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HOUSE BILL 1923
By Fitzhugh

AN ACT concerning nonprofit hospitals, medical-surgical facilities, health maintenance organizations, health service corporations, or other nonprofit health care providers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. (a) Any nonprofit hospital, medical-surgical facility, health maintenance organization, health service corporation or other nonprofit health care provider/insurer that intends to transfer, restructure, or convert its activities in conjunction with for-profit activities shall, prior to entering into an agreement or transaction, secure written consent from the Attorney General prior to entering into any agreement or transaction to do any of the following:

(1) Sell, transfer, lease, exchange, option, convey, restructure, or convert or otherwise disposes of its assets to a for-profit corporation or entity or to a mutual benefit corporation or entity when a material amount of the assets of the nonprofit corporation are involved or will be involved in the agreement or transaction.

(2) Transfer control, responsibility, or governance of a material amount of the assets, operations, or business of the nonprofit corporation to any for-profit corporation or entity or to any mutual benefit corporation or entity.

(b) A nonprofit corporation must give written notice to the Attorney General at least ninety (90) days before it sells, trades, leases, exchanges, options, conveys, converts, gives, merges or otherwise disposes of its assets.

(c) Within ninety (90) days of the receipt of the written notice required by Section 1 (b), the Attorney General shall notify the nonprofit corporation in writing of the decision to approve or disapprove of the agreement or transaction. The Attorney General may extend this period for an additional sixty (60) day period.

SECTION 2. (a) No later than forty-five (45) days after the Attorney General has received notice from the nonprofit corporation of its intent to enter an agreement or transaction, the Attorney General shall hold no less than one public meeting in the service area of the nonprofit corporation. The number of public meetings that shall be held must correspond to the size of the community in the non-profit's business area and the nature and value of the agreement or transaction. At least twenty-one (21) days prior to the public meeting, the Attorney General shall provide written notice of the time and place of the meeting through publication in one or more newspapers of general circulation in the affected communities and to the board of supervisors of the county in which the facility is located and should inform additional stockholders or interested parties. The Attorney General shall have the power to subpoena additional information or witnesses, require and administer oaths, and require sworn statements at any time prior to making a decision on an application.

(b) The Attorney General shall provide access to the records concerning the proposed agreement or transaction at no cost to the public. The records shall be considered "public records" and be made available at both the Attorney General's office and the office of the nonprofit corporation.

(c) The Attorney General may charge a nonprofit hospital, medical-surgical facility, health maintenance organization, or health service corporation for the costs of providing the public with notice and reasonable access to records relating to the proposed agreement or transaction of the nonprofit corporation.

(d) Within five (5) working days after presenting a plan or agreement or transaction to the Attorney General for approval, the nonprofit corporation proposing the agreement or

transaction must publish notice of the proposed plan in a form, approved by the Attorney General, in newspapers and circulated once per week for three weeks in the areas which the nonprofit corporation does business.

SECTION 3. Prior to approving an agreement or transaction, the Attorney General shall find that the proposal meets all of the following requirements:

(1) The terms and conditions of the agreement or transaction are fair and reasonable to the citizens of the state, the public, recipients and potential recipients of services, the subscribers and/or policyholders of the nonprofit corporation, and the nonprofit corporation.

(2) The agreement or transaction is in the public interest. An agreement or transaction is not in the public interest unless appropriate steps have been taken to safeguard the value of charitable assets and ensure that any proceeds of the transaction are irrevocably dedicated to charitable health care purposes.

(3) The agreement or transaction will not result in inurement to any private person or entity, including stock options, agreements not to compete, and other private benefits.

(4) The agreement or transaction does not create or have the likelihood of creating an adverse effect on the availability of health care services to the affected community and sufficient safeguards are included to assure the affected community continued access to affordable care.

(5) The nonprofit corporation proposing the agreement or transaction used due diligence in selecting the for-profit corporation or entity or mutual benefit corporation or entity, and negotiating the terms and conditions of the transaction when deciding to sell, lease, transfer, exchange, option, convey, convert, give, merge or similarly dispose of its assets.

(6) A charitable trust shall be set aside equal to the fair market value of the nonprofit corporation. Fair market value should be determined at the time of conversion, determined as if it had voting stock outstanding and one hundred percent of its stock were freely transferable and available for purchase without restrictions. Consideration shall be given to market value, investment or earnings value, net asset value, and a control premium, if any. The Attorney General may permit all or a portion of the consideration conveyed to the charitable organization to consist of stock of the for-profit corporation.

(7) The charitable trust distribution shall be dedicated to an existing or new tax-exempt charitable organization operating pursuant to 26 U.S.C.A. Section 501(c)(3) of the federal Internal Revenue Code.

(8) Each nonprofit charitable corporation receiving the charitable assets, its directors, officers, and staff shall be and remain independent of the for-profit/stock insurance company or mutual benefit corporation and its affiliates. No person who is an officer, director, or staff member of the nonprofit corporation submitting the plans, at the time the plan is submitted, or at the time of the agreement or transaction, or thereafter, shall be qualified to be an officer, director or staff member of the nonprofit charitable corporation receiving the charitable assets. No director, officer, agent or employee of the nonprofit corporation submitting the plan or the nonprofit charitable corporation receiving the charitable assets, shall benefit directly or indirectly from the agreement or transaction.

(9) The nonprofit charitable corporation receiving the charitable assets must put mechanisms in place to avoid conflicts of interest and to prohibit grants benefiting the board of directors and management and grants benefiting the for-profit corporation or entity or mutual benefit corporation or entity.

(10) The charitable mission and grant-making functions of the charitable corporation receiving the charitable trust assets shall be dedicated to serving the state's unmet health care needs, particularly with regard to medically uninsured and underserved populations, focusing on promoting access to care and improving quality of care.

(11) The charitable corporation receiving the charitable assets shall provide the Attorney General with an annual report of its grant-making and other charitable activities related to its use of the charitable assets receiving. The annual report shall be made available to the public at both the Attorney General's office and the office of the nonprofit charitable corporation.

SECTION 4. The Attorney General shall do the following:

(1) Contract with, consult, and receive advice from any state agency on those terms and conditions that the Attorney General deems appropriate.

(2) Contract with experts or consultants to assist in reviewing the proposed agreement or transaction that is reasonable and necessary.

(3) Contract costs shall not exceed an amount that is necessary to conduct the review and evaluation. The Attorney General may charge the nonprofit hospital, medical-surgical facility, health maintenance organization, or health service corporation submitting the proposed plan, an assessment fee to pay the cost of expert consultants required to help review public benefit and charitable trust proposals and to assess the fair market value of the charitable assets.

SECTION 5. (a) Any nonprofit corporation which converts into a mutual insurance company retains a charitable trust obligation to preserve its assets for charitable purposes. This obligation shall be paid any time the mutual insurance company enters into an agreement or transaction with a for-profit corporation or otherwise generates sufficient funds to fulfill its charitable trust obligation. The fair

market value of the nonprofit corporation on the date of conversion to a mutual insurance company, augmented by an increase in value of the mutual insurance company attributable to the use of the charitable trust assets or to its prior status as a nonprofit corporation, shall be the basis for the valuation of the trust obligation, consistent with Section 3 of this act.

(b) A mutual insurance company which enters into any agreement or transaction with a nonprofit corporation acquires and retains a charitable trust obligation to preserve the assets of the nonprofit corporation for charitable purposes. This obligation shall be paid any time the mutual insurance company enters into an agreement or transaction with a for-profit corporation. The fair market value of the nonprofit corporation on the date of conversion to a mutual insurance company, augmented by any increase in value of the mutual insurance company attributable to the use of the charitable trust assets or to its prior status as a nonprofit corporation, shall be the basis for the valuation of the trust obligation, consistent with Section 3 of this act.

(c) At such time that the mutual insurance company enters into an agreement or transaction to demutualize, it shall submit an asset distribution plan to fulfill its charitable obligations, consistent with the requirements under Section 3 of this Act. No agreement or transaction of a mutual insurance company to demutualize shall occur until the Attorney General consents to such plan as fair and equitable to the public and follows the other provision of this act.

SECTION 6. The Attorney General shall require every nonprofit hospital, medical-surgical facility, health maintenance organization, or health service corporation to submit for approval by the Attorney General, an annual report that identifies the activities to be undertaken by the nonprofit (if one continues to exist after the agreement or transaction is approved) to meet its public benefit and community benefit obligations.

SECTION 7. If the Attorney General receives information indicating that the for-profit corporation is not fulfilling the commitment to the affected community under Section 3, the regulator shall hold a public meeting upon ten (10) days notice to the affected parties. If, after such meeting, the regulator determines that the information is true, it shall institute proceedings to require a corrective action plan from the for-profit corporation. The Attorney General shall retain oversight of the for-profit's obligations under the corrective action plan for as long as necessary to ensure compliance with this statute.

SECTION 8. Any final action by the Attorney General, pursuant to Section 3, shall be subject to judicial review by the court at the initiation of the nonprofit corporation or any person that was a party to the agency proceeding. Any person adversely affected by the final agency decision shall be considered a party to the proceeding, including consumers or community groups representing the citizens of the state.

SECTION 9. This act shall take effect upon becoming a law, the public welfare requiring it.