



AN ACT CONCERNING THE SALE OF NONPROFIT HOSPITALS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-486 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2003*):

3 For purposes of sections 19a-486 to 19a-486h, inclusive:

4 (1) "Nonprofit hospital" means a nonprofit entity licensed as a
5 hospital pursuant to this chapter and any entity affiliated with such a
6 hospital through governance or membership, including, but not
7 limited to, a holding company or subsidiary.

8 (2) "Purchaser" means a person acquiring any assets of a nonprofit
9 hospital through a transfer.

10 (3) "Person" means any individual, firm, partnership, corporation,
11 limited liability company, association or other entity.

12 (4) "Transfer" means to sell, transfer, lease, exchange, option,
13 convey, give or otherwise dispose of or transfer control over,
14 including, but not limited to, transfer by way of merger or joint
15 venture not in the ordinary course of business.

16 (5) "Control" has the meaning assigned to it in section 36b-41.

17 (6) "Commissioner" means the Commissioner of Health Care Access.

18 Sec. 2. Section 19a-486a of the general statutes is repealed and the
19 following is substituted in lieu thereof (*Effective October 1, 2003*):

20 (a) No nonprofit hospital shall enter into an agreement to transfer a
21 material amount of its assets or operations or a change in control of
22 operations to a person that is organized or operated for profit without
23 first having [notified and, if applicable,] received approval of the
24 agreement by the [Commissioner of Health Care Access] commissioner
25 and the Attorney General pursuant to sections 19a-486 to 19a-486h,
26 inclusive, as amended by this act, and [his] pursuant to the Attorney
27 General's authority under section 3-125. Any such agreement without
28 the approval required by sections 19a-486 to 19a-486h, inclusive, as
29 amended by this act, shall be void.

30 (b) Prior to any transaction described in subsection (a) of this
31 section, the nonprofit hospital and the purchaser shall [give notice]
32 concurrently submit a letter of intent to the commissioner and the
33 Attorney General by serving it on them by certified mail, return receipt
34 requested, or delivering it by hand to each office. Such [notice] letter of
35 intent shall contain: (1) The name and address of the nonprofit
36 hospital; (2) the name and address of the purchaser; (3) a brief
37 description of the terms of the proposed agreement; [(4) copies of all
38 contracts, agreements and memoranda of understanding relating to
39 the proposed agreement; and (5) a fairness evaluation by an
40 independent person who is an expert in such agreements, that includes
41 an analysis of each of the criteria set forth in section 19a-486c] and (4)
42 the estimated capital expenditure, cost or value associated with the
43 proposed agreement. The [notice] letter of intent shall be subject to
44 disclosure pursuant to section 1-210.

45 [(c) Not later than ten days after receipt of a notice under this
46 section, the commissioner shall publish a summary of such agreement
47 in a newspaper of general circulation where the nonprofit hospital is
48 located.

49 (d) Any person may seek to intervene in the proceedings under

50 sections 19a-486 to 19a-486h, inclusive, pursuant to section 4-177a.]

51 (c) The commissioner and the Attorney General shall review the
52 letter of intent. The Attorney General shall determine whether the
53 agreement requires approval pursuant to this chapter. If such approval
54 is required, the commissioner and the Attorney General shall transmit
55 to the purchaser and the nonprofit hospital an application form for
56 approval pursuant to this chapter, unless the commissioner refuses to
57 accept a filed or submitted letter of intent as provided in section 19a-
58 639e. Such application form shall require the following information: (1)
59 The name and address of the nonprofit hospital; (2) the name and
60 address of the purchaser; (3) a description of the terms of the proposed
61 agreement; (4) copies of all contracts, agreements and memoranda of
62 understanding relating to the proposed agreement; (5) a fairness
63 evaluation by an independent person who is an expert in such
64 agreements, that includes an analysis of each of the criteria set forth in
65 section 19a-486c, as amended by this act; (6) documentation that the
66 nonprofit hospital exercised the due diligence required by subdivision
67 (2) of subsection (a) of section 19a-486c, as amended by this act,
68 including disclosure of the terms of any other offers to transfer assets
69 or operations or change control of operations received by the nonprofit
70 hospital and the reason for rejection of such offers; and (7) such other
71 information as the commissioner or the Attorney General deem
72 necessary to their review pursuant to the provisions of sections 19a-486
73 to 19a-486f, inclusive, as amended by this act, and sections 19a-637 to
74 19a-639, inclusive. The application shall be subject to disclosure
75 pursuant to section 1-210.

76 (d) No later than sixty days after the date of mailing of the
77 application form, the nonprofit hospital and the purchaser shall
78 concurrently file an application with the commissioner and the
79 Attorney General containing all the required information. The
80 commissioner and the Attorney General shall review the application
81 and determine whether the application is complete. The commissioner
82 and the Attorney General shall, no later than twenty days after the
83 date of their receipt of the application, provide written notice to the

84 nonprofit hospital and the purchaser of any deficiencies in the
85 application. Such application shall not be deemed complete until such
86 deficiencies are corrected.

87 (e) No later than twenty-five days after the date of their receipt of
88 the completed application under this section, the commissioner and
89 the Attorney General shall jointly publish a summary of such
90 agreement in a newspaper of general circulation where the nonprofit
91 hospital is located.

92 (f) Any person may seek to intervene in the proceedings under
93 section 19a-486e, as amended by this act, in the same manner as
94 provided in section 4-177a.

95 Sec. 3. Section 19a-486b of the general statutes is repealed and the
96 following is substituted in lieu thereof (*Effective October 1, 2003*):

97 [(a) Not later than twenty days after receipt of a notice of a
98 proposed agreement under section 19a-486a, the Attorney General
99 shall determine whether the agreement involves a material amount of
100 the assets or operations or a change in control of operations of the
101 nonprofit hospital and shall notify the Commissioner of Health Care
102 Access of such determination. If he determines that the agreement
103 involves a change in control of operations or the amount of assets or
104 operations involved is material, then he shall conduct a review of the
105 proposed agreement.

106 (b) Not later than one hundred twenty days after receipt of the
107 notice required by section 19a-486a, the Attorney General shall review
108 the agreement and shall approve the agreement, with or without
109 modifications, or disapprove the agreement. The one hundred twenty
110 days may be extended by agreement of the Attorney General, the
111 nonprofit hospital and the purchaser. If the Attorney General initiates
112 a proceeding pursuant to section 19a-486c to enforce a subpoena, the
113 one hundred twenty days shall be tolled until the final court decision
114 on the enforcement proceeding, including any appeal or time for the
115 filing of such appeal. Unless extended pursuant to this subsection,

116 failure to take action on an agreement within one hundred twenty
117 days shall be deemed approval.]

118 Not later than one hundred twenty days after the date of receipt of
119 the completed application pursuant to subsection (d) of section 19a-
120 486a, as amended by this act, the Attorney General and the
121 commissioner shall approve the application, with or without
122 modification, or deny the application. The commissioner shall also
123 determine, in accordance with the provisions of chapter 368z, whether
124 to approve, with or without modification, or deny the application for a
125 certificate of need that is part of the completed application.
126 Notwithstanding the provisions of sections 19a-638 and 19a-639, the
127 commissioner shall complete the decision on the application for a
128 certificate of need within the same time period as the completed
129 application. Such one-hundred-twenty day period may be extended by
130 agreement of the Attorney General, the commissioner, the nonprofit
131 hospital and the purchaser. If the Attorney General initiates a
132 proceeding to enforce a subpoena pursuant to section 19a-486c or 19a-
133 486d, as amended by this act, the one-hundred-twenty-day period
134 shall be tolled until the final court decision on the last pending
135 enforcement proceeding, including any appeal or time for the filing of
136 such appeal. Unless the one-hundred-twenty-day period is extended
137 pursuant to this section, if the commissioner and Attorney General fail
138 to take action on an agreement prior to the one hundred twenty-first
139 day after the date of the filing of the completed application, the
140 application shall be deemed approved.

141 Sec. 4. Section 19a-486c of the general statutes is repealed and the
142 following is substituted in lieu thereof (*Effective October 1, 2003*):

143 (a) The Attorney General shall [disapprove a proposed agreement
144 requiring notice under section 19a-486a] deny an application as not in
145 the public interest if the Attorney General determines that one or more
146 of the following conditions exist: (1) The transaction is prohibited by
147 Connecticut statutory or common law governing nonprofit entities,
148 trusts or charities; (2) the nonprofit hospital failed to exercise due

149 diligence in (A) deciding to transfer, (B) selecting the purchaser, (C)
150 obtaining a fairness evaluation from an independent person expert in
151 such agreements, or (D) negotiating the terms and conditions of the
152 transfer; (3) the nonprofit hospital failed to disclose any conflict of
153 interest, including, but not limited to, conflicts of interest pertaining to
154 board members, officers, key employees and experts of the hospital,
155 the purchaser or any other party to the transaction; (4) the nonprofit
156 hospital will not receive fair market value for its assets, which, for
157 purposes of this subsection, means the most likely price that the assets
158 would bring in a sale in a competitive and open market under all
159 conditions requisite to a fair sale, with the buyer and seller each acting
160 prudently, knowledgeably and in their own best interest, and with a
161 reasonable time being allowed for exposure in the open market; (5) the
162 fair market value of the assets has been manipulated by any person in
163 a manner that causes the value of the assets to decrease; (6) the
164 financing of the transaction by the nonprofit hospital will place the
165 nonprofit hospital's assets at an unreasonable risk; (7) any
166 management contract contemplated under the transaction is not for
167 reasonable fair value; (8) a sum equal to the fair market value of the
168 nonprofit hospital's assets (A) is not being transferred to one or more
169 persons to be selected by the superior court for the judicial district
170 where the nonprofit hospital is located who are not affiliated through
171 corporate structure, governance or membership with either the
172 nonprofit hospital or the purchaser, and (B) is not being used for one of
173 the following purposes: (i) For appropriate charitable health care
174 purposes consistent with the nonprofit hospital's original purpose, (ii)
175 for the support and promotion of health care generally in the affected
176 community, or (iii) with respect to any assets held by the nonprofit
177 hospital that are subject to a use restriction imposed by a donor, for a
178 purpose consistent with the intent of said donor; or (9) the nonprofit
179 hospital or the purchaser has failed to provide the Attorney General
180 with information and data sufficient to evaluate the proposed
181 agreement adequately, provided the Attorney General has notified the
182 nonprofit hospital or the purchaser of the inadequacy of the
183 information or data and has provided a reasonable opportunity to

184 remedy such inadequacy.

185 (b) The Attorney General may, during the course of a review
186 required by section 19a-486b: (1) Issue in writing and cause to be
187 served upon any person, by subpoena, a demand that such person
188 appear before [him] the Attorney General and give testimony or
189 produce documents as to any matters relevant to the scope of the
190 review; or (2) issue written interrogatories, to be answered under oath,
191 as to any matters relevant to the scope of the review and prescribing a
192 return date that would allow a reasonable time to respond. If any
193 person fails to comply with the provisions of this subsection, the
194 Attorney General may apply to the superior court for the judicial
195 district of Hartford seeking enforcement of the subpoena. The
196 [Superior Court] superior court may, upon notice to such person, issue
197 and cause to be served an order requiring compliance. Service of
198 subpoenas ad testificandum, subpoenas duces tecum, notices of
199 deposition and written interrogatories as provided in this subsection
200 may be made by personal service at the usual place of abode or by
201 certified mail, return receipt requested, addressed to the person to be
202 served at [his] such person's principal place of business within or
203 without this state or [his] such person's residence.

204 (c) The Attorney General may contract with experts or consultants
205 to assist in reviewing the proposed agreement, including, but not
206 limited to, assistance in independently determining the fair market
207 value of the nonprofit hospital's assets. The Attorney General may
208 appoint, or contract with, another person to conduct the review
209 required by this section and make recommendations to the Attorney
210 General. The Attorney General shall submit any bills for such contracts
211 to the purchaser. The purchaser shall pay such bills within thirty days
212 of receipt. Such bills shall not exceed [one hundred fifty] three
213 hundred thousand dollars.

214 Sec. 5. Section 19a-486d of the general statutes is repealed and the
215 following is substituted in lieu thereof (*Effective October 1, 2003*):

216 [(a) If the Attorney General determines, pursuant to section 19a-
217 486b, that the proposed agreement involves a material amount of the
218 assets or operations or a change in control of operations of the
219 nonprofit hospital, then not later than one hundred twenty days after
220 receipt of a notice of a proposed agreement under section 19a-486a, the
221 Commissioner of Health Care Access shall review the agreement and
222 shall approve the agreement, with or without modifications, or
223 disapprove the agreement. The one-hundred-twenty-day period may
224 be extended by agreement of the commissioner, the nonprofit hospital
225 and the purchaser. If the Attorney General, on behalf of the
226 commissioner, initiates a proceeding pursuant to subsection (c) of this
227 section to enforce a subpoena, the one-hundred-twenty-day period
228 shall be tolled until the final court decision on the proceeding,
229 including any appeal or any time for filing such appeal. Unless
230 extended pursuant to this subsection, failure to take action on an
231 agreement within one hundred twenty days shall be deemed approval.

232 (b) The commissioner shall not approve the agreement unless he
233 finds that: (1) The affected community will be assured of continued
234 access to affordable health care; (2) the purchaser has made a
235 commitment to provide health care to the uninsured and the
236 underinsured; and (3) safeguard procedures are in place to avoid a
237 conflict of interest in patient referral if health care providers or insurers
238 will be offered the opportunity to invest or own an interest in the
239 purchaser or an entity related to the purchaser.]

240 (a) The commissioner shall deny an application filed pursuant to
241 subsection (d) of section 19a-486a, as amended by this act, unless the
242 commissioner finds that: (1) The affected community will be assured of
243 continued access to affordable health care; (2) the purchaser has made
244 a commitment to provide health care to the uninsured and the
245 underinsured; (3) in a situation where health care providers or insurers
246 will be offered the opportunity to invest or own an interest in the
247 purchaser or an entity related to the purchaser safeguard procedures
248 are in place to avoid a conflict of interest in patient referral; and (4)
249 certificate of need authorization is justified in accordance with sections

250 19a-637 to 19a-639, inclusive. The commissioner may contract with any
251 person, including, but not limited to, financial or actuarial experts or
252 consultants, or legal experts with the approval of the Attorney General,
253 to assist in reviewing the completed application. The commissioner
254 shall submit any bills for such contracts to the purchaser. Such bills
255 shall not exceed one hundred fifty thousand dollars. The purchaser
256 shall pay such bills no later than thirty days after the date of receipt of
257 such bills.

258 [(c)] (b) The commissioner may, during the course of a review
259 required by this section: (1) Issue in writing and cause to be served
260 upon any person, by subpoena, a demand that such person appear
261 before [him] the commissioner and give testimony or produce
262 documents as to any matters relevant to the scope of the review; and
263 (2) issue written interrogatories, to be answered under oath, as to any
264 matters relevant to the scope of the review and prescribing a return
265 date that would allow a reasonable time to respond. If any person fails
266 to comply with the provisions of this subsection, the commissioner,
267 through the Attorney General, may apply to the superior court for the
268 judicial district of Hartford seeking enforcement of such subpoena. The
269 Superior Court may, upon notice to such person, issue and cause to be
270 served an order requiring compliance. Service of subpoenas ad
271 testificandum, subpoenas duces tecum, notices of deposition and
272 written interrogatories as provided in this subsection may be made by
273 personal service at the usual place of abode or by certified mail, return
274 receipt requested, addressed to the person to be served at [his] such
275 person's principal place of business within or without this state or [his]
276 such person's residence.

277 Sec. 6. Section 19a-486e of the general statutes is repealed and the
278 following is substituted in lieu thereof (*Effective October 1, 2003*):

279 Prior to making any decision to approve, [or disapprove a proposed
280 agreement requiring notice under section 19a-486a] with or without
281 modification, or deny any application filed pursuant to subsection (d)
282 of section 19a-486a, as amended by this act, the Attorney General and

283 the [Commissioner of Health Care Access] commissioner shall jointly
 284 conduct one or more public hearings, one of which shall be in the
 285 primary service area of the nonprofit hospital. At least [ten] fourteen
 286 days before conducting the public hearing, the Attorney General and
 287 the commissioner shall provide notice of the time and place of the
 288 hearing through publication in one or more newspapers of general
 289 circulation in the affected community.

290 Sec. 7. Section 19a-486f of the general statutes is repealed and the
 291 following is substituted in lieu thereof (*Effective October 1, 2003*):

292 [If the Commissioner of Health Care Access or the Attorney General
 293 disapproves a proposed agreement requiring notice under section 19a-
 294 486a, or approves it with modifications, the nonprofit hospital or the
 295 purchaser may appeal such decision pursuant to chapter 54.]

296 If the commissioner or the Attorney General denies an application
 297 filed pursuant to subsection (d) of section 19a-486a, as amended by this
 298 act, or approves it with modification, the nonprofit hospital or the
 299 purchaser may appeal such decision in the same manner as provided
 300 in section 4-183, provided that nothing in sections 19a-486 to 19a-486f,
 301 inclusive, as amended by this act, shall be construed to apply the
 302 provisions of chapter 54 to the proceedings of the Attorney General.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>
Sec. 6	<i>October 1, 2003</i>
Sec. 7	<i>October 1, 2003</i>

PH *Joint Favorable Subst.*