

LEGISLATIVE BILL 1188

Approved by the Governor April 15, 1996

Introduced by Matzke, 47; Jensen, 20; Klein, 19; Pirsch, 10; Schimek, 27;
Wesely, 26; Wickersham, 49

AN ACT relating to health care; to adopt the Nonprofit Hospital Sale Act; and
to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 12 of this act shall be known and may be
cited as the Nonprofit Hospital Sale Act.

Sec. 2. For purposes of the Nonprofit Hospital Sale Act:

(1) Department means the Department of Health;

(2) Hospital has the definition found in subdivision (3) of section
71-2017.01;

(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 or greater or which results in the acquiring person or
persons holding a fifty percent 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 as a governmental entity, and (c)
will maintain representation from the affected community on the local board;
and

(4) Person has the meaning found in section 71-5822.

Sec. 3. 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 department and without first having notified the Attorney
General and, if applicable, received approval from the Attorney General
pursuant to the Nonprofit Hospital Sale Act. 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. For purposes of the act, approval of the department
and the Attorney General shall not be required for the acquisition of a
hospital not owned by a nonprofit corporation as follows: (1) The lease of a
county hospital approved under section 23-3504; or (2) the dissolution of a
hospital district approved under sections 23-3544 to 23-3546 or the merger of
hospital districts approved under sections 23-3573 to 23-3578.

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 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.

The application shall be submitted to the department and the
Attorney General on forms provided by the department and shall include the
name of the seller, the name of the purchaser or other parties to an
acquisition, the terms of the proposed agreement, the sale price, a copy of
the acquisition agreement, 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 all other related documents.
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 applications and all related documents shall be considered public records
for purposes of sections 84-712 to 84-712.09.

Sec. 4. (1) Within five working days after receipt of an
application under section 3 of this act, the department 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.

(2) Within sixty 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.

Within twenty days after receiving an application, the Attorney General shall determine whether to review the application in accordance with section 7 of this act and shall so notify the applicant. If the Attorney General determines to review the application in accordance with the act, the Attorney General shall, within sixty 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. 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.

(3) For acquisitions which require approval from the department under the Nonprofit Hospital Sale Act and a certificate of need under the Nebraska Health Care Certificate of Need Act, the applicant shall submit a single application for both purposes and such application shall be reviewed under a single unified review process by the department. Following the single unified review process, the department shall simultaneously issue (a) its decision for purposes of the Nebraska Health Care Certificate of Need Act and (b) its decision for purposes of the Nonprofit Hospital Sale Act.

Sec. 5. The department, and the Attorney General if he or she determines to review the acquisition, shall during the course of review under 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 and at any time prior to making a decision on the application.

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

Sec. 6. (1) If the Attorney General determines to review the application, he or she shall review the application in accordance with the standards enumerated in section 7 of this act. Within sixty days after receipt of an application, the Attorney General shall approve or disapprove the acquisition.

If the Attorney General does not act within sixty 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 under the Uniform Declaratory Judgments Act for a determination that the acquisition is or is not in the public interest as provided in section 7 of this act.

(2) The department shall review the completed application in accordance with the standards enumerated in section 8 of this act. Within sixty days after receipt of a completed application, the department shall:

(a) Approve the acquisition, with or without any specific modifications; or

(b) Disapprove the acquisition.

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.

The department shall adopt and promulgate rules and regulations establishing procedures by which any affected person may appeal a final decision by the department under the Nonprofit Hospital Sale Act to the Certificate of Need Review Committee created under section 71-5859.01 under procedures substantially similar to those for appeals of health care certificate of need decisions. The committee shall have the same powers and duties with respect to appeals under the Nonprofit Hospital Sale Act as exist for appeals to the committee under the Nebraska Health Care Certificate of Need Act. The findings, conclusions, and decisions of the committee shall constitute the determination of the department, except that the department, the applicant, or any affected person who has intervened in the matter before the committee may seek judicial review as provided in sections 84-917 to

84-919.

Sec. 7. If the Attorney General determines to review the application, he or she shall approve the application unless he or she finds that the acquisition is not 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 subdivision (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 Nebraska Nonprofit Corporation Act and other laws of Nebraska 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 its 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.

Sec. 8. In making a decision whether to approve or disapprove an application, 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.

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.

Sec. 9. If the department 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 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.

Sec. 10. The Attorney General shall have the authority to ensure compliance with commitments which inure to the public interest.

Sec. 11. No license to operate a hospital may be issued or renewed by the department pursuant to Chapter 71, article 20, 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 under the

Uniform Declaratory Judgments Act 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 of safeguards committed to under subdivision (3) of such section.

This section does not limit the right to a hearing under section 71-2023 or the right of appeal for a hospital from such decision as provided in Chapter 71, article 20.

Sec. 12. Any acquisition of a hospital before the effective date of this act and any acquisition in which an application for a certificate of need under the Nebraska Health Care Certificate of Need Act has been granted by the department before the effective date of this act is not subject to the Nonprofit Hospital Sale Act.

Sec. 13. No provision of the Nonprofit Hospital Sale Act shall derogate from the common law or statutory authority of the Attorney General.

Sec. 14. Since an emergency exists, this act takes effect when passed and approved according to law.