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HOUSE BILL 1325

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MAX COLL

AN ACT

RELATING TO HEALTH CARE; 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, 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

1 "acquisition" does not include the acquiring of an interest in a
2 hospital owned by a nonprofit corporation if the transferee:

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

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

8 B. "department" means the department of health;

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

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

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

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

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

23 B. Except as provided in Subsection C of this
24 section, no person shall acquire a hospital owned by a person
25 other than a nonprofit corporation without first applying for

1 and receiving the approval of the department pursuant to the
2 Nonprofit Hospital Sale Act unless the acquiring person is a
3 nonprofit corporation.

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

- 7 (1) the lease of a county hospital;
- 8 (2) the dissolution of a hospital district; or
- 9 (3) the merger of hospital districts or
10 governmental hospitals.

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

24 E. A person not required to obtain approval for an
25 acquisition shall notify the department and the attorney general

Underscored material = new
[bracketed material] = delete

1 at least thirty days before the acquisition. The notice shall
2 briefly describe the impending acquisition, including any change
3 in ownership of tangible and intangible assets.

4 Section 4. APPLICATION-- CONTENTS-- TIME PERIODS-- APPROVALS
5 OR DISAPPROVALS.--

6 A. Within ten days after receipt of an application,
7 the department shall publish notice of the application in a
8 newspaper of general circulation in the county where the
9 hospital is located and shall notify by mail any person who has
10 requested notice of the filing of applications. The notice
11 shall state that an application has been received, state the
12 names of the parties to the agreement, describe the contents of
13 the application and state the date by which a person may submit
14 written comments about the application to the department.

15 B. Within twenty days after receiving an
16 application, the attorney general shall determine whether to
17 review the application in accordance with Section 7 of the
18 Nonprofit Hospital Sale Act and shall notify the applicant of
19 his decision. If the attorney general reviews the application,
20 he shall approve or disapprove the acquisition within sixty
21 days.

22 C. Within sixty days after receiving an application,
23 the department shall review the application in accordance with
24 the standards set forth in the Nonprofit Hospital Sale Act and
25 shall:

Underscored material = new
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1 (1) approve the acquisition, with or without
2 any specific modifications; or

3 (2) disapprove the acquisition.

4 D. If during its review the department determines
5 that the application is incomplete, it may return the
6 application to the applicant or may request additions or changes
7 to the application. All deadlines are suspended during the time
8 an application is incomplete.

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

14 F. An affected person may appeal a final decision by
15 the department pursuant to the Nonprofit Hospital Sale Act in
16 the same manner as appeals related to the department's denial,
17 suspension or revocation of a hospital license pursuant to
18 Section 24-1-5 NMSA 1978.

19 Section 5. PUBLIC HEARING. --The department and the
20 attorney general shall hold a public hearing in which any person
21 may file written comments and exhibits or appear and make a
22 statement. The department and the attorney general may subpoena
23 additional information or witnesses, require and administer
24 oaths, require sworn statements, take depositions and use
25 related discovery procedures for purposes of the hearing and at

Underscored material = new
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1 any time prior to making a decision on the application. The
2 hearing shall be held not later than forty days after receipt of
3 an application. The hearing shall be held upon ten working
4 days' notice, not including days the application is deemed
5 incomplete.

6 Section 6. DECLARATORY JUDGMENT.--After the attorney
7 general approves or disapproves the acquisition, the applicant
8 or any person who has submitted comments pursuant to Section 5
9 of the Nonprofit Hospital Sale Act, if the person has an
10 interest in the hospital being acquired or in another hospital
11 that has contracted with the acquirable hospital for the
12 provision of essential health services, may bring an action for
13 declaratory judgment for a determination that the acquisition is
14 or is not in the public interest as provided in Section 7 of
15 that act.

16 Section 7. ATTORNEY GENERAL--CRITERIA.--

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

25 B. In determining whether the acquisition meets the

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1 requirements of the Nonprofit Hospital Sale Act, the attorney
2 general shall consider:

3 (1) whether the acquisition is permitted by the
4 Nonprofit Corporation Act and other laws of New Mexico governing
5 public procurement or nonprofit entities;

6 (2) whether the nonprofit hospital exercised
7 due diligence in deciding to sell, selecting the purchaser and
8 negotiating the terms and conditions of the sale;

9 (3) the procedures used by the seller in making
10 its decision, including whether appropriate expert assistance
11 was used;

12 (4) whether conflict of interest was disclosed,
13 including conflicts of interest related to board members of,
14 executives of and experts retained by the seller, purchaser or
15 other parties to the acquisition;

16 (5) whether the seller will receive reasonable
17 consideration and fair value for its assets. The attorney
18 general may employ, at the seller's expense, reasonably
19 necessary expert assistance in making this determination;

20 (6) whether public and charitable funds are
21 placed at unreasonable risk, if the acquisition is financed in
22 part by the seller;

23 (7) whether any management contract under the
24 acquisition is for reasonable consideration and fair value;

25 (8) whether the sale proceeds will be used for

1 appropriate public and charitable health care purposes
2 consistent with the seller's original purpose or for the support
3 and promotion of health care in the affected community and
4 whether the proceeds will be controlled as public or charitable
5 funds independent of the purchaser or parties to the
6 acquisition; and

7 (9) whether a right of first refusal has been
8 retained to repurchase the assets by a successor nonprofit
9 corporation or foundation if the hospital is subsequently sold
10 to, acquired by or merged with another entity.

11 Section 8. DEPARTMENT CRITERIA. --

12 A. In determining whether the acquisition meets the
13 requirements of the Nonprofit Hospital Sale Act, the department
14 shall consider:

15 (1) whether sufficient safeguards are included
16 to assure the affected community continued access to affordable
17 and appropriate health care;

18 (2) whether the purchaser and parties to the
19 acquisition have made a commitment to provide health care to the
20 disadvantaged, the uninsured and the underinsured and to provide
21 benefits to the affected community to promote health care.

22 Activities and funding provided by the seller to provide such
23 health care may be considered in evaluating compliance with this
24 paragraph; and

25 (3) if health care providers will be offered

1 the opportunity to invest or own an interest in the purchaser or
2 an entity related to the purchaser, whether procedures or
3 safeguards are in place to avoid conflict of interest in patient
4 referral and the nature of the procedures or safeguards.

5 B. This section does not apply higher standards to
6 hospitals covered by the provisions of the Nonprofit Hospital
7 Sale Act than those applicable to hospitals not covered by the
8 provisions of that act.

9 Section 9. ACQUISITION--FAILURE TO FULFILL OBLIGATIONS--
10 REVOCATION OF LICENSE.--If the department receives information
11 indicating that the acquiring person is not fulfilling the
12 commitment to the affected community pursuant to Section 7 of
13 the Nonprofit Hospital Sale Act, the department shall hold a
14 hearing on ten working days' notice to the affected parties. If
15 after the hearing the department determines that the information
16 is true, it may institute proceedings to revoke the license
17 issued to the purchaser.

18 Section 10. LICENSURE--DENIAL, SUSPENSION OR REVOCATION.--

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

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

25 (2) there is an acquisition of a hospital

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1 without the approval of the attorney general if the attorney
2 general determines to review the application pursuant to the
3 Nonprofit Hospital Sale Act;

4 (3) there is an acquisition of a hospital and
5 there is a judicial determination that the acquisition is not in
6 the public interest; or

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

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

14 Section 11. EMERGENCY.--It is necessary for the public
15 peace, health and safety that this act take effect immediately.

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State of New Mexico
House of Representatives

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 6, 1997

Mr. Speaker:

Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to
whom has been referred

HOUSE BILL 1325

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
APPROPRIATIONS AND FINANCE COMMITTEE.

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Respectfully submitted,

Gary King, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

Excused: Heaton, King, Rios, Vigil

Absent: None

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**State of New Mexico
House of Representatives**

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 8, 1997

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to
whom has been referred

HOUSE BILL 1325

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

Respectfully submitted,

Max Coll, Chairman

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 10 For 4 Against

Yes: 10

No: Bird, Knowles, Pearce, Wallace

Excused: Buffett, Marquardt, Watchman

Absent: None

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FORTY-THIRD LEGISLATURE

FIRST SESSION, 1997

HB 1325/a

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March 17, 1997

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

HOUSE BILL 1325

has had it under consideration and reports same with recommendation that it DO PASS, amended as follows:

1. On page 2, line 13, strike "or a government" and insert in lieu thereof "or the state or a department, agency, institution or political subdivision of the state".

2. On page 2, line 15, before "including" insert "not".

Respectfully submitted,

Shannon Robinson, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

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Date _____

The roll call vote was 3 For 2 Against

Yes: 3

No: Adair, Boitano

Excused: Garcia, Vernon, Ingle, Rodarte

Absent: None

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Underscored material = new
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