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ASSEMBLY, No. 1439

STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblywoman CHARLOTTE VANDERVALK

District 39 (Bergen)

Assemblyman NEIL M. COHEN

District 20 (Union)

Co-Sponsored by:

Assemblyman Caraballo and Assemblywoman Gill

SYNOPSIS

Designated the "Community Health Care Assets Protection Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning nonprofit hospitals and supplementing Title 15A
2 of the New Jersey Statutes and Title 26 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known and may be cited as the "Community
8 Health Care Assets Protection Act."

9
10 2. In addition to the requirements of P.L.1971, c.136 (C.26:2H-1
11 et seq.) concerning certificate of need and licensure requirements, a
12 nonprofit hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et
13 seq.) shall apply to the Attorney General for approval prior to entering
14 into a transaction that results in the acquisition of the hospital by a
15 person or entity other than a corporation organized in this State for
16 charitable purposes under Title 15A of the New Jersey Statutes. The
17 proposed acquisition shall be subject to the written approval of the
18 Attorney General, in consultation with the Commissioner of Health
19 and Senior Services, pursuant to the provisions of this section.

20 For the purposes of sections 2 and 3 of this act, "acquisition"
21 means the purchase, lease, exchange, conversion, restructuring,
22 merger, division, consolidation, transfer of control or other disposition
23 of a substantial amount of assets or operations, whether through a
24 single transaction or series of transactions, with one or more persons
25 or entities.

26 a. Within five working days of submitting an application pursuant
27 to this section, the nonprofit hospital shall publish a notice of the
28 proposed acquisition, in a form approved by the Attorney General, in
29 a newspaper of general circulation in the service area of the hospital
30 once per week for three weeks. The notice shall state the names of
31 the parties to the agreement, describe the contents of the application
32 to the Attorney General and state the date by which a person may
33 submit written comments about the application to the Attorney
34 General.

35 b. The Attorney General, in consultation with the Commissioner
36 of Health and Senior Services, shall review the application and
37 approve the proposed acquisition, with or without any specific
38 modifications, or, if he finds that it is not in the public interest,
39 disapprove the proposed acquisition.

40 The proposed acquisition shall not be considered to be in the public
41 interest unless the Attorney General determines that appropriate steps
42 have been taken to safeguard the value of the charitable assets of the
43 hospital and to ensure that any proceeds from the proposed acquisition
44 are irrevocably dedicated for appropriate charitable health care
45 purposes; and the Commissioner of Health and Senior Services
46 determines that the proposed transaction is not likely to result in the

1 deterioration of the quality, availability or accessibility of health care
2 services in the affected communities.

3 In determining whether the acquisition meets the criteria of this
4 subsection, the Attorney General shall consider:

5 (1) Whether the acquisition is permitted under the "New Jersey
6 Nonprofit Corporation Act," Title 15A of the New Jersey Statutes,
7 and other applicable State statutes governing nonprofit entities, trusts
8 or charities;

9 (2) Whether the nonprofit hospital exercised due diligence in
10 deciding to effectuate the acquisition, selecting the other party to the
11 acquisition and negotiating the terms and conditions of the acquisition;

12 (3) The procedures used by the nonprofit hospital in making its
13 decision, including whether appropriate expert assistance was used;

14 (4) Whether conflict of interest was disclosed, including, but not
15 limited to, conflicts of interest related to board members of, executives
16 of and experts retained by the nonprofit hospital, purchaser or other
17 parties to the acquisition;

18 (5) Whether the nonprofit hospital will receive full and fair market
19 value for its assets. The Attorney General may employ, at the
20 nonprofit hospital's expense, reasonably necessary expert assistance in
21 making this determination;

22 (6) Whether charitable funds are placed at unreasonable risk, if the
23 acquisition is financed in part by the nonprofit hospital;

24 (7) Whether any management contract under the acquisition is for
25 reasonable fair value;

26 (8) Whether the acquisition proceeds will be used for appropriate
27 charitable health care purposes consistent with the nonprofit hospital's
28 original purpose or for the support and promotion of health care and
29 whether the proceeds will be controlled as charitable funds
30 independently of the purchaser or parties to the acquisition; and

31 (9) Whether a right of first refusal has been retained to repurchase
32 the assets by a successor nonprofit corporation or foundation if,
33 following the acquisition, the hospital is subsequently sold to, acquired
34 by or merged with another entity.

35 c. In his review of the proposed acquisition, the Attorney General
36 may assess the entity proposing to acquire the nonprofit hospital for
37 reasonable costs related to the review, as determined by the Attorney
38 General to be necessary. Reasonable costs may include expert review
39 of the acquisition and a process for educating the public about the
40 acquisition and obtaining public input.

41 d. The Attorney General and the Commissioner of Health and
42 Senior Services shall, during the course of the review pursuant to this
43 section, hold at least one public hearing in which any person may file
44 written comments and exhibits or appear and make a statement. The
45 Attorney General or the commissioner may subpoena additional
46 information or witnesses, including, but not limited to, information

1 about any transaction that is collateral to the proposed acquisition and
2 any related documents, require and administer oaths, require sworn
3 statements, take depositions and use related discovery procedures for
4 purposes of the hearing and at any time prior to completing the review
5 of the proposed acquisition.

6 The Attorney General shall make the information received pursuant
7 to this section, and the Department of Health and Senior Services shall
8 make any information in its records relating to the proposed
9 acquisition, available for inspection at no cost to the public.

10 The public hearing shall be held no later than 60 days after receipt
11 of an application from a nonprofit hospital that is deemed complete by
12 the Attorney General. Public notice of the hearing shall be provided
13 at least two weeks in advance of the date of the hearing.

14 f. Upon execution of the proposed acquisition, the amount
15 determined by the Attorney General to be set aside as a charitable
16 obligation shall be placed in a nonprofit charitable trust or one or more
17 existing or newly established tax-exempt charitable organizations
18 operating pursuant to 26 U.S.C. s. 501(c)(3). The charitable mission
19 and grant-making functions of any charitable entity that receives assets
20 pursuant to subsection e. of this section shall be dedicated to serving
21 the health care needs of the community historically served by the
22 predecessor nonprofit hospital. Any charitable entity that receives
23 assets pursuant to subsection e. of this section, the directors, officers
24 and trustees of any such charitable entity, and the assets of any such
25 charitable entity, including any stock involved in the acquisition, shall
26 be independent of any influence or control by the acquiring entity, its
27 directors, officers, trustees, subsidiaries or affiliates.

28 (1) The governance of the charitable trust that results from the
29 acquisition or of any newly established charitable organization that is
30 to receive charitable assets pursuant to subsection e. of this section
31 shall be subject to review and approval by the Attorney General. The
32 governance of any existing charitable organization that is to receive
33 charitable assets pursuant to subsection e. of this section shall be
34 subject to review by the Attorney General. The governance of the
35 charitable trust or the charitable organization shall be broadly based,
36 and neither the trust or organization nor any officer, director or senior
37 manager of the trust or organization shall be affiliated with the
38 acquiring entity and no officer, director or senior manager of the trust
39 or organization shall be a full-time employee of State government.
40 No officer, director or senior manager of the trust or organization shall
41 have been a director, officer, agent, trustee or employee of the
42 nonprofit hospital during the three years immediately preceding the
43 effective date of the acquisition.

44 (2) The governing body of the charitable trust or organization shall
45 establish or demonstrate that it has in place, as the case may be, a
46 mechanism to avoid conflicts of interest and to prohibit grants that

1 benefit the board of directors and management of the acquiring entity
2 or its affiliates or subsidiaries.

3 (3) The governing body of the charitable trust or organization shall
4 provide the Attorney General with an annual report which shall include
5 an audited financial statement and a detailed description of its grant-
6 making and other charitable activities related to its use of the
7 charitable assets received pursuant to this act. The annual report shall
8 be made available to the public at both the Attorney General's office
9 and the office of the charitable trust or organization. Nothing
10 contained in this act shall affect the obligations of an entity possessing
11 endowment funds under P.L.1975, c.26 (C.15:18-15 et seq.).

12 g. (1) The entity acquiring the nonprofit hospital, if determined to
13 be necessary by the Commissioner of Health and Senior Services, shall
14 provide funds, in an amount determined by the Commissioner of
15 Health and Senior Services, for the hiring by the Department of
16 Health and Senior Services of an independent health care access
17 monitor to monitor and report quarterly to the Department of Health
18 and Senior Services on community health care access by the entity,
19 including levels of uncompensated care for indigent persons provided
20 by the entity. The funding shall be provided for three years after the
21 date of the acquisition. The entity acquiring the hospital shall provide
22 the monitor with appropriate access to the entity's records in order to
23 enable the monitor to fulfill this function.

24 To prevent the duplication of any information already reported by
25 the entity, the monitor shall, to the extent possible, utilize data already
26 provided by the entity to the Department of Health and Senior
27 Services.

28 No personal identifiers shall be attached to any of the records
29 obtained by the monitor, and all such records shall be subject to the
30 privacy and confidentiality provisions of medical records provided by
31 law.

32 (2) Following the monitoring period, or in the event that no
33 monitoring period is established, if the Commissioner of Health and
34 Senior Services receives information indicating that the acquiring
35 entity is not fulfilling its commitment to the affected service area
36 pursuant to this act and determines that the information is true, he
37 shall order the acquiring entity to comply with a corrective action
38 plan. The commissioner shall retain oversight of the acquiring entity's
39 obligations under the corrective action plan for as long as necessary to
40 ensure compliance with this act.

41 h. The trustees and senior managers of the nonprofit hospital are
42 prohibited from investing in the acquiring entity for a period of three
43 years following the acquisition.

44 i. No director, officer, agent, trustee or employee of the nonprofit
45 hospital shall benefit directly or indirectly from the acquisition,
46 including the receipt of any compensation directly related to the

1 proposed acquisition.

2 j. Any final action by the Attorney General pursuant to this act
3 shall be subject to judicial review by the Superior Court at the
4 initiation of the nonprofit hospital or any person that was a party to
5 the proceeding. Any person adversely affected by the final decision of
6 the Attorney General shall be considered a party to the proceeding,
7 including consumers or community groups representing the citizens of
8 the State.

9 k. Notwithstanding the provisions of subsections a. and d. of this
10 section to the contrary, in the event that the Attorney General or the
11 Commissioner of Health and Senior Services determines that a
12 proposed acquisition should be considered on an expedited basis in
13 order to preserve the quality of health care provided to the community,
14 the Attorney General and the commissioner may combine the public
15 notice about the acquisition with the notice for a public hearing as
16 required in subsections a. and d., respectively, and may reduce the
17 period of time required for notice, as necessary.

18 l. The Attorney General, in consultation with the Commissioner of
19 Health and Senior Services, shall adopt regulations pursuant to the
20 "Administrative Procedure Act," P.L.1968, c.410, (C.52:14B-1 et
21 seq.) to carry out the purposes of this section.

22

23 3. A hospital owned and operated by a county is exempt from the
24 provisions of this act.

25

26 4. The provisions of this act shall apply to a proposed acquisition
27 of a nonprofit hospital by a person or entity other than a corporation
28 organized in this State for charitable purposes under Title 15A of the
29 New Jersey Statutes that is pending on, or initiated after, the effective
30 date of this act.

31

32 5. Nothing in this act shall be construed to limit the existing
33 authority of the Attorney General, the Commissioner of Health and
34 Senior Services or any other government official or entity or the court
35 to review, approve or disapprove conditions related to an acquisition,
36 transaction or disposition under current law.

37

38 6. This act shall take effect immediately.

39

40

41

STATEMENT

42

43 This bill, the "Community Health Care Assets Protection Act,"
44 provides for State oversight of the acquisition of a nonprofit hospital
45 by a for-profit entity.

1 The bill requires a nonprofit hospital to apply to the Attorney
2 General for approval prior to entering into a transaction that results in
3 the acquisition of the hospital by a person or entity other than a
4 corporation organized in this State for charitable purposes under Title
5 15A of the New Jersey Statutes. The bill defines "acquisition" to
6 mean the purchase, ease, exchange, conversion, restructuring, merger,
7 division, consolidation, transfer of control or other disposition of a
8 substantial amount of assets or operations, whether through a single
9 transaction or series of transactions, with one or more persons or
10 entities.

11 The proposed acquisition shall be subject to the written approval of
12 the Attorney General, in consultation with the Commissioner of Health
13 and Senior Services.

14 Within five working days after receipt of an application, the
15 Attorney General shall require the nonprofit hospital to publish notice
16 of the proposed acquisition in a newspaper of general circulation in the
17 service area of the hospital, once per week for three weeks. The
18 Attorney General, in consultation with the Commissioner of Health
19 and Senior Services, shall review the application and approve the
20 proposed acquisition, with or without any specific modifications, or,
21 if he finds that it is not in the public interest, disapprove the proposed
22 acquisition.

23 The proposed hospital acquisition shall not be considered to be in
24 the public interest unless the Attorney General determines that
25 appropriate steps have been taken to safeguard the value of the
26 charitable assets of the hospital and to ensure that any proceeds from
27 the proposed acquisition are irrevocably dedicated for appropriate
28 charitable health care purposes; and the Commissioner of Health and
29 Senior Services determines that the proposed transaction is not likely
30 to result in the deterioration of the quality, availability or accessibility
31 of health care services in the affected communities. The bill sets forth
32 specific criteria that the Attorney General shall consider in reviewing
33 the application.

34 The bill authorizes the Attorney General to assess the entity
35 proposing to acquire the nonprofit hospital for reasonable costs related
36 to the review. The Attorney General and the Commissioner of Health
37 and Senior Services are required, during the course of the review, to
38 hold at least one public hearing in which any person may file written
39 comments and exhibits or appear and make a statement. The Attorney
40 General or the commissioner may subpoena additional information or
41 witnesses, require and administer oaths, require sworn statements, take
42 depositions and use related discovery procedures for purposes of the
43 hearing and at any time prior to completing the review of the proposed
44 acquisition.

45 The Attorney General shall make the information received, and the
46 Department of Health and Senior Services shall make any information

1 in its records relating to the proposed acquisition available for
2 inspection, at no cost to the public.

3 The bill provides that upon execution of the proposed acquisition,
4 the amount determined by the Attorney General to be set aside as a
5 charitable obligation shall be placed in a nonprofit charitable trust or
6 one or more existing or newly established section 501(c)(3) tax
7 exempt charitable organizations. The charitable mission and grant-
8 making functions of a charitable entity that receives the assets shall be
9 dedicated to serving the health care needs of the community
10 historically served by the predecessor nonprofit hospital.

11 The governance of the charitable trust or organization shall be
12 subject to review and approval by the Attorney General and subject to
13 strict conflict of interest requirements to ensure that employees of the
14 trust or organization, former hospital employees and others involved
15 in the acquisition do not benefit financially from the acquisition. The
16 governing body of the charitable trust or organization shall provide the
17 Attorney General with an annual report which shall include an audited
18 financial statement and detailed description of its grant-making and
19 other charitable activities related to its use of the charitable assets.
20 The annual report shall be made available to the public at both the
21 Attorney General's office and the office of the charitable trust or
22 organization.

23 The bill provides that if the Commissioner of Health and Senior
24 Services receives information indicating that the acquiring entity is
25 not fulfilling its commitment to the affected service area, and
26 determines that the information is true, he shall order the acquiring
27 entity to comply with a corrective action plan. The commissioner shall
28 retain oversight of the acquiring entity's obligations under the
29 corrective action plan for as long as necessary to ensure compliance.

30 The bill provides that a county-owned hospital is exempt from the
31 provisions of the bill.

32 Finally, the bill provides that its provisions shall not be construed
33 to limit the existing authority of the Attorney General, the
34 Commissioner of Health and Senior Services or any other government
35 official or entity or the court to review, approve or disapprove
36 conditions related to an acquisition, transaction or disposition under
37 current law.

ASSEMBLY HEALTH COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1439

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 2, 2000

The Assembly Health Committee reports favorably and with committee amendments Assembly Bill No. 1439.

As amended by the committee, this bill, which is designated the "Community Health Care Assets Protection Act," provides for State oversight of the acquisition of a nonprofit hospital by a for-profit entity.

The bill requires a nonprofit hospital to apply to the Attorney General for approval prior to entering into a transaction that results in the acquisition of the hospital by a person or entity other than a corporation organized in this State for charitable purposes under Title 15A of the New Jersey Statutes. The bill defines "acquisition" to mean the purchase, ease, exchange, conversion, restructuring, merger, division, consolidation, transfer of control or other disposition of a substantial amount of assets or operations, whether through a single transaction or series of transactions, with one or more persons or entities.

The proposed acquisition shall be subject to the written approval of the Attorney General, in consultation with the Commissioner of Health and Senior Services.

Within five working days after receipt of an application, the Attorney General shall require the nonprofit hospital to publish notice of the proposed acquisition in a newspaper of general circulation in the service area of the hospital, once per week for three weeks. The Attorney General, in consultation with the Commissioner of Health and Senior Services, shall review the application and approve the proposed acquisition, with or without any specific modifications, or, if he finds that it is not in the public interest, disapprove the proposed acquisition.

The proposed hospital acquisition shall not be considered to be in the public interest unless the Attorney General determines that appropriate steps have been taken to safeguard the value of the charitable assets of the hospital and to ensure that any proceeds from the proposed acquisition are irrevocably dedicated for appropriate charitable health care purposes; and the Commissioner of Health and

Senior Services determines that the proposed transaction is not likely to result in the deterioration of the quality, availability or accessibility of health care services in the affected communities. The bill sets forth specific criteria that the Attorney General shall consider in reviewing the application.

The bill authorizes the Attorney General to assess the entity proposing to acquire the nonprofit hospital for reasonable costs related to the review. The Attorney General and the Commissioner of Health and Senior Services are required, during the course of the review, to hold at least one public hearing in which any person may file written comments and exhibits or appear and make a statement. The Attorney General or the commissioner may subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions and use related discovery procedures for purposes of the hearing and at any time prior to completing the review of the proposed acquisition.

The Attorney General shall make the information received, and the Department of Health and Senior Services shall make any information in its records relating to the proposed acquisition available for inspection, at no cost to the public.

The bill provides that upon execution of the proposed acquisition, the amount determined by the Attorney General to be set aside as a charitable obligation shall be placed in a nonprofit charitable trust or one or more existing or newly established section 501(c)(3) tax exempt charitable organizations. The charitable mission and grant-making functions of a charitable entity that receives the assets shall be dedicated to serving the health care needs of the community historically served by the predecessor nonprofit hospital.

The governance of the charitable trust or organization shall be subject to review and approval by the Attorney General and subject to strict conflict of interest requirements to ensure that employees of the trust or organization, former hospital employees and others involved in the acquisition do not benefit financially from the acquisition. The governing body of the charitable trust or organization shall provide the Attorney General with an annual report which shall include an audited financial statement and detailed description of its grant-making and other charitable activities related to its use of the charitable assets. The annual report shall be made available to the public at both the Attorney General's office and the office of the charitable trust or organization.

The bill provides that if the Commissioner of Health and Senior Services receives information indicating that the acquiring entity is not fulfilling its commitment to the affected service area, and determines that the information is true, he shall order the acquiring entity to comply with a corrective action plan. The commissioner shall retain oversight of the acquiring entity's obligations under the corrective action plan for as long as necessary to ensure compliance.

The bill provides that a county-owned hospital is exempt from the provisions of the bill.

Finally, the bill provides that its provisions shall not be construed to limit the existing authority of the Attorney General, the Commissioner of Health and Senior Services or any other government official or entity or the court to review, approve or disapprove conditions related to an acquisition, transaction or disposition under current law.

The committee amended the bill to modify the provision (in paragraph (1) of subsection f. of section 2) that prohibited an officer, director or senior manager of the charitable trust or organization created as a result of the acquisition of the nonprofit hospital from having been a director, officer, agent, trustee or employee of the nonprofit hospital during the three years immediately preceding the effective date of the acquisition. Under the amendment, this prohibition would apply unless that person can demonstrate to the satisfaction of the Attorney General that the person's assumption of the position of officer, director or senior manager of the trust or organization would not constitute a breach of fiduciary duty or other conflict of interest.

The other committee amendment, which is technical in nature, restores language comprising subsection e. of section 2, which was inadvertently deleted from the bill as prefiled for introduction. This subsection, which is referenced in subsection f. of section 2, provides that the Attorney General shall make a determination as to the amount of assets which the nonprofit hospital shall set aside as a charitable obligation, based on the full and fair market value of the hospital as determined by the Attorney General at the time of the proposed acquisition.

As reported by the committee, this bill is similar to the Assembly Committee Substitute for Assembly Bill Nos. 652 and 887 (2R) of 1998 (Vandervalk/Cohen/Caraballo), which this committee reported during the prior session and which passed the General Assembly 79-0-0 on June 11, 1998. The bill is also similar to Senate Bill No. 366 (Sinagra), which is currently pending in the Senate Health Committee.

This bill was prefiled for introduction in the 2000-2001 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

[First Reprint]

ASSEMBLY, No. 1439

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblywoman CHARLOTTE VANDERVALK

District 39 (Bergen)

Assemblyman NEIL M. COHEN

District 20 (Union)

Co-Sponsored by:

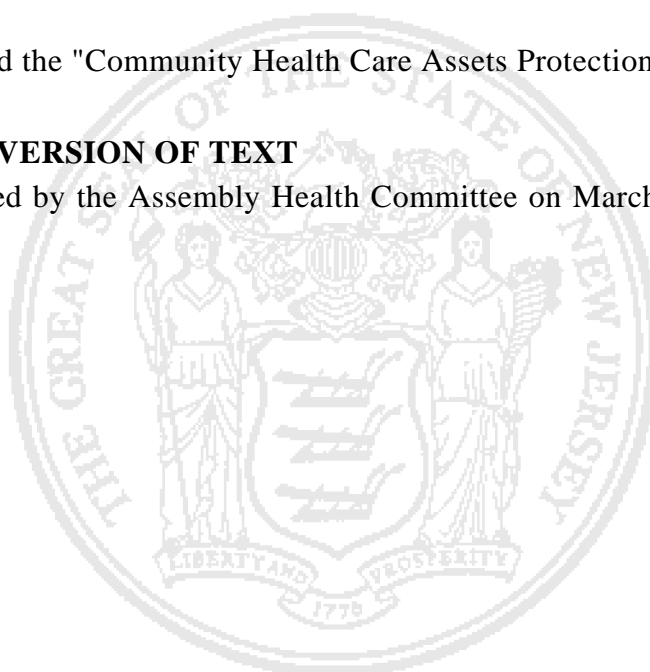
**Assemblyman Caraballo, Assemblywoman Gill, Assemblyman Conaway,
Assemblywoman Greenstein, Senators Sinagra, Matheussen, Adler and
Vitale**

SYNOPSIS

Designated the "Community Health Care Assets Protection Act."

CURRENT VERSION OF TEXT

As reported by the Assembly Health Committee on March 2, 2000, with
amendments.



(Sponsorship Updated As Of: 6/27/2000)

1 AN ACT concerning nonprofit hospitals and supplementing ¹[Title
2 15A of the New Jersey Statutes and]¹ Title 26 of the Revised
3 Statutes.

4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7

8 1. This act shall be known and may be cited as the "Community
9 Health Care Assets Protection Act."

10

11 2. In addition to the requirements of P.L.1971, c.136 (C.26:2H-1
12 et seq.) concerning certificate of need and licensure requirements, a
13 nonprofit hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et
14 seq.) shall apply to the Attorney General for approval prior to entering
15 into a transaction that results in the acquisition of the hospital by a
16 person or entity other than a corporation organized in this State for
17 charitable purposes under Title 15A of the New Jersey Statutes. The
18 proposed acquisition shall be subject to the written approval of the
19 Attorney General, in consultation with the Commissioner of Health
20 and Senior Services, pursuant to the provisions of this section.

21

22 For the purposes of sections 2 and 3 of this act, "acquisition" means
23 the purchase, lease, exchange, conversion, restructuring, merger,
24 division, consolidation, transfer of control or other disposition of a
25 substantial amount of assets or operations, whether through a single
26 transaction or series of transactions, with one or more persons or
27 entities.

28

29 a. Within five working days of submitting an application pursuant
30 to this section, the nonprofit hospital shall publish a notice of the
31 proposed acquisition, in a form approved by the Attorney General, in
32 a newspaper of general circulation in the service area of the hospital
33 once per week for three weeks. The notice shall state the names of
34 the parties to the agreement, describe the contents of the application
35 to the Attorney General and state the date by which a person may
36 submit written comments about the application to the Attorney
37 General.

38

39 b. The Attorney General, in consultation with the Commissioner
40 of Health and Senior Services, shall review the application and
41 approve the proposed acquisition, with or without any specific
42 modifications, or, if he finds that it is not in the public interest,
43 disapprove the proposed acquisition.

44

45 The proposed acquisition shall not be considered to be in the public

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AHL committee amendments adopted March 2, 2000.

1 interest unless the Attorney General determines that appropriate steps
2 have been taken to safeguard the value of the charitable assets of the
3 hospital and to ensure that any proceeds from the proposed acquisition
4 are irrevocably dedicated for appropriate charitable health care
5 purposes; and the Commissioner of Health and Senior Services
6 determines that the proposed transaction is not likely to result in the
7 deterioration of the quality, availability or accessibility of health care
8 services in the affected communities.

9 In determining whether the acquisition meets the criteria of this
10 subsection, the Attorney General shall consider:

11 (1) Whether the acquisition is permitted under the "New Jersey
12 Nonprofit Corporation Act," Title 15A of the New Jersey Statutes,
13 and other applicable State statutes governing nonprofit entities, trusts
14 or charities;

15 (2) Whether the nonprofit hospital exercised due diligence in
16 deciding to effectuate the acquisition, selecting the other party to the
17 acquisition and negotiating the terms and conditions of the acquisition;

18 (3) The procedures used by the nonprofit hospital in making its
19 decision, including whether appropriate expert assistance was used;

20 (4) Whether conflict of interest was disclosed, including, but not
21 limited to, conflicts of interest related to board members of, executives
22 of and experts retained by the nonprofit hospital, purchaser or other
23 parties to the acquisition;

24 (5) Whether the nonprofit hospital will receive full and fair market
25 value for its assets. The Attorney General may employ, at the
26 nonprofit hospital's expense, reasonably necessary expert assistance in
27 making this determination;

28 (6) Whether charitable funds are placed at unreasonable risk, if the
29 acquisition is financed in part by the nonprofit hospital;

30 (7) Whether any management contract under the acquisition is for
31 reasonable fair value;

32 (8) Whether the acquisition proceeds will be used for appropriate
33 charitable health care purposes consistent with the nonprofit hospital's
34 original purpose or for the support and promotion of health care and
35 whether the proceeds will be controlled as charitable funds
36 independently of the purchaser or parties to the acquisition; and

37 (9) Whether a right of first refusal has been retained to repurchase
38 the assets by a successor nonprofit corporation or foundation if,
39 following the acquisition, the hospital is subsequently sold to, acquired
40 by or merged with another entity.

41 c. In his review of the proposed acquisition, the Attorney General
42 may assess the entity proposing to acquire the nonprofit hospital for
43 reasonable costs related to the review, as determined by the Attorney
44 General to be necessary. Reasonable costs may include expert review
45 of the acquisition and a process for educating the public about the
46 acquisition and obtaining public input.

1 d. The Attorney General and the Commissioner of Health and
2 Senior Services shall, during the course of the review pursuant to this
3 section, hold at least one public hearing in which any person may file
4 written comments and exhibits or appear and make a statement. The
5 Attorney General or the commissioner may subpoena additional
6 information or witnesses, including, but not limited to, information
7 about any transaction that is collateral to the proposed acquisition and
8 any related documents, require and administer oaths, require sworn
9 statements, take depositions and use related discovery procedures for
10 purposes of the hearing and at any time prior to completing the review
11 of the proposed acquisition.

12 The Attorney General shall make the information received pursuant
13 to this section, and the Department of Health and Senior Services shall
14 make any information in its records relating to the proposed
15 acquisition, available for inspection at no cost to the public.

16 The public hearing shall be held no later than 60 days after receipt
17 of an application from a nonprofit hospital that is deemed complete by
18 the Attorney General. Public notice of the hearing shall be provided
19 at least two weeks in advance of the date of the hearing.

20 ¹e. The Attorney General shall make a determination as to the
21 amount of assets which the nonprofit hospital shall set aside as a
22 charitable obligation, based on the full and fair market value of the
23 hospital as determined by the Attorney General at the time of the
24 proposed acquisition.¹

25 f. Upon execution of the proposed acquisition, the amount
26 determined by the Attorney General to be set aside as a charitable
27 obligation shall be placed in a nonprofit charitable trust or one or more
28 existing or newly established tax-exempt charitable organizations
29 operating pursuant to 26 U.S.C. s. 501(c)(3). The charitable mission
30 and grant-making functions of any charitable entity that receives assets
31 pursuant to subsection e. of this section shall be dedicated to serving
32 the health care needs of the community historically served by the
33 predecessor nonprofit hospital. Any charitable entity that receives
34 assets pursuant to subsection e. of this section, the directors, officers
35 and trustees of any such charitable entity, and the assets of any such
36 charitable entity, including any stock involved in the acquisition, shall
37 be independent of any influence or control by the acquiring entity, its
38 directors, officers, trustees, subsidiaries or affiliates.

39 (1) The governance of the charitable trust that results from the
40 acquisition or of any newly established charitable organization that is
41 to receive charitable assets pursuant to subsection e. of this section
42 shall be subject to review and approval by the Attorney General. The
43 governance of any existing charitable organization that is to receive
44 charitable assets pursuant to subsection e. of this section shall be
45 subject to review by the Attorney General. The governance of the
46 charitable trust or the charitable organization shall be broadly based,

1 and neither the trust or organization nor any officer, director or senior
2 manager of the trust or organization shall be affiliated with the
3 acquiring entity and no officer, director or senior manager of the trust
4 or organization shall be a full-time employee of State government. No
5 officer, director or senior manager of the trust or organization shall
6 have been a director, officer, agent, trustee or employee of the
7 nonprofit hospital during the three years immediately preceding the
8 effective date of the acquisition¹, unless that person can demonstrate
9 to the satisfaction of the Attorney General that the person's
10 assumption of the position of officer, director or senior manager of the
11 trust or organization would not constitute a breach of fiduciary duty
12 or other conflict of interest¹.

13 (2) The governing body of the charitable trust or organization shall
14 establish or demonstrate that it has in place, as the case may be, a
15 mechanism to avoid conflicts of interest and to prohibit grants that
16 benefit the board of directors and management of the acquiring entity
17 or its affiliates or subsidiaries.

18 (3) The governing body of the charitable trust or organization shall
19 provide the Attorney General with an annual report which shall include
20 an audited financial statement and a detailed description of its grant-
21 making and other charitable activities related to its use of the
22 charitable assets received pursuant to this act. The annual report shall
23 be made available to the public at both the Attorney General's office
24 and the office of the charitable trust or organization. Nothing
25 contained in this act shall affect the obligations of an entity possessing
26 endowment funds under P.L.1975, c.26 (C.15:18-15 et seq.).

27 g. (1) The entity acquiring the nonprofit hospital, if determined to
28 be necessary by the Commissioner of Health and Senior Services, shall
29 provide funds, in an amount determined by the Commissioner of
30 Health and Senior Services, for the hiring by the Department of
31 Health and Senior Services of an independent health care access
32 monitor to monitor and report quarterly to the Department of Health
33 and Senior Services on community health care access by the entity,
34 including levels of uncompensated care for indigent persons provided
35 by the entity. The funding shall be provided for three years after the
36 date of the acquisition. The entity acquiring the hospital shall provide
37 the monitor with appropriate access to the entity's records in order to
38 enable the monitor to fulfill this function.

39 To prevent the duplication of any information already reported by
40 the entity, the monitor shall, to the extent possible, utilize data already
41 provided by the entity to the Department of Health and Senior
42 Services.

43 No personal identifiers shall be attached to any of the records
44 obtained by the monitor, and all such records shall be subject to the
45 privacy and confidentiality provisions of medical records provided by
46 law.

1 (2) Following the monitoring period, or in the event that no
2 monitoring period is established, if the Commissioner of Health and
3 Senior Services receives information indicating that the acquiring
4 entity is not fulfilling its commitment to the affected service area
5 pursuant to this act and determines that the information is true, he
6 shall order the acquiring entity to comply with a corrective action
7 plan. The commissioner shall retain oversight of the acquiring entity's
8 obligations under the corrective action plan for as long as necessary to
9 ensure compliance with this act.

10 h. The trustees and senior managers of the nonprofit hospital are
11 prohibited from investing in the acquiring entity for a period of three
12 years following the acquisition.

13 i. No director, officer, agent, trustee or employee of the nonprofit
14 hospital shall benefit directly or indirectly from the acquisition,
15 including the receipt of any compensation directly related to the
16 proposed acquisition.

17 j. Any final action by the Attorney General pursuant to this act
18 shall be subject to judicial review by the Superior Court at the
19 initiation of the nonprofit hospital or any person that was a party to
20 the proceeding. Any person adversely affected by the final decision of
21 the Attorney General shall be considered a party to the proceeding,
22 including consumers or community groups representing the citizens of
23 the State.

24 k. Notwithstanding the provisions of subsections a. and d. of this
25 section to the contrary, in the event that the Attorney General or the
26 Commissioner of Health and Senior Services determines that a
27 proposed acquisition should be considered on an expedited basis in
28 order to preserve the quality of health care provided to the community,
29 the Attorney General and the commissioner may combine the public
30 notice about the acquisition with the notice for a public hearing as
31 required in subsections a. and d., respectively, and may reduce the
32 period of time required for notice, as necessary.

33 1. The Attorney General, in consultation with the Commissioner of
34 Health and Senior Services, shall adopt regulations pursuant to the
35 "Administrative Procedure Act," P.L.1968, c.410, (C.52:14B-1 et
36 seq.) to carry out the purposes of this section.

37
38 3. A hospital owned and operated by a county is exempt from the
39 provisions of this act.

40
41 4. The provisions of this act shall apply to a proposed acquisition
42 of a nonprofit hospital by a person or entity other than a corporation
43 organized in this State for charitable purposes under Title 15A of the
44 New Jersey Statutes that is pending on, or initiated after, the effective
45 date of this act.

- 1 5. Nothing in this act shall be construed to limit the existing
- 2 authority of the Attorney General, the Commissioner of Health and
- 3 Senior Services or any other government official or entity or the court
- 4 to review, approve or disapprove conditions related to an acquisition,
- 5 transaction or disposition under current law.
- 6
- 7 6. This act shall take effect immediately.

SENATE HEALTH COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1439

STATE OF NEW JERSEY

DATED: JUNE 19, 2000

The Senate Health Committee reports favorably Assembly Bill No. 1439 (1R).

This bill, which is designated the "Community Health Care Assets Protection Act," provides for State oversight of the acquisition of a nonprofit hospital by a for-profit entity.

The bill requires a nonprofit hospital to apply to the Attorney General for approval prior to entering into a transaction that results in the acquisition of the hospital by a person or entity other than a corporation organized in this State for charitable purposes under Title 15A of the New Jersey Statutes. The bill defines "acquisition" to mean the purchase, lease, exchange, conversion, restructuring, merger, division, consolidation, transfer of control or other disposition of a substantial amount of assets or operations, whether through a single transaction or series of transactions, with one or more persons or entities.

The proposed acquisition shall be subject to the written approval of the Attorney General, in consultation with the Commissioner of Health and Senior Services.

Within five working days after receipt of an application, the Attorney General shall require the nonprofit hospital to publish notice of the proposed acquisition in a newspaper of general circulation in the service area of the hospital, once per week for three weeks. The Attorney General, in consultation with the Commissioner of Health and Senior Services, shall review the application and approve the proposed acquisition, with or without any specific modifications, or, if he finds that it is not in the public interest, disapprove the proposed acquisition.

The proposed hospital acquisition shall not be considered to be in the public interest unless the Attorney General determines that appropriate steps have been taken to safeguard the value of the charitable assets of the hospital and to ensure that any proceeds from the proposed acquisition are irrevocably dedicated for appropriate charitable health care purposes; and the Commissioner of Health and Senior Services determines that the proposed transaction is not likely to result in the deterioration of the quality, availability or accessibility

of health care services in the affected communities. The bill sets forth specific criteria that the Attorney General shall consider in reviewing the application.

The bill authorizes the Attorney General to assess the entity proposing to acquire the nonprofit hospital for reasonable costs related to the review. The Attorney General and the Commissioner of Health and Senior Services are required, during the course of the review, to hold at least one public hearing in which any person may file written comments and exhibits or appear and make a statement. The Attorney General or the commissioner may subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions and use related discovery procedures for purposes of the hearing and at any time prior to completing the review of the proposed acquisition.

The Attorney General shall make the information received, and the Department of Health and Senior Services shall make any information in its records relating to the proposed acquisition available for inspection, at no cost to the public.

The bill provides that upon execution of the proposed acquisition, the amount determined by the Attorney General to be set aside as a charitable obligation shall be placed in a nonprofit charitable trust or one or more existing or newly established section 501(c)(3) tax exempt charitable organizations. The charitable mission and grant-making functions of a charitable entity that receives the assets shall be dedicated to serving the health care needs of the community historically served by the predecessor nonprofit hospital.

The governance of the charitable trust or organization shall be subject to review and approval by the Attorney General and subject to strict conflict of interest requirements to ensure that employees of the trust or organization, former hospital employees and others involved in the acquisition do not benefit financially from the acquisition. The governing body of the charitable trust or organization shall provide the Attorney General with an annual report which shall include an audited financial statement and detailed description of its grant-making and other charitable activities related to its use of the charitable assets. The annual report shall be made available to the public at both the Attorney General's office and the office of the charitable trust or organization.

The bill provides that if the Commissioner of Health and Senior Services receives information indicating that the acquiring entity is not fulfilling its commitment to the affected service area, and determines that the information is true, he shall order the acquiring entity to comply with a corrective action plan. The commissioner shall retain oversight of the acquiring entity's obligations under the corrective action plan for as long as necessary to ensure compliance.

The bill provides that a county-owned hospital is exempt from the provisions of the bill.

Finally, the bill provides that its provisions shall not be construed

to limit the existing authority of the Attorney General, the Commissioner of Health and Senior Services or any other government official or entity or the court to review, approve or disapprove conditions related to an acquisition, transaction or disposition under current law.

As reported by the committee, this bill is identical to Senate Bill No. 366 SCA (Sinagra), which also was reported favorably by the committee on this date.

[First Reprint]

ASSEMBLY, No. 1439

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblywoman CHARLOTTE VANDERVALK

District 39 (Bergen)

Assemblyman NEIL M. COHEN

District 20 (Union)

Co-Sponsored by:

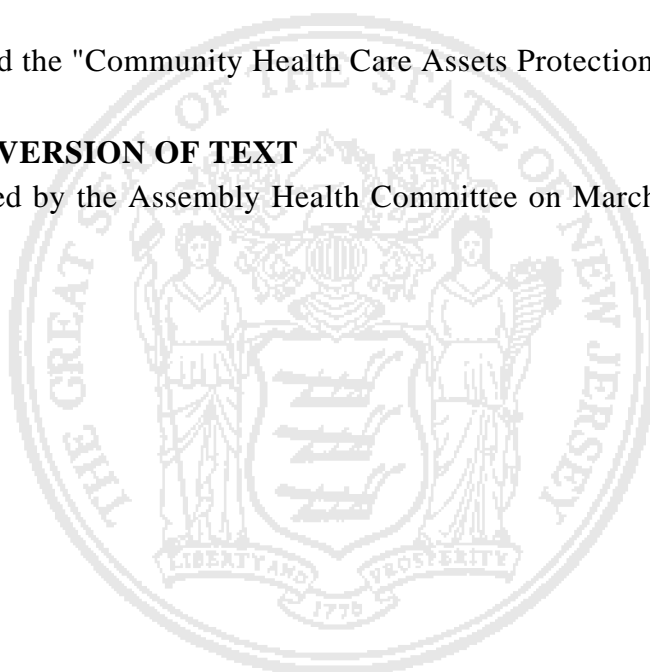
**Assemblyman Caraballo, Assemblywoman Gill, Assemblyman Conaway,
Assemblywoman Greenstein, Senators Sinagra, Matheussen, Adler and
Vitale**

SYNOPSIS

Designated the "Community Health Care Assets Protection Act."

CURRENT VERSION OF TEXT

As reported by the Assembly Health Committee on March 2, 2000, with amendments.



(Sponsorship Updated As Of: 6/27/2000)

1 AN ACT concerning nonprofit hospitals and supplementing ¹[Title
2 15A of the New Jersey Statutes and]¹ Title 26 of the Revised
3 Statutes.

4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7

8 1. This act shall be known and may be cited as the "Community
9 Health Care Assets Protection Act."

10

11 2. In addition to the requirements of P.L.1971, c.136 (C.26:2H-1
12 et seq.) concerning certificate of need and licensure requirements, a
13 nonprofit hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et
14 seq.) shall apply to the Attorney General for approval prior to entering
15 into a transaction that results in the acquisition of the hospital by a
16 person or entity other than a corporation organized in this State for
17 charitable purposes under Title 15A of the New Jersey Statutes. The
18 proposed acquisition shall be subject to the written approval of the
19 Attorney General, in consultation with the Commissioner of Health
20 and Senior Services, pursuant to the provisions of this section.

21

22 For the purposes of sections 2 and 3 of this act, "acquisition" means
23 the purchase, lease, exchange, conversion, restructuring, merger,
24 division, consolidation, transfer of control or other disposition of a
25 substantial amount of assets or operations, whether through a single
26 transaction or series of transactions, with one or more persons or
27 entities.

28

29 a. Within five working days of submitting an application pursuant
30 to this section, the nonprofit hospital shall publish a notice of the
31 proposed acquisition, in a form approved by the Attorney General, in
32 a newspaper of general circulation in the service area of the hospital
33 once per week for three weeks. The notice shall state the names of
34 the parties to the agreement, describe the contents of the application
35 to the Attorney General and state the date by which a person may
36 submit written comments about the application to the Attorney
37 General.

38

39 b. The Attorney General, in consultation with the Commissioner
40 of Health and Senior Services, shall review the application and
41 approve the proposed acquisition, with or without any specific
42 modifications, or, if he finds that it is not in the public interest,
43 disapprove the proposed acquisition.

44

45 The proposed acquisition shall not be considered to be in the public

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AHL committee amendments adopted March 2, 2000.

1 interest unless the Attorney General determines that appropriate steps
2 have been taken to safeguard the value of the charitable assets of the
3 hospital and to ensure that any proceeds from the proposed acquisition
4 are irrevocably dedicated for appropriate charitable health care
5 purposes; and the Commissioner of Health and Senior Services
6 determines that the proposed transaction is not likely to result in the
7 deterioration of the quality, availability or accessibility of health care
8 services in the affected communities.

9 In determining whether the acquisition meets the criteria of this
10 subsection, the Attorney General shall consider:

11 (1) Whether the acquisition is permitted under the "New Jersey
12 Nonprofit Corporation Act," Title 15A of the New Jersey Statutes,
13 and other applicable State statutes governing nonprofit entities, trusts
14 or charities;

15 (2) Whether the nonprofit hospital exercised due diligence in
16 deciding to effectuate the acquisition, selecting the other party to the
17 acquisition and negotiating the terms and conditions of the acquisition;

18 (3) The procedures used by the nonprofit hospital in making its
19 decision, including whether appropriate expert assistance was used;

20 (4) Whether conflict of interest was disclosed, including, but not
21 limited to, conflicts of interest related to board members of, executives
22 of and experts retained by the nonprofit hospital, purchaser or other
23 parties to the acquisition;

24 (5) Whether the nonprofit hospital will receive full and fair market
25 value for its assets. The Attorney General may employ, at the
26 nonprofit hospital's expense, reasonably necessary expert assistance in
27 making this determination;

28 (6) Whether charitable funds are placed at unreasonable risk, if the
29 acquisition is financed in part by the nonprofit hospital;

30 (7) Whether any management contract under the acquisition is for
31 reasonable fair value;

32 (8) Whether the acquisition proceeds will be used for appropriate
33 charitable health care purposes consistent with the nonprofit hospital's
34 original purpose or for the support and promotion of health care and
35 whether the proceeds will be controlled as charitable funds
36 independently of the purchaser or parties to the acquisition; and

37 (9) Whether a right of first refusal has been retained to repurchase
38 the assets by a successor nonprofit corporation or foundation if,
39 following the acquisition, the hospital is subsequently sold to, acquired
40 by or merged with another entity.

41 c. In his review of the proposed acquisition, the Attorney General
42 may assess the entity proposing to acquire the nonprofit hospital for
43 reasonable costs related to the review, as determined by the Attorney
44 General to be necessary. Reasonable costs may include expert review
45 of the acquisition and a process for educating the public about the
46 acquisition and obtaining public input.

1 d. The Attorney General and the Commissioner of Health and
2 Senior Services shall, during the course of the review pursuant to this
3 section, hold at least one public hearing in which any person may file
4 written comments and exhibits or appear and make a statement. The
5 Attorney General or the commissioner may subpoena additional
6 information or witnesses, including, but not limited to, information
7 about any transaction that is collateral to the proposed acquisition and
8 any related documents, require and administer oaths, require sworn
9 statements, take depositions and use related discovery procedures for
10 purposes of the hearing and at any time prior to completing the review
11 of the proposed acquisition.

12 The Attorney General shall make the information received pursuant
13 to this section, and the Department of Health and Senior Services shall
14 make any information in its records relating to the proposed
15 acquisition, available for inspection at no cost to the public.

16 The public hearing shall be held no later than 60 days after receipt
17 of an application from a nonprofit hospital that is deemed complete by
18 the Attorney General. Public notice of the hearing shall be provided
19 at least two weeks in advance of the date of the hearing.

20 ¹e. The Attorney General shall make a determination as to the
21 amount of assets which the nonprofit hospital shall set aside as a
22 charitable obligation, based on the full and fair market value of the
23 hospital as determined by the Attorney General at the time of the
24 proposed acquisition.¹

25 f. Upon execution of the proposed acquisition, the amount
26 determined by the Attorney General to be set aside as a charitable
27 obligation shall be placed in a nonprofit charitable trust or one or more
28 existing or newly established tax-exempt charitable organizations
29 operating pursuant to 26 U.S.C. s. 501(c)(3). The charitable mission
30 and grant-making functions of any charitable entity that receives assets
31 pursuant to subsection e. of this section shall be dedicated to serving
32 the health care needs of the community historically served by the
33 predecessor nonprofit hospital. Any charitable entity that receives
34 assets pursuant to subsection e. of this section, the directors, officers
35 and trustees of any such charitable entity, and the assets of any such
36 charitable entity, including any stock involved in the acquisition, shall
37 be independent of any influence or control by the acquiring entity, its
38 directors, officers, trustees, subsidiaries or affiliates.

39 (1) The governance of the charitable trust that results from the
40 acquisition or of any newly established charitable organization that is
41 to receive charitable assets pursuant to subsection e. of this section
42 shall be subject to review and approval by the Attorney General. The
43 governance of any existing charitable organization that is to receive
44 charitable assets pursuant to subsection e. of this section shall be
45 subject to review by the Attorney General. The governance of the
46 charitable trust or the charitable organization shall be broadly based,

1 and neither the trust or organization nor any officer, director or senior
2 manager of the trust or organization shall be affiliated with the
3 acquiring entity and no officer, director or senior manager of the trust
4 or organization shall be a full-time employee of State government. No
5 officer, director or senior manager of the trust or organization shall
6 have been a director, officer, agent, trustee or employee of the
7 nonprofit hospital during the three years immediately preceding the
8 effective date of the acquisition¹, unless that person can demonstrate
9 to the satisfaction of the Attorney General that the person's
10 assumption of the position of officer, director or senior manager of the
11 trust or organization would not constitute a breach of fiduciary duty
12 or other conflict of interest¹.

13 (2) The governing body of the charitable trust or organization shall
14 establish or demonstrate that it has in place, as the case may be, a
15 mechanism to avoid conflicts of interest and to prohibit grants that
16 benefit the board of directors and management of the acquiring entity
17 or its affiliates or subsidiaries.

18 (3) The governing body of the charitable trust or organization shall
19 provide the Attorney General with an annual report which shall include
20 an audited financial statement and a detailed description of its grant-
21 making and other charitable activities related to its use of the
22 charitable assets received pursuant to this act. The annual report shall
23 be made available to the public at both the Attorney General's office
24 and the office of the charitable trust or organization. Nothing
25 contained in this act shall affect the obligations of an entity possessing
26 endowment funds under P.L.1975, c.26 (C.15:18-15 et seq.).

27 g. (1) The entity acquiring the nonprofit hospital, if determined to
28 be necessary by the Commissioner of Health and Senior Services, shall
29 provide funds, in an amount determined by the Commissioner of
30 Health and Senior Services, for the hiring by the Department of
31 Health and Senior Services of an independent health care access
32 monitor to monitor and report quarterly to the Department of Health
33 and Senior Services on community health care access by the entity,
34 including levels of uncompensated care for indigent persons provided
35 by the entity. The funding shall be provided for three years after the
36 date of the acquisition. The entity acquiring the hospital shall provide
37 the monitor with appropriate access to the entity's records in order to
38 enable the monitor to fulfill this function.

39 To prevent the duplication of any information already reported by
40 the entity, the monitor shall, to the extent possible, utilize data already
41 provided by the entity to the Department of Health and Senior
42 Services.

43 No personal identifiers shall be attached to any of the records
44 obtained by the monitor, and all such records shall be subject to the
45 privacy and confidentiality provisions of medical records provided by
46 law.

1 (2) Following the monitoring period, or in the event that no
2 monitoring period is established, if the Commissioner of Health and
3 Senior Services receives information indicating that the acquiring
4 entity is not fulfilling its commitment to the affected service area
5 pursuant to this act and determines that the information is true, he
6 shall order the acquiring entity to comply with a corrective action
7 plan. The commissioner shall retain oversight of the acquiring entity's
8 obligations under the corrective action plan for as long as necessary to
9 ensure compliance with this act.

10 h. The trustees and senior managers of the nonprofit hospital are
11 prohibited from investing in the acquiring entity for a period of three
12 years following the acquisition.

13 i. No director, officer, agent, trustee or employee of the nonprofit
14 hospital shall benefit directly or indirectly from the acquisition,
15 including the receipt of any compensation directly related to the
16 proposed acquisition.

17 j. Any final action by the Attorney General pursuant to this act
18 shall be subject to judicial review by the Superior Court at the
19 initiation of the nonprofit hospital or any person that was a party to
20 the proceeding. Any person adversely affected by the final decision of
21 the Attorney General shall be considered a party to the proceeding,
22 including consumers or community groups representing the citizens of
23 the State.

24 k. Notwithstanding the provisions of subsections a. and d. of this
25 section to the contrary, in the event that the Attorney General or the
26 Commissioner of Health and Senior Services determines that a
27 proposed acquisition should be considered on an expedited basis in
28 order to preserve the quality of health care provided to the community,
29 the Attorney General and the commissioner may combine the public
30 notice about the acquisition with the notice for a public hearing as
31 required in subsections a. and d., respectively, and may reduce the
32 period of time required for notice, as necessary.

33 1. The Attorney General, in consultation with the Commissioner of
34 Health and Senior Services, shall adopt regulations pursuant to the
35 "Administrative Procedure Act," P.L.1968, c.410, (C.52:14B-1 et
36 seq.) to carry out the purposes of this section.

37
38 3. A hospital owned and operated by a county is exempt from the
39 provisions of this act.

40
41 4. The provisions of this act shall apply to a proposed acquisition
42 of a nonprofit hospital by a person or entity other than a corporation
43 organized in this State for charitable purposes under Title 15A of the
44 New Jersey Statutes that is pending on, or initiated after, the effective
45 date of this act.

- 1 5. Nothing in this act shall be construed to limit the existing
2 authority of the Attorney General, the Commissioner of Health and
3 Senior Services or any other government official or entity or the court
4 to review, approve or disapprove conditions related to an acquisition,
5 transaction or disposition under current law.
6
- 7 6. This act shall take effect immediately.

[Second Reprint]

ASSEMBLY, No. 1439

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblywoman CHARLOTTE VANDERVALK

District 39 (Bergen)

Assemblyman NEIL M. COHEN

District 20 (Union)

Co-Sponsored by:

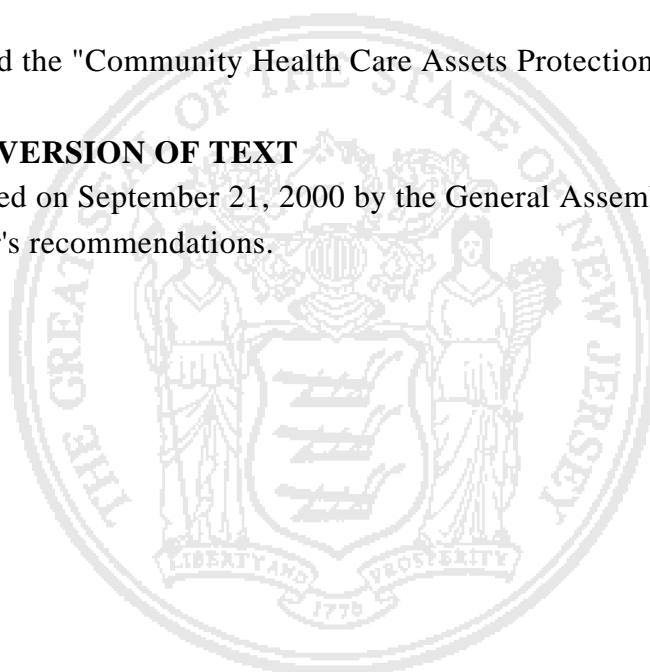
**Assemblyman Caraballo, Assemblywoman Gill, Assemblyman Conaway,
Assemblywoman Greenstein, Senators Sinagra, Matheussen, Adler and
Vitale**

SYNOPSIS

Designated the "Community Health Care Assets Protection Act."

CURRENT VERSION OF TEXT

As amended on September 21, 2000 by the General Assembly pursuant to the Governor's recommendations.



(Sponsorship Updated As Of: 6/27/2000)

1 AN ACT concerning nonprofit hospitals and supplementing ¹[Title
2 15A of the New Jersey Statutes and]¹ Title 26 of the Revised
3 Statutes.

4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7

8 1. This act shall be known and may be cited as the "Community
9 Health Care Assets Protection Act."

10

11 2. In addition to the requirements of P.L.1971, c.136 (C.26:2H-1
12 et seq.) concerning certificate of need and licensure requirements, a
13 nonprofit hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et
14 seq.) shall ²[apply to the Attorney General] satisfy the requirements
15 of this act before applying to the Superior Court of New Jersey² for
16 approval prior to entering into a transaction that results in the
17 acquisition of the hospital ²[by a person or entity other than a
18 corporation organized in this State for charitable purposes under Title
19 15A of the New Jersey Statutes] as defined in this act². The proposed
20 acquisition shall be subject to the ²[written approval] prior review²
21 of the Attorney General, in consultation with the Commissioner of
22 Health and Senior Services, pursuant to the provisions of this section.
23 ²The Attorney General shall review the application in furtherance of
24 his common law responsibilities as protector, supervisor and enforcer
25 of charitable trusts and charitable corporations.²

26

27 For the purposes of sections 2 and 3 of this act, "acquisition" means
28 the purchase, lease, exchange, conversion, restructuring, merger,
29 division, consolidation, transfer of control or other disposition of a
30 substantial amount of assets or operations, whether through a single
31 transaction or series of transactions, with one or more persons or
32 entities.

32

33 ²This act shall not apply to a nonprofit hospital if the proposed
34 acquisition is in the usual and regular course of its activities and the
35 Attorney General has given the nonprofit hospital a written waiver as
36 to the proposed acquisition. As used in this section, a proposed
37 acquisition is not in the usual and regular course of a nonprofit
38 hospital's activities if it effects a fundamental corporate change that
39 involves transfer of ownership or control of charitable assets or a
40 change of the nonprofit hospital's mission or purpose.²

40

a. ²(1)² Within five working days of submitting an application

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AHL committee amendments adopted March 2, 2000.

² Assembly amendments adopted in accordance with Governor's recommendations September 21, 2000.

1 pursuant to this section, the nonprofit hospital shall publish a notice of
2 the proposed acquisition, in a form approved by the Attorney General,
3 in a newspaper of general circulation in the service area of the hospital
4 once per week for three weeks. The notice shall state the names of
5 the parties to the agreement, describe the contents of the application
6 to the Attorney General and state the date by which a person may
7 submit written comments about the application to the Attorney
8 General.

9 ²(2) Within 30 days after receipt of an initial application, the
10 Attorney General shall advise the applicant in writing whether the
11 application is complete, and, if not, shall specify what additional
12 information is required.

13 (3) The Attorney General shall, upon receipt of the information
14 requested, notify the applicant in writing of the date of completion of
15 the application.²

16 b. ²[The] Within 90 days of the date of completion of the
17 application, the² Attorney General, in consultation with the
18 Commissioner of Health and Senior Services, shall review the
19 application and ²[approve] support² the proposed acquisition, with
20 or without any specific modifications, or, if he finds that it is not in the
21 public interest, ²[disapprove] oppose² the proposed acquisition.
22 The Attorney General or commissioner may, for good cause, extend
23 the time for review of an application submitted pursuant to this
24 section.²

25 The proposed acquisition shall not be considered to be in the public
26 interest unless the Attorney General determines that appropriate steps
27 have been taken to safeguard the value of the charitable assets of the
28 hospital and to ensure that any proceeds from the proposed acquisition
29 are irrevocably dedicated for appropriate charitable health care
30 purposes; and the Commissioner of Health and Senior Services
31 determines that the proposed transaction is not likely to result in the
32 deterioration of the quality, availability or accessibility of health care
33 services in the affected communities.

34 ²c.² In determining whether the acquisition meets the criteria of
35 ²[this]² subsection ²b. of this section², the Attorney General shall
36 consider:

37 (1) Whether the acquisition is permitted under the "New Jersey
38 Nonprofit Corporation Act," Title 15A of the New Jersey Statutes,
39 and other applicable State statutes governing nonprofit entities, trusts
40 or charities;

41 (2) Whether the nonprofit hospital exercised due diligence in
42 deciding to effectuate the acquisition, selecting the other party to the
43 acquisition and negotiating the terms and conditions of the acquisition;

44 (3) The procedures used by the nonprofit hospital in making its
45 decision, including whether appropriate expert assistance was used;

46 (4) Whether conflict of interest was disclosed, including, but not

- 1 limited to, conflicts of interest related to board members of, executives
2 of and experts retained by the nonprofit hospital, purchaser or other
3 parties to the acquisition;
- 4 (5) ²[Whether the nonprofit hospital will receive full and fair
5 market value for its assets. The Attorney General may employ, at the
6 nonprofit hospital's expense, reasonably necessary expert assistance in
7 making this determination;
- 8 (6) Whether charitable funds are placed at unreasonable risk, if the
9 acquisition is financed in part by the nonprofit hospital;
- 10 (7)]² Whether any management contract under the acquisition is
11 for reasonable fair value;
- 12 ²[(8)] 6.² Whether the acquisition proceeds will be used for
13 appropriate charitable health care purposes consistent with the
14 nonprofit hospital's original purpose or for the support and promotion
15 of health care and whether the proceeds will be controlled as charitable
16 funds independently of the purchaser or parties to the acquisition; and
- 17 ²[(9) Whether a right of first refusal has been retained to
18 repurchase the assets by a successor nonprofit corporation or
19 foundation if, following the acquisition, the hospital is subsequently
20 sold to, acquired by or merged with another entity.
- 21 c.] (7) Any other criteria the Attorney General establishes by
22 regulation to determine whether the proposed acquisition is in the
23 public interest.
- 24 d. In determining whether an acquisition by any person or entity
25 other than a corporation organized in this State for charitable purposes
26 under Title 15A of the New Jersey Statutes meets the criteria of
27 subsection b. of this section, the Attorney General shall consider, in
28 addition to the criteria set forth in subsection c., the following criteria:
- 29 (1) Whether the nonprofit hospital will receive full and fair market
30 value for its assets. The Attorney General may employ, at the
31 nonprofit hospital's expense, reasonably necessary expert assistance in
32 making this determination;
- 33 (2) Whether charitable funds are placed at unreasonable risk, if the
34 acquisition is financed in part by the nonprofit hospital;
- 35 (3) Whether a right of first refusal has been retained to repurchase
36 the assets by a successor nonprofit corporation or foundation if,
37 following the acquisition, the hospital is subsequently sold to, acquired
38 by or merged with another entity;
- 39 (4) Whether the nonprofit hospital established appropriate criteria
40 in deciding to pursue a conversion in relation to carrying out its
41 mission and purposes;
- 42 (5) Whether the nonprofit hospital considered the proposed
43 conversion as the only alternative or as the best alternative in carrying
44 out its mission and purposes;
- 45 (6) Whether the nonprofit hospital exercised due care in assigning
46 a value to the existing hospital and its charitable assets in proceeding

1 to negotiate the proposed conversion:

2 (7) Whether officers, directors, board members or senior
3 management will receive future contracts in existing, new, or affiliated
4 hospitals or foundations; and

5 (8) Any other criteria the Attorney General establishes by regulation
6 to determine whether a proposed acquisition by any person or entity
7 other than a corporation organized in this State for charitable purposes
8 under Title 15A of the New Jersey Statutes is in the public interest.

9 e.² In his review of the proposed acquisition, the Attorney General
10 may assess the entity proposing to acquire the nonprofit hospital for
11 reasonable costs related to the review, as determined by the Attorney
12 General to be necessary. Reasonable costs may include expert review
13 of the acquisition and a process for educating the public about the
14 acquisition and obtaining public input.

15 ²[d.] f.² The Attorney General and the Commissioner of Health
16 and Senior Services shall, during the course of the review pursuant to
17 this section, hold at least one public hearing in which any person may
18 file written comments and exhibits or appear and make a statement.

19 ²The public hearing may, if the Attorney General and commissioner so
20 agree, be conducted jointly. The commissioner may satisfy the
21 requirements of this subsection by conducting a public hearing in
22 conjunction with the certificate of need review process pursuant to
23 P.L.1971, c.136 (C.26:2H-1 et seq.).² The Attorney General or the
24 commissioner may subpoena additional information or witnesses,
25 including, but not limited to, information about any transaction that is
26 collateral to the proposed acquisition and any related documents,
27 require and administer oaths, require sworn statements, take
28 depositions and use related discovery procedures for purposes of the
29 hearing and at any time prior to completing the review of the proposed
30 acquisition.

31 The Attorney General shall make the information received pursuant
32 to this section, and the Department of Health and Senior Services shall
33 make any information in its records relating to the proposed
34 acquisition, available for inspection at no cost to the public.

35 The public hearing shall be held no later than 60 days after ²[receipt
36 of] the date that² an application from a nonprofit hospital ²[that]² is
37 deemed complete by the Attorney General. Public notice of the
38 hearing shall be provided at least two weeks in advance of the date of
39 the hearing.

40 ²[¹e. The Attorney General] g. In a proposed acquisition subject
41 to review under subsection d. of this section, the Attorney General,
42 after consultation with the principal parties to the transaction,² shall
43 make a determination as to the amount of assets which the nonprofit
44 hospital shall set aside as a charitable obligation, based on the full and
45 fair market value of the hospital ²at the time of the proposed
46 acquisition² as determined by the Attorney General ²[at the time of

1 the proposed acquisition]^{2, 1}

2 ²[f.] h.² Upon execution of ~~the~~ a ² proposed acquisition
3 subject to review under subsection d. of this section², the amount
4 determined by the Attorney General to be set aside as a charitable
5 obligation shall be placed in a nonprofit charitable trust or one or more
6 existing or newly established tax-exempt charitable organizations
7 operating pursuant to 26 U.S.C. s. 501(c)(3). The charitable mission
8 and grant-making functions of any charitable entity that receives assets
9 pursuant to subsection ²[e.] g.² of this section shall be dedicated to
10 serving the health care needs of the community historically served by
11 the predecessor nonprofit hospital. Any charitable entity that receives
12 assets pursuant to subsection ²[e.] g.² of this section, the directors,
13 officers and trustees of any such charitable entity, and the assets of any
14 such charitable entity, including any stock involved in the acquisition,
15 shall be independent of any influence or control by the acquiring entity,
16 its directors, officers, trustees, subsidiaries or affiliates.

17 (1) The governance of the charitable trust that results from the
18 acquisition or of any newly established charitable organization that is
19 to receive charitable assets pursuant to subsection ²[e.] g.² of this
20 section shall be subject to review and approval by the Attorney
21 General. The governance of any existing charitable organization that
22 is to receive charitable assets pursuant to subsection ²[e.] g.² of this
23 section shall be subject to review by the Attorney General. The
24 governance of the charitable trust or the charitable organization shall
25 be broadly based, and neither the trust or organization nor any officer,
26 director or senior manager of the trust or organization shall be
27 affiliated with the acquiring entity and no officer, director or senior
28 manager of the trust or organization shall be a full-time employee of
29 State government. No officer, director or senior manager of the trust
30 or organization shall have been a director, officer, agent, trustee or
31 employee of the nonprofit hospital during the three years immediately
32 preceding the effective date of the acquisition¹, unless that person can
33 demonstrate to the satisfaction of the Attorney General that the
34 person's assumption of the position of officer, director or senior
35 manager of the trust or organization would not constitute a breach of
36 fiduciary duty or other conflict of interest¹.

37 (2) The governing body of the charitable trust or organization shall
38 establish or demonstrate that it has in place, as the case may be, a
39 mechanism to avoid conflicts of interest and to prohibit grants that
40 benefit the board of directors and management of the acquiring entity
41 or its affiliates or subsidiaries.

42 (3) The governing body of the charitable trust or organization shall
43 provide the Attorney General with an annual report which shall include
44 an audited financial statement and a detailed description of its grant-
45 making and other charitable activities related to its use of the
46 charitable assets received pursuant to this act. The annual report shall

1 be made available to the public at both the Attorney General's office
2 and the office of the charitable trust or organization. Nothing
3 contained in this act shall affect the obligations of an entity possessing
4 endowment funds under P.L.1975, c.26 (C.15:18-15 et seq.).

5 ²[g.] i.² (1) The entity acquiring the nonprofit hospital, if
6 determined to be necessary by the Commissioner of Health and Senior
7 Services, shall provide funds, in an amount determined by the
8 Commissioner of Health and Senior Services, for the hiring by the
9 Department of Health and Senior Services of an independent health
10 care access monitor to monitor and report quarterly to the Department
11 of Health and Senior Services on community health care access by the
12 entity, including levels of uncompensated care for indigent persons
13 provided by the entity. The funding shall be provided for three years
14 after the date of the acquisition. The entity acquiring the hospital shall
15 provide the monitor with appropriate access to the entity's records in
16 order to enable the monitor to fulfill this function.

17 To prevent the duplication of any information already reported by
18 the entity, the monitor shall, to the extent possible, utilize data already
19 provided by the entity to the Department of Health and Senior
20 Services.

21 No personal identifiers shall be attached to any of the records
22 obtained by the monitor, and all such records shall be subject to the
23 privacy and confidentiality provisions of medical records provided by
24 law.

25 (2) Following the monitoring period, or in the event that no
26 monitoring period is established, if the Commissioner of Health and
27 Senior Services receives information indicating that the acquiring
28 entity is not fulfilling its commitment to the affected service area
29 pursuant to this act and determines that the information is true, he
30 shall order the acquiring entity to comply with a corrective action
31 plan. The commissioner shall retain oversight of the acquiring entity's
32 obligations under the corrective action plan for as long as necessary to
33 ensure compliance with this act.

34 ²[h.] j.² The trustees and senior managers of the nonprofit hospital
35 are prohibited from investing in the acquiring entity for a period of
36 three years following the acquisition.

37 ²[i.] k.² No director, officer, agent, trustee or employee of the
38 nonprofit hospital shall benefit directly or indirectly from the
39 acquisition, including the receipt of any compensation directly related
40 to the proposed acquisition.

41 ²[j.] Any final action by the Attorney General pursuant to this act
42 shall be subject to judicial review by the Superior Court at the
43 initiation of the nonprofit hospital or any person that was a party to
44 the proceeding.] l. Upon completion by the Attorney General of the
45 review of the application required by this act, the nonprofit hospital
46 shall apply to the Superior Court for approval of the proposed

1 acquisition. In that proceeding, the Attorney General shall advise the
2 court as to whether he supports or opposes the proposed acquisition,
3 with or without any specific modifications, and the basis for that
4 position.² Any person ²[adversely affected by the final decision of the
5 Attorney General] who filed a written comment or exhibit or appeared
6 and made a statement in the public hearing held by the Attorney
7 General pursuant to subsection f. of this section² shall be considered
8 a party to the proceeding, including consumers or community groups
9 representing the citizens of the State.

10 ²[k.] m.² Notwithstanding the provisions of subsections a. and
11 ²[d.] f.² of this section to the contrary, in the event that the Attorney
12 General or the Commissioner of Health and Senior Services
13 determines that a proposed acquisition should be considered on an
14 expedited basis in order to preserve the quality of health care provided
15 to the community, the Attorney General and the commissioner may
16 combine the public notice about the acquisition with the notice for a
17 public hearing as required in subsections a. and ²[d.] f.², respectively,
18 and may reduce the period of time required for notice, as necessary.
19 ²In considering a proposed acquisition on an expedited basis, the
20 Attorney General and commissioner may agree to reduce the period of
21 time for review of a completed application to less than 90 days.²

22 ²[l.] n.² The Attorney General, in consultation with the
23 Commissioner of Health and Senior Services, shall adopt regulations
24 pursuant to the "Administrative Procedure Act," P.L.1968, c.410,
25 (C.52:14B-1 et seq.) to carry out the purposes of this ²[section] act².

26
27 3. A hospital owned and operated by a county is exempt from the
28 provisions of this act.

29
30 4. The provisions of this act shall apply to ²[a] any² proposed
31 acquisition of a nonprofit hospital ²[by a person or entity other than
32 a corporation organized in this State for charitable purposes under
33 Title 15A of the New Jersey Statutes]² that is ²[pending on, or]²
34 initiated after²[,]² the effective date of this act.

35
36 5. Nothing in this act shall be construed to limit the existing
37 authority of the Attorney General, the Commissioner of Health and
38 Senior Services or any other government official or entity or the court
39 to review, approve or disapprove conditions related to an acquisition,
40 transaction or disposition under current law.

41
42 6. This act shall take effect immediately.

ASSEMBLY BILL NO. 1439
(First Reprint)

To the Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 1439 (First Reprint) with my recommendations for reconsideration.

A. Summary of Bill

This bill provides a statutory framework for review when a State-licensed nonprofit hospital is acquired by a for-profit or out-of-state entity. The bill would codify and supplement the State Attorney General's existing authority under the common law to act in the public interest to oversee and protect charitable trusts and charitable corporations.

The bill requires a non-profit hospital to apply to the Attorney General prior to entering into a transaction that would result in the acquisition of the hospital by an entity other than a charitable corporation registered in New Jersey. Under the bill, the Attorney General, in consultation with the Commissioner of Health and Senior Services, would review the application and approve the proposed acquisition, with or without any specific modifications, unless the Attorney General found that it was not in the public interest. A proposed acquisition would be in the public interest if the Attorney General finds that appropriate steps have been taken to safeguard the value of the charitable assets of the hospital and to ensure that any proceeds from the proposed acquisition are irrevocably dedicated for appropriate charitable health care purposes. The bill sets forth specific criteria for the Attorney General to consider in conducting his review. The bill further provides for the establishment and governance of any charitable trust that results from the proposed acquisition, and establishes specific rules and restrictions applicable to any such charitable entity.

The bill also requires the Commissioner of Health and Senior Services to consider whether the proposed transaction is likely to result in the deterioration of the quality, availability or accessibility of health care services in the affected communities. It permits the Department of Health and Senior Services to hire, at the expense of the acquiring entity, an independent monitor to assess community

health care access issues, including levels of uncompensated care for indigent persons.

The bill requires the Attorney General and the Commissioner of Health and Senior Services to hold at least one public hearing. It also provides for judicial review of the final action of the Attorney General in the Superior Court, at the initiation of the nonprofit hospital or any person that was a party to the proceeding. Lastly, the bill authorizes the Attorney General to assess the entity proposing to acquire the nonprofit hospital for reasonable costs related to the review.

B. Recommended Action

I commend the sponsors for their commitment to safeguarding a nonprofit hospital's charitable assets, as well as the community's continued access to healthcare services. I expressed support for the goals of an earlier version of this bill when it was first sent to me by the Legislature in 1998. I raised concern, however, that the bill presented to me at that time did not sufficiently address the need for expedited review in the case of emergent situations. I believe this revised bill adequately addresses that concern.

The bill serves the important purpose of articulating the procedure and criteria that apply to State review of a proposed acquisition of a nonprofit hospital by a for-profit or an out-of-state entity. The bill does not, in its current form, provide the same needed direction or clarification with respect to State review of a proposed acquisition of a nonprofit hospital by another charitable organization. As I strongly support the purpose of this bill with respect to for-profit acquisitions of nonprofit hospitals, I also believe that the public interest would be well served by the establishment of a statutory review procedure and application of enumerated criteria to govern transactions involving acquisition of nonprofit hospitals by nonprofit entities.

I therefore recommend that the bill codify the review procedure for nonprofit-to-nonprofit hospital acquisitions, incorporating some but not all of the features and criteria established to govern review of for-profit transactions. Consistent with the expansion of the procedural review to cover both acquisitions by nonprofit entities

as well as for-profit transactions, my recommendations reorganize and revise the review criteria, applying certain criteria to all proposed acquisitions regardless of the nature of the acquiring entity, and applying certain other criteria only to for-profit acquisitions based on the specific concern with protecting charitable assets inherent in such transactions.

In order to ensure that unnecessary review does not take place for transactions in which charitable assets are not affected or the nonprofit hospital's charitable mission or purpose is not changed, I also recommend that the bill clarify the breadth of those transactions properly subject to review, by authorizing a written waiver provision for transactions that occur in the usual and regular course of a hospital's activities. To provide consistency and certainty to the process, I recommend specific timeframes related to the review and holding of public hearings, which are consistent with certificate of need timeframes and public hearing requirements.

Additionally, I recommend clarification regarding the nature of the Attorney General's determination and the judicial review of that determination. As currently drafted, the bill provides that the Attorney General will have final agency decision making authority, subject to appellate court review. The bill also provides, however, that nothing therein should be construed to limit the existing authority of the court to review an acquisition. Under existing law, the Chancery Division reviews charitable transactions such as non-profit hospital conversions. Therefore, in practical application, the bill could result in a dual path for court challenges to a proposed transaction, with judicial review available in either the Chancery Division, the Appellate Division, or both. I recommend clarification to avoid this potentially duplicative and time-consuming result, by retaining the Attorney General's existing common law role in the Superior Court proceeding.

Therefore, I herewith return Assembly Bill No. 1439 (First Reprint) and recommend that it be amended as follows:

Page 2, Section 2, Line 14:

Delete "apply to the Attorney General"
insert "satisfy the requirements of this act
before applying to the Superior Court of
New Jersey"

| | |
|---------------------------------------|--|
| <u>Page 2, Section 2, Line 15-17:</u> | Delete “by a person or entity other than a corporation organized in this State for charitable purposes under Title 15A of the New Jersey Statutes” insert “as defined in this act” |
| <u>Page 2, Section 2, Line 18:</u> | Delete “written approval” insert “prior review” |
| <u>Page 2, Section 2, Line 20:</u> | Insert “The Attorney General shall review the application in furtherance of his common law responsibilities as protector, supervisor and enforcer of charitable trusts and charitable corporations.” |
| <u>Page 2, Section 2, Line 27:</u> | Insert “This act shall not apply to a nonprofit hospital if the proposed acquisition is in the usual and regular course of its activities and the Attorney General has given the nonprofit hospital a written waiver as to the proposed acquisition. As used in this section, a proposed acquisition is not in the usual and regular course of a nonprofit hospital’s activities if it effects a fundamental corporate change that involves transfer of ownership or control of charitable assets or a change of the nonprofit hospital’s mission or purpose.” |
| <u>Page 2, Section 2, Line 27:</u> | After “a.” insert “(1)” |
| <u>Page 2, Section 2 a., Line 36:</u> | Insert “(2) Within 30 days after receipt of an initial application, the Attorney General shall advise the applicant in writing whether the application is complete, and, if not, shall specify what additional information is required. (3) The Attorney General shall, upon receipt of the information requested, notify the applicant in writing of the date of completion of the application.” |
| <u>Page 2, Section 2 b., Line 36:</u> | After “b.” delete “The” insert “Within 90 days of the date of completion of the application, the” |
| <u>Page 2, Section 2 b., Line 38:</u> | Delete “approve” insert “support” |
| <u>Page 2, Section 2 b., Line 40:</u> | Delete “disapprove” insert “oppose”; after “acquisition.” insert “The Attorney General or commissioner may, for good cause, extend the time for review of an application submitted pursuant to this section.” |
| <u>Page 3, Section 2 b., Line 9:</u> | Insert “c.” before “In determining whether the acquisition meets the criteria of” delete “this” |

| | |
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| <u>Page 3, Section 2 b., Line 10:</u> | after "subsection" insert "b. of this section" |
| <u>Page 3, Section 2 b., Lines 24-29:</u> | After "(5)" delete in their entirety |
| <u>Page 3, Section 2 b., Line 30:</u> | Delete "(7)" |
| <u>Page 3, Section 2 b., Line 32:</u> | Delete "(8)" insert "(6)" |
| <u>Page 3, Section 2 b., Lines 37-40:</u> | <p>Delete in their entirety; insert</p> <p>"(7) Any other criteria the Attorney General establishes by regulation to determine whether the proposed acquisition is in the public interest.</p> <p>d. In determining whether an acquisition by any person or entity other than a corporation organized in this State for charitable purposes under Title 15A of the New Jersey Statutes meets the criteria of subsection b. of this section, the Attorney General shall consider, in addition to the criteria set forth in subsection c., the following criteria:</p> <p>(1) Whether the nonprofit hospital will receive full and fair market value for its assets. The Attorney General may employ, at the nonprofit hospital's expense, reasonably necessary expert assistance in making this determination;</p> <p>(2) Whether charitable funds are placed at unreasonable risk, if the acquisition is financed in part by the nonprofit hospital;</p> <p>(3) Whether a right of first refusal has been retained to repurchase the assets by a successor nonprofit corporation or foundation if, following the acquisition, the hospital is subsequently sold to, acquired by or merged with another entity;</p> <p>(4) Whether the nonprofit hospital established appropriate criteria in deciding to pursue a conversion in relation to carrying out its mission and purposes;</p> <p>(5) Whether the nonprofit hospital considered the proposed conversion as the only alternative or as the best alternative in carrying out its mission and purposes;</p> <p>(6) Whether the nonprofit hospital exercised due care in assigning a value to the existing hospital and its charitable assets in proceeding to negotiate the proposed conversion;</p> <p>(7) Whether officers, directors, board members or senior management will receive future contracts in existing, new, or affiliated hospitals or foundations; and</p> <p>(8) Any other criteria the Attorney General establishes by regulation to determine whether a proposed acquisition by any person or entity other than a corporation organized in this State for charitable</p> |

purposes under Title 15A of the New Jersey Statutes is in the public interest.”

| | |
|---|--|
| <u>Page 3, Section 2 c., Line 41:</u> | Delete “c.” insert “e.” |
| <u>Page 4, Section 2 d., Line 1:</u> | Delete “d.” insert “f.” |
| <u>Page 4, Section 2 d., Line 4:</u> | After “...make a statement.” insert “The public hearing may, if the Attorney General and commissioner so agree, be conducted jointly. The commissioner may satisfy the requirements of this subsection by conducting a public hearing in conjunction with the certificate of need review process pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.)” |
| <u>Page 4, Section 2 d., Lines 16-17:</u> | Delete “receipt of” insert “the date that” |
| <u>Page 4, Section 2 d., Line 17:</u> | After “hospital” delete “that” |
| <u>Page 4, Section 2 e., Line 20:</u> | Delete “e. The Attorney General” insert “g. In a proposed acquisition subject to review under subsection d. of this section, the Attorney General, after consultation with the principal parties to the transaction,” |
| <u>Page 4, Section 2 e., Lines 23-24:</u> | After “hospital” insert “at the time of the proposed acquisition”; after “Attorney General” delete “at the time of the proposed acquisition” |
| <u>Page 4, Section 2 f., Line 25:</u> | Delete “f.” insert “h.”; delete “the” insert “a”; after “proposed acquisition” insert “subject to review under subsection d. of this section” |
| <u>Page 4, Section 2 f., Line 31:</u> | Delete “e.” insert “g.” |
| <u>Page 4, Section 2 f., Line 34:</u> | Delete “e.” insert “g.” |
| <u>Page 4, Section 2 f. (1), Line 41:</u> | Delete “e.” insert “g.” |
| <u>Page 4, Section 2 f. (1), Line 44:</u> | Delete “e.” insert “g.” |
| <u>Page 5, Section 2 g., Line 27:</u> | Delete “g.” insert “i.” |
| <u>Page 6, Section 2 h., Line 10:</u> | Delete “h.” insert “j.” |
| <u>Page 6, Section 2 i., Line 13:</u> | Delete “i.” Insert “k.” |
| <u>Page 6, Section 2 j., Lines 17-20:</u> | Delete “j. Any final action by the Attorney General pursuant to this act shall be subject to judicial review by the Superior Court at the initiation of the nonprofit hospital or any person that was a party to the proceeding.” insert “l. Upon completion by the Attorney General of the review of the application required by this act, the nonprofit hospital shall apply to the Superior Court for approval of the |

proposed acquisition. In that proceeding, the Attorney General shall advise the court as to whether he supports or opposes the proposed acquisition, with or without any specific modifications, and the basis for that position.”

Page 6, Section 2 j., Lines 20-21:

After “Any person” delete “adversely affected by the final decision of the Attorney General” insert “who filed a written comment or exhibit or appeared and made a statement in the public hearing held by the Attorney General pursuant to subsection f of this section”

Page 6, Section 2 j., Line 24:

Delete “k.” insert “m.”; delete “d.” insert “f.”

Page 6, Section 2 j., Line 31:

Delete “d.” insert “f.”

Page 6, Section 2 j., Line 32:

After “period of time required for notice, as necessary.” Insert “In considering a proposed acquisition on an expedited basis, the Attorney General and commissioner may agree to reduce the period of time for review of a completed application to less than 90 days.”

Page 6, Section 2 l., Line 33:

Delete “l.” insert “n.”

Page 6, Section 2 l., Line 36:

Delete “section” insert “act”

Page 6, Section 4, Line 41:

Delete “a” insert “any”

Page 6, Section 4, Lines 42-44:

Delete “by a person or entity other than a corporation organized in this State for charitable purposes under Title 15A of the New Jersey Statutes”

Page 6, Section 4, Line 44:

Delete “pending on, or” after “initiated after” delete “,”

Respectfully,

/s/ Christine Todd Whitman

Governor

[seal]

Attest:

/s/ Robert E. Fabricant

Chief Counsel to the Governor

P.L. 2000, CHAPTER 143, *approved November 2, 2000*
Assembly, No. 1439 (*Second Reprint*)

1 AN ACT concerning nonprofit hospitals and supplementing ¹[Title
2 15A of the New Jersey Statutes and]¹ Title 26 of the Revised
3 Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. This act shall be known and may be cited as the "Community
9 Health Care Assets Protection Act."

10

11 2. In addition to the requirements of P.L.1971, c.136 (C.26:2H-1
12 et seq.) concerning certificate of need and licensure requirements, a
13 nonprofit hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et
14 seq.) shall ²[apply to the Attorney General] satisfy the requirements
15 of this act before applying to the Superior Court of New Jersey² for
16 approval prior to entering into a transaction that results in the
17 acquisition of the hospital ²[by a person or entity other than a
18 corporation organized in this State for charitable purposes under Title
19 15A of the New Jersey Statutes] as defined in this act². The proposed
20 acquisition shall be subject to the ²[written approval] prior review²
21 of the Attorney General, in consultation with the Commissioner of
22 Health and Senior Services, pursuant to the provisions of this section.
23 ²The Attorney General shall review the application in furtherance of
24 his common law responsibilities as protector, supervisor and enforcer
25 of charitable trusts and charitable corporations.²

26

27 For the purposes of sections 2 and 3 of this act, "acquisition" means
28 the purchase, lease, exchange, conversion, restructuring, merger,
29 division, consolidation, transfer of control or other disposition of a
30 substantial amount of assets or operations, whether through a single
31 transaction or series of transactions, with one or more persons or
32 entities.

32

33 ²This act shall not apply to a nonprofit hospital if the proposed
34 acquisition is in the usual and regular course of its activities and the
35 Attorney General has given the nonprofit hospital a written waiver as
36 to the proposed acquisition. As used in this section, a proposed
37 acquisition is not in the usual and regular course of a nonprofit
hospital's activities if it effects a fundamental corporate change that

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AHL committee amendments adopted March 2, 2000.

² Assembly amendments adopted in accordance with Governor's recommendations September 21, 2000.

1 involves transfer of ownership or control of charitable assets or a
2 change of the nonprofit hospital's mission or purpose.²

3 a. ²(1)² Within five working days of submitting an application
4 pursuant to this section, the nonprofit hospital shall publish a notice of
5 the proposed acquisition, in a form approved by the Attorney General,
6 in a newspaper of general circulation in the service area of the hospital
7 once per week for three weeks. The notice shall state the names of
8 the parties to the agreement, describe the contents of the application
9 to the Attorney General and state the date by which a person may
10 submit written comments about the application to the Attorney
11 General.

12 ²(2) Within 30 days after receipt of an initial application, the
13 Attorney General shall advise the applicant in writing whether the
14 application is complete, and, if not, shall specify what additional
15 information is required.

16 (3) The Attorney General shall, upon receipt of the information
17 requested, notify the applicant in writing of the date of completion of
18 the application.²

19 b. ²[The] Within 90 days of the date of completion of the
20 application, the² Attorney General, in consultation with the
21 Commissioner of Health and Senior Services, shall review the
22 application and ²[approve] support² the proposed acquisition, with
23 or without any specific modifications, or, if he finds that it is not in the
24 public interest, ²[disapprove] oppose² the proposed acquisition.
25 ²The Attorney General or commissioner may, for good cause, extend
26 the time for review of an application submitted pursuant to this
27 section.²

28 The proposed acquisition shall not be considered to be in the public
29 interest unless the Attorney General determines that appropriate steps
30 have been taken to safeguard the value of the charitable assets of the
31 hospital and to ensure that any proceeds from the proposed acquisition
32 are irrevocably dedicated for appropriate charitable health care
33 purposes; and the Commissioner of Health and Senior Services
34 determines that the proposed transaction is not likely to result in the
35 deterioration of the quality, availability or accessibility of health care
36 services in the affected communities.

37 ²c.² In determining whether the acquisition meets the criteria of
38 ²[this]² subsection ²b. of this section², the Attorney General shall
39 consider:

40 (1) Whether the acquisition is permitted under the "New Jersey
41 Nonprofit Corporation Act," Title 15A of the New Jersey Statutes,
42 and other applicable State statutes governing nonprofit entities, trusts
43 or charities;

44 (2) Whether the nonprofit hospital exercised due diligence in
45 deciding to effectuate the acquisition, selecting the other party to the
46 acquisition and negotiating the terms and conditions of the acquisition;

- 1 (3) The procedures used by the nonprofit hospital in making its
2 decision, including whether appropriate expert assistance was used;
- 3 (4) Whether conflict of interest was disclosed, including, but not
4 limited to, conflicts of interest related to board members of, executives
5 of and experts retained by the nonprofit hospital, purchaser or other
6 parties to the acquisition;
- 7 (5) ²[Whether the nonprofit hospital will receive full and fair
8 market value for its assets. The Attorney General may employ, at the
9 nonprofit hospital's expense, reasonably necessary expert assistance in
10 making this determination;
- 11 (6) Whether charitable funds are placed at unreasonable risk, if the
12 acquisition is financed in part by the nonprofit hospital;
- 13 (7)]² Whether any management contract under the acquisition is
14 for reasonable fair value;
- 15 ²[(8)] 6.² Whether the acquisition proceeds will be used for
16 appropriate charitable health care purposes consistent with the
17 nonprofit hospital's original purpose or for the support and promotion
18 of health care and whether the proceeds will be controlled as charitable
19 funds independently of the purchaser or parties to the acquisition; and
- 20 ²[(9) Whether a right of first refusal has been retained to
21 repurchase the assets by a successor nonprofit corporation or
22 foundation if, following the acquisition, the hospital is subsequently
23 sold to, acquired by or merged with another entity.
- 24 c.] (7) Any other criteria the Attorney General establishes by
25 regulation to determine whether the proposed acquisition is in the
26 public interest.
- 27 d. In determining whether an acquisition by any person or entity
28 other than a corporation organized in this State for charitable purposes
29 under Title 15A of the New Jersey Statutes meets the criteria of
30 subsection b. of this section, the Attorney General shall consider, in
31 addition to the criteria set forth in subsection c., the following criteria:
- 32 (1) Whether the nonprofit hospital will receive full and fair market
33 value for its assets. The Attorney General may employ, at the
34 nonprofit hospital's expense, reasonably necessary expert assistance in
35 making this determination;
- 36 (2) Whether charitable funds are placed at unreasonable risk, if the
37 acquisition is financed in part by the nonprofit hospital;
- 38 (3) Whether a right of first refusal has been retained to repurchase
39 the assets by a successor nonprofit corporation or foundation if,
40 following the acquisition, the hospital is subsequently sold to, acquired
41 by or merged with another entity;
- 42 (4) Whether the nonprofit hospital established appropriate criteria
43 in deciding to pursue a conversion in relation to carrying out its
44 mission and purposes;
- 45 (5) Whether the nonprofit hospital considered the proposed
46 conversion as the only alternative or as the best alternative in carrying

1 out its mission and purposes:

2 (6) Whether the nonprofit hospital exercised due care in assigning
3 a value to the existing hospital and its charitable assets in proceeding
4 to negotiate the proposed conversion;

5 (7) Whether officers, directors, board members or senior
6 management will receive future contracts in existing, new, or affiliated
7 hospitals or foundations; and

8 (8) Any other criteria the Attorney General establishes by regulation
9 to determine whether a proposed acquisition by any person or entity
10 other than a corporation organized in this State for charitable purposes
11 under Title 15A of the New Jersey Statutes is in the public interest.

12 e.² In his review of the proposed acquisition, the Attorney General
13 may assess the entity proposing to acquire the nonprofit hospital for
14 reasonable costs related to the review, as determined by the Attorney
15 General to be necessary. Reasonable costs may include expert review
16 of the acquisition and a process for educating the public about the
17 acquisition and obtaining public input.

18 ²[d.] f.² The Attorney General and the Commissioner of Health
19 and Senior Services shall, during the course of the review pursuant to
20 this section, hold at least one public hearing in which any person may
21 file written comments and exhibits or appear and make a statement.

22 ²The public hearing may, if the Attorney General and commissioner so
23 agree, be conducted jointly. The commissioner may satisfy the
24 requirements of this subsection by conducting a public hearing in
25 conjunction with the certificate of need review process pursuant to
26 P.L.1971, c.136 (C.26:2H-1 et seq.).² The Attorney General or the
27 commissioner may subpoena additional information or witnesses,
28 including, but not limited to, information about any transaction that is
29 collateral to the proposed acquisition and any related documents,
30 require and administer oaths, require sworn statements, take
31 depositions and use related discovery procedures for purposes of the
32 hearing and at any time prior to completing the review of the proposed
33 acquisition.

34 The Attorney General shall make the information received pursuant
35 to this section, and the Department of Health and Senior Services shall
36 make any information in its records relating to the proposed
37 acquisition, available for inspection at no cost to the public.

38 The public hearing shall be held no later than 60 days after ²[receipt
39 of] the date that² an application from a nonprofit hospital ²[that]² is
40 deemed complete by the Attorney General. Public notice of the
41 hearing shall be provided at least two weeks in advance of the date of
42 the hearing.

43 ²[1e. The Attorney General] g. In a proposed acquisition subject
44 to review under subsection d. of this section, the Attorney General,
45 after consultation with the principal parties to the transaction,² shall
46 make a determination as to the amount of assets which the nonprofit

1 hospital shall set aside as a charitable obligation, based on the full and
2 fair market value of the hospital ²at the time of the proposed
3 acquisition² as determined by the Attorney General ²[at the time of
4 the proposed acquisition]².¹

5 ²[f.] h.² Upon execution of ²[the] a² proposed acquisition
6 ²subject to review under subsection d. of this section², the amount
7 determined by the Attorney General to be set aside as a charitable
8 obligation shall be placed in a nonprofit charitable trust or one or more
9 existing or newly established tax-exempt charitable organizations
10 operating pursuant to 26 U.S.C. s. 501(c)(3). The charitable mission
11 and grant-making functions of any charitable entity that receives assets
12 pursuant to subsection ²[e.] g.² of this section shall be dedicated to
13 serving the health care needs of the community historically served by
14 the predecessor nonprofit hospital. Any charitable entity that receives
15 assets pursuant to subsection ²[e.] g.² of this section, the directors,
16 officers and trustees of any such charitable entity, and the assets of any
17 such charitable entity, including any stock involved in the acquisition,
18 shall be independent of any influence or control by the acquiring entity,
19 its directors, officers, trustees, subsidiaries or affiliates.

20 (1) The governance of the charitable trust that results from the
21 acquisition or of any newly established charitable organization that is
22 to receive charitable assets pursuant to subsection ²[e.] g.² of this
23 section shall be subject to review and approval by the Attorney
24 General. The governance of any existing charitable organization that
25 is to receive charitable assets pursuant to subsection ²[e.] g.² of this
26 section shall be subject to review by the Attorney General. The
27 governance of the charitable trust or the charitable organization shall
28 be broadly based, and neither the trust or organization nor any officer,
29 director or senior manager of the trust or organization shall be
30 affiliated with the acquiring entity and no officer, director or senior
31 manager of the trust or organization shall be a full-time employee of
32 State government. No officer, director or senior manager of the trust
33 or organization shall have been a director, officer, agent, trustee or
34 employee of the nonprofit hospital during the three years immediately
35 preceding the effective date of the acquisition¹, unless that person can
36 demonstrate to the satisfaction of the Attorney General that the
37 person's assumption of the position of officer, director or senior
38 manager of the trust or organization would not constitute a breach of
39 fiduciary duty or other conflict of interest¹.

40 (2) The governing body of the charitable trust or organization shall
41 establish or demonstrate that it has in place, as the case may be, a
42 mechanism to avoid conflicts of interest and to prohibit grants that
43 benefit the board of directors and management of the acquiring entity
44 or its affiliates or subsidiaries.

45 (3) The governing body of the charitable trust or organization shall
46 provide the Attorney General with an annual report which shall include

1 an audited financial statement and a detailed description of its grant-
2 making and other charitable activities related to its use of the
3 charitable assets received pursuant to this act. The annual report shall
4 be made available to the public at both the Attorney General's office
5 and the office of the charitable trust or organization. Nothing
6 contained in this act shall affect the obligations of an entity possessing
7 endowment funds under P.L.1975, c.26 (C.15:18-15 et seq.).

8 ²[g.] i.² (1) The entity acquiring the nonprofit hospital, if
9 determined to be necessary by the Commissioner of Health and Senior
10 Services, shall provide funds, in an amount determined by the
11 Commissioner of Health and Senior Services, for the hiring by the
12 Department of Health and Senior Services of an independent health
13 care access monitor to monitor and report quarterly to the Department
14 of Health and Senior Services on community health care access by the
15 entity, including levels of uncompensated care for indigent persons
16 provided by the entity. The funding shall be provided for three years
17 after the date of the acquisition. The entity acquiring the hospital shall
18 provide the monitor with appropriate access to the entity's records in
19 order to enable the monitor to fulfill this function.

20 To prevent the duplication of any information already reported by
21 the entity, the monitor shall, to the extent possible, utilize data already
22 provided by the entity to the Department of Health and Senior
23 Services.

24 No personal identifiers shall be attached to any of the records
25 obtained by the monitor, and all such records shall be subject to the
26 privacy and confidentiality provisions of medical records provided by
27 law.

28 (2) Following the monitoring period, or in the event that no
29 monitoring period is established, if the Commissioner of Health and
30 Senior Services receives information indicating that the acquiring
31 entity is not fulfilling its commitment to the affected service area
32 pursuant to this act and determines that the information is true, he
33 shall order the acquiring entity to comply with a corrective action
34 plan. The commissioner shall retain oversight of the acquiring entity's
35 obligations under the corrective action plan for as long as necessary to
36 ensure compliance with this act.

37 ²[h.] j.² The trustees and senior managers of the nonprofit hospital
38 are prohibited from investing in the acquiring entity for a period of
39 three years following the acquisition.

40 ²[i.] k.² No director, officer, agent, trustee or employee of the
41 nonprofit hospital shall benefit directly or indirectly from the
42 acquisition, including the receipt of any compensation directly related
43 to the proposed acquisition.

44 ²[j.] Any final action by the Attorney General pursuant to this act
45 shall be subject to judicial review by the Superior Court at the
46 initiation of the nonprofit hospital or any person that was a party to

1 the proceeding.] 1. Upon completion by the Attorney General of the
2 review of the application required by this act, the nonprofit hospital
3 shall apply to the Superior Court for approval of the proposed
4 acquisition. In that proceeding, the Attorney General shall advise the
5 court as to whether he supports or opposes the proposed acquisition,
6 with or without any specific modifications, and the basis for that
7 position.² Any person ²[adversely affected by the final decision of the
8 Attorney General] who filed a written comment or exhibit or appeared
9 and made a statement in the public hearing held by the Attorney
10 General pursuant to subsection f. of this section² shall be considered
11 a party to the proceeding, including consumers or community groups
12 representing the citizens of the State.

13 ²[k.] m.² Notwithstanding the provisions of subsections a. and
14 ²[d.] f.² of this section to the contrary, in the event that the Attorney
15 General or the Commissioner of Health and Senior Services
16 determines that a proposed acquisition should be considered on an
17 expedited basis in order to preserve the quality of health care provided
18 to the community, the Attorney General and the commissioner may
19 combine the public notice about the acquisition with the notice for a
20 public hearing as required in subsections a. and ²[d.] f.², respectively,
21 and may reduce the period of time required for notice, as necessary.
22 ²In considering a proposed acquisition on an expedited basis, the
23 Attorney General and commissioner may agree to reduce the period of
24 time for review of a completed application to less than 90 days.²

25 ²[l.] n.² The Attorney General, in consultation with the
26 Commissioner of Health and Senior Services, shall adopt regulations
27 pursuant to the "Administrative Procedure Act," P.L.1968, c.410,
28 (C.52:14B-1 et seq.) to carry out the purposes of this ²[section] act².

29
30 3. A hospital owned and operated by a county is exempt from the
31 provisions of this act.

32
33 4. The provisions of this act shall apply to ²[a] any² proposed
34 acquisition of a nonprofit hospital ²[by a person or entity other than
35 a corporation organized in this State for charitable purposes under
36 Title 15A of the New Jersey Statutes]² that is ²[pending on, or]²
37 initiated after²[,]² the effective date of this act.

38
39 5. Nothing in this act shall be construed to limit the existing
40 authority of the Attorney General, the Commissioner of Health and
41 Senior Services or any other government official or entity or the court
42 to review, approve or disapprove conditions related to an acquisition,
43 transaction or disposition under current law.

44
45 6. This act shall take effect immediately.

1

2

3 Designated the "Community Health Care Assets Protection Act."

CHAPTER 143

AN ACT concerning nonprofit hospitals and supplementing Title 26 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.26:2H-7.10 Short title.

1. This act shall be known and may be cited as the "Community Health Care Assets Protection Act."

C.26:2H-7.11 Additional requirements for nonprofit hospitals relative to acquisitions; exemptions; procedures.

2. In addition to the requirements of P.L.1971, c.136 (C.26:2H-1 et seq.) concerning certificate of need and licensure requirements, a nonprofit hospital licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) shall satisfy the requirements of this act before applying to the Superior Court of New Jersey for approval prior to entering into a transaction that results in the acquisition of the hospital as defined in this act. The proposed acquisition shall be subject to the prior review of the Attorney General, in consultation with the Commissioner of Health and Senior Services, pursuant to the provisions of this section. The Attorney General shall review the application in furtherance of his common law responsibilities as protector, supervisor and enforcer of charitable trusts and charitable corporations.

For the purposes of sections 2 and 3 of this act, "acquisition" means the purchase, lease, exchange, conversion, restructuring, merger, division, consolidation, transfer of control or other disposition of a substantial amount of assets or operations, whether through a single transaction or series of transactions, with one or more persons or entities.

This act shall not apply to a nonprofit hospital if the proposed acquisition is in the usual and regular course of its activities and the Attorney General has given the nonprofit hospital a written waiver as to the proposed acquisition. As used in this section, a proposed acquisition is not in the usual and regular course of a nonprofit hospital's activities if it effects a fundamental corporate change that involves transfer of ownership or control of charitable assets or a change of the nonprofit hospital's mission or purpose.

a. (1) Within five working days of submitting an application pursuant to this section, the nonprofit hospital shall publish a notice of the proposed acquisition, in a form approved by the Attorney General, in a newspaper of general circulation in the service area of the hospital once per week for three weeks. The notice shall state the names of the parties to the agreement, describe the contents of the application to the Attorney General and state the date by which a person may submit written comments about the application to the Attorney General.

(2) Within 30 days after receipt of an initial application, the Attorney General shall advise the applicant in writing whether the application is complete, and, if not, shall specify what additional information is required.

(3) The Attorney General shall, upon receipt of the information requested, notify the applicant in writing of the date of completion of the application.

b. Within 90 days of the date of completion of the application, the Attorney General, in consultation with the Commissioner of Health and Senior Services, shall review the application and support the proposed acquisition, with or without any specific modifications, or, if he finds that it is not in the public interest, oppose the proposed acquisition. The Attorney General or commissioner may, for good cause, extend the time for review of an application submitted pursuant to this section.

The proposed acquisition shall not be considered to be in the public interest unless the Attorney General determines that appropriate steps have been taken to safeguard the value of the charitable assets of the hospital and to ensure that any proceeds from the proposed acquisition are irrevocably dedicated for appropriate charitable health care purposes; and the Commissioner of Health and Senior Services determines that the proposed transaction is not likely to result in the deterioration of the quality, availability or accessibility of health care services in the affected communities.

c. In determining whether the acquisition meets the criteria of subsection b. of this section, the Attorney General shall consider:

(1) Whether the acquisition is permitted under the "New Jersey Nonprofit Corporation Act," Title 15A of the New Jersey Statutes, and other applicable State statutes governing nonprofit

entities, trusts or charities;

(2) Whether the nonprofit hospital exercised due diligence in deciding to effectuate the acquisition, selecting the other party to the acquisition and negotiating the terms and conditions of the acquisition;

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

(4) Whether 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 nonprofit hospital, purchaser or other parties to the acquisition;

(5) Whether any management contract under the acquisition is for reasonable fair value;

(6) Whether the acquisition proceeds will be used for appropriate charitable health care purposes consistent with the nonprofit hospital's original purpose or for the support and promotion of health care and whether the proceeds will be controlled as charitable funds independently of the purchaser or parties to the acquisition; and

(7) Any other criteria the Attorney General establishes by regulation to determine whether the proposed acquisition is in the public interest.

d. In determining whether an acquisition by any person or entity other than a corporation organized in this State for charitable purposes under Title 15A of the New Jersey Statutes meets the criteria of subsection b. of this section, the Attorney General shall consider, in addition to the criteria set forth in subsection c., the following criteria:

(1) Whether the nonprofit hospital will receive full and fair market value for its assets. The Attorney General may employ, at the nonprofit hospital's expense, reasonably necessary expert assistance in making this determination;

(2) Whether charitable funds are placed at unreasonable risk, if the acquisition is financed in part by the nonprofit hospital;

(3) Whether a right of first refusal has been retained to repurchase the assets by a successor nonprofit corporation or foundation if, following the acquisition, the hospital is subsequently sold to, acquired by or merged with another entity;

(4) Whether the nonprofit hospital established appropriate criteria in deciding to pursue a conversion in relation to carrying out its mission and purposes;

(5) Whether the nonprofit hospital considered the proposed conversion as the only alternative or as the best alternative in carrying out its mission and purposes;

(6) Whether the nonprofit hospital exercised due care in assigning a value to the existing hospital and its charitable assets in proceeding to negotiate the proposed conversion;

(7) Whether officers, directors, board members or senior management will receive future contracts in existing, new, or affiliated hospitals or foundations; and

(8) Any other criteria the Attorney General establishes by regulation to determine whether a proposed acquisition by any person or entity other than a corporation organized in this State for charitable purposes under Title 15A of the New Jersey Statutes is in the public interest.

e. In his review of the proposed acquisition, the Attorney General may assess the entity proposing to acquire the nonprofit hospital for reasonable costs related to the review, as determined by the Attorney General to be necessary. Reasonable costs may include expert review of the acquisition and a process for educating the public about the acquisition and obtaining public input.

f. The Attorney General and the Commissioner of Health and Senior Services shall, during the course of the review pursuant to this section, hold at least one public hearing in which any person may file written comments and exhibits or appear and make a statement. The public hearing may, if the Attorney General and commissioner so agree, be conducted jointly. The commissioner may satisfy the requirements of this subsection by conducting a public hearing in conjunction with the certificate of need review process pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.). The Attorney General or the commissioner may subpoena additional information or witnesses, including, but not limited to, information about any transaction that is collateral to the proposed acquisition and any related documents, require and administer oaths, require sworn statements, take depositions and use related discovery procedures for purposes of the hearing and at any time prior to completing the review of the proposed acquisition.

The Attorney General shall make the information received pursuant to this section, and the Department of Health and Senior Services shall make any information in its records relating to the proposed acquisition, available for inspection at no cost to the public.

The public hearing shall be held no later than 60 days after the date that an application from a nonprofit hospital is deemed complete by the Attorney General. Public notice of the hearing shall be provided at least two weeks in advance of the date of the hearing.

g. In a proposed acquisition subject to review under subsection d. of this section, the Attorney General, after consultation with the principal parties to the transaction, shall make a determination as to the amount of assets which the nonprofit hospital shall set aside as a charitable obligation, based on the full and fair market value of the hospital at the time of the proposed acquisition as determined by the Attorney General.

h. Upon execution of a proposed acquisition subject to review under subsection d. of this section, the amount determined by the Attorney General to be set aside as a charitable obligation shall be placed in a nonprofit charitable trust or one or more existing or newly established tax-exempt charitable organizations operating pursuant to 26 U.S.C. s. 501(c)(3). The charitable mission and grant-making functions of any charitable entity that receives assets pursuant to subsection g. of this section shall be dedicated to serving the health care needs of the community historically served by the predecessor nonprofit hospital. Any charitable entity that receives assets pursuant to subsection g. of this section, the directors, officers and trustees of any such charitable entity, and the assets of any such charitable entity, including any stock involved in the acquisition, shall be independent of any influence or control by the acquiring entity, its directors, officers, trustees, subsidiaries or affiliates.

(1) The governance of the charitable trust that results from the acquisition or of any newly established charitable organization that is to receive charitable assets pursuant to subsection g. of this section shall be subject to review and approval by the Attorney General. The governance of any existing charitable organization that is to receive charitable assets pursuant to subsection g. of this section shall be subject to review by the Attorney General. The governance of the charitable trust or the charitable organization shall be broadly based, and neither the trust or organization nor any officer, director or senior manager of the trust or organization shall be affiliated with the acquiring entity and no officer, director or senior manager of the trust or organization shall be a full-time employee of State government. No officer, director or senior manager of the trust or organization shall have been a director, officer, agent, trustee or employee of the nonprofit hospital during the three years immediately preceding the effective date of the acquisition, unless that person can demonstrate to the satisfaction of the Attorney General that the person's assumption of the position of officer, director or senior manager of the trust or organization would not constitute a breach of fiduciary duty or other conflict of interest.

(2) The governing body of the charitable trust or organization shall establish or demonstrate that it has in place, as the case may be, a mechanism to avoid conflicts of interest and to prohibit grants that benefit the board of directors and management of the acquiring entity or its affiliates or subsidiaries.

(3) The governing body of the charitable trust or organization shall provide the Attorney General with an annual report which shall include an audited financial statement and a detailed description of its grant-making and other charitable activities related to its use of the charitable assets received pursuant to this act. The annual report shall be made available to the public at both the Attorney General's office and the office of the charitable trust or organization. Nothing contained in this act shall affect the obligations of an entity possessing endowment funds under P.L.1975, c.26 (C.15:18-15 et seq.).

i. (1) The entity acquiring the nonprofit hospital, if determined to be necessary by the Commissioner of Health and Senior Services, shall provide funds, in an amount determined by the Commissioner of Health and Senior Services, for the hiring by the Department of Health and Senior Services of an independent health care access monitor to monitor and report quarterly to the Department of Health and Senior Services on community health care access by the entity, including levels of uncompensated care for indigent persons provided by the entity. The funding shall be provided for three years after the date of the acquisition. The entity acquiring the hospital shall provide the monitor with appropriate access to the entity's records in order to

enable the monitor to fulfill this function.

To prevent the duplication of any information already reported by the entity, the monitor shall, to the extent possible, utilize data already provided by the entity to the Department of Health and Senior Services.

No personal identifiers shall be attached to any of the records obtained by the monitor, and all such records shall be subject to the privacy and confidentiality provisions of medical records provided by law.

(2) Following the monitoring period, or in the event that no monitoring period is established, if the Commissioner of Health and Senior Services receives information indicating that the acquiring entity is not fulfilling its commitment to the affected service area pursuant to this act and determines that the information is true, he shall order the acquiring entity to comply with a corrective action plan. The commissioner shall retain oversight of the acquiring entity's obligations under the corrective action plan for as long as necessary to ensure compliance with this act.

j. The trustees and senior managers of the nonprofit hospital are prohibited from investing in the acquiring entity for a period of three years following the acquisition.

k. No director, officer, agent, trustee or employee of the nonprofit hospital shall benefit directly or indirectly from the acquisition, including the receipt of any compensation directly related to the proposed acquisition.

l. Upon completion by the Attorney General of the review of the application required by this act, the nonprofit hospital shall apply to the Superior Court for approval of the proposed acquisition. In that proceeding, the Attorney General shall advise the court as to whether he supports or opposes the proposed acquisition, with or without any specific modifications, and the basis for that position. Any person who filed a written comment or exhibit or appeared and made a statement in the public hearing held by the Attorney General pursuant to subsection f. of this section shall be considered a party to the proceeding, including consumers or community groups representing the citizens of the State.

m. Notwithstanding the provisions of subsections a. and f. of this section to the contrary, in the event that the Attorney General or the Commissioner of Health and Senior Services determines that a proposed acquisition should be considered on an expedited basis in order to preserve the quality of health care provided to the community, the Attorney General and the commissioner may combine the public notice about the acquisition with the notice for a public hearing as required in subsections a. and f., respectively, and may reduce the period of time required for notice, as necessary. In considering a proposed acquisition on an expedited basis, the Attorney General and commissioner may agree to reduce the period of time for review of a completed application to less than 90 days.

n. The Attorney General, in consultation with the Commissioner of Health and Senior Services, shall adopt regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410, (C.52:14B-1 et seq.) to carry out the purposes of this act.

C.26:2H-7.12 Exemption.

3. A hospital owned and operated by a county is exempt from the provisions of this act.

C.26:2H-7.13 Applicability of act.

4. The provisions of this act shall apply to any proposed acquisition of a nonprofit hospital that is initiated after the effective date of this act.

C.26:2H-7.14 Construction of act.

5. Nothing in this act shall be construed to limit the existing authority of the Attorney General, the Commissioner of Health and Senior Services or any other government official or entity or the court to review, approve or disapprove conditions related to an acquisition, transaction or disposition under current law.

6. This act shall take effect immediately.

Approved November 2, 2000.

PO BOX 004
TRENTON, NJ 08625

Office of the Governor
NEWS RELEASE

CONTACT: Jayne O'Connor
Laura Otterbourg
609-777-2600

RELEASE: November 2, 2000

Governor Christie Whitman today signed the following legislation:

A-1344, sponsored by Bagger (R-Middlesex/Morris/Somerset/Union) and Doria (D-Hudson) and Senators Littell (R-Sussex/Hunterdon/Morris) and Vitale (D-Middlesex), establishes the required funding level for charter school students and revises the procedure for evaluation of the charter school program. The bill incorporates recommendations made by the Governor in a conditional veto.

A-859, sponsored by Assembly Members Bagger (R-Middlesex/Morris/Somerset/Union) and Weingarten (R-Essex/Union) and Senators Vitale (D-Middlesex) and Sinagra (R-Middlesex), transfers certain DYFS property in Middlesex County to the New Jersey Natural Land Trust. The bill incorporates recommendations made by the Governor in a conditional veto.

A-1439, sponsored by Assembly Members Vandervalk (R-Bergen) and Cohen (D-Union) and Senators Sinagra (R-Middlesex) and Matheussen (R-Camden/Gloucester), establishes the Community Health Care Assets Protection Act. The bill incorporates recommendations made by the Governor in a conditional veto.