



General Assembly

Substitute Bill No. 562

February Session, 2004

* SB00562PH 031804 *

AN ACT CONCERNING THE CONVERSION OF NONPROFIT HOSPITALS.

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

1 Section 1. Section 19a-486a of the general statutes, as amended by
2 section 2 of public act 03-73, is repealed and the following is
3 substituted in lieu thereof (*Effective October 1, 2004*):

4 (a) No nonprofit hospital shall enter into an agreement to transfer a
5 material amount of its assets or operations or a change in control of
6 operations to a person that is organized or operated for profit without
7 first having received approval of the agreement by the commissioner
8 and the Attorney General pursuant to sections 19a-486 to 19a-486h,
9 inclusive, as amended by this act, and pursuant to the Attorney
10 General's authority under section 3-125. Any such agreement without
11 the approval required by sections 19a-486 to 19a-486h, inclusive, as
12 amended by this act, shall be void.

13 (b) Prior to any transaction described in subsection (a) of this
14 section, the nonprofit hospital and the purchaser shall concurrently
15 submit a letter of intent to the commissioner and the Attorney General
16 by serving it on them by certified mail, return receipt requested, or
17 delivering it by hand to each office. Such letter of intent shall contain:
18 (1) The name and address of the nonprofit hospital; (2) the name and
19 address of the purchaser; (3) a brief description of the terms of the

20 proposed agreement; and (4) the estimated capital expenditure, cost or
21 value associated with the proposed agreement. The letter of intent
22 shall be subject to disclosure pursuant to section 1-210, as amended.

23 (c) The commissioner and the Attorney General shall review the
24 letter of intent. The Attorney General shall determine whether the
25 agreement requires approval pursuant to this chapter, taking into
26 consideration both the amount of assets or operation or change in
27 control involved in the current proposal and any previous transfers of
28 assets, operations or control by the nonprofit hospital that, taken
29 together with the current proposal, would transfer a material amount
30 of assets or operation that results in a change in control to a person
31 organized or operated for profit. If such approval is required, the
32 commissioner and the Attorney General shall transmit to the purchaser
33 and the nonprofit hospital an application form for approval pursuant
34 to this chapter, unless the commissioner refuses to accept a filed or
35 submitted letter of intent as provided in section 19a-639e, as amended.
36 Such application form shall require the following information: (1) The
37 name and address of the nonprofit hospital; (2) the name and address
38 of the purchaser; (3) a description of the terms of the proposed
39 agreement; (4) copies of all contracts, agreements and memoranda of
40 understanding relating to the proposed agreement; (5) a fairness
41 evaluation by an independent person who is an expert in such
42 agreements, that includes an analysis of each of the criteria set forth in
43 section 19a-486c, as amended by this act; (6) documentation that the
44 nonprofit hospital exercised the due diligence required by subdivision
45 (2) of subsection (a) of section 19a-486c, as amended by this act,
46 including disclosure of the terms of any other offers to transfer assets
47 or operations or change control of operations received by the nonprofit
48 hospital and the reason for rejection of such offers; and (7) such other
49 information as the commissioner or the Attorney General deem
50 necessary to their review pursuant to the provisions of sections 19a-486
51 to 19a-486f, inclusive, as amended, and sections 19a-637 to 19a-639,
52 inclusive, as amended. The application shall be subject to disclosure
53 pursuant to section 1-210, as amended.

54 (d) No later than sixty days after the date of mailing of the
55 application form, the nonprofit hospital and the purchaser shall
56 concurrently file an application with the commissioner and the
57 Attorney General containing all the required information. The
58 commissioner and the Attorney General shall review the application
59 and determine whether the application is complete. The commissioner
60 and the Attorney General shall, no later than twenty days after the
61 date of their receipt of the application, provide written notice to the
62 nonprofit hospital and the purchaser of any deficiencies in the
63 application. Such application shall not be deemed complete until such
64 deficiencies are corrected.

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

70 (f) Any person may seek to intervene in the proceedings under
71 section 19a-486e, as amended, in the same manner as provided in
72 section 4-177a.

73 Sec. 2. Section 19a-486c of the general statutes, as amended by
74 section 4 of public act 03-73, is repealed and the following is
75 substituted in lieu thereof (*Effective October 1, 2004*):

76 (a) The Attorney General shall deny an application as not in the
77 public interest if the Attorney General determines that one or more of
78 the following conditions exist: (1) The transaction is prohibited by
79 Connecticut statutory or common law governing nonprofit entities,
80 trusts or charities; (2) the nonprofit hospital failed to exercise due
81 diligence in (A) deciding to transfer, (B) selecting the purchaser, (C)
82 obtaining a fairness evaluation from an independent person expert in
83 such agreements, or (D) negotiating the terms and conditions of the
84 transfer; (3) the nonprofit hospital failed to disclose any conflict of
85 interest, including, but not limited to, conflicts of interest pertaining to

86 board members, officers, key employees and experts of the hospital,
87 the purchaser or any other party to the transaction; (4) the nonprofit
88 hospital will not receive fair market value for its assets, which, for
89 purposes of this subsection, means the most likely price that the assets
90 would bring in a sale in a competitive and open market under all
91 conditions requisite to a fair sale, with the buyer and seller each acting
92 prudently, knowledgeably and in their own best interest, and with a
93 reasonable time being allowed for exposure in the open market; (5) the
94 fair market value of the assets has been manipulated by any person in
95 a manner that causes the value of the assets to decrease; (6) the
96 financing of the transaction by the nonprofit hospital will place the
97 nonprofit hospital's assets at an unreasonable risk; (7) any
98 management contract contemplated under the transaction is not for
99 reasonable fair value; (8) a sum equal to the fair market value of the
100 nonprofit hospital's assets (A) is not being transferred to one or more
101 persons to be selected by the superior court for the judicial district
102 where the nonprofit hospital is located who are not affiliated through
103 corporate structure, governance or membership with either the
104 nonprofit hospital or the purchaser, unless the nonprofit hospital
105 continues to operate on a nonprofit basis after the transaction and such
106 sum is transferred to the nonprofit hospital to provide health care
107 services, and (B) is not being used for one of the following purposes: (i)
108 For appropriate charitable health care purposes consistent with the
109 nonprofit hospital's original purpose, (ii) for the support and
110 promotion of health care generally in the affected community, or (iii)
111 with respect to any assets held by the nonprofit hospital that are
112 subject to a use restriction imposed by a donor, for a purpose
113 consistent with the intent of said donor; [or] (9) the transaction,
114 together with previous transfers of assets, operations or control from
115 the nonprofit hospital to an organization or organizations organized or
116 operated for profit, constitutes the transfer of a material amount of
117 assets, operation or change in control of such nonprofit hospital; or (10)
118 the nonprofit hospital or the purchaser has failed to provide the
119 Attorney General with information and data sufficient to evaluate the
120 proposed agreement adequately, provided the Attorney General has

121 notified the nonprofit hospital or the purchaser of the inadequacy of
122 the information or data and has provided a reasonable opportunity to
123 remedy such inadequacy.

124 (b) The Attorney General may, during the course of a review
125 required by section 19a-486b, as amended: (1) Issue in writing and
126 cause to be served upon any person, by subpoena, a demand that such
127 person appear before the Attorney General and give testimony or
128 produce documents as to any matters relevant to the scope of the
129 review; or (2) issue written interrogatories, to be answered under oath,
130 as to any matters relevant to the scope of the review and prescribing a
131 return date that would allow a reasonable time to respond. If any
132 person fails to comply with the provisions of this subsection, the
133 Attorney General may apply to the superior court for the judicial
134 district of Hartford seeking enforcement of the subpoena. The superior
135 court may, upon notice to such person, issue and cause to be served an
136 order requiring compliance. Service of subpoenas ad testificandum,
137 subpoenas duces tecum, notices of deposition and written
138 interrogatories as provided in this subsection may be made by
139 personal service at the usual place of abode or by certified mail, return
140 receipt requested, addressed to the person to be served at such
141 person's principal place of business within or without this state or such
142 person's residence.

143 (c) The Attorney General may contract with experts or consultants
144 to assist in reviewing the proposed agreement, including, but not
145 limited to, assistance in independently determining the fair market
146 value of the nonprofit hospital's assets. The Attorney General may
147 appoint, or contract with, another person to conduct the review
148 required by this section and make recommendations to the Attorney
149 General. The Attorney General shall submit any bills for such contracts
150 to the purchaser. The purchaser shall pay such bills within thirty days
151 of receipt. Such bills shall not exceed three hundred thousand dollars.

152 Sec. 3. Subsection (a) of section 19a-486d of the general statutes, as
153 amended by section 5 of public act 03-73, is repealed and the following

154 is substituted in lieu thereof (*Effective October 1, 2004*):

155 (a) The commissioner shall deny an application filed pursuant to
156 subsection (d) of section 19a-486a, as amended by this act, unless the
157 commissioner finds that: (1) The affected community will be assured of
158 continued access to affordable health care; (2) in a situation where the
159 asset or operation to be transferred provides or has provided health
160 care services to the uninsured or underinsured, the purchaser has
161 made a commitment to provide health care to the uninsured and the
162 underinsured; (3) in a situation where health care providers or insurers
163 will be offered the opportunity to invest or own an interest in the
164 purchaser or an entity related to the purchaser safeguard procedures
165 are in place to avoid a conflict of interest in patient referral; and (4)
166 certificate of need authorization is justified in accordance with sections
167 19a-637 to 19a-639, inclusive, as amended. The commissioner may
168 contract with any person, including, but not limited to, financial or
169 actuarial experts or consultants, or legal experts with the approval of
170 the Attorney General, to assist in reviewing the completed application.
171 The commissioner shall submit any bills for such contracts to the
172 purchaser. Such bills shall not exceed one hundred fifty thousand
173 dollars. The purchaser shall pay such bills no later than thirty days
174 after the date of receipt of such bills.

175 Sec. 4. Subdivision (16) of section 12-81 of the general statutes is
176 repealed and the following is substituted in lieu thereof (*Effective*
177 *October 1, 2004*):

178 (16) Subject to the provisions of section 12-88, all property of, or
179 held in trust for, any Connecticut hospital society or corporation or
180 sanatorium, provided (A) no officer, member or employee thereof
181 receives or, at any future time, shall receive any pecuniary profit from
182 the operations thereof, except reasonable compensation for services in
183 the conduct of its affairs, (B) such hospital society, corporation or
184 sanatorium manages its assets at all times in a manner consistent with
185 its charitable purpose, and [(B)] (C) in 1967, and quadrennially
186 thereafter, a statement shall be filed by such hospital society,

187 corporation or sanatorium on or before the first day of November with
188 the assessor or board of assessors of any town, consolidated town and
189 city or consolidated town and borough, in which any of its property
190 claimed to be exempt is situated. Such statement shall be filed on a
191 form provided by such assessor or board of assessors.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>
Sec. 4	<i>October 1, 2004</i>

PH *Joint Favorable Subst.*