

HOUSE BILL No. 1334

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2; IC 16-21-10.

Synopsis: Conversion of nonprofit hospitals. Regulates the conversion of nonprofit hospitals to for-profit entities. Requires parties to a transaction involving the conversion of a nonprofit hospital to a for-profit entity to obtain approval from the attorney general. Establishes conditions for approval of a nonprofit hospital conversion by the attorney general.

Effective: April 1, 1998.

C. Brown, T. Brown

January 13, 1998, read first time and referred to Committee on Public Health.

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Introduced

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 16-18-2-67.8 IS ADDED TO THE INDIANA
6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
7 [EFFECTIVE APRIL 1, 1998]: **Sec. 67.8. "Conditions for approval",**
8 **for purposes of IC 16-21-10, has the meaning set forth in**
9 **IC 16-21-10-3.**

10 SECTION 3. IC 16-18-2-122.5 IS ADDED TO THE INDIANA
11 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
12 [EFFECTIVE APRIL 1, 1998]: **Sec. 122.5. "Fair market value", for**
13 **purposes of IC 16-21-10, has the meaning set forth in**
14 **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 16-18-2-251, AS AMENDED BY P.L.144-1996,
4 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 APRIL 1, 1998]: Sec. 251. (a) "Nonprofit hospital", for purposes of
6 IC 16-21-9, has the meaning set forth in IC 16-21-9-3.

7 (b) "Nonprofit hospital", for purposes of IC 16-21-10, has the
8 meaning set forth in IC 16-21-10-6.

9 SECTION 6. IC 16-18-2-314.5 IS ADDED TO THE INDIANA
10 CODE AS A NEW SECTION TO READ AS FOLLOWS
11 [EFFECTIVE APRIL 1, 1998]: Sec. 314.5. "Related party", for
12 purposes of IC 16-21-10, has the meaning set forth in
13 IC 16-21-10-7.

14 SECTION 7. IC 16-18-2-353.7 IS ADDED TO THE INDIANA
15 CODE AS A NEW SECTION TO READ AS FOLLOWS
16 [EFFECTIVE APRIL 1, 1998]: Sec. 353.7. "Transaction", for
17 purposes of IC 16-21-10, has the meaning set forth in
18 IC 16-21-10-8.

19 SECTION 8. IC 16-21-10 IS ADDED TO THE INDIANA CODE
20 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
21 APRIL 1, 1998]:

22 **Chapter 10. Conversion of Nonprofit Hospitals to For-Profit**
23 **Entities**

24 **Sec. 1. The health of the citizens of Indiana is one of the state's**
25 **most important public concerns. The state has an interest in**
26 **protecting the continued existence of accessible, affordable health**
27 **care. Nonprofit hospitals have a substantive and beneficial role in**
28 **the provision of health care to the citizens of Indiana, providing as**
29 **part of their charitable mission uncompensated care to the**
30 **uninsured or underinsured. The general assembly believes that the**
31 **public interest must be protected whenever the assets or revenue**
32 **of a nonprofit hospital are transferred to a for-profit entity. This**
33 **chapter is intended to protect the public interest, to assure that**
34 **nonprofit hospital assets are preserved for the public and continue**
35 **to be dedicated to meeting the public's health needs, and shall be**
36 **construed with that purpose in mind.**

37 **Sec. 2. As used in this chapter, "assets" means real, personal,**
38 **tangible and intangible property and rights in property, including**
39 **cash, buildings, equipment, investments, and contracts with other**
40 **entities.**

41 **Sec. 3. As used in this chapter, "conditions for approval" means**
42 **the conditions listed in section 13(b) of this chapter.**



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1 **Sec. 4.** As used in this chapter, "fair market value" means the
 2 most likely price that the assets being transferred would bring in
 3 a competitive and open market under all conditions requisite to a
 4 fair sale, with the buyer and seller acting prudently,
 5 knowledgeable, and in their own best interest, and a reasonable
 6 time being allowed for exposure in the open market.

7 **Sec. 5.** As used in this chapter, "for-profit entity" means a
 8 business corporation, partnership, limited liability company, joint
 9 venture, or any other entity that is not exempt from federal income
 10 tax under Section 501 of the Internal Revenue Code.

11 **Sec. 6.** As used in this chapter, "nonprofit hospital" means a
 12 hospital that is licensed under IC 16-21-2 and that:

13 (1) is a nonprofit corporation or entity that is exempt from
 14 federal income tax under Section 501 of the Internal Revenue
 15 Code; or

16 (2) is owned, controlled, or operated, directly or indirectly, by
 17 a nonprofit corporation or entity that is exempt from federal
 18 income tax under Section 501 of the Internal Revenue Code.

19 **Sec. 7.** As used in this chapter, "related party" means an
 20 individual, a business, a corporation, a partnership, a limited
 21 liability company, a joint venture, a trust, or a for-profit entity that
 22 owns or controls, is owned or controlled by, or operates under
 23 common ownership or control of a party to a transaction.

24 **Sec. 8.** As used in this chapter, "transaction" means a transfer,
 25 a sale, a lease, a merger, a conversion, an option, an exchange, a
 26 restructuring, a consolidation, a gift, a conveyance, or other
 27 disposition of an ownership, management, or membership interest
 28 in a nonprofit hospital or its assets, to a for-profit entity through
 29 joint venture, operating agreement, or any other means, that has
 30 a fair market value of at least one million dollars (\$1,000,000), net
 31 of accumulated depreciation, as of the proposed closing date of the
 32 proposed transaction, and that would:

33 (1) result in a change of governance, ownership, or
 34 operational control of at least twenty percent (20%) of the
 35 assets of the nonprofit hospital; or

36 (2) when combined with one (1) or more transactions
 37 involving:

38 (A) the same nonprofit hospital and for-profit entity;

39 (B) the same nonprofit hospital and an entity related to the
 40 same for-profit entity; or

41 (C) the same for-profit entity and an entity related to the
 42 same nonprofit hospital;



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1 occurring within a five (5) year period, result in a change of
2 governance, ownership, or operational control of at least
3 twenty percent (20%) of the assets of the nonprofit hospital.

4 **Sec. 9.** This chapter applies to transactions that are signed by all
5 of the parties to the transaction after March 31, 1998.

6 **Sec. 10. (a)** A nonprofit hospital may not enter into a transaction
7 under this chapter without written approval from the attorney
8 general under this chapter.

9 (b) A nonprofit hospital proposing to enter into a transaction
10 shall, before entering into the transaction and at least one hundred
11 twenty (120) days before the closing date of the transaction,
12 provide written notice of the proposed transaction to the attorney
13 general.

14 (c) A nonprofit hospital shall submit the notice required under
15 subsection (b) on forms provided by the attorney general. The
16 notice must include the following information:

17 (1) The names and addresses of all parties to the proposed
18 transaction, including a list of all officers, directors, board
19 members, executives, or related parties of each of the parties
20 to the proposed transaction.

21 (2) A summary of the proposed transaction.

22 (3) Copies of all proposed or existing contracts or agreements
23 between the parties to the proposed transaction.

24 (4) A summary of:

25 (A) how the nonprofit hospital's decision to enter the
26 proposed transaction was made;

27 (B) how the acquiring for-profit entity was selected; and

28 (C) how terms of the proposed transaction were
29 negotiated.

30 (5) Audited financial statements of all parties to the proposed
31 transaction for the three (3) fiscal years before the date the
32 nonprofit hospital submits notice to the attorney general.

33 (6) A description of the method by which the parties
34 determined the fair market value of the transaction, including
35 a copy of a valuation statement that assesses fair market value
36 and that was prepared by an independent third party with no
37 financial interest in the proposed transaction.

38 (7) Copies of any reports prepared by consultants regarding
39 the proposed transaction.

40 (8) Conflict of interest statements from all board members,
41 officers, senior executives, or other fiduciaries of the nonprofit
42 hospital specifying any consideration received or promised

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1 from the acquiring for-profit entity, including copies or
 2 summaries of any agreements or communications regarding
 3 future employment or other direct or indirect economic
 4 interest.

5 (9) All documents pertaining to the disposition of proceeds
 6 from the proposed transaction, including:

7 (A) an explanation of how any funds remaining after the
 8 payment of debt by the nonprofit hospital or on its behalf
 9 will be used for tax-exempt purposes; and

10 (B) a written assurance that funds remaining after the
 11 payment of debt by the nonprofit hospital or on its behalf
 12 will not be disbursed for campaign contributions, lobbying
 13 expenditures, or other political activity.

14 (10) An explanation of how the proposed transaction will
 15 affect the availability and cost of health care, including health
 16 care for medically underserved populations, in the
 17 communities in which the nonprofit hospital is located and for
 18 which the nonprofit hospital provides services.

19 (11) An explanation of how the proposed transaction will
 20 affect the range of health care services available in the
 21 communities in which the nonprofit hospital is located and for
 22 which the nonprofit hospital provides services.

23 (12) Additional information as requested by the attorney
 24 general.

25 (d) Within thirty (30) days after the date notice is received, the
 26 attorney general shall determine whether the notice is complete for
 27 the purpose of review and contains all of the information required
 28 by subsection (c). If the attorney general determines that the notice
 29 is incomplete, the attorney general shall notify the applicant of the
 30 reasons for incompleteness and allow the applicant the opportunity
 31 to correct or supplement the notice.

32 **Sec. 11. (a) All documents and materials submitted as part of the**
 33 **notice provided under section 10 of this chapter are available for**
 34 **public inspection and copying under IC 5-14-3-3, except those that**
 35 **are considered confidential under IC 5-14-3-4.**

36 (b) Notwithstanding subsection (a) or IC 5-14-3-4(a)(5),
 37 financial information submitted to the attorney general under this
 38 chapter is confidential information for purposes of IC 5-14-3.

39 (c) The attorney general may adopt rules under IC 4-22-2 to
 40 declare other information submitted with regard to a transaction
 41 confidential.

42 **Sec. 12. (a) Before issuing a written decision approving or**

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1 disapproving the proposed transaction, the attorney general shall
2 hold at least one (1) public hearing in the community in which the
3 nonprofit hospital is located, the communities for which the
4 nonprofit hospital provides services, or both.

5 (b) At least fourteen (14) days before holding the public hearing,
6 the attorney general shall provide written notice of the time, place,
7 and general subject matter of the hearing through publication in
8 at least one (1) newspaper of general circulation in the affected
9 communities.

10 (c) The written notice must include a description of how
11 interested persons may submit written comments about the
12 proposed transaction to the attorney general.

13 Sec. 13. (a) In determining whether to approve the proposed
14 transaction, the attorney general shall consider input received
15 from the public at the hearing or through written comments.

16 (b) In determining whether to approve the proposed
17 transaction, the attorney general shall consider whether the
18 following conditions for approval are met:

19 (1) The terms and conditions of the proposed transaction are
20 fair and reasonable to the citizens of Indiana, the residents of
21 the affected communities, potential recipients of health care
22 services, and the nonprofit hospital.

23 (2) Clear and convincing evidence demonstrates that the
24 nonprofit hospital used due and reasonable care in:

25 (A) deciding to engage in the proposed transaction;

26 (B) selecting the acquiring for-profit entity; and

27 (C) negotiating the terms of the proposed transaction.

28 (3) The proposed transaction is structured to prevent
29 inurement to any private person or entity resulting in a
30 breach of fiduciary duty, as determined by the attorney
31 general, including conflicts of interest related to payments or
32 benefits to officers, directors, board members, executives, and
33 experts employed or retained by the parties.

34 (4) Clear and convincing evidence demonstrates the nonprofit
35 hospital used due and reasonable care in the selection and
36 consultation of experts, including the independent third party
37 selected to assess fair market value of the nonprofit hospital.

38 (5) The assets, including charitable assets, of the nonprofit
39 hospital are being conveyed at fair market value.

40 (6) The market value of the assets has not been manipulated
41 by the actions of the parties in a manner that causes the value
42 to decrease.

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1 (7) A charitable trust is established with the proceeds from
2 the proposed transaction, and:

3 (A) the trust has a health care purpose consistent with the
4 nonprofit hospital's charitable purpose or for the support
5 and promotion of health care in the affected communities;

6 (B) the proceeds of the trust will not be under the
7 ownership or control of the acquiring for-profit entity; and

8 (C) the proceeds of the trust will not be disbursed for
9 campaign contributions, lobbying expenditures, or other
10 political activity.

11 (8) The availability, range of services, and cost of health care
12 services in the communities in which the nonprofit hospital is
13 located and for which the nonprofit hospital provides services
14 will not be adversely affected by the proposed transaction.

15 (9) The acquiring for-profit entity has provided satisfactory
16 assurances that, following the proposed transaction:

17 (A) the hospital will continue to provide a level of health
18 care services to traditionally underserved populations,
19 including the uninsured, underinsured, and disadvantaged
20 persons in the affected communities, that is at least
21 comparable to the level of services provided before the
22 proposed transaction;

23 (B) the for-profit entity agrees to maintain or increase the
24 percentage of income from operations allocated to charity
25 care for indigent persons, as compared to the average of
26 the annual percentage allocated in the previous three (3)
27 years by the predecessor nonprofit hospital; and

28 (C) the for-profit entity will otherwise comply with the
29 community benefits plan filed by the nonprofit hospital
30 with the state department of health under IC 16-21-9.

31 (10) The attorney general has been provided with sufficient
32 information and data to:

33 (A) adequately evaluate the proposed transaction and its
34 effects on the public; and

35 (B) determine the suitability and responsibility of the
36 for-profit entity to fulfill the requirements of this chapter.

37 (11) The proposed transaction serves the public interest.

38 (12) The proposed transaction meets any other criteria that
39 the attorney general considers necessary to determine
40 whether the nonprofit hospital will receive fair market value
41 for the nonprofit hospital's charitable assets.

42 Sec. 14. (a) The attorney general may request any additional

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1 information from the nonprofit hospital that the attorney general
2 considers necessary to assess the valuation of the entity's charitable
3 assets.

4 (b) The nonprofit corporation shall provide the information not
5 later than ten (10) days after the date of the request.

6 (c) The written notice required under section 10 of this chapter
7 shall not be considered complete for the purposes of section 16 of
8 this chapter until all requests by the attorney general have been
9 satisfied.

10 (d) The attorney general may consult with state agencies and
11 retain experts, consultants, attorneys, or accountants to assist in
12 reviewing, valuing, or monitoring the proposed transaction.

13 (e) The written notice required under section 10 of this chapter
14 must be accompanied by an application fee of twenty-five thousand
15 dollars (\$25,000) to be deposited by the attorney general in the
16 nonprofit hospital conversion fund established under section 15 of
17 this chapter for the exclusive use of the attorney general to pay the
18 costs of the review process.

19 (f) To the extent the attorney general's reasonable costs exceed
20 the twenty-five thousand dollar (\$25,000) application fee, those
21 costs must be reimbursed to the attorney general by the parties
22 within thirty (30) days of receipt of notice that those costs are due
23 and owing. The attorney general may withhold approval of a
24 transaction until the costs are reimbursed to the attorney general.

25 **Sec. 15. (a)** The nonprofit hospital conversion fund is established
26 for the purpose of exclusive use of the attorney general to pay the
27 costs of the review process required under this chapter, including
28 the following:

29 (1) Salary and benefits costs associated with the hiring of
30 deputy attorneys general to assist in carrying out the review
31 and monitoring provisions of this chapter.

32 (2) Reasonable costs actually incurred by the attorney general
33 in the review of the proposed transaction, including the cost
34 of any consultation with state agencies, experts, consultants,
35 attorneys, or accountants under section 14(d) of this chapter.

36 The fund shall be administered by the attorney general.

37 (b) The treasurer of state shall invest the money in the fund not
38 currently needed to meet the obligations of the fund in the same
39 manner as other public money may be invested.

40 (c) Money in the fund at the end of a state fiscal year does not
41 revert to the state general fund. However, if the amount of money
42 in the fund at the end of a particular fiscal year exceeds two

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1 hundred fifty thousand dollars (\$250,000), the treasurer of state
2 shall transfer the excess from the fund into the state general fund.

3 **Sec. 16. (a)** Within one hundred eighty (180) days after the
4 receipt of a complete notice with information required under
5 section 10 of this chapter and any information requested by the
6 attorney general under section 14 of this chapter, the attorney
7 general shall issue a written decision approving or disapproving
8 the proposed transaction, unless the parties to the proposed
9 transaction and the attorney general agree to an extension of time.

10 (b) Once a proposed transaction is approved, any material
11 alteration in:

12 (1) the terms of the proposed transaction; or

13 (2) any information submitted under section 10 or 14 of this
14 chapter that occurs before the closing of the proposed
15 transaction;

16 constitutes a new proposed transaction subject to approval by the
17 attorney general.

18 **Sec. 17.** A decision of the attorney general approving or
19 disapproving a proposed transaction under this chapter shall be
20 considered a final administrative action which may be appealed
21 under IC 4-21.5-5 for judicial review after exhaustion of
22 administrative remedies.

23 **Sec. 18. (a)** The attorney general shall require annual reports
24 from the successor nonprofit corporation or foundation and from
25 the acquiring for-profit entity to ensure compliance with the
26 conditions of approval granted under this chapter.

27 (b) The attorney general may subpoena information and
28 documents and may conduct onsite compliance audits at the
29 acquiring for-profit entity's expense.

30 (c) If the attorney general receives information indicating that
31 the acquiring for-profit entity is not fulfilling the conditions of
32 approval made during the review process, the attorney general
33 shall hold a hearing after giving a ten (10) day notice to the
34 affected parties.

35 (d) If, after holding the hearing under subsection (c), the
36 attorney general determines that the information of nonfulfillment
37 is true, the attorney general, in conjunction with the state
38 department of health, may do either or both of the following:

39 (1) Revoke or suspend the hospital license issued to the
40 acquiring for-profit entity.

41 (2) Seek a court order compelling the acquiring for-profit
42 entity to fulfill the conditions of approval.

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(e) The attorney general may institute and prosecute an action to enforce this chapter in a court of the county in which the hospital is located or in a court of Marion County.

(f) This section does not preclude any other person with standing from instituting judicial proceedings to enforce this chapter.

(g) A court that finds that the requirements of this chapter have been violated may, in addition to any civil remedies:

- (1) grant injunctive relief;
- (2) rescind any completed parts of the transaction;
- (3) assess a civil penalty not to exceed fifty thousand dollars (\$50,000);
- (4) award the petitioner the costs and expenses arising from the action to enforce this chapter; or
- (5) impose any combination of these remedies.

Sec. 19. The attorney general may adopt rules under IC 4-22-2 to implement this chapter.

Sec. 20. The powers conferred on the attorney general under this chapter are in addition to all other statutory powers held by the attorney general.

SECTION 9. An emergency is declared for this act.

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