquisition of a hospital completed before the effective
5 date of this act or an acquisition in which a certificate of
6 need has been issued by the department under Chapter 7 of the
7 act of July 19, 1979 (P.L.130, No.48), known as the Health Care
8 Facilities Act, before the effective date of this act is not
9 subject to this act.

10 Section 15. Effective date.

11 This act shall take effect in 60 days.