

CHAPTER 29

AN ACT concerning hospital transactions and amending P.L.2000, c.143.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.2000, c.143 (C.26:2H-7.11) is amended to read as follows:

C.26:2H-7.11 Additional requirements for nonprofit hospitals relative to acquisitions; exemptions; procedures.

2. In addition to the requirements of P.L.1971, c.136 (C.26:2H-1 et seq.) concerning certificate of need and licensure requirements, a nonprofit hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) shall satisfy the requirements of P.L.2000, c.143 (C.26:2H-7.10 et seq.) before applying to the Superior Court of New Jersey for approval prior to entering into a transaction that results in the acquisition of the hospital as defined in P.L.2000, c.143 (C.26:2H-7.10 et seq.). The proposed acquisition shall be subject to the prior review of the Attorney General, in consultation with the Commissioner of Health, pursuant to the provisions of this section. The Attorney General shall review the application in furtherance of his common law responsibilities as protector, supervisor, and enforcer of charitable trusts and charitable corporations.

For the purposes of P.L.2000, c.143 (C.26:2H-7.10 et seq.), "acquisition" means the purchase, lease, exchange, conversion, restructuring, merger, division, consolidation, transfer of control, or other disposition of a substantial amount of assets or operations, whether through a single transaction or series of transactions, with one or more persons or entities.

P.L.2000, c.143 (C.26:2H-7.10 et seq.) shall not apply to a nonprofit hospital if the proposed acquisition is in the usual and regular course of its activities and the Attorney General has given the nonprofit hospital a written waiver as to the proposed acquisition. As used in this section, a proposed acquisition is not in the usual and regular course of a nonprofit hospital's activities if it effects a fundamental corporate change that involves transfer of ownership or control of charitable assets or a change of the nonprofit hospital's mission or purpose.

a. (1) Within five working days of submitting an application pursuant to this section, the nonprofit hospital shall publish a notice of the proposed acquisition, in a form approved by the Attorney General, in a newspaper of general circulation in the service area of the hospital once per week for three weeks. The notice shall state the names of the parties to the agreement, describe the contents of the application to the Attorney General, and state the date by which a person may submit written comments about the application to the Attorney General.

(2) Within 30 days after receipt of an initial application, the Attorney General shall advise the applicant in writing whether the application is complete, and, if not, shall specify what additional information is required.

(3) The Attorney General shall, upon receipt of the information requested, notify the applicant in writing of the date of completion of the application.

b. Within 90 days of the date of completion of the application, the Attorney General, in consultation with the Commissioner of Health, shall review the application and support the proposed acquisition, with or without any specific modifications, or, if the Attorney General finds that it is not in the public interest, oppose the proposed acquisition. The Attorney General or commissioner may, for good cause, extend the time for review of an application submitted pursuant to this section.

The proposed 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 the Commissioner of Health determines 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.

c. In determining whether the acquisition meets the criteria of subsection b. of this section, the Attorney General shall consider:

(1) Whether the acquisition is permitted under the "New Jersey Nonprofit Corporation Act," Title 15A of the New Jersey Statutes, and other applicable State statutes governing nonprofit corporations;

(2) Whether the nonprofit hospital exercised due diligence in deciding to effectuate the acquisition, selecting the other party to the acquisition and negotiating the terms and conditions of the acquisition;

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

(4) Whether conflicts of interest were disclosed, including, but not limited to, conflicts of interest related to board members of, executives of, and experts retained by, the nonprofit hospital, purchaser, or other parties to the acquisition;

(5) Whether any management contract under the acquisition is for reasonable fair value;

(6) Whether the acquisition proceeds will be used for appropriate charitable health care purposes consistent with the nonprofit hospital's original purpose or for the support and promotion of health care, and whether the proceeds will be controlled as charitable funds independently of the purchaser or parties to the acquisition; and

(7) Any other criteria the Attorney General establishes by regulation to determine whether the proposed acquisition is in the public interest.

d. In determining whether an acquisition by any person or entity other than a corporation organized in this State for charitable purposes under Title 15A of the New Jersey Statutes meets the criteria of subsection b. of this section, the Attorney General shall consider, in addition to the criteria set forth in subsection c., the following criteria:

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

(2) Whether charitable funds are placed at unreasonable risk, if the acquisition is financed in part by the nonprofit hospital;

(3) Whether a right of first refusal has been retained to repurchase the assets by a successor nonprofit corporation or foundation if, following the acquisition, the hospital is subsequently sold to, acquired by, or merged with another entity;

(4) Whether the nonprofit hospital established appropriate criteria in deciding to pursue a conversion in relation to carrying out its mission and purposes;

(5) Whether the nonprofit hospital considered the proposed conversion as the only alternative or as the best alternative in carrying out its mission and purposes;

(6) Whether the nonprofit hospital exercised due care in assigning a value to the existing hospital and its charitable assets in proceeding to negotiate the proposed conversion;

(7) Whether officers, directors, board members, or senior management will receive future contracts in existing, new, or affiliated hospitals or foundations; and

(8) Any other criteria the Attorney General establishes by regulation to determine whether a proposed acquisition by any person or entity other than a corporation organized in

this State for charitable purposes under Title 15A of the New Jersey Statutes is in the public interest.

e. In the Attorney General's review of the proposed acquisition, the Attorney General may assess the entity proposing to acquire the nonprofit hospital for reasonable costs related to the review, as determined by the Attorney General to be necessary. Reasonable costs may include expert review of the acquisition and a process for educating the public about the acquisition and obtaining public input.

f. The Attorney General and the Commissioner of Health shall, during the course of the review pursuant to this section, hold at least one public hearing in which any person may file written comments and exhibits or appear and make a statement. The public hearing may, if the Attorney General and commissioner so agree, be conducted jointly. The commissioner may satisfy the requirements of this subsection by conducting a public hearing in conjunction with the certificate of need review process pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.). The Attorney General or the commissioner may subpoena additional information or witnesses, including, but not limited to, information about any transaction that is collateral to the proposed acquisition and any related documents, 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 pursuant to this section, and the Department of Health shall make any information in its records relating to the proposed acquisition, available for inspection at no cost to the public.

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

g. In a proposed acquisition subject to review under subsection d. of this section, the Attorney General, after consultation with the principal parties to the transaction, shall 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 at the time of the proposed acquisition as determined by the Attorney General.

h. Upon execution of a proposed acquisition subject to review under subsection d. of this section, the amount determined by the Attorney General to be set aside as a charitable obligation shall be placed in a nonprofit charitable trust or one or more existing or newly established tax-exempt charitable organizations operating pursuant to 26 U.S.C. s.501(c)(3). The charitable mission and grant-making functions of any charitable entity that receives assets pursuant to subsection g. of this section shall be dedicated to serving the health care needs of the community historically served by the predecessor nonprofit hospital. Any charitable entity that receives assets pursuant to subsection g. of this section, the directors, officers, and trustees of any such charitable entity, and the assets of any such charitable entity, including any stock involved in the acquisition, shall be independent of any influence or control by the acquiring entity, its directors, officers, trustees, subsidiaries, or affiliates.

(1) The governance of the charitable trust that results from the acquisition or of any newly established charitable organization that is to receive charitable assets pursuant to subsection g. of this section shall be subject to review and approval by the Attorney General. The governance of any existing charitable organization that is to receive charitable assets pursuant to subsection g. of this section shall be subject to review by the Attorney General. The governance of the charitable trust or the charitable organization shall be broadly based, and neither the trust or organization nor any officer, director, or senior manager of the trust or organization shall be affiliated with the acquiring entity and no officer, director, or senior

manager of the trust or organization shall be a full-time employee of State government. No officer, director, or senior manager of the trust or organization shall have been a director, officer, agent, trustee, or employee of the nonprofit hospital during the three years immediately preceding the effective date of the acquisition, unless that person can demonstrate to the satisfaction of the Attorney General that the person's assumption of the position of officer, director, or senior manager of the trust or organization would not constitute a breach of fiduciary duty or other conflict of interest.

(2) The governing body of the charitable trust or organization shall establish or demonstrate that it has in place, as the case may be, a mechanism to avoid conflicts of interest and to prohibit grants that benefit the board of directors and management of the acquiring entity or its affiliates or subsidiaries.

(3) The governing body of the charitable trust or organization shall provide the Attorney General with an annual report which shall include an audited financial statement and a detailed description of its grant-making and other charitable activities related to its use of the charitable assets received pursuant to P.L.2000, c.143 (C.26:2H-7.10 et seq.). The annual report shall be made available to the public at both the Attorney General's office and the office of the charitable trust or organization. Nothing contained in P.L.2000, c.143 (C.26:2H-7.10 et seq.) shall affect the obligations of an entity possessing endowment funds under P.L.1975, c.26 (C.15:18-15 et seq.).

(4) (a) Upon notice to the Attorney General, and the nonprofit charitable entity or entities into which charitable assets were placed pursuant to this subsection, in the case of a nonprofit hospital previously acquired at any time after November 2, 2000 by any person or entity other than a corporation organized in this State for charitable purposes under Title 15A of the New Jersey Statutes in accordance with P.L.2000, c.143 (C.26:2H-7.10 et seq.), which is subsequently acquired by a charitable entity that operates a nonprofit hospital that in purpose, form and function is equivalent to the previously acquired nonprofit hospital and serves the same population served by the previously acquired nonprofit hospital, any remaining charitable assets that were placed in a nonprofit charitable entity pursuant to subsection h. of this section shall be subject to review by the Superior Court to determine whether allocating such assets to the nonprofit charitable entity acquiring the previously acquired nonprofit hospital would be more consistent with the previously acquired nonprofit hospital's original purpose. The Attorney General may submit to the court a recommendation concerning an application for allocation of assets authorized pursuant to this subparagraph.

(b) Upon notice to the Attorney General and the nonprofit charitable entity or entities into which charitable assets were placed pursuant to this subsection, in the case of establishment or operation by a charitable entity of a nonprofit hospital that in purpose, form and function is equivalent to and serves the same population served by a nonprofit hospital previously acquired at any time after November 2, 2000 by any person or entity other than a corporation organized in this State for charitable purposes under Title 15A of the New Jersey Statutes in accordance with P.L.2000, c.143 (C.26:2H-7.10 et seq.), which resulted in the placement of charitable assets in a nonprofit charitable entity pursuant to subsection h. of this section, any remaining charitable assets from such placement shall be subject to review by the Superior Court to determine whether allocating such assets to the nonprofit charitable entity establishing or operating the equivalent nonprofit hospital would be more consistent with the previously acquired nonprofit hospital's original purpose. The Attorney General may submit to the court a recommendation concerning an application for allocation of assets authorized pursuant to this subparagraph.

(c) For purposes of this subsection, "remaining charitable assets" means charitable assets that were placed in a nonprofit charitable entity pursuant to this subsection that:

(i) remain in the possession of the charitable entity and have not been disbursed by that entity and already used for the purpose of serving the health care needs of the community historically served by the predecessor nonprofit hospital; or

(ii) have at any time before, on or after the effective date of P.L.2014, c.82 been transferred by the nonprofit charitable entity to a donor-advised fund, or to any other entity, to use as recommended or as required by the nonprofit charitable entity, and have not been disbursed by that fund or entity and already used for the purpose of serving the health care needs of the community historically served by the predecessor nonprofit hospital.

i. (1) The entity acquiring the nonprofit hospital, if determined to be necessary by the Commissioner of Health, shall provide funds, in an amount determined by the Commissioner of Health, for the hiring by the Department of Health of an independent health care access monitor to monitor and report quarterly to the Department of Health on community health care access by the entity, including levels of uncompensated care for indigent persons provided by the entity. The funding shall be provided for three years after the date of the acquisition. The entity acquiring the hospital shall provide the monitor with appropriate access to the entity's records in order to enable the monitor to fulfill this function.

To prevent the duplication of any information already reported by the entity, the monitor shall, to the extent possible, utilize data already provided by the entity to the Department of Health.

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

(2) Following the monitoring period, or in the event that no monitoring period is established, if the Commissioner of Health receives information indicating that the acquiring entity is not fulfilling its commitment to the affected service area pursuant to P.L.2000, c.143 (C.26:2H-7.10 et seq.) and determines that the information is true, the commissioner shall order the acquiring entity to comply with a corrective action plan. The commissioner shall retain oversight of the acquiring entity's obligations under the corrective action plan for as long as necessary to ensure compliance with P.L.2000, c.143 (C.26:2H-7.10 et seq.).

j. The trustees and senior managers of the nonprofit hospital are prohibited from investing in the acquiring entity for a period of three years following the acquisition.

k. No director, officer, agent, trustee, or employee of the nonprofit hospital shall benefit directly or indirectly from the acquisition, including the receipt of any compensation directly related to the proposed acquisition.

l. Upon completion by the Attorney General of the review of the application required by P.L.2000, c.143 (C.26:2H-7.10 et seq.), the nonprofit hospital shall apply to the Superior Court for approval of the proposed acquisition. In that proceeding, the Attorney General shall advise the court as to whether the Attorney General supports or opposes the proposed acquisition, with or without any specific modifications, and the basis for that position. Any person who filed a written comment or exhibit or appeared and made a statement in the public hearing held by the Attorney General pursuant to subsection f. of this section shall be considered a party to the proceeding, including consumers or community groups representing the citizens of the State.

m. Notwithstanding the provisions of subsections a. and f. of this section to the contrary, in the event that the Attorney General or the Commissioner of Health determines that a proposed acquisition should be considered on an expedited basis in order to preserve the

quality of health care provided to the community, the Attorney General and the commissioner may combine the public notice about the acquisition with the notice for a public hearing as required in subsections a. and f., respectively, and may reduce the period of time required for notice, as necessary. In considering a proposed acquisition on an expedited basis, the Attorney General and commissioner may agree to reduce the period of time for review of a completed application to less than 90 days.

n. The Attorney General, in consultation with the Commissioner of Health, shall adopt regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to carry out the purposes of P.L.2000, c.143 (C.26:2H-7.10 et seq.).

2. This act shall take effect immediately.

Approved May 30, 2018.