

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, GREEN, PIELLI, WEBSTER, T. DAVIS AND MADSEN, MAY 28, 2024

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JULY 10, 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 "ACQUIRING ENTITY." THE ENTITY, OR PORTION OF AN ENTITY, <--
5 THAT ACQUIRES OR TAKES CONTROL OF AN ACQUIRED ENTITY UNDER AN
6 AGREEMENT OR TRANSACTION.

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

13 "Against the public interest."

14 A determination that an action is against the welfare or
15 well-being of the general public of this Commonwealth.

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

18 "Attorney General." The Office of Attorney General of the
19 Commonwealth.

20 "Capital distribution." A payment made, liability incurred
21 or other consideration given by a target firm health system to a
22 person for the purchase, acquisition, redemption, repurchase,
23 payment or retirement of capital stock or other equity interest
24 of the target firm health system or as a dividend, return of
25 capital or other distribution in respect of the target firm
26 health system's capital stock or other equity interest.

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

1 "Contracting affiliation." As follows:

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

4 (i) The entities to negotiate jointly with carriers
5 or third-party administrators over rates for professional
6 medical services.

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

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

12 "Health system." As defined in section 809.2.

13 "Material amount." An amount equal to ~~\$10,000,000~~
14 \$25,000,000 or more.

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15 "Material change." Any of the following:

16 (1) The sale, transfer, lease or other encumbrance of a
17 material amount of a health system's assets or operations,
18 including real property, employment groups, emergency
19 departments or other units.

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

23 (3) A capital distribution or similar reduction of a
24 health system's equity capital by a material amount or the
25 incursion of an obligation that commits the health system to
26 making a capital distribution or similar reduction of equity
27 by a material amount.

28 "Merger." A consolidation of two or more organizations,
29 including two or more organizations joining through a common
30 parent organization, or two or more organizations forming a new

1 organization. The term does not include a corporate
2 reorganization.

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

5 "Provider organization." A person or organized group of
6 persons, whether incorporated or not, which is in the business
7 of health care delivery or management and that represents seven
8 or more physicians in contracting with carriers or third-party
9 administrators for the payment of health care services. The term
10 includes a physician organization, physician-hospital
11 organization, independent practice association, provider network
12 or accountable care organization.

13 Section 802-C. Transactions against public interest.

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

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

22 Section 803-C. Filing.

23 (a) General rule.--A health system or provider organization
24 shall file a notification in accordance with subsection (c) and
25 shall observe the waiting period under subsection (b) prior to
26 entering into an agreement or transaction that results in a
27 material change.

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

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

3 (i) the notification required under subsection (c);

4 or

5 (ii) if notification is not completed, the
6 notification to the extent completed and a statement of
7 the reasons for noncompliance with subsection (c) from
8 both persons; and

9 (2) end:

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

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

14 (c) Notice.--The notification of the transaction or
15 agreement required under subsection (a) shall be submitted to
16 the Attorney General on a form and in a manner developed by the
17 Attorney General. The notification shall include all of the
18 following, IF APPLICABLE:

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19 (1) All organic documents, including articles of
20 incorporation, bylaws, operating agreements and other
21 documents related to governance and ownership of each party.

22 (2) All complete transaction documents with attachments,
23 including collateral or ancillary agreements involving
24 officers, directors or employees.

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

29 (4) Any of the following that comprise part or all of
30 the transaction:

1 (i) Asset contribution agreements.

2 (ii) Operating agreements.

3 (iii) Management contracts.

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

9 (6) All financial documents of the transaction parties
10 and related entities, if applicable, including audited
11 financial statements, ownership records, business projection
12 data, current capital asset valuation data and any records
13 upon which future earnings, existing asset values and fair
14 market value analysis can be based.

15 (7) All fairness opinions and independent valuation
16 reports of the assets and liabilities of the parties,
17 prepared on the parties' behalf.

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

20 (9) All relevant contracts that may affect value,
21 including business contracts and employee contracts, such as
22 buy-out provisions, profit-sharing agreements and severance
23 packages.

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

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

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

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

7 (14) All information in the possession of the
8 transacting parties relative to the perspective of the health
9 system's patient base and communities served, or their
10 representatives.

11 (15) All information, including internal and external
12 reports and studies, bearing on the effect of the proposed
13 transaction on the availability or accessibility of health
14 care in the affected community.

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

17 (17) Organizational charts of the parties to the
18 transaction, as they exist both pre-consummation and post-
19 consummation of the transaction, detailing the relationship
20 between the principal parties, including any subsidiary.

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

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

24 (1) The Attorney General may, prior to the expiration of
25 the waiting period under subsection (b), require the
26 submission of additional information or documentary material,
27 including a community health needs assessment, from a person
28 required to file notification under subsection (c), or from
29 any officer, director, partner, agent or employee of the
30 person.

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

6 (i) all of the additional information and
7 documentary material requested; or

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

11 (3) A further extension of the waiting period required
12 under subsection (b) must be granted by a court in accordance
13 with section ~~806-C(2)(ii)~~ 806-C(2). <--

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

18 Section 804-C. Public hearings and notice.

19 (a) General rule.--Prior to the expiration of the respective
20 waiting period under section 803-C(b), along with any extension
21 granted under section 803-C(d), the Attorney General shall
22 conduct one or more public hearings on the proposed agreement or
23 transaction.

24 (b) Format.--A public hearing required under subsection (a)
25 shall be live-streamed on the Attorney General's publicly
26 accessible Internet website. A video recording of the public
27 hearing shall be posted on the Attorney General's publicly
28 accessible Internet website.

29 (c) Specific entities.--If any agreement or transaction
30 involves acquiring a provider organization or a hospital or

1 hospital system, the Attorney General shall hold a public
2 hearing in any county in which the acquired entity is located to
3 hear comments from interested parties. Interested parties shall
4 include legal aid and health advocacy organizations within a
5 county in which the acquired entity is located. The Attorney
6 General may request testimony at a hearing from State agencies
7 subject to section 807-C(c).

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

11 (1) on the Attorney General's publicly accessible
12 Internet website;

13 (2) through social and broadcast media;

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

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

18 (e) Substantive changes to proposal.--If a substantive
19 change in the agreement or transaction is submitted to the
20 Attorney General after the initial public hearing, the Attorney
21 General may conduct an additional public hearing to hear
22 comments from interested parties with respect to the change.

23 Section 805-C. Determination and restraining prohibited
24 transactions.

25 (a) Determination.--No later than the final date of
26 expiration of the respective waiting period under section 803-
27 C(b), along with any extension granted under section 803-C(d),
28 the Attorney General shall determine whether the proposed
29 agreement or transaction is likely to create a material change
30 that is against the public interest, after reviewing and

1 evaluating the following:

2 (1) the market share of a transacting party or the
3 change in market concentration or competition resulting from
4 the transaction;

5 (2) the prices charged, or any likely changes in prices
6 following the transaction, by either of the transacting
7 parties to individuals, employers or insurers for services,
8 including relative prices compared to other providers for the
9 same services in the same geographic area;

10 (3) the quality of the services provided, or any likely
11 changes in the quality of services provided following the
12 transaction, by a health care provider party to the
13 transaction, including, but not limited to, patient
14 experience, performance on provider quality measures and
15 outcome measures, history of citations, inspection results
16 and enforcement actions taken by oversight entities;

17 (4) the availability and accessibility of services or
18 any changes to the availability and accessibility of services
19 provided by either transacting party within its primary
20 service areas and dispersed service areas;

21 (5) the impact of the material change transaction on
22 competing options for the delivery of health care services
23 within its primary service areas and dispersed service areas,
24 including, if applicable, the impact on existing service
25 providers of a large provider's expansion, corporate
26 affiliation, merger or acquisition, to enter a primary or
27 dispersed service area in which it did not previously
28 operate;

29 (6) the role of the transacting parties in serving
30 vulnerable, underserved, government payer patient populations

1 or low-income patient populations, rural communities, racial
2 and ethnic minorities, individuals with behavioral, substance
3 use disorder or mental health conditions and individuals with
4 other disabilities within the provider's primary service
5 areas and dispersed service areas and any likely impact to
6 these populations;

7 (7) the role of the transacting parties in providing low
8 margin or negative margin services within its primary service
9 areas and dispersed service areas and any likely impact to
10 these services;

11 (8) consumer concerns, including, but not limited to,
12 complaints or other allegations that a large provider or
13 proposed owner has engaged in any unfair method of
14 competition or any unfair or deceptive act or practice as
15 defined in the act of December 17, 1968 (P.L.1224, No.387),
16 known as the Unfair Trade Practices and Consumer Protection
17 Law, and any likely increase in unfair methods of competition
18 or unfair or deceptive acts or practices in or affecting
19 health care commerce;

20 (9) the methods used by either transacting party to
21 attract and retain patient volume, recruit, hire or retain
22 health care practitioners or acquire health care facilities;

23 (10) the impact on wages paid by, or the number of
24 employees employed by, a health care entity involved in a
25 transaction;

26 (11) the impact on wages, collective bargaining units
27 and collective bargaining agreements of existing or future
28 workers employed by a health care entity involved in a
29 transaction;

30 (12) either transacting party's prior history or

1 relevant outcomes related to any of the factors under
2 paragraphs (1), (2), (3), (4), (5), (6), (7), (8), (9), (10)
3 and (11), including provider closure, reduction in workforce
4 or change in price, quality or availability of care following
5 a prior material change, in addition to any violations of
6 relevant Federal law or regulations pertaining to healthcare,
7 competition, workforce or labor; and

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

10 (b) Action.--If the Attorney General determines that the
11 proposed agreement or transaction is against the public interest
12 under subsection (a), the Attorney General may commence an
13 action in a court of competent jurisdiction to enjoin the
14 agreement or transaction.

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

18 ~~Section 806 C. Civil penalty, compliance and power of court.~~ <--

19 ~~The following shall apply:~~

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

25 ~~(2) Notwithstanding paragraph (1), a person, or any~~
26 ~~officer, director, partner, agent or employee of the person,~~
27 ~~that substantially fails to comply with the notification~~
28 ~~requirement under section 803 C(a) or any request for the~~
29 ~~submission of additional information or documentary material~~
30 ~~under section 803 C(d) within the respective waiting period,~~

~~along with any extension granted under 803-C(d), the court may, in its discretion, do any or all of the following:~~

~~(i) Order compliance.~~

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

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

SECTION 806-C. COMPLIANCE AND POWER OF COURT.

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A PERSON, OR ANY OFFICER, DIRECTOR, PARTNER, AGENT OR EMPLOYEE OF THE PERSON, THAT SUBSTANTIALLY FAILS TO COMPLY WITH THE NOTIFICATION REQUIREMENT UNDER SECTION 803-C(A) OR ANY REQUEST FOR THE SUBMISSION OF ADDITIONAL INFORMATION OR DOCUMENTARY MATERIAL UNDER SECTION 803-C(D) WITHIN THE RESPECTIVE WAITING PERIOD, ALONG WITH ANY EXTENSION GRANTED UNDER SECTION 803-C(D), THE COURT MAY, IN ITS DISCRETION, DO ANY OR ALL OF THE FOLLOWING:

(1) ORDER COMPLIANCE.

(2) EXTEND THE WAITING PERIOD UNTIL THERE HAS BEEN SUBSTANTIAL COMPLIANCE.

(3) GRANT OTHER EQUITABLE RELIEF AS THE COURT DETERMINES NECESSARY OR APPROPRIATE.

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

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

(b) Contracts.--

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

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

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

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

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

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

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

25 ~~(2) THE COST OF A CONTRACT ENTERED INTO UNDER PARAGRAPH~~ <--
26 ~~(1) MUST BE AN AMOUNT THAT IS REASONABLE AND NECESSARY TO~~
27 ~~CONDUCT THE REVIEW AND EVALUATION. A CONTRACT SHALL BE ON A~~
28 ~~NONCOMPETITIVE BID BASIS.~~

29 ~~(3) THE ATTORNEY GENERAL SHALL BE ENTITLED TO~~
30 ~~REIMBURSEMENT FROM THE TRANSACTION PARTIES SEEKING CONSENT~~

1 FOR THE AGREEMENT OR TRANSACTION FOR 50% OF ALL ACTUAL,
2 REASONABLE AND DIRECT COSTS INCURRED IN REVIEWING, EVALUATING
3 AND MAKING A DETERMINATION UNDER SECTION 805-C(A), INCLUDING
4 ADMINISTRATIVE COSTS. THE TRANSACTION PARTIES SHALL PAY THE
5 ATTORNEY GENERAL WITHIN 30 DAYS OF THE REQUEST FROM THE
6 ATTORNEY GENERAL. THE ATTORNEY GENERAL MAY PROVIDE ADDITIONAL
7 TIME FOR THE TRANSACTION PARTIES TO PAY THEIR SHARE OF THE
8 COSTS, NOT TO EXCEED 90 ADDITIONAL DAYS. IF THE TRANSACTION
9 INVOLVES A MERGER OR ACQUISITION, THE FOLLOWING SHALL APPLY:

10 (I) NEITHER THE ATTORNEY GENERAL NOR THE ACQUIRING
11 ENTITY MAY SEEK REIMBURSEMENT FROM THE ACQUIRED ENTITY
12 FOR ANY COSTS UNDER THIS PARAGRAPH AND THE ACQUIRING
13 ENTITY SHALL BE RESPONSIBLE FOR THE FULL 50% OF THE
14 COSTS. AS PART OF ANY SETTLEMENT, COURT DECREE OR OTHER
15 AGREEMENT, THE ACQUIRING ENTITY MUST AGREE THAT IT WILL
16 NOT RECOUP ANY OF ITS SHARE OF THE COSTS FROM THE
17 ACQUIRED ENTITY.

18 (II) AN ACQUIRING ENTITY MAY PETITION A COURT OF
19 COMPETENT JURISDICTION FOR A WAIVER OF ANY OR ALL OF ITS
20 SHARE OF THE COSTS DUE TO FINANCIAL HARDSHIP OR OTHER
21 FACTORS THAT THE COURT DETERMINES FOR GOOD CAUSE SHOWN.
22 THE COURT SHALL DETERMINE WHETHER THE ACQUIRING ENTITY
23 INTENTIONALLY AND KNOWINGLY MISMANAGED ITS FUNDS FOR THE
24 PURPOSE OF BECOMING FINANCIALLY DISTRESSED TO OBTAIN
25 APPROVAL UNDER THIS SUBPARAGRAPH. IF THE COURT FINDS THAT
26 THE ACQUIRING ENTITY INTENTIONALLY AND KNOWINGLY
27 MISMANAGED ITS FUNDS FOR THE PURPOSE OF BECOMING
28 FINANCIALLY DISTRESSED TO OBTAIN APPROVAL UNDER THIS
29 SUBPARAGRAPH, THE COURT MAY NOT GRANT THE WAIVER
30 PETITION.

1 (c) Agency cooperation.--

2 (1) The Department of Aging, the department, the
3 Department of Human Services and the Insurance Department
4 shall assist the Attorney General in reviewing the proposed
5 agreement and transaction, if requested, and shall promptly
6 comply with any request for testimony or information.

7 (2) The Attorney General shall comply with any request
8 for information from the Insurance Department as may be
9 necessary and appropriate for the Insurance Department to
10 concurrently review a proposed transaction under Article XIV
11 of the act of May 17, 1921 (P.L.682, No.284), known as The
12 Insurance Company Law of 1921. Documents provided by the
13 Attorney General to the Insurance Department under this
14 paragraph shall be treated as confidential and are exempt
15 from public access under the act of February 14, 2008 (P.L.6,
16 No.3), known as the Right-to-Know Law.

17 Section 808-C. Construction.

18 This chapter shall not be construed to:

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

23 (2) prohibit any Federal agency, Commonwealth agency or
24 other state agency from regulating an agreement or
25 transaction or joining as party in an action seeking to
26 enjoin an agreement or transaction, including the Insurance
27 Department's jurisdiction to review an exposed transaction
28 under Article XIV of the act of May 17, 1921 (P.L.682,
29 No.284), known as The Insurance Company Law of 1921.

30 Section 809-C. Severability.

1 The provisions of this chapter are severable. If any
2 provision of this chapter or its application to any person or
3 circumstance is held invalid, the invalidity shall not affect
4 other provisions or applications of this chapter which can be
5 given effect without the invalid provision or application.

6 Section 2. This act shall take effect in ~~60~~ 180 days.

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