
HOUSE BILL 2287

State of Washington

55th Legislature

1997 Regular Session

By Representative Dyer

Read first time 4/24/97. Referred to Committee on Health Care.

1 AN ACT Relating to nonprofit hospital sales; amending RCW
2 70.44.007, 70.44.240, and 70.44.300; adding a new section to chapter
3 70.44 RCW; adding a new chapter to Title 70 RCW; and declaring an
4 emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The health of the people of our state is a
7 most important public concern. The state has an interest in assuring
8 the continued existence of accessible, affordable health care
9 facilities that are responsive to the needs of the communities in which
10 they exist. The state also has a responsibility to protect the public
11 interest in hospitals and to clarify the responsibilities of local
12 public hospital district boards with respect to public hospital
13 district assets by making certain that the charitable and public assets
14 of those hospitals are managed prudently and safeguarded consistent
15 with their mission under the laws governing nonprofit and municipal
16 corporations.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply
18 throughout this chapter unless the context clearly requires otherwise.

1 (1) "Department" means the Washington state department of health.

2 (2) "Hospital" means any entity that is: (a) Defined as a hospital
3 in RCW 70.41.020 and is required to obtain a license under RCW
4 70.41.090; or (b) a psychiatric hospital required to obtain a license
5 under chapter 71.12 RCW.

6 (3) "Acquisition" means an acquisition by a person of an interest
7 in a hospital, whether by purchase, merger, lease, gift, joint venture,
8 or otherwise, that results in a change of ownership or control of
9 twenty percent or more of the assets of the hospital, or that results
10 in the acquiring person holding or controlling fifty percent or more of
11 the assets of the hospital.

12 (4) "Nonprofit hospital" means a hospital owned by a nonprofit
13 corporation organized under Title 24 RCW.

14 (5) "Person" means an individual, a trust or estate, a partnership,
15 a corporation including associations, a limited liability company, a
16 joint stock company, or an insurance company.

17 NEW SECTION. **Sec. 3.** (1) A person may not engage in the
18 acquisition of a hospital without first having applied for and received
19 the approval of the department under this chapter.

20 (2) An application must be submitted to the department on forms
21 provided by the department, and at a minimum must include: The name of
22 the hospital being acquired, the name of the acquiring person or other
23 parties to the acquisition, the acquisition price, a copy of the
24 acquisition agreement, a financial and economic analysis and report
25 from an independent expert or consultant of the effect of the
26 acquisition under the criteria in section 7 of this act, and all other
27 related documents. The applications and all related documents are
28 considered public records for purposes of chapter 42.17 RCW.

29 (3) The department shall charge an applicant fees sufficient to
30 cover the costs of implementing this chapter. The fees must include
31 the cost of the attorney general's opinion under section 6 of this act.
32 The department shall transfer this portion of the fee, upon receipt, to
33 the attorney general.

34 NEW SECTION. **Sec. 4.** (1) The department, in consultation with the
35 attorney general, shall determine if the application is complete for
36 the purposes of review. The department may find that an application is
37 incomplete if a question on the application form has not been answered

1 in whole or in part, or has been answered in a manner that does not
2 fairly meet the question addressed, or if the application does not
3 include attachments of supporting documents as required by section 3 of
4 this act. If the department determines that an application is
5 incomplete, it shall notify the applicant within fifteen working days
6 after the date the application was received stating the reasons for its
7 determination of incompleteness, with reference to the particular
8 questions for which a deficiency is noted.

9 (2) Within five working days after receipt of a completed
10 application, the department shall publish notice of the application in
11 a newspaper of general circulation in the county or counties where the
12 hospital is located and shall notify by first class United States mail,
13 electronic mail, or facsimile transmission, any person who has
14 requested notice of the filing of such applications. The notice must
15 state that an application has been received, state the names of the
16 parties to the agreement, describe the contents of the application, and
17 state the date by which a person may submit written comments about the
18 application to the department.

19 NEW SECTION. **Sec. 5.** During the course of review under this
20 chapter, the department shall conduct one or more public hearings, at
21 least one of which must be in the county where the hospital to be
22 acquired is located. At the hearings, anyone may file written comments
23 and exhibits or appear and make a statement. The department may
24 subpoena additional information or witnesses, require and administer
25 oaths, require sworn statements, take depositions, and use related
26 discovery procedures for purposes of the hearing and at any time prior
27 to making a decision on the application.

28 A hearing must be held not later than forty-five days after receipt
29 of a completed application. At least ten days' public notice must be
30 given before the holding of a hearing.

31 NEW SECTION. **Sec. 6.** (1) The department shall provide the
32 attorney general with a copy of a completed application upon receiving
33 it. The attorney general shall review the completed application and,
34 within forty-five days of the first public hearing held under section
35 5 of this act, shall provide a written opinion to the department as to
36 whether or not the acquisition meets the requirements for approval in
37 section 7 of this act.

1 (2) The department shall review the completed application to
2 determine whether or not the acquisition meets the requirements for
3 approval in sections 7 and 8 of this act. Within thirty days after
4 receiving the written opinion of the attorney general under subsection
5 (1) of this section, the department shall:

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

8 (b) Disapprove the acquisition.

9 (3) The department may not make its decision subject to any
10 condition not directly related to requirements in section 7 or 8 of
11 this act, and any condition or modification must bear a direct and
12 rational relationship to the application under review.

13 (4) A person engaged in an acquisition and affected by a final
14 decision of the department has the right to an adjudicative proceeding
15 under chapter 34.05 RCW. The opinion of the attorney general provided
16 under subsection (1) of this section may not constitute a final
17 decision for purposes of review.

18 (5) The department or the attorney general may extend, by not more
19 than thirty days, any deadline established under this chapter one time
20 during consideration of any application, for good cause.

21 NEW SECTION. **Sec. 7.** The department shall approve an application
22 only if the parties to the acquisition of a nonprofit hospital have
23 taken the proper steps to safeguard the value of charitable assets and
24 ensure that any proceeds from the acquisition are used for appropriate
25 charitable health purposes. To this end, the department may not
26 approve an application unless, at a minimum, it determines that:

27 (1) The acquisition is permitted under chapter 24.03 RCW, the
28 Washington nonprofit corporation act, and other laws governing
29 nonprofit entities, trusts, or charities;

30 (2) The nonprofit corporation that owns the hospital being acquired
31 has exercised due diligence in authorizing the acquisition, selecting
32 the acquiring person, and negotiating the terms and conditions of the
33 acquisition;

34 (3) The procedures used by the nonprofit corporation's board of
35 trustees and officers in making its decision fulfilled their fiduciary
36 duties, that the board and officers were sufficiently informed about
37 the proposed acquisition and possible alternatives, and that they used
38 appropriate expert assistance;

1 (4) No conflict of interest exists related to the acquisition,
2 including, but not limited to, conflicts of interest related to board
3 members of, executives of, and experts retained by the nonprofit
4 corporation, acquiring person, or other parties to the acquisition;

5 (5) The nonprofit corporation will receive fair market value for
6 its assets. The attorney general or the department may employ, at the
7 expense of the acquiring person, reasonably necessary expert assistance
8 in making this determination. This expense must be in addition to the
9 fees charged under section 3 of this act;

10 (6) Charitable funds will not be placed at unreasonable risk, if
11 the acquisition is financed in part by the nonprofit corporation;

12 (7) Any management contract under the acquisition will be for fair
13 market value;

14 (8) The proceeds from the acquisition will be controlled as
15 charitable funds independently of the acquiring person or parties to
16 the acquisition, and will be used for charitable health purposes
17 consistent with the nonprofit corporation's original purpose, including
18 providing health care to the disadvantaged, the uninsured, and the
19 underinsured and providing benefits to promote improved health in the
20 affected community;

21 (9) Any charitable entity established to hold the proceeds of the
22 acquisition will be broadly based in and representative of the
23 community where the hospital to be acquired is located, taking into
24 consideration the structure and governance of such entity; and

25 (10) A right of first refusal to repurchase the assets by a
26 successor nonprofit corporation or foundation has been retained if the
27 hospital is subsequently sold to, acquired by, or merged with another
28 entity.

29 NEW SECTION. **Sec. 8.** The department shall approve an application
30 only if the acquisition in question will not detrimentally affect the
31 continued existence of accessible, affordable health care that is
32 responsive to the needs of the community in which the hospital to be
33 acquired is located. To this end, the department shall not approve an
34 application unless, at a minimum, it determines that:

35 (1) Sufficient safeguards are included to assure the affected
36 community continued access to affordable care, and that alternative
37 sources of care are available in the community should the acquisition
38 result in a reduction or elimination of particular health services;

1 (2) The acquisition will not result in the revocation of hospital
2 privileges;

3 (3) Sufficient safeguards are included to maintain appropriate
4 capacity for health science research and health care provider
5 education;

6 (4) The acquiring person and parties to the acquisition are
7 committed to providing health care to the disadvantaged, the uninsured,
8 and the underinsured and to providing benefits to promote improved
9 health in the affected community. Activities and funding provided
10 under section 7(8) of this act may be considered in evaluating
11 compliance with this commitment; and

12 (5) Sufficient safeguards are included to avoid conflict of
13 interest in patient referral.

14 NEW SECTION. **Sec. 9.** (1) The secretary of state may not accept
15 any forms or documents in connection with any acquisition of a hospital
16 until the acquisition has been approved by the department under this
17 chapter.

18 (2) The attorney general may seek an injunction to prevent any
19 acquisition not approved by the department under this chapter.

20 NEW SECTION. **Sec. 10.** The department shall require periodic
21 reports from a nonprofit corporation or its successor nonprofit
22 corporation or foundation and from the acquiring person and other
23 parties to the acquisition to ensure compliance with commitments made.
24 The department may subpoena information and documents and may conduct
25 onsite compliance audits at the acquiring person's expense.

26 If the department receives information indicating that the
27 acquiring person is not fulfilling commitments to the affected
28 community under section 8 of this act, the department shall hold a
29 hearing upon ten days' notice to the affected parties. If after the
30 hearing the department determines that the information is true, it may
31 revoke or suspend the hospital license issued to the acquiring person
32 pursuant to the procedure established under RCW 70.41.130, refer the
33 matter to the attorney general for appropriate action, or both. The
34 attorney general may seek a court order compelling the acquiring person
35 to fulfill its commitments under section 8 of this act.

1 NEW SECTION. **Sec. 11.** The attorney general has the authority to
2 ensure compliance with commitments that inure to the public interest.

3 NEW SECTION. **Sec. 12.** An acquisition of a hospital completed
4 before the effective date of this act and an acquisition in which an
5 application for a certificate of need under chapter 70.38 RCW has been
6 granted by the department before the effective date of this act are not
7 subject to this chapter.

8 NEW SECTION. **Sec. 13.** No provision of this chapter derogates from
9 the common law or statutory authority of the attorney general.

10 NEW SECTION. **Sec. 14.** The department may adopt rules necessary to
11 implement this chapter and may contract with and provide reasonable
12 reimbursement to qualified persons to assist in determining whether the
13 requirements of sections 7 and 8 have been met.

14 **Sec. 15.** RCW 70.44.007 and 1982 c 84 s 12 are each amended to read
15 as follows:

16 As used in this chapter, the following words (~~(shall)~~) have the
17 meanings indicated:

18 (1) (~~The words~~) "Other health care facilities" (~~(shall)~~) means
19 nursing home, extended care, long-term care, outpatient and
20 rehabilitative facilities, ambulances, and such other facilities as are
21 appropriate to the health needs of the population served.

22 (2) (~~The words~~) "Other health care services" (~~(shall)~~) means
23 nursing home, extended care, long-term care, outpatient,
24 rehabilitative, health maintenance, and ambulance services and such
25 other services as are appropriate to the health needs of the population
26 served.

27 (3) "Public hospital district" or "district" means public health
28 care service district.

29 **Sec. 16.** RCW 70.44.240 and 1982 c 84 s 19 are each amended to read
30 as follows:

31 Any public hospital district may contract or join with any other
32 public hospital district, any publicly owned hospital, any nonprofit
33 hospital, any corporation, any other legal entity, or individual to
34 acquire (~~(or provide services or facilities)~~), own, operate, manage, or

1 provide any hospital or other health care facilities or hospital
2 services or other health care services to be used by individuals,
3 districts, hospitals, or others, including the providing of health
4 maintenance services. If a public hospital district chooses to
5 contract or join with another party or parties pursuant to the
6 provisions of this chapter, it may do so through the establishment of
7 a nonprofit corporation, partnership, limited liability company, or
8 other legal entity of its choosing in which the public hospital
9 district and the other party or parties participate. The governing
10 body of such legal entity shall include representatives of the public
11 hospital district, including members of the public hospital district's
12 board of commissioners. A public hospital district contracting or
13 joining with another party pursuant to the provisions of this chapter
14 may appropriate funds and may sell, lease, or otherwise provide
15 property, personnel, and services to the legal entity established to
16 carry out the contract or joint activity.

17 **Sec. 17.** RCW 70.44.300 and 1984 c 103 s 4 are each amended to read
18 as follows:

19 (1) The board of commissioners of any public hospital district may
20 sell and convey at public or private sale real property of the district
21 ~~((which))~~ if the board ~~((has determined))~~ determines by resolution that
22 the property is no longer required for public hospital district
23 purposes or determines by resolution that the sale of the property will
24 further the purposes of the public hospital district. ((Such sale and
25 conveyance may be by deed or real estate contract.))

26 (2) Any sale of district real property authorized pursuant to this
27 section shall be preceded, not more than one year prior to the date of
28 sale, by market value appraisals by three licensed real estate brokers
29 or professionally designated real estate appraisers as defined in RCW
30 74.46.020 or three independent experts in valuing health care property,
31 selected by the board of commissioners, and no sale shall take place if
32 the sale price would be less than ninety percent of the average of such
33 appraisals.

34 (3) When the board of commissioners of any public hospital district
35 proposes a sale of district real property pursuant to this section and
36 the value of the property exceeds one hundred thousand dollars, the
37 board shall publish a notice of its intention to sell the property.
38 The notice shall be published at least once each week during two

1 consecutive weeks in a legal newspaper of general circulation within
2 the public hospital district. The notice shall describe the property
3 to be sold and designate the place where and the day and hour when a
4 hearing will be held. The board shall hold a public hearing upon the
5 proposal to dispose of the public hospital district property at the
6 place and the day and hour fixed in the notice and consider evidence
7 offered for and against the propriety and advisability of the proposed
8 sale.

9 (4) If in the judgment of the board of commissioners of any
10 district the sale of any district real property not needed for public
11 hospital district purposes would be facilitated and greater value
12 realized through use of the services of licensed real estate brokers,
13 a contract for such services may be negotiated and concluded. The fee
14 or commissions charged for any broker service shall not exceed seven
15 percent of the resulting sale price for a single parcel. No licensed
16 real estate broker or professionally designated real estate appraisers
17 as defined in RCW 74.46.020 or independent expert in valuing health
18 care property selected by the board to appraise the market value of a
19 parcel of property to be sold may be a party to any contract with the
20 public hospital district to sell such property for a period of three
21 years after the appraisal.

22 NEW SECTION. Sec. 18. A new section is added to chapter 70.44 RCW
23 to read as follows:

24 (1) When evaluating a potential acquisition, the commissioners
25 shall determine their compliance with the following requirements:

26 (a) That the acquisition is authorized under chapter 70.44 RCW and
27 other laws governing public hospital districts;

28 (b) That the procedures used in the decision-making process allowed
29 district officials to thoroughly fulfill their due diligence
30 responsibilities as municipal officers, including those covered under
31 chapter 42.23 RCW governing conflicts of interest and chapter 42.20 RCW
32 prohibiting malfeasance of public officials;

33 (c) That the acquisition will not result in the revocation of
34 hospital privileges;

35 (d) That sufficient safeguards are included to maintain appropriate
36 capacity for health science research and health care provider
37 education;

1 (e) That the acquisition is allowed under Article VIII, section 7
2 of the state Constitution, which prohibits gifts of public funds or
3 lending of credit, and Article XI, section 14, prohibiting private use
4 of public funds;

5 (f) That the public hospital district will retain control over
6 district functions as required under chapter 70.44 RCW and other laws
7 governing hospital districts;

8 (g) That the activities related to the acquisition process complied
9 with chapters 42.17 and 42.32 RCW, governing disclosure of public
10 records, and chapter 42.30 RCW, governing public meetings;

11 (h) That the acquisition complies with the requirements of RCW
12 70.44.300 relating to fair market value; and

13 (i) Other state laws affecting the proposed acquisition.

14 (2) The commissioners shall also determine whether the public
15 hospital district should retain a right of first refusal to repurchase
16 the assets by the public hospital district if the hospital is
17 subsequently sold to, acquired by, or merged with another entity.

18 (3)(a) Prior to approving the acquisition of a district hospital,
19 the board of commissioners of the hospital district shall obtain a
20 written opinion from a qualified independent expert or the Washington
21 state department of health as to whether or not the acquisition meets
22 the standards set forth in section 8 of this act.

23 (b) Upon request, the hospital district and the person seeking to
24 acquire its hospital shall provide the department or independent expert
25 with any needed information and documents. The department shall charge
26 the hospital district for any costs the department incurs in preparing
27 an opinion under this section. The hospital district may recover from
28 the acquiring person any costs it incurs in obtaining the opinion from
29 either the department or the independent expert. The opinion shall be
30 delivered to the board of commissioners no later than ninety days after
31 it is requested.

32 (c) Within ten working days after it receives the opinion, the
33 board of commissioners shall publish notice of the opinion in at least
34 one newspaper of general circulation within the hospital district,
35 stating how a person may obtain a copy, and giving the time and
36 location of the hearing required under (d) of this subsection. It
37 shall make a copy of the report and the opinion available to anyone
38 upon request.

1 (d) Within thirty days after it received the opinion, the board of
2 commissioners shall hold a public hearing regarding the proposed
3 acquisition. The board of commissioners may vote to approve the
4 acquisition no sooner than thirty days following the public hearing.

5 (4)(a) For purposes of this section, "acquisition" means an
6 acquisition by a person of any interest in a hospital owned by a public
7 hospital district, whether by purchase, merger, lease, or otherwise,
8 that results in a change of ownership or control of twenty percent or
9 more of the assets of a hospital currently licensed and operating under
10 RCW 70.41.090. Acquisition does not include activities between two or
11 more governmental organizations, including organizations acting
12 pursuant to chapter 39.34 RCW, regardless of the type of organizational
13 structure used by the governmental entities.

14 (b) For purposes of this subsection (4), "person" means an
15 individual, a trust or estate, a partnership, a corporation including
16 associations, a limited liability company, a joint stock company, or an
17 insurance company.

18 NEW SECTION. **Sec. 19.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 20.** Sections 1 through 14 of this act
23 constitute a new chapter in Title 70 RCW.

24 NEW SECTION. **Sec. 21.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and takes effect
27 immediately.

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