

Senate Bill No. 1094

Passed the Senate August 29, 2014

Secretary of the Senate

Passed the Assembly August 28, 2014

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, Lara. Nonprofit health facilities: sale of assets: Attorney General approval.

Existing law requires any nonprofit corporation that is subject to the Nonprofit Public Benefit Corporation Law that operates or controls a health facility, as defined, 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, to a mutual benefit corporation or entity, or to another nonprofit 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.

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

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

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

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

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

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

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

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

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

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

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

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

5926. (a) The Attorney General may enforce conditions imposed on the Attorney General's approval of an agreement or

transaction pursuant to Section 5914 or 5920. The Attorney General may require a transferee to fulfill all representations material to the enforcement of the conditions made during the Attorney General's review process, including those regarding the availability or accessibility of health care services to the affected community.

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

(1) An entity required to comply with the conditions imposed on the Attorney General's approval of the transaction or agreement makes material misrepresentations to the Attorney General. An amended condition imposed by the Attorney General pursuant to this paragraph shall meet the following requirements:

(A) The condition shall be substantially related to the material misrepresentation made by the entity.

(B) The condition shall be made within 5 years of the completion of an agreement or transaction pursuant to Section 5914 or 5920.

(2) An entity required to comply with the conditions imposed on the Attorney General's approval of the transaction or agreement violates the conditions set forth in the Attorney General's decision. An amended condition imposed by the Attorney General pursuant to this paragraph shall meet the following requirements:

(A) The condition shall be substantially related to the violation made by the entity.

(B) The condition shall be necessary to mitigate, and to provide appropriate restitution for, the effects of the violation.

(c) The Attorney General may impose an amended condition pursuant to subdivision (b) by providing the parties to the agreement or transaction written notice of the proposed condition pursuant to paragraph (1) or (2) of subdivision (b). The parties to the agreement or transaction shall have 30 days from the date of the Attorney General's notice to provide a written response to the Attorney General. Within 30 days of receiving the parties' response, the Attorney General may:

(1) Withdraw the written notice without prejudice.

(2) Meet and confer in good faith with the parties to the transaction or agreement.

(3) Impose an amended condition pursuant to subdivision (b).

(d) An amended condition pursuant to this section is subject to judicial review pursuant to Section 1085 of the Code of Civil Procedure.

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

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

5927. Once the agreement or transaction pursuant to Section 5914 or 5920 is closed, the parties to the transaction are deemed to have explicitly and implicitly consented to the applicability and compliance with each condition set forth in the Attorney General's consent, and to have waived any right to seek judicial relief with respect to each condition set forth in the Attorney General's consent. This section shall not apply to an amended condition imposed by the Attorney General pursuant to subdivision (b) of Section 5926.

Approved _____, 2014

Governor