

SHORT TITLE: Creating the Nonprofit Hospital Sale Act;
codification; effective date; emergency.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 279

By: Monson

AS INTRODUCED

An Act relating to public health and safety; creating the Nonprofit Hospital Sale Act; stating short title; defining terms; prohibiting certain acquisition without certain application and approval; requiring certain notice; specifying contents of application; requiring certain notice to be published; providing for review and approval or disapproval of application and procedures thereto; providing for certain public hearing and procedures thereto; requiring promulgation of rules; stating conditions for determining whether certain application meets certain criteria; providing for hearing pursuant to receipt of certain information; providing for nonissuance or revocation of a license; providing for right of appeal; construing provisions of act; providing for codification; providing an effective date; and declaring an emergency.

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 1-750.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 13 of this act shall be known and may be cited as the "Nonprofit Hospital Sale Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-750.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Nonprofit Hospital Sale Act:

1. "Department" means the State Department of Health;

2. "Hospital" means any facility as defined in Section 1-701 of Title 63 of the Oklahoma Statutes;

3. "Acquisition" means any acquisition by a person or persons of an ownership or controlling interest in a hospital, whether by purchase, merger, lease, gift, or otherwise, which results in a change of ownership or control of twenty percent (20%) or greater or which results in the acquiring person or persons holding a fifty percent (50%) or greater interest in the ownership or control of a hospital, but acquisition does not include the acquisition of an ownership or controlling interest in a hospital owned by a nonprofit corporation if the transferee:

- a. is a nonprofit corporation having a substantially similar charitable health care purpose as the transferor or is a governmental entity,
- b. is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code or is a governmental entity, and
- c. will maintain representation from the affected community or the local board; and

4. "Person" means any individual, company, corporation, partnership, society, association, or other legal entity.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-750.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No person shall engage in the acquisition of a hospital owned by a nonprofit corporation without first having applied for and received the approval of the State Department of Health and without first having notified the Attorney General and, if applicable, received approval from the Attorney General pursuant to the provisions of the Nonprofit Hospital Sale Act.

B. 1. No person shall engage in the acquisition of a hospital not owned by a nonprofit corporation without first having applied for and received the approval of the Department pursuant to the act unless such acquiring person is a nonprofit corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code or is a governmental entity.

2. For purposes of the act, approval of the Department and the Attorney General, if applicable, shall not be required for the acquisition of a hospital not owned by a nonprofit corporation.

C. Any person not required to obtain the approval of the Department under the provisions of the Nonprofit Hospital Sale Act shall give the Attorney General at least thirty (30) days' notice of an impending acquisition, during which time the Attorney General may take any necessary and appropriate action consistent with his or her general duties of oversight with regard to the conduct of charities. The notice shall briefly describe the impending acquisition, including any change in ownership of tangible or intangible assets.

D. 1. The application shall be submitted to the Department and the Attorney General on forms provided by the Department and shall include:

- a. the name of the seller,
- b. the name of the purchaser or other parties to an acquisition,
- c. the terms of the proposed agreement,
- d. the sale price,
- e. a copy of the acquisition agreement,

- f. a financial and economic analysis and report from an independent expert or consultant of the effect of the acquisition under the criteria set forth in Section 7 of this act, and
- g. all other related documents;

2. A copy of the application and copies of all additional related materials shall be submitted to the Department and to the Attorney General at the same time. The application and all related documents shall be considered public records.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-750.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Within five (5) working days after receipt of an application under Section 3 of this act, the State Department of Health shall publish notice of the application in a newspaper of general circulation in the county or counties where the hospital is located, and shall notify by first-class United States mail any person who has requested notice of the filing of such applications. The notice shall state that an application has been received, state the names of the parties to the agreement, describe the contents of the application, and state the date by which a person may submit written comments about the application to the Department.

B. Within sixty (60) days after receiving an application, the Department shall review the application in accordance with the standards set forth in the Nonprofit Hospital Sale Act and approve or disapprove the acquisition pursuant to the act.

C. 1. Within twenty (20) days after receiving an application, the Attorney General shall determine whether to review the application in accordance with the provisions of Section 7 of this act and shall so notify the applicant.

2. If the Attorney General determines to review the application in accordance with the act, the Attorney General shall, within sixty

(60) days after receiving the application, review the application in accordance with the standards set forth in Section 7 of this act and approve or disapprove the acquisition.

3. If the Attorney General determines not to review the application in accordance with the act, then none of the other provisions of the act applicable to review by the Attorney General shall apply.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-750.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Department of Health and the Attorney General, if the Attorney General determines to review the acquisition, shall during the course of review pursuant to Section 4 or 6 of this act hold a public hearing in which any person may file written comments and exhibits, or appear and make a statement. The Department or the Attorney General may subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions, and use related discovery procedures for purposes of the hearing at any time prior to making a decision on the application.

B. The hearing shall be held not later than thirty (30) days after receipt of an application. The hearing shall be held upon ten (10) working days' notice, not including days the application is deemed to be incomplete.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-750.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. If the Attorney General determines to review the application, the Attorney General shall review the application in accordance with the standards enumerated in Section 7 of this act. Within sixty (60) days after receipt of an application, the Attorney General shall approve or disapprove the acquisition.

B. If the Attorney General does not act within sixty (60) days after receipt of an application, the application shall be deemed approved. If the Attorney General approves or disapproves the acquisition, the applicant, or any person who has submitted comments under Section 5 of this act, if the person has a legal interest in the hospital being acquired or in another hospital that has contracted with the acquired hospital for the provision of essential health services, may bring an action for declaratory judgment for a determination that the acquisition is or is not in the public interest as provided in Section 7 of this act.

C. The Department shall review the completed application in accordance with the standards enumerated in Section 8 of this act. Within sixty (60) days after receipt of a completed application, the Department shall:

1. Approve the acquisition, with or without any specific modifications; or
2. Disapprove the acquisition.

D. 1. The Department shall not make its decision subject to any condition not directly related to criteria enumerated in Section 8 of this act, and any condition or modification shall bear a direct and rational relationship to the application under review.

2. The Department shall adopt and promulgate rules establishing procedures by which any affected person may appeal a final decision by the Department under the Nonprofit Hospital Sale Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-750.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. If the Attorney General determines to review the application, the Attorney General shall approve the application unless approval of the acquisition is determined not to be in the public interest. An acquisition is not in the public interest unless appropriate steps have been taken to safeguard the value of

charitable assets and ensure that any proceeds of the transaction are used for appropriate charitable health care purposes as provided in paragraph 8 of this section. In determining whether the acquisition meets such criteria under the Nonprofit Hospital Sale Act, the Attorney General shall consider:

1. Whether the acquisition is permitted under the laws of this state governing nonprofit entities, trusts, or charities;

2. Whether the nonprofit hospital exercised due diligence in deciding to sell, selecting the purchaser, and negotiating the terms and conditions of the sale;

3. The procedures used by the seller in making a decision, including whether appropriate expert assistance was used;

4. Whether conflict of interest was disclosed including, but not limited to, conflicts of interest related to board members of, executives of, and experts retained by the seller, purchaser, or parties to the acquisition;

5. Whether the seller will receive reasonably fair value for its assets. The Attorney General may employ, at the seller's expense, reasonably necessary expert assistance in making this determination;

6. Whether charitable funds are placed at unreasonable risk, if the acquisition is financed in part by the seller;

7. Whether any management contract under the acquisition is for reasonably fair value;

8. Whether the sale proceeds will be used for appropriate charitable health care purposes consistent with the seller's original purpose or for the support and promotion of health care in the affected community, and whether the proceeds will be controlled as charitable funds independently of the purchaser or parties to the acquisition; and

9. Whether a right of first refusal to repurchase the assets by a successor nonprofit corporation or foundation if the hospital is

subsequently sold to, acquired by, or merged with another entity has been retained.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-750.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. In making a decision whether to approve or disapprove an application, the State Department of Health shall consider:

1. Whether sufficient safeguards are included to assure the affected community continued access to affordable care;

2. Whether the purchaser and parties to the acquisition have made a commitment to provide health care to the disadvantaged, the uninsured, and the underinsured and to provide benefits to the affected community to promote improved health care. Activities and funding provided by the seller or its successor nonprofit corporation or foundation to provide such health care may be considered in evaluating compliance with this commitment; and

3. If health care providers will be offered the opportunity to invest or own an interest in the purchaser or a related entity to the purchaser, whether procedures or safeguards are in place to avoid conflict of interest in patient referral and the nature of such procedures or safeguards.

B. This section does not apply higher standards to hospitals covered by the Nonprofit Hospital Sale Act than those applicable to hospitals not covered by the act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-750.9 of Title 63, unless there is created a duplication in numbering, reads as follows:

If the State Department of Health receives information indicating that the acquiring person is not fulfilling the commitment to the affected community under Section 8 of this act, the Department shall hold a hearing upon ten (10) days' notice to the affected parties. If after such hearing, the Department

determines that the information is true, it may institute proceedings to revoke the license issued to the purchaser.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-750.10 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Attorney General shall have the authority to ensure compliance with commitments which inure to the public interest.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-750.11 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No license to operate a hospital may be issued or renewed by the State Department of Health pursuant to Section 1-702 of Title 63 of the Oklahoma Statutes, or any other state statute, and a license which has been issued shall be subject to revocation or suspension, if:

1. There is an acquisition of a hospital without first having received the approval of the Department under the Nonprofit Hospital Sale Act;

2. There is an acquisition of a hospital without the approval of the Attorney General, if the Attorney General determines to review the application under the act;

3. There is an acquisition of a hospital and the Attorney General disapproves the acquisition and there is a judicial determination that the acquisition is not in the public interest; or

4. The hospital is not fulfilling its commitment under Section 8 of this act, or is not following procedures or safeguards committed to under paragraph 3 of such section.

B. This section shall not limit the right to a hearing or the right of appeal for a hospital from such decision.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-750.12 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any acquisition of a hospital before the effective date of this act shall not be subject to the provisions of the Nonprofit Hospital Sale Act.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-750.13 of Title 63, unless there is created a duplication in numbering, reads as follows:

No provision of the Nonprofit Hospital Sale Act shall derogate from the common law or statutory authority of the Attorney General.

SECTION 14. This act shall become effective July 1, 1997.

SECTION 15. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-1-0266

CJ