

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

SENATE BILL NO. 746

By: Monson

AS INTRODUCED

An Act relating to public health and safety; creating the Nonprofit Hospital Sale Act; citing act; defining terms; prohibiting certain action prior to notification of specified persons; providing for notice; requiring the Attorney General to take certain actions; stating contents of notification; requiring certain materials be submitted simultaneously to the Attorney General and the State Department of Health; requiring State Department of Health to publish notice of notification and notify specified persons; specifying contents of published notice; requiring review by the State Department of Health of notification; requiring Attorney General to review notification within specified time period if decision is made to complete such review; requiring public hearing; allowing persons to file materials or appear and make statement; allowing the exercise of specified powers in connection with hearing; stating time frame during which hearing shall be held; requiring Attorney General to determine whether acquisition is in the public interest; declaring when an acquisition is not in the public interest; stating factors which the Attorney General shall consider in determining whether the acquisition meets specified criteria; allowing the Attorney General to employ specified expert assistance at seller's expense; requiring the State Department of Health to consider specified factors; construing application of section of law; requiring hearing by State Department of Health upon receipt of certain information; allowing institution of license revocation upon specified determination; granting specified authority to the Attorney General; stating grounds for nonissuance or nonrenewal of a license to operate a hospital; subjecting actions by reviewing authorities to the Administrative Procedures Act; requiring that certain actions by reviewing authorities by subject to trial de novo; grandfathering specified hospital acquisitions into law; 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 14 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, joint operating agreement, 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; 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 notified the State Department of Health and the Attorney General.

B. Any person required to notify the Department and the Attorney General under the provisions of the Nonprofit Hospital Sale Act shall give the Department and the Attorney General at least sixty (60) days' notification 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 notification shall briefly describe the impending acquisition, including any change in ownership of tangible or intangible assets.

C. 1. The notification 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 notification and copies of all additional related materials shall be submitted to the Department and to the Attorney General at the same time. The notification 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 a notification under Section 3 of this act, the State Department of Health shall publish notice of the notification 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 notification. The notice shall state that a notification has been received, state the names

of the parties to the agreement, describe the contents of the notification, and state the date by which a person may submit written comments about the notification to the Department.

B. Within thirty (30) days after receiving a notification, the Department shall review the notification in accordance with the standards set forth in the Nonprofit Hospital Sale Act.

C. If the Attorney General determines to review the notification in accordance with the act, the Attorney General shall, within thirty (30) days after receiving the notification, review the notification in accordance with the standards set forth in Section 6 of this act.

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 shall, during the course of review pursuant to Section 4 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 notification.

B. The hearing shall be held not later than forty-five (45) days after receipt of a notification. The hearing shall be held upon ten (10) working days' notice, not including days the notification 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. Upon review of the notification, the Attorney General shall determine if the acquisition is 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 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. Upon review of the notification by the State Department of Health, the Department 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 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:

If the State Department of Health receives information indicating that the acquiring person is not fulfilling the commitment to the affected community under Section 7 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 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:

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

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:

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 notified the Department under the Nonprofit Hospital Sale Act;

2. There is an acquisition of a hospital without first having notified the Attorney General; or

3. There is a judicial determination that the acquisition is not in the public interest.

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

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:

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 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:

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

SECTION 13. This act shall become effective July 1, 1999.

SECTION 14. 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.

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