

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 548 Session of 2023

INTRODUCED BY KEARNEY, A. WILLIAMS, CAPPELLETTI, KANE, HAYWOOD,
COSTA, DILLON, SAVAL AND COLLETT, MAY 15, 2023

REFERRED TO HEALTH AND HUMAN SERVICES, MAY 15, 2023

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:

16 CHAPTER 8-C

17 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
21 context clearly indicates otherwise:

22 "Acquired entity." The entity, or portion of an entity,

1 acquired under an agreement or transaction.

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

8 "Against the public interest." Where the effect of an action
9 includes, as determined by the Attorney General, any of the
10 following impacts:

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

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

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

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

20 (5) Reduced access to care in a rural, low-income or
21 disadvantaged community.

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

24 "Attorney General." The Office of Attorney General of the
25 Commonwealth.

26 "Capital distribution." A payment made, liability incurred
27 or other consideration given by a target firm health system to a
28 person for the purchase, acquisition, redemption, repurchase,
29 payment or retirement of capital stock or other equity interest
30 of the target firm health system or as a dividend, return of

1 capital or other distribution in respect of the target firm
2 health system's capital stock or other equity interest.

3 "Contracting affiliation." As follows:

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

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

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

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

14 "Health system." A for-profit entity owning and operating
15 one or more hospitals, hospice agencies or nursing homes.

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

17 "Material change." Any of the following:

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

22 (2) A merger, an acquisition or a contracting
23 affiliation with another health system or provider
24 organization.

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

30 "Merger." A consolidation of two or more organizations,

1 including two or more organizations joining through a common
2 parent organization, or two or more organizations forming a new
3 organization. The term does not include a corporate
4 reorganization.

5 "Person." A corporation, partnership, limited liability
6 company, business trust or other association that seeks to
7 acquire an entity through an agreement or transaction.

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

17 Section 802-C. Acquisition of health systems against the public
18 interest.

19 (a) General rule.--Except as provided under subsection (b),
20 no person shall sell, transfer, lease, exchange, option or
21 otherwise encumber a material amount of a health system's assets
22 or operations in a manner that is against the public interest.

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

27 Section 803-C. Filing.

28 (a) General rule.--A health system must file a notification
29 pursuant to subsection (c) and observe the waiting period under
30 subsection (b) prior to entering into an agreement or

1 transaction that results in a material change.

2 (b) Waiting period.--A health system must undergo a waiting
3 period prior to entering into an agreement or transaction, which
4 shall:

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

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

8 or

9 (ii) if notification is not completed, the
10 notification to the extent completed and a statement of
11 the reasons for noncompliance with subsection (c) from
12 both persons; and

13 (2) end:

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

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

18 (c) Notice.--The notification of the transaction or
19 agreement required under subsection (a) shall be submitted to
20 the Attorney General on a form and in a manner developed by the
21 Attorney General. The notification shall include:

22 (1) all organic documents, including articles of
23 incorporation, bylaws, operating agreements and other
24 documents related to governance and ownership of each party;

25 (2) all complete transaction documents with attachments,
26 including collateral or ancillary agreements involving
27 officers, directors or employees;

28 (3) all documents signed by the principals, or their
29 agents, that are necessary to determine the proposed
30 transaction's effect, if any, on related or subsidiary

1 business entities, whether nonprofit or for profit;

2 (4) any of the following that comprise part or all of
3 the transaction:

4 (i) asset contribution agreements;

5 (ii) operating agreements; or

6 (iii) management contracts;

7 (5) all information necessary to evaluate the effects of
8 the transaction on each component of an integrated delivery
9 system where that transaction involves a hospital, including
10 any changes in contracts between the integrated delivery
11 system entities and related physician groups;

12 (6) all financial documents of the transaction parties
13 and related entities, where applicable, including audited
14 financial statements, ownership records, business projection
15 data, current capital asset valuation data and any records
16 upon which future earnings, existing asset values and fair
17 market value analysis can be based;

18 (7) all fairness opinions and independent valuation
19 reports of the assets and liabilities of the parties,
20 prepared on the parties' behalf;

21 (8) all relevant contracts that may affect value,
22 including, but not limited to, business contracts and
23 employee contracts, such as buy-out provisions, profit-
24 sharing agreements and severance packages;

25 (9) all information and representations disclosing
26 related party transactions that are necessary to assess
27 whether the transaction is at arm's length or involves self-
28 dealing;

29 (10) all documents relating to noncash elements of the
30 transaction, including, but not limited to, pertinent

1 valuations of security for loans and stock restrictions;

2 (11) all tax-related information, including, but not
3 limited to, the existence of tax-free debt subject to
4 redemption and disqualified person transactions yielding tax
5 liability;

6 (12) a list of ongoing litigation, including full court
7 captions, involving the transaction parties or their related
8 entities, that may affect the interests of the parties;

9 (13) all information in the possession of the
10 transacting parties relative to the perspective of the health
11 system's patient base and communities served, or their
12 representatives;

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

17 (15) 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 and all
21 subsidiaries; and

22 (16) all additional documents that the Attorney General
23 deems necessary for review purposes.

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

25 (1) The Attorney General may, prior to the expiration of
26 the waiting period under subsection (b), require the
27 submission of additional information or documentary material
28 from a person required to file notification under subsection
29 (c), or from any officer, director, partner, agent or
30 employee of the 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 such 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 pursuant to
13 section 806-C(2)(ii).

14 (e) Right-to-Know Law.--The Attorney General shall not
15 disclose confidential information or documentary material
16 pertaining to an agreement or transaction that is exempt from
17 public access under the act of February 14, 2008 (P.L.6, No.3),
18 known as the Right-to-Know Law.

19 Section 804-C. Public hearings and notice.

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

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

30 (c) Specific entities.--If any agreement or transaction

1 involves acquiring a medical group or a hospital or hospital
2 system, or any portion of the acquired entity, the Attorney
3 General shall hold a public hearing in any county in which the
4 acquired entity is located to hear comments from interested
5 parties. Interested parties shall include, but are not limited
6 to, legal aid and health advocacy organizations within a county
7 in which the acquired entity is located.

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 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 may be against the public interest.

30 (b) Action.--If the Attorney General determines that the

1 proposed agreement or transaction is against the public interest
2 under subsection (a), the Attorney General may commence an
3 action in a court of competent jurisdiction to enjoin the
4 agreement or transaction.

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

6 The following shall apply:

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

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

20 (i) Order compliance.

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

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

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

26 (a) Rules and regulations.--The Attorney General shall
27 promulgate rules and regulations as may be necessary to carry
28 out and enforce the provisions of this chapter.

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 such
23 costs.

24 Section 808-C. Construction.

25 This chapter shall not be construed to:

26 (1) narrow, abrogate or otherwise alter the authority of
27 the Attorney General to maintain competitive markets and
28 prosecute or enforce violations of antitrust and unfair trade
29 practices laws; or

30 (2) prohibit any Federal agency, Commonwealth agency or

1 other state agency from regulating an agreement or
2 transaction or joining as party in an action seeking to
3 enjoin an agreement or transaction.

4 Section 809-C. Severability.

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

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