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HOUSE BILL 498

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

MAX COLL

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

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6 February 13, 1998

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8 Mr. Speaker:

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10 Your APPROPRIATIONS AND FINANCE COMMITTEE, to
11 whom has been referred

12
13 HOUSE BILL 498

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15 has had it under consideration and reports same with
16 recommendation that it DO NOT PASS, but that

17 HOUSE APPROPRIATIONS AND FINANCE COMMITTEE
18 SUBSTITUTE FOR HOUSE BILL 498

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20 DO PASS.
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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

Page 3

Respectfully submitted,

Max Coll, Chairman

Adopted _____

(Chief Clerk)

Not Adopted _____

(Chief Clerk)

Date _____

The roll call vote was 14 For 0 Against

Yes: 14

Excused: Marquardt, Saavedra, Salazar, Vigil

Absent: None

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HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 498

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
ENACTING THE NONPROFIT HOSPITAL SALE ACT; ESTABLISHING
PROCEDURES AND CRITERIA FOR REVIEW AND APPROVAL OF CERTAIN
ACQUISITIONS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Nonprofit Hospital Sale Act".

Section 2. DEFINITIONS.--As used in the Nonprofit
Hospital Sale Act:

A. "acquire" or "acquisition" means the acquiring
by a person of an interest in a hospital, whether by purchase,
merger, conveyance, transfer, lease, gift or otherwise, that
results in a change of ownership or control of twenty percent
or greater or that results in the acquiring person holding a
fifty percent or greater interest in the ownership or control
of a hospital, but "acquisition" does not include the
acquiring of an interest in a hospital owned by a nonprofit

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corporation if the transferee:

(1) is a nonprofit corporation having a substantially similar charitable health care purpose as the transferor; and

(2) will continue representation from the affected community on the local board;

B. "department" means the department of health;

C. "hospital" means a general or acute care or specialty hospital licensed by the department;

D. "nonprofit corporation" means a person exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code or a government; and

E. "person" means an individual or other legal entity, including the state or a department, agency, institution or political subdivision of the state.

Section 3. ACQUISITIONS--APPLICATIONS--APPROVALS. --

A. No person shall acquire a hospital owned by a nonprofit corporation without first applying for and receiving the approval of the department and without first notifying the attorney general and, if applicable, receiving approval from the attorney general pursuant to the Nonprofit Hospital Sale Act.

B. Except as provided in Subsection C of this section, no person shall acquire a hospital owned by a nonprofit corporation without first applying for and receiving the approval of the department pursuant to the Nonprofit Hospital Sale Act unless the acquiring person is a nonprofit corporation.

C. Approval of the department and the attorney general is not required for the acquisition of a hospital if the acquisition is a result of:

(1) the lease of a county hospital;

- 1 (2) the dissolution of a hospital district; or
- 2 (3) a merger among hospital districts or
- 3 governmental hospitals.

4 D. The acquisition application shall be submitted to
 5 the department and the attorney general on forms provided by the
 6 department and shall include the name of the seller, the name of
 7 the purchaser or other parties to the acquisition, the terms of
 8 the proposed agreement, the sale price, a copy of the acquisition
 9 agreement, a financial and economic analysis and report from an
 10 independent expert or consultant of the effect of the acquisition
 11 based on the criteria set forth in Sections 7 and 8 of the
 12 Nonprofit Hospital Sale Act and all other related documents. A
 13 copy of the application and copies of all additional related
 14 materials shall be submitted to the department and to the
 15 attorney general at the same time. Applications and all related
 16 documents are public records.

17 E. A person not required to obtain approval for an
 18 acquisition shall notify the department and the attorney general
 19 at least thirty days before the acquisition. The notice shall
 20 briefly describe the impending acquisition, including any change
 21 in ownership of tangible and intangible assets.

22 Section 4. APPLICATION--CONTENTS--TIME PERIODS--APPROVALS
 23 OR DISAPPROVALS.--

24 A. Within ten days after receipt of an application,
 25 the department shall publish notice of the application in a
 newspaper of general circulation in the county where the hospital
 is located and shall notify by mail any person who has requested
 notice of the filing of applications. The notice shall state

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1 that an application has been received, state the names of the
 2 parties to the agreement, describe the contents of the
 3 application and state the date by which a person may submit
 4 written comments about the application to the department.

5 B. Within twenty days after receiving an application,
 6 the attorney general shall determine whether to review the
 7 application in accordance with Section 7 of the Nonprofit
 8 Hospital Sale Act and shall notify the applicant of his decision.
 9 If the attorney general reviews the application, he shall approve
 or disapprove the acquisition within ninety days.

10 C. Within ninety days after receiving an application,
 11 the department shall review the application in accordance with
 12 the standards set forth in the Nonprofit Hospital Sale Act and
 shall:

13 (1) approve the acquisition, with or without
 14 any specific modifications; or

15 (2) disapprove the acquisition.

16 D. If during its review the department determines
 17 that the application is incomplete, it may return the application
 18 to the applicant or may request additions or changes to the
 19 application. All deadlines are suspended during the time an
 20 application is incomplete.

21 E. The department shall not make its decision subject
 22 to any condition not directly related to criteria enumerated in
 23 Section 8 of the Nonprofit Hospital Sale Act, and any condition
 24 or modification shall bear a direct and rational relationship to
 the application under review.

25 F. An affected person may appeal a final decision by

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1 the department pursuant to the Nonprofit Hospital Sale Act in the
2 same manner as appeals related to the department's denial,
3 suspension or revocation of a hospital license pursuant to
4 Section 24-1-5 NMSA 1978.

5 Section 5. PUBLIC HEARING. --The department and the
6 attorney general shall hold a public hearing in which any person
7 may file written comments and exhibits or appear and make a
8 statement. The department and the attorney general may subpoena
9 additional information or witnesses, require and administer
10 oaths, require sworn statements, take depositions and use related
11 discovery procedures for purposes of the hearing and at any time
12 prior to making a decision on the application. The hearing shall
13 be held not later than sixty days after receipt of an
14 application. The hearing shall be held upon ten working days'
15 notice, not including days the application is deemed incomplete.

16 Section 6. ATTORNEY GENERAL--CRITERIA. --

17 A. The attorney general shall approve the application
18 unless he finds that the acquisition is not in the public
19 interest. An acquisition is not in the public interest unless
20 appropriate steps have been taken to safeguard the value of
21 charitable assets and ensure that any proceeds of the transaction
22 are used for appropriate charitable health care purposes as
23 provided in Paragraph (8) of Subsection B of this section.

24 B. Before approving the application, the attorney
25 general shall find that the proposed acquisition meets all of the
following requirements:

(1) the acquisition is permitted by the
Nonprofit Corporation Act and other laws of New Mexico and the

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1 United States;

2 (2) the nonprofit hospital exercised due
3 diligence in deciding to sell, selecting the purchaser and
4 negotiating the terms and conditions of the sale;

5 (3) appropriate expert assistance was used by
6 the nonprofit hospital in making its decision;

7 (4) conflicts of interest were disclosed,
8 including conflicts of interest related to board members of,
9 executives of and experts retained by the seller, purchaser or
10 other parties to the acquisition;

11 (5) the seller will receive reasonable
12 consideration and fair value for its assets. The attorney
13 general shall employ, at the transacting parties' expense,
14 reasonably necessary expert assistance in making this
15 determination;

16 (6) public and charitable funds are not placed
17 at unreasonable risk, if the acquisition is financed in part by
18 the seller;

19 (7) any management contract under the
20 acquisition is for reasonable consideration and fair value;

21 (8) the sale proceeds will be used for
22 appropriate public and charitable health care purposes consistent
23 with the seller's original purpose or for the support and
24 promotion of health care in the affected community and the
25 proceeds will be controlled as public or charitable funds
independent of the purchaser or parties to the acquisition; and

(9) a right of first refusal has been retained
to repurchase the assets by a successor nonprofit corporation or

1 foundation if the hospital is subsequently sold to, acquired by
2 or merged with another entity.

3 Section 7. DEPARTMENT CRITERIA. --

4 A. Before approving the application, the department
5 shall find that the acquisition meets all of the following
6 requirements:

7 (1) sufficient safeguards are included to
8 assure the affected community continued access to affordable and
9 appropriate health care;

10 (2) the purchaser and parties to the
11 acquisition have made a commitment to provide health care to the
12 disadvantaged, the uninsured and the underinsured and to provide
13 benefits to the affected community to promote health care.

14 Activities and funding provided by the seller to provide such
15 health care may be considered in evaluating compliance with this
16 paragraph; and

17 (3) if health care providers will be offered
18 the opportunity to invest or own an interest in the purchaser or
19 an entity related to the purchaser, procedures or safeguards are
20 in place to avoid conflict of interest in patient referral and
21 the nature of the procedures or safeguards.

22 B. This section does not apply higher standards to
23 hospitals covered by the provisions of the Nonprofit Hospital
24 Sale Act than those applicable to hospitals not covered by the
25 provisions of that act.

Section 8. ACQUISITION--FAILURE TO FULFILL OBLIGATIONS--
REVOCATION OF LICENSE. --If the department receives information
indicating that the acquiring person is not fulfilling the

1 commitment to the affected community pursuant to Section 7 of the
 2 Nonprofit Hospital Sale Act, the department shall hold a hearing
 3 on ten working days' notice to the affected parties. If after
 4 the hearing the department determines that the information is
 5 true, it may institute proceedings to revoke the license issued
 6 to the purchaser.

6 Section 9. LICENSURE--DENIAL, SUSPENSION OR REVOCATION.--

7 A. No license to operate a hospital shall be issued
 8 or renewed by the department and a license that has been issued
 9 shall be suspended or revoked if:

10 (1) there is an acquisition of a hospital
 11 without first having received the approval, if applicable, of the
 12 department pursuant to the Nonprofit Hospital Sale Act;

13 (2) there is an acquisition of a hospital
 14 without the approval of the attorney general if the attorney
 15 general determines to review the application pursuant to the
 16 Nonprofit Hospital Sale Act;

17 (3) there is an acquisition of a hospital and
 18 there is a judicial determination that the acquisition is not in
 19 the public interest; or

20 (4) the hospital is not fulfilling its
 21 commitment pursuant to Section 8 of the Nonprofit Hospital Sale
 22 Act.

23 B. Hearings and appeals of department actions
 24 pursuant to this section shall be taken in the same manner as
 25 provided for other hospital license suspensions or revocations in
 Section 24-1-5 NMSA 1978.

Section 10. EMERGENCY.--It is necessary for the public

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1 peace, health and safety that this act take effect immediately.

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

February 15, 1998

Mr. President:

Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
whom has been referred

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE
FOR HOUSE BILL 498

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Roman M. Maes, III, Chairman

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HAFC/HB 498

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Fidel, Kidd, McKibben, Robinson

Absent: None

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