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**SUBSTITUTE SENATE BILL 6762**

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**State of Washington**

**60th Legislature**

**2008 Regular Session**

**By** Senate Health & Long-Term Care (originally sponsored by Senators Brown, Keiser, Kohl-Welles, Marr, and Franklin)

READ FIRST TIME 02/07/08.

1       AN ACT Relating to a community impact study for hospital  
2 conversions; and amending RCW 70.45.070 and 70.45.080.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4       **Sec. 1.** RCW 70.45.070 and 1997 c 332 s 7 are each amended to read  
5 as follows:

6       The department shall only approve an application if the parties to  
7 the acquisition have taken the proper steps to safeguard the value of  
8 charitable assets and ensure that any proceeds from the acquisition are  
9 used for appropriate charitable health purposes. To this end, the  
10 department may not approve an application unless, at a minimum, it  
11 determines that:

12       (1) The acquisition is permitted under chapter 24.03 RCW, the  
13 Washington nonprofit corporation act, and other laws governing  
14 nonprofit entities, trusts, or charities;

15       (2) The nonprofit corporation that owns the hospital being acquired  
16 has exercised due diligence in authorizing the acquisition, selecting  
17 the acquiring person, and negotiating the terms and conditions of the  
18 acquisition;

1 (3) The procedures used by the nonprofit corporation's board of  
2 trustees and officers in making its decision fulfilled their fiduciary  
3 duties, that the board and officers were sufficiently informed about  
4 the proposed acquisition and possible alternatives, and that they used  
5 appropriate expert assistance;

6 (4) No conflict of interest exists related to the acquisition,  
7 including, but not limited to, conflicts of interest related to board  
8 members of, executives of, and experts retained by the nonprofit  
9 corporation, acquiring person, or other parties to the acquisition;

10 (5) The nonprofit corporation will receive fair market value for  
11 its assets. The attorney general (~~(or the department may)~~) shall  
12 employ, at the expense of the acquiring person, reasonably necessary  
13 expert assistance in making this determination. This expense must be  
14 in addition to the fees charged under RCW 70.45.030;

15 (6) Charitable funds will not be placed at unreasonable risk, if  
16 the acquisition is financed in part by the nonprofit corporation;

17 (7) Any management contract under the acquisition will be for fair  
18 market value;

19 (8) The proceeds from the acquisition will be controlled as  
20 charitable funds independently of the acquiring person or parties to  
21 the acquisition, and will be used for charitable health purposes  
22 consistent with the nonprofit corporation's original purpose, including  
23 providing health care to the disadvantaged, the uninsured, and the  
24 underinsured and providing benefits to promote improved health in the  
25 affected community;

26 (9) Any charitable entity established to hold the proceeds of the  
27 acquisition will be broadly based in and representative of the  
28 community where the hospital to be acquired is located, taking into  
29 consideration the structure and governance of such entity; and

30 (10) A right of first refusal to repurchase the assets by a  
31 successor nonprofit corporation or foundation has been retained if the  
32 hospital is subsequently sold to, acquired by, or merged with another  
33 entity.

34 **Sec. 2.** RCW 70.45.080 and 1997 c 332 s 8 are each amended to read  
35 as follows:

36 The department shall (~~only~~) approve an application only if the  
37 acquisition in question will not detrimentally affect the continued

1 existence of accessible, affordable health care that is responsive to  
2 the needs of the community in which the hospital to be acquired is  
3 located. To this end, the department shall not approve an application  
4 unless, at a minimum, it determines that:

5 (1) Sufficient safeguards are included to assure the affected  
6 community continued access to affordable care, and that alternative  
7 sources of care are available in the community should the acquisition  
8 result in a reduction or elimination of particular health services;

9 (2) The acquisition will not result in the revocation of hospital  
10 privileges;

11 (3) Sufficient safeguards are included to maintain appropriate  
12 capacity for health science research and health care provider  
13 education;

14 (4) The acquiring person and parties to the acquisition are  
15 committed to providing health care to the disadvantaged, the uninsured,  
16 and the underinsured and to providing benefits to promote improved  
17 health in the affected community. Activities and funding provided  
18 under RCW 70.45.070(8) may be considered in evaluating compliance with  
19 this commitment; (~~and~~)

20 (5) Sufficient safeguards are included to avoid conflict of  
21 interest in patient referral; and

22 (6) The department shall employ, at the expense of the acquiring  
23 person, a qualified independent expert to conduct an independent,  
24 comprehensive health impact study in order to determine that all of the  
25 above conditions will be met. This expense must be in addition to fees  
26 charged under RCW 70.45.030.

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