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SENATE FILE 2059
BY NEUHAUSER

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act establishing procedures for certain transfers of assets of
2 nonprofit corporations which own, control, or operate
3 hospitals when the transfer is to certain acquiring entities,
4 providing penalties, and providing an applicability date.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2059

1 Section 1. NEW SECTION. 135M.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "Acquiring entity" means a person who is a purchaser or
5 lessee of an acquisition.

6 2. "Acquisition" means a purchase or lease by a person of
7 the assets of a hospital which is owned, controlled, or
8 operated by a nonprofit corporation, and which meets any of
9 the following conditions:

10 a. Constitutes a purchase or lease of fifty percent or
11 more of the assets of a hospital licensed under chapter 135B.

12 b. Constitutes a purchase or lease which, when combined
13 with one or more transfers between the same or related parties
14 occurring within a five-year period, constitutes a purchase or
15 lease of fifty percent or more of the assets of a hospital
16 licensed under chapter 135B.

17 "Acquisition" does not include the restructuring of a
18 hospital involving a lease of assets to any not-for-profit or
19 for-profit entity which has a principal place of business
20 located in the same county where the main campus of the
21 hospital is located and which is not owned, in whole or in
22 part, or controlled by any other for-profit or not-for-profit
23 entity whose principal place of business is located outside
24 the county.

25 3. "Attorney general" means the attorney general or the
26 attorney general's designee.

27 4. "Control" or "controlling interest" means ownership of
28 fifty percent or more of the assets of the entity in question
29 or the ability to influence significantly the operations or
30 decisions of the entity.

31 5. "Disposition" means a sale or lease of the assets of a
32 hospital which is owned, controlled, or operated by a
33 nonprofit corporation to an acquiring entity, which meets any
34 of the following conditions:

35 a. Constitutes a sale or lease of fifty percent or more of

1 the assets of a hospital licensed under chapter 135B.

2 b. Constitutes a sale or lease which, when combined with
3 one or more transfers between the same or related parties
4 occurring within a five-year period, constitutes a sale or
5 lease of fifty percent or more of the assets of a hospital
6 licensed under chapter 135B.

7 "Disposition" does not include the restructuring of a
8 hospital involving a lease of assets to any not-for-profit or
9 for-profit entity which has a principal place of business
10 located in the same county where the main campus of the
11 hospital is located and which is not owned, in whole or in
12 part, or controlled by any other for-profit or not-for-profit
13 entity whose principal place of business is located outside
14 the county.

15 6. "Family" means a parent, spouse, child, or sibling.

16 7. "Financial interest" means the direct or indirect
17 ownership of any assets or stock of any business.

18 8. "Hospital" means hospital as defined in section 135B.1.

19 9. "Related party" means a person that owns or controls,
20 is owned or controlled by, or operates under common ownership
21 or control with a party to a transaction.

22 10. "Transaction" means an acquisition and disposition.

23 Sec. 2. NEW SECTION. 135M.2 NOTIFICATION OF ATTORNEY
24 GENERAL.

25 1. An acquiring entity shall not engage in an acquisition
26 without first notifying the attorney general pursuant to this
27 chapter. A nonprofit corporation which owns, controls, or
28 operates, directly or indirectly, a hospital licensed under
29 chapter 135B shall not engage in a disposition without first
30 notifying the attorney general pursuant to this chapter. The
31 parties to the transaction shall provide the attorney general
32 with at least ninety days' notice of the proposed transaction
33 prior to its consummation.

34 2. Notice to the attorney general shall include the name
35 of the hospital; the name of the seller or lessor; the name of

1 the acquiring entity and other parties to the acquisition; the
2 county in which the main campus of the hospital is located; a
3 summary of the terms of the proposed acquisition agreement and
4 any related agreements including leases, management contracts,
5 and service contracts; the acquisition price; a copy of the
6 acquisition agreement and any related agreements including
7 leases, management contracts, and service contracts; any
8 valuations of the hospital's assets prepared in the three
9 years immediately preceding the proposed transaction date; a
10 financial and economic analysis and report from any expert or
11 consultant retained by the seller or lessor which addresses
12 each of the factors required to be addressed by a disclosure
13 pursuant to section 135M.5; a copy of the articles of
14 incorporation and bylaws of the nonprofit corporation and
15 related entities and foundations; all donative documents
16 reflecting the purposes of prior gifts of more than one
17 hundred thousand dollars in value by donors to the nonprofit
18 corporation or any related entities or foundations for or on
19 behalf of the hospital; and all documents pertaining to the
20 disposition of assets, including those documents which are
21 included as schedules or exhibits to the acquisition agreement
22 and any related agreements.

23 3. The attorney general may prescribe a form of notice to
24 be utilized by the seller or lessor and the acquiring entity
25 and may require information in addition to that specified in
26 this section if the disclosure of such information is
27 determined by the attorney general to be in the public
28 interest. The notice to the attorney general required by this
29 section and all related documents shall be considered public
30 records pursuant to section 22.7.

31 4. Notice to the attorney general shall be accompanied by
32 the payment by either the seller or lessor, or by the
33 acquiring entity, of a fee in the amount of fifty thousand
34 dollars.

35 5. The attorney general is authorized to retain financial,

1 economic, health planning, or other experts or consultants to
2 assist in addressing each of the factors set forth in section
3 135M.5.

4 6. Except as provided in subsection 8, notice to the
5 attorney general required by this chapter shall also include a
6 separate certification from each member of the governing board
7 and the chief executive officer of the nonprofit corporation
8 which is a party to the proposed disposition, and from each
9 member of the governing board and the chief executive officer
10 of any nonprofit corporation that holds a membership, stock,
11 or controlling interest in the corporation, executed under
12 oath, stating whether that director or officer of the
13 nonprofit corporation is then or may become within the three-
14 year period following the completion of the transaction a
15 member or shareholder in, or officer, employee, agent, or
16 consultant of, or will otherwise derive any compensation or
17 benefits, directly or indirectly, from the acquiring entity or
18 any related party in connection with or as a result of the
19 disposition.

20 7. Except as provided in subsection 8, notice to the
21 attorney general required by this section shall also include a
22 certification from each member of the governing board and the
23 chief executive officer of the nonprofit corporation which is
24 a party to the proposed disposition, and from each member of
25 the governing board and the chief executive officer of any
26 nonprofit corporation that holds a membership, stock, or
27 controlling interest in the corporation, executed under oath
28 which provides all of the following:

29 a. Disclosure of any financial interest held by that
30 individual or that individual's family, or held by any
31 business in which the individual or the individual's family
32 owns a financial interest, in any business which:

33 (1) Within the immediately preceding twelve-month period
34 sold products, property interests, or services to the
35 nonprofit corporation engaged in the disposition.

1 (2) Within the immediately preceding twelve-month period
2 sold or within the three-year period after the completion of
3 the transaction may sell products, property interests, or
4 services to the acquiring entity.

5 b. Disclosure of any contract pursuant to which a sale was
6 made or may be made of those products, property interests, or
7 services regarding financial interests which are disclosed
8 pursuant to paragraph "a".

9 c. A statement that the nonprofit corporation which is a
10 party to the disposition will receive fair market value for
11 its assets in the transaction or, in the case of a proposed
12 disposition to a not-for-profit entity or a hospital
13 authority, a statement that the nonprofit corporation will
14 receive an enforceable commitment of fair and reasonable
15 community benefits for its assets.

16 d. A statement that the market value of the hospital's
17 assets has not been manipulated to decrease their value.

18 e. A statement that the terms of the transaction are fair
19 and reasonable to the nonprofit corporation.

20 f. A statement that the transaction is authorized by the
21 nonprofit corporation's governing documents and is consistent
22 with the intent of any major donors who have contributed over
23 one hundred thousand dollars.

24 g. A statement that the proceeds of the transaction will
25 be used solely in a manner consistent with the charitable
26 purposes of the nonprofit corporation and will not be used,
27 directly or indirectly, to benefit the acquiring entity.

28 h. A statement that the transaction will not adversely
29 affect the availability or accessibility of health care
30 services in the county in which the main campus of the
31 hospital is located.

32 8. The certification requirements of subsections 6 and 7
33 do not apply to any governing board members who vote to oppose
34 the proposed disposition.

35 Sec. 3. NEW SECTION. 135M.3 PUBLIC NOTICE.

1 Within ten business days after receipt of a notice of a
2 proposed transaction under this chapter, the attorney general
3 shall publish notice of the proposed transaction in a
4 newspaper of general circulation in the county where the main
5 campus of the hospital is located and shall notify in writing
6 the governing authority of such county. The published notice
7 shall state that the attorney general has received notice of a
8 proposed transaction, the names of the parties to the proposed
9 transaction, the date, time, and place of the public hearing
10 regarding the transaction, and the means by which a person may
11 submit written comments about the proposed transaction to the
12 attorney general.

13 Sec. 4. NEW SECTION. 135M.4 PUBLIC HEARING.

14 1. Within sixty days after receipt of a notice of a
15 proposed transaction under this chapter, the attorney general
16 shall conduct a public hearing regarding the proposed
17 transaction in the county in which the main campus of the
18 hospital is located. At the hearing, the attorney general
19 shall provide an opportunity for those persons in favor of the
20 transaction, those persons opposed to the transaction, and
21 other interested persons to be heard. The attorney general
22 shall also receive written comments regarding the transaction
23 from any interested person, and the written comments shall be
24 considered public records pursuant to section 22.7.

25 2. Any expert or consultant retained by the nonprofit
26 corporation disposing of the hospital to prepare a financial
27 and economic analysis of the proposed transaction shall appear
28 and testify at the public hearing regarding the expert's or
29 consultant's report if requested to do so by the attorney
30 general and may be questioned by the attorney general. The
31 expert or consultant shall make the same disclosure required
32 by members and officers under section 135M.2. An independent
33 expert or consultant retained by the attorney general to
34 review the proposed transaction shall also appear and testify
35 at the public hearing regarding the expert's or consultant's

1 findings and analysis.

2 3. At least one member of the governing board of the
3 seller or lessor shall be designated by the seller or lessor,
4 and at least one representative of the acquiring entity shall
5 be designated by the acquiring entity, to appear and testify
6 under oath at the public hearing and shall be subject to
7 questioning by the attorney general.

8 Sec. 5. NEW SECTION. 135M.5 DISCLOSURES.

9 The purpose of a public hearing under section 135M.4 is to
10 ensure that the public's interest is protected when the assets
11 of a nonprofit hospital are acquired by an acquiring entity by
12 requiring full disclosure of the purpose and terms of the
13 transaction and providing an opportunity for local public
14 input. The disposition of a nonprofit hospital to an
15 acquiring entity shall not be in the public interest unless
16 there has been adequate disclosure as determined by the
17 attorney general during the public hearing and through the
18 notice and documents submitted to the attorney general that
19 appropriate steps have been taken to ensure that the
20 transaction is authorized, to safeguard the value of
21 charitable assets, and to ensure that any proceeds of the
22 transaction are used for appropriate charitable health care
23 purposes. The public hearing, or documents on file with the
24 attorney general pursuant to this chapter, shall address, at a
25 minimum, all of the following:

26 1. Whether the disposition is permitted under state laws
27 governing nonprofit entities, trusts, and charities.

28 2. Whether the disposition is consistent with the
29 directives of major donors who have contributed over one
30 hundred thousand dollars.

31 3. Whether the governing body of the nonprofit corporation
32 exercised due diligence in deciding to dispose of hospital
33 assets, selecting the acquiring entity, and negotiating the
34 terms and conditions of the disposition.

35 4. The procedures used by the nonprofit corporation in

1 making its decision to dispose of its assets, including
2 whether appropriate expert assistance was used.

3 5. Whether there are any conflicts of interest, including,
4 but not limited to, conflicts of interest related to directors
5 or officers of the nonprofit corporation and experts retained
6 by the parties to the transaction.

7 6. Whether the seller or lessor will receive fair market
8 value for its assets, including an appropriate control premium
9 for any relinquishment of control or, in the case of a
10 proposed disposition to a not-for-profit entity, will receive
11 an enforceable commitment for fair and reasonable community
12 benefits for its assets.

13 7. Whether charitable assets will be placed at
14 unreasonable risk if the transaction is financed in part by
15 the seller or lessor.

16 8. Whether the terms of any management or services
17 contract negotiated in conjunction with the transaction are
18 reasonable.

19 9. Whether disposition proceeds will be used for
20 appropriate charitable health care purposes consistent with
21 the nonprofit corporation's original purpose or for the
22 support and promotion of health care in the affected
23 community.

24 10. Whether a meaningful right of first refusal to
25 repurchase the assets from a successor nonprofit corporation
26 or foundation has been retained if the acquiring entity
27 subsequently proposes to sell, lease, or transfer the hospital
28 to yet another entity.

29 11. Whether sufficient safeguards are included in the
30 acquisition agreement to assure the affected community
31 continued access to affordable health care and to the range of
32 services historically provided by the nonprofit corporation.

33 12. Whether the acquiring entity has made an enforceable
34 commitment to provide health care to the disadvantaged, the
35 uninsured, and the underinsured and to provide benefits to the

1 affected community to promote improved health care.

2 13. Whether health care providers will be offered the
3 opportunity to invest or own an interest in the acquiring
4 entity or a related party, and whether procedures or
5 safeguards are in place to avoid conflict of interest in
6 patient referrals.

7 Sec. 6. NEW SECTION. 135M.6 ENFORCEMENT.

8 The attorney general is authorized to ensure compliance
9 with any and all notices, certifications, obligations, and
10 commitments required to be made in connection with a
11 transaction under this chapter and may institute proceedings
12 to enforce such compliance in the district court of the county
13 in which the main campus of the hospital is located. This
14 provision shall not preclude any other person with standing
15 from instituting judicial proceedings regarding the proposed
16 disposition.

17 Sec. 7. NEW SECTION. 135M.7 REPORT OF FINDINGS.

18 The attorney general shall issue a report of findings
19 addressing the issues outlined in section 135M.5 within thirty
20 days of the public hearing; provided, however, the time for
21 issuing the report may be extended for an additional thirty
22 days if the attorney general finds there has been a failure by
23 the entities involved in the transaction under review or any
24 of them, to comply with disclosures required by this chapter
25 or to respond to subpoenas or any other process authorized by
26 this chapter, and additional extensions may be ordered upon a
27 continuation of a failure to so comply.

28 Sec. 8. NEW SECTION. 135M.8 LICENSE -- NONISSUANCE.

29 A license shall not be issued to or renewed by a hospital
30 under chapter 135B or any other applicable law or rule, and a
31 license which has been issued shall be subject to revocation
32 or suspension, if there is a disposition or acquisition of
33 hospital assets as defined in this chapter without notice
34 first having been provided to the attorney general under
35 section 135M.2.

