
SENATE BILL 5227

State of Washington

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By Senators Deccio, Franklin, Patterson, Prentice, Benton, Wojahn and Long

Read first time 01/20/97. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to nonprofit hospital sales; adding a new chapter
2 to Title 70 RCW; and declaring an emergency.

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

4 NEW SECTION. **Sec. 1.** The health of the people of our state is a
5 most important public concern. The state has an interest in assuring
6 the continued existence of accessible, affordable health care
7 facilities that are responsive to the needs of the communities in which
8 they exist. The state also has a responsibility to protect the public
9 interest in nonprofit hospitals by making certain that the charitable
10 assets of those hospitals are managed prudently and in accordance with
11 the requirements of chapter 24.03 RCW.

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

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

15 (2) "Hospital" means any entity that is: (a) Defined as a hospital
16 in RCW 70.41.020 and is required to obtain a license under RCW
17 70.41.090, or (b) a psychiatric hospital required to obtain a license
18 under chapter 71.12 RCW.

1 (3) "Acquisition" means any acquisition by a person of an ownership
2 or controlling interest in a hospital, whether by purchase, merger,
3 lease, gift, or otherwise, that results in a change of ownership or
4 control of twenty percent or greater of either the voting rights or the
5 assets of a hospital, or that results in the acquiring person holding
6 a fifty percent or greater interest in the ownership or control of a
7 hospital, but acquisition does not include the acquisition of an
8 ownership or controlling interest in a hospital owned by a nonprofit
9 corporation if the transferee: (a) Is a nonprofit corporation having
10 a substantially similar charitable health care purpose as the
11 transferor or is a governmental entity; (b) is exempt from federal
12 income tax under section 501(c)(3) of the internal revenue code or as
13 a governmental entity; and (c) will maintain representation from the
14 affected community on the local board of the hospital.

15 (4) "Person" means an individual, a trust or estate, a partnership,
16 a corporation including associations, limited liability companies,
17 joint stock companies, and insurance companies, the state, a political
18 subdivision or instrumentality of the state including a municipal
19 corporation, or a hospital district.

20 (5) "Secretary" means the secretary of health or the secretary's
21 designee.

22 NEW SECTION. **Sec. 3.** (1) No person shall engage in the
23 acquisition of a hospital owned by a nonprofit corporation without
24 first having applied for and received the approval of the department
25 and the attorney general under this chapter. No person shall engage in
26 the acquisition of a hospital not owned by a nonprofit corporation
27 without first having applied for and received the approval of the
28 department under this chapter unless the acquiring person is a
29 nonprofit corporation exempt from federal income tax under section
30 501(c)(3) of the internal revenue code or is a governmental entity.
31 For purposes of this chapter, approval of the department and the
32 attorney general is not required if the acquisition is the result or
33 product of a consolidation of two or more hospital districts under
34 chapter 70.44 RCW.

35 (2) Any person not required to obtain the approval of the
36 department or the attorney general under this chapter shall give the
37 attorney general at least thirty days' notice of an impending
38 acquisition, during which time the attorney general may take any

1 necessary and appropriate action consistent with his or her general
2 duties of oversight with regard to the conduct of charities. The
3 notice must briefly describe the impending acquisition, including any
4 change in ownership of tangible or intangible assets.

5 (3) An application must be submitted to the department and the
6 attorney general on forms provided by the department and must include
7 the name of the seller, the name of the purchaser or other parties to
8 an acquisition, the terms of the proposed agreement, the sale price, a
9 copy of the acquisition agreement, a financial and economic analysis
10 and report from an independent expert or consultant of the effect of
11 the acquisition under the criteria set forth in section 7 of this act,
12 and all other related documents. A copy of the application and copies
13 of all additional related materials must be submitted to the department
14 and to the attorney general at the same time. The applications and all
15 related documents are considered public records for purposes of chapter
16 42.17 RCW.

17 NEW SECTION. **Sec. 4.** (1) Within five working days after receipt
18 of an application under section 3 of this act, the department shall
19 publish notice of the application in a newspaper of general circulation
20 in the county or counties where the hospital is located and shall
21 notify by first class United States mail any person who has requested
22 notice of the filing of such applications. The notice must state that
23 an application has been received, state the names of the parties to the
24 agreement, describe the contents of the application, and state the date
25 by which a person may submit written comments about the application to
26 the department.

27 (2) The department and the attorney general shall, within fifteen
28 days after the date an application is received, determine if the
29 application is complete for the purposes of review. The department or
30 the attorney general may find that an application is incomplete if a
31 question on the application form has not been answered in whole or in
32 part, or has been answered in a manner that does not fairly meet the
33 question addressed, or if the application does not include attachments
34 of supporting documents as required by section 3 of this act. If the
35 department or the attorney general determines that an application is
36 incomplete, it shall notify the applicant within fifteen days after the
37 date the application was received stating the reasons for its

1 determination of incompleteness with reference to the particular
2 questions for which a deficiency is noted.

3 (3) Within sixty days after receiving a completed application, the
4 department and the attorney general shall review the application in
5 accordance with the standards set forth in this chapter and approve or
6 disapprove the acquisition pursuant to this chapter.

7 (4) For acquisitions that require approval from the department
8 under this chapter and a certificate of need under chapter 70.38 RCW,
9 the applicant shall submit a single application for both purposes and
10 the application must be reviewed under a single, unified review process
11 by the department. Following the single, unified review process, the
12 department shall simultaneously issue: (a) Its decision for purposes
13 of chapter 70.38 RCW; and (b) its decision for purposes of this
14 chapter.

15 NEW SECTION. **Sec. 5.** The department or the attorney general
16 shall, during the course of review under section 4 of this act, hold a
17 public hearing in which any person may file written comments and
18 exhibits or appear and make a statement. The department or the
19 attorney general may subpoena additional information or witnesses,
20 require and administer oaths, require sworn statements, take
21 depositions, and use related discovery procedures for purposes of the
22 hearing and at any time prior to making a decision on the application.

23 The hearing must be held not later than thirty days after receipt
24 of a completed application. The hearing must be held upon ten working
25 days' notice, not including days the application is deemed to be
26 incomplete.

27 NEW SECTION. **Sec. 6.** (1) The attorney general shall review the
28 completed application in accordance with the standards enumerated in
29 section 7 of this act. Within sixty days after receipt of a completed
30 application, the attorney general shall:

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

33 (b) Disapprove the acquisition.

34 If the attorney general does not act within ninety days after
35 receipt of an application, the application is deemed approved. If the
36 attorney general approves or disapproves the acquisition, the
37 applicant, or any person who has submitted comments under section 5 of

1 this act if the person has a legal interest in the hospital being
2 acquired or in another hospital that has contracted with the acquired
3 hospital for the provision of essential health services, may bring an
4 action for declaratory judgment under chapter 7.24 RCW, the uniform
5 declaratory judgments act, for a determination that the acquisition is
6 or is not in the public interest as provided in section 7 of this act.

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

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

13 (b) Disapprove the acquisition.

14 The department shall not make its decision subject to any condition
15 not directly related to criteria enumerated in section 8 of this act,
16 and any condition or modification must bear a direct and rational
17 relationship to the application under review.

18 Any person engaged in an acquisition and affected by a final
19 decision of the department has the right to an adjudicative proceeding
20 under chapter 34.05 RCW, the administrative procedure act.

21 NEW SECTION. **Sec. 7.** The attorney general shall approve the
22 application unless he or she finds that the acquisition is not in the
23 public interest. An acquisition is not in the public interest unless
24 appropriate steps have been taken to safeguard the value of charitable
25 assets and ensure that any proceeds of the transaction are used for
26 appropriate charitable health care purposes as provided in subsection
27 (8) of this section. In determining whether the acquisition meets such
28 criteria under this chapter, the attorney general shall consider:

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

32 (2) Whether the nonprofit hospital exercised due diligence in
33 deciding to sell, selecting the purchaser, and negotiating the terms
34 and conditions of the sale;

35 (3) The procedures used by the seller in making its decision,
36 including whether appropriate expert assistance was used;

37 (4) Whether conflict of interest was disclosed, including, but not
38 limited to, conflicts of interest related to board members of,

1 executives of, and experts retained by the seller, purchaser, or
2 parties to the acquisition;

3 (5) Whether the seller will receive fair value for its assets. The
4 attorney general may employ, at the seller's expense, reasonably
5 necessary expert assistance in making this determination;

6 (6) Whether charitable funds are placed at unreasonable risk, if
7 the acquisition is financed in part by the seller;

8 (7) Whether any management contract under the acquisition is for
9 fair value;

10 (8) Whether the sale proceeds will be used for appropriate
11 charitable health care purposes consistent with the seller's original
12 purpose or for the support and promotion of health care in the affected
13 community and whether the proceeds will be controlled as charitable
14 funds independently of the purchaser or parties to the acquisition;

15 (9) Whether any charitable corporation established to hold the
16 proceeds of the sale will be broadly based in the community and be
17 representative of the affected community, taking into consideration the
18 structure and governance of such corporation; and

19 (10) Whether a right of first refusal to repurchase the assets by
20 a successor nonprofit corporation or foundation has been retained if
21 the hospital is subsequently sold to, acquired by, or merged with
22 another entity.

23 NEW SECTION. **Sec. 8.** In making a decision whether to approve or
24 disapprove an application, the department shall determine whether the
25 acquisition affects the continued existence of accessible, affordable
26 health care facilities that are responsive to the needs of the
27 community. In making this determination, the department shall
28 consider:

29 (1) Whether sufficient safeguards are included to assure the
30 affected community continued access to affordable care;

31 (2) Whether the purchaser and parties to the acquisition have made
32 a commitment to provide health care to the disadvantaged, the
33 uninsured, and the underinsured and to provide benefits to the affected
34 community to promote improved health care. Activities and funding
35 provided by the seller or its successor nonprofit corporation or
36 foundation to provide such health care may be considered in evaluating
37 compliance with this commitment; and

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

6 NEW SECTION. **Sec. 9.** The department shall require periodic
7 reports from the seller or its successor nonprofit corporation or
8 foundation and from the purchaser or other parties to the acquisition
9 to ensure compliance with commitments made. The department may
10 subpoena information and documents and may conduct onsite compliance
11 audits at the purchaser's expense.

12 If the department receives information indicating that the
13 acquiring person is not fulfilling the commitment to the affected
14 community under section 8 of this act, the department shall hold a
15 hearing upon ten days' notice to the affected parties. If after the
16 hearing the department determines that the information is true, it may
17 institute proceedings to revoke the license issued to the purchaser.

18 NEW SECTION. **Sec. 10.** The attorney general has the authority to
19 ensure compliance with commitments that inure to the public interest.

20 NEW SECTION. **Sec. 11.** No license to operate a hospital may be
21 issued or renewed by the department pursuant to any other state
22 statute, and a license that has been issued is subject to revocation or
23 suspension, if:

24 (1) There is an acquisition of a hospital without first having
25 received the approval of the department and the attorney general under
26 this chapter;

27 (2) There is an acquisition of a hospital and the attorney general
28 disapproves the acquisition and there is a judicial determination under
29 chapter 7.24 RCW, the uniform declaratory judgments act, that the
30 acquisition is not in the public interest; or

31 (3) The hospital is not fulfilling its commitment under section
32 8(2) of this act or is not following procedures of safeguards committed
33 to under section 8(3) of this act.

34 Nothing in this section limits the rights of a hospital to an
35 adjudicative proceeding in connection with the denial, suspension, or
36 revocation of a license under the provisions of RCW 70.41.130.

1 NEW SECTION. **Sec. 12.** Any acquisition of a hospital before the
2 effective date of this act and any acquisition in which an application
3 for a certificate of need under chapter 70.38 RCW has been granted by
4 the department before the effective date of this act is not subject to
5 this chapter.

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

8 NEW SECTION. **Sec. 14.** The secretary and the attorney general have
9 authority to adopt rules to implement this chapter and to contract with
10 and provide reasonable reimbursement to qualified persons to assist in
11 determining criteria under sections 7 and 8 of this act.

12 NEW SECTION. **Sec. 15.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 16.** Sections 1 through 15 of this act
17 constitute a new chapter in Title 70 RCW.

18 NEW SECTION. **Sec. 17.** This act is necessary for the immediate
19 preservation of the public peace, health, or safety, or support of the
20 state government and its existing public institutions, and takes effect
21 immediately.

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