

January 29, 1998

HOUSE BILL No. 1334

DIGEST OF HB 1334 (Updated January 27, 1998 2:11 pm - DI 77)

Citations Affected: IC 16-18; IC 16-21; noncode.

Synopsis: Conversion of nonprofit hospitals. Requires a public hearing before the conversion of a nonprofit hospital to a for-profit or nonprofit entity. Establishes an interim study committee to study issues related to the sale, merger, or transfer of ownership a nonprofit hospital to a for-profit or nonprofit entity.

Effective: April 1, 1998.

C. Brown, T. Brown

January 13, 1998, read first time and referred to Committee on Public Health.
January 28, 1998, amended, reported — Do Pass.

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HB 1334—LS 7149/DI 97



January 29, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

HOUSE BILL No. 1334

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 16-18-2-26.2 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE APRIL 1, 1998]: **Sec. 26.2. "Assets", for purposes of**
4 **IC 16-21-10, has the meaning set forth in IC 16-21-10-2.**
- 5 SECTION 2. IC 16-18-2-64.6 IS ADDED TO THE INDIANA
6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
7 [EFFECTIVE APRIL 1, 1998]: **Sec. 64.6. "Community benefit**
8 **assets", for purposes of IC 16-21-10, has the meaning set forth in**
9 **IC 16-21-10-3.**
- 10 SECTION 3. IC 16-18-2-64.7 IS ADDED TO THE INDIANA
11 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
12 [EFFECTIVE APRIL 1, 1998]: **Sec. 64.7. "Community benefit**
13 **purposes", for purposes of IC 16-21-10, has the meaning set forth**
14 **in IC 16-21-10-4.**
- 15 SECTION 4. IC 16-18-2-139.5 IS ADDED TO THE INDIANA
16 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
17 [EFFECTIVE APRIL 1, 1998]: **Sec. 139.5. "For-profit entity", for**

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1 purposes of IC 16-21-10, has the meaning set forth in
2 IC 16-21-10-5.

3 SECTION 5. IC 16-18-2-250.5 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE APRIL 1, 1998]: **Sec. 250.5. "Nonprofit entity", for**
6 **purposes of IC 16-21-10, has the meaning set forth in**
7 **IC 16-21-10-6.**

8 SECTION 6. IC 16-18-2-251, AS AMENDED BY P.L.144-1996,
9 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 APRIL 1, 1998]: Sec. 251. (a) "Nonprofit hospital", for purposes of
11 IC 16-21-9, has the meaning set forth in IC 16-21-9-3.

12 (b) "Nonprofit hospital", for purposes of IC 16-21-10, has the
13 meaning set forth in IC 16-21-10-7.

14 SECTION 7. IC 16-18-2-314.5 IS ADDED TO THE INDIANA
15 CODE AS A NEW SECTION TO READ AS FOLLOWS
16 [EFFECTIVE APRIL 1, 1998]: **Sec. 314.5. "Related party", for**
17 **purposes of IC 16-21-10, has the meaning set forth in**
18 **IC 16-21-10-8.**

19 SECTION 8. IC 16-18-2-353.7 IS ADDED TO THE INDIANA
20 CODE AS A NEW SECTION TO READ AS FOLLOWS
21 [EFFECTIVE APRIL 1, 1998]: **Sec. 353.7. "Transaction", for**
22 **purposes of IC 16-21-10, has the meaning set forth in**
23 **IC 16-21-10-9.**

24 SECTION 9. IC 16-21-10 IS ADDED TO THE INDIANA CODE
25 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
26 APRIL 1, 1998]:

27 **Chapter 10. Conversion of Nonprofit Hospitals**

28 **Sec. 1. (a) Except as provided in subsection (b), this chapter**
29 **applies to a nonprofit hospital that intends to enter into a**
30 **transaction with a for-profit entity or another nonprofit entity.**

31 (b) This chapter does not apply to the following:

32 (1) A physician or licensed health care provider contract with
33 a hospital or community health center.

34 (2) A contract between a licensed hospital and the following:

35 (A) A physician or a group of physicians.

36 (B) A licensed health care provider or a group of licensed
37 health care providers.

38 (3) A transaction:

39 (A) involving a transfer of community benefit assets of a
40 licensed hospital with a book value of less than one million
41 dollars (\$1,000,000), net of accumulated depreciation as of
42 the date of the closing date of the intended transaction;



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- 1 (B) enabling a party to finance the purchase of assets,
 2 refinance assets, mortgage or pledge assets already owned
 3 by a nonprofit hospital, for-profit entity, nonprofit entity,
 4 or related party, whether or not in its usual course of
 5 business;
 6 (C) between or among a nonprofit hospital and affiliated
 7 nonprofit entities that are part of a common line of
 8 ownership or control; or
 9 (D) for which a letter of intent or memorandum of
 10 understanding or similar documentation was executed
 11 before March 31, 1998.
- 12 Sec. 2. As used in this chapter, "assets" means real, personal,
 13 tangible, and intangible property and rights in property, including
 14 cash, buildings, equipment, investments, and contracts with other
 15 entities.
- 16 Sec. 3. As used in this chapter, "community benefit assets"
 17 means every asset that has been used in connection with furthering
 18 community benefit purposes during the previous year, including
 19 any health care activity that includes education, prevention,
 20 promotion of community health, indigent care, or any other
 21 charitable purpose.
- 22 Sec. 4. As used in this chapter, "community benefit purposes"
 23 means those purposes that an entity may qualify for exemption
 24 under Section 501(c)(3) of the Internal Revenue Code or for similar
 25 activity engaged in by a for-profit entity.
- 26 Sec. 5. As used in this chapter, "for-profit entity" means a
 27 business corporation, partnership, limited liability company, joint
 28 venture, or any other entity that is not exempt from federal income
 29 tax under Section 501 of the Internal Revenue Code.
- 30 Sec. 6. As used in this chapter, "nonprofit entity" means a
 31 nonprofit business corporation or another entity that is exempt
 32 from federal income tax under Section 501 of the Internal Revenue
 33 Code.
- 34 Sec. 7. As used in this chapter, "nonprofit hospital" means a
 35 hospital that is licensed under IC 16-21-2 and that:
 36 (1) is a nonprofit corporation or entity that is exempt from
 37 federal income tax under Section 501 of the Internal Revenue
 38 Code; or
 39 (2) is owned, controlled, or operated, directly or indirectly, by
 40 a nonprofit corporation or entity that is exempt from federal
 41 income tax under Section 501 of the Internal Revenue Code.
- 42 Sec. 8. As used in this chapter, "related party" means an



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1 individual, a business, a corporation, a partnership, a limited
2 liability company, a joint venture, a trust, or a for-profit entity that
3 owns or controls, is owned or controlled by, or operates under
4 common ownership or control of a party to a transaction.

5 **Sec. 9.** As used in this chapter, "transaction" means a transfer,
6 a sale, a lease, a merger, a conversion, an option, an exchange, a
7 restructuring, a consolidation, a gift, a conveyance, or other
8 disposition of an ownership, management, or membership interest
9 in a nonprofit hospital or its assets, to a for-profit entity or a
10 nonprofit entity through joint venture, operating agreement, or
11 any other means.

12 **Sec. 10. (a)** Not later than ninety (90) days before the anticipated
13 closing of a transaction, a nonprofit hospital that intends to engage
14 in the transaction shall give written notice to the following:

- 15 (1) The secretary of state.
- 16 (2) The state health commissioner.
- 17 (3) The attorney general.

18 (b) The written notice under subsection (a) must include the
19 following information:

- 20 (1) The name, address, and telephone number of each party
21 to the transaction.
- 22 (2) The name, address, and telephone number of each
23 attorney or other person representing the parties to the
24 transaction.
- 25 (3) A general summary of the transaction.
- 26 (4) A general description of the assets involved in the
27 transaction and the intended use of the assets after the closing
28 of the intended transaction.
- 29 (5) A general summary of all collateral transactions that
30 relate to the transaction, including the names, addresses, and
31 telephone numbers of the parties involved in the collateral
32 transactions.

33 (c) The notice and information required under this section are
34 public records.

35 **Sec. 11.** Not later than thirty (30) days after the nonprofit
36 hospital sends the written notice required under section 10 of this
37 chapter the parties to the transaction shall do the following:

- 38 (1) Select a hearing officer to conduct the public hearing
39 required by this section and determine the time and place of
40 the public hearing. The location of the public hearing must be
41 located in the county where the principal place of business of
42 the nonprofit hospital is located. The site for the public

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hearing must be agreed upon by the secretary of state and the state health commissioner.

(2) Publish a public notice of the time and place for the public hearing not less than three (3) consecutive times in at least one

(1) newspaper of general circulation in the county where the nonprofit hospital has its principal place of business.

Sec. 12. (a) The hearing officer shall hold a public hearing on the intended transaction not less than ten (10) days after the last publication of the public notice.

(b) The purpose of the public hearing is to provide information required under subsection (c) and receive comment from the public and interested parties regarding the proposed transaction.

(c) The parties to the transaction shall present written information at the public hearing that includes the following:

(1) The extent that the intended transaction impacts activities that further community benefit purposes and is consistent with community benefit purposes, including a description of the resources that will be committed to community benefit purposes following the transaction.

(2) Whether the intended transaction creates or has the likelihood of creating an adverse effect on the access to or availability or cost of health care services.

(3) Whether any director, officer, agent, or employee of the entity will receive any community benefit asset or will benefit directly or indirectly from the transaction, except for the receipt of compensation for professional services relating to the intended transaction for normal compensation for services.

(4) The extent to which the nonprofit hospital used due diligence in the selection of the entity that will receive the community benefit assets and in the negotiation of the price and other terms and conditions of the transaction.

(5) The extent to which the parties will continue to use the nonprofit hospital's community benefit assets for community benefit purposes following the transaction, or if applicable, the proceeds of the disposition of the assets will be deposited in a community benefit organization for community benefit purposes.

(6) Whether any initial board of directors members of any entity charged or created by the transaction will reside in or near the communities affected by the transaction.

(7) Whether any community benefit organization established

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1 to hold the proceeds of the disposition of assets is organized
2 for community benefit purposes as required under federal
3 and state law.

4 (d) The office of the attorney general may present information
5 at the public hearing.

6 Sec. 13. (a) The hearing officer conducting the public hearing
7 shall compile a summary report of the public hearing proceedings
8 and transmit the report, a notice of completion, and copies of all
9 written information presented at the hearing to the secretary of
10 state, state health commissioner, and attorney general.

11 (b) The parties to the intended transaction shall pay for all the
12 costs associated with the hearing officer, notices, public hearing,
13 and summary report.

14 Sec. 14. This chapter does not:

- 15 (1) affect the secretary of state's acceptance or denial of new,
16 restated, or amended articles of incorporation;
17 (2) affect the operation of state or federal antitrust laws or the
18 attorney general's enforcement of those laws; or
19 (3) create a private or governmental right or cause of action
20 relating to the transaction or parties related to the
21 transaction.

22 SECTION 10. [EFFECTIVE JULY 1, 1998]: (a) The general
23 assembly finds the following:

- 24 (1) The health of the citizens of Indiana is one of Indiana's
25 most important public concerns.
26 (2) Indiana has an interest in protecting the continued
27 existence of accessible, affordable health care.
28 (3) Nonprofit hospitals have a substantive and beneficial role
29 in the provision of health care to the citizens of Indiana,
30 providing as part of their charitable mission uncompensated
31 care to the uninsured or underinsured.
32 (4) The general assembly believes that the public interest must
33 be protected whenever the assets or revenue of a nonprofit
34 hospital are transferred to a for-profit entity or nonprofit
35 entity.

36 (b) The legislative council shall establish an interim study
37 committee to study the following:

- 38 (1) The need for review or oversight by the state when a
39 nonprofit hospital sells, merges, or transfers ownership of the
40 hospital to a for-profit entity or another nonprofit entity.
41 (2) Whether the charitable missions of nonprofit hospitals are
42 being carried out in Indiana communities after nonprofit

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1 **hospitals sell, merge, or transfer ownership of the hospitals to**
2 **for-profit or nonprofit entities.**
3 **(3) Any other topic assigned to the committee by the**
4 **legislative council.**
5 **(c) The committee shall operate under the direction and rules of**
6 **the legislative council and the committee shall issue a final report**
7 **when directed to do so by the legislative council.**
8 **(d) This SECTION expires November 1, 1998.**
9 **SECTION 11. An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1334, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to House Bill 1334 as introduced.)

C. BROWN, Chair

Committee Vote: yeas 11, nays 0.

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