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HOUSE BILL NO. 2542

Offered January 21, 1999

A BILL relating to the sale or conversion of nonprofit hospitals in certain county.

Patrons—Marshall, McQuigg, Parrish and Rollison

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. §1. Approval of sale or conversion of nonprofit hospitals in certain county.**

A. As used in this section, "acquisition" or "restructuring" means any acquisition by a person of an ownership of or controlling interest in a hospital that results in a substantial change in ownership or control or results in the acquiring person holding a fifty percent or greater interest in the ownership or control of the hospital.

B. Any person seeking to acquire a hospital owned by a nonprofit corporation which is located in a county having a land area of 337 square miles with a population of more than 209,274 and less than 217,881 shall submit an application to the Attorney General on forms provided by the Attorney General. The application 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 sales price, a copy of the acquisition agreement, and, from an independent expert or financial consultant, a financial and economic analysis of and report on the effect of the acquisition under the criteria set forth in subsection D of this section. The completed application and all related documents shall be considered public records for purposes of the Virginia Freedom of Information Act (§ 2.1-340 et seq.).

C. Within five working days after receipt of a completed application, the Attorney General shall inform the Department of Health, which shall publish notice of the application in a newspaper of general circulation in the health planning region where the hospital is located and shall notify by first-class mail any person who has requested notice of the filing of such application. 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.

The Department shall, during the course of preparing a report under subsection E, hold a public hearing in which any person may file written comments and exhibits or appear and make a statement. The hearing shall be held not later than thirty days after receipt of an application. Ten working days' notice shall be provided, not including any days the application is deemed to be incomplete.

D. The Attorney General shall approve the application upon finding that the acquisition is in the public interest or shall disapprove the application upon finding that the acquisition is not in the public interest. An acquisition shall be in the public interest if 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 7 of this subsection. In determining whether the acquisition is in the public interest, the Attorney General shall consider:

1. Whether the nonprofit hospital exercised due diligence in deciding to sell, selecting the purchaser, and negotiating the terms and conditions of the sale;

2. The procedures used by the seller in making its decision, including whether appropriate expert assistance was used;

3. Whether any 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;

4. Whether the seller will receive fair market value for its assets;

5. Whether charitable funds are placed at unreasonable risk, if the acquisition is financed in part by the seller;

6. Whether any management contract under the acquisition is for fair value;

7. 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 by a nonprofit corporation or foundation independent of the purchaser, or by the purchaser;

8. Whether a right of first refusal to repurchase the assets has been retained in the event the hospital is subsequently sold to, acquired by, or merged with another entity; and

9. Any information contained in the report prepared by the Department in accordance with subsection E.

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60 The Attorney General may employ expert assistance to aid in determining any of the factors listed in
61 this subsection. All expenses incurred by the Commonwealth while deciding these factors shall be paid
62 by the buyer of the hospital.

63 E. The Department shall review the completed application and shall submit a report with
64 recommendations concerning the acquisition to the Attorney General. In preparing a recommendation to
65 the Attorney General, the Department shall consider:

66 1. Whether sufficient safeguards are included to ensure the affected community's continued access to
67 affordable care;

68 2. Whether the purchaser and parties to the acquisition have made a commitment to provide health
69 care to the disadvantaged, the uninsured, and the underinsured and to provide benefits to the affected
70 community to promote improved health care. Activities and funding provided by the seller or any
71 nonprofit corporation or foundation to provide such health care may be considered in evaluating
72 compliance with this commitment;

73 3. If health care providers will be offered the opportunity to invest or own an interest in the
74 purchaser or an entity related to the purchaser, whether procedures or safeguards are in place to avoid
75 a conflict of interest in patient referral or violations of the Practitioner Self-Referral Act (§ 54.1-2410 et
76 seq.);

77 4. The history of the prospective purchaser in providing acute care, including that in other states
78 and jurisdictions; and

79 5. Information and testimony received as a result of the public hearing and comment period provided
80 in subsection C.

81 F. If the Attorney General determines it is necessary, the person acquiring the nonprofit hospital
82 shall provide funds, in an amount to be determined by the Attorney General, for the hiring of an
83 independent health-care access monitor to report quarterly to the Attorney General on community health
84 care access, including the levels of free care provided by the person.

85 G. If the Attorney General determines that the acquiring person is not fulfilling the commitment to
86 the affected community under subdivision 2 of subsection E, the Attorney General shall direct the
87 Commissioner to institute proceedings to revoke the license issued to the purchaser, unless the
88 conditions identified as not in compliance with such commitment are immediately resolved to the
89 satisfaction of the Attorney General.

90 H. No license to operate a hospital may be issued or renewed by the Department pursuant to Article
91 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 or any other statute, and a license which has been
92 issued shall be subject to revocation or suspension, if (i) a hospital has been acquired in violation of
93 this section or (ii) any acquired hospital is not fulfilling its commitment under subdivision 2 of
94 subsection E or is not complying with subdivision 3 of such subsection.

95 I. All trustees and senior managers of any nonprofit entity that is acquired by a for-profit entity are
96 prohibited from investing in the for-profit entity for a period of five years following such disposition.