

State of Wisconsin



1997 Senate Bill 365

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1997 WISCONSIN ACT 93

AN ACT to amend 50.35; and to create 165.40 of the statutes; relating to: acquisition of a hospital owned by a non-profit corporation, a city, a county, the state or the University of Wisconsin Hospitals and Clinics Authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 50.35 of the statutes is amended to read:

50.35 Application and approval. Application for approval to maintain a hospital shall be made to the department on forms provided by the department. On receipt of an application, the department shall issue a certificate of approval if the applicant and hospital facilities meet the requirements established by the department. This approval shall be in effect until, for just cause and in the manner herein prescribed, it is suspended or revoked. The certificate of approval may be issued only for the premises and persons or governmental unit named in the application and is not transferable or assignable. The department shall withhold, suspend or revoke approval for a failure to comply with s. 165.40 (6) (a) 1. or 2., but otherwise may not withhold, suspend or revoke approval unless for a substantial failure to comply with ss. 50.32 to 50.39 or the rules and standards adopted by the department, after giving a reasonable notice, a fair hearing and a reasonable opportunity to comply. Failure by a hospital to comply with s. 50.36 (3m) shall be considered to be a substantial failure to comply under this section.

SECTION 2. 165.40 of the statutes is created to read:

165.40 Acquisition of hospitals. (1) DEFINITIONS. In this section:

(a) "Acquisition" means the long-term leasing of a hospital or a system of hospitals, or the acquiring by a person of an ownership or controlling interest in a hospital or a system of hospitals that results in one of the following:

1. A change of at least 20% ownership or control.
2. Possession by the person of at least 50% ownership or control.

(am) "Department" means the department of health and family services.

(b) "Hospital" has the meaning given in s. 50.33 (2).

(c) "Local agency" means an agency of a county, city, village or town.

(d) "Nonprofit corporation" has the meaning given in s. 181.02 (8).

(dm) "Office" means the office of the commissioner of insurance.

(e) "Person" means an individual, sole proprietorship, partnership, association, limited liability company, corporation or joint stock company, lessee, trustee or receiver.

(f) "State agency" has the meaning given in s. 16.004 (12) (a), except that it includes the University of Wisconsin Hospitals and Clinics Authority.

(g) "Working day" has the meaning given in s. 227.01 (14).

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(2) PROHIBITION; APPROVAL REQUIRED. (a) Except as provided in sub. (5), no person may engage in the acquisition of a hospital or a system of hospitals owned by any of the following unless the person has first received review and approval of an application concerning the acquisition under this section from the attorney general, the office and the department:

1. A nonprofit corporation.
2. A city.
3. A county.
4. The state.
5. The University of Wisconsin Hospitals and Clinics Authority.

(b) If the proposed acquisition under this subsection is for a system of hospitals, the person who proposes to engage in the acquisition shall provide notice of the impending acquisition to the attorney general, to the office and to the department at least 30 days before the offer to purchase or lease is made. The attorney general shall, within 5 days after receipt of the notice, determine and notify the person as to whether a single application for the system or an application for each hospital within the system shall be submitted for review. If the attorney general determines that an application for each hospital within the system shall be submitted, no submitted application is complete until all complete applications for the hospitals within the system are submitted to the attorney general, to the office and to the department.

(3) APPLICATION REVIEW BY THE ATTORNEY GENERAL, THE OFFICE AND THE DEPARTMENT; PROCEDURES. (a) An application for review by the attorney general, the office and the department that is required under sub. (2) shall, at the time the offer to purchase or lease is made, be submitted to the attorney general, to the office and to the department on a form that is provided by the attorney general. The application shall include all of the following:

1. The name of the seller or lessor.
2. The name of the purchaser or lessee and, if applicable, other parties to the acquisition.
3. The terms of the proposed agreement.
4. The sale price or rental charges.
5. A copy of the acquisition agreement.
6. A financial and economic analysis and report by an independent expert or consultant of the effect of the acquisition under the standards specified in sub. (4).

(b) An application and all documents related to the application, as specified in par. (a), are public records for the purposes of subch. II of ch. 19.

(c) 1. Within 5 working days after receipt of a completed application under par. (a), the attorney general shall do all of the following:

a. Have notice of the application published as a class 2 notice, under ch. 985, in a newspaper having general circulation in the community or communities in which the hospital or system of hospitals to be sold or leased is located.

b. Notify by 1st class mail any person who has requested that the attorney general provide notice of the filing of hospital acquisition review applications.

2. Notice or a notification under subd. 1. shall state all of the following:

- a. That a hospital acquisition review application has been received.
- b. The names of the parties to the acquisition.
- c. The contents of the hospital acquisition review application.

d. The date by which a person may submit written comments about the hospital acquisition review application to the attorney general.

e. That a public meeting will be held on the acquisition proposed by the application, the time and location of the meeting and the fact that any person may file written comments or exhibits for the meeting or may appear and make a statement at the meeting.

(d) Not later than 30 days after receipt of a completed application under sub. (2) (a), or as soon as practicable but not more than 120 days after receipt of a completed application under sub. (2) (b), and after giving 10 working days' notice, the attorney general shall hold a public meeting at a location that, at a minimum, is in the community served by the hospital, on the acquisition proposed by the application. If the proposed acquisition is for a system of hospitals, a public meeting shall be held in each community served by the system. Any person may file written comments or exhibits for the meeting or may appear and make a statement at the meeting.

(e) The attorney general shall establish and maintain a summary of written and oral comments made for or at the public meeting, including all questions posed, and shall require answers of the appropriate parties. The attorney general shall in an expeditious manner provide the office and the department with a copy of the summary and answers. The summary and answers shall be filed in the office of the attorney general and in the public library of the public library system for the community served by the hospital and a copy shall be available upon request to the attorney general.

(f) The attorney general may subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions and use related discovery procedures for purposes of the meeting under par. (d) and otherwise during performance of a review under this subsection. The attorney general shall in an expeditious manner provide the office and the department with copies of any information obtained by the attorney general under this paragraph.

(g) The attorney general shall provide the office and the department with any information about the application that is in addition to that which the attorney general has previously provided the office and the department. Within 60 days after receipt of a completed application under sub. (2) (a) or as soon as practicable but not more

than 150 days after receipt of a completed application under sub. (2) (b), the attorney general, the office and the department shall each independently review the application in accordance with the standards specified in sub. (4) and shall approve or disapprove the application. The attorney general, the office and the department may not make a decision under this paragraph based on any condition that is not directly related to the standards under sub. (4). The attorney general, the office and the department shall jointly agree on a single release date for the decisions each has made under this paragraph and shall release their decisions on that date.

(h) If the attorney general, the office or the department disapproves an application under par. (g), any of the following may bring an action in circuit court for a declaratory judgment under s. 806.04 as to whether the proposed acquisition meets the standards under sub. (4):

1. The applicant.
2. Any person who submitted comments under par. (d) and who has a legal interest in a hospital for which acquisition is proposed or in another hospital that has contracted for the provision of essential health services with the hospital for which acquisition is proposed.

(4) APPLICATION REVIEW BY THE ATTORNEY GENERAL, THE OFFICE AND THE DEPARTMENT; STANDARDS. The attorney general shall approve an application if he or she finds and the office and the department shall approve an application if the office or the department finds that the following standards are met:

(a) That the acquisition is permitted under ch. 181 or any other statute that governs nonprofit entities.

(b) That the hospital exercised due diligence in deciding to sell or lease, selecting the purchaser or lessee and negotiating the terms and conditions of the sale or lease.

(c) That the procedure used by the seller or lessor in making its decision to sell or lease was adequate, including whether the seller or lessor used appropriate expert assistance. The attorney general may employ, at the purchaser's or lessee's expense, reasonably necessary expert assistance in considering evidence under this paragraph.

(d) That conflict of interest was disclosed, including conflicts of interest related to members of the board of directors of, executives of or experts retained by the seller or lessor, the purchaser or lessee or other parties to the acquisition.

(e) That charitable funds are not placed at unreasonable risk, if the acquisition is a sale that is financed in part by the seller.

(f) That any management contract under the acquisition is for reasonably fair value.

(g) That the sale or rental proceeds will be used for appropriate charitable health care purposes, including health promotion, in the community affected by the ac-

quisition and that the proceeds will be controlled as charitable funds independently of the purchaser or parties to the acquisition.

(h) That, if the hospital is sold, a right of first refusal is retained to repurchase the assets by a successor nonprofit corporation, by the city, county or state or by the University of Wisconsin Hospitals and Clinics Authority if the hospital is subsequently sold to, acquired by or merged with another entity.

(5) EXEMPTIONS. The acquisition, by one of the following, of a hospital or system of hospitals owned by a nonprofit corporation is exempt from the application of this section:

- (a) A state agency.
- (b) A local agency.
- (c) Another nonprofit corporation, to which all of the following apply:

1. The nonprofit corporation has a charitable health care purpose that is substantially similar to the corporation that owns the hospital or system of hospitals.

2. The nonprofit corporation is an organization described in section 501 (c) (3) of the Internal Revenue Code that is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

3. The nonprofit corporation maintains on the board of directors of the acquired hospital or system of hospitals representation from the community affected by the acquisition.

(6) DENIAL, SUSPENSION OR REVOCATION OF CERTIFICATE OF APPROVAL. (a) No certificate of approval to maintain a hospital may be issued under s. 50.35 and a certificate of approval that has been issued under that section shall be suspended or revoked if any of the following occurs:

1. Acquisition of a hospital that is subject to sub. (2) is made without approval by the attorney general, the office or the department.

2. Acquisition of a hospital that is subject to sub. (2) is made after the attorney general, the office or the department has disapproved an application for the acquisition under sub. (4) and, if an action under s. 806.04 is brought, after a judicial determination is made under s. 806.04 that the proposed acquisition does not meet the standards specified in sub. (4) (a) to (h).

(b) If the attorney general or the office is aware that a violation of par. (a) 1. or 2. has occurred, the attorney general or the office shall notify the department for appropriate action under s. 50.35.

(7) ATTORNEY GENERAL; AUTHORITY. Nothing in this section or in s. 50.35 limits the authority of the attorney general to act with respect to an acquisition, including the authority of the attorney general to act under 15 USC 26, ch. 133 or other state law.

SECTION 2m. Nonstatutory provisions.

(1) Notwithstanding the 30-day notice requirement under section 165.40 (2) (b) of the statutes, as created by this act, for offers to purchase or lease hospitals that were made before the effective date of this subsection but that have not been accepted or rejected or have not expired before the effective date of this subsection, notice that is required under section 165.40 (2) (b) of the statutes, as created by this act, shall be provided to the attorney general, the office of the commissioner of insurance and the department of health and family services within 30 days after the effective date of this subsection.

(2) Notwithstanding the requirement under section 165.40 (3) (intro.) of the statutes, as created by this act, that applications be submitted at the time an offer to purchase or lease is made, for offers to purchase or lease hos-

pitals that were made before the effective date of this subsection but that have not been accepted or rejected or have not expired before the effective date of this subsection, applications that are required under section 165.40 (2) of the statutes, as created by this act, shall be submitted to the attorney general, the office of the commissioner of insurance and the department of health and family services within 30 days after the effective date of this subsection.

SECTION 3. Initial applicability.

(1) ACQUISITIONS OF HOSPITALS. This act first applies to offers to purchase or lease hospitals that have been made before the effective date of this subsection, but that have not been accepted or rejected or have not expired before the effective date of this subsection.

