

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 3288

By: Roberts

AS INTRODUCED

An Act relating to public health; creating the Community Hospital Preservation and Equity Protection Act; providing for short title and purpose; providing definitions; authorizing certain transactions only in certain manner; establishing certain procedures; requiring certain notice and public hearing; establishing certain time frames; requiring certain information related to certain transactions; expanding the duties and responsibilities of the Attorney General; requiring certain determinations; establishing certain criteria; authorizing the retention of certain experts for certain purposes; requiring certain reimbursements; making certain requirements related to the proceeds of certain transactions; providing for certain appeals; establishing procedures; authorizing certain actions by the court; providing for certain limitations; prohibiting certain actions related to certain transactions by certain persons; establishing penalties; authorizing certain legal actions enforcing the Community Hospital Preservation and Equity Protection Act; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-725.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Sections 1 through 7 of this act shall be known and may be cited as the "Community Hospital Preservation and Equity Protection Act".

B. The purpose of the Community Hospital Preservation and Equity Protection Act is:

1. To respect and protect the past, present and future private and foundation financial contributions to a community hospital by the community in which the hospital is located;

2. To protect community hospitals against debt that is not directly related to the operation, debt services, expansion and proportionate corporate administrative costs of the community hospital;

3. To protect the freedom of a community hospital to meet the identified needs of the community in which the hospital is located, to expand local programs and services with assets generated by the community hospital, and to assure the quality of care provided to the patrons of the hospital; and

4. When the ownership of a community hospital is transferred to another corporate entity, to protect the community hospital and the local community from corporate strategies or actions that are inconsistent with or detrimental to the community hospital or local community.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-725.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Community Hospital Preservation and Equity Protection Act:

1. "Community hospital" means a hospital, as defined in Section 1-701 of Title 63 of the Oklahoma Statutes that:

- a. is owned or operated by a corporation organized under the nonprofit corporation law of this or another state,
- b. was established as a city, municipal or county trust hospital, or
- c. was established with federal funds, commonly referred to as "Hill-Burton Grants", pursuant to Sections 1-710 through 1-720 of Title 63 of the Oklahoma Statutes.

2. "Fair market value" means the price that the assets being transferred would bring in a competitive and open market under a fair sale with the buyer and seller acting prudently, knowledgeably, and in their own best interest and a reasonable time being allowed for exposure in the market. The term "fair market value" also means related tangible and intangible assets, including but not limited to real estate, property, art, stocks and bonds, independent trust funds, and documented volunteer hours;

3. "Nonprofit combination" means a transaction between a community hospital and another unrelated nonprofit health care entity;

4. "Party" includes a community hospital that is the subject of a transaction or proposed transaction, an acquiring person, and the resulting entity, if any;

5. "Transaction" means:

- a. a transfer of ownership or control of assets of a community hospital, whether by purchase, merger,

consolidation, lease, gift, joint venture, or other transfer, including any binding obligation in furtherance of the transaction, that is equal to at least twenty percent (20%) of the assets of the community hospital and occurs in the twenty-four-month period prior to the date notice is submitted to the Attorney General in accordance with Section 3 of this act,

b. a transfer of ownership or control of any assets of a community hospital, whether by purchase, merger, consolidation, lease, gift, joint venture, or other transfer, including any binding obligation in furtherance of the transaction, if the entity is unable to fulfill its stated or actual purpose without the assets, or

c. a nonprofit combination.

"Transaction" does not include a transfer of ownership or control of assets of a community hospital in relation to which the community hospital, prior to the effective date of this act, has entered into a consent decree with the Attorney General that requires distribution of the charitable assets of the community hospital to an appropriate health-related charity and shall not include any transaction complete prior to the effective date of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-725.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No community hospital shall enter into a transaction as defined by Section 2 of this act except in accordance with the provisions of this act.

B. A community hospital proposing to enter into a transaction shall provide notice of the proposed transaction to the Attorney General as provided by this section. The notice shall be submitted

on forms provided by the Attorney General and in accordance with rules promulgated by the Attorney General. The notice shall include:

1. The names and addresses of the parties, including a list of all individuals who are or have been chosen as directors, officers, or board members of the parties;

2. The terms of the proposed transaction, including a summary of all contracts or other agreements of the parties;

3. The amount, source, and nature of consideration to be paid to the nonprofit health care entity, its directors, officers, board members, executives, or experts retained by the nonprofit health care entity; and

4. Any additional information required in rules promulgated by the Attorney General.

C. Not later than seven (7) days after submitting the notice and other documents required by this section, the community hospital shall publish notice of the proposed transaction and a public hearing to receive comment on the proposed use of the proceeds of the transaction.

1. The notice shall be published in at least one daily newspaper of general circulation in the county where the community hospital has its principal place of business.

2. The notice shall state the names of the parties, a description of the proposed transaction and the date, time and place of the hearing.

3. The date set for the hearing shall not be more than forty-five (45) days after the publication of the notice.

4. The community hospital shall notify the Attorney General of the date, time and place of the public hearing, and shall provide the Attorney General with a written summary of the proceedings, including, but not limited to, recommendations, comments, or other relevant information.

D. Not later than two (2) business days after the discovery of any changes in information contained in the notice or other documents required by this section, the community hospital shall provide copies to the Attorney General of any documents and other material relevant to the changes. The Attorney General may, for good cause shown, delay approval of the proposed transaction up to thirty (30) days following receipt of the documents and other material relevant to the changes.

E. The notice and all other documents or materials submitted pursuant to this section are public records.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-725.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Not later than ninety (90) days after receipt of a notice and other documents required by Section 3 of this act, the Attorney General shall approve or disapprove the proposed transaction. The Attorney General may, for good cause shown, extend this period an additional sixty (60) days. The Attorney General or a representative of the Attorney General shall attend the public hearing required by Section 3 of the Community Hospital Preservation and Equity Protection Act.

B. In determining whether to approve or disapprove a proposed transaction, the Attorney General shall consider:

1. Whether the proposed transaction will result in a breach of fiduciary duty, as determined by the Attorney General, including conflicts of interest related to payments or benefits to officers, directors, board members, executives, and experts employed or retained by the parties;

2. Whether the community hospital will receive full and fair market value for its tangible and intangible assets;

3. Whether the proceeds of the proposed transaction will be used consistent with the health care needs and interests of the community in which the community hospital is located; and

4. Any other criteria the Attorney General considers necessary to effectuate the purposes of the Community Hospital Preservation and Equity Protection Act.

C. The Attorney General may retain, at the expense of the community hospital, one or more independently qualified experts, including an investment banker, actuary, appraiser, certified public accountant, or other expert, as the Attorney General considers reasonably necessary to provide assistance in making a decision under this section. The community hospital shall promptly reimburse the Attorney General for the cost of retaining experts. The cost of retaining an expert shall not exceed an amount that is reasonable and necessary to make a determination under this section.

D. At any time while considering a proposed transaction under this section, the Attorney General may request any information from the community hospital in addition to the information required by Section 3 of the Community Hospital Preservation and Equity Protection Act that the Attorney General considers appropriate to determine whether the proposed transaction conforms with the purposes of the Community Hospital Preservation and Equity Protection Act. The community hospital shall provide the information no later than ten (10) days after the date of the request. The Attorney General may, for good cause shown, delay approval or disapproval of the proposed transaction up to an additional thirty (30) days following receipt of documents and other material containing the information requested.

E. The Attorney General shall approve or disapprove a proposed transaction on the basis of the criteria set forth in subsection B of this section.

F. Once a proposed transaction is approved, any substantial alteration is a new transaction subject to approval by the Attorney General.

G. The proceeds of an approved transaction shall be dedicated and transferred to one or more existing or new trust funds, the proceeds of which shall be used only for the purposes of meeting the identified health care needs of the community in which the community hospital is located.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-725.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The community hospital may resubmit a notice and other documents seeking approval of a proposed transaction disapproved by the Attorney General but may not submit a notice and other documents that are identical or substantially similar to the original submission.

B. If the Attorney General disapproves the proposed transaction, the community hospital may appeal the disapproval as provided by this section.

1. The disapproval may be appealed to the district court of the county in which the community hospital has its principal place of business and shall proceed as an appeal de novo.

2. The community hospital shall file a notice of appeal with the Attorney General and the district court not later than fifteen (15) days after receipt of notice of the Attorney General's disapproval of the transaction.

3. Not later than thirty (30) days after receipt of the notice of appeal, the Attorney General shall prepare and certify to the court a complete record of all the documents submitted by the community hospital to the Attorney General and any documents generated by consultants at the request of the Attorney General or other materials produced by the Attorney General as part of the

Attorney General's determination of whether to approve or disapprove the transaction.

C. The district court may reverse, vacate, or modify the Attorney General's decision to disapprove a transaction if the court finds that the decision was unlawful or unreasonable.

D. The judgment of the district court is final unless reversed, vacated, or modified on appeal. An appeal may be taken by either the community hospital or the Attorney General and shall proceed as otherwise provided by law for civil matters.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-725.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Community Hospital Preservation and Equity Protection Act shall not operate to limit or otherwise affect any of the following:

1. Any other civil or criminal right, claim or defense that the Attorney General or parties may assert as otherwise provided by law;

2. The authority of the Attorney General to institute and prosecute an action as otherwise provided by law; or

3. The authority of the Attorney General to investigate and prosecute violations of any state or federal antitrust law.

B. Except as specifically provided by the Community Hospital Preservation and Equity Protection Act, nothing in this act shall be construed to limit charitable trusts and charitable assets in this state.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-725.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. Whoever violates subsection A of Section 3 of the Community Hospital Preservation and Equity Protection Act shall be, upon conviction, guilty of entering into a transaction involving a

community hospital without the approval of the Attorney General, a Class F felony.

2. No person who is an officer, director, board member, or other fiduciary of a community hospital shall receive anything of substantial value that relates to a transaction defined by Section 2 of the Community Hospital Preservation and Equity Protection Act, and is of such a character as to manifest a substantial and improper influence on the person with respect to the person's duties. A violation of this paragraph shall be, upon conviction, a Class F felony.

B. The Attorney General may institute and prosecute a civil or criminal action to enforce the Community Hospital Preservation and Equity Protection Act in the district court of the county in which the community hospital has its principal place of business or the district court of Oklahoma. In addition to any existing civil remedies, a court may rescind the transaction, grant injunctive relief, assess a civil penalty in an amount not exceeding Ten Million Dollars (\$10,000,000.00), or impose any combination of these remedies.

SECTION 8. This act shall become effective November 1, 1998.

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