

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2344 Session of 2024

INTRODUCED BY BOROWSKI, TAKAC, PROBST, DONAHUE, GIRAL, SANCHEZ, MAYES, KHAN, GUENST, DELLOSO, CIRESI, WAXMAN, KRAJEWSKI, HILL-EVANS, CERRATO, KRUEGER, BOYD, DALEY, KAZEEM, O'MARA AND GREEN, MAY 28, 2024

AS REPORTED FROM COMMITTEE ON HEALTH, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 26, 2024

AN ACT

1 Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An
2 act relating to health care; prescribing the powers and
3 duties of the Department of Health; establishing and
4 providing the powers and duties of the State Health
5 Coordinating Council, health systems agencies and Health Care
6 Policy Board in the Department of Health, and State Health
7 Facility Hearing Board in the Department of Justice;
8 providing for certification of need of health care providers
9 and prescribing penalties," providing for health systems
10 protection; imposing a fine; and promulgating regulations.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. The act of July 19, 1979 (P.L.130, No.48), known
14 as the Health Care Facilities Act, is amended by adding a
15 chapter to read:

CHAPTER 8-C

HEALTH SYSTEMS PROTECTION

18 Section 801-C. Definitions.

19 The following words and phrases when used in this chapter
20 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Acquired entity." The entity, or portion of an entity,
3 acquired under an agreement or transaction.

4 "Acquisition." An agreement, arrangement or activity the
5 consummation of which results in a person acquiring direct or
6 indirect control of another person. The term includes the
7 acquisition of voting securities and noncorporate interests,
8 including assets, capital stock or membership interests or
9 equity interests.

10 "Against the public interest." If the effect of an action <--
11 includes, as determined by the Attorney General, any of the
12 following impacts:

13 (1) Reduced competition or increased costs for health
14 care payers, purchasers or consumers.

15 (2) Unfair methods of competition in or affecting health
16 care commerce or unfair or deceptive acts or practices in or
17 affecting health care commerce.

18 (3) Reduced quality of care, including the ability to
19 offer culturally competent and appropriate care.

20 (4) Reduced access to or availability of health care for
21 payers, purchasers or consumers.

22 (5) Reduced access to care in a rural, low income or
23 disadvantaged community. A DETERMINATION THAT AN ACTION IS <--
24 AGAINST THE WELFARE OR WELL-BEING OF THE GENERAL PUBLIC OF
25 THIS COMMONWEALTH.

26 "Agreement or transaction." An agreement or transaction as
27 described under section 803-C(a).

28 "Attorney General." The Office of Attorney General of the
29 Commonwealth.

30 "Capital distribution." A payment made, liability incurred

1 or other consideration given by a target firm health system to a
2 person for the purchase, acquisition, redemption, repurchase,
3 payment or retirement of capital stock or other equity interest
4 of the target firm health system or as a dividend, return of
5 capital or other distribution in respect of the target firm
6 health system's capital stock or other equity interest.

7 "Community health needs assessment." An assessment that
8 complies with the requirements of 26 U.S.C. § 501(r)(3)
9 (relating to exemption from tax on corporations, certain trusts,
10 etc.).

11 "Contracting affiliation." As follows:

12 (1) The formation of a relationship between two or more
13 entities that permits any of the following:

14 (i) The entities to negotiate jointly with carriers
15 or third-party administrators over rates for professional
16 medical services.

17 (ii) One entity to negotiate on behalf of the other
18 entity with carriers or third-party administrators over
19 rates for professional medical services.

20 (2) The term does not include an arrangement among
21 entities under common ownership.

22 "Health system." ~~One or more health care facilities that are~~ <--
23 owned by a common legal entity or that have entered into an
24 affiliation agreement to combine or coordinate delivery of
25 health care services under a common organizational name. AS <--
26 DEFINED IN SECTION 809.2.

27 "Material amount." An amount equal to \$10,000,000 or more.

28 "Material change." Any of the following:

29 (1) The sale, transfer, lease or other encumbrance of a
30 material amount of a health system's assets or operations,

1 including real property, employment groups, emergency
2 departments or other units.

3 (2) A merger, an acquisition or a contracting
4 affiliation with another health system or provider
5 organization that is valued at a material amount.

6 (3) A capital distribution or similar reduction of a
7 health system's equity capital by a material amount or the
8 incursion of an obligation that commits the health system to
9 making a capital distribution or similar reduction of equity
10 by a material amount.

11 "Merger." A consolidation of two or more organizations,
12 including two or more organizations joining through a common
13 parent organization, or two or more organizations forming a new
14 organization. The term does not include a corporate
15 reorganization.

16 "Person." As defined in 1 Pa.C.S. § 1991 (relating to
17 definitions).

18 "Provider organization." A person or organized group of
19 persons, whether incorporated or not, which is in the business
20 of health care delivery or management and that represents seven
21 or more physicians in contracting with carriers or third-party
22 administrators for the payment of health care services. The term
23 includes a physician organization, physician-hospital
24 organization, independent practice association, provider network
25 or accountable care organization.

26 Section 802-C. Transactions against public interest.

27 (a) General rule.--Except as provided under subsection (b),
28 a person may not enter into an agreement or transaction
29 involving a material change with a health system or provider
30 organization in a manner that is against the public interest.

1 (b) Exception.--An action prohibited under subsection (a)
2 may be permitted when, as determined by the Attorney General,
3 there is no feasible alternative to prevent a health system's
4 closure or a greater loss of health services.

5 Section 803-C. Filing.

6 (a) General rule.--A health system or provider organization
7 shall file a notification in accordance with subsection (c) and
8 shall observe the waiting period under subsection (b) prior to
9 entering into an agreement or transaction that results in a
10 material change.

11 (b) Waiting period.--A health system or provider
12 organization shall undergo a waiting period prior to entering
13 into an agreement or transaction, which shall:

14 (1) begin on the date of receipt by the Attorney General
15 of:

16 (i) the notification required under subsection (c);
17 or

18 (ii) if notification is not completed, the
19 notification to the extent completed and a statement of
20 the reasons for noncompliance with subsection (c) from
21 both persons; and

22 (2) end:

23 (i) ninety days following the date of receipt under
24 paragraph (1) for all agreements or transactions; or

25 (ii) on a later date as may be prescribed under
26 subsection (d) or section 808-C.

27 (c) Notice.--The notification of the transaction or
28 agreement required under subsection (a) shall be submitted to
29 the Attorney General on a form and in a manner developed by the
30 Attorney General. The notification shall include all of the

1 following:

2 (1) All organic documents, including articles of
3 incorporation, bylaws, operating agreements and other
4 documents related to governance and ownership of each party.

5 (2) All complete transaction documents with attachments,
6 including collateral or ancillary agreements involving
7 officers, directors or employees.

8 (3) All documents signed by the principals, or their
9 agents, that are necessary to determine the proposed
10 transaction's effect, if any, on related or subsidiary
11 business entities, whether nonprofit or for profit.

12 (4) Any of the following that comprise part or all of
13 the transaction:

14 (i) Asset contribution agreements.

15 (ii) Operating agreements.

16 (iii) Management contracts.

17 (5) All information necessary to evaluate the effects of
18 the transaction on each component of an integrated delivery
19 system if that transaction involves a hospital, including any
20 changes in contracts between the integrated delivery system
21 entities and related physician groups.

22 (6) All financial documents of the transaction parties
23 and related entities, if applicable, including audited
24 financial statements, ownership records, business projection
25 data, current capital asset valuation data and any records
26 upon which future earnings, existing asset values and fair
27 market value analysis can be based.

28 (7) All fairness opinions and independent valuation
29 reports of the assets and liabilities of the parties,
30 prepared on the parties' behalf.

1 (8) A list of all donor restricted assets, together with
2 origination documents and current fund balances.

3 (9) All relevant contracts that may affect value,
4 including business contracts and employee contracts, such as
5 buy-out provisions, profit-sharing agreements and severance
6 packages.

7 (10) All information and representations disclosing
8 related party transactions that are necessary to assess
9 whether the transaction is at arm's length or involves self-
10 dealing.

11 (11) All documents relating to noncash elements of the
12 transaction, including pertinent valuations of security for
13 loans and stock restrictions.

14 (12) All tax-related information, including the
15 existence of tax-free debt subject to redemption and
16 disqualified person transactions yielding tax liability.

17 (13) A list of ongoing litigation, including full court
18 captions, involving the transaction parties or their related
19 entities, that may affect the interests of the parties.

20 (14) All information in the possession of the
21 transacting parties relative to the perspective of the health
22 system's patient base and communities served, or their
23 representatives.

24 (15) All information, including internal and external
25 reports and studies, bearing on the effect of the proposed
26 transaction on the availability or accessibility of health
27 care in the affected community.

28 (16) A complete list of all insurance plans under
29 contract and their expiration dates.

30 (17) Organizational charts of the parties to the

1 transaction, as they exist both pre-consummation and post-
2 consummation of the transaction, detailing the relationship
3 between the principal parties, including any subsidiary.

4 (18) All additional documents that the Attorney General
5 deems necessary for review purposes.

6 (d) Additional information and waiting period extensions.--

7 (1) The Attorney General may, prior to the expiration of
8 the waiting period under subsection (b), require the
9 submission of additional information or documentary material,
10 including a community health needs assessment, from a person
11 required to file notification under subsection (c), or from
12 any officer, director, partner, agent or employee of the
13 person.

14 (2) The Attorney General may, in its discretion, extend
15 the waiting period under subsection (b) for an additional 30
16 days for a transaction after the date on which the Attorney
17 General receives either of the following from a person to
18 whom a request is made under paragraph (1):

19 (i) all of the additional information and
20 documentary material requested; or

21 (ii) if the request is not fully complied with, the
22 information and documentary material submitted and a
23 statement of the reasons for the noncompliance.

24 (3) A further extension of the waiting period required
25 under subsection (b) must be granted by a court in accordance
26 with section 806-C(2)(ii).

27 (e) Right-to-Know Law.--A document provided to the Attorney
28 General under this chapter shall be exempt from public access
29 under the act of February 14, 2008 (P.L.6, No.3), known as the
30 Right-to-Know Law.

1 Section 804-C. Public hearings and notice.

2 (a) General rule.--Prior to the expiration of the respective
3 waiting period under section 803-C(b), along with any extension
4 granted under section 803-C(d), the Attorney General shall
5 conduct one or more public hearings on the proposed agreement or
6 transaction.

7 (b) Format.--A public hearing required under subsection (a)
8 shall be live-streamed on the Attorney General's publicly
9 accessible Internet website. A video recording of the public
10 hearing shall be posted on the Attorney General's publicly
11 accessible Internet website.

12 (c) Specific entities.--If any agreement or transaction
13 involves acquiring a provider organization or a hospital or
14 hospital system, the Attorney General shall hold a public
15 hearing in any county in which the acquired entity is located to
16 hear comments from interested parties. Interested parties shall
17 include legal aid and health advocacy organizations within a
18 county in which the acquired entity is located. The Attorney
19 General may request testimony at a hearing from State agencies
20 subject to section 807-C(c).

21 (d) Notice.--At least 14 days before the date of the public
22 hearing, the Attorney General shall provide written notice of
23 the date, time and place of the public hearing:

24 (1) on the Attorney General's publicly accessible
25 Internet website;

26 (2) through social and broadcast media;

27 (3) through publication in one or more newspapers of
28 general circulation in the affected community; and

29 (4) to the governing body of each county in which the
30 acquired entity is located.

1 (e) Substantive changes to proposal.--If a substantive
2 change in the agreement or transaction is submitted to the
3 Attorney General after the initial public hearing, the Attorney
4 General may conduct an additional public hearing to hear
5 comments from interested parties with respect to the change.
6 Section 805-C. Determination and restraining prohibited
7 transactions.

8 (a) Determination.--No later than the final date of
9 expiration of the respective waiting period under section 803-
10 C(b), along with any extension granted under section 803-C(d),
11 the Attorney General shall determine whether the proposed
12 agreement or transaction is against the public interest. LIKELY <--
13 TO CREATE A MATERIAL CHANGE THAT IS AGAINST THE PUBLIC INTEREST,
14 AFTER REVIEWING AND EVALUATING THE FOLLOWING:

15 (1) THE MARKET SHARE OF A TRANSACTING PARTY OR THE
16 CHANGE IN MARKET CONCENTRATION OR COMPETITION RESULTING FROM
17 THE TRANSACTION;

18 (2) THE PRICES CHARGED, OR ANY LIKELY CHANGES IN PRICES
19 FOLLOWING THE TRANSACTION, BY EITHER OF THE TRANSACTING
20 PARTIES TO INDIVIDUALS, EMPLOYERS OR INSURERS FOR SERVICES,
21 INCLUDING RELATIVE PRICES COMPARED TO OTHER PROVIDERS FOR THE
22 SAME SERVICES IN THE SAME GEOGRAPHIC AREA;

23 (3) THE QUALITY OF THE SERVICES PROVIDED, OR ANY LIKELY
24 CHANGES IN THE QUALITY OF SERVICES PROVIDED FOLLOWING THE
25 TRANSACTION, BY A HEALTH CARE PROVIDER PARTY TO THE
26 TRANSACTION, INCLUDING, BUT NOT LIMITED TO, PATIENT
27 EXPERIENCE, PERFORMANCE ON PROVIDER QUALITY MEASURES AND
28 OUTCOME MEASURES, HISTORY OF CITATIONS, INSPECTION RESULTS
29 AND ENFORCEMENT ACTIONS TAKEN BY OVERSIGHT ENTITIES;

30 (4) THE AVAILABILITY AND ACCESSIBILITY OF SERVICES OR

1 ANY CHANGES TO THE AVAILABILITY AND ACCESSIBILITY OF SERVICES
2 PROVIDED BY EITHER TRANSACTING PARTY WITHIN ITS PRIMARY
3 SERVICE AREAS AND DISPERSED SERVICE AREAS;

4 (5) THE IMPACT OF THE MATERIAL CHANGE TRANSACTION ON
5 COMPETING OPTIONS FOR THE DELIVERY OF HEALTH CARE SERVICES
6 WITHIN ITS PRIMARY SERVICE AREAS AND DISPERSED SERVICE AREAS,
7 INCLUDING, IF APPLICABLE, THE IMPACT ON EXISTING SERVICE
8 PROVIDERS OF A LARGE PROVIDER'S EXPANSION, CORPORATE
9 AFFILIATION, MERGER OR ACQUISITION, TO ENTER A PRIMARY OR
10 DISPERSED SERVICE AREA IN WHICH IT DID NOT PREVIOUSLY
11 OPERATE;

12 (6) THE ROLE OF THE TRANSACTING PARTIES IN SERVING
13 VULNERABLE, UNDERSERVED, GOVERNMENT PAYER PATIENT POPULATIONS
14 OR LOW-INCOME PATIENT POPULATIONS, RURAL COMMUNITIES, RACIAL
15 AND ETHNIC MINORITIES, INDIVIDUALS WITH BEHAVIORAL, SUBSTANCE
16 USE DISORDER OR MENTAL HEALTH CONDITIONS AND INDIVIDUALS WITH
17 OTHER DISABILITIES WITHIN THE PROVIDER'S PRIMARY SERVICE
18 AREAS AND DISPERSED SERVICE AREAS AND ANY LIKELY IMPACT TO
19 THESE POPULATIONS;

20 (7) THE ROLE OF THE TRANSACTING PARTIES IN PROVIDING LOW
21 MARGIN OR NEGATIVE MARGIN SERVICES WITHIN ITS PRIMARY SERVICE
22 AREAS AND DISPERSED SERVICE AREAS AND ANY LIKELY IMPACT TO
23 THESE SERVICES;

24 (8) CONSUMER CONCERNS, INCLUDING, BUT NOT LIMITED TO,
25 COMPLAINTS OR OTHER ALLEGATIONS THAT A LARGE PROVIDER OR
26 PROPOSED OWNER HAS ENGAGED IN ANY UNFAIR METHOD OF
27 COMPETITION OR ANY UNFAIR OR DECEPTIVE ACT OR PRACTICE AS
28 DEFINED IN THE ACT OF DECEMBER 17, 1968 (P.L.1224, NO.387),
29 KNOWN AS THE UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION
30 LAW, AND ANY LIKELY INCREASE IN UNFAIR METHODS OF COMPETITION

1 OR UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN OR AFFECTING
2 HEALTH CARE COMMERCE;

3 (9) THE METHODS USED BY EITHER TRANSACTING PARTY TO
4 ATTRACT AND RETAIN PATIENT VOLUME, RECRUIT, HIRE OR RETAIN
5 HEALTH CARE PRACTITIONERS OR ACQUIRE HEALTH CARE FACILITIES;

6 (10) THE IMPACT ON WAGES PAID BY, OR THE NUMBER OF
7 EMPLOYEES EMPLOYED BY, A HEALTH CARE ENTITY INVOLVED IN A
8 TRANSACTION;

9 (11) THE IMPACT ON WAGES, COLLECTIVE BARGAINING UNITS
10 AND COLLECTIVE BARGAINING AGREEMENTS OF EXISTING OR FUTURE
11 WORKERS EMPLOYED BY A HEALTH CARE ENTITY INVOLVED IN A
12 TRANSACTION;

13 (12) EITHER TRANSACTING PARTY'S PRIOR HISTORY OR
14 RELEVANT OUTCOMES RELATED TO ANY OF THE FACTORS UNDER
15 PARAGRAPHS (1), (2), (3), (4), (5), (6), (7), (8), (9), (10)
16 AND (11), INCLUDING PROVIDER CLOSURE, REDUCTION IN WORKFORCE
17 OR CHANGE IN PRICE, QUALITY OR AVAILABILITY OF CARE FOLLOWING
18 A PRIOR MATERIAL CHANGE, IN ADDITION TO ANY VIOLATIONS OF
19 RELEVANT FEDERAL LAW OR REGULATIONS PERTAINING TO HEALTHCARE,
20 COMPETITION, WORKFORCE OR LABOR; AND

21 (13) any other factors that the Attorney General
22 determines to be in the public interest.

23 (b) Action.--If the Attorney General determines that the
24 proposed agreement or transaction is against the public interest
25 under subsection (a), the Attorney General may commence an
26 action in a court of competent jurisdiction to enjoin the
27 agreement or transaction.

28 (c) Licensing.--A State license of a health care facility
29 shall not be revoked, denied, impeded or cited for noncompliance
30 due solely to a filing or review under this chapter.

1 Section 806-C. Civil penalty, compliance and power of court.

2 The following shall apply:

3 (1) In addition to any other proceeding at law, and
4 except as provided under paragraph (2), a person, or any
5 officer, director, partner, agency or employee of the person,
6 who fails to comply with this chapter shall be subject to a
7 fine of not less than \$10,000 for each day of noncompliance.

8 (2) Notwithstanding paragraph ~~(2)~~ (1), a person, or any <--
9 officer, director, partner, agent or employee of the person,
10 that substantially fails to comply with the notification
11 requirement under section 803-C(a) or any request for the
12 submission of additional information or documentary material
13 under section 803-C(d) within the respective waiting period,
14 along with any extension granted under 803-C(d), the court
15 may, in its discretion, do any or all of the following:

16 (i) Order compliance.

17 (ii) Extend the waiting period until there has been
18 substantial compliance.

19 (iii) Grant other equitable relief as the court
20 determines necessary or appropriate.

21 Section 807-C. Powers and duties of Attorney General.

22 (a) Rules and regulations.--The Attorney General, in
23 consultation with the department, shall promulgate rules and
24 regulations as may be necessary to carry out and enforce the
25 provisions of this chapter. The Attorney General and the
26 department shall ensure that the rules and regulations of the
27 Office of Attorney General and the department are not in
28 conflict.

29 (b) Contracts.--

30 (1) The Attorney General may do the following:

1 (i) Contract with, share information with and
2 consult and receive advice from any Federal agency or
3 Commonwealth agency as the Attorney General deems
4 appropriate to implement this chapter.

5 (ii) At the Attorney General's sole discretion,
6 contract with experts or consultants to assist in
7 reviewing the proposed agreement or transaction.

8 (2) The cost of a contract entered into under paragraph
9 (1) must be an amount that is reasonable and necessary to
10 conduct the review and evaluation. The following shall apply:

11 (i) A contract shall be on a noncompetitive bid
12 basis.

13 (ii) Upon request, the Attorney General shall be
14 paid promptly by the entities seeking consent for all
15 contract costs.

16 (3) The Attorney General shall be entitled to
17 reimbursement from the entities seeking consent for the
18 agreement or transaction for all actual, reasonable and
19 direct costs incurred in reviewing, evaluating and making a
20 determination under section 805-C(a), including
21 administrative costs. The entities seeking consent shall
22 promptly pay the Attorney General, upon request, for all the
23 costs.

24 (c) Agency cooperation.--The Department of Aging, the <--
25 department, the Department of Human Services and the Insurance
26 Department shall assist the Attorney General in reviewing the
27 proposed agreement and transaction, if requested, and shall
28 promptly comply with any request for testimony or information.

29 (1) THE DEPARTMENT OF AGING, THE DEPARTMENT, THE <--
30 DEPARTMENT OF HUMAN SERVICES AND THE INSURANCE DEPARTMENT

1 SHALL ASSIST THE ATTORNEY GENERAL IN REVIEWING THE PROPOSED
2 AGREEMENT AND TRANSACTION, IF REQUESTED, AND SHALL PROMPTLY
3 COMPLY WITH ANY REQUEST FOR TESTIMONY OR INFORMATION.

4 (2) THE ATTORNEY GENERAL SHALL COMPLY WITH ANY REQUEST
5 FOR INFORMATION FROM THE INSURANCE DEPARTMENT AS MAY BE
6 NECESSARY AND APPROPRIATE FOR THE INSURANCE DEPARTMENT TO
7 CONCURRENTLY REVIEW A PROPOSED TRANSACTION UNDER ARTICLE XIV
8 OF THE ACT OF MAY 17, 1921 (P.L.682, NO.284), KNOWN AS THE
9 INSURANCE COMPANY LAW OF 1921. DOCUMENTS PROVIDED BY THE
10 ATTORNEY GENERAL TO THE INSURANCE DEPARTMENT UNDER THIS
11 PARAGRAPH SHALL BE TREATED AS CONFIDENTIAL AND ARE EXEMPT
12 FROM PUBLIC ACCESS UNDER THE ACT OF FEBRUARY 14, 2008 (P.L.6,
13 NO.3), KNOWN AS THE RIGHT-TO-KNOW LAW.

14 Section 808-C. Construction.

15 This chapter shall not be construed to:

16 (1) narrow, abrogate or otherwise alter the authority of
17 the Attorney General to maintain competitive markets and
18 prosecute or enforce violations of antitrust and unfair trade
19 practices laws; or

20 (2) prohibit any Federal agency, Commonwealth agency or
21 other state agency from regulating an agreement or
22 transaction or joining as party in an action seeking to
23 enjoin an agreement or transaction, INCLUDING THE INSURANCE <--
24 DEPARTMENT'S JURISDICTION TO REVIEW AN EXPOSED TRANSACTION
25 UNDER ARTICLE XIV OF THE ACT OF MAY 17, 1921 (P.L.682,
26 NO.284), KNOWN AS THE INSURANCE COMPANY LAW OF 1921.

27 Section 809-C. Severability.

28 The provisions of this chapter are severable. If any
29 provision of this chapter or its application to any person or
30 circumstance is held invalid, the invalidity shall not affect

1 other provisions or applications of this chapter which can be
2 given effect without the invalid provision or application.

3 Section 2. This act shall take effect in 60 days.