

AMENDED IN ASSEMBLY AUGUST 4, 2014

AMENDED IN SENATE APRIL 21, 2014

SENATE BILL

No. 1094

Introduced by Senator Lara

February 19, 2014

An act to amend Sections 5915 and 5921 of, and to add Sections 5926 and 5927 to, the Corporations Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1094, as amended, Lara. Health facilities: sale of assets: approval.

Existing law requires any nonprofit corporation that is subject to the Nonprofit Public Benefit Corporation Law and is a health facility, as defined, or is a facility that provides similar health care, operates or controls a health facility or operates or controls a facility that provides similar health care, to provide written notice to, and obtain the written consent of, the Attorney General prior to selling or otherwise disposing of a material amount of its assets to a for-profit corporation or entity or to a mutual benefit corporation or entity. Existing law requires the Attorney General to conduct one or more public meetings prior to issuing its decision whether to consent to the proposed agreement or transaction, and, in any case, to issue its decision within 60 days of the receipt of the written notice from the public benefit corporation, subject to one additional 45-day extension under specified circumstances.

This bill would instead require the Attorney General to issue its decision within 90 days of the receipt of the written notice from the public benefit corporation. The bill would additionally authorize the Attorney General to enforce conditions imposed on the approval of an agreement or transaction, and to require the transferee to fulfill all representations made during the application process, as specified. The

bill would authorize the Attorney General to amend the conditions after the decision is issued under specified circumstances. The bill would additionally provide that once the agreement or transaction is closed, the parties to the transaction are deemed to have explicitly and implicitly consented to the applicability and compliance with each condition, except for an amended condition, set forth by the Attorney General, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5915 of the Corporations Code is
2 amended to read:

3 5915. Within 90 days of the receipt of the written notice
4 required by Section 5914, the Attorney General shall notify the
5 public benefit corporation in writing of the decision to consent to,
6 give conditional consent to, or not consent to the agreement or
7 transaction. The Attorney General may extend this period for one
8 additional 45-day period if any of the following conditions are
9 satisfied:

10 (a) The extension is necessary to obtain information pursuant
11 to subdivision (a) of Section 5919.

12 (b) The proposed agreement or transaction is substantially
13 modified after the first public meeting conducted by the Attorney
14 General in accordance with Section 5916.

15 (c) The proposed agreement or transaction involves a
16 multifacility health system serving multiple communities, rather
17 than a single facility.

18 SEC. 2. Section 5921 of the Corporations Code is amended to
19 read:

20 5921. Within 90 days of the receipt of the written notice
21 required by Section 5920, the Attorney General shall notify the
22 nonprofit corporation in writing of the decision to consent to, give
23 conditional consent to, or not consent to the agreement or
24 transaction. The Attorney General may extend this period for one
25 additional 45-day period if any of the following conditions are
26 satisfied:

27 (a) The extension is necessary to obtain relevant information
28 from any state agency, experts, or consultants.

1 (b) The proposed agreement or transaction is substantially
2 modified after the first public meeting conducted by the Attorney
3 General in accordance with Section 5922.

4 (c) The proposed agreement or transaction involves a
5 multifacility health system serving multiple communities, rather
6 than a single facility.

7 SEC. 3. Section 5926 is added to the Corporations Code, to
8 read:

9 5926. (a) The Attorney General may enforce conditions
10 imposed on the Attorney General’s approval of an agreement or
11 transaction pursuant to Section 5914 or 5920. The Attorney General
12 may require the transferee to fulfill all representations made during
13 the application process, including those regarding levels of care.

14 (b) The Attorney General may amend the conditions after the
15 decision is issued, if either of the following occur:

16 (1) ~~A party to~~ *An entity required to comply with the conditions*
17 *contained in* the transaction or agreement made material
18 misrepresentations to the Attorney General. An amended condition
19 imposed by the Attorney General pursuant to this paragraph shall
20 be substantially related to the material misrepresentation made by
21 ~~the party to the transaction~~ *entity and shall be made within three*
22 *years of the discovery of the misrepresentation by the Attorney*
23 *General.*

24 (2) ~~A party to~~ *An entity required to comply with the conditions*
25 *contained in* the transaction or agreement violated the conditions
26 set forth in the Attorney General’s decision. An amended condition
27 imposed by the Attorney General pursuant to this paragraph shall
28 be substantially related to the violation made by ~~the party to the~~
29 ~~transaction~~ *entity and shall be necessary to mitigate, and to provide*
30 *appropriate restitution for, the effects of the violation.*

31 (c) *An amended condition pursuant to this section is subject to*
32 *judicial review pursuant to Section 1085 of the Code of Civil*
33 *Procedure.*

34 (e)

35 (d) Nothing in this provision precludes the Attorney General
36 from pursuing any other available legal remedies.

37 SEC. 4. Section 5927 is added to the Corporations Code, to
38 read:

39 5927. Once the agreement or transaction pursuant to Section
40 5914 or 5920 is closed, the parties to the transaction are deemed

1 to have explicitly and implicitly consented to the applicability and
2 compliance with each condition set forth in the Attorney General's
3 consent, and to have waived any right to seek judicial relief with
4 respect to each condition set forth in the Attorney General's
5 consent. This section shall not apply to an amended condition
6 imposed by the Attorney General pursuant to subdivision (b) of
7 Section 5926.

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