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SENATE BILL NO. 1157

Offered January 10, 2001

Prefiled January 10, 2001

A BILL to amend and reenact §§ 55-531, 55-532, and 55-533 of the Code of Virginia, relating to disposition of assets by nonprofit health care entities.

Patron—Hanger

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-531, 55-532, and 55-533 of the Code of Virginia are amended and reenacted as follows:

§ 55-531. Definitions.

As used in this chapter, the following words shall have the following meanings:

"Disposition of assets" means any action undertaken by a nonprofit entity to dispose of control of all or substantially all of its assets pursuant to an agreement of sale, transfer, lease, exchange, option, joint venture, or partnership, or to restructure the nonprofit entity or its assets resulting in a change in control or governance of the entity or assets.

"Nonprofit entity" means a person that is exempt from taxation under 26 U.S.C. § 501 (c) (3) and is, or owns, one of the following: (i) a hospital licensed under Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 or Chapter 8 (§ 37.1-179 et seq.) of Title 37.1; (ii) a health services plan licensed under Chapter 42 (§ 38.2-4200 et seq.) of Title 38.2; (iii) a health maintenance organization licensed under Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2; (iv) a nursing home, including a facility known by varying nomenclature or designation such as convalescent home, skilled nursing facility or skilled care facility, intermediate care facility, extended care facility, a certified nursing facility or nursing care facility, licensed under the provisions of Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1; or (v) a facility for the provision of continuing care registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2.

"Purchaser" means a person acquiring any assets of a nonprofit entity through a disposition of assets.

§ 55-532. Obligations of nonprofit entity; .

A. Prior to disposition of assets, any nonprofit entity shall provide to the Attorney General written notice by *certified mail, return receipt requested*, on a form provided by the Attorney General, of its intent to dispose of such assets, including the terms of the proposal, *and obtain approval of the agreement by the Attorney General*.

The notice shall be given at least sixty days in advance of the effective date of such proposed transaction in order that the Attorney General may exercise his common law and statutory authority over the activities of these organizations. The Attorney General may employ expert assistance in reviewing any proposed transaction and such reasonable expenses incurred by the Attorney General shall be paid by a party to the proposed transaction.

B. The notice provided to the Attorney General shall contain: (i) the name and address of the nonprofit hospital; (ii) the name and address of the purchaser; (iii) a description of the terms of the proposed agreement; (iv) copies of all contracts, agreements, and memoranda of understanding relating to the proposed agreement; and (v) a fairness evaluation by an independent person who is an expert in such agreements, including an analysis of each of the criteria set forth in subsection C. The Attorney General may, as appropriate, notify the nonprofit entity and the purchaser of the inadequacy of the information or data. The Attorney General shall provide the relevant parties with reasonable opportunity to remedy such inadequacy.

C. Within ten days of receipt of the notice from the entity, the Attorney General shall cause a public notice of the transaction to be published in a newspaper in which legal notices may be published in that jurisdiction.

Prior to making any decision on a proposed agreement as provided in this section, the Attorney General shall conduct one or more public hearings, at least one of which shall be in the primary service area of the relevant nonprofit entity.

At least ten days prior to any public hearing, the Attorney General shall notify the public of the time and place of the hearing through publication in one or more newspapers of general circulation in the affected community.

D. Not later than twenty days after receipt of a notice of a proposed disposition of assets, the

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59 Attorney General shall determine whether the agreement involves a material amount of the assets or
60 operations or a change in control of operations of the nonprofit entity and shall so notify the parties.

61 If the Attorney General determines that the agreement involves a material amount of the assets or
62 operations or a change in control of operations of the nonprofit entity, then he shall conduct a review
63 of the proposed agreement.

64 E. On or before 120 days after receiving the notice required by this section from the parties, the
65 Attorney General shall review the agreement and shall approve, with or without modifications, or
66 disapprove the agreement. The 120 days may be extended by agreement between the Attorney General
67 and the parties. If a subpoena is initiated as provided in subsection F, the 120 days shall be tolled until
68 the final court decision on the enforcement proceeding, including any appeal or time for the filing of
69 such appeal. Unless extended pursuant to this subsection, the Attorney General's failure to take action
70 on an agreement within 120 days shall be deemed to be approval of the agreement.

71 F. The Attorney General may, during the course of a review required by this section: (i) issue and
72 cause to be served upon any person, by subpoena, a demand that such person appear before him and
73 give testimony or produce documents as to any matters relevant to the scope of the review; or (ii) issue
74 written interrogatories, to be answered under oath, as to any matters relevant to the scope of the review
75 and prescribing a return date that would allow a reasonable time to respond.

76 If any person fails to comply with the provisions of this subsection, the Attorney General may apply
77 to the circuit court for the City of Richmond seeking enforcement of the subpoena. The circuit court
78 may, upon notice to the person, issue and cause to be served an order requiring compliance.

79 Service of subpoenas, including subpoenas duces tecum, and notices of deposition and written
80 interrogatories as provided in this subsection may be made by personal service at the usual place of
81 abode or by certified mail, return receipt requested, addressed to the person to be served at his
82 residence or his principal place of business within or without the Commonwealth.

83 G. The Attorney General shall not approve the agreement unless he finds that: (i) the affected
84 community will be assured of continued access to affordable health care; (ii) the purchaser has made a
85 commitment to provide health care to the uninsured and the underinsured; and (iii) safeguard
86 procedures are in place to avoid a conflict of interest in patient referral if health care providers or
87 insurers will be offered the opportunity to invest or own an interest in the purchaser or an entity related
88 to the purchaser.

89 H. The Attorney General shall disapprove a proposed agreement requiring notice under this section
90 as not in the public interest if he determines that one or more of the following conditions exist: (i) the
91 transaction is prohibited by Virginia statutory or common law governing nonprofit entities, trusts or
92 charities; (ii) the nonprofit entity failed to exercise due diligence in deciding to make the disposition of
93 assets, selecting the purchaser, obtaining a fairness evaluation from an independent person expert in
94 such agreements, or negotiating the terms and conditions of the disposition of assets; (iii) the nonprofit
95 hospital failed to disclose any conflict of interest, including, but not limited to, conflicts of interest
96 pertaining to board members, officers, key employees and experts of the hospital, the purchaser or any
97 other party to the transaction; (iv) the nonprofit hospital will not receive fair market value for its assets,
98 which, for purposes of this subsection, means the most likely price that the assets would bring in a sale
99 in a competitive and open market under all conditions requisite to a fair sale, with the buyer and seller
100 each acting prudently, knowledgeably and in their own best interests, and with a reasonable time being
101 allowed for exposure in the open market; (v) the fair market value of the assets has been manipulated
102 by any person in a manner that causes the value of the assets to decrease; (vi) the financing of the
103 disposition of assets by the nonprofit hospital will place the nonprofit hospital's assets at an
104 unreasonable risk; (vii) any management contract contemplated under the transaction is not for
105 reasonable fair value; (viii) a sum equal to the fair market value of the nonprofit hospital's assets is not
106 being transferred to one or more persons who are not affiliated through corporate structure, governance
107 or membership with either the nonprofit hospital or the purchaser and is not being used for appropriate
108 charitable health care purposes consistent with the nonprofit hospital's original purpose, the support and
109 promotion of health care generally in the affected community or the support and promotion of health
110 care generally in the affected community or with respect to any assets held by the nonprofit hospital
111 that are subject to a use restriction imposed by a donor, for a purpose consistent with the intent of the
112 donor; or (ix) after receiving a notice from the Attorney General that the information in the original
113 notice was inadequate, the nonprofit entity or the purchaser has failed to provide the Attorney General
114 with information and data sufficient to evaluate the proposed agreement adequately.

115 I. If the Attorney General disapproves a proposed disposition of assets or approves it with
116 modifications, the nonprofit entity or the purchaser may appeal such decision to the Supreme Court of
117 Virginia.

118 J. Notice to the Attorney General pursuant to this section shall be given for State Corporation
119 Commission approval sought pursuant to Article 11 (§ 13.1-898.1) of Chapter 10 of Title 13.1 and
120 §§ 38.2-203 and 38.2-1322 through 38.2-1328 and subdivision A 1 of § 38.2-4316. Such notice need not

121 be given where the State Corporation Commission determines, in its sole discretion, that there is a
 122 reasonable expectation that the health services plan or health maintenance organization referenced herein
 123 will not be able to meet its obligations to subscribers or enrollees.

124 K. The provisions of this section shall not apply to any disposition of assets subject to the provisions
 125 of § 38.2-4214.1, or § 38.2-4317 or any of the provisions of Chapter 15 (§ 38.2-1500 et seq.) of Title
 126 38.2.

127 L. Any nonprofit entity failing to comply with the provisions of this chapter shall be subject to denial
 128 or revocation of any license such person may hold, after a hearing and an opportunity to be heard.

129 § 55-533. Applicability of chapter.

130 ~~This~~The amendments to this chapter taking effect on July 1, 2001, shall apply to any disposition of
 131 assets proposed to take effect on or after July 1, 19972001.