

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2344 Session of 2024

INTRODUCED BY BOROWSKI, TAKAC, PROBST, DONAHUE, GIRAL, SANCHEZ, MAYES, KHAN, GUENST, DELLOSO, CIRESI, WAXMAN, KRAJEWSKI, HILL-EVANS, CERRATO, KRUEGER, BOYD, DALEY, KAZEEM, O'MARA AND GREEN, MAY 28, 2024

REFERRED TO COMMITTEE ON HEALTH, MAY 28, 2024

AN ACT

1 Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An  
2 act relating to health care; prescribing the powers and  
3 duties of the Department of Health; establishing and  
4 providing the powers and duties of the State Health  
5 Coordinating Council, health systems agencies and Health Care  
6 Policy Board in the Department of Health, and State Health  
7 Facility Hearing Board in the Department of Justice;  
8 providing for certification of need of health care providers  
9 and prescribing penalties," providing for health systems  
10 protection; imposing a fine; and promulgating regulations.

11 The General Assembly of the Commonwealth of Pennsylvania  
12 hereby enacts as follows:

13 Section 1. The act of July 19, 1979 (P.L.130, No.48), known  
14 as the Health Care Facilities Act, is amended by adding a  
15 chapter to read:

16 CHAPTER 8-C

17 HEALTH SYSTEMS PROTECTION

18 Section 801-C. Definitions.

19 The following words and phrases when used in this chapter  
20 shall have the meanings given to them in this section unless the  
21 context clearly indicates otherwise:

1 "Acquired entity." The entity, or portion of an entity,  
2 acquired under an agreement or transaction.

3 "Acquisition." An agreement, arrangement or activity the  
4 consummation of which results in a person acquiring direct or  
5 indirect control of another person. The term includes the  
6 acquisition of voting securities and noncorporate interests,  
7 including assets, capital stock or membership interests or  
8 equity interests.

9 "Against the public interest." If the effect of an action  
10 includes, as determined by the Attorney General, any of the  
11 following impacts:

12 (1) Reduced competition or increased costs for health  
13 care payers, purchasers or consumers.

14 (2) Unfair methods of competition in or affecting health  
15 care commerce or unfair or deceptive acts or practices in or  
16 affecting health care commerce.

17 (3) Reduced quality of care, including the ability to  
18 offer culturally competent and appropriate care.

19 (4) Reduced access to or availability of health care for  
20 payers, purchasers or consumers.

21 (5) Reduced access to care in a rural, low-income or  
22 disadvantaged community.

23 "Agreement or transaction." An agreement or transaction as  
24 described under section 803-C(a).

25 "Attorney General." The Office of Attorney General of the  
26 Commonwealth.

27 "Capital distribution." A payment made, liability incurred  
28 or other consideration given by a target firm health system to a  
29 person for the purchase, acquisition, redemption, repurchase,  
30 payment or retirement of capital stock or other equity interest

1 of the target firm health system or as a dividend, return of  
2 capital or other distribution in respect of the target firm  
3 health system's capital stock or other equity interest.

4 "Community health needs assessment." An assessment that  
5 complies with the requirements of 26 U.S.C. § 501(r)(3)  
6 (relating to exemption from tax on corporations, certain trusts,  
7 etc.).

8 "Contracting affiliation." As follows:

9 (1) The formation of a relationship between two or more  
10 entities that permits any of the following:

11 (i) The entities to negotiate jointly with carriers  
12 or third-party administrators over rates for professional  
13 medical services.

14 (ii) One entity to negotiate on behalf of the other  
15 entity with carriers or third-party administrators over  
16 rates for professional medical services.

17 (2) The term does not include an arrangement among  
18 entities under common ownership.

19 "Health system." One or more health care facilities that are  
20 owned by a common legal entity or that have entered into an  
21 affiliation agreement to combine or coordinate delivery of  
22 health care services under a common organizational name.

23 "Material amount." An amount equal to \$10,000,000 or more.

24 "Material change." Any of the following:

25 (1) The sale, transfer, lease or other encumbrance of a  
26 material amount of a health system's assets or operations,  
27 including real property, employment groups, emergency  
28 departments or other units.

29 (2) A merger, an acquisition or a contracting  
30 affiliation with another health system or provider

1 organization that is valued at a material amount.

2 (3) A capital distribution or similar reduction of a  
3 health system's equity capital by a material amount or the  
4 incursion of an obligation that commits the health system to  
5 making a capital distribution or similar reduction of equity  
6 by a material amount.

7 "Merger." A consolidation of two or more organizations,  
8 including two or more organizations joining through a common  
9 parent organization, or two or more organizations forming a new  
10 organization. The term does not include a corporate  
11 reorganization.

12 "Person." As defined in 1 Pa.C.S. § 1991 (relating to  
13 definitions).

14 "Provider organization." A person or organized group of  
15 persons, whether incorporated or not, which is in the business  
16 of health care delivery or management and that represents seven  
17 or more physicians in contracting with carriers or third-party  
18 administrators for the payment of health care services. The term  
19 includes a physician organization, physician-hospital  
20 organization, independent practice association, provider network  
21 or accountable care organization.

22 Section 802-C. Transactions against public interest.

23 (a) General rule.--Except as provided under subsection (b),  
24 a person may not enter into an agreement or transaction  
25 involving a material change with a health system or provider  
26 organization in a manner that is against the public interest.

27 (b) Exception.--An action prohibited under subsection (a)  
28 may be permitted when, as determined by the Attorney General,  
29 there is no feasible alternative to prevent a health system's  
30 closure or a greater loss of health services.

1 Section 803-C. Filing.

2 (a) General rule.--A health system or provider organization  
3 shall file a notification in accordance with subsection (c) and  
4 shall observe the waiting period under subsection (b) prior to  
5 entering into an agreement or transaction that results in a  
6 material change.

7 (b) Waiting period.--A health system or provider  
8 organization shall undergo a waiting period prior to entering  
9 into an agreement or transaction, which shall:

10 (1) begin on the date of receipt by the Attorney General  
11 of:

12 (i) the notification required under subsection (c);  
13 or

14 (ii) if notification is not completed, the  
15 notification to the extent completed and a statement of  
16 the reasons for noncompliance with subsection (c) from  
17 both persons; and

18 (2) end:

19 (i) ninety days following the date of receipt under  
20 paragraph (1) for all agreements or transactions; or

21 (ii) on a later date as may be prescribed under  
22 subsection (d) or section 808-C.

23 (c) Notice.--The notification of the transaction or  
24 agreement required under subsection (a) shall be submitted to  
25 the Attorney General on a form and in a manner developed by the  
26 Attorney General. The notification shall include all of the  
27 following:

28 (1) All organic documents, including articles of  
29 incorporation, bylaws, operating agreements and other  
30 documents related to governance and ownership of each party.

1       (2) All complete transaction documents with attachments,  
2 including collateral or ancillary agreements involving  
3 officers, directors or employees.

4       (3) All documents signed by the principals, or their  
5 agents, that are necessary to determine the proposed  
6 transaction's effect, if any, on related or subsidiary  
7 business entities, whether nonprofit or for profit.

8       (4) Any of the following that comprise part or all of  
9 the transaction:

10           (i) Asset contribution agreements.

11           (ii) Operating agreements.

12           (iii) Management contracts.

13       (5) All information necessary to evaluate the effects of  
14 the transaction on each component of an integrated delivery  
15 system if that transaction involves a hospital, including any  
16 changes in contracts between the integrated delivery system  
17 entities and related physician groups.

18       (6) All financial documents of the transaction parties  
19 and related entities, if applicable, including audited  
20 financial statements, ownership records, business projection  
21 data, current capital asset valuation data and any records  
22 upon which future earnings, existing asset values and fair  
23 market value analysis can be based.

24       (7) All fairness opinions and independent valuation  
25 reports of the assets and liabilities of the parties,  
26 prepared on the parties' behalf.

27       (8) A list of all donor restricted assets, together with  
28 origination documents and current fund balances.

29       (9) All relevant contracts that may affect value,  
30 including business contracts and employee contracts, such as

1 buy-out provisions, profit-sharing agreements and severance  
2 packages.

3 (10) All information and representations disclosing  
4 related party transactions that are necessary to assess  
5 whether the transaction is at arm's length or involves self-  
6 dealing.

7 (11) All documents relating to noncash elements of the  
8 transaction, including pertinent valuations of security for  
9 loans and stock restrictions.

10 (12) All tax-related information, including the  
11 existence of tax-free debt subject to redemption and  
12 disqualified person transactions yielding tax liability.

13 (13) A list of ongoing litigation, including full court  
14 captions, involving the transaction parties or their related  
15 entities, that may affect the interests of the parties.

16 (14) All information in the possession of the  
17 transacting parties relative to the perspective of the health  
18 system's patient base and communities served, or their  
19 representatives.

20 (15) All information, including internal and external  
21 reports and studies, bearing on the effect of the proposed  
22 transaction on the availability or accessibility of health  
23 care in the affected community.

24 (16) A complete list of all insurance plans under  
25 contract and their expiration dates.

26 (17) Organizational charts of the parties to the  
27 transaction, as they exist both pre-consummation and post-  
28 consummation of the transaction, detailing the relationship  
29 between the principal parties, including any subsidiary.

30 (18) All additional documents that the Attorney General

1 deems necessary for review purposes.

2 (d) Additional information and waiting period extensions.--

3 (1) The Attorney General may, prior to the expiration of  
4 the waiting period under subsection (b), require the  
5 submission of additional information or documentary material,  
6 including a community health needs assessment, from a person  
7 required to file notification under subsection (c), or from  
8 any officer, director, partner, agent or employee of the  
9 person.

10 (2) The Attorney General may, in its discretion, extend  
11 the waiting period under subsection (b) for an additional 30  
12 days for a transaction after the date on which the Attorney  
13 General receives either of the following from a person to  
14 whom a request is made under paragraph (1):

15 (i) all of the additional information and  
16 documentary material requested; or

17 (ii) if the request is not fully complied with, the  
18 information and documentary material submitted and a  
19 statement of the reasons for the noncompliance.

20 (3) A further extension of the waiting period required  
21 under subsection (b) must be granted by a court in accordance  
22 with section 806-C(2)(ii).

23 (e) Right-to-Know Law.--A document provided to the Attorney  
24 General under this chapter shall be exempt from public access  
25 under the act of February 14, 2008 (P.L.6, No.3), known as the  
26 Right-to-Know Law.

27 Section 804-C. Public hearings and notice.

28 (a) General rule.--Prior to the expiration of the respective  
29 waiting period under section 803-C(b), along with any extension  
30 granted under section 803-C(d), the Attorney General shall



1 conduct one or more public hearings on the proposed agreement or  
2 transaction.

3 (b) Format.--A public hearing required under subsection (a)  
4 shall be live-streamed on the Attorney General's publicly  
5 accessible Internet website. A video recording of the public  
6 hearing shall be posted on the Attorney General's publicly  
7 accessible Internet website.

8 (c) Specific entities.--If any agreement or transaction  
9 involves acquiring a provider organization or a hospital or  
10 hospital system, the Attorney General shall hold a public  
11 hearing in any county in which the acquired entity is located to  
12 hear comments from interested parties. Interested parties shall  
13 include legal aid and health advocacy organizations within a  
14 county in which the acquired entity is located. The Attorney  
15 General may request testimony at a hearing from State agencies  
16 subject to section 807-C(c).

17 (d) Notice.--At least 14 days before the date of the public  
18 hearing, the Attorney General shall provide written notice of  
19 the date, time and place of the public hearing:

20 (1) on the Attorney General's publicly accessible  
21 Internet website;

22 (2) through social and broadcast media;

23 (3) through publication in one or more newspapers of  
24 general circulation in the affected community; and

25 (4) to the governing body of each county in which the  
26 acquired entity is located.

27 (e) Substantive changes to proposal.--If a substantive  
28 change in the agreement or transaction is submitted to the  
29 Attorney General after the initial public hearing, the Attorney  
30 General may conduct an additional public hearing to hear

1 comments from interested parties with respect to the change.  
2 Section 805-C. Determination and restraining prohibited  
3 transactions.

4 (a) Determination.--No later than the final date of  
5 expiration of the respective waiting period under section 803-  
6 C(b), along with any extension granted under section 803-C(d),  
7 the Attorney General shall determine whether the proposed  
8 agreement or transaction is against the public interest.

9 (b) Action.--If the Attorney General determines that the  
10 proposed agreement or transaction is against the public interest  
11 under subsection (a), the Attorney General may commence an  
12 action in a court of competent jurisdiction to enjoin the  
13 agreement or transaction.

14 (c) Licensing.--A State license of a health care facility  
15 shall not be revoked, denied, impeded or cited for noncompliance  
16 due solely to a filing or review under this chapter.

17 Section 806-C. Civil penalty, compliance and power of court.  
18 The following shall apply:

19 (1) In addition to any other proceeding at law, and  
20 except as provided under paragraph (2), a person, or any  
21 officer, director, partner, agency or employee of the person,  
22 who fails to comply with this chapter shall be subject to a  
23 fine of not less than \$10,000 for each day of noncompliance.

24 (2) Notwithstanding paragraph (2), a person, or any  
25 officer, director, partner, agent or employee of the person,  
26 that substantially fails to comply with the notification  
27 requirement under section 803-C(a) or any request for the  
28 submission of additional information or documentary material  
29 under section 803-C(d) within the respective waiting period,  
30 along with any extension granted under 803-C(d), the court

1 may, in its discretion, do any or all of the following:

2 (i) Order compliance.

3 (ii) Extend the waiting period until there has been  
4 substantial compliance.

5 (iii) Grant other equitable relief as the court  
6 determines necessary or appropriate.

7 Section 807-C. Powers and duties of Attorney General.

8 (a) Rules and regulations.--The Attorney General, in  
9 consultation with the department, shall promulgate rules and  
10 regulations as may be necessary to carry out and enforce the  
11 provisions of this chapter. The Attorney General and the  
12 department shall ensure that the rules and regulations of the  
13 Office of Attorney General and the department are not in  
14 conflict.

15 (b) Contracts.--

16 (1) The Attorney General may do the following:

17 (i) Contract with, share information with and  
18 consult and receive advice from any Federal agency or  
19 Commonwealth agency as the Attorney General deems  
20 appropriate to implement this chapter.

21 (ii) At the Attorney General's sole discretion,  
22 contract with experts or consultants to assist in  
23 reviewing the proposed agreement or transaction.

24 (2) The cost of a contract entered into under paragraph  
25 (1) must be an amount that is reasonable and necessary to  
26 conduct the review and evaluation. The following shall apply:

27 (i) A contract shall be on a noncompetitive bid  
28 basis.

29 (ii) Upon request, the Attorney General shall be  
30 paid promptly by the entities seeking consent for all

1 contract costs.

2 (3) The Attorney General shall be entitled to  
3 reimbursement from the entities seeking consent for the  
4 agreement or transaction for all actual, reasonable and  
5 direct costs incurred in reviewing, evaluating and making a  
6 determination under section 805-C(a), including  
7 administrative costs. The entities seeking consent shall  
8 promptly pay the Attorney General, upon request, for all the  
9 costs.

10 (c) Agency cooperation.--The Department of Aging, the  
11 department, the Department of Human Services and the Insurance  
12 Department shall assist the Attorney General in reviewing the  
13 proposed agreement and transaction, if requested, and shall  
14 promptly comply with any request for testimony or information.  
15 Section 808-C. Construction.

16 This chapter shall not be construed to:

17 (1) narrow, abrogate or otherwise alter the authority of  
18 the Attorney General to maintain competitive markets and  
19 prosecute or enforce violations of antitrust and unfair trade  
20 practices laws; or

21 (2) prohibit any Federal agency, Commonwealth agency or  
22 other state agency from regulating an agreement or  
23 transaction or joining as party in an action seeking to  
24 enjoin an agreement or transaction.

25 Section 809-C. Severability.

26 The provisions of this chapter are severable. If any  
27 provision of this chapter or its application to any person or  
28 circumstance is held invalid, the invalidity shall not affect  
29 other provisions or applications of this chapter which can be  
30 given effect without the invalid provision or application.

1 Section 2. This act shall take effect in 60 days.