

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SENATE BILL 1484

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5
6 AS INTRODUCED

7 An Act relating to public health and safety; creating
8 the Nonprofit Hospital Sale Act; providing short
9 title; defining terms; prohibiting certain action
10 prior to notification of specified persons; providing
11 for notice; allowing the Attorney General to take
12 certain actions; stating contents of notification;
13 requiring certain information be submitted
14 simultaneously to the Attorney General and the State
15 Department of Health; designating public records;
16 requiring State Department of Health to publish
17 notice of notification and notify specified persons;
18 specifying contents of published notice; requiring
19 review by the State Department of Health of
20 notification; requiring Attorney General to review
21 notification within specified time period; requiring
22 public hearing; allowing persons to file materials or
23 appear and make statement; allowing the exercise of
24 specified powers in connection with hearing; stating
time frame during which hearing shall be held;
allowing for completion of incomplete notification;
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; allowing activities and funding to
be considered in certain evaluation; allowing for
license revocation or suspension or prohibiting
licensure upon specified determination; construing
application of section of law; grandfathering into
law specified hospital acquisitions; providing effect

1 of other laws; providing for codification; providing
2 an effective date; and declaring an emergency.

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

5 SECTION 1. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1-750.1 of Title 63, unless
7 there is created a duplication in numbering, reads as follows:

8 Sections 1 through 10 of this act shall be known and may be
9 cited as the "Nonprofit Hospital Sale Act".

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

13 As used in the Nonprofit Hospital Sale Act:

14 1. "Acquisition" means the attainment by a person or persons of
15 an ownership or controlling interest in a hospital, whether by
16 purchase, merger, joint operating agreement, lease, gift, or
17 otherwise, which results in a change of ownership or control of
18 twenty percent (20%) or greater or which results in the acquiring
19 person or persons holding a fifty percent (50%) or greater interest
20 in the ownership or control of a hospital;

21 2. "Charitable" means inuring to the benefit of the public for
22 benevolent purposes;

23 3. "Department" means the State Department of Health;

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

3 5. "Nonprofit" means an entity organized not-for-profit which
4 holds a valid exemption from federal income taxation issued pursuant
5 to the Internal Revenue Code, 26 U.S.C., Section 501(a), and is
6 listed as an exempt organization in the Internal Revenue Code, 26
7 U.S.C., Section 501(c); and

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

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

13 A. No person shall engage in the acquisition of a hospital
14 owned by a nonprofit corporation without first having notified the
15 State Department of Health and the Attorney General.

16 B. Any person required to notify the Department and the
17 Attorney General under the provisions of the Nonprofit Hospital Sale
18 Act shall give the Department and the Attorney General at least
19 sixty (60) days' notification of an impending acquisition, during
20 which time the Attorney General may take any necessary and
21 appropriate action to carry out the provisions of the Nonprofit
22 Hospital Sale Act. The notification shall briefly describe the
23 impending acquisition, including any change in ownership of tangible
24 or intangible assets.

1 C. 1. The notification shall be submitted to the Department
2 and the Attorney General on forms provided by the Department and
3 shall include:

- 4 a. the name of the seller,
- 5 b. the name of the purchaser or other parties to an
6 acquisition,
- 7 c. the terms of the proposed agreement,
- 8 d. the sale price,
- 9 e. a copy of the acquisition agreement,
- 10 f. a financial and economic analysis and report from an
11 independent expert or consultant of the effect of the
12 acquisition under the criteria set forth in Section 6
13 of this act, and
- 14 g. all other related documents.

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

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

22 A. Within five (5) working days after receipt of a notification
23 under Section 3 of this act, the State Department of Health shall
24 publish notice of the notification in a newspaper of general

1 circulation in the county or counties where the hospital is located,
2 and shall notify by first-class United States mail any person who
3 has requested notice of the filing of such notification. The notice
4 shall state that a notification has been received, state the names
5 of the parties to the agreement, describe the contents of the
6 notification, and state the date by which a person may submit
7 written comments about the notification to the Department.

8 B. Within thirty (30) days after receiving a notification, the
9 Department shall review the notification in accordance with the
10 standards set forth in Section 6 of this act.

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

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

17 A. During the course of review pursuant to Section 4 of this
18 act, the State Department of Health and the Attorney General shall
19 hold a public hearing in which any person may file written comments
20 and exhibits, or appear and make a statement. The public hearing
21 shall be held in the municipality in which the hospital being
22 acquired is located. The Attorney General may issue subpoenas or
23 other process to any person, administer oaths and take sworn
24 statements under penalty of perjury, serve and execute search

1 warrants, take depositions, and use related discovery procedures for
2 purposes of the hearing at any time prior to making a decision on
3 the notification.

4 B. The hearing shall be held not later than forty-five (45)
5 days after receipt of a completed notification. If the notification
6 is deemed to be incomplete by the Attorney General or the
7 Department, the acquiring entity shall be allowed ten (10) days to
8 correct any deficiencies. Notice of the hearing shall be given by
9 one publication in a newspaper of general circulation published in
10 the county or counties where the hospital is located, which
11 publication shall be at least fifteen (15) days prior to the
12 hearing.

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

16 Upon review of the notification, the Attorney General shall
17 determine if the acquisition is in the public interest. An
18 acquisition is not in the public interest unless appropriate steps
19 have been taken to safeguard the value of charitable assets and
20 ensure that any proceeds of the transaction are used for appropriate
21 charitable health care purposes as provided in paragraph 8 of this
22 section. In determining whether the acquisition meets such criteria
23 under the Nonprofit Hospital Sale Act, the Attorney General shall
24 consider:

- 1 1. Whether the acquisition is permitted under the laws of this
2 state governing nonprofit entities, trusts, or charities;
- 3 2. Whether the nonprofit hospital exercised due diligence in
4 deciding to sell, selecting the purchaser, and negotiating the terms
5 and conditions of the sale;
- 6 3. The procedures used by the seller in making a decision,
7 including whether appropriate expert assistance in valuing the
8 hospital's assets, if necessary, was used;
- 9 4. Whether conflict of interest was disclosed including, but
10 not limited to, conflicts of interest related to board members of,
11 executives of, and experts retained by the seller, purchaser, or
12 parties to the acquisition;
- 13 5. Whether the seller will receive reasonably fair value for
14 its assets. The Attorney General may employ, at the seller's
15 expense, reasonably necessary expert assistance in making this
16 determination;
- 17 6. Whether charitable funds are placed at unreasonable risk, if
18 the acquisition is financed in part by the seller;
- 19 7. Whether any management contract under the acquisition is for
20 reasonably fair value;
- 21 8. Whether the sale proceeds will be used for appropriate
22 charitable health care purposes consistent with the seller's
23 original purpose or for the support and promotion of health care in
24 the affected community, and whether the proceeds will be controlled

1 as charitable funds independently of the purchaser or parties to the
2 acquisition; and

3 9. Whether a right of first refusal to repurchase the assets by
4 a successor nonprofit corporation or foundation if the hospital is
5 subsequently sold to, acquired by, or merged with another entity has
6 been retained.

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

10 Upon review of the notification by the State Department of
11 Health, the Department shall consider:

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

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

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

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

6 A. No license to operate a hospital shall be issued or renewed
7 by the State Department of Health pursuant to Section 1-702 of Title
8 63 of the Oklahoma Statutes, or any other state statute, and a
9 license which has been issued shall be subject to revocation or
10 suspension, if:

11 1. There is an acquisition of a hospital without first having
12 notified the Department and followed the procedures specified under
13 the Nonprofit Hospital Sale Act;

14 2. There is an acquisition of a hospital without first having
15 notified the Attorney General and followed the procedures specified
16 under the Nonprofit Hospital Sale Act; or

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

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

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

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1 Any acquisition of a hospital before July 1, 2008, shall not be
2 subject to the provisions of the Nonprofit Hospital Sale Act.

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

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

8 SECTION 11. This act shall become effective July 1, 2008.

9 SECTION 12. It being immediately necessary for the preservation
10 of the public peace, health and safety, an emergency is hereby
11 declared to exist, by reason whereof this act shall take effect and
12 be in full force from and after its passage and approval.

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